

CHOCTAW NATION
LIMITED LIABILITY COMPANY ACT

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§1000. Short title.

This act shall be known and may be cited as the “Choctaw Nation Limited Liability Company Act”.

§1001. Definitions.

As used in this act, unless the context otherwise requires:

- A. “articles of organization” means documents filed under Section 1004 of this act for the purpose of forming a limited liability company;
- B. “Assistant Chief” means the Assistant Chief of the Nation;
- C. “business” means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood;
- D. “capital contribution” means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services;
- E. “capital interest” means the fair market value as of the date contributed of a member’s capital contribution as adjusted for any additional capital contributions or withdrawals;
- F. “Chief” means the Chief of the Nation;
- G. “corporation” means a corporation formed under the laws of the Nation or a foreign corporation as defined in this section;
- H. “District Court” means the District Court of the Nation.
- I. “foreign corporation” means a corporation formed under the laws of any Tribe other than the Nation, or under the laws of any state, the District of Columbia, or any foreign country;
- J. “foreign limited liability company” means an entity that is:
 - 1. an unincorporated association,
 - 2. organized under the laws of any Tribe other than the laws of the Nation, or under the laws of any state, the District of Columbia, or any foreign country,
 - 3. organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and
 - 4. not required to be registered or organized under any statute of the Nation other than this act;
- K. “foreign limited partnership” means a limited partnership formed under the laws of any Tribe other than the Nation, or under the laws of any state, the District of Columbia or any foreign country;

L. “limited liability company,” “LLC,” or “domestic limited liability company” means an entity that is an unincorporated association or proprietorship having one or more members that is organized and existing under the laws of this Nation;

M. “limited partnership” means a limited partnership formed under the laws of the Nation or a foreign limited partnership as defined in this section;

N. “manager” or “managers” means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement;

O. “member” means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this act;

P. “membership interest” or “interest” means a member’s rights in the limited liability company, collectively, including the member’s share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company’s assets, and any right to vote or participate in management;

Q. “Nation” means the Choctaw Nation of Oklahoma, a Tribe.

R. “operating agreement”, regardless of whether referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, means any agreement of the members, including a sole member, as to the affairs of a limited liability company and the conduct of its business, including the agreement as amended or restated;

S. “person” means an individual, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation, a Tribe or any other legal or commercial entity; and

T. “state” means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

U. “Tribal Council” means the Tribal Council of the Nation.

V. “Tribe” means a federally recognized Indian tribe.

§1002. Purposes for formation; ownership.

A. A limited liability company may be formed under this act for the purpose of carrying on any lawful business, purpose or activity, whether or not for profit.

B. Any limited liability company formed under this Act must include the Nation, or an entity owned directly or indirectly and in whole or in part by the Nation, as a member.

C. The rules set forth in Section 1061 shall apply to the formation of any limited liability company under this act, regardless of whether the Nation is the sole member or if there are other members in addition to the Nation.

§1003. Powers and authority.

Each limited liability company may:

A. Sue and complain in all courts of competent jurisdiction;

- B. Be sued and defend in the District Court, unless another court is specified by contract or waiver; provided, however, nothing contained herein shall waive a limited liability company's sovereign immunity except as specifically provided for in Section 1063; provided further, nothing contained herein shall waive the Nation's sovereign immunity as provided in Section 1063;
- C. Transact its business, carry on its operations and have and exercise the powers granted by this section in any state, territory, district or possession of the United States, in Indian country, and in any foreign country;
- D. Make contracts and guarantees, incur liabilities, and borrow money;
- E. Sell, convey, lease, exchange, transfer, mortgage, pledge, and otherwise dispose of all or any part of its property and assets;
- F. Acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;
- G. Issue notes, bonds and other obligations and secure any of them by mortgage or deed of trust or security interest of any or all of its assets;
- H. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;
- I. Invest its surplus funds, lend money from time to time in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds so loaned or invested;
- J. Elect or appoint agents and define their duties and fix their compensation;
- K. Be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, limited liability company, joint venture, trust or other enterprise;
- L. Indemnify and hold harmless any member, agent, or employee from and against any and all claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee which constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;
- M. Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of the Nation, for the administration and regulation of the affairs of the limited liability company;
- N. Cease its activities and dissolve; and
- O. Do every other act not inconsistent with applicable law which is appropriate to promote and attain the purposes set forth in its articles of organization.

§1004. Filing articles of organization.

- A. One or more persons may form a limited liability company, as allowed under this act, upon the filing of executed articles of organization, and any other orders or approvals required under this act, with the Office of the Assistant Chief or any other Nation office or person designated by the Chief.

B. When the articles of organization become effective, the proposed organization becomes a limited liability company under the name and subject to the purposes, conditions, and provisions stated in the articles. A limited liability company formed under this act is a separate legal entity, the existence of which as a separate legal entity continues until cancellation of the limited liability company's articles of organization and completion of its winding up, if any.

§1005. Contents of articles of organization.

A. The articles of organization shall set forth:

1. The name of the limited liability company;
2. The term of the existence of the limited liability company, which may be perpetual; and
3. The street address of its principal place of business, wherever located, and the name and street address of its registered agent, as required under Section 1010.

B. The articles of organization may set forth any other matters the members determine to include. It is not necessary to set out in the articles of organization any of the powers enumerated in this act.

§1006. Execution of articles.

A. Articles required to be filed by this act shall be executed in the following manner:

1. Articles of organization must be signed by at least one person who need not be a member of the limited liability company; and
2. Articles of amendment, merger, consolidation, conversion or dissolution must be signed by a manager.

B. Any person may sign any articles by an attorney-in-fact. A person who executes articles as an attorney-in-fact, agent or fiduciary is not required to exhibit evidence of his or her authority as a prerequisite to filing.

C. The execution of any articles under this act constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

D. Any signature on articles or any other instrument authorized by this act may be a facsimile signature, a conformed signature or an electronically transmitted signature.

§1007. Delivery of articles; effective time.

A. One signed copy of the articles of organization or any other articles or approvals authorized or required by this act shall be delivered to the Office of the Assistant Chief. Unless the Assistant Chief finds that any articles do not conform to law, upon receipt of all filing and other fees required by law, he or she shall:

1. Endorse on each copy the word "filed" and the day, month and year, and the time, if applicable, of the filing thereof;
2. File one copy in his or her office; and
3. Return a file-stamped copy to the person who filed it or his or her representative.

B. Unless a future effective date or time, which shall be a specified date or time not later than ninety (90) days after the filing, is provided in the articles, articles of organization are effective, and the limited liability company is formed, at the time of the filing of the articles of organization with the Assistant Chief.

C. Unless a future effective date or time, which shall be a specified date or time not later than ninety (90) days after the filing, is provided in the articles, articles of amendment, merger, consolidation, conversion or dissolution are effective at the time of their filing with the Assistant Chief.

§1008. Name of company - Restrictions.

The name of each limited liability company as set forth in its articles of organization:

A. Shall contain either the words “limited liability company” or “limited company” or the abbreviations “LLC”, “LC”, “L.L.C.”, or “L.C.” The word “limited” may be abbreviated as “LTD.” and the word “Company” may be abbreviated as “CO.”; and

B. May not be the same as or indistinguishable from:

1. names upon the records in the Office of the Assistant Chief of limited liability companies then in good standing or registered or which were in good standing or registered at any time during the preceding five (5) years, or

2. names upon the records in the Office of the Assistant Chief of corporations organized under the laws of this Nation or of foreign corporations registered in accordance with the laws of this Nation then existing or which existed at any time during the preceding five (5) years, or

3. names upon the records in the Office of the Assistant Chief of general or limited partnerships, whether formed under the laws of this Nation or registered as foreign general or limited partnerships, then in good standing or registered or which were in good standing or registered at any time during the preceding five (5) years, or

4. trade names, fictitious names, or other names reserved with the Assistant Chief.

C. The provisions of subparagraph B of this section shall not apply if one of the following is filed with the Assistant Chief:

1. the written consent of the other limited liability company, corporation, general or limited partnership, or holder of the trade name, fictitious name or other reserved name to use the same or indistinguishable name with the addition of one or more words, numerals, numbers or letters to make that name distinguishable upon the records of the Assistant Chief, except that the addition of words, numerals, numbers or letters to make the name distinguishable shall not be required where such written consent states that the consenting entity is about to change its name, cease to do business, withdraw from the Nation or be wound up, or

2. a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such limited liability company or holder of a limited liability company name to the use of such name in this Nation, as determined under the Nation’s Code of Civil Procedure.

§1009. Reservation and transfer of company name.

[Reserved.]

§1010. Registered office and agent.

- A. Every domestic limited liability company shall continuously maintain within the territory of this Nation:
1. A registered office which may be, but need not be, the same as its principal place of business; and
 2. A registered agent for service of process on the limited liability company that may be the domestic limited liability company itself, an individual resident of this Nation, a domestic or qualified foreign corporation, limited liability company, or limited partnership. Each registered agent shall maintain a business office identical with the registered office which is open during regular business hours to accept service of process and otherwise perform the functions of a registered agent.
- B.
1. A limited liability company may designate or change its registered agent, registered office, or principal office by filing with the Office of the Assistant Chief a statement authorizing the designation or change and signed by any manager.
 2. A limited liability company may change the street address of its registered office by filing with the Office of the Assistant Chief a statement of the change signed by any manager.
 3. A designation or change of a principal office for a limited liability company under this subsection is effective when the Office of the Assistant Chief files the statement, unless a later effective date or time, which shall be a specified date or time not later than ninety (90) days after the filing, is provided in the statement.
- C.
1. A registered agent who changes his or her street address in the Nation shall notify the Office of the Assistant Chief of the change by filing with the Office of the Assistant Chief a statement of the change signed by the agent or on the agent's behalf.
 2. The statement shall include:
 - a. the name of the limited liability company for which the change is effective,
 - b. the new street address of the registered agent, and
 - c. the date on which the change is effective, if to be effective after the filing date.
 3. If the new address of the registered agent is the same as the new address of the principal office of the limited liability company, the statement may include a change of address of the principal office if:
 - a. the registered agent notifies the limited liability company of the change in writing, and
 - b. the statement recites that the registered agent has done so.
 4. The change of address of the registered agent or principal office is effective when the Office of the Assistant Chief files the statement, unless a later effective date or time, which shall be a specified date or time not later than ninety (90) days after the filing, is provided in the statement.
- D.
1. A registered agent may resign by filing with the Office of the Assistant Chief a copy of the resignation, signed and acknowledged by the registered agent, which contains a statement that notice of the resignation was given to the limited liability company at least thirty (30) days before the filing of the resignation by mailing or delivering the notice to the limited liability company at its address last known to the registered agent and specifying the address therein.

2. The resignation is effective thirty (30) days after it is filed, unless a later effective date or time, which shall be a specified date or time not later than ninety (90) days after the filing, is provided in the resignation.

§1011. Amendment to articles of organization.

A. The articles of organization shall be amended when:

1. There is a change in the name of the limited liability company;
2. There is a false or erroneous statement in the articles of organization;
3. There is a change in the time as stated in the articles of organization for the cancellation of the limited liability company; or
4. The members desire to restate the articles of organization in their entirety or to make a change in any other statement or to add a statement in the articles of organization in order to accurately represent their agreement.

B. An amendment to the articles of organization of a limited liability company shall set forth:

1. The name of the limited liability company;
2. The date of filing the articles of organization; and
3. The amendment to, and date of effect of, the articles of organization.

§1012. Articles of correction.

A. If any document filed with the Office of the Assistant Chief under this act contains any typographical error, error of transcription, or other technical error or has been defectively executed, the document may be corrected by the filing of articles of correction.

B. Articles of correction shall set forth:

1. The title of the document being corrected;
2. The date that the document being corrected was filed; and
3. The provision in the document as previously filed and as corrected and, if execution of the document was defective, the manner in which it was defective.

C. Articles of correction may not make any other change or amendment which would not have complied in all respects with the requirements of this act at the time the document being corrected was filed.

D. Articles of correction shall be executed in the same manner in which the document being corrected was required to be executed.

E. Articles of correction may not:

1. Change the effective date of the document being corrected; or

2. Affect any right or liability accrued or incurred before its filing, except that any right or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished by the filing if the person having the right has not detrimentally relied on the original document.

F. Notwithstanding that any instrument authorized to be filed with the Office of the Assistant Chief pursuant to the provisions of this act is, when filed inaccurately, defectively, or erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the Assistant Chief shall not be liable to any person for the preclearance for filing, or the filing and indexing of the instrument by, the Assistant Chief.

§1012.1. Cancellation of articles of organization.

The articles of organization shall be canceled upon the dissolution and the completion of winding up of a limited liability company, or upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation, or upon the conversion of a domestic limited liability company approved in accordance with Section 1054.2 of this act.

§1012.2. Operating agreement of LLC.

A. The operating agreement of the limited liability company governs generally:

1. Relations among the members as members and between the members and the limited liability company;
2. The rights and duties under this act of a person in the capacity of manager;
3. The activities of the company and the conduct of those activities; and
4. The means and conditions for amending the operating agreement.

B. If the operating agreement does not otherwise provide, this act governs the matter. The operating agreement may not vary the rights, privileges, duties and obligations imposed specifically under this act.

C. A limited liability company is bound by its operating agreement regardless of whether it executes the operating agreement. A member or manager of a limited liability company or an assignee of a membership interest is bound by the operating agreement regardless of whether the member, manager or assignee executes the operating agreement.

D. An operating agreement of a limited liability company having only one member is not unenforceable because there is only one person who is a party to the operating agreement.

E. The obligations of a limited liability company and its members to an assignee or dissociated member are governed by the operating agreement. Subject only to any court order to effectuate a charging order, an amendment to the operating agreement made after a person becomes an assignee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the assignee or dissociated member.

§1013. Managers - Qualifications - Powers.

A. Except as otherwise provided in the articles of organization, operating agreement, or this act, a limited liability company shall be managed by or under the authority of one or more managers who may, but need not, be members.

B. The articles of organization or operating agreement may prescribe qualifications for managers, including but not limited to, good character and sufficient management experience of an extent and complexity needed to manage the concern.

C. The number of managers shall be specified in, or fixed in accordance with, the articles of organization or operating agreement.

D. The articles of organization or operating agreement of a limited liability company may authorize the manager or managers of the limited liability company to adopt, amend, and repeal bylaws, or regulations, not inconsistent with the articles of organization and the operating agreement, to govern the affairs of the limited liability company. Unless otherwise provided in the articles of organization, operating agreement or enabling resolutions, bylaws or regulations from the managers shall be considered a part of the operating agreement.

§1014. Managers - Election – Removal - Resignation.

Unless otherwise provided in the articles of organization or operating agreement:

A. The election of managers shall be by majority vote of the members;

B. Any or all managers may be removed, with or without cause, by the written consent of the members; and

C. A manager may resign in accordance with the operating agreement or, if the operating agreement does not provide for the manager’s resignation, upon notice to the limited liability company.

§1015. Management of company without designated managers - Resignation of member.

A. The articles of organization or operating agreement may provide that the business of the limited liability company shall be managed without designated managers. So long as such provision continues in effect:

1. The members shall be deemed to be managers for purposes of applying provisions of this act, unless the context clearly requires otherwise;

2. The members shall have and be subject to all duties and liabilities of managers; and

3. A member signing on behalf of the limited liability company shall sign as a manager.

B. A member of a member-managed limited liability company may resign as a member in accordance with the operating agreement or, if the operating agreement does not provide for the member’s resignation, upon notice to the limited liability company. When a member of a member-managed limited liability company resigns, the member shall cease to have the rights and duties of a member and shall become an assignee; provided that the profits and losses of the limited liability company shall continue to be allocated to the member and any binding commitments for contributions shall continue as if the member had not resigned. If the resignation violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning member damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the resigning member. The member’s resignation shall not constitute a withdrawal from the limited liability company.

§1016. Managers - Duties - Good faith - Liability.

Subject to the provisions of Section 1017 of this act:

A. A manager shall discharge the duties as a manager in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in the manner the manager reasonably believes to be in the best interests of the limited liability company;

B. In discharging the duties, a manager may rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. one or more employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented,
2. legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence, or
3. a committee of managers of which the manager is not a member if the manager reasonably believes the committee merits confidence;

A manager is not acting in good faith if the manager has knowledge concerning the matter in question that makes reliance otherwise permitted by this paragraph unwarranted;

C. Unless otherwise provided in the operating agreement, a manager has the power and authority to delegate to one or more other persons the manager's rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to the agents, officers and employees of a manager to the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. The delegation by a manager shall not cause the manager to cease to be a manager of the limited liability company;

D. A manager is not liable for any action taken as a manager, or any failure to take any action, if the manager performed the duties of the office in accordance with principles incorporated in the business judgment rule, as determined by the District Court; and

E. Except as otherwise provided in the articles of organization or operating agreement, every manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager without the informed consent of the members from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by the manager of its property.

§1017. Elimination or limitation of liability.

A. Subject to subsection B of this section, the articles of organization or operating agreement may:

1. Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in Section 1016 of this act; and
2. Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in any proceeding because the person is or was a member or manager.

B. No provision permitted under subsection A of this section shall limit or eliminate the liability of a manager for:

1. Any breach of the manager's duty of loyalty to the limited liability company or its members;
2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

3. Any transaction from which the manager derived an improper personal benefit.

C. The articles of organization or operating agreement may define the scope of any duties owed by the members or managers to the limited liability company, if not manifestly unreasonable. A definition shall not eliminate the duty of loyalty or the obligation of good faith and fair dealing.

§1018. Majority vote of managers.

Except as otherwise provided in the articles of organization or operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be made by majority vote of the managers.

§1019. Managers as agents.

A. Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for apparently carrying on the business of the limited liability company of which he is a manager, binds the limited liability company, unless the manager so acting lacks the authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority. The unauthorized acts of the manager shall bind the limited liability company as to persons acting in good faith who have no knowledge of the fact that the manager had no such authority.

B. Subject to the provisions of subsection A of this section, instruments and documents providing for the acquisition, mortgage, or disposition of real or personal property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more of its managers.

§1019.1. Transfer of title to property.

A. Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company.

B. Title to property of the limited liability company that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, even if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.

C. Property transferred under subsections A or B of this section may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under Section 1019 of this act, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

§1020. Voting rights of members.

A. Voting by members may be on a per capita, number, financial interest, class, group or any other basis. Unless otherwise provided in the articles of organization or operating agreement, the members of a limited liability company vote in proportion to their respective capital interests. Except as otherwise provided in subsection D of this section or unless the context otherwise requires, references in this act to a vote or the consent of the members mean a vote or consent of the members holding a majority of the capital interests. The vote or consent may be evidenced in the minutes of a meeting of the members or by a written consent in lieu of a meeting.

B. Except as otherwise provided in subsection D of this section or in the articles of organization or operating agreement, a majority vote of the limited liability company's members shall be required to approve the following matters:

1. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company;
2. Merger of the limited liability company with another limited liability company or other business entity; and
3. An amendment to the articles of organization or operating agreement.

C. The articles of organization or operating agreement may alter the above voting rights and provide for any other voting rights of members.

D. Unless otherwise provided in the articles of organization or a written operating agreement, the unanimous vote or consent of the members shall be required to approve the following matters:

1. The dissolution of the limited liability company pursuant to Section 1037 of this act; or
2. An amendment to the articles of organization or an amendment to a written operating agreement:
 - a. which reduces the term of the existence of the limited liability company,
 - b. which reduces the required vote of members to approve a dissolution, merger or sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company,
 - c. which permits a member to voluntarily withdraw from the limited liability company, or
 - d. which reduces the required vote of members to approve an amendment to the articles of organization or written operating agreement reducing the vote previously required on the matters described in this paragraph.

E. An operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter.

§1021. Records required to be kept - Member access to information - Managers may inspect and copy records.

A. Unless otherwise provided in a written operating agreement, a limited liability company shall keep at its principal place of business the following:

1. A current and a past list of the full name and last-known mailing address of each member and manager;
2. Copies of records that would enable a member to determine the relative voting rights of the members;
3. A copy of the articles of organization, together with any amendments thereto;
4. Copies of the limited liability company's federal, state and local income tax returns and financial statements, if any, for the three most recent years or, if such returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal state and local tax returns for such period;

5. Copies of any effective written operating agreements and all amendments thereto and copies of any written operating agreements no longer in effect; and

6. Unless provided in writing in an operating agreement, a writing setting out:

a. the amount of cash and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions agreed to be made by each member are to be made, and

b. the events upon the happening of which the limited liability company is to be dissolved and its affairs wound up, and

c. any other information prepared pursuant to a requirement in an operating agreement.

B. A member, for any purpose reasonably related to the member's interest, may:

1. At the member's own expense, inspect and copy any limited liability company record upon reasonable request during ordinary business hours;

2. Obtain from time to time upon reasonable demand:

a. true and complete information regarding the state of the business and financial condition of the limited liability company,

b. promptly after becoming available, a copy of the limited liability company's state and local income tax returns for each year, if applicable, and

c. other information regarding the affairs of the limited liability company as is just and reasonable; and

3. Have a formal accounting of the limited liability company's affairs whenever circumstances render it just and reasonable.

C. A manager, for any purpose reasonably related to his position, may inspect and copy any limited liability company records upon reasonable request during ordinary business hours.

D. Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

§1022. Liability solely as manager or member.

A person who is a member or manager, or both, of a limited liability company is not liable for the obligations of a limited liability company solely by reason of being such member or manager or both.

§1023. Contribution of member - Form.

The contribution of a member to a limited liability company may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in the operating agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the

limited liability company. Unless otherwise provided in the operating agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a membership interest in the limited liability company.

§1024. Performance of obligations - Compromise - Remedies for failure to perform.

A. Except as otherwise provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any written promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or other reason. If a member does not make the required contribution of property or services, he is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value, as stated in the operating agreement, of the stated contribution that has not been made.

B. The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only upon compliance with the operating agreement, or, if the operating agreement does not so provide, with the unanimous consent of the members. A compromise shall not impair the right of any creditor to enforce the obligation or to require the obligation to be enforced if:

1. such creditor relied upon the obligation and the absence in the operating agreement of the limited liability company's authority to compromise the obligation, or
2. a duty to the creditor was breached in the making of the compromise.

C. An operating agreement may provide that the capital interest of a member who fails to make any contribution or other payment that the member is required to make shall be subject to specified remedies for, or specified consequences of, the failure. The remedy or consequence may take the form of reducing the defaulting member's capital interest in the limited liability company, subordinating the defaulting member's capital interest in the limited liability company to that of the nondefaulting members, a forced sale of the capital interest in the limited liability company, forfeiture of the capital interest in the limited liability company, the lending by the nondefaulting members of the amount necessary to meet the commitment, a fixing of the value of the member's capital interest in the limited liability company by appraisal or by formula and redemption and sale of the member's capital interest in the limited liability company at that value, or other remedy or consequences.

§1025. Allocation of profits and losses - Distributions.

Except as otherwise provided in the operating agreement:

A. The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in proportion to their respective capital interests; and

B. Distributions of the limited liability company shall be made to the members, and among classes or groups of members, in proportion to their right to share in the profits of the limited liability company.

§1026. Distributions - Time.

Except as otherwise provided in this act, a member is entitled to receive distributions from a limited liability company before the dissolution and winding up of the limited liability company to the extent and at the times upon which the members agree or as provided in the operating agreement.

§1027. Reserved.

§1028. Distribution - Cash - Asset in kind.

Except as otherwise provided in the operating agreement:

A. A member, regardless of the nature of the member's contribution, has no right to demand or receive any distribution from a limited liability company in any form other than cash; and

B. No member may be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage which the member's interest in the limited liability company is of all of the interests in the limited liability company.

§1029. Distribution - Status and rights of member.

At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

§1030. Distribution - Restrictions - Effect on indebtedness.

A. A distribution may not be made if, after giving effect to the distribution:

1. The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

2. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

B. The limited liability company may base a determination that a distribution is not prohibited under subsection A of this section on:

1. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

2. A fair valuation or other method that is reasonable in the circumstances.

C. Except as provided in subsection E of this section, the effect of a distribution under subsection A of this section is measured as of:

1. The date the distribution is authorized, if the payment occurs within one hundred twenty (120) days after the date of authorization; or

2. The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

D. A limited liability company's indebtedness to a member, incurred by reason of a distribution made in accordance with this section, is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

E. If the terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection B of this section; and if the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

§1031. Wrongful distribution - Liability of member - Action for recovery.

If a member has received a distribution in violation of the operating agreement or Section 1030 of this act, the member shall be liable to the limited liability company for the amount of the distribution wrongfully made. An action for the recovery of any wrongful distribution to a member must be brought within three (3) years from the date of the distribution.

§1032. Membership interest - Status.

A membership interest is personal property. A member has no interest in specific limited liability company property.

§1033. Assignment of membership interest.

A. Unless otherwise provided in an operating agreement:

1. A membership interest is not transferable; provided, however, that a member may assign the economic rights associated with a membership interest in whole or in part;
2. An assignment of the economic rights associated with a membership interest does not entitle the assignee to participate in the management and affairs of the limited liability company or to become, or to exercise any rights or powers of, a member;
3. An assignment entitles the assignee to share in profits and losses, to receive any distribution or distributions and to receive the allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled to the extent assigned;
4. Unless the assignee of an interest in a limited liability company becomes a member by virtue of that interest, the assignor continues to be a member and to have the power to exercise any rights of a member, unless the assignor is removed as a member either in accordance with the operating agreement or, after having assigned all of the membership interest, by an affirmative vote of the members who have not assigned their interests. The removal of an assignor shall not, by itself, cause the assignee to become a member;
5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and
6. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

B. The operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and also may provide for the assignment or transfer of any membership interest represented by such a certificate and may make other provisions with respect to such certificates.

C. Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or cease to have the power to exercise any rights or powers of a member.

§1034. Judgment creditor - Rights and interests.

On application to the District Court by any judgment creditor of a member, the District Court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. A charging order entered by the District Court pursuant to this section shall never be convertible into a membership interest through foreclosure or other action, and such a charging order shall only give such judgment creditor the rights of an

assignee of the membership interest. This act does not deprive any member of the benefit of any exemption laws applicable to his or her membership interest. This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

§1035. Assignee of interest in limited liability company - Membership rights, powers, restrictions and liabilities - Rights and liability of assignor - Admission to membership directly in limited liability company.

A. An assignee of an interest in a limited liability company may become a member if and to the extent that:

1. The operating agreement provides; or
2. The members representing a majority of the capital interests which are not the subject of the assignment consent in writing.

B. An assignee who becomes a member, to the extent assigned, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement and this act; however, unless otherwise provided in writing in the operating agreement or other written agreement, an assignee who becomes a member is also liable for any obligations of the assignor to make contributions as provided in Section 1024 of this act, but shall not be liable for the obligations of the assignor under Section 1031 of this act; however, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and which could not be ascertained from a written operating agreement.

C. Regardless of whether an assignee of an interest becomes a member, the assignor is not released from liability to the limited liability company under Sections 1024, 1031, and 1033 of this act.

D. Except as otherwise provided in writing in the operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when any assignee of the interest becomes a member with respect to the assigned interest.

E. Subject to subsection F of this section, a person acquiring a limited liability company interest directly from the limited liability company may become a member in a limited liability company upon compliance with the operating agreement or, if the operating agreement does not so provide in writing, upon the written consent of the members.

F. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or
2. The time provided in the operating agreement, or if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

§1036. Withdrawal as member - Rights of legal representative of deceased or incompetent member - Expulsion of member.

A. Unless the operating agreement specifically permits in writing the power to withdraw voluntarily, a member may not withdraw from a limited liability company at any time. If the operating agreement specifically provides in writing the power to withdraw voluntarily, but the withdrawal occurs as a result of wrongful conduct of the member, a member's voluntary withdrawal shall constitute a breach of the operating agreement and the limited liability company may recover from the withdrawing member damages, including the reasonable cost of replacing the services that the withdrawn member was obligated to perform. The limited liability company may offset its damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. The limited liability company shall not, however, be entitled to any equitable remedy that would prevent a member from exercising the power to withdraw if such power is permitted in the operating agreement.

B. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's personal representative shall have all of the rights of an assignee of the member's interest. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

C. If the sole member of a limited liability company dies or dissolves, or a court of competent jurisdiction adjudges the member to be incompetent or otherwise lacking legal capacity, the member's personal representative accedes to the membership interest and possesses all rights, powers and duties associated with the interest for the benefit of the incompetent member or the deceased member's estate.

D. The operating agreement may provide for the expulsion of a member, with or without cause, which shall include reasonable provision for the distributable interest.

§1037. Dissolution.

A. A limited liability company is dissolved upon the earlier of:

1. The occurrence of the latest date on which the limited liability company is to dissolve set forth in the articles of organization;
2. The occurrence of events specified in writing in the operating agreement;
3. The written consent of all of the members; or
4. Entry of a decree of judicial dissolution under Section 1038 of this act.

B. A limited liability company continues in existence after dissolution, regardless of whether articles of dissolution are filed, but may carry on only activities necessary to wind up its business or affairs and liquidate its assets under Sections 1039 and 1040 of this act.

§1038. Decree of dissolution.

On application by or for a member, the District Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

§1039. Winding up business or affairs; binding acts of managers; Presumptive notice.

A. Except as otherwise provided in the articles of organization or operating agreement:

1. The business or affairs of the limited liability company may be wound up in one of the following ways:
 - a. by the managers, or
 - b. if one or more of the members or managers have engaged in conduct that casts reasonable doubt on their ability to wind up the business or affairs of the limited liability company, or upon other cause shown, by the District Court on application of any member, his legal representative, or assignee; and
2. The persons winding up the business or affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

- a. prosecute and defend suits,
- b. settle and close the business of the limited liability company,
- c. dispose of and transfer the property of the limited liability company,
- d. discharge the liabilities of the limited liability company, and
- e. distribute to the members any remaining assets of the limited liability company.

B. Except as provided in subsections D and E of this section, after an event causing dissolution of the limited liability company any manager can bind the limited liability company:

1. By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and
2. By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

C. The filing of the articles of dissolution shall be presumed to constitute notice of dissolution for purposes of paragraph 2 of subsection B of this section.

D. An act of a manager or member that is not binding on the limited liability company pursuant to subsection B of this section is binding if it is otherwise authorized by the limited liability company.

E. An act of a manager or member that would be binding under subsection B or would be otherwise authorized but that is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

§1040. Winding up of affairs - Distribution of assets - Liability.

A. Upon the winding up of a limited liability company, the assets shall be distributed as follows:

1. Payment, or adequate provision for payment, shall be made to creditors, including to the extent permitted by law, members who are creditors, in satisfaction of liabilities of the limited liability company;
2. Except as provided in writing in the articles of organization or operating agreement, to members or former members in satisfaction of liabilities for distributions under this act; and
3. Except as provided in writing in the articles of organization or operating agreement, to members and former members first for the return of their contributions and second respecting their membership interests, in proportions in which the members share in distributions.

B. A member who receives a distribution in violation of subsection A of this section, and who knew or should have known at the time of the distribution that the distribution violated subsection A of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection A of this section, and who did not know and had no reason to know at the time of the distribution that the distribution violated subsection A of this section, shall not be liable for the amount of the distribution. Subject to subsection C of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for a distribution.

C. Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this act or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from the member is commenced before the expiration of the three-year period and an adjudication of liability against the member is made in the action.

§1041. Articles of dissolution.

After the dissolution of the limited liability company, pursuant to Section 1037 of this act, the limited liability company shall file articles of dissolution in the Office of the Assistant Chief. The articles of dissolution shall set forth:

- A. The name of the limited liability company;
- B. The date of filing of its articles of organization;
- C. The reason for filing the articles of dissolution;
- D. The effective date of the articles of dissolution if they are not to be effective upon the filing; and
- E. Any other information the members or managers filing the certificate determine.

§1042. Foreign limited liability company - Powers, rights and privileges.

Reserved.

§1043. Foreign limited liability company - Registration procedure.

Reserved.

§1044. Foreign limited liability company - Duties of Assistant Chief.

Reserved.

§1045. Foreign limited liability company - Name.

Reserved.

§1046. Foreign limited liability company - Correction certificate - Recording changes.

Reserved.

§1047. Foreign limited liability company - Certificate of withdrawal.

Reserved.

§1048. Foreign limited liability company - Necessity of registration to transact business.

Reserved.

§1049. Foreign limited liability company - Acts not constituting transacting business.

Reserved.

§1050. Foreign limited liability company - Action to restrain transacting business.

Reserved.

§1051. Action brought by member to recover judgment.

A member may bring an action in the right of the limited liability company to recover a judgment in his favor if all of the following conditions are met:

- A. Either:
 - 1. management of the limited liability company is vested in a manager or managers who have the sole authority to cause the limited liability company to sue in its own right, or
 - 2. management of the limited liability company is reserved to the members but the plaintiff does not have the authority to cause the limited liability company to sue in its own right under the provisions of an operating agreement; and
- B. The plaintiff has made demand on those managers or those members with such authority requesting that such managers or such members cause the limited liability company to sue in its own right; and
- C. The members or managers with such authority have wrongfully refused in the exercise of their business judgment to bring the action or, after adequate time to consider the demand, have failed to respond to such demand; and
- D. The plaintiff:
 - 1. is a member of the limited liability company at the time of bringing the action, and
 - 2. was a member of the limited liability company at the time of the transaction of which he complains, or his status as a member of the limited liability company thereafter developed upon him pursuant to the terms of the operating agreement from a person who was a member at such time; and
- E. The plaintiff fairly and adequately represents the interests of the members in enforcing the rights of the limited liability company.

§1052. Complaint in a derivative action.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by the managers or the members who would otherwise have the authority to cause the limited liability company to sue in its own right.

§1053. Expenses of a derivative action.

- A. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, and shall direct him to remit to the limited liability company the remainder of those proceeds received by him.
- B. In any action hereafter instituted in the right of any domestic or foreign limited liability company by a member or members thereof, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including attorneys' fees, incurred by them in the defense of such action.

§1054. Merger or consolidation.

A. Pursuant to an agreement of merger or consolidation, one or more domestic limited liability companies may merge or consolidate with or into one or more domestic limited liability companies or one or more other business entities formed or organized under the laws of the Nation or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof and if allowed thereunder, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. As used in this section, “business entity” means a domestic or foreign corporation, business trust, common law trust, or unincorporated business including a partnership, whether general or limited.

B. Unless otherwise provided in the limited liability company agreement, an agreement of merger or consolidation or a plan of merger shall be approved by each domestic limited liability company which is to merge or consolidate by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

C. If a domestic limited liability company is merging or consolidating pursuant to this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file articles of merger or consolidation with the Office of the Assistant Chief. The articles of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the limited liability companies or other business entities which are to merge or consolidate;
2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;
3. The name of the surviving or resulting domestic limited liability company or other business entity;
4. The future effective date or time, which shall be a specific date or time not later than a time on the ninetieth (90) day after the filing, of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;
5. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;
6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other business entity, upon request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate;
7. In the case of a merger, any amendments or changes in the articles of organization of the surviving domestic limited liability company that are to be effected by the merger;

8. In the case of a consolidation, that the articles of organization of the resulting domestic limited liability company shall be as set forth in an attachment to the articles of consolidation; and

9. If the surviving or resulting entity is not a domestic limited liability company or business entity formed or organized pursuant to the laws of this Nation, a statement that the surviving or resulting other business entity agrees to be served with process in this Nation in any action, suit, or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate; irrevocably appoints the Assistant Chief as its agent to accept service of process in any action, suit, or proceeding; and specifies the address to which process shall be mailed to the entity by the Assistant Chief.

D. [INTENTIONALLY OMITTED]

E. A merger or consolidation shall be effective upon the filing with the Office of the Assistant Chief of articles of merger or consolidation, unless a future effective date or time is provided in the articles of merger or consolidation.

F. Articles of merger or consolidation terminate the separate existence of a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

G. Once any merger or consolidation is effective pursuant to this section, for all purposes of the laws of this Nation, all of the rights, privileges, and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated and all property, real, personal, and mixed, and all debts due to each domestic limited liability company or other business entity, as well as all other things and causes of action belonging to each domestic limited liability company or other business entity shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each domestic limited liability company or other business entity that has merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this Nation, in any domestic limited liability company or other business entity shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of each domestic limited liability company or other business entity shall be preserved unimpaired. All debts, liabilities and duties of each domestic limited liability company or other business entity that has merged or consolidated shall thereafter attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against the surviving or resulting limited liability company or other entity to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the surviving or resulting limited liability company or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited liability company to wind up its affairs or pay its liabilities and distribute its assets.

§1054.1. Conversion of a Nation-owned business entity to a limited liability company.

A. As used in this section, the term “Nation-owned business entity” means a corporation, partnership, whether general or limited, limited liability company, business trust, common law trust, or other unincorporated association owned in whole or in part by the Nation and regardless of the jurisdiction of its original incorporation, organization or formation.

B. Any Nation-owned business entity may convert to a Nation-owned limited liability company by complying with subsection H of this section and filing with the Assistant Chief in accordance with Section 1007 of this act articles of conversion to a limited liability company that have been executed in accordance with Section 1006 of this act, to which shall be attached articles of organization that comply with Sections 1005 and 1008 of this act and have been executed by one or more authorized persons in accordance with Section 1006 of this act.

C. The articles of conversion to a limited liability company shall state:

1. The date on which the business entity was first formed;

2. The name and jurisdiction of formation of the business entity when formed and, if changed, its name and jurisdiction immediately before filing of the articles of conversion to a limited liability company;
3. The name of the limited liability company as set forth in its articles of organization filed in accordance with subsection B of this section; and
4. The future effective date or time of the conversion to a limited liability company, which shall be a date or time certain not later than ninety (90) days after the filing, if it is not to be effective upon the filing of the articles of conversion to a limited liability company and the articles of organization.

D. Upon the effective date or time of the articles of conversion to limited liability company and the articles of organization, the business entity shall be converted to a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this act, except that notwithstanding Section 1004 of this act, the existence of the limited liability company shall be deemed to have commenced on the date the business entity was formed.

E. The conversion of any business entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the business entity incurred before its conversion to a domestic limited liability company or the personal liability of any person incurred before the conversion.

F. When a business entity has converted to a domestic limited liability company under this section, the domestic limited liability company shall be deemed to be the same entity as the converting business entity. All of the rights, privileges and powers of the business entity that has converted, and all property, real, personal and mixed, and all debts due to the business entity, as well as all other things and causes of action belonging to the business entity, shall remain vested in the domestic limited liability company and shall be the property of the domestic limited liability company, and the title to any real property vested by deed or otherwise in the business entity shall not revert or be in any way impaired by reason of the conversion, but all rights of creditors and all liens upon any property of the business entity shall be preserved unimpaired, and all debts, liabilities and duties of the business entity that has converted shall remain attached to the domestic limited liability company and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it in its capacity as a domestic limited liability company. The rights, privileges, powers and interests in property of the business entity, as well as the debts, liabilities and duties of the business entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic limited liability company to which the business entity has converted for any purpose of the laws of this Nation.

G. Unless otherwise agreed or otherwise provided by any laws of this Nation applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the business entity and shall constitute a continuation of the existence of the converting business entity in the form of a domestic limited liability company.

H. Before filing the articles of conversion to a limited liability company with the Office of the Assistant Chief, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the business entity and the conduct of its business or by applicable law, as appropriate, and articles of organization shall be approved by the same authorization required to approve the conversion.

I. In a conversion of a business entity to a domestic limited liability company under this section, rights or securities of or interests in the business entity that is to be converted to a domestic limited liability company may be exchanged for or converted into cash, property, or rights or securities of or interests in the domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another domestic limited liability company or other business entity or may be canceled.

J. The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, a business entity to this Nation by any other means provided for in an operating

agreement or other agreement or as otherwise permitted by law, including by the amendment of an operating agreement or other agreement.

§1054.2. Conversion of limited liability company to a business entity.

A. A domestic limited liability company owned in whole or in part by the Nation may convert to a Nation-owned business entity upon the authorization of such conversion in accordance with this section. As used in this section, the term “Nation-owned business entity” means a corporation, partnership, whether general or limited, business trust, common law trust, or other unincorporated association owned in whole or in part by the Nation and regardless of the jurisdiction of its original incorporation, organization or formation.

B. If the operating agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the operating agreement.

C. If the operating agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the operating agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to a merger or consolidation.

D. If the operating agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval of a majority of the membership interest or, if there is more than one class or group of members, then by a majority of the membership interest in each class or group of members. Notwithstanding the foregoing, in addition to any other authorization required by this section, if the business entity into which the limited liability company is to convert does not afford all of its interest holders protection against personal liability for the debts of the business entity, the conversion must be authorized by any and all members who would be exposed to personal liability.

E. Unless otherwise agreed, the conversion of a domestic limited liability company to another business entity pursuant to this section shall not require the limited liability company to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute a dissolution of the limited liability company.

F. In a conversion of a domestic limited liability company to a business entity under this section, rights or securities of or interests in the domestic limited liability company which are to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the business entity to which the domestic limited liability company is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another business entity or may be canceled.

G. If the governing act of the domestic business entity to which the limited liability company is converting does not provide for the filing of a conversion notice with the Office of the Assistant Chief or the limited liability company is converting to a foreign business entity, articles of conversion executed in accordance with Section 1006 of this act, shall be filed in the Office of the Assistant Chief in accordance with Section 1007 of this act. The articles of conversion shall state:

1. The name of the limited liability company and, if it has been changed, the name under which its articles of organization were originally filed;
2. The date of filing of its original articles of organization with the Office of the Assistant Chief;
3. The name the business entity to which the limited liability company is converting and its jurisdiction of formation, if a foreign business entity;
4. The future effective date or time of the conversion, which shall be a date or time certain not later than ninety (90) days after the filing, if it is not to be effective upon the filing of the articles of conversion;

5. That the conversion has been approved in accordance with this section;
6. The agreement of the foreign business entity that it may be served with process in this Nation in any action, suit or proceeding for enforcement of any obligation of the foreign business entity arising while it was a domestic limited liability company, and that it irrevocably appoints the Assistant Chief as its agent to accept service of process in any such action, suit or proceeding, and its address to which a copy of the process shall be mailed to it by the Assistant Chief; and
7. If the domestic business entity to which the domestic limited liability company is converting was required to make a filing with the Office of the Assistant Chief as a condition of its formation, the type and date of such filing.

H. Upon the filing of a conversion notice with the Office of the Assistant Chief, whether under subsection G of this section or under the governing act of the domestic business entity to which the limited liability company is converting, the filing of any formation document required by the governing act of the domestic business entity to which the limited liability company is converting, and payment to the Office of the Assistant Chief of all prescribed fees, the Assistant Chief shall certify that the limited liability company has filed all documents and paid all required fees, and thereupon the limited liability company shall cease to exist as a limited liability company of this Nation. The Assistant Chief's certificate shall be prima facie evidence of the conversion by the limited liability company.

I. The conversion of a domestic limited liability company to a business entity under this section and the resulting cessation of its existence as a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the limited liability company incurred before the conversion or the personal liability of any person incurred before the conversion, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising before the conversion.

J. When a limited liability company has converted to a business entity under this section, the business entity shall be deemed to be the same entity as the limited liability company. All of the rights, privileges and powers of the limited liability company that has converted, and all property, real, personal and mixed, and all debts due to the limited liability company, as well as all other things and causes of action belonging to the limited liability company, shall remain vested in the business entity to which the limited liability company has converted and shall be the property of the business entity, and the title to any real property vested by deed or otherwise in the limited liability company shall not revert or be in any way impaired by reason of the conversion; but all rights of creditors and all liens upon any property of the limited liability company shall be preserved unimpaired, and all debts, liabilities and duties of the limited liability company that has converted shall remain attached to the business entity to which the limited liability company has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the business entity. The rights, privileges, powers and interests in property of the limited liability company that has converted, as well as the debts, liabilities and duties of the limited liability company, shall not be deemed, as a consequence of the conversion, to have been transferred to the business entity to which the limited liability company has converted for any purpose of the laws of this Nation.

§1054.3. Appraisal rights.

An operating agreement or other agreement may provide that contractual appraisal rights with respect to a membership interest or another interest in a limited liability company shall be available for any class or group of members or membership interests in connection with any amendment of an operating agreement, any merger or consolidation to which the limited liability company is a constituent party, any conversion of the limited liability company to another business entity, any transfer to or domestication in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets. The District Court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

§1055. Fees.

The Assistant Chief shall charge and collect all fees as designated by the Chief (or his or her designee).

§1055.1. Failure to pay fees.

Any limited liability company that fails to pay any fee by the due date shall not be in good standing and may be subject to penalties. The due date for fees and the penalties for failure to pay fees shall be established by memorandum of the Chief (or his or her designee).

§1055.2. Certificate of Formation.

The Assistant Chief shall have the authority to issue a Certificate of Formation to any limited liability company which is validly formed under this act.

§1055.3. Certificate of Good Standing.

The Assistant Chief shall have the authority to issue a Certificate of Good Standing to any limited liability company which is in good standing under this act.

§1056. Action to compel execution or filing of articles or other documents.

Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document to be filed under this act may petition the District Court or the Assistant Chief to direct the execution and filing of the articles or other document. If the District Court finds that it is proper for the articles or other document to be executed and filed and that there has been failure or refusal to execute and file such document, it shall order the Assistant Chief to file the appropriate articles or other document.

§1057. Application of act to foreign and interstate commerce.

The provisions of this act shall apply to commerce with foreign nations and among the several states only as permitted by law.

§1058. Rules of construction of act.

- A. The rules that statutes in derogation of the common law are to be strictly construed shall have no application to this act.
- B. The principles inherent in the law of estoppel, as established by the District Court, shall apply to this act.
- C. The principles inherent in the law of agency, as established by the District Court, shall apply under this act.
- D. It is the policy of this act to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.
- E. This act shall not be construed so as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.

§1059. Tribal court - Jurisdiction.

The District Court shall have jurisdiction to enforce the provisions of this act.

§1060. Cases not covered by this act.

In any case not provided for in this act, the principles inherent in law and equity, as established by the District Court, shall govern.

§1061. Limited liability companies wholly owned by the Nation.

The Chief is hereby authorized to create, by executive order or approval, limited liability companies wholly owned by the Nation. Such limited liability companies shall be instrumentalities of the Nation. The organizer shall file all articles and other documents with the Office of the Assistant Chief pursuant to the procedures set forth in Sections 1004 - 1008. When the organizer files the articles of organization for the creation of a limited liability company to be wholly owned by the Nation, a copy of the executed executive order or approval authorizing the formation of the limited liability company shall be included.

§1062. Tribal subsidiary companies.

The managers, directors or controlling persons of any business entity wholly owned by the Nation (either directly or indirectly), regardless of the jurisdiction of such entity's formation, are authorized to create, by resolution and with the approval of the Chief, wholly owned limited liability companies under this act. Such limited liability companies shall be instrumentalities of the Nation. The incorporator of such a subsidiary limited liability company shall file all articles and other documents with the Office of the Assistant Chief pursuant to the procedures set forth in Sections 1004 – 1008. When the organizer files the articles of organization for the creation of a subsidiary limited liability company, a copy of a resolution of the managers, directors or other controlling persons and written evidence of the Chief's approval authorizing the formation of the subsidiary limited liability company shall be included.

§1063. Privileges and immunities.

The limited liability companies established under Sections 1061 and 1062 shall be considered to be arms and instrumentalities of the Nation, created for carrying out authorities and responsibilities of the Nation's Government for economic development and the advancement of the Nation's citizens. Such limited liability companies, their managers, officers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Nation, including but not limited to immunities from suit in Federal, State and Tribal courts and from Federal, State, and local taxation or regulation, except that:

A. Such a tribally controlled limited liability company may specifically grant limited waivers of its immunity from suit and consent to be sued in the District Court or another court of competent jurisdiction as specified in the applicable waiver or contract containing such waiver; provided, however, that:

1. any such waiver or consent to suit shall in no way extend to any action against the Nation, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of the Nation;
2. any recovery against the limited liability company shall be limited to the assets of the limited liability company (or such portion of the limited liability company's assets as further limited by the waiver or consent), and the Nation shall not be liable for the payment or performance of any of the obligations of the limited liability company, and no recourse shall be had against any assets or revenues of the Nation in order to satisfy the obligations of the limited liability company; including assets of the Nation leased, loaned, or assigned to the LLC for its use, without transfer of title,
3. any waiver of the limited liability company's immunities shall be further limited or conditioned by the terms of such waiver, and
4. any waiver of a limited liability company's immunity from suit or any consent to be sued must be explicitly authorized by the Tribal Council before such waiver or consent may be valid.

B. The sovereign immunity of the limited liability company shall not extend to actions against the limited liability company by the Nation acting as member, or, in the case of a subsidiary limited liability company created pursuant to this act, by the parent entity acting as member, pursuant to Section 1073 of this act.

§1064. Ownership.

A. No membership interest in any limited liability company in which the Nation or a tribally owned limited liability company is the sole member may be alienated through sale, transfer, merger, conversion or otherwise except as specifically authorized by executive order or approval of the Chief.

B. All interests in any limited liability company wholly owned by the Nation shall be held by and for the Nation, or in the case of a wholly-owned Tribal subsidiary limited liability company, by and for an entity wholly owned, either directly or indirectly, by the Nation.

§1065. Project companies with non-tribal owners.

Any limited liability company created pursuant to this act, including subsidiary limited liability companies, may form or own interests or shares in partnerships, corporations, other limited liability companies or any other type of entity with other governmental or non-governmental entities or persons under the laws of the Nation or any other jurisdiction (each a “Project Company”); provided, however, that the partial ownership interest in any such Project Company shall not diminish or affect the privileges and immunities of any Tribally owned limited liability company or subsidiary limited liability company created pursuant to this Chapter.

§1066. Formation.

A. Unless a delayed effective date is specified:

1. the existence of a limited liability company directly owned by the Nation begins when Chief has issued an executive order or approval regarding the limited liability company’s formation and the articles of organization have been filed with the Office of the Assistant Chief.

2. the existence of a Tribal subsidiary limited liability company owned by a parent entity that is wholly owned by the Nation begins when the articles of organization have been approved by a resolution of the managers, directors or other controlling persons of the parent entity, and the articles have been filed with the Office of the Assistant Chief.

B. The articles of organization of a limited liability company in which the Nation is the sole member or in which an entity wholly-owned by the Nation is the sole member, and any amendments thereto, shall be filed with the Office of the Assistant Chief, and shall state at a minimum the items set forth in Section 1005 above.

C. The Chief (or his or her designee) shall, at least on an annual basis coinciding with the Nation’s annual budget process, notify the Tribal Council of the formation of any limited liability company in which the Nation is a member (either directly or through an entity owned, in whole or in part, by the Nation).

§1067. Selection of managers.

The number, terms, and method for selecting and removing managers of any manager-managed limited liability company in which the Nation is the sole member, either directly or indirectly, shall be in accordance with this act.

§1068. Voting by Nation.

The Nation’s voting interest as a member of a limited liability company (whether or not wholly or partially owned by the Nation) shall be voted in all matters by the Chief (or his or her designee)

§1069. Audit.

In addition to any member inspection rights provided in the articles of organization of a limited liability company owned in whole or in part by the Nation, the Nation may at any time, by member resolution, require that any limited

liability company in which the Nation owns any interest be audited by the Nation's internal auditors or an independent auditor hired by the Nation who shall have the absolute right to require access to all of the limited liability company's records and documents necessary for such an audit.

§1070. Financial, business, and budget information for the Nation.

In addition to any reports to the member required by the articles of organization or the operating agreement, the management of each limited liability company in which the Nation or a tribally owned entity is a member shall submit the following information to the Chief, upon request:

- 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 limited liability company's management;
- B. A full report of the business activities of the limited liability company within 120 days after the close of each fiscal year; and
- C. A proposed annual budget for the following Tribal fiscal year, including any proposed funding from the Nation or anticipated distributions to the Nation, by May 15 of each year, and the final annual budget adopted by the managers by October 1 of each Tribal fiscal year.

§1071. Court actions authorized.

The Nation as a member of any limited liability company organized pursuant to this act may bring a civil action against the limited liability company, its managers or its officers in the District Court only pursuant to this act to:

- A. enjoin temporarily or permanently any action of the limited liability company that is an ultra vires act outside the authority of the limited liability company and that is either:
 - 1. unlawful; or
 - 2. has or could cause material harm to the assets of the limited liability company or the Nation if no immediate action is taken; or
- B. bring an action to enforce provisions of the operating agreement of the limited liability company.

§1072. Approval of Nation required.

The filing of any court action against any limited liability company pursuant to this act must be authorized by the Nation as a member in the same manner required in Section 1068 for voting on any item properly coming before the Nation as member. The request for consideration of any proposed court action may be made by the Chief.

§1073. Relief available.

In any action brought under this act, the District Court may, based on clear and convincing evidence set forth in its findings of fact and conclusions of law:

- A. Issue a temporary restraining order, preliminary injunction, and permanent injunctive relief pursuant to the procedures and standards in the Nation's Rules of Civil Procedure, except that no bond need be posted for any preliminary injunctive relief; or
- B. Take any other action necessary to ensure compliance with the operating agreement of the limited liability company.