

CHAPTER 2-CORPORATE PURPOSES AND POWERS

201. PURPOSES

A corporation may be formed under this Code for any lawful business purpose or purposes.

202. GENERAL POWERS

(a) Each corporation, subject to any limitations provided in this Code or any other statute of the Nation or its certificate of incorporation, shall have power in furtherance of its corporate purposes:

- (1) To have perpetual duration.
- (2) To sue and be sued in all courts and to participate in actions and proceedings, whether judicial, administrative, arbitative or otherwise, in like cases as natural persons.
- (3) To have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.
- (4) To 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 leasehold interest in real property or any interest therein, wherever situated.
- (5) To sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in, all or any of its property, or any interest therein, wherever situated.
- (6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business.
- (7) To make contracts, give guarantees and 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 or pledge of all or any of its property or any interest therein, wherever situated.
- (8) To lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.
- (9) To do business, carry on its operations, and have offices and exercise the powers granted by this Code in any jurisdiction.

- (10) To elect or appoint officers, employees and other agents of the corporation, define their duties, fix their compensation and the compensation of directors, and to indemnify corporate personnel.
- (11) To adopt, amend or repeal by-laws, relating to the business of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its shareholders, directors or officers.
- (12) To make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.
- (13) To pay pensions, establish and carry out pension, profit-sharing, share bonus, share purchase, share option, savings, thrift and other retirement, incentive and benefit plans, trusts and provisions for any or all of its directors, officers and employees.
- (14) To purchase, receive, take, or otherwise acquire, own, hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares.
- (15) To be a promoter, partner, member, associate or manager of other business enterprises or ventures, or to the extent permitted in any other jurisdiction to be an incorporator of other corporations of any type or kind.
- (16) To have and exercise all powers necessary or convenient to affect any or all of the purposes for which the corporation is formed.

(b) No corporation shall do business under any name, other than that appearing in its certificate of incorporation, without filing, a \$10.00 fee as set forth in subdivision five of this section, in the office of the Nation Clerk a certificate setting forth the name or designation under which business is carried on or conducted or transacted, its corporate name, the location, if any, of its principal place of business in the Nation and the name of each place where it carries on or conducts or transacts business. Each certificate shall be executed and duly acknowledged by an officer of the corporation. A corporation which carries on or conducts or transacts business within the territorial jurisdiction of the Nation as a member of a partnership shall not be required solely by reason thereof to file the certificate required by this paragraph if the partners shall have filed the certificate required by this section.

1-a. As used in this section, unless the context otherwise requires:

(a) "Person" shall mean an individual, partnership, limited partnership, corporation, and unincorporated association;

(b) The "real name" of a corporation shall mean its corporate name as set forth in its certificate of incorporation and any generally accepted, understood or recognizable abbreviations of such corporate name.

(c) The use by a corporation of a divisional, departmental or trade name or designation, in conjunction with the real name of the corporation, shall be deemed to be the use of the real name of the corporation for purposes of this section.

2.(a) No person or persons shall hereafter use or file a certificate for the use of any name or designation to carry on or conduct or transact business within the territorial jurisdiction of the Nation which consists of or includes words, or initials and a word or words, which are or appear to be the full name or names, or the initial or initials and family name of a person or persons, or a colorable simulation thereof, unless

- (1) the words or initials and word or words appearing to be the full name or initial and family name of a person included, are the true full name or the initials and family name of the person or one of the persons conducting the business; or
- (2) the words or initials and words so included, which are or appear to be the full name, or the initials and family name, of any person, have a secondary, historic or geographic meaning or connotation apart from that of a name of a person, and the name or designation contains a word or words clearly signifying such secondary, historic or geographic meaning or connotation, or is followed by the abbreviation "a.n.", and said secondary, historic or geographic meaning or connotation is stated in the certificate; or
- (3) the person or persons conducting the business are successors in interest to the person or persons theretofore using such name or names to carry on or conduct or transact business, in which case the certificate filed shall so state.

(b) In addition to the prohibitions of paragraph (a) of this subdivision, no corporation shall use or file a certificate for the use of any name or designation to carry on or conduct or transact business within the territorial jurisdiction of the Nation which consists of or includes a word or words the use of which is prohibited by subparagraphs three through nine of paragraph a of section three hundred one of the business corporation code.

3. Whenever a certificate which has been filed under this section does not accurately set forth the facts required by this section, or within thirty days after there has been a change in such facts, an amended certificate shall be filed which shall identify the original certificate and incorporate the corrections or changes. If such amended certificate is filed for the purpose of adding or withdrawing the name of any person to the original certificate as a person conducting a business or as a partner, such amended certificate must be executed and acknowledged by such person and by any one or more of the other person named in the original or last amended certificate, unless otherwise provided by an order of the Nation Court. Any other amended certificate may be executed and acknowledged by any one or more of the persons named therein as a person

conducting the business or as a partner or, in the case of a corporation, by an officer of the corporation.

4. A certified copy of the original certificate, or if an amended certificate has been filed, then of the most recent amended certificate filed shall be conspicuously displayed on the premises at each place in which the business for which the same was filed is conducted.

5. The Nation Clerk shall keep an alphabetical index of all certificates, provided for herein, together with appropriate notations of the nature of amended certificates and certificates of discontinuance, and for the indexing and filing of such certificates shall receive a fee of twenty-five dollars.

6. A copy of a certificate filed under the provisions of this section, duly certified to by the Nation Clerk shall be presumptive evidence in the Nation court of the facts therein contained; provided, however, that neither the certificate itself nor the filing thereof shall, for any purpose other than this section, constitute or be construed as an admission by the filing person, or be used as evidence, that such person does or has done business or has carried on, conducted or transacted business in the Nation or intended to do so.

7. Subdivision one of this section shall not apply to a person who, or a partnership which, has duly filed a certificate of continued use of firm name under the Oneida Indian Nation partnership law, or to a partnership of attorneys and counselors-at-law engaged in the practice of their profession, and subdivision three of this section shall not apply to such a person or partnership who has filed a certificate of discontinuance under subdivision ten of this section.

8. The failure to comply with the provisions of this section shall in no way affect the rights of third persons, nor shall this section be deemed or construed to limit the liability of partners under the provisions of the partnership code.

8-a. The acceptance of a certificate by the Nation Clerk for filing pursuant to the provisions of this section shall not be construed to confer any right to or interest in any trade name; nor shall any of the provisions of this section be construed to affect the rights to, or the enforcement of any rights to, any trade name acquired at any time under any other law of the Nation.

9. Any person or persons carrying on, conducting or transacting business as aforesaid, who knowingly fails to comply with the provisions of this section or who knowingly makes a false statement in a certificate filed thereunder shall be guilty of a misdemeanor. Any person or persons carrying on, conducting or transacting business as aforesaid who fails to comply with the provisions of this section shall be prohibited from maintaining any action or proceeding in the Nation court on any contract, account or transaction made in a name other than its real name until the certificate required by this section has been executed and filed in accordance with the provisions set forth herein.

10. If the business for which a certificate is filed under this section is discontinued, or the

conditions under which it is conducted are such that the filing of a certificate with the Nation Clerk is no longer required, a certificate of discontinuance may be filed with the Nation Clerk, identifying such certificate and also identifying the amended certificate, if any, last previously filed and certifying the facts by reason of which the filing of a certificate is no longer required. The certificate of discontinuance shall be executed and acknowledged in the same manner as an original certificate and shall specify the date of which the discontinuance occurred or the conditions under which the business is conducted changed so that the filing of a certificate is no longer required. The Nation Clerk shall note the discontinuance. A certificate of discontinuance shall be executed by a majority of the persons named in the original certificate or the amended certificate last previously filed as persons conducting or transacting the business or as partners or, in the case of a corporation, by an officer of the corporation, provided that if any of them shall be deceased the certificate shall so state and may be executed and acknowledged by a majority of the survivors, or by the executor or administrator of a deceased person named in the original certificate or last previously filed amended certificate as the only person conducting or transacting the business, and provided further that any such signatures may be dispensed by order of the Nation Court.

203. DEFENSE OF ULTRA VIRES

(a) No act of a corporation and no transfer of real or personal property to or by a corporation, otherwise lawful, shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such transfer, but such lack of capacity or power may be asserted:

(1) In an action by a shareholder against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of such contract; provided that anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In an action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer or director of the corporation for loss or damage due to his unauthorized act.

(3) In an action or special proceeding by the Nation Prosecutor to annul or dissolve the corporation or to enjoin it from the doing of unauthorized business.