TITLE XXXV
BUSINESS ORGANIZATIONS
CHAPTER 1. LIMITED LIABILITY COMPANY CODE

§35-1 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.

§35-2 Purpose

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

§35-3 Definitions

(1) "Certificate of Formation" means the original Certificate of Formation for a Limited Liability Company and any amendments or restatements.


(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.
"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.

"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.

"Organizer" means the Person who signs and delivers the Certificate of Formation for filing.

"Person" means both natural persons, whether Tribal Members or otherwise, and corporations, limited liability companies, partnerships, trusts, Indian tribes, Tribal Authorities and other entities.

“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.

“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.

"Tribal Entity" means any business entity that is wholly-owned by the Tribe.

“Tribal Court” means the judiciary of the Tribe whose powers and duties are described in Title I of the Choctaw Tribal Code.

"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.

"Tribal Member" means an enrolled member of the Tribe.

“Tribal Court” 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 file 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.
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
Distributions of cash or other assets of a Limited Liability Company shall be allocated among the Members as provided in an Operating Agreement.

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;

(iii) becomes the subject of an order for relief under the federal bankruptcy laws which is not dismissed or overturned within ninety (90) days;

(iv) 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;

(v) 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

(vi) 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.
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.

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

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.

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.

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.
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.