

CHAPTER 11-JUDICIAL DISSOLUTION

1101. NATION PROSECUTOR'S ACTION FOR JUDICIAL DISSOLUTION

(a) The Nation Prosecutor may bring an action for the dissolution of a corporation upon one or more of the following grounds:

- (1) That the corporation procured its formation through fraudulent misrepresentation or concealment of a material fact.
- (2) That the corporation has exceeded the authority conferred upon it by law, or has violated any provision of law whereby it has forfeited its charter, or carried on, conducted or transacted its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to the public policy of the state has become liable to be dissolved.

(b) The enumeration in paragraph (a) of grounds for dissolution shall not exclude actions or special proceedings by the Nation Prosecutor for the annulment or dissolution of a corporation for other causes as provided in this chapter or in any other Nation statute.

1102. DIRECTORS' PETITION FOR JUDICIAL DISSOLUTION

If a majority of the board adopts a resolution that finds that the assets of a corporation are not sufficient to discharge its liabilities or that a dissolution will be beneficial to the shareholders, it may present a petition to the Nation Court for its dissolution.

1103. SHAREHOLDERS' PETITION FOR JUDICIAL DISSOLUTION

(a) If the shareholders of a corporation adopt a resolution stating that they find that its assets are not sufficient to discharge its liabilities, or that they deem a dissolution to be beneficial to the shareholders, the shareholders or such of them as are designated for that purpose in such resolution may present a petition to the Nation Court for its dissolution.

(b) A shareholders' meeting to consider such a resolution may be called, notwithstanding any provision in the certificate of incorporation, by the holders of ten percent of all outstanding shares entitled to vote thereon, or if the certificate of incorporation authorizes a lesser proportion of shares to call the meeting, by such lesser proportion. A meeting under this paragraph may not be called more often than once in any period of twelve consecutive months.

(c) Such a resolution may be adopted at a meeting of shareholders by vote of the holders of a majority of all outstanding shares entitled to vote thereon or if the certificate of incorporation requires a greater proportion of votes to adopt such a resolution, by such a greater proportion.

1104.PETITION IN CASE OF DEADLOCK AMOUNT DIRECTORS OR SHAREHOLDERS

(a) Except as otherwise provided in the certificate of incorporation under section 613 (Limitations on right to vote), the holders of one-half of all outstanding shares of a corporation entitled to vote in an election of directors may present a petition for dissolution on one or more of the following grounds:

- (1) That the directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained.
- (2) That the shareholders are so divided that the votes required for the election of directors cannot be obtained.
- (3) That there is internal dissension and two or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders.

(b) If the certificate of incorporation provided that the proportion of votes required for action by the board, or the proportion of votes of shareholders required for election of directors, shall be greater than that otherwise required by this chapter, such a petition may be presented by the holders of more than one-third of all outstanding shares entitled to vote on non-judicial dissolution under section 1001 (Authorization of dissolution).

(c) Notwithstanding any provision in the certificate of incorporation, any holder of shares entitled to vote at an election of directors of a corporation, may present a petition for its dissolution on the ground that the shareholders are so divided that they have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors.

1104-A. PETITION FOR JUDICIAL DISSOLUTION UNDER SPECIAL CIRCUMSTANCES

(a) The holders of twenty percent or more of all outstanding shares of a corporation, other than a corporation registered as an investment company under the United States law "Investment Company Act of 1940", no shares of which are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association, who are entitled to vote in an election of directors may present a petition of dissolution on one or more of the following grounds:

- (1) The directors or those in control of the corporation have been guilty of illegal, fraudulent or oppressive actions toward the complaining shareholders;
- (2) The property or assets of the corporation are being looted, wasted, or diverted for non-corporate purposes by its directors, officers or those in control of the corporation.

(b) The court, in determining whether to proceed with involuntary dissolution pursuant to this section, shall take into account:

- (1) Whether liquidation of the corporation is the only feasible means whereby the petitioners may reasonably expect to obtain a fair return on their investment; and
- (2) Whether liquidation of the corporation is reasonably necessary for the protection of the rights and interests of any substantial number of shareholders or of the petitioners.

(c) In addition to all other disclosure requirements, the directors or those in control of the corporation, no later than thirty days after the filing of a petition hereunder, shall make available for inspection and copying to the petitioners under reasonable working conditions the corporate financial books and records for the three preceding years.

(d) The court may order stock valuations be adjusted and may provide for a surcharge upon the directors or those in control of the corporation upon a finding of willful or reckless dissipation or transfer of assets or corporate property without just or adequate compensation therefore.

1105. CONTENTS OF PETITION FOR JUDICIAL DISSOLUTION

A petition for dissolution shall specify the section or sections of this chapter under which it is authorized and state the reasons why the corporation should be dissolved. It shall be verified by the petitioner or by one of the petitioners.

1106. ORDER TO SHOW CAUSE; ISSUANCE; PUBLICATION, SERVICE, FILING

(a) Upon the presentation of such a petition, the court shall make an order requiring the corporation and all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than four weeks after the granting of the order, why the corporation should not be dissolved. In connection therewith, the court may order the corporation, its officers and directors, to furnish the court with a schedule of all information, known or ascertainable with due diligence by them, deemed pertinent by the court, including a statement of the corporate assets and liabilities, and the name and address of each shareholder and of each creditor and claimant, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts.

(b) A copy of the order to show cause and the petition shall be filed, within ten days after the order is entered, with the Nation Clerk. A copy of each schedule furnished to the court under this section shall, within ten days thereafter, be filed with the Nation Clerk.

1107. AMENDING PAPERS

At any stage, before final order, the court may grant an order amending the petition or any other paper filed in the action or special proceeding, with like effect as though originally filed as amended, or otherwise as the court may direct.

1108. REFEREE

If a referee was not designated in the order to show cause, the court, in its discretion, may appoint a referee when or after the order is returnable. The court may at any time appoint a successor referee.

1109. HEARING AND DECISION

At the time and place specified in the order to show cause, or at any other time and place to which the hearing is adjourned, the court or the referee shall hear the allegations and proofs of the parties and determine the facts. The decision of the court or the report of the referee shall be made and filed with the clerk of the court with all convenient speed.

1110. APPLICATION FOR FINAL ORDER

When the hearing is before a referee, a motion for a final order must be made to the court upon notice to each party to the action or special proceeding who has appeared therein. The notice of motion may be served as prescribed for the service of papers upon an attorney in an action in such court. When the hearing is before the court, a motion for a final order may be made at the hearing or at such time and upon such notice as the court prescribes.

1111. JUDGMENT OR FINAL ORDER OF DISSOLUTION

(a) In an action or special proceeding under this chapter if, in the court's discretion, it shall appear that the corporation should be dissolved, it shall make a judgment or final order dissolving the corporation.

(b) In making its decision, the court shall take into consideration the following criteria:

- (1) In an action brought by the Nation Prosecutor, the interest of the public is of paramount importance.
- (2) In a special proceeding brought by directors or shareholders, the benefit to the shareholders of a dissolution is of paramount importance.
- (3) In a special proceeding brought under section 1104 (Petition in case of deadlock among directors or shareholders) or section 1104-a (Petition for judicial dissolution under special circumstances) dissolution is not to be denied merely because it is found that the

corporate business has been or could be conducted at a profit.

(c) If the judgment or final order shall provide for a dissolution of the corporation, the court may, in its discretion, provide therein for the distribution of the property of the corporation to those entitled thereto according to their respective rights.

(d) The clerk of the court or such other person as the court may direct shall transmit certified copies of the judgment or final order of dissolution to the Nation Clerk. Upon filing by the Nation Clerk, the corporation shall be dissolved.

(e) The corporation shall promptly thereafter transmit a certified copy of the judgment or final order to the Nation Clerk.

1112. PRESERVATION OF ASSETS; APPOINTMENT OF RECEIVER

At any stage of an action or special proceeding under this chapter, the court may, in its discretion, make all such orders as it may deem proper in connection with preserving the property and carrying on the business of the corporation, including the appointment and removal of a receiver under chapter 12 (Receivership), who may be a director, officer or shareholder of the corporation.

1113. CERTAIN SALES, TRANSFER, SECURITY INTERESTS AND JUDGMENTS VOID

A sale, mortgage, conveyance or other transfer of, or the creation of a security interest in, any property of a corporation made, without prior approval of the court, after service upon the corporation of a summons in an action, or of an order to show cause in a special proceeding, under this chapter in payment of or as security for an existing or prior debt or for any other or for no consideration, or a judgment thereafter rendered against the corporation by confession or upon the acceptance of any offer, shall be void as against such persons and to such extent, if any, as the court shall determine.

1114. INJUNCTION

(a) At any stage of an action or special proceeding under this chapter, the court may, in its discretion, grant an injunction, effective during the pendency of the action or special proceeding or such shorter period as it may specify in the injunction, for one or more of the following purposes:

- (1) Restraining the corporation and its directors and officers from transacting any unauthorized business and from exercising any corporate powers, except by permission of the court.
- (2) Restraining the corporation and its directors and officers from collecting or receiving any debt or other property of the corporation, and from paying out or otherwise transferring or delivering any property of the corporation, except by permission of the court.

- (3) Restraining the creditors of the corporation from beginning any action against the corporation, or from taking any proceedings in an action theretofore commenced, except by permission of the court. Such injunction shall have the same effect and be subject to the same provisions of law as if each creditor upon whom it is served was named therein.

1115. DISCONTINUANCE OF ACTION OR SPECIAL PROCEEDING

An action or special proceeding for the dissolution of a corporation may be discontinued at any stage when it is established that the cause for dissolution did not exist or no longer exists. In such event, the court shall dismiss the action or special proceeding and direct any receiver to redeliver the corporation all its remaining property.

1116. APPLICABILITY OF OTHER PROVISIONS

(a) Subject to the provisions of this article, the provisions of sections 1005 (Procedure after dissolution), 1006 (Corporate action and survival of remedies after dissolution), 1007 (Notice to creditors; filing or barring claims) and 1008 (Jurisdiction of Oneida Indian Nation court to supervise dissolution and liquidation) shall apply to a corporation dissolved under this article.

(b) Any orders provided for in section 1008, may be made at any stage of an action or special proceeding for dissolution of a corporation under this article, and if the corporation is dissolved under this article, the court may retain jurisdiction for the purpose of making such orders, after the dissolution, in such action or special proceeding. The court may also make such orders in separate special proceedings, as provided in section 1008.

(c) Notice to creditors and claimants, provided for in section 1007, may also be given, by order of the court, at any stage of an action or special proceeding for dissolution of a corporation under this article.

1117. PURCHASE OF PETITIONER'S SHARES; VALUATION

(a) In any proceeding brought pursuant to section eleven hundred four-a of this chapter, any other shareholder or shareholders or the corporation may, at any time within ninety days after the filing of such petition or at such later time as the court in its discretion may allow, elect to purchase the shares owned by the petitioners at their fair value and upon such terms and conditions as may be approved by the court, including the conditions of paragraph (c) herein. An election pursuant to this section shall be irrevocable unless the court, in its discretion, for just and equitable consideration determines that such election be revocable.

(b) If one or more shareholders or the corporation elect to purchase the shares owned by the petitioner but are unable to agree with the petitioner upon the fair value of such shares, the court, upon the application of such prospective purchaser or purchasers, or the petitioner, may stay the

proceedings brought pursuant to section 1104-a of this chapter and determine the fair value of the petitioner's shares as of the day prior to the date on which such petition was filed, exclusive of any element of value arising from such filing but giving effect to any adjustment or surcharge found to be appropriate in the proceeding under section 1104-a of this chapter. In determining the fair value of the petitioner's shares, the court, in its discretion, may award interest from the date the petition is filed to the date of payment for the petitioner's share at an equitable rate upon judicially determined fair value of his shares.

(c) In connection with any election to purchase pursuant to this section:

- (1) If such election is made beyond ninety days after the filing of the petition, the court allows such petition, the court, in its discretion, may award the petitioner his reasonable expenses incurred in the proceeding prior to such election, including reasonable attorneys' fees;
- (2) The court, in its discretion, may require, at any time prior to the actual purchase of petitioners shares, the posting of a bond or other acceptable security in an amount sufficient to secure petitioners for the fair value of his shares.