

TITLE XXXV
BUSINESS ORGANIZATIONS

CHAPTER 1.

LIMITED LIABILITY COMPANY CODE	1
§35-1-1 Citation and Authority	1
§35-1-2 Purpose.....	1
§35-1-3 Definitions	1
§35-1-4 Tax Treatment.....	2
§35-1-5 Interstate Application.....	3
§35-1-6 Execution of Documents.....	3
§35-1-7 Jurisdiction of Tribal Courts	3
§35-1-8 Filing Requirements.....	4
§35-1-9 Filing Duty of Secretary-Treasurer.....	4
§35-1-10 Effective Date and Time of Documents.....	4
§35-1-11 Status.....	5
§35-1-12 Confirmation of Status.....	5
§35-1-13 Annual Reports	5
§35-1-14 Execution by Judicial Act.....	5
§35-1-15 Organization.....	6
§35-1-16 Name of Limited Liability Company.....	6
§35-1-17 Registered Office and Registered Agent.....	6
§35-1-18 Authorized Purposes and Grant of Powers	7
§35-1-19 Certificate of Formation.....	8
§35-1-20 Amendment of Certificate of Formation.....	9
§35-1-21 Effect of Delivery of Filing of Certificate of Formation and Other Documents.....	9
§35-1-22 Agency Power of Members and Managers	10
§35-1-23 Tribal Management.....	10
§35-1-24 Liability of Members to Third Parties	10
§35-1-25 Parties to Actions	11
§35-1-26 Management.....	11
§35-1-27 Duties of Managers and Members	11
§35-1-28 Voting	11
§35-1-29 Records and Information.....	12
§35-1-30 Contributions	13
§35-1-31 Allocation of Profits and Losses	13
§35-1-32 Series of Members, Managers, or Limited Liability Company Interests.....	13
§35-1-33 Interim Distributions.....	13
§35-1-34 Allocation of Distributions	13
§35-1-35 Distribution Upon Partial Redemption	14
§35-1-36 Distribution Upon Dissociation	14
§35-1-37 Distribution in Kind.....	14
§35-1-38 Right to Distribution	14
§35-1-39 Limitations on Distributions	15
§35-1-40 Ownership of Limited Liability Company Property	15
§35-1-41 Transfer of Property.....	15
§35-1-42 Nature of Limited Liability Company Interest	16
§35-1-43 Assignment of Limited Liability Company Interest	16
§35-1-44 Right of Assignee to Become a Member	17
§35-1-45 Admission of Members.....	17
§35-1-46 Events of Dissociation	17
§35-1-47 Dissolution.....	19
§35-1-48 Judicial Dissolution.....	20
§35-1-49 Winding Up.....	20

§35-1-50	Distribution of Assets	21
§35-1-51	Articles of Dissolution	21
§35-1-52	Known Claims	21
§35-1-53	Unknown or Contingent Claims	22
§35-1-54	Enforcing Claims	23
§35-1-55	Wholly Owned Limited Liability Companies.....	23
§35-1-56	Limitations on Certain Powers of Limited Liability Companies.....	23
§35-1-57	Liability of Tribe as a Member of a Limited Liability Company	24
§35-1-58	Mergers and Conversions	24
§35-1-59	Sovereign Immunity	25
§35-1-60	Severability	25

CHAPTER 2.

NON-PROFIT CORPORATIONS CODE **26**

§35-2-1	Citation; Authority and Purpose	26
§35-2-2	Applicability	26
§35-2-3	Definitions	26
§35-2-4	Status of Certain Non-Profit Corporations	27
§35-2-5	Corporate Name	27
§35-2-6	Registered Agent.....	28
§35-2-7	Liability of Tribe.....	28
§35-2-8	Jurisdiction.....	28
§35-2-9	Records	28
§35-2-10	Unauthorized Assumption of Corporate Powers	30
§35-2-11	Purposes of Incorporation	30
§35-2-12	General Powers	30
§35-2-13	Ultra Vires.....	31
§35-2-14	Incorporators.....	32
§35-2-15	Articles of Incorporation.....	32
§35-2-16	Filing of Articles of Incorporation.....	33
§35-2-17	Effect of Issuance of Certificate of Incorporation	33
§35-2-18	Organization of Non-Profit Corporation.....	33
§35-2-19	Bylaws	33
§35-2-20	Right to Amend Articles of Incorporation	34
§35-2-21	Procedure to Amend Articles of Incorporation.....	34
§35-2-22	Articles of Amendment.....	34
§35-2-23	Filing of Articles of Amendment.....	35
§35-2-24	Members	35
§35-2-25	Meetings of Members	35
§35-2-26	Notice of Member Meetings	36
§35-2-27	Voting; Members	36
§35-2-28	Quorum	37
§35-2-29	Board of Directors	37
§35-2-30	Number, Election, Classification, and Removal of Directors.....	37
§35-2-31	Vacancies.....	38
§35-2-32	Quorum of Directors.....	38
§35-2-33	Committees	38
§35-2-34	Place and Notice of Directors' Meetings	39
§35-2-35	Action by Directors Without a Meeting.....	39
§35-2-36	Liability for Unlawful Distributions	39
§35-2-37	Officers	39

§35-2-38	Removal of Officers.....	40
§35-2-39	General Standards of Conduct for Directors and Officers	40
§35-2-40	Shares of Stock and Dividends Prohibited.....	40
§35-2-41	Loans to Directors and Officers Prohibited	41
§35-2-42	General Standards of Conduct for Directors and Officers	41
§35-2-43	Distribution of Assets	41
§35-2-44	Plan for Distribution	42
§35-2-45	Revocation of Voluntary Dissolution Proceedings.....	42
§35-2-46	Articles of Dissolution	43
§35-2-47	Filing of Articles of Dissolution	43
§35-2-48	Involuntary Dissolution	44
§35-2-49	Jurisdiction of Tribal Court to Liquidate Assets and Affairs of Non-Profit Corporation .	45
§35-2-50	Liquidation of Non-Profit Corporation by the Tribal Court	45
§35-2-51	Qualification of Receivers	47
§35-2-52	Filing of Claims in Liquidation Proceedings	47
§35-2-53	Discontinuance of Liquidation Proceedings	47
§35-2-54	Order of Dissolution	47
§35-2-55	Post Dissolution	48
§35-2-56	Decree of Involuntary Dissolution.....	48
§35-2-57	Filing of Decree of Dissolution.....	48
§35-2-58	Deposits with Secretary-Treasurer.....	48
§35-2-59	Limitations on Certain Powers of Non-Profit Corporations	49
§35-2-60	Severability	49

CHAPTER 1. LIMITED LIABILITY COMPANY CODE

§35-1-1 Citation and Authority

This Chapter may be referred to as the “Limited Liability Company Code” and is enacted pursuant to Article VIII, Section 1, Subsection (j) of the Revised Constitution and Bylaws of the Tribe.

§35-1-2 Purpose

The purpose of this Chapter is to provide a statutory framework for establishing Limited Liability Companies under the sovereign authority of the Tribe.

§35-1-3 Definitions

- (1) "Certificate of Formation" means the original Certificate of Formation for a Limited Liability Company and any amendments or restatements.
- (2) “Choctaw Indian Reservation” means Mississippi Choctaw Reservation Lands as recognized Acts of the United States Congress and the United States Supreme Court in *U.S. v. John*, 437 U.S. 634 (1978).
- (3) "Deliver" means deliver by hand, mail, or any other method of delivery allowed by the Secretary-Treasurer.
- (4) "Distribution" means a direct or indirect transfer by a Limited Liability Company of money or other property, other than an interest in the Limited Liability Company, to or for the benefit of its Members in respect of their interests.
- (5) "Event of Dissociation" means an event that causes a Person to cease to be a Member, as provided in Section 35-1-46.
- (6) "Foreign Business Entity" means any corporation, limited liability partnership, Limited Liability Company or any other limited liability entity formed under the law of a state within the United States of America, and not pursuant to this Title or under the laws of the Tribe.
- (7) "Limited Liability Company" except where otherwise specified, means a limited liability organization formed under this Chapter.
- (8) "Limited Liability Company Interest", "Interest in the Limited Liability Company" "Member's Interest" or "Membership Interest" means a Member's rights in the Limited Liability Company, including the Member's right to share in the profits and losses of the Limited Liability Company, the Member's right to receive Distributions of Limited Liability Company assets, and the Member's right to vote or participate in management of the Limited Liability Company, if any.
- (9) "Manager" means the Person designated in accordance with Section 35-1-26.

- (10) "Member" means a Person who has been admitted to membership in a Limited Liability Company as provided herein and who has not dissociated from the Limited Liability Company.
- (11) "Operating Agreement" or "Limited Liability Company Agreement" means an agreement in writing, if any, among all of the Members as to the conduct of the business of a Limited Liability Company and its relationships with its Members. A single Member Limited Liability Company may still have an agreement that governs its internal business and operations.
- (12) "Organizer" means the Person who signs and delivers the Certificate of Formation for filing.
- (13) "Person" means both natural persons, whether Tribal Members or otherwise, and corporations, limited liability companies, partnerships, trusts, Indian tribes, Tribal Authorities and other entities.
- (14) "Secretary-Treasurer" means the Secretary-Treasurer of the Tribal Council whose powers and duties are described in Article I of the Bylaws of the Tribe.
- (15) "Tribal Council" means the legislative body of the Tribe whose powers and duties are described in Article VIII of the Revised Constitution and Bylaws of the Tribe.
- (16) "Tribal Entity" means any business entity that is wholly-owned by the Tribe.
- (17) "Tribal Court" means the judiciary of the Tribe whose powers and duties are described in Title I of the Choctaw Tribal Code.
- (18) "Tribal Manager" means any of the following Persons when such Person is a Manager of a Limited Liability Company:
 - (a) a Tribal Entity; and
 - (b) any other Limited Liability Company.
- (19) "Tribal Member" means an enrolled member of the Tribe.
- (20) "Tribe" means the Mississippi Band of Choctaw Indians, a federally-recognized Indian tribe.

§35-1-4 Tax Treatment

This Chapter shall not be deemed to waive any immunity or exemption from federal, state or local taxation. To the extent that the Limited Liability Company or its business activities are not immune or exempt from federal, state, local or tribal taxes, then for all tax purposes if the relevant Limited Liability Company has two or more Members, the Limited Liability Company shall be treated as a partnership for all tax purposes:

- (1) unless it has voluntarily elected to be classified otherwise for federal income tax purposes, in which case it shall be classified in the same manner as it is for federal income tax purposes; and
- (2) if the Limited Liability Company has one (1) Member, the Limited Liability Company shall be treated as a disregarded entity for all tax purposes.

§35-1-5 Interstate Application

A Limited Liability Company may conduct its business, carry on its operations and have and exercise the powers granted by this Chapter on the Choctaw Indian Reservation, in any state, district or possession of the United States, or in any foreign jurisdiction.

§35-1-6 Execution of Documents

- (1) Except as provided in this Chapter, any document required or permitted by this Chapter to be delivered for filing to the Secretary-Treasurer shall be executed by a Manager, if management of the Limited Liability Company is vested in a Manager or Managers, otherwise by any Member, if management of the Limited Liability Company is reserved to the Members.
- (2) The Person executing the document shall sign it and state beneath or opposite the signature the Person's name and the capacity in which the Person signs.
- (3) The Person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to, or filed with, the Secretary-Treasurer.

§35-1-7 Jurisdiction of Tribal Courts

- (1) By organizing and forming a Limited Liability Company under this Chapter, the Limited Liability Company and all its Members shall be deemed to have entered into a consensual relationship with the Tribe and agree to be subject to the full extent of the Tribe's legislative, regulatory and adjudicatory jurisdiction.
- (2) Further, by a Member acquiring a Membership Interest at any time in a Limited Liability Company organized under this Chapter, that Member (with regard to such interest) shall be considered to have entered into a consensual relationship with the Tribe and agrees to be subject to the full extent of the Tribe's legislative, regulatory and adjudicatory jurisdiction, including, but not limited to, the personal jurisdiction of the Tribal Courts.
- (3) Unless explicitly stated otherwise in the Operating Agreement or the Certificate of Formation, all litigation between the Members, Managers, or any combination of Members and Managers directly involving the Limited Liability Company must be brought in Tribal Court.
- (4) Unless explicitly stated otherwise in the Operating Agreement or the Certificate of Formation, all litigation between Members or Managers and the Limited Liability Company or any combination of the Members, Managers and the Limited Liability Company must be brought in Tribal Court.

§35-1-8 Filing Requirements

- (1) A document required or permitted to be filed under this Chapter with the Secretary-Treasurer shall satisfy all of the following requirements :
 - (a) contain the information required by this Chapter;
 - (b) be executed in accordance with Section 35-1-6; and
 - (c) be Delivered to the Secretary-Treasurer for filing and be accompanied by one exact or conformed copy.
- (2) The Secretary-Treasurer shall file photocopies or other reproduced copies of typewritten or printed documents if the copies are manually signed and satisfy this Section.

§35-1-9 Filing Duty of the Secretary-Treasurer

- (1) Upon receipt of a document by the Secretary-Treasurer for filing under this Chapter, the Secretary-Treasurer shall stamp or otherwise endorse the date of receipt on the original, the document copy and, upon request, any additional document copy received. The Secretary-Treasurer shall return any additional document copy to the Person delivering it as confirmation of the date of receipt.
- (2) If a document satisfies Section 35-1-6 and the terms of the document satisfy the applicable provisions of this Chapter, the Secretary-Treasurer shall file the document by stamping or otherwise endorsing "filed", together with the Secretary-Treasurer's name, on both the original and the document copy. After filing a document, the Secretary-Treasurer shall deliver the document copy to the Limited Liability Company or its representative.
- (3) Failure to Meet Filing Requirements.
 - (a) If the Secretary-Treasurer refuses to file a document, the Secretary-Treasurer shall return it to the Limited Liability Company or its representative within ten (10) business days after the date on which the document is received by the Secretary-Treasurer for filing, together with a brief, written explanation of the reason for the refusal.
 - (b) The Secretary-Treasurer's failure to either file or return a document within ten (10) business days after the date on which it is received constitutes a refusal to file the document.

§35-1-10 Effective Date and Time of Documents

- (1) Specified Date and Time.
 - (a) Except as provided in subsection (b) below, a document filed under this Chapter is effective on the date that it is received by the Secretary-Treasurer for filing and at any of the following times on that date:

- (i) the time of day specified in the document as its effective time; or
 - (ii) if no effective time is specified, at the close of business.
 - (b) The date that a document is received by the Secretary-Treasurer is determined by the Secretary-Treasurer's endorsement on the original document under Section 35-1-9.
- (2) A document may specify a delayed effective date and time, except the effective date may not be more than ninety (90) days after the date that it is received for filing. If a document specifies a delayed effective date and time in accordance with this subsection, the document is effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date.

§35-1-11 Status

The records of the Secretary-Treasurer shall be definitive proof of whether a Limited Liability Company is in existence and good standing under this Chapter.

§35-1-12 Confirmation of Status

- (1) Any Person may obtain from the Secretary-Treasurer, upon written request, a certificate of existence and good standing for a Limited Liability Company.
- (2) A certificate of existence and good standing shall include all of the following information:
 - (a) the Limited Liability Company's name used in the Certificate of Formation;
 - (b) the date of organization of the Limited Liability Company; and
 - (c) whether each of the following is true:
 - (i) the Limited Liability Company is organized under the laws of the Tribe;
 - (ii) the Limited Liability Company has not filed articles of dissolution; and
 - (iii) the Limited Liability Company has filed with the Secretary Treasurer any required reports.
- (3) Subject to any qualification stated in a certificate of existence and good standing issued by the Secretary-Treasurer, the certificate is conclusive evidence that the Limited Liability Company is in existence and good standing under this Chapter.

§35-1-13 Annual Reports

The Secretary-Treasurer may require all Limited Liability Companies to file with the Secretary-Treasurer an annual report.

§35-1-14 Execution by Judicial Act

Any Person who is adversely affected by the failure or refusal of any Person to execute and file any articles or other document to be filed under this Chapter may petition the Tribal Court to direct the execution and filing of the articles or other document. If the Tribal Court finds that the Tribal Council has authorized execution and filing of the articles or other document to be executed and filed and that there has been failure or refusal to execute and such documents by the Secretary-Treasurer, the Tribal Court shall order the Secretary-Treasurer to file the appropriate articles or other document.

§35-1-15 Organization

- (1) Any Person authorized by the Tribal Council to form a Limited Liability Company may do so by signing and delivering a Certificate of Formation meeting the requirements of Section 35-1-19 to the Secretary-Treasurer for filing.
- (2) The Organizer must be authorized by a resolution of the Tribal Council to organize a Limited Liability Company.

§35-1-16 Name of Limited Liability Company

- (1) The name of a Limited Liability Company as set forth in its Certificate of Formation must contain the words "Limited Liability Company" or "Limited Liability Co." or end with the abbreviation "L.L.C." or "LLC".
- (2) Except as provided in subsection (4), the name of a Limited Liability Company must be distinguishable upon the records of the Secretary-Treasurer from the name of any other entity, authority, Limited Liability Company, or business enterprise existing under the laws of the Tribe.
- (3) The Secretary-Treasurer shall make the final determination whether the name of a Limited Liability Company is distinguishable from the names of other entities, authorities, Limited Liability Companies, and business enterprises existing under the laws of the Tribe.
- (4) The name of a Limited Liability Company organized under this Chapter shall not contain the words "Mississippi Band," "Mississippi Choctaw," "Choctaw Nation," or "Mississippi Band of Choctaw Indians."

§35-1-17 Registered Office and Registered Agent

- (1) Each Limited Liability Company shall continuously maintain on the Choctaw Indian Reservation a registered office and registered agent. The registered office may, but need not, be the same as any of its places of business. In all cases, the registered office must be located within the Choctaw Indian Reservation.
- (2) The registered agent shall be one of the following:
 - (a) the Tribal Chief;
 - (b) the Tribe's Attorney General; or
 - (c) a chief executive officer of a Tribal Entity.

- (3) Subject to subsection (1) above, a Limited Liability Company may change its registered office or registered agent, or both, by delivering to the Secretary-Treasurer for filing a statement of change.
- (4) Service of Registered Agent.
 - (a) A Limited Liability Company's registered agent is the Limited Liability Company's agent for service of process, notice or demand required or permitted by law to be served on the Limited Liability Company.
 - (b) Except as provided in subsection (c) below, if a Limited Liability Company has no registered agent or the agent cannot with reasonable diligence be served, the Limited Liability Company may be served by registered or certified mail, return receipt requested, addressed to the Limited Liability Company at its principal business office. Service is perfected under this subsection at the earliest of the following:
 - (i) the date on which the Limited Liability Company receives the mail;
 - (ii) the date shown on the return receipt, if signed on behalf of the Limited Liability Company; or
 - (iii) seven days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.
 - (c) If the address of the Limited Liability Company's principal business office cannot be determined from the records of the Secretary-Treasurer, the Limited Liability Company may be served by sending a written notice by certified or registered mail to the Tribal Council and the Secretary-Treasurer.

§35-1-18 Authorized Purposes and Grant of Powers

- (1) A Limited Liability Company may be organized under this Chapter for any lawful purpose.
- (2) Unless otherwise provided in an Operating Agreement, a Limited Liability Company organized and existing under this Chapter has the same powers as an individual to do all things necessary and convenient to carry out its business, including, but not limited to, all of the following:
 - (a) purchase, take, receive, lease or otherwise acquire and own, hold, improve, use and otherwise deal in or with real or personal property, or any legal or equitable interest in real or personal property, wherever situated, provided that no lease or commercial land assignment of Choctaw Indian Reservation lands may be made without Tribal Council approval;
 - (b) sell, convey, mortgage, pledge, create a security interest in, lease, exchange, and otherwise dispose of all or any part of its property, provided that the Limited Liability Company must obtain the written approval of the Tribal Council prior to subleasing or subassigning any Choctaw Indian Reservation lands;

- (c) purchase, take, receive, subscribe for or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity;
- (d) make contracts and guarantees;
- (e) incur liabilities, borrow money, and issue temporary or long-term evidence of indebtedness; provided, however, that, with respect to indebtedness in an aggregate principal amount in excess of \$5,000,000.00, the Limited Liability Company shall obtain the prior written approval of the Tribal Council;
- (f) issue notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises and income;
- (g) lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment;
- (h) conduct its business, locate offices and exercise the powers granted by this Title;
- (i) be a promoter, incorporator, partner, Member, associate or Manager of any enterprise or entity, including, without limitation, owning other Limited Liability Companies;
- (j) appoint officers, hire employees and agents of the Limited Liability Company, and define their compensation;
- (k) make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic or religious purposes;
- (l) indemnify a Member, Manager, employee, officer or agent or any other Person;
- (m) waive its sovereign immunity against suit, to sue and be sued, to complain and defend in its name, to accept service of process, to consent to jurisdiction of courts of competent jurisdiction consistent with federal law, and to consent to arbitration or mediation, but in each case only on behalf of itself, and consistent with the limitations set forth herein;
- (n) make application to the U.S. Small Business Administration under the 8(a) Business Development Program; and
- (o) make payments or donations, or do any other act not prohibited by law, that furthers the business of the Limited Liability Company.

§35-1-19 Certificate of Formation

The Certificate of Formation shall contain all of the following information:

- (1) a statement that the Limited Liability Company is organized under this Chapter;
- (2) a name for the Limited Liability Company that satisfies Section 35-1-16;

- (3) the street address of the registered office and the name of the registered agent at that office;
- (4) if management of the Limited Liability Company is vested in one or more Managers, a statement to that effect; provided that one or more Tribal Manager(s) must at all times constitute at least fifty-one percent (51%) of the Manager(s) (and hold fifty-one percent (51%) of all management interests) of the Limited Liability Company;
- (5) the name and business address of each Person organizing the Limited Liability Company;
- (6) if applicable, the delayed effective date and time of the Certificate of Formation permitted under Section 35-1-10;
- (7) the name and business address of each Member of the Limited Liability Company, and the Membership Interest of each Member; provided that the Tribe must, directly or indirectly, in all cases own at least fifty-one percent (51%) of all Membership Interests (including, but not limited to, at least fifty-one percent (51%) of all voting interests and financial interests related to membership);
- (8) the Tribal Council resolution number and date that the Tribal Council authorized the formation of the Limited Liability Company. A copy of the relevant Tribal Council resolution shall be presented with the Certificate of Formation; and
- (9) if applicable, any other matter with regard to the Limited Liability Company that its Member(s) may wish to include.

§35-1-20 Amendment of Certificate of Formation

- (1) A Limited Liability Company may amend its Certificate of Formation at any time by filing an amendment to its Certificate of Formation with the Secretary-Treasurer.
- (2) A Limited Liability Company amending its Certificate of Formation shall deliver to the Secretary-Treasurer for filing an amendment to the Certificate of Formation that includes all of the following information:
 - (a) the name of the Limited Liability Company;
 - (b) the text of the amendment to the Certificate of Formation; and
 - (c) a statement that the amendment was adopted by the vote required under Section 35-1-28(2).

§35-1-21 Effect of Delivery of Filing of Certificate of Formation and Other Documents

- (1) A Limited Liability Company is formed when the Certificate of Formation becomes effective under Section 35-1-10.
- (2) The Secretary-Treasurer's filing of the Certificate of Formation is conclusive proof that the Limited Liability Company is organized under this Chapter.

- (3) The status of a Limited Liability Company as a Limited Liability Company is not adversely affected by inadvertent errors or subsequent changes in any information stated in any filing made under this Title.

§35-1-22 Agency Power of Members and Managers

- (1) Except as provided in subsection (2), all of the following apply:
 - (a) each Member is an agent of the Limited Liability Company for the purpose of the Limited Liability Company's business; and
 - (b) the act of any Member in the name of the Limited Liability Company, including the execution of any instrument, shall be binding on the Limited Liability Company unless the Member has no authority to act for the Limited Liability Company in the particular matter.
- (2) If management of the Limited Liability Company is vested in one or more Managers, all of the following apply:
 - (a) no Member, solely by being a Member, is an agent of the Limited Liability Company or of the other Members or any of them;
 - (b) each Manager is an agent of the Limited Liability Company for the purpose of its business; and
 - (c) the act of any Manager in the name of the Limited Liability Company, including the execution of any instrument shall be binding on the Limited Liability Company unless the Manager has, in fact, no authority to act for the Limited Liability Company in the particular matter.
- (3) No act of a Member or of a Manager shall bind the Limited Liability Company unless in fact authorized at the time of the transaction or as otherwise ratified by Limited Liability Company pursuant to this Chapter or an Operating Agreement.
- (4) No Member or Manager, solely by being a Member or Manager, is an agent of the Tribe.
- (5) A Limited Liability Company is not an agent of the Tribe solely because it is owned by the Tribe.

§35-1-23 Tribal Management

If management of the Limited Liability Company is vested in one or more Managers, then in all cases, one or more Tribal Managers must constitute at least fifty-one percent (51%) of the Managers (and fifty-one percent (51%) of all Manager voting interests) of the Limited Liability Company.

§35-1-24 Liability of Members to Third Parties

The debts, obligations and liabilities of a Limited Liability Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Limited Liability

Company. A Member or Manager of a Limited Liability Company is not liable for any debt, obligation or liability of the Limited Liability Company.

§35-1-25 Parties to Actions

A Member of a Limited Liability Company is not a proper party to a proceeding by or against a Limited Liability Company solely by reason of being a Member of the Limited Liability Company, except if either of the following situations exists:

- (1) the object of the proceeding is to enforce a Member's right against or liability to the Limited Liability Company; and
- (2) the action is brought by the Member in Tribal Court.

§35-1-26 Management

Unless the Certificate of Formation vests management of a Limited Liability Company in one or more Managers, management of the business and affairs of the Limited Liability Company shall be vested in the Members, subject to any provision in an Operating Agreement or this Chapter restricting or enlarging the management rights and duties of any Member or group of Members. Unless otherwise provided in an Operating Agreement, the Manager(s):

- (1) shall be designated, appointed, elected, removed or replaced by a vote of the Members that meets the requirements under Section 35-1-28(1)(a);
- (2) need not be Members of the Limited Liability Company or individuals; and
- (3) shall hold office until a successor is elected and qualified, or until prior death, resignation or removal, as provided herein or by the Limited Liability Company's Operating Agreement.

§35-1-27 Duties of Managers and Members

An Operating Agreement may, but is not required to, impose certain duties on its Members and Managers, including, but not limited to, a specified duty of care, duty of fair dealing, and duty of loyalty.

§35-1-28 Voting

- (1) Unless otherwise provided in an Operating Agreement or this Chapter, and subject to subsection (2), an affirmative vote, approval or consent as follows shall be required to decide any matter connected with the business of a Limited Liability Company:
 - (a) if management of a Limited Liability Company is reserved to the Members, an affirmative vote, approval or consent by Members whose interests in the Limited Liability Company represent more than fifty percent (50%) of the Membership Interests, or, if relevant, more than fifty percent (50%) of the Members voting interests; or

- (b) if the management of a Limited Liability Company is vested in one or more Managers, the affirmative vote, consent or approval of more than fifty percent (50%) of the Managers or, if relevant, more than fifty percent (50%) of the management interests.
- (2) Unless otherwise provided in an Operating Agreement, the affirmative vote, approval or consent of the Tribe, Tribal Entity, or other entity of the Tribe that is a Member, in its capacity as a Member, shall be required to do any of the following:
- (a) amend the Certificate of Formation;
 - (b) issue a Membership Interest in a Limited Liability Company to any Person;
 - (c) adopt, amend or revoke an Operating Agreement;
 - (d) allow a Limited Liability Company to accept any additional contribution from a Member;
 - (e) allow a partial redemption of an interest in a Limited Liability Company under Section 35-1-35;
 - (f) value the contributions of Members under Section 35-1-30(2); or
 - (g) authorize a Manager, Member or other Person to do any act on behalf of the Limited Liability Company that contravenes an Operating Agreement, including any provision of the Operating Agreement that expressly limits the purpose or business of the Limited Liability Company or the conduct of the business of the Limited Liability Company.

§35-1-29 Records and Information

- (1) A Limited Liability Company shall keep at its principal place of business all of the following:
- (a) an alphabetical list of each past and present Member and, if applicable, Manager. The list shall include the full name and last-known mailing address of each Member or Manager, the date on which the Person became a Member or Manager, and the date, if applicable, on which the Person ceased to be a Member or Manager;
 - (b) a copy of the Certificate of Formation and all amendments to the Certificate of Formation, if any; and
 - (c) copies of the Limited Liability Company's federal income, state income or franchise tax returns, if applicable, and financial statements, if any, for the four (4) most recent years or, if such returns and statements are not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the Members to enable them to prepare any applicable tax returns for the four (4) most recent years.
- (2) Upon reasonable request, a Member may, at the Member's own expense, inspect and copy during ordinary business hours any Limited Liability Company record required to be kept

under subsection (1) and, unless otherwise provided in an Operating Agreement, any other Limited Liability Company record, wherever the record is located.

- (3) Failure of a Limited Liability Company to keep or maintain any of the records or information required under this Section shall not be grounds for imposing liability on any Member or Manager for the debts and obligations of the Limited Liability Company.

§35-1-30 Contributions

- (1) A Member's contributions to a Limited Liability Company may consist of cash, property, services rendered, or promissory notes or other written obligations to provide cash or property or to perform services.
- (2) The value of a Member's contribution shall be determined in the manner provided in an Operating Agreement.
- (3) If the Members do not enter into an Operating Agreement or if an Operating Agreement does not so provide, the value of a contribution shall be approved by the Members under Section 35-1-28(2)(f). That value shall be properly reflected in the records and information kept by the Limited Liability Company under Section 35-1-29(1) and the value shall be binding and conclusive on the Limited Liability Company and its Members.

§35-1-31 Allocation of Profits and Losses

- (1) The profits and losses of a Limited Liability Company shall be allocated among the Members in the manner provided in an Operating Agreement.
- (2) If the Members do not enter into an Operating Agreement or the Operating Agreement does not so provide, profits and losses shall be allocated on pro rata basis equal to the Member's ownership interests.

§35-1-32 Series of Members, Managers, or Limited Liability Company Interests

An Operating Agreement may establish, or provide for the establishment of, designated series or classes of Members, Managers, or Limited Liability Company interests that have separate or different preferences, limitations, rights, or duties, with respect to profits, losses, Distributions, voting, property, or other incidents associated with the Limited Liability Company.

§35-1-33 Interim Distributions

- (1) Except as provided in this Chapter, a Member is entitled to receive Distributions from a Limited Liability Company before the Member's Dissociation from the Limited Liability Company and before the Limited Liability Company's dissolution and winding up to the extent and at the times or upon the events specified in an Operating Agreement.
- (2) If not otherwise provided in an Operating Agreement, a Member is entitled to receive Distributions from a Limited Liability Company to the extent and at the times determined by the Members or Managers under Section 35-1-28(1).

§35-1-34 Allocation of Distributions

- (1) Distributions of cash or other assets of a Limited Liability Company shall be allocated among the Members as provided in an Operating Agreement.
- (2) If the Members do not enter into an Operating Agreement or the Operating Agreement does not so provide, Distributions shall be allocated in the same manner that profits are allocated under Section 35-1-31.

§35-1-35 Distribution upon Partial Redemption

- (1) Except as provided in this Chapter, upon the Distribution in partial redemption by a Limited Liability Company of a Member's Interest, the Member is entitled to receive any Distribution to which the Member is entitled under an Operating Agreement with respect to the redeemed interest.
- (2) If not otherwise provided in an Operating Agreement, the Member is entitled to receive the fair value of the redeemed interest as of the date of redemption based on the Member's right to share in Distributions from the Limited Liability Company within a reasonable time after the redemption.

§35-1-36 Distribution upon Dissociation

- (1) Except as otherwise provided in this Chapter, upon an event of Dissociation under Section 35-1-46 that does not cause dissolution of the Limited Liability Company, a dissociating Member is entitled to receive any Distribution to which the Member is entitled under an Operating Agreement.
- (2) If not otherwise provided in an Operating Agreement, the dissociating Member is entitled to receive a Distribution in complete redemption of the fair value of the Member's Interest in the Limited Liability Company as of the date of Dissociation based on the Member's right to share in Distributions from the Limited Liability Company within a reasonable time after Dissociation.

§35-1-37 Distribution in Kind

Unless otherwise provided in an Operating Agreement, all of the following apply:

- (1) a Member may not demand and receive any Distribution from a Limited Liability Company in any form other than cash, regardless of the form of the Member's contribution to the Limited Liability Company; and
- (2) a Member may not be compelled to accept a Distribution of any asset in kind from a Limited Liability Company to the extent that the percentage of the asset distributed to the Member exceeds the percentage in which the Member shares in Distributions from the Limited Liability Company.

§35-1-38 Right to Distribution

At the time that a Member becomes entitled to receive a Distribution from a Limited Liability Company, the Member has the status of and is entitled to all remedies available to a creditor of the Limited Liability Company with respect to the Distribution.

§35-1-39 Limitations on Distributions

- (1) A Limited Liability Company may not declare or make a Distribution to any of its Members if:
 - (a) giving effect to the Distribution, the Limited Liability Company would not be able to pay its debts as they become due in the regular course of business;
 - (b) the Limited Liability Company is insolvent or would be rendered insolvent or its net assets would be less than its total liabilities after giving effect to the Distribution; or
 - (c) the Certificate of Formation or Operating Agreement prohibits the Distribution.
- (2) A Limited Liability Company may base a determination that a Distribution is not prohibited by subsection (1) on any of the following:
 - (a) Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or
 - (b) a fair valuation or other method that is reasonable under the circumstances.

§35-1-40 Ownership of Limited Liability Company Property

- (1) All property originally transferred to or subsequently acquired by or on account of a Limited Liability Company is property of the Limited Liability Company and not of the Members individually.
- (2) Property acquired with Limited Liability Company funds is presumed to be Limited Liability Company property.
- (3) Property may be acquired, held and conveyed in the name of a Limited Liability Company. Any interest in real property may be acquired in the name of a Limited Liability Company and title to any interest so acquired shall vest in the Limited Liability Company rather than in the Members individually.

§35-1-41 Transfer of Property

- (1) Except as provided in subsection (2), property of a Limited Liability Company held in the name of the Limited Liability Company may be transferred by an instrument of transfer executed by any Member in the name of the Limited Liability Company.
- (2) If management of a Limited Liability Company is vested in one or more Managers, all of the following apply:

- (a) title to property of the Limited Liability Company that is held in the name of the Limited Liability Company may be transferred by an instrument of transfer executed by any Manager in the name of the Limited Liability Company; and
- (b) a Member who is not a Manager does not have authority, in the Member's capacity as a Member, to transfer title to property of the Limited Liability Company.

§35-1-42 Nature of Limited Liability Company Interest

A Limited Liability Company interest is personal property.

§35-1-43 Assignment of Limited Liability Company Interest

- (1) Unless otherwise provided in an Operating Agreement or this Chapter, all of the following apply:
 - (a) a Limited Liability Company interest is assignable in whole or in part; provided that, the Tribe must in all cases own, directly or indirectly, at least fifty-one percent (51%) of all Membership Interests in the Limited Liability Company;
 - (b) an assignment of a Limited Liability Company interest entitles the assignee to receive only the Distributions and to 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 a Limited Liability Company interest does not dissolve the Limited Liability Company;
 - (d) unless and until the assignee becomes a Member of the Limited Liability Company under Section 35-1-44, an assignment of a Limited Liability Company interest does not entitle the assignee to participate in the management of the business of the Limited Liability Company or to become or exercise any rights of a Member nor does an assignment result in the assignee having liability as a Member of the Limited Liability Company as a result of the assignment;
 - (e) unless and until the assignee of a Limited Liability Company interest becomes a Member of the Limited Liability Company under Section 35-1-44, the assignor continues to be a Member and to have the power to exercise the rights of a Member, subject to the Members' right to remove the assignor under Section 35-1-46; and
 - (f) the assignor of a Limited Liability Company interest is not released from any personal liability arising under this Chapter as a Member of the Limited Liability Company solely as a result of the assignment.
- (2) An Operating Agreement may provide that a Member's Limited Liability Company Interest may be evidenced by a certificate of Limited Liability Company interest issued by the Limited Liability Company and may also provide for the assignment or transfer of any interest represented by the certificate.
- (3) Unless otherwise provided in an Operating Agreement, the pledge of, or the granting of a security interest, lien or other encumbrance in or against, any or all of a Member's Limited

Liability Company Interest is not an assignment and shall not cause the Member to be an assignor or to cease to have the power to exercise any rights or powers of a Member.

§35-1-44 Right of Assignee to Become a Member

Unless otherwise provided in an Operating Agreement, an assignee of a Limited Liability Company interest may become a Member only if the other Members unanimously consent.

§35-1-45 Admission of Members

- (1) In connection with the formation of a Limited Liability Company, a Person acquiring a Limited Liability Company interest is admitted as a Member of the Limited Liability Company upon the later of the following to occur:
 - (a) the formation of the Limited Liability Company; or
 - (b) the time provided in and upon compliance with an Operating Agreement or, if the Limited Liability Company does not have an Operating Agreement or an Operating Agreement does not so provide, on the effective date of the Person's admission as reflected in the records of the Limited Liability Company maintained under Section 35-1-29(1).
- (2) After the formation of a Limited Liability Company, a Person acquiring a Limited Liability Company interest is admitted as a Member of the Limited Liability Company:
 - (a) in the case of a Person acquiring a Limited Liability Company interest directly from the Limited Liability Company, at the time provided in and upon compliance with an Operating Agreement or, if the Limited Liability Company does not have an Operating Agreement or an Operating Agreement does not so provide, upon the consent of all Members; or
 - (b) in the case of an assignee of a Limited Liability Company interest, as provided in Section 35-1-43 and at the time provided in and upon compliance with an Operating Agreement or, if the Limited Liability Company does not have an Operating Agreement or an Operating Agreement does not so provide, on the effective date of the Person's admission as reflected in the records of the Limited Liability Company maintained under Section 35-1-29(1).

§35-1-46 Events of Dissociation

- (1) A Person ceases to be a Member of a Limited Liability Company upon the occurrence of, and at the time of, any of the following events:
 - (a) unless otherwise provided in an Operating Agreement, the Member withdraws by voluntary act from the Limited Liability Company as provided herein;
 - (b) the Member assigns all of the Member's Interest in the Limited Liability Company and one or more assignees are admitted as Members under Section 35-1-44;
 - (c) the Member is removed as a Member in accordance with an Operating Agreement;

- (d) unless otherwise provided in an Operating Agreement or by the written consent of all Members at the time of the event, the Member does any of the following :
 - (i) makes an assignment for the benefit of creditors;
 - (ii) files a voluntary petition in bankruptcy;
 - (i) becomes the subject of an order for relief under the federal bankruptcy laws which is not dismissed or overturned within ninety (90) days;
 - (ii) files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
 - (iii) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding under subsection (iv); or
 - (iv) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Member or of all or any substantial part of the Member's properties;
- (e) unless otherwise provided in an Operating Agreement or by the written consent of all Members:
 - (i) at the expiration of one hundred and twenty (120) days after the commencement of any involuntary proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed; or
 - (ii) at the expiration of one hundred and twenty (120) days after the appointment without the Member's consent or acquiescence of a trustee, receiver or liquidator of the Member or of all or any substantial part of the Member's properties, if the appointment is not vacated or stayed, or at the expiration of one hundred and twenty (120) days after the expiration of any stay, if the appointment is not vacated;
- (f) unless otherwise provided in an Operating Agreement or by the written consent of all Members, if the Member is an individual:
 - (i) the Member's death; or
 - (ii) the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or estate;
- (g) unless otherwise provided in an Operating Agreement or by the written consent of all Members at the time, the termination of the trust if the Member is a trust or is acting as a Member by virtue of being a trustee of a trust, but not merely the substitution of a new trustee;

- (h) unless otherwise provided in an Operating Agreement or by the written consent of all Members at the time, the dissolution and commencement of winding up of the separate Limited Liability Company if the Member is a separate Limited Liability Company;
 - (i) unless otherwise provided in an Operating Agreement or by the written consent of all Members at the time, the filing of articles of dissolution for the corporation which is a Member or the revocation of the charter thereof and the lapse of the time provided by the laws of the state of incorporation without a reinstatement of its charter if the Member is a corporation;
 - (j) unless otherwise provided in an Operating Agreement or by the written consent of all Members at the time, the Distribution by the fiduciary of the estate's entire interest in the Limited Liability Company if the Member is an estate; or
 - (k) unless otherwise provided in an Operating Agreement or by the written consent of all Members at the time, the dissolution of the partnership or entity if the Member is a partnership or other entity not described under subsections (g) to (j).
- (2) The Members may provide in an Operating Agreement for other events the occurrence of which result in a Person ceasing to be a Member of the Limited Liability Company.

§35-1-47 Dissolution

- (1) A Limited Liability Company is dissolved and its affairs shall be wound up upon the happening of the first of the following:
- (a) the occurrence of events specified in an Operating Agreement;
 - (b) the written consent of all Members;
 - (c) an event of Dissociation of a Member, unless any of the following applies:
 - (i) the business of the Limited Liability Company is continued by the consent of all of the remaining Members within ninety (90) days after the date on which the event occurs at which time the remaining Members may agree to the admission of one or more additional Members or to the appointment of one or more additional Managers, or both; or
 - (ii) as otherwise provided in an Operating Agreement;
 - (d) entry of a decree of judicial dissolution under 35-1-48; or
 - (e) the Dissociation of the Tribe as a Member, or, if relevant, the Dissociation of the Tribal Entity or entity that is a Member of the Limited Liability Company.
- (2) Dissolution of a Limited Liability Company which is being used as a Qualified Active Low-Income Community Business (“QALICB”) in a New Market Tax Credit Program transaction shall not occur until following the end of the seven (7) year New Markets Tax Credit compliance period for such transaction.

§35-1-48 Judicial Dissolution

In a proceeding by or for a Member before the Tribal Court, the Tribal Court may order dissolution of a Limited Liability Company if any of the following is reasonably shown:

- (1) that it is not reasonably practicable to carry on the business of the Limited Liability Company;
- (2) that the Limited Liability Company is not acting substantially in conformity with an Operating Agreement; or
- (3) that the economic interests of the Tribe are not furthered by the Limited Liability Company continuing to do business as reasonably determined by the Tribal Council.

§35-1-49 Winding Up

A dissolved Limited Liability Company continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business. Unless otherwise provided in an Operating Agreement:

- (1) the business of the Limited Liability Company may be wound up by any of the following:
 - (a) the Members or Managers who have authority under Section 35-1-25 to manage the Limited Liability Company before dissolution; or
 - (b) the Chief Financial Officer of the Tribe.
- (2) the Persons winding up the business of the Limited Liability Company may do all of the following in the name of and on behalf of the Limited Liability Company:
 - (a) collect its assets;
 - (b) prosecute and defend suits;
 - (c) take any action necessary to settle and close the business of the Limited Liability Company;
 - (d) dispose of and transfer the property of the Limited Liability Company;
 - (e) discharge or make provision for discharging the liabilities of the Limited Liability Company; and
 - (f) distribute to the Members any remaining assets of the Limited Liability Company.
- (3) Dissolution of a Limited Liability Company does not do any of the following:
 - (a) transfer title to the Limited Liability Company's property;
 - (b) prevent transfer of all or part of a Member's interest;

- (c) prevent commencement of a civil, criminal, administrative or investigatory proceeding by or against the Limited Liability Company;
- (d) abate or suspend a civil, criminal, administrative or investigatory proceeding pending by or against the Limited Liability Company at the time of dissolution; or
- (e) terminate the authority of the registered agent of the Limited Liability Company.

§35-1-50 Distribution of Assets

Upon the winding up of a Limited Liability Company, the assets shall be distributed in the following order:

- (1) to creditors, including, to the extent permitted by law, Members who are creditors, in satisfaction of liabilities of the Limited Liability Company;
- (2) unless otherwise provided in an Operating Agreement, to Members and former Members in satisfaction of liabilities for Distributions under Sections 35-1-33, 35-1-35 and 35-1-36; and
- (3) unless otherwise provided in an Operating Agreement, to Members and former Members first for the return of their contributions in proportion to their respective values as specified in the records required to be maintained under Section 35-1-29(1) and, second, for their Membership interests in proportion to their respective rights to share in Distributions from the Limited Liability Company before dissolution.

§35-1-51 Articles of Dissolution

After the dissolution of a Limited Liability Company under Section 35-1-47, the Limited Liability Company shall file articles of dissolution with the Secretary-Treasurer that include all of the following:

- (1) the name of the Limited Liability Company;
- (2) the date of filing of its Certificate of Formation;
- (3) the statutory grounds under Section 35-1-47 for dissolution; and
- (4) the delayed effective date of the articles of dissolution under Section 35-1-10(2), if applicable.

§35-1-52 Known Claims

- (1) In this Section, the term "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.
- (2) Upon dissolution, a Limited Liability Company may dispose of the known claims against it by filing articles of dissolution under Section 35-1-51 and following the procedures in this Section.

- (3) A dissolved Limited Liability Company may notify its known claimants in writing of the dissolution at any time after the effective date of its articles of dissolution. The written notice shall include all of the following:
 - (a) a description of the pertinent information that must be included in a claim;
 - (b) a mailing address where a claim may be sent;
 - (c) the deadline , which may not be fewer than sixty (60) days after the date of the written notice, by which the Limited Liability Company must receive the claim; and
 - (d) a statement that the claim will be barred if not received by the deadline.
- (4) A claim against the Limited Liability Company is barred if any of the following occurs:
 - (a) a claimant who was given written notice under subsection (2) does not deliver the claim , in writing, to the Limited Liability Company by the deadline specified in the notice;
 - (b) a claimant whose claim is rejected by the Limited Liability Company does not commence a proceeding to enforce the claim in Tribal Court within ninety (90) days after receipt of the rejection notice; or
 - (c) in order to be effective, a rejection of a claim shall be in writing.

§35-1-53 Unknown or Contingent Claims

- (1) At any time after the effective date of its articles of dissolution, a dissolved Limited Liability Company may publish a notice of its dissolution under this Section that requests that Persons with claims, whether known or unknown, against the Limited Liability Company or its Members or Managers, in their capacities as such, present the claims in accordance with the notice.
- (2) The notice shall be published as a notice in a newspaper of general circulation, appearing not less frequently than weekly, in the community where the Limited Liability Company's principal place of business is located.
- (3) The notice shall include all of the following:
 - (a) a description of the information that must be included in a claim;
 - (b) a mailing address where the claim may be sent; and
 - (c) a statement that a claim against the Limited Liability Company or its Members or Managers will be barred unless a proceeding to enforce the claim is commenced within one (1) year after the publication of the notice, provided that all such claims shall be subject to the Choctaw Tort Claims Act.

- (4) If a dissolved Limited Liability Company publishes a notice under subsection (2), the claim of any of the following claimants against the Limited Liability Company or its Members or Managers is barred unless the claimant commences a proceeding to enforce the claim within one (1) year after the date of the publication of the notice:
 - (a) a claimant who did not receive written notice under Section 35-1-52;
 - (b) a claimant whose claim was timely sent to the Limited Liability Company under the deadline in Section 35-1-52 but was not acted on; or
 - (c) a claimant whose claim is contingent or based on an event occurring or to occur after the effective date of dissolution.

§35-1-54 Enforcing Claims

A claim not barred under Sections 35-1-52 or 35-1-53 may be enforced under this Section against any of the following:

- (1) the dissolved Limited Liability Company, to the extent of its undistributed assets; or
- (2) if the dissolved Limited Liability Company's assets have been distributed in liquidation, a Member of the Limited Liability Company to the extent of the Member's proportionate share of the claim or to the extent of the assets of the Limited Liability Company distributed to the Member in liquidation, whichever is less, but a Member's total liability for all claims under this Section may not exceed the total value of assets distributed to the Member in liquidation.

§35-1-55 Wholly Owned Limited Liability Companies

- (1) Without limiting the other provisions of the Chapter, any Limited Liability Company may be wholly owned by the Tribe, with the Tribe as the sole Member.
- (2) Without limiting the other provisions of this Chapter, subsidiary Limited Liability Companies owned by one or more levels of parent Limited Liability Companies (or any other parent entity) may be formed under this Chapter.

§35-1-56 Limitations on Certain Powers of Limited Liability Companies

- (1) Assets. A Limited Liability Company does not have authority to pledge or encumber lands or property, including gaming property, belonging to the Tribe, any other Tribal Entity, or another Limited Liability Company without prior written approval from the Tribal Council.
- (2) Non-Impairment. No otherwise valid legal contractual agreement of a Limited Liability Company shall be subject to any applicable laws, rule or regulation enacted subsequent to the execution of such contract to the extent such subsequent applicable law, rule, or regulation is held by a court of competent jurisdiction to effect a material impairment of such contract.
- (3) Tribal Sovereignty and Immunity. Except as expressly provided herein, nothing in this Chapter shall constitute or be interpreted as a waiver by the Tribe of sovereign immunity

from unconsented lawsuits, nor a consent by the Tribe to the bringing of any action against the Tribe, its officers, agents, employees, departments, or business entities. The sovereign immunity of the Tribe is hereby conferred on all Limited Liability Companies. By enacting this Chapter, the Tribe hereby grants a Limited Liability Company the authority to sue and to consent to be sued in Tribal Court and in all other courts of competent jurisdiction, and the authority to grant a limited waiver of the Limited Liability Company's sovereign immunity; provided, however, that:

- (a) no such waiver of immunity shall be effective against the Limited Liability Company unless the waiver is:
 - (i) explicit;
 - (ii) contained in a written contract or commercial document to which the Limited Liability Company is a party;
 - (iii) only on behalf of the Limited Liability Company; and
 - (iv) specifically approved by the Members and the Managers (if it has Managers) of the Limited Liability Company, or by the Members if so required by the Operating Agreement;
- (b) any recovery against such Limited Liability Company shall be limited to the assets of the Limited Liability Company, except as approved in a resolution of the Tribal Council.

§35-1-57 Liability of Tribe as a Member of a Limited Liability Company

Unless otherwise provided in the Certificate of Formation, neither the Tribe nor any government official of the Tribe, including, but not limited to, the Tribal Chief and members of the Tribal Council, shall be under any obligation to a Limited Liability Company or to the creditors of any such Limited Liability Company.

§35-1-58 Mergers and Conversions

- (1) A Limited Liability Company may be merged into any other Limited Liability Company by the filing of a certificate of merger with the Secretary-Treasurer. Merger is effected by the filing of a certificate of merger with the Secretary-Treasurer.
- (2) A Limited Liability Company may be converted or merged into any Foreign Business Entity if the merger or conversion is permitted by the law of the state under whose law the Foreign Business Entity is formed, and each Foreign Business Entity complies with that law in effecting the merger or conversion. Conversion is effected by the filing of a certificate of conversion with the Secretary-Treasurer.
- (3) The terms of the merger or conversion must be approved by all the Members of the Limited Liability Company being merged or converted.
- (4) A certificate of merger filed with the Secretary-Treasurer must state:

- (a) the name of the Limited Liability Company being merged;
 - (b) the name and state (or place) of formation of the surviving entity;
 - (c) names and addresses of registered agents of the merging and surviving entities;
 - (d) when the merger is effective;
 - (e) how equity interests of the surviving entity shall be allocated between the equity owners; and
 - (f) any other matters that the entities deem appropriate.
- (5) A certificate of conversion filed with the Secretary-Treasurer must state:
- (a) the name of the Limited Liability Company being converted;
 - (b) the name and location of formation of the surviving Foreign Business Entity;
 - (c) names and addresses of registered agents of the converting Limited Liability Company and surviving Foreign Business Entity;
 - (d) when the conversion is effective;
 - (e) how equity interests of the surviving Foreign Business Entity shall be allocated between the equity owners; and
 - (f) any other matters that the entities deem appropriate.

§35-1-59 Sovereign Immunity

By the adoption of this Chapter, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal or state, and neither the adoption of this Chapter, nor the organization of any Limited Liability Company hereunder, shall by itself be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court.

§35-1-60 Severability

If any provision of this Chapter or the application thereof to any Person or circumstance is held invalid, the invalidity shall not affect other provisions or application of the Chapter that can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are severable.

CHAPTER 2. NON-PROFIT CORPORATIONS CODE

§35-2-1 Citation; Authority and Purpose

This Chapter may be referred to as the “Non-Profit Corporations Code” and is enacted pursuant to Article VIII, Section 1, Subsection (a) of the Revised Constitution and Bylaws of the Tribe. The purpose of this Chapter is to provide a statutory framework for establishing Non-Profit Corporations under the sovereign authority of the Tribe.

§35-2-2 Applicability

The provisions of this Chapter shall apply to all Non-Profit Corporations organized hereunder.

§35-2-3 Definitions

- (1) “Articles of Incorporation” means the original or restated articles of incorporation and all amendments to the articles of incorporation.
- (2) “Board of Directors” means the group of persons vested with management of the affairs of the corporation.
- (3) “Bylaws” means the code of rules adopted for the regulation or management of the affairs of the corporation.
- (4) “Choctaw Indian Reservation” means Mississippi Choctaw Reservation Lands as recognized Acts of the United States Congress and the United States Supreme Court in *U.S. v. John*, 437 U.S. 634 (1978).
- (5) “Domestic Corporation” means a corporation, whether for profit or not for profit, that is incorporated under the laws of the Tribe.
- (6) “Foreign Corporation” means a corporation, whether for profit or not for profit, that is incorporated under laws other than the laws of the Tribe.
- (7) “Insolvent” means the inability of a corporation to pay its debts as they become due in the usual course of business.
- (8) “Member” means any entity, either corporate or natural, having membership rights in a corporation in accordance with the provisions of its Articles of Incorporation or Bylaws.
- (9) “Non-Profit Corporation” means a corporation which is wholly owned or majority owned by the Tribe and in which no part of the income of the corporation is distributable to any person by reason of that person’s status as a Member, director, officer or employee, except for reasonable wages for work performed.
- (10) “President” means that officer designated as the president in the Articles of Incorporation or Bylaws, or if not so designated, that officer authorized in the Articles of Incorporation, Bylaws or otherwise to perform the functions of the chief executive officer, irrespective of the name by which designated.

- (11) “Principal Office” means the office so designated in the annual report where the principal executive office of a Domestic or Foreign Corporation is located or in any other document executed by the corporation by an officer and delivered to the Secretary-Treasurer for filing. If an office has not been so designated, “Principal Office” means the known place of business of the corporation.
- (12) “Secretary-Treasurer” means the Secretary-Treasurer of the Tribal Council whose powers and duties are described in Article I of the Bylaws of the Tribe.
- (13) “Tribal Council” means the legislative body of the Tribe whose powers and duties are described in Article VIII of the Revised Constitution and Bylaws of the Tribe.
- (14) “Tribal Court” means the judiciary of the Tribe whose powers and duties are described in Title I of the Choctaw Tribal Code.
- (15) "Tribal Entity" means any business entity that is wholly-owned by the Tribe.
- (16) “Tribe” means the Mississippi Band of Choctaw Indians, a federally-recognized Indian tribe.

§35-2-4 Status of Certain Non-Profit Corporations

- (1) Non-Profit Corporations organized under this Chapter shall be considered to be instrumentalities of the Tribe, created to carry out the responsibilities of the Tribe for economic and community development and the advancement of members of the Tribe. Such Non-Profit Corporations, their officers, and employees are, therefore, entitled to all of the privileges and immunities enjoyed by the Tribe, including, but not limited to, immunities from suit in federal, state, and tribal courts, and federal and state taxation or regulation, except as specifically set out in the Articles of Incorporation granted pursuant to this Chapter or as specifically waived by the Tribal Council or applicable federal law.
- (2) Any subsidiary corporation, its officers and employees, which is wholly owned by a Non-Profit Corporation, shall have all the same powers, privileges and immunities as the parent Non-Profit Corporation.
- (3) For the sole purpose of taxation, regulatory jurisdiction, civil jurisdiction, and criminal jurisdiction, all Non-Profit Corporations formed pursuant to this Chapter which have as their primary purpose benefiting the members of the Tribe shall be treated as a member of a federally-recognized Indian tribe.
- (4) The Tribal Court shall have jurisdiction to decide all questions with respect to the status of Non-Profit Corporations formed pursuant to this Chapter.

§35-2-5 Corporate Name

- (1) The name of a Non-Profit Corporation may contain the words “Incorporated”, “Corporation”, “Limited”, “Association”, “Fund”, “Society”, “Club”, or “Foundation” and shall carry the by-line “A Mississippi Band of Choctaw Indians Non-Profit Corporation.”

- (2) A corporate name shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its Articles of Incorporation.
- (3) A Non-Profit Corporation formed under this Chapter shall not use any corporate name which is the same as, or similar to, the name of any other Non-Profit Corporation organized under this Chapter.

§35-2-6 Registered Agent

- (1) Each Non-Profit Corporation organized pursuant to this Chapter shall maintain a registered agent on the Choctaw Indian Reservation. The registered agent may be, but need not be, at the same location as the Non-Profit Corporation's Principal Office.
- (2) A Non-Profit Corporation may change its registered agent by delivering a statement in writing of such change to the Secretary-Treasurer.
- (3) A Non-Profit Corporation's registered agent is the Non-Profit Corporation's agent for service of process, notice, or demand required or permitted by law to be served on the Non-Profit Corporation. If the Non-Profit Corporation fails to appoint or maintain an agent, then service may be made upon the Secretary-Treasurer who shall record receipt of service and forward it by registered mail to the last address of record of the Non-Profit Corporation's Principal Office. The Secretary-Treasurer's record of service and mailing to the corporation shall be evidence of service.

§35-2-7 Liability of Tribe

The Tribe shall be under no obligation to a Non-Profit Corporation or the creditors of any Non-Profit Corporation which the Tribe incorporates, and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities, including its sovereign immunity, if the Tribe incorporates a Non-Profit Corporation.

§35-2-8 Jurisdiction

- (1) All Non-Profit Corporations formed pursuant to this Chapter and all directors, officers, and Members of such Non-Profit Corporations shall be subject to the civil, regulatory, and adjudicative jurisdiction of Tribe for all actions which arise out of the acts, omission or participation of such persons in connection with the affairs of such Non-Profit Corporations.
- (2) Any Non-Profit Corporation established pursuant to this Chapter, its directors, officers, or Members shall be bound by all applicable laws of the Tribe and of the federal government.

§35-2-9 Records

- (1) A Non-Profit Corporation shall keep as permanent records minutes of all meetings of its Members and Board of Directors, a record of all actions taken by the Members 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 on behalf of the Non-Profit Corporation.

- (2) A Non-Profit Corporation shall maintain appropriate accounting records.
- (3) A Non-Profit Corporation or its agent shall maintain a record of its Members, in a form that permits preparation of a list of the names and addresses of all Members in alphabetical order.
- (4) Each Non-Profit Corporation shall keep at the office of its registered agent the following records:
 - (a) its Articles of Incorporation and all amendments to them currently in effect;
 - (b) its Bylaws and all amendments to them currently in effect;
 - (c) the minutes of Members' meetings, and records of all action taken by Members without a meeting, for the past three years;
 - (d) all written communications to Members generally within the past three years, including the financial statements furnished for the past three years;
 - (e) a list of the names and addresses of its current directors and officers; and
 - (f) its most recent annual report delivered to the Secretary-Treasurer.
- (5) All relevant records may be inspected by Members, their agents or attorneys for any purpose at any reasonable time. The Tribal Council reserves the right to inspect a Non-Profit Corporation's books and records of accounts and reserves the right to perform audits to ensure compliance with applicable law. The Internal Audit Department may conduct such inspections and audits to ensure compliance with applicable law.
- (6) Any Non-Profit Corporation receiving grants, contracts, use of tribal property, or other benefits derived through or by the Tribe shall file with the Secretary-Treasurer quarterly financial statements and narratives of their actions and accomplishments of stated objectives and goals.
- (7) A Non-Profit Corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (8) Each Non-Profit Corporation shall file with the Secretary-Treasurer an annual report that sets forth:
 - (a) the name of the Non-Profit Corporation;
 - (b) the address of the office of its registered agent;
 - (c) the address of its Principal Office;
 - (d) the names and addresses of its directors and principal officers; and
 - (e) a brief description of the nature of its business.

- (9) Each annual report shall be filed with the Secretary-Treasurer's office between January 1 and April 1 of each year following the calendar year in which the Non-Profit Corporation was incorporated. Subsequent annual reports must be delivered to the Secretary-Treasurer between January 1 and April 1 of the following calendar years. Each Non-Profit Corporation that fails or refuses to file its annual report for any year within the time prescribed by this Chapter shall be subject to a penalty of \$50.00, to be assessed by the Secretary-Treasurer.
- (10) All certificates issued by the Secretary-Treasurer in accordance with the provisions of this Chapter and all copies of documents filed in their office in accordance with the provisions of this Chapter, when certified them, shall be taken and received in all Courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Secretary-Treasurer under the seal of their office, as to the existence or non-existence of the facts relating to Non-Profit Corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

§35-2-10 Unauthorized Assumption of Corporate Powers

All persons who assume to act as a Non-Profit Corporation without authority to do so shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

§35-2-11 Purposes of Incorporation

Non-Profit Corporations may be organized under this Chapter for any lawful purpose or purposes including, but not limited to, one or more of the following purposes: cultural; religious; educational; scientific; research; literary; musical; social; athletic; political; civil; professional; mutual or civic improvement; promotion of the arts.

§35-2-12 General Powers

Each Non-Profit Corporation shall have the power:

- (1) to have perpetual succession by its corporate name unless a limited period of duration is stated in its Articles of Incorporation;
- (2) to waive its sovereign immunity against suit, to sue and be sued, to complain and defend in its name, to accept service of process, to consent to jurisdiction of courts of competent jurisdiction consistent with federal law, and to consent to arbitration or mediation, but in each case only on behalf of itself, and consistent with the limitations set forth herein;
- (3) to have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed in any other manner reproduced;
- (4) to purchase, take, receive, lease, take by gift or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

- (5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
- (6) to lend money as authorized by the Board of Directors except to its officers and directors;
- (7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, corporations, whether or not incorporated under this Chapter and whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligation of the United States, or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof or any tribe;
- (8) to make contracts and incur liabilities, borrow money at such rates of interest as the Non-Profit Corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchise and income;
- (9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
- (10) to conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this Chapter;
- (11) to elect or appoint officers and agents of the Non-Profit Corporation, and define their duties and fix their compensation;
- (12) to make and alter Bylaws, not inconsistent with its Articles of Incorporation or with the laws, ordinances, and regulations of the Tribe and the United States, for the administration and regulation of the affairs of the Non-Profit Corporation; and
- (13) unless otherwise provided in the Articles of Incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the Non-Profit Corporation is organized.

§35-2-13 Ultra Vires

- (1) Except as provided in Subsection (2), below, the validity of corporate action may not be challenged on the ground that the Non-Profit Corporation lacks or lacked power to act.
- (2) A Non-Profit Corporation's power to act may be challenged in a proceeding before the Tribal Court by any of the following:
 - (a) ten percent (10%) of the Members or a director against the Non-Profit Corporation to enjoin the act;
 - (b) the Non-Profit Corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the Non-Profit Corporation to enjoin the act; or

- (c) the Tribe's Office of the Attorney General, as provided in this Chapter, to dissolve the Non-Profit Corporation or to enjoin the Non-Profit Corporation from performing unauthorized acts.

§35-2-14 Incorporators

When authorized by the Tribal Council, any person over the age of twenty-one (21) may act as the incorporator of a Non-Profit Corporation by signing, certifying, and delivering in duplicate to the Secretary-Treasurer, Articles of Incorporation for such Non-Profit Corporation.

§35-2-15 Articles of Incorporation

- (1) The Articles of Incorporation shall set forth the following:
 - (a) the name of the Non-Profit Corporation;
 - (b) the period of existence, which may be perpetual;
 - (c) the purpose or purposes for which the Non-Profit Corporation is organized;
 - (d) if the Non-Profit Corporation is to have no Members, a statement to that effect;
 - (e) if the Non-Profit Corporation is to have Members, any provisions stating the qualifications and rights of Members and conferring, limiting, or denying the right to vote;
 - (f) if the directors or any of them are not to be elected or appointed by Members, a statement of the manner in which such directors shall be elected or appointed, or that the manner of such election or appointment of such directors shall be provided in the Bylaws;
 - (g) any provision not inconsistent with law for the regulation of the internal affairs of the Non-Profit Corporation, including any provision for distribution of assets on dissolution or final liquidation and any provisions which under this Chapter is required or permitted to be set forth in the Bylaws;
 - (h) the address of the office of its initial registered agent;
 - (i) the number of directors constituting the initial Board of Directors and the names and addresses of the persons who are to serve as directors; and
 - (j) the name and address of each incorporator.
- (2) It shall not be necessary to set forth in the Articles of Incorporation any of the corporate powers enumerated in this Chapter.
- (3) The Tribal Council must approve, by majority vote, the Articles of Incorporation for any Non-Profit Corporation organized under this Chapter.

- (4) Whenever a provision of the Articles of Incorporation is inconsistent with the Bylaws, the Articles of Incorporation shall be controlling.
- (5) Unless the Articles of Incorporation provide that a change in the number of directors shall be made only by amendment to the Articles of Incorporation, a change in the number of directors made by amendment to the Bylaws shall be controlling.

§35-2-16 Filing of Articles of Incorporation

- (1) Duplicate originals of the Articles of Incorporation shall be delivered to the Secretary-Treasurer. If the Secretary-Treasurer finds that the Articles of Incorporation conform to this Chapter, the Secretary-Treasurer shall:
 - (a) endorse on each duplicate originals the word “filed” and the month, day, and year of the filing thereof;
 - (b) register and maintain one duplicate original in their office; and
 - (c) issue a certificate of incorporation to which they shall affix the other duplicate original and return to the incorporator(s).
- (2) The Secretary-Treasurer’s issuance of a certificate of incorporation and registering of the same is conclusive proof that all conditions precedent to incorporation has been satisfied.

§35-2-17 Effect of Issuance of Certificate of Incorporation

Unless a delayed effective date is specified, the corporate existence begins when the certificate of incorporation is registered.

§35-2-18 Organization of Non-Profit Corporation

- (1) After the Articles of Incorporation have been registered by the Secretary-Treasurer, the initial directors shall hold an organization meeting. The meeting shall be called by its incorporator(s) or a majority of the named directors, upon at least five days notice. The purpose of the meeting is to complete the corporation’s organization by selecting officers of the Board of Directors, appointing officers of the Non-Profit Corporation, adopting Bylaws, and carrying on any business brought before the meeting.
- (2) A first meeting of the Members may be held at the call of the directors, or a majority of them, upon at least five days notice, for such purposes as shall be stated in the notice of the meeting.

§35-2-19 Bylaws

- (1) The Bylaws of a Non-Profit Corporation may contain any provision for managing the business and regulating the affairs of the Non-Profit Corporation that is not inconsistent with this Chapter or the Articles of Incorporation.
- (2) The initial Bylaws of a Non-Profit Corporation shall be adopted by its Board of Directors. The power to alter, amend, or repeal the Bylaws or adopt new Bylaws shall be vested in

the Board of Directors unless otherwise provided in the Articles of Incorporation or the Bylaws.

§35-2-20 Right to Amend Articles of Incorporation

A Non-Profit Corporation may amend its Articles of Incorporation, from time to time, in any and as many respects as may be desired; provided that its Articles of Incorporation as amended contain only such provisions as might be lawfully contained in original Articles of Incorporation if made at the time of making such amendment.

§35-2-21 Procedure to Amend Articles of Incorporation

Amendment to the Articles of Incorporation shall be made in the following manner:

- (1) where there are Members having voting rights, the Board of Directors shall adopt a resolution setting forth the proposed amendment and directing that it is to be submitted to a vote at a meeting of Members having voting rights, which may be either an annual or a special meeting;
- (2) written or printed notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each Member entitled to vote at such meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of Members. If the meeting is an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;
- (3) the proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by Members present or represented by proxy at such meeting;
- (4) where there are no Members, or no Members having voting rights, an amendment shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the Directors in office.

§35-2-22 Articles of Amendment

The articles of amendment shall be executed in duplicate by the Non-Profit Corporation; by its President or vice-president, and the corporate seal shall be there to affixed, attested by its secretary or an assistant secretary, and shall set forth:

- (1) the name of the Non-Profit Corporation;
- (2) the amendment so adopted;
- (3) where there are no Members, or no Members having voting rights, a statement of such fact, the date of the meeting of the Board of Directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office;
- (4) where there are Members having voting rights:

- (a) a statement setting forth the date of the meeting of Members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes entitled to be cast by Members present or represented by proxy at such meeting; or
- (b) a statement that such amendment was adopted by consent in writing signed by all Members entitled to vote with respect thereto.

§35-2-23 Filing of Articles of Amendment

- (1) Duplicate originals of the executed articles of amendment shall be delivered to the Secretary-Treasurer. If the Secretary-Treasurer determines that the articles of amendment conform to this Chapter, the Secretary-Treasurer shall:
 - (a) endorse on each duplicate original the word “filed” and the month, day, and year of such filing thereof;
 - (b) register and maintain one such duplicate original in their office; and
 - (c) issue a certificate of amendment to which they shall affix the other duplicate original and return to the Non-Profit Corporation.
- (2) Upon the issuance of the certificate of amendment by the Secretary-Treasurer, the amendment shall become effective and is conclusive proof that all conditions precedent for amendment of the Articles of Incorporation have been satisfied.
- (3) No amendment shall affect any existing cause of action in favor of or against a Non-Profit Corporation, or any pending suit to which such Non-Profit Corporation shall be a party, or existing rights of persons other than Members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such Non-Profit Corporation under its former name shall abate for that reason.

§35-2-24 Members

A Non-Profit Corporation may have Members or may have no Members. If a Non-Profit Corporation has Members, the Tribal Council shall represent the Members. If the Non-Profit Corporation has no Members, that fact shall be set forth in the Articles of Incorporation. A Non-Profit Corporation may issue certificates evidencing membership therein.

§35-2-25 Meetings of Members

- (1) Meetings of Members at such place within the Choctaw Indian Reservation as may be provided in the Bylaws or, where not inconsistent with the Bylaws, in the notice of the meetings.
- (2) An annual meeting of the Members shall be held at such time as may be provided in the Bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Non-Profit Corporation.

- (3) Special meetings of the Members may be called by the President, the secretary, the Board of Directors, or by such other officers or persons or number or proportion of Members as may be provided in the Articles of Incorporation or the Bylaws. In the absence of a provision fixing the number or proportion of Members entitled to call a meeting, a special meeting of Members may be called by Members having at least one-twentieth (1/20) of the votes to the cast at such meeting.
- (4) Any action required by this Chapter to be taken at a meeting of the Members of a Non-Profit Corporation, or any action which may be taken at a meeting of the Members, may be taken without a meeting, if consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary-Treasurer under this Chapter.

§35-2-26 Notice of Member Meetings

- (1) Written or printed notice stating the place, day and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall in the absence of a provision in the Bylaws specifying a different period of notice, be delivered not less than ten or more than fifty (50) days before the date of the meeting, either personally or by mail; or at the direction of the President, or the secretary or the officers or persons calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as it appears on the records of the Non-Profit Corporation, with postage thereon prepaid.
- (2) A waiver of notice in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Presence without objection also waives notice.

§35-2-27 Voting; Members

- (1) Members shall not be entitled to vote except as the right to vote shall be conferred by the Articles of Incorporation.
- (2) A Member may vote in person, or unless the Articles of Incorporation or the Bylaws otherwise provide, may vote by proxy executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Where the Articles of Incorporation or the Bylaws so provide, voting on all matters, including the election of directors or officers where they are to be elected by the Members, may be conducted by mail.
- (3) The Articles of Incorporation or the Bylaws may provide that in all elections for directors every Member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected or by distributing such votes on the same principle among any number of such candidates.

- (4) If a Non-Profit Corporation has no Members or if the Members have no right to vote, the directors shall have the sole voting power and shall have all of the authority and may take any action herein permitted by Members.
- (5) Whenever, with respect to any action to be taken by the Members of a Non-Profit Corporation, the Articles of Incorporation requires the vote or concurrence of a greater proportion of the Members, as the case may be, than required by this Chapter, with respect to such action, the provisions of the Articles of Incorporation shall control.

§35-2-28 Quorum

- (1) The Bylaws may provide the number or percentage of Members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of Members. In the absence of any such provisions, Members having at least one-tenth (1/10) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the Members, unless a greater proportion is required by this Chapter, the Articles of Incorporation or the Bylaws.
- (2) Unless otherwise provided by the Articles of Incorporation or the Bylaws, the Members present at a duly organized meeting may continue to do business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum.
- (3) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

§35-2-29 Board of Directors

- (1) The affairs of a Non-Profit Corporation shall be managed by a Board of Directors. Directors need not be residents of the Choctaw Indian Reservation or Members of the Non-Profit Corporation unless the Articles of Incorporation or the Bylaws so require. The Articles of Incorporation or the Bylaws may prescribe other qualifications for directors.
- (2) Unless the original Articles of Incorporation provide otherwise, Non-Profit Corporations receiving grants, program contracts, use of tribal property, or other benefits derived through or by the Tribe, shall have no members of the same immediate family on the Board of Directors. Immediate family shall include grandparents, parents, children, brothers and sisters, and grandchildren of the family.

§35-2-30 Number, Election, Classification, and Removal of Directors

- (1) A Non-Profit Corporation shall have at least three directors, the majority of whom must be members of the Tribe and none of whom can be a member of the Tribal Council. Subject to such limitation, the number of directors shall be fixed by the Bylaws, except as to the number of the first Board of Directors, which number shall be fixed by the Articles of Incorporation. The number of directors may be increased or decreased from time to time by amendment to the Bylaws unless the Articles of Incorporation provide that a change in the number of directors shall be made only by amendment of the Articles of Incorporation. No decrease in number shall have the effect of shortening the term of any incumbent

director. In the absence of a Bylaw fixing the number of directors, the number shall be the same as that stated in the Articles of Incorporation.

- (2) The names and addresses of the members of the first Board of Directors shall be stated in the Articles of Incorporation. Such persons shall hold office until the first annual election of directors or for such period as may be specified in the Articles of Incorporation or the Bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the Articles of Incorporation or the Bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.
- (3) Directors may be divided into classes; the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until their successor shall have been elected or appointed and qualified, exception the case of ex officio directors.
- (4) A director may be removed from office pursuant to any procedure therefore provided in the Articles of Incorporation or the Bylaws, and if none be provided, may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election.

§35-2-31 Vacancies

Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the then members of the Board of Directors, though less than a quorum of the board, unless the Articles of Incorporation or the Bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

§35-2-32 Quorum of Directors

- (1) A majority of the number of directors fixed by the Bylaws, or in the absence of a Bylaw fixing the number of directors, then of the number stated in the Articles of Incorporation shall constitute a quorum for the transaction of business, unless otherwise provided in the Articles of Incorporation, or the Bylaws, but in no event shall a quorum consist of less than one-third (1/3) of the number of directors so stated or fixed.
- (2) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless with respect to any action to be taken by the directors of a Non-Profit Corporation, the Articles of Incorporation requires the vote or concurrence of a greater proportion of the directors, as the case may be, than required by this Chapter, with respect to such action, the provisions of the Articles of Incorporation shall control.

§35-2-33 Committees

If the Articles of Incorporation or the Bylaws provide, the Board of Directors may by resolution delegate its authority in the management of the Non-Profit Corporation to a committee designated and appointed by the Board of Directors. Other committees not having the authority of the Board

of Directors in the management of the Non-Profit Corporation may also be designated and appointed by resolution. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it or him by law.

§35-2-34 Place and Notice of Directors' Meetings

- (1) Meetings of the Board of Directors, regular or special, may be held at such place within the Choctaw Indian Reservation, and upon such notice as may be prescribed by the Bylaws, or where not inconsistent with the Bylaws, by resolution of the Board of Directors. A director's attendance at any meeting shall constitute a waiver of notice of such meeting, excepting such attendance at a meeting by the director for the purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.
- (2) Neither the business to be transacted, nor the purpose of any regular or special meeting of the Board of Directors need be specified in the notice or waiver of such notice, of such meeting, unless otherwise provided in the Articles of Incorporation or the Bylaws.
- (3) A waiver of notice in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Presence without objection also waives notice.

§35-2-35 Action by Directors without a Meeting

Any action required by this subchapter to be taken at a meeting of the directors of a Non-Profit Corporation, or any action which may be taken at a meeting of the directors, may be taken without a meeting, if consent in writing, setting forth the action so taken, shall be signed by all of the directors. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary-Treasurer under this Chapter.

§35-2-36 Liability for Unlawful Distributions

A director who votes for or assents to a distribution made in violation of Section 35-2-40 or the Articles of Incorporation is personally liable to the Non-Profit Corporation for the amount of the distribution that exceeds what could have been distributed without violating Section 35-2-40 or the Articles of Incorporation if it is established that the director's duties were not performed in compliance with Section 35-2-39.

§35-2-37 Officers

- (1) The officers of a Non-Profit Corporation shall consist of a President, a secretary, and a treasurer, and may include one or more vice-presidents, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the Articles of Incorporation or the Bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the Board of Directors. If the Bylaws so provide, any two or more offices may be held by the same person, except the offices of President and secretary.

- (2) The Articles of Incorporation or the Bylaws may provide that any one or more officers of the Non-Profit Corporation or other organizations shall be ex officio members of the Board of Directors.
- (3) The officers of a Non-Profit Corporation may be designated by such other titles as may be provided in the Articles of Incorporation or the Bylaws.
- (4) All officers and agents of the Non-Profit Corporation, as between themselves and the Non-Profit Corporation, shall have such authority and perform such duties in the management of the property and affairs of the Non-Profit Corporation as may be determined by resolution of the Board of Directors not inconsistent with the Bylaws.

§35-2-38 Removal of Officers

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever, in their judgment, the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create contract rights.

§35-2-39 General Standards of Conduct for Directors and Officers

- (1) Directors and officers shall discharge their duties in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner they reasonably believe to be in the best interests of the Non-Profit Corporation.
- (2) In discharging their duties, directors and officers are entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by one or more of the following:
 - (a) one or more officers or employees of the corporation whom they reasonably believe to be reliable and competent in the matters presented;
 - (b) legal counsel, public accountants, or other persons as to matters they reasonably believe are within the person's professional or expert competence; or
 - (c) a committee of the Board of Directors if they reasonably believe the committee merits confidence.
- (3) Directors and officers are not liable for any action taken in their corporate capacity, or any failure to take any action, if they performed their duties of office in compliance with this Section.

§35-2-40 Shares of Stock and Dividends Prohibited

A Non-Profit Corporation organized under this Chapter shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a Non-Profit Corporation shall be distributed to its Members, directors, or officers. A Non-Profit Corporation may pay compensation, including pensions, in a reasonable amount to its Members, directors, or officers for services rendered, may

confer benefits upon its Members in conformity with its purposes, and upon dissolution or final liquidation, may make distribution to its Members or others as permitted by this Chapter.

§35-2-41 Loans to Directors and Officers Prohibited

No loans shall be made by a Non-Profit Corporation to its directors or officers. The directors of a Non-Profit Corporation who vote for or assent to the making of a loan to a director or an officer of the Non-Profit Corporation, and any officer participating in the making of such a loan, shall be jointly and severally liable to the Non-Profit Corporation for the amount of such loan until the repayment thereof.

§35-2-42 General Standards of Conduct for Directors and Officers

- (1) Directors and officers shall discharge their duties in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner they reasonably believe to be in the best interests of the Non-Profit Corporation.
- (2) In discharging their duties, directors and officers are entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by one or more of the following:
 - (a) one or more officers or employees of the corporation whom they reasonably believe to be reliable and competent in the matters presented;
 - (b) legal counsel, public accountants, or other persons as to matters they reasonably believe are within the person's professional or expert competence; or
 - (c) a committee of the Board of Directors if they reasonably believe the committee merits confidence.
- (3) Directors and officers are not liable for any action taken in their corporate capacity, or any failure to take any action, if they performed their duties of office in compliance with this Section.

§35-2-43 Distribution of Assets

The assets of a Non-Profit Corporation in the process of dissolution shall be applied and distributed as follows:

- (1) all liabilities and obligations of the Non-Profit Corporation shall be paid, satisfied, and discharged, or adequate provisions shall be made therefore;
- (2) assets held by the Non-Profit Corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;
- (3) assets received and held by the Non-Profit Corporation subject to limitations, permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred, or conveyed to one or more Domestic or Foreign

Corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving Non-Profit Corporation, pursuant to a plan of distribution adopted as provided in this Chapter;

- (4) other assets, if any, shall be distributed in accordance with the provisions of the Articles of Incorporation or the Bylaws to the extent that the Articles of Incorporation or Bylaws determine the distributive rights of Members, or any class or classes of Members, or provide for distribution to others; and
- (5) any remaining assets may be distributed to such persons, societies, organizations, or Domestic or Foreign Corporations, whether for profit or not for profit, as may be specified if a plan of distribution is adopted as provided in this Chapter.

§35-2-44 Plan for Distribution

A plan providing for the distribution of assets, not inconsistent with the provisions of this Chapter, may be adopted by a Non-Profit Corporation in the process of dissolution and shall be adopted by a Non-Profit Corporation for the purpose of authorizing any transfer or conveyance of assets for which this Chapter requires a plan for distribution, in the following manner:

- (1) where there are Members having voting rights the Board of Directors shall adopt a resolution recommending a plan of distribution and directing that the plan be submitted to a vote at a meeting of Members having voting rights, which may be either an annual meeting or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each Member entitled to vote at such meeting, within the time and in the manner provided in this Chapter for the giving of notice of meetings of Members. Such plan of distribution shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by Members present or represented by proxy at such meetings; or
- (2) where there are no Members, or no Members having voting rights, a plan of distribution shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the directors in office.

§35-2-45 Revocation of Voluntary Dissolution Proceedings

A Non-Profit Corporation may, at any time prior to the issuance of a certificate of dissolution by the Secretary-Treasurer as hereinafter provided, revoke the action previously taken to dissolve the Non-Profit Corporation in the following manner:

- (1) where there are Members having voting rights, the Board of Directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at the meeting of Members having voting rights, which may be either an annual or special meeting. Written or printed notice stating that the purpose, or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each Member entitled to vote at such a meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of Members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by Members present or represented by proxy at such meeting; or

- (2) where there are no Members, or no Members having voting rights, a resolution to revoke the voluntary dissolution proceeding shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the directors in office; and
- (3) upon adoption of such resolution by the Members, or by the Board of Directors, where there are no Members or no Members with voting rights, the Non-Profit Corporation may there upon again conduct its affairs. If the articles of dissolution have been delivered to the Secretary-Treasurer, notice of such revocation shall be given to them in writing.

§35-2-46 Articles of Dissolution

If voluntary dissolution proceedings have not been revoked when all debts, liabilities, and obligations of the Non-Profit Corporation shall have been made therefore, and all of the remaining property and assets of the Non-Profit Corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this Chapter, articles of dissolution shall be executed in duplicate by the Non-Profit Corporation; by its President or a vice-president, and the Non-Profit Corporation's seal shall be thereto affixed and attested by its secretary or an assistant secretary, and such statement shall set forth:

- (1) the name of the Non-Profit Corporation;
- (2) where there are Members having voting rights;
 - (a) a statement setting forth the date of the meeting of Members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes entitled to be cast by Members or represented by proxy at such meetings; or
 - (b) a statement that such resolution was adopted by consent in writing signed by all Members entitled to vote with respect thereto;
- (3) where there are no Members, or no Members having voting rights, a statement of such fact, the date of the meeting of the Board of Directors at which the resolution to dissolve received the vote of a majority of the directors in office;
- (4) that all debts, liabilities, and obligations of the Non-Profit Corporation have been paid and discharged or that adequate provision has been made therefor;
- (5) that all the remaining property and assets of the Non-Profit Corporation have been transferred, conveyed, or distributed in accordance with the provisions of this Chapter; and
- (6) that there are no suits pending against the Non-Profit Corporation in any court, or that adequate provisions have been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

§35-2-47 Filing of Articles of Dissolution

- (1) Duplicate originals of such articles of dissolution shall be delivered to the Secretary-Treasurer.

- (2) If the Secretary-Treasurer finds that such articles of dissolution conform to law, they shall, when all fees and charges have been paid as in this Chapter prescribed:
 - (a) endorse on each of such duplicate original the word "filed", and the month, day, and year of such filing thereof;
 - (b) file one of such duplicate original in their office;
 - (c) issue a certificate of dissolution to which they shall affix the other duplicate original; and
 - (d) deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, to the representative of the dissolved Non-Profit Corporation.
- (3) Upon the issuance of such certificate of dissolution, the existence of the Non-Profit Corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by Members, directors, and officers as provided in this Chapter.

§35-2-48 Involuntary Dissolution

- (1) A Non-Profit Corporation may be dissolved involuntarily by a decree of the Tribal Court in an action instituted by the Tribe's Office of the Attorney General in the name of the Tribe, when it is made to appear to the Court that:
 - (a) the franchise of the Non-Profit Corporation was procured through fraud;
 - (b) the Non-Profit Corporation has continued to exceed or abuse the authority conferred upon it by this Chapter;
 - (c) the Non-Profit Corporation has failed for ninety (90) days to appoint and maintain a registered agent as provided in this Chapter;
 - (d) the Non-Profit Corporation has failed for ninety (90) days after change of its registered agent to deliver to the Secretary-Treasurer statement of such change; or
 - (e) the Non-Profit Corporation is found by the Tribal Court to be in violation of this Chapter or any other law of the Tribe.
- (2) At least thirty (30) days before any action for the involuntary dissolution of a Non-Profit Corporation shall be filed by the Tribe's Office of the Attorney General, the Secretary-Treasurer shall notify the Non-Profit Corporation by certified or registered mail addressed to such Non-Profit Corporation's registered agent, a notice of their intention to file such suit and the reasons therefore. If, before action is filed, the Non-Profit Corporation shall submit satisfactory evidence to rebut the conditions in Subsection (1), the Tribe's Office of the Attorney General shall not file an action against the Non-Profit Corporation for such cause. If, after action is filed for failure to comply with Subsections (1)(c) or (1)(d) and the Non-Profit Corporation satisfies those conditions and pays the costs of such action, the action for such cause shall abate.

§35-2-49 Jurisdiction of Tribal Court to Liquidate Assets and Affairs of Non-Profit Corporation

- (1) The Tribal Court shall have full jurisdiction to liquidate the assets and affairs of a Non-Profit Corporation:
 - (a) upon petition to the Tribal Court of any Member or director, or by resolution of Tribal Council, if the petition or resolution establishes one or more of the following:
 - (i) that the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the Non-Profit Corporation is being suffered or is threatened by that reason thereof, and either that the Members are unable to break the deadlock or there are no Members having voting rights;
 - (ii) that the acts of the directors or those in control of the Non-Profit Corporation are illegal, oppressive or fraudulent;
 - (iii) that the corporate assets are being misapplied or wasted;
 - (iv) that the Non-Profit Corporation is unable to carry out its purposes; or
 - (v) that the Non-Profit Corporation has consistently failed to use accepted accounting;
 - (b) upon petition to the Tribal Court of a creditor, if the petition established one or more of the following:
 - (i) the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the Non-Profit Corporation is Insolvent; or
 - (ii) the Non-Profit Corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the Non-Profit Corporation is Insolvent;
 - (c) upon application by a Non-Profit Corporation which has filed a statement of intent to dissolve; and
 - (d) when an action has been commenced by the Tribe's Office of the Attorney General to dissolve a Non-Profit Corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution.
- (2) It shall not be necessary to make directors or Members parties to any such action or proceeding unless relief is sought against them personally.

§35-2-50 Liquidation of Non-Profit Corporation by the Tribal Court

If the Tribal Court revokes a Non-Profit Corporation's certificate of incorporation, it shall proceed to liquidate the assets and business of a Non-Profit Corporation as follows:

- (1) the Tribal Court shall have power to issue injunctions, and to appoint a liquidating receiver with any powers and duties the Tribal Court may direct. The Tribal Court may also take any other actions necessary to preserve the corporate assets wherever situated, and carry on the business of the Non-Profit Corporation until final dissolution;
- (2) the liquidating receiver shall give notice to all parties in interest and creditors and allow each a proper hearing with sworn statements;
- (3) the liquidating receiver shall then collect the assets of the Non-Profit Corporation, and shall have authority to sell, convey and dispose of the assets of the Non-Profit Corporation wherever situated, either at public or private sale;
- (4) the assets of the Non-Profit Corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of the liquidation and to the payment of the liabilities and obligations of the Non-Profit Corporation according to this Chapter. Any remaining assets or proceeds shall be distributed according to this Chapter;
- (5) the assets of a Non-Profit Corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:
 - (a) all costs and expenses of the Tribal Court proceedings and all liabilities and obligations of the Non-Profit Corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;
 - (b) assets held by the Non-Profit Corporation upon conditions requiring return, transfer, or conveyance which conditions occur by reason of dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;
 - (c) assets received and held by the Non-Profit Corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more Domestic or Foreign Corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the Court may direct;
 - (d) other assets, if any, shall be distributed in accordance with the provisions of the Articles of Incorporation or the Bylaws to the extent that the Articles of Incorporation or Bylaws determine the distributive rights of the Members or any class or classes of Members, or provide for distribution to others; and
 - (e) any remaining assets may be distributed to such persons, societies, organizations, or Domestic or Foreign Corporations, whether for profit or not for profit, specified in the plan of distribution which has been adopted, as the Tribal Court may direct.

- (6) the Tribal Court shall have power to allow compensation to the receiver and any attorneys in the proceeding out of the assets of the Non-Profit Corporation or the proceeds of any sale or disposition of such assets; and
- (7) a receiver of a corporation appointed under the provisions of this Section shall have authority to sue and defend in all courts in his own name as receiver of such Non-Profit Corporation. The Court appointing such receiver shall, for the purposes of this Chapter have exclusive jurisdiction of the Non-Profit Corporation and its property, wherever situated.

§35-2-51 Qualification of Receivers

A receiver shall in all cases be a natural person or a Domestic Corporation authorized to act as receiver, and shall in all cases give such bond as the Tribal Court may direct with such sureties as the Tribal Court may require.

§35-2-52 Filing of Claims in Liquidation Proceedings

In proceeds to liquidate the assets and affairs of a Non-Profit Corporation, the Court may require all creditors of the Non-Profit Corporation to file with the Clerk of Court or with the receiver, in such form as the Tribal Court may prescribe, proofs under oath of their respective claims, it shall fix a date which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the Tribal Court may extend the time for the filing of claims. Creditors and claimants failing to file proofs or claims on or before the date so fixed may be barred, by order of the Tribal Court, from participating in the distribution of the assets of the Non-Profit Corporation.

§35-2-53 Discontinuance of Liquidation Proceedings

The liquidation of the assets and affairs of a Non-Profit Corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists. In such event the Tribal Court shall dismiss the proceedings and direct the receiver to redeliver to the Non-Profit Corporation all its remaining property and assets.

§35-2-54 Order of Dissolution

- (1) The Tribal Court shall issue an order dissolving the Non-Profit Corporation, when:
 - (a) the costs and expense of the liquidation have been satisfied;
 - (b) all debts, obligations and liabilities of the Non-Profit Corporation have been paid and discharged; and
 - (c) all of its remaining property and assets have been distributed.
- (2) In case the corporation's property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, but all the property and assets have been applied so far as they will go to their payment, the Court shall issue an order dissolving the Non-Profit Corporation.

- (3) Upon issuance of an order, the existence of the Non-Profit Corporation shall cease.
- (4) When the Tribal Court issues an order dissolving a Non-Profit Corporation, it shall file a certified copy of the order with the Secretary-Treasurer.

§35-2-55 Post Dissolution

- (1) Deposit with the Tribal Court of Amount Due Certain Creditors. Upon the voluntary or involuntary dissolution or liquidation of a Non-Profit Corporation, the portion of the assets distributable to a creditor who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Tribal Court and shall be paid over to the creditor or to their legal representative upon proof satisfactory to the Tribal Court of his rights thereto.
- (2) Survival of Remedy after Dissolution. The dissolution of a corporation by the issuance of a certificate of dissolution by the Secretary-Treasurer, an order issued by the Tribal Court before the Non-Profit Corporation's assets have been liquidated as provided in this Chapter, or upon expiration of its period of duration, shall not take away or impair any remedy available to or against a Non-Profit Corporation, its directors, or officers, for any right or claim existing or any liability incurred, prior to dissolution if an action or other proceeding is commenced within two years after the date of dissolution. Any such action or proceeding by or against the Non-Profit Corporation may be prosecuted or defended by the Non-Profit Corporation in its corporate name. The directors and officers shall have power to take corporate or other action as shall be appropriate to protect a remedy, right or claim. If a Non-Profit Corporation was dissolved by the expiration of its period of duration, it may amend its Articles of Incorporation at any time during the period of two (2) years so as to extend its period of duration

§35-2-56 Decree of Involuntary Dissolution

In proceedings to liquidate the assets and affairs of a Non-Profit Corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the Non-Profit Corporation shall have been paid and discharged and all of its remaining property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the Tribal Court shall enter a decree dissolving the Non-Profit Corporation, whereupon the existence of the Non-Profit Corporation shall cease.

§35-2-57 Filing of Decree of Dissolution

In case the Tribal Court shall enter a decree dissolving a Non-Profit Corporation, it shall be the duty of the Clerk of Court to cause a certified copy of the decree to be delivered to the Secretary-Treasurer, who shall file the same.

§35-2-58 Deposits with Secretary-Treasurer

Upon the voluntary or involuntary dissolution of a Non-Profit Corporation, the portion of the assets distributable to any persons who are unknown or cannot be found, or who are under disability and

there is no person legally competent to receive such distributive portion, shall be reduced to cash and be deposited with the Secretary-Treasurer and shall be paid over to such person or to his legal representative upon proof satisfactory to the Tribal Court of his rights thereto.

§35-1-59 Limitations on Certain Powers of Non-Profit Corporations

- (1) Assets. A Non-Profit Corporation does not have authority to pledge or encumber lands or property, including gaming property, belonging to the Tribe, any other Tribal Entity, or another Limited Liability Company without prior written approval from the Tribal Council.
- (2) Non-Impairment. No otherwise valid legal contractual agreement of a Non-Profit Corporation shall be subject to any applicable laws, rule or regulation enacted subsequent to the execution of such contract to the extent such subsequent applicable law, rule, or regulation is held by a court of competent jurisdiction to effect a material impairment of such contract.
- (3) Tribal Sovereignty and Immunity. Except as expressly provided herein, nothing in this Chapter shall constitute or be interpreted as a waiver by the Tribe of sovereign immunity from unconsented lawsuits, nor a consent by the Tribe to the bringing of any action against the Tribe, its officers, agents, employees, departments, or business entities. The sovereign immunity of the Tribe is hereby conferred on all Non-Profit Corporations. By enacting this Chapter, the Tribe hereby grants a Non-Profit Corporation the authority to sue and to consent to be sued in Tribal Court and in all other courts of competent jurisdiction, and the authority to grant a limited waiver of the Non-Profit Corporation's sovereign immunity; provided, however, that:
 - (a) no such waiver of immunity shall be effective against the Non-Profit Corporation unless:
 - (i) the waiver is explicit;
 - (ii) the waiver is contained in a written contract or commercial document to which the Non-Profit Corporation is a party;
 - (iii) the waiver is only on behalf of the Non-Profit Corporation; ~~and~~
 - (iv) the waiver is specifically approved by the Board of Directors of the Non-Profit Corporation, or by the Members if so required by the Articles of Incorporation; and
 - (v) written notice of the waiver is provided to the Tribal Council at least ten (10) calendar days prior to the waiver being approved by the Board of Directors of the Non-Profit Corporation;
 - (b) any recovery against such Non-Profit Corporation shall be limited to the assets of the Non-Profit Corporation, except as approved in a resolution of the Tribal Council.

§35-2-60 Severability

If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.