

**TITLE XV
LIMITED LIABILITY COMPANY CODE**

CHAPTER 1 GENERAL PROVISIONS

Section 15-1-1 Short Title.

This Title shall be known as the "Ponca Tribal Limited Liability Company Code."

Section 15-1-2 Authority; Purposes; Sovereign Immunity.

1. This Code is enacted pursuant to the Ponca Tribe of Nebraska's inherent governmental power, fiscal authority, and tribal sovereignty and as specifically authorized by the Constitution of the Tribe.
2. The purpose of this Code is to provide for economic development of the Ponca Tribe and its members by:
 - a. providing the legal framework for organizing individually-owned business entities in order to expand the private business sector on Tribal Lands; and
 - b. authorizing the formation of wholly-owned Tribal business entities for managing the Tribe's economic activities separate from the general affairs of its Tribal Council, with the ability to enter into legally-binding contracts and commercial relationships without the need for formal Tribal Council action.
3. By the adoption of this Code, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal or state, and neither the adoption of this Code, nor the incorporation of any Limited Liability Company hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court.

Section 15-1-3 Scope.

This Code shall apply to all limited liability companies organized under its provisions or that elect to accept the provisions of this Code.

Section 15-1-4 Applicable Law.

The companies organized and created under this Code shall be subject to this Code, and all other laws of the Tribe. To the extent that any provisions of the Ponca Tribal Limited Liability Company Code conflict with any other provisions of the Law & Order Code of the Ponca Tribe of Nebraska, this Title supersedes those conflicting provisions. By organizing and creating a Limited Liability Company under this Code, the Limited Liability Company and its Owners shall be considered to have entered into a consensual relationship with the Tribe and agree to be subject to the full extent of the Tribe's legislative, regulatory, and adjudicatory jurisdiction. Unless displaced by particular provisions of this Code or other Tribal law, the principles of law and equity supplement this Code.

Section 15-1-5 Definitions.

Terms used in this Code have the following meanings:

1. "Articles of Organization" means the articles filed under Section 201 and those articles as amended or restated.
2. "Corporation" means a domestic Corporation organized under the laws of the Tribe or a foreign Corporation formed under the laws of any other jurisdiction.
3. "Distribution" means a direct or indirect transfer by a Limited Liability Company of money or other property to or for the benefit of its Owners in respect of their interests.
4. "Entity" includes an individual, a general partnership, limited partnership, a Limited Liability Company, a trust, an estate, an association, a Corporation or any other legal or commercial entity.
5. "Foreign" means an Entity organized under the laws of a jurisdiction other than the Tribe.
6. "Limited Liability Company" or "Domestic Limited Liability Company" means an organization formed under this Code, except as provided for in Section 15-8-1(1).
7. "Limited Liability Company Interest" or "Interest in the Limited Liability Company" or "Owner's Interest" means an Owner's rights in the Limited Liability Company, including rights to distributions, profits and losses, and to

- participate in management, as specified in the Operating Agreement.
8. "LLC" means a Limited Liability Company.
 9. "Majority in Interest" means an Owner or Owners holding more than fifty percent (50%) of the total voting interests in the Limited Liability Company excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Code.
 10. "Majority of Owners" means more than fifty percent (50%) of the Owners, irrespective of how many interests each Owner holds.
 11. "Manager" or "Managers" means the person(s) or entity(ies) designated to manage the LLC pursuant to the Articles of Organization and Operating Agreement.
 12. "Office of the Secretary" means the Office of the Secretary of the Tribal Council as provided by Article X Section 6 the Tribal Constitution, or that individual's designee.
 13. "Operating Agreement" means an agreement in writing among all of the Owners as to the conduct of the business of a Limited Liability Company and its relationships with its Owners.
 14. "Organizational Documents" means records that create a Business Entity's organization and determine its internal governance and relations among persons that own it, have an interest in it, or are Owners of it, and it includes but is not limited to, Articles of Organization, Operating Agreements, Articles of Incorporation, Bylaws, partnership agreements, agreements of trust, and declarations of trust.
 15. "Organizer(s)" means the person(s) or entity(ies) which signs and delivers the Articles of Organization for filing to the Office of the Secretary.
 16. "Owner" means a Person that is an owner of a Limited Liability Company or has an ownership interest in a Limited Liability Company. The term does not include a person that has dissociated as an owner under Section 15-3-7.
 17. "Person" includes a natural person, Tribal Entity, and an organization such as a general partnership, limited

partnership, a Domestic or Foreign Limited Liability Company, a trust, an estate, an association, or a Corporation.

18. "Secretary of the Tribe" means the individual duly elected to the position of Secretary of the Tribal Council, or that individual's designee.
19. "State" includes a state, territory, or possession of the United States, and the District of Columbia.
20. "Tribal Constitution" means the Constitution of the Ponca Tribe of Nebraska.
21. "Tribal Corporation" means a Corporation wholly owned by the Tribe and duly formed pursuant to a Section 17 Charter, a Tribal Resolution, a Business Corporation Code adopted by the Tribe, or other law.
22. "Tribal Council" means the Tribal Council as established by Article IV and Article V of the Tribal Constitution as the governing body of the Tribe.
23. "Tribal Court" means the Tribal Court of the Ponca Tribe of Nebraska as established by Article VI of the Tribal Constitution.
24. "Tribal Entity" includes the Tribe, the Tribal Council, a general partnership, limited partnership, a Domestic or Foreign Limited Liability Company, a trust, an estate, an association, a Corporation, a program, a department, an administrative agency or any other legal, commercial or governmental entity of the Tribe.
25. "Tribal Lands" means all lands under the jurisdiction of the Tribe, and such other lands as may hereafter be added thereto under any law of the United States of America, except as otherwise provided by law.
26. "Tribally-Owned LLC" means a Limited Liability Company wholly owned by the Tribe with the Tribe as its sole Owner.
27. "Tribally-Owned Second Tiered Subsidiary LLC" means a Limited Liability Company wholly owned by a Tribally-Owned Subsidiary LLC.

28. "Tribally-Owned Subsidiary LLC" means a Limited Liability Company wholly owned by a Tribally-Owned LLC.
29. "Tribe" means the Ponca Tribe of Nebraska.
30. "Trust Land" means land held in trust by the United States for the benefit of the Tribe or its members.

Section 15-1-6 Name.

1. The name of a Limited Liability Company as set forth in its Articles of Organization must contain the words "Limited Liability Company" or end with the abbreviation "L.L.C." or "LLC." The name may not contain language stating or implying that the Limited Liability Company is organized for any purpose other than that permitted under Section 15-1-9, below.
2. The name of a Domestic LLC shall be distinguishable from any LLC or Corporation previously organized under the laws of the Tribe.

Section 15-1-7 Registered Office and Registered Agent.

1. A Limited Liability Company's registered agent is the Limited Liability Company's agent for receiving service of process, notice, or demand required or permitted by law to be served on the Limited Liability Company under the laws of the Tribe.
2. Each LLC shall continuously maintain a registered office and a registered agent. The registered office may, but need not, be the same as any of its places of business. The agent may be the same person then serving in a designated office of the Tribe rather than a specified person if the Tribe is an Owner in the LLC of which the Tribe's officer is the appointed agent.
3. An LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed, with the Office of the Secretary and paying the filing fee.
4. The registered agent of an LLC may resign as a registered agent by delivering to the Office of the Secretary for

filing a written statement of resignation and the appointment by the LLC of another registered agent.

Section 15-1-8 Tribe as an Owner.

1. The Tribe shall form or become an Owner of a Tribally-Owned LLC formed under this Code only upon approval of such action by duly enacted resolution of the Tribal Council.
2. If the Tribe or a Tribal Entity is an Owner of an LLC formed under this Code, any action which the Tribe is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as specified in Section 15-9-41 of this Code or, as to actions related to the Managers of a Manager-managed LLC, as stated in the LLC's Operating Agreement approved by the Tribal Council.
3. If the Tribe is the sole Owner of an LLC formed under this Code, such Tribally-Owned LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement.
4. If a Tribally-Owned LLC, of which the Tribe or a Tribal Entity is the sole Owner, forms a Tribally-Owned Subsidiary LLC, of which the Tribally-Owned LLC is the sole Owner, such Tribally-Owned Subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement.
5. If a Subsidiary Tribally-Owned LLC, of which the Tribally-Owned LLC is the sole Owner, forms a Tribally-Owned Second Tier Subsidiary LLC, such Tribally-Owned Second Tier Subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement.
6. If the Tribe or a Tribal Entity is an Owner with a Majority in Interest in an LLC formed under this Code, such LLC may possess the privileges and immunities of the Tribe, including sovereign immunity from suit, to

the extent allowed by federal law, this Code or its Operating Agreement.

7. In no event shall any Manager not an Owner of an LLC in which the Tribe is an Owner, bind the Tribe in any manner; provided that the Tribe's interest as an Owner may be bound by Manager or Owner actions as stated in this Code and the Operating Agreement of the LLC.
8. Nothing contained in this Code shall be construed as creating any liability or waiving of sovereign immunity of the Tribe in any manner; provided that the assets of the LLC in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Tribe as Owner concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as an Owner of the LLC.
9. For all Tribally-Owned Limited Liability Companies, the additional provisions of Chapter 9 of this Code shall apply.

Section 15-1-9 Nature of Business.

A Limited Liability Company may be organized under this Code for any lawful purpose. Unless otherwise provided in its Operating Agreement, an LLC organized and existing under this Code has the same powers as an individual to do all things necessary and convenient to carry out its business, including but not limited to, all of the following:

1. Consent to be sued, complain and defend in its name; provided, however, that if an LLC is Tribally-Owned, or wholly-owned by another entity which itself is wholly-owned by the Tribe, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless the Operating Agreement otherwise provides.
2. Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal in or with real, or personal property or any legal or equitable interest in real or personal property, wherever situated.

3. Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.
4. Lend money, property, and services to, and otherwise assist, its Owners and Managers, if any.
5. Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity.
6. Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.
7. Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
8. Conduct its business, locate offices, and exercise the powers granted by this Code inside or outside of Tribal Lands.
9. Be a promoter, incorporator, partner, Owner, associate, or Manager of any enterprise or entity.
10. Elect or appoint Managers, agents, and employees, define their duties, and fix their compensation.
11. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former Owners, Managers, employees, and agents.
12. Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.
13. Indemnify an Owner, Manager, employee, officer, or agent, or any other person.

14. Provide benefits or payments to Owners, Managers, employees, and agents of the LLC, and to their estates, families, dependents, or beneficiaries in recognition of the past services of the Owners, Managers, employees, and agents of the LLC.
15. Make payments or donations, or do any other act not prohibited by law, that furthers the business of the LLC.
16. Transact any lawful business that the Owners or the Managers find to be appropriate to promote and further the business and affairs of the Limited Liability Company.

Section 15-1-10 Execution of Documents.

1. Except as otherwise provided in this Code, any document required or permitted by this Code to be delivered for filing in accordance with Section 15-1-11 shall be executed by any of the following:
 - a. Any Manager, if management of the LLC is vested in a Manager or Managers, or by an Owner, if management of the LLC is reserved to the Owners.
 - b. All individuals listed or to be listed as organizers of the LLC in the documents that will be filed pursuant to Section 15-1-11. The name and address of each organizer shall be provided.
 - c. The drafter of the document.
2. The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.
3. The person executing the document may do so as an attorney-in-fact. Powers-of-attorney relating to the executing of the document need not be shown to nor filed with the Office of the Secretary.

Section 15-1-11 Filing.

1. The Office of the Secretary shall receive all filings required under this Code and maintain the records of such filings pursuant to this Section, including but not limited, to the Articles of Organization, amended or

restated articles, annual reports, names and addresses of registered offices and agents, and, in the case of Tribally-Owned LLCs, the Operating Agreement and amendments thereto, and other reports required by this Code.

2. Upon receipt of a document for filing under this Code, the Office of the Secretary shall ensure it meets the requirements herein and then shall stamp or otherwise endorse the date and time of receipt of the original, the duplicate copy, and, upon request, any additional copy received.
3. If the Office of the Secretary refuses to file a request, the Office shall return it to the person tendering the document for filing within five (5) business days after the date on which the document is received by the Office for filing, together with a brief written explanation of the reason for refusal.
4. Any document accepted by the Office of the Secretary shall be effective at the time of receipt unless a delayed effective date and/or time not more than ninety (90) days after receipt by the Office of the Secretary is specified in the document.
5. Fees. The Office of the Secretary shall impose a reasonable filing fee for each document filed, initially set at the sum of \$100.00, and an annual renewal fee initially set at the sum of \$25.00 during the life of the LLC, subject to any uniform schedule of fees as may hereafter be adopted by the Office of the Secretary, with approval of the Tribal Council, from time to time.

Section 15-1-12 Certificate of Status.

Any person may obtain from the Office of the Secretary, upon request, a certificate of status for either a Domestic or a Foreign LLC.

Section 15-1-13 Execution by Judicial Act.

Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document

required to be filed under this Code may petition the Tribal Court solely for the purpose of requesting an order that directs the execution and filing of the articles or other document. Review by the Tribal Court shall be limited to a determination of whether the articles or document comply with the requirements for the articles and document set forth in this Code. Nothing in this Code, however, serves to waive any aspect of the Tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Articles of Organization and/or Operating Agreement. Nothing in this Code authorizes lawsuits against the Office of the Secretary for damages or any relief other than the order described in this section.

Section 15-1-14 Interstate Application and Application in Other Foreign Jurisdictions.

An LLC may conduct its business, carry on its operations and have and exercise the powers granted by this Code in any foreign jurisdiction, including but not limited to, any jurisdiction of an Indian tribe, any foreign nation, and any state, territory, district or possession of the United States.

CHAPTER 2
OPERATING AGREEMENT AND DEALING WITH LLC

Section 15-2-1 Articles of Organization.

1. One or more persons may organize a Limited Liability Company by signing and delivering the Articles of Organization to the Office of the Secretary for filing. The organizer(s) need not be Owners of the LLC at the time of organization or thereafter.
2. A Limited Liability Company shall have one or more Owners.
3. The Articles of Organization shall contain all of and only the following information:
 - a. A statement that the LLC is organized under this Code.
 - b. A name for the LLC that satisfies the provisions of this Code.
 - c. The street address of the registered office and the name of the registered agent at that office. For all LLCs formed pursuant to this Code and for all Foreign LLCs operating within Tribal Lands, such office, and agent shall be located within the exterior boundaries of Tribal Lands.
 - d. If management of the LLC is vested in one or more Managers, a statement to that effect.
 - e. The name and address of each person organizing the LLC.
 - f. Whether the LLC is Tribally-Owned.
 - g. If Tribally-Owned, whether the LLC is to enjoy Tribal sovereign immunity and the scope of any waiver of that immunity.
4. The Office of the Secretary shall assign each Article of Organization an identification number.

5. Amendment. An LLC may amend its Articles of Organization at any time by delivering an amendment, with filing fee, for filing to the Office of the Secretary.
6. Effect of Delivery or Filing.
 - a. An LLC is formed when the Articles of Organization become effective under Section 15-1-11(4).
 - b. The Office of the Secretary's filing of the Articles of Organization is conclusive proof that the LLC is organized and formed under this Code.

Section 15-2-2 Agency Power of Owners and Managers.

1. Except as provided in subsection 2, below:
 - a. Each Owner is an agent of the LLC, but not of any of the other Owners, for the purpose of its business.
 - b. The act of any Owner, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of business the business of the LLC, binds the LLC in the particular matter, unless the person with whom the Owner is dealing has knowledge that the Owner has no authority to act in this matter.
 - c. If the Tribe is an Owner, the Tribe's authority shall be exercised pursuant to Section 15-9-41.
2. If management of the LLC is vested in one or more Managers:
 - a. No Owner, solely by being an Owner, is an agent of the LLC or of the other Owners.
 - b. Each Manager is an agent of the LLC, but not for the other Owners, for the purpose of its business. The act of any Manager, including the execution in the name of the LLC of any instrument for apparently carrying on the ordinary course of business of the LLC, binds the LLC unless the Manager has, in fact, no authority to act for the LLC in the particular matter, and the person with whom the Manager is

dealing has knowledge that the Manager has no authority to act in the matter.

3. No act of an Owner or, if management of the LLC is vested in one or more Managers, of a Manager that is not apparently authorized for the carrying on in the ordinary course of business the business of the LLC, shall bind the LLC unless in fact authorized at the time of the transaction or at any other time.

Section 15-2-3 Admissions of Owners and Managers.

1. Except as provided in Section 15-2-3(2)(b), an admission or representation made by any Owner concerning the business of an LLC within the scope of the Owner's actual authority may be used as evidence against the LLC in any legal proceeding.
2. If management of the LLC is vested in one or more Managers:
 - a. An admission or representation made by a Manager concerning the business of an LLC within the scope of the Manager's authority may be used as evidence against the LLC in any legal proceeding.
 - b. The admission or representation of any Owner, acting solely in the Owner's capacity as an Owner, is not evidence against the LLC in any legal proceeding.

Section 15-2-4 Knowledge of or Notice to Owner or Manager.

1. Except as provided in Section 15-2-4(2)(b), notice to any Owner of any matter relating to the business of an LLC, and the knowledge of an Owner acting in the particular matter, acquired while an Owner or known by the person at the time of becoming an Owner, and the knowledge of any Owner who reasonably could and should have communicated it to the acting Owner, operate as notice to or knowledge of the LLC.
2. If management of the LLC is vested in one or more Managers:
 - a. Notice to any Manager of any matter relating to the business of the LLC, and the knowledge of the

Manager acting in the particular matter acquired while a Manager or known by the person at the time of becoming a Manager and the knowledge of any other Manager who reasonably could and should have communicated it to the acting Manager, operate as notice to or knowledge of the LLC.

- b. Notice to or knowledge of any Owner while the Owner is acting solely in the capacity of an Owner is not notice to or knowledge of the LLC.

Section 15-2-5 Liability of Owners to Third Parties.

The debts, obligations, and liabilities of an LLC, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the LLC. Except as otherwise specifically provided in this Code, an Owner or Manager of an LLC is not personally liable for any debt, obligation, or liability of an LLC, as such debt, obligation or liability may be defined in the Operating Agreement.

Section 15-2-6 Parties to Action.

An Owner of an LLC is not a proper party to a proceeding by or against an LLC solely by reason of being an Owner of the LLC, except if any of the following exist:

1. The object of the proceeding is to enforce an Owner's right against or liability to the LLC.
2. The action is brought by an Owner under Section 15-2-7.

Section 15-2-7 Authority to Sue.

Unless otherwise provided in the Operating Agreement, an action on behalf of an LLC may be brought in the name of the LLC by:

1. One or more Owners of the LLC, if authorized by a Majority in Interest of Owners, excluding the vote of any Owner who has an interest in the outcome of the action that is adverse to the interest of the LLC.
2. One or more Managers of an LLC if the management of the LLC is vested in one or more Managers, or if the Managers are authorized to sue by a Majority in Interest of Owners.

Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe as Owner unless otherwise provided in the Operating Agreement.

**CHAPTER 3
OWNERS AND MANAGERS**

Section 15-3-1 Management.

1. Unless the Articles of Organization vest management in one or more Managers, management of the LLC shall be vested in the Owners subject to any provision in the Operating Agreement or this Code restricting or enlarging the management rights and duties of any Owner or group of Owners.

In an Owner-managed LLC, the following rules shall apply, subject to the provisions of the Operating Agreement or this Code:

- a. A difference arising among Owners as to a matter in the ordinary course of the activities of the LLC may be decided by a Majority of the Owners.
 - b. An act outside the ordinary course of activities of a Limited Liability Company may be undertaken only with the consent of all the Owners.
2. If the Articles of Organization vest management in one or more Managers, management of the business or affairs of the LLC shall be vested in the Manager or Managers subject to any provisions in the Operating Agreement or this Code restricting or enlarging the management rights and duties of any Manager or group of Managers. Unless otherwise provided in the Operating Agreement, the Manager, or Managers:
 - a. Shall be designated, appointed, elected, removed, or replaced by a vote of a Majority in Interest of the Owners.
 - b. Need not be Owners of the LLC nor individuals.
 - c. Unless earlier removed or earlier resigned, shall hold office until a successor is elected and qualified.

Section 15-3-2 Duties.

1. All Owners and Managers shall have and owe fiduciary duties to the LLC and to the Owner(s).
2. No Owner or Manager shall act in a manner that constitutes any of the following:
 - a. A willful failure to deal fairly with the LLC or its Owners in connection with a matter in which the Owner or Manager has a material conflict of interest.
 - b. A violation of criminal law involving moral turpitude.
 - c. A transaction from which the Owner or Manager derived an improper personal profit.
 - d. Willful misconduct.
3. Every Owner and Manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that Owner or Manager without the consent of a majority of the disinterested Owners or Managers, or other persons participating in the management of the LLC, from any of the following:
 - a. A transaction connected with the organization, conduct, or winding up of the LLC.
 - b. A use by an Owner or Manager of the property of an LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as Owner or Manager.
4. An LLC's Operating Agreement may impose duties on its Owners and Managers that are in addition to, but not in abrogation of, those provided in subsection (2) above.

Section 15-3-3 Limitation of Liability and Indemnification.

1. In this Section, "expenses" mean expenses of defending a lawsuit, including attorney's fees, and any civil judgment or penalty, or settlement payment in lieu

thereof, paid in connection with a lawsuit against an Owner or Manager in such capacity.

2. An LLC shall indemnify or allow expenses to each Owner and each Manager for all reasonable expenses incurred with respect to a proceeding if that Owner or Manager was a party to the proceeding in the capacity of an Owner or Manager.
3. The Operating Agreement may alter or provide additional rights to indemnification or allowance of expenses to Owners and Managers.
4. Notwithstanding subsections (2) and (3) above, an LLC may not indemnify an Owner or Manager unless it is determined that the Owner or Manager did not breach or fail to perform a duty to the LLC as provided in Section 15-3-2.
5. Unless otherwise provided in the Operating Agreement:
 - a. An Owner or Manager shall be conclusively presumed not to have breached or failed to perform a duty to the LLC to the extent that the Owner or Manager has been successful on the merits or otherwise in the defense of the proceeding.
 - b. In situations not described in paragraph (a), above, the determination of whether Owner or Manager has breached or failed to perform a duty to the LLC shall be made by the vote of a Majority in Interest of the Owners, excluding any Owner who is a party to the same or related proceeding unless all Owners are parties.

Section 15-3-4 Voting.

1. Unless otherwise provided in the Operating Agreement or this Section, and subject to subsection (2) below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of an LLC.
 - a. If management of an LLC is reserved to the Owners, an affirmative vote, approval, or consent by a Majority in Interest of Owners.

- b. If the management of an LLC is vested in one or more Managers, the affirmative vote, consent, or approval of more than fifty percent (50%) of the Managers.
2. Unless otherwise provided in the Operating Agreement or this Code, the affirmative vote, approval, or consent of all Owners shall be required to do any of the following:
 - a. Amend the Articles of Organization.
 - b. Issue an interest in an LLC to any person.
 - c. Adopt, amend, or revoke Operating Agreement.
 - d. Allow an LLC to accept any additional contribution from an Owner.
 - e. Allow a partial redemption of an interest in an LLC under Section 15-5-3.
 - f. Value contributions of Owners under Section 15-4-1.
 - g. Authorize a Manager, Owner, or other person to do any act on behalf of the LLC that contravenes the Operating Agreement.
3. Unless otherwise provided in the Operating Agreement, if any Owner is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the Owner would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under Section 15-1-5(9) for that matter.
4. Unless otherwise provided in the Operating Agreement or this Section, if all or part of an interest in the LLC is assigned under Section 15-6-4, the assigning Owner shall be considered the owner of the assigned interest for purposes of determining the 50% threshold under Section 15-1-5(9) until the assignee of the interest in the LLC becomes an Owner under Section 15-6-6.

Section 15-3-5 Records and Information.

1. An LLC shall keep at its principal place of business all of the following:
 - a. A list, in alphabetical order, of each past and present Owner and, if applicable, Manager.
 - b. A copy of the Articles of Organization and all amendments to the articles, together with executed copies of any powers of attorney under which any articles were executed.
 - c. A copy of the Operating Agreement and all amendments thereto.
 - d. A record of all matters referred to in this Code as maintained in such records which are not otherwise specified in the Operating Agreement.
2. Upon reasonable request, an Owner may, at the Owner's own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in the Operating Agreement.
3. Owners or, if the management of the LLC is vested in one or more Managers, Managers shall provide true and full information of all things affecting the Owners to any Owner or to the legal representative of any Owner upon reasonable request of the Owner or the legal representative.
4. Failure of an LLC to keep or maintain any of the records of information required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the LLC.

Section 15-3-6 Admission of Owners.

1. In connection with the formation of an LLC, a person acquiring an LLC interest is admitted as an Owner upon formation unless the Operating Agreement otherwise provides.
2. After the formation of an LLC, a person acquiring an LLC interest is admitted as an Owner of the LLC as specified in the Operating Agreement or, if not so specified, by consent of all the other Owners, or, if the person is an

assignee of another person's LLC interest, only pursuant to Section 15-6-6.

Section 15-3-7 Dissociation.

1. A person ceases to be an Owner of an LLC upon the simultaneous occurrence of and at the same time of any of the following events:
 - a. The Owner withdraws by voluntary act.
 - b. The Owner is removed as an Owner in accordance with the Operating Agreement or this Code.
 - c. Unless otherwise provided in the Operating Agreement or by the written consent of all Owners at the time of the event, the Owner does any of the following:
 - i. Makes an assignment for the benefit of the creditors.
 - ii. Files a petition in bankruptcy.
 - iii. Becomes the subject of an order for relief under the federal bankruptcy laws or state or tribal insolvency laws.
 - iv. Fails to gain dismissal of any federal bankruptcy or state or tribal insolvency proceeding within 120 days of commencement of an involuntary proceeding.
 - d. Unless provided in the Operating Agreement or by the written consent of all Owners, if the Owner is an individual, either of the following occurs:
 - i. The Owner's death.
 - ii. The entry of an order by a court of competent jurisdiction adjudicating the Owner incompetent to manage the Owner's person or estate.
 - e. Unless otherwise provided in the Operating Agreement or by written agreement or by the written consent of all Owners at the time, if the Owner is

a trust, Corporation, partnership, or Limited Liability Company upon liquidation, dissolution, or termination.

2. The Owners may provide in the Operating Agreement for other events the occurrence of which result in a person ceasing to be an Owner of the LLC.
3. Unless the Operating Agreement provides that an Owner does not have the power to withdraw by voluntary act from an LLC, the Owner may do so at any time by giving written notice to the other Owners or as provided in the Operating Agreement. If the Owner has the power to withdraw but the withdrawal is a breach of the Operating Agreement, the LLC may offset the damages against the amount otherwise distributable to the Owner, in addition to pursuing any remedies provided for in the Operating Agreement or otherwise available under applicable law.

CHAPTER 4 FINANCE

Section 15-4-1 Contributions.

1. An Owner's contributions to an LLC may consist of cash, property, or services rendered, or promissory notes or other written obligations to provide cash or property or to perform services.
6. The value of an Owner's contribution shall be determined in the manner provided in the Operating Agreement. If the Operating Agreement does not fix a value to a contribution, the value of a contribution shall be approved by a Majority in Interest of the Owners, shall be properly reflected in the records and information kept by the LLC under Section 15-3-5(1). The value of contributions so determined shall be binding and conclusive on the LLC and its Owners.

Section 15-4-2 Liability for Contribution.

1. An obligation of an Owner to provide cash or property or to perform services as a contribution to an LLC is not enforceable unless specified in a writing signed by the Owner.
2. Unless otherwise provided in the Operating Agreement, an Owner is obligated to an LLC to perform any enforceable promise to provide cash or property or to perform

services, even if the Owner is unable to perform because of death, disability, or any other reason. If an Owner does not provide cash, property, or services as promised, the Owner is obligated at the option of the LLC to provide cash equal to that portion of the value of the stated contribution that has not been fulfilled.

3. Unless otherwise provided in the Operating Agreement, an Owner's obligation to provide cash or property or perform services as a contribution to the LLC may be compromised only by the written consent of all of the Owners.

Section 15-4-3 Allocation of Profits and Losses.

The profits and losses of an LLC shall be allocated among the Owners in the manner provided in the Operating Agreement. If the Owners do not enter into an Operating Agreement or the Operating Agreement does not provide otherwise, profits and losses shall be allocated on the basis of value of the contributions made by each Owner.

CHAPTER 5 NON-LIQUIDATING DISTRIBUTIONS

Section 15-5-1 Interim Distributions.

Except as provided in this Chapter, an Owner is entitled to receive Distributions from an LLC before the Owner's dissociation from the LLC and before its dissolution and winding up to the extent and at the times or upon the events specified in the Operating Agreement, or to the extent and at the times determined by the Owners or Managers.

Section 15-5-2 Allocation of Distributions.

Distributions of cash or other assets of an LLC shall be allocated among the Owners as provided in Operating Agreement, or if the Operating Agreement does not so provide, on the basis of the value of the contributions made by each Owner.

Section 15-5-3 Distribution Upon Partial Redemption.

Except as provided in this Chapter, upon the Distribution in partial liquidation of an Owner's interest, the redeeming Owner is

entitled to receive the amount to which the Owner is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair value of the redeemed interest based on the Owner's right to share in Distributions from the LLC.

Section 15-5-4 Distribution Upon Dissociation.

Except as otherwise provided in this Chapter, upon an event of dissociation under Section 15-3-7 that does not cause dissolution of the LLC, a dissociating Owner is entitled to receive any Distribution to which Owner is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair market value of the Owner's interest in the LLC based on the Owner's rights to share in Distributions from the LLC.

Section 15-5-5 Distribution in Kind.

Unless otherwise provided in the Operating Agreement:

1. An Owner may not demand and receive any Distribution from an LLC in any form other than cash.
2. An Owner may not be compelled to accept a Distribution of any asset in kind except for a liquidating Distribution made proportionately.

Section 15-5-6 Right to Distribution.

At the time that an Owner becomes entitled to receive a Distribution from an LLC, the Owner has the status of and is entitled to all remedies available to a creditor of the LLC with respect to the Distribution; provided, however, that such right shall not in any way limit any other remedy available to such Owner under any other provision of applicable law of the Operating Agreement.

Section 15-5-7 Limitations of Distributions.

1. An LLC may not declare or make a Distribution to any of its Owners, if after giving effect to the Distribution, any of the following would occur:
 - a. The LLC would be unable to pay its debts as they become due in the usual course of business.

- b. The fair market value of the LLC's total assets would be less than the sum of its total liabilities plus, unless the Operating Agreement provides otherwise, the amount that would be needed for the preferential rights upon dissolution of Owners, if any.
2. An LLC may base a determination that a Distribution is not prohibited by subsection (1), above, on any of the following:
 - a. Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
 - b. A fair market valuation or other method that is reasonable under the circumstances.
3. An LLC's indebtedness to an Owner incurred by reason of a Distribution made in accordance with this Section is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Section does not affect the validity or priority of a security interest in an LLC's property that is created to secure the indebtedness to the Owner.

Section 15-5-8 Liability for Wrongful Distribution.

1. Except as provided in subsection (2) below, an Owner (other than the Tribe or Tribal Entity) or Manager who votes or assents to a Distribution in violation of Section 15-5-7 or of the Operating Agreement is personally liable to the LLC for the amount of the excess Distribution, subject to contribution from all other Managers or Owners participating in such action.
2. An action to recover under this Section may be brought in the Tribal Court; however, a proceeding under this Section is barred unless it is brought within two (2) years after the date of the distribution.
3. Nothing in this Code serves to waive any aspect of the Tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement.

CHAPTER 6
OWNERSHIP AND TRANSFER OF PROPERTY

Section 15-6-1 Ownership of LLC Property.

1. All property originally transferred to or acquired by an LLC is property of the LLC and not the Owners individually.
2. Property acquired with LLC funds is presumed to be LLC property.
3. Property may be acquired, held, and conveyed in the name of the LLC.

Section 15-6-2 Transfer of Property.

The property of an LLC may be transferred by an instrument of transfer executed by any Owner in the name of the LLC, unless management is vested in Managers, in which case the document of transfer shall be executed by a Manager, subject to any limitation that may be imposed by the Operating Agreement.

Section 15-6-3 Nature of Interest.

An LLC interest is personal property.

Section 15-6-4 Assignment of LLC Interest.

1. Unless otherwise provided in the Operating Agreement:
 - a. An LLC interest is assignable in whole or in part.
 - b. An assignment of an LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignor would be entitled with respect to the assigned interest.
 - c. An assignment of an LLC interest does not dissolve the LLC.
 - d. Unless and until the assignee becomes an Owner of the LLC under Section 15-6-6, the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of an Owner.

- e. Unless and until the assignee of an LLC interest becomes an Owner of the LLC under Section 15-6-6, the assignor continues to be an Owner.
 - f. The assignor of an LLC interest is not released from any personal liability arising under this Code as an Owner of the LLC solely as a result of the assignment.
2. Unless otherwise provided in the Operating Agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of an Owner's LLC interest is not assignable and shall not cause the Owner to cease to have the power to exercise any rights or powers of an Owner.

Section 15-6-5 Rights of Judgment Creditor.

Upon application to a court of competent jurisdiction, including a court other than the Tribal Court having valid jurisdiction over an Owner, by any judgment creditor of the Owner, the court may charge the LLC interest of any Owner (other than the Tribe) with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the Owner's LLC interest in Distributions made by the LLC to Owners and other assigned interest holders in the usual course of business. This Section does not deprive any Owner of the benefit of any exemption laws applicable to the LLC interest. In no event shall the Tribe's interest be attachable without the Tribe's express consent or otherwise in abrogation of its sovereign immunity.

Section 15-6-6 Right of Assignee to Become an Owner.

- 1. Unless otherwise provided in the Operating Agreement, an assignee of an LLC interest may become an Owner only if the other Owners unanimously consent.
- 2. An assignee of an LLC interest who becomes an Owner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the Operating Agreement and this Code.
- 3. Unless otherwise provided in the Operating Agreement, an assignor of an LLC interest is not released from any

liability to the LLC without the written consent of all the Owners, whether or not the assignee becomes an Owner.

Section 15-6-7 Powers of Legal Representative.

If an Owner who is an individual dies or a court of competent jurisdiction adjudges the Owner to be incompetent to manage his or her person or property, the Owner's personal representative, administrator, guardian, conservator, trustee, or other legal representative shall have all the rights of an assignee of the Owner's interest. If an Owner is a Corporation, trust, partnership, Limited Liability Company, or other entity and is dissolved or terminated, the powers of that Owner may be exercised by its legal representative or successor.

**CHAPTER 7
DISSOLUTION**

Section 15-7-1 Dissolution.

A Limited Liability Company is dissolved and its affairs shall be wound up upon the happening of the first of the following:

1. The occurrence of events specified in the Operating Agreement.
2. The written consent of all Owners.
3. An event of dissociation of an Owner, unless otherwise provided in the Operating Agreement or continuation is consented to by all remaining Owners.
4. Entry of a decree of judicial dissolution under Section 15-7-2.

Section 15-7-2 Judicial Dissolution.

1. In a proceeding by or for an Owner, the Tribal Court may order dissolution of an LLC if any of the following is established:
 - a. That it is not reasonably practicable to carry on the business of the LLC.
 - b. That the LLC is not acting in conformity with its Operating Agreement.

- c. That one or more Managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.
 - d. That one or more Owners in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.
 - e. That LLC assets are being misapplied or wasted.
2. If the Tribe is an Owner of the LLC, any action under this Section must be brought in the Tribal Court, unless explicitly otherwise provided in the Operating Agreement. No tribal member or other individual may bring an action for or on behalf of the Tribe as Owner under this Section and only the Tribal Council may authorize a suit by the Tribe as Owner under this Section. Nothing in this Section may be construed as a waiver of the Tribe's sovereign immunity from suit, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement.

Section 15-7-3 Winding Up.

- 1. A dissolved LLC continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business.
- 2. Unless otherwise provided in its Operating Agreement:
 - a. The business of the LLC may be wound up by any of the following:
 - i. The Owners or Managers who have authority to manage the LLC before dissolution.
 - ii. In a judicial dissolution, the person(s) designated by the Tribal Court or court of competent jurisdiction.
 - b. The persons winding up the business of the LLC may do all of the following in the name of and on behalf of the LLC:
 - i. Collect its assets.
 - ii. Prosecute, settle, and defend suits.

- iii. Take any action necessary to settle and close the business of the LLC.
 - iv. Dispose of and transfer the property of the LLC.
 - v. Discharge or make provision for discharging the liabilities of the LLC.
 - vi. Distribute to the Owners any remaining assets of the LLC.
3. Dissolution of an LLC does not do any of the following:
- a. Transfer title to the LLC's property.
 - b. Prevent transfer of all or part of an Owner's interest.
 - c. Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the LLC.
 - d. Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC at the time of dissolution.
 - e. Terminate the authority of the registered agent of the LLC.
 - f. Alter the limited liability of an Owner.

Section 15-7-4 Distribution of Assets.

Upon the winding up of an LLC, the assets shall be distributed in the following order:

- 1. To creditors, including to the extent permitted by law, Owners, and former Owners in satisfaction of liabilities of the LLC.
- 2. Unless otherwise provided in the Operating Agreement, to Owners and former Owners in satisfaction of liabilities for Distributions under Sections 15-5-1, 15-5-3 and 15-5-4.

3. Unless otherwise provided in the Operating Agreement, to Owners and former Owners first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

Section 15-7-5 Articles of Dissolution.

After the dissolution of an LLC under Section 15-7-1, the LLC may file articles of dissolution with the Office of the Secretary that include the following:

1. The name of the LLC.
2. The date of filing of its Articles of Organization.
3. The statutory grounds under Section 15-7-1 for dissolution.
4. The delayed effective date of the articles of dissolution under Section 15-1-11(4), if applicable.

Section 15-7-6 Known Claims Against Dissolved LLC.

1. A dissolved LLC may notify its known claimants in writing of the dissolution and specify a procedure for making claims.
2. A claim against the LLC is barred if:
 - a. A claimant who was given written notice under subsection (1) above, does not deliver the claim, in writing, to the LLC by the deadline specified in the notice; or
 - b. A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce the claim within ninety (90) days after receipt of the rejection notice.

Section 15-7-7 Unknown or Contingent Claims.

A claim not barred under Section 15-7-6 may be enforced:

1. Against the dissolved LLC, to the extent of its undistributed assets.

2. If the dissolved LLC's assets have been distributed in liquidation, against an Owner of the LLC, other than the Tribe, to the extent of the Owner's proportionate share of the claim or of the assets of the LLC distributed to the Owner in liquidation, whichever is less, but an Owner's total liability for all claims under this Section may not exceed the total value of assets at the time distributed to the Owner.

CHAPTER 8 MERGER AND CONVERSION

Section 15-8-1 Definitions.

1. "Business Entity" in this Part means a Domestic business entity and a Foreign business entity.
2. "Domestic business entity" means a Corporation, incorporated under the laws of the Ponca Tribe of Nebraska; a Domestic LLC, organized under this Code; a tribally-charted entity of the Tribe, an unincorporated cooperative of the Tribe; a Section 17 Corporation owned by the Tribe; or other tribally-formed entity, that is party to the merger.
3. "Foreign business entity" means a Foreign Limited Liability Company; a Foreign Limited Partnership, or a Foreign Corporation.
4. Unless the context requires otherwise, in this Chapter "LLC" includes a Domestic LLC and a Foreign LLC.

Section 15-8-2 Merger.

1. Unless otherwise provided in its Operating Agreement, one or more LLCs may merge with or into one or more other Business Entities if the action of merger is a process permitted under the applicable laws of the jurisdiction that governs each such other Business Entity and each such Business Entity approves the plan of merger in accordance with its Organizational Documents.
2. Interests or shares in an LLC that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving Business Entity.

Section 15-8-3 Approval of Merger.

1. Unless otherwise provided in the Operating Agreement, a Domestic LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote by all of the Owners.
2. Unless otherwise provided in the Operating Agreement, the Manager or Managers of a Domestic LLC may not approve a merger without also obtaining the approval of the LLC's Owners under subsection (1), above.
3. Each Business Entity, other than a Domestic LLC, that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable to the Business Entity and in accordance with their respective Organizational Documents.
4. Each Business Organization that is a party to the merger shall have any rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the Business Entity or in accordance with its Organizational Documents.
5. Upon approval of a merger, the LLC shall notify its Owners of the approval and of the effective date of the merger.
6. After a merger is authorized, and at any time before the Articles of Merger are filed with the Tribal Secretary, the planned merger may be abandoned, subject to any contractual rights, without further action on the part of the shareholders or other owners, in accordance with the procedures set forth in the plan of merger or, if none is set forth, in the manner determined by the governing body of any Business Entity that is a party to the merger.

Section 15-8-4 Plan of Merger.

The plan of merger shall include all of the following:

1. The name, form of Business Entity, and identity of the jurisdiction governing each Business Entity that is a party to the merger and the name, form of business entity, and identity of the jurisdiction of the surviving business entity

with, or into, which each other business entity proposes to merge.

2. The terms and conditions of the proposed merger.
3. The manner and basis of converting the interests in each business entity that is a party to the merger into shares, interests, obligations, or other securities of the surviving Business Entity or into cash or other property in whole or in part.
4. Amendments to the Articles of Organization or other similar governing document of the surviving Business Entity.
5. Other necessary or desirable provisions relating to the proposed merger.

Section 15-8-5 Articles of Merger.

1. The surviving Business Entity shall deliver to the Office of the Tribal Council Secretary Articles of Merger, executed by each party to the plan of merger, that include all of the following:
 - a. The plan of merger.
 - b. The name of the surviving or resulting LLC.
 - c. The effective date and time of the merger.
 - d. A statement as to whether the surviving Business Entity is Tribally-Owned.
 - e. If Tribally-Owned, a statement as to whether the surviving Business Entity enjoys the Tribe's sovereign immunity.
 - f. A statement that the plan of merger was approved by each Domestic LLC that is a party to the merger in accordance with Section 15-8-3.
2. A merger takes effect upon the effective date of the Articles of Merger.

Section 15-8-6 Effects of Merger.

A merger has the following effects:

1. The Business Organization must become a single Entity, which shall be the Entity designated in the plan of merger as the surviving LLC.
2. Each Business Organization, except the surviving LLC, ceases to exist.
3. The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged Business Organization and is subject to all of the restrictions, disabilities, and duties of each merged Business Organization.
4. All property and all debts, including contributions, and each interest belonging to or owed to each of the Business Organizations are vested in the surviving LLC without further act.
5. Title to all real estate and any interest in real estate, vested in any Business Organization, does not revert, and is not in any way impaired because of the merger.
6. The surviving LLC has all the liabilities and obligations of each of the Business Organizations and any claim existing or action or proceedings pending by or against any merged Business Organization may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.
7. The rights of creditors and any liens on the property of any Business Organization survive the merger.
8. The interests in a Business Organization that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.
9. The Articles of Organization of the surviving LLC is amended to the extent provided in the Articles of Merger.

Section 15-8-7 Right to Object.

Unless otherwise provided in the Operating Agreement, upon receipt of the notice required by Section 15-8-3(5), an Owner who did not

vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily dissociate from the LLC under Section 15-3-7(3) and receive fair value for the Owner's LLC interest under Section 15-5-4.

Section 15-8-8 Conversion.

1. Unless otherwise provided in its Organizational Documents, a Domestic LLC may convert to another form of Business Entity if it:
 - a. Follows the procedures and requirements under this Chapter relating to conversions; and
 - b. If the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the Business Entity into which the Domestic LLC is converting.
2. Unless otherwise provided in its Organizational Documents, a Business Entity other than a Domestic LLC may convert into a Domestic LLC if it:
 - a. Follows the procedures and requirements under this Chapter relating to conversions; and
 - b. If the conversion is permitted under the applicable law of the jurisdiction that governs the Business Entity.
3. The filing requirements of Section 15-1-11 apply to conversions under this Chapter.
4. Notwithstanding its prior approval, a plan of conversion under this Chapter may be amended before the conversion takes effect if the amendment is approved by the Owners of the converting Domestic LLC or Business Entity in the same manner as was required for the approval of the original plan of conversion.

Section 15-8-9 Conversion of Domestic LLC into Another Business Entity.

A Domestic LLC may convert into another Business Entity if all of the requirements of Section 15-8-10 and Section 15-8-11 are satisfied.

Section 15-8-10 Plan of Conversion for Domestic LLC into Another Business Entity.

1. Unless subsection (3) applies, the Domestic LLC proposing to convert shall adopt a plan of conversion that includes all of the following:
 - a. The name of the Domestic LLC, the name of the Business Entity into which the Domestic LLC is converting, the type of Business Entity into which the Domestic LLC is converting, identification of the statute that will govern the internal affairs of the surviving Business Entity, the street address of the surviving Business Entity, the street address of the Domestic LLC if different from the street address of the surviving Business Entity, and the principal place of business of the surviving Business Entity.
 - b. The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interest of the Domestic LLC into ownership interests or obligations of the surviving Business Entity, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.
 - c. The terms and conditions of the Organizational Documents that are to govern the surviving Business Entity.
 - d. Any other provisions with respect to the proposed conversion that the Domestic LLC considers as necessary or desirable.
2. A unanimous vote of the Owners of the Domestic LLC entitled to vote is required to adopt a plan of conversion under subsection (1), unless its Operating Agreement provides otherwise.
3. If the Domestic LLC has not commenced business; has not issued any ownership interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its ownership interests, subsections (1) and (2) do not apply and the Owners of the Domestic LLC, may approve

of the conversion of the Domestic LLC into another Business Entity by majority vote. To effect the conversion, a Majority of the Owners must execute and file a certificate of conversion under Section 15-8-11.

Section 15-8-11 Filing of Certificate of Conversion for Domestic LLC.

1. If the plan of conversion is approved under Section 15-8-10(2), the Domestic LLC shall file any formation documents required to be filed under the laws governing the internal affairs of the surviving Business Entity, in the manner prescribed by those laws, and shall file a certificate of conversion with the Office of the Secretary. The certificate of conversion shall include all of the following:
 - a. Unless Section 15-8-10(3) applies, a copy of the plan of conversion.
 - b. The name of the Domestic LLC that is converting into another business entity.
 - c. The type of business entity the Domestic LLC is converting into and the jurisdiction under which the surviving Business Entity shall be governed.
 - d. A statement that the Owners of the Domestic LLC have adopted the plan of conversion under Section 15-8-10(2), or that the Owners of the Domestic LLC have approved of the conversion under Section 15-8-10(3), as applicable.
 - e. A statement that the surviving Business Entity will furnish a copy of the plan of conversion, on request and without cost, to any Owner of the Domestic LLC.
 - f. The registered agent and registered office, of the Domestic LLC before and after conversion.
 - g. A Statement whether the Domestic LLC is Tribally-Owned.

Section 15-8-12 Effect of Conversion of Domestic LLC into Another Business Entity.

1. When a conversion from a Domestic LLC into another Business Entity takes effect, all of the following apply:
 - a. The Domestic LLC converts into the surviving Business Entity, and the Organizational Documents of the Domestic LLC are canceled.
 - b. Except as otherwise provided in this Code, the surviving Business Entity is organized under and subject to the organizational laws of the jurisdiction of the surviving Business Entity as stated in the Certificate of Conversion.
 - c. The surviving Business Entity has all of the liabilities of the Domestic LLC. The conversion of the Domestic LLC into a Business Entity under this Section shall not be considered to affect any obligations or liabilities of the Domestic LLC incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the Domestic LLC with respect to matters arising before the conversion.
 - d. The title to all real estate and other property and rights owned by the Domestic LLC remain vested in the surviving Business Entity without reversion or impairment.
 - e. The surviving Business Entity is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the Domestic LLC was originally organized.
 - f. The ownership interests of the Domestic LLC that were to be converted into ownership interest or obligations of the surviving Business Entity or into cash or other property are converted.
 - g. Unless otherwise provided in the plan of conversion, the Domestic LLC is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute dissolution of the Domestic LLC.

h. The Organizational Documents of the surviving Business Entity are as provided in the plan of conversion.

i. All other provisions of the plan of conversion apply.

Section 15-8-13 Conversion of Business Entity into a Domestic LLC.

A Business Entity may convert into a Domestic LLC if all of the requirements of Section 15-8-14 and 15-8-15 are satisfied.

Section 15-8-14 Plan of Conversion Business Entity into a Domestic LLC.

1. A Business Entity proposing to convert into a Domestic LLC shall adopt a plan of conversion that includes all of the following:
 - a. The name of the Business Entity, the type of Business Entity that is converting, identification of the statute that governs the internal affairs of the Business Entity, the name of the surviving Domestic LLC into which the Business Entity is converting, the street address of the surviving Domestic LLC, the street address of the Business Entity if different from the street address of the surviving Domestic LLC, and the principal place of business of the surviving Domestic LLC.
 - b. The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the Business Entity into ownership interests of the surviving Domestic LLC, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.
 - c. The terms and conditions of the Organizational Documents that are to govern the surviving Domestic LLC.
 - d. Any other provisions with respect to the proposed conversion that the Business Entity considers necessary or desirable.

2. If a plan of conversion is adopted by the Business Entity under subsection (1), the plan of conversion is submitted for approval in the manner required by the law governing the internal affairs of that Business Entity.
3. If the plan of conversion is approved under subsections (1) and (2), the Business Entity shall file a Certificate of Conversion with the Office of the Tribal Secretary. The Certificate of Conversion shall include all of the following:
 - a. A copy of the plan of conversion.
 - b. A statement that the Business Entity has obtained approval of the plan of conversion under subsection (2).
 - c. A statement that the surviving Domestic LLC will furnish a copy of the plan of conversion, on request and without cost, to any Owner of the Business Entity.
 - d. The registered agent and registered office, record agent and record office, or other similar agent and office of the surviving Domestic LLC before and after conversion.
 - e. The type of Business Entity and the date and location of jurisdiction where the Business Entity was formed prior to converting into a Domestic LLC.
 - f. A statement whether the surviving Domestic LLC is Tribally-Owned.
 - g. Submission of Articles of Organization for the surviving Domestic LLC that meet all of the requirements of this Code.

Section 15-8-15 Effect of Conversion of Business Entity into Domestic LLC.

When a conversion of a Business Entity into a Domestic LLC takes effect, all of the following apply:

1. The Business Entity converts into the surviving Domestic LLC. Except as otherwise provided in this Section, the surviving Domestic LLC is organized under and subject to this Code.

2. The surviving Domestic LLC has all of the liabilities of the Business Entity. The conversion of the Business Entity into a Domestic LLC under this Section shall not be considered to affect any obligations or liabilities of the Business Entity incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the Business Entity with respect to matters arising before conversion.
3. The title to all real estate and other property and rights owned by the Business Entity remains vested in the surviving Domestic LLC without reversion or impairment.
4. A proceeding pending against the Business Entity may be continued as if the conversion had not occurred, or the surviving Domestic LLC may be substituted in the pending proceeding for the Business Entity.
5. The surviving Domestic LLC is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the Business Entity was originally organized.
6. The ownership interests of the Business Entity that were to be converted into ownership interests or obligations of the surviving Domestic LLC or into cash or other property are converted.
7. Unless otherwise provided in a plan of conversion, the Business Entity is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the Business Entity.
8. The Organizational Documents of the Domestic LLC are as provided in the plan of conversion.
9. All other provisions of the plan of conversion apply.

**CHAPTER 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE**

SUBPART 1

[Reserved]

CHAPTER 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 1A GENERAL PROVISIONS FOR TRIBALLY-OWNED LLCs

Section 15-9-11. Tribally-Owned Companies.

There are hereby authorized to be created Limited Liability Companies wholly-owned by the Tribe, with the Tribe as the sole Owner. Tribally-Owned Limited Liability Companies shall be created by a duly adopted resolution of the Tribal Council and shall be deemed subordinate organizations pursuant to Article V, Section 1(n) of the Tribal Constitution. The organizer shall file in accordance with Section 15-1-11. When the organizer files the Articles of Organization and the Operating Agreement of a Tribally-Owned LLC, a certified copy of the resolution authorizing the formation of the LLC and approving the articles shall be included. Tribally-Owned LLCs shall be considered to be instrumentalities of the Tribe.

Section 15-9-12 Tribally-Owned Subsidiary Companies.

There are hereby authorized to be created by resolution of the Board of Directors of a Tribally-Owned Limited Liability Company or of a Tribal Corporation, or of a wholly-owned subsidiary of such a Tribally-Owned LLC or Tribal Corporation, subsidiary LLCs to be wholly-owned by the parent Tribally-Owned LLC or parent Tribal Corporation, which shall be instrumentalities of the Tribe. The organizer of such a Tribally-Owned Subsidiary LLC shall file in accordance with Section 15-1-11. When the organizer files the Articles of Organization and the Operating Agreement of the Tribally-Owned Subsidiary LLC, a certified copy of a resolution of the Board of Directors of the parent Tribally-Owned LLC or parent Tribal Corporation authorizing the formation of the subsidiary LLC and approving the articles shall be included. No such Resolution is required if the Tribally-Owned Subsidiary LLC is Manager-managed.

Section 15-9-13. Privileges and Immunities.

The Limited Liability Companies established under Sections 15-9-11 and 15-9-12 shall be considered to be instrumentalities of the Tribe, and their officers and employees considered officers and employees of the Tribe, created for the purpose of carrying out authorities and responsibilities of the Tribal Council for economic development of the Tribe and the advancement of its Tribal

members. Such LLCs, their directors, officers, Managers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to immunities from suit in Federal, State, and Tribal courts and from Federal, State, and local taxation or regulation.

Section 15-9-14. Ownership.

1. No Ownership interest in any LLC in which the Tribe is an Owner may be alienated unless approved by a duly adopted resolution of the Tribal Council. Further, no Ownership interest in any Tribally-Owned Subsidiary LLC may be alienated unless approved by a duly adopted resolution of the Board of Directors of the parent Tribally-Owned LLC or parent Tribal Corporation.
2. All interests in any Tribally-Owned LLC shall be held by and for the Tribe, or in the case of a wholly-owned subsidiary LLC, by the parent Tribally-Owned LLC or parent Tribal Corporation. No individual member of the Tribe shall have any personal ownership interest in any LLC organized under this Part, whether by virtue of such person's status as a member of the Tribe, as an officer of the Tribe's Government, or otherwise.

Section 15-9-15. Project Companies with Non-Tribal Owners.

Any LLC created pursuant to this Chapter, including subsidiary LLCs, may form or own interests or shares in partnerships, Corporations, or other Limited Liability Companies with other governmental or non-governmental entities or persons under the laws of the Tribe or any other jurisdiction ("Project Companies"); provided, however, that the partial ownership interest in such Project Companies shall not diminish or affect the privileges and immunities of the Tribally-Owned LLCs or Tribally-Owned Subsidiary LLCs created pursuant to this Chapter.

Section 15-9-16. Purpose of Tribally-Owned LLCs.

All Tribally-Owned LLCs, whether directly or indirectly owned, shall state in their Operating Agreement the purpose of the LLC that relates to the overall needs, priorities, goals, and objectives of the Tribe's government, including how the LLC will contribute to tribal economic policy and further the goals of self-determination and economic self-sufficiency.

Section 15-9-17. Waiver of Sovereign Immunity.

The Limited Liability Companies established under Sections 15-9-11 and 15-9-12 may only waive the privileges and immunities granted under Section 15-9-13 in the following manner:

1. The LLC may specifically grant limited waivers of its immunity from suit and consent to be sued in Tribal Court or another court of competent jurisdiction or consent to binding arbitration pursuant to the procedures and authorities set forth in the LLC's Operating Agreement; provided, however, that:
 - a. Any such waiver or consent to suit granted pursuant to the LLC's Operating Agreement shall include written language in any contract or agreement explicitly limiting said waiver to a specific dollar amount not to exceed the dollar amount of the agreement or to other specific, limited non-monetary relief;
 - b. Any contract or agreement with such waiver or consent to suit language shall be reviewed and approved by an attorney representing the Tribe or the Tribally-Owned LLC prior to contract execution;
 - c. Any such waiver or consent to suit granted pursuant to the LLC's Operating Agreement shall in no way extend to any action against the Tribe, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe;
 - d. Any recovery against the LLC shall be limited to the assets of the LLC (or such portion of the LLC's assets as further limited by the waiver or consent) and the Tribe shall not be liable for the payment or performance of any of the obligations of the LLC, and no recourse shall be had against any assets or revenues of the Tribe in order to satisfy the obligations of the LLC; including assets of the Tribe leased, loaned, or assigned to the LLC for its use, without transfer of title, and
 - e. Any waiver of the LLC's immunities granted pursuant to the LLC's Operating Agreement shall be further limited or conditioned by the terms of such waiver.
2. The sovereign immunity of a Tribally-Owned LLC, whether directly or indirectly owned, shall not extend to

actions against the LLC by the Tribe, or, in the case of a subsidiary LLC created pursuant to this Chapter, by the parent LLC acting as Owner, pursuant to Section 15-9-11.

3. The LLC must follow the method mandated by Section 15-9-21.
4. Notwithstanding subsection (1) above, the LLC may also specifically grant a limited waiver of its immunity from suit for participation in the Small Business Administration 8a program in the manner required by federal regulations governing the program.

CHAPTER 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 2 SPECIAL FORMATION REQUIREMENTS
FOR TRIBALLY-OWNED LLCs

Section 15-9-21. Formation.

1. Tribally-Owned LLCs. The Chairperson of the Tribal Council shall be the organizer of any Tribally-Owned Limited Liability Company.
2. Subsidiaries of Tribally-Owned LLCs. A Board Member of the parent Tribally-Owned LLC or parent Tribal Corporation shall be the organizer of any Tribally-Owned Subsidiary LLC. If practicable, such Board Member shall also be a member of the Tribe. The C.E.O. of the parent Tribally-Owned LLC or Manager of a Tribally-Owned Subsidiary LLC shall be the organizer of any Tribally-Owned Second Tier Subsidiary LLC.
3. Unless a delayed effective date is specified:
 - a. The existence of a Tribally-Owned LLC begins when the following events occur: (i) the Articles of Organization have been approved by resolution of the Tribal Council in accordance with Section 15-9-11 and have been filed with the Office of the Secretary in accordance with Section 15-1-11; and (ii) an Operating Agreement for the Tribally-Owned LLC has been approved by resolution of the Tribal Council.
 - b. The existence of a subsidiary LLC owned by a Tribally-Owned LLC or Tribal Corporation begins when the following events occur: (i) the Articles of Organization have been approved by a resolution of the Directors of the parent Tribally-Owned LLC or Tribal Corporation and have been filed with the Office of the Secretary in accordance with Section 15-1-11; and (ii) an Operating Agreement for the Tribally-Owned Subsidiary LLC has been approved by resolution of the Directors of the parent Tribally-Owned LLC or Tribal Corporation.
 - c. The existence of a Tribally-Owned Second Tier Subsidiary LLC owned by a Tribally-Owned Subsidiary

begins when the Articles of Organization have been approved by the C.E.O. or Manager of the Tribally-Owned Subsidiary or C.E.O. of the parent Tribally-Owned LLC.

- d. The Articles of Organization of any Tribally-Owned LLC or subsidiary thereof, and any amendments thereto, shall be filed with the Office of the Secretary in accordance with Section 15-1-11, and shall state at a minimum the items set forth in Section 15-9-22 below.

Section 15-9-22. Additional Requirements for the Articles of Organization.

As set forth in Section 15-9-17, Tribally-Owned Limited Liability Companies established under Sections 15-9-11 and 15-9-12 may grant a limited waiver of sovereign immunity in order to promote economic development through commercial transactions for which such a waiver is necessary and beneficial to the Tribe. The method for granting a limited waiver of sovereign immunity through the above-mentioned entities is as follows:

1. The sovereign immunity of a Tribally-Owned LLC may be waived only by:
 - a. A resolution adopted by the Board of Directors of the Tribally-Owned LLC for the specific purpose of granting a waiver, or in the case of an Owner-managed Tribally-Owned Subsidiary LLC, by the Owner's Board of Directors; and
 - b. The language of the waiver must be explicit and state that said waiver be specifically limited to a specific dollar amount not to exceed the amount of the agreement or to other specific, limited non-monetary relief; and
 - c. The waiver must be contained in a written contract or commercial document to which the LLC is a party.
2. Waivers of sovereign immunity by resolution of the Tribal Council may be granted only when necessary to secure a substantial advantage or benefit to the Tribally-Owned LLC. Waivers of sovereign immunity by resolution may not be general but must be specific and limited as to duration, grantee, transaction, property,

court having jurisdiction, applicable law, and shall be specifically limited to a specific dollar amount not to exceed the dollar amount of the agreement, or to other specific, limited non-monetary relief.

CHAPTER 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 3 MANAGEMENT OF TRIBALLY-OWNED LLCs

Section 15-9-31. Management.

1. All Tribally-Owned LLCs formed pursuant to Section 15-9-11 of this Code shall be managed by a Board of Directors in the manner described in the Limited Liability Company's Operating Agreement. The qualifications, number, terms and method for selecting and removing Directors of any Tribally-Owned LLC shall be specified in the LLC's Operating Agreement, subject to requirements set forth in this Chapter.
2. All Tribally-Owned Subsidiary LLCs formed pursuant to Section 15-9-12 of this Code, including Tribally-Owned Second Tier Subsidiary LLCs, may be Owner-managed or Manager-managed. If Manager-managed, the Limited Liability Company's Operating Agreement shall set forth the qualifications, number, terms, and method for selecting and removing such Managers. If Owner-managed, the LLC shall have one or more persons exercising the functions of Chief Executive Officer.

Section 15-9-32. Board of Directors.

1. Appointment of directors. The Tribal Council shall retain the power to appoint the Board of Directors for Tribally-Owned LLCs wholly-owned by the Tribe. For all such LLCs, including Subsidiary Tribal Corporations, that may have a Board of Directors, the Board of Directors shall be comprised of members of the Tribal Council, Tribal members, and/or individuals experienced in business and Tribal government. In addition to any requirements set forth in the Limited Liability Company's Operating agreement, Board Members of Tribally-Owned LLCs shall meet the following requirements:
 - a. Be at least twenty-five (25) years old.

- b. Possess a Bachelor's Degree; or possess a high school diploma (or a General Equivalency Diploma) and at least five (5) years of business, financial, legal, government contracting or industry experience.
 - c. Have no felony convictions.
 - d. Submit to a background investigation which yields no results showing convictions involving tax evasion, tax fraud, embezzlement or moral turpitude.
2. The Tribal Council's determination as to whether an individual is qualified to be a member of the Board of Directors, including whether a particular conviction disqualifies an individual under the standards set forth herein, shall be final and not subject to appeal, review, challenge, or other action in any court or tribunal, including the Tribal Court.
3. Removal of directors. A director of an LLC wholly-owned by the Tribe may be removed with or without cause by the Tribal Council; or as specified in the LLC's Operating Agreement.
- a. "Cause" shall mean any the following:
 - i. Breach of a fiduciary duty.
 - ii. Conviction of a felony
 - iii. Conviction of a misdemeanor or violation of a law of the Tribe, including a provision of this Title, that, in the sole determination of the Tribal Council, adversely affects the Limited Liability Company or such Director's ability to perform his or her duties.
 - iv. Adjudication as incompetent by a Court of competent jurisdiction.
 - v. Misappropriation of Limited Liability Company funds or other acts of dishonesty with respect to the Limited Liability Company.

- vi. Gross negligence, fraud, deceit or intentional misconduct that had a material adverse effect on the Limited Liability Company.
 - vii. Misconduct, including insubordination, related to the duties and performance as a Director.
 - viii. Dissatisfaction with the performance of the Director or the LLC.
- b. The Tribal Council's decision to remove a director shall be solely within the discretion and determination of the Tribal Council and shall not be subject to appeal, review, challenge, or other action in any court or tribunal, including the Tribal Court. No person who has served as a director may challenge his or her removal in any court or tribunal, including the Tribal Court.
3. Resignation of Directors. Unless otherwise provided in the Operating Agreement, any Director may resign by delivering a written resignation to the Board of Directors. A resignation shall be effective upon receipt, unless the resignation states otherwise.
4. Loans to directors. An LLC wholly-owned, directly or indirectly, by the Tribe may not lend money to or guarantee the personal obligation of a director, officer, or employee of the Limited Liability Company under any circumstances.

CHAPTER 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 4 DECISIONS AND VOTING FOR TRIBALLY-OWNED LLCS

Section 15-9-41 Voting.

1. The Ownership interests in all Tribally-Owned LLCs shall be voted in accordance with the Tribal Council's procedures for voting and passing Tribal resolutions.
2. The Ownership interests in a Tribally-Owned Subsidiary LLC, including Tribally-Owned Second Tier Subsidiary LLCs, shall be voted as provided in the Limited Liability Company's Operating Agreement.

CHAPTER 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 5 DISTRIBUTIONS FOR TRIBALLY-OWNED LLCS

Section 15-9-51. Distributions of Income.

1. Subject to the Tribe's ultimate ownership right to all income generated by its Tribally-Owned LLCs, a Tribally-Owned LLC shall distribute the net income of the LLC to the Tribe as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by the Tribal Council, except that a Tribally-Owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Board of Directors, subject to further limitations set forth in Section 15-5-7 and in the Operating Agreement.
2. Subject to the parent Tribally-Owned LLC's or parent Tribal Corporation's ultimate ownership right to all income generated by its subsidiary LLCs, a subsidiary LLC created pursuant to Section 15-9-12 shall distribute the net income of the LLC to the parent Tribally-Owned LLC or parent Tribal Corporation as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by its Board of Directors, except that a Tribally-Owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Board of

Directors, subject to further limitations set forth in Section 15-5-7 and in the Operating Agreement.

3. When any income or assets of an LLC are distributed or otherwise transferred to the Tribe or, in the case of subsidiary LLCs, the parent Tribally-Owned LLC or parent Tribal Corporation, such income and assets shall cease being income or assets of the LLC, and shall become income and assets of the Tribe or, in the case of subsidiary LLCs, the parent Tribally-Owned LLC or parent Tribal Corporation, and shall not be subject to any attachment or other process which may reach the income or assets of the LLC.

CHAPTER 9

LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 6 ADDITIONAL REPORTS AND AUDITS

Section 15-9-61. Audit.

In addition to any Owner inspection rights provided in the Operating Agreement of a Tribally-Owned LLC, the Tribal Council may at any time, by process in the manner required to be provided in the Operating Agreement, require that any LLC wholly-owned by the Tribe, whether directly or indirectly, or an LLC in which the Tribe owns the majority interest, be audited by an independent auditor hired by the Tribe who shall have the absolute right to require access to all of the LLC's records and documents necessary for such an audit.

Section 15-9-62. Financial, Business, and Planning Information.

1. Reports. In addition to any reports to the Owner required by the Operating Agreement, the Board of Directors of each Tribally-Owned LLC, whether owned directly or indirectly, shall submit the following information to the Tribal Council:
 - a. Copies of any periodic financial statements (including monthly or quarterly balance sheets, profit and loss statements, and cash flow statements) as may be prepared in the ordinary course of business, promptly after such statements are furnished to the LLC's Board of Directors;

- b. A full report of the business activities of the Limited Liability Company within 120 days after the close of each fiscal year;
 - c. A proposed annual plan for the following year, including any proposed funding from the Tribe or anticipated distributions to the Tribe; and
 - d. Such other reports as reasonably requested by the Tribal Council as Owner, unless otherwise provided in the Operating Agreement.
2. Special meetings. Unless otherwise provided in the Operating Agreement, the Tribal Council, acting as Owner, may call special meetings of the Owner for any purpose or purposes, unless otherwise prescribed by statute, and may require that the Board of Directors of the Tribally-Owned LLC, if such Board exists, attend the special meeting so called.

CHAPTER 9

LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 7 ACTIONS AGAINST TRIBALLY-OWNED LLCS

Section 15-9-71. Court Actions By The Tribe Authorized.

1. The Tribe, as Owner of any Tribally-Owned Limited Liability Company organized pursuant to this Code, or in the case of a subsidiary LLC created pursuant to this Chapter, the parent Tribally-Owned LLC or Tribal Corporation acting as Owner, may bring a civil action against the LLC to:
 - a. Enjoin temporarily or permanently any action of the LLC that is an ultra vires act outside the authority of the LLC and that is either:
 - i. Unlawful; or
 - ii. Has or could cause material harm to the assets of the LLC or the Tribe if no immediate action is taken; or
 - b. Require the distribution of the LLC's surplus net income, to the extent permitted by Section 15-5-7.

2. An action against an LLC pursuant to this Section by the Tribe or by a parent LLC or Corporation, acting as Owner, shall not act as a waiver of the Tribe's, or the parent LLC's or parent Corporation's, sovereign immunity from suit of any kind, nor shall it otherwise authorize a suit of any kind, including a countersuit by the Tribally-Owned LLC, its Board of Directors or its officers.
3. In accordance with Section 15-9-13, the sovereign immunity of the LLC shall not extend to actions against the LLC by the Tribe acting as Owner, or, in the case of a subsidiary LLC created pursuant to this Chapter, by the parent LLC acting as Owner.
4. Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe.

Section 15-9-72 Tribal Approval Required.

The filing of any court action against a Tribally-Owned LLC pursuant to this Chapter must be authorized by the Tribe as Owner in the same manner as required in Section 15-9-41 for voting on any item properly coming before the Tribe as Owner. The request for consideration of the proposed court action may be made by any member of the Tribal Council.

Section 15-9-73. Relief Available.

In any action brought under this Chapter, the Tribal Court may, based on a preponderance of the evidence, set forth in its findings of fact and conclusions of law:

1. Issue a declaratory judgment, temporary restraining order, preliminary injunction, permanent injunction, or other appropriate relief pursuant to the procedures and standards applicable in the Tribal Court, except that no bond, obligation, or other security shall be required from the Tribe; or
2. Order that funds of the LLC be distributed to the Tribe to the extent permitted by the Operating Agreement and Section 15-5-7 of this Code.

CHAPTER 10
FOREIGN LIMITED LIABILITY COMPANIES

Section 15-10-1 Governing Law.

1. The laws of the jurisdiction under which a Foreign Limited Liability Company is organized shall govern its organization and internal affairs and the liability and authority of its managers and owners, regardless of whether the Foreign LLC obtained or should have obtained a certificate of registration under this Chapter. However, a Foreign LLC that has filed a certificate of conversion under Chapter 8 of this Title to become a Domestic LLC shall be subject to the requirements of this Chapter governing Domestic LLCs on the effective date of the conversion and shall not be subject to the requirements of this Chapter governing Foreign LLCs.
2. A Foreign LLC may not be denied a certificate of registration by reason of any difference between the laws of the other jurisdiction under which it is organized and the laws of the Tribe.
3. A Foreign LLC holding a valid certificate of registration under this Chapter shall have no greater rights and privileges than a Domestic LLC. Registration may not be considered to authorize a Foreign LLC to exercise any powers or purposes that a Domestic LLC is forbidden by law to exercise.

Section 15-10-2. Registration Required.

1. A Foreign Limited Liability Company may not transact business on Tribal Lands until it obtains a certificate of registration from the Office of the Secretary.
2. Activities that for the purposes of subsection (1) do not constitute transacting business include, but are not limited to:
 - a. Maintaining, defending, or settling any civil, criminal, administrative, or investigatory proceeding.
 - b. Holding meetings of its Owners or Managers or carrying on other activities concerning its internal affairs.

- c. Maintaining financial institution accounts.
 - d. Maintaining offices or agencies for the transfer, exchange and registration of the Foreign LLC's own securities or interests or maintaining trustees or depositories with respect to those securities or interests.
 - e. Selling through independent contractors.
 - f. Soliciting or obtaining orders, by mail or through employees or agents or otherwise, if the orders require acceptance outside Tribal Lands before they become contracts.
 - g. Lending money or creating or acquiring indebtedness, mortgages, and security interests in property.
 - h. Securing or collecting debts or enforcing mortgages and security interests in property security the debts.
 - i. Owning, without more, property.
 - j. Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature.
 - k. Transacting business in interstate commerce or between different jurisdictions.
3. A Foreign LLC shall not be considered to be transacting business on Tribal Lands solely because of any of the following:
- a. The Foreign LLC owns a controlling interest in a Corporation that is transacting business on Tribal Lands.
 - b. The Foreign LLC is a limited partner of a limited partnership that is transacting business on Tribal Lands.

- c. The Foreign LLC is an Owner or Manager of a Limited Liability Company or a Foreign LLC that is transacting business on Tribal Lands
 - d. The Foreign limited liability partnership is a limited partner of a limited partnership that is transacting business on Tribal Lands.
4. This Section does not apply in determining the contracts or activities that may subject a Foreign Limited Liability Company to service of process or taxation on Tribal Lands or to regulation under any other law of the Tribe.

Section 15-10-3 Consequences of Transacting Business Without Registration.

1. A Foreign LLC transacting business without a certificate of registration may not maintain a proceeding in Tribal Court relating to or involving such transacted business until the Foreign LLC obtains a certificate of registration.
2. Neither the successor to a Foreign LLC that transacted business on Tribal Lands without a certificate of registration nor the assignee of a cause of action arising out of that business may maintain a proceeding based on that cause of action in Tribal Court until the Foreign LLC or its successor obtains a certificate of registration.
3. The Tribal Court may stay a proceeding commenced by a Foreign LLC, or its successor or assignee, until the Tribal Court determines if the Foreign LLC or its successor requires a certificate of registration. If the Tribal Court determines that a certificate is required, the Tribal Court may further stay the proceedings until the Foreign LLC or its successor obtains the certificate of registration.
4. The failure of a Foreign LLC to obtain a certificate of registration does not do any of the following:
 - a. Impair the validity of any contract or act of the Foreign LLC or its title to property on Tribal Lands.
 - b. Affect the right of any other party to contract to maintain any action, suit or proceeding on a contract.

c. Prevent the Foreign LLC from defending any proceeding in Tribal Court.

5. Civil penalty.

a. A Foreign LLC that transacts business on Tribal Lands without a certificate of registration is liable to the Tribe, for each year or any part of a year during which it transacted business on Tribal Lands without a certificate of registration, in an amount equal to the sum of the following:

i. All fees that would have been imposed by this Chapter upon the Foreign LLC had it applied for and received a certificate of registration.

ii. Fifty percent of the amount owed under subsection (5) (a) (i) above or \$5,000.00, whichever is less.

b. The Foreign LLC shall pay the amount owed under subsection (5) (a) to the Office of the Secretary. The Secretary may not issue a certificate of registration to the Foreign LLC until the amount owed is paid.

6. An Owner or Manager of a Foreign LLC is not liable for the debts and obligations of the LLC solely because the LLC transacted business on Tribal Lands without a certificate of registration.

Section 15-10-4. Application for Certificate of Registration.

A Foreign LLC may apply for a certificate of registration to transact business on Tribal Lands by delivering an application to the Office of the Secretary for filing signed by a person with authority to do so under the laws of the State or other jurisdiction of its organization. The application shall include all of the following:

1. The name of the Foreign Limited Liability Company and, if different, the name under which it proposes to transact business on Tribal Lands.

2. The name of the State or other jurisdiction under whose laws it is organized.

3. The date of its organization.
4. The street address of its registered office on Tribal Lands and the name of its registered agent at that office.
5. If management of the LLC is vested in one or more Managers, a statement to that effect.
6. The street address of the office required to be maintained in the State or other jurisdiction of its organization by the laws of that State or jurisdiction or, if no office is required, its principal office.
7. A statement that the applicant is a Foreign Limited Liability Company.
8. A statement that the Foreign Limited Liability Company is in good standing in the State or other jurisdiction under whose laws it is organized.

Section 15-10-5. Name.

A certificate of registration may not be issued to a Foreign LLC unless its name satisfies Section 15-1-6. If the name under which a Foreign LLC is registered in the jurisdiction of its formation does not satisfy Section 15-1-6, the Foreign LLC may obtain a certificate of registration to transact business on Tribal Lands under a trade name registered pursuant to this Chapter that is available and that satisfies Section 15-1-6.

Section 15-10-6 Amended Certificate of Registration.

1. A Foreign LLC authorized to transact business on Tribal Lands shall obtain an amended certificate of registration from the Office of the Secretary if the Foreign LLC changes any of the following:
 - a. Its name or the fictitious or trade name under which it has been issued a certificate of registration.
 - b. The State or jurisdiction under whose laws it is organized or its date of organization.
 - c. Whether management of the Foreign LLC is vested in one or more Managers.

2. The requirements of Section 15-10-4 for obtaining an original certificate of registration apply to obtaining an amended certificate of registration.

Section 15-10-7. Registered Office and Registered Agent of a Foreign LLC.

1. A Foreign LLC authorized to transact business on Tribal Lands shall continuously maintain on Tribal Lands a registered office and registered agent. The registered office may, but need not, be the same as any of its places of business on Tribal Lands, if any.
2. A Foreign LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed with the Office of the Secretary and paying the filing fee.
3. The registered agent of a Foreign LLC may resign as a registered agent by delivering to the Office of the Secretary for filing a written statement of registration and the appointment by the Foreign LLC of another registered agent.

Section 15-10-8. Service of Foreign Limited Liability Company.

1. Except as otherwise provided in subsection (2) and (3), the registered agent of a Foreign LLC authorized to transact business on Tribal Lands is the Foreign LLC's agent for service of process, notice, or demand required or permitted by law to be served on the Foreign LLC.
2. A Foreign LLC authorized to transact business on Tribal Lands may be served in the manner provided in subsection (4) if the Foreign LLC has no registered agent or its registered agent cannot with reasonable diligence be served.
3. A Foreign LLC formerly authorized to transact business on Tribal Lands may be served in the manner provided in subsection (4) in any civil, criminal, administrative or investigatory proceeding based on a cause of action arising while it was authorized to transact business on Tribal Lands, if the Foreign LLC has withdrawn its registration under Section 15-10-9.

4. With respect to a Foreign LLC described in subsection (2) or (3), the Foreign LLC may be served by registered or certified mail, return receipt requested, addressed to the Foreign LLC at its principal office as shown on the records of the Office of the Secretary. Service is perfected under this paragraph at the earliest of the following:
 - a. The date on which the Foreign LLC receives the mail.
 - b. The date shown on the return receipt, if signed on behalf of the Foreign LLC.
 - c. Five days after the mail is deposited in the U.S. mail, if mailed postpaid and correctly addressed.
5. This Section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a Foreign LLC in any other manner permitted by law.

Section 15-10-9. Withdrawal of Registration.

1. A Foreign LLC authorized to transact business on Tribal Lands may not withdraw until it obtains a certificate of withdrawal from the Office of the Secretary.
2. A Foreign LLC authorized to transact business on Tribal Lands may apply for a certificate of withdrawal by delivering an application to the Office of the Secretary for filing signed by a person with authority to do so under the laws of the State or other jurisdiction of its organization. The application shall include all of the following:
 - a. The name of the Foreign LLC and the name of the State or jurisdiction under whose laws it is organized.
 - b. A statement that the Foreign LLC is not transacting business on Tribal Lands and that it surrenders its authority to transact business on Tribal Lands.
 - c. A statement that the Foreign LLC revokes the authority of its registered agent to accept service on its behalf and that it consents to services of process under Section 15-10-8(3) and (4) in any

proceeding based on a cause of action arising while it was authorized to transact business on Tribal Lands.

- d. An address to which a person may mail a copy of any process against the Foreign LLC.
- e. A commitment to notify the Office of the Secretary in the future of any change in the mailing address of the Foreign LLC principal office.

Section 15-10-10. Grounds for Revocation.

1. Except as provided in subsection (2), the Office of the Secretary may revoke the certificate of registration of a Foreign LLC registered to transact business on Tribal Lands in accordance with Section 15-10-11 if any of the following applies:
 - a. The Foreign LLC failed to file its annual report with the Office of the Secretary within four (4) months after it is due.
 - b. The Foreign LLC does not pay, within four (4) months after they are due, any fees or penalties due the Office of the Secretary under this Tribal Limited Liability Company Code.
 - c. The Foreign LLC is without a registered agent or registered office on Tribal Lands for at least six (6) months.
 - d. The Foreign LLC obtained a certificate of registration through fraud.
 - e. The Office of the Secretary receives an authenticated certificate from the secretary of state or other official having custody of LLC records in the State or country under whose law the Foreign LLC is incorporated stating that it has been dissolved or disappeared as the result of a merger.
2. The Tribal Court may revoke the certificate of registration of the Foreign LLC registered to transact business on Tribal Lands. The Tribal Court shall notify the Office of the Secretary of the action, and the Office of the

Secretary shall revoke the Foreign LLC's certificate of registration under Section 15-10-11(2)(b).

Section 15-10-11. Procedure for and effect of revocation.

1. If the Office of the Secretary determines that one or more grounds exist under Section 15-10-10(1) for revocation of a certificate of registration, the Office of the Secretary shall give the Foreign LLC written notice of the determination by first class mail, addressed to the Foreign LLC's registered office.
2. Correction of grounds.
 - a. Within sixty (60) days after the notice takes effect, the Foreign LLC shall correct each ground for revocation or demonstrate to the reasonable satisfaction of the Office of the Secretary that each ground determined by the Office of the Secretary does not exist.
 - b. If the Foreign LLC fails to satisfy subsection (2)(a) above, the Office of the Secretary may revoke the Foreign LLC's certificate of registration by entering a notation in the Office's records to reflect each ground for revocation and the effective date of the revocation. The Office of the Secretary shall give written notice of those facts to the Foreign LLC by first class mail, addressed to the Foreign LLC's registered office.
3. If any such notice under this Section is undeliverable, then the Office of the Secretary shall give written notice to the Foreign LLC addressed to the principal office of the Foreign LLC. Notice to the registered office or principal office takes effect at the earliest of the following:
 - a. When received.
 - b. Five days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.
 - c. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

4. The authority of a Foreign LLC to transact business on Tribal Lands, other than as provided in Section 15-10-2(2), ends as of the effective date of revocation of its certificate of registration as reflected in the records of the Office of the Secretary.
5. If the Office of the Secretary or the Tribal Court revokes a Foreign LLC's certificate of registration, the Foreign LLC may be served under Section 15-10-8(3) and (4) or the Foreign LLC's registered agent may be served until the registered agent's authority is terminated, in any proceeding based on a cause of action which arose while the Foreign LLC was registered to transact business on Tribal Lands.
6. Revocation of a Foreign LLC's certificate of registration does not terminate the authority of its registered agent.

Section 15-10-14. Appeal from Revocation.

1. A Foreign LLC may appeal the Office of the Secretary's revocation of its certificate of registration under Section 15-10-10(1) to the Tribal Court. The Foreign LLC shall appeal by petitioning the Tribal Court to set aside the revocation and attaching to the petition copies of its certificate of registration and the Office of the Secretary's notice of revocation.
2. The Tribal Court may order the reinstatement of the certificate of registration only if the Foreign LLC demonstrates that the Office of the Secretary's revocation was a violation of this Title or otherwise arbitrary or unauthorized.
3. The Tribal Court's final decision may be appealed as in other civil proceedings.

**CHAPTER 11
EFFECTIVE DATE AND AUTHORITY**

Section 15-11-1. Severability; Effect of Invalidity of Part of this Code.

If the Tribal Court shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, chapter, or part of this Code, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Code, but the effect thereof shall

be confined to the clause, sentence, paragraph, section, part or Chapter of this Code as adjudged to be invalid or unconstitutional.

Section 15-11-2. Effective Date.

This Code shall be in full force and effect according to its terms upon adoption by the Tribal Council.

Section 15-11-3. Amendments.

The Tribal Council reserves the right to repeal or amend the provisions of this Code, subject to the limitation of Section 15-11-4. Any amendment to this Title of the Law & Order Code shall be by resolution of the Tribal Council.

Section 15-11-4. No Impairment of Contracts.

Otherwise lawful contracts and other obligations of any LLC shall not be impaired by any subsequent action of the Tribe or the Tribal Council. Actions to restrain any attempts to impair contracts of Tribal LLCs, or to declare such actions null and void, shall be available to any interested party before the Tribal Court. Nothing in this Section shall be construed to restrict the general application of law or of this Code to the acts and contracts of Tribal LLCs.

Section 15-11-5. Fees for Filing Documents and Issuing Certificates.

The Office of the Secretary is authorized to make regulations, subject to Tribal Council approval, providing for reasonable fees for other services not specifically stated in the title of this Code or to make changes in any and all fees for services set out in this Title. These changes shall be available through the Office of the Secretary.

Section 15-11-6. Certificates and Certified Copies to be Received into Evidence.

All certificates or documents issued by the Tribal Council Secretary in accordance with the provisions of this Code and all copies of documents filed in his or her office in accordance with the provisions of this Code, when certified by him or her, shall be taken and received in all Courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Tribal Council Secretary under the seal of his or her office, as to the existence or non-existence of the facts

relating to LLCs which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

Section 15-11-7. Forms to be Furnished by the Tribal Council Secretary.

The Tribal Council Secretary shall have the authority, subject to Tribal Council approval, to prescribe certain forms for documents required by this Chapter to be filed in the office of the Tribal Council Secretary; such forms shall be furnished by the Tribal Council Secretary and used by the public for such filing.

Approved 2/18/12
Resolution 12-06