

**ONEIDA INDIAN NATION**  
**BUSINESS CORPORATION CODE**

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**ONEIDA INDIAN NATION**  
**BUSINESS CORPORATION CODE**

**CHAPTER 1-SHORT TITLE; DEFINITIONS; APPLICATIONS; CERTIFICATES;  
MISCELLANEOUS**

**101. SHORT TITLE**

This Code shall be known as the "Business Corporation Code".

**102. DEFINITIONS**

(a) As used in this Code, unless the context otherwise requires, the term:

- (1) "Bonds" includes secured and unsecured bonds, debentures, and notes.
- (2) "Capital surplus" means the surplus other than earned surplus.
- (3) "Certificate of incorporation" includes (A) the original certificate of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, as amended, supplemented or restated by certificates of amendment, merger or consolidation or other certificates or instruments filed or issued under any statute; or (B) a special act or charter creating a domestic or foreign corporation, as amended, supplemented or restated.
- (4) "Corporation" or "domestic corporation" means a corporation for profit formed under this chapter, or existing on its effective date and theretofore formed under any other statute or by any special act of the Nation for a purpose or purposes for which a corporation may be formed under this Code.
- (5) "Court" means the Oneida Nation Court.
- (6) "Director" means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term "board" means "board of directors".
- (7) "Earned surplus" means the portion of the surplus that represents the net earnings, gains or profits, after deduction of all losses, that have not been distributed to the shareholders as dividends, or transferred to stated capital or capital surplus, or applied to other purposes permitted by law. Unrealized appreciation of assets is not included in earned surplus.

- (8) "Foreign corporation" means a corporation for profit formed under laws other than the statutes of the Nation, which has as its purpose or among its purposes a purpose for which a corporation may be formed under this chapter, other than a corporation which, if it were to be formed currently under the laws of the Nation, could not be formed under this chapter. "Authorized", when used with respect to a foreign corporation, means having authority under Chapter 13 (Foreign corporations) to do business in the Nation.
- (9) "Infant" means a person who has not attained the age of eighteen years.
- (10) "Insolvent" means being unable to pay debts as they become due in the usual course of the debtor's business.
- (11) "Net assets" means the amount by which the total assets exceed the total liabilities. Stated capital and surplus are not liabilities.
- (12) "Office of a corporation" means the office the location of which is stated in the certificate of incorporation of a domestic corporation, or in the application for authority of a foreign corporation or an amendment thereof. Such office need not be a place where business activities are conducted by such corporation.
- (13) "Nation" means the Oneida Indian Nation.
- (14) "Oneida Indian Nation Clerk" and "Nation Clerk" mean the Clerk of the Oneida Indian Nation.
- (15) "Process" means judicial process and all orders, demands, notices or other papers required or permitted by law to be personally served on a domestic or foreign corporation, for the purpose of acquiring jurisdiction of such corporation in any action or proceeding, civil or criminal, whether judicial, administrative, arbitrate or otherwise, in the Nation.
- (16) "Stated capital" means the sum of (A) the par value of all shares with par value that have been issued, (B) the amount of the consideration received for all shares without par value that have been issued, except such part of the consideration therefore as may have been allocated to surplus in a manner permitted by law, and (C) such amounts not included in clauses (A) and (B) as have been transferred to stated capital, whether upon the distribution of shares or otherwise, minus all reductions from such sums as have been effected in a manner permitted by law.
- (17) "Surplus" means the excess of net assets over stated capital.
- (18) "Treasury shares" means shares which have been issued, have been subsequently acquired, and are retained uncanceled by the corporation. Treasury shares are issued

shares, but not outstanding shares, and are not assets.

### **103. APPLICATION**

(a) This Code applies to every domestic corporation and to every foreign corporation which is authorized or does business in the Nation. This Code also applies to any other domestic corporation or foreign corporation of any type or kind to the extent, if any, provided under this Code or any law governing such corporation.

(b) This Code also applies to a corporation of any type or kind, formed for profit under the laws of the Nation.

(c) The enactment of this Code shall not affect the duration of a corporation which is existing on the effective date of this Code. Any such existing corporation, its shareholders, directors and officers shall have the same rights and be subject to the same limitations, restrictions, liabilities and penalties as a corporation formed under this Code, its shareholders, directors and officers.

(d) This Code shall not affect any cause or action, liability, penalty or action or special proceeding, which on the effective date of this Code, is accrued, existing, incurred or pending but the same may be asserted, enforced, prosecuted or defended as if this Code had not been enacted.

### **104. CERTIFICATES; REQUIREMENTS, SIGNING, FILING, EFFECTIVENESS**

(a) Whenever such instrument is required to set forth an address, it shall include the street and number, or other particular description instead of a street and number. This requirement does not apply where a post office address is specified to be set forth.

(b) Whenever such instrument is required to set forth the date when a certificate of incorporation was filed by the Nation Clerk, the original certificate of incorporation is meant. This requirement shall be satisfied, in the case of a corporation created by special act, by setting forth the ordinance number and year of passage of such ordinance.

(c) Every such certificate required under this Code to be signed and delivered to the Nation Clerk shall, except as otherwise specified in the section providing for such certificate, be signed either (1) by the holders of all outstanding shares entitled to vote thereon, or (2) by the chairman of the board, the president or a vice president and by the secretary or an assistant secretary, or (3) if there are no such officers by a majority of the directors or such directors as are designated by a majority of the directors in office, or (4) if also there are no directors, by the holders, or such of them as are designated by the holders, of record of a majority of all outstanding shares entitled to vote thereon, or (5) if also there is no shareholder of record, by a subscriber for shares whose subscription has been accepted or his successor in interest or (6) if also no subscription for shares has been accepted, by an incorporator or anyone acting in his stead under paragraph (c) of section 615 (Written consent of shareholders, subscribers or incorporators without a meeting). His name and the capacity in which any person signs such certificate shall be stated beneath or opposite his signature. The

person signing such certificate or, if more than one person signs it, one of such persons shall verify or acknowledge the certificate if required by the section providing for such certificate. In lieu of being signed and verified or acknowledged, the certificate may be subscribed by such person and affirmed by him as true under the penalties of perjury.

(d) If an instrument which is delivered to the Nation Clerk for filing complies as to form with the requirements of law and there has been attached to it the consent or approval of the Nation official, department, board, agency or other body, if any, whose consent to or approval of such instrument or the filing thereof is required by any statute of the Nation and the filing fee and tax, if any, required by any statute of the Nation in connection therewith have been paid, the instrument shall be filed and indexed by the Nation Clerk. No certificate of authentication or conformity or other proof shall be required with respect to any verification, oath or acknowledgment of any instrument delivered to the Nation Clerk under this Code, if such verification, oath or acknowledgment purports to have been made before a notary public. Without limiting the effect of section four hundred three of this Code, filing and indexing by the Nation Clerk shall not be deemed a finding that a certificate conforms to law, nor shall it be deemed to constitute an approval by the Nation Clerk of the name of the corporation or the contents of the certificate, nor shall it be deemed to prevent any person with appropriate standing from contesting the legality thereof in an appropriate forum.

(e) Except as otherwise provided in this Code, such instrument shall become effective upon the filing thereof by the Nation Clerk.

#### **104-A. FEES**

Except as otherwise provided, the Nation Clerk shall collect the following fees pursuant to this Code:

(a) For the reservation of a corporate name pursuant to section three hundred three of this Code, twenty dollars.

(b) For the resignation of a registered agent for service of process pursuant to section three hundred five of this Code, sixty dollars.

(c) For service of process on the Nation Clerk pursuant to section three hundred six or three hundred seven of this Code, forty dollars.

(d) For filing a certificate of incorporation pursuant to section four hundred two of this Code, one hundred twenty-five dollars.

(e) For filing a certificate of amendment pursuant to section eight hundred five of this Code, sixty dollars.

(f) For filing a certificate of change pursuant to section eight hundred five-A of this Code, thirty dollars.

(g) For filing a restated certificate of incorporation pursuant to section eight hundred seven of this Code, sixty dollars.

(h) For filing a certificate of merger or consolidation pursuant to section nine hundred four of this Code, sixty dollars.

(i) For filing a certificate of merger of a subsidiary corporation pursuant to section nine hundred five of this Code, sixty dollars.

(j) For filing a certificate of merger or consolidation of domestic and foreign corporations pursuant to section nine hundred seven of this Code, sixty dollars.

(k) For filing a certificate of dissolution pursuant to section one thousand three of this Code, twenty dollars.

(l) For filing an application by a foreign corporation for authority to do business in the Nation pursuant to section thirteen hundred four of this Code, two hundred twenty-five dollars.

(m) For filing a certificate of amendment of an application for authority by a foreign corporation pursuant to section thirteen hundred nine of this Code, sixty dollars.

(n) For filing a certificate of change of application for authority by a foreign corporation pursuant to section thirteen hundred nine-A of this Code, thirty dollars.

(o) For filing a certificate of surrender of authority pursuant to section thirteen hundred ten of this Code, sixty dollars.

(p) For filing a statement of the termination of existence of a foreign corporation pursuant to section thirteen hundred eleven of this Code, sixty dollars. There shall be no fee for the filing by an authorized officer of the jurisdiction of incorporation of a foreign corporation of a certificate that the foreign corporation has been dissolved or its authority or existence has been otherwise terminated or cancelled in the jurisdiction of its incorporation.

(q) For filing any other certificate or document, forty dollars.



## **105. CERTIFICATES; CORRECTIONS**

Any certificate or other instrument relating to a domestic or foreign corporation filed by the Nation Clerk under this Code may be corrected with respect to any informality or error apparent on the face, incorrect statement or defect in the execution thereof including the deletion of any matter not permitted to be stated therein. A certificate, entitled "Certificate of correction of....(correct title of certificate and name of corporation)" shall be signed, verified and delivered to the Nation Clerk.

It shall set forth the name of the corporation, the date the certificate to be corrected was filed by the Nation Clerk, a statement as to the nature of the informality error, incorrect statement or defect, the provision in the certificate as corrected or eliminated and if the execution was defective, the proper execution. The filing of the certificate by the Nation Clerk shall not alter the effective time of the instrument being corrected, which shall remain as its original effective time, and shall not affect any right or liability accrued or incurred before such filing. A corporate name may not be changed or corrected under this section. The provisions of this section shall apply to all instruments and certificates heretofore and hereafter filed with the Nation Clerk.

## **106. CERTIFICATES AS EVIDENCE**

(a) Any certificate or other instrument filed by the Nation Clerk relating to a domestic or foreign corporation and containing statements of fact required or permitted by law to be contained therein, shall be received in all courts, public offices and official bodies as prima facie evidence of such facts and of the execution of such instrument.

(b) Whenever by the laws of any jurisdiction other than the Nation, any certificate by any officer in such jurisdiction or a copy of any instruments certified or exemplified by any such officer, may be received as prima facie evidence of the incorporation, existence or capacity of any foreign corporation incorporated in such jurisdiction, or claiming so to be, such certificate when exemplified, or such copy of such instrument when exemplified shall be received in all courts, public offices and official bodies of the Nation, as prima facie evidence with the same force as in such jurisdiction. Such certificate or certified copy of such instrument shall be so received, without being exemplified, if it is certified by the Nation Clerk, or official performing the equivalent function as to corporate records, of such jurisdiction.

## **107. CORPORATE SEAL AS EVIDENCE**

The presence of the corporate seal on a written instrument purporting to be executed by authority of a domestic or foreign corporation shall be prima facie evidence that the instrument was so executed.

## **108. WHEN NOTICE OR LAPSE OF TIME UNNECESSARY; NOTICES DISPENSED WITH WHEN DELIVERY IS PROHIBITED**

(a) Whenever, under this Code or the certificate of incorporation or by-laws of any corporation or by the terms of any agreement or instrument, a corporation or the board or any committee thereof authorized to take any action after notice to any person or persons or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time, if at any time before or after such action is completed the person or persons entitled to such notice or entitled to participate in the action to be taken or, in the case of a shareholder, by his attorney-in-fact, submit a signed waiver of notice of such requirements.

(b) Whenever any notice or communication is required to be given to any person by this Code, the certificate of incorporation or by-laws, or by the terms of any agreement or instrument, or as a condition precedent to taking any corporate action and communication with such person is then unlawful under any statute of the Nation or any regulation, proclamation or order issued under said statutes, then the giving of such notice or communication to such person shall not be required and there shall be no duty to apply for license or other permission to do so. Any affidavit, certificate or other instrument which is required to be made or filed as proof of the giving of any notice or communication required under this Code shall, if such notice or communication to any person is dispensed with under this paragraph, include a statement that such notice or communication was not given to any person with whom communication is unlawful. Such affidavit, certificate or other instrument shall be as effective for all purposes as though such notice or communication has been personally given to such person.

(c) Whenever any notice or communication is required or permitted by this Code to be given by mail, it shall, except as otherwise expressly provided in this Code, be mailed to the person to whom it is directed at the address designated by him for that purpose or, if none is designated, at his last known address. Such notice or communication is given when deposited, with postage thereon prepaid, in a post office or official depository under the exclusive care and custody of the United States post office department. Such mailing shall be by first class mail except where otherwise required by this Code.

## **109. ACTIONS OR SPECIAL PROCEEDINGS BY NATION PROSECUTOR**

(a) The Nation Prosecutor may maintain an action or special proceeding:

- (1) To annul the corporate existence or dissolve a corporation that has acted beyond its capacity or power or to restrain it from the doing of unauthorized business;
- (2) To annul the corporate existence or dissolve any corporation that has not been duly formed;
- (3) To restrain any person or persons from acting as a domestic or foreign corporation within the territorial jurisdiction of the Nation without being duly incorporated or from exercising in the territorial jurisdiction of the Nation any corporate rights, privileges or franchises not granted to them by the law of the Nation;

- (4) To procure a judgment removing a director of a corporation for cause under section 706 (Removal of directors);
- (5) To dissolve a corporation under Code 11 (Judicial dissolution);
- (6) To restrain a foreign corporation or to annul its authority to do business within the territorial jurisdiction of the Nation under section 1303 (Violations).
- (7) Upon written application, ex parte, for an order to the Oneida Indian Nation court and if the court so orders, to inspect the books and records of the corporation to the extent that such inspection is available to shareholders and directors under the law of the Nation. This paragraph applies to every corporation, 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. This paragraph does not apply to a corporation all shares of which are owned either directly or through a wholly owned subsidiary by a corporation or corporations to which this paragraph does not apply.
- (8) To collect any fines payable to the Nation Clerk pursuant to section four hundred nine of this Code.

(b) In an action or special proceeding brought by the Nation Prosecutor under any of the provisions of this Code:

- (1) The court may confer immunity.
- (2) A temporary restraining order to restrain the commission or continuance of the unlawful acts which form the basis of the action or special proceeding may be granted upon proof, by affidavit, that the defendant or defendants have committed or are about to commit such acts. Application for such restraining order may be made ex parte or upon such notice as the court may direct.
- (3) If the action or special proceeding is against a foreign corporation, the Nation Prosecutor may apply to the court at any stage thereof for the appointment of a temporary receiver of the assets in the Nation of such foreign corporation, whenever it has assets or property of any kind whatsoever, tangible or intangible, within the Nation.
- (4) When final judgment in such action or special proceeding is rendered against the defendant or defendants, the court may direct the costs to be collected by execution against any or all of the defendants or by order of attachment or other process against the person of any director or officer of a corporate defendant.
- (5) In connection with any such proposed action or special proceeding, the Nation Prosecutor may take proof and issue subpoenas in accordance with the Oneida Indian

Nation Rules of Civil Procedure.

(c) In any such action or special proceeding against a foreign corporation which has not designated the Nation Clerk as its agent for service of process under section 304 (Statutory designation of Nation Clerk as agent for service of process), any of the following acts within the territorial jurisdiction of the Nation by such foreign corporations shall constitute the appointment by it of the Nation Clerk as its agent upon whom process against such foreign corporation may be served:

- (1) As used in this paragraph the term "resident" shall include individuals, domestic corporations and foreign corporations authorized to do business in the Nation.
- (2) Any act done, or representation made as part of a course of the solicitation of orders, or the issuance, or the delivery, of contracts for, or the sale of, property, or the performance of services to residents which involves or promotes a plan or scheme to defraud residents in violation of the laws or the public policy of the Nation.
- (3) Any act done as part of a course of conduct of business in the solicitation of orders from residents for property, goods or services, to be delivered or rendered within the Nation to, or on their behalf, where the orders or contracts are executed by such residents within the Nation and where such orders or contracts are accompanied or followed by an earnest money deposit or other down payment or any installment payment thereon or any other form of payment, which payment is either delivered in or transmitted from the territorial jurisdiction of the Nation.
- (4) Any act done as part of the conduct of a course of business with residents which defrauds such residents or otherwise involves or promotes an attempt by such foreign corporation to circumvent the laws of the Nation.

(d) Paragraphs (b), (c), (d) and (e) of section 307 (Service of process on unauthorized foreign corporation) shall apply to process served under paragraph (c).

#### **110. RESERVATION OF POWER**

The Oneida Indian Nation reserves the right, at pleasure, to alter, amend, suspend or repeal in whole or in part this Code, or any certificate of incorporation or any authority to do business in the Nation, of any domestic or foreign corporation, whether or not existing or authorized on the effective date of this Code.

#### **111. EFFECT OF INVALIDITY OF PART OF CODE; SEVERABILITY**

If any provision of this Code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared severable.

## **112. REFERENCES**

Unless otherwise stated, all references in this Code to chapters or sections refer to the chapters or sections of this Code, and all references in any section of this Code to a lettered or numbered paragraph or subparagraph refer to the paragraph or subparagraph so lettered or numbered in such section.

## **113. CODE NOT APPLICABLE TO CORPORATION CREATED BY NATION ORDINANCES**

Corporate or other bodies created as instrumentalities of the Nation by Nation ordinance shall not be governed by the provisions of this Code.

## **114. SOVEREIGN IMMUNITY**

The Nation does not by enacting this Code waive in any respect its sovereign immunity, or that of its agents, in any manner, under any law, for any purpose, nor in any place.

## 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.

## CHAPTER 3-CORPORATE NAME AND SERVICE OF PROCESS

### 301. CORPORATE NAME; GENERAL

(a) Except as otherwise provided in this Code, the name of a domestic or foreign corporation:

- (1) Shall contain the word "corporation", "incorporated" or "limited", or an abbreviation of one of such words.
- (2) Shall not be the same as the name of a corporation of any type or kind, or a fictitious name of an authorized foreign corporation filed pursuant to chapter thirteen of this Code, as such name appears on the index of names of existing domestic and authorized foreign corporations of any type or kind, including fictitious names of authorized foreign corporations filed pursuant to chapter thirteen of this Code, in the Nation Clerk, or a name the right to which is reserved, or a name so similar to any such name as to tend to confuse or deceive.
- (2) Shall be such as to distinguish it from the names of corporations of any type or kind, as such names appear on the index of names of existing domestic and authorized foreign corporations of any type or kind in the Nation Clerk, or names the right to which are reserved.
- (3) Shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute or ordinance of the Nation, unless in the latter case the restrictions have been complied with.
- (4) Shall not contain any word or phrase, or any abbreviation or derivative thereof, in a context which indicates or implies that the corporation, if domestic, is formed or, if foreign, is authorized for any purpose or is possessed within the territorial jurisdiction of the Nation of any power other than a purpose for which, or a power with which, the domestic corporation may be and is formed or the foreign corporation is authorized.
- (5)(A) Shall not contain any of the following phrases, or any abbreviation or derivative thereof:

Nation  
Police  
Oneida  
Oneida Indian Nation

(B) Shall not contain any of the following words, or any abbreviation or derivative thereof:

acceptance    endowment    loan

annuity	fidelity	mortgage
assurance	finance	savings
bank	guaranty	surety
benefit	indemnity	title
bond	insurance	trust
casualty	investment	underwriter
doctor	lawyer	

unless the approval of the Oneida Indian Nation is attached to the certificate of incorporation, or application for authority or amendment thereof.

- (6) Shall not contain any words or phrases, or any abbreviation or derivation thereof in a context which will tend to mislead the public into believing that the corporation is an agency or instrumentality of the Oneida Indian Nation.
- (7) Shall not contain any word or phrase, or any abbreviation or derivation thereof, which, separately, or in context, shall be indecent or obscene, or shall ridicule or degrade any person, group, belief, business or agency of government, or indicate or imply any unlawful activity.
- (8) Shall not, unless the approval of the Oneida Indian Nation is attached to the certificate of incorporation, or application for authority or amendment thereof, contain the word "exchange" or any abbreviation or derivative thereof. Such approval shall not be granted by the Oneida Indian Nation, if in the opinion the use of the word "exchange" in the proposed corporate name would falsely imply that the corporation conducts its business at a place where trade is carried on in securities or commodities by brokers, dealers, or merchants.

### 302. CORPORATE NAME; EXCEPTIONS

(a) Any reference to a corporation in this section except as otherwise provided herein shall include both domestic and foreign corporations.

(b) The provisions of section 301 (Corporate Name; General):

(1) Shall not prevent a corporation with which another corporation is merged, or which is formed by the reorganization or consolidation of one or more other corporations or upon a sale, lease, exchange or other disposition to a domestic corporation of all or substantially all the assets of another domestic corporation, including its name, as provided in paragraph (b) of Section 909 (Sale, lease, exchange or other disposition of assets), from having the same name as any of such corporations if at the time such other corporation was authorized or existing under any statute of the Nation.

(2) Shall not prevent a foreign corporation from being authorized under a name which is

similar to the name of a corporation of any type or kind existing or authorized under any statute, if the Nation Clerk finds, upon proof by affidavit or otherwise as it may determine, that a difference between such names exists in the terms or abbreviations indicating corporate character or otherwise, that the applicant has engaged in business as a corporation under its said name for not less than ten consecutive years immediately prior to the date of its application that the business to be conducted in the Nation is not the same as or similar to the business conducted by the corporation with whose name it may conflict and that the public is not likely to be confused or deceived, and if the applicant shall agree in its application for authority to use with its corporate name, in the Nation, to be placed immediately under or following such name, the words "a ....(name of jurisdiction of incorporation) corporation".

- (3) Shall not prevent a "small business investment corporation" as such term is defined in the United States "Small Business Investment Act of 1958" from including the word "investment" as part of its name if such word is coupled with the words "small business".
- (4) Shall not prevent an "investment company" as such term is defined in the United States "Investment Company Act of 1940" from including the word "finance" or "bond" as part of its name, if the approved bank regulations is attached to the certificate of incorporation, application for authority, or amendment thereof.
- (5) Shall not prevent a broker or dealer in securities, as such term is defined in the United States "Securities Exchange Act of 1934", from including the words "investment" as part of its name if such word is coupled with the words "broker" or "brokers" and if such broker or dealer is registered under the United States law.
- (6) Shall not prevent an association of banks or trust companies organized as a non-profit membership corporation for the promotion of the interests of member banks from including the word "bankers" as part of its corporate name.
- (7) Shall not prevent a bank holding company, as long as it is required to be registered under the laws of other sovereigns as each may be amended from time to time, from using the words "bank", "banker" or "trusts" or any abbreviation, derivative or combination thereof as part of its corporate name, if the approval of the superintendent of banks of that sovereign is attached to the certificate of incorporation, application for authority, or amendment thereof.

### **303. RESERVATION OF NAME**

(a) A corporate name may be reserved by:

- (1) Any person intending to form a domestic corporation.

- (2) Any domestic corporation intending to change its name.
- (3) Any foreign corporation intending to apply for authority to do business within the territorial jurisdiction of the Nation.
- (4) Any authorized foreign corporation intending to change its name.
- (5) Any person intending to incorporate a foreign corporation and to have it apply for authority to do business within the territorial jurisdiction of the Nation.

(b) A fictitious name for use pursuant to section 1301 of this Code, may be reserved by:

- (1) Any foreign corporation intending to apply for authority to do business in the Nation, pursuant to paragraph (d) of section 1301 of this Code.
- (2) Any authorized foreign corporation intending to change its fictitious name under which it does business in the Nation.
- (3) Any authorized foreign corporation which has changed its corporate name in its jurisdiction, such new corporate name not being available in the Nation.

(c) Application to reserve a corporate or fictitious name shall be delivered to the Nation Clerk. It shall set forth the name and address of the applicant, the name to be reserved and a statement of the basis under paragraph (a) or (b) for the application. The Nation Clerk may require that there be included in the application a statement as to the nature of the business to be conducted by the corporation. If the name is available for corporate use, the Nation Clerk shall reserve the name for the use of the applicant for a period of sixty days and issue a certificate of reservation. The restrictions and qualifications set forth in subparagraphs (a)(3), (4), (5), (6), and (7) of section 301 (Corporate name; general) are not waived by the issuance of a certificate of reservation. The certificate of reservation shall include the name of the applicant, the name reserved and the date of the reservation. The certificate of reservation (or in lieu thereof an affidavit by the applicant or by his agent or attorney that the certificate of reservation has been lost or destroyed) shall accompany the certificate of incorporation or the application for authority when either is delivered to the Nation Clerk.

(d) The Nation Clerk may extend the reservation for additional periods of not more than sixty days each, upon the written request of the applicant, his attorney or agent delivered to the Nation Clerk, to be filed before the expiration of the reservation period in effect. Such request shall have attached to it the certificate of reservation of name. Not more than two such extensions shall be granted.

(e) Upon the request of the applicant, delivered to the Nation Clerk before the expiration of the reserved period, the Secretary shall cancel the reservation.

(f) Any application or request under this section shall be signed by the applicant, his attorney or

agent.

#### **304. STATUTORY DESIGNATION OF NATION CLERK AS AGENT FOR SERVICE OF PROCESS**

(a) The Nation Clerk shall be the agent of every domestic corporation and every authorized foreign corporation upon whom process against the corporation may be served.

(b) No domestic or foreign corporation may be formed or authorized to do business in the Nation under this Code unless in its certificate of incorporation or application for authority it designates the Nation Clerk as such agent.

(c) Any designation by a domestic or a foreign corporation of the Nation Clerk as such agent, which designation is in effect on the effective date of this chapter, shall continue. Every domestic or foreign corporation, existing or authorized on the effective date of this chapter, which has not designated the Nation Clerk as such agent, shall be deemed to have done so. Any designation prior to the effective date of this chapter by a foreign corporation of an agent other than the Nation Clerk shall terminate on the effective date of this chapter.

(d) Any designated post-office address to which the Nation Clerk shall mail a copy of process served upon him as agent of a domestic corporation or a foreign corporation, shall continue until the filing of a certificate under this chapter directing the mailing to a different post-office address.

#### **305. REGISTERED AGENT FOR SERVICE OF PROCESS**

(a) In addition to such designation of the Nation Clerk, every domestic corporation or authorized foreign corporation may designate a registered agent in the Nation upon whom process against such corporation may be served. The agent shall be a natural person who is a resident of or has a business address in the Nation or a domestic corporation or foreign corporation of any type or kind formed, or authorized to do business in the Nation, under this chapter or under any other statute of the Nation.

(b) Any such designation of a registered agent may be made, revoked or changed as provided in this chapter.

(c) A registered agent may resign as such agent. A certificate entitled "Certificate of resignation of registered agent of ...(name of designating corporation) under section 305 of the Business Corporation Code", shall be signed, verified by him and delivered to the Nation Clerk. It shall set forth:

- (1) That he resigns as registered agent for the designating corporation.
- (2) The date the certificate of incorporation or the application for authority of the designating corporation was filed by the Nation Clerk.

- (3) That he has sent a copy of the certificate of resignation by registered mail to the designating corporation at the post office address on file with the Nation Clerk specified for the mailing of process or if such address is the address of the registered agent, then to the office of the designating corporation in the jurisdiction of its formation or incorporation.

(d) The designation of a registered agent shall terminate thirty days after the filing by the Nation Clerk of a certificate of resignation or a certificate containing a revocation or change of the designation, whichever is filed earlier. A certificate designating a new registered agent may be delivered to the Nation Clerk by the corporation within the thirty days or thereafter.

### **306. SERVICE OF PROCESS**

Service of process on a registered agent may be made in the manner provided by the Oneida Indian Nation Rules of Civil Procedure for the service of summons, as if the registered agent was a defendant.

### **307. SERVICE OF PROCESS ON UNAUTHORIZED FOREIGN CORPORATION**

(a) In any case in which a non-domiciliary would be subject to the personal or other jurisdiction of the courts of the Nation, a foreign corporation not authorized to do business within the territorial jurisdiction of the Nation is subject to a like jurisdiction. In any such case, process against such foreign corporation may be served upon the Nation Clerk as its agent. Such process may issue in the Nation court.

(b) Service of such process upon the Nation Clerk shall be made by personally delivering to and leaving with him, a copy of such process. Such service shall be sufficient if notice thereof and a copy of the process are:

- (1) Delivered personally to such foreign corporation by a person and in the manner authorized to serve process by law of the jurisdiction in which service is made, or
- (2) Sent by or on behalf of the plaintiff to such foreign corporation by registered mail with return receipt requested, at the post office address specified for the purpose of mailing process, on file in the office of the Nation Clerk, or if no such address is there specified, to its registered or other office there specified, or if no such office is there specified, to the last address of such foreign corporation known to the plaintiff.

(c) 1. Where service of a copy of process was effected by personal service, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after such service, with the clerk of the court. Service of process shall be complete ten days after such papers are filed with the clerk.



2. Where service of a copy of process was effected by mailing in accordance with this section, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after receipt of the return receipt signed by the foreign corporation, or other official proof of delivery or of the original envelope mailed. If a copy of process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such foreign corporation or other official proof of delivery or, if acceptance was refused by it, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the notice and process together with notice of the mailing by registered mail and refusal to accept shall be promptly sent to such foreign corporation at the same address by ordinary mail and the affidavit of compliance shall so state. Service of process shall be complete ten days after such papers are filed with the clerk of the court. The refusal to accept delivery of the registered mail or to sign the return receipt shall not affect the validity of the service and such foreign corporation refusing to accept such registered mail shall be charged with knowledge of the contents thereof.

(d) Service made within the territorial jurisdiction of the Nation as provided in this section shall have the same force as personal service made within the Nation.

(e) Nothing in this section shall affect the right to serve process in any other manner permitted by law.

### **308. RECORDS AND CERTIFICATES OF NATION CLERK**

The Nation Clerk shall keep a record of each process served upon the Nation Clerk under this chapter, including the date of service. It shall, upon request made within ten years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service and the receipt of the statutory fee. Process served upon the Nation Clerk under this chapter shall be destroyed by him after a period of ten years from such service.

## 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.

## **CHAPTER 5-CORPORATE FINANCE**

### **501. AUTHORIZED SHARES**

(a) Every corporation shall have power to create and issue the number of shares stated in its certificate of incorporation. Such shares may be all of one class or may be divided into two or more classes. Each class shall consist of either shares with par value or shares without par value, having such designation and such relative voting, dividend, liquidation and other rights, preferences and limitations, consistent with this Code, as shall be stated in the certificate of incorporation. The certificate of incorporation may deny, limit or otherwise define the voting rights and may limit or deny, limit or otherwise define the dividend or liquidation rights of shares of any class, but no such denial, limitation or definition of voting rights shall be effective unless at the time one or more classes of outstanding shares or bonds, singly or in the aggregate, are entitled to full voting rights, and no such limitation or definition of dividend or liquidation rights shall be effective unless at the time one or more classes of outstanding shares, singly or in the aggregate, are entitled to unlimited dividend and liquidation rights.

(b) If the shares are divided into two or more classes, the shares of each class shall be designated to distinguish them from the shares of all other classes. Shares which are entitled to preference in the distribution of dividends or assets shall not be designated as common shares. Shares which are not entitled to preference in the distribution of dividends or assets shall be common shares, even if identified by a class or other designation, and shall not be designated as preferred shares.

(c) Subject to the designations, relative rights, preferences and limitations applicable to separate series and except as otherwise permitted by subparagraph two of paragraph (a) of section five hundred five of this chapter, each share shall be equal to every other share of the same class.

### **502. ISSUE OF ANY CLASS OF PREFERRED SHARES IN SERIES**

(a) If the certificate of incorporation so provides, a corporation may issue any class of preferred shares in series. Shares of each such series when issued, shall be designated to distinguish them from shares of all other series.

(b) The number of shares included in any or all series of any classes of preferred shares and any or all of the designations, relative rights, preferences and limitations of any or all such series may be fixed in the certificate of incorporation, subject to the limitation that, if the stated dividends and amounts payable on liquidation are not paid in full, the shares of all series of the same class shall share ratably in the payment of dividends including accumulations, if any, in accordance with the sums which would be payable on such shares if all dividends were declared and paid in full, and in any distribution of assets other than by way of dividends in accordance with the sums which would be payable on such distribution if all sums payable were discharged in full.

(c) If any such number of shares or any such designation, relative right, preference or limitation of

the shares of any series is not fixed in the certificate of incorporation, it may be fixed by the board, to the extent authorized by the certificate of incorporation.

(d) Before the issue of any shares of a series established by the board, a certificate of amendment under section 805 (Certificate of amendment; contents) shall be delivered to the Nation Clerk. Such certificate shall set forth:

- (1) The name of the corporation, and, if it has been changed, the name under which it was formed.
- (2) The date the certificate of incorporation was filed by the Nation Clerk.
- (3) That the certificate of incorporation is thereby amended by the addition of a provision stating the number, designation, relative rights, preferences, and limitations of the shares of the series as fixed by the board, setting forth in full the text of such provision.

### **503. SUBSCRIPTION FOR SHARES; TIME OF PAYMENT, FORFEITURE FOR DEFAULT**

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

(b) A subscription, whether made before or after the formation of a corporation, shall not be enforceable unless in writing and signed by the subscriber.

(c) Unless otherwise provided by the terms of the subscription, subscriptions for shares, whether made before or after the formation of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board. Any call made by the board for payment on subscriptions shall be uniform as to all shares of the same class or of the same series. If a receiver of the corporation has been appointed, all unpaid subscriptions shall be paid at such times and in such installments as such receiver or the court may direct.

(d) In the event of default in the payment of any installment or call when due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation or the board may declare a forfeiture of the subscriptions. The subscription agreement may prescribe other penalties, not amounting to forfeiture, for failure to pay installments or calls that may become due. No forfeiture of the subscription shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of thirty days after written demand has been made therefore. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his post office address known to the corporation, with postage thereon prepaid. Upon forfeiture of the subscription, if at least fifty percent of the subscription price has been paid, the share subscribed for shall be offered for sale for cash at a price at least sufficient to pay the full balance owed by the delinquent subscriber plus the

expenses incidental to such sale, and any excess of net proceeds realized over the amount owed on such shares shall be paid to the delinquent subscriber or to his legal representative. If no prospective purchaser offers a cash price sufficient to pay the full balance owed by the delinquent subscriber plus the expenses incidental to such sale, or if less than fifty percent of the subscription price has been paid, the shares subscribed for shall be cancelled and restored to the status of authorized but unissued shares and all previous payments thereon shall be forfeited to the corporation and transferred to capital surplus.

#### **504. CONSIDERATION AND PAYMENT FOR SHARES**

(a) Consideration for issue of shares shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board or shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

(b) Neither obligations of the subscriber for future payments nor future services shall constitute payment or part payment for shares of a corporation.

(c) Shares with par value may be issued for such consideration, not less than the par value thereof, as if fixed from time to time by the board.

(d) Shares without par value may be issued for such consideration as is fixed from time to time by the board unless the certificate of incorporation reserves to the shareholders the right to fix the consideration. If such right is reserved as to any shares, a vote of the shareholders shall either fix the consideration to be received for the shares or authorize the board to fix such consideration.

(e) Treasury shares may be disposed of by a corporation on such terms and conditions as are fixed from time to time by the board.

(f) Upon distribution of authorized but unissued shares to shareholders, that part of the surplus of a corporation which is concurrently transferred to stated capital shall be the consideration for the issue of such shares.

(g) In the event of a conversion of bonds or shares into shares, or in the event of an exchange of bonds or shares for shares, with or without par value, the consideration for the shares so issued in exchange or conversion shall be the sum of (1) either the principal sum of, and accrued interest on, the bonds so exchanged or converted, or the stated capital represented by the shares so exchanged or converted, plus (2) any additional consideration paid to the corporation for the new shares, plus (3) any stated capital not theretofore allocated to any designated class or series which is thereupon allocated to the new shares, plus (4) any surplus thereupon transferred to stated capital and allocated to the new shares.

(h) Certificates for shares may not be issued until the full amount of the consideration therefore has



been paid, except as provided in paragraphs (e) and (f) of section 505 (Rights and options to purchase shares; issue of rights and options to directors, officers and employees).

(i) When the consideration for shares has been paid in full, the subscriber shall be entitled to all the rights and privileges of a holder of such shares and to a certificate representing his shares, and such shares shall be fully paid and nonassessable.

**505. RIGHTS AND OPTIONS TO PURCHASE SHARES; ISSUE OF RIGHTS AND OPTIONS TO DIRECTORS, OFFICERS AND EMPLOYEES**

(a) (1) Except as otherwise provided in this section or in the certificate of incorporation, a corporation may create and issue, whether or not in connection with the issue and sale of any of its shares or bonds, rights or options entitling the holders thereof to purchase from the corporation, upon such consideration, terms and conditions as may be fixed by the board, shares of any class or series, whether authorized but unissued shares, treasury shares or shares to be purchased or acquired or assets of the corporation.

(2) (i) In the case of a resident domestic corporation that has a class of voting stock registered with the United States Securities and Exchange Commission pursuant to section twelve of the United States Exchange Act, the terms and conditions of such rights or operations may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer or receipt of such rights or operations by an interested shareholder or any transferee of any such interested shareholder or that invalidate or void such rights or operations held by any such interested shareholder or any such transferee. For the purposes of this subparagraph, the terms "resident domestic corporation", "voting stock:", "Exchange Act" and "interested shareholder" shall have the same meanings as set forth in section nine hundred twelve of this Code.

(ii) Determinations of the board of directors whether to impose, enforce or waive or otherwise render ineffective such limitations or conditions as are permitted by clause (i) of this subparagraph shall be subject to judicial review in an appropriate proceeding in which the Nation court formulates or applies appropriate standards in order to insure that such limitations or conditions are imposed, enforced or waived in the best long-term interests and short-term interests of the corporation and its shareholders considering, without limitation, the prospect for potential growth, development, productivity and profitability of the corporation.

(b) The consideration for shares to be purchased under any such right or option shall comply with the requirements of section 504 (Consideration and payment for shares).

(c) The terms and conditions of such rights or options, including the time or times at or within which and the price or prices at which they may be exercised and any limitations upon transferability, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options.

(d) The issue of such rights or options to one or more directors, officers or employees of the corporation or a subsidiary or affiliate thereof, as an incentive to service or continued service with the corporation, a subsidiary or affiliate thereof, or to a trustee on behalf of such directors, officers or employees, shall be authorized at a meeting of shareholders by the vote of the holders of a majority of all outstanding shares entitled to vote thereon, or authorized by and consistent with and adopted by such vote of shareholders. If, under the certificate of incorporation, there are preemptive rights to any of the shares to be thus subject to rights or options to purchase, either such issue or such plan, if any shall also be approved by the vote or written consent of the holders of a majority of the shares entitled to exercise preemptive rights with respect to such shares and such vote or written consent shall operate to release the preemptive rights with respect thereto of the holders of all the shares that were entitled to exercise such preemptive rights. In the absence of preemptive rights, nothing in this paragraph shall require shareholder approval for the issuance of rights or options to purchase shares of the corporation in substitution for, or upon the assumption of, rights or options issued by another corporation, if such substitution or assumption is in connection with such other corporation's merger or consolidation with, or the acquisition of its shares or all or part of its assets by, the corporation or its subsidiary.

(e) A plan adopted by the shareholders for the issue of rights or options to directors, officers or employees shall include the material terms and conditions upon which such rights or options are to be issued, such as, but without limitation thereof, any restrictions on the number of shares that eligible individuals may have the right or option to purchase, the method of administering the plan, the terms and conditions of payment for shares in full or in installments, the issue of certificate for shares to be paid for in installments, any limitations upon the transferability of such shares and the voting and dividend rights to which the holders of such shares may be entitled, though the full amount of the consideration therefore has not been paid; provided that under this section no certificate for shares shall be delivered to a shareholder, prior to full payment therefore, unless the fact that the shares are partly paid is noted conspicuously on the face or back of such certificate.

(f) If there is shareholder approval for the issue of rights or options to individual directors, officers or employees, but not under an approved plan under paragraph (e), the terms and conditions of issue set forth in paragraph (e) shall be permissible except that the grantees of such rights or options shall not be granted voting or dividend rights until the consideration for the shares to which they are entitled under such rights or options has been fully paid.

(g) If there is shareholder approval for the issue of rights and options, such approval may provide

that the board is authorized by certificate of amendment under section 805 (Certificate of amendment; contents) to increase the authorized shares of any class or series to such number as will be sufficient, when added to the previously authorized but unissued shares of such class or series, to satisfy any such rights or options entitling the holders thereof to purchase from the corporation authorized but unissued shares of such class or series.

(h) In the absence of fraud in the transaction, the judgment of the board shall be conclusive as to the adequacy of the consideration, tangible or intangible, received or to be received by the corporation for the issue of rights or options for the purchase from the corporation of its shares.

(i) The provisions of this section are inapplicable to the rights of the holders of convertible shares or bonds to acquire shares upon the exercise of conversion privileges under section 519 (Convertible shares and bonds).

#### **506. DETERMINATION OF STATED CAPITAL**

(a) Upon issue by a corporation of shares with a par value, the consideration received therefore shall constitute stated capital to the extent of the par value of such shares.

(b) Upon issue by a corporation of shares without par value, the entire consideration received therefore shall constitute stated capital unless the board within a period of sixty days after issue allocates to surplus a portion, but not all, of the consideration received for such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation upon involuntary liquidation except all or part of the amount, if any, of such consideration in excess of such preference, nor shall such allocation be made of any portion of the consideration for the issue of shares without par value which is fixed by the shareholders pursuant to a right reserved in the certificate of incorporation, unless such allocation is authorized by vote of the shareholders.

(c) The stated capital of a corporation may be increased from time to time by resolution of the board transferring all or part of the surplus of the corporation to stated capital. The board may direct that the amount so transferred shall be stated capital in respect of any designated class or series of shares.

#### **507. COMPENSATION FOR FORMATION, REORGANIZATION AND FINANCING**

The reasonable charges and expenses of formation or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby impairing the fully paid and nonassessable status of such shares.

## 508. CERTIFICATES REPRESENTING SHARES

(a) The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or a vice-chairman of the board, or the president or a vice-president, and the secretary or an assistant secretary, or the treasurer or an assistant treasurer of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles if; (1) the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or its employee, or (2) the shares are listed on a registered national security exchange. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of issue.

(b) Each certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designation, relative rights, preferences and limitations of each such series so far as the same have been fixed and the authority of the board to designate and fix the relative rights, preferences and limitations of other series.

(c) Each certificate representing shares shall state upon the face thereof:

- (1) That the corporation is formed under the laws of the Oneida Indian Nation.
- (2) The name of the person or persons to whom issued.
- (3) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(d) Shares shall be transferable in the manner provided by law and in the by-laws.

(e) The corporation may issue a new certificate for shares in place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the board may require the owner of the lost or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss or destruction of any such certificate or the issuance of any such new certificate.

(f) Unless otherwise provided by the articles of incorporation or by-laws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertified shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to paragraphs (b) and (c) of this section. Except as otherwise expressly provided by law,

the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

#### **509. FRACTIONS OF A SHARE OR SCRIP AUTHORIZED**

(a) A corporation may, but shall not be obliged to, issue fractions of a share either represented by a certificate or uncertificated where necessary to effect share transfers, share distributions or reclassification, mergers, consolidations or reorganizations, which shall entitle the holder, in proportion to his fractional holdings, to exercise voting rights, receive dividends and participate in liquidating distributions.

(b) As an alternative, a corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined.

(c) As an alternative, a corporation may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a shareholder except as therein provided. Such scrip may be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board may determine.

(d) A corporation may provide reasonable opportunity for persons entitled to fractions of a share or scrip to sell such fractions of a share or scrip or to purchase such additional fractions of a share or scrip as may be needed to acquire a full share.

#### **510. DIVIDENDS OR OTHER DISTRIBUTIONS IN CASH OR PROPERTY**

(a) A corporation may declare and pay dividends or make other distributions in cash or its bonds or its property, including the shares or bonds of other corporations, on its outstanding shares, except when currently the corporation is insolvent or would thereby be made insolvent, or when the declaration, payment or distribution would be contrary to any restrictions contained in the certificate of incorporation.

(b) Dividends may be declared or paid and other distributions may be made out of surplus only, so that the net assets of the corporation remaining after such declaration, payment or distribution shall at least equal the amount of its stated capital; except that a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or formed primarily for the liquidation of specific assets, may declare and pay dividends or make other distributions in excess of its surplus, computed after taking due account of depletion and amortization, to the extent that the cost of the wasting or specific assets has been recovered by depletion reserves, amortization or sale, if the net assets remaining after such dividends or distributions are sufficient to cover the liquidation preferences of share having such preferences in involuntary liquidation.

(c) When any dividend is paid or any other distribution is made, in whole or in part, from sources other than earned surplus, it shall be accompanied by a written notice (1) disclosing the amounts by which such dividend or distribution affects stated capital, capital surplus and earned surplus, or (2) if such amounts are not determinable at the time of such notice, disclosing the approximate effect of such dividend or distribution upon stated capital, capital surplus and earned surplus and stating that such amounts are not yet determinable.

## **511. SHARE DISTRIBUTIONS AND CHANGES**

(a) A corporation may make pro rata distributions of its authorized but unissued shares to holders of any class or series of its outstanding shares, subject to the following conditions:

- (1) If a distribution of shares having a par value is made, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate par value of such shares.
- (2) If a distribution of shares without par value is made, the amount of stated capital to be represented by each such share shall be fixed by the board, unless the certificate of incorporation reserves to the shareholders the right to fix the consideration for the issue of such shares, and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate stated capital represented by such shares.
- (3) A distribution of shares of any class or series may be made only to holders of the same class or series of shares unless the certificate of incorporation permits distribution, subject to the preemptive rights of holders of any outstanding shares, to holders of another class or series, or unless such distribution is approved, when there are no outstanding preemptive rights, by the affirmative vote or the written consent of the holders of a majority of the outstanding shares of the class or series to be distributed.

(b) A corporation making a pro rata distribution of authorized but unissued shares to the holders of any class or series of outstanding shares may at its option make an equivalent distribution upon treasury shares of the same class or series, and any shares so distributed shall be treasury shares.

(c) A change of issued shares of any class which increases the stated capital represented by those shares may be made if the surplus of the corporation is sufficient to permit the transfer, and a transfer is concurrently made, from surplus to stated capital, of an amount equal to such increase.

(d) No transfer from surplus to stated capital need be made by a corporation making a distribution of its treasury shares to holders of any class of outstanding shares; nor upon a split up or division of issued shares of any class into greater number of shares of the same class, or a combination of issued shares of any class into a lesser number of shares of the same class, if there is no increase in

the aggregate stated capital represented by them.

(e) Nothing in this section shall prevent a corporation from making other transfers from earned surplus to stated capital or capital surplus in connection with share distributions or otherwise.

(f) Every distribution to shareholders of certificates representing a share distribution or a change of shares which affects stated capital, capital surplus or earned surplus shall be accompanied by a written notice (1) disclosing the amounts by which such distribution or change affects stated capital, capital surplus and earned surplus, or (2) if such amounts are not determinable at the time of such notice, disclosing the approximate effect of such distribution or change upon stated capital, capital surplus and earned surplus and stating that such amounts are not yet determinable.

(g) When issued shares are changed in any manner which affects stated capital, capital surplus or earned surplus, and no distribution to shareholders of certificates representing any shares resulting from such change is made, disclosure of the effect of such change upon the stated capital, capital surplus and earned surplus shall be made in the next financial statement covering the period in which such change is made that is furnished by the corporation to holders of shares of the class or series so changed, or if practicable, in the first notice of dividend or share distribution or change that is furnished to such shareholders between the date of the change of the shares and the next such financial statement, and in any event within six months of the date of such change.

## **512. REDEEMABLE SHARES**

(a) A corporation may provide in its certificate of incorporation for one or more classes or series of shares which are redeemable, in whole or in part, at the option of the corporation or, except as provided in paragraph (b) of this section, at the option of the holder, at such price or prices, within such period or periods and under such conditions as are stated in the certificate of incorporation.

(b) A corporation shall not issue common shares which purport by their terms to grant to any holder thereof the right to compel the corporation to redeem such shares except that an open-end investment company, as defined in the United States "Investment Company Act of 1940", may, if its certificate of incorporation so provides and upon compliance with that act, issue shares which are redeemable at the option of the holder at a price approximately equal to the share's proportionate interest in the net assets of the corporation, and a shareholder may compel redemption of such shares in accordance with their terms.

(c) No redeemable common shares, other than such shares of an investment company or of a member corporation of a securities exchange registered under a statute of the United States such as the Securities Exchange Act of 1934 or of a corporation described in this paragraph, shall be issued or redeemed unless the corporation at the time has outstanding a class of common shares that is not subject to redemption. Any common shares of a corporation which directly or through a subsidiary has a license or franchise from a governmental agency to conduct its business, which license or franchise is conditioned upon some or all of the holders of such corporation's common shares possessing prescribed qualifications, may be made subject to redemption by the corporation to the

extent necessary to prevent the loss of, or to reinstate, such license or franchise.

(d) Nothing in this section shall prevent a corporation from creating sinking funds for the redemption or purchase of its shares to the extent permitted by section 513 (Purchase or redemption by a corporation of its own shares).

### **513. PURCHASE OR REDEMPTION BY A CORPORATION OF ITS OWN SHARES**

(a) A corporation, subject to any restrictions contained in its certificate of incorporation, may purchase its own shares, or redeem its redeemable shares, out of surplus except when currently the corporation is insolvent or would thereby be made insolvent.

(b) A corporation may purchase its own shares out of stated capital unless the corporation is insolvent or would thereby be made insolvent, if the purchase is made for the purpose of:

- (1) Eliminating fractions of shares;
- (2) Collecting or compromising indebtedness to the corporation; or
- (3) Paying shareholders entitled to receive payment for their shares under section 623 (Procedure to enforce shareholder's right to receive payment for shares).

(c) A corporation, subject to any restrictions contained in its certificate of incorporation, may redeem or purchase its redeemable shares out of stated capital unless the corporation is insolvent or would thereby be made insolvent and unless such redemption or purchase would reduce net assets below the stated capital remaining after giving effect to the cancellation of such redeemable shares.

(d) When its redeemable shares are purchased by a corporation within the period of redeemability, the purchase price thereof shall not exceed the applicable redemption price stated in the certificate of incorporation. Upon a call for redemption, the amount payable by the corporation for shares having a cumulative preference on dividends may include the stated redemption price plus accrued dividends to the next dividend date following the date of redemption of such shares.

(e) No resident domestic corporation which is subject to the provisions of section nine hundred twelve of this Code shall purchase or agree to purchase more than ten percent of the stock of the resident domestic corporation from a shareholder for more than the market value thereof unless such purchase or agreement to purchase is approved by the affirmative vote of the board of directors followed by the affirmative vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders unless the certificate of incorporation requires a greater percentage of the outstanding shares to approve. The provisions of this paragraph (e) shall not apply when the resident domestic corporation offers to purchase shares from all holders of stock or for stock which the holder has been the beneficial owner of for more than two years. The terms "resident domestic corporation", "stock", "beneficial owner", and "market value" shall be as defined in section nine hundred twelve of this Code.



#### **514. AGREEMENTS FOR PURCHASE BY A CORPORATION OF ITS OWN SHARES**

(a) An agreement for the purchase by a corporation of its own shares shall be enforceable by the shareholder and the corporation to the extent such purchase is permitted at the time of purchase by section 513 (Purchase or redemption by a corporation of its own shares).

(b) The possibility that a corporation may not be able to purchase its shares under section 513 shall not be a ground for denying to either party specific performance of any agreement for the purchase by a corporation of its own shares, if at the time for performance the corporation can purchase all or part of such shares under section 513.

#### **515. REACQUIRED SHARES**

(a) Shares that have been issued and have been purchased, redeemed or otherwise reacquired by a corporation shall be cancelled if they are reacquired out of stated capital, or if they are converted shares, or if the certificate of incorporation requires that such shares be cancelled upon reacquisition.

(b) Any shares reacquired by the corporation and not required to be cancelled may be either retained as treasury shares or cancelled by the board at the time of reacquisition or at any time thereafter.

(c) Neither the retention of reacquired shares as treasury shares, nor their subsequent distribution to shareholders or disposition for a consideration shall change the stated capital. When treasury shares are disposed of for a consideration, the capital surplus shall be increased by the full amount of the consideration received unless the corporation exercises the option granted in subparagraph (a)(5) of section 517 (Special provisions relative to surplus and reserves).

(d) When reacquired shares other than converted shares are cancelled, the stated capital of the corporation is thereby reduced by the amount of stated capital then represented by such shares plus any stated capital not theretofore allocated to any designated class or series which is thereupon allocated to the shares cancelled. The amount by which stated capital has been reduced by cancellation of reacquired shares during a stated period of time shall be disclosed in the next financial statement covering such period that is furnished by the corporation to all its shareholders or, if practicable, in the first notice of dividend or share distribution that is furnished to the holders of each class or series of its shares between the end of the period and the next such financial statement, and in any event to all its shareholders within six months of the date of the reduction of capital.

(e) Shares cancelled under this section are restored to the status of authorized but unissued shares. However, if the certificate of incorporation prohibits the reissue of any shares required or permitted to be cancelled under this section, the board by certificate of amendment under section 805 (Certificate of amendment; contents) shall reduce the number of authorized shares accordingly.

## **516. REDUCTION OF STATED CAPITAL IN CERTAIN CASES**

(a) Except as otherwise provided in the certificate of incorporation, the board may at any time reduce the stated capital of a corporation by eliminating from stated capital amounts previously transferred by the board from surplus to stated capital and not allocated to any designated class or series of shares, or by eliminating any amount of stated capital represented by issued shares having a par value which exceeds the aggregate par value of such issued shares without par value. However, if the consideration for the issue of shares without par value was fixed by the shareholders under section 504 (Consideration and payment for shares), the board shall not reduce the stated capital represented by such shares except to the extent, if any, that the board was authorized by the shareholders to allocate any portion of such consideration to surplus.

(b) No reduction of stated capital shall be made under this section unless after such reduction the stated capital exceeds the aggregate preferential amounts payable upon involuntary liquidation upon all issued shares having preferential rights in the assets plus the par value of all other issued shares with par value.

(c) When a reduction of stated capital has been effected under this section, the amount of such reduction shall be disclosed in the next financial statement covering the period in which such reduction is made that is furnished by the corporation to all its shareholders or, if practicable, in the first notice of dividend or share of distribution that is furnished to the holders of each class or series of its shares between the date of such reduction and the next such financial statement, and in any event to all its shareholders within six months of the date of such reduction.

## **517. SPECIAL PROVISIONS RELATIVE TO SURPLUS AND RESERVES**

(a) Whenever under this chapter it is necessary for a corporation to determine the amount or availability of its earned surplus, the following rules shall apply:

(1) The amount of the earned surplus of a corporation may be computed either from the date of formation or from the latest date when a deficit was eliminated as permitted in this section by an application of the corporation's capital surplus provided that:

(A) The board of any corporation formed before the effective date of this chapter may determine the amount of the corporation's earned surplus before the declaration of the first dividend after the effective date of this chapter, and such determination if made in good faith shall be conclusive; and

(B) After merger, consolidation or combination of two or more corporations by purchase or otherwise, the amount of the earned surplus of the surviving, consolidated or purchasing corporation shall not exceed the aggregate net earned surplus of the component corporations as it existed immediately prior to such merger, consolidation or combination, reduced by such distributions to

shareholders and transfers of earned surplus to stated capital or capital surplus as were made in connection with the issue of shares or otherwise at the time of merger, consolidation or combination.

- (2) All or part of the earned surplus of a corporation may be transferred by the board at any time to capital surplus or to stated capital.
  - (3) Any surplus resulting from reduction of stated capital shall be capital surplus.
  - (4) A corporation may apply any part or all of its capital surplus to the elimination of any deficit in the earned surplus account, upon approval by vote of the shareholders. The application of capital surplus to the elimination of a deficit in the earned surplus account shall be disclosed in the next financial statement covering the period in which such elimination is made that is furnished by the corporation to all its shareholders or, if practicable, in the first notice of dividend or share distribution that is furnished to holders of each class or series of its shares between the date of such elimination and the next such financial statement, and in any event to all its shareholders within six months of the date of such action.
  - (5) When a corporation has applied its earned surplus to the acquisition of treasury shares and such shares are subsequently disposed of for a consideration, the corporation may, at its option restore to earned surplus, out of the consideration received and on an appropriate basis per share, all or part of the amount by which earned surplus was reduced at the time of acquisition of such shares. If the consideration received exceeds the amount by which earned surplus was reduced with respect to such shares, the excess shall be capital surplus.
- (b) Nothing in this section shall prevent a corporation from creating reserves from its earned surplus or capital surplus for any proper purpose or purposes, or from increasing, decreasing or abolishing any such reserve.

## **518. CORPORATE BONDS**

- (a) No corporation shall issue bonds except for money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in the formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received shall be conclusive.
- (b) If a distribution of its own bonds is made by a corporation to holders of any class or series of its outstanding shares, there shall be concurrently transferred to the liabilities of the corporation in respect of such bonds an amount of surplus equal to the principal amount of, and any accrued interest on, such bonds. The amount of the surplus so transferred shall be the consideration for the issue of such bonds.

(c) A corporation may, in its certificate of incorporation, confer upon the holders of any bonds issued or to be issued by the corporation, rights to inspect the corporate books and records and to vote in the election of directors and on any other matters on which shareholders of the corporation may vote.

#### **519. CONVERTIBLE SHARES AND BONDS**

(a) When so provided in the certificate of incorporation, and subject to the restrictions in paragraph (d), a corporation may issue shares convertible,

- (1) at the option of the holder only, into shares of any class or into shares of any series of any class, except into a class of shares having rights or preferences as to dividends or distribution of assets upon liquidation which are prior or superior in rank to those of the shares being converted, and
- (2) if a member corporation of a securities exchange registered under a statute of the United States such as the Security Exchange Act of 1934, at the option of the corporation or upon the happening of a specified event, into shares of any class or into shares of any series of any class or into any other security of the corporation. Authorized shares, whether issued or unissued, may be made so convertible within such period and upon such terms and conditions as are stated in the certificate of incorporation.

(b) Unless otherwise provided in the certificate of incorporation, and subject to the restrictions of paragraph (d), a corporation may issue its bonds convertible into other bonds or into shares of the corporation within such period and upon such terms and conditions as are fixed by the board.

(c) If there is shareholder approval for the issue of bonds or shares convertible into shares of the corporation, such approval may provide that the board is authorized by certificate of amendment under section 805 (Certificate of amendment; contents) to increase the authorized shares of any class or series to such number as will be sufficient, when added to the previously authorized but unissued shares of such class or series, to satisfy the conversion privileges of any such bonds or shares convertible into shares of such class or series.

(d) No issue of bonds or shares convertible into shares of the corporation shall be made unless:

- (1) A sufficient number of authorized but unissued shares of the appropriate class or series are reserved by the board to be issued only in satisfaction of the conversion privileges of such convertible bonds or shares when issued; or
- (2) The aggregate conversion privileges of such convertible bonds or shares when issued do not exceed the aggregate of any shares reserved under subparagraph (1) and any additional shares which may be authorized by the board under paragraph (c).

(e) No conversion of shares shall result in a reduction of stated capital. No privilege of conversion

may be conferred upon, or altered in respect to, any shares or bonds that would result in the receipt by the corporation of less than the minimum consideration required to be received upon the issue of new shares. The consideration for shares issued upon the exercise of a conversion privilege shall be that provided in paragraph (g) of section 504 (Consideration and payment for shares).

(f) When shares have been converted, they shall be cancelled and disclosure of the conversion of shares during a stated period of time and its effect, if any, upon stated capital shall be made in the next financial statement covering such period that is furnished by the corporation to all its shareholders or, if practicable, in the first notice of dividend or share distribution that is furnished to the holders of each class or series of its shares between the end of such period and the next such financial statement, and in any event to all its shareholders within six months of the date of the conversion of shares. When bonds have been converted, they shall be cancelled and not reissued except upon compliance with the provisions governing the issue of convertible bonds.

## **520. LIABILITY FOR FAILURE TO DISCLOSE REQUIRED INFORMATION**

Failure of the corporation to comply in good faith with the notice or disclosure provisions of paragraph (c) of section 510 (Dividends or other distributions in cash or property), or paragraphs (f) and (g) of section 511 (Share distributions and changes), or paragraphs (d) of section 515 (Reacquired shares), or paragraph (c) of section 516 (Reduction of stated capital in certain cases), or subparagraph (a)(4) of section 517 (Special provisions relative to surplus and reserves), or paragraph (f) of section 519 (Convertible shares and bonds), shall make the corporation liable for any damage sustained by any shareholder in consequence thereof.

## CHAPTER 6-SHAREHOLDERS

### 601. BY-LAWS

(a) The initial by-laws of a corporation shall be adopted by its incorporator or incorporators at the organization meeting. Thereafter, subject to section 613 (Limitations on right to vote), by-laws may be adopted, amended or repealed by vote of the holders of the shares at the time entitled to vote in the election of any directors. When so provided in the certificate of incorporation or a by-law adopted by shareholders, by-laws may also be adopted, amended or repealed by the board by such vote as may be therein specified, which may be greater than the vote otherwise prescribed by this chapter, but any by-law adopted by the board may be amended or repealed by the shareholders entitled to vote thereon as herein provided. Any reference in this chapter to a "by-law adopted by the shareholders" shall include by-law adopted by the incorporator or incorporators.

(b) If any by-law regulating an impending election of directors is adopted, amended or repealed by the board, there shall be set forth in the notice of the next meeting of shareholders for the election of directors the by-law so adopted, amended or repealed, together with a concise statement of the changes made.

(c) The by-laws may contain any provision 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, not inconsistent with this chapter or any other statute of the Nation or the certificate of incorporation.

### 602. MEETINGS OF SHAREHOLDERS

(a) Meetings of shareholders may be held at such place, as may be fixed by or under the by-laws, or if not so fixed, at the office of the corporation.

(b) A meeting of shareholders shall be held annually for the election of directors and the transaction of other business on a date fixed by or under the by-laws. A failure to hold the annual meeting on the date so fixed or to elect a sufficient number of directors to conduct the business of the corporation shall not work a forfeiture or give cause for dissolution of the corporation, except as provided in paragraph (c) of section 1104 (Petition in case of deadlock among directors or shareholders).

(c) Special meetings of the shareholders may be called by the board and by such person or persons as may be so authorized by the certificate of incorporation or the by-laws. At any such special meeting only such business may be transacted which is related to the purpose of purposes set forth in the notice required by section 605 (Notice of meetings of shareholders).

### **603. SPECIAL MEETING FOR ELECTION OF DIRECTORS**

(a) If, for a period of one month after the date fixed by or under the by-laws for the annual meeting of shareholders, or if no date has been so fixed, for a period of thirteen months after the formation of the corporation or the last annual meeting, there is a failure to elect a sufficient number of directors to conduct the business of the corporation, the board shall call a special meeting for the election of directors. If such special meeting is not called by the board within two weeks after the expiration of such period or if it is so called but there is a failure to elect such directors for a period of two months after the expiration of such period, holders of ten percent of the shares entitled to vote in an election of directors may, in writing, demand the call of a special meeting for the election of directors specifying the date and month thereof, which shall not be less than sixty nor more than ninety days from the date of such written demand. The secretary of the corporation upon receiving the written demand shall promptly give notice of such meeting, or if he fails to do so within five business days thereafter, any shareholder signing such demand may give such notice. The meeting shall be held at the place fixed in the by-laws or, if not so fixed, at the office of the corporation.

(b) At any such special meeting called on demand of shareholders, notwithstanding section 608 (Quorum of shareholders), the shareholders attending, in person or by proxy, and entitled to vote in an election of directors shall constitute a quorum for the purpose of electing directors, but not for the transaction of any other business.

### **604. FIXING RECORD DATE**

(a) For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividend or the allotment of any rights, or for the purpose of any other action, the by-laws may provide for fixing or, in the absence of such provision, the board may fix, in advance, a date as the record date for any such determination of shareholders. Such date shall not be more than fifty nor less than ten days before the date of such meeting, nor more than fifty days prior to any other action.

(b) If no record date is fixed:

- (1) The record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held.
- (2) The record date for determining shareholders for any purpose other than that specified in subparagraph (1) shall be at the close of business on the day on which the resolution of the board relating thereto is adopted.
- (c) When a determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders has been made as provided in this section, such determination

shall apply to any adjournment thereof, unless the board fixes a new record date under this section for the adjourned meeting.

#### **605. NOTICE OF MEETING OF SHAREHOLDERS**

(a) Whenever under the provisions of the chapter shareholders are required or permitted to take any action at a meeting, written notice shall be given stating the place, date and hour of the meeting and, unless it is the annual meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. If, at any meeting, action is proposed to be taken which would, if taken, entitle shareholders fulfilling the requirements of section 623 (Procedure to enforce shareholder's right to receive payment for shares) to receive payment for their shares, the notice of such meeting shall include a statement of that purpose and to that effect and shall be accompanied by a copy of section 623 or an outline of its material terms. A copy of the notice of any meeting shall be given, personally or by first class mail, not fewer than ten nor more than fifty days before the date of the meeting, provided, however, that a copy of such notice may be given by third class mail not fewer than twenty-four nor more than fifty days before the date of the meeting, to each shareholder entitled to vote at such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the shareholder at his address as it appears on the record of shareholders, or, if he shall have filed with the secretary of the corporation a written request that notices to him be mailed to some other address, then directed to him at such other address. An affidavit of the secretary or other person giving the notice or of a transfer agent of the corporation that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

(b) When a meeting is adjourned to another time or place, it shall not be necessary, unless the by-laws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice under paragraph (a).

#### **606. WAIVER OF NOTICE**

Notice of meeting need not be given to any shareholder who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him.



## **607. LIST OF SHAREHOLDERS AT MEETINGS**

A list of shareholders as of the record date, certified by the corporate officer responsible for its preparation or by a transfer agent, shall be produced at any meeting of shareholders upon the request thereat or prior thereto of any shareholder. If the right to vote at any meeting is challenged, the inspectors of election, or person presiding thereat, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.

## **608. QUORUM OF SHAREHOLDERS**

(a) The holders of a majority of the shares entitled to vote thereat shall constitute a quorum at a meeting of shareholders for the transaction of any business, provided that when a specified item of business is required to be voted on by a class or series, voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum for the transaction of such specified time of business.

(b) The certificate of incorporation or by-laws may provide for any lesser quorum not less than one-third of the shares entitled to vote, and the certificate of incorporation may, under section 616 (Greater requirement as to quorum and vote of shareholders), provide for a greater quorum.

(c) When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any shareholders.

(d) The shareholders present may adjourn the meeting despite the absence of a quorum.

## **609. PROXIES**

(a) Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize another person or persons to act for him by proxy.

(b) Every proxy must be signed by the shareholder or his attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.

(c) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of shareholders.

(d) Except when other provision shall have been made by written agreement between the parties, the record holder of shares which he holds as pledgee or otherwise as security or which belong to another, shall issue to the pledgor or to such owner of such shares, upon demand therefore and

payment of necessary expenses thereof, a proxy to vote or take other action thereon.

(e) A shareholder shall not sell his vote or issue a proxy to vote to any person for any sum of money or anything of value, except as authorized in this section and section 620 (Agreements as to voting; provision in certificate of incorporation as to control of directors).

(f) A proxy which is entitled "irrevocable proxy" and which states that it is irrevocable, is irrevocable when it is held by any of the following or a nominee of any of the following:

- (1) A pledgee;
- (2) A person who has purchased or agreed to purchase the shares;
- (3) A creditor or creditors of the corporation who extend or continue credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit;
- (4) A person who has contracted to perform services as an officer of the corporation, if a proxy is required by the contract of employment, if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for;
- (5) A person designated by or under an agreement under paragraph (a) of section 620.

(g) Notwithstanding a provision in a proxy, stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, or the debt of the corporation is paid, or the period of employment provided for in the contract of employment has terminated, or the agreement under paragraph (a) of section 620 has terminated; and in a case provided for in subparagraphs (f)(3) or (4) becomes revocable three years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in the section. This paragraph does not affect the duration of a proxy under paragraph (b).

(h) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability is noted conspicuously on the face or back of the certificate representing such shares.

## **610. SELECTION OF INSPECTORS AT SHAREHOLDERS' MEETINGS**

If the by-laws require inspectors at any shareholders' meeting, such requirements is waived unless compliance therewith is requested by a shareholder present in person or by proxy and entitled to vote at such meeting. Unless otherwise provided in the by-laws, the board, in advance of any shareholders' meeting, may appoint one or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a shareholders' meeting may, and on the request of any shareholder entitled to vote shall appoint one or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by board in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability.

## **611. DUTIES OF INSPECTORS AT SHAREHOLDERS' MEETINGS**

The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate the votes, ballots or consent, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the person presiding at the meeting or any shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified by them.

## **612. QUALIFICATION OF VOTERS**

(a) Every shareholder of record shall be entitled at every meeting of shareholders to one vote for every share standing in his name on the record of shareholders, unless otherwise provided in the certificate of incorporation.

(b) Treasury shares and shares held by another domestic or foreign corporation of any type or kind, if a majority of the shares entitled to vote in the election of directors of such other corporation is held by the corporation, shall not be shares entitled to vote or to be counted in determining the total number of outstanding shares.

(c) Shares held by an administrator, executor, guardian, conservator, committee, or other fiduciary, except a trustee, may be voted by him, either in person or by proxy, without transfer of such shares into his name. Shares held by a trustee may be voted by him, either in person or by proxy, only after the shares have been transferred into his name as trustee or into the name of his nominee.

(d) Shares held by or under the control of a receiver may be voted by him without the transfer thereof into his name if authority so to do is contained in an order of the court by which such

receiver was appointed.

(e) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee.

(f) Redeemable shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders of the shares upon surrender of certificates therefore.

(g) Shares standing in the name of another domestic or foreign corporation of any type or kind may be voted by such officer, agent or proxy as the by-laws of such corporation may provide, or, in the absence of such provision, as the board of such corporation may determine.

(h) If shares are registered on the record of shareholders of a corporation in the name of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

- (1) If only one votes, the vote shall be accepted by the corporation as the vote of all;
- (2) If more than one vote, the act of the majority so voting shall be accepted by the corporation as the vote of all;
- (3) If more than one vote, but the vote is equally divided on any particular matter, the vote shall be accepted by the corporation as a proportionate vote of the shares; unless the corporation has evidence, on the record of shareholders or otherwise, that the shares are held in a fiduciary capacity.
- (4) When shares as to which the vote is equally divided are registered on the record of shareholders of a corporation in the name of, or have passed by operation of law or by virtue of any deed of trust or other instrument to two or more fiduciaries, any court having jurisdiction of their accounts, upon petition by any of such fiduciaries or by any party in interest, may direct the voting of such shares for the best interest of the beneficiaries. This subparagraph shall not apply in any case where the instrument or order of the court appointing fiduciaries shall otherwise direct how such shares shall be voted; and
- (5) If the instrument or order furnished to the secretary of a corporation shows that a tenancy

is held in unequal interests, a majority or equal division for the purposes of this paragraph shall be a majority or equal division in interest.

(i) Notwithstanding the foregoing paragraphs, a corporation shall be protected in treating the persons in whose names shares stand on the record of shareholders as the owner thereof for all purposes.

#### **613. LIMITATIONS ON RIGHT TO VOTE**

This certificate of incorporation may provide, except as limited by section 501 (Authorized shares), either absolutely or conditionally, that the holders of any designated classes or series of shares shall not be entitled to vote, or it may otherwise limit or define the respective voting powers of the several classes or series of shares, and, except as otherwise provided in this chapter, such provisions of such certificate shall prevail, according to their tenor, in all elections and in all proceedings, over the provisions of the chapter which authorizes any action by the shareholders.

#### **614. VOTE OF SHAREHOLDERS**

(a) Directors shall, except as otherwise required by this chapter or by the certificate of incorporation as permitted by this chapter, be elected by a plurality of the votes cast at a meeting of shareholders by the holders of shares entitled to vote in the election.

(b) Whenever any corporate action, other than the election of directors, is to be taken under this chapter by vote of the shareholders, it shall, except as otherwise required by this chapter or by the certificate of incorporation as permitted by this chapter, be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon.

#### **615. WRITTEN CONSENT OF SHAREHOLDERS, SUBSCRIBERS OR INCORPORATORS WITHOUT A MEETING**

(a) Whenever under this chapter shareholders are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of all outstanding shares entitled to vote thereon. This paragraph shall not be construed to alter or modify the provisions of any section or any provision in a certificate of incorporation not inconsistent with this chapter under which the written consent of the holders of less than all outstanding shares is sufficient for corporate action.

(b) Written consent thus given by the holders of all outstanding shares entitled to vote shall have the same effect as a unanimous vote of shareholders and any certificate with respect to the authorization or taking of any such action which is to be delivered to the Nation Clerk shall recite that the authorization was by unanimous written consent.

(c) When there are no shareholders of record, such action may be taken on the written consent signed by a majority in interest of the subscribers for shares whose subscriptions have been

accepted or their successors in interest or, if no subscription has been accepted, on the written consent signed by the incorporator or a majority of the incorporators. When there are two or more incorporators, if any dies or is for any reason unable to act, the other or others may act. If there is not incorporator able to act, any person for whom an incorporator was acting as agent may act in his stead, or if such other person also dies or is for any reason unable to act, his legal representative may act.

#### **616. GREATER REQUIREMENT AS TO QUORUM AND VOTE OF SHAREHOLDERS**

(a) The certificate of incorporation may contain provisions specifying either or both of the following:

(1) That the proportion of shares, or the proportion of shares of any class or series thereof, the holders of which shall be present in person or by proxy at any meeting of shareholders, including a special meeting for election of directors under section 603 (Special meeting for election of directors), in order to constitute a quorum for the transaction of any business or any specified item of business, including amendments to the certificate of incorporation, shall be greater than the proportion prescribed by this chapter in the absence of such provision.

(2) That the proportion of votes of the holders of shares, or of the holders of shares of any class or series thereof, that shall be necessary at any meeting of shareholders for the transaction of any business or of any specified time of business, including amendments to the certificate of incorporation, shall be greater than the proportion prescribed by this chapter in the absence of such provision.

(b) An amendment of the certificate of incorporation which changes or strikes out a provision permitted by this section, shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, or of such greater proportion of shares, or class or series of shares, as may be provided specifically in the certificate of incorporation for changing or striking out a provision permitted by this section.

(c) If the certificate of incorporation of any corporation contains a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every certificate for shares issued by such corporation, except that this requirement shall not apply to any corporation having any class of any equity security registered pursuant to Section twelve of the United States Securities Exchange Act of 1934, as amended.

#### **617. VOTING BY CLASS OR CLASSES OF SHARES**

(a) The certificate of incorporation may contain provisions specifying that any class or classes' shares or of any series thereof shall vote as a class in connection with the transaction of any business or of any specified item of business at a meeting of shareholders, including amendments to the certificate of incorporation.

(b) Where voting as a class is provided in the certificate of incorporation, it shall be by the proportionate vote so provided or, if no proportionate vote is provided, in the election of directors, by a plurality of the votes cast at such meeting by the holders of shares of such class entitled to vote in the election, or for any other corporate action, by a majority of the votes cast at such meeting by the holders of shares of such class entitled to vote thereon.

(c) Such voting by class shall be in addition to any other vote, including vote by class, required by this chapter and by the certificate of incorporation as permitted by this chapter.

#### **618. CUMULATIVE VOTING**

The certificate of incorporation of any corporation may provide that in all elections of directors of such corporation each shareholder shall be entitled to as many votes as shall equal the number of votes which, except for such provisions as to cumulative voting, he would be entitled to cast for the election of directors with respect to his shares multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit, which right, when exercised, shall be termed cumulative voting.

#### **619. POWERS OF ONEIDA NATION COURT RESPECTING ELECTION**

Upon the petition of any shareholder aggrieved by an election, and upon notice to the persons elected, the corporation and such other persons as the court may direct, the Oneida Indian Nation court shall forthwith hear the proofs and allegations of the parties, and confirm the election, order a new election, or take such other action as justice may require.

#### **620. AGREEMENTS AS TO VOTING; PROVISION IN CERTIFICATES OF INCORPORATION AS TO CONTROL OF DIRECTORS**

(a) An agreement between two or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon them.

(b) A provision in the certificate of incorporation otherwise prohibited by law because it improperly restricts the board in its management of the business of the corporation, or improperly transfers to one or more shareholders or to one or more persons or corporations to be selected by him or them, all or any part of such management otherwise within the authority of the board under this chapter, shall nevertheless be valid:

- (1) If all the incorporators or holders of record of all outstanding shares, whether or not having voting power, have authorized such provision in the certificate of incorporation or an amendment thereof; and

(2) If, subsequent to the adoption of such provision, shares are transferred or issued only to persons who had knowledge or notice thereof or consented in writing to such provision.

(c) A provision authorized by paragraph (b) shall be valid only so long as no shares of the corporation are listed on a securities exchange or regularly quoted in an over-the-counter market by one or more members of a securities association.

(d) Except as provided in paragraph (e), an amendment to strike out a provision authorized by paragraph (b) shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon or by the holders of such greater proportion of shares as may be required by the certificate of incorporation for that purpose.

(e) Alternatively, if a provision authorized by paragraph (b) shall have ceased to be valid under this section, the board may authorize a certificate of amendment under section 805 (Certificate of amendment; contents) striking out such provision. Such certificate shall set forth the event by reason of which the provision ceased to be valid.

(f) The effect of any provision authorized by paragraph (b) shall be to relieve the directors and impose upon the shareholders authorizing the same or consenting thereto the liability for managerial acts or omissions that is imposed on directors by this chapter to the extent that and so long as the discretion or powers of the board in its management of corporate affairs is controlled by any such provision.

(g) If the certificate of incorporation of any corporation contains a provision authorized by paragraph (b), the existence of such provision shall be noted conspicuously on the face of back of every certificate for shares issued by such corporation.

## **621. VOTING TRUST AGREEMENTS**

(a) Any shareholder or shareholders, under an agreement in writing, may transfer his or their shares to a voting trustee or trustees for the purpose of conferring the right to vote thereon for a period not exceeding ten years upon the terms and conditions therein stated. The certificates for shares so transferred shall be surrendered and cancelled and new certificates therefore issued to such trustee or trustees stating that they are issued under such agreement, and in the entry of such ownership in the record of the corporation that fact shall also be noted, and such trustee or trustees may vote the shares so transferred during the term of such agreement.

(b) The trustee or trustees shall keep available for inspection by holders of voting trust certificates at his or their office or at a place designated in such agreement or of which the holders of voting trust certificates have been notified in writing, correct and complete books and records of account relating to the trust, and a record containing the names and addresses of all persons who are holders of voting trust certificates and the number and class of shares represented by the certificates held by them and the dates when they became the owners thereof. The record may be in written form or any other form capable of being converted into written form within a reasonable time.



(c) A duplicate of every such agreement shall be file in the office of the corporation and it and the record of voting trust certificate holders shall be subject to the same right of inspection by a shareholder of record or a holder of a voting trust certificate, in person or by agent or attorney, as are the records of the corporation under section 624 (Books and records; right of inspection, prima facie evidence). The shareholder or holder of a voting trust certificate shall be entitled to the remedies provided in that section.

(d) At any time within six months before the expiration of such voting trust agreement as originally fixed or as extended one or more times under this paragraph, one or more holders of voting trust certificates may, by agreement in writing, extend the duration of such voting trust agreement, nominating the same or substitute trustee or trustees, for an additional period not exceeding ten years. Such extension agreement shall not affect the rights or obligations of persons not parties thereto and shall in every respect comply with and be subject to all the provisions of the section applicable to the original voting trust agreement.

## **622. PREEMPTIVE RIGHTS**

(a) As used in this section, the term:

- (1) "Unlimited dividends rights" means the right without limitations as to amount either to all or to a share of the balance of current or liquidating dividends after the payment of dividends on any shares entitled to a preference.
- (2) "Equity shares" means shares of any class, whether or not preferred as to dividends or assets, which have unlimited dividend rights.
- (3) "Voting rights" means the right to vote for the election of one or more directors, excluding a right so to vote which is dependent on the happening of an event specified in the certificate of incorporation which would change the voting rights of any class of shares.
- (4) "Voting shares" means shares of any class which have voting rights, but does not include bonds on which voting rights are conferred under section 518 (Corporate bonds).
- (5) "Preemptive right" means the right to purchase shares or other securities to be issued or subject to rights or options to purchase, as such right is defined in this section.

(b) Except as otherwise provided in their certificate of incorporation, and except as provided in this section, the holders of equity shares of any class, in case of the proposed issuance by the corporation of, or the proposed granting by the corporation of rights or options to purchase, its equity shares of any class or any shares or other securities convertible into or carrying rights or options to purchase its equity shares of any class, shall, if the issuance of the equity shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other

securities would adversely affect the unlimited dividend rights of such holder, have the right during a reasonable time and on reasonable conditions, both to be fixed by the board, to purchase such shares or other securities in such proportions as shall be determined as provided in this section.

(c) Except as otherwise provided in the certificate of incorporation, and except as provided in this section, the holders of voting shares of any class, in case of the proposed issuance by the corporation of, or the proposed granting by the corporation of rights or options to purchase, its voting shares of any class or any shares or other securities convertible into carrying rights or options to purchase its voting shares of any class, shall, if the issuance of the voting shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the voting rights of such holders, have the right during a reasonable time and on reasonable conditions, both to be fixed by the board, to purchase such shares or other securities in such proportions as shall be determined as provided in this section.

(d) The preemptive right provided for in paragraphs (b) and (c) shall entitle shareholders having such rights to purchase the shares or other securities to be offered or optioned for sale as nearly as practicable in such proportions as would, if such preemptive right were exercised, preserve the relative unlimited dividend rights and voting rights of such holders and at a price or prices not less favorable than the price or prices at which such shares or other securities are proposed to be offered for sale to others, without deduction of such reasonable expenses of and compensation for the sale, underwriting or purchase of such shares or other securities by underwriters or dealers as may lawfully be paid by the corporation. In case each of the shares entitling the holders thereof to preemptive rights does not confer the same unlimited dividend right or voting right, the board shall apportion the shares or other securities to be offered or optioned for sale among the shareholders having preemptive rights to purchase them in such proportions as in the opinion of the board shall preserve as far as practicable the relative unlimited dividend rights and voting rights of the holders at the time of such offering. The apportionment made by the board shall, in the absence of fraud or bad faith, be binding upon all shareholders.

(e) Unless otherwise provided in the certificate of incorporation, shares or other securities offered for sale or subjected to rights or options to purchase shall not be subject to preemptive rights if they:

- (1) Are to be issued by the board to effect a merger or consolidation or offered or subjected to rights or options for consideration other than cash;
- (2) Are to be issued or subjected to rights or options under paragraph (d) of section 505 (Rights and options to purchase shares; issue of rights and options to directors, officer and employees);
- (3) Are to be issued to satisfy conversion or option rights theretofore granted by the corporation;
- (4) Are treasury shares;

(5) Are part of the shares or other securities of the corporations authorized in its original certificate of incorporation and are issued, sold or optioned within two years from the date of filing such certificate; or

(6) Are to be issued under a plan of reorganization approved in a proceeding under any applicable law relating to reorganization of corporations.

(f) Shareholders of record entitled to preemptive rights on the record date fixed by the board under section 604 (Fixing record date), or, if no record date is fixed, then on the record date determined under section 604, and no others shall be entitled to the right defined in this section.

(g) The board shall cause to be given to each shareholder entitled to purchase shares or other securities in accordance with this section, a notice directed to him in the manner provided in section 605 (Notice of meeting of shareholder) setting forth the time within which and the terms and conditions upon which the shareholder may purchase such shares or other securities and also the apportionment made of the right to purchase among the shareholders entitled to preemptive rights. Such notice shall be given personally or by mail at least fifteen days prior to the expiration of the period during which the shareholder shall have the right to purchase. All shareholders entitled to preemptive rights to whom notice shall have been given as aforesaid shall be deemed conclusively to have had a reasonable time in which to exercise their preemptive rights.

(h) Shares or other securities which have been offered to shareholders having preemptive rights to purchase and which have not been purchased by them within the time fixed by the board may thereafter, for a period of not exceeding one year following the expiration of the time during which shareholders might have exercised such preemptive rights, be issued, sold or subjected to rights or options to any other person or persons at a price, without deduction of such reasonable expenses of and compensation for the sale, underwriting or purchase of such shares by underwriters or dealers as may lawfully be paid by the corporation, not less than that at which they were offered to such shareholders. Any such shares or other securities not so issued, sold or subjected to rights or options to others during such one year period shall thereafter again be subject to the preemptive rights of shareholders.

(i) Except as otherwise provided in the certificate of incorporation and except as provided in this section, no holder of any shares of any class shall as such holder have any preemptive right to purchase any other shares or securities of any class which at any time may be sold or offered for sale by the corporation. Unless otherwise provided in the certificate or incorporation, holders of bonds on which voting rights are conferred under section 518 shall have no preemptive rights.

### **623.PROCEDURE TO ENFORCE STOCKHOLDER'S RIGHT TO RECEIVE PAYMENT FOR SHARES**

(a) A shareholder intending to enforce his right under a section of this chapter to receive payment for his shares if the proposed corporate action referred to therein is taken shall file with the corporation, before the meeting of shareholders at which the action is submitted to a vote, or at such meeting but before the vote, written objection to the action. The objection shall include a notice of his election to dissent, his name and residence address, the number and classes of shares as to which he dissents and a demand for payment of fair value of his shares if the action is taken. Such objection is not required from any shareholder to whom the corporation did not give notice of such meeting in accordance with this chapter or where the proposed action is authorized by written consent of shareholders without a meeting.

(b) Within ten days after the shareholders' authorization date, which term as used in this section means the date on which the shareholders' vote authorizing such action was taken, or the date on which such consent without a meeting was obtained from the requisite shareholders, the corporation shall give written notice of such authorization or consent by registered mail to each shareholder who file written objection or from whom written objection was not required, excepting any shareholder who voted for or consented in writing to the proposed action and who thereby is deemed to have elected not to enforce his right to receive payment for his shares.

(c) Within twenty days after the giving of notice to him, any shareholder from whom written objection was not required and who elects to dissent shall file with the corporation a written notice of such election, stating his name and residence address, the number and classes of shares as to which he dissents and a demand for payment of the fair value of his shares. Any shareholder who elects to dissent from a merger under section 905 (Merger of subsidiary corporation) or paragraph (c) of section 907 (Merger or consolidation of domestic and foreign corporations) or from a share exchange under paragraph (g) of section 913 (Share exchanges) shall file a written notice of such election to dissent within twenty days after the giving to him of a copy of the plan of merger or exchange or an outline of the material features thereof under section 905 or 913.

(d) A shareholder may not dissent as to less than all of the shares, as to which he has a right to dissent, held by him of record, that he owns beneficially. A nominee or fiduciary may not dissent on behalf of any beneficial owner as to less than all of the shares of such owner, as to which such nominee or fiduciary has a right to dissent, held of record by such nominee or fiduciary.

(e) Upon consummation of the corporate action, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of his shares and any other rights under this section. A notice of election may be withdrawn by shareholder at any time prior to his acceptance in writing of an offer made by the corporation, as provided in paragraph (g), but in no case later than sixty days from the date of consummation of the corporate action except that if the corporation fails to make a timely offer, as provided in paragraph (g), the time for withdrawing a notice of election shall be extended sixty days from the date an offer is made. Upon expiration of such time, withdrawal of a notice of election requires the written consent of the corporation. In

order to be effective, withdrawal of a notice of election must be accompanied by the return to the corporation of any advance payment made to the shareholder as provided in paragraph (g). If a notice of election is withdrawn, or the corporate action is rescinded, or a court shall determine that the shareholder is not entitled to receive payment for his shares, or the shareholder shall otherwise lose his dissenter's rights, he shall not have the right to receive payment for his shares and he shall be reinstated to all his rights as a shareholder as of the consummation of the corporate action, including any intervening preemptive rights and the right to payment of any intervening dividend or other distribution or, if any, such rights have expired or any such dividend or distribution or, if any such rights have expired or any such dividend or distribution other than in cash has been completed, in lieu thereof, at the election of the corporation, the fair value thereof in cash as determined by the board as of the time of such expiration or completion, but without prejudice otherwise to any corporate proceedings that may have been taken in the interim.

(f) At the time of filing the notice of election to dissent or within one month thereafter the shareholder of shares represented by certificates shall submit the certificates representing his shares to the corporation, or to its transfer agent, which shall forthwith note conspicuously thereon that a notice of election has been filed and shall return the certificates to the shareholder or other person who submitted them on his behalf. Any shareholder of shares represented by certificates who fails to submit his certificates for such notation as herein specified shall, at the option of the corporation exercised by written notice to him within forty-five days from the date of filing of such notice of election to dissent, lose his dissenter's rights unless a court, for good cause shown, shall otherwise direct. Upon transfer of a certificate bearing such notation, each new certificate issued therefore shall bear a similar notation together with the name of the original dissenting holder of the shares and a transferee shall acquire no rights in the corporation except those which the original dissenting shareholder had at the time of transfer.

(g) Within fifteen days after the expiration of the period within which shareholders may file their notices of election to dissent, or within fifteen days after the proposed corporate action is consummated, whichever is later (but in no case later than ninety days from the shareholders' authorization date), the corporation or, in the case of a merger or consolidation, the surviving or new corporation, shall make a written offer by registered mail to each shareholder who has filed such notice of election to pay for his shares at a specified price which the corporation considers to be their fair value. Such offer shall be accompanied by a statement setting forth the aggregate number of shares with respect to which notices of election to dissent have been received and the aggregate number of holders of such shares. If the corporate action has been consummated, such offer shall also be accompanied by (1) advance payment to each such shareholder who has submitted the certificates representing his shares to the corporation, as provided in paragraph (f), of an amount equal to eighty percent of the amount of such offer, or (2) as to each shareholder who has not yet submitted his certificates a statement that advance payment to him of an amount equal to eighty percent of the amount of such offer will be made by the corporation promptly upon submission of his certificates. If the corporate action has not been consummated at the time of the making of the offer, such advance payment or statement as to advance payment shall be sent to each shareholder entitled thereto forthwith upon consummation of the corporate action. Every advance payment or statement as to advance payment shall include advice to the shareholder to the effect

that acceptance of such payment does not constitute a waiver of any dissenters' rights. If the corporate action has not been consummated upon the expiration of the ninety day period after the shareholders' authorization date, the offer may be conditioned upon the consummation of such action. Such offer shall be made at the same price per share to all dissenting shareholders of the same class, or if divided into series, of the same series and shall be accompanied by a balance sheet of the corporation whose shares the dissenting shareholder holds as of the latest available date, which shall not be earlier than twelve months before the making of such offer, and a profit and loss statement or statements for not less than a twelve month period ended on the date of such balance sheet or, if the corporation was not in existence throughout such twelve month period, for the portion thereof during which it was in existence. Notwithstanding the foregoing, the corporation shall not be required to furnish a balance sheet or profit and loss statement or statements to any shareholder to whom such balance sheet or profit and loss statement or statements were previously furnished, nor if in connection with obtaining the shareholders' authorization for or consent to the proposed corporate action the shareholders were furnished with a proxy or information statement, which included financial statements, pursuant to Regulation 14A or Regulation 14C of the United States Securities and Exchange Commission. If within thirty days after the making of such offer, the corporation making the offer and any shareholder agree upon the price to be paid for his shares, payment therefore shall be made within sixty days after the making of such offer or the consummation of the proposed corporate action, whichever is later, upon the surrender of the certificates for any such shares represented by certificates.

(h) The following procedure shall apply if the corporation fails to make such offer within such period of fifteen days, or if it makes the offer and any dissenting shareholder or shareholders fail to agree with it within the period of thirty days thereafter upon the price to be paid for their shares:

- (1) The corporation shall, within twenty days after the expiration of whichever is applicable of the two periods last mentioned, institute a special proceeding in the Oneida Nation Court to determine the rights of dissenting shareholders and to fix the fair value of their shares. If, in the case of merger or consolidation, the surviving or new corporation is a foreign corporation, such proceeding shall be brought in the Oneida Nation court.
- (2) If the corporation fails to institute such proceeding within such period of twenty days, any dissenting shareholder may institute such proceeding for the same purpose not later than thirty days after the expiration of such twenty day period. If such proceeding is not instituted within such thirty day period, all dissenter's rights shall be lost unless the Oneida Nation court, for good cause shown, shall otherwise direct.
- (3) All dissenting shareholders, excepting those who, as provided in paragraph (g), have agreed with the corporation upon the price to be paid for their shares, shall be made parties to such proceeding, which shall have the effect of an action quasi in rem against their shares. The corporation shall serve a copy of the petition in such proceeding upon each dissenting shareholder in the manner provided by law for the service of a summons. The jurisdiction of the court shall be plenary and exclusive.

- (4) The court shall determine whether each dissenting shareholder, as to whom the corporation requests the court to make such determination, is entitled to receive payment for his shares. If the corporation does not request any such determination or if the court finds that any dissenting shareholder is so entitled, it shall proceed to fix the value of the share, which, for the purposes of this section, shall be the fair value as of the close of business on the day prior to the shareholders' authorization date. In fixing the fair value of the shares, the court shall consider the nature of the transaction giving rise to the shareholder's right to receive payment for shares and its effects on the corporation and its shareholders, the concepts and methods then customary in the relevant securities and financial markets for determining fair value of shares of a corporation engaging in a similar transaction under comparable circumstances and all other relevant factors. The court shall determine the fair value of the shares without referral to an appraiser or referee. Upon application by the corporation or by any shareholder who is a party to the proceeding, the court may, in its discretion, permit pretrial disclosure, including, but not limited to, disclosure of any expert's reports relating to the fair value of the shares whether or not intended for use at the trial in the proceeding.
- (5) The final order in the proceeding shall be entered against the corporation in favor of each dissenting shareholder who is a party to the proceeding and is entitled thereto for the value of his shares so determined.
- (6) The final order shall include an allowance for interest at such rate as the court finds to be equitable, from the date the corporate action was consummated to the date of payment. In determining the rate of interest, the court shall consider all relevant factors, including the rate of interest which the corporation would have had to pay to borrow money during the pendency of the proceeding. If the court finds that the refusal of any shareholder to accept the corporate offer of payment for his shares was arbitrary, vexatious or otherwise not in good faith, no interest shall be allowed to him.
- (7) Each party to such proceeding shall bear its own costs and expenses, including the fees and expenses of its counsel and of any experts employed by it. Notwithstanding the foregoing, the court may, in its discretion, apportion and assess all or any parts of the costs, expenses and fees incurred by the corporation against any or all of the dissenting shareholders who are parties to the proceeding, including any who have withdrawn their notices of election as provided in paragraph (e), if the court finds that their refusal to accept the corporate offer was arbitrary, vexatious or otherwise not in good faith. The court may, in its discretion, apportion and assess all or any part of the costs, expenses and fees incurred by any or all of the dissenting shareholders who are parties to the proceeding against the corporation if the court finds any of the following: (A) that the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay; (B) that no offer or required advance payment was made by the corporation; (C) that the corporation failed to institute the special proceeding within the period specified therefore; or (D) that the action of the corporation in complying

with its obligations as provided in this section was arbitrary, vexatious or otherwise not in good faith. In making any determination as provided in clause (A), the court may consider the dollar amount or the percentage, or both, by which the fair value of the shares as determined exceed the corporate offer.

(8) Within sixty days after final determination of the proceeding, the corporation shall pay to each dissenting shareholder the amount found to be due him, upon surrender of the certificates for any such shares represented by certificates.

(i) Shares acquired by the corporation upon the payment of the agreed value therefore or of the amount due under the final order, as provided in this section, shall become treasury shares or be cancelled as provided in section 515 (Reacquired shares), except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

(j) No payment shall be made to a dissenting shareholder under this section at a time when the corporation is insolvent or when such payment would make it insolvent. In such event, the dissenting shareholder shall, at his option:

(1) Withdraw his notice of election, which shall in such event be deemed withdrawn with the written consent of the corporation; or

(2) Retain his status as a claimant against the corporation and, if it is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the non-dissenting shareholders, and if it is not liquidated, retain his right to be paid for his shares, which right the corporation shall be obliged to satisfy when the restrictions of this paragraph do not apply.

(3) The dissenting shareholder shall exercise such option under subparagraph (1) or (2) by written notice filed with the corporation within thirty days after the corporation has given him written notice that payment for his shares cannot be made because of the restrictions of this paragraph. If the dissenting shareholder fails to exercise such option as provided, the corporation shall exercise the option by written notice given to him within twenty days after the expiration of such period of thirty days.

(k) The enforcement by a shareholder of his right to receive payment for his shares in the manner provided herein shall exclude the enforcement by such shareholder of any other right to which he might otherwise be entitled by virtue of share ownership, except as provided in paragraph (e), and except that this section shall not exclude the right of such shareholder to bring or maintain an appropriate action to obtain relief on the ground that such corporate action will be or is unlawful or fraudulent as to him.

(l) Except as otherwise expressly provided in the section, any notice to be given by a corporation to a shareholder under this section shall be given in the manner provided in section 605 (Notice of



meetings of shareholders).

(m) This section shall not apply to foreign corporations except as provided in subparagraph (e)(2) of section 907 (Merger or consolidation of domestic and foreign corporations).

#### **624. BOOKS AND RECORD; RIGHT OF INSPECTION, PRIMA FACIE EVIDENCE**

(a) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders, board and executive committee, if any, and shall keep at the office of the corporation in the Nation, a record containing the names and addresses of all shareholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof. Any of the foregoing books, minutes or record may be in written form or in any other form capable of being converted into written form within a reasonable time.

(b) Any person who shall have been a shareholder of record of a corporation for at least six months immediately preceding his demand, or any person holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding shares, upon at least five days' written demand shall have the right to examine in person or by agent or attorney, during usual business hours, its minutes of the proceedings of its shareholders and record of shareholders and to make extracts therefrom. Holders of voting trust certificates representing shares of the corporation shall be regarded as shareholders for the purpose of this section.

(c) An inspection authorized by paragraph (b) may be denied to such shareholder or other person upon his refusal to furnish to the corporation, its transfer agent or registrar an affidavit that such inspection is not desired for a purpose which is in the interest of a business or object other than the business of the corporation and that he has not within five years sold or offered for sale any list of shareholders of any corporation of any type or kind, whether or not formed under the laws of the Nation, or aided or abetted any person in procuring any such record of shareholders for any such purpose.

(d) Upon refusal by the corporation or by an officer or agent of the corporation to permit an inspection of the minutes of the proceedings of its shareholders or of the record of shareholders as herein provided, the person making the demand for inspection may apply to the Nation court, upon such notice as the court may direct, for an order directing the corporation, its officer or agent to show cause why an order should not be granted permitting such inspection by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such inspection, the court shall grant an order compelling such inspection and awarding such further relief as to the court may seem just and proper.

(e) Upon the written request of any person who shall have been a shareholder of record for at least six months immediately preceding his request, or of any person holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding shares, the corporation

shall give or mail to such shareholder an annual balance sheet and profit and loss statement for the preceding fiscal year, and, if any interim balance sheet or profit and loss statement has been distributed to its shareholders or otherwise made available to the public, the most recent such interim balance sheet or profit and loss statement. The corporation shall be allowed a reasonable time to prepare such annual balance sheet and profit and loss statement.

(f) Nothing herein contained shall impair the power of courts to compel the production for examination of the books and records of a corporation.

(g) The books and records specified in paragraph (a) shall be prima facie evidence of the facts therein stated in favor of the plaintiff in any action or special proceeding against such corporation or any of its officers, directors or shareholders.

#### **625. INFANT SHAREHOLDERS AND BONDHOLDERS**

(a) A corporation may treat an infant who holds shares or bonds of such corporation as having capacity to receive and to empower others to receive dividends, interest, principal and other payments and distributions, to vote or express consent or dissent, in person or by proxy, and to make elections and exercise rights relating to such shares or bonds, unless, in the case of shares, the corporate officer responsible for maintaining the list of shareholders or the transfer agent of the corporation or, in the case of bonds, the treasurer or paying officer or agent has received written notice that such holder is an infant.

(b) An infant holder of shares or bonds of a corporation who has received or empowered others to receive payments or distributions, voted or expressed consent or dissent, or made an election or exercised a right relating thereto, shall have not right thereafter to disaffirm or avoid, as against the corporation, any such act on his part, unless prior to such receipt, vote, consent, dissent, election or exercise, as to share, the corporate officer responsible for maintaining the list of shareholders or its transfer agent or, in the case of bonds, the treasurer or paying officer had received written notice that such holder was an infant.

(c) This section does not limit any other statute which authorizes any corporation to deal with an infant or limits the right of an infant to disaffirm his acts.

#### **626.SHAREHOLDERS' DERIVATIVE ACTION BROUGHT IN THE RIGHT OF THE CORPORATION TO PROCURE A JUDGMENT IN ITS FAVOR**

(a) An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor, by a holder of shares or of voting trust certificates of the corporation or of a beneficial interest in such shares or certificates.

(b) In any such action, it shall be made to appear that the plaintiff is such a holder at the time of bringing the action and that he was such a holder at the time of the transaction of which he complains, or that his shares or his interest therein devolved upon him by operation of law.

(c) In any such action, the complaint shall set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board or the reasons for not making such effort.

(d) Such action shall not be discontinued, compromised or settled, without the approval of the court having jurisdiction of the action. If the court shall determine that the interests of the shareholders or any class or classes thereof will be substantially affected by such discontinuance, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the shareholders or class or classes thereof whose interest it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

(e) If the action on behalf of the corporation was successful, in whole or in part, or if anything was received by the plaintiff or plaintiffs or a claimant or claimants as the result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff or plaintiffs, claimant or claimants, reasonable expenses, including reasonable attorney's fees, and shall direct him or them to account to the corporation for the remainder of the proceeds so received by him or them. This paragraph shall not apply to any judgment rendered for the benefit of injured shareholders only and limited to a recovery of the loss or damage sustained by them.

**627. SECURITY FOR EXPENSES IN SHAREHOLDERS' DERIVATIVE ACTION  
BROUGHT IN THE RIGHT OF THE CORPORATION TO PROCURE A  
JUDGMENT IN ITS FAVOR**

In any action specified in section 626 (Shareholders' derivative action brought in the right of the corporation to procure a judgment in its favor), unless the plaintiff or plaintiffs hold five percent or more of any class of the outstanding shares or hold voting trust certificates or a beneficial interest in shares representing five percent or more of any class of such shares, or the shares, voting trust certificates and beneficial interest of such plaintiff or plaintiffs have a fair value in excess of fifty thousand dollars, the corporation in whose right such action is brought shall be entitled at any stage of the proceedings before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including attorney's fees, which may be incurred by it in connection with such action and by the other parties defendant in connection therewith for which the corporation may become liable under this chapter, under any contract or otherwise under law, to which the corporation shall have recourse in such amounts as the court shall determine upon the termination of such action. The amount of such security may thereafter from time to time be increased or decreased in the discretion of the court upon showing that the security provided has or may become inadequate or excessive.

## **628. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS**

(a) A holder of or subscriber for shares of a corporation shall be under no obligation to the corporation for payment for such shares other than the obligation to pay the unpaid portion of his subscription which in no event shall be less than the amount of the consideration for which such shares could be issued lawfully.

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

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

## **629. CERTAIN TRANSFERS OR ASSIGNMENTS BY SHAREHOLDERS OR SUBSCRIBER; EFFECT**

Any transfer or assignment by a shareholder of his shares, or by a subscriber for shares of his interest in the corporation, shall not relieve him of any liability as a shareholder or subscriber if at the time of such transfer or assignment the aggregate of the corporation's property, exclusive of any property which it may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay its creditors, is not at a fair valuation sufficient in amount to pay its debts, or if such condition is imminent.

## **CHAPTER 7-DIRECTORS AND OFFICERS**

### **701. BOARD OF DIRECTORS. BOARD OF DIRECTORS**

Subject to any provision in the certificate of incorporation authorized by paragraph (b) of section 620 (Agreements as to voting; provision in certificate of incorporation as to control of directors) or by paragraph (b) of section 715 (Officers), the business of a corporation shall be managed under the direction of its board of directors, each of whom shall be at least eighteen years of age. The certificate of incorporation or the by-laws may prescribe other qualifications for directors.

### **702. NUMBER OF DIRECTORS. NUMBER OF DIRECTORS**

(a) The number of directors constituting the entire board shall not be less than three, except that where all the shares of a corporation are owned beneficially and of record by less than three shareholders, the number of directors may be less than three but not less than the number of shareholders. Subject to such limitation, such number may be fixed by the by-laws, or by action of the shareholders or of the board under the specific provisions of a by-law adopted by the shareholders. If not otherwise fixed under this paragraph, the number shall be three. As used in this chapter, "entire board" means the total number of directors which the corporation would have if there were no vacancies.

(b) The number of directors may be increased or decreased by amendment of the by-laws, or by action of the shareholders or of the board under the specific provisions of a by-law adopted by the shareholders, subject to the following limitations:

- (1) If the board is authorized by the by-laws to change the number of directors, whether by amending the by-laws or by taking action under the specific provisions of a by-law adopted by the shareholders, such amendment or action shall require the vote of a majority of the entire board.
- (2) No decrease shall shorten the term of any incumbent director.

### **703. ELECTION AND TERM OF DIRECTORS. ELECTION AND TERM OF DIRECTORS**

(a) At each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting except as authorized by section 704 (Classification of directors). The certificate of incorporation may provide for the election of one or more directors by the holders of the shares of any class or series, or by the holders of bonds entitled to vote in the election of directors pursuant to section 518 (Corporate bonds), voting as a class.

(b) Each director shall hold office until the expiration of the term for which he is elected, and until

his successor has been elected and qualified.

#### **704. CLASSIFICATION OF DIRECTORS. CLASSIFICATION OF DIRECTORS**

(a) The certificate of incorporation or the specific provisions of a by-law adopted by the shareholders may provide that the directors be divided into either two, three or four classes. All classes shall be as nearly equal in number as possible, and no class shall include less than three directors. The terms of office of the directors initially classified shall be as follows: that of the first class shall expire at the next annual meeting of shareholders, the second class at the second succeeding annual meeting, the third class, if any, at the third succeeding annual meeting, and the fourth class, if any, at the fourth succeeding annual meeting.

(b) At each annual meeting after such initial classification, directors to replace those whose terms expire at such annual meeting shall be elected to hold office until the second succeeding annual meeting if there are two classes, the third succeeding annual meeting if there are three classes, or the fourth succeeding annual meeting if there are four classes.

(c) If directors are classified and the number of directors is thereafter changed:

- (1) Any newly created directorships or any decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as possible.
- (2) When the number of directors is increased by the board and any newly created directorships are filled by the board, there shall be no classification of the additional directors until the next annual meeting of shareholders.

#### **705. NEWLY CREATED DIRECTORSHIPS AND VACANCIES. NEWLY CREATED DIRECTORSHIPS AND VACANCIES**

(a) Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board for any reason except the removal of directors without cause may be filled by vote of the board. If the number of the directors then in office is less than a quorum, such newly created directorships and vacancies may be filled by vote of a majority of the directors then in office. Nothing in this paragraph shall affect any provision of the certificate of incorporation or the by-laws which provides that such newly created directorships or vacancies shall be filled by vote of the shareholders, or any provision of the certificate of incorporation specifying greater requirements as permitted under section 709 (Greater requirements as to quorum and vote of directors).

(b) Unless the certificate of incorporation or the specific provisions of a by-law adopted by the shareholders provide that the board may fill vacancies occurring in the board by reason of the removal of directors without cause, such vacancies may be filled only by vote of the shareholders.

(c) A director elected to fill a vacancy, unless elected by the shareholders, shall hold office until the next meeting of shareholders at which the election of directors is in the regular order of business,

and until his successor has been elected and qualified.

#### **706. REMOVAL OF DIRECTORS**

(a) Any or all of the directors may be removed for cause by vote of the shareholders. The certificate of incorporation or the specific provisions of a by-law adopted by the shareholders may provide for such removal by action of the board, except in the case of any director elected by cumulative voting, or by the holders of the shares of any class or series, or holders of bonds, voting as a class, when so entitled by the provisions of the certificate of incorporation.

(b) If the certificate of incorporation or the by-laws so provide, any or all of the directors may be removed without cause by vote of the shareholders.

(c) The removal of directors, with or without cause, as provided in paragraphs (a) and (b) is subject to the following:

(1) In the case of a corporation having cumulative voting, no director may be removed when the votes cast against his removal would be sufficient to elect him if voted cumulatively at an election at which the same total number of votes were cast and the entire board, or the entire class of directors of which he is a member, were then being elected; and

(2) When by the provisions of the certificate of incorporation the holders of the shares of any class or series, or holders of bonds, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the holders of the shares of that class or series, or the holders of such bonds, voting as a class.

(d) An action to procure a judgment removing a director for cause may be brought by the Nation Prosecutor or by the holders of ten percent of the outstanding shares, whether or not entitled to vote. The court may bar from re-election any director so removed for a period fixed by the court.

#### **707. QUORUM OF DIRECTORS**

Unless a greater proportion is required by the certificate of incorporation, a majority of the entire board shall constitute a quorum for the transaction of business or of any specified item of business, except that the certificate of incorporation or the by-laws may fix the quorum at less than a majority of the entire board but not less than one-third thereof.

#### **708. ACTION BY THE BOARD**

(a) Except as otherwise provided in this chapter, any reference in this chapter to corporate action to be taken by the board shall mean such action at a meeting of the board.

(b) Unless otherwise restricted by the certificate of incorporation or the by-laws, any action required

or permitted to be taken by the board or any committee thereof may be taken without a meeting if all members of the board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the board or committee shall be filed with the minutes of the proceedings of the board or committee.

(c) When authorized by the certificate of incorporation or the by-laws, any one or more members of the board or any committee thereof may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

(d) Except as otherwise provided in this chapter, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board.

#### **709. GREATER REQUIREMENT AS TO QUORUM AND VOTE OF DIRECTORS**

(a) The certificate of incorporation may contain provisions specifying either or both of the following:

(1) That the proportion of directors that shall constitute a quorum for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by this chapter in the absence of such provision.

(2) That the proportion of votes of directors that shall be necessary for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by this chapter in the absence of such provision.

(b) An amendment of the certificate of incorporation which changes or strikes out a provision permitted by this section shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, or of such greater proportion of shares or class or series of shares, as may be provided specifically in the certificate of incorporation for changing or striking out a provision permitted by this section.

(c) If the certificate of incorporation of any corporation contains a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every certificate for shares issued by such corporation, except that this requirement shall not apply to any corporation having any class of any equity security registered pursuant to section twelve of the United States Securities Exchange Act of 1934, as amended.



## **710. PLACE AND TIME OF MEETINGS OF THE BOARD**

Meetings of the board, regular or special, may be held at any place within or without this state, unless otherwise provided by the certificate of incorporation or the by-laws. The time and place for holding meetings of the board may be fixed by or under the by-laws, or, if not so fixed, by the board.

## **711. NOTICE OF MEETINGS OF THE BOARD**

(a) Unless otherwise provided by the by-laws, regular meetings of the board may be held without notice if the time and place of such meetings are fixed by the by-laws or the board. Special meetings of the board shall be held upon notice to the directors.

(b) The by-laws may prescribe what shall constitute notice of meeting of the board. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board, unless required by the by-laws.

(c) Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him.

(d) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the by-laws so provide, notice of any adjournment of a meeting of the board to another time or place shall be given to the directors who were not present at the time of adjournment and, unless such time and place are announced at the meeting, to the other directors.

## **712. EXECUTIVE COMMITTEE AND OTHER COMMITTEES**

(a) If the certificate of incorporation or the by-laws so provide, the board, by resolution adopted by a majority of the entire board, may designate from among its members an executive committee and other committees, each consisting of three or more directors, and each of which, to the extent provided in the resolution or in the certificate of incorporation or by-laws, shall have all the authority of the board, except that no such committee shall have authority as to the following matters:

- (1) The submission to shareholders of any action that needs shareholders' approval under this chapter.
- (2) The filling vacancies in the board of directors or in any committee.
- (3) The fixing of compensation of the directors for serving on the board or on any committee.

- (4) The amendment or repeal of the by-laws, or the adoption of new by-laws.
- (5) The amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable.

(b) The board may designate one or more directors as alternate members of any such committee, who may replace any absent member or members at any meeting of such committee.

(c) Each such committee shall serve at the pleasure of the board. The designation of any such committee, the delegation thereto of authority, or action by any such committee pursuant to such authority shall not alone constitute performance by any member of the board who is not a member of the committee in question, of his duty to the corporation under section 717 (Duty of directors).

### **713. INTERESTED DIRECTORS**

(a) No contract or other transaction between a corporation and one or more of its directors, or between a corporation and any other corporation, firm, association or other entity in which one or more of its directors are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such director or directors are present at the meeting of the board, or of a committee thereof, which approves such contract or transaction, or that his or their votes are counted for such purpose:

- (1) If the material facts as to such director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the board or committee, and the board or committee approves such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested director or, if the votes of the disinterested directors are insufficient to constitute an act of the board as defined in section 708 (Action by the board), by unanimous vote of the disinterested directors; or

- (2) If the material facts as to such director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the shareholders entitled to vote thereon, and such contract or transaction is approved by vote of such shareholders.

(b) If such good faith disclosure of the material facts as to the director's interest in the contract or transaction and as to any such common directorship, officership or financial interest is made to the directors or shareholders, or known to the board or committee or shareholders approving such contract or transaction, as provided in paragraph (a), the contract or transaction may not be avoided by the corporation for the reasons set forth in paragraph (a). If there was no such disclosure or knowledge, or if the vote of such interested director was necessary for the approval of such contract or transaction at a meeting of the board or committee at which it was approved, the corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the corporation at the time it was approved

by the board, a committee or the shareholders.

(c) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board or of a committee which approves such contract or transaction.

(d) The certificate of incorporation may contain additional restrictions on contracts or transactions between a corporation and its directors and may provide that contracts or transactions in violation of such restrictions shall be void or voidable by the corporation.

(e) Unless otherwise provided in the certificate of incorporation or the by-laws, the board shall have authority to fix the compensation of directors for services in any capacity.

#### **714. LOANS TO DIRECTORS**

A loan shall not be made by a corporation to any director unless it is authorized by vote of the shareholders. For this purpose, the shares of the director who would be the borrower shall not be shares entitled to vote. A loan made in violation of this section shall be a violation of the duty to the corporation of the directors approving it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

#### **715. OFFICERS**

(a) The board may elect or appoint a president, one or more vice-presidents, a secretary and a treasurer, and such other officers as it may determine, or as may be provided in the by-laws.

(b) The certificate of incorporation may provide that all officers or that specified officers shall be elected by the shareholders instead of by the board.

(c) Unless otherwise provided in the certificate of incorporation or the by-laws, all officers shall be elected or appointed to hold office until the meeting of the board following the next annual meeting of shareholders or, in the case of officers elected by the shareholders, until the next annual meeting of shareholders.

(d) Each officer shall hold office for the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified.

(e) Any two or more offices may be held by the same person, except the offices of president and secretary. When all of the issued and outstanding stock of the corporation is owned by one person, such person may hold all or any combination of offices.

(f) The board may require any officer to give security for the faithful performance of his duties.

(g) All officers as between themselves and the corporation shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws or, to the

extent not so provided, by the board.

(h) An officer shall perform his duties as an officer in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances. In performing his duties, an officer shall be entitled to rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared by:

- (1) one or more other officers or employees of the corporation or of any other corporation of which at least fifty percentum of the outstanding shares of stock entitling the holders thereof to vote for the election of directors is owned directly or indirectly by the corporation, whom the officer believes to be reliable and competent in the matter presented, or
- (2) counsel, public accountants or other persons as to matter which the officer believes to be within such person's professional or expert competence, so long as in so relying he shall be acting in good faith and with such degree of care, but he shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs his duties shall have no liability by reason of being or having been an officer of the corporation.

#### **716. REMOVAL OF OFFICERS**

(a) Any officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the shareholders may be removed, with or without cause, only by vote of the shareholders, but his authority to act as an officer may be suspended by the board for cause.

(b) The removal of an officer without cause shall be without prejudice to his contract rights, if any. The election or appointment of an officer shall not of itself create contract rights.

(c) An action to procure a judgment removing an officer for cause may be brought by the Nation Prosecutor or by the holders of ten percent of the outstanding shares, whether or not entitled to vote. The court may bar from re-election or reappointment any officer so removed for a period fixed by the court.

#### **717. DUTY OF DIRECTORS**

(a) A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances. In performing his duties, a director shall be entitled to rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by:

- (1) one or more officers or employees of the corporation or of any other corporation of which at least fifty percentum of the outstanding shares of stock entitling the holders thereof to vote for the election of directors is owned directly or indirectly by the corporation, whom the director believes to be reliable and competent in the matters presented,
- (2) counsel, public accountants or other persons as to matters which the director believes to be within such person's professional or expert competence, or
- (3) a committee of the board upon which he does not serve, duly designated in accordance with a provision of the certificate of incorporation or the by-laws, as to matters within its designated authority, which committee the director believes to merit confidence, so long as in so relying he shall be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs his duties shall have no liability by reason of being or having been a director of the corporation.

(b) In taking action, including, without limitation, action which may involve or relate to a change or potential change in the control of the corporation, a director shall be entitled to consider, without limitation,

- (1) both the long-term and the short-term interests of the corporation and its shareholders and
- (2) the effects that the corporation's actions may have in the short-term or in the long-term upon any of the following:
  - (i) the prospects for potential growth, development, productivity and profitability of the corporation;
  - (ii) the corporation's current employees;
  - (iii) the corporation's retired employees and other beneficiaries receiving or entitled to receive retirement, welfare or similar benefits from or pursuant to any plan sponsored, or agreement entered into, by the corporation;
  - (iv) the corporation's customers and creditors; and
  - (v) the ability of the corporation to provide, as a going concern, goods, services, employment opportunities and employment benefits and otherwise to contribute to the communities in which it does business.

Nothing in this paragraph shall create any duties owed by any director to any person or entity to consider or afford any particular weight to any of the foregoing or abrogate any duty of the directors, either statutory or recognized by common law or court decisions.

For purposes of this paragraph, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the corporation, whether through the ownership of voting stock by contract, or otherwise.

#### **718. LIST OF DIRECTORS AND OFFICERS**

(a) If a shareholder or creditor of a corporation, in person or by his attorney or agent, or the Nation Clerk, or the Nation Prosecutor, makes a written demand on a corporation to inspect a current list of its directors and officers and their residence addresses, the corporation shall, within two business days after receipt of the demand and for a period of one week thereafter, make the list available for such inspection at its office during usual business hours.

(b) Upon refusal by the corporation to make a current list of its directors and officers and their residence addresses available, as provided in paragraph (a), the person making a demand for such list may apply, ex parte, to the Nation court for an order directing the corporation to make such list available. The court may grant such order or take such other action as it may deem just and proper.

#### **719. LIABILITY OF DIRECTORS IN CERTAIN CASES**

(a) Directors of a corporation who vote for or concur in any of the following corporate actions shall be jointly and severally liable to the corporation for the benefit of its creditors or shareholders, to the extent of any injury suffered by such persons, respectively, as a result of such action:

- (1) The declaration of any dividend or other distribution to the extent that it is contrary to the provisions of paragraphs (a) and (b) of section 510 (Dividends or other distributions in cash or property).
- (2) The purchase of the shares of the corporation to the extent that it is contrary to the provisions of section 513 (Purchase or redemption by a corporation of its own shares).
- (3) The distribution of assets to shareholders after dissolution of the corporation without paying or adequately providing for a known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set in a notice given to creditors under chapter 10 (Non-judicial dissolution) or 11 (Judicial dissolution).
- (4) The making of any loan contrary to section 714 (Loans to directors).

(b) A director who is present at a meeting of the board, or any committee thereof, when action specified in paragraph (a) is taken shall be presumed to have concurred in the action unless his dissent thereto shall be entered in the minutes of the meeting, or unless he shall submit his written

dissent to the person acting as the secretary of the meeting before the adjournment thereof, or shall deliver or send by registered mail such dissent to the secretary of the corporation promptly after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. A director who is absent from a meeting of the board, or any committee thereof, when such action is taken shall be presumed to have concurred in the action unless he shall deliver or send by registered mail his dissent thereto to the secretary of the corporation or shall cause such dissent to be filed with the minutes of the proceedings of the board or committee within a reasonable time after learning of such action.

(c) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the action upon which the claim is asserted.

(d) Directors against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amounts paid by them to the corporation as a result of such claims:

- (1) Upon payment to the corporation of any amount of an improper dividend or distribution, to be subrogated to the rights of the corporation against shareholders who received such dividend or distribution with knowledge of facts indicating that it was not authorized by section 510, in proportion to the amounts received by them respectively.
- (2) Upon payment to the corporation of any amount of the purchase price of an improper purchase of shares, to have the corporation rescind such purchase of shares and recover for their benefit, but at their expense, the amount of such purchase price from any seller who sold such shares with knowledge of facts indicating that such purchase of shares by the corporation was not authorized by section 513.
- (3) Upon payment to the corporation of the claim of any creditor by reason of a violation of subparagraph (a)(3), to be subrogated to the rights of the corporation against shareholders who received an improper distribution of assets.
- (4) Upon payment to the corporation of the amount of any loans made contrary to section 714, to be subrogated to the rights of the corporation against a director who received the improper loan.

(e) A director shall not be liable under this section if, in the circumstances, he performed his duty to the corporation under section 717.

(f) This section shall not affect any liability otherwise imposed by law upon any director.

## **720. ACTION AGAINST DIRECTORS AND OFFICERS FOR MISCONDUCT**

(a) An action may be brought against one or more directors or officers of a corporation to procure a judgment for the following relief:

- (1) Subject to any provision of the certificate of incorporation authorized pursuant to paragraph (b) of section 402, to compel the defendant to account for his official conduct in the following cases:
  - (A) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge.
  - (B) The acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.
- (2) To set aside an unlawful conveyance, assignment or transfer of corporate assets, where the transferee knew of its unlawfulness.
- (3) To enjoin a proposed unlawful conveyance, assignment or transfer of corporate assets, where there is sufficient evidence that it will be made.

(b) An action may be brought for the relief provided in this section, and in paragraph (a) of section 719 (Liability of directors in certain cases) by a corporation, or a receiver, trustee in bankruptcy, officer, director or judgment creditor thereof, or, under section 626 (Shareholders' derivative action brought in the right of the corporation to procure a judgment in its favor), by a shareholder, voting trust certificate holder, or the owner of a beneficial interest in shares thereof.

(c) This section shall not affect any liability otherwise imposed by law upon any director or officer.

## **721. NON-EXCLUSIVITY OF STATUTORY PROVISIONS FOR INDEMNIFICATION OF DIRECTORS AND OFFICERS**

The indemnification and advancement of expenses granted pursuant to, or provided by, this chapter shall not be deemed exclusive of any other rights to which a director or officer seeking indemnification or advancement of expenses may be entitled, whether contained in the certificate of incorporation or the by-laws or, when authorized by such certificate of incorporation or by-laws, (i) a resolution of shareholders, (ii) a resolution of directors, or (iii) an agreement providing for such indemnification, provided that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled. Nothing contained in this chapter shall affect any rights to indemnification to which corporate personnel other than directors and officers may be entitled by contract or otherwise under law.



## **722.AUTHORIZATION FOR INDEMNIFICATION OF DIRECTORS AND OFFICERS**

(a) A corporation may indemnify any person made, or threatened to be made, a party to an action or proceeding (other than one by or in the right of the corporation to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the corporation served in any capacity at the request of the corporation, by reason of the fact that he, his testator or intestate, was a director or officer of the corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful.

(b) The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such director or officer did not act, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation or that he had reasonable cause to believe that his conduct was unlawful.

(c) A corporation may indemnify any person made, or threatened to be made a party to an action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he, his testator or intestate, is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of any other corporation of any type of kind, domestic or foreign, of any partnership, joint venture, trust employee benefit plan or other enterprise, against amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, if such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation, except that no indemnification under this paragraph shall be the corporation, except that no indemnification under this paragraph shall be made in respect of (1) a threatened action, or a pending action which is settled or otherwise disposed of, or (2) any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the Nation, determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

(d) For the purpose of this section, a corporation shall be deemed to have requested a person to

serve an employee benefit plan where the performance by such person of his duties to the corporation also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to applicable law shall be considered fines; and action taken or omitted by a person with respect to an employee benefit plan in the performance of such person's duties for a purpose reasonably believed by such person to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

### **723. PAYMENT OF INDEMNIFICATION OTHER THAN BY COURT AWARD**

(a) A person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in section 722 shall be entitled to indemnification as authorized in such section.

(b) Except as provided in paragraph (a), any indemnification under section 722 or otherwise permitted by section 721, unless ordered by the Nation court under section 724 (indemnification of directors and officers by a court), shall be made by the corporation, only if authorized in the specific case:

- (1) By the board acting by a quorum consisting of directors who are no parties to such action or proceeding upon a finding that the director or officer has met the standard of conduct set forth in section 722 or established pursuant to section 721, as the case may be, or,
- (2) If a quorum under subparagraph (1) is not obtainable or, even if obtainable, a quorum of disinterested directors so directs;
  - (A) By the board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in such sections has been met by such director or officer, or
  - (B) By the shareholders upon a finding that the director or officer has met the applicable standard of conduct set forth in such sections.

(c) Expenses incurred in defending a civil or criminal action or proceeding may be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount as, and to the extent, required by paragraph (a) of section 725.

## **724. INDEMNIFICATION OF DIRECTORS AND OFFICERS BY A COURT**

(a) Notwithstanding the failure of a corporation to provide indemnification, and despite any contrary resolution of the board or of the shareholders in the specific case under section 723 (Payment of indemnification other than by court award), indemnification shall be awarded by the Nation court to the extent authorized under section 722 (Authorization for indemnification of directors and officers), and paragraph (a) of section 723. Application therefore may be made, in every case, either:

- (1) In the civil action or proceeding in which the expenses were incurred or other amounts were paid, or
- (2) To the Nation court in a separate proceeding, in which case the application shall set forth the disposition of any previous application made to any court for the same or similar relief and also reasonable cause for the failure to make application for such relief in the action or proceeding in which the expenses were incurred or other amounts were paid

(b) The application shall be made in such manner and form as may be required by the applicable rules of court or, in the absence thereof, by direction of the Nation court. Such application shall be upon notice to the corporation. The Nation court may also direct that notice be given at the expense of the corporation to the shareholders and such other persons as it may designate in such manner as it may require.

(c) Where indemnification is sought by judicial action, the court may allow a person such reasonable expenses, including attorneys' fees, during the pendency of the litigation as are as necessary in connection with his defense therein, if the court shall find that the defendant has by his pleadings or during the course of the litigation raised genuine issues of fact or law.

## **725. OTHER PROVISIONS AFFECTING INDEMNIFICATION OF DIRECTORS AND OFFICERS**

(a) All expenses incurred in defending a civil or criminal action or proceeding which are advanced by the corporation under paragraph (c) of section 723 (Payment of indemnification other than by court award) or allowed by the court under paragraph (c) of section 724 (Indemnification of directors and officers by the court) shall be repaid in case the person receiving such advancement or allowance is ultimately found, under the procedure set forth in this chapter, not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the corporation or allowed by the court exceed the indemnification to which he is entitled.

(b) No indemnification, advancement or allowance shall be made under this chapter in any circumstance where it appears:

- (1) That the indemnification would be inconsistent with a provision of the jurisdiction of

incorporation of a foreign corporation which prohibits or otherwise limits such indemnification;

- (2) That the indemnification would be inconsistent with a provision of the certificate of incorporation, a by-law, a resolution of the board or of the shareholders, an agreement or other proper corporate action, in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
- (3) If there has been a settlement approved by the court, that the indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

(c) If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the shareholders, the corporation shall, not later than the next annual meeting of shareholders unless such meeting held within three months from the date of such payment, and, in any event, within fifteen months from the date of such payment, mail to its shareholders of record at the time entitled to vote for the election of directors a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

(d) If any action with respect to indemnification of directors and officers is taken by way of amendment of the by-laws, resolution of directors, or by agreement, then the corporation shall, not later than the next annual meeting of shareholders, unless such meeting is held within three months from the date of such action, and, in any event, within fifteen months from the date of such action, mail to its shareholders of record at the time entitled to vote for the election of directors a statement specifying the action taken.

(e) Any notification required to be made pursuant to the foregoing paragraph (c) or (d) of this section by any domestic mutual insurer shall be satisfied by compliance with the corresponding provisions of section one thousand two hundred sixteen of the insurance law.

(f) The provisions of this chapter relating to indemnification of directors and officers and insurance therefore shall apply to domestic corporations and foreign corporations doing business within the territorial jurisdiction of the Nation, except as provided in section 1320 (Exemption from certain provisions).

## **726. INSURANCE FOR INDEMNIFICATION OF DIRECTORS AND OFFICERS**

(a) Subject to paragraph (b), a corporation shall have power to purchase and maintain insurance:

- (1) To indemnify the corporation for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of this chapter, and

- (2) To indemnify directors and officers in instances in which they may be indemnified by the corporation under the provisions of this chapter, and
- (3) To indemnify directors and officers in instances in which they may not otherwise be indemnified by the corporation under the provisions of this chapter provided the contract of insurance covering such directors and officers provides, in a manner acceptable to the superintendent of insurance, for a retention amount and for co-insurance.

(b) No insurance under paragraph (a) may provide for any payment, other than cost of defense, to or on behalf of any director or officer:

- (1) if a judgment or other final adjudication adverse to the insured director or officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled, or
- (2) in relation to any risk the insurance of which is prohibited under the insurance law of this state.

(c) Insurance under any or all subparagraphs of paragraph (a) may be included in a single contract or supplement thereto. Retrospective rated contracts are prohibited.

(d) The corporation shall, within the time and to the persons provided in paragraph (c) of section 725 (Other provisions affecting indemnification of directors or officers), mail a statement in respect of any insurance it has purchased or renewed under this section, specifying the insurance carrier, date of the contract, cost of the insurance, corporate positions insured, and a statement explaining all sums, not previously reported in a statement to shareholders, paid under any indemnification insurance contract.

## CHAPTER 8-AMENDMENTS AND CHANGES

### 801. RIGHT TO AMEND CERTIFICATE OF INCORPORATION

(a) A corporation may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, if such amendment contains only such provisions as might be lawfully contained in an original certificate of incorporation filed at the time of making such amendment.

(b) In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

- (1) To change its corporate name.
- (2) To enlarge, limit or otherwise change its corporate purposes.
- (3) To specify or change the location of the office of the corporation.
- (4) To specify or change the post office address to which the Nation Clerk shall mail a copy of any process against the corporation served upon him.
- (5) To make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.
- (6) To extend the duration of the corporation or, if the corporation ceased to exist because of the expiration of the duration specified in its certificate of incorporation, to revive its existence.
- (7) To increase or decrease the aggregate number of shares, or shares of any class or series, with or without par value, which the corporation shall have authority to issue.
- (8) To remove from authorized shares any class of shares, or any shares of any class, whether issued or unissued.
- (9) To increase the par value of any authorized shares of any class with par value, whether issued or unissued.
- (10) To reduce the par value of any authorized shares of any class with par value, whether issued or unissued.
- (11) To change any authorized shares, with or without par value, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of any one or more classes or any series thereof, either with or without par value.

- (12) To fix, change or abolish the designation of any authorized class or any series thereof or any of the relative rights, preferences and limitations of any shares of any authorized class or any series thereof, whether issued or unissued, including any provisions in respect of any undeclared dividends, whether or not cumulative or accrued, or the redemption of any shares, or any sinking fund for the redemption or purchase of any shares, or any preemptive right to acquire shares or other securities.
- (13) As to the shares of any preferred class, then or theretofore authorized, which may be issued in series, to grant authority to the board or to change or revoke the authority of the board to establish and designate series and to fix the number of shares and the relative rights, preferences and limitation as between series.
- (14) To strike out, change or add any provision, not inconsistent with this chapter of any other statute, relating to the business of the corporation, its affairs, its rights or powers, or the right or powers of its shareholders, directors or officers, including any provision which under this chapter is required or permitted to be set forth in the by-laws, except that a certificate of amendment may not be filed wherein the duration of the corporation shall be reduced.

(c) A corporation created by special act may accomplish any or all amendments permitted in this chapter, in the manner and subject to the conditions provided in this chapter.

## **802. REDUCTION OF STATED CAPITAL BY AMENDMENT**

(a) A corporation may reduce its stated capital by an amendment of its certificate of incorporation under section 801 (Right to amend certificate of incorporation) which:

- (1) Reduces the par value of any issued shares with par value.
- (2) Changes issued shares under subparagraph (b)(11) of section 801 that results in a reduction of stated capital.
- (3) Removes from authorized shares, shares that have been issued, reacquired and cancelled by the corporation.

(b) This section shall not prevent a corporation from reducing its stated capital in any other manner permitted by this chapter.

### **803. AUTHORIZATION OF AMENDMENT OR CHANGE**

(a) Amendment or change of the certificate of incorporation may be authorized by vote of the board, followed by vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders.

(b) Alternatively, any one or more of the following changes may be authorized by or pursuant to authorization of the board:

(1) To specify or change the location of the corporation's office.

(2) To specify or change the post office address to which the Nation Clerk shall mail a copy of any process against the corporation served upon him.

(3) To make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

(c) This section shall not alter the vote required under any other section for the authorization of an amendment referred to therein, nor alter the authority of the board to authorized amendments under any other section.

(d) Amendment or change of the certificate of incorporation of a corporation which has no shareholders of record, no subscribers for shares whose subscriptions have been accepted and no directors may be authorized by the sole incorporator or a majority of the incorporators.

### **804. CLASS VOTING ON AMENDMENT**

(a) Notwithstanding any provision in the certificate of incorporation, the holders of shares of a class or series shall be entitled to vote and to vote as a class upon the authorization of an amendment and, in addition to the authorization of the amendment by vote of the holders of a majority of all outstanding shares entitled to vote thereon, the amendment shall be authorized by vote of the holders of a majority of all outstanding shares of the class or series when a proposed amendment would:

(1) Exclude or limit their right to vote on any matter, except as such right may be limited by voting rights given to new shares then being authorized of any existing or new class or series.

(2) Change their shares under subparagraphs (b)(10), (11) or (12) of section 801 (Right to amend certificate of incorporation) or provide that their shares may be converted into shares of any other class or into shares of any other series of the same class, or alter the terms or conditions upon which their shares are convertible or change the shares issuable upon conversion of their shares, if such action would adversely affect such holders, or



- (3) Subordinate their rights, by authorizing shares having preferences which would be in any respect superior to their rights.

(b) If any proposed amendment referred to in paragraph (a) would adversely affect or subordinate the rights of the holders of shares of only one or more series of any class, but not the entire class, then only the holders of each series whose rights would be adversely affected or subordinated shall be considered a separate class for the purposes of this section.

## **805. CERTIFICATE OF AMENDMENT; CONTENTS**

(a) To accomplish any amendment, a certificate of amendment, entitled "Certificate of amendment of the certificate of incorporation of ..... (name of corporation) under section 805 of the Business Corporation Code", shall be signed, verified and delivered to the Nation Clerk. It shall set forth:

- (1) The name of the corporation and, if it has been changed, the name under which it was formed.
- (2) The date its certificate of incorporation was filed by the Nation Clerk.
- (3) Each amendment effected thereby, setting forth the subject matter of each provision of the certificate of incorporation which is to be amended or eliminated and the full text of the provision or provisions, if any, which are to be substituted or added.
- (4) If an amendment provides for a change of shares, the number, par value and class of issued shares changed, the number, par value and class of issued shares resulting from such change, the number, par value and class of unissued shares changed, the number, par value and class of unissued shares resulting from such change and the terms of each such change. If an amendment makes two or more such changes, a like statement shall be included in respect to each change.
- (5) If any amendment reduces stated capital, then a statement of the manner in which the same is effected and the amounts from which and to which stated capital is reduced.
- (6) The manner in which the amendment of the certificate of incorporation was authorized.

(b) Any number of amendments or changes may be included in one certificate under this section. Such certificate may also include any amendments or changes permitted by other sections and in that case the certificate shall set forth any additional statement required by any other section specifying the contents of a certificate to effect such amendment or change.

(c) In case of a change of shares, the shares resulting from such change, shall upon the filing of the certificate of amendment, be deemed substituted for the shares changed, in accordance with the stated terms of change.

**805-A. CERTIFICATE OF CHANGE; CONTENTS**

(a) Any one or more of the changes authorized by subdivision (b) of section 803 (Authorization of amendment or change) may be accomplished by filing a certificate of change which shall be entitled "Certificate of change of ..... (name of corporation) under section 805-A of the Business Corporation Code" and shall be signed, verified and delivered to the Nation Clerk. It shall set forth:

- (1) The name of the corporation, and if it has been changed, the name under which it was formed.
- (2) The date its certificate of incorporation was filed by the Nation Clerk.
- (3) Each change effected thereby.
- (4) The manner in which the change was authorized.

(b) A certificate of change which changes only the post office address to which the Nation Clerk shall mail a copy of any process against a corporation served upon him or the address of the registered agent, provided such address being changed is the address of a person, partnership or other corporation whose address, as agent, is the address to be changed or who has been designated as registered agent for such corporation, may be signed, verified and delivered to the Nation Clerk by such agent. The certificate of change shall set forth the statements required under subparagraphs (a)(1), (2) and (3) of this section; that a notice of the proposed change was mailed to the corporation by the party signing the certificate not less than thirty days prior to the date of delivery to the Secretary and that such corporation has not objected thereto; and that the party signing the certificate is the agent of such corporation to whose address the Nation Clerk is required to mail copies of process or the registered agent, if such be the case. A certificate signed, verified and delivered under this paragraph shall not be deemed to effect a change of location of the office of the corporation in whose behalf such certificate is filed.

**806. PROVISIONS AS TO CERTAIN PROCEEDINGS**

(a) The Nation Clerk shall not file a certificate of amendment reviving the existence of a corporation unless the consent of the Oneida Indian Nation to the revival is delivered to the Nation Clerk. If the name of the corporation being revived is not available under section 301 (Corporate name; general) for use by a corporation then being formed under this chapter, the certificate of amendment shall change the name to one which is available for such use.

(b) The following provisions shall apply to amendments and changes under this chapter, except under section 808 (Reorganization under act of congress):

- (1) The stated capital in respect of any shares without par value resulting from a change of issued shares shall be the amount of stated capital in respect of the shares changed or, if

such stated capital is reduced by the amendment, the reduced amount stated in the certificate of amendment. No corporation shall change issued shares into both shares with par value and shares without par value unless the stated capital in respect of the shares so changed or, if such stated capital is reduced by the amendment, the reduced amount of stated capital stated in the certificate of amendment, exceeds the par value of the shares with par value resulting from such change; and the amount of such excess shall be the stated capital in respect of the shares without par value resulting from such change.

- (2) No corporation shall increase the aggregate par value of its issued shares with par value, unless, after giving effect to such increase, the stated capital is at least equal to the amount required by subparagraph (a)(12) of section 102 (Definitions).
- (3) No reduction of stated capital shall be made by amendment unless after such reduction the stated capital exceeds the aggregate preferential amount payable upon involuntary liquidation upon all issued shares having preferential rights in assets plus the par value of all other issued shares with par value.
- (4) Any changes that may be made in the relative rights, preferences and limitations of the authorized shares of any class by any certificate of amendment which does not eliminate such shares from authorized shares or change them into shares of another class, shall not for the purpose of any statute or rule of law effect an issue of a new class of shares.
- (5) No amendment or change shall affect any existing cause of action in favor of or against the corporation, or any pending suit which it shall be a party, or the existing rights of persons other than shareholders; and in the event the corporate name shall be changed, no suit brought by or against the corporation under its former name shall abate for that reason.
- (6) A holder of any adversely affected shares who does not vote for or consent in writing to the taking of such action shall, subject to complying with the provisions of section 623 (Procedure to enforce shareholder's right to receive payment for shares), have the right to dissent and to receive payment for such shares, if the certificate of amendment (A) alters or abolishes any preferential right of such shares having preferences; (B) creates, alters or abolishes any provision or right in respect of the redemption of such shares or any sinking fund for the redemption or purchase of such shares; (C) alters or abolishes any preemptive right of such holder to acquire shares or other securities; or (D) excludes or limits the right of such holder to vote on any matter, except as such right may be limited by the voting rights given to new shares then being authorized of any existing or new class.

## 807. RESTATED CERTIFICATE OF INCORPORATION

(a) A corporation, when authorized by the board, may restate in a single certificate the text of its certificate of incorporation without making any amendment or change thereby, except that it may include any one or more of the amendments or changes which may be authorized by the board without a vote of shareholders under this chapter. Alternatively, a corporation may restate in a single certificate the text of its certificate of incorporation as amended thereby to effect any one or more of the amendments or changes authorized by this chapter, when authorized by the required vote of the holders of shares entitled to vote thereon.

(b) A restated certificate of incorporation, entitled "Restated certificate of incorporation of ..... (name of corporation) under section 807 of the Business Corporation Code", shall be signed, verified and delivered to the Nation Clerk. It shall set forth:

- (1) The name of the corporation and, if it has been changed, the name under which it was formed.
- (2) The date its certificate of incorporation was filed by the Nation Clerk.
- (3) If the restated certificate restates the text of the certificate of incorporation without making any amendment or change, then a statement that the text of the certificate of incorporation is thereby restated without amendment or changed to read as therein set forth in full.
- (4) If the restated certificate restates the text of the certificate of incorporation as amended or changed thereby, then a statement that the certificate of incorporation is amended or changed to effect one or more of the amendments or changes authorized by this chapter, specifying each such amendment or change and that the text of the certificate of incorporation is thereby restated as amended or changed to read as therein set forth in full.
- (5) If an amendment, effected by the restated certificate, provides for a change of issued shares, the number and kind of shares changed, the number and kind of shares resulting from such change and the terms of change. If any amendment makes two or more such changes, a like statement shall be included in respect to each such change.
- (6) If the restated certificate contains an amendment which effects a reduction of stated capital, then a statement of the manner in which the same is effected and the amounts from which and to which stated capital is reduced.
- (7) The manner in which the restatement of the certificate of incorporation was authorized.

(c) A restated certificate need not include statements as to the incorporator or incorporators, the original subscribers for shares or the first directors.

(d) Any amendment or change under this section shall be subject to any other section, not inconsistent with this section, which would be applicable if a separate certificate were filed to effect such amendment or change.

(e) Notwithstanding that the corporation would be required by any statute to secure from any Nation official, department, board, agency or other body, any consent or approval to the filing of its certificate of incorporation or a certificate of amendment, such consent or approval shall not be required with respect to the restated certificate if such certificate makes no amendment and if any previously required consent of approval had been secured.

(f) Upon filing by the Secretary, the original certificate of incorporation shall be superseded and the restated certificate of incorporation, including any amendments and changes made thereby, shall be the certificate of incorporation of the corporation.

### **808. REORGANIZATION**

(a) Whenever a plan of reorganization of a corporation has been confirmed by a decree or order of a court in proceedings under any applicable law relating to reorganization of corporations, the corporation shall have authority, without action of its shareholders or board, to put into effect and carry out the plan and decree and orders of the court relative thereto, and take any proceeding and any action for which provision is made in any statute governing the corporation or for which provision is or might be made in its certificate of incorporation or by-laws and which is provided for in such plan or directed by any such decree or order.

(b) Such authority may be exercised, and such proceedings and actions may be taken, as may be directed by any such decree or order, by the trustee or trustees of such corporation appointed in the reorganization proceedings, or if none is acting, by any person or persons designated or appointed for the purpose by any such decree or order, with like effect as if exercised and taken by unanimous action of the board and shareholders of the corporation.

(c) Any certificate, required or permitted by law to be filed or recorded to accomplish any corporate purpose, shall be signed, and verified or acknowledged, under any such decree or order, by such trustee or trustees or the person or persons referred to in paragraph (b), and shall certify that provision for such certificate is contained in the plan of reorganization or in a decree or order of the court relative thereto, and that the plan has been confirmed, as provided in an applicable law, specified in the certificate, with the title and venue of the proceeding and the date when the decree or order confirming the plan was made, and such certificate shall be delivered to the Nation Clerk.

(d) A shareholder of any such corporation shall have no right to receive payment for his shares and only such rights, if any, as are provided in the plan of reorganization.

(e) Notwithstanding section 504 (Consideration and payment for shares), such corporation may, after the confirmation of such plan, issue its shares, bonds and other securities for the consideration

specified in the plan of reorganization and may issue warrants or other optional rights for the purchase of shares upon such terms and conditions as may be set forth in such plan.

(f) If after the filing of any such certificate by the Nation Clerk, the decree or order of confirmation of the plan or reorganization is reversed or vacated or such plan is modified, such other or further certificates shall be executed and delivered to the Nation Clerk as may be required to conform to the plan of reorganization as finally confirmed or to the decree or order as finally made.

(g) Except as otherwise provided in this section, no certificates filed by the Nation Clerk hereunder shall confer on any corporation any powers other than those permitted to be conferred on a corporation formed under this chapter.

(h) If, in any proceeding under any applicable law relating to reorganization of corporations, a decree or order provides for the formation of a new domestic corporation or for the authorization of a new foreign corporation to do business within the territorial jurisdiction of the Nation under a name the same as or similar to that of the corporation being reorganized, the certificate of incorporation of the new domestic corporation or the application of the new foreign corporation shall set forth that it is being delivered pursuant to such decree or order and be endorsed with the consent of the Nation court. After such certificate of incorporation or application has been filed, the corporation being reorganized shall not continue the use of its name except in connection with the reorganization proceeding and as may be necessary to adjust and wind up its affairs, and thirty days after such filing, the reorganized domestic corporation shall be automatically dissolved or the authority of the reorganized foreign corporation to transact business within the territorial jurisdiction of the Nation shall cease. To the extent that the adjustment and winding up of the affairs of such dissolved corporation is not accomplished as a part of the proceeding or prescribed by the decree or order of such court, it shall proceed in accordance with the provisions of chapter 10 (Non-judicial dissolution).

## **CHAPTER 9-MERGER OR CONSOLIDATION; GUARANTEE; DISPOSITION OF ASSETS**

### **901. POWER OF MERGER OR CONSOLIDATION**

(a) Two or more domestic corporations may, as provided in this chapter:

- (1) Merge into a single corporation which shall be one of the constituent corporations; or
- (2) Consolidate into a single corporation which shall be a new corporation to be formed pursuant to the consolidation.

(b) Whenever used in this chapter:

- (1) "Merger" means a procedure of the character described in subparagraph (a)(1).
- (2) "Consolidation" means an procedure of the character described in subparagraph (a)(2).
- (3) "Constituent corporation" means an existing corporation that is participating in the merger or consolidation with one or more other corporations.
- (4) "Surviving corporation" means the constituent corporation into which one or more other constituent corporations are merged.
- (5) "Consolidated corporation" means the new corporation into which two or more constituent corporations are consolidated.

### **902. PLAN OF MERGER OR CONSOLIDATION**

(a) The board of each corporation proposing to participate in a merger or consolidation under section 901 (Power of merger or consolidation) shall adopt a plan of merger or consolidation, setting forth:

- (1) The name of each constituent corporation and, if the name of any of them has been changed, the name under which it was formed; and the name of the surviving corporation, or the name, or the method of determining it, of the consolidated corporation.
- (2) As to each constituent corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote and further specifying each class and series, if any, entitled to vote as a class; and, if the number of any such shares is subject to change prior to the effective date of the merger or consolidation, the manner in which such change may occur.

- (3) The terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the shares of each constituent corporation into shares, bonds or other securities of the surviving or consolidated corporation, or the cash or other consideration to be paid or delivered in exchange for shares of each constituent corporation, or a combination thereof.
- (4) In case of merger, a statement of any amendments or changes in the certificate of incorporation of the surviving corporation to be effected by such merger; in case of consolidation, all statements required to be included in a certificate of incorporation for a corporation formed under this chapter, except statements as to facts not available at the time the plan of consolidation is adopted by the board.
- (5) Such other provisions with respect to the proposed merger or consolidation as the board considers necessary or desirable.

### **903. AUTHORIZATION BY SHAREHOLDERS**

(a) The board of each constituent corporation, upon adopting such plan of merger or consolidation, shall submit such plan to a vote of shareholders in accordance with the following:

- (1) Notice of meeting shall be given to each shareholder of record, as of the record date fixed pursuant to section 604 (Fixing record date), whether or not entitled to vote. A copy of the plan of merger or consolidation or an outline of the material features of the plan shall accompany such notice.
- (2) The plan of merger or consolidation shall be adopted at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon. Notwithstanding any provision in the certificate of incorporation, the holders of shares of a class or series shall be entitled to vote and to vote as a class if the plan of merger or consolidation contains any provision which, if contained in an amendment to the certificate of incorporation, would entitle the holders of shares of such class or series to vote and to vote as a class thereon. In such case, in addition to the authorization of the merger or consolidation by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, the merger or consolidation shall be authorized by vote of the holders of a majority of all outstanding shares of each such class or series.

(b) Notwithstanding shareholder authorization and at any time prior to the filing of the certificate of merger or consolidation, the plan of merger or consolidation may be abandoned pursuant to a provision for such abandonment, if any, contained in the plan of merger or consolidation.



#### **904. CERTIFICATE OF MERGER OR CONSOLIDATION; CONTENTS**

(a) After adoption of the plan of merger or consolidation by the board and shareholders of each constituent corporation, unless the merger or consolidation is abandoned in accordance with paragraph (b) of section 903 (Authorization by shareholders), a certificate of merger or consolidation, entitled "Certificate of merger (or consolidation) of ..... and ..... into ..... (names of corporations) under section 904 of the Business Corporation Code", shall be signed and verified on behalf of each constituent corporation and delivered to the Nation Clerk. It shall set forth:

- (1) The statements required by subparagraphs (a)(1), (2) and (4) of section 902 (Plan of merger or consolidation).
- (2) The effective date of the merger or consolidation if other than the date of filing of the certificate of merger or consolidation by the Nation Clerk.
- (3) In the case of consolidation, any statement required to be included in a certificate of incorporation for a corporation formed under this chapter but which was omitted under subparagraph (a)(4) of section 902.
- (4) The date when the certificate of incorporation of each constituent corporation was filed by the Nation Clerk.
- (5) The manner in which the merger or consolidation was authorized with respect to each constituent corporation.

#### **905. MERGER OF PARENT AND SUBSIDIARY CORPORATION**

(a) Any domestic corporation owning at least ninety percent of the outstanding shares of each class of another domestic corporation or corporations may either merge such other corporation or corporations into itself without the authorization of the shareholders of any such corporation or merge itself and one or more of such other corporations into one of such other corporations with the authorization of the parent corporation's shareholders in accordance with paragraph (a) of section 903 (Authorization by shareholders). In either case the board of such parent corporation shall adopt a plan of merger, setting forth:

- (1) The name of each corporation to be merged and the name of the surviving corporation, and if the name of any of them has been changed, the name under which it was formed.
- (2) The designation and number of outstanding shares of each class of each corporation to be merged and the number of such shares of each class, if any, owned by the surviving corporation; and if the number of any such shares is subject to change prior to the effective date of the merger, the manner in which such change may occur.

- (3) The terms and conditions of the proposed merger, including the manner and basis of converting the shares of each subsidiary corporation to be merged not owned by the parent corporation into shares, bonds or other securities of the surviving corporation, or the cash or other consideration to be paid or delivered in exchange for shares of each such subsidiary corporation, or a combination thereof.
- (4) If the parent corporation is not the surviving corporation, provision for the pro rata issuance of shares of the surviving corporation to the shareholders of the parent corporation on surrender of any certificates therefore.
- (5) If the parent corporation is not the surviving corporation, a statement of any amendments or changes in the certificate of incorporation of the surviving corporation to be effected by the merger.
- (6) Such other provisions with respect to the proposed merger as the board considers necessary or desirable.

(b) If the surviving corporation is the parent corporation, a copy of such plan of merger or an outline of the material features thereof shall be given, personally or by mail, to all holders of shares of each subsidiary corporation to be merged not owned by the parent corporation, unless the giving of such copy or outline has been waived by such holders.

(c) A certificate of merger, entitled "Certificate of merger of ..... into ..... (names of corporations) under section 905 of the Business Corporation Code", shall be signed, verified and delivered to the Nation Clerk by the surviving corporation. If the surviving corporation is the parent corporation and such corporation does not own all shares of each subsidiary corporation to be merged, such certificate shall be delivered not less than thirty days after the giving of a copy or outline of the material features of the plan of merger to shareholders of each such subsidiary corporation, or at any time after the waiving thereof by the holders of all of the outstanding shares of each such subsidiary corporation not owned by the surviving corporation. The certificate shall set forth:

- (1) The statements required by subparagraphs (a)(1), (2), (4) and (5) of this section.
- (2) The effective date of the merger if other than the date of filing of the certificate of merger by the Nation Clerk.
- (3) The date when the certificate of incorporation of each constituent corporation was filed by the Nation Clerk.
- (4) A statement that the plan of merger was adopted by the board of directors of the parent corporation.
- (5) If the surviving corporation is the parent corporation and such corporation does not own

all the shares of each subsidiary corporation to be merged, either the date of the giving to holders of shares of each subsidiary corporation not owned by the surviving corporation of a copy of the plan of merger or an outline of the material features thereof, or a statement that the giving of such copy or outline has been waived, if such is the case.

- (6) If the parent corporation is not the surviving corporation, a statement that the proposed merger has been approved by the shareholders of the parent corporation in accordance with paragraph (a) of section 903 (Authorization by shareholders).

(d) The surviving corporation shall thereafter cause a copy of such certificate, to be filed in the office of the Nation Clerk

(e) Paragraph (b) of section 903 (Authorization by shareholders) shall apply to a merger under this section.

(f) The right of merger granted by this section to certain corporations shall not preclude the exercise by such corporations of any other right of merger or consolidation under this chapter.

#### **906. EFFECT OF MERGER OR CONSOLIDATION**

(a) Upon the filing of the certificate of merger or consolidation by the Nation Clerk or on such date subsequent thereto, not to exceed thirty days, as shall be set forth in such certificate, the merger or consolidation shall be effected.

(b) When such merger or consolidation has been effected:

- (1) Such surviving or consolidated corporation shall thereafter, consistently with its certificate of incorporation as altered or established by the merger or consolidation, possess all the rights, privileges, immunities, powers and purposes of each of the constituent corporations.
- (2) All the property, real and personal, including subscriptions to shares, causes of action and every other asset of each of the constituent corporations, shall vest in such surviving or consolidated corporation without further act or deed.
- (3) The surviving or consolidated corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent corporations. No liability or obligation due or to become due, claim or demand for any cause existing against any such corporation, or any shareholder, officer or director thereof, shall be released or impaired by such merger or consolidation. No action or proceeding, whether civil or criminal, then pending by or against any such constituent corporation, or any shareholder, officer or director thereof, shall abate or be discontinued by such merger or consolidation, but may be enforced, prosecuted, settled or compromised as if such

merger or consolidation had not occurred, or such surviving or consolidated corporation may be substituted in such action or special proceeding in place of any constituent corporation.

- (4) In the case of a merger, the certificate of incorporation of the surviving corporation shall be automatically amended to the extent, if any, that changes in its certificate of incorporation are set forth in the plan of merger; and, in the case of a consolidation, the statements set forth in the certificate of consolidation and which are required or permitted to be set forth in a certificate of incorporation of a corporation formed under this chapter shall be its certificate of incorporation.

#### **907.MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPORATIONS**

(a) One or more foreign corporations and one or more domestic corporations may be merged or consolidated into a corporation, if such merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is incorporated. With respect to such merger or consolidation, any reference in paragraph (b) of section 901 (Power of merger or consolidation) to a corporation shall, unless the context otherwise requires, include both domestic and foreign corporations.

(b) With respect to procedure, including the requirement of shareholder authorization, each domestic corporation shall comply with the provisions of this chapter relating to merger or consolidation of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the law of the jurisdiction under which it is incorporated.

(c) The procedure for the merger of a subsidiary corporation or corporations under section 905 (Merger of parent and subsidiary corporations) shall be available where either a subsidiary corporation or the corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary is a foreign corporation, and such merger is permitted by the laws of the jurisdiction under which such foreign corporation is incorporated.

(d) If the surviving or consolidated corporation is, or is to be, a domestic corporation, a certificate of merger or consolidation shall be signed, verified and delivered to the Nation Clerk as provided in section 904 (Certificate of merger or consolidation; contents) or 905 (Merger of parent and subsidiary corporations), as the case may be. In addition to the matters specified in such sections, the certificate shall set forth as to each constituent foreign corporation the jurisdiction and date of its incorporation and the date when its application for authority to do business within the territorial jurisdiction of the Nation was filed by the Nation Clerk, and its fictitious name used in this Nation pursuant to chapter thirteen of this chapter, if applicable, or, if no such application has been filed, a statement to such effect.

(e) If the surviving or consolidated corporation is, or is to be, formed under the law of any jurisdiction other than the Nation:

- (1) It shall comply with the provisions of this chapter relating to foreign corporations if it is to do business within the territorial jurisdiction of the Nation.
- (2) It shall deliver to the Nation Clerk a certificate, entitled "Certificate of merger (or consolidation) of ..... and ..... into ..... (names of corporations) under section 907 of the Business Corporation Code", which shall be signed and verified on behalf of each constituent domestic and foreign corporation. It shall set forth:
  - (A) If the procedure for the merger or consolidation of a constituent domestic corporation was effected in compliance with sections 902 (Plan of merger or consolidation) and 903 (Authorization by shareholders), the following:
    - (i) The statements required by subparagraphs (a)(1) and (2) of section 902.
    - (ii) The effective date of the merger or consolidation if other than the date of filing of the certificate of merger or consolidation by the Nation Clerk.
    - (iii) The manner in which the merger or consolidation was authorized with respect to each constituent domestic corporation and that the merger or consolidation is permitted by the laws of the jurisdiction of each constituent foreign corporation and is in compliance therewith.
  - (B) If the procedure for the merger of a subsidiary corporation was effected in compliance with section 905, the following:
    - (i) The statements required by subparagraphs (a)(1), (2), (4) and (5) of section 905.
    - (ii) The effective date of the merger if other than the date of filing of the certificate of merger by the Nation Clerk.
    - (iii) If the surviving foreign corporation does not own all the shares of a subsidiary domestic corporation being merged, either the date of the giving to holders of shares of each subsidiary domestic corporation not owned by the surviving foreign corporation of a copy of the plan of merger or an outline of the material features thereof, or a statement that the giving of such copy or outline has been waived, if such is the case.

(iv) That the merger is permitted by the laws of the jurisdiction of each constituent foreign corporation and is in compliance therewith.

(v) If the parent domestic corporation is not the surviving corporation, a statement that the proposed merger has been approved by the shareholders of the parent domestic corporation in accordance with paragraph (a) of section 903 (Authorization by shareholders).

- (C) The jurisdiction and date of incorporation of the surviving or consolidated foreign corporation, the date when its application for authority to do business within the territorial jurisdiction of the Nation was filed by the Nation Clerk, and its fictitious name used within the territorial jurisdiction of the Nation pursuant to chapter thirteen of this chapter, if applicable, or, if no such application has been filed, a statement to such effect and that it is not to do business within the territorial jurisdiction of the Nation until an application for such authority shall have been filed by such department.
- (D) The date when the certificate of incorporation of each constituent domestic corporation was filed by the Nation Clerk and the jurisdiction and date of incorporation of each constituent foreign corporation, other than the surviving or consolidated foreign corporation, and, in the case of each such corporation authorized to do business within the territorial jurisdiction of the Nation, the date when its application for authority was filed by the secretary of state.
- (E) An agreement that the surviving or consolidated foreign corporation may be served with process within the territorial jurisdiction of the Nation in any action or special proceeding for the enforcement of any liability or obligation of any domestic corporation or of any foreign corporation, previously amenable to suit within the territorial jurisdiction of the Nation, which is a constituent corporation in such merger or consolidation, and for the enforcement, as provided in this chapter, of the right of shareholders of any constituent domestic corporation to receive payment for their shares against the surviving or consolidated corporation.
- (F) An agreement that, subject to the provisions of section 623 (Procedure to enforce shareholder's right to receive payment for shares), the surviving or consolidated foreign corporation will promptly pay to the shareholders of each constituent domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter relating to the right of shareholders to receive payment for their shares.

(G) A designation of the Nation Clerk as its agent upon whom process against it may be served in the manner set forth in paragraph (b) of section 306 (Service of process), in any action or special proceeding, and a post office address, to which the Nation Clerk shall mail a copy of any process against it served upon him. Such post office address shall supersede any prior address designated as the address to which process shall be mailed.

(f) Upon the filing of the certificate of merger or consolidation by the Nation Clerk or on such date subsequent thereto, not to exceed ninety days, as shall be set forth in such certificate, the merger or consolidation shall be effected.

(g) The surviving or consolidated domestic or foreign corporation shall thereafter cause a copy of such certificate, to be filed in the office of the Nation Clerk

(h) If the surviving or consolidated corporation is, or is to be, formed under the law of the Nation, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations under section 906 (Effect of merger or consolidation). If the surviving or consolidated corporation is, or is to be, incorporated under the law of any jurisdiction other than the Nation, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, except in so far as the law of such other jurisdiction provides otherwise.

#### **908. GUARANTEE AUTHORIZED BY SHAREHOLDERS**

A guarantee may be given by a corporation, although not in furtherance of its corporate purposes, when authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon. If authorized by a like vote, such guarantee may be secured by a mortgage or pledge of, or the creation of a security interest in, all or any part of the corporate property, or any interest therein, wherever situated.

#### **909. SALE, LEASE, EXCHANGE OR OTHER DISPOSITION OF ASSETS**

(a) A sale, lease, exchange or other disposition of all or substantially all the assets of a corporation, if not made in the usual or regular course of the business actually conducted by such corporation, shall be authorized only in accordance with the following procedure:

- (1) The board shall authorize the proposed sale, lease, exchange or other disposition and direct its submission to a vote of shareholders.
- (2) Notice of meeting shall be given to each shareholder of record, whether or not entitled to vote.
- (3) The shareholders shall approve such sale, lease, exchange or other disposition and may fix, or may authorize the board to fix, any of the terms and conditions thereof and the

consideration to be received by the corporation therefore, which may consist in whole or in part of cash or other property, real or personal, including shares, bonds or other securities of any other domestic or foreign corporation or corporations, by vote at a meeting of shareholders of the holders of two-thirds of all outstanding shares entitled to vote thereon.

(b) A recital in a deed, lease or other instrument of conveyance executed by a corporation to the effect that the property described therein does not constitute all or substantially all of the assets of the corporation, or that the disposition of the property affected by said instrument was made in the usual or regular course of business of the corporation, or that the shareholders have duly authorized such disposition, shall be presumptive evidence of the fact so recited.

(c) An action to set aside a deed, lease or other instrument of conveyance executed by a corporation affecting real property or real and personal property may not be maintained for failure to comply with the requirements of paragraph (a) unless the action is commenced and a notice of pendency of action is filed within one year after such conveyance, lease or other instrument is recorded.

(d) Whenever a transaction of the character described in paragraph (a) involves a sale, lease, exchange or other disposition of all or substantially all the assets of the corporation, including its name, to a new corporation formed under the same name as the existing corporation, upon the expiration of thirty days from the filing of the certificate of incorporation of the new corporation, the existing corporation shall be automatically dissolved, unless, before the end of such thirty-day period, such corporation has changed its name. The adjustment and winding up of the affairs of such dissolved corporation shall proceed in accordance with the provisions of chapter 10 (Non-judicial dissolution).

(e) The certificate of incorporation of a corporation formed under the authority of paragraph (d) shall set forth the name of the existing corporation, the date when its certificate of incorporation was filed by the Nation Clerk, and that the shareholders of such corporation have authorized the sale, lease, exchange or other disposition of all or substantially all the assets of such corporation, including its name, to the new corporation to be formed under the same name as the existing corporation.

(f) Notwithstanding shareholder approval, the board may abandon the proposed sale, lease, exchange or other disposition without further action by the shareholders, subject to the rights, if any, of third parties under any contract relating thereto.



**910. RIGHT OF SHAREHOLDER TO RECEIVE PAYMENT FOR SHARES UPON MERGER OR CONSOLIDATION, OR SALE, LEASE, EXCHANGE OR OTHER DISPOSITION OF ASSETS, OR SHARE EXCHANGE**

(a) A shareholder of a domestic corporation shall, subject to and by complying with section 623 (Procedure to enforce shareholder's right to receive payment for shares), have the right to receive payment of the fair value of his shares and the other rights and benefits provided by such section, in the following cases:

(1) Any shareholder entitled to vote who does not assent to the taking of an action specified in subparagraphs (A), (B) and (C).

(A) Any plan of merger or consolidation to which the corporation is a party; except that the right to receive payment of the fair value of his shares shall not be available:

(i) To a shareholder of the parent corporation in a merger authorized by section 905 (Merger of parent and subsidiary corporations), or paragraph (c) of section 907 (Merger or consolidation of domestic and foreign corporations); and

(ii) To a shareholder of the surviving corporation in a merger authorized by this chapter, other than a merger specified in subparagraph (i), unless such merger effects one or more of the changes specified in subparagraph (b)(6) of section 806 (Provisions as to certain proceedings) in the rights of the shares held by such shareholder.

(B) Any sale, lease, exchange or other disposition of all or substantially all of the assets of a corporation which requires shareholder approval under section 909 (Sale, lease, exchange or other disposition of assets) other than a transaction wholly for cash where the shareholders' approval thereof is conditioned upon the dissolution of the corporation and the distribution of substantially all of its net assets to the shareholders in accordance with their respective interests within one year after the date of such transaction.

(C) Any share exchange authorized by section 913 in which the corporation is participating as a subject corporation; except that the right to receive payment of the fair value of his shares shall not be available to a shareholder whose shares have not been acquired in the exchange.

(2) Any shareholder of the subsidiary corporation in a merger authorized by section 905 or

paragraph (c) of section 907, or in a share exchange authorized by paragraph (g) of section 913, who files with the corporation a written notice of election to dissent as provided in paragraph (c) of section 623.

#### **911.MORTGAGE OR PLEDGE OF, OR SECURITY INTEREST IN, CORPORATE PROPERTY**

The board may authorize any mortgage or pledge of, or the creation of a security interest in, all or any part of the corporate property, or any interest therein, wherever situated. Unless the certificate of incorporation provides otherwise, no vote or consent of shareholders shall be required to approve such action by the board.

#### **912. REQUIREMENTS RELATING TO CERTAIN BUSINESS COMBINATIONS**

(a) For the purpose of this section:

- (1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified person.
- (2) "Announcement date", when used in reference to any business combination, means the date of the first public announcement of the final, definitive proposal for such business combination.
- (3) "Associate", when used to indicate a relationship with any person, means (A) any corporation or organization of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of voting stock, (B) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (C) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person.
- (4) "Beneficial owner", when used with respect to any stock, means a person:
  - (A) that, individually or with or through any of its affiliates or associates, beneficially owns such stock, directly or indirectly; or
  - (B) that, individually or with or through any of its affiliates or associates, has (i) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding (whether or not in writing), or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the beneficial owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such

person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (ii) the right to vote such stock pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a person shall not be deemed the beneficial owner of any stock under this item if the agreement, arrangement or understanding vote such stock (X) arises solely from a revocable proxy in accordance with the applicable rules and regulations under the United States Exchange Act and (Y) is not then reportable on Schedule 13D under the United States Exchange Act (or any comparable or successor report); or

(C) that has any agreement, arrangement or understanding (whether or not in writing), for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (ii) of clause (B) of the subparagraph), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

(5) "Business combination", when used in reference to any resident domestic corporation and any interested shareholder of such resident domestic corporation, means:

(A) any merger or consolidation of such resident domestic corporation or any subsidiary of such resident domestic corporation with (i) such interested shareholder or (ii) any other corporation (whether or not itself an interested shareholder of such resident domestic corporation) which is, or after such merger or consolidation would be, an affiliate or associate of such interested shareholder;

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with such interested shareholder or any affiliate or associate of such interested shareholder of assets of such resident domestic corporation or any subsidiary of such resident domestic corporation (i) having an aggregate market value equal to ten percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of such resident domestic corporation, (ii) having an aggregate market value equal to ten percent or more of the aggregate market value of all the outstanding stock of such resident domestic corporation, or (iii) representing ten percent or more of the earning power or net income, determined on a consolidated basis, of such resident domestic corporation;

(C) the issuance or transfer by such resident domestic corporation or any subsidiary of such resident domestic corporation (in one transaction or a series of transactions) of any stock of such resident domestic corporation or any subsidiary of such resident domestic corporation which has an aggregate market value equal to five percent or more of the aggregate market value of all the

outstanding stock of such resident domestic corporation to such interested shareholder or any affiliate or associate of such interested shareholder except pursuant to the exercise of warrants or rights to purchase stock offered, or a dividend or distribution paid or made, pro rata to all shareholders of such resident domestic corporation;

(D) the adoption of any plan or proposal for the liquidation or dissolution of such resident domestic corporation proposed by, or pursuant to any agreement, arrangement or understanding (whether or not in writing) with, such interested shareholder or any affiliate or associate of such interested shareholder;

(E) any reclassification of securities (including, without limitation, any stock split, stock dividend, or other distribution of stock in respect of stock, or any reverse stock split), or recapitalization of such resident domestic corporation, or any merger or consolidation of such resident domestic corporation with any subsidiary of such resident domestic corporation, or any other transaction (whether or not with or into or otherwise involving such interested shareholder), proposed by, or pursuant to any agreement, arrangement or understanding (whether or not in writing) with, such interested shareholder or any affiliate or associate of such interested shareholder, which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting stock or securities convertible into voting stock of such resident domestic corporation or any subsidiary of such resident domestic corporation which is directly or indirectly owned by such interested shareholder or any affiliate or associate of such interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(F) any receipt by such interested shareholder or any affiliate or associate of such interested shareholder of the benefit, directly or indirectly (except proportionately as a shareholder of such resident domestic corporation) of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by or through such resident domestic corporation.

(6) "Common stock" means any stock other than preferred stock.

(7) "Consummation date", with respect to any business combination, means the date of consummation of such business combination, or, in the case of a business combination as to which a shareholder vote is taken, the later of the business day prior to the vote or twenty days prior to the date of consummation of such business combination.

(8) "Control", including the terms "controlling", "controlled by" and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the

ownership of voting stock, by contract, or otherwise. A person's beneficial ownership of ten percent or more of a corporation's outstanding voting stock shall create a presumption that such person has control of such corporation. Notwithstanding the foregoing, a person shall not be deemed to have control of a corporation if such person holds voting stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(9) "Exchange Act" means the United States law known as the Securities Exchange Act of 1934, as the same has been or hereafter may be amended from time to time.

(10) "Interested shareholder", when used in reference to any resident domestic corporation, means any person (other than such resident domestic corporation or any subsidiary of such resident domestic corporation) that

(A) (i) is the beneficial owner, directly or indirectly, of twenty percent or more of the outstanding voting stock of such resident domestic corporation; or

(ii) is an affiliate or associate of such resident domestic corporation and at any time within the five-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of twenty percent or more of the then outstanding voting stock of such resident domestic corporation; provided that

(B) for the purpose of determining whether a person is an interested shareholder, the number of shares of voting stock of such resident domestic corporation deemed to be outstanding shall include shares deemed to be beneficially owned by the person through application of subparagraph four of the paragraph but shall not include any other unissued shares of voting stock of such resident domestic corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(11) "Market value", when used in reference to stock or property of any resident domestic corporation, means:

(A) in the case of stock, the highest closing sale price during the thirty-day period immediately preceding the date in question of a share of such stock on the composite tape for New York stock exchange-listed stocks, or, if such stock is not quoted on such composite tape or if such stock is not listed on such exchange, on the principal United States securities exchange registered under

the Exchange Act on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the thirty-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the board of directors of such resident domestic corporation in good faith; and

(B) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by the board of directors of such resident domestic corporation in good faith.

(12) "Preferred stock" means any class or series of stock of a resident domestic corporation which under the by-laws or certificate of incorporation of such resident domestic corporation is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of stock, or is entitled in the event of any voluntary liquidation, dissolution or winding up of the resident domestic corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of stock.

(13) "Resident domestic corporation" means an issuer of voting stock which:

(A) is organized under the laws of the Nation;

(B) either (i) has its principal executive offices and significant business operations located within the territorial jurisdiction of the Nation; and

(C) has at least ten percent of its voting stock owned beneficially by persons residing within the territorial jurisdiction of the Nation. For purposes of this section, the residence of a partnership, unincorporated association, trust or similar organization shall be the principal office of such organization.

No resident domestic corporation, which is organized under the laws of the Nation, shall cease to be a resident domestic corporation by reason of events occurring or actions taken while such resident domestic corporation is subject to the provisions of this section.

(14) "Stock" means:

(A) any stock or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for stock; and

(B) any security convertible, with or without consideration, into stock, or any warrant, call or other option or privilege of buying stock without being bound

to do so, or any other security carrying any right to acquire, subscribe to or purchase stock.

- (15) "Stock acquisition date", with respect to any person and any resident domestic corporation, means the date that such person first becomes an interested shareholder of such resident domestic corporation.
- (16) "Subsidiary" of any person means any other corporation of which a majority of the voting stock is owned, directly or indirectly, by such person.
- (17) "Voting stock" means shares of capital stock of a corporation entitled to vote generally in the election of directors.

(b) Notwithstanding anything to the contrary contained in the chapter (except the provisions of paragraph (d) of this section), no resident domestic corporation shall engage in any business combination with any interested shareholder of such resident domestic corporation for a period of five years following such interested shareholder's stock acquisition date unless such business combination or the purchase of stock made by such interested shareholder on such interested shareholder's stock acquisition date is approved by the board of directors of such resident domestic corporation prior to such interested shareholder's stock acquisition date. If a good faith proposal is made in writing to the board of directors of such resident domestic corporation regarding a business combination, the board of directors shall respond, in writing, within thirty days or such shorter period, if any, as may be required by the United States Exchange Act, setting forth its reasons for its decision regarding such proposal. If a good faith proposal to purchase stock is made in writing to the board of directors of such resident domestic corporation, the board of directors, unless it responds affirmatively in writing thirty days or such shorter period, if any, as may be required by the United States Exchange Act, shall be deemed to have disapproved such stock purchase.

(c) Notwithstanding anything to the contrary contained in the chapter (except the provisions of paragraphs (b) and (d) of this section), no resident domestic corporation shall engage at any time in any business combination with any interested shareholder of such resident domestic corporation other than a business combination specified in any one of subparagraph (1), (2) or (3):

- (1) A business combination approved by the board of directors of such resident domestic corporation prior to such interested shareholder's stock acquisition date, or where the purchase of stock made by such interested shareholder on such interested shareholder's stock acquisition date had been approved by the board of directors of such resident domestic corporation prior to such interested shareholder's stock acquisition date.
- (2) A business combination approved by the affirmative vote of the holders of a majority of the outstanding voting stock not beneficially owned by such interested shareholder or any affiliate or associate of such interested shareholder at a meeting called for such purpose no earlier than five years after such interested shareholder's stock acquisition date.

(3) A business combination that meets all of the following conditions:

(A) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of common stock of such resident domestic corporation in such business combination is at least equal to the higher of the following:

(i) the highest per share price paid by such interested shareholder at a time when he was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting stock of such resident domestic corporation, for any shares of common stock of the same class or series acquired by it (X) within the five-year period immediately prior to the announcement date with respect to such business combination, or (Y) within the five-year period immediately prior to, or in, the transaction in which such interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earlier date on which such highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common stock since such earliest date, up to the amount of such interest; and

(ii) the market value per share of common stock on the announcement date with respect to such business combination or on such interested shareholder's stock acquisition date, whichever is higher; plus interest compounded annually from such date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common stock since such date, up to the amount of such interest.

(B) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of



outstanding shares of any class or series of stock, other than common stock, of such resident domestic corporation is at least equal to the highest of the following (whether or not such interested shareholder has previously acquired any shares of such class or series of stock):

(i) the highest per share price paid by such interested shareholder at a time when he was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting stock of such resident domestic corporation, for any shares of such class or series of stock acquired by it (X) within the five-year period immediately prior to the announcement date with respect to such business combination, or (Y) within the five-year period immediately prior to, or in, the transaction in which such interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which such highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series of stock since such earliest date, up to the amount of such interest;

(ii) the highest preferential amount per share to which the holders of shares of such class or series of stock are entitled in the event of any voluntary liquidation, dissolution or winding up of such resident domestic corporation, plus the aggregate amount of any dividends declared or due as to which such holders are entitled prior to payment of dividends on some other class or series of stock (unless the aggregate amount of such dividends is included in such preferential amount); and

(iii) the market value per share of such class or series of stock on the announcement date with respect to such business combination or on such interested shareholder's stock acquisition date, whichever is higher; plus interest compounded annually from such date through the consummation date at the rate for

one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series of stock since such date, up to the amount of such interest.

- (C) The consideration to be received by holders of a particular class or series of outstanding stock (including common stock) of such resident domestic corporation in such business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of such class or series of stock previously acquired by it, and such consideration shall be distributed promptly.
- (D) The holders of all outstanding shares of stock of such resident domestic corporation not beneficially owned by such interested shareholder immediately prior to the consummation of such business combination are entitled to receive in such business combination cash or other consideration for such shares in compliance with clauses (A), (B) and (C) of this subparagraph.
- (E) After such interested shareholder's stock acquisition date and prior to the consummation date with respect to such business combination, such interested shareholder has not become the beneficial owner of any additional shares of voting stock of such resident domestic corporation except:
  - (i) as part of the transaction which resulted in such interested shareholder becoming an interested shareholder;
  - (ii) by virtue of proportionate stock splits, stock dividends or other distributions of stock in respect of stock not constituting a business combination under clause (E) of subparagraph five of paragraph (a) of this section;
  - (iii) through a business combination meeting all of the conditions of paragraph (b) of this section and this paragraph; or
  - (iv) through purchase by such interested shareholder at any price which, if such price had been paid in an otherwise permissible business combination the announcement date and consummation date of which were the date of such purchase, would have satisfied

the requirements of clauses (A), (B) and (C) of this subparagraph.

(d) The provisions of this section shall not apply:

(1) to any business combination of a resident domestic corporation that does not have a class of voting stock registered with the United States Securities and Exchange Commission pursuant to section twelve of the United States Exchange Act, unless the certificate of incorporation provides otherwise; or

(2) to any business combination of a resident domestic corporation whose certificate of incorporation has been amended to provided that such resident domestic corporation shall be subject to the provisions of this section, which did not have a class of voting stock registered with the United States Securities and Exchange Commission pursuant to section twelve of the United States Exchange Act on the effective date of such amendment, and which is a business combination with an interested shareholder whose stock acquisition date is prior to the effective date of such amendment; or

(3) to any business combination of a resident domestic corporation (i) the original certificate of incorporation of which contains a provision expressly electing not to be governed by this section, or (ii) which adopts an amendment to such resident domestic corporation's by-laws, approved by the affirmative vote of the holders, other than interested shareholders and their affiliates and associates, of a majority of the outstanding voting stock of such resident domestic corporation, excluding the voting stock of interested shareholders and their affiliates and associates, expressly electing not to be governed by this section, provided that such amendment to the by-laws shall not be effective until eighteen months after such vote of such resident domestic corporation's shareholders and shall not apply to any business combination of such resident domestic corporation with an interested shareholder whose stock acquisition date is on or prior to the effective date of such amendment; or

(4) to any business combination of a resident domestic corporation with an interested shareholder of such resident domestic corporation which became an interested shareholder inadvertently, if such interested shareholder (i) as soon as practicable, divests itself of a sufficient amount of the voting stock of such resident domestic corporation so that it no longer is the beneficial owner, directly or indirectly, of twenty percent or more of the outstanding voting stock of such resident domestic corporation, an (ii) would not at any time within the five-year period preceding the announcement date with respect to such business combination have been an interested shareholder but for such inadvertent acquisition.

### 913. SHARE EXCHANGES

(a) (1) Two domestic corporations may, as provided in this section, participate in the consummation of a plan for binding share exchanges.

(2) Whenever used in this chapter:

(A) "Acquiring corporation" means a corporation that is participating in a procedure pursuant to which such corporation is acquiring all of the outstanding shares of one or more classes of a subject corporation.

(B) "Subject corporation" means a corporation that is participating in a procedure pursuant to which all of the outstanding shares of one or more classes of such corporation are being acquired by an acquiring corporation.

(b) The board of the acquiring corporation and the board of the subject corporation shall adopt a plan of exchange, setting forth:

(1) The name of the acquiring corporation and the name of the subject corporation, and, if the name of either of them has been changed, the name under which it was formed;

(2) As to the acquiring corporation and the subject corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote and further specifying each class and series, if any, entitled to vote as a class; and, if the number of any such shares is subject to change prior to the effective date of the exchange, the manner in which such change may occur;

(3) The terms and conditions of the proposed exchange, including the manner and basis of exchanging the shares to be acquired for shares, bonds or other securities of the acquiring corporation, or the cash or other consideration to be paid or delivered in exchange for such shares to be acquired, or a combination thereof; and

(4) Such other provisions with respect to the proposed exchange as the board considers necessary or desirable.

(c) The board of the subject corporation, upon adopting the plan of exchange, shall submit such plan, except as provided in paragraph (g) of this section, to a vote of shareholders in accordance with the following:

(1) Notice of meeting shall be given to each shareholder of record, as of the record date fixed pursuant to section 604 (Fixing record date), whether or not entitled to vote. A copy of the plan of exchange or an outline of the material features of the plan shall accompany such notice.

- (2) The plan of exchange shall be adopted at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon. Notwithstanding any provision in the certificate of incorporation, the holders of shares of a class or series shall be entitled to vote and to vote as a class if the plan of exchange contains any provision which, if contained in an amendment to the certificate of incorporation, would entitle the holders of shares of such class or series to vote as a class thereon, or if the shares of such class or series are to be exchanged pursuant to the plan of exchange. In such case, in addition to the authorization of the exchange by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, the exchange shall be authorized by vote of the holders of a majority of all outstanding shares of each such class or series. Notwithstanding shareholder authorization and at any time prior to the filing of the certificate of exchange, the plan of exchange may be abandoned pursuant to a provision for such abandonment, if any, contained in the plan of exchange.

(d) After adoption of the plan of exchange by the board of the acquiring corporation and the board of the subject corporation and by the shareholders of the subject corporation entitled to vote thereon, unless the exchange is abandoned in accordance with paragraph (c), a certificate of exchange, entitled "Certificate of exchange of shares of ....., subject corporation, for shares of ....., acquiring corporation, or other consideration, under section 913 of the Business Corporation Code", shall be signed and verified on behalf of each corporation and delivered to the Nation Clerk. It shall set forth:

- (1) the statements required by subparagraphs (1) and (2) of paragraph (b) of this section;
- (2) the effective date of the exchange if other than the date of filing of the certificate of exchange by the Nation Clerk;
- (3) the date when the certificate of incorporation of each corporation was filed by the Nation Clerk;
- (4) the designation of the shares to be acquired by the acquiring corporation and a statement of the consideration for such shares; and
- (5) the manner in which the exchange was authorized with respect to each corporation.

(e) Upon the filing of the certificate of exchange by the Nation Clerk or on such date subsequent thereto, not to exceed thirty days, as shall be set forth in such certificate, the exchange shall be effected. When such exchange has been effected, ownership of the shares to be acquired pursuant to the plan of exchange shall vest in the acquiring corporation, whether or not the certificates for such shares have been surrendered for exchange, and the acquiring corporation shall be entitled to have new certificates registered in its name or at its direction. Shareholders whose shares have been so acquired shall become entitled to the shares, bonds or other securities of the acquiring corporation, or the cash or other consideration, required to be paid or delivered in exchange for such

shares pursuant to the plan. Subject to any terms of the plan regarding surrender of certificates thereto evidencing the shares so acquired and regarding whether such certificates shall thereafter evidence securities of the acquiring corporation, such certificates shall thereafter evidence only the right to receive the consideration required to be paid or delivered in exchange for such shares pursuant to the plan, or, in the case of dissenting shareholders, their rights under section 910 (Right of shareholder to receive payment for shares upon merger or consolidation, or sale, lease, exchange or other disposition of assets, or share exchange) and section 623 (Procedure to enforce shareholder's right to receive payment for shares).

- (f)
  - (1) a foreign corporation and a domestic corporation may participate in a share exchange, but, if the subject corporation is a foreign corporation, only if such exchange is permitted by the laws of the jurisdiction under which such foreign corporation is incorporated. With respect to such exchange, any reference in subparagraph (2) of paragraph (a) of this section to a corporation shall, unless the context otherwise requires, include both domestic and foreign corporations, and the provisions of paragraphs (b), (c), (d) and (e) of this section shall apply, except to the extent otherwise provided in this paragraph.
  - (2) With respect to procedure, including the requirement of shareholder authorization, a domestic corporation shall comply with the provisions of this chapter relating to share exchanges in which domestic corporations are participating, and a foreign corporation shall comply with the applicable provisions of the law of the jurisdiction under which it is incorporated.
  - (3) If the subject corporation is a foreign corporation, the certificate of exchange shall set forth, in addition to the matters specified in paragraph (d), the jurisdiction and date of incorporation of such corporation and a statement that the exchange is permitted by the laws of the jurisdiction of such corporation and is in compliance therewith.
- (g)
  - (1) Any corporation owning at least ninety percent of the outstanding common shares, having full voting rights, of another corporation may acquire by exchange the remainder of such outstanding common shares, without the authorization of the shareholders of any such corporation and with the effect provided for in paragraph (e) of this section. The board of the acquiring corporation shall adopt a plan of exchange, setting forth the matters specified in paragraph (b) of this section. A copy of such plan of exchange or an outline of the material features thereof shall be given, personally or by mail, to all holders of shares of the subject corporation that are not owned by the acquiring corporation, unless the giving of such copy or outline has been waived by such holders.
  - (2) A certificate of exchange, entitled "Certificate of exchange of shares of ....., subject corporation, for shares of ....., acquiring corporation, or other consideration, under paragraph (g) of section 913 of the Business Corporation Code" and complying with the provisions of paragraph (d) and, if applicable, subparagraph (3) of paragraph (f)

shall be signed, verified and delivered to the Nation Clerk by the acquiring corporation, but not less than thirty days after the giving of a copy or outline of the material features of the plan of exchange to shareholders of the subject corporation, or at any time after the waiving thereof by the holders of all the outstanding shares of the subject corporation not owned by the acquiring corporation.

- (3) The right of exchange of shares granted by this paragraph to certain corporations shall not preclude the exercise by such corporations of any other right of exchange under this chapter.
  - (4) The procedure for the exchange of shares of a subject corporation under this paragraph (g) of this section shall be available where either the subject corporation or the acquiring corporation is a foreign corporation, and, in case the subject corporation is a foreign corporation, where such exchange is permitted by the laws of the jurisdiction under which such foreign corporation is incorporated.
- (h) This section does not limit the power of a domestic or foreign corporation to acquire all or part of the shares of one or more classes of another domestic or foreign corporation by means of a voluntary exchange or otherwise.
- (i)
    - (1) A binding share exchange pursuant to this section shall constitute a "business combination" pursuant to section nine hundred twelve of this chapter (Requirements relating to certain business combinations) if the subject corporation is a "resident domestic corporation" and the acquiring corporation is an "interested shareholder" of the subject corporation, as such terms are defined in section nine hundred twelve of this chapter.
    - (2) With respect to convertible securities and other securities evidencing a right to acquire shares of a subject corporation, a binding share exchange pursuant to this section shall have the same effect on the rights of the holders of such securities as a merger of the subject corporation.

## **CHAPTER 10-NON-JUDICIAL DISSOLUTION**

### **1001. AUTHORIZATION OF DISSOLUTION**

A corporation may be dissolved under this chapter. Such dissolution shall be authorized at a meeting of shareholders by the vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, except as otherwise provided under section 1002 (Dissolution under provision in certificate of incorporation).

### **1002. DISSOLUTION UNDER PROVISION IN CERTIFICATE OF INCORPORATION**

(a) The certificate of incorporation may contain a provision that any shareholder, or the holders of any specified number or proportion of shares, or of any specified number or proportion of shares of any class or series thereof, may require the dissolution of the corporation at will or upon the occurrence of a specified event. If the certificate of incorporation contains such a provision, a certificate of dissolution under section 1003 (Certificate of dissolution; contents) may be signed, verified and delivered to the Nation Clerk as provided in section 104 (Certificate; requirements, signing, filing, effectiveness) when authorized by a holder or holders of the number or proportion of shares specified in such provision, given in such manner as may be specified therein, or if no manner is specified therein, when authorized on written consent signed by such holder or holders; or such certificate may be signed, verified and delivered to the Nation Clerk by such holder or holders or by such of them as are designated by them.

(b) An amendment of the certificate of incorporation which adds a provision permitted by this section, or which changes or strikes out such a provision, shall be authorized at a meeting of shareholders by vote of all outstanding shares, whether or not otherwise entitled to vote on any amendment, or of such lesser proportion of shares and of such class or series of shares, but not less than a majority of all outstanding shares entitled to vote on any amendment, as may be provided specifically in the certificate of incorporation for adding, changing or striking out a provision permitted by this section.

(c) If the certificate of incorporation of any corporation contains a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

### **1003. CERTIFICATE OF DISSOLUTION; CONTENTS**

(a) A certificate of dissolution, entitled "Certificate of dissolution of .... (name of corporation) under section 1003 of the Business Corporation Code", shall be signed, verified and delivered to the Nation Clerk. It shall set forth:

(1) The name of the corporation and, if its name has been changed, the name under which it



was formed.

- (2) The date its certificate of incorporation was filed by the Nation Clerk.
- (3) The name and address of each of its officers and directors.
- (4) That the corporation elects to dissolve.
- (5) The manner in which the dissolution was authorized.

#### **1004. CERTIFICATE OF DISSOLUTION; FILING**

The Nation Clerk shall not file such certificate unless all Nation taxes have been paid. Upon payment of all Nation taxes, or a statement from the Chief Financial Officer of the Nation that no taxes are due, the certificate shall be filed.

#### **1005. PROCEDURE AFTER DISSOLUTION**

(a) After dissolution:

- (1) The corporation shall carry on no business except for the purpose of winding up its affairs.
- (2) The corporation shall proceed to wind up its affairs, with power to fulfill or discharge its contracts, collect its assets, sell its assets for cash at public or private sale, discharge or pay its assets for cash at public or private sale, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business.
- (3) After payment or adequately providing for the payment of its liabilities:
  - (A) The corporation, if authorized at a meeting of shareholders by a vote of the holders of a majority of all outstanding shares entitled to vote thereon may sell its remaining assets, or any part thereof, for cash, shares, bonds or other securities or partly for cash and partly for shares, bonds or other securities, and distribute the same among the shareholders according to their respective rights. In the case of a sale under this subparagraph where the consideration is in whole or in part other than cash, any shareholder, entitled to vote thereon, who does not vote for or consent in writing to such sale, thereon, who does not vote for or consent in writing to such sale, shall, subject to and by complying with the provisions of section 623 (Procedure to enforce shareholder's right to receive payment for shares), have the right to receive payment for his shares. Section 909 (Sale, lease, exchange or other disposition of assets) is not applicable to a sale of assets under this paragraph.

(B) The corporation, whether or not it has made a sale under subparagraph (A), may distribute any remaining assets, in cash or in kind or partly each, among its shareholders according to their respective rights.

(b) When there are no shareholders, upon dissolution all subscriptions for shares shall be cancelled and all obligations of the corporation to issue shares or of the subscribers to pay their subscriptions shall terminate, except for such payments as may be required to enable the corporation to pay its liabilities.

(c) Upon the winding up of the affairs of the corporation, any assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and for whom there is no legal representative, shall be paid to the Nation as payment of the final liquidating distribution, and be subject to the provisions of the abandoned property law.

### **1006.CORPORATE ACTION AND SURVIVAL OF REMEDIES AFTER DISSOLUTION**

(a) A dissolved corporation, its directors, officers and shareholders may continue to function for the purpose of winding up the affairs of the corporation in the same manner as if the dissolution had not taken place, except as otherwise provided in this chapter or by court order. In particular, and without limiting the generality of the foregoing:

- (1) The directors of a dissolved corporation shall not be deemed to be trustees of its assets; title to such assets shall not vest in them, but shall remain in the corporation until transferred by it in its corporate name.
- (2) Dissolution shall not change quorum or voting requirements for the board of shareholders, or provisions regarding election, appointment, resignation or removal of, or filling vacancies among, directors or officers, or provisions regarding amendment or repeal of by-laws or adoption of new by-laws.
- (3) Shares may be transferred and determinations of shareholders for any purpose may be made without closing the record of shareholders until such time, if any, as such record may be closed, and either the board or the shareholders may close it.
- (4) The corporation may sue or be sued in all courts and participate in actions and proceedings, whether judicial, administrative, arbitral or otherwise, in its corporate name, and process may be served by or upon it.

(b) The dissolution of a corporation shall not affect any remedy available to or against such corporation, its directors, officers or shareholders for any right or claim existing or any liability incurred before such dissolution, except as provided in sections 1007 (Notice to creditors; filing or barring claims) or 1008 (Jurisdiction of Nation court to supervise dissolution and liquidation).

## **1007. NOTICE TO CREDITORS; FILING OR BARRING CLAIMS**

(a) At any time after dissolution, the corporation may give a notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day. The giving of such notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid, or operate as a recognition of the validity of, or a waiver of any defense or counterclaim in respect of any claim against the corporation, its assets, directors, officers or shareholders, which has been barred by any statute of limitations or become invalid by any cause, or in respect of which the corporation, its directors, officers or shareholders, has any defense or counterclaim.

(b) Any claims which shall have been filed as provided in such notice and which shall be disputed by the corporation may be submitted for determination to the Nation court. A claim filed by the trustee or paying agent for the holders of bonds or coupons shall have the same effect as if filed by the holder of any such bond or coupon. Any person whose claim is, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section or section 1008. The claim of any such person and all other claims which are not timely filed as provided in such notice except claims which are the subject of litigation, and all claims which are so filed but are disallowed by the court under section 1008, shall be forever barred as against the corporation, its assets, directors, officers and shareholders, except to such extent, if any, as the court may allow them against any remaining assets of the corporation in the case of a creditor who shows satisfactory reason for his failure to file his claim as so provided.

(c) Notwithstanding this section and section 1008 tax claims and other claims of the Nation, another Indian Nation, any state and of the United States shall not be required to be filed under those sections, and such claims shall not be barred because not so filed, and distribution of the assets of the corporation, or any part thereof, may be deferred until determination of any such claims.

(d) Laborer's wages shall be preferred claims and entitled to payment before any other creditors out of the assets of the corporation in excess of valid prior liens or encumbrances.

## **1008. JURISDICTION OF ONEIDA NATION COURT TO SUPERVISE DISSOLUTION AND LIQUIDATION**

(a) At any time after the filing of a certificate of dissolution under this chapter the Nation court, in a special proceeding instituted under this section, upon the petition of the corporation, or, in a situation approved by the court, upon the petition of a creditor, claimant, director, officer, shareholder, subscriber for shares, incorporator or the Nation Prosecutor, may suspend or annul the dissolution or continue the liquidation of the corporation under the supervision of the court and may make all such order as it may deem proper in all matters in connection with the dissolution or the winding up of the affairs of the corporation, and in particular, and without limitation of the generality thereof, in respect of the following:

- (1) The determination of the validity of the authorization of the dissolution of the corporation and of the execution and delivery of the certificate of dissolution under this chapter.
- (2) The adequacy of the notice given to creditors and claimants and if it is determined to have been inadequate, the requirement of such further notice as the court may deem proper.
- (3) The determination of the validity and amount or invalidity of any claims which have been presented to the corporation.
- (4) The barring of all creditors and claimants who have not timely filed claims as provided in any such notice, or whose claims have been disallowed by the court, as against the corporation, its assets, directors, officers and shareholders.
- (5) The determination and enforcement of the liability of any director, officer, shareholder or subscriber for shares, to the corporation or for the liabilities of the corporation.
- (6) The payment, satisfaction or compromise of claims against the corporation, the retention of assets for such purpose, and the determination of the adequacy of provisions made for payment of the liabilities of the corporation.
- (7) The disposition or destruction of records, documents and papers of the corporation.
- (8) The appointment and removal of a receiver under chapter 12 (Receivership) who may be a director, officer or shareholder of the corporation.
- (9) The issuance of injunctions for one or more of the purposes and as provided in section 1115 (Injunction).
- (10) The return of subscription payments to subscribers for shares, and the making of distributions, in cash or in kind or partly each, to the shareholders.
- (11) The payment to the Oneida Indian Nation, as abandoned property, of assets under paragraph (c) of section 1005 (Procedure after dissolution).

(b) Orders under this section may be entered ex parte, except that if such special proceeding was not instituted upon petition of the corporation, notice shall be given to the corporation in such manner as the court may direct. Notice shall be given to such other persons interested, and in such manner, as the court may deem proper, of any hearings and of the entry of any orders on such matters as the court shall deem proper. All orders made by the court under this section shall be binding upon the Nation, the corporation, its officers, directors, shareholders, subscribers for shares, incorporators, creditors and claimants.

- (c) (1) Simultaneously with the institution of such special proceeding for annulment of the dissolution, the petitioner shall apply to the Nation Clerk to reserve the corporation name to the corporation. If such name shall not be available for use, the petitioner forthwith upon being notified thereof shall apply to such department for the reservation of another and available name and any judgment or order of annulment made in such proceeding shall order and direct the petitioner to execute a certificate of change of the corporate name to such other name.
- (2) The clerk of the court, shall transmit a certified copy of the judgment or order of annulment of the dissolution, together with the certificate of change of corporate name in the appropriate case, to the Nation Clerk. Upon filing by the Nation Clerk, the annulment of dissolution shall be effected.

#### **1009. APPLICABILITY TO DISSOLUTION UNDER OTHER PROVISIONS**

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 Nation court to supervise dissolution and liquidation) shall apply to a corporation dissolved by expiration of its period of duration.

## **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.

## CHAPTER 12-RECEIVERSHIP

### 1201. ACTION BY JUDGMENT CREDITOR FOR SEQUESTRATION

Where final judgment for a sum of money has been rendered against a corporation, and an execution issued has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment sequestering the property of the corporation and providing for a distribution thereof.

### 1202. APPOINTMENT OF RECEIVER OF PROPERTY OF A DOMESTIC OR FOREIGN CORPORATION

(a) A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

- (1) An action or special proceeding brought under chapter 10 (Non-judicial dissolution) or 11 (Judicial dissolution).
- (2) An action under section 1201 (Action by judgment creditor for sequestration).
- (3) An action brought by the Nation Prosecutor or by a shareholder to preserve the assets of a corporation.
- (4) An action to preserve the assets of any kind, tangible or intangible, of a foreign corporation which has been dissolved, nationalized or its authority or existence otherwise terminated or cancelled in the jurisdiction of its incorporation or which has ceased to do business, brought by any creditor or shareholder of such corporation or by one on whose behalf an order of attachment against the property of such corporation has been issued.

(b) A receiver shall be subject to the control of the court at all times and may be removed by the court at any time.

(c) All actions or special proceedings brought by or against a receiver shall have a preference.

### **1203. TEMPORARY AND PERMANENT RECEIVER**

(a) At any stage before final judgment or final order in an action or special proceeding brought under this chapter, the court may appoint one or more receivers of the property of the corporation or of the property of a foreign corporation against which an action has been brought under subparagraph (a)(4) of section 1202 (Appointment of receiver of property of a domestic or foreign corporation). Notice of an application for the appointment of a receiver shall be given to the Nation Prosecutor and to such other persons and in such manner as the court directs. The determination by the court of the necessity or advisability of appointing a receiver or an attorney for a receiver, and the allowance of expenses, commissions or compensation to the receiver or his attorney, shall be subject to review on appeal. This provision shall not affect any other right to review on appeal.

(b) A receiver appointed by or under a final judgment or order in an action or special proceeding, or a temporary receiver who is continued by the final judgment or order, is a permanent receiver. The court may confer upon a temporary receiver the powers, and subject him to the duties of a permanent receiver, or so much thereof as it deems proper.

### **1204. OATH AND SECURITY**

(a) A receiver, before entering upon his duties, shall:

- (1) Take and subscribe an oath that he will faithfully, honestly and impartially discharge the trust committed to him, and the oath shall be filed with the clerk of the court in which the action or special proceeding is pending.
- (2) File with the clerk of such court a bond, with at least two sufficient sureties or a bond executed by any fidelity or surety company in a penalty fixed by the court appointing him, conditioned for the faithful discharge of his duties as receiver. The court may at any time direct a receiver to give a new bond with new sureties and with like condition.

### **1205. DESIGNATION OF DEPOSITORIES BY COURT**

All orders appointing a receiver of a corporation shall designate therein one or more places of deposit, wherein all funds of the corporation not needed for immediate distribution shall be deposited and no other deposits and no investment of such funds shall be made, except upon the order of the court.

## 1206. POWERS OF PERMANENT RECEIVER

(a) A permanent receiver, upon qualifying under section 1204 (Oath and security), shall be vested with title to all the property of the corporation wherever situated or of the property within the territorial jurisdiction of the Nation of a foreign corporation against which an action or special proceeding has been brought under subparagraph (a)(4) of section 1202 (Appointment of receiver of property of a domestic or foreign corporation), for the benefit of the creditors and shareholders of the corporation.

(b) A permanent receiver shall have the power:

- (1) To sue his own name or otherwise for the recovery of the property, debts and causes of action of the corporation. No set-off or counterclaim shall be allowed in any such action for any demand unless it was owing by the corporation to the defendant before the commencement of the action or special proceeding in which the receiver was appointed or unless it shall have been incurred by the receiver subsequent to his appointment.
- (2) To sell at public or private sale all the property vested in him, in such manner and on such terms and conditions as the court shall direct, and to make necessary transfers and conveyances thereof.
- (3) To examine on oath, to be administered by him, any person concerning any matter pertaining to or affecting the receivership.
- (4) To settle or compound any demands by or against the receivership.

(c) When more than one receiver is appointed, all provisions in this chapter in reference to one receiver shall apply to them.

(d) When more than one receiver is appointed, the debts and property of the corporation may be collected and received by any of them; when more than two receivers are appointed, the powers and rights conferred on them may be exercised by any two.

(e) When more than one receiver is appointed, the survivor or survivors of such receivers shall have all the powers and right of the receivers.

## 1207. DUTIES OF RECEIVER UPON APPOINTMENT

(a) Upon appointment and qualification, a receiver shall have the following duties:

- (1) To give immediate notice of his appointment by publication once a week for two successive weeks in two newspapers of general circulation in Madison County, New York or, in the case of a foreign corporation against which an action has been brought under subparagraph (a)(4) of section 1202 (Appointment of receiver of property of a domestic or foreign corporation), in a newspaper of general circulation as directed by the court, requiring:
  - A) All persons indebted to the corporation to render an account of all debts owing by them to the corporation and to pay the same to the receiver at a specified place and by a specified day.
  - B) All persons having in their possession any property of the corporation to deliver the same to the receiver at the specified place and by the specified day.
  - C) All creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims to the receiver in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Whenever a receiver is appointed in dissolution proceedings under chapter 10 (Non-judicial dissolution) or chapter 11 (Judicial dissolution), section 1007 (Notice to creditors; filing or barring claims) shall apply and shall control the giving of notice to creditors and claimants and the filing and barring of claims.
- (2) To call a general meeting of the creditors of the corporation within four months from the date of his appointment by a notice to be published as directed in subparagraph (a)(1), setting forth the time and place of such meeting, which time shall be not more than two months, nor less than one month after the first publication of such notice. At such meeting, or at an adjournment thereof, the receiver shall present a statement of all accounts and demands for and against the corporation, its subsisting contracts, and the money and other assets in his hands.
- (3) To keep true books of account of all moneys received and expended by him as receiver, which books shall be open for inspection at reasonable times by creditors or other persons interested therein. On or before the first day of February in each year, for the preceding calendar year, and at such other times as the court shall direct, the receiver shall file with the clerk of the court by which he was appointed a verified statement showing the assets received, the disposition thereof, the money on hand, all payments made, specifying the persons to whom paid and the purpose of the payments, the amount necessary to be retained to meet necessary expenses and claims against the



receiver, and the distributive share in the remainder of each person interested therein. A copy of such statement shall be served by the receiver upon the Nation Prosecutor within five days after the filing thereof.

#### **1208. PENALTY FOR CONCEALING PROPERTY FROM RECEIVER**

Any persons having possession of property belonging to the corporation, who shall wrongfully withhold such property from the receiver after the day specified in the notice given under section 1207 (Duties of receiver upon appointment), shall forfeit to the receiver double the value of such property, and the same may be recovered in an action by the receiver.

#### **1209. RECOVERY OF ASSETS**

(a) Whenever a receiver, by verified petition to the Nation court shall show that he has good reason to believe that any person has in his possession or under his control, or has wrongfully concealed, withheld or disposed of, any property of the corporation, or that any person can testify concerning such facts, the court, with or without notice, shall make an order requiring such person to appear before the court or a referee, at a time and place designated, and submit to an examination concerning such facts. In such order, or at any time thereafter, in its discretion, the court may enjoin and restrain such person from disposing of any property of the corporation in his possession or under his control.

(b) In any examination under such order, the court may confer immunity.

(c) A person so ordered to appear shall be subject to the same penalties upon failure to appear and testify in obedience to such order as are provided by law in the case of witnesses who fail to obey a subpoena to appear and testify in an action.

(d) A person appearing for examination in obedience to such order shall be sworn, and shall be entitled to represented on such examination by counsel, and may be cross-examined, or may make a voluntary statement in his own behalf concerning the subject of his examination.

(e) The testimony taken under such order shall be signed and sworn to by the person examined, and be filed in the office of the clerk of the Nation court. If it shall appear that any person is wrongfully concealing or withholding, or has in his possession or under his control, any property of the corporation, on notice to him, the court may make an order requiring him forthwith to deliver it to the receiver, subject to the further order of the court.

#### **1210. ORDER OF PAYMENT BY RECEIVER**

(a) Laborers' wages shall be preferred claims and entitled to payment before any other creditors out of the assets of the corporation in excess of valid prior liens or encumbrances.

(b) The receiver shall, subject to any prior liens or encumbrances, distribute the residue of the

moneys in his hands, among the creditors whose claims have been proved and allowed, as follows:

- (1) All debts due by such corporation to the Oneida Indian Nation and all debts entitled to a preference under applicable laws.
- (2) All debts that may be owing by the corporation as trustee.
- (3) Judgments against the corporation, to the extent of the value of the real property on which they are liens.
- (4) All other creditors, in proportion to their respective demands, without preferences to specialty debts.

#### **1211. FINAL DISTRIBUTION BY RECEIVER**

- (a) If there remains property of the corporation after the first distribution, the receiver shall, within one year thereafter, make a final distribution among the creditors entitled thereto.
- (b) A creditor or claimant who failed to prove his claim before the first distribution and who proves it before the final one shall receive the sum he would have been entitled to on the first distribution before any further distribution shall be made to other creditors or claimants.
- (c) Unless the court shall otherwise direct, no other distribution shall be made thereafter to creditors, except to those having pending actions against the corporation or the receiver.
- (d) After the final distribution to creditors, the receiver shall not be answerable to any creditor or claimant, unless his claim shall have been proved before or at the time specified in the notice of the final distribution.

#### **1212. DISPOSITION OF MONEYS RETAINED; SURPLUS; UNCLAIMED DISTRIBUTIONS**

- (a) When any action pending at the time of the final distribution shall be terminated, the receiver shall apply the moneys retained by him to the payment of the amount recovered, and his necessary charges and expenses incurred therein.
- (b) After the final distribution to creditors and after deducting his charges and expenses, the receiver shall distribute any surplus among the shareholders of the corporation, in accordance with their respective rights.
- (c) Any portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and for whom there is not legal representative, shall be paid by the receiver to the Nation as abandoned property within six months from the date fixed for the payment of the final liquidating distribution, and be subject to the provisions of the abandoned property law.

### **1213. OMISSION OR DEFAULT OF RECEIVER**

Upon notice to the Nation Prosecutor and upon such notice to creditors or others interested as the court shall direct, the court may, in the furtherance of justice, relieve a receiver from any omission or default, on such conditions as may be imposed, and, on compliance therewith, confirm his action.

### **1214. APPLICATION BY NATION PROSECUTOR FOR REMOVAL OF RECEIVER AND TO CLOSE RECEIVERSHIP**

(a) Whenever he deems it to be to the advantage of the shareholders, creditors or other persons interested in the assets of any corporation for which a receiver has been appointed, the Nation Prosecutor may move:

- (1) For an order removing the receiver and appointing another in his stead;
- (2) To compel the receiver to account;
- (3) For such other and additional orders as may facilitate the closing of the receivership

### **1215. RESIGNATION BY RECEIVER; FILLING ANY VACANCY**

(a) A receiver may petition the court appointing him for an order to show cause why he should not be permitted to resign.

(b) The petition shall be accompanied by a verified account of all the assets of the corporation received by him, of all payments or other disposition thereof made by him, of the remaining assets of the corporation in respect to which he was appointed receiver and the situation of the same, and of all his transactions as receiver. Thereupon, the court shall grant an order directing notice to be given to the sureties on his official bond and to all persons interested in the property of the corporation to show cause, at a time and place specified, why the receiver should not be permitted to resign. If it shall appear that the proceedings of the receiver in the discharge of his trust have been fair and honest and that there is not good cause to the contrary, the court shall make an order permitting such receiver to resign. Thereupon he shall be discharged and his powers as receiver shall cease, but he shall remain subject to any liability incurred prior to the making of such order. The court, in its discretion, may require the expense of such proceeding to be paid by the receiver presenting the petition.

(c) Any vacancy created by resignation, removal, death or otherwise, may be filled by the court, and the property of the receivership shall be delivered to the remaining receivers or, if there are none, to the successor appointed by the court. The court may summarily enforce delivery by order in the action or special proceeding in which the receiver was appointed.

## **1216. FINAL ACCOUNTING; NOTICE; DUTY OF NATION PROSECUTOR**

(a) Within one year after qualifying, the receiver shall apply to the court for a final settlement of his accounts and for an order for distribution, or, upon notice to the Nation Prosecutor, for an extension of time, setting forth the reasons therefore. If the receiver has not so applied for a settlement of his accounts or for such extension of time, the Nation Prosecutor or any creditor or shareholder may apply for an order that the receiver show cause why an accounting and distribution should not be had, and after the expiration of eighteen months from the time the receiver qualified, it shall be the duty of the Nation Prosecutor to apply for such an order on notice to the receiver.

(b) Before presenting a final account, the receiver shall give notice of his intention to file it by publication, under subparagraph (a)(1) of section 1207 (Duties of receiver upon appointment), setting forth the time and place of filing and presentation to the court. The receiver shall also give not less than eight days' written notice to the sureties on his official bond.

(c) Upon presentation of such account, the court shall hear the allegations, objections and proofs of all parties interested and allow or disallow such account, in whole or in part, and make a final order. The court may refer the account and the hearing, in whole or in part, to a referee who shall report thereon to the court.

## **1217. COMMISSIONS**

(a) A receiver shall be entitled, in addition to his necessary expenses, to such commissions upon the sums received and disbursed as may be allowed by the court, as follows:

(1) On the first twenty thousand dollars, not exceeding five percent;

(2) On the next eighty thousand dollars, not exceeding two and one-half percent; and

(3) On the remainder, not exceeding one percent.

(b) If the commissions of the receiver so computed do not amount to one hundred dollars, the court in its discretion may allow such sum not exceeding one hundred dollars as shall be reasonable.

(c) When more than one receiver shall be appointed, the compensation herein provided shall be divided between them, as the court directs.

## **1218. SPECIAL PROVISIONS RELATING TO ACTIONS OR SPECIAL PROCEEDINGS AGAINST FOREIGN CORPORATIONS**

(a) In any action or special proceeding brought against a foreign corporation under this chapter, the following provisions shall apply.

(1) Service of the summons in such action may be made personally within the territorial

jurisdiction of the Oneida Indian Nation, by delivery of the same to any officer or director of the corporation, or by publication pursuant to an order obtained as hereinafter provided.

- (2) An order directing service by publication of the summons shall be made upon application of a plaintiff in any such action and shall be founded upon a verified complaint, alleging that the defendant is a foreign corporation and has or may have or may be entitled to assets, credits, chose in action or other property, tangible or intangible within the territorial jurisdiction of the Oneida Indian Nation and that such corporation has been dissolved, nationalized or that its authority or existence has been terminated or cancelled in the jurisdiction of its incorporation, or that it has ceased to do business, and upon an affidavit reciting that personal service of the summons cannot be effected within the territorial jurisdiction of the Oneida Indian Nation with due diligence and that a temporary receiver of its property within the territorial jurisdiction of the Oneida Indian Nation has been appointed pursuant to this chapter in such action and that a copy of the order appointing the receiver has been served personally by or on behalf of such receiver upon a person, firm or corporation holding property, tangible or intangible, of the said foreign corporation exists and that demand therefore has been made upon such person, firm or corporation by or on behalf of such receiver.
- (3) The order directing service of the summons shall require the publication thereof in a newspaper published in the general locality of the Nation in the Oneida or English language at least once a week for four successive weeks, and shall also require the mailing on or before the date of the first publication of a copy of the summons, complaint and order to the corporation at its last known principal or head office in the stated or country of its incorporation.
- (4) In any such action, the summons shall be served personally or an order directing service thereof by publication shall be obtained and the first publication thereof made within sixty days after the appointment of the temporary receiver, and if served by publication, the service shall be made complete by the continuance thereof.
- (5) If served by publication, service of the summons shall be deemed complete on the date of the last publication. The action shall be deemed commenced upon the issuance of the summons. The order appointing the receiver and the paper upon which the same is granted shall be filed in the office of the clerk of the court where the action is triable within ten days after the order is made.
- (6) In the event that the defendant defaults in answering, or if after a trial the court is satisfied that the defendant has ceased to do business by reason of any thing or matter whatsoever, or that it has been dissolved, nationalized, or its authority or existence has been otherwise terminated or cancelled, the court shall thereupon direct judgment, appointing a permanent receiver and directing the receiver to liquidate the assets, credits, chose in action and property, tangible and intangible, within the territorial

jurisdiction of the Nation of the said defendant, in the manner provided in this chapter.

- (7) The time between the cessation of business by the corporation or its dissolution or nationalization or the termination or cancellation of its authority or existence and the appointment of a receiver pursuant to this chapter, whichever time is longer, plus three years after such appointment, shall not be a part of the time limited by domestic or foreign law for the commencement of an action or for the assertion of a claim therein by or no behalf of or against said corporation or by or against said receiver, whether or not said action or claim has heretofore been barred by any statute of limitations of the Nation or any other Indian Nation or country.
- (8) The existence of and cause of action of or against such corporation existing at the time of its dissolution, nationalization, or the termination or cancellation of its authority or existence, or arising thereafter, shall not be deemed ended, abated or affected thereby, nor shall actions brought by or against such corporation or a receiver appointed hereunder or any remedy therein be deemed to have ended or abated or to have been affected by reason of such dissolution, nationalization, or termination or cancellation of its authority or existence. This provision shall apply to all property, tangible and intangible, debts, demands, and chooses in action of such corporation within the Nation, and to all litigation heretofore or hereafter brought in the Nation court to which the corporation or the receiver of said corporation appointed pursuant to the provisions of this chapter is a party. Any receiver appointed pursuant to the provisions of the article may be substituted for such corporation in any action or proceeding pending in the Nation court to which such corporation is a party and may intervene in any action or proceeding which relates to or affects any of the assets or claims of the corporation and revive any action which shall have heretofore or which may hereafter have abated, and such dissolution, nationalization, or termination or cancellation of its authority or existence in the jurisdiction of its incorporation, or any confiscatory law or decree thereof, shall not be deemed to have any extra-territorial effect or validity as to the property, tangible or intangible, debts, demands or chooses in action of such corporation within the territorial jurisdiction of the Nation or any debts or obligations owing to such corporation from persons, firms or corporations residing, sojourning or doing business within the territorial jurisdiction of the Nation. Nothing contained in this subdivision shall be deemed to validate claims for or causes of action or actions to recover property located in or moneys payable in the jurisdiction of incorporation which are unenforceable under the laws of such jurisdiction.
- (9) If any receiver or trustee has heretofore been appointed for such corporation or its property in any action or proceeding, either before or supplementary to judgment, otherwise than in an action brought pursuant to this article, such receiver or trustee may be appointed or continued as the receiver in any action brought pursuant to the provisions of this chapter.
- (10) The appointment of a receiver or the pendency of an action for the appointment of such

receiver, shall until such receiver shall be discharged or until such action shall have terminated, be a bar to any subsequent application or action for the appointment of a receiver of the assets of the same corporation.

- (11) An action shall be commenced within three years from the discovery by the plaintiff or his predecessor in interest, of any asset of said corporation within the territorial jurisdiction of the Nation.

## CHAPTER 13-FOREIGN CORPORATIONS

### 1301. AUTHORIZATION OF FOREIGN CORPORATIONS

(a) A foreign corporation shall not do business within the territorial jurisdiction of the Nation until it has been authorized to do so as provided in this chapter. A foreign corporation may be authorized to do within the territorial jurisdiction of the Nation any business which may be done lawfully within the territorial jurisdiction of the Nation by a domestic corporation, to the extent that it is authorized to do such business in the jurisdiction of its incorporation, but no other business.

(b) Without excluding other activities which may not constitute doing business within the territorial jurisdiction of the Nation, a foreign corporation shall not be considered to be doing business within the territorial jurisdiction of the Nation, for the purposes of this chapter, by reason of carrying on within the territorial jurisdiction of the Nation any one or more of the following activities:

- (1) Maintaining or defending any action or proceeding, whether judicial, administrative, arbitrative or otherwise, or effecting settlement thereof or the settlement of claims or disputes.
- (2) Holding meetings of its directors or its shareholders.
- (3) Maintaining bank accounts.
- (4) Maintaining offices or agencies only for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(c) The specification in paragraph (b) does not establish a standard for activities which may subject a foreign corporation to service of process under this chapter or any other statute of the Nation.

(d) A foreign corporation whose corporate name is not acceptable for authorization pursuant to section 301 and 302 of this chapter, may submit in its application for authority pursuant to section 1304 of this chapter, a fictitious name under which it shall do business in the Nation. A fictitious name submitted pursuant to this section shall be subject to the provisions of subparagraphs (2) through (9) of paragraph (a) of section 301 and 302 of this chapter. A foreign corporation authorized to do business within the territorial jurisdiction of the Nation under a fictitious name pursuant to this section, shall use such fictitious name in all of its dealings with the Nation Clerk and in the conduct of its business within the territorial jurisdiction of the Nation.



### **1302. APPLICATION TO EXISTING AUTHORIZED FOREIGN CORPORATIONS**

Every foreign corporation which on the effective date of this chapter is authorized to do business within the territorial jurisdiction of the Nation under a certificate of authority heretofore issued to it by the Nation Clerk shall continue to have such authority. Such foreign corporation, its shareholders, directors and officers shall have the same rights, franchises and privileges and shall be subject to the same limitations, restrictions, liabilities and penalties as a foreign corporation authorized under this chapter, its shareholders, directors and officers respectively. Reference in this chapter to an application for authority shall, unless the context otherwise requires, include the statement and designation and any amendment thereof required to be filed by the Nation Clerk under prior statutes to obtain a certificate of authority.

### **1303. VIOLATIONS**

The Nation Prosecutor may bring an action to restrain a foreign corporation from doing within the territorial jurisdiction of the Nation without authority any business for the doing of which it is required to be authorized within the territorial jurisdiction of the Nation, or from doing within the territorial jurisdiction of the Nation any business not set forth in its application for authority or certificate of amendment filed by the Nation Clerk. The Nation Prosecutor may bring an action or special proceeding to annul the authority of a foreign corporation doing within the territorial jurisdiction of the Nation any business not set forth in its application for authority or certificate of amendment or the authority of which was obtained through fraudulent misrepresentation or concealment of a material fact or to enjoin or annul the authority of any foreign corporation which within the territorial jurisdiction of the Nation contrary to law has done or omitted any act which if done by a domestic corporation would be a cause for its dissolution under section 1101 (Nation Prosecutor action for judicial dissolution) or to annul the authority of a foreign corporation that has been dissolved or had its authority or existence otherwise terminated or cancelled in the jurisdiction of its incorporation. The Nation Prosecutor shall deliver a certified copy of the order of annulment to the secretary of state. Upon the filing thereof by the Nation Clerk the authority of the foreign corporation to do business within the territorial jurisdiction of the Nation shall be annulled. The Nation Clerk shall continue as agent of the foreign corporation upon whom process against it may be served in any action or special proceeding based upon any liability or obligation incurred by the foreign corporation within the territorial jurisdiction of the Nation prior to the filing of the certified copy of the order of annulment by the Nation Clerk.

### **1304. APPLICATION FOR AUTHORITY; CONTENTS**

(a) A foreign corporation may apply for authority to do business within the territorial jurisdiction of the Nation. An application, entitled "Application for authority of ..... (name of corporation) under section 1304 of the Business Corporation Code", shall be signed and verified by an officer of or attorney-in-fact for the corporation and delivered to the Nation Clerk. It shall set forth:

- (1) The name of the foreign corporation.

- (2) The fictitious name the corporation agrees to use within the territorial jurisdiction of the Nation pursuant to section 1301 of this chapter, if applicable.
- (3) The jurisdiction and date of its incorporation.
- (4) 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 chapter, provided that it also state that it is not formed to engage in any act or activity requiring the consent or approval of the Nation, department, board, agency or other body 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 chapter, if any.
- (5) The address of its office.
- (6) A designation of the Nation Clerk as its agent 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.
- (7) If it is to have a registered agent, his name and address within the Nation and a statement that the registered agent is to be its agent upon whom process against it may be served.
- (8) A statement that the foreign corporation has not since its incorporation or since the date its authority to do business within the territorial jurisdiction of the Nation was last surrendered, engaged in any activity within the territorial jurisdiction of the Nation, except as set forth in paragraph (b) of section 1301 (Authorization of foreign corporations), or in lieu thereof the consent of the Nation to the filing of the application, which consent shall be attached thereto.

(b) Attached to the application for authority shall be a certificate by an authorized officer of the jurisdiction of its incorporation that the foreign corporation is an existing corporation. If such certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto.

### **1305. APPLICATION FOR AUTHORITY; EFFECT**

Upon filing by the Nation Clerk of the application for authority the foreign corporation shall be authorized to do within the territorial jurisdiction of the Nation any business set forth in the application. Such authority shall continue so long as it retains its authority to do such business within the territorial jurisdiction of the Nation has not been surrendered, suspended or annulled in accordance with law.

### **1306. POWERS OF AUTHORIZED FOREIGN CORPORATIONS**

An authorized foreign corporation shall have such powers as are permitted by the laws of the jurisdiction of its incorporation but no greater powers than that of a domestic corporation formed for the business set forth in the application for authority.

### **1307. TENURE OF REAL PROPERTY**

A foreign corporation may acquire and hold real property in the Nation in furtherance of its corporate purposes and may convey the same by deed or otherwise in the same manner as a domestic corporation.

### **1308. AMENDMENTS OR CHANGES**

(a) An authorized foreign corporation may amend or change its application for authority from time to time in any and as many of the following respects as may be desired if the amendments contain only such provisions as might be lawfully contained in an application for authority at the time of making such amendment:

- (1) To change its corporate name if such change has been effected under the laws of the jurisdiction of its incorporation.
- (2) To change its fictitious name filed pursuant to paragraph (d) of section 1301 of this chapter, to another fictitious name, if its true corporate name is not available for use within the territorial jurisdiction of the Nation.
- (3) To delete its fictitious name filed pursuant to paragraph (d) of section 1301 of this chapter, if its true corporate name is now available for use in the Nation.
- (4) To adopt a fictitious name when the corporate name is changed and is not available in the Nation.
- (5) To enlarge, limit or otherwise change the business which it proposes to do in the Nation.
- (6) To change the location of its office in the Nation.
- (7) To specify or change the post office address to which the Nation Clerk shall mail a copy of any process against it served upon him.
- (8) To make, revoke or change the designation of a registered agent or to specify or change his address.
- (9) To change the jurisdiction of its incorporation if such change has been effected under laws permitting such a change to occur.

### 1309. CERTIFICATE OF AMENDMENT; CONTENTS, EFFECT

(a) to accomplish such amendment a certificate, entitled "Certificate of amendment of application for authority of ..... (name of corporation) under section 1309 of the Business Corporation Code", shall be signed and verified by an officer of or attorney-in-fact for the foreign corporation and delivered to the Nation Clerk. It shall set forth:

- (1) The name of the foreign corporation as it appears on the index of names of existing domestic and authorized foreign corporations of any type or kind in the Nation Clerk, division of corporations and the fictitious name the corporation has agreed to use in the Nation pursuant to paragraph (d) of section 1301 of this chapter.
- (2) The jurisdiction of its incorporation. If the jurisdiction of its incorporation has been changed, a statement that the change of jurisdiction has been effected under laws permitting such a change to occur, citing such laws, and including the date the change in jurisdiction was so effected; and a statement that annexed to this certificate of amendment of application for authority is the certificate required by paragraph (b) of this section.
- (3) The date it was authorized to do business in the Nation.
- (4) Each amendment effected thereby.
- (5) If the true corporate name of the foreign corporation is to be changed, a statement that the change of name has been effected under the laws of the jurisdiction of its incorporation and the date the change was so effected.
- (6) If the business it proposes to do in the Nation is to be enlarged, limited or otherwise changed, a statement that it is authorized to do in the jurisdiction of its incorporation the business which it proposes to do in the Nation.

(b) If the jurisdiction of its incorporation has been changed, annexed to the certificate of amendment of application for authority shall be a certificate by an authorized officer of the new jurisdiction of its incorporation that such foreign corporation is an existing corporation domiciled in that jurisdiction. If the annexed certificate by an authorized officer is not in the Oneida or English language, there shall be attached thereto a translation thereof in the Oneida or English language under oath of the translator.

(c) If an authorized foreign corporation has changed its name in the jurisdiction of its incorporation, or has changed its jurisdiction of incorporation, it shall deliver to the secretary of state within twenty days after the change became effective in that jurisdiction a certificate of amendment under paragraph (a) of this section. Upon its failure to deliver such certificate, its authority to do business within the territorial jurisdiction of the Nation shall upon the expiration of said twenty days be

suspended. The filing by the Nation Clerk of a certificate of amendment changing the corporate name or jurisdiction of incorporation within one hundred twenty days after the effective date of the change of name in the jurisdiction of its incorporation or of the change of jurisdiction of its incorporation effected under laws permitting such a change to occur shall annul the suspension and its authority to do business within the territorial jurisdiction of the Nation shall be restored and continue as if no suspension had occurred. The Nation Clerk shall continue as agent of the foreign corporation upon whom process against the foreign corporation may be served in the manner set forth in paragraph (b) of section 306 (Service of process), in any action or special proceeding based upon any liability or obligation incurred by it within the territorial jurisdiction of the Nation before the filing of the certificate of amendment changing the corporate name or changing the jurisdiction of incorporation.

### **1309-A. CERTIFICATE OF CHANGE; CONTENTS**

(a) In lieu of a certificate of amendment, an authorized foreign corporation, upon compliance with this section, may make any or all of the following changes in its application for authority:

- (1) To change the location of its office in the Nation.
- (2) To specify or change the post office address to which the Nation Clerk shall mail a copy of any process against it served upon him.
- (3) To make, revoke or change the designation of a registered agent or specify or change his address.

(b) To accomplish such change, a certificate entitled "Certificate of change of application for authority of ..... (name of corporation) under section 1309-A of the Business Corporation Code" shall be signed and verified by an officer or attorney-in-fact for the foreign corporation and delivered to the Nation Clerk.

It shall set forth:

- (1) The name of the foreign corporation as it appears on the index of names of existing domestic and authorized foreign corporations of any type or kind in the Nation Clerk, division of corporations and the fictitious name the corporation has agreed to use within the territorial jurisdiction of the Nation pursuant to paragraph (d) of section 1301 of this chapter.
- (2) The jurisdiction of its incorporation.
- (3) The date it was authorized to do business in the Nation.
- (4) Each change effected thereby.

(c) A certificate of change of application for authority which changes only the post address to which the Nation Clerk shall mail a copy of any process against an authorized foreign corporation served upon him or which changes the address of its registered agent, provided such address is the address of a person, partnership or other corporation whose address, as agent, is the address to be changed or who has been designated as registered agent for such authorized foreign corporation, may be signed, verified and delivered to the Nation Clerk by such agent. The certificate of change of application for authority shall set forth the statements required under subparagraphs (a)(1), (2), (3) and (4) of this section; that a notice of the proposed change was mailed by the party signing the certificate to the authorized foreign corporation not less than thirty days prior to the date of delivery to the secretary and that such corporation has not objected thereto; and that the party signing the certificate is the agent of such foreign corporation to whose address the Nation Clerk is required to mail copies of process or the registered agent, if such be the case. A certificate signed, verified and delivered under this paragraph shall not be deemed to effect a changed of location of the office of the corporation in whose behalf such certificate is filed.

### **1310. SURRENDER OF AUTHORITY**

(a) An authorized foreign corporation may surrender its authority. A certificate, entitled "Certificate of surrender of authority of ..... (name of corporation) under section 1310 of the Business Corporation Code", shall be signed, verified by an officer of or attorney-in-fact for the foreign corporation or by a trustee, receiver or other liquidator of such corporation, and delivered to the Nation Clerk. It shall set forth:

- (1) The name of the foreign corporation as it appears on the index of names of existing domestic and authorized foreign corporations of any type or kind in the Nation Clerk, division of corporations or, the fictitious name the corporation has agreed to use in the Nation pursuant to paragraph (d) of section 1301 of this chapter.
- (2) The jurisdiction of its incorporation.
- (3) The date it was authorized to do business in the Nation.
- (4) That it surrenders its authority to do business within the territorial jurisdiction of the Nation.
- (5) That it revokes the authority of its registered agent, if any, previously designated and consents that process against it in any action or special proceeding based upon any liability or obligation incurred by it within the Nation before the filing of the certificate of surrender may be served on the Nation Clerk after the filing thereof in the manner set forth in paragraph (b) of section 306 (Service of process).
- (6) A post office address within or without the Nation to which the Nation Clerk shall mail a copy of any process against it served upon him.

(b) The Nation Clerk shall not file such certificate unless the consent of the Oneida Indian Nation to the surrender of authority is attached thereto.

(c) The authority of the foreign corporation to do business in the Nation shall terminate on the filing by the Nation Clerk of the certificate of surrender of authority.

(d) The post office specified under subparagraph (a)(6) may be changed. A certificate, entitled "Certificate of amendment of certificate of surrender of authority of .....(name of corporation) under section 1310 of the Business Corporation Code", shall be signed, verified as provided in paragraph (a) and delivered to the Nation Clerk. It shall set forth:

(1) The name of the foreign corporation.

(2) The jurisdiction of its incorporation.

(3) The date its certificate of surrender of authority was filed by the Nation Clerk.

(4) The changed post offices address to which the Nation Clerk shall mail a copy of any process against it served upon him.

#### **1311. TERMINATION OF EXISTENCE**

When an authorized foreign corporation is dissolved, or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its incorporation or when such foreign corporations is merged into or consolidated with another foreign corporation, a certificate of the Nation Clerk, or official performing the equivalent function as to corporate records, of the jurisdiction of incorporation if such foreign corporation attesting to the occurrence of any such event or a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign corporation, the termination of its existence or the cancellation of its authority shall be delivered to the Nation Clerk. The filing of the certificate, order or decree shall have the same effect as the filing of a certificate of surrender of authority under section 1310 (Surrender of authority). The Nation Clerk shall continue as agent of the foreign corporation upon whom process against it may be served in the manner set forth in paragraph (b) of section 306 (Service of process), in any action or special proceeding based upon any liability or obligation incurred by the foreign corporation within the territorial jurisdiction of the Nation prior to the filing of such certificate, order of decree and he shall promptly cause a copy of any such process to be mailed by registered mail, return receipt requested, to such foreign corporation at the post office address on file in his office specified for such purpose. The post office address may be changed by signing, verifying and delivering to the Nation Clerk a certificate of change setting forth the statements required under section 1309-A (Certificate of change; contents) to effect a change in the post office address under subparagraph (a)(4) of section 1308 (Amendments or changes).

### **1312. ACTIONS OR SPECIAL PROCEEDINGS BY UNAUTHORIZED FOREIGN CORPORATIONS**

(a) A foreign corporation doing business within the territorial jurisdiction of the Nation without authority shall not maintain any action or special proceeding in the Nation unless and until such corporation has been authorized to do business in the Nation and it has paid to the Nation all fees and taxes imposed under the law, as well as penalties and interest charges related thereto, accrued against the corporation. This prohibition shall apply to any successor in interest of such foreign corporation.

(b) The failure of a foreign corporation to obtain authority to do business in the Nation shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in the Nation.

### **1313. ACTIONS OR SPECIAL PROCEEDING BY FOREIGN CORPORATIONS**

An action or special proceeding may be maintained by a foreign corporation, in like manner and subject to the same limitations, as an action or special proceeding brought by a domestic corporation, except as otherwise prescribed by statute.

### **1314. ACTIONS OR SPECIAL PROCEEDINGS AGAINST FOREIGN CORPORATIONS**

(a) An action or special proceeding against a foreign corporation may be maintained by a resident of the Nation or by a domestic corporation of any type or kind for any cause of action.

(b) Except as otherwise provided in this article, an action or special proceeding against a foreign corporation may be maintained by another foreign corporation of any type or kind or by a non-resident in the following cases only:

- (1) Where it is brought to recover damages for the breach of a contract made or to be performed within the territorial jurisdiction of the Nation, or relating to property situated within territorial jurisdiction of the Nation at the time of the making of the contract.
- (2) Where the subject matter of the litigation is situated within the territorial jurisdiction of the Nation.
- (3) Where the cause of action arose within the Nation, except where the object of the action or special proceeding is to affect the title of real property situated outside the territorial jurisdiction of the Nation.
- (4) Where, in any case not included in the preceding subparagraphs, a non-domiciliary would be subject to the personal jurisdiction of the Nation court under section 302 of the civil practice law and rules.



- (5) Where the defendant is a foreign corporation doing business or authorized to do business in the Nation.

### **1315. RECORD OF SHAREHOLDERS**

(a) Any resident of the Nation who shall have been a shareholder of record, for at least six months immediately preceding his demand, of a foreign corporation doing business within the territorial jurisdiction of the Nation, or any resident of the Nation holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding shares, upon at least five days' written demand may require such foreign corporation to produce a record of its shareholders setting forth the names and addresses of all shareholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof and shall have the right to examine in person or by agent or attorney at the office of the foreign corporation in the Nation or at the office of its transfer agent or registrar in the Nation in which the foreign corporation is doing business as may be designated by the foreign corporation, during the usual business hours, the record of shareholders or an exact copy thereof certified as correct by the corporate officer or agent responsible for keeping or producing such record and to make extracts therefrom. Resident holders of voting trust certificates representing shares of the foreign corporation shall for the purpose of this section be regarded as shareholders.

(b) An examination authorized by paragraph (a) may be denied to such shareholder or other person upon his refusal to furnish to the foreign corporation or its transfer agent or registrar an affidavit that such inspection is not desired for a purpose which is in the interest of a business or object other than the business of the foreign corporation and that such shareholder or other person has not within five years sold or offered for sale any list of shareholders of any corporation of any type or kind, whether or not formed under the laws of the Nation, or aided or abetted any person in procuring any such record of shareholders for any such purpose.

(c) Upon refusal by the foreign corporation or by an officer or agent of the foreign corporation to produce for examination or to permit an examination of the record of shareholders as herein provided, the person making the demand for production and examination may apply to the Oneida Indian Nation upon such notice as the court may direct, for an order directing the foreign corporation, its officer or agent, to show cause why an order should not be granted directing such production and permitting such examination by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such examination, the court shall grant an order compelling such production for examination and awarding such further relief as to the court may seem just and proper.

(d) Nothing herein contained shall impair the court to compel the production for examination of the books of a foreign corporation. The record of shareholders specified in paragraph (a) shall be prima facie evidence of the facts therein stated in favor of the plaintiff in any action or special proceeding against such foreign corporation or any of its officer, directors or shareholders.

### 1316. VOTING TRUST RECORDS

(a) A voting trustee, appointed under a voting trust agreement to vote the shares of a foreign corporation doing business in the Nation, who either has an office in the Nation or has designated a transfer agent within the Nation, shall produce for examination and permit to be examined in the Nation, at the office of the foreign corporation or at his office or at the office of such transfer agent, a record of voting trust certificate holders setting forth their names, alphabetically arranged, and addresses, the number and class of shares represented by the certificates held by them respectively and the dates when they respectively became the owners thereof, upon the written demand of any resident of the Nation who shall have been a voting trust certificate holder or a shareholder of the foreign corporation for at least six months immediately preceding his demand, or of any resident of this state holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding shares of such foreign corporation, either directly or as holders of voting trust certificates for such shares, subject to the same terms and conditions set forth with respect to the right of examination of the record of shareholders of the foreign corporation in section 1315 (Record of shareholders).

(b) The voting trustee shall deposit an exact copy of the voting trust agreement with the foreign corporation at its office in the Nation or at the office of the transfer agent in the Nation.

(c) The copy of the voting trust agreement shall be subject to the same right of examination by voting trust certificate holders and by shareholders of the foreign corporation as is the record of shareholders of a corporation under section 624 (Books and records; right of inspection, prima facie evidence).

(d) Upon refusal by a voting trustee or his transfer agent to produce for examination or to permit an examination of the record of voting trust certificate holders or of such copy of the voting trust agreement as herein provided, the person making the demand may apply to the Nation court, upon such notice as the court may direct, for an order directing the voting trustee or his transfer agent to show cause why an order should not be granted directing such production and permitting such examination. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is entitled to such examination, the court shall grant an order compelling such production for examination and awarding such further relief as to the court may seem just and proper.

(e) Where the voting trust agreement shall vest in the voting trustee the right to vote the shares of a foreign corporation which has an office in the Nation for the doing of business where the principal business operation of which is conducted within the Nation or the greater part of its property is located within the Nation, and the voting trust agreement is an express trust created under the laws of the Nation, Oneida Nation Court upon the petition of a voting trust certificate holder, may exercise such power over the trustee named therein.

### **1317. LIABILITIES OF DIRECTORS AND OFFICERS OF FOREIGN CORPORATIONS**

(a) Except as otherwise provided in this chapter, the directors and officers of a foreign corporation doing business within the territorial jurisdiction of the Nation are subject, to the same extent as directors and officers of a domestic corporation, to the provisions of:

- (1) Section 719 (Liability of directors in certain cases) except subparagraph (a)(3) thereof, and
- (2) Section 720 (Action against directors and officers for misconduct.)

(b) Any liability imposed by paragraph (a) may be enforced in, and such relief granted by, the Nation court, in the same manner as in the case of a domestic corporation.

### **1318. LIABILITY OF FOREIGN CORPORATIONS FOR FAILURE TO DISCLOSE REQUIRED INFORMATION**

(a) A foreign corporation doing business in the Nation shall, in the same manner as a domestic corporation, disclose to its shareholders of record who are residents of the Nation the information required under paragraph (c) of section 510 (Dividends or other distributions in cash or property), paragraphs (f) and (g) of section 511 (Share distributions and changes), paragraph (d) of section 515 (Reacquired shares), paragraph (c) of section 516 (Reduction of stated capital in certain cases), subparagraph (a)(4) of section 517 (Special provisions relative to surplus and reserves) or paragraph (f) of section 519 (Convertible shares and bonds), and shall be liable as provided in section 520 (Liability for failure to disclose required information) for failure to comply in good faith with these requirements.

(b) For the purposes of this section, an authorized foreign corporation may by board action determine the amount of its earned surplus before the declaration of its first dividend after either (1) the effective date of this chapter or (2) the date of filing of its application for authority under this chapter, whichever is later; and such determination if made in good faith shall be conclusive. Thereafter such foreign corporation may determine the amount or availability of its earned surplus in the same manner as a domestic corporation.

### **1319. APPLICABILITY OF OTHER PROVISIONS**

(a) In application to 1 (Short title; definitions; application; certificates; miscellaneous) and 3 (Corporate name and service of process) and the other sections of Chapter 13, the following provisions, to the extent provided therein, shall apply to a foreign corporation doing business within the territorial jurisdiction of the Nation, its directors, officers and shareholders:

- (1) Section 623 (Procedure to enforce shareholder's right to receive payment for shares).
- (2) Section 626 (Shareholders' derivative action brought in the right of the corporation to

procure a judgment in its favor).

- (3) Section 627 (Security for expenses in shareholders' derivative action brought in the right of the corporation to procure a judgment in its favor).
- (4) Section 721 (Exclusivity of statutory provisions for indemnification of directors and officers) through 727 (Insurance for indemnification of directors and officers), inclusive.
- (5) Section 808 (Reorganization under act of congress).
- (6) Section 907 (Merger or consolidation of domestic and foreign corporations).

### **1320. EXEMPTION FROM CERTAIN PROVISIONS**

(a) Notwithstanding any other provision of this chapter, a foreign corporation doing business within the territorial jurisdiction of the Nation which is authorized under this chapter, its directors, officers and shareholders, shall be exempt from the provisions of paragraph (e) of section 1316 (Voting trust records), subparagraph (a)(1) of section 1317 (Liabilities of directors and officers of foreign corporations), section 1318 (Liability of foreign corporations for failure to disclose required information) and subparagraph (a)(4) of section 1319 (Applicability of other provisions) if when such provision would otherwise apply:

- (1) Shares of such corporation were listed on a national securities exchange, or
- (2) Less than one-half of the total of its business income for the preceding three fiscal years, or such portion thereof as the foreign corporation was in existence, was allocable to the Nation for franchise tax purposes under any tax law.