

CHAPTER 4-FORMATION OF CORPORATIONS

401. INCORPORATORS

One or more natural persons of the age of eighteen years or over may act as incorporators of a corporation to be formed under this chapter.

402. CERTIFICATE OF INCORPORATION; CONTENTS

(a) A certificate, entitled "Certificate of incorporation of (name of corporation) under section 402 of the Business Corporation Code", shall be signed by each incorporator, with his name and address stated beneath or opposite his signature, acknowledged and delivered to the Nation Clerk. It shall set forth:

- (1) The name of the corporation.
- (2) The purpose or purposes for which it is formed, it being sufficient to state, either alone or with other purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under this Code, provided that it also states that it is not formed to engage in any act or activity requiring the consent or approval of a Nation official, without such consent or approval first being obtained. By such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations therein or in this Code, if any.
- (3) The address of the office of the corporation.
- (4) The aggregate number of shares which the corporation shall have the authority to issue; if such shares are to consist of one class only, the par value of the shares or a statement that the shares are without par value; or, if the shares are to be divided into classes, the number of shares of each class and the par value of the shares having par value and a statement as to which shares, if any, are without par value.
- (5) If the shares are to be divided into classes, the designation of each class and a statement of the relative rights, preferences and limitations of the shares of each class.
- (6) If the shares of any preferred class are to be issued in series, the designation of each series and a statement of the variations in the relative rights, preferences and limitations as between series insofar as the same are to be fixed in the certificate of incorporation, and a statement of any authority to be vested in the board to establish and designate series and to fix the variations in the relative rights, preferences and limitations as between series.
- (7) A designation of the Nation Clerk as agent of the corporation upon whom process

against it may be served and the post office address to which the Nation Clerk shall mail a copy of any process against it served upon him.

(8) If the corporation is to have a registered agent, his name and address and a statement that the registered agent is to be the agent of the corporation upon whom process against it may be served.

(9) The duration of the corporation if other than perpetual.

(b) The certificate of incorporation may set forth a provision eliminating or limiting the personal liability of directors to the corporation or its shareholders for damages for any breach of duty in such capacity, provided that no such provision shall eliminate or limit:

(1) the liability of any director if a judgment or other final adjudication adverse to him establishes that his acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law; or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled; or that his act violated section 719, or

(2) the liability of any director for any act or omission prior to the adoption of a provision authorized by this paragraph.

(c) The certificate of incorporation may set forth any provision, not inconsistent with this Code or any other statute of the Nation, relating to the business of the corporation, its affairs, its rights or powers, or the rights or powers of its shareholders, directors or officers including any provision relating to matters which under this chapter are required or permitted to be set forth in the by-laws. It is not necessary to set forth in the certificate of incorporation any of the powers enumerated in this chapter.

403. CERTIFICATE OF INCORPORATION; EFFECT

Upon the filing of the certificate of incorporation by the Nation Clerk, the corporate existence shall begin, and such certificate shall be conclusive evidence that all conditions precedent have been fulfilled and that the corporation has been formed under this chapter, except in an action or special proceeding brought by the Nation Prosecutor. Notwithstanding the above, a certificate of incorporation may set forth a date subsequent to filing, not to exceed ninety days after filing, upon which date corporate existence shall begin.

404. ORGANIZATION MEETING

(a) After the corporate existence has begun, an organization meeting of the incorporator or incorporators shall be held for the purpose of adopting by-laws, electing directors to hold office until the first annual meeting of shareholders, except as authorized under section 704 (Classification of directors), and the transaction of such other business as may come before the meeting. If there are two or more incorporators, the meeting may be held at the call of any incorporator, who shall give at least five days' notice thereof by mail to each other incorporator, which notice shall set forth the time and place of the meeting. Notice need not be given to any incorporator who attends the meeting or submits a signed waiver of notice before or after the meeting. If there are more than two incorporators, a majority shall constitute a quorum and the act of the majority of the incorporators present at a meeting at which a quorum is present shall be the act of the incorporator or his attorney-in-fact.

(b) Any action permitted to be taken at the organization meeting may be taken without a meeting if each incorporator or his attorney-in-fact signs an instrument setting forth the action so taken.

(c) If an incorporator dies or is for any reason unable to act, action may be taken as provided in such event in paragraph (c) of section 615 (Written consent of shareholders, subscribers or incorporators without a meeting).

405. DAY CARE CENTER FOR CHILDREN; APPROVAL OF CERTIFICATE

Every certificate of incorporation which includes among its corporate purposes the establishment or operation of a day care center for children shall have endorsed thereon or annexed thereto the approval of the Oneida Indian Nation.

406. FILING OF A CERTIFICATE OF INCORPORATION; FACILITY FOR ALCOHOLISM OR ALCOHOL ABUSE

Every certificate of incorporation which includes among its corporate purposes the establishment or operation of a program of services for alcoholism or alcohol abuse shall have endorsed thereon or annexed thereto the approval of the Oneida Indian Nation.

407. SUBSTANCE ABUSE PROGRAM; CONSENT TO CERTIFICATE

Every certificate of incorporation which includes among the purposes of the corporation, the establishment or operation of a substance abuse program shall have endorsed thereon or annexed thereto the consent of the Oneida Indian Nation.

408. STATEMENT OF ADDRESSES AND DIRECTORS; FILING

1. Each domestic corporation, and each foreign corporation authorized to do business within the territorial jurisdiction of the Nation, shall, during the applicable filing period as determined by subdivision three of this section, file a statement setting forth:

- (a) The name and respective business address of its chairman of the board of directors.
- (b) The street address of its principal executive office.
- (c) The post office address to which the Nation Clerk shall mail a copy of any process against it served upon him or her. Such address shall supersede any previous address on file with the Nation Clerk for this purpose.

2. Such statement shall be made on forms prescribed by the Nation Clerk, and the information therein contained shall be given as of the date of the execution of the statement. Such statement shall only request reporting of information required under subdivision one of this section. It shall be signed, verified and delivered to the Nation Clerk.

3. For the purpose of this section the applicable filing period for a corporation shall be the calendar month during which its original certificate of incorporation or application for authority were filed or the effective date thereof if stated. The applicable filing period shall occur annually.

409. PENALTY FOR FAILURE TO FILE; CURE

1. Each corporation which has failed to file its statement within the time required by this chapter after thirty days shall be shown to be past due on the records of the Nation Clerk.

2. Each corporation which has failed to file its statement for two years shall be shown to be delinquent on the records of the Nation Clerk sixty days after a notice of delinquency has been mailed to the last known address of such corporation. Such delinquency shall be removed from the records of the Nation Clerk upon the filing of the current statement required by section four hundred eight of this Code, and the payment of a fine of two hundred fifty dollars.

3. The notice of delinquency shall state the cure and fine for such delinquency as determined by subdivision two of this section and the period during which such delinquency shall be forborne without the imposition of such fine.