TITLE 18

CORPORATIONS

Chapter

CHAPTER 1

CHEROKEE NATION GENERAL CORPORATION ACT

Article

ARTICLE 1

GENERAL PROVISIONS

Section

§ 1. Short title

Sections 1 through 146 of this Title shall be known and may be cited as the "Cherokee Nation General Corporation Act". Section captions are part of the Cherokee Nation General Corporation Act.

LA 16-96, eff. July 15, 1996.

§ 2. Scope of act

A. The provisions of the Cherokee Nation General Corporation Act shall be applicable to every for-profit corporation, whether stock or nonstock, existing as of the effective date of this act or thereafter formed or qualified to transact business in Cherokee Nation, and to all securities thereof, except to the extent that:

1. any such corporation is expressly excluded from the operation of the Cherokee Nation General Corporation Act or portions thereof; or

2. special provisions concerning any such corporation conflict with the provisions of the Cherokee Nation General Corporation Act, in which case such special provisions shall govern.

B. Any conflicts with the provisions of the Cherokee Nation General Corporation Act and any tax or unclaimed property laws of 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 General Corporation Act concerning qualifications of foreign corporations and providing requirements and duties relating to such corporations 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 General Corporation Act concerning qualifications of foreign corporations and providing requirements and duties relating to such corporations shall apply to foreign transportation companies until such time as a Corporation Commission or similar agency to govern transportation is formed.

LA 16-96, eff. July 15, 1996.

§ 3. 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 General Corporation 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 General Corporation Act, shall not be impaired, diminished or affected.

LA 16-96, eff. July 15, 1996.

§ 4. Reserved power of Cherokee Nation to amend or repeal—Cherokee Nation General Corporation Act part of corporation's charter or certificate of incorporation

The Cherokee Nation General Corporation Act may be amended or repealed at the pleasure of the Council of Cherokee Nation, but any amendment or repeal shall not take away or impair any remedy available pursuant to the provisions of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

LA 16-96, eff. July 15, 1996.

ARTICLE 2

FORMATION

Section

14. Emergency bylaws and other powers in emergency

§ 5. Incorporators—How corporation formed—Purposes

A. Any tribal citizen of Cherokee Nation pursuant to Article III, Section 1 [now Article IV, § 1] of the Cherokee Nation Constitution, Cherokee Nation, any partnership, association or corporation in which the majority of the shares are owned by Cherokee Nation or one or more tribal citizens may, singly or jointly with any person, partnership, association or corporation, and without regard to his or their residence, domicile or place of incorporation, incorporate or organize a corporation pursuant to the provisions of the Cherokee Nation General Corporation Act by filing with the Office of the Principal Chief or his authorized representative a certificate of incorporation which shall be executed, acknowledged and filed in accordance with the provisions of 18 CNCA § 7.

B. A corporation may be incorporated or organized pursuant to the provisions of the Cherokee Nation General Corporation Act to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of Cherokee Nation.

C. A corporation incorporated under the Cherokee Nation General Corporation Act must maintain its principal office in Indian Country, as defined by 18 U.S.C. § 1151 within Cherokee Nation boundaries.

LA 16-96, eff. July 15, 1996.

§ 6. Certificate of incorporation—Contents

A. The certificate of incorporation shall set forth:

1. The name of the corporation which shall contain one of the words "association", "company", "corporation", "club", "foundation", "fund", "incorporated", "institute", "society", "union", "syndicate", or "limited" or one of the abbreviations "co.", "corp.", "inc.", "ltd.", or words or abbreviations of like import in other languages provided that such abbreviations are written in Roman characters or letters, and which shall be such as to distinguish it upon the records in the Office of the Principal Chief or his authorized representative from:

a. names of other corporations organized under the laws of Cherokee Nation then existing or which existed at any time during the preceding three (3) years; or

b. names of foreign corporations registered in accordance with the laws of Cherokee Nation then existing or which existed at any time during the preceding three (3) years; or

c. names of then existing limited partnerships whether organized pursuant to the laws of Cherokee Nation or licensed or registered as foreign limited partnerships in Cherokee Nation; or

d. trade names or fictitious names filed with the Office of the Principal Chief or his authorized representative; or

e. corporate or limited partnership names reserved with the Office of the Principal Chief or his authorized representative.

2. The address, including the street, number, city and county, of the corporation's registered office in Cherokee Nation, and the name of the corporation's registered agent at such address;

3. The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the general corporation law of Cherokee Nation, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

4. If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class, and shall specify each class the shares of which are to be without par value and each class the shares of which are to have par value and the par value of the shares of each such class. The provisions of this paragraph shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the certificate of incorporation. The conditions of membership of such corporations shall likewise be stated in the certificate of incorporation or the certificate may provide that the conditions of membership shall be stated in the bylaws;

5. The name and mailing address of the incorporator or incorporators;

6. If the powers of the incorporator or incorporators are to terminate upon the filing of the certificate of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and

B. In addition to the matters required to be set forth in the certificate of incorporation pursuant to the provisions of subsection (A) of this section, the certificate of incorporation may also contain any or all of the following matters:

1. Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, or the members of a nonstock corporation, if such provisions are not contrary to the laws of Cherokee Nation. Any provision which is required or permitted by any provision of the Cherokee Nation General Corporation Act to be stated in the bylaws may instead be stated in the certificate of incorporation;

2. The following provisions, in substantially the following form: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its shareholders or any

class of them, the District Court of Cherokee Nation, on the application in a summary way of this corporation or of any creditor or shareholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of 18 CNCA § 106 or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of 18 CNCA § 100, may order a meeting of the creditors or class of creditors, and/or of the shareholders or class of shareholders of this corporation, as the case may be, to be summoned in such manner as the Court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the shareholders or class of shareholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of such compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the Court to which the application has been made, shall be binding on all the creditors or class of creditors, and/or on all the shareholders or class of shareholders, of this corporation, as the case may be, and also on this corporation.";

3. Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No shareholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to him in the certificate of incorporation. Preemptive rights, if granted, shall not extend to fractional shares;

4. Provisions requiring, for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by the provisions of the Cherokee Nation General Corporation Act;

5. A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

6. A provision imposing personal liability for the debts of the corporation on its shareholders or members to a specified extent and upon specified conditions; otherwise, the shareholders or members of a corporation shall not be personally liable for the payment of the corporation's debts, except as they may be liable by reason of their own conduct or acts;

7. A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director:

a. for any breach of the director's duty of loyalty to the corporation or its shareholders; or

b. for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

c. under 18 CNCA § 53; or

d. for any transaction from which the director derived an improper personal benefit.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective.

C. It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by the provisions of the Cherokee Nation General Corporation Act.

LA 16-96, eff. July 15, 1996.

§ 7. Execution, acknowledgment, filing and effective date of original certificate of incorporation and other instruments—Exceptions

A. Whenever any provision of the Cherokee Nation General Corporation Act requires any instrument to be filed in accordance with the provisions of this section or with the provisions of the Cherokee Nation General Corporation Act, such instrument shall be executed as follows:

1. The certificate of incorporation and any other instrument to be filed before the election of the initial board of directors, if the initial directors were not named in the certificate of incorporation, shall be signed by the incorporator or incorporators;

2. All other instruments shall be signed:

a. by the chairman or vice-chairman of the board of directors, or by the president, or by a vice-president, and attested by the secretary or an assistant secretary; or by such officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice-president and by the secretary or assistant secretary of a corporation;

b. if it appears from the instrument that there are no such officers, then by a majority of the directors or by such directors as may be designated by the board;

c. if it appears from the instrument that there are no such officers or directors, then by the holders of record, or such of them as may be designated by the holders of record, of a majority of all outstanding shares of stock; or

d. by the holders of record of all outstanding shares of stock.

B. Whenever any provision of the Cherokee Nation General Corporation Act requires any instrument to be acknowledged, such requirement is satisfied by either:

1. The formal acknowledgment by the person or one of the persons signing the instrument that it is his act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. Such acknowledgment shall be made before a person who is authorized by the law of the place of execution to take acknowledgments of deeds and who, if he has a seal of office, shall affix it to the instrument; or

2. The signature, without more, of the person or persons signing the instrument,

in which case such signature or signatures shall constitute the affirmation or acknowledgment of the signatory, under penalties of perjury, that the instrument is his act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true.

C. Whenever any provision of the Cherokee Nation General Corporation Act requires any instrument to be filed in accordance with the provisions of this section or with the provisions of the Cherokee Nation General Corporation Act, such requirement means that:

1. Two signed instruments, one of which may be a conformed copy, shall be delivered to the Office of the Principal Chief or his authorized representative;

2. All corporate franchise taxes authorized by law to be collected by the Cherokee Nation Tax Commission shall be tendered to the Cherokee Nation Tax Commission as prescribed by 68 CNCA § 1201 et seq.;

3. All fees authorized by law to be collected by the Office of the Principal Chief or his authorized representative in connection with the filing of the instrument shall be tendered to the Office of the Principal Chief or his authorized representative; and

4. Upon delivery of the instrument, and upon tender of the required taxes and fees, the Office of the Principal Chief or his authorized representative shall certify that the instrument has been filed in his office by endorsing upon the signed instrument the word "Filed", and the date of its filing. This endorsement is the "filing date" of the instrument, and is conclusive of the date of its filing in the absence of actual fraud. Upon request, the Office of the Principal Chief or his authorized representative shall also endorse the hour that the instrument was filed, which endorsement shall be conclusive of the hour of its filing in the absence of actual fraud. The Office of the Principal Chief or his authorized representative shall thereupon file and index the endorsed instrument.

D. Any instrument filed in accordance with the provisions of subsection (C) of this section shall be effective upon its filing date. Any instrument may provide that it is not to become effective until a specified date subsequent to the time it is filed, but such date shall not be later than a time on the ninetieth (90th) day after the date of its filing.

E. If another section of the Cherokee Nation General Corporation Act specifically prescribes a manner of executing, acknowledging or filing a specified instrument or a time when such instrument shall become effective which differs from the corresponding provisions of this section, then the provisions of such other section shall govern.

F. Whenever any instrument authorized to be filed with the Office of the Principal Chief or his authorized representative under any provision of this title has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, sealed or acknowledged, such instrument may be corrected by filing with the Office of the Principal Chief or his authorized representative a certificate of correction of such instrument which shall be executed, acknowledged and filed in accordance with the provisions of this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in

corrected form. The corrected instrument shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the corrected instrument shall be effective from the filing date of the corrected instrument.

G. If any instrument authorized to be filed with the Office of the Principal Chief or his authorized representative pursuant to any provision of this title is filed inaccurately, defectively or erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the Office of the Principal Chief or his authorized representative shall have no liability to any person for the preclearance for filing, the acceptance for filing, or the filing and indexing of such instrument by the filing and indexing of such instrument by the Office of the Principal Chief or his authorized representative.

H. Any signature on any instrument authorized to be filed with the Office of the Principal Chief or his authorized representative under any provisions of this Title may be a facsimile.

LA 16-96, eff. July 15, 1996.

§ 8. Certificate of incorporation—Definition

The term **"certificate of incorporation"**, as used in the Cherokee Nation General Corporation Act, unless the context requires otherwise, includes not only the original certificate of incorporation filed to create a corporation but also all other certificates, agreements of merger or consolidation, plans of reorganization, or other instruments, howsoever designated, which are filed pursuant to the provisions of 18 CNCA §§ 6, 23 through 26, 32, 76 through 87, or 118, or any other section of this Title, and which have the effect of amending or supplementing in some respect a corporation's original certificate of incorporation.

LA 16-96, eff. July 15, 1996.

§ 9. Certificate of incorporation and other certificates—Evidence

A copy of a certificate of incorporation, or of a restated certificate of incorporation, or of any other certificate which has been filed in the Office of the Principal Chief or his authorized representative as required by any provision of this title, when duly certified by the Office of the Principal Chief or his authorized representative, shall be received in all courts, public offices, and official bodies as prima facie evidence of:

1. Due execution, acknowledgment and filing of the instrument;

2. Observance and performance of all acts and conditions necessary to have been observed and performed precedent to the instrument becoming effective; and

3. Of any other facts required or permitted by law to be stated in the instrument.

LA 16-96, eff. July 15, 1996.

§ 10. Commencement of corporate existence

Upon the filing with the Office of the Principal Chief or his authorized representative of the certificate of incorporation, executed and acknowledged in accordance with the provisions of 18 CNCA § 7, the incorporator or incorporators who signed the certificate, and his or their successors and assigns, from the date of such filing, shall be and constitute a body corporate by the name set forth in the certificate, subject to the provisions of 18 CNCA § 7(D) and subject to dissolution or other termination of its existence as provided for in the Cherokee Nation General Corporation Act.

LA 16-96, eff. July 15, 1996.

§ 11. Powers of incorporators

If the persons who are to serve as directors until the first annual meeting of shareholders have not been named in the certificate of incorporation, the incorporator or incorporators, until the directors are elected, shall manage the affairs of the corporation and may do whatever is necessary and proper to perfect the organization of the corporation, including the adoption of the original bylaws of the corporation and the election of directors.

LA 16-96, eff. July 15, 1996.

§ 12. Organization meeting of incorporators or directors named in certificate of incorporation

A. After the filing of the certificate of incorporation, an organization meeting of the incorporator or incorporators, or of the board of directors if the initial directors were named in the certificate of incorporation, shall be held either within or without Cherokee Nation at the call of a majority of the incorporators or directors, as the case may be, for the purposes of adopting bylaws, electing directors if the meeting is of the incorporators, to serve or hold office until the first annual meeting of shareholders or until their successors are elected and qualify, electing officers if the meeting is of the directors, doing any other or further acts to perfect the organization of the corporation, and transacting such other business as may come before the meeting.

B. The persons calling the meeting shall give to each other incorporator or director, as the case may be, at least two (2) days' written notice thereof by any usual means of communication, which notice shall state the time, place and purposes of the meeting as fixed by the persons calling it. Notice of the meeting need not be given to anyone who attends the meeting or who signs a waiver of notice either before or after the meeting.

C. Any action permitted to be taken at the organization meeting of the incorporators or directors, as the case may be, may be taken without a meeting if each incorporator or director, where there is more than one, or the sole incorporator or director where there is only one, signs an instrument which states the action so taken.

LA 16-96, eff. July 15, 1996.

§ 13. Bylaws

A. The original or other bylaws of a corporation may be adopted, amended or

repealed by the incorporators, by the initial directors if they were named in the certificate of incorporation, or, before a corporation has received any payment for any of its stock, by its board of directors. After a corporation has received any payment for any of its stock, the power to adopt, amend or repeal bylaws shall be in the shareholders entitled to vote, or, in the case of a nonstock corporation, in its members entitled to vote; provided, however, any corporation, in its certificate of incorporation, may confer the power to adopt, amend or repeal bylaws upon the directors or, in the case of a nonstock corporation, upon its governing body by whatever name designated. The fact that such power has been so conferred upon the directors or governing body, as the case may be, shall not divest the shareholders or members of the power, nor limit their power to adopt, amend or repeal bylaws.

B. The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its shareholders, directors, officers or employees.

LA 16-96, eff. July 15, 1996.

§ 14. Emergency bylaws and other powers in emergency

A. The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the shareholders, which, notwithstanding any different provision in the Cherokee Nation General Corporation Act, in the certificate of incorporation, or bylaws, shall be operative during any emergency resulting from an attack on the United States or on a locality in which the corporation conducts its business or customarily holds meetings of its board of directors or its shareholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the board of directors or a standing committee thereof cannot readily be convened for action. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

1. A meeting of the board of directors or a committee thereof may be called by an officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

2. The director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

3. The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time, not longer than reasonably necessary after the termination of the emergency, as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

B. The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

C. The board of directors, either before or during any such emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers to do so.

D. No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct.

E. To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency and upon its termination the emergency bylaws shall cease to be operative.

F. Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during such an emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

G. To the extent required to constitute a quorum at any meeting of the board of directors during such an emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

H. Nothing contained in this section shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of the Cherokee Nation General Corporation Act which have been or may be adopted by corporations created pursuant to the provisions of the Cherokee Nation General Corporation Act.

LA 16-96, eff. July 15, 1996.

ARTICLE 3

POWERS

Section

§ 15. General powers

In addition to the powers enumerated in 18 CNCA § 16, every corporation, its officers, directors and shareholders shall possess and may exercise all the powers and privileges granted by the provisions of the Cherokee Nation General Corporation Act or by any other law or by its certificate of incorporation,

together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation.

LA 16-96, eff. July 15, 1996.

§ 16. Specific powers

Every corporation created pursuant to the provisions of the Cherokee Nation General Corporation Act shall have power to:

1. Have perpetual succession by its corporate name, unless a limited period of duration is stated in its certificate of incorporation;

2. Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitrative or other proceeding, in its corporate name;

3. Have a corporate seal, which may be altered at pleasure, and use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

4. Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated, subject to the limitations prescribed by 18 CNCA § 20;

5. Appoint or elect such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation;

6. Adopt, amend and repeal bylaws;

7. Wind up and dissolve itself in the manner provided for in the Cherokee Nation General Corporation Act;

8. Conduct its business, carry on its operations, and have offices and exercise its powers within or without Cherokee Nation;

9. Make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war or other national emergency in aid thereof;

10. Be an incorporator, promoter or manager of other corporations of any type or kind;

11. Participate with others in any corporation, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;

12. Transact any lawful business which the corporation's board of directors shall

find to be in aid of governmental authority;

13. Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income, and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of:

a. a corporation, all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation;

b. a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation; or

c. a corporation, all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation, and to make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation;

14. Lend money for its corporate purposes, invest and reinvest its funds, and take, hold and deal with real and personal property as security for the payment of funds so loaned or invested;

15. Pay pensions and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers, and employees, and for any or all of the directors, officers, and employees of its subsidiaries;

16. Provide insurance for its benefit on the life of any of its directors, officers, or employees, or on the life of any shareholder for the purpose of acquiring at his death shares of its stock owned by such shareholder;

17. Provided that corporations in which Cherokee Nation is the sole or majority shareholder cannot give, pledge or loan its credit to any individual, firm, company, corporation or association without prior approval of the Cherokee Nation Tribal Council. The Tribal Council shall develop procedures to facilitate this act without interfering with the daily operations of tribally-owned corporations or businesses. The Tribal Council hereby pre-approves a corporation in which Cherokee Nation is majority shareholder to make purchases of real property in an amount not to exceed Six Million Dollars ($6,000,000.00) in the aggregate during a fiscal year. Said corporation shall acquire Tribal Council approval to make additional purchases of real property in excess of the six million dollar fiscal year limit. Said tribal corporation through its officers shall report to the Executive and Finance Committee of Cherokee Nation Tribal Council on the status of real property acquisitions.

Sunset Provision

The amendment by LA 53-12, increasing the limit on real property purchases from Six Million Dollars to Fifteen Million Dollars, was in effect for only nine months and reverted back on October 1, 2013.

LA 16-96, eff. July 15, 1996. Amended LA 2-03, eff. January 20, 2003; LA 4-04, eff. February 23, 2004; LA 53-12, eff. December 27, 2012.

§ 17. Powers respecting securities of other corporations or entities

A. Any corporation organized under the laws of Cherokee Nation may guarantee, purchase, take, receive, subscribe for or otherwise acquire; own, hold, use or otherwise employ; sell, lease, exchange, transfer, or otherwise dispose of; mortgage, lend, pledge or otherwise deal in and with, bonds and other obligations of, or shares or other securities or interests in, or issued by, any other domestic or foreign corporation, partnership, association, or individual, or by any government or agency or instrumentality thereof, subject to the limitation prescribed in subsection (B) of this section. A corporation while the owner of any such securities may exercise all the rights, powers and privileges of ownership, including the right to vote.

B. No trust company, or bank or banking company shall own, hold, or control, in any manner whatever, the stock of any other trust company or bank or banking company, except such stock as may be pledged in good faith to secure bona fide indebtedness, acquired upon foreclosure, execution sale, or otherwise for the satisfaction of debt; and such stock shall be disposed of in the time and manner hereinbefore provided.

LA 16-96, eff. July 15, 1996.

§ 18. Monthly cash dividend

A. Those for-profit corporations in which Cherokee Nation is the sole or majority shareholder, and that are incorporated under Cherokee Nation law, shall issue a monthly cash dividend in the amount of thirty (30%) of net income. Any dividend payment required by this section shall be conditioned upon such corporation remaining in compliance with any financial covenant or guaranty and not otherwise in default of any credit agreement. In addition, the Board of Directors of such Corporations will have the discretion to declare any special quarterly dividend that they deem appropriate.

B. Those for-profit corporations in which Cherokee Nation is the sole or majority shareholder, and that are incorporated under Cherokee Nation law, shall issue a monthly cash dividend in the amount of five percent (5%) of net income which will be set aside exclusively for contract health services for Cherokee Nation citizens, including, but not limited to, eyeglasses, dentures, prostheses, cancer treatments and hearing aids. Funds expended under this Section shall be expended to Cherokee Nation citizens who reside anywhere within the fourteen county jurisdictional area.

C. Those for-profit corporations in which Cherokee Nation is the sole or majority shareholder, and that are incorporated under Cherokee Nation law, shall issue a monthly cash dividend in the amount of two percent (2%) of net income which will be set aside exclusively for an unanticipated and extraordinary financial

emergency as provided for in LA-35-17 ("Cherokee Nation Sovereign Wealth Fund") and codified under Title 62, Public Finance, Chapter 13, Section 5 (A)(1).

LA 2-03, eff. January 20, 2003. Amended LA 4-04, eff. February 23, 2004; LA 36-05, eff. January 1, 2006; LA 25-11, eff. November 17, 2011; LA 34-17, eff. December 14, 2017.

Historical and Statutory Notes

2017 Legislation

LA 34-17, Section 2, provides:

"Section 2. Purpose. The purpose of this Act is to increase the monthly dividend of corporation in which the Cherokee Nation is the sole or majority shareholder by Two Percent (2%) with said percentage being set aside exclusively for an unexpected and extraordinary financial emergency."

§§ 19, 20. Reserved

ARTICLE 4

REGISTERED OFFICE AND REGISTERED AGENT

Section

§ 21. Registered office in Cherokee Nation—Principal office or place of business in Cherokee Nation

A. Every corporation shall have and maintain in Cherokee Nation a registered office which may, but need not be, the same as its place of business.

B. Whenever the term **"corporation's principal office or place of business in Cherokee Nation"** or **"principal office or place of business of the corporation in Cherokee Nation"**, or other term of like import, is or has been used in a corporation's certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation's registered office required by this section. It shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with the provisions of this section.

LA 16-96, eff. July 15, 1996.

§ 22. Registered agent in Cherokee Nation—Resident agent

A. Every domestic corporation shall have and maintain in Cherokee Nation a registered agent, which agent may be either an individual resident in the state whose business office is identical with the corporation's registered office, or a domestic corporation, which may be itself, or a foreign corporation authorized to transact business in Cherokee Nation, having a business office identical with such registered office.

B. Every foreign corporation qualified to transact business in Cherokee Nation shall have and maintain the Office of the Principal Chief or his authorized representative as its registered agent in Cherokee Nation. In addition, such foreign corporation may have and maintain in Cherokee Nation a registered agent, which agent may be either an individual resident of Cherokee Nation whose business office is identical with the corporation's registered office, or a domestic corporation, or a foreign corporation authorized to transact business in Cherokee Nation, having a business office identical with such registered office; provided that if such additional registered agent is designated, service of process shall be on such agent and not on the Office of the Principal Chief or his authorized representative.

C. Whenever the term **"resident agent"** or **"resident agent in charge of a corporation's principal office or place of business in Cherokee Nation"**, or other term of like import which refers to a corporation's agent required by statute to be located in Cherokee Nation, is or has been used in a corporation's certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation's registered agent required by this section. It shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with the provisions of this section.

LA 16-96, eff. July 15, 1996.

§ 23. Change of location of registered office—Change of registered agent

Any corporation, by resolution of its board of directors, may change the location of its registered office in Cherokee Nation to any other place in Cherokee Nation. By like resolution, the registered agent of a corporation may be changed to any other person or corporation, including itself. In either such case, the resolution shall be as detailed in its statement as is required by the provisions of 18 CNCA § 6(A)(2). Upon the adoption of such a resolution, a certificate certifying the change shall be executed, acknowledged and filed in accordance with the provisions of 18 CNCA § 7.

LA 16-96, eff. July 15, 1996.

§ 24. Change of address or name of registered agent

A. A registered agent may change the address of the registered office of the corporation or corporations for which he is the registered agent to another address in Cherokee Nation by filing with the Office of the Principal Chief or

his authorized representative a certificate in the name of each affected corporation, executed and acknowledged by such registered agent, setting forth the name of the corporation represented by such registered agent, the address at which the registered office for the corporation has been maintained, the new address to which the registered office will be changed as of a given date and at which new address such registered agent will thereafter maintain the registered office for the corporation recited in the certificate.

B. In the event of a change of name of any person or corporation acting as registered agent in Cherokee Nation, such registered agent shall file with the Office of the Principal Chief or his authorized representative a certificate in the name of each affected corporation, executed and acknowledged by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the name of the corporation represented by such registered agent, and the address at which such registered agent has maintained the registered office for the corporation.

LA 16-96, eff. July 15, 1996.

§ 25. Resignation of registered agent coupled with appointment of successor

The registered agent of one or more corporations may resign and appoint a successor registered agent by filing in the name of each affected corporation a certificate with the Office of the Principal Chief or his authorized representative, stating the name and address of the successor agent, in accordance with the provisions of 18 CNCA § 6(A)(2). There shall be attached to each such certificate a statement of the affected corporation ratifying and approving such change of registered agent. Each such statement shall be executed and acknowledged in accordance with the provisions of 18 CNCA § 7. Upon such filing, the successor registered agent shall become the registered agent of each corporation which has ratified and approved each substitution and the successor registered agent's address, as stated in each certificate, shall become the address of each such corporation's registered office in Cherokee Nation. The Office of the Principal Chief or his authorized representative shall then issue his certificate that the successor registered agent has become the registered agent of the corporation so ratifying and approving such change, and setting out the names of such corporation.

LA 16-96, eff. July 15, 1996.

§ 26. Resignation of registered agent not coupled with appointment of successor—Absence of registered agent

A. The registered agent of one or more corporations may resign without appointing a successor by filing in the name of each affected corporation a certificate with the Office of the Principal Chief or his authorized representative; but such resignation shall not become effective until sixty (60) days after each certificate is filed. There shall be included in the certificate a statement of such registered agent, if an individual, or of the president, a vice-president, or the secretary thereof, if a corporation, that at least thirty (30) days prior to the date of the filing of the certificate, due notice of the resignation of the registered agent was sent by certified or registered mail to the corporation for which such registered agent was acting, at the principal office thereof, if known to the registered agent or, if not, to the last-known address of the

attorney or other individual at whose request the registered agent was appointed for such corporation and such address shall be specified therein.

B. After receipt of the notice of the resignation of its registered agent provided for in subsection (A) of this section, the corporation for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning in the same manner as provided for in 18 CNCA § 23 for change of registered agent. If such corporation, being a corporation of Cherokee Nation, fails to obtain and designate a new registered agent prior to the expiration of the period of sixty (60) days after the filing by the registered agent of the certificate of resignation, the Office of the Principal Chief or his authorized representative shall be deemed to be the registered agent of such corporation until a new registered agent is designated. The Office of the Principal Chief or his authorized representative shall charge the fee prescribed by 18 CNCA § 23 for acting as registered agent.

C. If a corporation has no registered agent or the registered agent cannot be found, then service on the corporation may be made by serving the Office of the Principal Chief or his authorized representative as its agent as provided in 12 CNCA and in Rule 4 of the Federal Rules of Civil Procedure.

LA 16-96, eff. July 15, 1996.

ARTICLE 5

DIRECTORS AND OFFICERS

Section

§ 27. Board of directors—Powers—Number—Qualifications—Terms and quorum—committees—Classes of directors—Reliance upon books—Action without meeting, etc.

A. The business and affairs of every corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act shall be managed by or under the direction of a board of directors, except as may be otherwise provided for in the Cherokee Nation General Corporation Act or in its certificate of incorporation. If any such provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by the provisions of the Cherokee Nation General Corporation Act shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

B. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by or in the manner provided for in the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be shareholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until his successor is elected and qualified or until his earlier resignation or removal. Provided, that a director shall not serve more than four (4) consecutive years without confirmation by the Tribal Council to a corporation whose majority shareholder is Cherokee Nation. Any director may resign at any time upon written notice to the corporation. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. Unless the certificate of incorporation provides otherwise, the bylaws may provide that a number less than a majority shall constitute a quorum which in no case shall be less than one-third (1/3) of the total number of directors except that when a board of one director is authorized under the provisions of this section, then one director shall constitute a quorum. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

C. The board of directors, by resolution passed by a majority of the whole board, may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation (except that a committee, to the extent authorized in the resolution or resolution providing for the issuance of shares of stock adopted by the board of directors as provided for in 18 CNCA § 32(A), may fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation in accordance with the provisions of 18 CNCA § 81 or 82, recommending to the shareholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the shareholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution, bylaws or certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, authorize the

issuance of stock, or to adopt a certificate of ownership and merger pursuant to the provisions of 18 CNCA § 83.

D. The directors of any corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the shareholders, may be divided into one, two or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one (1) year thereafter; of the third class two (2) years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for such term, and have such voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the certificate of incorporation may be greater than or less than those of any other director or class of directors. If the certificate of incorporation provides that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in the Cherokee Nation General Corporation Act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors.

E. A member of the board of directors, or a member of any committee designated by the board of directors, in the performance of his duties, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation.

F. Unless otherwise restricted by the certificate of incorporation or bylaws:

1. Any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee;

2. The board of directors of any corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act may hold its meetings, and have an office or offices, outside of Cherokee Nation;

3. The board of directors shall have the authority to fix the compensation of directors; and

4. Members of the board of directors of any corporation, or any committee designated by such board, may participate in a meeting of such board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to the provisions of this subsection shall constitute presence in person at such meeting.

G. 1. The certificate of incorporation of any corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act which is not authorized to issue capital stock may provide that less than one-third (1/3) of the members of the governing body may constitute a quorum thereof and may otherwise provided that the business and affairs of the corporation shall be managed in a manner different from that provided for in this section.

2. Except as may be otherwise provided by the certificate of incorporation, the provisions of this section shall apply to such a corporation, and when so applied, all references to the board of directors, to members thereof, and to shareholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively.

H. 1. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

a. Unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided for in subsection (D) of this section, shareholders may effect such removal only for cause; or

b. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes case against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he is a part.

2. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the certificate of incorporation, the provisions of this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

I. There shall be an advisory board of directors to all corporations in which Cherokee Nation is a majority shareholder. This advisory board shall consist of eight (8) Members of the Cherokee Nation Tribal Council. The Tribal Council shall appoint these Members in accordance with their rules and procedures. The advisory board shall have full access to all information and meetings of the board of directors and have all privileges of the board of directors except exercise of voting privileges or otherwise acting upon a matter. The attendance of a board of directors meeting by Tribal Council Members who do not serve on the advisory board, for the purpose of observing such meetings rather than for the purpose of discussing or acting upon a matter, shall not be construed as a "meeting" of the Tribal Council under the Freedom of Information and Privacy Rights Act of 2001 (67 CNCA § 101 et seq.), regardless of the number of Tribal Council Members present at such meeting.

LA 16-96, eff. July 15, 1996. Amended LA 35-02, eff. November 18, 2002; LA 15-10, eff. May 10, 2010; LA 17-10, eff. June 21, 2010; LA 15-12, eff. April 18, 2012.

§ 28. Officers; titles, duties, selection, term; failure to elect; vacancies

A. Every corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws and as may be necessary to enable it to sign instruments and stock certificates which comply with the provisions of 18 CNCA §§ 7(A)(2) and 39. One of the officers shall have the duty to record the proceedings of the meetings of the shareholders and directors in a book to be kept for that purpose. Any number of offices may be held by the same person unless the certificate of incorporation or bylaws provide otherwise.

B. Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors or other governing body. Each officer shall hold his office until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation.

C. The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

D. A failure to elect officers shall not dissolve or otherwise affect the corporation.

E. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise, shall be field as the bylaws provide. In the absence of such provision, the vacancy shall be filled by the board of directors or other governing body.

LA 16-96, eff. July 15, 1996.

§ 29. Loans to employees and officers; guaranty of obligations of employees and officers

Any corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section shall be construed to deny, limit or restrict the powers of guaranty or warranty of any corporation at common law or under any statute.

LA 16-96, eff. July 15, 1996.

§ 30. Interested directors; quorum

A. No contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director

or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

1. The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

2. The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or

3. The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee thereof, or the shareholders.

B. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

LA 16-96, eff. July 15, 1996.

§ 31. Indemnification of officers, directors, employees and agents; insurance

A. A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if the acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which be reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

B. A corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys'

fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court shall deem proper.

C. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection (A) or (B) of this section, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith.

D. Any indemnification under the provisions of subsection (A) or (B) of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection (A) or (B) of this section. Such determination shall be made:

1. by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or

2. if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or

3. by the shareholders.

E. Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized by the provisions of this section. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

F. The indemnification and advancement of expenses provided by or granted pursuant to the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

G. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture,

trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

H. For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation, including any constituent of a constituent, absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

I. For purposes of this section, references to "**other enterprises**" shall include employee benefit plans; references to "**fines**" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "**serving at the request of the corporation**" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services, by such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "**not opposed to the best interests of the corporation**" as referred to in this section.

J. The indemnification and advancement of expenses provided by or granted pursuant to this section, unless otherwise provided when authorized or ratified, shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

LA 16-96, eff. July 15, 1996.

ARTICLE 6

STOCK AND DIVIDENDS

Section

37. Partly paid shares

38. Rights and options respecting stock

39. Stock certificates, uncertificated shares

40. Shares of stock—Personal property, transfer and taxation

41. Corporation's powers respecting ownership, voting, etc., of its own stock—Rights of stock called for redemption

42. Issuance of additional stock—When and by whom

43. Liability of shareholder or subscriber for stock not paid in full

44. Payment for stock not paid in full

45. Failure to pay for stock—Remedies

46. Revocability of pre-incorporation subscriptions

47. Formalities required of stock subscriptions

48. Situs of ownership of stock

49. Dividends—Payment—Wasting asset corporations

50. Special purpose reserves

51. Liability of directors as to dividends or stock redemption

52. Declaration and payment of dividends

53. Liability of directors for unlawful payment of dividend or unlawful stock purchase or redemption—Exoneration from liability—Contribution among directors—Subrogation

§ 32. Classes and series of stock—Rights, etc.

A. Every corporation may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the certificate of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the certificate of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested

in it by the provisions of its certificate of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. The power to increase or decrease or otherwise adjust the capital stock as provided for in the Cherokee Nation General Corporation Act shall apply to all or any such classes of stock.

B. Any stock which is entitled upon any distribution of the corporation's assets, whether by dividend or by liquidation, to a preference over another class or series of stock may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event. Any stock of a regulated investment company registered under the Investment Company Act of 1940, as heretofore or hereafter amended [1], may be given the right to require the corporation to redeem or repurchase the stock at the option of the holder of the stock, provided such redemption or repurchase would not impair or cause a further impairment of the capital of the corporation. Any stock of a corporation which has a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it. Any stock which may be made redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection (A) of this section.

C. The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection (A) of this section, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as otherwise provided for in the Cherokee Nation General Corporation Act.

D. The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection (A) of this section.

E. Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or

upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as provided for in subsection (A) of this section.

F. If any corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided for in 18 CNCA § 55, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each shareholder who so requests the powers, resignations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or 18 CNCA § 37, 18 CNCA § 55(A) or 18 CNCA § 63(A), or with respect to this section a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holder of certificates representing stock of the same class and series shall be identical.

G. 1. When any corporation desires to issue any shares of stock of any class or of any series of any class of which the powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the certificate of incorporation or in any amendment thereto but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the certificate of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series as to which the resolution or resolutions apply shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of 18 CNCA § 7. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such series to which such resolution or resolutions apply may be increased, but not above the total number of authorized shares of the class, or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed, acknowledged and filed setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased, the number of shares so specified in the certificate shall resume the status

which they had prior to the adoption of the first resolution or resolutions. Unless otherwise provided in the certificate of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which states that no shares of the class or series have been issued, sets forth a copy of the resolution or resolutions, and, if the designation of the class or series is being changed, indicates the original designation and the new designation, shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of 18 CNCA § 7. When no shares of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to such class or series, may be executed, acknowledged and filed in accordance with the provisions of 18 CNCA § 7 and, when such certificate becomes effective, it shall have the effect of eliminating from the certificate of incorporation all matters set forth in the certificate of designations with respect to such class or series of stock.

2. When any certificate filed pursuant to the provisions of this subsection becomes effective, it shall have the effect of amending the certificate of incorporation; except that neither the filing of such certificate nor the filing of a restated certificate of incorporation pursuant to 18 CNCA § 80 shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

[1] 15 U.S.C. § 80a-1 et seq.

LA 16-96, eff. July 15, 1996.

§ 33. Issuance of stock, lawful consideration—Fully paid stock

A. The consideration, as determined pursuant to the provisions of 18 CNCA § 34(A) and (B), for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in such form and in such manner as the board of directors shall determine. In the absence of actual fraud in the transaction, the judgment of the directors as to the value of such consideration shall be conclusive. The capital stock so issued shall be deemed to be fully paid and nonassessable stock, if:

1. the entire amount of such consideration has been received by the corporation in the form of cash, services rendered, personal property, real property, leases of real property, or a combination thereof; or

2. not less than the amount of the consideration determined to be capital pursuant to the provisions of 18 CNCA § 35 has been received by the corporation in such form and the corporation has received a binding obligation of the subscriber or purchaser to pay the balance of the subscription or purchase price.

B. The provisions of subsection (A) of this section shall not be construed to

prevent the board of directors from issuing partly paid shares in accordance with the provisions of 18 CNCA § 37.

LA 16-96, eff. July 15, 1996.

§ 34. Consideration for stock

A. Shares of stock with par value may be issued for such consideration, having a value not less than the par value thereof, as is determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

B. Shares of stock without par value may be issued for such consideration as is determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

C. Treasury shares may be disposed of by the corporation for such consideration as may be determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

D. If the certificate of incorporation reserves to the shareholders the right to determine the consideration for the issue of any shares, the shareholders, unless the certificate requires a greater vote, shall do so by a vote of a majority of the outstanding stock entitled to vote thereon.

LA 16-96, eff. July 15, 1996.

§ 35. Determination of amount of capital—Capital, surplus and net assets defined

Any corporation, by resolution of its board of directors, may determine that only a part of the consideration which shall be received by the corporation for any of the shares of its capital stock which it shall issue from time to time shall be capital; but, in case any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares. In each such case the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined, at the time of issue of any shares of the capital stock of the corporation issued for cash or within sixty (60) days after the issue of any shares of the capital stock of the corporation issued for property other than cash, what part of the consideration for such shares shall be capital, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The amount of the consideration so determined to be capital in respect of any shares without par value shall be the stated capital of such shares. The capital of the corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital be transferred to the capital account. The board of directors may direct that the portion of such net assets so transferred shall be treated as capital in respect of any shares of the corporation of any

designated class or classes. The excess, if any, at any given time, of the net assets of the corporation over the amount so determined to be capital shall be surplus. "Net assets" means the amount by which total assets exceed total liabilities. Capital and surplus are not liabilities for this purpose.

LA 16-96, eff. July 15, 1996.

§ 36. Fractions of shares

A corporation may, but shall not be required to, issue fractions of a share. If it does not issue fractions of a share, it shall:

1. arrange for the disposition of fractional interests by those entitled thereto; or

2. pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

3. issue scrip or warrants in registered form (either represented by a certificate or be uncertificated) or in bearer form (represented by a certificate) which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or warrants aggregating a full share.

A certificate for a fractional share or an uncertificated fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip or warrants to be issued subject to the conditions that they shall become void if not exchanged for certificates representing the full shares or uncertificated full shares before a specified date, or subject to the conditions that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip or warrants, or subject to any other conditions which the board of directors may impose.

LA 16-96, eff. July 15, 1996.

§ 37. Partly paid shares

A. Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated and the corporation shall comply with applicable provisions of subsection (B) of this section. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

B. Rules for determining whether certain obligations and interests are securities or financial assets.

1. A share or similar equity interest issued by a corporation, business trust,

joint stock company, or similar entity is a security.

2. An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in an investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

3. An interest in a partnership or limited liability company is not a security unless it is dealt in traded on securities exchanges or in securities markets or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

4. An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

5. A commodity contract is not a security or a financial asset. A "commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that in each case, is:

a. traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities law; or

b. traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

LA 16-96, eff. July 15, 1996.

§ 38. Rights and options respecting stock

Subject to any provisions in the certificate of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as shall be approved by the board of directors. The terms upon which, including the time or times, which may be limited or unlimited in duration, at or within which, and the price or prices at which any such shares may be purchased from the corporation upon the exercise of any such right or option, shall be such as shall be stated in the certificate of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive. In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par

value, the consideration therefor shall be determined in the manner provided for in 18 CNCA § 34.

LA 16-96, eff. July 15, 1996.

§ 39. Stock certificates, uncertificated shares

The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Notwithstanding the adoption of any such resolution, shares represented by a certificate shall not become uncertificated shares until such certificate is surrendered to the corporation. Every holder of stock in a corporation shall be entitled to have a certificate signed by, or in the name of, the corporation by the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of such corporation certifying and representing the number of shares owned by him in such corporation. Subject to applicable provisions of the Uniform Commercial Code—Investment Securities, such entitlement shall apply equally to a holder of uncertificated shares, notwithstanding the adoption of a resolution by the board of directors providing for the issuance of uncertificated shares, who makes written request of the corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

LA 16-96, eff. July 15, 1996.

§ 40. Shares of stock—Personal property, transfer and taxation

The shares of stock in every corporation shall be deemed personal property and transferable as provided for in the Uniform Commercial Code—Investment Securities. No stock or bonds issued by any corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act shall be taxed by Cherokee Nation when the same shall be owned by nonresidents of Cherokee Nation or by foreign corporations.

LA 16-96, eff. July 15, 1996.

§ 41. Corporation's powers respecting ownership, voting, etc., of its own stock—Rights of stock called for redemption

A. Every corporation may purchase, redeem, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; provided, however, that no corporation shall:

1. purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of the corporation, except that a corporation may purchase or redeem out of capital any of its own shares

which are entitled upon any distribution of its assets, whether by dividend or in liquidation, to a preference over another class or series of its stock if such shares will be retired upon their acquisition and the capital of the corporation reduced in accordance with the provisions of 18 CNCA §§ 78 and 79. Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of a corporation given by it as consideration for its acquisition by purchase, redemption or exchange of its shares of stock if at the time such note, debenture or obligation was delivered by the corporation its capital was not then impaired or did not thereby become impaired; or

2. purchase, for more than the price at which they may then be redeemed, any of its shares which are redeemable at the option of the corporation; or

3. redeem any of its shares unless their redemption is authorized by 18 CNCA § 32(B) and then only in accordance with the provisions of such section and the certificate of incorporation.

B. Nothing in this section shall be construed to limit or affect a corporation's right to resell any of its shares theretofore purchased or redeemed out of surplus and which have not been retired, for such consideration as shall be fixed by the board of directors or by the shareholders if the certificate of incorporation so provides.

C. Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes. Nothing in this section shall be construed as limiting the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

D. Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem such shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

LA 16-96, eff. July 15, 1996.

§ 42. Issuance of additional stock—When and by whom

The directors, at any time and from time to time, if all of the shares of capital stock which the corporation is authorized by its certificate of incorporation to issue have not been issued, subscribed for, or otherwise committed to be issued, may issue or take subscriptions for additional shares of its capital stock up to the amount authorized in its certificate of incorporation.

LA 16-96, eff. July 15, 1996.

§ 43. Liability of shareholder or subscriber for stock not paid in full

A. When the whole of the consideration payable for shares of a corporation has

not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of or subscriber for such shares shall be bound to pay on each share held or subscribed for by him the sum necessary to complete the amount of the unpaid balance of the consideration for which such shares were issued or to be issued by the corporation.

B. The amounts which shall be payable as provided in subsection (A) of this section may be recovered as provided for in 18 CNCA § 124, after a writ of execution against the corporation has been returned unsatisfied as provided for in that section.

C. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable for any unpaid portion of such consideration, but the transferor shall remain liable therefor.

D. No person holding shares in any corporation as collateral security shall be personally liable as a shareholder but the person pledging such shares shall be considered the holder thereof and shall be so liable. No executor, administrator, guardian, trustee or other fiduciary shall be personally liable as a shareholder, but the estate or funds held by such executor, administrator, guardian, trustee or other fiduciary in such fiduciary capacity shall be liable.

E. No liability under the provisions of this section or under the provisions of 18 CNCA § 124 shall be asserted more than six (6) years after the issuance of the stock or the date of the subscription upon which the assessment is sought.

F. In any action by a receiver or trustee of an insolvent corporation or by a judgment creditor to obtain an assessment under the provisions of this section, any shareholder or subscriber for stock of the insolvent corporation may appear and contest the claim or claims of such receiver or trustee.

LA 16-96, eff. July 15, 1996.

§ 44. Payment for stock not paid in full

The capital stock of a corporation shall be paid for in such amounts and at such times as the directors may require. The directors, from time to time, may demand payment, in respect of each share of stock not fully paid, of such sum of money as the necessities of the business, in the judgment of the board of directors, may require, not exceeding in the whole the balance remaining unpaid on such stock, and such sum so demanded shall be paid to the corporation at such times and by such installments as the directors shall direct. The directors shall give written notice of the time and place of such payments, which notice shall be mailed at least thirty (30) days before the time for such payment, to each holder of or subscriber for stock which is not fully paid at his last-known post office address.

LA 16-96, eff. July 15, 1996.

§ 45. Failure to pay for stock—Remedies

When any shareholder fails to pay any installment or call upon his stock which

may have been properly demanded by the directors, at the time when such payment is due, the directors may collect the amount of any such installment or call or any balance thereof remaining unpaid, from the said shareholder by an action at law, or they shall sell at public sale such part of the shares of such delinquent shareholder as will pay all demands then due from him with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement at least one (1) week before the sale, in the newspaper *Cherokee Phoenix*, and such notice shall be mailed by the corporation to such delinquent shareholder at his last-known post office address, at least twenty (20) days before such sale. If no bidder can be had to pay the amount due on the stock, and if the amount is not collected by an action at law, which may be brought within the county where the corporation has its registered office, within one (1) year from the date of the bringing of such action at law, said stock and the amount previously paid in by the delinquent shareholder on the stock shall be forfeited to the corporation.

LA 16-96, eff. July 15, 1996.

§ 46. Revocability of pre-incorporation subscriptions

Unless otherwise provided for by the terms of the subscription, a subscription for stock of a corporation to be formed shall be irrevocable, except with the consent of all other subscribers or the corporation, for a period of six (6) months from its date.

LA 16-96, eff. July 15, 1996.

§ 47. Formalities required of stock subscriptions

A subscription for stock of a corporation, whether made before or after the formation of a corporation, shall not be enforceable against a subscriber, unless in writing and signed by the subscriber or by his agent.

LA 16-96, eff. July 15, 1996.

§ 48. Situs of ownership of stock

For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in Cherokee Nation, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of Cherokee Nation, whether organized in accordance with the provisions of the Cherokee Nation General Corporation Act or otherwise, shall be regarded as in Cherokee Nation.

LA 16-96, eff. July 15, 1996.

§ 49. Dividends—Payment—Wasting asset corporations

A. The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either out of its surplus, as defined in and computed in accordance with the provisions of 18 CNCA §§ 35 and 79, or in case there shall be no such surplus, out of its net profits for the fiscal year in which the

dividend is declared and/or the preceding fiscal year. If the capital of the corporation, computed in accordance with the provisions of 18 CNCA §§ 35 and 79, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired.

B. Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets) may determine the net profits derived from the exploitation of such wasting assets or the net proceeds derived from such liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets.

LA 16-96, eff. July 15, 1996.

§ 50. Special purpose reserves

The directors of a corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

LA 16-96, eff. July 15, 1996.

§ 51. Liability of directors as to dividends or stock redemption

A member of the board of directors, or a member of any committee designated by the board of directors, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of its officers or employees, or committees of the board of directors, or by any other person as to matters the director reasonably believes are within such officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation, as to the value and amount of the assets, liabilities and/or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed.

LA 16-96, eff. July 15, 1996.

§ 52. Declaration and payment of dividends

No corporation shall pay dividends except in accordance with the provisions of the Cherokee Nation General Corporation Act. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock. If the dividend is to be paid in shares of the corporation's theretofore unissued capital stock, the

board of directors, by resolution, shall direct that there be designated as capital in respect of such shares an amount which is not less than the aggregate par value of par value shares being declared as a dividend and, in the case of shares without par value being declared as a dividend, such amount as shall be determined by the board of directors. No such designation as capital shall be necessary if shares are being distributed by a corporation pursuant to a split-up or division of its stock rather than as payment of a dividend declared payable in stock of the corporation.

LA 16-96, eff. July 15, 1996.

§ 53. Liability of directors for unlawful payment of dividend or unlawful stock purchase or redemption—Exoneration from liability—Contribution among directors—Subrogation

A. In case of any willful or negligent violation of the provisions of 18 CNCA §§ 141 and 152, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within six (6) years after paying any unlawful dividend or after any unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued.

Any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after he has notice of the same.

B. Any director against whom a claim is successfully asserted under the provisions of this section shall be entitled to contribution from the other directors who voted for or concurred in the unlawful dividend, stock purchase or stock redemption.

C. Any director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by him as a result of such claim, to be subrogated to the rights of the corporation against shareholders who received the dividend on, or assets for the sale or redemption of, their stock with knowledge of facts indicating that such dividend, stock purchase or redemption was unlawful pursuant to the provisions of the Cherokee Nation General Corporation Act, in proportion to the amounts received by such shareholders respectively.

LA 16-96, eff. July 15, 1996.

ARTICLE 7

STOCK TRANSFERS

Section

55. Restriction on transfer of securities

§ 54. Transfer of stock, stock certificates and uncertificated stock

Except as otherwise provided for in the Cherokee Nation General Corporation Act, the transfer of stock and the certificates of stock which represent the stock or uncertificated stock shall be governed by the Uniform Commercial Code—Investment Securities. To the extent that any provision of the Cherokee Nation General Corporation Act is inconsistent with any provision of the Uniform Commercial Code—Investment Securities, the provisions of the Uniform Commercial Code—Investment Securities shall be controlling.

LA 16-96, eff. July 15, 1996.

§ 55. Restriction on transfer of securities

A. A written restriction on the transferor registration of transfer of a security of a corporation, if permitted by this section and noted conspicuously on the certificate representing the security or, in the case of uncertificated shares, contained in the notice sent pursuant to the provisions of 18 CNCA § 32(F), may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate representing the security or, in the case of uncertificated shares, contained in the notice sent pursuant to the provisions of 18 CNCA § 32(F), a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

B. A restriction on the transfer or registration of transfer of securities of a corporation may be imposed either by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

C. A restriction on the transfer of securities of a corporation is permitted by the provisions of this section if it:

1. obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

2. obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

3. requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities; or

4. prohibits the transfer of the restricted securities to designated persons or classes of persons, and such designation is not manifestly unreasonable.

D. Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under Subchapter S of the United States Internal Revenue Code[1] or of maintaining any other tax advantage to the corporation is conclusively presumed to be for a reasonable purpose.

E. Any other lawful restriction on transfer or registration of transfer of securities is permitted by the provisions of this section.

[1] 26 U.S.C. § 1361 et seq.

LA 16-96, eff. July 15, 1996.

ARTICLE 8

MEETINGS, ELECTIONS, VOTING AND NOTICE

Section

cause

72. Powers of court in elections of directors

73. Consent of shareholders in lieu of meeting

74. Waiver of notice

75. Exception to requirements of notice

§ 56. Meetings of shareholders

A. Meetings of shareholders may be held at such place, either within or without Cherokee Nation, as may be designated by or in the manner provided for in the bylaws or, if not so designated, at the registered office of the corporation in Cherokee Nation.

B. An annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by or in the manner provided for in the bylaws. Any other proper business may be transacted at the annual meeting.

C. A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation except as may be otherwise specifically provided for in the Cherokee Nation General Corporation Act. If the annual meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as is convenient. If there be a failure to hold the annual meeting for a period of thirty (30) days after the date designated therefor, or if no date has been designated, for a period of thirteen (13) months after the organization of the corporation or after its last annual meeting, the district court may summarily order a meeting to be held upon the application of any shareholder or director. The shares of stock represented at such meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the certificate of incorporation or bylaws to the contrary. The district court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date for determination of shareholders entitled to vote, and the form of notice of such meeting.

D. Special meetings of the shareholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws.

E. All elections of directors shall be by written ballot, unless otherwise provided for in the certificate of incorporation.

LA 16-96, eff. July 15, 1996.

§ 57. Voting rights of shareholders—Proxies—Limitations

A. Unless otherwise provided for in the certificate of incorporation and subject to the provisions of 18 CNCA § 58, each shareholder shall be entitled to one vote

for each share of capital stock held by such shareholder. If the certificate of incorporation provides for more or less than one vote for any share on any matter, every reference in the Cherokee Nation General Corporation Act to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

B. Each shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

C. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

LA 16-96, eff. July 15, 1996.

§ 58. Fixing date for determination of shareholders of record

A. In order that the corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

B. 1. In order that the corporation may determine the shareholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by the Cherokee Nation General Corporation Act, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in Cherokee Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors

is required by the Cherokee Nation General Corporation Act, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

2. The provisions of this subsection shall be effective with respect to corporate actions taken by written consent, and to such written content or consents, as to which the first written consent is executed or solicited after June 10, 1996.

C. In order that the corporation may determine the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

LA 16-96, eff. July 15, 1996.

§ 59. Cumulative voting

The certificate of incorporation of any corporation may provide that at all elections of directors of the corporation, or at elections held under specified circumstances, each holder of stock or of any class or classes or of a series or series thereof shall be entitled to as many votes as shall equal the number of votes which, except for such provision as to cumulative voting, be would be entitled to cast for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected by him, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two (2) or more of them as he may see fit.

LA 16-96, eff. July 15, 1996.

§ 60. Voting rights of members of nonstock corporations—Quorum—Proxies

A. The provisions of 18 CNCA §§ 56 through 59 and 61 shall not apply to corporations not authorized to issue stock.

B. Unless otherwise provided for in the certificate of incorporation of a nonstock corporation, each member shall be entitled at every meeting of members to one vote in person or by proxy, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period.

C. Unless otherwise provided for in the Cherokee Nation General Corporation Act, the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation, one-third (1/3) of the members of such corporation shall constitute a quorum at a meeting of such members, and the affirmative vote of a majority of

such members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by the provisions of the Cherokee Nation General Corporation Act, the certificate of incorporation or bylaws.

D. If the election of the governing body of any nonstock corporation shall not be held on the day designated by the bylaws, the governing body shall cause the election to be held as soon thereafter as convenient. The failure to hold such an election at the designated time shall not work any forfeiture or dissolution of the corporation, but the district court may summarily order such an election to be held upon the application of any member of the corporation. At any election pursuant to such order the persons entitled to vote in such election who shall be present at such meeting, either in person or by proxy, shall constitute a quorum for such meeting, notwithstanding any provision of the certificate of incorporation or the bylaws of the corporation to the contrary.

LA 16-96, eff. July 15, 1996.

§ 61. Quorum and required vote for stock corporations

Subject to the provisions of the Cherokee Nation General Corporation Act, in respect of the vote that shall be required for a specified action, the certificate of incorporation or bylaws of any corporation authorized to issue stock may specify the number of shares and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business, but in no event shall a quorum consist of less than one-third (1/3) of the shares entitled to vote at the meeting. In the absence of such specification in the certificate of incorporation or bylaws of the corporation:

1. a majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of shareholders;

2. in all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the shareholders;

3. directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and

4. where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

LA 16-96, eff. July 15, 1996.

§ 62. Voting rights of fiduciaries, pledgors and joint owners of stock

A. Persons holding stock in a fiduciary capacity shall be entitled to vote the

shares so held. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he has expressly empowered the pledgee, to vote thereon, in which case only the pledgee, or his proxy may represent such stock and vote thereon.

B. If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

1. If only one (1) vote, his act binds all; or

2. If more than one (1) vote, the act of the majority so voting binds all; or

3. If more than one (1) vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or any person voting the shares, or a beneficiary, if any, may apply to the district court to appoint an additional person to act with the persons so voting the shares, which shall then be voted as determined by a majority of such persons and the person appointed by such court. If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection shall be a majority or even-split in interest.

LA 16-96, eff. July 15, 1996.

§ 63. Voting trusts and other voting agreements

A. One or more shareholders, by agreement in writing, may deposit capital stock of an original issue with or transfer capital stock to any person or persons, or corporation or corporations authorized to act as trustee, for the purpose of vesting in such person or persons, corporation or corporations, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, not exceeding ten (10) years, upon the terms and conditions stated in such agreement. The agreement may contain any other lawful provisions not inconsistent with such purpose. After the filing of a copy of the agreement in the registered office of the corporation in Cherokee Nation, which copy shall be open to the inspection of any shareholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with him or them, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and canceled and new certificates or uncertificated stock shall be issued therefor to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as shareholder, trustee or otherwise,

except for his or their own individual malfeasance. In any case where two or more persons are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

B. The trustee or trustees shall execute and deliver to the beneficiary or beneficiaries voting trust certificates. Such voting trust certificates shall be transferable in the same manner as certificates of stock under the provisions of this act.

C. At any time within two (2) years prior to the time of expiration of any voting trust agreement as originally fixed or as last extended as provided for in this subsection, one or more beneficiaries of the trust under the voting trust agreement, by written agreement and with the written consent of the voting trustee or trustees, may extend the duration of the voting trust agreement for an additional period not exceeding ten (10) years from the expiration date of the trust as originally fixed or as last extended, as provided for in this subsection. The voting trustee or trustees, prior to the time of expiration of any such voting trust agreement, as originally fixed or as previously extended, as the case may be, shall file in the registered office of the corporation in Cherokee Nation a copy of such extension agreement and of his or their consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement; but no such extension agreement shall affect the rights or obligations of persons not parties thereto.

D. An agreement between two or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them. No such agreement shall be effective for a term of more than ten (10) years, but, at any time within two (2) years prior to the time of the expiration of such agreement, the parties may extend its duration for as many additional periods, each not to exceed ten (10) years, as they may desire.

E. The validity of any such voting trust or other voting agreement, otherwise lawful, shall not be affected during a period of ten (10) years from the date when it was created or last extended by the fact that under its terms it will or may last beyond such ten- (10) year period.

F. This section shall not be construed to invalidate any voting or other agreement among shareholders or any irrevocable proxy which is not otherwise illegal.

LA 16-96, eff. July 15, 1996.

§ 64. List of shareholders entitled to vote—Penalty for refusal to produce—Stock ledger

A. The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical

order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Such list shall be open to the examination of any shareholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified on the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any shareholder who is present.

B. Upon the willful neglect or refusal of the directors to produce such a list at any meeting for the election of directors, they shall be ineligible for election to any office at such meeting.

C. The stock ledger shall be the only evidence as to who are the shareholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote in person or by proxy at any meeting of shareholders.

LA 16-96, eff. July 15, 1996.

§ 65. Inspection of books and records

A. As used in this section, **"shareholder"** means a shareholder of record.

B. Any shareholder, in person or by attorney or other agent, upon written demand under oath stating the purpose thereof, shall have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its shareholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a shareholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the shareholder. The demand under oath shall be directed to the corporation at its registered office in Cherokee Nation or at its principal place of business.

C. 1. If the corporation or an officer or agent thereof refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to the provisions of subsection (B) of this section or does not reply to the demand within five (5) business days after the demand has been made, the shareholder may apply to the district court for an order to compel such inspection. The court may summarily order the corporation to permit the shareholder to inspect the corporation's stock ledger, an existing list of shareholders, and its other books and records, and to make copies or extracts therefrom; or the Court may order the corporation to furnish to the shareholder a list of its shareholders as of a specific date on condition that the shareholder first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the Court deems appropriate.

2. Where the shareholder seeks to inspect the corporation's books and records, other than its stock ledger or list of shareholders, he shall first establish that:

a. he has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents; and

b. the inspection he seeks is for a proper purpose.

3. Where the shareholder seeks to inspect the corporation's stock ledger or list of shareholders and he has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents, the burden of proof shall be upon the corporation to establish that the inspection he seeks is for an improper purpose. The court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other or further relief as the Court may deem just and proper. The court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within Cherokee Nation and kept in Cherokee Nation upon such terms and conditions as the order may prescribe.

D. Any director shall have the right to examine the corporation's stock ledger, a list of its shareholders and its other books and records for a purpose reasonably related to his position as a director. The district court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the stock list and to make copies or extracts therefrom. The court, in its discretion, may prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

LA 16-96, eff. July 15, 1996.

§ 66. Voting, inspection and other rights of bondholders and debenture holders

Every corporation, in its certificate of incorporation, may confer upon the holders of any bonds, debentures or other obligations issued or to be issued by the corporation the power to vote in respect to the corporate affairs and management of the corporation to the extent and in the manner provided in the certificate of incorporation, and may confer upon such holders of bonds, debentures or other obligations the same right of inspection of its books, accounts and other records, and also any other rights, which the shareholders of the corporation have or may have by reason of the provisions of the Cherokee Nation General Corporation Act or of its certificate of incorporation. If the certificate of incorporation so provides, such holders of bonds, debentures or other obligations shall be deemed to be shareholders, and their bonds, debentures or other obligations shall be deemed to be shares of stock, for the purpose of any provision of the Cherokee Nation General Corporation Act which requires the vote of shareholders as a prerequisite to any corporate action and the certificate of incorporation may divest the holders of capital stock, in whole or in part, of their right to vote on any corporate matter whatsoever, except as set forth in 18 CNCA § 77(B)(2).

LA 16-96, eff. July 15, 1996.

§ 67. Notice of meetings and adjourned meetings

A. Whenever shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the

purpose or purposes for which the meeting is called.

B. Unless otherwise provided for in the Cherokee Nation General Corporation Act, the written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each shareholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the shareholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given, in the absence of fraud, shall be prima facie evidence of the facts stated therein.

C. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

LA 16-96, eff. July 15, 1996.

§ 68. Vacancies and newly created directorships

A. 1. Unless otherwise provided in the certificate of incorporation or bylaws:

a. Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the shareholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director; and

b. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

2. If at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any officer or any shareholder or an executor, administrator, trustee or guardian of a shareholder, or other fiduciary entrusted with like responsibility for the person or estate of a shareholder, may call a special meeting of shareholders in accordance with the provisions of the certificate of incorporation or the bylaws, or may apply to the district court for a decree summarily ordering an election as provided for in 18 CNCA § 56.

B. In the case of a corporation the directors of which are divided into classes, any directors chosen under subsection (A) of this section shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified.

C. If, at the time of filling any vacancy or any newly created directorship, the

directors then in office shall constitute less than a majority of the whole board, as constituted immediately prior to any such increase, the district court, upon application of any shareholder or shareholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, may summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office, which election shall be governed by the provisions of Section 56 of this act as far as applicable.

D. Unless otherwise provided in the certificate of incorporation or bylaws, when one or more directors shall resign from the board, effective at a future data, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided for in this section in the filling of other vacancies.

LA 16-96, eff. July 15, 1996.

§ 69. Form of records

Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept in, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, or any other information storage device, provided that the records so kept can be converted into clearly legible written form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect the same. Where records are kept in such manner, a clearly legible written form produced from the cards, tapes, photographs, microphotographs or other information storage device shall be admissible in evidence and shall be accepted for all other purposes, to the same extent as an original written record of the same information would have been, when said written form accurately portrays the record.

LA 16-96, eff. July 15, 1996.

§ 70. Contested election of directors—Proceedings to determine validity

A. Upon application of any shareholder or director, or any officer whose title to office is contested, or any member of a corporation without capital stock, the district court may hear and determine the validity of any election of any director, member of the governing body, or officer of any corporation, and the right of any person to hold such office, and, in case any such office is claimed by more than one person, may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the district court may order an election to be held in accordance with the provisions of 18 CNCA § 56 or 18 CNCA § 60. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office; and the registered agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is

contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such person at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant shareholder. The court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

B. Upon application of any shareholder or any member of a corporation without capital stock, the district court may hear and determine the result of any vote of shareholders or members, as the case may be, upon matters other than the election of directors, officers or members of the governing body. Service of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting notice of the application as it deems proper under the circumstances.

LA 16-96, eff. July 15, 1996.

§ 71. Appointment of custodian or receiver of corporation on deadlock or for other cause

A. The District Court, upon application of any shareholder, may appoint one or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of and for any corporation when:

1. at any meeting held for the election of directors the shareholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

2. the business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the shareholders are unable to terminate this division; or

3. the corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

B. A custodian appointed pursuant to the provisions of this section shall have all the powers and title of a receiver appointed by the Court under applicable law, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the Court shall otherwise order and except in cases arising pursuant to paragraph 3 of subsection (A) of this section.

LA 16-96, eff. July 15, 1996.

§ 72. Powers of court in elections of directors

A. The District Court, in any proceeding instituted pursuant to the provisions of 18 CNCA § 56, 18 CNCA § 60 or 18 CNCA § 70, may determine the right and power of persons claiming to own stock, or in the case of a corporation without capital stock, of the persons claiming to be members, to vote at any meeting of the shareholders or members.

B. The District Court may appoint a master to hold any election provided for in 18 CNCA § 56, 18 CNCA § 60 or 18 CNCA § 70 under such orders and powers as it deems proper; and it may punish any officer or director for contempt in case of disobedience of any order made by the Court; and, in case of disobedience by a corporation of any order made by the Court, may enter a decree against such corporation for a penalty of not more than Five Thousand Dollars ($5,000.00).

LA 16-96, eff. July 15, 1996.

§ 73. Consent of shareholders in lieu of meeting

A. Except as provided in subsection (B) of this section or unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Cherokee Nation General Corporation Act to be taken at any annual or special meeting of shareholders of a corporation or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in Cherokee Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

B. With respect to a domestic corporation with a class of voting stock listed or traded on a national securities exchange or registered under Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as amended, which has one thousand or more shareholders of record, unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Cherokee Nation General Corporation Act to be taken at any annual or special meeting of shareholders of such corporation or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action to taken, shall be signed by the holders of all outstanding stock entitled to vote thereon and shall be delivered to the corporation by delivery to its registered office in Cherokee Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. The provisions of this subsection shall be effective with respect to corporate actions by written consent, and to such written consent or consents, as to which the first written consent is executed or solicited after June 10, 1996.

C. Unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Cherokee Nation General Corporation Act to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by

members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in Cherokee Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

D. Every written consent shall bear the date of signature of each shareholder or member who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to its registered office in Cherokee Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

E. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those shareholders or members, as the case may be, who have not consented in writing. In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by shareholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of shareholders or members, that written consent has been given in accordance with the provisions of this section, and that written notice has been given as provided for in this section.

LA 16-96, eff. July 15, 1996.

§ 74. Waiver of notice

Whenever notice is required to be given under any provision of the Cherokee Nation General Corporation Act or of the certificate of incorporation or bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the shareholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the certificate of incorporation or the bylaws.

LA 16-96, eff. July 15, 1996.

§ 75. Exception to requirements of notice

A. Whenever notice is required to be given, pursuant to any provision of this

title or of the certificate of incorporation or bylaws of any corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this title, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

B. Whenever notice is required to be given pursuant to any provision of the Cherokee Nation General Corporation Act or the certificate of incorporation or bylaws of any corporation, to any shareholder or, if the corporation is a nonstock corporation, to any member to whom:

1. notice of two (2) consecutive annual meetings and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two (2) consecutive annual meetings; or

2. all, and at least two, payments, if sent by first-class mail, of dividends or interest on securities during a twelve- (12) month period, have been mailed addressed to such person at his address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of the Cherokee Nation General Corporation Act, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to the provisions of this subsection.

LA 16-96, eff. July 15, 1996.

ARTICLE 9

AMENDMENT OF CERTIFICATE OF INCORPORATION—CHANGES IN CAPITAL AND CAPITAL STOCK

Section

§ 76. Amendment of certificate of incorporation before receipt of payment for stock

A. Before a corporation has received any payment for any of its stock, it may amend its certificate of incorporation at any time or times, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of filing the amendment.

B. The amendment of certificate of incorporation authorized by the provisions of this section shall be adopted by a majority of the incorporators, if directors were not named in the original certificate of incorporation or have not yet been elected, or, if directors were named in the original certificate of incorporation or have been elected and have qualified, by a majority of the directors. A certificate setting forth the amendment and certifying that the corporation has not received any payment for any of its stock and that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged and filed in accordance with the provisions of 18 CNCA § 7. Upon such filing, the corporation's certificate of incorporation shall be deemed to be amended accordingly as of the date on which the original certificate of incorporation became effective, except as to those persons who are substantially and adversely affected by the amendment and as to those persons the amendment shall be effective from the filing date.

LA 16-96, eff. July 15, 1996.

§ 77. Amendment of certificate of incorporation after receipt of payment for stock—Nonstock corporations

A. 1. After a corporation has received payment for any of its capital stock, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and if a change in stock or the rights of shareholders, or an exchange, reclassification or cancellation of stock or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

a. to change its corporate name; or

b. to change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or

c. to increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares; or

d. to cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or

e. to create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or

f. to change the period of its duration.

2. Any or all changes or alterations provided for in paragraph 1 of this subsection may be effected by one certificate of amendment.

B. Every amendment authorized by the provisions of subsection (A) of this section shall be made and effected in the following manner:

1. If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the shareholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of shareholders. Such special or annual meeting shall be called and held upon notice in accordance with the provisions of 18 CNCA § 67. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby, as the directors shall deem advisable. At the meeting a vote of the shareholders entitled to vote thereon shall be taken for and against the proposed amendment. If a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of 18 CNCA § 7.

2. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, references, or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased, but not below the number of shares thereof then outstanding, by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of the provisions of this paragraph, if so provided in the original certificate of incorporation, in any amendment thereto which created such class or classes of stock or which was adopted prior to the issuance of any shares of such class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

3. If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If at a subsequent meeting, held, on notice stating the purpose thereof, not earlier than fifteen (15) days and not later than sixty (60) days from the meeting at which such resolution has been passed, a majority of all the members of the governing body, shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of 18 CNCA § 7. The certificate of incorporation of any such corporation without capital stock may contain a provision requiring an amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation in which event only one meeting of the governing body thereof shall be necessary, and such proposed amendment shall be submitted to the members or to any specified class of members of such corporation without capital stock in the same manner, so far as applicable, as is provided for in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof, a certificate evidencing such amendment shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of 18 CNCA § 7. In the event the amendment to the certificate of incorporation of a nonstock corporation results in the change of the name of such corporation, a notice of the name change shall be published one (1) time in the newspaper *Cherokee Phoenix*. Proof of such publication shall be filed in the Office of the Principal Chief or his authorized representative.

4. Whenever the certificate of incorporation shall require for action by the board of directors, by the holders of any class or series of shares or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by the provisions of the Cherokee Nation General Corporation Act, the provision of the certificate of incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

LA 16-96, eff. July 15, 1996.

§ 78. Retirement of stock

A. A corporation, by resolution of its board of directors, may retire any shares of its capital stock that are issued but are not outstanding.

B. Whenever any shares of the capital stock of a corporation are retired, they shall resume the status of authorized and unissued shares of the class or series to which they belong unless the certificate of incorporation otherwise provides. If the certificate of incorporation prohibits the reissuance of such shares, or prohibits the reissuance of such shares as a part of a specific series only, a certificate stating that reissuance of the shares, as part of the class or series, is prohibited identifying the shares and reciting their retirement shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of 18 CNCA § 7. When such certificate becomes effective, it shall have the effect of amending the certificate of incorporation so as to reduce accordingly the number of authorized shares of the class or series to which such shares belong or, if such retired shares constitute all of the authorized shares of the class or series to which they belong, of eliminating from the certificate of incorporation all reference to such class or series of stock.

C. If the capital of the corporation will be reduced by or in connection with the retirement of shares, the reduction of capital shall be effected pursuant to the provisions of 18 CNCA § 79.

LA 16-96, eff. July 15, 1996.

§ 79. Reduction of capital

A. A corporation, by resolution of its board of directors, may reduce its capital in any of the following ways:

1. By reducing or eliminating the capital represented by shares of capital stock which have been retired; or

2. By applying to an otherwise authorized purchase or redemption of outstanding shares of its capital stock some or all of the capital represented by the shares being purchased or redeemed, or any capital that has not been allocated to any particular class of its capital stock; or

3. By applying to an otherwise authorized conversion or exchange of outstanding shares of its capital stock some or all of the capital represented by the shares being converted or exchanged, or some or all of any capital that has not been allocated to any particular class of its capital stock, or both, to the extent that such capital in the aggregate exceeds the total aggregate par value or the stated capital of any previously unissued shares issuable upon such conversion or exchange; or

4. By transferring to surplus:

a. some or all of the capital not represented by any particular class of its capital stock; or

b. some or all of the capital represented by issued shares of its par value capital stock, which capital is in excess of the aggregate par value of such shares; or

c. some of the capital represented by issued shares of its capital stock without par value.

B. Notwithstanding the other provisions of this section, no reduction of capital shall be made or effected unless the assets of the corporation remaining after such reduction shall be sufficient to pay any debts of the corporation for which payment has not been otherwise provided. No reduction of capital shall release any liability of any shareholder whose shares have not been fully paid.

LA 16-96, eff. July 15, 1996.

§ 80. Restated certificate of incorporation

A. A corporation, whenever desired, may integrate into a single instrument all of the provisions of its certificate of incorporation which are then in effect and operative as a result of there having up to that time been filed with the Office of the Principal Chief or his authorized representative one or more certificates or other instruments pursuant to any of the sections referred to in

18 CNCA § 8, and it may at the same time also further amend its certificate of incorporation by adopting a restated certificate of incorporation.

B. If the restated certificate of incorporation merely restates and integrates but does not further amend the certificate of incorporation, as up to that time amended or supplemented by any instrument that was filed pursuant to any of the sections mentioned in 18 CNCA § 8, it may be adopted by the board of directors without a vote of the shareholders, or it may be proposed by the directors and submitted by them to the shareholders for adoption, in which case the procedure and vote required by 18 CNCA § 77 for amendment of the certificate of incorporation shall be applicable. If the restated certificate of incorporation restates and integrates and also further amends in any respect the certificate of incorporation, as up to that time amended or supplemented, it shall be proposed by the directors and adopted by the shareholders in the manner and by the vote prescribed by 18 CNCA § 77 or, if the corporation has not received any payment for any of its stock, in the manner and by the vote prescribed by 18 CNCA § 76.

C. A restated certificate of incorporation shall be specifically designated as such in its heading. It shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the Office of the Principal Chief or his authorized representative. A restated certificate shall also state that it was duly adopted in accordance with the provisions of this section. If it was adopted by the board of directors without a vote of the shareholders, unless it was adopted pursuant to the provisions of 18 CNCA § 76, it shall state that it only restates and integrates and does not further amend the provisions of the corporation's certificate of incorporation as up to that time amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated certificate. A restated certificate of incorporation may omit:

1. such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares; and

2. such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective.

Any such omissions shall not be deemed a further amendment.

D. A restated certificate of incorporation shall be executed, acknowledged and filed in accordance with the provisions of 18 CNCA § 7. Upon its filing with the Office of the Principal Chief or his authorized representative, the original certificate of incorporation, as up to that time amended or supplemented, shall be superseded. From that time forward, the restated certificate of incorporation, including any further amendments or changes made thereby, shall be the certificate of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

E. Any amendment or change effected in connection with the restatement and integration of the certificate of incorporation shall be subject to any other

provision of the Cherokee Nation General Corporation Act, not inconsistent with the provisions of this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

LA 16-96, eff. July 15, 1996.

ARTICLE 10

MERGER OR CONSOLIDATION

Section

§ 81. Merger or consolidation of domestic corporations

A. Any two or more corporations existing under the laws of Cherokee Nation may merge into a single corporation, which may be any one of the constituent corporations or may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. The board of directors of each corporation which desires to merge or

consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

1. the terms and conditions of the merger or consolidation;

2. the mode of carrying the same into effect;

3. in the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation of the surviving or resulting corporation;

4. in the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;

5. the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights or securities of any other corporation which the holders of such shares are to receive in exchange for or upon conversion of such shares and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and

6. such other details or provisions as are deemed desirable, including without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of 18 CNCA § 36. The agreement so adopted shall be executed and acknowledged in accordance with the provisions of 18 CNCA § 7. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement required by the provisions of subsection (B) of this section shall be submitted to the shareholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock whether voting or nonvoting, of the corporation at his address as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable; provided, however, such notice shall be effective only with respect to mergers or consolidations for which the notice of the shareholders meeting to vote thereon has been mailed after the effective date of this title. At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or the assistant secretary of the corporation. If the agreement shall be so adopted and certified by each constituent corporation, it shall then

be filed and shall become effective in accordance with the provisions of 18 CNCA § 7. In lieu of filing an agreement of merger or consolidation required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of 18 CNCA § 7 and which states:

1. the name and state of incorporation of each of the constituent corporations;

2. that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the provisions of this section;

3. the name of the surviving or resulting corporation;

4. in the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. in the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation, stating the address thereof; and

7. that a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation. For purposes of 18 CNCA §§ 84 and 86, the term **"shareholder"** shall be deemed to include "member".

D. 1. Any agreement of merger or consolidation may contain a provision that at any time prior to the filing of the agreement with the Office of the Principal Chief or his authorized representative, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the shareholders of all or any of the constituent corporations. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the Office of the Principal Chief or his authorized representative, provided that an amendment made subsequent to the adoption of the agreement by the shareholders of any constituent corporation shall not:

a. alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation;

b. alter or change any term of the certificate of incorporation of the surviving corporation to be effected by the merger or consolidation; or

c. alter or change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series

thereof of such constituent corporation.

2. For purposes of 18 CNCA § 83, the references to **"agreement of merger"** in this subsection shall mean the resolution of merger adopted by the board of directors of the parent corporation.

E. In the case of a merger, the certificate of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the certificate of incorporation are set forth in the certificate of merger.

F. Notwithstanding the requirements of subsection (C) of this section, unless required by its certificate of incorporation, no vote of shareholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if:

1. the agreement of merger does not amend in any respect the certificate of incorporation of such constituent corporation;

2. each share of stock of such constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and

3. either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan do not exceed twenty percent (20%) of the shares of common stock of such constituent corporation outstanding immediately prior to the effective date of the merger. No vote of shareholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its shareholders pursuant to the provisions of this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to the provisions of this subsection and that, as of the date of such certificate, the outstanding shares of the corporation were such as to render the provisions of this subsection applicable. The agreement so adopted and certified shall then be filed and shall become effective in accordance with the provisions of 18 CNCA § 7. Such filing shall constitute a representation by the person who executes the certificate that the facts stated in the certificate remain true immediately prior to such filing.

LA 16-96, eff. July 15, 1996.

§ 82. Merger or consolidation of domestic and foreign corporations—Service of process upon surviving or resulting corporation

A. Any one or more corporations of Cherokee Nation may merge or consolidate with one or more other corporations of Cherokee Nation, any other federally-recognized

Indian tribe, any other state or states of the United States, or of the District of Columbia if the laws of such other tribe, state or states or of the District permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. In addition, any one or more corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of Cherokee Nation if the surviving or resulting corporation will be a corporation of Cherokee Nation, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction.

B. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

1. the terms and conditions of the merger or consolidation;

2. the mode of carrying the same into effect;

3. the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights, or securities of any other corporation which the holder of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;

4. such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of 18 CNCA § 36; and

5. such other provisions or facts as shall be required to be set forth in the certificate of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be adapted, approved, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of a Cherokee Nation corporation, in the same manner as

is provided for in 18 CNCA § 81. The agreement shall be filed and shall become effective for all purposes of the laws of Cherokee Nation when and as provided for in 18 CNCA § 81 with respect to the merger or consolidation of corporations of Cherokee Nation. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of 18 CNCA § 7, which states:

1. the name and state of incorporation of each of the constituent corporations;

2. that an agreement of merger or consolidation has been approved, adopted, executed and acknowledged by each of the constituent corporations in accordance with the provisions of this subsection;

3. the name of the surviving or resulting corporation;

4. in the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. in the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation and the address thereof;

7. that a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation;

8. if the corporation surviving or resulting from the merger or consolidation is to be a corporation of Cherokee Nation, the authorized capital stock of each constituent corporation which is not a corporation of Cherokee Nation; and

9. the agreement, if any, required by the provisions of subsection (D) of this section. For purposes of 18 CNCA § 85, the term **"shareholder"** in subsection (D) of this section shall be deemed to include "member".

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than Cherokee Nation, it shall agree that it may be served with process in Cherokee Nation in any proceeding for enforcement of any obligation of any constituent corporation of Cherokee Nation, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of 18 CNCA § 91, and shall irrevocably appoint the Office of the Principal Chief or his authorized representative as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Office of the Principal Chief or his authorized representative. In the event of such service upon the Office of the Principal

Chief or his authorized representative in accordance with the provisions of this subsection, the Office of the Principal Chief or his authorized representative shall immediately notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such surviving or resulting corporation at its address so specified unless such surviving or resulting corporation shall have designated in writing to the Office of the Principal Chief or his authorized representative a different address for such purpose, in which case it shall be mailed to the last address to designated. Such letter shall enclose a copy of the process and any other papers served on the Office of the Principal Chief or his authorized representative pursuant to the provisions of this subsection. 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 Office of the Principal Chief or his authorized representative that service is being effected pursuant to the provisions of this subsection and to pay the Office of the Principal Chief or his authorized representative the fee provided for in 18 CNCA § 142(7), which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Office of the Principal Chief or his authorized representative shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been effected pursuant to the provisions of this subsection, the return date thereof, and the date service was made. The Office of the Principal Chief or his authorized representative shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Office of the Principal Chief or his authorized representative.

E. The provisions of 18 CNCA § 81(D) shall apply to any merger or consolidation pursuant to the provisions of this section. The provisions of 18 CNCA § 81(E) shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is a corporation of the Cherokee Nation. The provisions of 18 CNCA § 81(F) shall apply to any merger pursuant to the provisions of this section.

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§ 83. Merger of parent corporation and subsidiary or subsidiaries

A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of the stock of a corporation or corporations is owned by another corporation and one of such corporations is a corporation of Cherokee Nation and the other or others are corporations of Cherokee Nation or of any state or states or of the District of Columbia and the laws of such state or states or of the District of Columbia permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge such other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of such other corporations, into one of such other corporations by executing, acknowledging and filing, in accordance with the provisions of 18 CNCA § 7, a certificate of such ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of the adoption thereof; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation

shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after twenty (20) days' notice of the purpose of the meeting mailed to each such shareholder at his address as it appears on the records of the corporation if the parent corporation is a corporation of Cherokee Nation or state that the proposed merger has been adopted, approved, certified, executed and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is not a corporation of Cherokee Nation. If the surviving corporation exists under the laws of the District of Columbia or any state other than Cherokee Nation, the provisions of 18 CNCA § 82(D) shall also apply to a merger pursuant to the provisions of this section.

B. Subject to the provisions of 18 CNCA § 6(A)(1), if the surviving corporation is a Cherokee Nation corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be so changed.

C. The provisions of 18 CNCA § 81(D) shall apply to a merger pursuant to the provisions of this section, and the provisions of 18 CNCA § 81(E) shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is the subsidiary corporation and is a corporation of Cherokee Nation. Any merger which effects any changes other than those authorized by the provisions of this section or made applicable by this subsection shall be accomplished in accordance with the provisions of 18 CNCA § 81 or 18 CNCA § 82. The provisions of 18 CNCA § 91 shall not apply to any merger effected pursuant to the provisions of this section, except as provided for in subsection (D) of this section.

D. In the event all of the stock of a subsidiary Cherokee Nation corporation party to a merger effected pursuant to the provisions of this section is not owned by the parent corporation immediately prior to the merger, the shareholders of the subsidiary Cherokee Nation corporation party to the merger shall have appraisal rights as set forth in 18 CNCA § 91.

E. A merger may be effected pursuant to the provisions of this section although one or more of the corporations is a corporation organized under the laws of a jurisdiction other than one of the United States; provided that the laws of such jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction; and provided further that the surviving or resulting corporation shall be a corporation of Cherokee Nation.

LA 16-96, eff. July 15, 1996.

§ 84. Merger or consolidation of domestic nonstock, not for profit corporations

A. Any two or more nonstock corporations of Cherokee Nation, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. 1. The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

a. the terms and conditions of the merger or consolidation;

b. the mode of carrying the same into effect;

c. such other provisions or facts required or permitted by the Cherokee Nation General Corporation Act to be stated in a certificate of incorporation for nonstock corporations as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;

d. the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation; and

e. such other details or provisions as are deemed desirable.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each member of each such corporation who has the right to vote for the election of the members of the governing body of his corporation, at his address as it appears on the records of the corporation at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable; provided, however such notice shall be effective only with respect to mergers or consolidations for which the notice of the members meeting to vote thereon has been mailed after the effective date of this title. At the meeting, the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement, each member who has the right to vote for the election of the members of the governing body of his corporation being entitled to one vote. If the votes of two-thirds (2/3) of the total number of members of each such corporation who have the voting power above mentioned shall be for the adoption of the agreement, then that fact shall be certified on the agreement by the officer of each such corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation. The agreement so adopted and certified shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of 18 CNCA § 7. The provisions of 18 CNCA § 81(C)(1) through (6) shall apply to a merger under this section.

D. If, under the provisions of the certificate of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided for in subsection (B) of this section shall be submitted to the members of the governing body of such corporation or corporations, at a meeting thereof. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting two-thirds (2/3) of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation and thereafter the same procedure shall be followed to consummate the merger or consolidation.

E. The provisions of 18 CNCA § 81(E) shall apply to a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if such charitable nonstock corporation would thereby have its charitable status lost or impaired; but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

LA 16-96, eff. July 15, 1996.

§ 85. Merger or consolidation of domestic and foreign nonstock, not for profit corporation; service of process upon surviving or resulting corporation

A. Any one or more nonstock, not for profit corporations of Cherokee Nation may merge or consolidate with one or more other nonstock, not for profit corporations of any state of the United States or of the District of Columbia, if the laws of such state or of the District of Columbia permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock, not for profit corporation formed by the consolidation, which may be a corporation of Cherokee Nation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. In addition, any one or more nonstock, not for profit corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more nonstock, not for profit corporations of Cherokee Nation if the surviving or resulting corporation will be a corporation of Cherokee Nation, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.

B. 1. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

a. the terms and conditions of the merger or consolidation;

b. the mode of carrying the same into effect;

c. the manner of converting the memberships of each of the constituent corporations into members of the corporation surviving or resulting from such merger or consolidation;

d. such other details and provisions as shall be deemed desirable; and

e. such other provisions or facts as shall then be required to be stated in a certificate of incorporation by the laws of Cherokee Nation which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed and, in the case of Cherokee Nation, in the same manner as is provided for in 18 CNCA § 84. The agreement shall be filed and shall become effective for all purposes of the laws of Cherokee Nation when and as provided for in 18 CNCA § 84 with respect to the merger of nonstock, not for profit corporations of Cherokee Nation. Insofar as they may be applicable, the provisions of 18 CNCA § 82(C)(1) through (9) shall apply to a merger under this section.

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any jurisdiction other than Cherokee Nation, it shall agree that it may be served with process in Cherokee Nation in any proceeding for enforcement of any obligation of any constituent corporation of Cherokee Nation, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation and shall irrevocably appoint the Office of the Principal Chief or his authorized representative as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Office of the Principal Chief or his authorized representative. In the event of such service upon the Office of the Principal Chief or his authorized representative in accordance with the provisions of this subsection, the Office of the Principal Chief or his authorized representative shall immediately notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Office of the Principal Chief or his authorized representative a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served upon the Office of the Principal Chief or his authorized representative. 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 Office of the Principal Chief or his authorized representative that service is being made pursuant to the provisions of this subsection, and to pay the Office of the Principal Chief or his authorized representative the fee prescribed by 18 CNCA § 142(7), which fee shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Office of the Principal Chief or his authorized representative shall maintain an alphabetical record of

any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to the provisions of this subsection, the return date thereof, and the date when the service was made. The Office of the Principal Chief or his authorized representative shall not be required to retain such information for a period longer than five (5) years from his receipt of service of process.

E. The provisions of 18 CNCA § 81(E) shall apply to a merger pursuant to the provisions of this section if the corporation surviving the merger is a corporation of Cherokee Nation.

LA 16-96, eff. July 15, 1996.

§ 86. Merger or consolidation of domestic stock and nonstock corporations

A. Any one or more nonstock corporations of Cherokee Nation, whether or not organized for profit, may merge or consolidate with one or more stock corporations of Cherokee Nation, whether or not organized for profit. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving constituent corporation or a new corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

B. The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

1. the terms and conditions of the merger or consolidation;

2. the mode carrying the same into effect;

3. such other provisions or facts required or permitted by the Cherokee Nation General Corporation Act to be stated in the certificate of incorporation as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;

4. the manner of converting the shares of stock of a stock corporation and the interests of the members of nonstock corporation into shares or other securities of a stock corporation or membership interests of a nonstock corporation surviving or resulting from such merger or consolidation, and if any shares of any such stock corporation or membership interests of any such nonstock corporation are not to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in

addition to or in lieu of shares or other securities of any stock corporation or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and

5. such other details or provisions as are deemed desirable.

C. In a merger or consolidation provided for in this section, the interests of members of a constituent nonstock corporation may be treated in various ways so as to convert such interests into interests of value, other than shares of stock, in the surviving or resulting stock corporation or into shares of stock Office of the Principal Chief or his authorized representative in the surviving or resulting stock corporation, voting or nonvoting, or into creditor interests or any other interests of value equivalent to their membership interests in their nonstock corporation. The voting rights of members of a constituent nonstock corporation need not be considered an element of value in measuring the reasonable equivalence of the value of the interests received in the surviving or resulting stock corporation by members of a constituent nonstock corporation, nor need the voting rights of shares of stock in a constituent stock corporation be considered as an element of value in measuring the reasonable equivalence of the value of the interests in the surviving or resulting nonstock corporations received by shareholders of a constituent stock corporation, and the voting or nonvoting shares of a stock corporation may be converted into voting or nonvoting regular, life, general, special or other type of membership, however designated, creditor interests or participating interests, in the nonstock corporation surviving or resulting from such merger or consolidation of a stock corporation and a nonstock corporation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

D. The agreement, required by subsection (B) of this section in the case of each constituent stock corporation, shall be adopted, approved, certified, executed and acknowledged by each constituent corporation in the same manner as is provided for in 18 CNCA § 81 and, in the case of each constituent nonstock corporation, shall be adopted, approved, certified, executed and acknowledged by each of said constituent corporations in the same manner as is provided for in 18 CNCA § 84. The agreement shall be filed and shall become effective for all purposes of the laws of Cherokee Nation when and as provided for in 18 CNCA § 81 with respect to the merger of stock corporations of Cherokee Nation. Insofar as they may be applicable, the provisions of 18 CNCA § 81(C)(1) through (7) shall apply to a merger under this section.

E. The provisions of 18 CNCA § 81(E) shall apply to a merger pursuant to the provisions of this section, if the surviving corporation is a corporation of Cherokee Nation. The provisions of 18 CNCA § 81(D) shall apply to any constituent stock corporation participating in a merger or consolidation pursuant to the provisions of this section. The provisions of 18 CNCA § 81(F) shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which

shall continue as the surviving corporation.

LA 16-96, eff. July 15, 1996.

§ 87. Merger or consolidation of domestic and foreign stock and nonstock corporations

A. Any one or more corporations of Cherokee Nation, whether stock or nonstock corporations and whether or not organized for profit, may merge or consolidate with one or more other corporations of any state or states of the United States or of the District of Columbia, whether stock or nonstock corporations and whether or not organized for profit, if the laws under which the other corporation or corporations are formed shall permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the place of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving or new corporation may be either a stock corporation or a membership corporation, as shall be specified in the agreement of merger required by the provisions of subsection (B) of this section.

B. The method and procedure to be followed by the constituent corporations so merging or consolidating shall be as prescribed in 18 CNCA § 86 in the case of Cherokee Nation corporations. The agreement of merger or consolidation shall also set forth such other matters or provisions as shall then be required to be set forth in certificates of incorporation by the laws of Cherokee Nation which are stated in the agreement to be the laws which shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. The agreement, in the case of foreign corporations, shall be adopted, approved, executed and acknowledged by each of the constituent foreign corporations in accordance with the laws under which each is formed.

C. The requirements of the provisions of 18 CNCA § 82(D) as to the appointment of the Office of the Principal Chief or his authorized representative to receive process and the manner of serving the same in the event the surviving or new corporation is to be governed by the laws of any other state shall also apply to mergers or consolidations effected pursuant to the provisions of this section. The provisions of 18 CNCA § 81(E) shall apply to mergers effected pursuant to the provisions of this section if the surviving corporation is a corporation of Cherokee Nation. The provisions of 18 CNCA § 81(D) of this act shall apply to any constituent stock corporation participating in a merger of consolidation pursuant to the provisions of this section. The provisions of 18 CNCA § 81(F) shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

D. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

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§ 88. Status, rights, liabilities, etc. of constituent and surviving or resulting corporations following merger or consolidation

When any merger or consolidation shall have become effective pursuant to the provisions of the Cherokee Nation General Corporation Act, for all purposes of the laws of Cherokee Nation the separate existence of all the constituent corporations, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, possessing all the rights, privileges, powers and franchises as well of public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated; and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation surviving or resulting from such merger or consolidation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the surviving or resulting corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise, under the laws of Cherokee Nation, in any of such constituent corporations, shall not revert or be in any way impaired by reason of the provisions of the Cherokee Nation General Corporation Act; but all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations, from that time forward, shall attach to said surviving or resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

LA 16-96, eff. July 15, 1996.

§ 89. Powers of corporation surviving or resulting from merger or consolidation; issuance of stock, bonds or other indebtedness

When two or more corporations are merged or consolidated, the corporation surviving or resulting from the merger may issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all payments it will be required to make, or obligations it will be required to assume, in order to effect the merger or consolidation. For the purpose of securing the payment of any such bonds and obligations, it shall be lawful for the surviving or resulting corporation to mortgage its corporate franchise, rights, privileges and property, real, personal or mixed. The surviving or resulting corporation may issue certificates of its capital stock or uncertificated stock if authorized to do so and other securities to the shareholders of the constituent corporations in exchange or payment for the original shares, in such amount as shall be necessary in accordance with the terms of the agreement of merger or consolidation in order to effect such merger or consolidation in the manner and on the terms specified in the agreement.

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§ 90. Effect of merger upon pending actions

Any action or proceeding, whether civil or criminal or any other proceeding provided for in Cherokee Nation Code Annotated pending by or against any corporation which is a party to a merger or consolidation shall be prosecuted as if such merger or consolidation had not taken place, or the corporation surviving or resulting from such merger or consolidation may be substituted in such action or proceeding.

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§ 90.1. Share acquisitions

A. One or more corporations may acquire all or part of the outstanding shares of one or more other corporations, if the board of directors of each corporation adopts and its shareholders approve, if required by subsection (C) of this section, the agreement of acquisition.

B. The agreement of acquisition shall set forth:

1. the name or names of the corporation or corporations whose shares will be acquired and the name or names of the acquiring corporation or corporations;

2. the terms and conditions of the acquisitions;

3. the manner and basis of exchanging the shares to be acquired for the consideration proffered;

4. any amendments or changes in the certificate of incorporation of a corporation which is a party to the agreement; and

5. such other provisions as the directors shall deem advisable.

C. After adopting an agreement of acquisition, the board of directors of each corporation whose shares are to be acquired, in whole or in part, or whose certificate of incorporation is to be amended, shall submit the agreement of acquisition for approval by the shareholders entitled to vote thereon. Due notice of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at his address as it appears on the records of the corporation, at least twenty (20) days prior to the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable. At the meeting, the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation. If the agreement shall be adopted and approved in accordance with the provisions of this section, it shall then be filed and shall become effective in accordance with the provisions of 18 CNCA § 7. In lieu of filing an agreement of acquisition required by this section, the acquiring corporation may file a certificate of acquisition, executed in accordance with the provisions of 18 CNCA § 7, which states:

1. the name and jurisdiction of incorporation of each corporation which is a party to the agreement;

2. that the agreement of acquisition has been adopted, approved, certified, executed, and acknowledged in accordance with the provisions of this section;

3. whether the corporation is an acquiring corporation or a corporation whose shares are to be acquired;

4. the amendments or changes, if any, in the certificate of incorporation that are to be effected by the agreement of acquisition;

5. that the executed agreement of acquisition is on file at the principal place of business of each corporation, stating the address thereof, and

6. that a copy of the agreement of acquisition will be furnished by each corporation, on request and without cost, to any of its shareholders.

D. Any agreement of acquisition may contain a provision that at any time prior to the filing of the agreement with the Office of the Principal Chief or his authorized representative, the agreement may be terminated by the board of directors of any affected corporation notwithstanding approval of the agreement by the shareholders of one or more of the affected corporations. Any agreement of acquisition may contain a provision that the board of directors of the affected corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the Office of the Principal Chief or his authorized representative, provided that an amendment made subsequent to the adoption of the agreement by the shareholders of any affected corporation shall not:

1. alter or change the amount or kind of consideration to be received in exchange for or on conversion of all or part of the shares to be acquired;

2. alter or change any term of the certificate of incorporation of the affected corporations; or

3. alter or change any of the terms and consideration of the agreement if such alteration or change would adversely affect the holders of any class or series of a corporation whose shares are to be acquired.

E. The holders of the outstanding shares of a class shall be entitled to vote as a class upon an agreement of acquisition, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the agreement provides for the acquisition of all or part of the shares of the class.

F. This section shall not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

G. Any shareholder whose shares are to be acquired pursuant to an agreement of acquisition adopted and approved in accordance with this section and who has complied with the procedural steps specified in 18 CNCA § 91(D) for mergers and consolidations and who has neither voted in favor of the share acquisition nor consented thereto in writing shall be entitled to an appraisal by the District

Court of the fair value of his shares in compliance with the same provisions and procedures and with the same rights and limitations as set out in 18 CNCA § 91(E) through (K).

H. If the entity acquiring shares pursuant to this section is governed by the laws of the District of Columbia or any state other than Cherokee Nation, the entity shall agree that it may be served with process in Cherokee Nation in any proceeding for enforcement of any obligation of the acquiring corporation arising from the share acquisition, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of 18 CNCA § 91, and shall irrevocably appoint the Office of the Principal Chief or his authorized representative as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Office of the Principal Chief or his authorized representative. In the event of such service upon the Office of the Principal Chief or his authorized representative in accordance with this subsection, the Office of the Principal Chief or his authorized representative shall forthwith notify such acquiring corporation thereof by letter sent by certified mail, with return receipt requested, directed to such acquiring corporation at its address so specified, unless such acquiring corporation shall have designated in writing to the Office of the Principal Chief or his authorized representative a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Office of the Principal Chief or his authorized representative pursuant to this subsection. 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 Office of the Principal Chief or his authorized representative that service is being effected pursuant to this subsection and to pay the Office of the Principal Chief or his authorized representative the fee provided for in 18 CNCA § 142(7), which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Office of the Principal Chief or his authorized representative shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Office of the Principal Chief or his authorized representative shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Office of the Principal Chief or his authorized representative.

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§ 90.2. Merger or consolidation of domestic corporation and limited partnership

A. Any one or more corporations of Cherokee Nation may merge or consolidate with one or more limited partnerships, of Cherokee Nation or of any state of the United States, or of the District of Columbia, unless the laws of such states or the District of Columbia forbid such merger or consolidation. Such corporation or corporations and such one or more limited partnerships may merge with or into a corporation, which may be any one of such corporations, or they may merge with or into a limited partnership, which may be any one of such limited partnerships,

or they may consolidate into a new corporation or limited partnership formed by the consolidation, which shall be a corporation or limited partnership of Cherokee Nation or any state of the United States, or the District of Columbia, which permits such merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

B. Each such corporation and limited partnership shall enter into a written agreement of merger or consolidation. The agreement shall state:

1. the terms and conditions of the merger or consolidation;

2. the mode of carrying the consolidation into effect;

3. the manner of converting the shares of stack of each such corporation and the partnership interests of each limited partnership into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation, and if any shares of any such corporation or any partnership interests of any such limited partnership are not to be converted solely into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other rights or securities of any other corporation or entity which the holders of such shares or partnership interests are to receive in exchange for, or upon conversion of, such shares or partnership interests and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation; and

4. such other details or provisions as are deemed desirable, including but not limited to, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or limited partnership. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement required by subsection (B) of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporation in the same manner as is provided in 18 CNCA § 81 and, in the case of the limited partnerships, in accordance with their limited partnership agreements and in accordance with the laws of Cherokee Nation under which they are formed, as the case may be. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of Cherokee Nation when and as provided in 18 CNCA § 81 with respect to the merger or consolidation of corporations of Cherokee Nation. In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation or limited partnership may file a certificate of merger or consolidation, executed in accordance with 18 CNCA § 7 if the surviving or resulting entity is a corporation, or by a general partner, if the surviving or resulting entity is a limited partnership, which states:

1. the name and state of domicile of each of the constituent entities;

2. that an agreement of merger or consolidation has been approved, adopted,

certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;

3. the name of the surviving or resulting corporation or limited partnership;

4. in the case of a merger in which a corporation is the surviving entity, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. in the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as set forth in an attachment to the certificate;

6. that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation or limited partnership and the address thereof,

7. that a copy of the agreement of consolidation or merger shall be furnished by the surviving or resulting entity, on request and without cost, to any shareholder of any constituent corporation or any partner of any constituent limited partnership; and

8. the agreement, if any, required by subsection (D) of this section.

D. If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state of the United States, other than Cherokee Nation, the entity shall agree that it may be served with process in this Nation in any proceeding for enforcement of any obligation of any constituent corporation or limited partnership of Cherokee Nation, as well as for enforcement of any obligation of the surviving or resulting corporation or limited partnership arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of 18 CNCA § 91, and shall irrevocably appoint the Office of the Principal Chief or his authorized representative as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Office of the Principal Chief or his authorized representative. In the event of service upon the Office of the Principal Chief or his authorized representative pursuant to this subsection, the Office of the Principal Chief or his authorized representative shall forthwith notify the surviving or resulting corporation or limited partnership thereof by a letter, sent by certified mail with return receipt requested, directed to such surviving or resulting corporation or limited partnership at its address so specified, unless such surviving or resulting corporation or limited partnership shall have designated in writing to the Office of the Principal Chief or his authorized representative a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Office of the Principal Chief or his authorized representative pursuant to this subsection. 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 Office of the Principal Chief or his authorized representative that service is being effected pursuant to this subsection and to

pay the Office of the Principal Chief or his authorized representative the fee provided for in 18 CNCA § 142(A)(7), which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Office of the Principal Chief or his authorized representative shall maintain an alphabetical record of any such service, setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Office of the Principal Chief or his authorized representative shall not be required to retain such information longer than five (5) years from the date of receipt of the service of process by the Office of the Principal Chief or his authorized representative.

E. 18 CNCA § 81(D), (E) and (F) and 18 CNCA §§ 88 through 90 and 127, insofar as they are applicable, shall apply to mergers or consolidations between corporations and limited partnerships.

LA 16-96, eff. July 15, 1996.

§ 90.3. Business combinations with interested shareholders

A. Notwithstanding any other provisions of this title, a corporation shall not engage in any business combination with any interested shareholder for a period of three (3) years following the date that such person became an interested shareholder, unless:

1. prior to such date, the board of directors of the corporation approved either the business combination or the transaction which resulted in the person becoming an interested shareholder;

2. upon consummation of the transaction which resulted in the person becoming an interested shareholder, the interested shareholder owned of record or beneficially capital stock having at least eighty-five percent (85%) of all voting power of the corporation at the time the transaction commenced, excluding for purposes of determining such voting power the votes attributable to those shares owned of record or beneficially by:

a. persons who are directors and also officers, and

b. employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

3. on or subsequent to such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of all voting power which is not attributable to shares owned of record or beneficially by the interested shareholder.

B. The restrictions contained in this section shall not apply if:

1. the corporation's original certificate of incorporation contains a provision

expressly electing not to be governed by this section;

2. the corporation, by action of its board of directors, adopts an amendment to its bylaws within ninety (90) days of the effective date of this section, expressly electing not to be governed by this section, which amendment shall not be further amended by the board of directors;

3. the corporation, by action of its shareholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by this section, provided that, in addition to any other vote required by law, such amendment to the certificate of incorporation or bylaws must be approved by the affirmative vote of a majority of all voting power of a corporation. An amendment adopted pursuant to this paragraph shall not be effective until twelve (12) months after the adoption of such amendment and shall not apply to any business combination between such corporation and any person who became an interested shareholder of such corporation on or prior to such adoption. A bylaw amendment adopted pursuant to this paragraph shall not be further amended by the board of directors;

4. the corporation does not have a class of voting stock that is:

a. listed on a national securities exchange,

b. authorized for quotation on an inter-dealer quotation system of a registered national securities association, or

c. held of record by one thousand or more shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder;

5. a person becomes an interested shareholder inadvertently and:

a. as soon as practicable divests sufficient shares so that the person ceases to be an interested shareholder, and

b. would not, at any time within the three-year period immediately prior to a business combination between the corporation and such person, have been an interested shareholder but for the inadvertent acquisition;

6. a. the business combination is proposed prior to the consummation or abandonment of, and subsequent to the earlier of the public announcement or the notice required hereunder of, a proposed transaction which:

i. constitutes one of the transactions described in subparagraph b of this paragraph,

ii. is with or by a person who either was not an interested shareholder during the previous three (3) years or who became an interested shareholder with the approval of the corporation's board of directors, and

iii. is approved or not opposed by a majority of the members of the board of directors then in office, but not less than one, who were directors prior to any person becoming an interested shareholder during the previous three (3) years or

were recommended for election or elected to succeed such directors by a majority of such directors;

b. the proposed transactions referred to in subparagraph a of this paragraph are limited to:

i. a share acquisition pursuant to 18 CNCA § 90.1, or a merger or consolidation of the corporation, except for a merger in respect of which, pursuant to 18 CNCA § 81(F), no vote of the shareholders of the corporation is required,

ii. a sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to any direct or indirect wholly-owned subsidiary or to the corporation, having an aggregate market value equal to fifty percent (50%) or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation, or

iii. a proposed tender or exchange offer for outstanding stock of the corporation which represents fifty percent (50%) or more of all voting power of the corporation. The corporation shall give not less than twenty (20) days' notice to all interested shareholders prior to the consummation of any of the transactions described in divisions (i) or (ii) of this subparagraph.

C. Notwithstanding paragraphs (1), (2), (3) and (4) of subsection (B) of this section, a corporation may elect by a provision of its original certificate of incorporation or any amendment thereto to be governed by this section, provided that any such amendment to the certificate of incorporation shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became such prior to the effective date of the amendment.

D. As used in this section only:

1. **"Affiliate"** means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person;

2. **"All voting power"** means the aggregate number of votes which the holders of all classes of capital stock of the corporation would be entitled to cast in an election of directors generally;

3. **"Associate"**, when used to indicate a relationship with any person, means:

a. any corporation or organization of which such person is a director, officer or partner or is, of record or beneficially, the owner of outstanding stock of the corporation having twenty percent (20%) or more of all voting power of the corporation,

b. any trust or other estate in which such person has at least a twenty percent (20%) beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and

c. any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person;

4. **"Beneficial ownership"** shall have the meaning ascribed to such term by Rule 13d-3 under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as amended, except that a person shall be deemed to be the owner or beneficial owner of securities of which he has the right to acquire ownership either immediately or only after the passage of any time or the giving of notice or both; provided, however, that a person shall not be deemed the owner or beneficial owner of any stock if:

a. the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to more than ten (10) persons, or

b. the stock is tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates, until such tendered stock is accepted for purchase or exchange;

5. **"Business combination"**, when used in reference to any corporation and any interested shareholder of such corporation, means:

a. any merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with:

i. the interested shareholder, or

ii. any other corporation if the merger or consolidation is caused by the interested shareholder and as a result of such merger or consolidation subsection (A) of this section is not applicable to the surviving corporation,

b. any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of such corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation,

c. any transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested shareholder, except:

i. pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of such corporation or any such subsidiary which securities were outstanding prior to the time that the interested shareholder became such,

ii. pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of such corporation or any such subsidiary which security is distributed,

pro rata to all holders of a class or series of stock of such corporation subsequent to the time the interested shareholder became such, or

iii. pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of said stock; provided, however, that in no case under divisions ii and iii of this subparagraph shall there be an increase in the interested shareholder's proportionate share of the stock of any class or series of the corporation or of all voting power of the corporation,

d. any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, or all voting power, of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested shareholder,

e. any receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of such corporation, of any loans, advances, guarantees, pledges, or other financial benefits, other than those expressly permitted in subparagraphs a through d of this paragraph, provided by or through the corporation or any direct or indirect majority-owned subsidiary, or

f. any share acquisition by the interested shareholder from the corporation or any direct or indirect majority-owned subsidiary of the corporation pursuant to 18 CNCA § 90.1;

6. **"Control"**, including the terms **"controlling"**, **"controlled by"** and **"under common control with"**, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who owns, of record or beneficially, outstanding stock of the corporation having twenty percent (20%) or more of all voting power of the corporation shall be presumed to have control of such corporation, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such corporation;

7. **"Group"** means two or more persons who agree to act together for the purpose of acquiring, holding, voting or disposing of securities of the corporation;

8.a. **"Interested shareholder"** means:

i. any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that:

(a) owns of record or beneficially outstanding stock of the corporation having fifteen percent (15%) or more of all voting power of the corporation, or

(b) is an affiliate or associate of the corporation and owned of record or

beneficially outstanding stock of the corporation having fifteen percent (15%) or more of all voting power of the corporation at any time within the three- (3) year period immediately prior to the date on which it is sought to be determined whether such person is an interested shareholder, and

ii. the affiliates and associates of such person;

b. the term **"interested shareholder"** shall not include:

i. any person who:

(a) owned of record or beneficially shares in excess of the fifteen percent (15%) limitation set forth herein as of, or acquired such shares pursuant to a tender offer commenced prior to, September 1, 1991, or pursuant to an exchange offer announced prior to September 1, 1991, and commenced within ninety (90) days thereafter and continued to own shares in excess of such fifteen percent (15%) limitation or would have but for action by the corporation, or

(b) acquired such shares from a person described in subdivision (a) of this division by gift, inheritance or in a transaction in which no consideration was exchanged, or

ii. any person whose ownership of shares in excess of the fifteen percent (15%) limitation set forth herein is the result of action taken solely by the corporation provided that such person shall be an interested shareholder if thereafter he acquires additional shares of voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by such person;

c. for the purpose of determining whether a person is an interested shareholder, the stock of the corporation deemed to be outstanding shall include stock owned of record or beneficially by such person, but shall not include any other unissued stock of such corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise;

9. **"Person"** means any individual, corporation, partnership, unincorporated association, any other entity, any group and any member of a group.

E. No provisions of a certificate of incorporation or bylaw shall require, for any vote of shareholders required by this section, a greater vote of shareholders than that specified in this section.

LA 16-96, eff. July 15, 1996.

§ 91. Appraisal rights

A. Any shareholder of a corporation of Cherokee Nation who holds shares of stock on the date of the making of a demand pursuant to the provisions of subsection (D) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with the provisions of subsection D of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to the provisions of 18 CNCA § 73 shall be entitled to an

appraisal by the district court of the fair value of his shares of stock under the circumstances described in subsections B and C of this section. As used in this section, the word **"shareholder"** means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words **"stock"** and **"share"** mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation. The provisions of this subsection shall be effective only with respect to mergers or consolidations consummated pursuant to an agreement of merger or consolidation entered into after the effective date of this title.

B. 1. Except as otherwise provided for in this subsection, appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation, or of the acquired corporation in a share acquisition, to be effected pursuant to the provisions of 18 CNCA § 81, 18 CNCA § 82, 18 CNCA § 86, 18 CNCA § 87, 18 CNCA § 90.2, or 18 CNCA § 91.1.

2. a. No appraisal rights under this section shall be available for the shares of any class or series of stock which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders to act upon the agreement of merger or consolidation, were either:

i. listed on a national securities exchange; or

ii. held of record by more than two thousand shareholders.

b. In addition, no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the shareholders of the surviving corporation as provided for in 18 CNCA § 81(F).

3. Notwithstanding the provisions of paragraph (2) of this subsection, appraisal rights provided for in this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to the provisions of 18 CNCA § 81, 18 CNCA § 82, 18 CNCA § 86 or 18 CNCA § 87 to accept for such stock anything except:

a. shares of stock of the corporation surviving or resulting from such merger or consolidation; or

b. shares of stock of any other corporation which at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than two thousand (2,000) shareholders; or

c. cash in lieu of fractional shares of the corporations described in subparagraphs a and b of this paragraph; or

d. any combination of the shares of stock and cash in lieu of the fractional shares described in subparagraphs (a), (b) and (c) of this paragraph.

4. In the event all of the stock of a subsidiary Cherokee Nation corporation party to a merger effected pursuant to the provisions of 18 CNCA § 83 is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Cherokee Nation corporation.

C. Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (D) and (E) of this section, shall apply as nearly as is practicable.

D. Appraisal rights shall be perfected as follows:

1. If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of shareholders, the corporation, not less than twenty (20) days prior to the meeting, shall notify each of its shareholders entitled to such appraisal rights that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each shareholder electing to demand the appraisal of the shares of the shareholder shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of the shares of the shareholder. Such demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends thereby to demand the appraisal of the shares of the shareholder. A proxy or vote against the merger or consolidation shall not constitute such a demand. A shareholder electing to take such action must do so by a separate written demand as herein provided. Within ten (10) days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each shareholder of each constituent corporation who has complied with the provisions of this subsection and has not voted in favor of or consented to the merger or consolidation as of the date that the merger or consolidation has become effective; or

2. If the merger or consolidation was approved pursuant to the provisions of 18 CNCA § 73 or 18 CNCA § 83, the surviving or resulting corporation, either before the effective date of the merger or consolidation or within ten (10) days thereafter, shall notify each of the shareholders entitled to appraisal rights of the effective date of the merger or consolidation and that appraisal rights are available for any or all of the shares of the constituent corporation, and shall include in such notice a copy of this section. The notice shall be sent by certified or registered mail, return receipt requested, addressed to the shareholder at the address of the shareholder as it appears on the records of the corporation. Any shareholder entitled to appraisal rights may, within twenty (20) days after the date of mailing of the notice, demand in writing from the surviving or resulting corporation the appraisal of the shares of the shareholder. Such demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends to demand the appraisal of the shares of the shareholder.

E. Within one hundred twenty (120) days after the effective date of the merger or consolidation, the surviving or resulting corporation or any shareholder who has complied with the provisions of subsections (A) and (D) of this section and who is otherwise entitled to appraisal rights, may file a petition in District Court demanding a determination of the value of the stock of all such shareholders. Provided, however, at any time within sixty (60) days after the

effective date of the merger or consolidation, any shareholder shall have the right to withdraw the demand of the shareholder for appraisal and to accept the terms offered upon the merger or consolidation. Within one hundred twenty (120) days after the effective date of the merger or consolidation, any shareholder who has complied with the requirements of subsections (A) and (D) of this section, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the shareholder within ten (10) days after the shareholder's written request for such a statement is received by the surviving or resulting corporation or within ten (10) days after expiration of the period for delivery of demands for appraisal pursuant to the provisions of subsection (D) of this section, whichever is later.

F. Upon the filing of any such petition by a shareholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which, within twenty (20) days after such service, shall file in the office of the Court Clerk of the District Court in which the petition was filed a duly verified list containing the names and addresses of all shareholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Court Clerk, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the shareholders shown on the list at the addresses therein stated. Such notice shall also be given by one or more publications at least one (1) week before the day of the hearing, in the newspaper *Cherokee Phoenix* or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

G. At the hearing on such petition, the Court shall determine the shareholders who have complied with the provisions of this section and who have become entitled to appraisal rights. The Court may require the shareholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Court Clerk for notation thereon of the pendency of the appraisal proceedings; and if any shareholder fails to comply with such direction, the Court may dismiss the proceedings as to such shareholder.

H. After determining the shareholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. In determining the fair rate of interest, the Court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any shareholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the shareholder entitled to an appraisal. Any shareholder

whose name appears on the list filed by the surviving or resulting corporation pursuant to the provisions of subsection (F) of this section and who has submitted the certificates of stock of the shareholder to the Court Clerk, if such is required, may participate fully in all proceedings until it is finally determined that the shareholder is not entitled to appraisal rights pursuant to the provisions of this section.

I. The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the shareholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be so made to each such shareholder, in the case of holders of uncertificated stock immediately, and in the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the District Court may be enforced, whether such surviving or resulting corporation be a corporation of Cherokee Nation or of any state.

J. The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a shareholder, the Court may order all or a portion of the expenses incurred by any shareholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney fees and the fees and expenses of experts, to be charged pro rata against the value of all of the shares entitled to an appraisal.

K. From and after the effective date of the merger or consolidation, no shareholder who has demanded the appraisal rights of the shareholder as provided for in subsection (D) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock, except dividends or other distributions payable to shareholders of record at a date which is prior to the effective date of the merger or consolidation; provided, however, that if no petition for an appraisal shall be filed within the time provided for in subsection (E) of this section, or if such shareholder shall deliver to the surviving or resulting corporation a written withdrawal of the shareholder's demand for an appraisal and an acceptance of the merger or consolidation, either within sixty (60) days after the effective date of the merger or consolidation as provided for in subsection (E) of this section or thereafter with the written approval of the corporation, then the right of such shareholder to an appraisal shall cease. Provided, however, no appraisal proceeding in the District Court shall be dismissed as to any shareholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

L. The shares of the surviving or resulting corporation into which the shares of such objecting shareholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

LA 16-96, eff. July 15, 1996.

ARTICLE 11

SALE OF ASSETS, DISSOLUTION AND WINDING UP

Section

§ 92. Sale, lease or exchange of assets—Consideration—Procedure

A. Every corporation, at any meeting of its board of directors or governing body, may sell, lease, or exchange all or substantially all of its property and assets, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property, including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors or governing body deems expedient and for the bent interests of the corporation, when and as authorized by a resolution adopted by the holders of a majority of the outstanding stock of the corporation entitled to vote thereon or, if the corporation is a nonstock corporation, by a majority of the members having the right to vote for the election of the members of the governing body, at a meeting duly called upon at least twenty (20) days' notice. The notice of the meeting shall state that such a resolution will be considered.

B. Notwithstanding authorization or consent to a proposed sale, lease or exchange of a corporation's property and assets by the shareholders or members, the board of directors or governing body may abandon such proposed sale, lease or exchange without further action by the shareholders or members, subject to the rights, if

any, of third parties under any contract relating thereto.

LA 16-96, eff. July 15, 1996.

§ 93. Mortgage or pledge of assets

The authorization or consent of shareholders to the mortgage or pledge of a corporation's property and assets shall not be necessary, except to the extent that the certificate of incorporation otherwise provides.

LA 16-96, eff. July 15, 1996.

§ 94. Dissolution of joint venture corporation having two shareholders

A. If the shareholders of a corporation of Cherokee Nation, having only two shareholders each of which owns fifty percent (50%) of the stock therein, shall be engaged in the prosecution of a joint venture and if such shareholders shall be unable to agree upon the desirability of discontinuing such joint venture and disposing of the assets used in such venture, either shareholder may file with the District Court a petition stating that it desires to discontinue such joint venture and to dispose of the assets used in such venture in accordance with a plan to be agreed upon by both shareholders or that, if no such plan shall be agreed upon by both shareholders, the corporation be dissolved. Such petition shall have attached thereto a copy of the proposed plan of discontinuance and distribution and a certificate stating that copies of such petition and plan have been transmitted in writing to the other shareholder and to the directors and officers of such corporation. The petition and certificate shall be executed and acknowledged in accordance with the provisions of 18 CNCA § 7.

B. Unless both shareholders file with the District Court:

1. within three (3) months of the date of the filing of such petition, a certificate similarly executed and acknowledged stating that they have agreed on such plan, or a modification thereof; and

2. within one (1) year from the date of the filing of such petition, a certificate similarly executed and acknowledged stating that the distribution provided by such plan has been completed, the District Court may dissolve such corporation and may by appointment of one or more trustees or receivers with all the powers and title of a trustee or receiver appointed pursuant to the provisions of 18 CNCA § 100, administer and wind up its affairs. Either or both of the periods provided for in paragraphs (1) and (2) of this subsection may be extended by agreement of the shareholders, evidenced by a certificate similarly executed, acknowledged and filed with the District Court prior to the expiration of such period.

LA 16-96, eff. July 15, 1996.

§ 95. Dissolution before the issuance of shares or beginning business—Procedure

If a corporation has not issued shares or has not commenced the business for which the corporation was organized, a majority of the incorporators, or, if directors were named in the certificate of incorporation or have been elected, a majority of the directors, may surrender all of the corporation's rights and

franchises by filing in the Office of the Principal Chief or his authorized representative a certificate, executed and acknowledged by a majority of the incorporators or directors, stating that no shares of stock have been issued or that the business of activity for which the corporation was organized has not begun; that no part of the capital of the corporation has been paid, or, if some capital has been paid, that the amount actually paid in for the corporation's shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto; that if the corporation has begun business but it has not issued shares, all debts of the corporation have been paid; that if the corporation has not begun business but has issued stock certificates all issued stock certificates, if any, have been surrendered and canceled; and that all rights and franchises of the corporation are surrendered. Upon such certificate becoming effective in accordance with the provisions of 18 CNCA § 7, the corporation shall be dissolved.

LA 16-96, eff. July 15, 1996.

§ 96. Dissolution—Procedure

A. If it should be deemed advisable in the judgment of the board of directors of any corporation that it should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice to be mailed to each shareholder entitled to vote thereon of the adoption of the resolution and of a meeting of shareholders to take action upon the resolution.

B. At the meeting a vote shall be taken upon the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon shall vote for the proposed dissolution, a certificate of dissolution shall be filed with the Office of the Principal Chief or his authorized representative pursuant to subsection (D) of this section.

C. Dissolution of a corporation may also be authorized without action of the directors if all the shareholders entitled to vote thereon shall consent in writing and a certificate of dissolution shall be filed with the Office of the Principal Chief or his authorized representative pursuant to subsection (D) of this section.

D. If dissolution is authorized in accordance with this section, a certificate of dissolution shall be executed, acknowledged and filed, and shall become effective, in accordance with 18 CNCA § 7. Such certificate of dissolution shall set forth:

1. the name of the corporation;

2. the date dissolution was authorized;

3. that the dissolution has been authorized by the board of directors and shareholders of the corporation, in accordance with subsections (A) and (B) of this section, or that the dissolution has been authorized by all of the shareholders of the corporation entitled to vote on a dissolution, in accordance with subsection (C) of this section; and

4. the names and addresses of the directors and officers of the corporation.

E. The resolution authorizing a proposed dissolution may provide that notwithstanding authorization or consent to the proposed dissolution by the shareholders, or the members of a nonstock corporation pursuant to 18 O.S. § 1097, the board of directors or governing body may abandon such proposed dissolution without further action by the shareholders or members.

F. Upon a certificate of dissolution becoming effective in accordance with 18 CNCA § 7, the corporation shall be dissolved.

LA 16-96, eff. July 15, 1996.

§ 97. Reserved

§ 98. Payment of franchise taxes before dissolution

No corporation shall be dissolved pursuant to the provisions of the Cherokee Nation General Corporation Act until all franchise taxes due to or assessable by Cherokee Nation have been paid by the corporation.

LA 16-96, eff. July 15, 1996.

§ 99. Continuation of corporation after dissolution for purposes of suit and winding up affairs

All corporations, whether they expire by their own limitation or are otherwise dissolved, nevertheless shall be continued, for the term of three (3) years from such expiration or dissolution or for such longer period as the District Court shall in its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or any other proceeding provided for by Cherokee Nation Code Annotated, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to their shareholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit, or proceeding begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, the action shall not abate by reason of the expiration or dissolution of the corporation. The corporation, solely for the purpose of such action, suit or proceeding, shall be continued as a body corporate beyond the three-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the District Court.

LA 16-96, eff. July 15, 1996.

§ 100. Trustees or receivers for dissolved corporations—Appointment—Powers—Duties

When any corporation organized in accordance with the provisions of the Cherokee Nation General Corporation Act shall be dissolved in any manner whatever, the District Court, on application of any creditor, shareholder or director of the corporation, or any other person who shows good cause therefor, at any time, may either appoint one or more of the directors of the corporation to be trustees, or appoint one or more persons to be receivers, of and for the corporation, to take charge of the corporation's property, and to collect the debts and property

due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers may be continued as long as the District Court shall think necessary for the purposes provided for in this section.

LA 16-96, eff. July 15, 1996.

§ 100.1. Notice to claimants—Filing of claims

A. 1. After a corporation has been dissolved in accordance with the procedures set forth in the Cherokee Nation General Corporation Act, the corporation or any successor entity may give notice of the dissolution requesting all persons having a claim against the corporation to present their claims against the corporation in accordance with such notice. Such notice shall state:

a. that all claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim;

b. the mailing address to which a claim must be sent;

c. the date by which a claim must be received by the corporation or successor entity, which date shall be no earlier than sixty (60) days from the date thereof; and

d. that the corporation or a successor entity may make distributions to other claimants and the corporation's shareholders or persons interested as having been such without further notice to the claimant.

2. Such notice shall also be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the office of the corporation's last registered agent in Cherokee Nation is located and in the corporation's principal place of business and, in the case of a corporation having Ten Million Dollars ($10,000,000.00) or more in total assets at the time of its dissolution, at least once in the newspaper *Cherokee Phoenix*. On or before the date of the first publication of such notice, the corporation or successor entity shall mail a copy of such notice by certified or registered mail, return receipt requested, to each known claimant of the corporation.

3. A corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this subsection by mailing notice of such rejection by certified mail return receipt requested to the claimant within ninety (90) days after receipt of such claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in 18 CNCA § 99. A notice sent by a corporation or successor entity pursuant to this subsection shall be accompanied by a copy of 18 CNCA §§ 99 through 100.3.

B. 1. A corporation or successor entity electing to follow the procedures described in subsection (A) of this section shall also give notice of the dissolution of the corporation to persons with claims contingent upon the

occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request that such persons present such claims in accordance with the terms of such notice. Such notice shall be in substantially the form, and sent and published in the same manner, as described in paragraph (1) of subsection (A) of this section.

2. The corporation or successor entity shall offer any claimant whose claim is contingent, conditional or unmatured, such security as the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall mail such offer to the claimant by certified mail, return receipt requested, within ninety (90) days of receipt of such claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in 18 CNCA § 99. If the claimant offered such security does not deliver in writing to the corporation or successor entity a notice rejecting the offer within one hundred twenty (120) days after receipt of such offer for security, the claimant shall be deemed to have accepted such security as the sole source from which to satisfy his claim against the corporation.

C. 1. A corporation or successor entity which has given notice in accordance with subsections (A) and (B) of this section shall petition the District Court to determine the amount and form of security that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to paragraph (2) of subsection (B) of this section.

2. A corporation or successor entity which has given notice in accordance with subsection (A) of this section shall petition the district court to determine the amount and form of security which will be sufficient to provide compensation to claimants whose claims are known to the corporation or successor entity but whose identities are unknown. The District Court shall appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this subsection. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

D. The giving of any notice or making of any offer pursuant to the provisions of this section shall not revive any claim then barred or constitute acknowledgment by the corporation or successor entity that any person to whom such notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom such notice is sent.

E. As used in this section, the term **"successor entity"** shall include any trust, receivership or other legal entity governed by the laws of Cherokee Nation to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of prosecuting and defending suits, by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

LA 16-96, eff. July 15, 1996.

§ 100.2. Payment and distribution to claimants and shareholders

A. A dissolved corporation or successor entity which has followed the procedures described in 18 CNCA § 100.1 shall:

1. pay the claims made and not rejected in accordance with 18 CNCA § 100.1(A);

2. post the security offered and not rejected pursuant to 18 CNCA § 100.1(B)(2);

3. post any security ordered by the District Court in any proceeding under 18 CNCA § 100.1(C); and

4. pay or make provision for all other obligations of the corporation or such successor entity.

Such claims or obligations shall be paid in full and any such provision for payment shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority, and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be distributed to the shareholders of the dissolved corporation; provided, however, that such distribution shall not be made before the expiration of one hundred fifty (150) days from the date of the last notice of rejections given pursuant to 18 CNCA § 100.1(A)(3). In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of such successor entity as to the provision made for the payment of all obligations under paragraph (4) of this subsection shall be conclusive.

B. A dissolved corporation or successor entity which has not followed the procedures described in 18 CNCA § 100.1 shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims known to the corporation or such successor entity and all claims which are known to the dissolved corporation or such successor entity but for which the identity of the claimant is unknown. Such claims shall be paid in full and any such provision for payment made shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefore. Any remaining funds shall be distributed to the shareholders of the dissolved corporation.

C. Directors of a dissolved corporation or governing persons of a successor entity which has complied with subsection (A) or (B) of this section shall not be personally liable to the claimants of the dissolved corporation.

D. As used in this section, the term **"successor entity"** has the meaning set forth in 18 CNCA § 100.1(E).

LA 16-96, eff. July 15, 1996.

§ 100.3. Liability of shareholders of dissolved corporations

A. A shareholder of a dissolved corporation the assets of which were distributed

pursuant to 18 CNCA § 100.2(A) or (B) shall not be liable for any claim against the corporation in an amount in excess of such shareholder's pro rata share of the claim or the amount so distributed to him, whichever is less.

B. A shareholder of a dissolved corporation the assets of which were distributed pursuant to 18 CNCA § 100.2(A) shall not be liable for any claim against the corporation on which an action, suit or proceeding is not begun prior to the expiration of the period described in 18 CNCA § 99.

C. The aggregate liability of any shareholder of a dissolved corporation for claims against the dissolved corporation shall not exceed the amount distributed to him in dissolution.

LA 16-96, eff. July 15, 1996.

§ 101. Jurisdiction of Court

The District Court shall have jurisdiction of the application prescribed in 18 CNCA § 100 and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

LA 16-96, eff. July 15, 1996.

§§ 102, 103. Reserved

§ 104. Revocation or forfeiture of charter—Proceedings

A. The District Court shall have jurisdiction to revoke or forfeit the charter of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises. The Attorney General of Cherokee Nation, upon his own motion or upon the relation of a proper party, shall proceed for this purpose by complaint in Cherokee Nation District Court.

B. The District Court shall have power, by appointment of receivers or otherwise, to administer and wind up the affairs of any corporation whose charter shall be revoked or forfeited by any Court pursuant to the provisions of the Cherokee Nation General Corporation Act or otherwise, and to make such orders and decrees with respect thereto as shall be just and equitable respecting its affairs and assets and the rights of its shareholders and creditors.

C. No proceeding shall be instituted pursuant to the provisions of this section for nonuse of any corporation's powers, privileges or franchises during the first two (2) years after its incorporation.

LA 16-96, eff. July 15, 1996.

§ 105. Dissolution or forfeiture of charter by decree of Court—Filing

Whenever any corporation is dissolved or its charter forfeited by decree or judgment of the District Court, the decree or judgment shall be immediately filed by the Clerk in the District Court, in the Office of the Principal Chief or his authorized representative, and a note thereof shall be made by the Office of the Principal Chief or his authorized representative on the corporation's charter or

certificate of incorporation and on the index thereof.

LA 16-96, eff. July 15, 1996.

ARTICLE 12

INSOLVENCY; RECEIVERS AND TRUSTEES

Section

§ 106. Receivers for insolvent corporations—Appointment and powers

Whenever a corporation shall be insolvent, the District Court of Cherokee Nation may at any time upon the application of a shareholder or shareholders, severally or jointly, who have been registered owners for a period of not less than six (6) months, of not less than ten percent (10%) of the entire outstanding stock of the corporation or a creditor whose claim has been reduced to judgment and execution thereon has been issued, appoint one or more persons to be receivers of and for the corporation, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts, claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper. The powers of the receivers shall be such and shall continue so long as the Court shall deem necessary.

LA 16-96, eff. July 15, 1996.

§ 107. Title to property—Filing order of appointment—Exception

A. Trustees of or receivers for any corporation, appointed by the District Court, and their respective survivors and successors, upon their appointment and qualification or upon the death, resignation or discharge of any co-trustee or co-receiver, shall be vested by operation of law and without any act or deed, with the title of the corporation to all of its property, real, personal, or mixed of whatsoever nature, kind, class or description, and wheresoever situated, except real estate situated outside Cherokee Nation.

B. Trustees or receivers appointed by the District Court, within twenty (20) days from the date of their qualification, shall file in the office of the Clerk of the District Court a certified copy of the order of their appointment and evidence of their qualification.

C. This section shall not apply to receivers appointed pendente lite.

LA 16-96, eff. July 15, 1996.

§ 108. Notices to shareholders and creditors

All notices required to be given to shareholders and creditors in any action in which a receiver or trustee for a corporation was appointed shall be given by the District Court, unless otherwise ordered by the Court.

LA 16-96, eff. July 15, 1996.

§ 109. Receivers or trustees—Inventory—List of debts and reports

Trustees or receivers, as soon as convenient, shall file in the District Court a full and complete itemized inventory of all the assets of the corporation which shall show their nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained. Trustees or receivers shall make a report to the District Court whenever and as often as the Court shall direct.

LA 16-96, eff. July 15, 1996.

§ 110. Creditors' proof of claims—When barred—Notice

All creditors shall make proof under oath of their respective claims against the corporation, and cause the same to be filed in the District Court within the time fixed by the order of the District Court. All creditors and claimants failing to do so, within the time limited by the provisions of this section, or the time prescribed by the order of the District Court, by direction of the District Court, may be barred from participating in the distribution of the assets of the corporation. The District Court may also prescribe what notice, by publication or otherwise, shall be given to the creditors of the time fixed for the filing and making proof of claims.

LA 16-96, eff. July 15, 1996.

§ 111. Adjudication of claims—Appeal

A. The District Court immediately upon the expiration of the time fixed for the filing of claims, in compliance with the provisions of 18 CNCA § 110, shall notify the trustee or receiver of the filing of the claims, and the trustee or receiver, within thirty (30) days after receiving the notice, shall inspect the claims, and if the trustee or receiver or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, the trustee or receiver shall immediately notify the creditors whose claims are disputed of his decision. The trustee or receiver shall require all creditors whose claims are disputed to submit themselves to such examination in relation to their claims as the trustee or receiver shall direct, and the creditors shall produce such books and papers relating to their claims as shall be required. The trustee or receiver shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

B. Every creditor or claimant who shall have received notice from the receiver or trustee that his claim has been disallowed in whole or in part may appeal to the District Court within thirty (30) days thereafter. The District Court, after hearing, shall determine the rights of the parties.

LA 16-96, eff. July 15, 1996.

§ 112. Sale of perishable or deteriorating property

Whenever the property of a corporation is at the time of the appointment of a receiver or trustee encumbered with liens of any character, and the validity, extent or legality of any lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting the lien, the District Court may order the receiver or trustee to sell the property of the corporation, clear of all encumbrances, at public or private sale, for the best price that can be obtained therefor, and pay the net proceeds arising from the sale thereof after deducting the costs of the sale into the District Court, there to remain subject to the order of the District Court, and to be disposed of as the District Court shall direct.

LA 16-96, eff. July 15, 1996.

§ 113. Compensation, costs and expenses of receiver or trustee

The District Court, before making distribution of the assets of a corporation among the creditors or shareholders thereof, shall allow a reasonable compensation to the receiver or trustee for his services, and the costs and expenses incurred in and about the execution of his trust, and the costs of the proceedings in the District Court, to be first paid out of the assets.

LA 16-96, eff. July 15, 1996.

§ 114. Substitution of trustee or receiver as party—Abatement of actions

A trustee or receiver, upon application by him in the District Court, shall be substituted as party plaintiff in the place of the corporation in any suit or proceeding which was so pending at the time of his appointment. No action against a trustee or receiver of a corporation shall state by reason of his death, but,

upon suggestion of the facts of the record, shall be continued against his successor or against the corporation in case no now trustee or receiver is appointed.

LA 16-96, eff. July 15, 1996.

§ 115. Liens for wages or products when corporation is insolvent

A. Whenever any corporation of Cherokee Nation, or any foreign corporation doing business in Cherokee Nation, shall become insolvent, the employees performing labor or services of whatever character in the regular employ of the corporation shall have a lien upon the personal property of such corporation for the amount of the wages or payments due to them, not exceeding four months wages or payments which shall have accrued prior to the adjudication of the insolvency of such corporation, which lien shall be paid prior to any other debts, charges or claims against said corporation, except taxes or fees due the United States government or Cherokee Nation. The word **"employee"** shall not be construed to include any of the officers of the corporation.

B. The lien provided for in this section shall be enforced in the manner provided for by law for the enforcement of other liens for labor.

LA 16-96, eff. July 15, 1996.

§ 116. Discontinuance of liquidation

The liquidation of the assets and business of an insolvent corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the District Court in its discretion, and subject to such condition as it may deem appropriate, may dismiss the proceedings and direct the receiver or trustee to redeliver to the corporation all of its remaining property and assets.

LA 16-96, eff. July 15, 1996.

§ 117. Compromise or arrangement between corporation and creditors or shareholders

A. Whenever the provision provided for in 18 CNCA § 6(B)(2) is included in the original certificate of incorporation of any corporation, all persons who become creditors or shareholders thereof shall be deemed to have become such creditors or shareholders subject in all respects to that provision and the same shall be absolutely binding upon them. Whenever that provision is inserted in the certificate of incorporation of any such corporation by an amendment of its certificate all persons who become creditors or shareholders of such corporation after such amendment shall be deemed to have become such creditors or shareholders subject in all respects to that provision and the same shall be absolutely binding upon them.

B. The District Court may administer and enforce any compromise or arrangement made pursuant to the provision provided for in 18 CNCA § 6(B)(2) and may restrain, pendente lite, all actions and proceedings against any corporation with respect to which the District Court shall have begun the administration and enforcement of that provision and may appoint a temporary receiver for such corporation and

may grant the receiver such powers as it deems proper, and may make and enforce such rules as it deems necessary for the exercise of such jurisdiction.

LA 16-96, eff. July 15, 1996.

§ 118. Bankruptcy proceedings under a statute of the United States—Effectuation

A. Any corporation of Cherokee Nation, a plan of reorganization of which, pursuant to the provisions of any applicable statute of the United States relating to the bankruptcy of corporations, has been or shall be confirmed by the decree or order of a court of competent jurisdiction, may put into effect and carry out the plan and the decrees and orders of the court or judge relative thereto and may take any proceedings and do any act provided in the plan or directed by such decrees and orders, without further action by its directors or shareholders. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the trustee or trustees of such corporation appointed in the bankruptcy proceedings, or a majority thereof, or if none be appointed and acting, by designated officers of the corporation, or by a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation.

B. Such corporation, in the manner provided for in subsection (A) of this section, but without limiting the generality or effect of the foregoing, may alter, amend, or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its certificate of incorporation, and make any change in its capital or capital stock, or any other amendment, change, or alteration, or provision, authorized by the provisions of the Cherokee Nation General Corporation Act; be dissolved, transfer all or part of its assets, merge or consolidate as permitted by the provisions of the Cherokee Nation General Corporation Act, in which case, however, no shareholder shall have any statutory right of appraisal of his stock; change the location of its registered office, change its registered agent, and remove or appoint any agent to receive service of process; authorize and fix the terms, manner and conditions of, the issuance of bonds, debentures or other obligations, whether or not convertible into stock of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for stock of any class; or lease its property and franchises to any corporation, as permitted by law.

C. A certificate of any amendment, change or alteration, or of dissolution, or any agreement of merger or consolidation, made by such corporation pursuant to the provisions of this section, shall be filed with the Office of the Principal Chief or his authorized representative in accordance with the provisions of 18 CNCA § 7, and, subject to the provisions of 18 CNCA § 7(D), shall thereupon become effective in accordance with its terms and the provisions of this section. Such certificate, agreement of merger or other instrument shall be made, executed and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees appointed in the reorganization or debtor in possession in the bankruptcy proceedings, or a majority thereof, or, if none be appointed and acting, by the officers of the corporation, or by a master or other representative appointed by the court or judge, and shall certify that provision for the making of such certificate, agreement or instrument is contained in a decree or order

of a court or judge having jurisdiction of a proceeding under such applicable statute of the United States for the reorganization of such corporation.

D. The provisions of this section shall cease to apply to such corporation upon consummation of a plan of reorganization or the entry of a final decree in the bankruptcy proceedings closing the case and discharging the trustee, if any, or the debtor in possession.

E. On filing any certificate, agreement, report or other paper made or executed pursuant to the provisions of this section, there shall be paid to the Office of the Principal Chief or his authorized representative, for the use of Cherokee Nation, the same fees as are payable by corporations not in bankruptcy proceedings upon the filing of like certificates, agreements, reports or other papers.

LA 16-96, eff. July 15, 1996.

ARTICLE 13

RENEWAL, REVIVAL, EXTENSION AND RESTORATION OF CERTIFICATE OF INCORPORATION OR CHARTER

Section

§ 119. Revocation of voluntary dissolution

A. At any time prior to the expiration of three (3) years following the dissolution of a corporation pursuant to the provisions of 18 CNCA § 96, or, at any time prior to the expiration of such longer period as the District Court may have directed pursuant to the provisions of 18 CNCA § 99, a corporation may revoke the dissolution up to that time effected by it in the following manner:

1. The board of directors shall adopt a resolution recommending that the dissolution be revoked and directing that the question of the revocation be submitted to a vote at a special meeting of shareholders.

2. Notice of the special meeting of shareholders shall be given in accordance with the provisions of 18 CNCA § 67 to each shareholder whose shares were entitled to vote upon a proposed dissolution before the corporation was dissolved.

3. At the meeting a vote of the shareholders shall be taken on a resolution to revoke the dissolution. If a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution shall be voted for the resolution, a certificate of revocation of dissolution shall be executed and acknowledged in accordance with the provisions of 18 CNCA § 7 which shall state:

a. the name of the corporation;

b. the names and respective addresses of its officers;

c. the names and respective addresses of its directors; and

d. that a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution have voted in favor of a resolution to revoke the dissolution; or, if it be the fact, that, in lieu of a meeting and vote of shareholders, the shareholders have given their written consent to the revocation in accordance with the provisions of 18 CNCA § 73.

B. Upon the filing in the Office of the Principal Chief or his authorized representative of the certificate of revocation of dissolution, the Office of the Principal Chief or his authorized representative, upon being satisfied that the requirements of this section have been complied with, shall issue his certificate that the dissolution has been revoked. Upon the issuance of such certificate by the Office of the Principal Chief or his authorized representative, the revocation of the dissolution shall become effective and the corporation may again carry on its business.

C. If, after three (3) years from the date upon which the dissolution became effective, the name of the corporation is unavailable upon the records of the Office of the Principal Chief or his authorized representative, then, in such case, the corporation shall not be reinstated under the same name which it bore when its dissolution became effective, but shall adopt and be reinstated under some other name, and in such case the certificate to be filed pursuant to the provisions of this section shall set forth the name borne by the corporation at the time its dissolution became effective and the new name under which the corporation is to be reinstated.

D. Nothing in this section shall be construed to affect the jurisdiction or power of the District Court pursuant to the provisions of 18 CNCA § 100 or 18 CNCA § 101.

LA 16-96, eff. July 15, 1996.

§ 120. Renewal, revival, extension and restoration of certificate of incorporation

A. As used in this section, the term **"certificate of incorporation"** includes the charter of a corporation organized pursuant to the provisions of any law of Cherokee Nation.

B. Any corporation, at any time before the expiration of the time limited for its existence and any corporation whose certificate of incorporation has become forfeited by law for nonpayment of taxes and any corporation whose certificate of incorporation has expired by reason of failure to renew it or whose certificate of incorporation has been renewed, but, through failure to comply strictly with the provisions of the Cherokee Nation General Corporation Act, the validity of whose renewal has been brought into question, may at any time procure an extension, restoration, renewal or revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto.

C. The extension, restoration, renewal or revival of the certificate of incorporation may be procured by executing, acknowledging and filing a certificate in accordance with the provisions of 18 CNCA § 7.

D. The certificate required by the provisions of subsection (C) of this section shall state:

1. The name of the corporation, which shall be the existing name of the corporation or the name it bore when its certificate of incorporation expired, except as provided for in subsection (F) of this section;

2. The address, including the street, city and county, of the corporation's registered office in Cherokee Nation and the name of its registered agent at such address;

3. Whether or not the renewal, restoration or revival is to be perpetual and if not perpetual the time for which the renewal, restoration or revival is to continue and, in case of renewal before the expiration of the time limited for its existence, the date when the renewal is to commence, which shall be prior to the date of the expiration of the old certificate of incorporation which it is desired to renew;

4. That the corporation desiring to be renewed or revived and so renewing or reviving its certificate of incorporation was organized pursuant to the laws of Cherokee Nation;

5. The date when the certificate of incorporation would expire, if such is the case, or such other facts as may show that the certificate of incorporation has become forfeited or that the validity of any renewal has been brought into question; and

6. That the certificate for renewal or revival is filed by authority of those who were directors or members of the governing body of the corporation at the time its certificate of incorporation expired or who were elected directors or members of the governing body of the corporation as provided for in subsection (H) of this section.

E. Upon the filing of the certificate in accordance with the provisions of 18 CNCA § 7, the corporation shall be renewed and revived with the same force and affect as if its certificate of incorporation had not become forfeited, or had not expired by limitation. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its certificate of incorporation by the corporation, its officers and agents during the time when its certificate of incorporation was forfeited or after its expiration by limitation, with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect. All real and personal property, rights and credits, which belonged to the corporation at the time its certificate of incorporation became forfeited, or expired by limitation and which were not disposed of prior to the time of its revival or renewal shall be vested in the corporation after the renewal or revival, as fully and amply as they were held by the corporation at and before the time its certificate of incorporation became forfeited, or expired by limitation, and the corporation after its renewal and revival shall be as

exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its officers and agents prior to its reinstatement, as if its certificate of incorporation had at all times remained in full force and effect.

F. If, after three (3) years from the date upon which the certificate of incorporation became forfeited for nonpayment of taxes, or expired by limitation, the name of the corporation is unavailable upon the records of the Office of the Principal Chief or his authorized representative, then in such case the corporation to be renewed or revived shall not be renewed under the same name which it bore when its certificate of incorporation became forfeited, or expired but shall adopt or be renewed under some other name and in such case the certificate to be filed under the provisions of this section shall set forth the name borne by the corporation at the time its certificate of incorporation became forfeited, or expired and the new name under which the corporation is to be renewed or revived.

G. Any corporation that renews or revives its certificate of incorporation pursuant to the provisions of this section shall pay to Cherokee Nation the amounts provided in 68 CNCA §§ 1201 through 1214. No payment made pursuant to this subsection shall reduce the amount of franchise tax due pursuant to the provisions of 68 CNCA §§ 1201 through 1214 for the year in which the renewal or revival is effected.

H. If a sufficient number of the last acting officers of any corporation desiring to renew or revive its certificate of incorporation are not available by reason of death, unknown address or refusal or neglect to act, the directors of the corporation or those remaining on the board, even if only one, may elect successors to such officers. In any case where there shall be no directors of the corporation available to renew or revive the certificate of incorporation of the corporation, the shareholders may elect a full board of directors, as provided by the bylaws of the corporation, and the board shall then elect such officers as are provided by law, by the certificate of incorporation or by the bylaws to carry on the business and affairs of the corporation. A special meeting of the shareholders for the purposes of electing directors may be called by any officer, director or shareholder upon notice given in accordance with the provisions of 18 CNCA § 67.

I. After a renewal or revival of the certificate of incorporation of the corporation shall have been effected, except where a special meeting of shareholders has been called in accordance with the provisions of subsection (H) of this section, the officers who signed the certificate of renewal or revival shall, jointly, immediately call a special meeting of the shareholders of the corporation upon notice given in accordance with the provisions of 18 CNCA § 67, and at the special meeting the shareholders shall elect a full board of directors, which board shall then elect such officers as are provided by law, by the certificate of incorporation or the bylaws to carry on the business and affairs of the corporation.

LA 16-96, eff. July 15, 1996.

§ 121. Status of corporation

Any corporation desiring to renew, extend and continue its corporate existence,

upon complying with the provisions of 18 CNCA § 120, shall be and continue for the time stated in its certificate of renewal, a corporation and, in addition to the rights, privileges and immunities conferred by its charter, shall possess and enjoy all the benefits of the provisions of the Cherokee Nation General Corporation Act, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities prescribed by the provisions of the Cherokee Nation General Corporation Act imposed on such corporations.

LA 16-96, eff. July 15, 1996.

ARTICLE 14

SUITS AGAINST CORPORATIONS, DIRECTORS, OFFICERS OR SHAREHOLDERS

Section

§ 122. Failure of corporation to obey order of Court—Appointment of receiver

Whenever any corporation shall refuse, fail or neglect to obey any order or decree of any Court of Cherokee Nation within the time fixed by the Court for its observance, such refusal, failure or neglect shall be a sufficient ground for the appointment of a receiver of the corporation by a court of Cherokee Nation. If the corporation is a foreign corporation, such refusal, failure, or neglect shall be a sufficient ground for the appointment of a receiver of the assets of the corporation within Cherokee Nation.

LA 16-96, eff. July 15, 1996.

§ 123. Failure of corporation to obey writ of mandamus—Quo warranto proceedings for forfeiture of charter

If any corporation fails to obey the mandate of any peremptory writ of mandamus issued by a court of competent jurisdiction of Cherokee Nation for a period of thirty (30) days after the serving of the writ upon the corporation in any manner as provided by the laws of Cherokee Nation for the service of writs, any party

in interest in the proceeding in which the writ of mandamus issued, either himself or through his or its attorney, may file a statement of such fact with the Attorney General of Cherokee Nation, and it shall thereupon be the duty of the Attorney General to immediately commence proceedings in the nature of quo warranto against the corporation in the District Court, and the Court, upon competent proof of such state of facts and proper proceedings had in such proceeding in the nature of quo warranto, shall decree the charter of the corporation forfeited.

LA 16-96, eff. July 15, 1996.

§ 124. Actions against officers, directors or shareholders to enforce liability of corporation—Unsatisfied judgment against corporation

A. When the officers, directors or shareholders of any corporation shall be liable by the provisions of the Cherokee Nation General Corporation Act to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action, at law or in equity, against any one or more of them, and the petition shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally.

B. No suit shall be brought against any officer, director or shareholder for any debt of a corporation of which he is an officer, director or shareholder, until judgment is obtained therefor against the corporation and execution thereon returned unsatisfied.

LA 16-96, eff. July 15, 1996.

§ 125. Action by officer, director or shareholder against corporations for corporate debt paid

When any officer, director or shareholder shall pay any debt of a corporation for which he is made liable by the provisions of the Cherokee Nation General Corporation Act, he may recover the amount so paid in an action against the corporation for money paid for its use, and in such action only the property of a corporation shall be liable to be taken, and not the property of any shareholder.

LA 16-96, eff. July 15, 1996.

§ 126. Shareholder's derivative action—Allegation of stock ownership

In any derivative suit instituted by a shareholder of a corporation, it shall be averred in the petition that the plaintiff was a shareholder of the corporation at the time of the transaction of which he complains or that his stock thereafter devolved upon him by operation of law.

LA 16-96, eff. July 15, 1996.

§ 127. Liability of corporation, etc.—Impairment by certain transactions

The liability of a corporation of Cherokee Nation, or of the shareholders, directors or officers thereof, or the rights or remedies of the creditors thereof, or persons doing or transacting business with the corporation, shall not in any way be lessened or impaired by the sale of its assets, or by the increase or

decrease in the capital stock of the corporation, or by its merger or consolidation with one or more corporations or by any change or amendment in its certificates of incorporation.

LA 16-96, eff. July 15, 1996.

§ 128. Defective organization of corporation as defense

A. No corporation of Cherokee Nation and no person sued by any such organization shall be permitted to assert the want of legal organization as a defense to any claim.

B. This section shall not be construed to prevent judicial inquiry into the regularity or validity of the organization of a corporation, or its lawful possession of any corporate power it may assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain the challenge shall be admissible in any such suit or proceeding.

LA 16-96, eff. July 15, 1996.

§ 129. Usury—Pleading by corporation

No corporation shall plead any statute against usury in any court of law or equity in any suit instituted to enforce the payment of any bond, note or other evidence of indebtedness issued or assumed by it.

LA 16-96, eff. July 15, 1996.

ARTICLE 15

FOREIGN CORPORATIONS

Section

138. Foreign corporations doing business without having qualified—Injunctions

§ 130. Foreign corporations—Definition—Qualification to do business in Cherokee Nation—Procedure

A. As used in the Cherokee Nation General Corporation Act, the words **"foreign corporation"** mean a corporation organized pursuant to the laws of any jurisdiction other than Cherokee Nation.

B. No foreign corporation shall do any business in Cherokee Nation, through or by branch offices, agents or representatives located in Cherokee Nation, until it shall have paid to the Office of the Principal Chief or his authorized representative of Cherokee Nation the fees prescribed in 18 CNCA § 142 and shall have filed with the Office of the Principal Chief or his authorized representative:

1. A certificate issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto;

2. A statement executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of 18 CNCA § 7, setting forth:

a. the mailing address of the corporation's principal place of business, wherever located;

b. the name and address of its additional registered agent in Cherokee Nation, if any, which agent shall be either an individual resident in Cherokee Nation when appointed or another corporation authorized to transact business in Cherokee Nation;

c. the aggregate number of its authorized shares itemized by classes, par value of shares, shares without par value, and series, if any, within any classes authorized, unless it has no authorized capital;

d. a statement, as of a date not earlier than six (6) months prior to the filing date, of the assets and liabilities of the corporation;

e. the business it proposes to do in Cherokee Nation and a statement that it is authorized to do that business in Cherokee Nation; and

f. a statement of the maximum amount of capital such corporation intends and expects to invest in Cherokee Nation at any time during the current fiscal year. **"Invested capital"** is defined as the value of the maximum amount of funds, credits, securities and property of whatever kind existing at any time during the fiscal year in Cherokee Nation and used or employed by such corporation in its business carried on in Cherokee Nation.

C. The Office of the Principal Chief or his authorized representative, upon payment to the Office of the Principal Chief or his authorized representative of the fees prescribed in 18 CNCA § 142, shall issue a sufficient number of certificates under the hand and official seal of the Office of the Principal Chief or his authorized representative, evidencing the filing of the statement

required by the provisions of subsection (B) of this section. The certificate of the Office of the Principal Chief or his authorized representative shall be prima facie evidence of the right of the corporation to do business in the Cherokee Nation; provided that the Office of the Principal Chief or his authorized representative shall not issue such certificate unless the name of the corporation is such as to distinguish it upon the records of the Office of the Principal Chief or his authorized representative in accordance with the provisions of 18 CNCA § 141.

D. A foreign corporation, upon receiving a certificate from the Office of the Principal Chief or his authorized representative, shall enjoy the same rights and privileges as, but not greater than, a corporation organized under the laws of Cherokee Nation for the purposes set forth in the statement filed by the corporation with the Office of the Principal Chief or his authorized representative pursuant to which such certificate is issued and, except as otherwise provided in the Cherokee Nation General Corporation Act, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a corporation organized under the laws of Cherokee Nation with like purpose and of like character.

LA 16-96, eff. July 15, 1996.

§ 131. Additional requirements in case of change of name, mailing address, authorized capital or business purpose, or merger or consolidation

A. Every foreign corporation admitted to do business in Cherokee Nation which shall change its corporate name, the mailing address of its principal office, or its authorized capital, or shall enlarge, limit or otherwise change the business which it proposes to do in Cherokee Nation, within thirty (30) days after the time the change becomes effective, shall file with the Office of the Principal Chief or his authorized representative a statement executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of 18 CNCA § 7, setting forth:

1. The name of the foreign corporation as it appears on the records of the Office of the Principal Chief or his authorized representative of Cherokee Nation;

2. The jurisdiction of its incorporation;

3. The date it was authorized to do business in Cherokee Nation;

4. If the name of the foreign corporation has been changed, a statement of the name relinquished, a statement of the new name and a statement that the change of name has been effected pursuant to the laws of the jurisdiction of its incorporation and the date the change was effected;

5. If the mailing address of its principal office has been changed, a statement of the mailing address relinquished and a statement of the mailing address assumed;

6. If the authorized capital of the corporation has been changed, a restatement of the corporate article which states its amended capitalization, a statement that the change has been effected pursuant to the laws of the jurisdiction of its incorporation and the date the change was effected; and

7. If the business it proposes to do in Cherokee Nation is to be enlarged, limited or otherwise changed, a statement reflecting such change and a statement that it is authorized to do such business in Cherokee Nation.

B. Whenever a foreign corporation authorized to transact business in Cherokee Nation shall be the survivor of a merger permitted by the laws of Cherokee Nation, state or country in which it is incorporated, within thirty (30) days after the merger becomes effective, it shall file a certificate, issued by the Office of the Principal Chief or his authorized representative, attesting to the occurrence of such event. If the merger has changed the corporate name, mailing address, or authorized capital of such foreign corporation or has enlarged, limited or otherwise changed the business it proposes to do in Cherokee Nation, it shall also comply with the provisions of subsection (A) of this section.

C. Whenever a foreign corporation authorized to transact business in Cherokee Nation ceases to exist because of a statutory merger or consolidation with a foreign corporation not qualified to transact business in Cherokee Nation, it shall comply with the provisions of 18 CNCA § 135.

D. The Office of the Principal Chief or his authorized representative shall be paid the fee prescribed in 18 CNCA § 142 for filing and indexing each statement or certificate required by the provisions of subsection (A) or (B) of this section.

LA 16-96, eff. July 15, 1996.

§ 132. Exceptions to requirements

A. No foreign corporation shall be required to comply with the provisions of 18 CNCA § 130 and 18 CNCA § 131, if:

1. it is the mail order or a similar business, merely receiving orders by mail or otherwise in pursuance of letters, circulars, catalogs, or other forms of advertising, or solicitation, accepting the orders outside Cherokee Nation, and filing them with goods shipped into Cherokee Nation; or

2. it employs salesmen, either resident or traveling, to solicit orders in Cherokee Nation, either by display of samples or otherwise, whether or not maintaining sales offices in Cherokee Nation, all orders being subject to approval at the offices of the corporation without Cherokee Nation, and all goods applicable to the orders being shipped in pursuance thereof from without Cherokee Nation to the vendee or to the seller or his agent for delivery to the vendee, and if any samples kept within Cherokee Nation are for display or advertising purposes only, and no sales, repairs, or replacements are made from stock on hand in Cherokee Nation; or

3. it sells, by contract consummated outside Cherokee Nation, and agrees by the contract, to deliver into Cherokee Nation, machinery, plants or equipment, the construction, erection or installation of which within Cherokee Nation requires the supervision of technical engineers or skilled employees performing services not generally available, and as a part of the contract of sale agrees to furnish such services, and such services only, to the vendee at the time of construction, erection or installation; or

4. its business operations within Cherokee Nation are wholly interstate in character; or

5. it is an insurance company doing business in Cherokee Nation; or

6. it creates, as borrower or lender, or acquires, evidences of debt, mortgages or liens on real or personal property; or

7. it secures or collects debts or enforces any rights in property securing the same.

B. The provisions of this section shall have no application to the question of whether any foreign corporation is:

1. subject to service of process and suit in Cherokee Nation pursuant to the provisions of 18 CNCA § 136 or any other law of Cherokee Nation; or

2. subject to the taxation laws of Cherokee Nation.

LA 16-96, eff. July 15, 1996.

§ 133. Change of registered agent upon whom process may be served

A. Any foreign corporation which has qualified to do business in Cherokee Nation may change its registered agent and substitute therefor another registered agent by filing a certificate with the Office of the Principal Chief or his authorized representative, acknowledged in accordance with the provisions of 18 CNCA § 7, setting forth:

1. the name and address of its registered agent designated in Cherokee Nation upon whom process directed to the corporation may be served; and

2. a revocation of all previous appointments of agent for such purposes.

Such registered agent shall be either an individual residing in Cherokee Nation when appointed or a corporation authorized to transact business in Cherokee Nation.

B. Any individual or corporation designated by a foreign corporation as its registered agent for service of process may resign by filing with the Office of the Principal Chief or his authorized representative a signed statement that he or it is unwilling to continue to act as the registered agent of the corporation for service of process, including in the statement the post office address of the main or headquarters office of the foreign corporation. Upon the expiration of thirty (30) days after the filing of the statement with the Office of the Principal Chief or his authorized representative, the capacity of the individual or corporation, as registered agent, shall terminate. Upon the filing of the statement, the Office of the Principal Chief or his authorized representative immediately shall give written notice to the corporation by mail of the filing of the statement, which notice shall be addressed to the corporation at the post office address given in the statement and also, if different, to the corporation at its post office address, if any, given in the corporation's certificate filed pursuant to the provisions of 18 CNCA § 130.

C. If any agent designated and certified as required by the provisions of 18 CNCA § 130 shall die, remove himself from Cherokee Nation or resign, then the foreign corporation for which the agent had been so designated and certified, within ten (10) days after the death, removal or resignation of its agent, shall substitute, designate and certify to the Office of the Principal Chief or his authorized representative, the name of another registered agent for the purposes of the Cherokee Nation General Corporation Act, and all process, orders, rules and notices may be served on or given to the substituted agent with like effect.

LA 16-96, eff. July 15, 1996.

§ 134. Violations and penalties

A. Any foreign corporation doing business of any kind in Cherokee Nation without first having complied with any provision of the Cherokee Nation General Corporation Act applicable to it, shall be fined not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00) for each such offense. Any agent of any foreign corporation that shall do any business in Cherokee Nation for any foreign corporation before the foreign corporation has complied with any provision of the Cherokee Nation General Corporation Act applicable to it, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) for each such offense.

B. If any foreign corporation fails to file or cause to be filed a certificate as provided for in 18 CNCA § 142(A)(11) and (13) or fails to pay to the Office of the Principal Chief or his authorized representative any additional fees shown to be due by the certificate provided for in 18 CNCA § 142(A)(13), the corporation:

1. may be ousted from Cherokee Nation by the Office of the Principal Chief or his authorized representative and its certificate of authority to do business in Cherokee Nation revoked and canceled. Before such revocation the Office of the Principal Chief or his authorized representative shall give not less than thirty (30) days' notice sent by mail duly addressed to such corporation at its principal place of business or last address shown on the records of the Office of the Principal Chief or his authorized representative of the Office of the Principal Chief or his authorized representative's intent to revoke the corporation's authority to transact business in Cherokee Nation; and

2. after notice required in paragraph 1 above, shall be subject to a penalty and shall forfeit to Cherokee Nation for each day it fails to comply with the provisions of this subsection, the sum of Twenty-five Dollars ($25.00) per day but not more than Five Hundred Dollars ($500.00) for each such offense.

C. All fines and penalties provided for by this section may be recovered in a suit brought therefor by the Attorney General, in the name of Cherokee Nation, against the corporation, in any District Court of Cherokee Nation. Fines and penalties received or collected pursuant to this section by the Clerk of the District Court as a result result of an action brought in the name of Cherokee Nation by the Attorney General, shall be paid into an account established by the Office of the Principal Chief or his authorized representative.

LA 16-96, eff. July 15, 1996.

§ 135. Withdrawal of foreign corporation from Cherokee Nation—Service of process on Office of the Principal Chief or his authorized representative

A. Any foreign corporation which shall have qualified to do business in Cherokee Nation pursuant to the provisions of 18 CNCA § 130, may surrender its authority to do business in Cherokee Nation and may withdraw therefrom by filing with the Office of the Principal Chief or his authorized representative:

1. A certificate signed by its president or a vice-president and attested by its secretary or an assistant secretary, stating that it surrenders its authority to transact business in Cherokee Nation and withdraws therefrom; and stating the address to which the Office of the Principal Chief or his authorized representative may mail any process against the corporation that may be served upon the Office of the Principal Chief or his authorized representative; or

2. A copy of a certificate of dissolution issued by the Office of the Principal Chief or his authorized representative, certified to be a true copy under the official seal of Cherokee Nation, together with a certificate, which shall be executed in accordance with the provisions of paragraph 1 of this subsection, stating the address to which the Office of the Principal Chief or his authorized representative may mail any process against the corporation that may be served upon the Office of the Principal Chief or his authorized representative; or

3. A copy of an order or decree of dissolution made by any court of competent jurisdiction of Cherokee Nation or other jurisdiction of its incorporation, certified to be a true copy under the hand of the Clerk of the Court or other official body, and the official seal of the Court or official body or Clerk thereof, together with a certificate executed in accordance with the provisions of paragraph 1 of this subsection, stating the address to which the Office of the Principal Chief or his authorized representative may mail any process against the corporation that may be served upon the Office of the Principal Chief or his authorized representative.

B. The Office of the Principal Chief or his authorized representative, upon payment to the Office of the Principal Chief or his authorized representative of the fees prescribed in 18 CNCA § 142, shall issue a sufficient number of certificates, under the hand and official seal of the Office of the Principal Chief or his authorized representative, evidencing the surrender of the authority of the corporation to do business in Cherokee Nation and its withdrawal therefrom. One of the certificates shall be delivered to the agent of the corporation designated as such immediately prior to the withdrawal.

C. Upon the issuance of the certificates by the Office of the Principal Chief or his authorized representative, the appointment of the registered agent of the corporation in Cherokee Nation, upon whom process against the corporation may be served, shall be revoked, and service on the corporation may be made by serving the Office of the Principal Chief or his authorized representative as its agent as provided in Federal Rules of Civil Procedure, Rule 4, 28 U.S.C. and in 12 CNCA.

LA 16-96, eff. July 15, 1996.

§ 136. Service of process on nonqualifying foreign corporations

A. If any foreign corporation shall transact business in Cherokee Nation without having qualified to do business in accordance with the provisions of 18 CNCA § 130, service on the corporation may be made by serving the Office of the Principal Chief or his authorized representative as its agent as provided in Federal Rules of Civil Procedure, Rule 4, 28 U.S.C. and in 12 CNCA.

B. The provision of 18 CNCA § 132 shall not apply in determining whether any foreign corporation is transacting business in Cherokee Nation within the meaning of this section; and **"the transaction of business"** or **"business transacted in Cherokee Nation"**, by any such foreign corporation, whenever those words are used in this section, shall mean the course or practice of carrying on any business activities in the Cherokee Nation, including, without limiting the generality of the foregoing, the solicitation of business or orders in Cherokee Nation. The provisions of this section shall not apply to any insurance company doing business in Cherokee Nation.

LA 16-96, eff. July 15, 1996.

§ 137. Actions by and against unqualified foreign corporations

A. A foreign corporation which is required to comply with the provisions of 18 CNCA § 130 and 18 CNCA § 131 and which has done business in Cherokee Nation without authority shall not maintain any action or special proceeding in Cherokee Nation unless and until such corporation has been authorized to do business in Cherokee Nation and has paid to Cherokee Nation all fees, penalties and franchise taxes for the years or parts thereof during which it did business in Cherokee Nation without authority. This prohibition shall not apply to any successor in interest of such foreign corporation.

B. The failure of a foreign corporation to obtain authority to do business in Cherokee Nation shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in Cherokee Nation.

LA 16-96, eff. July 15, 1996.

§ 138. Foreign corporations doing business without having qualified—Injunctions

The District Court shall have jurisdiction to enjoin any foreign corporation, or any agent thereof, from transacting any business in Cherokee Nation if such corporation has failed to comply with any provision of the Cherokee Nation General Corporation Act applicable to it or if such corporation has secured a certificate of the Office of the Principal Chief or his authorized representative pursuant to the provisions of 18 CNCA § 130 or on the basis of false or misleading representations. The Attorney General, upon his own motion or upon the relation of proper parties, shall proceed by filing a petition in the District Court of Cherokee Nation.

LA 16-96, eff. July 15, 1996.

ARTICLE 16

MISCELLANEOUS PROVISIONS

Section

§ 139. Reservation of corporate name

A. The exclusive right to the use of a corporate name, in good faith, may be reserved by:

1. Any person intending to form a corporation under this title; or

2. Any corporation organized under the laws of Cherokee Nation intending to change its name; or

3. Any foreign corporation intending to qualify to transact business in Cherokee Nation under this title; or

4. Any foreign corporation qualified to transact business in Cherokee Nation intending to change its name; or

5. Any person intending to organize a foreign corporation and intending to have such corporation qualified to transact business in Cherokee Nation under the laws of Cherokee Nation; or

6. Any corporation whose charter has expired or has been forfeited intending to renew or revive the corporation under this title.

B. Such reservation shall be made by filing in the Office of the Principal Chief or his authorized representative an application to reserve a specified corporate name. If the Office of the Principal Chief or his authorized representative finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of sixty (60) days.

C. The right to the exclusive use of a specified corporate name so reserved may

be transferred to any other person by filing in the Office of the Principal Chief or his authorized representative a notice of such transfer, executed by the person for whom such name was reserved and specifying the name and address of the transferee.

LA 16-96, eff. July 15, 1996.

§ 140. Trade names

A. A corporation or other business entity doing business in Cherokee Nation under any name other than its legal name shall file a report with the Office of the Principal Chief or his authorized representative setting forth the trade name under which the business is carried on, a brief description of the kind of business transacted under the name, the address wherein the business is to be carried on, the legal name and the name and address of its registered agent in Cherokee Nation. The report shall be executed, acknowledged, and filed in accordance with 18 CNCA § 7. The trade name adopted shall be such as to be distinguishable upon the records in the Office of the Principal Chief or his authorized representative from:

1. Names of other business entitles organized under the laws of Cherokee Nation then existing or which existed at any time during the preceding three (3) years; or

2. Names of foreign business entities qualified to do business in Cherokee Nation then existing or which existed at any time during the preceding three (3) years; or

3. Trade names or fictitious names filed with the Office of the Principal Chief or his authorized representative; or

4. Names reserved with the Office of the Principal Chief or his authorized representative.

B. As used in this section, **"business entity"** means a corporation, a business trust, a common law trust, a limited liability company, or any unincorporated business, including any form of partnership.

LA 16-96, eff. July 15, 1996.

§ 141. Prohibition on use of name or indistinguishable names—Exceptions

The Office of the Principal Chief or his authorized representative shall not accept for reservation or filing a statement or certificate containing a name which is the same as or indistinguishable from the name of any business entity, as defined in 18 CNCA § 15, trade name, fictitious name, or reserved name filed with the Office of the Principal Chief or his authorized representative unless one of the following is filed with the Office of the Principal Chief or his authorized representative:

1. The written consent of the business entity or holder of the trade name, fictitious name, or reserved name to use the same or indistinguishable name with the addition of one or more words to make that name distinguishable upon the records of the Office of the Principal Chief or his authorized representative,

except that the addition of words to make the name distinguishable shall not be required where the written consent states that the consenting entity is about to change its name, cease to do business, withdraw from Cherokee Nation, or be wound up;

2. A certified copy of a final decree of a court of competent jurisdiction of Cherokee Nation establishing the prior right of the business entity or holder of a reserved name, trade name, or fictitious name to the use of the name in Cherokee Nation;

3. In the case of any foreign business entity having a name prohibited by this section which intends to qualify to transact business within Cherokee Nation, a resolution adopting a fictitious name not prohibited by this section, which shall be used to the exclusion of its true name when transacting business within Cherokee Nation.

LA 16-96, eff. July 15, 1996.

§ 142. Filing and other service fees

A. The Office of the Principal Chief or his authorized representative, for services performed in the Office of the Principal Chief or his authorized representative and for expense of mailing, shall charge and collect the following fees:

1. For any report, document, or other paper required to be filed in the Office of the Principal Chief or his authorized representative, a fee of Twenty-five Dollars ($25.00);

2. For reservation of corporate name, a fee of Ten Dollars ($10.00);

3. For issuing extra copies of any certificate not requiring any extra filing of papers or documents of any kind, a fee of Ten Dollars ($10.00);

4. For issuing any other certificate, a fee of Ten Dollars ($10.00);

5. For receiving a filing or indexing the annual certificate of a foreign corporation doing business in Cherokee Nation, or both when filed together, a fee of Ten Dollars ($10.00);

6. For preclearance of any document for filing, a fee of Fifty Dollars ($50.00);

7. For each service of process made upon and accepted by the Office of the Principal Chief or his authorized representative, a fee of Twenty-five Dollars ($25.00);

8. For preparing and providing a written report of a record search, a fee of Five Dollars ($5.00);

9. For filing and issuing certificates of incorporation, the fee shall be one-tenth of one percent (1/10 of 1%) of the authorized capital stock of such corporation; provided, that the minimum fee for any such service shall be Fifty Dollars ($50.00); provided further, that not for profit corporations shall only be required to pay a fee of Twenty-five Dollars ($25.00);

10. For filing and issuing amended certificates of incorporation or certificates of consolidation, if the resulting corporation is a domestic corporation, merger, if the surviving corporation is a domestic corporation, restatement, reorganization, revival, extension or dissolution, the fee shall be Fifty Dollars ($50.00). If an amendment shall provide for an increase in authorized capital in excess of Fifty Thousand Dollars ($50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such increase;

11. For issuing a certificate to a foreign corporation to do business in Cherokee Nation, and filing a certificate and statement of such corporation required pursuant to the provisions of 18 CNCA § 130, the fee shall be one-tenth of one percent (1/10 of 1%) of the maximum amount of capital invested by such corporation in Cherokee Nation at any time during the fiscal year such certificate is issued to any such foreign corporation; provided, that the minimum fee for any such service shall be Three Hundred Dollars ($300.00); provided further, that no such corporation shall be required to pay a fee on an amount in excess of its authorized capital;

12. For amended certificate of qualification of a foreign corporation, or certificate of consolidation, if the resulting corporation is a foreign corporation, merger, if the surviving corporation is a foreign corporation, or withdrawal to a foreign corporation doing business in Cherokee Nation, a fee of Two Hundred Dollars ($200.00); provided, however, for a certificate solely reflecting a change of mailing address, a fee of Ten Dollars ($10.00);

13. Every foreign corporation on the anniversary of its qualification in Cherokee Nation each year, shall cause to be filed with the Office of the Principal Chief or his authorized representative a certificate of its president, vice-president or other managing officers, in which shall be stated and shown the maximum amount of capital the corporation had invested in Cherokee Nation at any time subsequent to the issuance to it of a certificate to do business in Cherokee Nation and the amount of capital previously paid upon. If the amount of capital so invested as shown by said certificate exceeds the amount formerly paid upon, the corporation, at the time of filing said certificate, shall pay to the Office of the Principal Chief or his authorized representative an additional fee equal to one-tenth of one percent (1/10 of 1%) of the amount of such excess capital so invested by the corporation in Cherokee Nation; provided, that no such corporation shall be required to pay a filing fee on an amount in excess of its authorized capital, or to file the certificate provided for in this paragraph after it shall have paid a filing fee on its total authorized capitalization;

14. For acting as the registered agent, a fee of One Hundred Dollars ($100.00) payable on the first day of July each year, and if not paid before the next ensuing September 1st, the Cherokee Nation Tax Commission shall suspend and forfeit the charter of the delinquent corporation pursuant to the procedures prescribed in 68 CNCA § 1212. The Cherokee Nation Tax Commission shall collect and audit the registered agent fee authorized pursuant to this paragraph in conjunction with the collection and audit of franchise taxes as provided for in 68 CNCA §§ 1201 through 1214. All monies received by the Office of the Principal Chief or his authorized representative pursuant to the provisions of this paragraph shall be paid to an account established by the Office of the Principal Chief or his authorized representative; and

15. For any response by means of telecommunications to inquiries regarding information required to be maintained by the Office of the Principal Chief or his authorized representative, a fee of Five Dollars ($5.00), unless otherwise provided. Fees collected pursuant to this paragraph shall be deposited in an account established by the Office of the Principal Chief or his authorized representative.

B. Except as otherwise provided by law, fees paid to the Office of the Principal Chief or his authorized representative in accordance with the provisions of the Cherokee Nation General Corporation Act shall be properly accounted for and shall be deposited in an account established by the Office of the Principal Chief or his authorized representative.

C. For any certificate supplied by the Court Clerk, such Clerk shall receive a fee of One Dollar ($1.00). Such fees shall be properly accounted for and shall be paid into an account established by the Office of the Principal Chief or his authorized representative.

D. In any court proceeding pursuant to the provisions of the Cherokee Nation General Corporation Act requiring the filing of any decree, order, report or other document the Office of the Principal Chief or his authorized representative, in addition to the usual court costs and the costs for filing in the office of the Clerk of the Court, fees equal to the amounts provided for in this section for such required filing shall be collected as costs in such proceedings and such amount shall be forwarded to the Office of the Principal Chief or his authorized representative.

E. The provisions contained in this section relating to the payment of incorporation fees by foreign corporations are not intended and shall not be construed to relieve such corporations, where applicable, of the payment of the annual corporate franchise tax to the Cherokee Nation Tax Commission.

F. For the purposes of computing the fees to be collected by the Office of the Principal Chief or his authorized representative pursuant to the provisions of this section, each share without par value shall be treated the same as a share with a par value of Fifty Dollars ($50.00), and the fees thereon shall be collected accordingly.

G. Payments for any required fees except as otherwise provided by law may be made as follows:

1. By the applicant's personal or company check, cash, or money order;

2. By a nationally-recognized credit card issued to the applicant. The Office of the Principal Chief or his authorized representative may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card. For purposes of this paragraph, **"nationally-recognized credit card"** means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit. The Office of the Principal Chief or his authorized representative shall determine which nationally recognized credit cards will be in the same manner as other fees collected by the clerk for the filing and recording of mortgages

accepted; provided, however, the Office of the Principal Chief or his authorized representative must ensure that no loss of Cherokee Nation revenue will occur by the use of such card.

LA 16-96, eff. July 15, 1996.

§ 142.1. Fees for telephone assistance

The Office of the Principal Chief or his authorized representative is authorized to charge fees as provided by law for a telephone assistance service to provide information concerning records retained by the Office of the Principal Chief or his authorized representative.

LA 16-96, eff. July 15, 1996.

§ 143. Duplication of Cherokee Nation General Corporation Act by the Office of the Principal Chief or his authorized representative—Distribution

The Office of the Principal Chief or his authorized representative may have printed, from time to time as he deems necessary, pamphlet copies of the Cherokee Nation General Corporation Act for distribution to persons and corporations desiring the same for a sum not exceeding the cost of printing. The money received from the sale of the copies shall be disposed of as are other fees of the Office of the Principal Chief or his authorized representative. Nothing in this section shall be construed to prevent the free distribution of single pamphlet copies of the Cherokee Nation General Corporation Act by the Office of the Principal Chief or his authorized representative.

LA 16-96, eff. July 15, 1996.

§ 144. Required filing with the Office of the Principal Chief or his authorized representative following a merger or consolidation, or a change of corporate name

A. A certified copy of the following documents, as applicable, shall be filed with the Office of the Principal Chief or his authorized representative the surviving or resulting corporation to a merger or consolidation, or a corporation whose name was changed, has a recorded interest in real property:

1. a certificate or agreement of merger or consolidation filed with the Office of the Principal Chief or his authorized representative in accordance with the provisions of 18 CNCA § 81, 18 CNCA § 82, 18 CNCA § 84, 18 CNCA § 85, 18 CNCA § 86 or 18 CNCA § 87;

2. a certificate of ownership and merger filed with the Office of the Principal Chief or his authorized representative as provided in 18 CNCA § 83;

3. an amendment to the certificate of incorporation effecting a change of name pursuant to 18 CNCA § 76, 18 CNCA § 77 or 18 CNCA § 131.

B. The provisions of this section shall have prospective application only.

LA 16-96, eff. July 15, 1996.

§ 145. Inspection and auditing of books, records, and reports

A. The accounts, books, and papers of corporations which the majority of the shares are owned by Cherokee Nation shall be opened to inspection by the Principal Chief or his authorized representative during regular business hours. The account and records of such corporations shall be audited at the close of each fiscal year, and copies of the audit shall be furnished to the Principal Chief, the Council, and to such other persons as the Principal Chief directs.

LA 16-96, eff. July 15, 1996.

§ 146. Forms

Recommended forms for the documents required to be filed with the Office of the Principal Chief or his authorized representative to comply with this title may be obtained from the Office of the Principal Chief or his authorized representative.

LA 16-96, eff. July 15, 1996.

CHAPTER 2

CHEROKEE NATION LIMITED LIABILITY COMPANY ACT

ARTICLE 1. GENERAL PROVISIONS

Section

ARTICLE 1

GENERAL PROVISIONS

§ 201. Short title

This act 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.

LA 15-96, eff. July 15, 1996. Amended LA 32-04, eff. July 16, 2004.

§ 202. 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 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 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 time 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.

LA 15-96, eff. July 15, 1996.

§ 203. 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.

LA 32-04, eff. July 16, 2004.

§ 204. 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 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 amendment 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 Cherokee Nation or of the United States.

LA 32-04, eff. July 16, 2004.

§ 205. 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 18 CNCA § 213 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 State 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 Cherokee Nation which afford limited liability to its owners comparable to the liability under 18 CNCA § 223 and is not required to obtain a certificate of authority to transact business under any law of Cherokee Nation other than this chapter.

8. **"Government-owned limited liability company"** means an entity wholly-owned by 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 person 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 government entity.

15. **"Principal office"** means the office, whether or not in 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.

LA 32-04, eff. July 16, 2004.

§ 206. Name of limited liability company

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

1. 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

2. may not be the same as or indistinguishable from:

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

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

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

d. trade names, fictitious names, or other names reserved with the Office of the Principal Chief.

3. The provisions of subdivision 2 of this section shall not apply if one of the following is filed with the Office of the Principal Chief:

a. 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 Cherokee Nation or be wound up, or

b. 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.

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

a. merged with the other company;

b. been formed by reorganization with the other company; or

c. acquired substantially all of the assets, including the name, of the other company.

LA 32-04, eff. July 16, 2004.

§ 207. 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.

LA 32-04, eff. July 16, 2004.

§ 208. Designated office and agent for service of process

A. A limited liability company and a foreign limited liability company authorized to do business in Cherokee Nation shall designate and continuously maintain in 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 Cherokee Nation, or a domestic or qualified foreign corporation limited liability company, or limited partnership.

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

C. For purposes of this section, **"in Cherokee Nation"** and **"of 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.

LA 32-04, eff. July 16, 2004.

§ 209. 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 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.

LA 32-04, eff. July 16, 2004.

§ 210. 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.

LA 32-04, eff. July 16, 2004.

§ 211. 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 Cherokee Nation governing or regulating business.

B. A limited liability company organized under this chapter has a consensual civil relationship to 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 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 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.

LA 32-04, eff. July 16, 2004.

ARTICLE 2

ORGANIZATION

§ 212. Limited liability company as legal entity

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

LA 32-04, eff. July 16, 2004.

§ 213. 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.

LA 32-04, eff. July 16, 2004.

§ 214. 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.

LA 32-04, eff. July 16, 2004.

§ 215. 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:

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.

LA 32-04, eff. July 16, 2004.

§ 216. 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 (1) 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 ninetieth (90th) day after the record is filed, the record is effective on the ninetieth (90th) day.

LA 32-04, eff. July 16, 2004.

§ 217. Delivery of articles of organization and other documents to the Office of the Principal Chief

A. Two (2) 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 thereof;

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.

LA 32-04, eff. July 16, 2004.

§ 218. 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.

LA 32-04, eff. July 16, 2004.

§ 219. 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 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 Cherokee Nation have been paid;

4. whether its most recent annual certification required by 18 CNCA § 220 has been filed in 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 Cherokee Nation;

2. that it is authorized to transact business in 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 Cherokee Nation have been paid;

4. whether its most recent annual certification required by 18 CNCA § 220 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 Cherokee Nation.

LA 32-04, eff. July 16, 2004.

§ 220. 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 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 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 Cherokee Nation or any agency, subdivision or other entity thereof is a member shall be required to file an annual certification under this section.

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.

LA 32-04, eff. July 16, 2004.

ARTICLE 3

RELATIONS OF MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

§ 221. 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 18 CNCA § 229, 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 (1) or more of its managers.

LA 32-04, eff. July 16, 2004.

§ 222. 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 18 CNCA § 226(C) acting on the company's behalf in the ordinary course of business of the company or with authority of the company.

LA 32-04, eff. July 16, 2004.

§ 223. 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 18 CNCA § 233; 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.

LA 32-04, eff. July 16, 2004.

ARTICLE 4

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

§ 224. 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.

LA 32-04, eff. July 16, 2004.

§ 225. 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:

a. 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

b. 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.

LA 32-04, eff. July 16, 2004.

§ 226. 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:

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

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

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

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:

a. 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;

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

c. 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.

LA 32-04, eff. July 16, 2004.

§ 227. 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 (1) manager, all decisions of the managers shall be made by majority vote of the managers.

LA 32-04, eff. July 16, 2004.

§ 228. Allocation of profits and losses—Distributions

Except as otherwise provided in the operating agreement:

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

2. 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.

LA 32-04, eff. July 16, 2004.

§ 229. Allocation of profits and losses—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 as 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.

LA 32-04, eff. July 16, 2004.

§ 230. Liability for unlawful distributions

If a member has received a distribution in violation of the operating agreement or 18 CNCA § 229, 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.

LA 32-04, eff. July 16, 2004.

§ 231. 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:

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

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

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

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

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

2. Obtain from time to time upon reasonable demand:

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

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

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

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

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

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

LA 32-04, eff. July 16, 2004.

§ 232. 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 18 CNCA § 243(A); or

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

a. which reduces the term of the existence of the limited liability company,

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

c. which permits a member to voluntarily withdraw from the limited liability company, or

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

LA 32-04, eff. July 16, 2004.

§ 233. Managers—Duties—Good faith—Liability

Subject to the provisions of 18 CNCA § 227 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:

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

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

c. 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.

LA 32-04, eff. July 16, 2004.

§ 234. 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.

LA 32-04, eff. July 16, 2004.

ARTICLE 5

ASSIGNEES AND CREDITORS OF MEMBER

§ 235. Membership interest

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

LA 32-04, eff. July 16, 2004.

§ 236. Assignment of membership interest

A. Unless otherwise provided in an operating agreement:

1. A membership interest is not transferable, except as provided in 18 CNCA § 237; 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.

LA 32-04, eff. July 16, 2004.

§ 237. 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.

LA 32-04, eff. July 16, 2004.

§ 238. 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.

LA 32-04, eff. July 16, 2004.

§ 239. 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.

LA 32-04, eff. July 16, 2004.

§ 240. 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.

LA 32-04, eff. July 16, 2004.

§ 241. 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.

LA 32-04, eff. July 16, 2004.

ARTICLE 6

MEMBER'S DISSOCIATION

§ 242. 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.

LA 32-04, eff. July 16, 2004.

ARTICLE 7

WINDING UP LIMITED LIABILITY COMPANY'S BUSINESS

§ 243. 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 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.

LA 32-04, eff. July 16, 2004.

§ 244. Winding up limited liability company

Except as otherwise provided in the articles of organization or operating agreement, the business or affairs of the limited liability company may be wound up in one of the following ways:

1. by the managers, or

2. 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.

LA 32-04, eff. July 16, 2004.

§ 245. 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 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 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 18 CNCA § 248, settle disputes by mediation or arbitration, and perform other necessary acts.

LA 32-04, eff. July 16, 2004.

§ 246. 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.

LA 32-04, eff. July 16, 2004.

§ 247. Article 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.

LA 32-04, eff. July 16, 2004.

§ 248. Article of dissolution

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 18 CNCA § 239; 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.

LA 32-04, eff. July 16, 2004.

ARTICLE 8

CONVERSION AND MERGERS

§ 249. 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 Cherokee Nation, a statement that the surviving or resulting other business entity agrees to be served with process in 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 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 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 18 CNCA § 243 or pay its liabilities and distribute its assets pursuant to 18 CNCA § 248.

LA 32-04, eff. July 16, 2004.

§ 250. Conversion of certain entities to a limited liability company

A. As used in this section, the term **"other entity"** means a corporation, statutory trust, business trust, real estate investment trust, common law trust, other unincorporated business or entity (including a partnership, whether general or limited), or foreign limited liability company.

B. Any other 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 18 CNCA § 217 articles of conversion to a limited liability company that have been executed in accordance with 18 CNCA § 216, to which shall be attached articles of organization that comply with 18 CNCA §§ 206 and 214 and have been executed by one or more authorized persons in accordance with 18 CNCA § 216.

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

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

2. The name of the other 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 other 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 18 CNCA § 213, the existence of the limited liability company shall be deemed to have commenced on the date the other entity was formed.

E. The conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other 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 other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other 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 other entity that has converted, and the title to any real property vested by deed or otherwise in such other 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 other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other 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 other entity, the converting other 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 other entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited liability company. When an other 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 other entity.

H. Prior to filing the articles of conversion of an other 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 other 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.

I. The converting other entity should give written notice of the conversion to the jurisdiction in which the converting other entity was formed, provided, however, the failure to give such written notice shall not affect the other entity's conversion into a domestic limited liability company.

LA 32-04, eff. July 16, 2004. Amended LA 28-13, eff. November 14, 2013.

§ 251. 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 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 (1) 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.

LA 32-04, eff. July 16, 2004.

ARTICLE 9

FOREIGN LIMITED LIABILITY COMPANIES

§ 252. 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 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 Cherokee Nation.

LA 32-04, eff. July 16, 2004.

§ 253. Application for certificate of authority

A. Before transacting business in Cherokee Nation, a foreign limited liability company shall apply for a certificate of authority to transact business in 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 Cherokee Nation, a name that satisfies the requirements of 18 CNCA § 206;

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 Cherokee Nation;

5. the name and street address of its initial resident agent for service of process in 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 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.

LA 32-04, eff. July 16, 2004.

§ 254. Activities that do not constitute transacting business in Cherokee Nation

A. Activities of a foreign limited liability company that do not constitute transacting business in 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 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 Cherokee Nation so acquired;

10. selling or transferring title to property in 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 Cherokee Nation.

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

LA 32-04, eff. July 16, 2004.

§ 255. 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.

LA 32-04, eff. July 16, 2004.

§ 256. Name of foreign limited liability company

If the name of a foreign limited liability company does not satisfy the requirements of 18 CNCA § 206, the company, to obtain or maintain a certificate of authority to transact business in Cherokee Nation, must use a fictitious name to transact business in 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.

LA 32-04, eff. July 16, 2004.

§ 257. Revocation of certificate of authority

A. A certificate of authority of a foreign limited liability company to transact business in 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:

a. pay any fees, taxes, and penalties owed to Cherokee Nation;

b. deliver its annual certification required under 18 CNCA § 220 to the Office of the Principal Chief within sixty (60) days after it is due;

c. appoint and maintain an agent for service of process as required by this article; or

d. 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 Cherokee Nation, or if the company fails to appoint and maintain a proper agent in Cherokee Nation, addressed to the office required to be maintained by 18 CNCA § 209. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in Cherokee Nation ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

LA 32-04, eff. July 16, 2004.

§ 258. Cancellation of authority

A foreign limited liability company may cancel its authority to transact business in 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 Cherokee Nation.

LA 32-04, eff. July 16, 2004.

§ 259. Effect of failure to obtain certificate of authority

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

B. The failure of a foreign limited liability company to have a certificate of

authority to transact business in 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 Cherokee Nation.

C. Limitations on personal liability of managers, members, and their assignees arc not waived solely by transacting business in Cherokee Nation without a certificate of authority.

D. If a foreign limited liability company transacts business in 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 Cherokee Nation.

LA 32-04, eff. July 16, 2004.

§ 260. 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 Cherokee Nation in violation of this article.

LA 32-04, eff. July 16, 2004.

ARTICLE 10

DERIVATIVE ACTIONS

§ 261. 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.

LA 32-04, eff. July 16, 2004.

§ 262. 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.

LA 32-04, eff. July 16, 2004.

§ 263. 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.

LA 32-04, eff. July 16, 2004.

§ 264. 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 attorney fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

LA 32-04, eff. July 16, 2004.

ARTICLE 11

GOVERNMENT-OWNED LIMITED LIABILITY COMPANIES

§ 265. Limited liability companies formed by Cherokee Nation

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 Cherokee Nation or any such agency, subdivision or entity.

LA 32-04, eff. July 16, 2004.

§ 266. Sovereign immunity of Cherokee Nation wholly-owned limited liability companies

A. All limited liability companies which are wholly-owned by Cherokee Nation, or any agency or subdivision thereof, or any entity which is wholly-owned by Cherokee Nation or any agency or subdivision thereof, formed pursuant to this act are hereby expressly cloaked with the mantel of sovereign immunity of 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 Cherokee Nation, or any agency or subdivision thereof, or any entity which is wholly-owned by 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.

LA 32-04, eff. July 16, 2004.

CHAPTER 3

CHEROKEE NATION NONPROFIT CORPORATIONS ACT

Section

§ 301. Short title

This act shall be known as the Cherokee Nation Nonprofit Corporations Act.

LA 2-96, eff. March 11, 1996.

§ 302. Purpose

The purpose of this act is to enable Cherokee Nation to form a nonprofit corporation and/or non profit corporations for the purpose of performing certain exclusive functions for the benefit of Cherokee citizens, and enabling such nonprofit corporations to achieve tax-exempt status pursuant to the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

LA 2-96, eff. March 11, 1996.

§ 303. Definitions

For the purpose of this chapter, unless the context otherwise requires, the terms defined in this section shall have the meanings ascribed to them as follows:

1. **"Articles"** means the original articles of incorporation as amended, articles of merger, or articles of consolidation and incorporation, as the case may be.

2. **"Bylaws"** means the code adopted for the regulation or management of the internal affairs of the nonprofit corporation, regardless of how designated.

3. **"Cherokee Nation nonprofit corporation"** or **"nonprofit corporation"** means a

nonprofit corporation formed by those elected officials of Cherokee Nation specified in 18 CNCA § 306 for a tribal purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such, and having no capital stock.

4. **"Directors"** means the persons vested with the general management of the affairs of the nonprofit corporation, regardless of how they are designated.

5. **"Member"** means an entity, either corporate or natural, having any membership or shareholder rights in a nonprofit corporation in accordance with its articles, bylaws, or both.

6. **"Notice"** means written notice stating the place, day and hour of the meeting and in case of a special meeting, the purpose for which the meeting is called, which shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary; provided that regular and special meetings of the board of directors may be held with or without notice as prescribed in the by-laws. **"Waiver of notice"** means (1) a written waiver signed by the person or persons entitled to such notice, whether before or after the time stated therein, which shall be equivalent to the giving of such notice; or (2) attendance of a director at a meeting, except where the director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

LA 2-96, eff. March 11, 1996. Amended LA 17-96, eff. September 16, 1996.

§ 304. Purposes of a nonprofit corporation

A nonprofit corporation may be formed under this chapter for exclusive operations for one or more of the following purposes: charitable, educational, scientific, literary, or any other purpose allowed for organizations subject to federal income tax exemptions under 26 U.S.C. § 501(c)(3).

LA 2-96, eff. March 11, 1996.

§ 305. Incorporators

The Cherokee Nation Principal Chief, Cherokee Nation Deputy Chief and Chairman or Co-Chairman of the Executive and Finance Committee of the Council of Cherokee Nation shall serve as the three incorporators of each Cherokee Nation nonprofit corporation established under this chapter.

LA 2-96, eff. March 11, 1996. Amended LA 11-96, eff. July 15, 1996.

§ 306. Articles of incorporation

A. Execution and approval. The articles shall be signed by each of the incorporators and acknowledged by each of them, and shall be approved by resolution of the Council of Cherokee Nation.

B. Contents. The articles of the nonprofit corporation organized under this chapter shall state:

1. The name of the nonprofit corporation;

2. The purpose of the nonprofit corporation;

3. That the nonprofit corporation does not afford pecuniary gain, incidentally or otherwise, to its members;

4. The period of duration of corporate existence which may be perpetual;

5. The location, by city, town, or other community, and the name of its registered agent and registered office in the Nation's jurisdiction;

6. The name and address of each incorporator;

7. The number of directors constituting the first board of directors, the name and address of each such director, and the tenure in office of the first directors, provided that the board shall consist of not less than five (5) or not more than eleven (11) members as may be provided by the by-laws of the corporation, and provided further that said directors shall be appointed by the Principal Chief and confirmed by the Council of Cherokee Nation; and

8. Any other provision, consistent with the law of Cherokee Nation for regulating the business of the nonprofit corporation or the conduct of the corporate affairs.

LA 2-96, eff. March 11, 1996. Amended LA 17-96, eff. September 16, 1996.

§ 307. Corporate name

A nonprofit corporation organized pursuant to this chapter may use any corporate name authorized by the Principal Chief, provided, that it shall not be necessary for a nonprofit corporation to use the word "corporation," "company," "incorporated," or "limited" or an abbreviation of one of those words in its corporate name.

LA 2-96, eff. March 11, 1996.

§ 308. Corporate capacity and powers

A nonprofit corporation incorporated under this chapter shall have general corporate capacity, and shall have and possess all of the general powers of a domestic corporation incorporated under this title.

LA 2-96, eff. March 11, 1996.

§ 309. Filing of articles

The articles of incorporation shall be filed in the Office of the Principal Chief. If the articles conform to law, the Office of the Principal Chief shall record the articles and issue and record a certificate of incorporation. The certificate shall state the name of the nonprofit corporation and the fact and date of incorporation. Corporate existence shall begin upon the issuance by the Principal Chief of the certificate of incorporation.

LA 2-96, eff. March 11, 1996.

§ 310. Amendment of articles

A. A corporation established under this chapter may amend its articles of incorporation from time to time, in any and as many respects as may be desired including without limitation change of name, change in period of duration and change to enlarge or diminish its corporate purposes; provided that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendments.

B. Amendments to the articles of incorporation shall be adopted by the affirmative vote of a majority vote of the Board after notice in accordance with 18 CNCA § 303(6) herein, and shall be approved by Cherokee Nation Council. The articles of amendment shall be executed in duplicate by the corporation by its president and its secretary, and verified by one of the officers signing such articles and shall set forth the name of the corporation, the amendments so adopted the date of the adoption of the amendments by the board of directors, and the number of directors voting for and against such amendment respectively. A copy of the Council resolution approving the articles of amendment shall be attached to each duplicate original.

C. Duplicate originals of the articles of amendment shall be filed in the Office of the Principal Chief. If the Principal Chief finds the articles of amendment conform to law, be shall record the articles of amendment and issue and record a certificate of amendment. The certificate of amendment together with the duplicate original of the articles of amendment affixed thereto, shall be returned to the corporation or its representative.

D. The articles of incorporation shall be deemed amended upon issuance of the certificate of amendment by the Principal Chief or on such later date, not more than thirty (30) days subsequent to the filing thereof with the Principal Chief, as shall be provided for in the articles of incorporation. No amendment shall affect any existing causes of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons; and in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

LA 2-96, eff. March 11, 1996. Amended LA 17-96, eff. September 16, 1996.

§ 311. Organizational meeting

After commencement of corporate existence, the first meeting of the board of directors shall be held at the call of the incorporators or the directors, after notice, for the purpose of adopting the initial bylaws, electing officers, performing other acts in the internal organization of the nonprofit corporation, and for such other purposes as shall be stated in the notice of the meeting. Such meeting shall be held within thirty (30) days after the issuance of a certificate of incorporation by the Principal Chief. The first meeting of the members shall be held at the call of an officer or of the initial board of directors, after notice. The initial bylaws adopted by the board of directors shall remain effective until legally amended or repealed at a membership meeting duly called

for the specific purpose of amending or repealing the bylaws.

LA 2-96, eff. March 11, 1996.

§ 312. Disposition of assets

Notwithstanding any provision of the Nation's law or in the articles of incorporation to the contrary, the articles of incorporation of each nonprofit corporation which is an exempt charitable, literary, educational, or scientific organization as described in 26 U.S.C. § 501(c)(3), as amended, shall be conclusively deemed to contain the following provisions: Upon the dissolution of the nonprofit corporation, the board of directors shall, after paying or making provision for the payment of all of the liabilities of the nonprofit corporation, dispose of all of the assets of the nonprofit corporation exclusively for the purposes of the nonprofit corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, literary or scientific purposes as shall at the time qualify as an exempt organization or organizations under 26 U.S.C. § 501(c)(3), as amended, or the corresponding provision of any future United States Internal Revenue law, as the board of trustees shall determine. Any such assets not to disposed of shall be disposed of by the courts of Cherokee Nation, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

LA 2-96, eff. March 11, 1996.

§ 313. General corporate laws applicable

The provisions of this title shall generally apply to nonprofit corporations organized pursuant to this chapter except where a different rule is provided in this chapter. Provided, that nonprofit corporations formed exclusively for charitable, literary, educational, or scientific purposes which qualify as a nonprofit corporation exempt from federal taxation pursuant to 26 U.S.C. § 501(c)(3), as amended, or any successor provision to this section, shall be exempt from payment of any filing fees, franchise fees or license fees. Each nonprofit corporation shall file an annual report with the Office of the Principal Chief, which shall be subject to review by the Council of Cherokee Nation.

LA 2-96, eff. March 11, 1996.

CHAPTER 4

JOBS GROWTH

Section

§ 401. Short title

This act shall be known and may be cited as the Jobs Growth Act of 2005.

LA 37-05, eff. December 18, 2005.

§ 402. Purpose

The purpose of this act is to implement a more effective business structure and efficient process for:

1. Maintaining and improving supervision and control over the Nation's business operations;

2. Improving accountability and consolidated financial reporting to the Nation by the entities conducting business operations;

3. Streamlining the business infrastructure and decision-making processes;

4. Preserving and enhancing profits and cash flow available for redistribution and investment according to the Nation's priorities;

5. Providing strategic planning, support for direction setting and coordination of business activities between the Nation and the businesses it owns, as well as among the business entities themselves;

6. Serving as the primary point for guiding overall implementation of economic development and business development strategy for the Nation;

7. Enhancing leveraging of resources and debt, and providing a disciplined process for funding expansion and diversification of the Nation's business interests;

8. Providing a more transparent view of allocation of resources for business development;

9. Increasing accountability to Cherokee Nation, the shareholder of the business entities.

This act constitutes a thoughtful, deliberate investment for the future of Cherokee citizens by providing for sustainable jobs, and making future business investment in a comprehensive manner to economic development, health, community services, education, language and culture and infrastructure. In so doing, the Nation advances its long-term vision of responsible economic development, self-sufficiency for the government and its citizens, and a strong, tribal government.

LA 37-05, eff. December 18, 2005.

§ 403. Definitions

For the purposes of this act:

1. **"Parent company"** means a company that owns a majority of the shares in another company or companies.

2. **"Subsidiary"** means a company owned by another company. If a subsidiary is wholly owned, all its stock is held by the parent company.

LA 37-05, eff. December 18, 2005. Amended LA 23-12, eff. August 23, 2012.

§ 404. Ownership of certain Cherokee Nation business entities

A. Jobs growth.

1. Assignment of ownership. The Principal Chief, or designee, shall be authorized to execute the necessary documents to transfer ownership of Cherokee Nation Enterprises, Inc. (CNE), Cherokee Nation Industries, Inc. (CNI), Cherokee Nation Distributors (CND), and any subsidiaries of the listed entities to Cherokee Nation Businesses, Inc. (CNB), a corporation wholly-owned by Cherokee Nation, as the parent company of the listed entities.

2. Parent company ownership. The Nation shall be the sole owner of the parent company for all purposes, including all assets and goodwill, and no interest in CNB shall be held at any time by any other party.

For the purposes of this act, any business corporation, or entity wholly-owned by Cherokee Nation, or in which Cherokee Nation owns a majority interest, the entity which shall represent the shareholder and vote any and all shares of stock or interest shall be the Principal Chief and the Cherokee Nation Council. It will take two-thirds (2/3) majority of the Council to take any action pursuant to this section. The Council and the Principal Chief shall adopt procedures to effectuate the provisions of this section.

3. CNB purpose. The purpose of CNB shall be to:

i. engage in all lawful activities, and to facilitate and promote the Nation's economic development through strategic planning, self-sufficiency, and a strong tribal government;

ii. preserve and enhance profits and cash flow available for redistribution and investment, consistent with the policy direction of Cherokee Nation;

iii. establish procedures to evaluate and approve allocation of capital to new business ventures and opportunities, and expansion of existing businesses;

iv. provide the necessary debt, subject to Council approval, or equity capital to pursue such business ventures and opportunities, and meet the long term capital requirements of new, as well as existing, businesses.

4. CNB Board of Directors. The CNB Board of Directors shall be comprised of no more than seventeen (17) members and shall, upon the dissolution of the CNE and CNI boards, be comprised of the then-current CNB directors and the former members of the dissolved CNE and CNI boards. Other subsidiaries may have directors as allowed by Cherokee law. Provided that, effective upon enactment of this act, the seats shall be assigned as follows:

Seat 1, a term expiring 9/30/14, currently held by Mike Watkins

Seat 2, a term expiring 9/30/14, currently held by Tommy Sue Wright

Seat 3, a term expiring 9/30/14, currently held by Rex Earl Starr

Seat 4, a term expiring 9/30/14, currently held by Bob Berry

Seat 5, a term expiring 9/30/14, currently held by Brent Taylor

Seat 6, a term expiring 9/30/14, currently held by Sam Hart

Seat 7, a term expiring 9/30/14, currently held by Gary Cooper

Seat 8, a term expiring 9/30/14, currently held by Jerry Holderby

Seat 9, a term expiring 9/30/14, currently held by Rick Doherty

Seat 10, a term expiring 9/30/14, currently held by Deacon Turner

Seat 11, a term expiring 9/30/11, currently held by David Ballew

Seat 12, currently an open seat

Seat 13, currently an open seat

Seat 14, currently an open seat

Seat 15, currently an open seat

Seat 16, currently an open seat

Seat 17, currently an open seat

5. Capital investments. The CNB Board of Directors shall establish appropriate policies for capital maintenance and investments based upon individual subsidiary business needs. Provided, that Cherokee Nation Enterprises shall retain minimum capital for expansions from net income in the amounts equal to forty percent (40%) of net income for fiscal years 2006 through 2008.

6. Business operations. All business operations shall be conducted directly by each subsidiary in its own name.

7. Advisory Board Members. Legislative Act 35-02 establishing Advisory Board Members for each business entity in which the Nation is a majority shareholder is referenced and hereby reaffirmed. Advisory Board members provide oversight of the Council for ongoing advice and notice of business activities.

8. Dividends not affected. Dividends required or otherwise authorized by LA 16-96, as amended, remain unchanged by this act.

9. Authority. CNB shall have all powers of corporations as provided by LA 16-96, as amended.

B. Acquisitions.

1. Real estate acquisitions. CNB shall be subject to Legislative Act 4-04, as amended, which requires that all real estate acquisitions by corporations in which the Nation is a majority shareholder, greater than Six Million Dollars ($6,000,000.00) in the aggregate annually be approved by the Council of Cherokee Nation.

2. Notice to Council. Notice for business acquisitions shall be provided to the Council of Cherokee Nation, prior to notification to the public or to members of the press. Such notification will include, but not be limited to, notice in writing or presentation to special and regular committee meetings.

LA 37-05, eff. December 18, 2005. Amended LA 11-10, eff. April 22, 2010; LA 27-11, eff. December 14, 2011; LA 23-12, eff. August 23, 2012.