

TITLE 03 - DEVELOPMENT & OPERATION OF TRIBAL ENTERPRISES

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Chapter 01. Development and Operation of Tribal Enterprises

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Sec. 03.01.021	Codification and Definitions

Sec. 03.01.001 Definitions

As used in this Title, the term:

- A. “Board” shall mean the Board of Directors of the Section 17 holding company established pursuant to this Title.
- B. “Tribal Corporation” shall mean a holding company established pursuant to Section 17 of the Indian Reorganization Act of 1934, as amended. Section 17 of the IRA gives tribes the power to incorporate and enables them to waive sovereign immunity to facilitate business transactions, thereby fostering tribal economic development and independence.
- C. “Tribal enterprise” shall mean any incorporated or unincorporated affiliate, subsidiary, or subdivision of the Tribe’s Section 17 holding company established pursuant to this Title.
- D. “Executive Council” shall mean the Executive Council of the Central Council of the Tlingit and Haida Indian Tribes of Alaska.
- E. “Tribe” shall mean the Central Council of the Tlingit and Haida Indian Tribes of Alaska.
- F. “President” shall be defined as contained in Section 1, Article IX of the Constitution, which provides, “The President of the Central Council shall be its chief executive officer. He or she shall preside over all assemblies of the Central

Council and, subject to its direction, he shall conduct and manage the business of the Central Council, execute documents and otherwise act for and on behalf of the Central Council, be a member ex officio of all committees of the Central Council, and exercise such other powers as may be delegated to him or her. The President may delegate authority to others to perform functions and exercise powers of his or her office, and appoint committees to assist the Central Council or the President in the performance of their functions. The President shall be entitled to vote in the General Assembly in the same manner, as are delegates but only to break a tie or when it is clear the vote of the President will affect the outcome of the issue. The President shall be the Chairman of the Tribal Corporation. The President or his/her designee shall be the sole stockholder representative of the tribe.

- G.** “Tribal member” is a citizen enrolled to the Central Council of the Tlingit & Haida Indian Tribes of Alaska pursuant to Title 15 – Enrollment and Elections.
- H.** “Affiliates” are two or more companies that own less than a majority of the voting stock of the other company or when both companies are subsidiaries of a third company (Tribal Corporation.)
- I.** “Subsidiary” is a company of which another corporation, termed the Tribal Corporation or Parent Corporation, owns more than 50% of the voting shares. A subsidiary is always, by definition, an affiliate, but subsidiary is the preferred term when majority control exists.
- J.** “Subdivision” is a subordinate group or entity organized to perform governmental functions for the tribe and its member citizens pursuant to section 3 of the Central Council constitution.

Sec. 03.01.002 Authority for Title

This Title is enacted pursuant to the inherent sovereign powers of the Tribe, which is recognized in the Act of June 19, 1935, 49 Stat. 388); as amended by the Act of August 19, 1965, (79 Stat. 543); as amended by the Act of November 2, 1994 (108 Stat. 4791), and the Constitution of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, as amended April 18, 1987, for the purpose of providing a statutory basis for the formation and operation of a Tribal corporation. Congress authorized tribes to organize two separate entities: (1) a political governing body to exercise powers of self-government pursuant to Section 16 of the IRA, and (2) a federally chartered Tribal corporation to engage in business transactions pursuant to Section 17.

Sec. 03.01.003 Authority to Establish a Tribal Corporation

Section 3 of the CCTHITA Constitution authorizes the General Assembly to provide for the organization of subordinate groups or entities to perform governmental, proprietary and revenue-raising functions for the Tribe. The General Assembly approves creation of the section 17 Tribal Corporation through adoption of this ordinance.

Sec. 03.01.004 Establishment and Ownership

The Board of Directors of the Tribal corporation is hereby delegated the authority to establish and develop any Tribal enterprise of the Tribe as it shall determine from time to time to be in the

best interests of the Tribe. Any Tribal enterprise so established shall be governed and operated in a manner, which is consistent with the provisions of this Title.

Sec. 03.01.005 Purpose

The purposes of any Tribal corporation shall be to provide a revenue surplus to provide funding for the further development of the Tribe and to supplement the Tribe's operations, programs and other revenues.

Sec. 03.01.006 Powers

Subject to the paramount authority of the Tribe, the Board of the Tribal Corporation shall exercise control and authority over those assets of the Tribe, which have been dedicated to the development of the Tribal Corporation.

Sec. 03.01.007 Board of Directors

- A. Composition:** The Tribal corporation shall be managed by a Board of Directors consisting of five persons, as follows: (1) the President of the Tribe who shall serve as the Chairman of the Board; and four (4) members who are appointed by the Executive Council.
1. The Executive Council, as Incorporators of this Corporation, shall appoint the first Board of Directors.
 2. The Board of Directors shall select and nominate subsequent Directors, other than the President, subject to final approval by the Executive Council.
 3. The Board and the Council must give preference in the appointment of Directors to persons who have a commitment to Tribal economic development and backgrounds, experience and expertise in related or relevant areas of business, finance or merchandising.
- B. Terms.** The President of the Tribe shall serve as Chairman and principal stockholder representative of the Tribe during his/her term in office. The remaining four (4) directors shall serve four-year terms. Two of the initial directors shall serve a two-year term unless reappointed or until their successors are selected. Two of the initial directors shall serve a four-year term unless reappointed or until their successors are selected.
- C. Vacancies.** Any vacancy in the Board, other than the President, shall be appointed by the Executive Council.
- D. Authority.** The Board shall establish policies for the management and control of the business, property and affairs of the Tribal Corporation and the Board is hereby vested with the authority and power necessary to the discharge of those duties. The members of the Board shall be deemed to be officers of the Tribe and as such share the same privileges and immunities as the tribal government. The tribe hereby conveys the following powers to the Tribal Corporation including, but not limited to:
1. Power to buy and sell real and personal property; including the power to purchase restricted Indian lands;

2. To enter into leases or mortgages of tribal land for a term of 25 years without Section 81 approval by the Secretary of the Interior;
 3. To enter into contracts or agreements without Section 81 approval by the Secretary of the Interior;
 4. Provide for economic development and investment income to the tribal government by utilizing the following:
 - a. Tribal financial facilitation of bond financing
 - b. Grants
 - c. Borrowing and/or relending eligibility
 - d. General tribal participation contribution value
 - e. Property and other asset contributions
 - f. Labor force training and deployment value
 - g. Political and intertribal intergovernmental coordination values
 - h. Debt/equity participation
 - i. Tax credits
 5. Further powers as may be necessary to the conduct of corporate business.
- E.** General Powers. The Board shall have and is authorized to exercise all powers necessary or convenient to affect the purposes for which a Tribal corporation is organized, or to further the business in which a Tribal corporation may lawfully be engaged. The Board shall carry out its responsibilities through the development of policies for the management and control of the Tribal corporation and its activities and property. The Board shall delegate to the President/Chief Executive Officer such authority as is necessary to carry out the policies of the Board for the day-to-day conduct of the business activities of the Tribal Corporation, unless provided otherwise in this Title.

Sec. 03.01.008 Fiscal Year

The fiscal year of Tribal Corporation shall be the calendar year.

Sec. 03.01.009 Annual Meeting

The Board shall conduct an annual meeting with the stockholders represented by the Executive Council to review the annual report, audited financial statements, and any other business that may come before the meeting.

Sec. 03.01.010 Personnel

The Board shall employ a President/Chief Executive Officer who shall have the authority to hire, promote and discharge such personnel as may be required to conduct the affairs of the Tribal Corporation.

Sec. 03.01.011 Contracts and Liabilities

The President/Chief Executive Officer shall have the authority to make contracts and incur liabilities in the ordinary course of the business. With the concurrence of the Board in the form of a resolution, the President/Chief Executive Officer may also enter into contracts of guaranty or surety ship, borrow money on such terms and conditions as may be necessary for the conduct of the business of the Tribal corporation, issue notes and bonds and other obligations and secure any of its obligations by mortgage, pledge or other encumbrance of all or any part of its property, franchise and income; provided, however, that neither the President/Chief Executive Officer nor the Board shall have any authority to mortgage, pledge or otherwise encumber lands of the Tribe except with the express consent of the Tribe; and further provided, that every contract, note, bond, or other obligation or instrument approved by the President/Executive Officer or the Board shall include an express limitation of recourse on such contract to the assets of the Tribal corporation and to no other property or income of the Tribe.

Sec. 03.01.012 Sovereign Immunity

With respect to any contract, guaranty, surety, loan, note or similar instrument approved by the Board, the Tribe hereby waives any and all defenses otherwise available to the Tribe based upon its sovereign immunity from suit with respect to any actions against the Tribe in any forum seeking to enforce the obligations of Tribal corporation under such instruments; provided, however, that such waiver is expressly limited to enforcement of such obligations against the assets of the Tribal corporation and not to any other property or income of the Tribe. The Board is further empowered to sue and be sued in the name of Tribal Corporation; provided, however, that the power to sue and be sued shall extend only to actions on express contracts and instruments and shall not constitute a waiver of the sovereign immunity of the Tribe, including the Tribal Corporation for any other purpose or action.

Sec. 03.01.013 Indemnification

The Board shall have the authority, on behalf of the Tribe, to provide for the indemnification of its Directors, officers and employees, from any personal liability, which they may incur when acting in such capacities and within the scope of their respective authority, in the absence of willful misconduct. The Tribe hereby waives any and all defenses otherwise available to the Tribe based upon its sovereign immunity from suit with respect to any action against the Tribe in any forum seeking to enforce the obligations of Tribal corporation with respect to such provisions for indemnification as are adopted in the bylaws of the Board; provided, however that such waiver is expressly limited to enforcement of such obligations against the assets of Tribal corporation and not to any other property or income of the Tribe.

Sec. 03.01.014 Insurance

The Board shall have the authority, on behalf of the Tribe, to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Tribal corporation or its subsidiaries or affiliates, or is or was at the request of the Board serving as a Director or other officer or agent of any corporation, partnership, joint venture, trust or other Tribal corporation, against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether the Tribal corporation would have the authority to indemnify him or her against such liability under the provisions of this Title.

Sec. 03.01.015 Principal Place of Business

The principal place of business of the Tribal corporation shall be located in, Juneau, Alaska; provided, however that the Board is authorized to conduct the business of the Tribal corporation, carry on its operations, and have offices and exercise the powers granted by this Title in any state, territory, district or possession of the United States, or in any foreign country, as the business of the Tribal corporation may from time to time require.

Sec. 03.01.016 Employment Preference

The Board shall at all times maintain and enforce a policy of tribal member preference to provide opportunities to qualified members of the Tribe to receive training, employment and contracts with a Tribal corporation.

Sec. 03.01.017 Revenues Payable to the Tribe

Subject to any applicable restrictions reflecting the financing of a Tribal corporation, at least sixty percent of annual net revenues of the Tribal corporation after satisfaction of debt service obligations, taxes, and after reserving such funds as may in the judgment of the Board be required capital expenditures, shall be remitted to the general fund of the Tribe for disposition by the Tribe.

Sec. 03.01.018 Records and Reports

The Tribal Corporation shall provide for an annual audit of its books and records in accordance with the generally accepted standards for a business activity of the type engaged in by the Tribal Corporation. The Tribal Corporation shall prepare and file with the Chief Finance Officer of the Tribe the annual audit report prepared by a Certified Public Accountant.

Sec. 03.01.019 Tax and License Fees

The Tribal Corporation, its subsidiaries, affiliates or subdivision shall be subject to such taxes and license fees or requirements as may be required by law.

Sec. 03.01.020 Duration and Dissolution

A. Dissolution. The Tribal Corporation may be dissolved upon the recommendations of the Board with the concurrence of the Executive Council through the adoption of a resolution to that effect. Upon the dissolution of a Tribal corporation, the Board shall ensure that the Tribal corporation does not carry on any business except those activities which are appropriate to wind up and liquidate its business and affairs, including; (1) collecting its assets; (2) disposing of its properties by transfer, distribution or delivery to the Tribe; (3) discharging or making provision for the discharge of its liabilities.

- 1.** The Board shall adopt a resolution recommending that the Tribal Corporation be dissolved and that the question of dissolution be submitted to a vote at a meeting of the Executive Council, which may be either an annual or special meeting.
- 2.** Written notice shall be given to the Executive Council in the manner provided in applicable Tribal law for giving notice of meetings of the Executive Council, and shall state that the purpose, or one of the purposes,

of the meeting is to consider the advisability of dissolving the Tribal Corporation.

3. At the meeting, a vote shall be taken on a resolution to dissolve the Tribal Corporation.
4. Upon adoption of the resolution, a statement of intent to dissolve shall be executed by the Tribal Corporation Chairperson or Vice-Chairperson and by its Secretary and verified by one of the officers signing the statement, and shall be delivered to the Executive Council.
5. Upon filing of the statement of intent to dissolve with the Executive Council, the Tribal Corporation shall cease to carry on its business, except insofar as necessary for the winding up thereof.
6. After filing the statement of intent to dissolve, the Tribal Corporation shall immediately cause notice thereof to be mailed to each known creditor of the Tribal Corporation and shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to the Tribe, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, to the Tribe.
7. By resolution of the Board or by resolution adopted by the Executive Council at any time, the Tribal Corporation may revoke any voluntary dissolution proceedings. Written notice of the revocation shall be filed with the Executive Council. Upon filing of the notice of revocation of voluntary dissolution proceedings, the revocation shall be effective and the Tribal Corporation may again carry on its business.
8. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities and obligations of the Tribal Corporation have been paid and discharged, or adequate provision has been made therefore, and all of the remaining property and assets of the Tribal Corporation have been distributed to the Tribe, the Tribe shall take all actions necessary to dissolving the Tribal Corporation.

B. Duration. The period of the duration of the Tribal Corporation shall be perpetual or until it is dissolved.

Sec. 03.01.021 Codification and Definitions

The definitions and construction of words and phrases in the COC Codification Statute 01.01.010 ET. Seq. is adopted as applicable in this Statute.

Chapter 02. Limited Liability Companies

Sec. 03.02.001	Definitions
Sec. 03.02.002	Standards for Electronic Filing - Rules
Sec. 03.02.003	Name Set Forth in Certificate of Formation
Sec. 03.02.004	Reserved Name - Registered Name
Sec. 03.02.005	Registered Office - Registered Agent
Sec. 03.02.006	Service of Process on Domestic Limited Liability Companies
Sec. 03.02.007	Nature of Business Permitted - Powers
Sec. 03.02.008	Business Transactions of Member or Manager with the Limited Liability Company
Sec. 03.02.009	Limitation of Liability and Indemnification

Sec. 03.02.001 Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- A. "Certificate of formation" means the certificate referred to in section 3.210.010, and the certificate as amended.
- B. "Event of dissociation" means an event that causes a person to cease to be a member as provided in section 3.220.040.
- C. "Foreign limited liability company" means an entity that is formed under:
 - 1. The limited liability company laws of any Tribe or state other than this Tribe; or
 - 2. The laws of any foreign country that is:
 - a. An unincorporated association,
 - b. Formed 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
 - c. Not required, in order to transact business or conduct affairs within this Tribe, to be registered or qualified under Title 3, or any other chapter of the code authorizing the formation of a domestic entity and the registration or qualification in this Tribe of similar entities formed under the laws of a jurisdiction other than this Tribe.
- D. "Limited liability Company" and "domestic limited liability company" means a limited liability company having one or more members that is organized and existing under this chapter.
- E. "Limited liability company agreement" means any written agreement of the members, or any written statement of the sole member, as to the affairs of a limited liability company and the conduct of its business, which is binding upon the member or members.

- F.** "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.
- G.** "Manager" or "managers" means, with respect to a limited liability company that has set forth in its certificate of formation that it is to be managed by managers, the person, or persons designated in accordance with section 3.230.010(2).
- H.** "Member" means a person who has been admitted to a limited liability company as a member as provided in section 3.220.010 and who has not been dissociated from the limited liability company.
- I.** "Person" means an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, or any other legal or commercial entity.
- J.** "Professional limited liability company" means a limited liability company which is organized for the purpose of rendering professional service and whose certificate of formation sets forth that it is a professional limited liability company subject to section 3.200.100.
- K.** "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Note: Effective date - January 31, 2014: "This act is necessary for the support of the Tribal government and its existing public institutions, and shall take effect January 31, 2014."

HISTORICAL NOTE

This chapter was enacted by Executive Council Motion, dated January 24, 2014.

Sec. 03.02.002 Standards for Electronic Filing - Rules

The Tribal Secretary may adopt rules to facilitate electronic filing. The rules will detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the Secretary will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted.

Sec. 03.02.003 Name Set Forth in Certificate of Formation

- A.** The name of each limited liability company as set forth in its certificate of formation:
 - 1.** Must contain the words "Limited Liability Company," the words "Limited Liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC";
 - 2.** Except as provided in subsection (1) (d) of this section, may contain the name of a member or manager;

3. Must not contain language stating or implying that the limited liability company is organized for a purpose other than those permitted by Tribal law;
 4. Must not contain any of the words or phrases: "Bank," "banking," "banker," "trust," "cooperative," "partnership," "corporation," "incorporated," or the abbreviations "corp.," "Ltd.," or "Inc.," or "LP," "L.P.," "LLP," "L.L.P.," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this Tribe; and
 5. Must be distinguishable upon the records of the Secretary from the names of pre-existing Tribal companies, and the names of any limited liability company reserved, registered, or formed under the laws of this Tribe or qualified to do business as a foreign limited liability company of this Tribe.
- B.** A limited liability company may apply to the Secretary authorization to use any name which is not distinguishable upon the records of the Secretary from one or more of the names described in subsection (1)(e) of this section. The Secretary shall authorize use of the name applied for if the other corporation, limited partnership, limited liability partnership, or limited liability company consents in writing to the use and files with the Secretary documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the Secretary from the name of the applying limited liability company.
- C.** A name shall not be considered distinguishable upon the records of the Secretary by virtue of:
1. A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "Inc.," "co.," "Ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," or "L.L.C.";
 2. The addition or deletion of an article or conjunction such as "the" or "and" from the same name;
 3. Punctuation, capitalization, or special characters or symbols in the same name; or
 4. Use of abbreviation or the plural form of a word in the same name.
- D.** This chapter does not control the use of assumed business names or "trade names."

Sec. 03.02.004 Reserved Name - Registered Name

- A.** Reserved Name.
1. A person may reserve the exclusive use of a limited liability company name by delivering an application to the Secretary of for filing. The

application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary finds that the limited liability company name applied for is available, the Secretary shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred eighty-day period.

2. The owner of a reserved limited liability company name may transfer the reservation to another person by delivering to the Secretary a signed notice of the transfer that states the name and address of the transferee.

B. Registered Name.

1. A foreign limited liability company may register its name if the name is distinguishable upon the records of the Secretary.
2. A foreign limited liability company registers its name by delivering to the Secretary for filing an application that:
 - a. Sets forth its name and the Tribe, state or country and date of its organization; and
 - b. Is accompanied by a certificate of existence, or a document of similar import, from the Tribe, state or country of organization.

C. The name is registered for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

D. A foreign limited liability company whose registration is effective may renew it for successive years by delivering to the Secretary for filing a renewal application, which complies with the requirements of (b) of this subsection, between October 1st and December 31st of the preceding year. The renewal application when filed renews the registration for the following calendar year.

E. A foreign limited liability company whose registration is effective may thereafter qualify as a foreign limited liability company under the registered name, or consent in writing to the use of that name by a limited liability company thereafter organized under this chapter, by a corporation thereafter formed under Title 3, Chapters I or II, by a limited partnership thereafter formed this Chapter, or by another foreign limited liability company, foreign corporation, or foreign limited partnership thereafter authorized to transact business in this state. The registration terminates when the domestic limited liability company is organized, the domestic corporation is incorporated, or the domestic limited partnership is formed, or the foreign limited liability company qualifies or consents to the qualification of another foreign limited liability company, corporation, or limited partnership under the registered name.

Sec. 03.02.005 Registered Office - Registered Agent

A. Each limited liability company shall continuously maintain within this Tribe:

1. A registered office, which may but need not be a place of its business within this Tribe's jurisdiction. The registered office shall be at a specific

geographic location within this Tribe's jurisdiction, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the Secretary may permit the use of a post office address in conjunction with the registered office address if the limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

2. A registered agent for service of process on the limited liability company, which agent may be either an individual whose business office is identical with the limited liability company's registered office, or a domestic corporation, limited partnership, or limited liability company, or a government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, or a foreign corporation, limited partnership, or limited liability company authorized to do business within this Tribe having a business office identical with such registered office; and
3. A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the Secretary in such form as the Secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent.

B. A limited liability company may change its registered office or registered agent by delivering to the Secretary for filing a statement of change that sets forth:

1. The name of the limited liability company;
2. If the current registered office is to be changed, the street address of the new registered office in accord with subsection (1) of this section;
3. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
4. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.
 - a. If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any limited liability company for which the agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary for filing a statement that complies with the requirements of subsection (2) of this section and recites that the limited liability company has been notified of the change.

- b. A registered agent may resign as agent by signing and delivering to the Secretary for filing a statement that the registered office is also discontinued. After filing the statement, the Secretary shall mail a copy of the statement to the limited liability company at its principal office. The agency appointment is terminated, and the registered office discontinued is so provided, on the thirty-first day after the date on which the statement was filed.

Sec. 03.02.006 Service of Process on Domestic Limited Liability Companies

- A. A limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.
- B. The Secretary shall be an agent of a limited liability company upon whom any such process, notice, or demand may be served if:
 - 1. The limited liability company fails to appoint or maintain a registered agent for this Tribe; or
 - 2. The registered agent cannot with reasonable diligence be found at the registered office.
- C. Service on the Secretary of any such process, notice, or demand shall be made by delivering to and leaving with the Secretary, or with any duly authorized clerk of the Secretary's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the Secretary, the Secretary shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the limited liability company at its principal place of business as it appears on the records of the Secretary. Any service so had on the Secretary shall be returnable in not less than thirty days.
- D. The Secretary shall keep a record of all processes, notices, and demands served upon the Secretary under this section, and shall record therein the time of such service and the Secretary action with reference thereto.
- E. This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

Sec. 03.02.007 Nature of Business Permitted - Powers

- A. Every limited liability company formed under this chapter may carry on any lawful business or activity unless a more limited purpose is set forth in the certificate of formation. A limited liability company may not be formed under this chapter for the purposes of engaging in business as an insurer.
- B. Unless this chapter, its certificate of formation, or its limited liability company agreement provides otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs.

Sec. 03.02.008 Business Transactions of Member or Manager with the Limited Liability Company

Except as provided in a limited liability company agreement, a member or manager may lend money to, act as a surety, guarantor, or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

Sec. 03.02.009 Limitation of Liability and Indemnification

- A.** The limited liability company agreement may contain provisions not inconsistent with law that:
 - 1.** Eliminate or limit the personal liability of a member or manager to the limited liability company or its members for monetary damages for conduct as a member or manager, provided that such provisions shall not eliminate or limit the liability of a member or manager for acts or omissions that involve intentional misconduct or a knowing violation of law by a member or manager, or for any transaction from which the member or manager will personally receive a benefit in money, property, or services to which the member or manager is not legally entitled; or
 - 2.** Indemnify any member or manager from and against any judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which an individual is a party because he or she is, or was, a member or a manager, provided that no such indemnity shall indemnify a member or a manager from or on account of acts or omissions of the member or manager finally adjudged to be intentional misconduct or a knowing violation of law by the member or manager, or any transaction with respect to which it was finally adjudged that such member or manager received a benefit in money, property, or services to which such member or manager was not legally entitled.
- B.** To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating thereto to a limited liability company or to another member or manager (a) any such member or manager acting under a limited liability company agreement shall not be liable to the limited liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreement, and (b) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

Chapter 03. Formation: Certificate of Formation, Amendment, Filing and Execution

Sec. 03.03.001	Certificate of Formation
Sec. 03.03.002	Amendment to Certificate of Formation
Sec. 03.03.003	Sec. 03.02.003 Execution
Sec. 03.03.004	Execution, Amendment, or Cancellation by Judicial Order
Sec. 03.03.005	Filing
Sec. 03.03.006	Restated Certificate
Sec. 03.03.007	Initial and Annual Reports

Sec. 03.03.001 ~~Sec. 03.02.001~~ Certificate of Formation

- A. In order to form a limited liability company, one or more persons must execute a certificate of formation. The certificate of formation shall be filed in the office of the Secretary and set forth:
1. The name of the limited liability company;
 2. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 03.02.050;
 3. The address of the principal place of business of the limited liability company;
 4. If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve;
 5. If management of the limited liability company is vested in a manager or managers, a statement to that effect;
 6. Any other matters the members decide to include therein; and
 7. The name and address of each person executing the certificate of formation.
- B. Effect of filing:
1. Unless a delayed effective date is specified, a limited liability company is formed when its certificate of formation is filed by the Secretary. A delayed effective date for a certificate of formation may be no later than the ninetieth day after the date it is filed.
 2. The Secretary's filing of the certificate of formation is conclusive proof that the persons executing the certificate satisfied all conditions precedent to the formation.
 3. A limited liability company formed under this chapter shall be a separate legal entity.

Sec. 03.03.002 ~~Sec. 03.02.002~~ — **Amendment to Certificate of Formation**

- A.** A certificate of formation is amended by filing a certificate of amendment thereto with the Secretary. The certificate of amendment shall set forth:
 - 1.** The name of the limited liability company; and
 - 2.** The amendment to the certificate of formation.
- B.** A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, shall promptly amend the certificate of formation.
- C.** A certificate of formation may be amended at any time for any other proper purpose.
- D.** Unless otherwise provided in this chapter or unless a later effective date (which shall be a date no later than the ninetieth day after the date it is filed) is provided for in the certificate of amendment, a certificate of amendment shall be effective when filed by the Secretary.

Sec. 03.03.003 ~~Sec. 03.02.003~~ — **Execution**

- A.** Each document required by this chapter to be filed in the office of the Secretary shall be executed in the following manner:
 - 1.** Each original certificate of formation must be signed by the person or persons forming the limited liability company;
 - 2.** A reservation of name may be signed by any person;
 - 3.** A transfer of reservation of name must be signed by, or on behalf of, the applicant for the reserved name;
 - 4.** A registration of name must be signed by any member or manager of the foreign limited liability company;
 - 5.** A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members;
 - 6.** A certificate of dissolution must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to section 03.02.655(3);
 - 7.** If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited liability company, limited partnership, or corporation; and
 - 8.** A foreign limited liability company's application for registration as a foreign limited liability company doing business within the Tribe must be

signed by any member or manager of the foreign limited liability company.

- B. Any person may sign a certificate, articles of merger, limited liability company agreement, or other document by an attorney-in-fact or other person acting in a valid representative capacity, so long as each document signed in such manner identifies the capacity in which the signatory signed.
- C. The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the Secretary.
- D. The execution of a certificate or articles of merger by any person constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

Sec. 03.03.004 ~~Sec. 03.02.004~~ — **Execution, Amendment, or Cancellation by Judicial Order**

- A. If a person required to execute a certificate required by this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary to record an appropriate certificate.
- B. If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the limited liability company agreement or amendment thereof. If the court finds that the limited liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

Sec. 03.03.005 ~~Sec. 03.02.005~~ — **Filing**

- A. The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, of the certificate of formation or any other document required to be filed pursuant to this chapter, except as set forth under section 03.02.270 or unless a duplicate is not required under rules adopted under section 03.02.020, shall be delivered to the Secretary. If the Secretary determines that the documents conform to the filing provisions of this chapter, he or she shall, when all required filing fees have been paid:
 - 1. Endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;
 - 2. Retain the signed original in the Secretary's files; and
 - 3. Return the duplicate copy to the person who filed it or the person's representative.

- B. If the Secretary is unable to make the determination required for filing by subsection (1) of this section at the time any documents are delivered for filing, the documents are deemed to have been filed at the time of delivery if the Secretary subsequently determines that:
 - 1. The documents as delivered conform to the filing provisions of this chapter; or
 - 2. Within twenty days after notification of nonconformance is given by the Secretary to the person who delivered the documents for filing or the person's representative, the documents are brought into conformance.
- C. If the filing and determination requirements of this chapter are not satisfied completely within the time prescribed in subsection (2) (b) of this section, the documents shall not be filed.
- D. Upon the filing of a certificate of amendment (or judicial decree of amendment) or restated certificate in the office of the Secretary , or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein.

Sec. 03.03.006 ~~Sec. 03.02.006~~ ————— **Restated Certificate**

- A. A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of their having theretofore been filed with the Secretary one or more certificates or other instruments pursuant to any of the sections referred to in this chapter and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.
- B. If a restated certificate of formation merely restates and integrates but does not amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this chapter, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in section 03.02.250 in the office of the Secretary . If a restated certificate restates and integrates and also amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in section 03.02.250 in the office of the Secretary .
- C. A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing

of its original certificate of formation with the Secretary, and the future effective date (which shall be a date not later than the ninetieth day after the date it is filed) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates, integrates, and does not further amend a limited liability company's certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

- D.** Upon the filing of a restated certificate of formation with the Secretary, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.
- E.** Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

Sec. 03.03.007 ~~**Sec. 03.02.007**~~ **Initial and Annual Reports**

- A.** Each domestic limited liability company, and each foreign limited liability company authorized to transact business in this state, must deliver to the Secretary for filing, both initial and annual reports that set forth:
 - 1.** The name of the company and the Tribe, state or country under whose law it is organized;
 - 2.** The street address of its registered office and the name of its registered agent at that office in this state;
 - 3.** In the case of a foreign company, the address of its principal office in the Tribe, state or country under the laws of which it is organized;
 - 4.** The address of the principal place of business of the company;
 - 5.** The names and addresses of the company's members, or if the management of the company is vested in a manager or managers, then the name and address of its manager or managers;
 - 6.** A brief description of the nature of its business.
- B.** Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the company.
- C.** A company's initial report must be delivered to the Secretary within one hundred twenty days of the date on which a domestic company's certificate of formation was filed, or on which a foreign company's application for registration was submitted. Subsequent annual reports must be delivered to the Secretary on a date determined by the Secretary, and at such additional times as the company elects.

1. The Secretary may allow a company to file an initial or annual report through electronic means. If allowed, the Secretary must adopt rules detailing the circumstances under which the electronic filing of the reports is permitted and how the reports may be filed.
2. For purposes of this section only, a person executing an electronically filed annual report may deliver the report to the office of the Secretary without a signature and without an exact or conformed copy, but the person's name must appear in the electronic filing as the person executing the filing, and the filing must state the capacity in which the person is executing the filing.

Chapter 04. Members

Sec. 03.04.001	Admission of Members
Sec. 03.04.002	Voting and Classes of Membership
Sec. 03.04.003	Liability of Members and Managers to Third Parties
Sec. 03.04.004	Events of Dissociation
Sec. 03.04.005	Records and Information
Sec. 03.04.006	Remedies for Breach of Limited Liability Company Agreement by Member

Sec. 03.04.001 ~~Sec. 03.02.001~~ — **Admission of Members**

- A.** In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:
- 1.** The formation of the limited liability company; or
 - 2.** The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when the person's admission is reflected in the records of the limited liability company.
- B.** After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:
- 1.** In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; or
 - 2.** In the case of an assignee of a limited liability company interest who meets the conditions for membership set forth in 03.02.540 (1) at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when any such assignee's admission as a member is reflected in the records of the limited liability company.

Sec. 03.04.002 ~~Sec. 03.02.002~~ — **Voting and Classes of Membership**

- A.** Except as provided in this chapter, or in the limited liability company agreement, and subject to subsection (2) of this section, the affirmative vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 03.02.250) of the contributions made, or required to be made, by all members shall be necessary for actions requiring member approval.

- B. Except as provided in the limited liability company agreement, the affirmative vote, approval, or consent of all members shall be required to:
 1. Amend the limited liability company agreement; or
 2. Authorize a manager, member, or other person to do any act on behalf of the limited liability company that contravenes the limited liability company agreement, including any provision thereof, which expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof.
- C. A limited liability company agreement may provide for classes or groups of members having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.
- D. A limited liability company 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. If the limited liability company agreement so provides, voting by members may be on a per capita, number, profit share, class, group, or any other basis.
- E. A limited liability company agreement which contains provisions related to voting rights of members may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

Sec. 03.04.003 ~~**Sec. 03.02.003**~~ — **Liability of Members and Managers to Third Parties**

- A. Except as otherwise provided by this chapter, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations, and liabilities of the limited liability company; and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation, or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.
- B. A member or manager of a limited liability company is personally liable for his or her own torts.

- A.** A person ceases to be a member of a limited liability company, and the person or its successor in interest attains the status of an assignee as set forth in section 03.02.520 (2), upon the occurrence of one or more of the following events:
- 1.** The member dies or withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;
 - 2.** The member ceases to be a member as provided in section 03.02.520 (2) (b), following an assignment of all the member's limited liability company interest;
 - 3.** The member is removed as a member in accordance with the limited liability company agreement;
 - 4.** Unless otherwise provided in the limited liability company agreement, or with the written consent of all other members at the time, the member (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order for relief in bankruptcy proceedings; (iv) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution,
- B.** or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of the nature described in (d) (i) through (iv) of this subsection; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;
- 1.** Unless otherwise provided in the limited liability company agreement, or with the consent of all other members at the time, one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety days after the expiration of any stay, the appointment is not vacated;
 - 2.** Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member who is an individual, the entry of an order by a court of competent jurisdiction adjudicating the member incapacitated;
 - 3.** Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is another limited liability company, the dissolution and commencement of winding up of such limited liability company;

4. Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period authorized for application for reinstatement; or
 5. Unless otherwise provided in the limited liability company agreement or with written consent of all other members at the time, in the case of a member that is a limited partnership, the dissolution and commencement of winding up of such limited partnership.
- C. The limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.
- D. A member may withdraw from a limited liability company at the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the time for the dissolution and commencement of winding up of the limited liability company, without the written consent of all other members at the time.

Sec. 03.04.005

~~**Sec. 03.02.005**~~ ————— **Records and Information**

- A. A limited liability company shall keep at its principal place of business the following:
1. A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any;
 2. A copy of its certificate of formation and all amendments thereto;
 3. A copy of its current limited liability company agreement and all amendments thereto, and a copy of any prior agreements no longer in effect;
 4. Unless contained in its certificate of formation or limited liability company agreement, a written statement of:
 5. The amount of cash and a description of the agreed value of the other property or services contributed by each member (including that member's predecessors in interest), and which each member has agreed to contribute;
 6. The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made; and
 7. Any right of any member to receive distributions, which include a return of all or any part of the member's contribution.
 8. A copy of the limited liability company's federal, state, and local tax returns and reports, if any, for the three most recent years; and

9. A copy of any financial statements of the limited liability company for the three most recent years.
- B. The records required by subsection (1) of this section to be kept by a limited liability company are subject to inspection and copying at the reasonable request, and at the expense, of any member during ordinary business hours. A member's agent or attorney has the same inspection and copying rights as the member.
- C. Each manager shall have the right to examine all of the information described in subsection (1) of this section for a purpose reasonably related to his or her position as a manager.
- D. A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.
- E. Any action to enforce any right arising under this section shall be brought in the Tribal Courts.

Sec. 03.04.006 ~~Sec. 03.02.006~~ ————— **Remedies for Breach of Limited Liability Company Agreement by Member**

A limited liability company agreement may provide that (1) a member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

Chapter 05. Management and Managers

Sec. 03.05.001	Management
Sec. 03.05.002	Liability of Managers and Members
Sec. 03.05.003	Manager - Members' Rights and Duties
Sec. 03.05.004	Voting and Classes of Managers
Sec. 03.05.005	Remedies for Breach of Limited Liability Company Agreement by Manager
Sec. 03.05.006	Reliance on Reports and Information by Member or Manager
Sec. 03.05.007	Resignation of manager
Sec. 03.05.008	Loss of Sole Remaining Manager

Sec. 03.05.001 ~~Sec. 03.02.007~~ Management

- A. Unless the certificate of formation vests management of the limited liability company in a manager or managers: (a) Management of the business or affairs of the limited liability company shall be vested in the members; and (b) each member is an agent of the limited liability company for the purpose of its business and the act of any member for apparently carrying on in the usual way the business of the limited liability company binds the limited liability company unless the member so acting has in fact no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority. Subject to any provisions in the limited liability company agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.
- B. If the certificate of formation vests management of the limited liability company in one or more managers, then such persons shall have such power to manage the business or affairs of the limited liability company as is provided in the limited liability company agreement. Unless otherwise provided in the limited liability company agreement, such persons:
1. Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 03.02.250) of the contributions made, or required to be made, by all members at the time of such action;
 2. Need not be members of the limited liability company or natural persons; and
 3. Unless they have been earlier removed or have earlier resigned, shall hold office until their successors shall have been elected and qualified.

- C. If the certificate of formation vests management of the limited liability company in a manager or managers, no member, acting solely in the capacity as a member, is an agent of the limited liability company.

Sec. 03.05.002 ~~Sec. 03.02.008~~ ————— **Liability of Managers and Members**

Unless otherwise provided in the limited liability company agreement:

- A. A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless such act or omission constitutes gross negligence, intentional misconduct, or a knowing violation of law.
- B. Every member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by him or her without the consent of a majority of the disinterested managers or members, or other persons participating in the management of the business or affairs of the limited liability company from (a) any transaction connected with the conduct or winding up of the limited liability company or (b) any use by him or her of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to him or her as a result of his or her status as manager or member.

Sec. 03.05.003 ~~Sec. 03.02.009~~ ————— **Manager - Members' Rights and Duties**

A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of his or her participation in the limited liability company as a member.

Sec. 03.05.004 ~~Sec. 03.02.010~~ ————— **Voting and Classes of Managers**

- A. Unless the limited liability company agreement provides otherwise, the affirmative vote, approval, or consent of more than one-half by number of the managers shall be required to decide any matter connected with the business and affairs of the limited liability company.
- B. A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

- C. A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. If the limited liability company agreement so provides, voting by managers may be on a financial interest, class, group, or any other basis.
- D. A limited liability company agreement which contains provisions related to voting rights of managers may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

Sec. 03.05.005 ~~Sec. 03.02.011~~ — **Remedies for Breach of Limited Liability Company Agreement by Manager**

A limited liability company agreement may provide that (1) a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or specified consequences.

Sec. 03.05.006 **Reliance on Reports and Information by Member or Manager**

In discharging the duties of a manager or a member, a member or manager of a limited liability company is entitled to rely in good faith upon the records of the limited liability company and upon such information, opinions, reports, or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

Sec. 03.05.007 ~~Sec. 03.02.013~~ — **Resignation of manager**

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company.

Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager.

Sec. 03.05.008 ~~**Sec. 03.02.014**~~ ————— **Loss of Sole Remaining Manager**

In the event of the death, resignation, or removal of the sole remaining manager, or if one of the events described in section 03.02.240 (1) (d) through (i) occurs with regard to the sole remaining manager, and unless the limited liability company agreement provides otherwise, the limited liability company shall become member-managed unless one or more managers are appointed by majority vote of the members within ninety days after the occurrence of such an event.

Chapter 06. Finance, Distributions and Resignation

Sec. 03.06.001	Form of Contribution
Sec. 03.06.002	Liability for Contribution
Sec. 03.06.003	Allocation of Profits and Losses
Sec. 03.06.004	Allocation of distributions
Sec. 03.06.005	Interim distributions
Sec. 03.06.006	Distribution on event of dissociation
Sec. 03.06.007	Distribution in-kind
Sec. 03.06.008	Right to distribution
Sec. 03.06.009	Limitations on Distribution

Sec. 03.06.001 ~~Sec. 03.02.001~~ — **Form of Contribution**

The contribution of a member to a limited liability company may be made in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Sec. 03.06.002 ~~Sec. 03.02.002~~ — **Liability for Contribution**

- A.** Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 03.02.250) of the contribution that has not been made. This option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.
- B.** Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after either the certificate of formation, limited liability company agreement or an amendment thereto, or records required to be kept under section 03.02.250 reflect the obligation, and before the amendment of any thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

- C. A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of non-defaulting members, a forced sale of the member's limited liability company interest, forfeiture of the member's limited liability company interest, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's limited liability company interest by appraisal or by formula and redemption or sale of the member's limited liability company interest at such value, or other penalty or consequence.

Sec. 03.06.003 ~~Sec. 03.02.003~~ ———— **Allocation of Profits and Losses**

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated in proportion to the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 03.02.250) of the contributions made, or required to be made, by each member.

Sec. 03.06.004 ~~Sec. 03.02.004~~ ———— **Allocation of distributions**

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made in proportion to the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 03.02.250) of the contributions made, or required to be made, by each member.

Sec. 03.06.005 ~~Sec. 03.02.005~~ ———— **Interim distributions**

Except as provided in this article, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before the member's dissociation from the limited liability company and before the dissolution and winding up thereof.

Sec. 03.06.006 ~~Sec. 03.02.006~~ ———— **Distribution on event of dissociation**

Unless otherwise provided in the limited liability company agreement, upon the occurrence of an event of dissociation under section 03.02.240 which does not cause dissolution (other than an event of dissociation specified section 03.02.240 (1) (b) where the dissociating member's assignee is admitted as a member), a dissociating member (or the member's assignee) is entitled to receive any distribution to which an assignee would be entitled.

Sec. 03.06.007 ~~Sec. 03.02.007~~ ———— **Distribution in-kind**

Except as provided in a limited liability company agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in-kind from a

limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset which is equal to the percentage in which he or she shares in distributions from the limited liability company.

Sec. 03.06.008 ~~Sec. 03.02.008~~ **Right to distribution**

Subject to section 03.02.490 and 03.02.670, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

Sec. 03.06.009 ~~Sec. 03.02.009~~ **Limitations on Distribution**

- A.** A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution (i) the limited liability company would not be able to pay its debts as they became due in the usual course of business, or (ii) all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.
- B.** A member who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) 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 (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (3) of this section, this subsection (2) shall not affect any obligation or liability of a member under a limited liability company agreement or other applicable law for the amount of a distribution.
- C.** Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three-year period and an adjudication of liability against such member is made in the said action.

Chapter 07. Assignment of Limited Liability Company Interests and Derivative Actions

Sec. 03.07.001	Nature of Limited Liability Company Interest - Certificate of Interest
Sec. 03.07.002	Assignment of Limited Liability Company Interest
Sec. 03.07.003	Rights of Judgment Creditor
Sec. 03.07.004	Right of Assignee to Become Member
Sec. 03.07.005	Right to Bring Derivative Actions
Sec. 03.07.006	Proper Plaintiff
Sec. 03.07.007	Complaint
Sec. 03.07.008	Expenses

Sec. 03.07.001 ~~Sec. 03.02.001~~ — Nature of Limited Liability Company Interest - Certificate of Interest

- A. A limited liability company interest is personal property. A member has no interest in specific limited liability company property.
- B. A limited liability company agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

Sec. 03.07.002 ~~Sec. 03.02.002~~ — Assignment of Limited Liability Company Interest

- A. A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except:
 - 1. Upon the approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or
 - 2. As provided in a limited liability company agreement.
- B. Unless otherwise provided in a limited liability company agreement:
 - 1. An assignment entitles the assignee to share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and
 - 2. A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.
- C. For the purposes of this chapter, unless otherwise provided in a limited liability company agreement:

1. The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the limited liability company interest of a member shall not be deemed to be an assignment of the member's limited liability company interest, but a foreclosure or execution sale or exercise of similar rights with respect to all of a member's limited liability company interest shall be deemed to be an assignment of the member's limited liability company interest to the transferee pursuant to such foreclosure or execution sale or exercise of similar rights;
 2. Where a limited liability company interest is held in a trust or estate, or is held by a trustee, personal representative, or other fiduciary, the transfer of the limited liability company interest, whether to a beneficiary of the trust or estate or otherwise, shall be deemed to be an assignment of such limited liability company interest, but the mere substitution or replacement of the trustee, personal representative, or other fiduciary shall not constitute an assignment of any portion of such limited liability company interest.
- D.** Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

Sec. 03.07.003 ~~**Sec. 03.02.003**~~ **Rights of Judgment Creditor**

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company 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 limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest.

Sec. 03.07.004 ~~**Sec. 03.02.004**~~ **Right of Assignee to Become Member**

- A.** An assignee of a limited liability company interest may become a member upon:
 1. The approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or
 2. Compliance with any procedure provided for in the limited liability company agreement.
- B.** An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. An assignee who becomes a member is liable for the obligations of his or her assignor to make contributions as provided in section 03.02.420, and for the obligations of his or her assignor under article VI of this chapter.
- C.** Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his or her liability to a limited liability company under articles V and VI of this chapter.

Sec. 03.07.005 ~~Sec. 03.02.005~~ ————— **Right to Bring Derivative Actions**

A member may bring an action in the Tribal Court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

Sec. 03.07.006 **Proper Plaintiff**

In a derivative action, the plaintiff must be a member at the time of bringing the action and:

- A. At the time of the transaction of which the plaintiff complains; or
- B. The plaintiff's status as a member had devolved upon him or her by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member at the time of the transaction.

Sec. 03.07.007 ~~Sec. 03.02.007~~ ————— **Complaint**

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

Sec. 03.07.008 ~~Sec. 03.02.008~~ ————— **Expenses**

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise, or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, from any recovery in any such action or from a limited liability company.

Chapter 08. Dissolution

Sec. 03.08.001	Dissolution
Sec. 03.08.002	After Dissolution under Section 03.02.061
Sec. 03.08.003	Judicial Dissolution
Sec. 03.08.004	Administrative Dissolution - Commencement of Proceeding
Sec. 03.08.005	Administrative Dissolution - Notice - Opportunity to Correct Deficiencies
Sec. 03.08.006	Administrative Dissolution - Reinstatement - Application - When Effective
Sec. 03.08.007	Dissolution under Sec. 03.02.610 - Revocation - Approval Required - When Effective
Sec. 03.08.008	Winding Up
Sec. 03.08.009	Disposing of Known Claims - Definition
Sec. 03.08.010	Distribution of Assets
Sec. 03.08.011	Remedies Available After Dissolution

Sec. 03.08.001 ~~Sec. 03.02.001~~ ————— **Dissolution**

A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

- A. The dissolution date, if any, specified in the certificate of formation. If a dissolution date is not specified in the certificate of formation, the limited liability company's existence will continue until the first to occur of the events described in subsections (2) through (6) of this section. If a dissolution date is specified in the certificate of formation, the certificate of formation may be amended and the existence of the limited liability company may be extended by vote of all the members.
- B. The happening of events specified in a limited liability company agreement;
- C. The written consent of all members;
- D. Unless the limited liability company agreement provides otherwise, ninety days following an event of dissociation of the last remaining member, unless those having the rights of assignees in the limited liability company under section 03.02.240(1) have, by the ninetieth day, voted to admit one or more members, voting as though they were members, and in the manner set forth in section 03.02.220;
- E. The entry of a decree of judicial dissolution under section 03.02.630; or
- F. The administrative dissolution of the limited liability company by the Secretary under section 03.02.650(2) unless the limited liability company is reinstated by the Secretary under section 03.02.660.

Sec. 03.08.002 ~~Sec. 03.02.002~~ — **After Dissolution under Section 03.02.061**

- A.** After dissolution occurs under section 03.02.610, the limited liability company may deliver to the Secretary for filing a certificate of dissolution signed in accordance with section 03.02.130.
- B.** A certificate of dissolution filed under subsection (1) of this section must set forth:
 - 1.** The name of the limited liability company; and
 - 2.** A statement that the limited liability company is under section 03.02.610.

Sec. 03.08.003 ~~Sec. 03.02.003~~ — **Judicial Dissolution**

On application by, or for a member or manager, the Tribal Courts\ may decree dissolution of a limited liability company whenever: (1) It is not reasonably practicable to carry on the business in conformity with a limited liability company agreement; or (2) other circumstances render dissolution equitable.

Sec. 03.08.004 ~~Sec. 03.02.004~~ — **Administrative Dissolution - Commencement of Proceeding**

The Secretary may commence a proceeding under section 03.02.640 to administratively dissolve a limited liability company if:

- A.** The limited liability company does not pay any license fees or penalties, imposed by this chapter, when they become due;
- B.** The limited liability company does not deliver its completed initial report or annual report to the Secretary when it is due;
- C.** The limited liability company is without a registered agent or registered office in accordance with Tribal law for sixty days or more; or
- D.** The limited liability company does not notify the Secretary within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

Sec. 03.08.005 ~~Sec. 03.02.005~~ — **Administrative Dissolution - Notice - Opportunity to Correct Deficiencies**

- A.** If the Secretary determines that one or more grounds exist under section 03.02.630 for dissolving a limited liability company, the Secretary shall give the limited liability company written notice of the determination by first-class mail, postage prepaid, reciting the grounds there for. Notice shall be sent to the address of the principal place of business of the limited liability company as it appears in the records of the Secretary.
- B.** If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary that each ground determined by the Secretary does not exist within sixty days after notice is sent, the limited liability company is thereupon dissolved. The Secretary shall give the limited liability company written notice of the dissolution that recites the ground or grounds there for and its effective date.

- C. A limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs.
- D. The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

Sec. 03.08.006 Administrative Dissolution - Reinstatement - Application -When Effective

- A. A limited liability company that has been administratively dissolved under section 03.02.640 may apply to the Secretary for reinstatement within five years after the effective date of dissolution. The application must be delivered to the Secretary for filing and state:
 - 1. The name of the limited liability company and the effective date of its administrative dissolution;
 - 2. That the ground or grounds for dissolution either did not exist or have been eliminated; And
 - 3. That the limited liability company's name satisfies the requirements of section 03.02.160.
- B. If the Secretary determines that an application contains the information required by subsection (1) of this section and that the name is available, the Secretary shall reinstate the limited liability company and give the limited liability company written notice, as provided in section 03.02.640 (1), of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited liability company must file with its application for reinstatement an amendment to its certificate of formation reflecting a change of name.
- C. When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume carrying on its activities as if the administrative dissolution had never occurred.

Sec. 03.08.007 ~~Sec. 03.02.007~~ — Dissolution under Sec. 03.02.610 - Revocation - Approval Required - When Effective

- A. A limited liability company dissolved under section 03.02.610 (2) or (3) that has filed a certificate of dissolution under section 03.02.620 may revoke its dissolution within one hundred twenty days of filing its certificate of dissolution.
- B. Except as provided in (ii) of this subsection, revocation of dissolution must be approved in the same manner as the dissolution was approved unless that approval permitted revocation in some other manner, in which event the dissolution may be revoked in the manner permitted.
- C. If dissolution occurred upon the happening of events specified in the limited liability company agreement, revocation of dissolution must be approved in the manner necessary to amend the provisions of the limited liability company agreement specifying the events of dissolution.

- D. After the revocation of dissolution is approved, the limited liability company may revoke the dissolution and the certificate of dissolution by delivering to the Secretary for filing a certificate of revocation of dissolution that sets forth:
- E. The name of the limited liability company and a statement that the name satisfies the requirements of section 03.02.030; if the name is not available, the limited liability company must file a certificate of amendment changing its name with the certificate of revocation of dissolution;
 - 1. The effective date of the dissolution that was revoked;
 - 2. The date that the revocation of dissolution was approved;
 - 3. If the limited liability company's managers revoked the dissolution, a statement to that effect;
 - 4. If the limited liability company's managers revoked a dissolution approved by the company's members, a statement that revocation was permitted by action by the managers alone pursuant to that approval; and
 - 5. If member approval was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the members in accordance with subsection (2) of this section.
- F. Revocation of dissolution and revocation of the certificate of dissolution are effective upon the filing of the certificate of revocation of dissolution.
- G. When the revocation of dissolution and revocation of the certificate of dissolution are effective, they relate back to and take effect as of the effective date of the dissolution and the limited liability company resumes carrying on its activities as if the dissolution had never occurred.

Sec. 03.08.008 ~~Sec. 03.02.008~~ **Winding Up**

- A. A limited liability company continues after dissolution only for the purpose of winding up its activities.
- B. In winding up its activities, the limited liability company:
 - 1. May file a certificate of dissolution with the Secretary to provide notice that the limited liability company is dissolved, preserve the limited liability company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited liability company's property, settle disputes, and perform other necessary acts; and
 - 2. Shall discharge the limited liability company's liabilities, settle and close the limited liability company's activities, and marshal and distribute the assets of the company.
- C. Unless otherwise provided in a limited liability company agreement, the persons responsible for managing the business and affairs of a limited liability company under section 03.02.310 are responsible for winding up the activities of a dissolved limited liability company. If a dissolved limited liability company does

not have any managers or members, the legal representative of the last person to have been a member may wind up the activities of the dissolved limited liability company, in which event the legal representative is a manager for the purposes of section 03.02.320.

- D.** If the persons responsible for winding up the activities of a dissolved limited liability company under subsection (3) of this section decline or fail to wind up the limited liability company's activities, a person to wind up the dissolved limited liability company's activities may be appointed by the consent of the transferees owning a majority of the rights to receive distributions as transferees at the time consent is to be effective. A person appointed under this subsection:
1. Is a manager for the purposes of section 03.02.320; and
 2. Shall promptly amend the certificate of formation to state:
 - a. The name of the person who has been appointed to wind up the limited liability company; and
 - b. The street and mailing address of the person.
- E.** The Tribal Court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited liability company's activities, if:
1. On application of a member, the applicant establishes good cause; or
 2. On application of a transferee, a limited liability company does not have any managers or members and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (3) or (4) of this section.

Sec. 03.08.009

~~**Sec. 03.02.009**~~ — **Disposing of Known Claims - Definition**

- A.** A dissolved limited liability company that has filed a certificate of dissolution with the Secretary may dispose of the known claims against it by following the procedure described in subsection (2) of this section.
- B.** A dissolved limited liability company may notify its known claimants of the dissolution in a record. The notice must:
1. Specify the information required to be included in a known claim;
 2. Provide a mailing address to which the known claim must be sent;
 3. State the deadline for receipt of the known claim, which may not be fewer than one hundred twenty days after the date the notice is received by the claimant; and
 4. State that the known claim will be barred if not received by the deadline.
- C.** A known claim against a dissolved limited liability company is barred if the requirements of subsection (2) of this section are met and:
1. The known claim is not received by the specified deadline; or

2. In the case of a known claim that is timely received but rejected by the dissolved limited liability company, the claimant does not commence an action to enforce the known claim against the limited liability company within ninety days after the receipt of the notice of rejection.
- D.** For purposes of this section, "known claim" means any claim or liability that either:
1. Has matured sufficiently, before or after the effective date of the dissolution, to be legally capable of assertion against the dissolved limited liability company, whether or not the amount of the claim or liability is known or determinable; or (ii) is unmatured, conditional, or otherwise contingent but may subsequently arise under any executory contract to which the dissolved limited liability company is a party, other than under an implied or statutory warranty as to any product manufactured, sold, distributed, or handled by the dissolved limited liability company; and
 2. As to which the dissolved limited liability company has knowledge of the identity and the mailing address of the holder of the claim or liability and, in the case of a matured and legally assertible claim or liability, actual knowledge of existing facts that either (i) could be asserted to give rise to, or (ii) indicate an intention by the holder to assert, such a matured claim or liability.

Sec. 03.08.010 ~~**Sec. 03.02.010**~~ ————— **Distribution of Assets**

- A.** Upon the winding up of a limited liability company, the assets shall be distributed as follows:
1. To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under section 03.02.045 or 03.02.048;
 2. Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under section 03.02.450 or 03.02.048; and
 3. Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.
- B.** A limited liability company, which has dissolved, shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the Limited Liability Company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims

and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available there for. Unless otherwise provided in a limited liability company agreement, any remaining assets shall be distributed as provided in this chapter. Any person winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

Sec. 03.08.011 ~~**Sec. 03.02.011**~~ **Remedies Available After Dissolution**

Except as provided in section 03.02.670, the dissolution of a limited liability company does not take away or impair any remedy available to or against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless the limited liability company has filed a certificate of dissolution under section 03.02.615, that has not been revoked under section 03.02.655, and an action or other proceeding thereon is not commenced within three years after the filing of the certificate of dissolution. Such an action or proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its own name.

Chapter 09. Mergers

Sec. 03.09.001	Merger - Plan - Effective date
Sec. 03.09.002	Merger - Plan - Approval
Sec. 03.09.003	Article of Merger - Filing
Sec. 03.09.004	Effect of Merger
Sec. 03.09.005	Merger - Foreign and Domestic

Sec. 03.09.001 ~~Sec. 03.02.001~~ ————— **Merger - Plan - Effective date**

- A.** One or more domestic limited liability companies may merge with one or more domestic partnerships, domestic limited partnerships, domestic limited liability companies, or domestic corporations pursuant to a plan of merger approved or adopted as provided in section 03.02.720.
- B.** The plan of merger must set forth:
- 1.** The name of each partnership, limited liability company, limited partnership, and corporation planning to merge and the name of the surviving partnership, limited liability company, limited partnership, or corporation into which the other partnership, limited liability company, limited partnership, or corporation plans to merge;
 - 2.** The terms and conditions of the merger; and
 - 3.** The manner and basis of converting the interests of each member of each limited liability company, the partnership interests in each partnership or limited partnership, and the shares of each corporation party to the merger into the interests, shares, obligations, or other securities of the surviving or any other partnership, limited liability company, limited partnership, or corporation or into cash or other property in whole or part.
- C.** The plan of merger may set forth:
- 1.** Amendments to the certificate of formation of the surviving limited liability company;
 - 2.** Amendments to the certificate of limited partnership of the surviving limited partnership;
 - 3.** Amendments to the articles of incorporation of the surviving corporation; and
 - 4.** Other provisions relating to the merger.
- D.** If the plan of merger does not specify a delayed effective date, it shall become effective upon the filing of articles of merger. If the plan of merger specifies a delayed effective time and date, the plan of merger becomes effective at the time and date specified. If the plan of merger specifies a delayed effective date but no time is specified, the plan of merger is effective at the close of business on that date. A delayed effective date for a plan of merger may not be later than the ninetieth day after the date it is filed.

Sec. 03.09.002 ~~Sec. 03.02.002~~ — **Merger - Plan - Approval**

Unless otherwise provided in the limited liability company agreement, approval of a plan of merger by a domestic limited liability company party to the merger shall occur when the plan is approved 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 contributing more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to section 03.02.250) of the contributions made, or obligated to be made, by all members or by the members in each class or group, as appropriate.

Sec. 03.09.003 ~~Sec. 03.02.003~~ — **Article of Merger - Filing**

After a plan of merger is approved or adopted, the surviving partnership, Limited Liability Company, limited partnership, or corporation shall deliver to the Secretary for filing articles of merger setting forth:

- A. The plan of merger;
- B. If the approval of any members, partners, or shareholders of one or more partnerships, limited liability companies, limited partnerships, or corporations party to the merger was not required, a statement to that effect; or
- C. If the approval of any members, partners, or shareholders of one or more of the partnerships, limited liability companies, limited partnerships, or corporations party to the merger was required, a statement that the merger was duly approved by such members, partners, and shareholders.

Sec. 03.09.004 ~~Sec. 03.02.004~~ — **Effect of Merger**

- A. When a merger takes effect:
 - 1. Every other partnership, limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving partnership, limited liability company, limited partnership, or corporation and the separate existence of every partnership, limited liability company, limited partnership, or corporation except the surviving partnership, limited liability company, limited partnership, or corporation ceases;
 - 2. The title to all real estate and other property owned by each partnership, limited liability company, limited partnership, and corporation party to the merger is vested in the surviving partnership, limited liability company, limited partnership, or corporation without reversion or impairment;
 - 3. The surviving partnership, limited liability company, limited partnership, or corporation has all liabilities of each partnership, limited liability company, limited partnership, and corporation that is party to the merger;
 - 4. A proceeding pending against any partnership, limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving partnership, limited liability company, limited partnership, or corporation may be substituted in the proceeding for the partnership, limited liability company, limited partnership, or corporation whose existence ceased;

5. The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;
 6. The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;
 7. The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and
 8. The former members of every limited liability company party to the merger, holders of the partnership interests of every domestic partnership or domestic limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the extent of the rights provided in the plan of merger and under this Chapter.
- B.** Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under section 03.02.660 or pay its liabilities and distribute its assets under section 03.02.670.
- C.** Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership, which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under or pay its liabilities and distribute its assets.
- D.** Unless otherwise agreed, a merger of a domestic partnership, including a domestic partnership, which is not the surviving entity in the merger, shall not require the domestic partnership to wind up its affairs.
- E.** Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs.

Sec. 03.09.005 ~~**Sec. 03.02.005**~~ — **Merger - Foreign and Domestic**

- A.** One or more foreign partnerships, one or more foreign limited liability companies, one or more foreign limited partnerships, and one or more foreign corporations may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations if:
1. The merger is permitted by the law of the jurisdiction under which each foreign limited liability company was formed, each foreign partnership or foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign limited liability company, foreign partnership, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;
 2. The surviving entity complies with section 03.02.730;

3. Each domestic limited liability company complies with section 03.02.720;
and
 4. Each domestic corporation complies with Title 3.
- B.** Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the Secretary as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners or shareholders of each domestic limited liability company, domestic limited partnership, or domestic corporation party to the merger.

Chapter 10. Dissenters' Rights

Sec. 03.10.001	Definitions
Sec. 03.10.002	Member - Dissent - Payment of Fair Value
Sec. 03.10.003	Dissenters' Rights - Notice - Timing
Sec. 03.10.004	Member - Dissent - Voting Restriction
Sec. 03.10.005	Members - Dissenters' Notice - Requirements
Sec. 03.10.006	Member - Payment Demand - Entitlement
Sec. 03.10.007	Member's Interests - Transfer Restriction
Sec. 03.10.008	Payment of Fair Value - Requirements for Compliance
Sec. 03.10.009	Merger - Not Effective within Sixty Days - Transfer Restrictions
Sec. 03.10.010	Dissenter's Estimate of Fair Value - Notice
Sec. 03.10.011	Unsettled Demand for Payment - Proceeding - Parties - Appraisers
Sec. 03.10.012	Unsettled Demand for Payment - Costs - Fees and Expenses of Counsel

Sec. 03.10.001 ~~Sec. 03.02.001~~ Definitions

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

- A. "Limited liability Company" means the domestic limited liability company in which the dissenter holds or held a membership interest, or the surviving limited liability company, limited partnership, or corporation by merger, whether foreign or domestic, of that limited liability company.
- B. "Dissenter" means a member who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.
- C. "Fair value," with respect to a dissenter's limited liability company interest, means the value of the member's limited liability company interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.
- D. "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the limited liability company on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

Sec. 03.10.002 ~~Sec. 03.02.002~~ Member - Dissent - Payment of Fair Value

- A. Except as provided in section 03.02.840 or 8.310.850(2), a member of a domestic limited liability company is entitled to dissent from, and obtain payment of, the fair value of the member's interest in a limited liability company in the event of consummation of a plan of merger to which the limited liability company is a party as permitted by section 03.02.710 or 03.02.740.
- B. A member entitled to dissent and obtain payment for the member's interest in a limited liability company under this article may not challenge the merger creating

the member's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, or the limited liability company agreement, or is fraudulent with respect to the member or the limited liability company.

- C. The right of a dissenting member in a limited liability company to obtain payment of the fair value of the member's interest in the limited liability company shall terminate upon the occurrence of any one of the following events:
1. The proposed merger is abandoned or rescinded;
 2. A court having jurisdiction permanently enjoins or sets aside the merger; or
 3. The member's demand for payment is withdrawn with the written consent of the limited liability company.

Sec. 03.10.003 ~~Sec. 03.02.003~~ — **Dissenters' Rights - Notice - Timing**

- A. Not less than ten days prior to the approval of a plan of merger, the limited liability company must send a written notice to all members who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.
- B. The limited liability company shall notify in writing all members not entitled to vote on or approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by section 03.02.850.

Sec. 03.10.004 ~~Sec. 03.02.004~~ — **Member - Dissent - Voting Restriction**

A member of a limited liability company who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A member who does not satisfy the requirements of this section is not entitled to payment for the member's interest in the limited liability company under this article.

Sec. 03.10.005 ~~Sec. 03.02.005~~ — **Members - Dissenters' Notice - Requirements**

- A. If the plan of merger is approved, the limited liability company shall deliver a written dissenters' notice to all members who satisfied the requirements of section 03.02.740.
1. The dissenters' notice required by section 03.02.730(2) or by subsection (1) of this section must be sent within ten days after the approval of the plan of merger, and must:
 2. State where the payment demand must be sent;
 3. Inform members as to the extent transfer of the member's interest in the limited liability company will be restricted as permitted by section 03.02.855 after the payment demand is received;
 4. Supply a form for demanding payment;

5. Set a date by which the limited liability company must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice under this section is delivered; and
6. Be accompanied by a copy of this article.

Sec. 03.10.006 ~~Sec. 03.02.006~~ — **Member - Payment Demand - Entitlement**

- A. A member of a limited liability company who demands payment retains all other rights of a member of such company until the proposed merger becomes effective.
- B. A member of a limited liability company sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the member's interest in the limited liability company under this article.

Sec. 03.10.007 ~~Sec. 03.02.007~~ — **Member's Interests - Transfer Restriction**

The limited liability company agreement may restrict the transfer of members' interests in the limited liability company from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article.

Sec. 03.10.008 ~~Sec. 03.02.008~~ — **Payment of Fair Value - Requirements for Compliance**

- A. Within thirty days of the later of the date, the proposed merger becomes effective, or the payment demand is received, the limited liability company shall pay each dissenter who complied with section 03.02.850 the amount the limited liability company estimates to be the fair value of the dissenting member's interest in the limited liability company, plus accrued interest.
- B. The payment must be accompanied by:
 1. Copies of the financial statements for the limited liability company for its most recent fiscal year;
 2. An explanation of how the limited liability company estimated the fair value of the member's interest in the limited liability company;
 3. An explanation of how the accrued interest was calculated;
 4. A statement of the dissenter's right to demand payment; and
 5. A copy of this article.

Sec. 03.10.009 ~~Sec. 03.02.008~~ — **Merger - Not Effective within Sixty Days - Transfer Restrictions**

- A. If the proposed merger does not become effective within sixty days after the date set for demanding payment, the limited liability company shall release any transfer restrictions imposed as permitted by SECTION 8.310.070.
- B. If, after releasing transfer restrictions, the proposed merger becomes effective, the limited liability company must send a new dissenters' notice as provided in section 03.02.830(2) and 03.02.845 and repeat the payment demand procedure.

Sec. 03.10.010 ~~Sec. 03.02.009~~ ————— **Dissenter's Estimate of Fair Value - Notice**

- A.** A dissenting member may notify the limited liability company in writing of the dissenter's own estimate of the fair value of the dissenter's interest in the limited liability company, and amount of interest due, and demand payment of the dissenter's estimate, less any payment under section 03.02.860, if:
 - 1.** The dissenter believes that the amount paid is less than the fair value of the dissenter's interest in the limited liability company, or that the interest due is incorrectly calculated;
 - 2.** The limited liability company fails to make payment within sixty days after the date set for demanding payment; or
 - 3.** The limited liability company, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on members' interests as permitted by section 03.02.855 within sixty days after the date set for demanding payment.
- B.** A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited liability company of the dissenter's demand in writing under subsection (1) of this section within thirty days after the limited liability company made payment for the dissenter's interest in the limited liability company.

Sec. 03.10.011 ~~Sec. 03.02.010~~ ————— **Unsettled Demand for Payment -
Proceeding - Parties - Appraisers**

- A.** If a demand for payment under section 03.02.850 remains unsettled, the limited liability company shall commence a proceeding within sixty days after receiving the payment demand and petition the Tribal Court to determine the fair value of the dissenting member's interest in the limited liability company, and accrued interest. If the limited liability company does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.
- B.** The limited liability company shall commence the proceeding in the Tribal Court.
- C.** The limited liability company shall make all dissenters (whether or not residents of this Tribe's Jurisdiction) whose demands remain unsettled parties to the proceeding as in an action against their membership interests in the limited liability company and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.
- D.** The limited liability company may join as a party to the proceeding any member who claims to be a dissenter but who has not, in the opinion of the limited liability company, complied with the provisions of this article. If the court determines that such member has not complied with the provisions of this article, the member shall be dismissed as a party.
- E.** The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive

evidence and recommend decisions on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

- F. Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of the dissenter's membership interest in the limited liability company, plus interest, exceeds the amount paid by the limited liability company.

Sec. 03.10.012 ~~**Sec. 03.02.011**~~ — **Unsettled Demand for Payment - Costs - Fees and Expenses of Counsel**

- A. The court in a proceeding commenced under section 03.02.890 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment.
- B. The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:
 - 1. Against the limited liability company and in favor of any or all dissenters if the court finds the limited liability company did not substantially comply with the requirements of this article; or
 - 2. Against either the limited liability company or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.
- C. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

Chapter 11. Miscellaneous

Sec. 03.11.001	Construction and Application of Chapter and Limited Liability Company Agreement
Sec. 03.11.002	Establishment of Filing Fees and Miscellaneous Charges
Sec. 03.11.003	Authority to Adopt Rules
Sec. 03.11.004	Effective Date — January 31, 2014
Sec. 03.11.005	Short Title
Sec. 03.11.006	Severability

Sec. 03.11.001 ~~Sec. 03.02.001~~ — Construction and Application of Chapter and Limited Liability Company Agreement

- A. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.
- B. It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.
- C. Unless the context otherwise requires, as used in this chapter, the singular shall include the plural and the plural may refer to only the singular. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this chapter and do not constitute part of the law.

Sec. 03.11.002 ~~Sec. 03.02.002~~ — Establishment of Filing Fees and Miscellaneous Charges

- A. The Secretary shall adopt rules establishing fees which shall be charged and collected for:
 - 1. Filing of a certificate of formation for a domestic limited liability company or an application for registration of a foreign limited liability company;
 - 2. Filing of a certificate of dissolution for a domestic limited liability company;
 - 3. Filing a certificate of cancellation for a foreign limited liability company;
 - 4. Filing of a certificate of amendment or restatement for a domestic or foreign limited liability company;
 - 5. Filing an application to reserve, register, or transfer a limited liability company name;
 - 6. Filing any other certificate, statement, or report authorized or permitted to be filed;
 - 7. Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

- B. In the establishment of a fee schedule, the Secretary shall, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations governed by SECTION Title 8. Fees for copies, certified copies, certificates of record, and service of process filings shall also be established.
- C. All fees collected by the Secretary shall be deposited with the Tribe's Chief Financial Officer.

Sec. 03.11.003 ~~Sec. 03.02.003~~ — **Authority to Adopt Rules**

The Secretary shall adopt such rules as are necessary to implement the transfer of duties and records required by this chapter.

Sec. 03.11.004 ~~Sec. 03.02.004~~ — **Effective Date — January 31, 2014**

This act shall take effect January 31, 2014.

Sec. 03.11.005 ~~Sec. 03.02.005~~ — **Short Title**

This chapter may be cited as the "Central Council Limited Liability Company Act."

Sec. 03.11.006 ~~Sec. 03.02.006~~ — **Severability**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Chapter 12. Foreign Limited Liability Companies

Sec. 03.12.001	Law Governing
Sec. 03.12.002	Sec. 03.03.002 Registration Required - Application
Sec. 03.12.003	Issuance of Registration
Sec. 03.12.004	Name - Registered Office - Registered Agent
Sec. 03.12.005	Amendments to Application
Sec. 03.12.006	Cancellation of Registration
Sec. 03.12.007	Doing Business without Registration
Sec. 03.12.008	Foreign Limited Liability Companies Doing Business without Having Qualified - Injunctions.
Sec. 03.12.009	Transactions Not Constituting Transacting Business
Sec. 03.12.010	Service of Process on Registered Foreign Limited Liability Companies
Sec. 03.12.011	Service of Process on Unregistered Foreign Limited Liability Companies
Sec. 03.12.012	Revocation of Registration - Requirements for Commencement
Sec. 03.12.013	Revocation of Registration - Procedure - Notice - Correction of Grounds - Certificate of Revocation - Authority of Agent

Sec. 03.12.001 ~~Sec. 03.03.001~~ — Law Governing

- A. Subject to the Constitution of the Central Council Tlingit Haida Indian Tribes of Alaska:
1. The laws of the Tribe, state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers; and
 2. A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this Tribe.
- B. A foreign limited liability company is subject to section 03.02.070 and, notwithstanding subsection (1)(a) of this section, a foreign limited liability company rendering professional services within this Tribe is also subject to section 03.02.010.
- C. A foreign limited liability company and its members and managers doing business within this Tribe thereby submit to personal jurisdiction of the courts of this Tribe and are subject to.

Sec. 03.12.002 ~~Sec. 03.03.002~~ — Registration Required - Application

Before doing business within this Tribe, a foreign limited liability company shall register with the Secretary. In order to register, a foreign limited liability company shall submit to the Secretary, an application for registration as a foreign limited liability company executed by any member or manager of the foreign limited liability company, setting forth:

- A. The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business within this Tribe;
- B. The Tribe, state, territory, possession, or other jurisdiction or country where formed, the date of its formation and a duly authenticated statement from the Secretary or other official having custody of limited liability company records in the jurisdiction under whose law it was formed, that as of the date of filing the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;
- C. The nature of the business or purposes to be conducted or promoted within this Tribe;
- D. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 03.03.040 (2);
- E. The address of the principal place of business of the foreign limited liability company;
- F. A statement that the Secretary is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in section 03.03.100 (2); and
- G. The date on which the foreign limited liability company first did, or intends to do, business within this Tribe.

Sec. 03.12.003 ~~Sec. 03.03.003~~ ————— **Issuance of Registration**

- A. If the Secretary finds that an application for registration conforms to law and all requisite fees have been paid, the Secretary shall:
 - 1. Certify that the application has been filed in his or her office by endorsing upon the original application the word "Filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;
 - 2. File the endorsed application.
- B. The duplicate of the application, similarly endorsed, shall be returned to the person who filed the application or that person's representative.

Sec. 03.12.004 ~~Sec. 03.03.004~~ ————— **Name - Registered Office - Registered Agent**

- A. A foreign limited liability company may register with the Secretary under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company.
- B. Each foreign limited liability company shall continuously maintain within this Tribe:
 - 1. A registered office, which may but need not be a place of its business within this Tribe's Jurisdiction. The registered office shall be at a specific

geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the Secretary may permit the use of a post office address in conjunction with the registered office address if the foreign limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

2. A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of this Tribe's Jurisdiction whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, a limited partnership or limited liability company, or a foreign corporation authorized to do business within this Tribe having a business office identical with such registered office; and
3. A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the Secretary in such form as the Secretary may prescribe. The written consent shall be filled with or as a part of the document first appointing a registered agent. In the event any individual, limited liability company, limited partnership, or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the Secretary.

C. A foreign limited liability company may change its registered office or registered agent by delivering to the Secretary for filing a statement of change that sets forth:

1. The name of the foreign limited liability company;
2. If the current registered office is to be changed, the street address of the new registered office in accord with subsection (2)(a) of this section;
3. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
4. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

D. If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary for filing a statement that complies with the requirements of subsection (3) of this section

and recites that the foreign limited liability company has been notified of the change.

- E. A registered agent of any foreign limited liability company may resign as agent by signing and delivering to the Secretary for filing a statement that the registered office is also discontinued. After filing the statement the Secretary shall mail a copy of the statement to the foreign limited liability company at its principal place of business shown in its application for certificate of registration if no annual report has been filed. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Sec. 03.12.005 ~~Sec. 03.03.005~~ ——— **Amendments to Application**

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly file in the office of the Secretary a certificate, executed by any member or manager, correcting such statement.

Sec. 03.12.006 ~~Sec. 03.03.006~~ ——— **Cancellation of Registration**

- A. A foreign limited liability company may cancel its registration by filing with the Secretary a certificate of cancellation, executed by any member or manager. A cancellation does not terminate the authority of the Secretary to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business within this Tribe.
- B. The certificate of cancellation shall set forth:
 - 1. The name of the foreign limited liability company;
 - 2. The date of filing of its certificate of registration;
 - 3. The reason for filing the certificate of cancellation;
 - 4. The future effective date (not later than the ninetieth day after the date it is filed) of cancellation if it is not to be effective upon filing of the certificate;
 - 5. The address to which service of process may be forwarded; and
 - 6. Any other information the person filing the certificate of cancellation desires.

Sec. 03.12.007 ~~Sec. 03.03.007~~ ——— **Doing Business without Registration**

- A. A foreign limited liability company doing business within this Tribe may not maintain any action, suit, or proceeding within this Tribe until it has registered in accordance with this Chapter, and has paid to this Tribe all fees and penalties for the years or parts thereof, during which it did business within this Tribe without having registered.

- B. Neither the failure of a foreign limited liability company to register with this Tribe nor the issuance of a certificate of cancellation with respect to a foreign limited liability company's registration with this Tribe impairs:
 - 1. The validity of any contract or act of the foreign limited liability company;
 - 2. The right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or
 - 3. The foreign limited liability company from defending any action, suit, or proceeding in any court of this state.
- C. A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business within this Tribe without registration.

Sec. 03.12.008 ~~Sec. 03.03.008~~ — **Foreign Limited Liability Companies Doing Business without Having Qualified - Injunctions.**

The Tribal Courts shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business within this Tribe if such foreign limited liability company has failed to register under this article or if such foreign limited liability company has secured a certificate of registration from the Secretary under section 03.03.030 on the basis of false or misleading representations. The Secretary shall, upon the Secretary's own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited liability company is doing or has done business.

Sec. 03.12.009 ~~Sec. 03.03.009~~ — **Transactions Not Constituting Transacting Business**

- A. The following activities, among others, do not constitute transacting business within the meaning of this article:
 - 1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
 - 2. Holding meetings of the members, or managers if any, or carrying on other activities concerning internal limited liability company affairs;
 - 3. Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;
 - 4. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositaries with respect to those securities or interests;
 - 5. Selling through independent contractors;
 - 6. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this Tribe's Jurisdiction before becoming binding contracts and where the

contracts do not involve any local performance other than delivery and installation;

7. Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;
8. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
9. Owning, without more, real or personal property;
10. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
11. Transacting business in intertribal commerce;
12. Owning a controlling interest in a corporation or a foreign corporation that transacts business within this state;
13. Participating as a limited partner of a domestic or foreign limited partnership that transacts business within this state; or
14. Participating as a member or a manager of a domestic or foreign limited liability company that transacts business within this state.

B. The list of activities in subsection (1) of this section is not exhaustive.

Sec. 03.12.010 ~~Sec. 03.03.010~~ — **Service of Process on Registered Foreign Limited Liability Companies**

- A. A foreign limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.
- B. The Secretary shall be an agent of a foreign limited liability company upon whom any such process, notice, or demand may be served if:
 1. The foreign limited liability company fails to appoint or maintain a registered agent in this state; or
 2. The registered agent cannot with reasonable diligence be found at the registered office.
- C. Service on the Secretary of any such process, notice, or demand shall be made by delivering to and leaving with the Secretary, or with any duly authorized clerk of the Secretary's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the Secretary, the Secretary shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the foreign limited liability company at the address of its principal place of Business as it appears on the records of the Secretary. Any service so had on the Secretary shall be returnable in not less than thirty days.
- D. The Secretary shall keep a record of all processes, notices, and demands served upon the Secretary under this section, and shall record therein the time of such service and the Secretary's action with reference thereto.

- E. This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign limited liability company in any other manner now or hereafter permitted by law.

Sec. 03.12.011 ~~Sec. 03.03.011~~ **Service of Process on Unregistered Foreign Limited Liability Companies**

- A. Any foreign limited liability company which shall do business within this Tribe without having registered under section 03.03.020 shall be deemed to have thereby appointed and constituted the Secretary its agent for the acceptance of legal process in any civil action, suit, or proceeding against it in any Tribal, state or federal court arising or growing out of any business done by it within this state. The doing of business within this Tribe by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon a registered agent personally within this state.
- B. In the event of service upon the Secretary in accordance with subsection (1) of this section, the Secretary shall forthwith notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the Secretary by the plaintiff in such action, suit, or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the Secretary. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary that service is being made pursuant to this subsection.

Sec. 03.12.012 ~~Sec. 03.03.012~~ **Revocation of Registration - Requirements for Commencement**

The Secretary may commence a proceeding in accordance with section 03.03.130 to revoke registration of a foreign limited liability company authorized to transact business within this Tribe if:

- A. The foreign limited liability company is without a registered agent or registered office within this Tribe for sixty days or more;
- B. The foreign limited liability company does not inform the Secretary under section 03.03.050 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;
- C. A manager or other agent of the foreign limited liability company signed a document knowing it was false in any material respect with intent that the document be delivered to the Secretary for filing; or
- D. The Secretary receives a duly authenticated certificate from the Secretary or other official having custody of limited liability company records in the jurisdiction under which the foreign limited liability company was organized stating that the foreign limited liability company has been dissolved or its certificate or articles of formation canceled.

Sec. 03.12.013

**Revocation of Registration - Procedure - Notice - Correction of
Grounds - Certificate of Revocation - Authority of Agent**

- A.** If the Secretary determines that one or more grounds exist under section 03.03.120 for revocation of a foreign limited liability company's registration, the Secretary shall give the foreign limited liability company written notice of the determination by first-class mail, postage prepaid, stating in the notice the ground or grounds for and effective date of the Secretary's determination, which date shall not be earlier than the date on which the notice is mailed.
- B.** If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary that each ground determined by the Secretary does not exist within sixty days after notice is effective, the Secretary shall revoke the foreign limited liability company's registration by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary shall file the original of the certificate and mail a copy to the foreign limited liability company.
- C.** Documents to be mailed by the Secretary to a foreign limited liability company for which provision is made in this section shall be sent to the foreign limited liability company at the address of the agent for service of process contained in the application or certificate of this limited liability company, which is most recently filed with the Secretary.
- D.** The authority of a foreign limited liability company to transact business within this Tribe ceases on the date shown on the certificate revoking its registration.
- E.** The Secretary revocation of a foreign limited liability company's registration appoints the Secretary the foreign limited liability company's agent for service of process in any proceeding based on a cause of action, which arose during the time the foreign limited liability company was authorized to transact business in this state.
- F.** Revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the foreign limited liability company.

Chapter 13. Professional Limited Liability Companies

Sec. 03.13.001	Professional Limited Liability Companies - Definition
Sec. 03.13.002	Member Agreements
Sec. 03.13.003	Membership Residency
Sec. 03.13.004	Piercing the Veil

Sec. 03.13.001 ~~Sec. 03.04.001~~ — Professional Limited Liability Companies - Definition

- A. A person or group of persons licensed or otherwise legally authorized to render professional services within this or any other Tribe may organize and become a member or members of a professional limited liability company under the provisions of this chapter for the purposes of rendering professional service. A "professional limited liability company" is subject to all the provisions of Title 3 that apply to a professional corporation, and its managers, members, agents, and employees shall be subject to all the provisions of Title 3 that apply to the directors, officers, shareholders, agents, or employees of a professional corporation, except as provided otherwise in this section. Nothing in this section prohibits a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this Tribe from becoming a member of a professional limited liability company organized for the purpose of rendering the same professional services. Nothing in this section prohibits a professional limited liability company from rendering professional services outside this Tribe through individuals who are not duly licensed or otherwise legally authorized to render such professional services within this state. Persons engaged in a profession and otherwise meeting the requirements of this chapter may operate under this chapter as a professional limited liability company so long as each member personally engaged in the practice of the profession in this Tribe is duly licensed or otherwise legally authorized to practice the profession in this Tribe and:
1. At least one manager of the company is duly licensed or otherwise legally authorized to practice the profession in this state of Alaska; or
 2. Each member in charge of an office of the company in this Tribe is duly licensed or otherwise legally authorized to practice the profession within the state of Alaska.
- B. If the company's members are required to be licensed to practice such profession, and the company fails to maintain for itself and for its members practicing in this Tribe a policy of professional liability insurance, bond, or other evidence of financial responsibility of a kind designated by rule by the Tribe and in the amount of at least one million dollars or a greater amount as the Tribe may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the business, then the company's members are personally liable to the extent that, had the insurance, bond, or other

evidence of responsibility been maintained, it would have covered the liability in question.

- C. For purposes of applying the provisions of Title 3 to a professional limited liability company, the terms "director" or "officer" means manager, "shareholder" means member, "corporation" means professional limited liability company, "articles of incorporation" means certificate of formation, "shares" or "capital stock" means a limited liability company interest, "incorporator" means the person who executes the certificate of formation, and "bylaws" means the limited liability company agreement.
- D. The name of a professional limited liability company must contain either the words "Professional Limited Liability Company," or the words "Professional Limited Liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC" provided that the name of a professional limited liability company organized to render dental services shall contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C." or "PLLC."
- E. Subject to the provisions of section 03.02.060 of this chapter, the following may be a member of a professional limited liability company and may be the transferee of the interest of an ineligible person or deceased member of the professional limited liability company:
 - 1. A professional corporation, if its shareholders, directors, and its officers other than the Secretary and the treasurer, are licensed or otherwise legally authorized to render the same specific professional services as the professional limited liability company; and
 - 2. Another professional limited liability company, if the managers and members of both professional limited liability companies are licensed or otherwise legally authorized to render the same specific professional services.

Sec. 03.13.002 Member Agreements

In addition to agreeing among themselves with respect to the provisions of this chapter, the members of a limited liability company or professional limited liability company may agree among themselves to any otherwise lawful provision governing the company, which is not in conflict with this chapter. Such agreements include, but are not limited to, buy-sell agreements among the members and agreements relating to expulsion of members.

Sec. 03.13.003 ~~Sec. 03.04.003~~ Membership Residency

Nothing in this chapter requires a limited liability company or a professional limited liability company to restrict membership to persons residing in or engaging in business within this Tribe's jurisdiction.

Sec. 03.13.004 ~~Sec. 03.04.004~~ Piercing the Veil

Members of a limited liability company shall be personally liable for any act, debt, obligation, or liability of the limited liability company to the extent that shareholders of a Central Council business corporation would be liable in analogous circumstances. In this regard, the court may

consider the factors and policies set forth in established case law with regard to piercing the corporate veil, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any act, debt, obligation, or liability of the limited liability company if the certificate of formation and limited liability company agreement do not expressly require the holding of meetings of members or managers.

Chapter 14. Tribal General Business Licenses

Sec. 03.14.001 Definitions

Sec. 03.14.002 Tribal General Business Licenses

Sec. 03.14.001 Definitions

As used in this Chapter 14 of Title 3, the following terms shall have the meanings set forth below unless the context otherwise requires:

- A. “Access” means entering Subject Land on which general business occurs.
- B. “Business” means a for profit or nonprofit entity engaging or offering to engage in a business, including a trade, a service, a profession, or an activity with the goal of receiving a financial benefit in exchange for the provision of services, or goods or other property, except that “Business” shall not include the Tribe or any entity controlled or wholly owned by the Tribe.
- C. “Non-Tribal Business License” means any business license issued by any government within Alaska other than the Tribe.
- D. “General Business” means the conduct of commercial activity by any Person, on Subject Land, who represents to regularly engage in such commercial activity, including but not limited to wholesale and retail sale, distribution and provision of goods and services, professional office services, and construction and demolition projects, but excluding brief activity which only occasionally or coincidentally occurs on the Subject Land.
- E. “Person” means an individual, firm, partnership, joint venture, association, corporation, estate trust, business trust, receiver, company or any group or combination acting as a unit, except that “Person” shall not include the Tribe or any entity controlled or wholly owned by the Tribe.
- F. “Subject Land” means land and water subject to the jurisdiction of the Tribe, including any land and water now or hereafter held by the United States in trust for the Tribe, or for any tribal citizen thereof, or held, subject to a federal law restriction against alienation or taxation, by the Tribe or any tribal citizen thereof, or held by the Tribe in fee simple.
- G. “Tribal Business License” means a business license issued by the Tribe for the conduct of General Business.
- H. “Tribe” means the Central Council of Tlingit and Haida Indian Tribes of Alaska.

Sec. 03.14.002 Tribal General Business Licenses

- A. No Person may conduct Business on Subject Land without first obtaining and maintaining a Tribal Business License.
- B. Issuance. The Secretary of the Tribe shall issue a Tribal Business License to any Person presenting the following evidence of compliance:

1. A completed application.

2. Requirements and Consents:

a. A copy of a Non-Tribal Business License in effect for the same Person and purporting to cover the same Subject Land on which the Person seeks to conduct business.

b. A written statement executed by the Person which contains the following words:

“I consent to the jurisdiction of the Tribe for purposes of the Tribe’s enforcement of any Tribal Business License. I warrant that the conduct of business on the Subject Land will be in full compliance with my Non-Tribal Business License. I will hold the Tribe harmless from any damage that may be caused by such conduct of business. I shall provide the Tribe, or its designee, with access to the Subject Land for enforcement purposes.”

c. **Exception.** Notwithstanding subsection a and b above, in his or her discretion, and with the consent of the owner or lessee of the Subject Land, the Secretary may issue, without requiring the presentation of a Non-Tribal Business License, a Tribal Business License to any Person seeking to conduct business on Subject Land that is not held in fee simple, provided that the Person first execute a written statement which contains the following words:

“I consent to the jurisdiction of the Tribe for purposes of the Tribe’s enforcement of my Tribal Business License. I warrant that all business conducted on the Subject Land that is not held in fee simple will be in full compliance with the terms of my Tribal Business License. I will hold the Tribe harmless from any damage that may be caused by my conduct of business under my Tribal Business License. I shall provide the Tribe, or its designee, with access to the Subject Land for enforcement purposes.”

3. **Fees.** For the privilege of engaging in a business on the Subject Land a Person shall pay the Tribal Business License annual fee, as set by the Director of Business and Economic Development.

C. **Scope.** A Tribal Business License issued to a Person covers all its operations in the Subject Land regardless of the number of its establishments. A Tribal Business License may cover multiple lines of business.

D. **Content.** A Tribal Business License issued under this subsection must include the name and address of the licensee; lines of Business to be conducted; the dates for which the Tribal Business License is valid; and the business name to be used by the licensee.

E. **Enforcement.**

1. The Director for Business and Economic Development shall have the authority to investigate the conduct of business authorized by a Tribal

Business License and to report the results of investigation to the Secretary along with the Director's recommendations on enforcement actions to be taken.

2. Based on the Director's report and recommendation, if any, the Secretary may at any time suspend or withdraw a Tribal Business License, may compel compliance through a requirement of special conditions or civil monetary penalties, and may reinstate a suspended or withdrawn Tribal Business License with conditions.

A.F. Standards. The standards, terms, and conditions of any Tribal Business License issued to a Person shall be no less stringent and restrictive than those applicable to a Non-Tribal Business License that might be otherwise issued to the same Person for the Subject Land.

~~Adopted~~ **ADOPTED** this 24th day of January 2014, by the Executive Council of Central Council of Tlingit and Haida Indian Tribes of Alaska, by a vote of 6 yeas, 0 nays, 0 abstentions and 0 absence(s).

CERTIFY

President Richard J. Peterson

ATTEST

Tribal Secretary Ralph Wolfe