

TITLE 17. ECONOMIC DEVELOPMENT

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Economic Development Fund, see Title 37, § 2-208.

CHAPTER 1. GENERAL PROVISIONS

Section

1-101. Hiring authorization; economic development projects.

Historical and Statutory Notes

NCA 97-60, §§ 101, 102, provide:
“Section 101. Findings: The National Council finds that:

“A. It is the goal of the Muscogee (Creek) Nation to pursue economic development projects.

“B. Successfully managed economic development projects will provide employment op-

portunities and revenue for the Muscogee (Creek) Nation.

“C. If our economic development projects are to be successful, the Muscogee (Creek) Nation must hire the best qualified applicants to administer the projects.

§ 1-101. Hiring authorization; economic development projects

The Principal Chief or his designee is hereby authorized to hire the best qualified applicants for positions involving economic development projects.

[NCA 97-60, § 103, approved June 28, 1997.]

CHAPTER 2. TRADE AND COMMERCE AUTHORITY

Section

- 2-101. Short title.
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Historical and Statutory Notes

NCA 99-22, §§ 101, 102, 118, provide:

“Section 101. Findings: The National Council Finds That:

“A. Article VI, Section 7, of the Muscogee Nation Constitution vests the National Council with the power to:

“(1) Promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of the citizens of The Muscogee (Creek) Nation; and

“(2) Create authorities with attendant powers to achieve objectives allowed within the scope of the Constitution.

“B. In furtherance of its constitutional duty to promote the public welfare and economic advancement of the Muscogee people, the National Council may exercise its authority to create tribal business authorities to engage in commercial activities.

“C. It is in the best economic interest of the Muscogee Nation to prepare for the future of the Nation by organizing a tribal authority responsible for investigating, planning, organizing and operating business ventures pursuant to approved plans of business operations.

“Section 102. Policy:

“It is the policy of the Muscogee (Creek) Nation to provide for the health, safety, education and welfare of its citizens, and to raise revenue necessary to pay the costs of performing governmental functions on behalf of the citizens of Muscogee Nation.”

“Section 118. Severability:

“In the event any provision of this Act is determined by a court of competent jurisdiction to be invalid, all other provisions hereof shall be deemed severable from the provision held to be invalid and shall be given full force and effect.”

§ 2-101. Short title

This chapter shall be known and cited as the Muscogee (Creek) Nation Tribal Trade and Commerce Authority Act.

[NCA 99-22, § 104, approved March 4, 1999.]

§ 2-102. Definitions

Wherever used in this chapter, the terms set forth below shall have the following meanings:

A. “Authority” shall mean the agency of the Muscogee (Creek) Nation created under Title 17, § 2-103, pursuant to the powers vested in the National Council in Article VI, Section 7, of the Constitution of the Muscogee (Creek) Nation.

B. "Board" shall mean the Board of Trustees created under Title 17, § 2-107.

[NCA 99-22, § 105, approved March 4, 1999.]

§ 2-103. Creation and name of Authority

There is hereby created a Tribal Trade and Commerce Authority with the purposes and authorities set forth in Title 17, § 2-106. The name of the Authority created hereunder shall be, and is, "Muscogee (Creek) Nation Tribal Trade and Commerce Authority."

[NCA 99-22, § 106, approved March 4, 1999.]

§ 2-104. Duration and fiscal year of Authority

Muscogee (Creek) Nation Tribal Trade and Commerce Authority shall have perpetual existence, which shall commence on March 4, 1999. The initial fiscal year of the Authority shall end on September 30, 1999, and thereafter the fiscal year of the Authority shall commence on October 1 of each year and end on September 30 of the following year.

[NCA 99-22, § 107, approved March 4, 1999.]

§ 2-105. Registered office and agent of Authority

A. The registered office of the Muscogee (Creek) Nation Tribal Trade and Commerce Authority is the Muscogee (Creek) Nation Capital Complex, Loop 56 & Hwy. 75 (P.O. Box 580), Muscogee Nation, Okmulgee, OK 74447.

B. The registered agent of the Authority shall at all times be the person holding the office of the Principal Chief of the Muscogee Nation but only for the duration of time that he or she remains in said office.

[NCA 99-22, § 108, approved March 4, 1999.]

§ 2-106. Purpose, authority and limitations of Trade and Commerce Authority

A. The purpose of the Authority shall be to investigate, evaluate, carry on and maintain various for-profit Tribal business enterprises, ventures and/or economic development projects for the economic benefit of the Muscogee (Creek) Nation and its citizens, subject to the limitations set forth in subsection D of this section.

B. Incident to the purpose set forth in subsection A of this section and to any approved business plan required under subsection D of this section, and subject to the availability of funding, the Authority shall be and is hereby authorized to:

1. Adopt and use an official seal;
2. Enter into agreements, contracts, joint ventures, partnerships, cooperative projects and/or other appropriate relationships with any federal, Tribal, state, municipal or foreign government, or with any agency or authority of any such government, or with any person, partnership, corporation, or any other

legal entity, and agree to any conditions attached to federal financial assistance or contract subject to the terms of this chapter;

3. Acquire personal property of any kind, including funds, securities and other intangible property or property rights, and to own and hold same in its own name, separate and apart from the property and assets of Muscogee (Creek) Nation;

4. Sell, lease exchange, transfer and/or assign personal property of any kind owned by the Authority;

5. Lease property for use in the business of the Authority for such periods as are authorized by law, and to hold and manage or to sublease the same;

6. Borrow or lend money, issue temporary or long-term evidence of indebtedness and repay the same, provided that no loans shall be made by the Authority to any person who is an officer, trustee or employee of the Authority or to any person who is a member of such officer, the Authority Trustee or employee's immediate family; and provided further that the notes and other obligations of the Authority shall not be debts of the Muscogee (Creek) Nation and shall not create a lien or any other encumbrance on any property or assets of the Muscogee (Creek) Nation, and any such obligations shall so state on their face;

7. Pledge the assets and receipts of the Authority as security for debts;

8. Employ personnel and establish the compensation, benefits and conditions of their employment, and delegate to such personnel such powers or duties as the Authority may deem proper, subject to the terms of this chapter;

9. Employ consultants, advisors, planners and other experts by written contract in accordance with Tribal and federal law, and employ outside legal counsel by written contract subject to National Council approval by Tribal Resolution;

10. Invest such funds that are not required for immediate disbursements or obligations;

11. Open and maintain, in the name of the Muscogee (Creek) Nation Tribal Trade and Commerce Authority, accounts in any financial institution whose deposits are insured by an agency of the United States government;

12. Engage in any lawful business or activity and exercise such further incidental powers not inconsistent with the purposes for which the Authority is created, as are commonly engaged in by Tribal enterprises of this character and as the Board may deem necessary or appropriate to effectuate the purposes of the Authority as stated in subsection A of this section;

13. Enter into partnerships, joint ventures or other business arrangements with any person, government, governmental agencies or authorities or any other legal entity to effectuate the purposes of the Authority, subject to the provisions of this chapter; and

14. Purchase insurance from any stock or mutual company for any property or against any risk or hazards.

C. The Authority, by and through the Board, may employ a Director and one or more managers responsible for the day-to-day operational management

of the Authority's business ventures or economic development projects whose plans shall have been approved pursuant to subsection D of this section; provided however, that the activities of any such Director and manager(s) shall be subject to the control and oversight of the Board at all times in accordance with established policies and procedures adopted by the Board. Without specific authority from the Board, which must be set forth in a duly-adopted written resolution of the Board or by employment contract properly executed by the Board, such Director and manager(s) shall not:

1. Borrow money or pledge assets of the Authority;
2. Sell, lease, assign or convey personal property of the Authority except that this provision shall not apply to the wares or products produced or offered for sale as an integral part of any business ventures of the Authority;
3. Enter into any contract with a term exceeding one year or that requires the expenditure of more than five thousand dollars (\$5,000.00) of the Authority's funds;
4. Compromise any claim of or against the Authority over one thousand dollars (\$1,000.00); or
5. Enter into contracts with any other Indian Tribe or with any unit of federal, state, or local government.

D. Neither the Authority nor any person employed by it or acting on its behalf shall have the power or authority to waive sovereign immunity of the Muscogee (Creek) Nation or to sell, convey, assign, or encumber any real or personal property or other assets of the Muscogee (Creek) Nation, provided that this limitation shall not apply to personal property or other assets held in the name of the Authority. Furthermore, no business venture, enterprise or economic development project shall be pursued or carried on by the Authority except pursuant to and in accordance with a written business plan which has been approved by the National Council by way of duly adopted Tribal Resolution.

[NCA 99-22, § 109, approved March 4, 1999; amended by NCA 03-076, § 1, eff. June 6, 2003; NCA 04-028, § 1, eff. March 4, 2004.]

Cross References

Authorization of expenditures and sales, farm operations, see Title 1, § 1-101.

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-107. Board of Trustees and Officers

A. The Authority shall be governed by a five-member Board of Trustees consisting of:

1. **Membership and Appointment.** Two (2) members shall be appointed by the Principal Chief and confirmed by the National Council by Tribal Resolution. Three (3) members shall be nominated by the Business and Governmental Committee of the National Council and confirmed by the National Council by Tribal Resolution.

2. **Qualifications.** Candidates for appointment must have a reputation of good character and honesty and shall have demonstrated experience, education, skill or training in business or economic development. Candidates must be enrolled Tribal members.

3. **Term and Compensation.** The appointee shall serve a term of office of two (2) years, commencing on the date of confirmation and shall receive a stipend of one hundred fifty dollars (\$150.00) for each meeting of the Board that he or she attends plus telephone and mileage reimbursement.

4. **Officers, Meetings and Minutes.** The Tribal Trade and Commerce Authority shall provide for the election of its officers to affect the discharge of its responsibilities, in addition, it shall adopt a schedule of meetings, attendance requirements and methods of recording minutes of all Tribal Trade and Commerce Authority affairs. The Chairman shall be responsible for drafting bylaws of the Authority.

B. When a new trustee has not been confirmed or an incumbent trustee reconfirmed, pursuant to paragraph 2 or 3 of subsection A of this section, prior to the expiration of the term of office of the previous trustee appointed and confirmed to that same office, the previous trustee shall hold over in office until a new appointee is confirmed pursuant to paragraph 2 or 3 of subsection A of this section.

[NCA 99-22, § 110, approved March 4, 1999; amended by NCA 02-108, § 1, approved July 30, 2002; NCA 07-132, § 2, eff. May 31, 2007; NCA 09-203, eff. Nov. 3, 2009.]

Library References

Indians ⇄ 210, 216, 222.
Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to
72, 180.

§ 2-108. Powers and duties of Board

In addition to any other powers and duties of the Board of Trustees provided for in this chapter, and subject to the limitations of subsection D of Title 17, § 2-106, in furtherance of the purposes of the Authority, the Board shall have the following powers and duties:

A. To be responsible for the fiscal affairs of the Authority and all businesses and ventures under its management and to oversee and control the financial and business affairs of the Authority and all businesses and ventures under its management through the establishment and implementation in accordance with generally accepted accounting principles of an administrative system that shall include, but not be limited to controlling, accounting and reporting disbursements, payroll, cost management and investments and establishing and maintaining bank accounts in the name of the Muscogee (Creek) Nation Tribal Trade and Commerce Authority, in any financial institution whose deposits are insured by an agency of the United States government; provided that expenditures may be made only upon approval by (1) the Chairman of the Board of Trustees or (2) another member of the Board of Trustees who has been designated by duly enacted resolution of the Board of Trustees to approve the expenditure of funds, or (3) subject to the control and oversight of the Board of Trustees, the Director or a manager employed by the Board of Trustees pursuant to subsection C of Title 17, § 2-106, if so authorized by duly enacted

resolution of the Board of Trustees; provided that the Controller shall deliver all funds appropriated through the Muscogee (Creek) Nation pursuant to the Nation's Comprehensive Annual Budgets or special appropriations acts to the Authority for its use in accordance with the Muscogee (Creek) Nation Tribal Trade and Commerce Authority Act and generally accepted accounting principles.

B. Employ administrative staff to serve the Board;

C. Employ a Director, managers, accountants and administrative staff, clerks and other employees who shall be primarily responsible for carrying out the day-to-day operations of any business or venture authorized by a business plan approved by the National Council pursuant to subsection D of Title 17, § 2-106, subject at all times to the oversight of the Board;

D. Oversee, supervise, and control the activities of the Director and business managers employed by the Authority to carry out approved business plans, provided that said managers shall have primary supervisory authority over all subordinate personnel which shall include the authority to hire and fire such personnel;

E. Adopt administrative and personnel policies and procedures for the Board's staff as well as for the Director, managers and their administrative and other staff operating businesses or ventures under any approved business plan(s), provided that said policies and procedures shall include, but not be limited to, provisions calculated to (1) prevent nepotism in the hiring of personnel and procurement of goods and services, and (2) assure that all contracting and procurement is conducted in a manner which is always consistent with the best interests of the Authority;

F. Review, evaluate, initiate and cause to be carried out business ventures, projects and/or commercial enterprises;

G. Hold regular meetings of the Board, not less than once every month, for the conduct of business and to discharge its powers and duties hereunder;

H. Delegate such authority to the Director and the manager(s) of the Authority's businesses as the Board deems appropriate, subject to any limitations imposed by this chapter;

I. On behalf of the Authority, and subject to the limitations of subsection D of Title 17, § 2-106, approve any contracts proposed by the Director or manager(s) for the engagement of consultants, advisors, planners and/or other experts which the Board deems necessary or appropriate to carry out the purposes of the Authority, provided that all such contracts shall be in writing, shall be approved by written resolution of the Board at a meeting duly called and held, and shall be available for review upon request by the National Council and the Attorney General;

J. Subject to any requirements and/or limitations imposed on the Board or the Authority under the provisions of this chapter, take or perform any and all other actions, including without limitation approving contracts and agreements in the name of the Authority, which the Board may deem necessary or appropriate in order for the Authority to carry out its purposes and authority set forth in Title 17, § 2-106, provided that any limitations imposed hereunder

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on the Authority, including without limitation the provisions of Title 17, § 2–106, shall be limitations on the Board; and

K. Perform any other actions required of the Board under this chapter.

[NCA 99–22 § 111, approved March 14, 1999; amended by NCA 03–011, § 1, eff. February 4, 2003; NCA 04–028, § 2, eff. March 4, 2004.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2–109. Meetings of Board

A. The Board shall have one regular meeting each month, on a date and at a time which shall be fixed by the Board at its first monthly meeting which shall be held on a date and time, to be set by the chairman, not more than thirty (30) days after March 4, 1999. The date and time for the regular monthly meeting may be changed by the Board from time to time but only by way of written resolution adopted at any regular or special meeting of the Board.

B. Special meetings of the Board may be called (1) by the Chairman, by giving written or telephonic notice to the other Trustees not less than twenty-four (24) hours before the special meeting; or (2) by any two Trustees of the Board, by giving the other Trustees written or telephonic notice not less than twenty-four (24) hours before the special meeting. In addition to the foregoing, written notice of special meetings shall be posted at least twenty-four (24) hours before the meeting within the Administration Building of the Capitol Complex in at least two (2) prominent places as well as on at least two (2) exterior doors of the Mound Building.

C. No business shall be transacted by the Board except at a regular monthly or duly called special meeting at which a quorum has been established, which shall require the presence of at least two (2) Trustees on the Board. If a quorum is established at the beginning of any meeting but is lost during the course of a meeting, no action taken during the period when less than a quorum is present shall be valid.

D. The transaction of any Board business or action shall require a majority vote of Trustees present at a meeting.

[NCA 99–22, § 112, approved March 4, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2–110. By-laws

The Board may adopt and, from time to time, amend by-laws of the Authority, provided that such by-laws and amendments shall be in writing and shall not be inconsistent with this chapter. Copies of any by-laws or amended by-laws of the Board shall be delivered to the offices of the Principal Chief and the

Speaker of the National Council no later than the end of the next business day following the meeting at which the by-laws or amended by-laws were adopted.

[NCA 99-22, § 113, approved March 4, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-111. Records and audits

The Board shall maintain complete, accurate books and records of the financial affairs of the Authority, and for each fiscal year shall furnish to the National Council of the Muscogee (Creek) Nation an annual budget, annual balance sheet, annual income statement, and complete annual report of the business and financial affairs of the Authority and each of its businesses or ventures. The books and records of Authority shall be audited each year by an independent Certified Public Accountant in accordance with generally accepted auditing procedures.

[NCA 99-22, § 114, approved March 4, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-112. Disposition of profits

Within ninety (90) days after the end of each fiscal year, the Board shall determine or cause to be determined the net profits of the Authority and the net profits of all Travel Plazas and business operations under the Trade and Commerce Board for the fiscal year together with any accumulated surplus from all prior fiscal years. The Board shall determine or cause to be determined the amount thereof needed for reserves to meet the Authority's obligations, maintain operations of existing enterprises, including all Travel Plazas and business operations under the Trade and Commerce Board and to finance its activities, including without limitation the purchase, repair, maintenance or replacement of capital equipment and other assets of the Authority. Such reserve funds shall be retained by the Authority for use and expenditure for said purposes. Upon determining the amount necessary for said reserves, the Board shall promptly pay over all other earnings and surplus in excess of said reserved amount to the Controller, who shall deposit fifty percent (50%) of all such funds into the General Fund for appropriation and expenditure as the Muscogee (Creek) National Council deems proper and who shall deposit fifty percent (50%) of all such funds into the Economic Development and Land Acquisition Fund.

[NCA 99-22, § 115, approved March 4, 1999; amended by NCA 03-037, § 2, eff. March 11, 2003.]

Library References

Indians ☞210. Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-113. Power to sue; sovereign immunity

A. The Authority shall have the power to sue in any court in its own name. The sovereign immunity of the Muscogee (Creek) Nation and the Authority, as an agency of the Muscogee (Creek) Nation, is hereby expressly retained for all purposes, including but not limited to counter-claims and cross-claims raised in any suit initiated by the Authority pursuant to the power granted by this section.

B. Notwithstanding the provisions of subsection A of this section, the Board shall have the authority to waive the Authority's sovereign immunity from suit for the limited purpose of allowing a party to a contract between the Authority and said party to enforce that party's rights under the contract in question or to recover damages for any breach thereof by the Authority, provided (1) the waiver must be in the form of a provision in a specific written contract between the party and the Authority; (2) the specific contract shall be authorized by duly adopted, written resolution of the Board identifying the contract, which contract must be signed by the Chairman of the Board; (3) the waiver shall be limited to injunctive relief and/or contract damages, including reasonable attorneys fees and costs, if applicable, and shall not authorize damages for bodily or other personal injury or punitive damages; (4) the waiver shall be limited to suits brought in the name of the contracting party against the Authority only, and shall not authorize any suit to be brought against the Muscogee (Creek) Nation or its officers; and (5) in the event judgment is rendered against the Authority, execution thereon shall be limited to assets held in the name of the Authority. No suit, judgment or execution shall be brought against the Nation or any assets of the Nation.

C. The Board is hereby authorized, in its discretion, to adopt a written resolution of the Board requiring an endorsement or other appropriate attachment or amendment to the policies of insurance described in Title 17, § 2-114 setting forth the appropriate circumstances and/or conditions under which the insurer would be required or authorized to refrain from raising the defense of sovereign immunity against any claim asserted in a lawsuit or other judicial proceeding against the Authority, the Board or any officer or employee of the Authority or of any business or venture of the Authority acting within the scope of his or her appointment or employment, but only to the extent that the claim is covered by the limits of the policy of insurance; provided that (i) said defense shall be raised and maintained for all amounts of any claim(s) in excess of such limits of coverage; (ii) that in the event that any such claim is not covered by any policy of insurance, the Authority shall be immune from suit on any such claim; and (iii) that nothing in this section shall be construed as a waiver of Muscogee (Creek) Nation's sovereign immunity from suit.

[NCA 99-22, § 116, approved March 4, 1999.]

Library References

Indians ◊210, 404, 405.
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to
179.

§ 2-114. Insurance

The Authority shall acquire and maintain at its own expense general liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence and five million dollars (\$5,000,000.00) in the aggregate for all activities on sites of the Authority's businesses or ventures. Any and all buildings, improvements, and contents therein owned by the Authority shall be insured against loss by fire, flood, theft, malicious mischief and other casualty; and the Authority shall provide adequate workers compensation insurance coverage for all employees of the Board and/or the Authority. The costs of all such insurance, to the extent that it relates to the sites, facilities and activities of the Authority, shall be deemed a part of the Authority's operating expenses.

[NCA 99-22, § 117, approved March 4, 1999.]

CHAPTER 3. MANUFACTURING ENTERPRISE

Section

- 3-101. Formation of business enterprise.
- 3-102. Name of enterprise.
- 3-103. Duration.
- 3-104. Registered office and agent.
- 3-105. Purpose of business.
- 3-106. Directors/officers.
- 3-107. Records and audits.
- 3-108. Net income; surplus.
- 3-109. Power to sue and be sued; sovereign immunity.

Historical and Statutory Notes

NCA 92-210, §§ 101, 102, provide:

“§ 101. Findings:

“The National Council finds:

“A. The Muscogee Nation Constitution vests the National Council with the following powers:

“1. ‘To promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of citizens of the Muscogee (Creek) Nation. Muscogee Nation Constitution Article VI, § 7(a).

“2. ‘To create authorities with attendant powers to achieve objective allowed within the scope of this Constitution.’ Muscogee Nation Constitution Article VI, § 7(i).

“3. To exercise any power not specifically set forth in this Article which at some future

date be exercised by the Muscogee (Creek) Nation.

“B. The Muscogee Nation Reservation is in a state of depression.

“C. It is the duty and responsibility of the Muscogee Nation, as mandated by the Constitution, to provide for the economic well-being of Muscogee citizens and reservation residents.

“§ 102. Policy and purpose:

“It is the policy of the Muscogee Nation to further the important governmental functions of self-determination and economic self-sufficiency by providing mechanisms to engage in economic development. The purpose of this ordinance is to provide for the creation of a wholly owned business enterprise to carry forward the governmental tasks in ardent to the stated policy and purpose.”

§ 3-101. Formation of business enterprise

There is hereby created a business enterprise of the Muscogee (Creek) Nation. The enterprise is wholly owned by the Muscogee (Creek) Nation.

[NCA 92-210, § 103, approved Dec. 23, 1992.]

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-102. Name of enterprise

The name of the enterprise shall be “Muscogee (Creek) Nation Manufacturing Enterprises”.

[NCA 92-210, § 104, approved Dec. 23, 1992.]

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-103. Duration

MCN Enterprises shall have perpetual existence.

[NCA 92-210, § 105, approved Dec. 23, 1992.]

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-104. Registered office and agent

A. The registered office of MCN Enterprises is Muscogee Nation Capitol Complex, Loop 56 at Highway 75, Okmulgee District, P.O. Box 580, Okmulgee, Oklahoma 74447.

B. The registered agent of MCN Enterprises is the Principal Chief of the Muscogee Nation.

[NCA 92-210, § 106, approved Dec. 23, 1992.]

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-105. Purpose of business

The purpose for which this Enterprise is formed is to carry on and maintain a manufacturing business for the above stated policy and purpose and incident thereto:

A. To adopt and use an official seal;

B. To enter into agreements, contracts and understandings with any government, federal, Tribal, state, municipal or foreign, or with any person, partnership, corporation, or any other legal entity and to agree to any conditions attached to federal financial assistance or contract;

C. To lease property to or from the Nation and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

D. To borrow or lend money, to issue temporary or long term evidence of indebtedness; and repay the same; provided that no loans shall be made to officers and directors. The notes and other obligations of the Enterprise shall not be a debt of the Muscogee Nation and the obligations shall so state on their face.

E. To pledge the assets and receipts of the Enterprise as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein;

F. To purchase or to take by gift or lands or interests in land or take the same by gift; lands located within the Muscogee (Creek) Nation reservation shall be placed in trust with the United States for the benefit of the Muscogee (Creek) Nation and will thereafter be assigned for the use of the Enterprise; to lease land or interests in land owned or assigned to the use of the Enterprise to

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the extent provided by law, provided the Enterprise may not lease Muscogee (Creek) Nation lands assigned to its use for a period exceeding the term of the assignment of the land to the Enterprise or for more than a period of ten (10) years absent the consent of the Nation; For the purposes of this subsection, an assignment of the Nation's land to the Enterprise for an indefinite term, or for no stated term shall be an assignment which is revocable upon thirty (30) days notice by the Nation that the land is needed for other governmental purposes. The determination of the Nation of such need is final and conclusive.

G. To elect or appoint or employ personnel, to establish the conditions of their employment, and to delegate to such personnel such powers or duties as the Enterprise may deem proper; to employ legal counsel pursuant to NCA 92-81.¹

H. To invest such funds that are not required for immediate disbursements.

I. To maintain bank accounts in any institution whose deposits are insured by an agency of the United States government.

J. To engage in any lawful business or activity and exercise such further incidental powers not inconsistent with the purposes for which the Enterprise is created, as are commonly engaged in by public or corporate bodies of this character as the Board of Directors may deem necessary or convenient to effectuate the purposes of the Enterprise.

K. To enter into partnerships, joint ventures, or other business arrangements with any legal entity to effectuate the purposes of the Enterprise.

L. To purchase insurance from any stock or mutual company for any property or against any risk or hazards.

[NCA 92-210, § 107, approved Dec. 23, 1992.]

¹ NCA 92-81, § 104, prohibiting Muscogee (Creek) Nation government agencies from retaining or employing legal counsel except as may be approved by the Attorney General, was deleted by NCA 01-155, § 1, approved Sept. 1, 2001.

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-106. Directors/officers

A. The Muscogee (Creek) Nation Manufacturing Enterprise shall be governed by a three (3) member Board of Directors consisting of the Principal Chief of the Muscogee (Creek) Nation who shall serve as the Chairman of the Board.

B. The Muscogee (Creek) Nation Controller (National Treasurer) shall serve as Secretary/Treasurer.

C. The third director shall be a previously confirmed/appointed official of the Muscogee government and shall be appointed by the Principal Chief.

[NCA 92-210, § 108, approved Dec. 23, 1992.]

Library References

Indians ⇨210, 216.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3–107. Records and audits

The Board of Directors shall maintain accurate and complete records of the financial affairs of the Enterprise, shall cause an annual audit of the Enterprise's financial affairs to be conducted, shall furnish an annual budget, an annual balance sheet, income statement, and complete report of the financial affairs of the MCN Enterprise to the Muscogee (Creek) National Council. [NCA 92–210, § 109, approved Dec. 23, 1992.]

Library References

Indians ⇨210.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3–108. Net income; surplus

At the close of each fiscal year, the Board of Directors shall determine the net income for that fiscal year together with the accumulated surplus from prior fiscal years. The Board shall determine the amount thereof needed for reserves to meet Enterprise obligations and to finance the activities of the Enterprise, including purchase of additional capital equipment, and such funds shall be retained by the Enterprise. The income and surplus in excess of that amount shall be forwarded to the National Treasury and thereafter appropriated as the Muscogee (Creek) National Council deems proper.

[NCA 92–210, § 110, approved Dec. 23, 1992.]

Library References

Indians ⇨210.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3–109. Power to sue and be sued; sovereign immunity

A. MCN Enterprises shall have the power to sue in any court in its own name.

B. The sovereign immunity of MCN Enterprises enjoyed as an authority of the Muscogee Nation is preserved and may only be waived by separate Tribal Resolution of the Muscogee National Council.

[NCA 92–210, § 111, approved Dec. 23, 1992.]

Library References

Indians ⇨210, 404, 405.
 Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

CHAPTER 4. DEVELOPMENT AND CONSTRUCTION COMPANY

Section

- 4-101. Authorization to form public utility for governmental facilities development and construction activities and for other purposes.
- 4-102. Purposes of corporation.
- 4-103. Scope of activities.
- 4-104. Board of Directors.
- 4-105. Appropriations for establishment of company.
- 4-106. Receipt and disbursement of funds.
- 4-107. Reports.
- 4-108. Dividends; reserve accounts.
- 4-109. Budget and appropriations.
- 4-110. Dissolution of corporation.

Historical and Statutory Notes

NCA 93-110, §§ 101, 102, provide:

“Section 101. Declared policy:

“It is the policy of the government of the Muscogee (Creek) Nation:

“A. To promote economic growth and development;

“B. to promote the economic welfare of its citizenry;

“C. To provide the economic capacity building framework for development and construction of governmental facilities, public works, and private construction;

“D. To provide a governmental structure to assist Creek privately owned development and construction activities;

“Section 102. Findings: The National Council finds that:

“A. There is a need for a business to perform the essential service to promote the development and construction industry within the Creek Nation.

“B. There is a need for a public utility with an exclusive franchise to promote to necessary smooth functioning of development and construction economic activity

“C. The Citizenry requires assistance to promote the development and construction economic sector of the Creek economy.

“D. A public utility with exclusive franchise will meet the requirements to promote the development and construction industry.”

§ 4-101. Authorization to form public utility for governmental facilities development and construction activities and for other purposes

A. There is hereby authorized a public utility with exclusive franchise for the development and construction of governmental facilities, and other related public works activities to be titled, “Muscogee (Creek) Nation Development and Construction Company”. the common name shall be titled, “Creek Nation Development and Construction.”

B. No other individual, partnership, corporation, or other entity is granted permission to the name “Muscogee (Creek) Nation Development and Construction” in its commerce activities, or any other such activities, be they commercial or otherwise.

C. The Creek Nation Development and Construction Company, a public utility, is a wholly owned for-profit corporation of the Muscogee Government.

[NCA 93-110, § 103, approved Dec. 23, 1993.]

Library References

Indians ↻210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-102. Purposes of corporation

The purposes of the corporation are:

- A. To earn a profit.
- B. To assume activities which are in the best interest of the Government for purposes of development, construction, and the short-term management of real estate and properties;
- C. To promote the development of construction expertise in the Creek Nation through the hiring preference of Creek citizens, the training of Creek citizens and the contracting with firms that are wholly owned by Creek citizens in a majority ownership.
- D. To take the lead in large scale construction projects which require capitalization above and beyond the normal Creek-owned construction companies' ability to secure financing and performance bonding.
- E. To act in behalf of the Muscogee Government in development of physical infrastructures; and, in such capacity which would normally be the functions of government; and, other works activities.
- F. To enter into joint ventures with other entities, private and publicly-owned, which will promote the development and construction activities.

[NCA 93-110, § 104, approved Dec. 23, 1993.]

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-103. Scope of activities

The scope of the public utility corporation's activities include:

- A. Participation in governmental programs with the right of Indian preference.
- B. Assets and liability to be solely limited to the corporation;
- C. Sue and be sued, including the Government's right to sue; liability limited to the Corporation;
- D. An **ARM'S-LENGTH** function of the Executive Branch of Government;
- E. Employee incentive plans which will promote profitability and efficiency.

[NCA 93-110, § 104, approved Dec. 23, 1993.]

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-104. Board of Directors

Control of the Corporation is to be vested in a Board of Directors whose functions shall include at a minimum: the principal officer; a record keeping office whose function shall be the responsible to keep all official records and

Title 17, § 4–104

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documents of the corporation; and, an officer whose function is to be responsible for the receipt and disbursement of funds; and such other officers as may be needed for the Corporation to exercise and carry out its functions.

[NCA 93–110, § 104, approved Dec. 23, 1993.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–105. Appropriations for establishment of company

- A. Assets transferred to the company, if any;
- B. Liability transferred to the company.

[NCA 93–110, § 105, approved Dec. 23, 1993.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–106. Receipt and disbursement of funds

The Board of Directors is authorized to receive and disburse funds.

[NCA 93–110, § 105, approved Dec. 23, 1993.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–107. Reports

The Board of Directors is to report to the Principal Chief and National Council for purposes of:

- A. Annual financial report.
- B. Annual business accomplishments.
- C. Business forecasts and projections. Annual forecasts and projections. Five-year forecasts and projections.
- D. Issues and concerns in the industry.
- E. Governmental actions and recommendations.

[NCA 93–110, § 105, approved Dec. 23, 1993.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–108. Dividends; reserve accounts

Dividends are to be paid out in the form to establish reserve accounts for the following:

- A. Funding of reserve for construction loans;
 - B. Funding of reserve for capital equipment depreciation accounts;
 - C. Funding of reserve for short-term loans, not to exceed three (3) years, for the purpose of bridging construction to long-term loans;
 - D. To call bonds issued by the Development Company.
- [NCA 93–110, § 105, approved Dec. 23, 1993.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–109. Budget and appropriations

The annual budget and appropriations funds are the sole discretion of the Board of Directors based on the best available knowledge and business forecasts for the year; the annual budget and appropriation shall be included in the Government's annual appropriations as a matter of governmental accounting principles.

[NCA 93–110, § 105, approved Dec. 23, 1993.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–110. Dissolution of corporation

In the event the Corporation is dissolved, the liabilities and assets shall be handled in the following manner:

- A. Liabilities equal the assets; and, projected cash flow is inadequate to meet the short-term liabilities of the Corporation; and, a reorganization or financial plan can be implemented to resolve the financial condition.
- B. Conditions of bankruptcy exists and re-organization of the corporate assets and liabilities are not viable for future business purposes.
- C. Business conditions are such that future business is highly unlikely, unprofitable, or do not warrant short-term losses which may not be recoverable (minimize losses).
- D. Purposes of the Corporation are no longer viable.
- E. Voluntary determinations by the Board of Directors.

[NCA 93–110, § 105, approved Dec. 23, 1993.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

CHAPTER 5. TRAVEL PLAZA

Section

- 5-101. Short title.
- 5-102. Definitions.
- 5-103. Security for debt.
- 5-104. Issuance of debt instruments.
- 5-105. Distribution of profits.

Historical and Statutory Notes

NCA 95-105, §§ 102, 109, provide:

“Section 102. Findings

“The National Council finds that:

“A. The continuing need exists for Business Enterprises that provides jobs for tribal members and produces profits that can be reinvested and generate additional jobs and provide income for tribal government programming and appropriation.

“B. Recent United States Court decisions have been made that are favorable to tribes in the Fuel Excise Tax area, creating opportunities

to establish retail operations that would utilize this advantage.

“C. Therefore, an immediate implementation of this opportunity should be made by authorizing the establishment of appropriate facilities and providing the financing mechanisms necessary.”

“Section 109. Severability

“The provisions of this Act are severable and if any part of the provisions hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.”

Cross References

Budget, travel plaza establishment and financing, see Title 37, § 2-110.

§ 5-101. Short title

This chapter may be cited as the “Muscogee (Creek) Nation Travel Plaza Establishment and Financing Act of 1995.”

[NCA 95-105, § 101, approved Nov. 30, 1995.]

§ 5-102. Definitions

For the purposes of this chapter:

A. “Approved site” means locations that have been approved for development or acquisition by the Muscogee (Creek) National Council. All sites acquired will be placed in trust.

B. “Debt instrument” means any legal document that is used to reduce the Agreement of Debt to writing and that has been approved by the Principal Chief and the Muscogee (Creek) National Council.

C. “Facilities” means the physical structures that have been approved for construction or purchase by the Muscogee (Creek) National Council.

D. “Travel Plaza Enterprise” means any all locations built and/or purchased by the Tribe for the operation of retail sales of petroleum products and convenience store products, including food, sundries, tobacco, Indian art and jewelry and other related products.

[NCA 95-105, § 104, approved Nov. 30, 1995; amended by NCA 97-84, § 103, approved Aug. 23, 1997.]

§ 5-103. Security for debt

Certificates of deposits or any other secured U.S. governmental securities of the “Permanent Fund” within the General Fund of the Tribe may be pledged as security for any debt issuances of the Tribe for these acquisitions by National Council law. Therefore, they will be unavailable for appropriation for any other purposes to the extent they are required as obligation for the debt. [NCA 95-105, § 106, approved Nov. 30, 1995.]

§ 5-104. Issuance of debt instruments

This chapter provides for the issuance of appropriate debt instruments, (notes/bonds, etc.) evidencing the indebtedness herein authorized and provide that such debt instruments may be issued in one or more series, may bear such date or dates, may mature at such time or times, may be in such denomination or denominations, may be in such form, coupon or registered, may carry such registration or conversion provisions, may be executed in such manner, may be payable in such medium or payment at such place or places, may be subject to such terms of redemption, with or without premium, and may bear such rate or rates of interest as the Principal Chief and the Muscogee (Creek) National Council may deem expedient. The debt instruments may contain any and all provisions which may be deemed necessary or expedient to make such instruments marketable as general obligations of the Muscogee (Creek) Nation, for the purposes previously stated, with the full faith and credit of the Nation pledged thereto. Within limits of indebtedness herein authorized, the Principal Chief may authorize the issuance of such debt instruments and the incurring of the authorized indebtedness in fractional amounts of the total indebtedness hereby authorized to be incurred, from time to time as needed and approved by the Muscogee (Creek) National Council.

[NCA 95-105, § 107, approved Nov. 30, 1995; NCA 97-84, § 103, approved Aug. 23, 1997.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 5-105. Distribution of profits

Each location developed under this chapter, after payment of outstanding debt for its location, shall pay fifty percent (50%) of its net income, annually, after provision for depreciation, interest and overall Travel Plaza Enterprise administrative costs, to the Tribal General Fund. These funds will then be available for appropriation by the National Council, in accordance with its normal practices. The remainder of the profits retained by the Travel Plaza Enterprise, as a whole, may be used for expansion to other sites, after giving due consideration to working capital needs of current locations.

[NCA 95-105, § 108, approved Nov. 30, 1995.]

CHAPTER 6. BUSINESS ENTERPRISE

Section

- 6-101. Short title.
- 6-102. Definitions.
- 6-103. Creation and name of Enterprise.
- 6-104. Duration and fiscal year of Enterprise.
- 6-105. Registered office and agent of Enterprise.
- 6-106. Purpose, authority and limitations of Business Enterprise.
- 6-107. Board of Directors and Officers.
- 6-108. Powers and duties of Board.
- 6-109. Meetings of the Board.
- 6-110. By-laws.
- 6-111. Budgetary and financial requirements.
- 6-112. Disposition of profits.
- 6-113. Power to sue and be sued.
- 6-114. Insurance.

Historical and Statutory Notes

NCA 99-10, §§ 101 to 103, 118, provide:

“Section 101. Findings: The National Council Finds That:

“A. Article VI, Section 7 of the Muscogee Nation Constitution vests the National Council with the power to:

“(1) Promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of the citizens of The Muscogee (Creek) Nation; and

“(2) Create authorities with attendant powers to achieve objectives allowed within the scope of the Constitution.

“B. To discharge its constitutional duties to promote the public welfare and economic advancement of the Muscogee people, the National Council may exercise its authority to create tribal enterprises to engage in commercial activities.

“C. It is in the best economic interest of the Muscogee Nation to organize a tribal business enterprise to act as the Nation’s agency responsible for investigating, planning, organizing and operating business ventures pursuant to approved plans of business operations.

“D. It is also in the best economic interest of the Muscogee Nation that the business enterprise be structured so as to qualify as a “Participant” under section 8(A) of the federal Small Business Act, 15 U.S.C. § 637(a).

“Section 102. Policy:

“It is the policy of the Muscogee (Creek) Nation to provide for the health, safety, education and welfare of its citizens, and to raise revenue necessary to pay the costs of performing governmental functions on behalf of the citizens of Muscogee Nation.

“Section 103. Purpose:

“The purpose of this Act is to create a tribal business enterprise qualified for certification as a Participant under Section 8(A) of the Small Business Act and to provide its governing board with the necessary authority and powers to operate successful business ventures and economic development projects.”

“Section 118. Severability:

“In the event any provision of this Act is determined by a court of competent jurisdiction to be invalid, all other provisions hereof shall be deemed severable and be given full force and effect.”

§ 6-101. Short title

This chapter shall be known and cited as the “Muscogee Nation Business Enterprise Act.”

[NCA 99-10, § 104, approved Feb. 2, 1999.]

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–102. Definitions

Wherever used in this chapter, the terms set forth below shall have the following meanings:

A. “Board” shall mean the Board of Directors created under Title 17, § 6–107.

B. “Business Enterprise” or “Enterprise” shall mean the agency of the Muscogee (Creek) Nation created under Title 17, § 6–103, pursuant to the powers vested in the National Council in Article VI, Section 7, of the Constitution of the Muscogee (Creek) Nation.

C. “Small Business Act” shall mean the federal Small Business Act at 15 U.S.C. § 631 et seq.

D. “SBA” shall mean the federal Small Business Administration.

[NCA 99–10, § 105, approved Feb. 2, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–103. Creation and name of Enterprise

There is hereby created a Tribal business enterprise with the purposes and authorities set forth in Title 17, § 6–106. The name of the enterprise created hereunder shall be, and is, “Muscogee Nation Business Enterprise.”

[NCA 99–10, § 106, approved Feb. 2, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–104. Duration and fiscal year of Enterprise

Muscogee Nation Business Enterprise shall have perpetual existence, which shall commence on Feb. 2, 1999. The initial fiscal year of the Enterprise shall end on September 30, 1999, and thereafter the fiscal year of the Enterprise shall commence on October 1 of each year and end on September 30 of the following year.

[NCA 99–10, § 107, approved Feb. 2, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–105. Registered office and agent of Enterprise

A. The registered office of the Muscogee Nation Business Enterprise is the Muscogee (Creek) Nation Capital Complex, Loop 56 & Hwy. 75 (P.O. Box 580), Muscogee Nation, Okmulgee, OK 74447.

B. The registered agent of the Muscogee Nation Business Enterprise shall at all times be the person holding the office of Principal Chief of the Muscogee (Creek) Nation but only for the duration of time that he or she remains in said office.

[NCA 99-10, § 108, approved Feb. 2, 1999.]

Library References

Indians ↻210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

6-106. Purpose, authority and limitations of Business Enterprise

A. The purpose of the Business Enterprise shall be to investigate, evaluate, carry on and maintain various Tribal business ventures and/or economic development projects for the economic benefit of the Muscogee (Creek) Nation and its citizens, subject to the limitations set forth in subsection D of this section.

B. Incident to the purpose set forth in subsection A of this section and to any approved business plan as provided by subsection D of this section, and subject to the availability of funding, the Business Enterprise shall be and is hereby authorized to:

1. Adopt and use an official seal;
2. Enter into agreements, contracts, joint ventures, partnerships, cooperative projects and/or other appropriate relationships with any federal, Tribal, state, municipal or foreign government, or with any agency or authority of any such government, or with any person, partnership, corporation, or any other legal entity, and agree to any conditions attached to federal financial assistance or contract subject to the terms of this chapter;
3. Acquire personal property of any kind, including funds, securities and other intangible property or property rights, and to own and hold same in its own name, separate and apart from the property and assets of the Muscogee (Creek) Nation;
4. Sell, lease, exchange, transfer and/or assign personal property of any kind owned by the Business Enterprise;
5. Lease property for use in the business of the Business Enterprise for such periods as are authorized by law, and to hold and manage or to sublease the same;
6. Borrow or lend money, issue temporary or long-term evidence of indebtedness and repay the same, provided that no loans shall be made by the Business Enterprise to any person who is an officer, director or employee of the Enterprise, or to any person who is a member of such officer's, director's or employee's immediate family; and provided further that the notes and other obligations of the Enterprise shall not be debts of the Muscogee (Creek) Nation and shall not create a lien or any other encumbrance on any property or assets of the Muscogee (Creek) Nation, and any such obligations shall so state on their face;

7. Pledge the assets and receipts of the Business Enterprise as security for debts;

8. Employ personnel and establish the compensation, benefits and conditions of their employment, and delegate to such personnel such powers or duties as the Business Enterprise may deem proper, subject to the terms of this chapter;

9. Employ consultants, advisors, planners and other experts by written contract in accordance with Tribal and federal law, and employ outside legal counsel by written contract subject to National Council approval by Tribal Resolution;

10. Invest such funds that are not required for immediate disbursements or obligations;

11. Open and maintain, in the name of the Muscogee Nation Business Enterprise, accounts in any financial institution whose deposits are insured by an agency of the United States government;

12. Engage in any lawful business or activity and exercise such further incidental powers not inconsistent with the purposes for which the Business Enterprise is created, as are commonly engaged in by Tribal enterprises of this character and as the Board may deem necessary or appropriate to effectuate the purposes of the Enterprise as stated in subsection A of this section.

13. Enter into partnerships, joint ventures or other business arrangements with any person, government, governmental agencies or authorities or any other legal entity to effectuate the purposes of the Enterprise, subject to the provisions of this chapter; and

14. Purchase insurance from any stock or mutual company for any property or against any risk or hazards.

C. The Business Enterprise, by and through the Board, may employ a Director and one or more managers responsible for the day-to-day operational management of the Enterprise's business ventures or economic development projects whose plans shall have been approved pursuant to subsection D of this section; provided, however, that the activities of any such Director and manager(s) shall be subject to the control and oversight of the Board at all times in accordance with established policies and procedures adopted by the Board. Without specific authority from the Board, which must be set forth in a duly-adopted written resolution of the Board or by employment contract properly executed by the Board, such manager(s) shall not:

1. Borrow money or pledge assets of the Enterprise;

2. Sell, lease, assign or convey personal property of the Muscogee Nation Business Enterprise except that this provision shall not apply to the wares or products produced or offered for sale as an integral part of any business ventures of the Enterprise;

3. Enter into any contract with a term exceeding one year or that requires the expenditure of more than fifty thousand dollars (\$50,000.00) of the Enterprise's funds;

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4. Compromise any claim of or against the Enterprise over one thousand dollars (\$1,000.00);

5. Expend funds in an amount exceeding five thousand dollars (\$5,000.00);
or

6. Enter into contracts with any other Indian Tribe or with any unit of federal, state or local government.

D. Neither the Business Enterprise nor any person employed by it or acting on its behalf shall have the power or authority to waive the sovereign immunity of the Muscogee (Creek) Nation or to sell, convey, assign, or encumber any real personal property or other assets of the Muscogee (Creek) Nation. Furthermore, no business venture, enterprise or economic development project shall be pursued or carried on by the Business Enterprise unless and until such venture, enterprise or project is within the scope of approved NAICS Codes identified in the annual general U.S. Small Business Administration 8(a) Business Plan for the Business Enterprise; provided that such annual general Business Plan and any amendment thereof shall have been approved by the National Council by Tribal Resolution.

[NCA 99–10, § 109, approved Feb. 2, 1999; amended by NCA 03–077, § 1, approved June 6, 2003; NCA 03–162, § 1, eff. July 30, 2003; NCA 04–001, § 1, eff. Feb. 6, 2004; NCA 04–027, § 1, eff. March 4, 2004.]

Library References

Indians ⇄ 210, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–107. Board of Directors and officers

A. The Business Enterprise shall be governed by a three-member Board of Directors consisting of:

1. Duly elected Second Chief who shall be Chairman.

2. The best qualified candidate who shall be appointed by the Principal Chief and confirmed by the National Council by Tribal Resolution, and who shall have a reputation of good character and honesty and shall have demonstrated experience, education, skill or training in business or economic development and who shall serve as the Vice-Chairman of the Board during his or her term of office. The confirmed nominee shall serve a term of office of two years, commencing on the date of confirmation by Tribal Resolution, and shall receive a stipend of seventy-five dollars (\$75.00) for each meeting of the Board that he or she attends. Indian preference shall be given.

3. The best qualified candidate who shall be appointed by the Business and Governmental Committee of the National Council and confirmed by the National Council by Tribal Resolution, and who shall have a reputation of good character and honesty and shall have demonstrated experience, education, skill or training in business or economic development and who, if confirmed, shall serve as the Secretary/Treasurer of the Board during his or her term of office. The confirmed nominee shall serve a term of office of two (2) years, commencing on the date of confirmation by Tribal resolution, and shall receive a stipend

of seventy-five dollars (\$75.00) for each meeting of the Board that he or she attends. Indian preference shall be given.

B. When a new Director has not been confirmed or an incumbent Director reconfirmed, pursuant to paragraph 2 or 3 of subsection A of this section prior to the expiration of the term of office of the previous Director appointed and confirmed to that same office, the previous Director shall hold over in office until a new appointee is confirmed pursuant to paragraph 2 or 3 of subsection A of this section.

[NCA 99–10, § 110, approved Feb. 2, 1999; amended by NCA 02–107, § 1, approved July 30, 2002.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–108. Powers and duties of Board

In addition to any other powers and duties of the Board of Directors provided for in this act, in furtherance of the purposes of the Enterprise Board, the Board shall have the following powers:

A. To be responsible for the fiscal affairs of the Business Enterprise and all businesses and ventures under its management and to oversee and control the financial and business affairs of the Business Enterprise and all businesses and ventures under its management through the establishment and implementation in accordance with generally accepted accounting principles of an administrative system that shall include, but not be limited to controlling, accounting and reporting disbursements, payroll, cost management and investments and establishing and maintaining bank accounts in the name of the Muscogee (Creek) Nation Business Enterprise, in any financial institution whose deposits are insured by an agency of the United States government; provided that expenditures may be made only upon approval by (1) the Chairman of the Board of Directors or (2) another member of the Board of Directors who has been designated by duly enacted resolution of the Board of Directors to approve the expenditure of funds, or (3) subject to the control and oversight of the Board of Directors, the Director or a manager employed by the Board of Directors pursuant to § 6–106, subsection C of this Title if so authorized by duly enacted resolution of the Board of Directors, provided that the Controller shall deliver all funds appropriated through the Muscogee (Creek) Nation pursuant to special appropriation acts to the Business Enterprise for its use in accordance with the Muscogee Business Enterprise Act and generally accepted accounting principles.

B. Employ administrative staff to serve the Board;

C. Employ a Director, managers, accountants and administrative staff, clerks and other employees who shall be primarily responsible for carrying out the day-to-day operations of any business or venture authorized by a duly-adopted business plan, subject at all times to the oversight board;

D. Oversee, supervise, and control the activities of the Director and business managers employed by the Enterprise to carry out approved business plans,

provided that said managers shall have primary supervisory authority over all subordinate personnel including the authority to hire and fire such personnel;

E. Adopt administrative and personnel policies and procedures for the Board's staff as well as for the Director, managers and their administrative and other staff operating businesses or ventures under any approved business plan(s), provided that said policies and procedures shall include, but not be limited to, provisions calculated to (1) prevent nepotism in the hiring of personnel and procurement of goods and services, and (2) assure that all contracting and procurement is conducted in a manner which is always consistent with the best interests of the Business Enterprise;

F. Review, evaluate, initiate and cause to be carried out business ventures, projects and/or commercial enterprises;

G. Hold regular meetings of the Board, not less than once every month, for the conduct of business and to discharge its powers and duties hereunder;

H. Delegate such authority to the Director and the manager(s) of the Enterprise's businesses as the Board deems appropriate, subject to any limitations imposed by this chapter;

I. On behalf of the Business Enterprise, approve any contracts proposed by the Director or manager(s) for the engagement of consultants, advisors, planners and/or other experts which the Board deems necessary or appropriate to carry out the purpose of the Enterprise, provided that all such contracts shall be in writing, shall be approved by written resolution of the Board at a meeting duly called and held, and shall be available for review upon request by the National Council and the Attorney General;

J. Subject to any requirements and/or limitations imposed on the Board or the Enterprise under the provisions of this chapter, take or perform any and all other actions, including without limitation approving contracts and agreements in the name of the Business Enterprise, which the Board may deem necessary or appropriate in order for the Enterprise to carry out its purposes and authority set forth in Title 17, § 6–106, provided that any limitations imposed hereunder on the Enterprise shall be limitations on the Board; and

K. Perform any other actions required of the Board under this chapter.

[NCA 99–10, § 111, approved Feb. 2, 1999; amended by NCA 03–012, § 1, eff. Feb. 4, 2003; NCA 04–027, § 2, eff. March 4, 2004.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–109. Meetings of the Board

A. The Board shall have one regular meeting each month, on a date and at a time which shall be fixed by the Board at its first monthly meeting which shall be held on a date and time, to be set by the chairman, not more than thirty (30) days after Feb. 2, 1999. The date and time for the regular monthly meeting may be changed by the Board from time to time but only by way of written resolution adopted at any regular or special meeting of the Board.

B. Special meetings of the Board may be called (1) by the Chairman, by giving written or telephonic notice to the other Board members not less than twenty-four (24) hours before the special meeting; or (2) by any two (2) members of the Board, by giving the other Board member written or telephonic notice not less than twenty-four (24) hours before the special meeting. In addition to the foregoing, written notice of special meetings shall be posted at least twenty-four (24) hours before the meeting within the Administration Building of the Capitol Complex in at least two (2) prominent places as well as on at least two (2) exterior doors of the Mound Building.

C. No business shall be transacted by the Board except at a regular monthly or duly called special meeting at which a quorum has been established, which shall require the presence of at least two Board members. If a quorum is established at the beginning of any meeting but is lost during the course of a meeting, no action taken during the period when less than a quorum is present shall be valid.

D. The transaction of any Board business or action shall require a majority vote of Board members present at a meeting.

[NCA 99–10, § 112, approved Feb. 2, 1999.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–110. By-laws

The Board may adopt and, from time to time, amend by-laws of the Business Enterprise, provided that such by-laws and amendments shall be in writing and shall not be inconsistent with this chapter. Copies of any by-laws or amended by-laws of the Board shall be delivered to the office of the Speaker of the National Council no later than the end of the next business day following the meeting at which the by-laws or amended by-laws were adopted.

[NCA 99–10, § 113, approved Feb. 2, 1999.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–111. Budgetary and financial requirements

A. Budget. The Enterprise Board shall prepare an annual budget no later than September 15 of each fiscal year immediately succeeding the fiscal year for which the budget has been prepared. The Enterprise budget shall not be part of the Nation's Comprehensive Annual Budget (CAB) and the Enterprise shall not be subject to CAB requirements; provided that the Enterprise shall provide a copy of its annual budget to the Principal Chief and the National Council for informational purposes. If the Enterprise needs additional funds other than those funds generated from existing businesses and ventures then the Enterprise shall submit a budget and seek the appropriation of those funds from National Council through separate legislation.

B. Financials. The Board shall maintain complete, accurate books and records of the financial affairs of the Business Enterprise and each of its businesses and ventures. The Enterprise shall submit to the Principal Chief, Controller and National Council quarterly financials by the 30th of the following month the end of the previous quarter and all other documents and reports submitted to the Small Business Administration pursuant to the requirements of federal law or regulation. The Board shall also submit to the Principal Chief and National Council a complete annual report, including financials, of the business and financial affairs of the Enterprise and each of its businesses or ventures.

C. Audits. The books and records of the Enterprise shall be audited each year by an independent Certified Public Accountant in accordance with generally accepted auditing procedures. The Accountant may be the same Accountant utilized by the Nation for its independent audit, provided compensation is from Enterprise funds. Records and books shall be made available upon request by the National Council or Principal Chief.

[NCA 99-10, § 114, approved Feb. 2, 1999; amended by NCA 03-179, § 1, approved Nov. 3, 2003; NCA 05-225, § 4, eff. Oct. 3, 2005.]

Library References

Indians ⇐210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6-112. Disposition of profits

A. Within thirty (30) days after the Business Enterprise submits its quarterly financials to the Principal Chief, Controller and National Council, the Business Enterprise shall distribute twelve percent (12%) of its quarterly net income to the Muscogee (Creek) Nation as provided herein. Based upon quarterly financials, the Business Enterprise Board shall determine, the quarterly net income of the Business Enterprise, which shall be net income generated from the Business Enterprise minus operating expenses and any outstanding financial obligations, including but not limited to surety bonds, lines of credit, loans and collateralized funds. The portion of such quarterly net income distributed to the Muscogee (Creek) Nation by the Business Enterprise, hereinafter referred to as the "Quarterly Distribution," shall be as follows:

1. The Business Enterprise Board shall pay the Quarterly Distribution to the Muscogee (Creek) Nation Controller for deposit into the General Fund, as provided for in paragraph 2 of this subsection. Upon payment of the Quarterly Distribution to the Controller, the Board shall notify the Principal Chief and National Council of such Quarterly Distribution in writing of the date said Quarterly Distribution was made to the Controller. In the event that the Business Enterprise's Quarterly Distribution to the Nation overextends the Business Enterprise's ability to cover its outstanding financial obligations, the Business Enterprise shall immediately provide written notice to the Principal Chief, the National Council and the Controller of said issue and the Controller shall return the funds necessary to cover the financial obligations of the Business Enterprise.

2. The Quarterly Distributions from the Business Enterprise shall be allocated as follows:

- a. Contract Health-40%
- b. Economic Development and Land Acquisition-60%

[NCA 99-10, § 115, approved Feb. 2, 1999; amended by NCA 05-225, § 3, eff. Oct. 3, 2005.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6-113. Power to sue and be sued

A. Subject to the provisions of this section, the Business Enterprise shall have the power to sue in any court in its own name.

B. The Muscogee (Creek) Nation does not waive, limit, or modify its sovereign immunity from unconsented suit. Provided, however, for any dispute between the Business Enterprise and a contracting party, the Nation expressly consents to and allows the Business Enterprise to be sued in any court of competent jurisdiction, provided the Board has first approved said waiver by duly enacted Board resolution. Provided, however, the foregoing is limited to suits against the Business Enterprise in the name of the Enterprise only and does not authorize suits against Muscogee (Creek) Nation itself. Provided further that, notwithstanding the foregoing, no court shall have the authority or jurisdiction to execute against any assets of the Muscogee (Creek) Nation; instead, such execution shall be limited to assets held in the name of the Business Enterprise. As used in this subsection, the term “assets held in the name of the Business Enterprise” shall not include any real or personal property title to which is held by or in trust for the Muscogee (Creek) Nation regardless of whether such property is used by the Enterprise. Nor shall assets held in the name of the Business Enterprise include any funds generated by the Enterprise, which have been paid over to the Controller for the Muscogee (Creek) Nation pursuant to Title 17 § 6-112.

C. The Business Enterprise is hereby allowed to consent to the laws of another jurisdiction when entering into contracts for goods and services, provided the Board has first approved said choice of law provision by duly enacted Board resolution, and provided further the consent to the choice of law of another jurisdiction by the Business Enterprise shall not affect the sovereign immunity of the Muscogee (Creek) Nation

D. The Business Enterprise shall be allowed to consent to arbitration provisions when entering into contracts for goods and services which allow the final arbitration judgment to be entered into a court of competent jurisdiction, provided the Board has first approved said arbitration clause by duly enacted Board resolution, and provided further the consent to arbitration shall not effect the sovereign immunity of the Muscogee (Creek) Nation. Any arbitration judgment that attempts to effects the assets of the Muscogee (Creek) Nation and not the assets of the Business Enterprise shall be null and void.

[NCA 99-10, § 116, approved Feb. 2, 1999; amended by NCA 05-110, § 2, approved Feb. 9, 2005; NCA 05-078, § 2, approved May 2, 2005]

Library References

Indians ↻210, 404, 405.
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to
179.

§ 6–114. Insurance

A. The Business Enterprise shall acquire and maintain at its own expense general liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence and five million dollars (\$5,000,000.00) in the aggregate for all activities on sites of the Enterprise's businesses or ventures. Any and all buildings, improvements, and contents therein owned by the Enterprise shall be insured against loss by fire, flood, theft, malicious mischief and other casualty; and the Business Enterprise shall provide adequate workers' compensation insurance coverage for all employees of the Board and/or Business Enterprise. The costs of all such insurance, to the extent that it relates to the sites, facilities and activities of the Business Enterprise, shall be deemed a part of the Enterprise's operating expenses.

B. The Board is hereby authorized, in its discretion, to adopt a written resolution of the Board requiring an endorsement or other appropriate attachment or amendment to the policies of insurance described in subsection A of this section setting forth the appropriate circumstances and/or conditions under which the insurer would be required or authorized to refrain from raising the defense of sovereign immunity against any claim asserted in a lawsuit or other judicial proceeding against the Enterprise, the Board or any officer or employee of the Enterprise or of any business or venture of the Enterprise acting within the scope of his or her appointment or employment, but only to the extent that the claim is covered by the limits of the policy of insurance; provided that said defense shall be raised and maintained for all amounts of the claim(s) in excess of such limits of coverage. Provided further, however, nothing in this section shall be construed as a waiver of Muscogee (Creek) Nation's sovereign immunity from suit.

[NCA 99–10, § 117, approved Feb. 2, 1999.]