

CHAPTER 8-FOREIGN LIMITED LIABILITY COMPANIES

801. GOVERNING LAW

Subject to the laws of the Oneida Indian Nation:

- (a) the laws of the jurisdiction under which a foreign limited liability company is formed govern its organization and internal affairs and the liability of its members and managers; and
- (b) a foreign limited liability company may not be denied a certificate of authority by reason of any difference between such laws and the laws of the Oneida Indian Nation.

802. APPLICATION FOR AUTHORITY

- (a) Before doing business within the territorial jurisdiction of the Nation, a foreign limited liability company shall apply for authority to do business in the Nation by submitting to the Nation Clerk (i) a certificate of existence or, if no such certificate is issued by the jurisdiction of formation, a certified copy of the articles of organization of the limited liability company and all subsequent amendments thereto or, if no articles of organization have been filed, a certified copy of the certificate filed as its organizational basis and all amendments thereto (if such certificate or certified copy is in a foreign language, a translation in English thereof under oath of the translator shall be attached thereto) and (ii) an application for authority as a foreign limited liability company entitled "Application for authority of...(name of foreign limited liability company) under section eight hundred two of the Limited Liability Company Code" signed and verified on or affirmed under penalties of perjury by an authorized person and setting forth:
 - (1) the name of the foreign limited liability company and, if a foreign liability company's name is not acceptable for authorization pursuant to section two hundred four of this Code, the fictitious name under which it proposes to apply for authority and do business in the Nation, which name shall be in compliance with section two hundred four of this Code and shall be used by the foreign limited liability company in all its dealings with the Nation Clerk and in the conduct of its business within the territorial jurisdiction of the Nation.
 - (2) the jurisdiction and date of its organization;
 - (3) the office of the limited liability company is to be located;
 - (4) a designation of the Nation Clerk as its agent upon whom process against it may be served and the post office address within the Nation to which the Nation Clerk shall mail a copy of any process against it served upon him or her;

- (5) if it is to have a registered agent, his or her name and address within the Nation and a statement that the registered agent is to be its agent upon whom process may be served;
- (6) the address of the office required to be maintained in the jurisdiction of its formation by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited liability company;
- (7) a statement that the foreign limited liability company is in existence in the jurisdiction of its formation at the time of the filing of such application; and
- (8) the name and address of the authorized officer in the jurisdiction of its formation where a copy of its articles of organization is filed or, if no public filing of its articles of organization is required by the law of the jurisdiction of formation, a statement that the foreign limited liability company shall provide, on request, a copy thereof with all amendments thereto (if such documents are in a foreign language, a translation in English thereof under oath of the translator shall be attached thereto), and the name and post office address of the person responsible for providing such copies.

803. ACTIVITIES NOT CONSTITUTING DOING BUSINESS

- (a) Without excluding other activities that may not constitute doing business within the territorial jurisdiction of the Nation, a foreign limited liability company shall not be considered to be doing business within the territorial jurisdiction of the Nation for the purposes of this Code, 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 members or managers;
 - (3) maintaining bank accounts; or
 - (4) maintaining offices or agencies only for the transfer, exchange and registration of its membership interests or appointing and maintaining depositaries with relation to its membership interests.
- (b) The specification in subdivision (a) of this section does not establish a standard of activities that may subject a foreign limited liability company to service of process under this Code or any other statute of the Nation.

804. AMENDMENTS TO APPLICATION FOR AUTHORITY

- (a) A foreign limited liability company may amend or change its application for authority from time to time if the amendments or changes contain only such provisions as might be lawfully contained in an application for authority at the time of making such amendment or change.
- (b) Every foreign limited liability company that has received a filing receipt entitled "Certificate of authority of...(name of foreign limited liability company) under section eight hundred five of the Limited Liability Company Code," evidencing authority as provided herein, shall, within ninety days after the change of any of the information required to be set forth in its application for authority under section eight hundred two of this Code, file an amendment to its application with the Nation Clerk entitled "Certificate of amendment of change of...(name of foreign limited liability company) under section eight hundred four of the Limited Liability Company Code," signed and verified on or affirmed under penalties of perjury by an authorized person. The certificate shall set forth:
 - (1) the name of the foreign organization as it appears on the index of names of existing domestic and foreign limited liability companies of any type or kind in the Nation Clerk, and the fictitious name, if any, the foreign limited liability company has agreed to use in the Nation pursuant to section eight hundred two of this Code;
 - (2) the jurisdiction of its organization;
 - (3) the date it was authorized to do business in the Nation;
 - (4) each amendment or change effected thereby; and
 - (5) if the true name of the foreign limited liability company is changed, a statement that the change of name has been effected under laws of the jurisdiction of its formation and the date the change was so effected.

805. ISSUANCE OF CERTIFICATE OF AUTHORITY; EFFECT

- (a) Upon filing with the Nation Clerk of the application for authority, the Nation Clerk shall issue a filing receipt entitled "Certificate of authority of...(name of foreign limited liability company) under section eight hundred five of the Limited Liability Company Code," and the foreign limited liability company shall be authorized to do business within the territorial jurisdiction of the Nation. Such authority shall continue so long as the foreign limited liability company retains its authority to do business in the jurisdiction of its formation and its authority to do business has not been surrendered, suspended or annulled in accordance with the law.
- (b) A foreign limited liability company that has received a certificate of authority shall have such powers to conduct business in the Nation as are permitted by the laws of the jurisdiction in which it was organized but no greater than those of a domestic limited liability company;

provided, that this subdivision shall not affect the powers of the foreign limited liability company outside the Nation; and provided, further, that a foreign related limited liability partnership (i) shall have such powers to conduct business in the Nation as are permitted by the laws of the jurisdiction whose laws govern the agreement under which such foreign related limited liability partnership operates but no greater than those of a partnership without limited partners operating under an agreement governed by the laws of the Nation and provided that such foreign related limited liability partnership shall not engage in any profession or professions and (ii) shall be deemed to be a foreign limited liability partnership for purposes of subdivision (l) and (m) of section 121-1502 of the Oneida Indian Nation partnership law which subdivisions shall be applicable to foreign related limited liability partnerships.

806. SURRENDER OF CERTIFICATE OF AUTHORITY

- (a) A foreign limited liability company may surrender its certificate of authority by filing with the Nation Clerk a certificate entitled "Certificate of surrender of authority of...(name of foreign limited liability company) under section eight hundred six of the Limited Liability Company Code" signed and verified by an authorized person, or by a trustee, receiver or other person authorized by law to wind up such limited liability company. The authority of the foreign limited liability company to do business in the Nation shall terminate on such filing of the certificate of surrender of authority. A surrender shall not terminate the authority of the Nation Clerk to accept service of process on the foreign limited liability company with respect to causes of action arising out of doing business in the Nation.
- (b) The certificate of surrender of authority shall set forth:
- (1) the name of the foreign limited liability company as it appears on the index of names of existing domestic and authorized foreign limited liability companies of any type or kind in the Nation Clerk, and the fictitious name the foreign limited liability company has agreed to use in the Nation pursuant to section eight hundred two of this Code;
 - (2) the jurisdiction where it was organized;
 - (3) the date on which its certificate of authority to do business in the Nation was filed with the Nation Clerk;
 - (4) that it surrenders its authority to do business in the Nation;
 - (5) that it revokes the authority of its registered agent, if any, previously designated, and that it 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 before filing of the certificate of surrender may be served on the Nation Clerk in the manner set forth in Code three of this Code; and
 - (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 or her.

807. TERMINATION OF EXISTENCE

When a foreign limited liability company that has received a certificate of authority is dissolved or its authority to conduct its business or existence is otherwise terminated or canceled in the jurisdiction of its formation or when such foreign limited liability company is merged into or consolidated with another foreign limited liability company, (a) a certificate of the Nation Clerk or official performing the equivalent function as to limited liability company records in the jurisdiction of organization of such limited liability company attesting to the occurrence of any such event of (b) a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign limited liability company, the termination of its existence or the surrender 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 eight hundred six of this Code. The Nation Clerk shall continue as agent of the foreign limited liability company upon whom process against it may be served in the manner set forth in this Code, in any action or proceeding based upon any liability or obligation incurred by the foreign limited liability company within the Nation prior to the filing of such certificate, order or decree. The post office address may be changed by filing with the Nation Clerk a certificate of amendment under section eight hundred four of this Code.

808. DOING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY

- (a) A foreign limited liability company doing business within the territorial jurisdiction of the Nation without having received a certificate of authority to do business within the territorial jurisdiction of the Nation may not maintain any action, suit or special proceeding in the court unless and until such limited liability company shall have received a certificate of authority in the Nation.
- (b) The failure of a foreign limited liability company that is doing business in the Nation to comply with the provisions of this Code does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action or special proceeding in the Court.
- (c) A member, manager or agent of a foreign limited liability company is not liable for the contractual obligations or other liabilities of the foreign limited liability company solely by reason of the limited liability company's doing or having done business in the Nation without having received a certificate of authority.
- (d) By doing business in the Nation without authority, a foreign limited liability company appoints the Nation Clerk as its agent for service of process with respect to causes of action arising out of doing business in the Nation. In any such case, process against such foreign limited liability company may be served upon the Nation Clerk in the manner set forth in this Code.

809. ACTION BY NATION PROSECUTOR

The Nation Prosecutor shall, upon his or her own motion or upon the motion of proper parties, bring an action to restrain a foreign limited liability company without a certificate of authority from doing any business in the Nation in violation of this Code or from doing any business in the Nation that is prohibited under the laws of the Nation. The Nation Prosecutor may bring an action or special proceeding to annul the authority of a foreign limited liability company that is doing any business in the Nation that is prohibited under the laws of the Nation. The Nation Prosecutor shall deliver a certified copy of the order of annulment to the Nation Clerk. Upon the filing thereof by the Nation Clerk, the certificate of authority of the foreign limited liability company to do business in the Nation shall be annulled, and the provisions of section eight hundred seven of this Code shall thereafter be applicable. The Nation Clerk shall continue as agent of the foreign limited liability company upon whom process against it may be served in any action, suit or special proceeding based upon any liability or obligation incurred by the foregoing foreign limited liability company within the Nation prior to the filing of the certified copy of the order of annulment by the Nation Clerk.