

Chapter 4. Limited Liability Company Code

12.401 AUTHORITY

Article VII, Section D, of the Little Traverse Bay Bands of Odawa Indians (LTBB) Constitution, adopted February 1, 2005, gives Tribal Council the power to make laws, statutes and resolutions necessary to exercise Tribal jurisdiction, including the regulation of commerce.

(Source: WOS 2020-005, January 29, 2020, Section I)

12.402 SHORT TITLE

This Statute shall be known and cited as the “Limited Liability Company Code” or the “LLC Code”.

(Source: WOS 2020-005, January 29, 2020, Section II)

12.403 PUPROSE

A. The purpose of this Statute is to provide for economic development of the Little Traverse Bay Bands of Odawa Indians and its Citizens by:

- 1.** Providing the legal framework for organizing individually owned business entities in order to expand the private business sector either on or off the Reservation; and
- 2.** To extend the benefits of limited liability and pass-through taxation to the Tribe, Tribal Citizens, and private-sector businesses operating within the jurisdiction of the Tribe.
- 3.** To develop and modernize the laws applicable to businesses created under the sovereign powers of the Tribe by allowing for the organization of limited liability companies.
- 4.** Authorizing the formation of wholly owned tribal business entities for managing the Tribe's nongaming economic activities separate from the general affairs of its Tribal Council, with the ability to enter into legally binding contracts and commercial relationships, including the ownership or formation of subsidiary entities, without the

need for formal Tribal Council action; and

5. Authorizing the formation of limited liability companies by individuals or the Tribe for the purpose of organizing entities whose primary purpose is the pursuit of charitable or other non-profit purposes.

B. By enactment of this Statute, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal or state, and neither the enactment of this Statute, nor the organization and creation of any limited liability company hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court.

(Source: WOS 2020-005, January 29, 2020, Section III)

12.404 SCOPE

A. This Statute shall apply to all limited liability companies organized under its provisions or which elect to accept the provisions of this Statute.

B. The provisions of this Statute modify the Tribal Comprehensive Business Code, WOS 2003-007. Provisions of this Statute apply to all limited liability companies (LLC) authorized herein under the laws and sovereign power of the Tribe. The Department of Commerce shall have such authority as prescribed in this Statute and elsewhere. Preexisting LLCs shall be deemed to be in valid existence and allowed a ninety (90) day grace period from the date of the adoption of this Act to amend or conform their articles of organization in order to comply with the provisions herein.

C. This Statute repeals and replaces WOS 2012-016 Limited Liability Company Code.

(Source: WOS 2020-005, January 29, 2020, Section IV)

12.405 APPLICABLE LAW

The companies organized and created under this Statute shall be subject to this Statute, and all other laws of the Tribe. By organizing and creating a company under this Statute, the company and its owners shall be considered to have entered into a consensual relationship with the Tribe and agree to be subject to the full extent of the Tribe's legislative, regulatory and adjudicatory

jurisdiction. Unless displaced by particular provisions of this Statute or other tribal law, the principles of law and equity supplement this Statute.

(Source: WOS 2020-005, January 29, 2020, Section V)

12.406 RULES OF CONSTRUCTION

A. The provisions of this Statute shall be construed to promote its purpose and the policies of the Tribe as laid out in the Tribal Comprehensive Business Code's Preamble.

B. Nothing in this Statute shall be construed as a waiver of the Tribe's sovereign immunity or that of its officers or employees.

C. Nothing in this Statute shall be construed as creating a claim for monetary or injunctive relief against the Tribe or its officers or employees.

D. Nothing in this Statute shall be construed as consent by an LLC, where the Tribe is its sole member, to the jurisdiction of the United States or of any state with regard to the LLC.

E. Nothing in this Statute shall be construed as a waiver by the Tribe of its adjudicatory or regulatory jurisdiction over businesses operating within its jurisdiction.

F. Nothing in this Statute shall be construed as limiting the Tribal Court's jurisdiction to adjudicate matters arising under Tribal law, including this Statute.

G. The provisions of this Statute shall be construed to give maximum effect to the freedom of contract and the enforceability of articles of operation and other agreements.

H. Limited Liability Companies shall be considered apart from corporations for the purposes of interpreting LTBB Comprehensive Business Codes.

(Source: WOS 2020-005, January 29, 2020, Section VI)

12.407 DEFINITIONS

A. **"Articles of Organization"** means the original documents filed under Section XXII of

this Statute and those articles as amended or restated evidencing the creation of an LLC pursuant to the Tribe's sovereign powers.

B. "Contribution" means anything of value that a person contributes to the LLC, including cash, property, services performed, a promissory note or other binding obligation to contribute cash, property, or services, as a prerequisite for, or in connection with, becoming a member.

C. "Corporation" means a "domestic corporation" organized under the Tribal Corporations Code and a foreign corporation formed under the laws of any other jurisdiction.

D. "Corporations Code" means Chapter One (1) of the Tribal Comprehensive Business Codes Statute, WOS 2003-07, or as amended.

E. "Distribution" means a direct or indirect transfer by an LLC of money or other property or the incurrence of indebtedness by an LLC to or for the benefit of its members or assignees in respect of their interests.

F. "Entity" means an individual, a general partnership, limited partnership, a domestic or foreign LLC, a trust, an estate, an association, a corporation, or any other legal or commercial entity whether formed under the law of the Band or formed under the laws of any other jurisdiction.

G. "Foreign" means an entity established under the laws of a jurisdiction other than the Little Traverse Bay Bands of Odawa Indians.

H. "Jurisdiction" means the jurisdiction of the Little Traverse Bay Bands of Odawa Indians as described in the Tribal Constitution, adopted February 1, 2005, and any amendments thereto.

I. "Limited Liability Company" or "Domestic Limited Liability Company" or "LLC" means an organization formed under this Statute.

J. "Limited Liability Company Interest" or "Interest" or "Member's Interest" means a member's rights in the LLC, including but not limited to rights to distributions, profits and losses, and to participate in management or vote, as specified in the articles of operation.

K. "Majority in Interest" means a majority of votes as allocated by the articles of operation or, if not otherwise specified, members contributing more than fifty percent (50%) of the value of

total capital contributions to the LLC excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Statute.

L. “**Manager**” or “**Managers**” means the person(s) or entity(ies) designated to manage the LLC pursuant to the articles of organization and operating agreement.

M. “**Operating Agreement**” means an agreement in writing among all of the owners as to the conduct of the business of a limited liability company and its relationships with its owners.

N. “**Organizer(s)**” means the person(s) or entity(ies) which signs and delivers the articles of organization for filing to the Tribe’s Department of Commerce.

O. “**Owner**” means a person who has been admitted to membership in an LLC as provided by law and who has not dissociated from the LLC.

P. “**Notice**” means written notice unless oral notice is reasonable under the circumstances.

Q. “**Person**” means a natural person, tribal entity and an organization such as a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, or a corporation.

R. “**Reservation**” means all lands under the jurisdiction of the Tribe, including *as defined in the Constitution*, “all lands within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of Interior.”

S. “**State**” includes a state, territory, or possession of the United States and the District of Columbia.

T. “**Tribal Citizen**” means an individual duly enrolled in the Little Traverse Bay Bands of Odawa Indians.

U. “**Tribal Constitution**” means the Constitution of the Little Traverse Bay Bands of Odawa Indians.

V. “**Tribal Corporation**” means a corporation wholly owned by the Tribe and duly formed pursuant to this Statute, a Tribal resolution, a Business Corporation Code adopted by the Tribe, or other law.

W. “**Tribal Council**” means the Little Traverse Bay Bands of Odawa Indians Tribal Council.

X. “**Tribal Court**” means the judicial system of the Little Traverse Bay Bands of Odawa Indians.

Y. “**Tribal Entity**” means the Tribe, the Tribal Council, the Tribal Chair, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, a program, a department, an administrative agency or any other legal, commercial or governmental entity of the Tribe.

Z. “**Tribally Owned LLC**” means a limited liability company wholly owned by the Tribe with the Tribe as its sole owner.

AA. “**Tribally Owned Second Tiered Subsidiary LLC**” means a limited liability company wholly owned by a tribally owned subsidiary LLC.

BB. “**Tribally Owned Subsidiary LLC**” means a limited liability company wholly owned by a tribally owned LLC or by any other tribal entity that is wholly owned by the Tribe.

CC. “**Tribe**” or “**LTBB**” means the Waganakising Odawak, also known as the Little Traverse Bay Bands of Odawa Indians.

DD. “**Trust Land**” means land held in trust by the United States for the benefit of the Tribe or its Citizens.

(Source: WOS 2020-005, January 29, 2020, Section VII)

12.408 STATUS OF THE LLC

A. If an LLCs principle place of business is located within the exterior boundaries of the

LTBB reservation and the LLC is incorporated both under Tribal law and the laws of any state, then Tribal law and the articles of organization and operation filed with the Tribal Department of Commerce take precedence over any conflicting state law and state charter documents in any dispute concerning the status of the LLC or the rights and obligations of any persons with respect to the LLC.

B. The Tribal Court has jurisdiction to decide all questions with respect to status of the LLC under this Statute.

(Source: WOS 2020-005, January 29, 2020, Section VIII)

12.409 NAME

The name of a limited liability company as set forth in its articles of organization must contain the words "limited liability company" or end with the abbreviation "L.L.C." or "LLC." The name may not contain language stating or implying that the limited liability company is organized for any purpose other than that permitted under this Statute.

(Source: WOS 2020-005, January 29, 2020, Section IX)

12.410 REGISTERED OFFICE AND REGISTERED AGENT

A. A limited liability company's registered agent is the company's agent for receiving service of process, notice, or demand required or permitted by law to be served on the company under the laws of the Tribe.

B. Each LLC shall continuously maintain a registered office and a registered agent. The registered office may, but need not, be the same as any of its places of business. If the Tribe is an owner in the LLC, the agent may be a designated office or position, rather than a specified person.

C. An LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed, with the Tribal Department of Commerce.

D. The registered agent of an LLC may resign as a registered agent by delivering to the

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

(Source: WOS 2020-005, January 29, 2020. Section X)

12.411 TRIBE AS OWNER

- A.** The Tribe shall form or become an owner of a tribally owned LLC formed under this Statute only upon approval of such action by duly enacted Tribal Resolution.

- B.** A second-tier subsidiary LLCs is an LLC that is formed under either a Tribally Chartered Corporation, an LLC, or a subordinate Tribal entity. The ownership interests in a tribally owned subsidiary LLC, including tribally owned second tier subsidiary LLCs, shall be voted as provided in the company's operating agreement.

- C.** If the Tribe is the sole owner of an LLC formed under this Statute, such tribally owned LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its operating agreement.

- D.** If a tribally owned LLC, of which the Tribe or a tribal entity is the sole member, forms a tribally owned subsidiary LLC, of which the tribally owned LLC or other tribal entity is the sole member, such tribally owned subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its operating agreement.

- E.** If a subsidiary tribally owned LLC, of which the tribally owned LLC is the sole member, forms a tribally owned second tier subsidiary LLC, such tribally owned second tier subsidiary LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its operating agreement.

- F.** If the Tribe or a tribal entity is an owner with a majority in interest in an LLC formed under this Statute, such LLC may possess the privileges and immunities of the Tribe, including sovereign immunity from suit, to the extent allowed by federal law, this Statute or its operating agreement.

- G.** In no event shall any manager who is not an owner of an LLC in which the Tribe is an

owner, bind the Tribe in any manner; provided that the Tribe's interest as an owner may be bound by manager or owner actions as stated in this Statute and the operating agreement of the LLC.

H. Nothing contained in this Statute shall be construed as creating any liability or waiving of sovereign immunity of the Tribe in any manner; provided that the assets of the LLC in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein,

I. In no event shall any action taken by the Tribe as owner concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in an LLC be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as an owner of the LLC.

J. For all tribally owned limited liability companies and tribally owned subsidiary limited liability companies, the additional provisions of Section LXIX and Section LXX of this Statute shall apply.

(Source: WOS 2020-005, January 29, 2020. Section XI)

12.412 JURISDICTION OF THE TRIBAL COURT

Unless parties otherwise stipulate in writing, all LLCs formed under this Statute and members and managers of such, regardless of whether they are Tribal Citizens, shall be subject to the jurisdiction of the Tribal Court in all actions which arise out of their acts, omissions or participations in connection with the affairs of the LLC established under this Statute. The Tribal Court of the Little Traverse Bay Bands of Odawa Indians shall possess exclusive jurisdiction over all matters and controversies regarding the interpretation and implementation of these Articles which may arise.

(Source: WOS 2020-005, January 29, 2020. Section XII)

12.413 GENERAL POWERS OF AN LLC

An LLC may be organized under this Statute for any lawful purpose. Unless otherwise provided in the articles of operation, an LLC organized and existing under this Statute has the same powers as an individual to do all things necessary and convenient to carry out its business, including but

not limited to all of the following:

- A.** Sue and be sued, complain, and defend its name; provided that if an LLC is wholly owned by the Tribe, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit, except as explicitly waived by Tribal Council.
- B.** Purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal in or with real or personal property, or any legal or equitable interest in real or personal property, wherever situated.
- C.** Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property, within the limitation of Section LXIX, if applicable.
- D.** Purchase, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other entity.
- E.** Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.
- F.** Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
- G.** Conduct its business, locate offices, and exercise the powers granted by this Statute within or outside the exterior boundaries of the Reservation.
- H.** Be a promoter, partner, member, associate, or manager of any entity.
- I.** Elect or appoint managers, agents, and employees, define their duties, and fix their compensation and lend them money, services, and credit.
- J.** Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former members, managers, employees, and agents.

- K.** Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.
- L.** Indemnify a member, manager, employee, officer or agent, or any other person.
- M.** Transact any lawful business that will aid governmental policy.
- N.** Make payments or donations, or do any other act not prohibited by law, that furthers the business of the LLC.
- O.** Provide benefits or payments to members, managers, employees, and agents of the LLC, and to their estates, families, dependents or beneficiaries in recognition of the past services of the members, managers, employees, and agents of the LLC.

(Source: WOS 2020-005, January 29, 2020. Section XIII)

12.414 LIMITED LIABILITY

The debts, obligations, and liabilities of an LLC, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the LLC. Except as otherwise specifically provided in this Statute, a member or manager of an LLC is not personally liable for any debt, obligation or liability of an LLC as defined in the articles of operation. No member or manager of any LLC formed under this Statute shall be liable to any creditor of the LLC by reason of his or her status as a member or manager, except insofar as said member or manager may be indebted to the LLC. The failure of an LLC to observe formalities or requirements relating to the exercise of its powers or the management of its business and affairs shall not be grounds for imposing personal liability on members or managers for obligations of the LLC.

(Source: WOS 2020-005, January 29, 2020. Section XIV)

12.415 INTERSTATE APPLICATION

An LLC may conduct its business, carry on its operations and have and exercise the powers granted by this Statute, in any sovereign Indian Tribe, any state, territory, district or possession of the United States, or in any foreign jurisdiction

(Source: WOS 2020-005, January 29, 2020. Section XV)

12.416 DEPARTMENT OF COMMERCE

The Tribe's Department of Commerce as established by the Corporations Code shall implement this Statute and amendments thereto. The Department of Commerce shall have the following powers and duties as they relate to LLCs:

- A.** To review and approve applications for organization and grant certificates of organization under this Statute.
- B.** To review and approve amended articles of organization, including articles of operation, and issue certificates of amendment.
- C.** To review and approve proposed articles of dissolution and to dissolve LLCs administratively.
- D.** To review and approve proposed articles of merger and to merge LLCs administratively.
- E.** To accept for filing other notices, reports and documents from LLCs.
- F.** To furnish, on request, copies of articles of organization, notices, reports and other non-confidential documents to the public upon the payment of reasonable fees.
- G.** To issue requests for filings from LLCs in accordance with the provisions of this Statute.
- H.** To participate in actions in Tribal Court or any other court of competent jurisdiction for the enforcement of any provision of this Statute.
- I.** To promulgate regulations and/or policies through the Executive Branch to implement this Statute.
- J.** Upon Tribal Council approval, to enter into agreements or contracts with other Indian tribes, businesses, or other entities to implement this Statute.

K. To establish an escrow account for deposit of any assets of a dissolved LLC that should be transferred to an individual in accordance with Section LXII.

(Source: WOS 2020-005, January 29, 2020. Section XVI)

12.417 REPORTING REQUIREMENTS

The Department of Commerce may deliver to an LLC requests to inspect documents as may be reasonably necessary or proper to enable the Department to ascertain whether such LLC is complying with the provisions of this Statute. Such requests for inspection shall be answered within thirty (30) days after mailing, and the answers shall be full and complete and shall be notarized.

(Source: WOS 2020-005, January 29, 2020. Section XVII)

12.418 REGISTERED AGENT

A. From the time of filing, each LLC shall continuously maintain a registered agent. An LLC's registered agent is the company's agent for service of process, notice or demand required or permitted by applicable law to be served on the LLC. A registered agent may be either a natural person or another entity authorized to transact business within the Tribe's jurisdiction.

B. The name and address of the registered agent shall appear in the articles of organization of the LLC. The address of the registered agent may, but need not, be the same as any of its places of business. The agent may be the person then serving in a designated office of the Tribe rather than a specified person if the Tribe is a member in the LLC.

C. An LLC may change the name or address of its registered agent, or both, by amending articles of organization or noting the change in articles of merger. The registered agent of an LLC may resign as registered agent by delivering to the Tribe's Department of Commerce for filing a written statement of resignation, which becomes effective upon the appointment by the LLC of another registered agent or thirty (30) days after the statement is filed, whichever is sooner.

D. In the event that the LLC fails to notify the Department of Commerce of any change in the name or address of its registered agent, the LLC shall be deemed to consent to the appointment of the Department of Commerce as its agent for service of process until such time as it files notice

of a change with the Department of Commerce. Service upon the Department of Commerce shall be deemed to be service on such LLC within ten (10) days thereof, provided that the Department of Commerce shall give notice of such service to any member or manager of the LLC at the most recent address noted in the DOC's files.

(Source: WOS 2020-005, January 29, 2020. Section XVIII)

12.419 NAME

- A.** The name of an LLC as set forth in its articles of organization must contain the words "limited liability company" or end with the abbreviation "L.L.C." or "LLC".
- B.** The name of an LLC may not contain language stating or implying that it is organized for any purpose other than that permitted under this Statute.
- C.** The name of an LLC shall be distinguishable from any LLC or entity previously organized under the laws of the Tribe, including this Statute and the Corporations Code.
- D.** Any LLC that is not authorized by Tribal Council or wholly owned and operated by the Tribe may not use any name nor make any representation that implies that it is a subdivision or enterprise of the Tribe.

(Source: WOS 2020-005, January 29, 2020. Section XIX)

12.420 FEES

Fees shall be set per Regulations approved by Tribal Council, and a published schedule of fees shall be available upon request through the Department of Commerce, for:

- A.** Filing an application to organize an LLC;
- B.** Filing articles of operation;
- C.** Filing an application to reserve a name;
- D.** Filing a certificate of assumed name or certificate of termination of assumed name;

- E.** Filing an application for an amendment to the articles of organization or operation;
- F.** Filing a statement of change of name or address of registered agent;
- G.** Filing any other statement or report of an LLC, including a certificate of merger or dissolution;
- H.** Furnishing a certified copy of any document, instrument report, or other paper related to the LLC;
- I.** Furnishing a certificate as to the status of an LLC or as to the existence or non-existence of facts relating to the LLC;
- J.** Furnishing copies to any person or group;
- K.** Furnishing a certificate of organization in accordance with this Statute; and
- L.** Expediting filing.

(Source: WOS 2020-005, January, 29, 2020, Section XX)

12.421 EXECUTION OF DOCUMENTS

A. Except as otherwise provided in this Statute, any document required or permitted by this Statute to be delivered for filing to the Department of Commerce shall be executed by any of the following:

- 1.** Any manager, if management of the LLC is vested in a manager or managers, or by a member, if management of the LLC is reserved to the members; provided, documents executed by the Tribe as member must be approved by Tribal Council.
- 2.** All organizers of the LLC if the LLC has not been organized. Name and address of each organizer shall be provided.

3. An authorized agent of the LLC.
- B. The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.
 - C. The document shall be accompanied by fees and other documents required by law.
 - D. The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the executing of the document must be shown to and filed with the Department of Commerce.
 - E. Any document accepted by the Department of Commerce shall be effective at the time of receipt unless a delayed effective date and/or time not more than ninety (90) days after receipt by the Department of Commerce is specified in the document.

(Source: WOS 2020-005, January 29, 2020, Section XXI)

12.422 FILING ARTICLES OF ORGANIZATION

- A. Duplicate originals of the articles of organization shall be delivered to the Department of Commerce.
- B. If the Department of Commerce finds that the articles of organization substantially meet the requirements of this Statute, the Department of Commerce shall, when all fees have been paid in accordance with this Statute and the applicable Regulations approved by Tribal Council:
 1. Stamp or otherwise endorse the date and time of receipt of the original, the duplicate copy, and, upon request, any additional copy received.
 2. File one of such originals.
 3. Issue a certificate of organization to which the other original shall be affixed, which shall be returned to the person tendering the articles of organization.
- C. If the Department of Commerce refuses to file a request, the Department of Commerce shall return it to the person tendering the document for filing within five (5) business days after

the date on which the document is received by the Department of Commerce for filing, together with a brief written explanation of the reason for refusal.

(Source: WOS 2020-005, January 29, 2020, Section XXII)

12.423 ARTICLES OF ORGANIZATION

A. One or more persons may organize an LLC by signing and delivering articles of organization to the Department of Commerce for filing. The organizer(s) need not be members of the LLC at the time of organization or thereafter.

B. The articles of organization shall contain all of and only the following information:

1. A statement that the LLC is organized under this Statute.
2. A name for the LLC that satisfies the provisions of this Statute.
3. The period of duration, which may be perpetual or for a stated term of years.
4. The purpose or purposes for which the LLC is formed which may be stated to be, or include, the transaction of any or all lawful business for which LLCs may be organized under this Statute.
5. The name and address of the registered agent and the address of its principal office.
6. If management of the LLC is vested in one or more managers, a statement to that effect.
7. The name and address of each person organizing the LLC.
8. A list of members. An LLC shall have one or more members.
9. Whether or not the LLC is wholly owned by the Tribe.
10. If wholly owned by the Tribe, whether the LLC is to enjoy the Tribe's sovereign

immunity and the scope of any waiver of that immunity; provided that the Tribal Council is the only entity authorized to make any such waiver.

C. The Department of Commerce shall assign each article of organization an identification number.

D. An LLC may amend its articles of organization at any time by delivering an amendment, with filing fee, to the Department of Commerce.

(Source: WOS 2020-005, January 29, 2020, Section XXIII)

12.424 ARTICLES OF OPERATION

In addition, the articles of organization may also contain articles of operation, not inconsistent with Tribal law, regarding:

A. The direction of the management of the business and the regulation of the affairs of the LLC.

B. The definition, limitation, and regulation of the powers of the LLC, the members or managers.

C. Any other provision that this Statute requires or permits to be set forth.

D. An LLC may amend its articles of operation at any time by delivering an amendment, with filing fee, to the Department of Commerce.

E. If there is a conflict between the articles of organization and articles of operation, the articles of organization shall control.

(Source: WOS 2020-005, January 29, 2020, Section XXIV)

12.425 CERTIFICATE OF ORGANIZATION

Upon filing the articles of organization, unless a delayed effective date is stated in the documents, the LLC is formed and the certificate of organization shall be conclusive

evidence that all conditions precedent required to be performed by the organizers have been complied with and that the LLC has been organized and formed under this Statute, except in a proceeding against the Tribe to cancel or revoke the certificate of organization or for involuntary dissolution of the LLC.

(Source: WOS 2020-005, January 29, 2020, Section XXV)

12.426 CERTIFICATE OF GOOD STANDING

A. Any person may obtain from the Department of Commerce, upon request, a certificate of status for either a domestic or a foreign LLC.

B. A certificate of good standing shall be issued on the following conditions:

1. The LLC has been validly authorized to transact business within the jurisdiction of the Tribe.

2. The LLC is validly in existence under the laws of the Tribe, including this Statute.

3. The LLC has complied with all requests for filings from the Department of Commerce.

C. An LLC that is not in good standing remains in existence and may continue to transact business in the jurisdiction of the Tribe.

(Source: WOS 2020-005, January 29, 2020, Section XXVI)

12.427 MANAGEMENT

A. Unless the articles of organization vest management in one or more managers, management of the LLC shall be vested in the members subject to any provision in articles of operation or this Statute restricting or enlarging the management rights and duties of any member or group of members.

B. If the articles of organization vest management in one or more managers, management

of the business or affairs of the LLC shall be vested in the manager or managers subject to any provisions in the articles of operation or this Statute restricting or enlarging the management rights and duties of any manager or group of managers. Unless otherwise provided in articles of operation, the manager or managers:

1. Shall be designated, appointed, elected, removed, or replaced by a vote of a majority in interest of the members. The members may remove a manager for cause only at a meeting called expressly for that purpose, and that manager shall have reasonable advance notice of the allegations against him or her and an opportunity to be heard.
2. Need not be members of the LLC nor natural persons.
3. Unless earlier removed or earlier resigned, shall hold office until a successor is elected and qualified.

(Source: WOS 2020-005, January 29,2020, Section XXVII)

12.428 DUTIES

Unless otherwise provided in articles of operation:

- A. No member or manager shall act or fail to act in a manner that constitutes any of the following:
 1. A willful failure to deal fairly with the LLC or its members in connection with a matter in which the member or manager has a material conflict of interest.
 2. A violation of criminal law, unless the member or manager had reasonable cause to believe that the person's conduct was lawful or no reasonable cause to believe that the conduct was unlawful.
 3. A transaction from which the member or manager derived an improper personal profit.
 4. Willful misconduct, gross misconduct or malice.

B. A manager may rely on information, opinions, reports, or statements including, but not limited to, financial statements or other financial data, if prepared or presented by a person whom the manager reasonably believes to be competent in the matter presented. A manager is not entitled to rely on the information described above if he or she has knowledge concerning the matter in question that makes reliance otherwise unwarranted.

C. Every member and manager shall account to the LLC and hold as trustee for it any profit derived by that member or manager without the consent of a majority of the disinterested members or managers, or other persons participating in the management of the LLC, from any of the following:

1. A transaction connected with the organization, conduct, or winding up of the LLC.

2. An improper use by a member or manager of the property of an LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as member or manager.

D. A manager is not liable for an action taken as a manager or the failure to act if he or she performs the duties of his or her office in compliance with this section provided, articles of operation may impose duties on its members and managers that are in addition to, but not in abrogation of, those provided in paragraphs A and B, above.

E. Any action against a member or manager for failure to perform duties in accordance with this Statute shall be commenced within three (3) years after the cause of action has accrued or within two (2) years after the cause of action is discovered or should reasonably have been discovered, whichever occurs first.

(Source: WOS 2020-005, January 29, 2020, Section XXVIII)

12.429 AGENCY POWER OF MEMBERS AND MANAGERS

A. If the articles of operation delegate management of the LLC as vested in the members, the following shall apply:

1. Each member is an agent of the LLC for the purpose of its business, but not an agent of any of the other members of the LLC.
2. The act of any member, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of business of the LLC, binds the LLC in the particular matter, unless the person with whom the member is dealing has knowledge that the member has no authority to act in this matter.
3. If the Tribe is a member, the Tribe's authority shall be exercised only by approval of Tribal Council.

B. If the articles of organization delegate management of the LLC as vested in one or more managers the following shall apply:

1. The articles of organization shall serve as notice to third parties that managers have agency authority and not the members of the LLC.
2. No member, solely by being a member, is an agent of the LLC, nor are they an agent of any of the other members.
3. Each manager is an agent of the LLC for the purpose of its business, but in not an agent of any of the other members. The act of any manager, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of business of the LLC, binds the LLC unless the manager has, in fact, no authority to act for the LLC in the particular matter, and the person with whom the manager is dealing has knowledge that the manager has no authority to act in the matter.

C. No act of a member or, if management of the LLC is vested in one or more managers, of a manager that is not apparently for the carrying on in the ordinary course of business of the LLC shall bind the LLC unless in fact authorized at the time of the transaction or at any other time.

(Source: WOS 2020-005, January 29, 2020, Section XXIX)

12.430 ADMISSION OR REPRESENTATION OF MEMBERS AND MANAGERS

A. Except as provided in paragraph B, below, an admission or representation made by any

member concerning the business of an LLC within the scope of the member's actual authority as provided in Section XXIX, above, may be used as evidence against the LLC in any legal proceeding.

B. If management of the LLC is vested in one or more managers:

1. An admission or representation made by a manager concerning the business of an LLC within the scope of the manager's authority as provided under Section XXIX, above, may be used as evidence against the LLC in any legal proceeding.

2. The admission or representation of any member, acting solely in the member's capacity as a member, is not evidence against the LLC in any legal proceeding.

(Source: WOS 2020-005, January 29, 2020, Section XXX)

12.431 KNOWLEDGE OF OR NOTICE TO MEMBER OR MANAGER

A. Except as provided in paragraph B, below, notice to any member of any matter relating to the business of an LLC, and the knowledge of a member acting in the particular matter, acquired while a member or known by the person at the time of becoming a member, and the knowledge of any member who reasonably could and should have communicated it to the acting member, operate as notice to or knowledge of the LLC.

B. If management of the LLC is vested in one or more managers:

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

2. Notice to or knowledge of any member while the member is acting solely in the capacity of a member is not notice to or knowledge of the LLC.

(Source: WOS 2020-005, January 29, 2020, Section XXXI)

12.432 PARTIES TO ACTION

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

- A.** The object of the proceeding is to enforce a member's right against or liability to the LLC.
- B.** The action is brought by a member under Section XXXIII, below (Authority to Sue).

(Source: WOS 2020-005, January 29, 2020, Section XXXII)

12.433 AUTHORITY TO SUE

Unless otherwise provided in articles of operation an action on behalf of an LLC may be brought in the name of the LLC by:

- A.** One or more members of the LLC, if authorized by a majority in interest of members, excluding the vote of any member who has an interest in the outcome of the action that is averse to the interest of the LLC.
- B.** One or more managers of an LLC if the management of the LLC is vested in one or more managers, or if the managers are authorized to sue by a majority in interest of members.

(Source: WOS 2020-005, January 29, 2020, Section XXXIII)

12.434 LIMITATION OF LIABILITY AND INDEMNIFICATION

In this Section, "expenses" means expenses of defending a lawsuit, including attorney's fees, and any civil judgment or penalty, or settlement payment in lieu thereof, paid in connection with a lawsuit against a member or manager in such capacity.

- A.** An LLC shall indemnify or allow expenses to each member and each manager for all reasonable expenses incurred with respect to a proceeding if that member or manager was a party to the proceeding in the capacity of a member or manager under Section XXXIII,

(Authority to Sue); provided that articles of operation may alter or provide additional rights to indemnification or allowance of expenses to members and managers.

B. Notwithstanding paragraph A, above, an LLC may not indemnify a member or manager unless it is determined that the member or manager did not breach or fail to perform a duty to the LLC; unless otherwise provided in articles of operation:

1. A member or manager shall be conclusively presumed not to have breached or failed to perform a duty to the LLC to the extent that the member or manager has been successful on the merits or otherwise in the defense of the proceeding.

2. In situations not described in paragraph 1, above, the determination of whether member or manager has breached or failed to perform a duty to the LLC shall be made by the vote of a majority in interest of the members, excluding any member who is a party to the same or related proceeding or who has a conflict of interest unless all members are parties.

(Source: WOS 2020-005, January 29, 2020, Section XXXIV)

12.435 ADMISSION OF MEMBERS

A. In connection with the formation of an LLC, a person acquiring an LLC interest is admitted as a member upon formation unless the articles of operation otherwise provides.

B. After the formation of an LLC, a person acquiring an LLC interest is admitted as a member of the LLC as specified in the articles of operation or, if not so specified, by unanimous consent of the members.

(Source: WOS 2020-005, January 29, 2020, Section XXXV)

12.436 VOTING

A. Unless otherwise provided in articles of operation or this Section, and subject to paragraph B, below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of an LLC:

1. If management of an LLC is reserved to the members, an affirmative vote,

approval, or consent by majority in interest of members.

2. If the management of an LLC is vested in one or more managers, the affirmative, vote, consent, or approval of more than fifty percent (50%) of the managers.

B. Unless otherwise provided in articles of operation or this Statute, the affirmative vote, approval, or consent of all disinterested members shall be required to do any of the following:

1. Amend the articles of organization.

2. Issue an interest in an LLC to any person.

3. Adopt, amend, or revoke articles of operation.

4. Allow an LLC to accept any additional contribution from a member.

5. Allow a partial redemption of an interest in an LLC under Section XLV (Distribution Upon Dissociation).

6. Value contributions of members under Section XXXIX (Contributions).

7. Authorize a manager, member, or other person to do any act on behalf of the LLC that contravenes the articles of operation.

C. Unless otherwise provided in articles of operation, if any member is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the member would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under Section VII (M), for that matter.

D. Unless otherwise provided in articles of operation or this Section, if all or part of an interest in the LLC is assigned under Section L, the assigning member shall be considered the owner of the assigned interest for purposes of determining the 50% threshold under Section VII (M) until the assignee of the interest in the LLC becomes a member under Section LV (Right of Assignee to Become a Member).

(Source: WOS 2020-005, January 29, 2020, Section XXXVI)

12.437 RECORDS AND INFORMATION

- A.** An LLC shall keep at its principal place of business all of the following:
- 1.** A list, in alphabetical order, of each past and present member and, if applicable, manager(s).
 - 2.** A copy of the articles of organization and all amendments to the articles, including articles of operation, together with executed copies of any powers of attorney under which any articles were executed.
 - 3.** A record of all matters referred to in this Statute as maintained in such records which are not otherwise specified in the articles of operation.
 - 4.** Copies of federal, state, and local tax returns and reports, if any, for the three (3) most recent years.
 - 5.** Copies of any financial statements of the LLC for the three (3) most recent years.
 - 6.** Copies of records that would enable a member to determine the member's relative shares of the LLC's distributions and the member's relative voting rights.
- B.** Upon reasonable request, a member may, at the member's own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in articles of operation.
- C.** Members or, if the management of the LLC is vested in one or more managers, managers shall provide true and full information of all things affecting the members to any member or to the legal representative of any member upon reasonable request of the member or the legal representative.
- D.** Failure of an LLC to keep or maintain any of the records of information required under this Section shall not be grounds for imposing personal liability on any manager or member for the debts and obligations of the LLC.

(Source: WOS 2020-005, January 29, 2020, Section XXXVII)

12.438 DISSOCIATION OF MEMBERS

A. A person ceases to be a member of an LLC upon the occurrence of and at the same as any of the following events:

- 1.** The member withdraws by voluntary act. See C, below.
- 2.** The member is removed as a member in accordance with articles of operation or this Statute.
- 3.** Unless otherwise provided in articles of organization/operation or by the written consent of all members at the time of the event, the member does any of the following:
 - a.** Makes an assignment for the benefit of the creditors.
 - b.** Files a voluntary petition in bankruptcy.
 - c.** Becomes the subject of an order for relief under the federal bankruptcy laws or state or Tribal insolvency laws.
 - d.** Fails to gain dismissal of any federal bankruptcy or state or tribal insolvency proceeding within 120 days of commencement of an involuntary proceeding.
- 4.** Unless provided in articles of operation or by the written consent of all members, if the member is a natural person:
 - a.** The member's death.
 - b.** The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or estate.

5. Unless otherwise provided in articles of operation or by the written consent of all members at the time, if the member is a trust, corporation, partnership, or LLC upon liquidation, dissolution, or termination.

B. The members may provide in the articles of operation for other events the occurrence of which result in a person ceasing to be a member of the LLC.

C. Unless articles of operation provide that a member does not have the power to withdraw by voluntary act from an LLC, the member may do so at any time by giving written notice to the other members or as provided in articles of operation. If the member has the power to withdraw but the withdrawal is in breach of the articles of operation, the LLC may offset the damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in articles of operation or otherwise available under applicable law.

(Source: WOS 2020-005, January 29, 2020, Section XXXVIII)

12.439 CONTRIBUTIONS

A. A member's contributions to an LLC may consist of cash, property, or services rendered, or promissory notes, contracts for services to be performed or other written obligations to provide cash or property or to perform services.

B. The value of a member's contribution shall be determined in the manner provided in articles of operation. If the articles of operation do not fix a value to a contribution, the value of a contribution shall be approved by a majority in interest of the members, shall be properly reflected in the records and information kept by the LLC. The value of contributions so determined shall be binding and conclusive on the LLC and its members.

(Source: WOS 2020-005, January 29, 2020, Section XXXIX)

12.440 LIABILITY FOR CONTRIBUTION

A. An obligation of a member to provide cash or property or to perform services as a contribution to an LLC is not enforceable unless specified in a writing signed by the member.

B. Unless otherwise provided in articles of operation, a member is obligated to an LLC to

perform any enforceable promise to provide cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not provide cash, property, or services as promised, the member is obligated at the option of the LLC to provide cash equal to that portion of the value of the stated contribution that has not been fulfilled. This is in addition to any other rights that the LLC may have under the operating agreement or applicable law.

C. Unless otherwise provided in articles of operation, a member's obligation to provide cash or property or perform services as a contribution to the LLC may be compromised only by the written consent of all of the members. Notwithstanding a compromise, a creditor who acts in reliance on the member's obligation after the member signs an obligation and before the amendment of the writing to reflect the compromise, may enforce the original obligation.

(Source: WOS 2020-005, January 29, 2020, Section XL)

12.441 ALLOCATION OF PROFITS AND LOSSES

The profits and losses of an LLC shall be allocated among the members in the manner provided in articles of operation. If the members do not enter into articles of operation or the articles of operation do not so provide, profits and losses shall be allocated on the basis of value of the contributions made by each member.

(Source: WOS 2020-005, January 29, 2020, Section XLI)

12.442 INTERIM DISTRIBUTIONS

Except as provided in this Statute, a member is entitled to receive distributions from an LLC before the member's dissociation from the LLC and before its dissolution and winding up to the extent and at the times or upon the events specified in articles of organization, or to the extent and at the times determined by the members or managers.

(Source: WOS 2020-005, January 29, 2020, Section XLII)

12.443 ALLOCATION OF DISTRIBUTIONS

Distributions of cash or other assets of an LLC shall be allocated among the members as

provided in articles of operation, or if articles of operation do not provide, on the basis of the value of the contributions made by each member.

(Source: WOS 2020-005, January 29, 2020, Section XLIII)

12.444 DISTRIBUTION UPON PARTIAL REDEMPTION

Except as provided in this Statute, upon the distribution in partial liquidation of a member's interest, the redeeming member is entitled to receive the amount to which the member is entitled under articles of operation and, if not otherwise provided in articles of operation, the fair value of the redeemed interest based on the member's right to share in distributions from the LLC.

(Source: WOS 2020-005, January 29, 2020, Section XLIV)

12.445 DISTRIBUTION UPON DISSOCIATION

Except as otherwise provided in this Statute, upon an event of dissociation under Section XXXVIII (Dissociation of Members) that does not cause dissolution of the LLC, a dissociating member is entitled to receive any distribution to which the member is entitled under articles of operation and, if not otherwise provided in articles of operation, the fair value of the member's interest in the LLC based on the member's rights to share in distributions from the LLC.

(Source: WOS 2020-005, January 29, 2020, Section XLV)

12.446 DISTRIBUTION IN KIND

Unless otherwise provided in the articles of operation:

- A.** A member may not demand and receive any distribution from an LLC in any form other than cash.

- B.** A member may not be compelled to accept a distribution of any asset in kind except for a liquidating distribution made proportionately.

(Source: WOS 2020-005, January 29, 2020, Section XLVI)

12.447 RIGHT TO DISTRIBUTION

At the time that a member becomes entitled to receive a distribution from an LLC, the member has the status of and is entitled to all remedies available to a creditor of the LLC with respect to the distribution.

(Source: WOS 2020-005, January 29, 2020, Section XLVII)

12.448 LIMITATIONS OF DISTRIBUTIONS

A. An LLC may not declare or make a distribution to any of its members, if after giving effect to the distribution, any of the following would occur:

- 1.** The LLC would be unable to pay its debts as they become due in the usual course of business.
- 2.** The fair market value of the LLCs total assets would be less than the sum of its total liabilities plus, unless articles of operation provides otherwise, the amount that would be needed for the preferential rights upon dissolution of members, if any.

B. An LLC may base a determination that a distribution is not prohibited by paragraph A, above, on any of the following:

- 1.** Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
- 2.** A fair market valuation or other method that is reasonable under the circumstances.

C. An LLCs indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the LLCs indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Section does not affect the validity or priority of a security interest in an LLCs property that is created to secure the indebtedness to the member.

(Source: WOS 2020-005, January 29, 2020, Section XLVIII)

12.449 LIABILITY FOR WRONGFUL DISTRIBUTION

A. Except as provided in paragraph B, below, a manager who votes or assents to a distribution in violation of Section XLVIII (Limitations of Distributions) or of articles of operation is personally liable, jointly and severally, to the LLC for the amount of the excess distribution, subject to contribution from all other managers or members participating in such action. A member or manager is presumed to have assented to a distribution unless he or she files a written dissent with the LLC.

B. A member who accepts or receives a distribution with knowledge that it is in violation of Section XLVIII (Limitations of Distributions) or of articles of operation is liable to the LLC for the amount that exceeds the member's share that could have been distributed without violating Section XLVIII (Limitations of Distributions) or of articles of operation.

C. A proceeding under this Section is barred unless it is brought within two (2) years after the date on which the effect of the distribution was measured under Section XLII (Interim Distributions).

(Source: WOS 2020-005, January 29, 2020, Section XLIX)

12.450 OWNERSHIP OF LLC PROPERTY

A. All property originally transferred to or acquired by an LLC is property of the LLC and not the members individually.

B. Property acquired with LLC funds is presumed to be LLC property.

C. Property may be acquired, held, and conveyed in the name of the LLC.

(Source: WOS 2020-005, January 29, 2020, Section L)

12.451 TRANSFER OF PROPERTY

The property of an LLC may be transferred by an instrument of transfer executed by any member

in the name of the LLC, unless management is vested in managers, in which case the document of transfer shall be executed by a manager, subject to any limitation that may be imposed by the articles of operation.

(Source: WOS 2020-005, January 29, 2020, Section LI)

12.452 NATURE OF INTEREST

An LLC interest is personal property.

(Source: WOS 2020-005, January 29, 2020, Section LII)

12.453 ASSIGNMENT OF LLC INTEREST

A. Unless otherwise provided in articles of operation:

- 1.** An LLC interest is assignable in whole or in part.
- 2.** An assignment of an LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignee would be entitled with respect to the assigned interest.
- 3.** As assignment of an LLC interest does not dissolve the LLC.
- 4.** Unless and until the assignee becomes a member of the LLC under Section LV (Right of Assignee to Become Member), the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of a member.
- 5.** Unless and until the assignee of an LLC interest becomes a member of the LLC under Section LV (Right of Assignee to Become Member), the assignor continues to be a member.
- 6.** The assignor of an LLC interest is not released from any personal liability arising under this Statute as a member of the LLC solely as a result of the assignment.

B. Unless otherwise provided in articles of operation, the granting of a security interest, lien,

or other encumbrance in or against any or all of a member's LLC interest is not assignable and shall not cause the member to cease to have the power to exercise any rights or powers of a member.

(Source: WOS 2020-005, January 29, 2020, Section LIII)

12.454 RIGHTS OF JUDGMENT CREDITOR

On application to a court of competent jurisdiction, including a court other than the Tribal Court having valid jurisdiction over the member by any judgment creditor of a member, the court may charge the LLC interest of any member other than the Tribe with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's LLC interest. This Section does not deprive any member of the benefit of any exemption laws applicable to the LLC interest. In no event shall the Tribe's interest be attachable in abrogation of its sovereign immunity.

(Source: WOS 2020-005, January 29, 2020, Section LIV)

12.455 RIGHT OF ASSIGNEE TO BECOME MEMBER

A. Unless otherwise provided in articles of operation, an assignee of an LLC interest may become a member only if the other members unanimously consent.

B. An assignee of an LLC interest who becomes a member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under articles of operation and this Statute.

C. Unless otherwise provided in articles of operation, an assignor of an LLC interest is not released from any liability to the LLC without the written consent of all the members, whether or not the assignee becomes a member.

(Source: WOS 2020-005, January 29, 2020, Section LV)

12.456 POWERS OF LEGAL REPRESENTATIVE

If a member, who is an individual dies, or a court of competent jurisdiction adjudges the member

to be incompetent to manage his or her person or property, the member's personal representative, administrator, guardian, conservator, trustee, or other legal representative shall have all the rights of an assignee of the member's interest. If a member is a corporation, trust, partnership, LLC, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

(Source: WOS 2020-005, January 29, 2020, Section LVI)

12.457 DISSOLUTION

An LLC is dissolved and its affairs shall be wound up upon the happening of the first of the following:

- A.** The occurrence of events specified in articles of operation.
- B.** The written consent of all members.
- C.** An event of dissociation of a member, unless otherwise provided in articles of operation or continuation is consented to in writing by all remaining members.
- D.** Entry of a decree of judicial dissolution under Section LVIII, below.

(Source: WOS 2020-005, January 29, 2020, Section LVII)

12.458 JUDICIAL DISSOLUTION

In a proceeding by or for a member, the Tribal Court may order dissolution of an LLC if any of the following is established.

- A.** That it is not reasonably practicable to carry on the business of the LLC.
- B.** That the LLC is not acting in conformity with its articles of operation.
- C.** That one or more managers are acting or will act in a manner that is illegal, oppressive, or fraudulent in relation to the LLC.

D. That one or more members in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent in relation to the LLC.

E. That LLC assets are being misapplied or wasted.

(Source: WOS 2020-005, January 29, 2020, Section LVIII)

12.459 WINDING UP

A. A dissolved LLC continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business.

B. Unless otherwise provided in articles of operation:

1. The business of the LLC may be wound up by any of the following:

- a.** The members or managers who have authority to manage the LLC before dissolution.
- b.** In a judicial dissolution, the person(s) designated by the Tribal Court.

2. The persons winding up the business of the LLC may do all of the following in the name of and on behalf of the LLC:

- a.** Collect its assets.
- b.** Prosecute and defend suits.
- c.** Take any action necessary to settle and close the business of the LLC.
- d.** Dispose of and transfer the property of the LLC.
- e.** Discharge or make provision for discharging the liabilities of the LLC.
- f.** Distribute to the members any remaining assets of the LLC.

C. Dissolution of an LLC does not do any of the following:

1. Transfer title to the LLCs property.
2. Prevent transfer of all or part of a member's interest.
3. Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the LLC.
4. Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC at the time of dissolution.
5. Terminate the authority of the registered agent of the LLC.
6. Alter the limited liability of a member.

(Source: WOS 2020-005, January 29, 2020, Section LIX)

12.460 DISTRIBUTION OF ASSETS

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

- A. To creditors, including to the extent permitted by law, members, and former members, including the Tribe, in satisfaction of liabilities of the LLC.
- B. Unless otherwise provided in articles of operation, to members and former members in satisfaction of liabilities for distributions under Sections XLII (Interim Distributions), XLIV (Distribution Upon Partial Redemption), and XLV (Distribution Upon Dissociation).
- C. Unless otherwise provided in articles of operation, to members and former members first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

(Source: WOS 2020-005, January 29, 2020, Section LX)

12.461 ARTICLES OF DISSOLUTION

After the dissolution of an LLC under Section LVII (Dissolution), the LLC must file articles of dissolution with the Department of Commerce that includes the following:

- A. The name of the LLC.
- B. The date of filing or delayed effective date of its articles of organization.
- C. The statutory grounds under Section LVII (Dissolution) and the date authorized.
- D. The delayed effective date of the articles of dissolution under Section XXII, if applicable.

(Source: WOS 2020-005, January 29, 2020, Section LXI)

12.462 KNOWN CLAIMS AGAINST DISSOLVED LLC

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

(Source: WOS 2020-005, January 29, 2020, Section LXII)

12.463 UNKNOWN OR CONTINGENT CLAIMS

A claim not barred under Section LX, above, may be enforced:

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

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

(Source: WOS 2020-005, January 29, 2020, Section LXIII)

12.464 DEPOSIT WITH DEPARTMENT OF COMMERCE

Assets of a dissolved corporation that should be transferred to an individual creditor or claimant who cannot be found, is a minor, or who is not competent to receive them shall be reduced to cash and deposited into an escrow account for safekeeping established by the Department of Commerce. When the individual furnishes satisfactory proof of entitlement to the amount deposited, the Department of Commerce shall pay to the individual the amount due.

(Source: WOS 2020-005, January 29, 2020, Section LXIV)

12.465 MERGER

A. Unless the context requires otherwise, in this Statute, LLC includes a domestic LLC and a foreign LLC.

B. Unless otherwise provided in articles of operation one or more LLCs may merge with or into one or more LLCs or one or more other foreign LLCs provided in the plan of merger.

C. Interests in an LLC that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving LLC.

(Source: WOS 2020-005, January 29, 2020, Section LXV)

12.466 APPROVAL OF MERGER

A. Unless otherwise provided in articles of operation an LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote of a majority in interest of

members.

B. Unless otherwise provided in articles of operation the manager or managers of an LLC may not approve a merger without also obtaining the approval of the LLCs members under paragraph A, above.

C. Each foreign LLC that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable to the foreign LLC.

D. Each LLC that is a party to the merger shall have any rights to abandon the merger that is provided for in the plan of merger or in the laws applicable to the LLC.

E. Upon approval of a merger, the LLC shall notify each member of the approval and of the effective date of the merger.

(Source: WOS 2020-005, January 29, 2020, Section LXVI)

12.467 PLAN OF MERGER

Each LLC that is a party to a proposed merger shall enter into a written plan of merger to be approved under Section LXVI, above.

(Source: WOS 2020-005, January 29, 2020, Section LXVII)

12.468 ARTICLES OF MERGER

A. The surviving LLC shall deliver to the Department of Commerce articles of merger, executed by each party to the plan of merger, that include all of the following:

- 1.** The name and state or jurisdiction of organization for each LLC that is to merge.
- 2.** The plan of merger.
- 3.** The name of the surviving or resulting LLC.

4. A statement as to whether the management of the surviving LLC will be reserved to its members or vested in one or more managers.
 5. The delayed effective date of the merger under Section XXII if applicable.
 6. A statement whether the Tribe is the sole member.
 7. If the Tribe is sole member, a statement as to whether and to what extent the LLC enjoys the Tribe's sovereign immunity.
 8. A statement that the plan of merger was approved under Section LXVI, above.
- B.** A merger takes effect upon the effective date of the articles of merger.

(Source: WOS 2020-005, January 29, 2020, Section LXVIII)

12.469 EFFECTS OF MERGER

A merger has the following effects:

- A.** The LLCs that are parties to the plan of merger become a single entity, which shall be the entity designated in the plan of merger as the surviving LLC.
- B.** Each party to the plan of merger, except the surviving LLC, ceases to exist.
- C.** The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged LLC and is subject to all of the restrictions, disabilities, and duties of each merged LLC.
- D.** All property and all debts, including contributions, and each interest belonging to or owed to each of the parties to the merger are vested in the surviving LLC without further act.
- E.** Title to all real estate and any interest in real estate, vested in any party to the merger, does not revert and is not in any way impaired because of the merger.

F. The surviving LLC has all the liabilities and obligations of each of the parties to the plan of merger and any claim existing or action or proceedings pending by or against any merged LLC may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.

G. The rights of creditors and any liens on the property of any party to the plan of merger survive the merger.

H. The interests in an LLC that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.

I. The articles of organization of the surviving LLC are amended to the extent provided in the articles of merger.

(Source: WOS 2020-005, January 29, 2020, Section LXIX)

12.470 RIGHT TO OBJECT

Unless otherwise provided in articles of operation, upon receipt of the notice required by Section XLIII (Merger), a member who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily disassociate from the LLC under Section XXXVIII (C) (Dissociation of Members) and receive fair value for the member's LLC interest under Section XLV (Distribution Upon Dissociation).

(Source: WOS 2020-005, January 29, 2020, Section LXX)

12.471 LIMITED LIABILITY COMPANIES WHOLLY OWNED BY THE TRIBE

A. Tribally owned companies are authorized to be created as limited liability companies wholly owned by the Tribe, with the Tribe as the sole owner. Tribally owned limited liability companies shall be created by a duly adopted resolution of the Tribal Council. When the organizer files the articles of organization and the operating agreement of a tribally owned LLC, a certified copy of the resolution authorizing the formation of the LLC and approving the articles

shall be included. Tribally owned LLCs shall be considered to be instrumentalities of the Tribe.

B. Tribally owned subsidiary companies are authorized to be created by the Board of Directors or by action of a manager, if the tribal entity is manager managed, of a 1) tribally owned limited liability company, 2) a tribal corporation, 3) a tribal subordinate entity that is wholly-owned by the Tribe, or 4) a wholly-owned subsidiary of such a tribally owned LLC, tribal corporation, or other subordinate tribal entity. Subsidiary LLCs to be wholly owned by the parent tribally owned LLC, parent tribal corporation or other parent tribal subordinate entity or such wholly-owned subsidiaries, which shall be instrumentalities of the Tribe. The organizer of such a tribally owned subsidiary LLC shall be filed with the Tribal Department of Commerce.

C. Privileges and immunities. The limited liability companies and their agents, directors, officers, managers and employees shall be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to immunities from suit in federal, state and tribal courts and from federal, state, and local taxation or regulation, except to the extent such immunities are not conveyed to, or are expressly limited, under the terms of the articles of organization or operating agreement for any such LLC. Unless such actions fall under Section LXXII (Actions Against Limited Liability Companies Wholly Owned By The Tribe).

D. Any real property must also be approved by a majority vote by referendum, or by a quorum at an annual membership meeting before it may be sold, convey, or otherwise dispose of all or any part, in accordance with the Tribal Constitution.

E. Ownership.

1. No ownership interest in any LLC in which the Tribe is an owner may be alienated unless approved by the Tribal Council. Further, no ownership interest in any tribally owned subsidiary LLC may be alienated unless approved by the Board of Directors of the parent tribally owned LLC, parent tribal corporation or other parent subordinate tribal entity, as the case may be.

2. All interests in any tribally owned LLC shall be held by and for a Tribe, or in the case of a wholly-owned subsidiary LLC, by the parent tribally owned LLC or parent tribal corporation. No individual member of the Tribe shall have any personal ownership interest in any LLC organized under this article, whether by virtue of such person's status as a Tribal Citizen, as an officer of a Tribe's government, or otherwise.

F. Project companies. Any LLC created pursuant to this article, including subsidiary LLCs, may form or own interests or shares in partnerships, corporations, or other limited liability companies with other governmental or nongovernmental entities or persons under the laws of the Tribe or any other jurisdiction ("project companies"); provided, however, that the partial ownership interest in such project companies shall not diminish or affect the privileges and immunities of the tribally owned LLCs or tribally owned subsidiary LLCs created pursuant to this article.

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

H. Immunity.

1. Tribally owned limited liability companies and tribally owned subsidiary LLC may waive their Constitutional and common law immunity to suit, provided that the waiver states any dispute or cause of action shall be filed in the Tribal Court of the Little Traverse Bay Bands of Odawa Indians, including the enforcement of arbitration, when entering into contracts for up to the amount of the contract but not to exceed \$750,000.00 or the amount of assets under their direct control, whichever is less.

2. Any such waiver or consent to suit in the LLCs or subsidiary LLCs articles or operating agreement shall in no way extend to any action against the Tribe, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe;

3. Any recovery against the LLC or subsidiary LLC shall be limited to the assets of the LLC or subsidiary LLC (or such portion of the such assets as further limited by the waiver or consent) and the Tribe shall not be liable for the payment or performance of any of the obligations of the LLC or subsidiary LLC, and no recourse shall be had against any assets or revenues of the Tribe in order to satisfy the such obligations; including assets of the Tribe leased, loaned, or assigned to the LLC or subsidiary LLC for its use, without transfer of title.

H. Existence. Unless a delayed effective date is specified:

a. The existence of a tribally owned LLC begins when the articles of organization have been approved by Tribal Council and have been filed with the Tribal Department of Commerce.

b. The existence of a subsidiary LLC owned by a tribally owned LLC or tribal corporation begins when the articles of organization have been approved by directors of the parent tribally chartered corporation, and has been filed with the Tribal Department of Commerce.

c. The existence of a tribally owned second tier subsidiary LLC owned by a tribally owned subsidiary begins when the articles of organization have been approved by the CEO or manager of the tribally owned subsidiary or CEO of the parent tribally owned LLC and has been filed with the Tribal Department of Commerce.

I. Formation of LLCs that report to Tribal Council.

1. Tribally owned LLCs that report to directly to Tribal Council shall be formed by Tribal Resolution. The Tribal Resolution shall include the board member qualifications, and numbers.

2. Board members who meet the qualifications shall be nominated by Tribal Chair and approved by Tribal Council. If there is vacancy on a board, the Tribal Chair shall submit to Tribal Council one or more nominations within 60 days of the notice of a vacant board position. If there is more than one vacancy on a board, the Tribal Chair shall submit to Tribal Council one or more nominations within 30 days of the notice of vacancy.

3. Board members may continue to serve until either replaced or removed by Tribal Council. Board members serve at the pleasure of Tribal Council.

J. Formation of Subsidiaries LLCs.

1. Subsidiaries of tribally owned LLCs may be formed by a tribally chartered corporation, a CEO of the parent tribally owned LLC or manager of a tribally owned subsidiary LLC.

2. The qualifications, number, terms and method for selecting and removing directors, or manager of any tribally owned LLC or subsidiary LLC shall be specified in the operating agreement.

K. Additional reports and audits. Any additional audits or reports shall be included in the operating agreement, including: facility inspections, Financial, business, and planning information, periodic financial statements, including monthly or quarterly balance sheets, profit and loss statements, and cash flow statements, proposed annual plan, proposed funding from the Tribe, or anticipated distributions to the Tribe.

(Source: WOS 2020-005, January 29, 2020, Section LXXI)

12.472 ACTIONS AGAINST LIMITED LIABILITY COMPANIES WHOLLY OWNED BY THE TRIBE

A. Court actions by the Tribe authorized. The Tribe, as owner of any tribally owned limited liability company organized pursuant to this chapter, or in the case of a subsidiary LLC created pursuant to this article, the parent tribally owned LLC or tribal corporation acting as owner, may bring a civil action against the LLC, its board of directors or its officers in the Tribal Court only pursuant to this article to:

1. Enjoin temporarily or permanently any action of the LLC that is an ultra vires act outside the authority of the LLC and one of the following:

a. Unlawful;

b. Has or could cause material harm to the assets of the LLC or the Tribe if no immediate action is taken;

c. Failure to make the require the distribution of the LLCs surplus net income, to the extent permitted by this Statute.

2. An action against an LLC pursuant to this section by the Tribe or by a parent LLC or corporation, acting as owner, shall not act as a waiver of the Tribe's, or the parent LLC

or parent corporation's sovereign immunity from suit of any kind, including a countersuit by the tribally owned LLC, its board of directors or its officers.

3. In accordance with this Statute, the sovereign immunity of the LLC shall not extend to actions against the LLC by the Tribe acting as owner, or, in the case of a subsidiary LLC created pursuant to this article, by the parent LLC acting as owner.

4. Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe.

B. Tribal Council approval required. In accordance with the Tribal Constitution, the filing of any court action against a tribally owned LLC shall either be proposed by the Executive, and have Tribal Council approval; or Tribal Council may approve the filing of a without Executive concurrence by an affirmative vote of six (6) members of the Tribal Council.

C. Relief available. In any action brought under this article, the Tribal Court may, based on clear and convincing evidence set forth in its findings of fact and conclusions of law:

1. Issue a temporary restraining order, preliminary injunction, and permanent injunctive relief pursuant to the procedures and standards applicable in the Tribal Court, except that no bond need be posted for any preliminary injunctive relief; or

2. Order that funds of the LLC be distributed to the Tribe to the extent permitted by the operating agreement and this Statute.

(Source: WOS 2020-005, January 29, 2020, Section LXXII)

12.473 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2020-005, January 29, 2020, Section LXXIII)

12.474 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2020-005, January 29, 2020, Section LXXIV)