

**PONCA TRIBE OF NEBRASKA
TITLE XXI
PARTNERSHIPS**

**CHAPTER 1
GENERAL PROVISIONS**

Section 21-1-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Contribution" means property or a benefit that is provided by a person to a partnership to become a partner or in the person's capacity as a partner.

2. "Distribution" means a direct or indirect transfer of money or other property from a partnership to or for the benefit of its partners or in the person's capacity as a partner, 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.

3. "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under provisions similar to this Chapter.

4. "Foreign limited partnership" means an unincorporated entity formed under the law of a jurisdiction other than the Tribe which would be a limited partnership if formed under the laws of the Tribe and includes a foreign limited liability limited partnership.

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

6. "General partner" means a person that:

a. Has become a general partner as provided in this Chapter or was a general partner in a partnership when the partnership became subject to this Chapter; and

b. Has not dissociated as a general partner.

7. "Limited liability limited partnership", except when used in the phrase foreign limited liability limited partnership, means a limited partnership whose certificate of limited partnership filed under this Title states that the partnership is a limited liability limited partnership.

8. "Limited liability partnership" means, except when used in the phrase foreign limited liability partnership, means a partnership that has filed a statement of qualification under this Title and does not have a similar statement in effect in any other jurisdiction and, unless the context requires otherwise, includes a limited liability limited partnership.

9. "Limited partner" means a person that:

a. Has become a limited partner in a limited partnership as provided in this Chapter or was a limited partner in a limited partnership when the partnership became subject to this Chapter; and

b. Has not dissociated.

10. "Limited partnership" means, except in when used in the phrase foreign limited partnership, an entity that has filed a certificate of limited partnership under this Title or such an entity which becomes subject to this Title and includes a limited liability limited partnership.

11. "Partner" means a person that both:

a. Has become a partner, including a general partner or limited partner, in a partnership or was a partner when the partnership became subject to this Title; and

b. Has not dissociated under this Title.

12. "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under this Title or that becomes subject to this Title and, unless the context requires otherwise, includes a limited partnership,

limited liability partnership, and limited liability limited partnership.

13. "Partnership agreement" means the agreement, whether or not referred to as a partnership agreement and whether oral, implied, in writing, or in any combination thereof, of all the partners of a partnership concerning the conduct of the business of the partnership and its relationships with its partners and includes the agreement as amended or restated.

14. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

15. 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 21-1-2. 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 partnerships.

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

Section 21-1-3. 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 21-1-4. 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 21-2-1. Formation.

1. Except as otherwise provided in this Section, the association of two or more persons at least the age of majority to

carry on as co-owners a business forms a partnership, whether or not the persons intend to form a partnership.

2. An entity formed under a law of the Tribe other than this Title or a comparable statute of another jurisdiction is not a partnership under this Title.

3. In determining whether a partnership is formed, the following rules apply:

a. Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property;

b. The sharing of gross revenues does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the revenues are derived;

c. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

i. Of a debt or loan, even if the amount of payment varies with the profits of the business or the debt or loan includes a present or future ownership of collateral or rights to income, proceeds, or increase in value derived from the collateral;

ii. For services as an independent contractor or an employee;

iii. Of rent;

iv. Of a retirement or health benefit to a deceased or retired partner or a beneficiary, representative, or designee of a deceased or retired partner; or

v. For the sale of the goodwill of a business or other property.

4. A partnership may file its partnership agreement with the Office of the Secretary and, if so filed, the Office of the Secretary's filing of the partnership agreement of a partnership

is conclusive proof that the partnership is organized and formed under this Title.

Section 21-2-2. Partnership for a Definite Term.

1. Partnership for a definite term or particular undertaking is a partnership in which the partners have agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

2. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

3. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Section 21-2-3. Partnership Agreement.

1. Except as otherwise provided in this Section, the partnership agreement governs:

a. Relations among the partners as partners and between the partners and the partnership;

b. The activities and affairs of the partnership and the conduct of those activities and affairs; and

c. The means and conditions for amending the partnership agreement.

2. To the extent the partnership agreement does not provide for a matter described in this Section, this Title and any other law of the Tribe applicable to the partnership governs the matter.

3. In addition to any other limitations on organizational documents of a business entity under the laws of the Tribe, a partnership agreement may not:

a. Vary the law applicable to the partnership;

b. Vary a partnership's capacity to sue and be sued in its own name;

c. Vary any requirement, procedure, or other provision of the laws of the Tribe pertaining to registered agents or the Office of the Secretary, including provisions pertaining to records authorized or required to be filed with the Office of the Secretary under the laws of the Tribe;

d. In the case of limited partnership, vary the right of a general partner to vote on or consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership;

e. Alter or eliminate the duties of partners under the laws of the Tribe, including the duties of loyalty and care and obligations of good faith and fair dealing, except as otherwise expressly permitted in the laws of the Tribe;

f. Vary the power of a person to voluntarily withdraw as a partner under this Title, except to require that notice of withdrawal be in writing;

g. Relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law;

h. Vary the information required under this Title to be maintained by the partnership or unreasonably restrict the duties and rights of partners to information under this Title;

i. Vary the grounds for expulsion specified in this Title;

j. In the case of limited partnership, vary the power of a person to dissociate as a general partner, except to require that notice of dissociation be in writing;

k. Unreasonably restrict the right of a partner to maintain an action under this Title;

l. Vary the right of a partner to approve a merger, interest exchange, conversion, or domestication;

m. Vary the right of a partner to vote on or consent to a cancellation of a statement of qualification under this Chapter; or

n. Except as otherwise expressly provided in this Title, restrict the rights under this Title of a person other than a partner.

4. If a document delivered by a partnership to the Office of the Secretary for filing becomes effective and contains a provision that would be ineffective under this Section if contained in the partnership agreement, the provision is ineffective.

5. If a document delivered by a partnership to the Office of the Secretary for filing becomes effective and conflicts with a provision of the partnership agreement:

a. The partnership agreement prevails as to partners, persons dissociated as partners, and transferees; and

b. The document prevails as to other persons to the extent they reasonably rely on the document.

6. A partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the partnership agreement.

7. A person that becomes a partner in a partnership is deemed to assent to the partnership agreement.

8. Two or more persons intending to become the initial partners of a partnership may make an agreement providing that, upon the formation of the partnership, the agreement will become the partnership agreement.

9. A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

Section 21-2-4. Statement of Qualification.

1. A partnership may become a limited liability partnership pursuant to this Section.

2. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the affirmative vote or consent necessary to amend the partnership agreement.

3. After the required approval, a partnership may become a limited liability partnership by delivering to the Office of the Secretary for filing a statement of qualification. The statement must contain:

a. The name of the partnership that complies with the laws of the Tribe;

b. The principal address, which may be the same as the mailing address of the partnership's registered agent;

c. The name and street and mailing addresses in the territory of the Tribe of the partnership's registered agent; and

d. A statement that the partnership elects to become a limited liability partnership.

4. A partnership's status as a limited liability partnership remains effective, regardless of changes in the partnership, until it is canceled or administratively revoked pursuant to this Section.

5. The Office of the Secretary's filing of a statement of qualification of a limited liability partnership is conclusive proof that the limited liability partnership is organized and formed under this Title.

6. The status of a partnership as a limited liability partnership and the protection against liability of its partners for the debts, obligations, or other liabilities of the partnership while it is a limited liability partnership is not affected by errors or later changes in the information required to be contained in the statement of qualification.

7. A limited liability partnership may amend or cancel its statement of qualification by delivering to the Office of the Secretary for filing a statement of amendment or cancellation. The statement must be approved by the affirmative vote or consent of all the partners and state the name of the limited liability partnership and in the case of:

a. An amendment, state the text of the amendment; and

b. A cancellation, state that the statement of qualification is canceled.

8. The Office of the Secretary may commence a proceeding to revoke the statement of qualification of a limited liability partnership administratively for any of the reasons and under the process for administratively dissolving a business entity under Title XIV of the Code, provided that an administrative revocation affects only a partnership's status as a limited liability partnership and is not an event causing dissolution of the partnership and does not terminate the authority of its registered agent.

CHAPTER 3 PARTNERS

Section 21-3-1. Admission of Partners.

1. Upon formation of a partnership, a person becomes a partner by being one of the persons associated to carry on as a co-owner of the business upon formation.

2. After formation of a partnership, a person becomes a partner:

a. As provided in the partnership agreement;

b. As the result of a merger, interest exchange, conversion, or domestication; or

c. With the affirmative vote or consent of all the partners.

3. A person may become a partner without:

a. Acquiring a transferable interest; or

b. Making or being obligated to make a contribution to the partnership.

Section 21-3-2. Dissociation.

1. A person ceases to be a partner in a partnership and is dissociated as a partner when:

a. The person voluntarily withdraws as a partner and the partnership knows or has notice of the person's express will to withdraw as a partner, provided the person may designate a date of withdrawal as partner;

b. An event stated in the partnership agreement as causing the person's dissociation occurs;

c. The person is expelled as a partner pursuant to the partnership agreement or this Title or other law of the Tribe applicable to the partnership;

d. The person is expelled as a partner by the affirmative vote or consent of all the other partners if:

i. It is unlawful to carry on the partnership business with the person as a partner;

ii. There has been a transfer of all of the person's transferable interest in the partnership, other than a transfer for security purposes;

e. The person:

i. Becomes a debtor in bankruptcy;

ii. Signs an assignment for the benefit of creditors; or

iii. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property;

f. The person is an entity and:

i. Has filed a statement of dissolution or the equivalent;

ii. Has been administratively dissolved or the equivalent;

iii. Had its charter or the equivalent revoked;

iv. Had its right to conduct business suspended in its jurisdiction of formation; or

v. Has been liquidated;

g. If the person is a trust or estate or is acting as a partner by virtue of being a trustee of a trust or personal representative of an estate, the trust's or estate's entire transferable interest in the partnership is distributed;

h. On application by the partnership or a partner in an action brought in Tribal Court, the person is expelled as a partner by order of the Tribal Court because the person:

i. Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's activities and affairs;

ii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the partnership, or a duty or obligation to the partnership; or

iii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the partnership, or a duty or obligation to the partnership; or

iv. Has engaged or is engaging in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a partner;

i. In the case of an individual:

i. The individual dies;

ii. A guardian or general conservator for the individual is appointed; or

iii. A court orders that the individual has otherwise become incapable of performing the individual's duties as a partner under this Title or the partnership agreement;

j. In the case of a person that is not an individual, the existence of the person terminates;

k. The partnership participates in a merger, interest exchange, conversion, or domestication under Title XIV of this Code and:

i. The partnership does not survive the transaction; or

ii. Otherwise as a result of the transaction, the person ceases to be a partner; or

1. The partnership dissolves and completes winding up.

2. A person has the power to dissociate as a partner at any time, rightfully or wrongfully, by withdrawing as a partner voluntarily.

3. A person's dissociation as a partner is wrongful only if the dissociation:

a. Is in breach of an express provision of the partnership agreement, this Title, or other law of the Tribe applicable to the partnership; or

b. In the case of a partnership for a definite term or particular undertaking, occurs before the expiration of the term or the completion of the undertaking and:

i. The person withdraws as a partner voluntarily, unless the withdrawal follows another person's dissociation by death or wrongful dissociation under this subsection not later than ninety (90) days after such dissociation;

ii. The person is expelled as a partner by order of the Tribal Court under this Section;

iii. The person is dissociated as a result of bankruptcy, an assignment for the benefit of creditors, or the appointment of a trustee, receiver, or liquidator under this Section; or

iv. In the case of a person that is not a trust, estate, or individual, the person is expelled or otherwise dissociated because it willfully dissolved or terminated.

4. A person that wrongfully dissociates as a partner is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the partner to the partnership or the other partners. In addition to pursuing any remedies otherwise available under the partnership agreement or applicable law, if a person wrongfully dissociates as a partner, the partnership may offset the damages against the amount otherwise distributable to the partner.

5. If a person is dissociated as a partner:

a. The person's right to participate as a partner in the management and conduct of the partnership's activities and affairs terminates, except to the extent the partner participates in winding up the partnership's business pursuant to a dissolution; and

b. The person's duties and obligations as a partner end with regard to matters arising and events occurring after the person's dissociation, except to the extent the partner participates in winding up the partnership's business pursuant to a dissolution.

6. A person's dissociation does not of itself discharge the person from any debt, obligation, or other liability to the partnership or the other partners which the person incurred while a partner.

7. If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership, the partnership shall cause the person's interest in the partnership to be purchased for a buyout price in the amount that would have been distributable to the person if, on the date of dissociation, the assets of the partnership were sold and the partnership were wound up, with the sale price equal to the greater of:

a. The liquidation value; or

b. The value based on a sale of the entire business as a going concern without the person.

8. A person that wrongfully dissociates as a partner before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any part of the buyout

price until the expiration of the term or completion of the undertaking.

9. A person dissociated as a partner may maintain an action against the partnership to determine the buyout price of that person's interest, any offsets under this Section for wrongful dissociation, or other terms of the obligation to purchase. The action must be commenced not later than one (1) year after written demand for payment by the person or offer to pay by the partnership is tendered, whichever is earlier. The court may assess reasonable attorney's fees and costs against a party that the court finds acted arbitrarily, vexatiously, or not in good faith, unless the party is the Tribe or a Tribal business entity.

10. After a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership business and before the partnership is merged out of existence, converted, domesticated, or dissolved under Title XIV of this Code, the partnership is bound by an act of the person only if:

a. The act would have bound the partnership before dissociation; and

b. At the time the other party enters into the transaction:

i. Less than two (2) years has passed since the dissociation; and

ii. The other party does not know or have notice of the dissociation and reasonably believes that the person is a partner.

11. If a partnership is bound under subsection 10, the person dissociated as a partner which caused the partnership to be bound is liable:

a. To the partnership for any damage caused to the partnership arising from the obligation incurred; and

b. If a partner or another person dissociated as a partner is liable for the obligation, to the partner or other person for any damage caused to the partner or other person arising from the liability.

12. By agreement with a creditor of a partnership and the partnership, a person dissociated as a partner may be released from liability for a debt, obligation, or other liability of the partnership. A person dissociated as a partner is released from liability for a debt, obligation, or other liability of the partnership if the partnership's creditor, with knowledge or notice of the person's dissociation but without the person's consent, agrees to a material alteration in the nature or time of payment of the debt, obligation, or other liability.

13. Except as otherwise provided in this Section, a person dissociated as a partner is not liable for a partnership obligation incurred after dissociation. Continued use of a partnership name, or the name of a person dissociated as a partner as part of the partnership name, by partners continuing the business does not of itself make the person dissociated as a partner liable for an obligation of the partners or the partnership continuing the business.

14. A partnership shall defend, indemnify, and hold harmless a person dissociated as a partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the person for which the person is otherwise liable under this Section.

15. A person dissociated as a partner or the partnership may deliver to the Office of the Secretary for filing a statement of dissociation stating the name of the partnership and that the person has dissociated from the partnership. A statement of dissociation is a limitation on the authority of a person dissociated as a partner.

16. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Section 21-3-3. Management.

1. Except as otherwise provided in this Title, each partner has equal rights in the management and conduct of the partnership's business.

2. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation

for services rendered in winding up the business of the partnership.

Section 21-3-4. Voting of Partners.

1. A difference arising as to a matter in the ordinary course of the partnerships' activities and affairs may be decided by a majority of the partners.

2. The affirmative vote, approval, or consent of all partners shall be required to do any of the following:

a. Amend the partnership agreement;

b. In the case of a limited partnership, amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership;

c. Undertake an act outside the ordinary course of the partnerships' activities and affairs, including the sale, lease, exchange, or other disposal of all, or substantially all, of the partnership's property; or

d. Authorize a partner or other person to do any act on behalf of the partnership that contravenes the partnership agreement.

Section 21-3-5. Action by Written Consent.

1. Unless the partnership agreement requires that action be taken only by affirmative vote of the partners, any action that may be taken by the partners may be taken if each partner entitled to vote on the action consents in writing to the action.

2. Consent under this Section may be withdrawn by a partner in writing at any time before the partnership receives a consent from each partner entitled to vote.

3. Consent to any action may specify the effective date or time of the action.

Section 21-3-6. Duties of Partners.

1. All partners, except limited partners in a limited partnership, owe to the partnership and the other partners' fiduciary duties.

2. The fiduciary duties of a partner include:

a. To act in a manner the partner reasonably believes to be in the best interests of the partnership;

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 partners information not already known by them but known by the partner to be material to the discharge of the decision-making or oversight functions of the partners, 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 partnership and hold as trustee for it any property, profit, or benefit derived by the partner:

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

ii. From a use by the partner of the partnership's property; or

iii. From the appropriation of a partnership opportunity;

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

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

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 partnership or its other partners in connection with

a matter in which the partner has a material conflict of interest; and

i. To refrain from a transaction from which the partner may derive an improper personal profit.

3. All partners shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the partnership, or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.

4. All the partners of a partnership 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.

5. Every partner shall account to the partnership and hold as trustee for it any improper personal profit derived by that partner without the consent of a majority of the disinterested partners from:

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

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

6. A partnership agreement or other private organizational documents may impose duties on partners that are in addition to, but not in abrogation of, those provided in this Section.

Section 21-3-7. Partner as Agent. Except for limited partners in a limited partnership, subject to the effect of a statement of authority filed with the Office of the Secretary under the laws of the Tribe, the following rules apply:

1. Each partner is an agent of the partnership for the purpose of its business, but not of any of the other partners.

2. The act of any partner, including the execution in the name of the partnership of an instrument for apparently carrying on the ordinary course of business of the partnership, binds the partnership in the particular matter unless the person with whom

the partner is dealing knows or should know that the partner has no authority to act in the matter.

3. If the Tribe is a partner in a partnership, the Tribe's authority shall be exercised pursuant to Chapter 4 of Title XIV.

4. No act of a partner that is not apparently authorized for carrying on the ordinary course of business of the partnership shall bind the partnership unless the act is in fact authorized at the time of the transaction or ratified thereafter by all the other partners.

Section 21-3-8. Representations of Partner. An admission or representation made by a partner concerning the business of a partnership within the scope of the partner's actual authority may be used as evidence against the partnership in any legal proceeding.

Section 21-3-9. Knowledge of Partner. Except as otherwise provided in this Title, the following operates as notice to or knowledge of the partnership:

1. Notice to any partner of any matter relating to the business of the partnership;

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

3. Knowledge of any partner who reasonably could and should have communicated it to the acting partner.

Section 21-3-10. Rights to Information and Records.

1. On reasonable request, a partner may inspect and during regular business hours copy, at the partner's expense, any record maintained by the partnership regarding the partnership's activities, affairs, financial condition, and other circumstances, unless otherwise provided in the partnership agreement or this Title.

2. The partnership shall furnish to each partner or the partner's legal representative:

a. Without demand, any true and full information concerning the partnership's activities, affairs, financial condition, and other circumstances which the partnership

knows and is material to the proper exercise of the partner's rights and duties under the partnership agreement or this Title; and

b. On demand, any other true and full information concerning the partnership's activities, affairs, financial condition, and other circumstances.

3. The duty to furnish information under this Section also applies to each partner to the extent the partner knows any of the information described in this Section.

4. On ten (10) days' demand made in writing received by a partnership, a person dissociated as a partner may have access to information to which the person was entitled while a partner if:

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

b. The person seeks the information in good faith; and

c. The person satisfies other requirements imposed on a partner by this Section.

5. In addition to any restriction or condition stated in its partnership agreement, a partnership, as a matter within the ordinary course of its business, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this Section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the partnership has the burden of proving reasonableness.

Section 21-3-11. Direct Action by Partner.

1. A partner may maintain a direct action against another partner or the partnership to enforce the partner's rights and protect the partner's interests, including rights and interests under the partnership agreement or this Title or arising independently of the partnership relationship.

2. A partner maintaining an action under this Section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the partnership.

3. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Section 21-3-12. Derivative Actions.

1. A partner may maintain a derivative action to enforce a right of a partnership if:

a. Unless such a demand would be futile, the partner first makes a demand on the other partners, excluding limited partners in a limited partnership, requesting that they cause the partnership to bring an action to enforce the right; and

b. The partners 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 partners; or

b. Why demand should be excused as futile.

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

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

b. Whose status as a partner devolved on the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

4. If a partnership is named as or made a party in a derivative proceeding, the partnership may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the partnership. If the partnership appoints a special litigation committee, on motion by the committee made in the name of the partnership, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit

the committee to make its investigation. 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. A special litigation committee must be composed of one or more disinterested and independent individuals, who may be partners. A special litigation committee may be appointed by the affirmative vote or consent of a majority of the partners, other than limited partners in a limited partnership, not named as parties in the proceeding or, if all partners are named as parties, a majority of all the partners, other than limited partners in a limited partnership.

6. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the partnership that the proceeding:

a. Continue under the control of the plaintiff;

b. Continue under the control of the committee;

c. Be settled on terms approved by the committee; or

d. Be dismissed.

7. After making a determination how to proceed, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination. The special litigation committee shall serve each party with a copy of the determination and report. If the court finds the committee has proven that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff.

8. A derivative action on behalf of a partnership may not be voluntarily dismissed or settled without the court's approval.

9. 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 partnership and not to the plaintiff; and

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

10. Unless the partnership 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 partnership.

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.

CHAPTER 4 DEALING WITH PARTNERSHIP

Section 21-4-1. Nature of Partnership.

1. A partnership is an entity distinct from its partners.

2. A partnership is the same entity regardless of whether the partnership has a statement of qualification in effect under this Chapter.

3. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

Section 21-4-2. Interest in Partnership.

1. An interest in a partnership is personal property.

2. The right of a person, in his or her capacity as a partner, to receive distributions from a partnership, whether or not the person remains a partner or continues to own any part of the right to receive distributions, is assignable.

3. Unless otherwise provided in its partnership agreement:

a. An interest in a partnership is assignable in whole or in part;

b. An assignment of an interest in a partnership entitles the assignee to receive only the distributions and share in the allocations of profits and losses to which the assignor would be entitled with respect to the assigned interest;

c. An assignment of an interest in a partnership does not dissolve the partnership;

d. Unless and until the assignee becomes a partner, the assignment of an interest in a partnership does not entitle the assignee to participate in the management or exercise the rights of a partner;

e. Unless and until the assignee of an interest in a partnership becomes a partner, the assignor continues to be a partner; and

f. The assignor of an interest in a partnership is not released from any personal liability as a partner solely as a result of the assignment.

4. Unless otherwise provided in the partnership agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of a partner's interest in a partnership is only an assignment and shall not cause the partner to cease to have the power to exercise any rights or powers of a partner.

5. A partner's personal representative, administrator, guardian, conservator, trustee, successor, or other legal representative shall have all the rights of an assignee of the partner's interest if:

a. In the case of an individual:

i. The individual dies;

ii. A guardian or general conservator for the individual is appointed; or

iii. A court orders that the individual has otherwise become incapable of performing the individual's duties as a partner under this Title or the partnership agreement; or

b. In the case of a trust, estate, or entity, the trust, estate, or entity is dissolved or terminated.

6. Unless otherwise provided in the partnership agreement or this Title, an assignee of an interest in a partnership may become a partner only if the other partners unanimously consent.

7. An assignee of an interest in a partnership who becomes a partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the partnership agreement, this Title, and other laws of the Tribe applicable to the partnership.

8. Unless otherwise provided in the partnership agreement, an assignor of an interest in a partnership is not released from any liability to the partnership without the written consent of all the partners, whether or not the assignee becomes a partner.

Section 21-4-3. Charging Partnership Interest.

1. On application to a court having valid jurisdiction over a partner and the subject matter by a judgment creditor of the partner, such court may enter a charging order against the transferable interest in the partnership of the partner, other than a partner which is the Tribe, for the unsatisfied amount of the judgment.

2. Except as otherwise provided in this Section, a charging order constitutes a lien on the partner's transferable interest and requires the partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the partner. The judgment creditor has only the rights of an assignee of the partner's interest.

3. At any time before foreclosure under this Section, the partner whose transferable interest is subject to a charging order under this Section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

4. At any time before foreclosure under this Section, a partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

5. Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest of the partner. Except as otherwise provided in this Section, the purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner, and has only the rights of an assignee of the partner's interest.

6. This Section shall not be construed to deprive any partner of the benefit of any exemption of an interest in a partnership that may exist under applicable law.

7. This Section provides the exclusive remedy by which a person seeking in the capacity of judgment creditor to enforce a judgment against a partner may satisfy the judgment from the partner's transferable interest.

8. In no event shall the Tribe's interest in a partnership be attachable, chargeable, or subject to lien or encumbrance without the Tribe's express written consent or express waiver of its sovereign immunity.

Section 21-4-4. Property of Partnership.

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

2. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

3. A partner may use or possess partnership property only on behalf of the partnership.

4. Property may be acquired, held, and conveyed in the name of a partnership.

5. Property is partnership property if acquired in the name of:

a. The partnership; or

b. One or more partners with an indication in the instrument transferring title to the property of the person's

capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

6. Property is acquired in the name of the partnership by a transfer to:

a. The partnership in its name; or

b. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

7. Property acquired with funds of a partnership is presumed to be property of the partnership.

8. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

9. Subject to any limitations in its partnership agreement or this Title, partnership property may be transferred as follows:

a. Subject to the effect of a statement of authority filed with the Office of the Secretary under the laws of the Tribe, if the property is held in the name of the partnership, by an instrument executed by any partner in the partnership name;

b. If held in the name of one or more partners without an indication of the name of the partnership, by an instrument executed by the persons in whose name the property is held; or

c. If held in the name of one or more persons, other than the partnership, without an indication the property is owned by them in their capacity as partners or the partnership, by an instrument executed by the persons in whose name the property is held.

Section 21-4-5. Liability to Third Parties.

1. A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act

or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with the actual or apparent authority of the partnership.

2. If, in the course of the partnership's business or while acting with actual or apparent authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

3. Except as otherwise provided in this Title, all partners are liable jointly and severally for all debts, obligations, and other liabilities of the partnership, whether arising in contract, tort, or otherwise, unless otherwise agreed by the claimant or provided by law.

4. A person that becomes a partner is not personally liable for a debt, obligation, or other liability of the partnership, whether arising in contract, tort, or otherwise, incurred before the person became a partner.

5. A debt, obligation, or other liability of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the limited liability partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an act, debt, obligation, or other liability of the limited liability partnership solely by reason of being or acting as a partner. This subsection applies:

a. Despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability partnership under this Chapter; and

b. Regardless of the dissolution of the limited liability partnership.

6. The failure of a limited liability partnership 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 partner for an act, debt, obligation, or other liability of the limited liability partnership.

7. The cancellation or administrative revocation of a limited liability partnership's statement of qualification does

not affect the limitation in this Section on the liability of a partner for an act, debt, obligation, or other liability of the partnership incurred while the statement was in effect.

8. Nothing in this Section shall be construed as imposing any liability on the Tribe as a partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Section 21-4-6. Parties to Actions.

1. A partnership may sue and be sued in the name of the partnership.

2. To the extent not inconsistent with this Title governing liability of partners to third parties, a partner may be joined in an action against the partnership or named in a separate action.

3. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

4. A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under this Title and:

a. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment against the partnership has been returned unsatisfied in whole or in part;

b. The partnership is a debtor in bankruptcy;

c. The partner has agreed that the creditor need not exhaust partnership assets;

d. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is otherwise equitable under the circumstances; or

e. Liability is imposed on the partner by law or contract independent of the existence of the partnership.

Section 21-4-7. Authority to Sue.

1. Unless otherwise provided in its partnership agreement, an action on behalf of a partnership may be brought in the name of the partnership by one or more partners, if authorized by a majority vote of the partners excluding the vote of any partner who has an interest in the outcome of the action that is adverse to the interests of the partnership.

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

Section 21-4-8. Actions Between Partners and Partnership.

1. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

2. A partner may maintain an action against the partnership or another partner, with or without an accounting as to partnership business, to enforce the partner's rights and protect the partner's interests, including rights and interests under the partnership agreement, this Title, other law of the Tribe governing the partnership or arising independently of the partnership relationship. A partner maintaining a direct action under this subsection must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the partnership.

3. A right to an accounting on dissolution and winding up does not revive a claim barred by law.

4. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner.

Section 21-4-9. Records. A partnership shall maintain at its principal office the following information:

1. A current list showing the full name and last known street and mailing address of each partner and, in the case of a limited partnership, separately identifying the general partners in alphabetical order and the limited partners in alphabetical order;

2. In the case of a limited liability partnership, a copy of the initial statement of qualification and all amendments to and restatements of the same, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

3. In the case of a limited partnership, a copy of the initial certificate of limited partnership and all amendments to and restatements of the same, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

4. A copy of any filed articles of merger, interest exchange, conversion, or domestication;

5. A copy of the partnership's Tribal, federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;

6. A copy of any written partnership agreement and any written amendment to any partnership agreement;

7. A copy of any financial statement of the partnership for the three most recent years;

8. A copy of the three (3) most recent annual reports delivered by the partnership to the Office of the Secretary pursuant to the laws of the Tribe;

9. A copy of any record made by the partnership during the past three (3) years of any consent given by or vote taken of any partner pursuant to this Title or the partnership agreement; and

10. Unless contained in a written partnership agreement, a record stating:

a. A description and statement of the agreed value of contributions other than money made and agreed to be made by each partner;

b. The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

c. In the case of a limited partnership, for any person that is both a general partner and a limited partner, a

specification of what transferable interest the person owns in each capacity; and

d. Any events upon the happening of which the partnership is to be dissolved and its activities and affairs wound up.

CHAPTER 5 LIMITED PARTNERSHIPS

Section 21-5-1. Formation.

1. To form a limited partnership, a person must deliver a certificate of limited partnership to the Office of the Secretary for filing.

2. A partnership may become a limited partnership by complying with this Section and without accomplishing a conversion under the laws of the Tribe.

3. A limited partnership is formed when:

a. The certificate of limited partnership becomes effective;

b. At least two persons have become partners;

c. At least one person has become a general partner;
and

d. At least one person has become a limited partner.

4. The Office of the Secretary's filing of the certificate of limited partnership of a limited partnership is conclusive proof that the limited partnership is organized and formed under this Title.

Section 21-5-2. Certificate of Limited Partnership.

1. A certificate of limited partnership must state all of the following:

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

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

c. The principal address, which may be the same as the mailing address of the limited partnership's registered agent;

d. The name and street and mailing addresses in the territory of the Tribe of the limited partnership's registered agent;

e. The name and street and mailing addresses of each general partner;

f. Whether the limited partnership is a limited liability limited partnership;

g. Whether the limited partnership is a Tribal business entity; and

h. If the limited partnership is a Tribal business entity, whether the limited partnership enjoys the Tribe's sovereign immunity and the scope of any waiver of that immunity.

2. An initial certificate of limited partnership shall be signed by all general partners listed in the certificate.

3. A certificate of limited partnership 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 21-5-3. Amendment or Restatement of Certificate.

1. A certificate of limited partnership may be amended or restated at any time.

2. To amend its certificate of limited partnership, a limited partnership must deliver to the Office of the Secretary for filing an amendment stating:

a. The name of the limited partnership;

b. The date of filing of its initial certificate; and

c. The text of the amendment.

3. An amendment to the certificate of limited partnership adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate. Any other amendment to the certificate of limited partnership must be signed by:

a. At least one general partner listed in the certificate;

b. Each person designated in the amendment as a new general partner; and

c. Each person that the amendment indicates has dissociated as a general partner, unless the person is deceased or the person has previously delivered to the Office of the Secretary for filing a statement of dissociation.

4. To restate its certificate of limited partnership, a limited partnership must deliver to the Office of the Secretary for filing a restatement of the certificate, designated as such in its heading. A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other subsection of this Section, the certificate must be signed in a manner that satisfies that subsection.

5. A limited partnership shall promptly deliver to the Office of the Secretary for filing an amendment to a certificate of limited partnership to reflect:

a. The admission of a new general partner;

b. The dissociation of a person as a general partner;
or

c. The appointment of a person to wind up the limited partnership's activities and affairs under Title XIV of this Code.

6. A certificate of limited partnership shall be amended if there is a statement in the certificate that was false or erroneous when it was made.

7. If a general partner of a limited partnership knows that any information in a filed certificate of limited partnership was

inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the general partner shall promptly:

- a. Cause the certificate 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 21-5-4. Dual Capacity.

1. A person may be both a general partner and a limited partner.

2. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this Title, other laws of the Tribe applicable to the limited partnership, and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the limited partnership, and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the limited partnership, and the partnership agreement for limited partners.

Section 21-5-5. Admission of Limited Partners.

1. Upon formation of a limited partnership, a person becomes a limited partner as agreed among the persons that are to be the initial partners.

2. After formation, a person becomes a limited partner:

- a. As provided in the partnership agreement;
- b. As the result of a merger, interest exchange, conversion, or domestication; or
- c. With the affirmative vote or consent of all the partners.

3. A person may become a limited partner without:

- a. Acquiring a transferable interest; or

b. Making or being obligated to make a contribution to the limited partnership.

Section 21-5-6. Person Erroneously Believing Limited Partner.

1. Except as otherwise provided in this Section, a person that makes an investment in a business entity and erroneously but in good faith believes that the person has become a limited partner in the business entity is not liable for the business entity's obligations by reason of making the investment, receiving distributions from the business entity, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

a. Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the Office of the Secretary for filing; or

b. Withdraws from future participation as an owner in the business entity by signing and delivering to the Office of the Secretary for filing a statement of negation.

2. A person that makes an investment described in this Section is liable to the same extent as a general partner to any third party that enters into a transaction with the business entity, believing in good faith that the person is a general partner, before the Office of the Secretary files a statement of negation, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

3. If a person makes a diligent effort in good faith to file an appropriate certificate under this Section and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the Office of the Secretary for filing, the person has the right to withdraw from the business entity by filing a statement of negation even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the business entity.

Section 21-5-7. Dissociation of Limited Partners.

1. A person does not have a right to dissociate as a limited partner in a limited partnership before the completion of the winding up of the limited partnership.

2. A person is dissociated as a limited partner when:

a. The person voluntarily withdraws as a limited partner and the limited partnership knows or has notice of the person's express will to withdraw as a limited partner, provided the person may designate a date of withdrawal as limited partner;

b. An event stated in the partnership agreement as causing the person's dissociation as a limited partner occurs;

c. The person is expelled as a limited partner pursuant to the partnership agreement or this Title or other law of the Tribe applicable to the limited partnership;

d. The person is expelled as a limited partner by the affirmative vote or consent of all the other partners if:

i. It is unlawful to carry on the limited partnership business with the person as a limited partner;

ii. There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes;

e. The person is an entity and:

i. Has filed a statement of dissolution or the equivalent;

ii. Has been administratively dissolved or the equivalent;

iii. Had its charter or the equivalent revoked; or

iv. Had its right to conduct business suspended in its jurisdiction of formation;

f. If the person is a trust or estate or is acting as a limited partner by virtue of being a trustee of a trust or personal representative of an estate, the trust's or estate's entire transferable interest in the limited partnership is distributed;

g. On application by the limited partnership or a partner in an action brought in Tribal Court, the person is expelled as a limited partner by order of the Tribal Court because the person:

i. Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;

ii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the limited partnership, or a duty or obligation to the limited partnership; or

iii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the limited partnership, or a duty or obligation to the limited partnership; or

iv. Has engaged or is engaging in conduct relating to the limited partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a limited partner;

h. In the case of an individual, the individual dies;

i. In the case of a person that is not an individual, the existence of the person terminates;

j. The limited partnership participates in a merger, interest exchange, conversion, or domestication under Title XIV of this Code and:

i. The limited partnership does not survive the transaction; or

ii. Otherwise as a result of the transaction, the person ceases to be a limited partner; or

k. The limited partnership dissolves and completes winding up.

3. In addition to all other consequences of dissociation as a partner, if a person is dissociated as a limited partner, the person does not have further rights as a limited partner.

Section 21-5-8. Management by Limited Partner. Unless the partnership agreement provides otherwise, a limited partner has no rights in the management and conduct of the limited partnership's business.

Section 21-5-9. Voting of Limited Partners. Except for matters requiring the vote of all partners under this Title or another law of the Tribe applicable to the limited partnership, limited partners have the right to vote on a matter of the partnership's activities only to the extent provided in the partnership agreement.

Section 21-5-10. Duties of Limited Partners.

1. Limited partners shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the limited partnership, or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.

2. Except as otherwise provided in this Section, a limited partner does not have any duty to the limited partnership or to any other partner solely by reason of acting as a limited partner.

3. Unless the partnership agreement provides otherwise, if a limited partner enters into a transaction with a limited partnership, the limited partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

4. A partnership agreement or other private organizational documents may impose duties on limited partners that are in addition to, but not in abrogation of, those provided in this Section.

Section 21-5-11. Limited Partner as Agent. In the case of a limited partner in a limited partnership, the following rules apply:

1. A limited partner is not an agent of a limited partnership solely by reason of being a limited partner; and

2. A person's status as a limited partner does not prevent or restrict a law of the Tribe other than this Title from imposing liability on a limited partnership because of the person's conduct.

Section 21-5-12. Knowledge of Limited Partner. A limited partner's knowledge or notice of a fact relating to the limited partnership is not effective as knowledge of or notice to the limited partnership.

Section 21-5-13. Rights to Information and Records.

1. Whenever this Title or a partnership agreement provides for a limited partner to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information that is known to the partnership and is material to the limited partner's decision.

2. In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its business, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this Section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

Section 21-5-14. Liability to Third Parties.

1. A debt, obligation, or other liability of a limited partnership is not the debt, obligation, or other liability of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the limited partnership. This subsection applies regardless of the dissolution of the limited partnership.

2. The failure of a limited partnership 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 limited partner for a debt, obligation, or other liability of the limited partnership.

3. Nothing in this Section shall be construed as imposing any liability on the Tribe as a partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

CHAPTER 6 CONTRIBUTIONS AND DISTRIBUTIONS

Section 21-6-1. Contributions.

1. A contribution may consist of money or property transferred to, services performed for, or another benefit provided to the partnership or an agreement to transfer money or property to, perform services for, or provide another benefit to the partnership.

2. The value of a partner's contribution shall be determined in the manner provided in the partnership agreement. If the partnership agreement does not fix a value to a contribution, the value of a contribution shall be approved by a majority of the partners and be properly reflected in the records and information kept by the partnership under this Title. The value of contributions so determined shall be binding and conclusive on the partnership and its partners.

3. An obligation of a person to make a contribution to a partnership is not enforceable unless specified in a writing signed by the person. A person's obligation to make a contribution to a partnership is not excused by the person's death, disability, termination, or other inability to perform personally.

4. If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the partnership to contribute money equal to the value of the part of the contribution which has not been made.

5. The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the partners. If a creditor of a partnership extends credit or otherwise acts in reliance on an obligation to make a contribution without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

Section 21-6-2. Allocation of Profits and Losses.

1. The profits and losses of a partnership shall be allocated among the partners in the manner provided in its partnership agreement.

2. If the partners do not enter into a partnership agreement or the partnership agreement does not provide for allocation of profits and losses, profits and losses shall be allocated on the basis of value of the contributions made by each partner.

Section 21-6-3. Distributions Generally.

1. Any distribution made by a partnership before its dissolution and winding up must be:

a. In the case of a limited partnership, shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner; and

b. In the case of all other partnerships, in equal shares among partners, except to the extent necessary to comply with an effective transfer of a transferable interest in the partnership under this Chapter or a charging order in effect under this Chapter.

2. Subject to the requirements to buyout a person's interest upon dissociation that does not result in the dissolution and winding up of the partnership, a person has a right to a distribution before the dissolution and winding up of a partnership only if the partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

3. A person does not have a right to demand or receive a distribution from a partnership in any form other than money. Except as otherwise provided in the laws of the Tribe, a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

4. If a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the partnership with respect to the

distribution. However, the partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as partner on whose account the distribution is made.

Section 21-6-4. Limitations on Distributions.

1. A limited liability partnership or limited partnership may not declare or make a distribution if, after the distribution:

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

b. The partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed to satisfy the preferential rights, if any, of partners upon dissolution and winding up.

2. A limited liability partnership or limited partnership may base a determination that a distribution is not prohibited under subsection 1 on:

a. Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

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

3. A limited liability partnership's or limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this Section is equivalent to the partnership's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This subsection does not affect the validity or priority of a security interest in a limited liability partnership's or limited partnership's property that is created to secure the indebtedness to the partner.

Section 21-6-5. Liability for Improper Distributions.

1. A partner that is not the Tribe who votes or assents to a distribution in violation of this Chapter is personally liable to the partnership for the amount of the excess distribution, subject to contribution from all other partners participating in such action.

2. To the extent the partnership agreement expressly relieves a partner of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other partners, the liability stated in this Section applies to the other partners and not the partner relieved of the authority and responsibility.

3. A person that receives a distribution knowing that the distribution violated this Chapter is personally liable to the partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this Chapter.

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

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

b. Each partner for the amount the partner accepted knowing the distribution was made in violation of this Chapter.

5. 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 two (2) years after the date of the distribution.

6. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

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