

**ACT RELATING TO  
ENACTING THE  
CHEROKEE NATION LIMITED LIABILITY COMPANY ACT**

**BE IT ENACTED BY THE CHEROKEE NATION:**

**Section 1. Title and Codification**

This act shall be known as the Cherokee Nation Limited Liability Company Act and codified as Title 18, Chapter 4, of the Cherokee Nation Code Annotated.

**Section 2. Purpose**

To adopt a statute which authorizes the formation of a limited liability company (LLC) under Cherokee Nation law.

**Section 3. Legislative History**

A. "The Council shall have the power to establish laws which it shall deem necessary and proper for the good of the Nation, which shall not be contrary to the provisions of this Constitution."

Article V § 7, Cherokee Nation Constitution.

B. "The Principal Chief shall cause the laws of the Cherokee Nation to be faithfully executed, and shall conduct in person and in such manner as shall be prescribed by law, all communications and business of the Cherokee Nation."

Article VI § 10 Cherokee Nation Constitution.

C. This act was approved for full Council consideration by the Rules Committee of the Cherokee Nation on January 29, 2004.

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### **ARTICLE 1. GENERAL PROVISIONS**

#### **101. SHORT TITLE**

Sections 101 through 1202 of this title shall be known and may be cited as the "Cherokee Nation Limited Liability Company Act." Section captions are part of the Cherokee Nation Limited Liability Company Act.

#### **102. SCOPE OF ACT**

(a) The provisions of the Cherokee Nation Limited Liability Company Act shall be applicable to every limited liability company existing as of the effective date of this Act or thereafter formed or qualified to transact business within the Cherokee Nation, and to all securities thereof, except to the extent that:

(1) any such limited liability company is expressly excluded from the operation of the Cherokee Nation Limited Liability Company Act or portions thereof; or

(2) special provisions concerning any such limited liability company conflict with the provisions of the Cherokee Nation Limited Liability Company Act, in which case such special provisions shall govern.

(b) Any conflicts with the provisions of the Cherokee Nation Limited Liability Company Act and any tax or unclaimed property laws of the Cherokee Nation shall be governed by the tax or unclaimed property provisions, including those provisions relating to personal liability of corporate officers and directors.

(c) The provisions of the Cherokee Nation Limited Liability Company Act concerning qualifications of foreign limited liability companies and providing requirements and duties relating to such limited liability companies shall apply to insurance companies until such times as an Insurance Commission or similar agency to govern insurance is formed.

(d) The provisions of the Cherokee Nation Limited Liability Company Act concerning qualifications of foreign limited liability companies and providing requirements and duties relating to such limited liability companies shall apply to foreign transportation companies until such time as a Corporation Commission or similar agency to govern transportation is formed.

### **103. RIGHTS, LIABILITIES AND DUTIES UNDER PRIOR STATUTES**

All rights, privileges and immunities vested or accrued by and pursuant to any laws enacted prior to the adoption or subsequent amendment of the Cherokee Nation Limited Liability Company Act, all suits pending, all rights of action conferred, and all duties, restrictions, liabilities and penalties imposed or required by and pursuant to laws enacted prior to the adoption or amendment of the Cherokee Nation Limited Liability Company Act, shall not be impaired, diminished or affected.

### **104. RESERVED POWER OF CHEROKEE NATION TO AMEND OR REPEAL; CHEROKEE NATION LIMITED LIABILITY COMPANY ACT PART OF LIMITED LIABILITY COMPANY'S CERTIFICATE OF LIMITED LIABILITY**

The Cherokee Nation Limited Liability Company Act may be amended or repealed at the pleasure of the Council of the Cherokee Nation, but any amendment or repeal shall not take away or impair any remedy available pursuant to the provisions of the Cherokee Nation Limited Liability Company Act against any limited liability company or its members for any liability which shall have been previously incurred. The Cherokee Nation Limited Liability Company Act and any amendments thereto shall be a part of the charter or certificate of limited liability of every limited liability company except so far as the same are inapplicable and inappropriate to the objects of the limited liability company. The provisions of this section shall not affect or impair as to any limited liability company any rights protected or guaranteed by the Constitution of the Cherokee Nation or of the United States.

### **105. DEFINITIONS**

As used in this chapter unless the context otherwise requires:

- (1) "Act" means the Cherokee Nation Limited Liability Company Act.
- (2) "Articles of organization" means documents filed under Section 202 of this chapter for the purpose of forming a limited liability company;
- (3) "Business" means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood;
- (4) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state, or foreign law governing insolvency;
- (5) "Distribution" means a transfer of money, property, or other benefit from a limited liability company to a member in the member's capacity as a member or to a transferee of the member's membership interest.
- (6) "Entity" means a person other than an individual;
- (7) "Foreign limited liability company" means an unincorporated entity organized under laws other than the laws of the Cherokee Nation which afford limited liability to its owners comparable to the liability under Section 303 and is not required to obtain a certificate of authority to transact business under any law of the Cherokee Nation other than this chapter;
- (8) "Government owned limited liability company" means an entity wholly-owned by the Cherokee Nation or any agency or subdivision thereof;
- (9) "Limited liability company" means an entity that is an unincorporated association or proprietorship having one or more members that is organized and existing under this Act;
- (10) "Manager" or "Managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement;
- (11) "Member" means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this Act;

(12) "Membership interest" means a member's rights in the limited liability company, collectively, including the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management;

(13) "Operating agreement" means any agreement of the members as to the affairs of a limited liability company and the conduct of its business;

(14) "Person" means an individual, a corporation, an estate, a trust, a general partnership, a limited partnership, a limited liability company, an association, or any other legal, commercial or governmental entity;

(15) "Principal office" means the office, whether or not in the Cherokee Nation, where the principal executive office of a domestic or foreign limited liability company is located;

(16) "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;

(17) "Sign" means to identify a record by means of a signature, mark, or other symbol, with intent to authenticate it;

(18) "State" means a state, territory, or possession of the United States, a federally recognized Indian tribe, the District of Columbia or the Commonwealth of Puerto Rico; or any territory or insular possession subject to the jurisdiction of the United States.

(19) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, and gift.

#### **106. NAME OF LIMITED LIABILITY COMPANY**

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

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

(b) May not be the same as or indistinguishable from:

(1) names upon the records in the Office of the Principal Chief of then existing limited liability companies whether organized pursuant to the laws of the Cherokee Nation or authorized as foreign limited liability companies, or

(2) names upon the records in the Office of the Principal Chief of corporations organized under the laws of the Cherokee Nation or of foreign corporations registered in accordance with the laws of the Cherokee Nation then existing or which existed at any time during the preceding three (3) years, or

(3) names upon the records in the Office of the Principal Chief of limited partnerships formed under the laws of the Cherokee Nation or of foreign limited partnerships registered in accordance with the laws of the Cherokee Nation, or

(4) trade names, fictitious names, or other names reserved with the Office of the Principal Chief.

(c) The provisions of subsection (b) of this section shall not apply if one of the following is filed with the Office of the Principal Chief:

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

(2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such limited liability company or holder of a limited liability company name to the use of such name in Cherokee Nation.

(d) A limited liability company may use the name, including a fictitious name, of another domestic or foreign company which is used in the Cherokee Nation if the other company is organized or authorized to transact business in the Cherokee Nation and the company proposing to use the name has:

- (1) merged with the other company;
- (2) been formed by reorganization with the other company; or
- (3) acquired substantially all of the assets, including the name, of the other company.

#### **107. RESERVATION OF LIMITED LIABILITY COMPANY NAME**

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign company whose name is not available, by delivering an application to the Office of the Principal Chief for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Office of the Principal Chief or his authorized representative finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a period of sixty (60) days.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Office of the Principal Chief a signed notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

#### **108. DESIGNATED OFFICE AND AGENT FOR SERVICE OF PROCESS**

(a) A limited liability company and a foreign limited liability company authorized to do business in the Cherokee Nation shall designate and continuously maintain in the Cherokee Nation:

(1) a principal office, which need not be a place of its business; and

(2) a resident agent for service of process on the limited liability company that is an individual resident of the Cherokee Nation, or a domestic or qualified foreign corporation limited liability company, or limited partnership

(b) An agent must be an individual resident of the Cherokee Nation, a domestic corporation, another limited liability company, or a foreign corporation or foreign company authorized to do business in the Cherokee Nation.

(c) For purposes of this section, "in the Cherokee Nation" and "of the Cherokee Nation" means the historic reservation boundaries defined in the 1838 fee patent signed by President Martin Van Buren, or any other lands which are, or become, subject to tribal jurisdiction.

#### **109. CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS**

(a) A limited liability company may change its designated principal office or resident agent for service of process by delivering to the Office of the Principal Chief for filing a statement of change which sets forth:

(1) the name of the company;

(2) the street address of its current designated office;

(3) if the current designated principal office is to be changed, the street address of the new designated office;

(4) the name and address of its current resident agent for service of process; and

(5) if the current resident agent for service of process or street address of that resident agent is to be changed, the new address or the name and street address of the new agent for service of process.

(b) Unless otherwise provided in the statement, the change of address of the principal office or resident agent is effective when the Office of the Principal Chief files the statement.

#### **110. RESIGNATION OF AGENT FOR SERVICE OF PROCESS**

(a) A resident agent for service of process of a limited liability company may resign by delivering to the Office of the Principal Chief for filing a record of the statement of resignation.

(b) After filing a statement of resignation, the Office of the Principal Chief or an authorized representative shall mail a copy to the designated office and another copy to the limited liability company at its principal office.

(c) Unless a later time is specified in the resignation, it is effective thirty (30) days after it is filed.

#### **111. NATURE OF BUSINESS AND POWERS**

(a) A limited liability company may be organized under this chapter and may conduct business in any state for any lawful purpose, subject to any law of the Cherokee Nation governing or regulating business.

(b) A limited liability company organized under this chapter has a consensual civil relationship to the Cherokee Nation and is subject to the jurisdiction of Cherokee Nation courts.

(c) Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry on its business or affairs, including the power to:

(1) sue and be sued, and defend in its name, except as provided in Article 11 with respect to government owned limited liability companies;

(2) purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;

(3) sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;

(4) purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;

(5) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;

(6) lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(7) be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(8) conduct its business, locate offices, and exercise the powers granted by this chapter within or without the Cherokee Nation;

(9) elect managers and appoint officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;

(10) pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former members, managers, officers, employees, and agents;

(11) make donations for the public welfare or for charitable, scientific, or educational purposes;

(12) make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company;

(13) Indemnify and hold harmless any member, agent, or employee from and against any and all claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee which constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

(14) Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of the Cherokee Nation, for the administration and regulation of the affairs of the limited liability company;

(15) Cease its activities and dissolve; and

(16) Do every other act not inconsistent with law which is appropriate to promote and attain the purposes set forth in its articles of organization.

## **ARTICLE 2. ORGANIZATION**

### **201. LIMITED LIABILITY COMPANY AS LEGAL ENTITY**

A limited liability company is a legal entity distinct from its members.

### **202. ARTICLES OF ORGANIZATION - FILING**

(a) One or more persons may form a limited liability company upon the filing of executed articles of organization with the Office of the Principal Chief.

(b) When the Office of the Principal Chief files the articles of organization, the proposed organization becomes a limited liability company under the name and subject to the purposes, conditions, and provisions stated in the articles.

(c) Filing of the articles by the Office of the Principal Chief is conclusive evidence of the formation of the limited liability company.

### **203. ARTICLES OF ORGANIZATION - CONTENT**

(a) Articles of organization shall set forth:

(1) the name of the limited liability company;

(2) the term of the existence of the limited liability company which may be perpetual;

(3) the street address of its principal place of business in the Cherokee Nation; and

(4) the name and street address of its resident agent in the Cherokee Nation,

(b) It is not necessary to set out in the articles of organization any of the powers enumerated in this chapter.

### **204. ARTICLES OF ORGANIZATION - AMENDMENT**

(a) The articles of organization shall be amended when:

(1) There is a change in the name of the limited liability company;

(2) There is a change in the name or address of a manager;

(3) There is a false or erroneous statement in the articles of organization;

(4) There is a change in the time as stated in the articles of organization for the cancellation of the limited liability company; or

(5) The members desire to restate the articles of organization in their entirety or to make a change in any other statement or to add a statement in the articles of organization in order to accurately represent their agreement.

(b) An amendment to the articles of organization of a limited liability company shall set forth the:

(1) the name of the limited liability company;

(2) the date of filing of the articles of organization; and

(3) the amendment to the articles.

## **205. ARTICLES OF ORGANIZATION - EXECUTION**

(a) Articles required by this chapter to be filed with the Office of the Principal Chief shall be executed in the following manner:

(1) Articles of organization must be signed by at least one person who need not be a member of the limited liability company; and

(2) Articles of amendment, merger, or dissolution must be signed by a manager.

(b) Any person may sign any articles by an attorney in fact. Powers of attorney relating to the signing of articles by an attorney in fact need not be sworn to, verified or acknowledged, and need not be filed with the Office of the Principal Chief.

(c) The execution of any articles under this chapter constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

(d) Any signature on any instrument authorized to be filed with the Office of the Principal Chief under this Act may be a facsimile.

(e) A record accepted for filing by the Office of the Principal Chief is effective:

(1) at the time of filing on the date it is filed, as evidenced by the Office of the Principal Chief's date and time endorsement on the original record; or

(2) at the time specified in the record as its effective time on the date it is filed.

(f) A record may specify a delayed effective time and date, and if it does so the record becomes effective at the time and date specified. If a delayed effective date but no time is specified, the record is effective at the close of business on that date. If a delayed effective date is later than the 90th day after the record is filed, the record is effective on the 90th day.

## **206. DELIVERY OF ARTICLES OF ORGANIZATION AND OTHER DOCUMENTS TO THE OFFICE OF THE PRINCIPAL CHIEF**

(a) Two signed copies of the articles of organization or any articles of amendment or dissolution or of any decree of judicial amendment or dissolution shall be delivered to the Office of the Principal Chief. A person who executes articles as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Office of the Principal Chief finds that any articles do not conform to law, upon receipt of all filing fees required by law he shall:

(1) Endorse on each copy the word "filed" and the day, month and year of the filing

(2) File one copy in his office; and

(3) Return the other copy to the person who filed it or his representative.

(b) Upon the filing of articles of amendment or a decree of judicial amendment in the Office of the Principal Chief, the articles of organization shall be amended as set forth therein and upon the effective date of articles of dissolution or a decree of judicial dissolution, the articles of organization are cancelled.

#### **207. CORRECTING FILED RECORD**

(a) A limited liability company or foreign limited liability company may correct a record filed with the Office of the Principal Chief if the record contains any typographical error, error of transcription, or other technical error or has been defectively executed.

(b) Articles of correction shall set forth:

(1) the title of the document being corrected;

(2) that the document being corrected was filed; and

(3) the provision in the document as previously filed and as corrected and, if execution of the document was defective, the manner in which it was defective.

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

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

(e) Articles of correction may not:

(1) Change the effective date of the document being corrected; or

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

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

#### **208. CERTIFICATE OF EXISTENCE OR AUTHORIZATION**

(a) A person may request the Office of the Principal Chief to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

(b) A certificate of existence for a limited liability company must set forth:

(1) the company's name;

(2) that it is duly organized under the laws of the Cherokee Nation, the date of organization;

(3) if payment is reflected in the records of the Office of the Principal Chief and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to the Cherokee Nation have been paid;

(4) whether its most recent annual certification required by Section 209 has been filed the Office of the Principal Chief;

(5) that articles of termination have not been filed; and

(6) other facts of record in the Office of the Principal Chief which may be requested by the applicant.

(c) A certificate of authorization for a foreign limited liability company must set forth:

(1) the company's name used in the Cherokee Nation;

(2) that it is authorized to transact business in the Cherokee Nation;

(3) if payment is reflected in the records of the Office of the Principal Chief and if nonpayment affects the authorization of the company, that all fees, taxes, and penalties owed to the Cherokee Nation have been paid;

(4) whether its most recent annual certification required by Section 209 has been filed with the Office of the Principal Chief;

(5) that a certificate of cancellation has not been filed; and

(6) other facts of record in the Office of the Principal Chief which may be requested by the applicant.

(d) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Office of the Principal Chief may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in the Cherokee Nation.

#### **209. ANNUAL CERTIFICATION FOR THE OFFICE OF THE PRINCIPAL CHIEF**

(a) A domestic limited liability company, and a foreign limited liability company authorized to transact business in the Cherokee Nation, shall deliver to the Office of the Principal Chief for filing an annual certification that sets forth:

(1) the name of the company and the state or country under whose law it is organized;

(2) the address of its designated office and the name and address of its agent for service of process in the Cherokee Nation;

(3) the address of its principal office; and

(4) the names and business addresses of any managers.

Notwithstanding the foregoing, no limited liability company in which the Cherokee Nation or any agency, subdivision or other entity thereof is a member shall be required to file an annual certification under this Section 209.

(b) Information in an annual certification must be current as of the date the annual certification is signed on behalf of the limited liability company.

(c) The first annual certification must be delivered to the Office of the Principal Chief between January 1 and April 1 of the year following the calendar year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual certifications must be delivered to the Office of the Principal Chief between January 1 and April 1 of the ensuing calendar years.

(d) If an annual certification does not contain the information required in subsection (a), the Office of the Principal Chief shall promptly notify the certifying limited liability company or foreign limited liability company and return the certification to it for correction. If the certification is corrected to contain the information required in subsection (a) and delivered to the Office of the Principal Chief within thirty (30) days after the effective date of the notice, it is timely filed.

## **ARTICLE 3. RELATIONS OF MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY**

### **301. MANAGER AS AGENT OF LIMITED LIABILITY COMPANY**

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

(b) Subject to the provisions of subsection (a) of this section and Section 406 of this Act, instruments and documents providing for the acquisition, mortgage, or disposition of real or personal property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more of its managers.

### **302. LIMITED LIABILITY COMPANY LIABLE FOR MEMBER'S OR MANAGER'S ACTIONABLE CONDUCT**

A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a manager acting in the ordinary course of business of the company or with authority of the company or a member acting as a manager pursuant to Section 403(c) of this Act acting on the company's behalf in the ordinary course of business of the company or with authority of the company.

### **303. MEMBER OR MANAGER - LIMITATION OR ELIMINATION OF LIABILITY - INDEMNIFICATION**

(a) Subject to subsection (b) of this section, the articles of organization or operating agreement may:

(1) Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in Section 410 of this chapter; and

(2) Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in any proceeding because he is or was a member or manager.

(b) No provision permitted under subsection (a) of this section shall limit or eliminate the liability of a manager for:

(1) Any breach of the manager's duty of loyalty to the limited liability company or its members;

(2) Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

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

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

## **ARTICLE 4. RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY**

### **401. FORM OF CONTRIBUTION OF MEMBER**

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

#### **402. MEMBER'S LIABILITY FOR CONTRIBUTIONS**

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

(b)

(1) 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 upon compliance with the operating agreement, or, if the operating agreement does not so provide, with the unanimous consent of the members.

(2) A compromise shall not impair the right of any creditor to enforce the obligation or to require the obligation to be enforced if:

(i) such creditor relied upon the obligation and the absence in the operating agreement of the limited liability company's authority to compromise the obligation, or

(ii) a duty to the creditor was breached in the making of the compromise.

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

#### **403. MANAGEMENT OF LIMITED LIABILITY COMPANY**

(a) Management of company with managers:

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

(2) The articles of organization or operating agreement may prescribe qualifications for managers.

(3) The number of managers shall be specified in or fixed in accordance with the articles of organization or operating agreement.

(b) Election and removal of managers:

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

(i) The election of managers shall be by majority vote of the members;

(ii) Any or all managers may be removed, with or without cause, by the written consent of the members.

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

(c) Management of company without designated managers:

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

(i) The members shall be deemed to be managers for purposes of applying provisions of the Cherokee Nation Limited Liability Company Act unless the context clearly requires otherwise;

(ii) The members shall have and be subject to all duties and liabilities of managers; and

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

(2) A member of a member-managed limited liability company may resign as a member in accordance with the operating agreement or, if the operating agreement does not provide for or prohibit the members' resignation, upon notice to the limited liability company. When a member of a member-managed limited liability company resigns, the member shall cease to have the rights and duties of a member and shall become an assignee, as set forth in Article 5 of this Act; provided that the profits and losses of the limited liability company shall continue to be allocated to the member and any binding commitments for contributions shall continue as if the member had not resigned. If the resignation violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning member damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the resigning member. The member's resignation shall not constitute a withdrawal from the limited liability company.

#### **404. MANAGERS - MAJORITY VOTE REQUIRED**

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

#### **405. ALLOCATION OF PROFITS AND LOSSES - DISTRIBUTIONS**

Except as otherwise provided in the operating agreement:

(a) The profits and losses of a limited liability company shall be allocated among the members in proportion to their respective capital interests.

(b) Distributions of the limited liability company shall be made to the members in proportion to their right to share in the profits of the limited liability company.

#### **406. LIMITATIONS ON DISTRIBUTIONS**

(a) A distribution may not be made if, after giving effect to the distribution:

(1) the limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or

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

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and

principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(c) Except as otherwise provided in subsection (e), the effect of a distribution under subsection (a) is measured as of:

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

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

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

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

#### **407. LIABILITY FOR UNLAWFUL DISTRIBUTIONS**

If a member has received a distribution in violation of the operating agreement or Section 406 of this title, the member shall be liable to the limited liability company for the amount of the distribution wrongfully made. An action for the recovery of any wrongful distribution to a member must be brought within three (3) years from the date of the distribution.

#### **408. MEMBER'S RIGHT TO INFORMATION**

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

(1) A current and a past list of the full name and last-known mailing address of each member and manager;

(2) Copies of records that would enable a member to determine the relative voting rights of the members;

(3) A copy of the articles of organization, together with any amendments thereto;

(4) Copies of the limited liability company's federal, state and local income tax returns and financial statements, if any, for the three (3) most recent years or, if such returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal state and local tax returns for such period;

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

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

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

(ii) the events upon the happening of which the limited liability company is to be dissolved and its affairs wound up, and

(iii) any other information prepared pursuant to a requirement in an operating agreement.

(b) A member, for any purpose reasonably related to the member's interest, may:

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

(2) Obtain from time to time upon reasonable demand:

(i) true and complete information regarding the state of the business and financial condition of the limited liability company,

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

(iii) other information regarding the affairs of the limited liability company as is just and reasonable; and

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

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

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

#### 409. MEMBERS - VOTING RIGHTS

(a) Unless otherwise provided in the articles of organization or operating agreement, the members of a limited liability company shall vote in proportion to their respective capital interests. Except as otherwise provided in subsection (d) of this section or unless the context otherwise requires, references in this Act to a vote or the consent of the members shall mean a vote or consent of the members holding a majority of the capital interests. The vote or consent may be evidenced in the minutes of a meeting of the members or by a written consent in lieu of a meeting.

(b) Except as otherwise provided in subsection (d) of this section or in the articles of organization or operating agreement, a majority vote of the members shall be required to approve the following matters:

(1) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company;

(2) Merger of the limited liability company with another limited liability company or other business entity; and

(3) An amendment to the articles of organization or operating agreement.

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

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

(1) The dissolution of the limited liability company pursuant to subsection (a) of Section 701 of this title; or

(2) An amendment to the articles of organization or an amendment to a written operating agreement:

(i) which reduces the term of the existence of the limited liability company,

(ii) which reduces the required vote of members to approve a dissolution, merger of sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company,

(iii) which permits a member or voluntarily withdraw from the limited liability company, or

(iv) which reduces the required vote of members to approve an amendment to the articles of organization or written operating agreement reducing the vote previously required on the matters described in this section.

#### **410. MANAGERS - DUTIES - GOOD FAITH - LIABILITY**

Subject to the provisions of Section 404 of this title and except as otherwise provided in the operating agreement:

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

(2) In discharging his duties, a manager may rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(i) one or more employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented,

(ii) legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence, or

(iii) a committee of managers of which he is not a member if the manager reasonably believes the committee merits confidence;

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

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

(4) A manager is not liable for any action taken as a manager, or any failure to take any action, if the manager performed the duties of the office in compliance with the [business judgment rule as applied to directors and officers of a corporation]; and

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

#### **411. LIABILITY SOLELY AS MANAGER OR MEMBER**

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

## ARTICLE 5. ASSIGNEES AND CREDITORS OF MEMBER

### 501. MEMBERSHIP INTEREST

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

### 502. ASSIGNMENT OF MEMBERSHIP INTEREST

(a) Unless otherwise provided in an operating agreement:

(1) A membership interest is not transferable, except as provided in Section 503; provided, however, that a member may assign a membership interest in whole or in part as set forth in this Section;

(2) An assignment of a membership interest does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights or powers of a member;

(3) An assignment entitles the assignee to receive any distribution or distributions to which the assignor was entitled to the extent assigned;

(4) Unless the assignee of an interest in a limited liability company becomes a member by virtue of that interest, the assignor continues to be a member and to have the power to exercise any rights of a member, unless the assignor is removed as a member either in accordance with the operating agreement or, after having assigned all of the membership interest, by an affirmative vote of the members who have not assigned their interests. The removal of an assignor shall not, by itself, cause the assignee to become a member;

(5) Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

(6) The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

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

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

### 503. RIGHTS OF ASSIGNEES

(a) An assignee of a membership interest may become a member of a limited liability company if and to the extent that the operating agreement provides or the members representing a majority of the capital interests which are not the subject of the assignment consent in writing.

(b) An assignee who has become a member, to the extent assigned, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and this chapter. However, unless otherwise provided in writing in the operating agreement or other written agreement, an assignee who becomes a member also is liable for any obligations of the assignor to make contributions, but the assignee is not obligated for liabilities of which the assignee had no knowledge unknown to the transferee at the time the assignee became a member and which could not be ascertained from a written operating agreement.

(c) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from liability to the limited liability company under the operating agreement or this chapter, unless otherwise provided in the operating agreement.

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

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

(f) The effective time of admission of a member to a limited liability company shall be the later of:

(1) The date the limited liability company is formed; or

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

#### **504. RIGHTS OF CREDITORS**

(a) On application by a judgment creditor of a member of a limited liability company or of a member's assignee, a court having jurisdiction may charge the membership interest of the judgment debtor to satisfy the judgment, with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest.

(b) This chapter does not deprive any member of the benefit of any exemption laws applicable to his membership interest.

(c) This section provides the exclusive remedy by which a judgment creditor may satisfy a judgment out of the judgment debtor's membership interest.

#### **505. DISTRIBUTIONS TO MEMBERS BEFORE WITHDRAWAL AND DISSOLUTION**

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

#### **506. FORM OF DISTRIBUTION-ASSET IN KIND**

Except as otherwise provided in the operating agreement:

(1) 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; and

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

#### **507. STATUS OF MEMBER AND DISTRIBUTION**

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

### **ARTICLE 6. MEMBER'S DISSOCIATION**

#### **601. MEMBER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION**

(a) Unless the operating agreement specifically permits in writing the power to withdraw voluntarily, a member may not withdraw at any time. If the operating agreement specifically

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

(b) If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator, or other legal representative shall have all of the rights of an assignee of the member's interest.

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

## **ARTICLE 7. WINDING UP LIMITED LIABILITY COMPANY'S BUSINESS**

### **701. EVENTS CAUSING DISSOLUTION AND WINDING UP OF LIMITED LIABILITY COMPANY'S BUSINESS**

(a) A limited liability company is dissolved and its affairs shall be wound up upon the earlier of:

(1) the occurrence of the latest date on which the limited liability company is to dissolve set forth in the articles of organization;

(2) the occurrence of events specified in writing in the operating agreement;

(3) the written consent of all of the members; or

(4) entry of a decree of judicial dissolution under subsection (b).

(b) On application by or for a member, the district court of the Cherokee Nation may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

### **702. WINDING UP LIMITED LIABILITY COMPANY**

(a) Except as otherwise provided in the articles of organization or operating agreement:

(1) The business or affairs of the limited liability company may be wound up in one of the following ways:

(i) by the managers, or

(ii) if one or more of the members or managers have engaged in conduct that casts reasonable doubt on their ability to wind up the business or affairs of the limited liability company, or upon other cause shown, by the district court on application of any member, his legal representative, or assignee.

### **703. RIGHT TO WIND UP LIMITED LIABILITY COMPANY'S BUSINESS**

(a) After dissolution, a member who has not wrongfully dissociated may participate in winding up a limited liability company's business, but on application of any member, member's legal representative, or transferee, the district court of the Cherokee Nation, for good cause shown, may order judicial supervision of the winding up.

(b) A legal representative of the last surviving member may wind up a limited liability company's business.

(c) A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to Section 706, settle disputes by mediation or arbitration, and perform other necessary acts.

#### **704. MEMBER'S OR MANAGER'S POWER AND LIABILITY AS AGENT AFTER DISSOLUTION**

(a) A limited liability company is bound by a member's or manager's act after dissolution that:

(1) is appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution;

(2) would have bound the limited liability company had it not been dissolved, if the other party to the transaction did not have notice of the dissolution.

(b) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for winding up the company's business is liable to the company for any damage caused to the company arising from the liability.

#### **705. ARTICLES OF DISSOLUTION**

(a) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Office of the Principal Chief articles of dissolution stating:

(1) the name of the limited liability company;

(2) the date of filing of its articles of organization;

(3) the reason for filing the articles of dissolution;

(4) the effective date of the articles of dissolution, if they are not to be effective upon the filing; and

(5) any other information the members or managers filing the certificate determine.

(b) The existence of a limited liability company is terminated upon the filing of the articles of dissolution, or upon a later effective date, if specified in the articles of dissolution.

#### **706. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED LIABILITY COMPANY'S BUSINESS**

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

(1) Payment, or adequate provision for payment, shall be made to creditors, including to the extent permitted by law, members who are creditors, in satisfaction of liabilities of the limited liability company;

(2) Except as provided in writing in the articles of organization or operating agreement, to members or former members in satisfaction of liabilities for distributions under Section 505 of this chapter; and

(3) Except as provided in writing in the articles of organization or operating agreement, to members and former members first for the return of their contributions and second respecting their membership interests, in proportions in which the members share in distributions.

### **ARTICLE 8. CONVERSIONS AND MERGERS**

#### **801. MERGER OR CONSOLIDATION**

(a) Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic or foreign limited liability companies or other business entities. As used in this section, "business entity" means a domestic

or foreign corporation, a business trust, a common law trust, or an unincorporated business including a partnership, whether general or limited.

(b) Unless otherwise provided in the articles of organization or the operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by a majority of the members or, if there is more than one class or group of members, then by a majority of each class or group. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

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

(1) The name and jurisdiction of formation or organization of each of the limited liability companies or other business entities which are to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting domestic limited liability company or other business entity;

(4) The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;

(6) That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other business entity, upon request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate;

(7) In the case of a merger, any amendments or changes in the articles of organization of the surviving domestic limited liability company that are to be effected by the merger;

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

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

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

(e) Articles of merger or consolidation shall act as articles of dissolution for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

Once any merger or consolidation is effective pursuant to this section, for all purposes of the laws of the Cherokee Nation, all of the rights, privileges, and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated and all

property, real, personal and mixed, and all debts due to each domestic limited liability company or other business entity, as well as all other things and causes of action belonging to each domestic limited liability company or other business entity shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each domestic limited liability company or other business entity that has merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the Cherokee Nation, in any domestic limited liability company or other business entity shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of each domestic limited liability company or other business entity shall be preserved unimpaired. All debts, liabilities and duties of each domestic limited liability company or other business entity that has merged or consolidated shall thereafter attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against the surviving or resulting limited liability company or other entity to the same extent as if the debts, liabilities and duties had been incurred or contracted by the surviving or resulting limited liability company or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited liability company to wind up its affairs pursuant to Section 701 of this chapter or pay its liabilities and distribute its assets pursuant to Section 706 of this chapter.

## **802. CONVERSION OF CERTAIN ENTITIES TO A LIMITED LIABILITY COMPANY**

(a) As used in this section, the term "business entity" means a domestic corporation, partnership, whether general or limited, business trust, common law trust, or other unincorporated association.

(b) Any business entity may convert to a domestic limited liability company by complying with subsection (h) of this section and filing with the Office of the Principal Chief in accordance with Section 106 of this chapter articles of conversion to a limited liability company that have been executed in accordance with Section 205 of this chapter, to which shall be attached articles of organization that comply with Sections 203 and 106 of this chapter and have been executed by one or more authorized persons in accordance with Section 205 of this chapter.

(c) The articles of conversion to a limited liability company shall state:

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

(2) The name of the business entity immediately prior to the filing of the articles of conversion to limited liability company; and

(3) The name of the limited liability company as set forth in its articles of organization filed in accordance with subsection (b) of this section.

(d) Upon the filing in the Office of the Principal Chief of the articles of conversion to a limited liability company and the articles of organization, the business entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this Act, except that notwithstanding Section 202 of this chapter, the existence of the limited liability company shall be deemed to have commenced on the date the business entity was formed.

(e) The conversion of any business entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

(f) When any conversion shall have become effective under this section, for all purposes of the laws of the Cherokee Nation, all of the rights, privileges and powers of the business entity that has converted, and all property, real, personal and mixed, and all debts due to such business entity, as well as all other things and causes of action belonging to such business entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the business entity that has converted, and the

title to any real property vested by deed or otherwise in such business entity shall not revert or be in any way impaired by reason of this Act, but all rights of creditors and all liens upon any property of such business entity shall be preserved unimpaired, and all debts, liabilities and duties of the business entity that has converted shall thenceforth attach to the domestic limited liability company and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(g) Unless otherwise agreed or otherwise provided by any laws of the Cherokee Nation applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such business entity and shall constitute a continuation of the existence of the converting business entity in the form of a domestic limited liability company. When a business entity has been converted to a limited liability company pursuant to this section, the limited liability company shall, for all purposes of the laws of the Cherokee Nation, be deemed to be the same entity as the converting business entity.

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

### **803. APPROVAL OF CONVERSION OF A LIMITED LIABILITY COMPANY**

A domestic limited liability company may convert to a corporation, partnership, whether general or limited, business trust, common law trust or other unincorporated association organized, formed or created under the laws of the Cherokee Nation, upon the authorization of such conversion in accordance with this section. If the operating agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the operating agreement. If the operating agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the operating agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to a merger or consolidation. If the operating agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. Notwithstanding the foregoing, in addition to any other authorization required by this section, if the entity into which the limited liability company is to convert does not afford all of its interest holders protection against personal liability for the debts of the entity, the conversion must be authorized by any and all members who would be exposed to personal liability.

## **ARTICLE 9. FOREIGN LIMITED LIABILITY COMPANIES**

### **901. LAW GOVERNING FOREIGN LIMITED LIABILITY COMPANIES**

(a) The laws of the State or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers and members.

(b) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the laws of the Cherokee Nation.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in the Cherokee Nation.

## **902. APPLICATION FOR CERTIFICATE OF AUTHORITY**

a) Before transacting business in the Cherokee Nation, a foreign limited liability company shall apply for a certificate of authority to transact business in the Cherokee Nation by delivering an application to the Office of the Principal Chief for filing. The application must set forth:

(1) the name of the foreign limited liability company or, if its name is unavailable for use in the Cherokee Nation, a name that satisfies the requirements of Section 106;

(2) the name of the state or country under whose law it is organized;

(3) the street address of its principal office;

(4) the address of its initial principal office in the Cherokee Nation;

(5) the name and street address of its initial resident agent for service of process in the Cherokee Nation; and

(6) such additional information as may be necessary or appropriate in order to enable the Office of the Principal Chief to determine whether such limited liability company is entitled to transact business in the Cherokee Nation.

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of company records in the state, Indian tribe, country or other jurisdiction under whose law it is organized.

## **903. ACTIVITIES THAT DO NOT CONSTITUTE TRANSACTING BUSINESS IN THE CHEROKEE NATION**

(a) Activities of a foreign limited liability company that do not constitute transacting business in the Cherokee Nation within the meaning of this article include:

(1) maintaining, defending, or settling an action or proceeding;

(2) holding meetings of its members or managers or carrying on any other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Cherokee Nation before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) holding, protecting, renting, maintaining and operating real or personal property in the Cherokee Nation so acquired;

(10) selling or transferring title to property in the Cherokee Nation to any person;

(11) conducting an isolated transaction that is completed within thirty (30) days and is not one in the course of repeated transactions of a like manner; and

(12) transacting business with the Cherokee Nation.

(b) For purposes of this article, the ownership in the Cherokee Nation of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in the Cherokee Nation.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under any other law of the Cherokee Nation or under federal law.

#### **904. ISSUANCE OF CERTIFICATE OF AUTHORITY**

Unless the Office of the Principal Chief determines that an application for a certificate of authority fails to comply as to form with the filing requirements of this chapter, the Office of the Principal Chief, upon payment of all filing fees, shall file the application and send a receipt for it and the fees to the limited liability company or its representative.

#### **905. NAME OF FOREIGN LIMITED LIABILITY COMPANY**

If the name of a foreign limited liability company does not satisfy the requirements of Section 106, the company, to obtain or maintain a certificate of authority to transact business in the Cherokee Nation, must use a fictitious name to transact business in the Cherokee Nation if its real name is unavailable and it delivers to the Office of the Principal Chief for filing a copy of the resolution of its managers, in the case of a manager-managed company, or of its members, in the case of a member-managed company, adopting the fictitious name.

#### **906. REVOCATION OF CERTIFICATE OF AUTHORITY**

(a) A certificate of authority of a foreign limited liability company to transact business in the Cherokee Nation may be revoked by the Office of the Principal Chief in the manner provided in subsection (b) if:

(1) the company fails to:

(i) pay any fees, taxes, and penalties owed to the Cherokee Nation;

(ii) deliver its annual certification required under Section 209 to the Office of the Principal Chief within sixty (60) days after it is due;

(iii) appoint and maintain an agent for service of process as required by this article; or

(iv) file a statement of a change in the name or business address of the agent as required by this article; or

(2) a misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this article.

(b) The Office of the Principal Chief may not revoke a certificate of authority of a foreign limited liability company unless the Office of the Principal Chief sends the company notice of the revocation, at least sixty (60) days before its effective date, by a record addressed to its agent for service of process in the Cherokee Nation, or if the company fails to appoint and maintain a proper agent in the Cherokee Nation, addressed to the office required to be maintained by Section 109. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in the Cherokee Nation ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

#### **907. CANCELLATION OF AUTHORITY**

A foreign limited liability company may cancel its authority to transact business in the Cherokee Nation by filing in the Office of the Principal Chief a certificate of cancellation. Cancellation does not terminate the authority of the Office of the Principal Chief to accept service of process in the company for claims for relief arising out of the transaction of business in the Cherokee Nation.

#### **908. EFFECT OF FAILURE TO OBTAIN CERTIFICATE OF AUTHORITY**

(a) A foreign limited liability company transacting business in the Cherokee Nation may not maintain an action or proceeding in the courts of the Cherokee Nation unless it has a certificate of authority to transact business in the Cherokee Nation.

(b) The failure of a foreign limited liability company to have a certificate of authority to transact business in the Cherokee Nation does not impair the validity of a contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending an action or proceeding in the courts of the Cherokee Nation.

(c) Limitations on personal liability of managers, members, and their assignees are not waived solely by transacting business in the Cherokee Nation without a certificate of authority.

(d) If a foreign limited liability company transacts business in the Cherokee Nation without a certificate of authority, it appoints the Office of the Principal Chief as its agent for service of process for claims for relief arising out of the transaction of business in the Cherokee Nation.

#### **909. ACTION BY THE OFFICE OF THE PRINCIPAL CHIEF**

The Office of the Principal Chief may maintain an action to restrain a foreign limited liability company from transacting business in the Cherokee Nation in violation of this article.

### **ARTICLE 10. DERIVATIVE ACTIONS**

#### **1001. RIGHT OF ACTION**

A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

#### **1002. PROPER PLAINTIFF**

In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced; and:

(1) must have been a member at the time of the transaction of which the plaintiff complains; or

(2) the plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

#### **1003. PLEADING**

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

#### **1004. EXPENSES**

If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

## **ARTICLE 11. GOVERNMENT OWNED LIMITED LIABILITY COMPANIES**

### **1101. LIMITED LIABILITY COMPANIES FORMED BY THE CHEROKEE NATION**

The Cherokee Nation or any agency, subdivision or other entity thereof are authorized to form limited liability companies under this Act for the conduct of business on behalf of the Cherokee Nation or any such agency, subdivision or entity.

### **1102. SOVEREIGN IMMUNITY OF CHEROKEE NATION WHOLLY-OWNED LIMITED LIABILITY COMPANIES**

(a) All limited liability companies which are wholly-owned by the Cherokee Nation, or any agency or subdivision thereof, or any entity which is wholly-owned by the Cherokee Nation or any agency or subdivision thereof, formed pursuant to this Act are hereby expressly cloaked with the mantle of sovereign immunity of the Cherokee Nation to the fullest extent allowed under applicable law.

(b) Except as prohibited in the operating agreement, any waiver of sovereign immunity by a limited liability company wholly-owned by the Cherokee Nation, or any agency or subdivision thereof, or any entity which is wholly-owned by the Cherokee Nation or any agency or subdivision thereof, must be effected by resolution of the Council and approved by the Principal Chief. Said resolution shall state the time the waiver is to be in effect, and such effective time shall rule past any change in the elected Council.

## **ARTICLE 12. MISCELLANEOUS PROVISIONS**

### **1201. SEVERABILITY CLAUSE**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

### **1202. EFFECTIVE DATE**

This chapter takes effect upon passage by the Council.

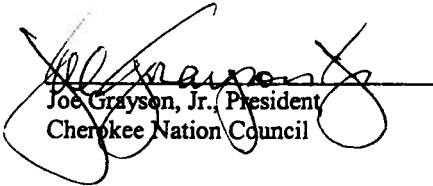
#### **Section 6. Provisions as cumulative**

The provisions of this act shall be cumulative to existing law.

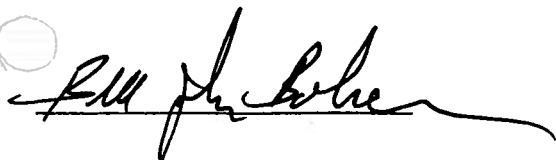
#### **Section 8. Emergency declared**

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Enacted by the Council of the Cherokee Nation on the 15<sup>th</sup> day of January, 2004.

  
Joe Grayson, Jr., President  
Cherokee Nation Council

ATTEST:



Bill John Baker, Secretary  
Cherokee Nation Council

Approved and signed by the Principal Chief this 16th day of JULY, 2004.



Chad Smith, Principal Chief  
Cherokee Nation

ATTEST:



Jay Hannah, Secretary/Treasurer  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Audra Smoke-Connor	<u>Yea</u>	Melvina Shotpouch	<u>Yea</u>
Bill John Baker	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Joe Crittenden	<u>Yea</u>	John F. Keener	<u>Yea</u>
Jackie Bob Martin	<u>Yea</u>	Cara Cowan	<u>Yea</u>
Phyllis Yargee	<u>Yea</u>	Buel Anglen	<u>Yea</u>
David W. Thornton, Sr.	<u>Absent</u>	William G. Johnson	<u>Yea</u>
Don Garvin	<u>Yea</u>	Charles "Chuck" Hoskin	<u>Yea</u>
Ada Hughes-O'Leary	<u>Yea</u>		

**Administrative Clearance**

Program/Project Manager

Signature/Initial

Date

Department Director:

*12-8-03*  
*[Signature]*

Signature/Initial

Date

Executive Director:

Signature/Initial

Date

Controller: (If Needed)

Signature/Initial

Date

Government Resources Dept:

*12-08-03*  
*[Signature]*

Signature/Initial

Date

Administration Approval:

*12-08-03*  
*[Signature]*

Signature/Initial

Date

**Legislative Clearance**

Legislative Aide:

*12-9-03 5:20pm*  
*[Signature]*

Signature/Initial

Date

Standing Committee:

Next Meeting Date

Chairperson:

Signature/Initial

Date

Returned to Presenter:

Date

**Cherokee Nation  
Act /Resolution Proposal Form**

Act



Resolution

TITLE: Cherokee Nation Limited Liability Company ActDEPARTMENT CONTACT: John E. Parris

RESOLUTION PRESENTER: \_\_\_\_\_

SPONSOR: \_\_\_\_\_

**NARRATIVE:***(See Attached Outline for Information Needed)*

Limited Liability Companies are a relatively new form of company but since 1977 have gained wide acceptance. The main advantage is that it combines the tax advantages of partnerships while retaining the liability limits of a corporation. The main tax advantage is that tax liability passes through the company to the owners. This eliminates the double taxation problem of standard corporations. Also, when the Cherokee Nation is the owner, the company is not taxed.

The language in this act is based on the Uniform Limited Liability Company Act (1996), with substitutions and additions from the Oklahoma and Delaware acts. This act will allow private parties and Tribal entities such as Cherokee Nation Enterprises, Inc. to form independent companies and subsidiaries that will benefit from the special structure of the Limited Liability Company.

**RECEIVED**

DEC 08 2003

GOVERNMENT RESOURCES