

**PONCA TRIBE OF NEBRASKA
TITLE XIX
CORPORATIONS**

**CHAPTER 1
GENERAL PROVISIONS**

Section 19-1-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Act of the board of directors" means either:

a. An act adopted or rejected by a majority of the directors present at a duly called meeting where a quorum is present, unless the act of a greater number is required by this Title, the articles of incorporation, or the bylaws; or

b. Action taken by written consent of the directors in accordance with this Title.

2. "Act of the shareholders" means either:

a. An act adopted or rejected by a majority of the votes entitled to be cast by each class of shareholders entitled to vote on the act at a duly called meeting where a quorum is present, unless a greater number of votes is required by this Title, the articles of incorporation, or the bylaws; or

b. An action taken by written consent of the shareholders in accordance with this Title.

3. "Articles of incorporation" means the articles filed under this Title to organize and establish a corporation and includes the articles as amended or restated.

4. "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

5. "Board of directors" means the group of persons vested with the management of the affairs of a domestic or foreign corporation irrespective of the name by which the group is designated.

6. "Bylaws" means the code of rules adopted for the regulation or management of the affairs of a domestic or foreign

corporation irrespective of the name by which those rules are designated.

7. "Corporation" means, except when used in the phrase foreign corporation, an entity that is formed under this Title or that becomes subject to this Title.

8. "Distribution" means a direct or indirect transfer of money or other property, except its own shares, from a domestic or foreign corporation to or for the benefit of its shareholders in respect of any of its shares and includes a declaration or payment of a dividend and any purchase, redemption, or other acquisition of shares, but does not include:

a. Amounts constituting reasonable compensation for present or past service; or

b. Payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

9. "Foreign corporation" means an incorporated entity that is formed under the law of a jurisdiction other than the Tribe and that would be a corporation if the incorporated entity were formed under the laws of the Tribe.

10. "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

11. "Shares" means the units into which the proprietary interests in a corporation are divided.

12. "Voting group" means all shares of one or more classes or series that under the articles of incorporation, bylaws, or this Title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders.

13. Terms used in this Title and not defined herein, but defined in Title XIV of this Code have the meanings defined in Title XIV of this Code.

Section 19-1-2. Governing Laws.

1. Unless displaced by particular provisions of this Title, the relevant provisions of Title XIV of this Code supplement this Title and shall apply to all corporations.

2. This Title shall apply to all corporations to which Title XIV of this Code applies.

Section 19-1-3. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 19-1-4. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2 FORMATION

Section 19-2-1. Formation.

1. One or more persons at least the age of majority may act as incorporators to form a corporation by delivering to the Office of the Secretary for filing the articles of incorporation. The incorporators of a corporation need not be shareholders at the time of formation or thereafter.

2. A corporation is formed when the articles of incorporation become effective.

3. The Office of the Secretary's filing of the articles of incorporation of a corporation is conclusive proof that the corporation is organized and formed under this Title.

Section 19-2-2. Articles of Incorporation.

1. The articles of incorporation must state all of the following:

a. A statement that the corporation is organized under this Title;

b. The name of the corporation that complies with the laws of the Tribe;

- c. The period of duration, which may be perpetual;
 - d. The number of shares the corporation is authorized to issue and, if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;
 - e. A brief statement of the character of business that the corporation initially intends to actually conduct in the territory of the Tribe, provided such statement shall not constitute a limitation on the character of business that the corporation ultimately may conduct;
 - f. The principal address, which may be the same as the mailing address of the corporation's registered agent;
 - g. The name and street and mailing addresses in the territory of the Tribe of the corporation's registered agent;
 - h. The name and address of each incorporator;
 - i. Whether the corporation is a Tribal business entity; and
 - j. If the corporation is Tribal business entity, whether the corporation enjoys the Tribe's sovereign immunity and the scope of any waiver of that immunity.
2. The articles of incorporation shall be signed by all incorporators.
 3. The articles of incorporation may contain statements as to matters other than those required in this Section which are not inconsistent with the laws of the Tribe or not prohibited by the laws of the Tribe.

Section 19-2-3. Amendment or Restatement of Articles.

1. Articles of incorporation may be amended or restated at any time. Except as provided in the articles of incorporation, a shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, purpose, or duration of the corporation.

2. If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

3. If a corporation has issued shares, the following apply to amendments to the articles of incorporation:

a. A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders and the board of directors may condition its submission of the proposed amendment on any basis;

b. If the articles of incorporation expressly permit, the shareholders may propose one or more amendments to the articles of incorporation;

c. The corporation shall provide notice to each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting and the notice shall:

i. State that the proposed amendment will be considered at the meeting; and

ii. Contain or be accompanied by a copy or summary of the amendment; and

d. For the amendment to be adopted, the shareholders must approve the amendment by:

i. A majority vote at a meeting where a quorum consisting of a majority of the votes entitled to vote is present; and

ii. If any voting group is entitled to vote on the amendment, the approval of each such voting group at a meeting where a quorum of the voting group consisting of a majority of the votes entitled to be cast on the amendment by that voting group is present.

4. To amend its articles of incorporation, a corporation must deliver to the Office of the Secretary for filing an amendment stating:

a. The name of the corporation;

b. The date of filing of its initial articles of incorporation;

c. The text of each amendment adopted;

d. The date of each amendment's adoption;

e. If an amendment was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly adopted by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required; and

f. If an amendment required approval of the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this Title and the articles of incorporation.

5. The articles of incorporation shall be amended if there is a statement in the articles that was false or erroneous when it was made.

6. If a director of a corporation knows that any information in a filed articles of incorporation was inaccurate when the articles were filed or has become inaccurate due to changed circumstances, the director shall promptly:

a. Cause the articles to be amended; or

b. If appropriate, deliver to the Office of the Secretary for filing a statement of change or a statement of correction.

Section 19-2-4. Restatement of Articles.

1. A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

2. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in this Chapter for amendments to the articles of incorporation.

3. A corporation that restates its articles of incorporation shall deliver to the Office of the Secretary for filing articles of restatement setting forth:

- a. The name of the corporation;
- b. The date of filing of its initial articles of incorporation;
- c. The text of the restated articles of incorporation;
- d. A statement that the restated articles consolidate all amendments into a single document; and
- e. If a new amendment is included in the restated articles, the statements required under this Chapter for an amendment to the articles of incorporation.

4. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

Section 19-2-5. Bylaws.

1. The board of directors of a corporation shall adopt initial bylaws for the corporation.

2. The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with the laws of the Tribe or the articles of incorporation.

3. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless:

a. The power to alter, amend, or repeal the bylaws is reserved to the shareholders by the articles of incorporation; or

b. The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

4. Unless otherwise provided in the articles of incorporation, the bylaws of a corporation shall be subject to repeal or change by act of the shareholders even though the bylaws may also be amended or repealed by the board of directors.

CHAPTER 3
SHARES AND SHAREHOLDERS

Section 19-3-1. Shares.

1. The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class, and before the issuance of shares of a class, the preferences, limitations, and relative rights of that class shall be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical to those other shares of the same class except to the extent otherwise permitted by this Section.

2. The articles of incorporation shall authorize:

a. One or more classes of shares that together have unlimited voting rights; and

b. One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation on dissolution.

3. The articles of incorporation may authorize one or more classes of shares that:

a. Have special, conditional, or limited voting rights or no right to vote, except to the extent prohibited by this Chapter;

b. Are redeemable or convertible as specified in the articles of incorporation either:

i. At the option of the corporation, the shareholder, or another person or on the occurrence of a designated event;

ii. For cash, indebtedness, securities, or other property; or

iii. In a designated amount or in an amount determined in accordance with a designated formula or by reference to external data or events.

c. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, non-cumulative, or partially cumulative; or

d. Have preference over any other class of shares with respect to distributions, including dividends and distributions on the dissolution of the corporation.

4. The description of the designations, preferences, limitations, and relative rights of share classes in this Section is not exhaustive.

5. If the articles of incorporation provide for it, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in this Section, of either:

a. Any class of shares before the issuance of any shares of that class; or

b. One or more series within a class before the issuance of any shares of that series.

6. Each series of a class of shares shall be given a distinguishing designation.

7. Unless otherwise expressly permitted in this Chapter, all shares of a series shall have preferences, limitations, and relative rights identical to those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

8. A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

9. At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation on dissolution must be outstanding.

Section 19-3-2. Issuance of Shares.

1. Unless the articles of incorporation reserve the power to the shareholders, the board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation including cash, services performed, or other securities of the corporation, except that neither promissory notes nor future services constitute valid consideration.

2. A shareholder of a corporation shall be under no obligation to the corporation or its creditors with respect to the shareholder's shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued.

3. Before the corporation issues shares, the board of directors or, if the articles of incorporation reserve the power to the shareholders, the shareholders, must determine that the consideration received or to be received for shares to be issued is adequate. Such determination is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and non-assessable.

4. When the corporation receives the consideration for which the board of directors or shareholders authorized the issuance of shares, the shares issued for the consideration are fully paid.

5. Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the terms and conditions relating to their exercise, including the time or times, the conditions precedent, and the consideration for which and the holders by whom the rights, options, or warrants may be exercised.

6. The shares of a corporation shall be represented by certificates signed by an officer of the board of directors. At a minimum, each share certificate must state on its face:

- a. The name of the issuing corporation;
- b. The name of the person to whom issued; and

c. The number and class of shares and the designation of the series, if any, the certificate represents.

7. The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. Such a restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

8. A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this Section and its existence is noted conspicuously on the front or back of the certificate. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

9. The shareholders of a corporation do not have any preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

10. A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares, except that if the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired.

Section 19-3-3. Meetings of Shareholders.

1. A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

2. A corporation shall hold a special meeting of shareholders:

a. On the call of its board of directors or the person authorized to do so by the articles of incorporation or bylaws;

b. On the call of the holders of not less than one-fifth (1/5) of all the outstanding shares entitled to vote;
or

c. When otherwise required in this Title, other law of the Tribe applicable to the corporation, the articles of incorporation, or bylaws.

3. Only business within the purpose or purposes described in the meeting notice may be conducted at a special shareholders' meeting.

4. Shareholders' meetings may be held in or out of the territory of the Tribe at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's known place of business.

5. Unless the articles of incorporation provide otherwise, shareholders may participate in any shareholders' meeting by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A shareholder participating in a meeting by such means is deemed to be present in person at the meeting.

6. Unless otherwise provided in the articles of incorporation or bylaws, a majority of the votes entitled to be cast on a matter constitutes a quorum for action on that matter, provided that in no event shall a quorum consist of less than one-third (1/3) of the outstanding shares entitled to vote on the matter. Unless otherwise provided in the articles of incorporation or bylaws, once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

7. Unless the vote of a greater number is required by the articles of incorporation, bylaws, this Title, or other law of the Tribe applicable to the corporation, if a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the matter shall be the act of the shareholders.

8. If the articles of incorporation provide for voting by a single voting group on a matter, action on that matter is taken when voted on by that voting group. If the articles of incorporation provide for voting by two or more voting groups on a matter, action on that matter is taken when voted on by each of those voting groups counted separately. Voting by individual voting groups entitled to vote on a matter need not be simultaneous.

9. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting at least ten (10) but not more than sixty (60) days before the meeting date. Notice may be given by mail, personal delivery, or electronic transmission. Notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

10. A shareholder may waive any notice before or after the date and time of the shareholders' meeting that is the subject of such notice. The waiver must be in writing, signed by the shareholder entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records, except that a shareholder's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

11. Unless the shareholder objects to considering the matter when it is presented, a shareholder waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice.

Section 19-3-4. Shareholder Action Without Meeting.

1. Action required or permitted to be taken at a shareholders' meeting may be taken without a meeting or a vote if there is written consent by at least the minimum number of outstanding shares entitled to vote on the action which would be necessary to authorize or take the action at a meeting.

2. An action taken by shareholders without a shareholders' meeting must be taken by all shareholders and must be evidenced by written consent of all shareholders of the corporation if:

a. The action involves the election or removal of one or more directors; or

b. The articles of incorporation or bylaws require that the action must be taken by all shareholders if taken without a shareholders' meeting.

3. Action taken by the written consent of the shareholders must be evidenced by one or more written consents describing the

action taken and signed by holders of at least the minimum number of outstanding shares necessary to authorize or take the action. The written consents to the action must be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

4. Unless the written shareholder consent specifies a later effective date, action taken under this Section is effective when consents sufficient to authorize taking the action have been delivered to the corporation.

5. A shareholder may revoke the shareholder's consent by delivering a signed revocation of the consent to the chairperson or secretary of the board of directors before the date that the consents sufficient to authorize taking the action have been delivered to the corporation.

6. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document, except that, if the action requires the filing of a certificate under this Title or other law of the Tribe applicable to the corporation, the certificate so filed shall state, in lieu of any statement concerning a vote of shareholders, that written consent has been obtained in accordance with this Section.

7. Notice of the taking of a corporate action without a meeting must be given within thirty (30) days after the effective date of the corporate action to:

a. Each shareholder entitled to take the action who did not consent to the action in writing; and

b. Each shareholder who, if the action had been taken at a meeting, would have been entitled to notice of the meeting.

Section 19-3-5. Voting of Shares.

1. Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of shareholders.

2. Except for shares held by it in a fiduciary capacity, shares of its own stock belonging to a corporation shall not be voted, directly or indirectly, and shall not be counted in

determining the total number of outstanding shares at any given time.

3. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by the shareholder's duly authorized attorney-in-fact, but a proxy shall not be permitted for a Tribal business entity wholly owned by the Tribe. No proxy shall be valid after twelve (12) months from the date of its execution unless otherwise provided in the proxy.

4. Every proxy shall be revocable at the pleasure of the person executing it or his or her personal representatives or assignee, but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold until the contract of pledge or sale is fully executed.

5. In all elections for directors, every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder, for as many persons as there are directors to be elected.

6. If so provided in the articles of incorporation, shareholders may cumulate votes by multiplying the number of votes they are entitled to cast by the number of directors to be elected and to cast the product for a single candidate or distribute the product among two (2) or more candidates.

Section 19-3-6. Voting Trusts and Agreements.

1. One or more shareholders may create a voting trust, conferring on one or more trustees the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and transferring their shares to the trustee. The agreement may contain any lawful provision not inconsistent with the purposes of the trust.

2. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. Unless otherwise provided in the voting agreement, a voting agreement is specifically enforceable.

Section 19-3-7. Shareholder Agreements.

1. An agreement among the shareholders of a corporation is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this Title

if it complies with this Section and meets any of the following conditions:

a. Restricts the discretion or powers of the board of directors;

b. Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in this Chapter;

c. Establishes who shall be directors or officers of the corporation, their terms and conditions of office or employment, or their manner of selection or removal;

d. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

e. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

f. Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue where there is a deadlock among directors or shareholders;

g. Requires dissolution of the corporation at the request of one or more of the shareholders or on the occurrence of a specified event or contingency;

h. Establishes the terms and conditions of employment of shareholders;

i. Addresses the use of arbitration or other forms of dispute resolution to resolve disputes among shareholders;

j. Restricts the transfer of shares; or

k. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation, its liquidation and dissolution, or the

relationship among the shareholders, the directors, and the corporation, or among any of them.

2. An agreement authorized by this section shall be:

a. Set forth either:

i. In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

ii. In a written agreement that is signed by all persons who are shareholders at the time of the agreement and that is filed with the corporation;

b. Subject to amendment or termination only by all persons who are shareholders at the time of the amendment or termination, unless the agreement provides otherwise; and

c. Valid for the duration of the corporation's existence, unless the agreement provides otherwise.

3. An agreement authorized by this Section is enforceable by any person with standing. The existence of an agreement authorized by this Section shall be noted conspicuously on the front or back of each certificate for outstanding shares. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who at the time of purchase did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate for the shares or the purchaser has actual notice of the existence of the agreement at the time of purchase. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety (90) days after discovery of the existence of the agreement or two (2) years after the time of the purchase of the shares.

4. If an agreement authorized by this Section ceases to be effective for any reason and the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, the board of directors may adopt an amendment to the articles of incorporation or bylaws without shareholder action to delete the agreement and any references to it.

5. An agreement that is authorized by this Section and that limits the discretion or powers of the board of directors relieves the directors of liability for acts or omissions imposed by law on directors with respect to the discretion or powers limited by the agreement and imposes such liability on the persons in whom such discretion or powers are vested.

6. The existence or performance of an agreement authorized by this Section is not a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

7. Incorporators may act as shareholders with respect to an agreement authorized by this Section if no shares have been issued when the agreement is made.

8. This Section does not apply to, limit, or invalidate agreements that are otherwise valid or authorized without regard to this Section, including, without limitation, shareholder agreements between or among some or all of the shareholders or agreements between or among the corporation and one or more shareholders. The procedure set forth in this Section is not the exclusive method of agreement among shareholders or among shareholders and the corporation with respect to any of the matters described in this Section.

Section 19-3-8. Shareholder Dissent.

1. A shareholder is entitled to dissent from and obtain payment of the fair value of the shareholder's shares in the event of any of the following corporate actions:

a. Consummation of a plan of merger to which the corporation is a party if:

i. Shareholder approval is required for the merger under the articles of incorporation or laws of the Tribe; or

ii. The corporation is a subsidiary that is merged with its parent;

b. If the shareholder is entitled to vote on the plan, consummation of a plan of interest exchange to which the corporation is a party as the acquired entity;

c. Consummation of a plan of conversion, domestication, or division if the shareholder does not receive interests in the converted, domesticated, or resulting entity that have terms as favorable to the shareholder in all material respects and that represent at least the same percentage interest of the total voting rights of the outstanding interests of the converted entity as the shares held by the shareholder before the conversion, domestication, or division;

d. If the shareholder is entitled to vote on the sale or exchange, consummation of a sale or exchange of all or substantially all of the property of the corporation other than in the usual and regular course of business, including a sale in dissolution, but excluding a sale:

i. Pursuant to court order; or

ii. For cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;

e. An amendment of the articles of incorporation that materially and adversely affects rights in respect of the shareholder's shares because it:

i. Alters or abolishes a preferential right of the shares;

ii. Creates, alters, or abolishes a right in respect of redemption of the shares;

iii. Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

iv. Excludes or limits the right of the shares to vote on any matter; or

v. Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash; or

f. Any other corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that shareholders are entitled to dissent and obtain payment for their shares.

2. A shareholder entitled to dissent and obtain payment for the shareholder's shares under this Section may not challenge the corporate action creating the shareholder's entitlement unless the action is fraudulent or fails to comply with this Title, the articles of incorporation, or bylaws with respect to the shareholder or the corporation.

3. The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any of the following events:

a. The proposed corporate action is abandoned or rescinded; or

b. The shareholder's demand for payment is withdrawn with the written consent of the corporation.

4. If proposed corporate action creating dissenters' rights is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this Section. If corporate action creating dissenters' rights is taken without a vote of shareholders, the corporation, within ten (10) days after the effective date of such corporate action, shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them written dissenters' notice as provided in this Section.

5. If proposed corporate action creating dissenters' rights under this Section is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights shall both deliver written notice to the corporation before the vote is taken of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effectuated and not vote the shares in favor of the proposed action. A shareholder who does not satisfy the requirements of this subsection is not entitled to payment for the shares under this Section. The corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of this subsection.

6. Dissenters' notice required in this Section must be sent within ten (10) days after the effective date of the corporate action and shall:

a. State where the payment demand must be sent and where and when certificates for shares must be deposited; and

b. Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty (30) nor more than sixty (60) days after the date the dissenters' notice is delivered.

7. A shareholder sent a dissenters' notice must demand payment and deposit the shareholder's certificates in accordance with the terms of the notice. A shareholder who demands payment and deposits the shareholder's share certificates retains all other rights of a shareholder until the proposed corporate action is affected. A shareholder who does not demand payment or deposit the shareholder's share certificates where required by the date set in the dissenters' notice is not entitled to payment for the shareholder's shares under this Section.

8. Within thirty (30) days of the later of the effective date of the proposed corporate action or the date the payment demand is received, the corporation shall pay each dissenter who demanded payment and deposited the shareholder's share certificates in accordance with the notice the amount the corporation estimates to be the fair value of the shares plus accrued interest. The payment must be accompanied by:

a. The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

b. An explanation of how the corporation estimated the fair value of the shares;

c. An explanation of how the interest was calculated; and

d. A statement of the dissenter's right to dispute the payment amount under this Section.

9. Provided a demand for payment under this subsection is made in writing within thirty (30) days after the corporation made or offered payment for the dissenter's shares, a dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due and demand payment of the dissenter's estimate, less any payment made under this Section, and demand payment of the dissenter's estimate of the fair value of the dissenter's shares and interest due, if:

a. The dissenter believes that the amount paid under this Section is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

b. The corporation fails to make payment under this Section within sixty (60) days after the date set for demanding payment; or

c. The corporation does not affect the proposed action and does not return the deposited share certificates within sixty (60) days after the date set for demanding payment.

10. If a dissenter's demand for payment under subsection 9 of this Section remains unsettled:

a. The corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the Tribal Court to determine the fair value of the shares and accrued interest;

b. If the corporation does not commence the proceeding within such sixty (60) day period, it shall pay each dissenter whose demand remains unsettled the amount demanded;

c. The Tribal Court may appoint one (1) or more persons as appraisers to receive evidence and recommend a fair valuation to the Tribal Court;

d. Appraisers appointed by the Tribal Court shall have the powers described in the order appointing them or in any amendment to it;

e. The dissenters shall be entitled to the same discovery rights as parties in other civil proceedings;

f. Each dissenter made a party to the proceeding shall be entitled to judgment for the amount, if any, by which the

Tribal Court finds the fair value of the dissenter's shares plus interest exceeds the amount paid by the corporation;

g. The Tribal Court shall determine all costs of the proceeding, including the reasonable compensation and expenses of the appraisers appointed by the Tribal Court and assess the costs against the corporation, except that the Tribal Court may assess the costs against all or some of the dissenters, other than dissenters who are the Tribe or a Tribal business entity, in amounts the Tribal Court finds equitable, to the extent the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment;

h. Except for a party that is the Tribe or a Tribal business entity, the Tribal Court may assess fees and expenses of legal counsel and experts for the respective parties in amounts the Tribal Court finds equitable:

i. Against the corporation and in favor of any or all dissenters if the corporation did not substantially comply with the requirements of this Section; or

ii. Against the corporation or a dissenter if the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided in this Section.

11. Under this Section, fair value with respect to a dissenter's shares shall be determined as the value of the shares immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

12. If the Tribe is a shareholder in a corporation, any right to dissent as a shareholder may only be exercised by the Tribe and no individual member of the Tribe or the Tribal Council shall have any right of shareholder dissent under this Section even if the shares of the Tribe are voted by individual members of the Tribal Council.

13. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as a shareholder or otherwise or waiving the sovereign immunity of any Tribal business entity.

Section 19-3-9. Derivative Actions.

1. A shareholder may maintain a derivative action to enforce a right of a corporation if:

a. Unless such a demand would be futile, the shareholder first makes a demand on the board of directors requesting that they cause the corporation to bring an action to enforce the right; and

b. The board of directors do not bring the action within a reasonable time.

2. In a derivative action, the complaint must state with particularity:

a. The date and content of plaintiff's demand and the response to the demand by the board of directors; or

b. Why demand should be excused as futile.

3. A derivative action to enforce a right of a corporation may be maintained only by a person that is a shareholder at the time the action is commenced and:

a. Was a shareholder when the conduct giving rise to the action occurred; or

b. Who became a shareholder through transfer by operation of law from one who was a shareholder at the time of the conduct.

4. The court may appoint a panel of one or more independent persons on motion by the corporation to determine whether the maintenance of the derivative action is in the best interests of the corporation. If the court appoints such a panel, on motion by the corporation, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit the panel to make its determination. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Title; or

b. Granting a temporary restraining order or preliminary injunction.

5. After appropriate investigation, a panel appointed by the court under this Section may determine that it is in the best interests of the corporation that the proceeding:

- a. Continue under the control of the plaintiff;
- b. Continue under the control of the corporation;
- c. Be settled on terms approved by the corporation; or
- d. Be dismissed.

6. After making a determination how to proceed, a panel appointed by the court under this Section shall file with the court a statement of its determination and its report supporting its determination. The panel shall serve each party with a copy of the determination and report. If the court finds the panel has proven that the members of the panel were disinterested and independent and that the panel acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the panel. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff. A person appointed to a panel by the court under this Section is not liable whatsoever for a determination made pursuant to this Section.

7. A derivative action on behalf of a corporation may not be voluntarily dismissed or settled without the court's approval. If the court determines that a proposed dismissal or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

8. Subject to the award of expenses provided in this Section:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the corporation and not to the plaintiff; and

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the corporation.

9. Unless the corporation is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable

legal counsel's fees and costs, from the recovery of the corporation.

10. In any derivative action brought to enforce the right of a foreign corporation, the matters covered by this Section shall be governed by the laws of the jurisdiction of formation of the foreign corporation except for the provision in this Section governing stays, discontinuance, settlement, and payment of expenses.

11. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or waiving the sovereign immunity of any Tribal business entity.

Section 19-3-10. Financial Statements.

1. A corporation shall furnish its shareholders annual financial statements that may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, and that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

2. If the annual financial statements are reported on by a certified public accountant, that report shall accompany them. If not, the statements shall be accompanied by a statement of the person responsible for the corporation's accounting records both:

a. Stating that person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

b. Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

3. A corporation shall mail or transmit the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year. On written request from a shareholder, the corporation shall mail or transmit that shareholder the latest annual financial statements.

4. If a corporation indemnifies or advances expenses to a director or officer with respect to a proceeding where the director or officer was a party, the corporation shall report the indemnification or advance in writing to the shareholders with or before the annual financial statements required under this Section. Failure to report under this subsection does not invalidate otherwise valid indemnification.

Section 19-3-11. Rights to Information and Records.

1. On reasonable request, a shareholder is entitled to inspect and copy, during regular business hours at the corporation's principal place of business, any of the records of the corporation required to be maintained at such principal place of business under this Title or other law of the Tribe applicable to the corporation.

2. The corporation shall furnish to each shareholder, on reasonable and good faith demand, any other true and full information concerning the corporation's activities, affairs, financial condition, and other circumstances.

3. A former shareholder is entitled to information to which the shareholder was entitled while a shareholder if:

a. The information pertains to the period during which the person was a shareholder;

b. The former shareholder seeks the information in good faith; and

c. The former shareholder satisfies the requirements of this Section.

4. The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of records subject to inspection and copying by shareholders under this Section.

5. The right of inspection granted by this Section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

6. A shareholder's agent or legal representative has the same inspection and copying rights as the shareholder it represents.

7. If a corporation does not allow within a reasonable time a shareholder to inspect and copy any record subject to inspection and copying under this Section, on application of the shareholder, the Tribal Court may summarily order inspection and copying of the records demanded at the corporation's expense.

8. Unless the corporation is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if the Tribal Court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable legal counsel fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded. Unless the shareholder is the Tribe or a Tribal business entity, the Tribal Court may order a shareholder to pay all or a portion of the corporation's costs, including reasonable legal counsel fees, if the demand to inspect is denied in whole or in material part.

9. If the Tribal Court orders inspection and copying of records pursuant to this Section, it may impose reasonable restrictions on the use or distribution of the records by the shareholder.

10. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including a corporation that is a Tribal business entity.

CHAPTER 4 BOARD OF DIRECTORS

Section 19-4-1. Board of Directors.

1. The business and affairs of a corporation shall be managed by a board of directors, subject to any limitations in this Title, the articles of incorporation, or bylaws.

2. Unless the articles of incorporation or bylaws so provide, directors need not be shareholders in the corporation.

3. The articles of incorporation or bylaws may prescribe qualifications for directors.

4. A board of directors shall consist of one (1) or more individuals, with the number established in the articles of incorporation or bylaws.

5. Initial directors may be named in the articles of incorporation, elected by the shareholders, or, prior to the issuance of shares, elected by the incorporators. Thereafter, directors shall be elected at the annual meeting of the shareholders.

6. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting where a quorum is present and those receiving the greatest number of votes shall be deemed elected even though not receiving a majority. At each election for directors, shareholders are entitled to cumulate their votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and casting the product for a single candidate or distributing the product among two or more candidates.

7. Unless otherwise provided in the articles of incorporation, each director shall hold office for the term for which he or she is elected or appointed and until his successor shall have been elected or appointed and qualified.

8. Unless the articles of incorporation require cause for removing a director, a director may be removed from office with or without cause at a meeting of the shareholders called expressly for that purpose by such vote as would suffice for the director's election. The articles of incorporation may provide additional procedures for removing a director.

9. A director may resign at any time by delivering written notice thereof to the board of directors or its chairperson.

10. Unless the articles of incorporation or bylaws provide otherwise, a vacancy on the board of directors may be filled by the board of directors in office even if they constitute less than a quorum. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office.

11. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

12. Unless a law applicable to the corporation or the articles of incorporation or bylaws provide otherwise generally or for any particular act of the board of directors, a majority of

the number of directors shall constitute a quorum for the transaction of business, provided that in no event shall a quorum consist of fewer than one third (1/3) of the number of directors.

13. Unless a law applicable to the corporation or the articles of incorporation or bylaws provide for a greater number generally or for any particular act of the board of directors, the act of the majority of the directors present at a meeting where a quorum is present shall be the act of the board of directors.

14. A director may waive any notice required by this Title, the articles of incorporation, or the bylaws before or after the date and time stated in the notice. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting, unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not, after objecting, vote for or assent to action taken at the meeting.

15. Unless the articles of organization or bylaws provide otherwise, action to be taken at a meeting of the board of directors may be taken without a meeting or a vote if there is written consent by at least a majority of the directors. The written consent to the action must be included in the minutes or filed with the corporate records.

Section 19-4-2. Board Committees.

1. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have one or more members, and each member of a committee shall serve at the pleasure of the board of directors.

2. Unless the articles of incorporation or bylaws require a greater number, the creation of a committee and appointment of members of the board of directors to it must be approved by a majority of all the directors in office when the action is taken.

3. The provisions of this Chapter governing meetings, action without meetings, notice, waiver of notice, quorum, and voting requirements of the board of directors also apply to committees and their members.

4. Subject to the limitations set forth in this Section, each committee of the board of directors may exercise the authority of the board of directors under this Chapter to the extent

specified by the board of directors or in the articles of incorporation or bylaws.

5. A committee shall not take any of the following actions:

a. Authorize distributions;

b. Approve or recommend to shareholders any action that requires the shareholders' approval under this Title;

c. Fill vacancies on the board of directors or on any of its committees;

d. Adopt, amend, or repeal articles of incorporation or bylaws; or

e. Fix the compensation of directors for serving on the board of directors or any committee of the board of directors.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in this Chapter.

7. The board of directors may designate one or more directors as alternate members of any committee who may replace any absent member at any meeting of the committee.

Section 19-4-3. Officers.

1. A corporation has the officers set forth in its articles of incorporation or bylaws or appointed by the board of directors. Each officer has the authority and shall perform the duties set forth in the articles of incorporation or bylaws or, to the extent consistent with the articles of incorporation and bylaws, prescribed by the board of directors.

2. The articles of incorporation shall delegate to one of the officers the responsibility for preparing minutes of meetings of the directors and the shareholders and for authenticating records of the corporation.

3. Unless the articles of incorporation or bylaws provided otherwise, the same individual may simultaneously hold more than one office in the corporation.

4. The appointment of an officer does not by itself create any contractual or property right. Nor does the removal of an officer affect the contractual or property rights, if any, of the officer or corporation.

5. The board of directors may remove an officer at any time with or without cause.

6. An officer may resign at any time by delivering written notice thereof to the corporation.

Section 19-4-4. Duties of Directors and Officers.

1. All directors and officers owe fiduciary duties to the corporation and the shareholders.

2. The fiduciary duties of a director or officer include:

a. To act in a manner the director or officer reasonably believes to be in the best interests of the corporation;

b. To discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other directors or officers information not already known by them but known by the director or officer to be material to the discharge of the decision-making or oversight functions of the directors, unless disclosure would violate another duty imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the corporation and hold as trustee for it any property, profit, or benefit derived by the director or officer:

i. In the conduct or winding up of the corporation's activities and affairs;

ii. From a use by the director or officer of the corporation's property; or

iii. From the appropriation of a corporation opportunity;

e. To refrain from dealing with the corporation in the conduct or winding up of the corporation's activities and affairs as or on behalf of a person having an interest adverse to the corporation;

f. To refrain from competing with the corporation in the conduct of the corporation's activities and affairs before the dissolution of the corporation;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the corporation or its shareholders in connection with a matter in which the director or officer has a material conflict of interest; and

i. To refrain from a transaction from which the director or officer may derive an improper personal profit.

3. All directors and officers shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the corporation, or the articles of incorporation or bylaws consistently with the contractual obligation of good faith and fair dealing.

4. In discharging the director's or officer's duties, unless the director or officer has knowledge that would make reliance unwarranted, a director or officer is entitled to rely on:

a. One or more other directors, officers, or employees of the corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director or officer reasonably believes are within the person's professional or expert competence; or

c. A committee of the board of which the director or officer is not a member if the director or officer reasonably believes the committee merits confidence.

5. The shareholders of a corporation may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

6. Every director and officer shall account to the corporation and hold as trustee for it any improper personal profit derived by that director or officer without the consent of a majority of the disinterested directors from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the corporation; and

b. A use by a director or officer of the property of the corporation, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as a director or officer.

7. A corporation's articles of incorporation or bylaws may impose duties on its directors and officers that are in addition to, but not in abrogation of, those provided in this Section.

Section 19-4-5. Conflicts of Interest.

1. A director or officer shall not vote or participate in any discussion or action of the board of directors concerning a matter where the director or officer or any of their immediate family has a business or personal interest which conflicts with the interests of the corporation.

2. A transaction with the corporation in which a director has an interest is voidable by the corporation solely because of the director's interest in the transaction unless:

a. The material facts of the transaction and the director's interest in the transaction were disclosed to or known by the board of directors at the time of approval of the transaction and a majority of the directors approved or ratified the transaction, provided that any director with an interest in the transaction does not vote on the approval or ratification and is not counted toward the minimum number of directors required to constitute a quorum;

b. The material facts of the transaction and the director's interest in the transaction were disclosed to or known by the shareholders entitled to vote and the

shareholders authorized, approved, or ratified the transaction by a majority vote of the shares entitled to vote, excluding any shares owned by a director who has an interest in the transaction; or

c. The transaction was fair to the corporation at the time it was approved.

3. A corporation shall not lend any money to or guarantee the personal debts or obligations of any director or officer of the corporation unless:

a. The shareholders approve the loan or guarantee by a majority vote of the shares entitled to vote, excluding any shares owned by a director who has an interest in the transaction; or

b. The board of directors determines the loan or guarantee benefits the corporation and a majority of the directors approve the loan or guarantee, provided that any director with an interest in the transaction does not vote on the approval and is not counted toward the minimum number of directors required to constitute a quorum.

Section 19-4-6. Representations of Directors and Officers. An admission or representation made by a director or officer concerning the business of a corporation within the scope of the director's or officer's authority may be used as evidence against the corporation in any legal proceeding.

Section 19-4-7. Knowledge of Directors and Officers. The following operates as notice to or knowledge of a corporation:

1. Notice to any director or officer of any matter relating to the business of the corporation;

2. Knowledge of the director or officer acting in the particular matter acquired while a director or officer or known by the person at the time of becoming a director or officer; and

3. Knowledge of any other director or officer who reasonably could and should have communicated it to the acting director or officer.

CHAPTER 5
DEALING WITH CORPORATION

Section 19-5-1. Nature of Corporation. A corporation is an entity distinct from its shareholders.

Section 19-5-2. Property of Corporation.

1. All property originally transferred to or acquired by a corporation is property of the corporation and not the shareholders individually.

2. Property acquired with funds of a corporation is presumed to be property of the corporation.

3. Property may be acquired, held, and conveyed in the name of a corporation.

4. Subject to any limitations in its articles of incorporation, its bylaws, this Title, or other law of the Tribe applicable to the corporation, the property of a corporation may be transferred by an instrument executed by a director in the name of the corporation.

Section 19-5-3. Liability to Third Parties.

1. A debt, obligation, or other liability of a corporation, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the corporation. This subsection applies regardless of the dissolution of the corporation.

2. A shareholder is not personally liable, directly or indirectly, by way of contribution or otherwise, for an act, debt, obligation, or other liability of the corporation solely by reason of being or acting as a shareholder. This subsection applies regardless of the dissolution of the corporation.

3. The failure of a corporation to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a shareholder for an act, debt, obligation, or other liability of the corporation.

Section 19-5-4. Parties to Actions. A shareholder of a corporation is not a proper party to a proceeding by or against a corporation solely by reason of being a shareholder, except if:

1. The object of the proceeding is to enforce a shareholder's right against or liability to the corporation; or

2. The action is brought by a shareholder under this Title.

Section 19-5-5. Authority to Sue.

1. Unless otherwise provided in its articles of incorporation or bylaws, an action on behalf of a domestic or foreign corporation may be brought in the name of the corporation by:

a. One or more shareholders as a derivative action in accordance with this Title; or

b. One or more directors, if authorized by the board of directors, unless otherwise directed by a majority vote of the shares entitled to vote, excluding shares of any shareholder who has an interest in the outcome of the action that is adverse to the interests of the corporation.

2. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as shareholder or otherwise.

Section 19-5-6. Records.

1. A corporation shall keep at its principal place of business all of the following:

a. A record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each;

b. A list of the names and business addresses of its current directors and officers;

c. A copy of its articles of incorporation and all amendments thereto and restatements thereof together with executed copies of any powers of attorney under which any articles were executed;

d. A copy of its most recent annual report delivered to the Office of the Secretary;

e. A copy of all other organizational documents of the corporation, documents filed with the Office of the Secretary, and all amendments thereto and restatements thereof;

f. A copy of its bylaws and all amendments thereto and restatements thereof;

g. A copy of all shareholder agreements under this Chapter;

h. Any notices to shareholders on which a document filed with the Office of the Secretary is dependent;

i. Resolutions adopted by its board of directors;

j. All written communications within the past three (3) years to shareholders;

k. Minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors;

l. All annual financial statements prepared for the corporation for its last three (3) fiscal years and any audit or other reports with respect to such financial statements; and

m. A record of all matters referred to in this Title or other law of the Tribe applicable to the corporation as maintained in such records which are not otherwise specified in the articles of incorporation or bylaws.

2. A corporation shall maintain accounting records in a form that permits preparation of its financial statements.

3. Failure of a corporation to keep or maintain any of the records required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the corporation.

CHAPTER 6
DISTRIBUTIONS

Section 19-6-1. Distributions Generally.

1. The board of directors may authorize, and the corporation may make, distributions to its shareholders subject to any restrictions in the articles of incorporation and the limitations in this Section.

2. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving any purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

Section 19-6-2. Limitations on Distributions.

1. A distribution shall not be made if, after giving it effect, either:

a. The corporation would not be able to pay its debts as they become due in the ordinary course of the corporation's activities and affairs; or

b. The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation provide otherwise, the amount that would be needed to satisfy the preferential rights, if any, of shareholders upon dissolution and winding up.

2. The board of directors may base a determination that a distribution is not prohibited under this Section on:

a. Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable in the circumstances, which in the absence of special circumstances shall be generally accepted accounting principles or applicable regulatory accounting principles; or

b. A fair valuation or other method that is reasonable under the circumstances.

3. Except as otherwise provided in this Section, the effect of a distribution is measured:

a. In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of either:

i. The date money or other property is transferred or debt is incurred by the corporation; or

ii. The date the shareholder ceases to be a shareholder with respect to the acquired shares;

b. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

c. In all other cases, as of either:

i. The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or

ii. The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

4. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this Section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

Section 19-6-3. Liability for Improper Distributions.

1. A director who votes for or assents to a distribution made in violation of this Chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this Chapter or the articles of incorporation if it is established that the director's duties were not performed in compliance with this Chapter.

2. A director of a corporation who is present at a meeting of its board of directors at which action on any distribution in violation of this Chapter is taken is presumed to have assented to the action taken unless his or her dissent is entered in the minutes of the meeting, the director files his or her written dissent to the action with the secretary of the meeting before the adjournment of the meeting, or the director forwards the dissent

by registered or certified mail to the secretary of the corporation before close of business on the next business day after the adjournment of the meeting. The right to dissent does not apply to a director who voted in favor of the action.

3. A director who is held liable under this Section for an unlawful distribution is entitled to contribution from:

a. Every other director who could be held liable under this Section for the unlawful distribution; and

b. Each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of this Chapter or the articles of incorporation.

4. An action to recover under this Section may be brought in the Tribal Court. An action under this Section is barred unless commenced no later than four (4) years after the date of the distribution.

5. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including a corporation that is a Tribal business entity.

APPROVED 7/26/22
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