

CHAPTER 4-MANAGEMENT BY MEMBERS OR MANAGERS

401. MANAGEMENT OF THE LIMITED LIABILITY COMPANY BY MEMBERS

- (a) Unless the articles of organization provides for management of the limited liability company by a manager or managers or a class or classes of managers, management of the limited liability company shall be vested in its members who shall manage the limited liability company in accordance with this Code, subject to any provisions in the articles of organization or the operating agreement and section four hundred eighteen of this Code granting or withholding the management powers or responsibilities of one or more members or classes of members.
- (b) If management of a limited liability company is vested in its members, then (i) any such member exercising such management powers or responsibilities shall be deemed to be a manager for purposes of applying the provisions of this Code, unless the context otherwise requires, and (ii) any such member shall have and be subject to all of the duties and liabilities of a manager provided in this Code.

402. VOTING RIGHTS OF MEMBERS

- (a) Except as provided in the operating agreement, in managing the affairs of the limited liability company, electing managers or voting on any other matter that requires the vote at a meeting of the members pursuant to this Code, the articles of organization or the operating agreement, each member of a limited liability company shall vote in proportion to such member's share of the current profits of the limited liability company in accordance with section five hundred three of this Code.
- (b) Except as provided in the operating agreement, any member may vote in person or by proxy.
- (c) Except as provided in the operating agreement, whether or not a limited liability company is managed by the members or by one or more managers, the vote of a majority in interest of the members entitled to vote thereon shall be required to:
 - (1) admit a person as a member and issue such person a membership interest in the limited liability company;
 - (2) approve the incurrence of indebtedness by the limited liability company other than in the ordinary course of its business; or
 - (3) adopt, amend, restate or revoke the articles of organization or operating agreement, subject to the provisions in subdivision (e) of this section, subdivision (b) of section six hundred nine of this Code and subdivision (b) of section four hundred seventeen of this Code.

- (d) Except as provided in the operating agreement, whether or not a limited liability company is managed by the members or by one or more managers, the vote of at least two-thirds in interest of the members entitled to vote thereon shall be required to:
- (1) approve the dissolution of the limited liability company in accordance with section seven hundred one of this Code;
 - (2) approve the sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited liability company; or
 - (3) approve a merger or consolidation of the limited liability company with or into another limited liability company or foreign limited liability company.
- (e) Notwithstanding anything to the contrary in this section or section four hundred seventeen of this Code, no applicable provision in either this Code, the articles of organization or operating agreement, as the case may be, that provides for the vote or consent of a percentage in interest of the members or class of members shall be amended without the vote or consent of at least such percentage in interest of the members or such class of members.
- (f) Whenever any action is to be taken under this Code by the members or a class of members, it shall, except as otherwise required or specified by this Code or the articles of organization or the operating agreement as permitted by this Code, be authorized by a majority in interest of the members' votes cast at a meeting of members by members or such class of members entitled to vote thereon.

403. MEETINGS OF MEMBERS

Except as provided in the operating agreement, a limited liability company shall hold meetings of members annually. Meetings of members may be held at a place, either within or outside the Nation, as may be fixed by or in accordance with the operating agreement, or if not so fixed, at the office of the limited liability company. Except as provided in the operating agreement, members of a limited liability company may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person at the meeting.

404. QUORUM OF MEMBERS

- (a) Except as provided in the operating agreement, a majority in interest of the members entitled to vote shall constitute a quorum at a meeting of members for the transaction of any business, provided that when a specified item of business is required to be voted on by a class of members voting as a class, a majority in interest of the members of such class shall constitute a quorum for the transaction of such specified item of business.
- (b) The operating agreement may provide for a greater quorum or a lesser quorum, provided that

such lesser quorum shall not be less than one-third in interest of the members entitled to vote.

- (c) When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any members.
- (d) The members present may adjourn the meeting despite the absence of a quorum.

405. NOTICE OF MEETINGS OF MEMBERS

- (a) Except as provided in the operating agreement, whenever under the provisions of this Code members are required or permitted to take any action by vote at a meeting, written notice shall be given stating the place, date and hour of the meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting and, in the case of a special meeting, stating the purpose or purposes for which the meeting is called.
- (b) Except as provided in the operating agreement, a copy of the notice of any meeting shall be given, personally or by first class mail, not less than ten or more than sixty days before the date of the meeting, provided, however, that a copy of such notice may be given by third class mail not less than twenty-four nor more than sixty days before the date of the meeting, to each member 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 member at his or her address as it appears in the records of the limited liability company. An affidavit of a manager, if any, or other person giving the notice that the notice required by this section has been given and shall, in the absence of fraud, be prima facie evidence of the facts therein stated.
- (c) Except as provided in the operating agreement, when a meeting is adjourned to another time or place, it shall not be necessary 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 at the original date of the meeting.

406. WAIVER OF NOTICE

Except as provided in the operating agreement, notice of meeting need not be given to any member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any member at the 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 or her.

407. ACTION BY MEMBERS WITHOUT A MEETING

- (a) Whenever under this Code members of a limited liability company are required or permitted to take any action by vote, except as provided in the operating agreement, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken shall be signed by the members who hold the voting interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting which all of the members entitled to vote therein were present and voted and shall be delivered to the office of the limited liability company, its principal place of business or a manager, employee or agent of the limited liability company having custody of the records of the limited liability company. Delivery made to the office of the limited liability company shall be by hand or by certified or registered mail, return receipt requested.
- (b) Every written consent shall bear the date of signature of each member who signs the consent, and, except as provided in the operating agreement, no written consent shall be effective to take the action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by this section to the limited liability company, written consents signed by a sufficient number of members to take the action are delivered to the office of the limited liability company, its principal place of business or a manager, employee or agent of the limited liability company. Delivery made to such office, principal place of business or manager, employee or agent shall be by hand or by certified or registered mail, return receipt requested.
- (c) Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to those members who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting. In the event that the action that is consented to is such as would have required the filing of articles or a certificate under any other section of this Code, if such action had been voted on by members at a meeting thereof, such articles or certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of members, that written consent has been given in accordance with this section and that written notice has been given as provided in this section.

408. MANAGEMENT BY MANAGERS

- (a) If the articles of organization provides that the management of the limited liability company shall be vested in a manager or managers or class or classes of managers, then the management of the limited liability company shall be vested in one or more managers or classes of managers in accordance with this Code, subject to any provisions in the articles of organization or the operating agreement and section four hundred nineteen of this Code granting or withholding the management powers or responsibilities of one or more managers or class or classes of managers. A manager shall hold such offices and have such responsibilities accorded to him or her by the members as provided in the operating agreement.

- (b) Except as provided in the operating agreement and in accordance with section four hundred nineteen of this Code, the managers shall manage the limited liability company by the affirmative vote of a majority of the managers.
- (c) Except as provided in the operating agreement, any action required or permitted to be taken by a vote of the managers or a class of managers may be taken without a vote if all of the managers or all of the managers in such class, as the case may be, consent thereto in writing, and the writing is filed with the records of the limited liability company.
- (d) Except as otherwise provided in the operating agreement, managers of a limited liability company may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person at the meeting.

409. DUTIES OF MANAGERS

- (a) A manager shall perform his or her duties as a manager, including his or her duties as a member of any class of managers, in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.
- (b) In performing his or her duties, a manager 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 agents or employees of the limited liability company;
 - (2) counsel, public accountants or other persons as to matters that the manager believes to be within such person's professional or expert competence; or
 - (3) a class of managers of which he or she is not a member, duly designated in accordance with the operating agreement of the limited liability company, as to matters within its designated authority, which class the manager believes to merit confidence, so long as in so relying he or she shall be acting in good faith and with such degree of care, but he or she shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that would cause such reliance to be unwarranted.
- (c) A person who so performs his or her duties in accordance with this section shall have no liability by reason of being or having been a manager of the limited liability company.

410. QUALIFICATION OF MANAGERS

- (a) Unless otherwise provided in the operating agreement, a manager may, but need not, be a member of the limited liability company.

(b) The operating agreement may prescribe qualifications for managers.

411. INTERESTED MANAGERS

(a) No contract or other transaction between a limited liability company and one or more of its managers, or between a limited liability company and any other limited liability company or other business entity in which one or more of its managers are managers, 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 manager or managers are present at the meeting of the managers, or of a class thereof, which approves such contract or transaction, or that his or her or their votes are counted for such purpose:

(1) if the material facts as to such manager's interest in such contract or transaction and as to any such common managership, directorship, officership or financial interest are disclosed in good faith or known to the other managers or class of managers, and the managers or such class approve such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested manager or, if the votes of the disinterested managers are insufficient to constitute an act of the managers pursuant to section four hundred eight of this Code, by unanimous vote of the disinterested managers; or

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

(b) If such good faith disclosure of the material facts as to the managers interest in the contract or transaction and as to any such common managership, directorship, officership or financial interest is made to the managers or members, or known to the managers or class of managers or members approving such contract or transaction, as provided in subdivision (a) of this section, the contract or transaction may not be avoided by the limited liability company for the reasons set forth in subdivision (a) of this section. If there was no such disclosure or knowledge, or if the vote of such interested manager was necessary for the approval of such contract or transaction at a meeting of the managers or class of managers at which it was approved, the limited liability company 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 limited liability company at the time it was approved by the managers, a class of managers or the members.

(c) Common or interested managers may be counted in determining the presence of a quorum at a meeting of the managers or of a class of managers that approves such contract or transaction.

(d) The operating agreement may contain additional restrictions on contracts or transactions between a limited liability company and its managers and may provide that contracts or

transactions in violation of such restrictions shall be void or voidable by the limited liability company.

- (e) Unless otherwise provided in the operating agreement, the managers shall have authority to fix the compensation of managers for services in any capacity.

412. AGENCY OF MEMBERS OR MANAGERS

- (a) Unless the articles of organization of a limited liability company provide that management shall be vested in a manager or managers, every member is an agent of the limited liability company for the purpose of its business, and the act of every member, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way of business of the limited liability company, binds the limited liability company, unless (i) the member so acting has in fact no authority to act for the limited liability company in the particular matter and (ii) the person with whom he or she is dealing has knowledge of the fact that the member has no such authority.
- (b) If the articles of organization of a limited liability company provide that management shall be vested in one or more managers:
 - (1) no member, solely by reason of being a member, is an agent of the limited liability company for the purpose of its business except to the extent that authority has been delegated to such member by the manager or managers or by the provisions of the operating agreement; and
 - (2) every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business of the limited liability company binds the limited liability company, unless (A) the manager acting has in fact no authority to act for the limited liability company in the particular matter and (B) the person with whom he or she is dealing has knowledge of the fact that the manager has no such authority.
- (c) An act of a member or manager that is not apparently for the carrying on of the business of the limited liability company in the usual way does not bind the limited liability company unless authorized in fact by the limited liability company in the particular matter.
- (d) No act of a member, manager or other agent of a limited liability company in contravention of a restriction on authority shall bind the limited liability company to persons having knowledge of the restriction.

413. ELECTION AND TERM OF MANAGERS

- (a) Except as provided in the operating agreement, if the articles of organization provides that management shall be vested in one or more managers, the members shall vote in accordance with section four hundred two of this Code to designate or elect annually the manager or managers of the limited liability company.
- (b) Each manager shall hold the office and have the terms (which may be unlimited) and responsibilities accorded to him or her by the members and set out in the operating agreement until his or her successor has been elected and qualified or until his or her earlier resignation or removal.
- (c) Except as provided in the operating agreement, the initial managers shall hold office until the first annual meeting and until their successors have been elected and qualified.
- (d) The number of managers may be increased or decreased by amendment to and in the manner provided in the operating agreement.

414. REMOVAL OR REPLACEMENT OF MANAGERS

Except as provided in the operating agreement, any or all managers of a limited liability company may be removed or replaced with or without cause by a vote of majority in interest of the members entitled to vote thereon.

415. RESIGNATION OF MANAGERS

Except as provided in the operating agreement, a manager may resign at any time by giving written notice to the limited liability company; provided however, that if the resignation violates any provision contained in the operating agreement or the provision of any contractual agreement between the manager and the limited liability company, the limited liability company may recover from such manager damages for such breach as provided by such operating agreement or contract or by law. The election of a manager shall not of itself create contract rights.

416. VACANCIES

- (a) Except as provided in the operating agreement, if management of the limited liability company is vested in a group of managers, and vacancies occurring in such group may be filled by the vote of a majority in interest of the members entitled to vote thereon.
- (b) Except as provided in the operating agreement, a manager chosen to fill a vacancy shall serve the unexpired term of his or her predecessor.
- (c) Except as provided in the operating agreement, any manager's position filled by reason of an increase in the number of managers shall be filled by the vote of a majority in interest of the

members entitled to vote thereon.

- (d) Except as provided in the operating agreement, a manager chosen to fill a position resulting from an increase in the number of managers shall hold office until the next annual meeting of members or until a successor has been elected and qualified.

417. OPERATING AGREEMENT

- (a) Subject to the provisions of this Code, the members of a limited liability company shall adopt a written operating agreement that contains any provisions not inconsistent with law or its articles of organization relating to (i) the business of the limited liability company, (ii) the conduct of its affairs and (iii) the rights, powers, preferences, limitations or responsibilities of its members, managers, employees or agents, as the case may be. The operating agreement may set forth a provision eliminating or limiting the personal liability of managers to the limited liability company or its members for damages for any breach of duty in such capacity, provided that no such provision shall eliminate or limit:

- (1) the liability of any manager if a judgment or other final adjudication adverse to him or her establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or that with respect to a distribution the subject of subdivision (a) of section five hundred eight of this Code his or her acts were not performed in accordance with section four hundred nine of this Code; or

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

- (b) The operating agreement of a limited liability company may be amended from time to time as provided therein; provided, however, that, except as otherwise provided in the operating agreement or the articles of organization, without the written consent of each member adversely affected thereby, (i) no amendment of the operating agreement or (ii) to the extent any provision concerning (A) the obligations of any member to make contributions, (B) the allocation for tax purposes of any items of income, gain, loss, deduction or credit, (C) the manner of computing the distributions of any member or (D) the compromise of an obligation of a member to make a contribution is contained in the articles of organization, no amendment of such provision in the articles of organization, shall be made that (i) increases the obligations of any member to make contributions, (ii) alters the allocation for tax purposes of any items of income, gain, loss, deduction or credit, (iii) alters the manner of computing the distributions of any member or (iv) allows the obligation of a member to make a contribution to be compromised by consent of less than all the members.

418. CLASSES AND VOTING OF MEMBERS

- (a) The articles of organization of a limited liability company may provide for classes or groups of members having such relative rights, powers, preferences and limitations as the operating agreement of such limited liability company may provide. The articles of organization may make provision for the future creation, in the manner provided in the operating agreement, of additional classes of members having such relative rights, powers, preferences and limitations as may from time to time be established pursuant to the operating agreement, including rights, powers, preferences, limitations and duties senior to existing to existing classes of members. The operating agreement may grant to or withhold from all or one or more classes of members the right to vote upon any matter on the basis of capital contributions, capital commitments or capital accounts or on a per capita, class or other basis.
- (b) The operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

419. CLASSES AND VOTING OF MANAGERS

- (a) The articles of organization of limited liability company may provide for classes or groups of managers having such relative rights, powers, preferences and limitations as the operating agreement may provide. The articles of organization may make provision for the future creation, in the manner provided in the operating agreement, of additional classes of managers having such relative rights, powers, preferences and limitations as may from time to time be established pursuant to the operating agreement, including rights, powers, preferences, limitations and duties senior to existing classes of managers. The operating agreement may provide for the classification of managers within classes of managers for the purpose of determining the terms of office of such managers and may grant to all or to one or more classes of managers the right to vote upon any matter on a per capita, class or other basis.
- (b) The operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

420. INDEMNIFICATION

Subject to the standards and restrictions, if any, set forth in its operating agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless, and advance expenses to, any member, manager or other person, or any testator or intestate of such member, manager or other person, from and against any and all claims and demands whatsoever; provided, however, that no indemnification may be made to or on behalf of any member, manager or other person if a judgment or other final adjudication adverse to such member, manager or other person establishes (a) that his or her 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 (b) that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.