

TITLE 3. CORPORATIONS

ETELIKETV

Chapter		Section
1.	MUSCOGEE (CREEK) NATION GENERAL CORPORATION ACT.....	1-1001
2.	MUSCOGEE (CREEK) NATION LIMITED LIABILITY COMPANY ACT.....	2-2000

REPEAL

NCA 07-112 repealed former Title 3, Corporations, Chapters 1 and 2, sections 1-100 through 2-102 and adopted revised Title 3, Corporations and Business Entities, codified in Chapters 1 through 4, which was subsequently recodified as Title 3, Chapters 1 and 2 and Title 3A, Chapters 1 and 2.

Historical and Statutory Notes

NCA 07-112, § 1, provides:

“Findings: The National Council finds that:

“A. Article VI, Section 7 of the Muscogee (Creek) 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.

“B. In furtherance of its Constitutional duty to promote the public welfare and economic advancement of the Mvskoke people, the National Council may exercise its authority to regulate business associations which engage in commercial activities within or with the Muscogee (Creek) Nation.

“C. It is in the best economic interest of the Muscogee (Creek) Nation to prepare for the future of the Nation by creating laws to establish rules, regulations and procedures governing

these business entities which form and/or do business within the Muscogee (Creek) Nation.

“D. The enactment of these acts is an exercise of Tribal sovereignty and will further advance the aims of Tribal self-determination by providing statutory authority for the regulation of common business entities doing business within and with the Muscogee (Creek) Nation.”

Former sections:

Former § 1-101, related to application fee and franchise tax of profit making corporate charters, repealed by NCA 07-112, § 7, was derived from NCA 92-112, § 106.

Former § 2-101, related to the jurisdiction of non-profit corporations, repealed by NCA 07-112, § 7, was derived from NCA 92-191, § 103, subsec. A.

Former § 2-102, related to application fee and franchise tax of non-profit making corporate charters, repealed by NCA 07-112, § 7, was derived from NCA 92-191, § 105.

Cross References

Office of secretary of nation, duties and responsibilities, see Title 16, § 8-103.

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§ 1-1001. Short title

Sections 1-1001 through 1-1143 of this Title shall be known and may be cited as the Muscogee (Creek) Nation General Corporation Act. Section captions are part of the Muscogee (Creek) Nation General Corporation Act. [Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Oklahoma General Business Corporation Act, short title, see 18 Okl.St. Ann. § 1001.

§ 1-1002. Scope of Act

A. The provisions of the Muscogee (Creek) Nation General Corporation Act shall be applicable to every corporation, whether profit or not for profit, stock or nonstock, existing as of the effective date of this act or thereafter formed or qualified to transact business in this Nation, and to all securities thereof, except to the extent that:

1. any such corporation is expressly excluded from the operation of the Oklahoma General Corporation Act or portions thereof; or
2. special provisions concerning any such corporation conflict with the provisions of the Muscogee (Creek) Nation General Corporation Act, in which case such special provisions shall govern.

B. Any conflicts with the provisions of the Muscogee (Creek) Nation General Corporation Act and any tax or unclaimed property laws of this Nation shall be governed by the tax or unclaimed property provisions, including those provisions relating to personal liability of corporate officers and directors.

C. The provisions of the Muscogee (Creek) Nation General Corporation Act concerning qualification of foreign corporations and providing requirements and duties relating to such corporations shall not apply to insurance companies subject to the jurisdiction of the Insurance Commissioner of the State of Oklahoma or to foreign transportation companies subject to the jurisdiction of the Corporation Commission of the State of Oklahoma, existing as of the effective date of this act or thereafter qualified to transact business in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Scope of act, see 18 Okl.St. Ann. § 1002.

§ 1-1003. Reserved

§ 1-1004. Reserved power of Nation to amend or repeal; Muscogee (Creek) Nation General Corporation Act part of corporation's charter or certificate of incorporation

The Muscogee (Creek) Nation General Corporation Act may be amended or repealed at the pleasure of the Legislature, but any amendment or repeal shall not take away or impair any remedy available pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act against any corporation or its officers for any liability which shall have been previously incurred. The Muscogee (Creek) Nation General Corporation Act and any amendments thereto shall be a part of the charter or certificate of incorporation of every corporation except so far as the same are inapplicable and inappropriate to the objects of the corporation. The provisions of this section shall not affect or impair as to any corporation any rights protected or guaranteed by the Constitution of this Nation or of the United States.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Reserved power of Oklahoma to amend or repeal, Oklahoma General Corporation Act part of corporation's charter or certificate of incorporation, see 18 Okl.St. Ann. § 1004.

Library References

Corporations ⌘39.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 77 to 88.

§ 1-1005. Incorporators; how corporation formed; purposes

A. Any person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile or state of incorporation, may incorporate or organize a corporation pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act by filing with the Secretary of the Nation a certificate of incorporation which shall be executed, acknowledged and filed in accordance with the provisions of this act; provided, however, at least three (3) persons, partnerships, associations, or corporations, or any combination thereof, shall be required to incorporate as a not for profit corporation pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act.

B. A corporation may be incorporated or organized pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of this Nation.

C. Corporations for constructing, maintaining and operating public utilities, whether in or outside of this Nation, may be organized pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act, but corporations for constructing, maintaining and operating public utilities within this Nation shall be subject to, in addition to the provisions of the Muscogee (Creek) Nation General Corporation Act, the special provisions and require-

ments of Title 17 of the Muscogee (Creek) Nation Statutes applicable to such corporations.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Incorporators, how corporation formed, purposes, see 18 Okl.St. Ann. § 1005.

Library References

Corporations \S 14, 15, 17.

Westlaw Topic No. 101.

C.J.S. Corporations $\S\S$ 47 to 49, 51, 53 to 56.

§ 1-1006. Certificate of incorporation; contents

A. The certificate of incorporation shall set forth:

1. The name of the corporation which shall contain one of the words “association”, “company”, “corporation”, “club”, “foundation”, “fund”, “incorporated”, “institute”, “society”, “union”, “syndicate”, or “limited” or abbreviations thereof, with or without punctuation, or words or abbreviations thereof, with or without punctuation, of like import of foreign countries or jurisdictions; provided that such abbreviations are written in Roman characters or letters, and which shall be such as to distinguish it upon the records in the Office of the Secretary of the Nation from:

a. names of other corporations organized under the laws of this Nation then existing or which existed at any time during the preceding three (3) years,

b. names of foreign corporations registered in accordance with the laws of this Nation then existing or which existed at any time during the preceding three (3) years,

c. names of then existing limited partnerships whether organized pursuant to the laws of this Nation or registered as foreign limited partnerships in this Nation,

d. trade names or fictitious names filed with the Secretary of the Nation,

e. corporate, limited liability company or limited partnership names reserved with the Secretary of the Nation, or

f. names of then existing limited liability companies whether organized pursuant to the laws of this Nation or registered as foreign limited liability companies in this Nation;

2. The address, including the street, number, city and county, of the corporation’s registered office in this Nation, and the name of the corporation’s registered agent at such address;

3. The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the Muscogee (Creek) Nation General Corporation Act, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

4. If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class, and shall specify each class the shares of which are to be without par value and each class the shares of which are to have par value and the par value of the shares of each such class. The provisions of this paragraph shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the certificate of incorporation;

5. The name and mailing address of the incorporator or incorporators;

6. If the powers of the incorporator or incorporators are to terminate upon the filing of the certificate of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and

7. If the corporation is not for profit:

- a. that the corporation does not afford pecuniary gain, incidentally or otherwise, to its members as such,
- b. the name and mailing address of each trustee or director,
- c. the number of trustees or directors to be elected at the first meeting, and
- d. in the event the corporation is a church, the street address of the location of the church.

The restriction on affording pecuniary gain to members shall not prevent a not-for-profit corporation operating as a cooperative from rebating excess revenues to patrons who may also be members.

B. In addition to the matters required to be set forth in the certificate of incorporation pursuant to the provisions of subsection A of this section, the certificate of incorporation may also contain any or all of the following matters:

1. Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, or the members of a nonstock corporation, if such provisions are not contrary to the laws of this state. Any provision which is required or permitted by any provision of the Muscogee (Creek) Nation General Corporation Act to be stated in the bylaws may instead be stated in the certificate of incorporation;

2. The following provisions, in substantially the following form: Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its shareholders or any class of them, any court of equitable jurisdiction within the Muscogee (Creek) Nation, on the application in a summary way of this

corporation or of any creditor or shareholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 1106 of this Title or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 1100 of this Title, may order a meeting of the creditors or class of creditors, and/or of the shareholders or class of shareholders of this corporation, as the case may be, to be summoned in such manner as the court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the shareholders or class of shareholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of such compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, and/or on all the shareholders or class of shareholders, of this corporation, as the case may be, and also on this corporation.;

3. Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No shareholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to him in the certificate of incorporation. Preemptive rights, if granted, shall not extend to fractional shares;

4. Provisions requiring, for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by the provisions of this act;

5. A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

6. A provision imposing personal liability for the debts of the corporation on its shareholders or members to a specified extent and upon specified conditions; otherwise, the shareholders or members of a corporation shall not be personally liable for the payment of the corporation's debts, except as they may be liable by reason of their own conduct or acts;

7. A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director:

a. for any breach of the director's duty of loyalty to the corporation or its shareholders,

b. for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law,

c. under Section 1-1053 of this Title, or

d. for any transaction from which the director derived an improper personal benefit.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective.

C. It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by the provisions of this act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Change of location of registered office, change of registered agent, see Title 3, § 1–1023.
Compromise or arrangement between corporation and creditors or shareholders, see Title 3, § 1–1117.

Oklahoma Statutes Annotated

Amendment of certificate,

After receipt of payment for stock, nonstock corporations, see 18 Okl.St. Ann. § 1077.

Before receipt of payment for stock, see 18 Okl.St. Ann. § 1076.

Certificate of merger, domestic corporations, see 18 Okl.St. Ann. § 1081 et seq.

Certificate of incorporation, contents, see 18 Okl.St. Ann. § 1006.

Name change, merger of parent and subsidiaries, see 18 Okl.St. Ann. § 1083.

Registered agent,

Appointment of successor, see 18 Okl.St. Ann. § 1025.

Defined, see 18 Okl.St. Ann. § 1022.

Registered office, see 18 Okl.St. Ann. § 1021.

Renewal, revival, extension and restoration of certificate, see 18 Okl.St. Ann. § 1120.

Restatement of certificate, see 18 Okl.St. Ann. § 1080.

Library References

Corporations ⇌18.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 47 to 49, 56.

§ 1–1007. Execution, acknowledgment, filing and effective date of original certificate of incorporation and other instruments; exception

A. Whenever any provision of the Muscogee (Creek) Nation General Corporation Act requires any instrument to be filed in accordance with the provisions of this section or with the provisions of the Muscogee (Creek) Nation General Corporation Act, such instrument shall be executed as follows:

1. The certificate of incorporation and any other instrument to be filed before the election of the initial board of directors, if the initial directors were not named in the certificate of incorporation, shall be executed by the incorporator or incorporators;

2. All other instruments shall be executed:

a. by the chair or vice-chair of the board of directors, or by the president, or by a vice-president, and attested by the secretary or an assistant secretary; or by such officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice-president and by the secretary or assistant secretary of a corporation;

b. if it appears from the instrument that there are no such officers, then by a majority of the directors or by those directors designated by the board;

c. if it appears from the instrument that there are no such officers or directors, then by the holders of record, or those designated by the holders of record, of a majority of all outstanding shares of stock; or

d. by the holders of record of all outstanding shares of stock.

B. Whenever any provision of the Muscogee (Creek) Nation General Corporation Act requires any instrument to be acknowledged, that requirement is satisfied by either:

1. The formal acknowledgment by the person or one of the persons signing the instrument that it is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. The acknowledgment shall be made before a person who is authorized by the law of the place of execution to take acknowledgments of deeds and who shall affix a seal of office, if any, it to the instrument; or

2. The signature, without more, of the person or persons signing the instrument, in which case the signature or signatures shall constitute the affirmation or acknowledgment of the signatory, under penalty of perjury, that the instrument is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true.

C. Whenever any provision of the Muscogee (Creek) Nation General Corporation Act requires any instrument to be filed in accordance with the provisions of this section or with the provisions of the Muscogee (Creek) Nation General Corporation Act, the requirement means that:

1. Two signed instruments, one of which may be a conformed copy, shall be delivered to the Office of the Secretary of the Nation;

2. All delinquent franchise taxes authorized by law to be collected by the Muscogee (Creek) Nation shall be tendered to the Muscogee (Creek) Nation Tax Commission;

3. All fees authorized by law to be collected by the Secretary of the Nation in connection with the filing of the instrument shall be tendered to the Secretary of the Nation; and

4. Upon delivery of the instrument, and upon tender of the required taxes and fees, the Secretary of the Nation shall certify that the instrument has been filed in the Secretary of State by endorsing upon the signed instrument the word "Filed", and the date of its filing. This endorsement is the "filing date" of the instrument, and is conclusive of the date of its filing in the absence of actual fraud. Upon request, the Secretary of the Nation shall also endorse the hour that the instrument was filed, which endorsement shall be conclusive of the hour of its filing in the absence of actual fraud. The Secretary of the Nation shall thereupon file and index the endorsed instrument.

D. Any instrument filed in accordance with the provisions of subsection C of this section shall be effective upon its filing date. Any instrument may provide that it is not to become effective until a specified time subsequent to the time it is filed, but that date shall not be later than a time on the ninetieth day after the date of its filing. If any instrument filed in accordance with subsection C of this section provides for a future effective date or time and if the transaction is terminated or its terms are amended to change the future effective date or time

prior to the future effective date or time, the instrument shall be terminated or amended by the filing, prior to the future effective date or time set forth in the instrument, of a certificate of termination or amendment of the original instrument, executed in accordance with subsection A of this section, which shall identify the instrument which has been terminated or amended and shall state that the instrument has been terminated or the manner in which it has been amended.

E. If another section of the Muscogee (Creek) Nation General Corporation Act specifically prescribes a manner of executing, acknowledging or filing a specified instrument or a time when an instrument shall become effective which differs from the corresponding provisions of this section, then the provisions of the other section shall govern.

F. Whenever any instrument authorized to be filed with the Secretary of the Nation under any provision of Title 3 of the Muscogee (Creek) Nation Statutes has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, sealed or acknowledged, the instrument may be corrected by filing with the Secretary of the Nation certificate of correction of the instrument which shall be executed, acknowledged and filed in accordance with the provisions of this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. The corrected instrument shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the corrected instrument shall be effective from the filing date of the corrected instrument.

G. If any instrument authorized to be filed with the Secretary of the Nation pursuant to any provision of this title is filed inaccurately or defectively, or is erroneously executed, sealed, or acknowledged, or is otherwise defective in any respect, the Secretary of the Nation shall have no liability to any person for the preclearance for filing, the acceptance for filing, or the filing and indexing of such instrument.

H. When authorized by the rules of the Secretary of the Nation, any signature on any instrument authorized to be filed with the Secretary of the Nation under any provision of this title may be a facsimile signature, a conformed signature, or an electronically transmitted signature.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Additional requirements in case of change of name, mailing address, authorized capital or business purpose, or merger or consolidation, see Title 3, § 1-1131.
Amendment of certificate of incorporation after receipt of payment for stock, see Title 3, § 1-1077.
Change of location of registered office, change of registered agent, see Title 3, § 1-1023.
Classes and series of stock, shareholder rights, see Title 3, § 1-1032.
Conversion of business entity to corporation, see Title 3, § 1-1090.4.
Merger or consolidation of domestic corporations, see Title 3, § 1-1081.
Retirement of stock, see Title 3, § 1-1078.

Oklahoma Statutes Annotated

Bankruptcy proceedings under federal statute; filing of instruments, see 18 Okl.St. Ann. § 1118.

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Board resolutions, stock rights and restrictions, see 18 Okl.St. Ann. § 1032.
Certificate identifying retired stock, see 18 Okl.St. Ann. § 1078.
Certificate of incorporation,
 After stock payments, nonstock corporations, see 18 Okl.St. Ann. § 1077.
 Before stock payments, see 18 Okl.St. Ann. § 1076.
 Extension, restoration, renewal or revival, see 18 Okl.St. Ann. § 1120.
 Restated, see 18 Okl.St. Ann. § 1080.
Dissolution,
 Before beginning business, certificate, see 18 Okl.St. Ann. § 1095.
 Certificate, see 18 Okl.St. Ann. § 1096.
Execution, acknowledgment, filing and effective date of original certificate of incorporation and other instruments, exceptions, see 18 Okl.St. Ann. § 1007.
Filing fees, see 18 Okl.St. Ann. § 1142.
Foreign corporations,
 Qualification to do business, see 18 Okl.St. Ann. § 1130.
 Registered agent, substitution, see 18 Okl.St. Ann. § 1133.
Joint venture corporation, dissolution, petition and certificate, see 18 Okl.St. Ann. § 1094.
Merger or consolidation,
 Agreement, see 18 Okl.St. Ann. §§ 1081, 1084.
 Certificate, domestic and foreign corporations, see 18 Okl.St. Ann. § 1081 et seq.
Officers, titles and duties, see 18 Okl.St. Ann. § 1028.
Registered agent, appointment of successor, see 18 Okl.St. Ann. § 1025.
Trade names,
 Transfer, filing with Secretary of State, see 18 Okl.St. Ann. § 1140.2.
 Withdrawal, filing with Secretary of State, see 18 Okl.St. Ann. § 1140.1.
Voluntary dissolution, revocation, see 18 Okl.St. Ann. § 1119.

Library References

Corporations ⇌ 18, 21.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 47 to 49, 56 to 57.

§ 1–1008. Certificate of incorporation; definition

The term “certificate of incorporation”, as used in the Muscogee (Creek) Nation General Corporation Act, unless the context requires otherwise, includes not only the original certificate of incorporation filed to create a corporation but also all other certificates, agreements of merger or consolidation, plans of reorganization, or other instruments, howsoever designated, which are filed pursuant to the provisions of this act, or any other section of Title 3 of the Muscogee (Creek) Nation Statutes, and which have the effect of amending or supplementing in some respect a corporation’s original certificate of incorporation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Restated certificate of incorporation, see Title 3, § 1–1080.

Oklahoma Statutes Annotated

Certificate of incorporation, definition, see 18 Okl.St. Ann. § 1008.
Restated certificate of incorporation, see 18 Okl.St. Ann. § 1080.

Library References

Corporations ⇌ 18.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 47 to 49, 56.

§ 1–1009. Certificate of incorporation and other certificates; evidence

A copy of a certificate of incorporation, or of a restated certificate of incorporation, or of any other certificate which has been filed in the Office of the Secretary of the Nation as required by any provision of Title 3 of the Muscogee (Creek) Nation Statutes, when duly certified by the Secretary of the Nation, shall be received in all courts, public offices, and official bodies as prima facie evidence of:

1. Due execution, acknowledgment and filing of the instrument;
2. Observance and performance of all acts and conditions necessary to have been observed and performed precedent to the instrument becoming effective; and
3. Of any other facts required or permitted by law to be stated in the instrument.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Certificate of incorporation and other certificates, evidence, see 18 Okl.St. Ann. § 1009.

Library References

Corporations ⇨32(1), 32(7).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 69 to 71.

§ 1–1010. Commencement of corporate existence

Upon the filing with the Secretary of the Nation of the certificate of incorporation, executed and acknowledged in accordance with the provisions of this act, the incorporator or incorporators who signed the certificate, and his or their successors and assigns, from the date of such filing, shall be and constitute a body corporate by the name set forth in the certificate, subject to the provisions of this act and subject to dissolution or other termination of its existence as provided for in the Muscogee (Creek) Nation General Corporation Act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Commencement of corporate existence, see 18 Okl.St. Ann. § 1010.

Library References

Corporations ⇨22, 31, 35. C.J.S. Corporations §§ 47 to 49, 57, 59, 63 to
Westlaw Topic No. 101. 64, 66.

§ 1–1011. Powers of incorporators

If the persons who are to serve as directors until the first annual meeting of shareholders have not been named in the certificate of incorporation, the incorporator or incorporators, until the directors are elected, shall manage the affairs of the corporation and may do whatever is necessary and proper to

perfect the organization of the corporation, including the adoption of the original bylaws of the corporation and the election of directors.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Powers of incorporators, see 18 Okl.St. Ann. § 1011.

Library References

Corporations ☞30.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 99 to 131.

§ 1-1012. Organization meeting of incorporators or directors named in certificate of incorporation

A. After the filing of the certificate of incorporation, an organization meeting of the incorporator or incorporators, or of the board of directors if the initial directors were named in the certificate of incorporation, shall be held either within or without this state at the call of a majority of the incorporators or directors, as the case may be, for the purposes of adopting bylaws, electing directors if the meeting is of the incorporators, to serve or hold office until the first annual meeting of shareholders or until their successors are elected and qualify, electing officers if the meeting is of the directors, doing any other or further acts to perfect the organization of the corporation, and transacting such other business as may come before the meeting.

B. The persons calling the meeting shall give to each other incorporator or director, as the case may be, at least two (2) days' written notice thereof by any usual means of communication, which notice shall state the time, place and purposes of the meeting as fixed by the persons calling it. Notice of the meeting need not be given to anyone who attends the meeting or who signs a waiver of notice either before or after the meeting.

C. Any action permitted to be taken at the organization meeting of the incorporators or directors, as the case may be, may be taken without a meeting if each incorporator or director, where there is more than one, or the sole incorporator or director where there is only one, signs an instrument which states the action so taken.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Organization meeting of incorporators or directors named in certificate of incorporation, see 18 Okl.St. Ann. § 1012.

Library References

Corporations ☞24, 30, 298.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 47 to 49, 52, 99 to 131, 544, 546 to 551.

§ 1-1013. Bylaws

A. The original or other bylaws of a corporation may be adopted, amended or repealed by the incorporators, by the initial directors if they were named in the certificate of incorporation, or, before a corporation has received any

payment for any of its stock, by its board of directors. After a corporation has received any payment for any of its stock, the power to adopt, amend or repeal bylaws shall be in the shareholders entitled to vote, or, in the case of a nonstock corporation, in its members entitled to vote; provided, however, any corporation, in its certificate of incorporation, may confer the power to adopt, amend or repeal bylaws upon the directors or, in the case of a nonstock corporation, upon its governing body by whatever name designated. The fact that such power has been so conferred upon the directors or governing body, as the case may be, shall not divest the shareholders or members of the power, nor limit their power to adopt, amend or repeal bylaws.

B. The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its shareholders, directors, officers or employees.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Bylaws, see 18 Okl.St. Ann. § 1013.

Library References

Corporations ⌘53.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 154 to 171.

§ 1–1014. Emergency bylaws and other powers in emergency

A. The board of directors of any corporation may adopt emergency bylaws which, notwithstanding any different provision in the Muscogee (Creek) Nation General Corporation Act, in the certificate of incorporation, or bylaws, shall be operative during any emergency resulting from an attack on the United States or on a locality in which the corporation conducts its business or customarily holds meetings of its board of directors or its shareholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the board of directors or a standing committee thereof cannot readily be convened for action. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

1. A meeting of the board of directors or a committee thereof may be called by an officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

2. The director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

3. The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time, not longer than reasonably necessary after the termination of the emergency, as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent

required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

B. The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

C. The board of directors, either before or during any such emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers to do so.

D. No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct.

E. To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency and upon its termination the emergency bylaws shall cease to be operative.

F. Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during such an emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

G. To the extent required to constitute a quorum at any meeting of the board of directors during such an emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

H. Nothing contained in this section shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of this act which have been or may be adopted by corporations created pursuant to the provisions of this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Emergency bylaws and other powers in emergency, see 18 Okl.St. Ann. § 1014.

Library References

Corporations ⌘53.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 154 to 171.

§ 1-1014.1. Interpretation and enforcement of the certificate of incorporation and bylaws

Any shareholder, member or director may bring an action to interpret, apply or enforce the provisions of the certificate of incorporation or the bylaws of a domestic corporation in the district court.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Interpretation and enforcement of the certificate of incorporation and bylaws, see 18 Okl.St. Ann. § 1014.1.

Title 3, § 1–1014.1

CORPORATIONS

Library References

Corporations ☞18, 53.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 47 to 49, 56, 154 to
171.

§ 1–1015. General powers

In addition to the powers enumerated in this act, every corporation, its officers, directors and shareholders shall possess and may exercise all the powers and privileges granted by the provisions of the Muscogee (Creek) Nation General Corporation Act or by any other law or by its certificate of incorporation, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

General powers, see 18 Okl.St. Ann. § 1015.

Library References

Corporations ☞370 to 386.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 651 to 676, 692.

§ 1–1016. Specific powers

Every corporation created pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act shall have power to:

1. Have perpetual succession by its corporate name, unless a limited period of duration is stated in its certificate of incorporation;
2. Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitratative or other proceeding, in its corporate name;
3. Have a corporate seal, which may be altered at pleasure, and use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;
4. Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated;
5. Appoint or elect such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation;
6. Adopt, amend and repeal bylaws;
7. Wind up and dissolve itself in the manner provided for in this act;
8. Conduct its business, carry on its operations, and have offices and exercise its powers within or without this Nation;

9. Make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war or other national emergency in aid thereof;

10. Be an incorporator, promoter or manager of other corporations of any type or kind;

11. Participate with others in any corporation, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;

12. Transact any lawful business which the corporation's board of directors shall find to be in aid of governmental authority;

13. Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income, and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of:

a. a corporation, all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation,

b. a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, or

c. a corporation, all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation, and to make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation;

14. Lend money for its corporate purposes, invest and reinvest its funds, and take, hold and deal with real and personal property as security for the payment of funds so loaned or invested;

15. Pay pensions and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers, and employees, and for any or all of the directors, officers, and employees of its subsidiaries;

16. Provide insurance for its benefit on the life of any of its directors, officers, or employees, or on the life of any shareholder for the purpose of acquiring at his death shares of its stock owned by such shareholder; and

17. Renounce in its certificate of incorporation or by action of its board of directors any interest or expectancy of the corporation in, or in being offered an opportunity to participate in, specified business opportunities or specified

classes or categories of business opportunities that are presented to the corporation or one or more of its officers, directors or shareholders.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Abuse, misuse, nonuse of powers, revocation or forfeiture of charter, see 18 Okl.St. Ann. § 1104.
Mortgage or pledge of assets, see 18 Okl.St. Ann. § 1093.
Sale, lease or exchange of assets, see 18 Okl.St. Ann. § 1092.
Specific powers, see 18 Okl.St. Ann. § 1016.

Library References

Corporations ⇌370 to 386.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 651 to 676, 692.

§ 1–1017. Powers respecting securities of other corporations or entities

Any corporation organized under the laws of this Nation may guarantee, purchase, take, receive, subscribe for or otherwise acquire; own, hold, use or otherwise employ; sell, lease, exchange, transfer, or otherwise dispose of; mortgage, lend, pledge or otherwise deal in and with, bonds and other obligations of, or shares or other securities or interests in, or issued by, any other domestic or foreign corporation, partnership, association, or individual, or by any government or agency or instrumentality thereof. A corporation while the owner of any such securities may exercise all the rights, powers and privileges of ownership, including the right to vote.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Powers respecting securities of other corporations or entities, see 18 Okl.St. Ann. § 1017.

Library References

Corporations ⇌377.
Westlaw Topic No. 101.
C.J.S. Corporations § 658.

§ 1–1018. Lack of corporate capacity or power, effect; *ultra vires*

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

1. In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, may set aside and enjoin the performance of such contract, and in so doing, may allow to the corporation or to the other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of

them which may result from the action of the court in setting aside and enjoining the performance of such contract. Anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against an incumbent or former officer or director of the corporation for loss or damage due to his unauthorized act; or

3. In a proceeding by the Attorney General to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Abuse, misuse, nonuse of powers, revocation or forfeiture of charter, see 18 Okl.St. Ann. § 1104.
Lack of corporate capacity or power, effect, ultra vires, see 18 Okl.St. Ann. § 1018.

Library References

Corporations ⇨ 385, 387, 446. C.J.S. Corporations §§ 673 to 674, 676, 678.
Westlaw Topic No. 101. C.J.S. Wills § 96.

§ 1-1019. Private foundations; powers and duties

A corporation of this Nation which is a private foundation under the United States internal revenue laws and whose certificate of incorporation does not expressly provide that this section shall not apply to it is required to act or to refrain from acting so as not to subject itself to the taxes imposed by Sections 4941, relating to taxes on self-dealing, 4942, relating to taxes on failure to distribute income, 4943, relating to taxes on excess business holdings, 4944, relating to taxes on investments which jeopardize charitable purpose, or 4945, relating to taxable expenditures, of the Internal Revenue Code of 1954,¹ as amended, or corresponding provisions of any subsequent United States internal revenue law.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

¹ 26 U.S.C.A. §§ 4941 to 4945.

Oklahoma Statutes Annotated

Private foundations,
Governing instrument or articles of incorporation deemed to contain certain provisions, amendments without judicial proceedings, see 60 Okl.St. Ann. §§ 174.1, 174.2.
Powers and duties, see 18 Okl.St. Ann. § 1019.

Library References

Internal Revenue ⇨ 4063.
Westlaw Topic No. 220.
C.J.S. Internal Revenue § 472.

§ 1-1020. Reserved

§ 1-1021. Registered office in Nation; principal office or place of business; in Nation

A. Every corporation shall have and maintain in this Nation a registered office which may, but need not be, the same as its place of business.

B. Whenever the term “corporation’s principal office or place of business in this Nation” or “principal office or place of business of the corporation in this Nation”, or other term of like import, is or has been used in a corporation’s certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation’s registered office required by this section. It shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with the provisions of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign corporations, statement of principal office or place of business, see 18 Okl.St. Ann. § 1130.
Registered office in Oklahoma, principal office or place of business in Oklahoma, see 18 Okl.St. Ann. § 1021.

Library References

Corporations ¶52, 392.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 146 to 149, 679.

§ 1-1022. Registered agent in Nation; resident agent

A. Every domestic corporation shall have and maintain in this Nation a registered agent, which agent may be either

1. The domestic corporation itself;
2. An individual resident of this Nation; or
3. A domestic or qualified foreign corporation, limited liability company, or limited partnership. Each registered agent shall maintain a business office identical with the registered office which is open during regular business hours to accept service of process and otherwise perform the function of a registered agent.

B. Every foreign corporation transacting business in this Nation shall have and maintain the Secretary of the Nation as its registered agent in this Nation. In addition, such foreign corporation may have and maintain in this Nation a registered agent, which agent may be either:

1. An individual resident of this Nation; or
2. A domestic or qualified foreign corporation, limited liability company, or limited partnership. Each registered agent shall maintain a business office identical with the registered office; which is open during regular business hours to accept service of process and otherwise perform the functions of a registered agent. If such additional registered agent is designated, service of process shall be on such agent and not on the Secretary of the Nation.

C. Whenever the term “resident agent” or “resident agent in charge of a corporation’s principal office or place of business in this Nation”, or other term of like import which refers to a corporation’s agent required by statute to be located in this Nation, is or has been used in a corporation’s certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation’s registered agent required by this section. It shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with the provisions of this section.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign corporations,

Service of summons on corporations, see 12 Okl.St. Ann. § 2004.

Statement of additional registered agent and principal place of business, see 18 Okl.St. Ann. § 1130.

Venue, see 18 Okl.St. Ann. § 471.

Registered agent in Oklahoma, resident agent, see 18 Okl.St. Ann. § 1022.

Library References

Corporations ¶¶ 392, 645.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 679, 987.

§ 1–1023. Change of location of registered office; change of registered agent

Any corporation, by resolution of its board of directors, may change the location of its registered office in this Nation to any other place in this Nation. By like resolution, the registered agent of a corporation may be changed to any other person or corporation, including itself. In either such case, the resolution shall be as detailed in its statement as is required by the provisions of paragraph 2 of subsection A of Section 1–1006 of this Title. Upon the adoption of such a resolution, a certificate certifying the change shall be executed, acknowledged and filed in accordance with the provisions of Section 1–1007 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Change of location of registered office, change of registered agent, see 18 Okl.St. Ann. § 1023.

Foreign corporations,

Statement of additional registered agent, see 18 Okl.St. Ann. § 1130.

Statement of change of additional registered agent, see 18 Okl.St. Ann. § 1133.

Library References

Corporations ¶¶ 52, 392.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 146 to 149, 679.

§ 1–1024. Change of address or name of registered agent

A. A registered agent may change the address of the registered office of the corporation or corporations for which he or she is the registered agent to

another address in this Nation by filing with the Secretary of the Nation a certificate in the name of each affected corporation, executed and acknowledged by the registered agent, setting forth the name of the corporation represented by the registered agent, the new address to which the registered office will be changed at which the registered agent will maintain the registered office for the corporation recited in the certificate.

B. In the event of a change of name of any person or corporation acting as registered agent in this Nation, the registered agent shall file with the Secretary of the Nation a certificate in the name of each affected corporation, executed and acknowledged by the registered agent, setting forth the new name of the registered agent, the name of the registered agent before it was changed, the name of the corporation represented by the registered agent, and the address of the registered office for the corporation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Change of address or name of registered agent, see 18 Okl.St. Ann. § 1024.

Library References

Corporations ⌘392.
Westlaw Topic No. 101.
C.J.S. Corporations § 679.

§ 1–1025. Resignation of registered agent coupled with appointment of successor

The registered agent of one or more corporations may resign and appoint a successor registered agent by filing in the name of each affected corporation a certificate with the, Secretary of the Nation stating the name and address of the successor agent, in accordance with the provisions of this act. There shall be attached to each such certificate a statement of the affected corporation ratifying and approving such change of registered agent. Each such statement shall be executed and acknowledged in accordance with this act. Upon such filing, the successor registered agent shall become the registered agent of each corporation which has ratified and approved each substitution and the successor registered agent's address, as stated in each certificate, shall become the address of each such corporation's registered office in this Nation. The Secretary of the Nation shall then issue his certificate that the successor registered agent has become the registered agent of the corporations so ratifying and approving such change, and setting out the names of such corporations.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Resignation of registered agent coupled with appointment of successor, see 18 Okl.St. Ann. § 1025.

Library References

Corporations ⌘392.
Westlaw Topic No. 101.
C.J.S. Corporations § 679.

§ 1-1026. Resignation of registered agent not coupled with appointment of successor

A. The registered agent of one or more corporations may resign without appointing a successor by filing in the name of each affected corporation a certificate of resignation with the Secretary of the Nation; but a resignation shall not become effective until thirty (30) days after each certificate is filed. The certificate shall:

1. Be acknowledged by the registered agent;
2. Contain a statement that written notice of resignation was given to the corporation at least thirty (30) days prior to the filing of the certificate by mailing or delivering the notice to the corporation at its address last known to the registered agent and specify such address therein; and
3. Set forth the date the notice was mailed.

B. 1. After receipt of the notice of the resignation of its registered agent provided for in subsection A of this section, the corporation for which the registered agent was acting may obtain and designate a new registered agent in the same manner as provided for in Section 1-1023 of this Title for a change of registered agent.

2. If a domestic corporation fails to obtain and designate a new registered agent prior to the expiration of the period of thirty (30) days after the filing by the registered agent of the certificate of resignation, the Secretary of the Nation shall be deemed to be the registered agent of such corporation until a new registered agent is designated. The Office of the Secretary of the Nation shall charge the fee prescribed by Section 1-1142 of this Title for acting as registered agent.

C. After the resignation of a registered agent has become effective, if no new registered agent has been obtained and designated in the time and manner required, service of legal process against the corporation for which the resigned registered agent had been acting shall be upon the Secretary of the Nation as provided in the Muscogee (Creek) Nation Statutes.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Resignation of registered agent not coupled with appointment of successor, absence of registered agent, see 18 Okl.St. Ann. § 1026.

Library References

Corporations ☞392.
Westlaw Topic No. 101.
C.J.S. Corporations § 679.

§ 1-1027. Board of directors; powers; number; qualifications; terms and quorum; committees; classes of directors; not for profit corporations; reliance upon books; action without meeting; etc.

A. The business and affairs of every corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act shall be managed by or under the direction of a board of directors, except as

may be otherwise provided for in the Muscogee (Creek) Nation General Corporation Act or in the corporation's certificate of incorporation. If any provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by the provisions of the Muscogee (Creek) Nation General Corporation Act shall be exercised or performed to the extent and by the person or persons stated in the certificate of incorporation.

B. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by or in the manner provided for in the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be shareholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until a successor is elected and qualified or until his or her earlier resignation or removal. Any director may resign at any time upon written notice to the corporation. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. Except as provided in subsection G of this section, neither the certificate of incorporation nor the bylaws may provide that a quorum may be less than one-third (1/3) of the total number of directors. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

C. The board of directors may designate one or more committees consisting of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at a meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority to

1. Approve, adopt, or recommend to the shareholders any action or matter expressly required by the Muscogee (Creek) Nation General Corporation Act to be submitted to shareholders for approval; or

2. Adopt, amend, or repeal any bylaw of the corporation.

D. The directors of any corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a

vote of the shareholders, may be divided into one, two or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one (1) year thereafter; of the third class two (2) years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for the term, and have voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the certificate of incorporation may be greater than or less than those of any other director or class of directors. If the certificate of incorporation provides that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in the Muscogee (Creek) Nation General Corporation Act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of the directors.

E. A member of the board of directors, or a member of any committee designated by the board of directors, in the performance of the member's duties, shall be fully protected in relying in good faith upon the records of the corporation and upon information, opinions, reports, or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within the officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation.

F. Unless otherwise restricted by the certificate of incorporation or bylaws:

1. Any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee;

2. The board of directors of any corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act may hold its meetings, and have an office or offices, outside of this Nation;

3. The board of directors shall have the authority to fix the compensation of directors; and

4. Members of the board of directors of any corporation, or any committee designated by the board, may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear or otherwise communicate with each other. Participation in a meeting pursuant to the provisions of this subsection shall constitute presence in person at the meeting.

G. 1. The certificate of incorporation of any corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act which is not authorized to issue capital stock may provide that less than one-third (1/3) of the members of the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the

corporation shall be managed in a manner different from that provided for in this section.

2. Except as may be otherwise provided by the certificate of incorporation, the provisions of this section shall apply to such a corporation, and when so applied, all references to the board of directors, to members thereof, and to shareholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively.

H. 1. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

a. Unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided for in subsection D of this section, shareholders may effect such removal only for cause; or

b. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against the director's removal would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which the director is a part.

2. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the certificate of incorporation, the provisions of this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Board of directors, powers, number, qualifications, terms and quorum, committees, classes of directors, not for profit corporations, reliance upon books, action without meeting, etc., see 18 Okl.St. Ann. § 1027.

Frauds and offenses in corporation affairs, see 21 Okl.St. Ann. § 1631 et seq.

Knowledge and assent of director, presumptions, see 21 Okl.St. Ann. § 1641 et seq.

Library References

Corporations ⇌ 282, 283, 291, 294, 297, 298, C.J.S. Corporations §§ 518 to 529, 532 to 299, 533, 535 to 536, 539 to 551.

Westlaw Topic No. 101.

§ 1–1028. Officers; titles, duties, selection, term; failure to elect; vacancies

A. Every corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws and as may be necessary to enable it to sign instruments and stock certificates which comply with the provisions of this act. One of the officers shall have the duty to record the proceedings of the meetings of the shareholders and directors in a book to

be kept for that purpose. Any number of offices may be held by the same person unless the certificate of incorporation or bylaws provide otherwise.

B. Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors or other governing body. Each officer shall hold his office until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation.

C. The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

D. A failure to elect officers shall not dissolve or otherwise affect the corporation.

E. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise, shall be filled as the bylaws provide. In the absence of such provision, the vacancy shall be filled by the board of directors or other governing body.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Frauds and offenses in corporation affairs, see 21 Okl.St. Ann. § 1631 et seq.
Officers, titles, duties, selection, term, failure to elect, vacancies, see 18 Okl.St. Ann. § 1028.
Summons, service on officer or agent, see 12 Okl.St. Ann. § 2004.

Library References

Corporations ☞284 to 295. C.J.S. Corporations §§ 519 to 520, 530 to 531, 534 to 542, 559 to 560.
Westlaw Topic No. 101.

§ 1–1029. Loans to employees and officers; guaranty of obligations of employees and officers

Any corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section shall be construed to deny, limit or restrict the powers of guaranty or warranty of any corporation at common law or under any statute.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Loans to employees and officers, guaranty of obligations of employees and officers, see 18 Okl.St. Ann. § 1029.

Library References

Corporations ☞461.
Westlaw Topic No. 101.
C.J.S. Corporations § 776.

§ 1-1030. Interested directors; quorum

A. No contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

1. The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

2. The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or

3. The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee thereof, or the shareholders.

B. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Interested directors, quorum, see 18 Okl.St. Ann. § 1030.

Library References

Corporations \S 316.
Westlaw Topic No. 101.

C.J.S. Corporations $\S\S$ 587, 591, 596 to 599,
613 to 619.

§ 1-1031. Indemnification of officers, directors, employees and agents; insurance

A. A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect

to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

B. A corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by the person in connection with the defense or settlement of an action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which the person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses which the court shall deem proper.

C. To the extent that a present or former director, or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsection A or B of this section, or in defense of any claim, issue or matter therein, the person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by the person in connection therewith.

D. Any indemnification under the provisions of subsection A or B of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsection A or B of this section. This determination shall be made, with respect to a person who is a director or officer at the time of the determination:

1. By a majority vote of the directors who are not parties to the action, suit, or proceeding, even though less than a quorum;
2. By a committee of directors designated by a majority vote of directors, even though less than a quorum;
3. If there are no such directors, or if such directors direct, by independent legal counsel in a written opinion; or
4. By the shareholders.

E. Expenses incurred by an officer or director in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it shall ultimately be determined that the person is not entitled to be indemnified by the corporation as authorized by the provisions of this section. Expenses incurred by former directors or officers or other employees and agents may be paid upon the terms and conditions, if any, as the corporation deems appropriate.

F. The indemnification and advancement of expenses provided by or granted pursuant to the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in the person's official capacity and as to action in another capacity while holding an office.

G. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by the person in any such capacity, or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against liability under the provisions of this section.

H. For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation, including any constituent of a constituent, absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees, or agents, so that any person who is or was a director, officer, employee, or agent of a constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as the person would have with respect to the constituent corporation if its separate existence had continued.

I. For purposes of this section, references to "other enterprises" shall include, but are not limited to, employee benefit plans; references to "fines" shall include, but are not limited to, any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include, but are not limited to, any service as a director, officer, employee, or agent of the corporation which imposes duties on, or involves services, by the director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

J. The indemnification and advancement of expenses provided by or granted pursuant to this section, unless otherwise provided when authorized or ratified, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of the person.

K. The Muscogee (Creek) Nation District Court is vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise. The Court may summarily determine a corporation's obligation to advance expenses including attorney's fees.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Indemnification of officers, directors, employees and agents, insurance, see 18 Okl.St. Ann. § 1031.

Library References

Corporations \Leftrightarrow 308(1).
Westlaw Topic No. 101.

C.J.S. Corporations §§ 577 to 579, 625 to 626, 628, 632.

§ 1-1032. Classes and series of stock; rights, etc.

A. Every corporation may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have voting powers, full or limited, or no voting powers, and designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the certificate of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation. Any of the voting powers, designations, preferences, rights, and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the certificate of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of the stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation, provided that the manner in which the facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations, or restrictions of the class or series of stock is clearly and expressly set forth in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors. The power to increase or decrease or otherwise adjust the capital stock as provided for in the Muscogee (Creek) Nation General Corporation Act shall apply to all or any such classes of stock. The term "facts", as used in this subsection includes, but is not limited to the occurrence of any event, including a determination or action by any person or body, including the corporation.

B. Any stock of any class or series may be made subject to redemption by the corporation at its option or at the option of the holders of the stock or upon

the happening of a specified event; provided however, immediately following any redemption, the corporation shall have outstanding one or more shares or one or more classes or series of stock, which share, or shares together, shall have full voting powers. Notwithstanding the limitation stated in the foregoing proviso:

1. Reserved

2. Any stock of a corporation which directly or indirectly holds a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise, or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of the license, franchise, or membership or to reinstate it. Any stock which may be made redeemable under this section may be redeemed for cash, property, or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with any adjustments, as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors as provided for in subsection A of this section.

C. The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, conditions, and times as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors as provided for in subsection A of this section, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which the stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as otherwise provided for in the Muscogee (Creek) Nation General Corporation Act.

D. The holders of the preferred or special stock of any class or of any series thereof shall be entitled to the rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors as provided for in subsection A of this section.

E. Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at the price or prices or at such rate or rates of exchange and with the adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors as provided for in subsection A of this section.

F. If any corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, prefer-

ences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent the class or series of stock, provided that, except as otherwise provided for in Section 1-1055 of this Title, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent the class or series of stock, a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or Section 1-1037, subsection A of Section 1-1055 or subsection A of Section 1-1063 of this Title, or with respect to this section a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of the preferences or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holder of certificates representing stock of the same class and series shall be identical.

G. 1. When any corporation desires to issue any shares of stock of any class or of any series of any class of which the powers, designations, preferences and relative, participating, optional, or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the certificate of incorporation or in any amendment thereto but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the certificate of incorporation or any amendment thereto, a certificate of designations setting forth a copy of the resolution or resolutions and the number of shares of stock of the class or series as to which the resolution or resolutions apply shall be executed, acknowledged, and filed, and shall become effective, in accordance with the provisions of Section 1-1007 of this Title. Unless otherwise provided in any resolution or resolutions, the number of shares of stock of any series to which the resolution or resolutions apply may be increased, but not above the total number of authorized shares of the class, or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed, acknowledged and filed setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of the shares shall be decreased, the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. Unless otherwise provided in the certificate of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences, and relative, participating, optional, or other rights,

if any, or the qualifications, limitations, or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which states that no shares of the class or series have been issued, sets forth a copy of the resolution or resolutions, and, if the designation of the class or series is being changed, indicates the original designation and the new designation, shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of Section 1-1007 of this Title. When no shares of any class or series are outstanding, either because none were issued or because no issued shares of any class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to the class or series, may be executed, acknowledged and filed in accordance with the provisions of Section 1-1007 of this Title and, when the certificate becomes effective, it shall have the effect of eliminating from the certificate of incorporation all matters set forth in the certificate of designations with respect to the class or series of stock.

2. When any certificate filed pursuant to the provisions of this subsection becomes effective, it shall have the effect of amending the certificate of incorporation; except that neither the filing of the certificate nor the filing of a restated certificate of incorporation pursuant to Section 1-1080 of this Title shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Restriction on transfer of securities, see Title 3, § 1-1055.
Corporation's powers respecting ownership, voting, etc. of its own stock, rights of stock called for redemption, see Title 3, § 1-1041.

Oklahoma Statutes Annotated

Board of directors, committees, powers, see 18 Okl.St. Ann. § 1027.
Certificate of incorporation, contents, see 18 Okl.St. Ann. § 1006.
Classes and series of stock, rights, etc., see 18 Okl.St. Ann. § 1032.
Redemption, corporate powers, see 18 Okl.St. Ann. § 1041.

Library References

Corporations ☞ 62, 68, 71, 154. C.J.S. Corporations §§ 173, 180 to 183, 205
Westlaw Topic No. 101. to 220, 245 to 248, 360 to 361, 367 to 370.

§ 1-1033. Issuance of stock, lawful consideration; fully paid stock

A. The consideration for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in such form and in such manner as the board of directors shall determine. In the absence of actual fraud in the transaction, the judgment of the directors as to the value of such consideration shall be conclusive. The capital stock so issued shall be deemed to be fully paid and nonassessable stock, if:

1. the entire amount of such consideration has been received by the corporation in the form of cash, services rendered, personal property, real property, leases of real property, or a combination thereof; or

2. not less than the amount of the consideration determined to be capital has been received by the corporation in such form and the corporation has received a binding obligation of the subscriber or purchaser to pay the balance of the subscription or purchase price.

B. The provisions of subsection A of this section shall not be construed to prevent the board of directors from issuing partly paid shares in accordance with the provisions of Section 37¹ of this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

¹ Title 3, § 1-1037.

Oklahoma Statutes Annotated

Dividends, payment in shares, see 18 Okl.St. Ann. § 1052.

Issuance of stock, lawful consideration, fully paid stock, see 18 Okl.St. Ann. § 1033.

Transfer of vehicle title to corporation without excise tax, see 68 Okl.St. Ann. § 2105.

Library References

Corporations ⇌88.

Westlaw Topic No. 101.

§ 1-1034. Consideration for stock

A. Shares of stock with par value may be issued for such consideration, having a value not less than the par value thereof, as is determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

B. Shares of stock without par value may be issued for such consideration as is determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

C. Treasury shares may be disposed of by the corporation for such consideration as may be determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

D. If the certificate of incorporation reserves to the shareholders the right to determine the consideration for the issue of any shares, the shareholders, unless the certificate requires a greater vote, shall do so by a vote of a majority of the outstanding stock entitled to vote thereon.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Consideration for stock, see 18 Okl.St. Ann. § 1034.

Dividends, payment in shares, see 18 Okl.St. Ann. § 1052.

Rights and options respecting stock, consideration, see 18 Okl.St. Ann. § 1038.

Library References

Corporations ⇌72, 88.

Westlaw Topic No. 101.

C.J.S. Corporations § 204.

§ 1-1035. Determination of amount of capital; capital, surplus and net assets defined

Any corporation, by resolution of its board of directors, may determine that only a part of the consideration which shall be received by the corporation for

any of the shares of its capital stock which it shall issue from time to time shall be capital; but, in case any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares. In each such case the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined, at the time of issue of any shares of the capital stock of the corporation issued for cash or within sixty (60) days after the issue of any shares of the capital stock of the corporation issued for property other than cash, what part of the consideration for such shares shall be capital, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The amount of the consideration so determined to be capital in respect of any shares without par value shall be the stated capital of such shares. The capital of the corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital be transferred to the capital account. The board of directors may direct that the portion of such net assets so transferred shall be treated as capital in respect of any shares of the corporation of any designated class or classes. The excess, if any, at any given time, of the net assets of the corporation over the amount so determined to be capital shall be surplus. "Net assets" means the amount by which total assets exceed total liabilities. Capital and surplus are not liabilities for this purpose.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Dividends, payment, see Title 3, § 1–1049.

Oklahoma Statutes Annotated

Determination of amount of capital, capital, surplus and net assets defined, see 18 Okl.St. Ann. § 1035.

Dividends, payment, see 18 Okl.St. Ann. §§ 1049, 1052.

Retirement of stock, see 18 Okl.St. Ann. § 1078.

Library References

Corporations Ⓒ60, 61.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 172, 174 to 179, 186.

§ 1–1036. Fractions of shares

A corporation may, but shall not be required to, issue fractions of a share. If it does not issue fractions of a share, it shall:

1. arrange for the disposition of fractional interests by those entitled thereto; or
2. pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

3. issue scrip or warrants in registered form (either represented by a certificate or be uncertificated) or in bearer form (represented by a certificate) which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or warrants aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip or warrants to be issued subject to the conditions that they shall become void if not exchanged for certificates representing the full shares or uncertificated full shares before a specified date, or subject to the conditions that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip or warrants, or subject to any other conditions which the board of directors may impose.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Merger or consolidation of domestic and foreign corporations, service of process, see Title 3, § 1-1082.

Merger or consolidation of domestic corporations, see Title 3, § 1-1081.

Oklahoma Statutes Annotated

Fractions of shares, see 18 Okl.St. Ann. § 1036.

Merger or consolidation,

Domestic and foreign corporations, see 18 Okl.St. Ann. § 1082.

Domestic corporations, see 18 Okl.St. Ann. § 1081.

Library References

Corporations ¶62.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 173, 180 to 183, 205 to 206.

§ 1-1037. Partly paid shares

Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated and the corporation shall comply with applicable provisions of Section 8-209 of Title 33 of the Muscogee (Creek) Nation Statutes. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Partly paid shares, see 18 Okl.St. Ann. § 1037.

Uncertificated stock, written notice of rights and restrictions, see 18 Okl.St. Ann. § 1032.

Library References

Corporations Ⓒ88.
Westlaw Topic No. 101.

§ 1-1038. Rights and options respecting stock

Subject to any provisions in the certificate of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as shall be approved by the board of directors. The terms upon which, including the time or times, which may be limited or unlimited in duration, at or within which, and the price or prices at which any such shares may be purchased from the corporation upon the exercise of any such right or option, shall be such as shall be stated in the certificate of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive. In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided for this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Rights and options respecting stock, see 18 Okl.St. Ann. § 1038.

Library References

Corporations Ⓒ116.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 301 to 308, 310.

§ 1-1039. Stock certificates, uncertificated shares

The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Notwithstanding the adoption of any such resolution, shares represented by a certificate shall not become uncertificated shares until such certificate is surrendered to the corporation. Every holder of stock in a corporation shall be entitled to have a certificate signed by, or in the name of, the corporation by the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of such corporation certifying and representing the number of shares owned by him in such corporation. Subject

to applicable provisions of the Uniform Commercial Code—Investment Securities,¹ such entitlement shall apply equally to a holder of uncertificated shares, notwithstanding the adoption of a resolution by the board of directors providing for the issuance of uncertificated shares, who makes written request of the corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 33, § 8–101 et seq.

Oklahoma Statutes Annotated

Officers, titles and duties, see 18 Okl.St. Ann. § 1028.

Stock certificates, uncertificated shares, see 18 Okl.St. Ann. § 1039.

Library References

Corporations ¶95.

Westlaw Topic No. 101.

C.J.S. Corporations § 237.

§ 1–1040. Shares of stock; personal property, transfer and taxation

The shares of stock in every corporation shall be deemed personal property and transferable as provided for in the Uniform Commercial Code—Investment Securities.¹ No stock or bonds issued by any corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act shall be taxed by this Nation when the same shall be owned by nonresidents of this Nation or by foreign corporations.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 33, § 8–101 et seq.

Oklahoma Statutes Annotated

Bank or trust company stock, see 6 Okl.St. Ann. § 706.

Shares of stock, personal property, transfer and taxation, see 18 Okl.St. Ann. § 1040.

Library References

Corporations ¶65, 111 to 121.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 184, 285 to 296, 301

to 318.

§ 1–1041. Corporation's powers respecting ownership, voting, etc. of its own stock; rights of stock called for redemption

A. Every corporation may purchase, redeem, receive, take, or otherwise acquire, own, hold, sell, lend, exchange, transfer, or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; provided, however, that no corporation shall:

1. Purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when the purchase or redemption would cause any impairment of the capital of the corporation,

except that a corporation may purchase or redeem out of capital any of its own shares which are entitled upon any distribution of its assets, whether by dividend or in liquidation, to a preference over another class or series of its stock, or if no shares entitled to a preference are outstanding, any of its own shares if such shares will be retired upon their acquisition and the capital of the corporation reduced in accordance with the provisions of Sections 1–1078 and 1–1079 of this Title. Nothing in this subsection shall invalidate or otherwise affect a note, debenture, or other obligation of a corporation given by it as consideration for its acquisition by purchase, redemption, or the exchange of its shares of stock if at the time such note, debenture, or obligation was delivered by the corporation its capital was not then impaired or did not thereby become impaired;

2. Purchase, for more than the price at which they may then be redeemed, any of its shares which are redeemable at the option of the corporation; or

3. Redeem any of its shares unless their redemption is authorized by subsection B of Section 1–1032 of this Title and then only in accordance with the provisions of that section and the certificate of incorporation.

B. Nothing in this section shall be construed to limit or affect a corporation's right to resell any of its shares theretofore purchased or redeemed out of surplus and which have not been retired, for consideration fixed by the board of directors or by the shareholders if the certificate of incorporation so provides.

C. Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of the other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes. Nothing in this section shall be construed as limiting the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

D. Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem those shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of the certificates.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Corporation's powers respecting ownership, voting, etc. of its own stock, rights of stock called for redemption, see 18 Okl.St. Ann. § 1041.

Directors' liability, violation of statute, see 18 Okl.St. Ann. § 1053.

Library References

Corporations ☞68, 72.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 204, 245 to 248.

§ 1–1042. Issuance of additional stock; when and by whom

The directors, at any time and from time to time, if all of the shares of capital stock which the corporation is authorized by its certificate of incorporation to

issue have not been issued, subscribed for, or otherwise committed to be issued, may issue or take subscriptions for additional shares of its capital stock up to the amount authorized in its certificate of incorporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Issuance of additional stock, when and by whom, see 18 Okl.St. Ann. § 1042.

Library References

Corporations Ⓒ69, 158.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 185, 187, 192 to 203,
207 to 216.

§ 1-1043. Liability of shareholder or subscriber for stock not paid in full

A. When the whole of the consideration payable for shares of a corporation has not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of or subscriber for such shares shall be bound to pay on each share held or subscribed for by him the sum necessary to complete the amount of the unpaid balance of the consideration for which such shares were issued or to be issued by the corporation.

B. The amounts which shall be payable as provided in subsection A of this section may be recovered as provided for in this act, after a writ of execution against the corporation has been returned unsatisfied.

C. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable for any unpaid portion of such consideration, but the transferor shall remain liable therefor.

D. No person holding shares in any corporation as collateral security shall be personally liable as a shareholder but the person pledging such shares shall be considered the holder thereof and shall be so liable. No executor, administrator, guardian, trustee or other fiduciary shall be personally liable as a shareholder, but the estate or funds held by such executor, administrator, guardian, trustee or other fiduciary in such fiduciary capacity shall be liable.

E. No liability under the provisions of this section shall be asserted more than six (6) years after the issuance of the stock or the date of the subscription upon which the assessment is sought.

F. In any action by a receiver or trustee of an insolvent corporation or by a judgment creditor to obtain an assessment under the provisions of this section, any shareholder or subscriber for stock of the insolvent corporation may appear and contest the claim or claims of such receiver or trustee.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability of shareholder or subscriber for stock not paid in full, see 18 Okl.St. Ann. § 1043.

Library References

Corporations Ⓒ89, 228.

Westlaw Topic No. 101.

Title 3, § 1-1043

CORPORATIONS

C.J.S. Corporations § 506.

§ 1-1044. Payment for stock not paid in full

The capital stock of a corporation shall be paid for in such amounts and at such times as the directors may require. The directors, from time to time, may demand payment, in respect of each share of stock not fully paid, of such sum of money as the necessities of the business, in the judgment of the board of directors, may require, not exceeding in the whole the balance remaining unpaid on such stock, and such sum so demanded shall be paid to the corporation at such times and by such installments as the directors shall direct. The directors shall give written notice of the time and place of such payments, which notice shall be mailed at least thirty (30) days before the time for such payment, to each holder of or subscriber for stock which is not fully paid at his last-known post office address.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Payment for stock not paid in full, see 18 Okl.St. Ann. § 1044.

Library References

Corporations Ⓒ89.
Westlaw Topic No. 101.

§ 1-1045. Failure to pay for stock; remedies

When any shareholder fails to pay any installment or call upon his stock which may have been properly demanded by the directors, at the time when such payment is due, the directors may collect the amount of any such installment or call or any balance thereof remaining unpaid, from the said shareholder by an action at law, or they shall sell at public sale such part of the shares of such delinquent shareholder as will pay all demands then due from him with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement at least one (1) week before the sale, in a newspaper of the county in this state where such corporation's registered office is located, and such notice shall be mailed by the corporation to such delinquent shareholder at his last-known post office address, at least twenty (20) days before such sale. If no bidder can be had to pay the amount due on the stock, and if the amount is not collected by an action at law, which may be brought within the county where the corporation has its registered office, within one (1) year from the date of the bringing of such action at law, said stock and the amount previously paid in by the delinquent shareholder on the stock shall be forfeited to the corporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Electronic notice, see Title 3, § 1-1075.2.

Oklahoma Statutes Annotated

Failure to pay for stock, remedies, see 18 Okl.St. Ann. § 1045.

Library References

Corporations Ⓒ89, 90.
Westlaw Topic No. 101.

§ 1-1046. Revocability of pre-incorporation subscriptions

Unless otherwise provided for by the terms of the subscription, a subscription for stock of a corporation to be formed shall be irrevocable, except with the consent of all other subscribers or the corporation, for a period of six (6) months from its date.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Cooperative corporations, subscriptions to stock, see 18 Okl.St. Ann. § 426.
Fraud in subscriptions for stock, see 21 Okl.St. Ann. § 1631.
Liability of subscribers and shareholders, see 18 Okl.St. Ann. § 1043.
Revocability of preincorporation subscriptions, see 18 Okl.St. Ann. § 1046.

Library References

Corporations Ⓒ81, 83.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 274 to 275.

§ 1-1047. Formalities required of stock subscriptions

A subscription for stock of a corporation, whether made before or after the formation of a corporation, shall not be enforceable against a subscriber, unless in writing and signed by the subscriber or by his agent.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Formalities required of stock subscriptions, see 18 Okl.St. Ann. § 1047.

Library References

Corporations Ⓒ76.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 252, 255 to 257.

§ 1-1048. Situs of ownership of stock

For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in this Nation, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of this Nation, whether organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act or otherwise, shall be regarded as in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Situs of ownership of stock, see 18 Okl.St. Ann. § 1048.

Library References

Corporations ☞65.
Westlaw Topic No. 101.
C.J.S. Corporations § 184.

§ 1–1049. Dividends; payment; wasting asset corporations

A. The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock, or to its members if the corporation is a nonstock corporation, either out of its surplus, as defined in and computed in accordance with the provisions of Sections 1–1035 and 1–1079 of this Title, or in case there is no surplus, out of its net profits for the fiscal year in which the dividend is declared or the preceding fiscal year. If the capital of the corporation, computed in accordance with the provisions of Sections 1–1035 and 1–1079 of this Title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of the corporation shall not declare and pay out of the net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. Nothing in this subsection shall invalidate or otherwise affect a note, debenture, or other obligation of the corporation paid by it as a dividend on shares of its stock, or any payment made thereon, if at the time the note, debenture, or obligation was delivered by the corporation, the corporation had either surplus or net profits as provided in this subsection from which the dividend could lawfully have been paid.

B. Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets including, but not limited to, a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets, may determine the net profits derived from the exploitation of wasting assets or the net proceeds derived from such liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dividends, payment, wasting asset corporations, see 18 Okl.St. Ann. § 1049.

Library References

Corporations ☞151 to 157. C.J.S. Corporations §§ 217 to 220, 360 to
Westlaw Topic No. 101. 371.

§ 1–1050. Special purpose reserves

The directors of a corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Special purpose reserves, see 18 Okl.St. Ann. § 1050.

Library References

Corporations Ⓒ151.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 360 to 361, 368.

§ 1-1051. Liability of directors as to dividends or stock redemption

A member of the board of directors, or a member of any committee designated by the board of directors, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of its officers or employees, or committees of the board of directors, or by any other person as to matters the director reasonably believes are within such officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation, as to the value and amount of the assets, liabilities and/or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability of directors as to dividends or stock redemption, see 18 Okl.St. Ann. § 1051.

Library References

Corporations Ⓒ153, 334.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 369, 371, 637.

§ 1-1052. Declaration and payment of dividends

No corporation shall pay dividends except in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock. If the dividend is to be paid in shares of the corporation's theretofore unissued capital stock, the board of directors, by resolution, shall direct that there be designated as capital in respect of such shares an amount which is not less than the aggregate par value of par value shares being declared as a dividend and, in the case of shares without par value being declared as a dividend, such amount as shall be determined by the board of directors. No such designation as capital shall be necessary if shares are being distributed by a corporation pursuant to a split-up or division of its stock rather than as payment of a dividend declared payable in stock of the corporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Allocation of consideration for shares, see 18 Okl.St. Ann. § 1035.
Declaration and payment of dividends, see 18 Okl.St. Ann. § 1052.

Payment of consideration for shares, see 18 Okl.St. Ann. §§ 1033, 1034.
 Required consideration of shares, see 18 Okl.St. Ann. § 1034.
 Transfer of certificate of shares, see 18 Okl.St. Ann. § 1054.

Library References

Corporations ☞153.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 369, 371.

§ 1–1053. Liability of directors for unlawful payment of dividend or unlawful stock purchase or redemption; exoneration from liability; contribution among directors; subrogation

A. In case of any willful or negligent violation of the provisions of this act, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within six (6) years after paying any unlawful dividend or after any unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation’s stock, with interest from the time such liability accrued. Any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after he has notice of the same.

B. Any director against whom a claim is successfully asserted under the provisions of this section shall be entitled to contribution from the other directors who voted for or concurred in the unlawful dividend, stock purchase or stock redemption.

C. Any director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by him as a result of such claim, to be surrogated to the rights of the corporation against shareholders who received the dividend on, or assets for the sale or redemption of, their stock with knowledge of facts indicating that such dividend, stock purchase or redemption was unlawful pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act, in proportion to the amounts received by such shareholders respectively.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Contents of certificate of incorporation, see Title 3, § 1–1006.

Oklahoma Statutes Annotated

Liability of directors for unlawful payment of dividend or unlawful stock, purchase or redemption, exoneration from liability, contribution among directors, subrogation, see 18 Okl.St. Ann. § 1053.

Library References

Corporations ☞153, 334.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 369, 371, 637.

§ 1-1054. Transfer of stock, stock certificates and uncertified stock

Except as otherwise provided for in the Muscogee (Creek) Nation General Corporation Act, the transfer of stock and the certificates of stock which represent the stock or uncertified stock shall be governed by the Uniform Commercial Code—Investment Securities.¹ To the extent that any provision of the Muscogee (Creek) Nation General Corporation Act is inconsistent with any provision of the Uniform Commercial Code—Investment Securities, the provisions of the Uniform Commercial Code—Investment Securities shall be controlling.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

¹ Title 33, § 8-101 et seq.

Oklahoma Statutes Annotated

Bank or trust company stock, see 6 Okl.St. Ann. § 706.

Transfer of stock, stock certificates and uncertificated stock, see 18 Okl.St. Ann. § 1054.

Library References

Corporations ¶¶ 111 to 149.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 285 to 318, 320 to 353.

§ 1-1055. Restriction on transfer of securities

A. A written restriction or restrictions on the transfer or registration of transfer of a security of a corporation, or on the amount of a corporation's securities that may be owned by any person or group of persons, if permitted by this section and noted conspicuously on the certificate or certificates representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or notices sent pursuant to the provisions of subsection F of Section 1-1032 of this Title, may be enforced against the holder of the restricted security or securities or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate or certificates representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or notices sent pursuant to the provisions of subsection F of Section 1-1032 of this Title, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

B. A restriction on the transfer or registration of transfer of securities of a corporation, or on the amount of a corporation's securities that may be owned by any person or group of persons, may be imposed either by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

C. A restriction on the transfer or registration of transfer of securities of a corporation or on the amount of a corporation's securities that may be owned

by any person or group of persons is permitted by the provisions of this section if it:

1. Obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities;

2. Obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities;

3. Requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities or to approve the amount of securities of the corporation that may be owned by any person or group of persons;

4. Obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, or causes or results in the automatic sale or transfer of an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing; or

5. Prohibits or restricts the transfer of the restricted securities to, or the ownership of restricted securities by, designated persons or classes of persons or groups of persons, and such designation is not manifestly unreasonable.

D. Any restriction on the transfer or the registration of transfer of the securities of a corporation, or on the amount of securities of a corporation that may be owned by a person or group of persons, shall be conclusively presumed to be for a reasonable purpose for any of the following purposes:

1. Maintaining any local, state, federal or foreign tax advantage to the corporation or its shareholders, including without limitation:

a. maintaining the corporation's status as an electing small business corporation under Subchapter S of the United States Internal Revenue Code,¹

b. maintaining or preserving any tax attribute, including, without limitation, net operating losses, or

c. qualifying or maintaining the qualification of the corporation as a real estate investment trust pursuant to the United States Internal Revenue Code or regulations adopted pursuant to the United States Internal Revenue Code; or

2. Maintaining any statutory or regulatory advantage or complying with any statutory or regulatory requirements under applicable local, state, federal, or foreign law.

E. Any other lawful restriction on transfer or registration of transfer of securities, or on the amount of securities that may be owned by any person or group of persons, is permitted by the provisions of this section.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ 26 U.S.C.A. § 1361 et seq.

Cross References

Classes and series of stock, shareholder rights, see Title 3, § 1-1032.

Oklahoma Statutes Annotated

Restriction on transfer of securities, see 18 Okl.St. Ann. § 1055.

Library References

Corporations ¶113.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 288 to 293.

§ 1-1056. Meetings of shareholders

A. Meetings of shareholders may be held at such place, either within or without this Nation, as may be designated by or in the manner provided for in the bylaws or, if not so designated, at the registered office of the corporation in this Nation.

B. 1. Unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by or in the manner provided for in the bylaws. Shareholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; provided however, that if the consent is less than unanimous, the action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of the action are vacant and are filled by the action.

2. Any other proper business may be transacted at the annual meeting.

C. A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation except as may be otherwise specifically provided for in the Muscogee (Creek) Nation General Corporation Act. If the annual meeting for election of directors is not held on the date designated therefor or action by written consent to elect directors in lieu of an annual meeting had not been taken, the directors shall cause the meeting to be held as soon as is convenient. If there is a failure to hold the annual meeting or action by written consent to elect directors in lieu of an annual meeting, for a period of thirty (30) days after the date designated for the annual meeting, or if no date has been designated, for a period of thirteen (13) months after the latest to occur of the organization of the corporation, its last annual meeting, or the last action by written consent to elect directors in lieu of an annual meeting, the district court may summarily order a meeting to be held upon the application of any shareholder or director. The shares of stock represented at the meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of the meeting, notwithstanding any provision of the certificate of incorporation or bylaws to the contrary. The district court may issue orders as may be appropriate, including, without limitation, orders designating the time and

place of the meeting, the record date for determination of shareholders entitled to vote, and the form of notice of the meeting.

D. Special meetings of the shareholders may be called by the board of directors or by the person or persons as may be authorized by the certificate of incorporation or by the bylaws.

E. All elections of directors shall be by written ballot, unless otherwise provided for in the certificate of incorporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Duties of inspectors and voting procedures, see Title 3, § 1-1075.1.

Oklahoma Statutes Annotated

Meetings of shareholders, see 18 Okl.St. Ann. § 1056.
Notice, meetings and adjourned meetings, see 18 Okl.St. Ann. § 1067.
Powers of court, elections of directors, see 18 Okl.St. Ann. § 1072.
Summary order, election of directors,
 Prior election invalid, see 18 Okl.St. Ann. § 1070.
 Vacancies, see 18 Okl.St. Ann. § 1068.

Library References

Corporations ◊191 to 201.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 442 to 481.

§ 1-1057. Voting rights of shareholders; proxies; limitations

A. Unless otherwise provided for in the certificate of incorporation and subject to the provisions of Section 1-1058 of this Title, each shareholder shall be entitled to one vote for each share of capital stock held by the shareholder. If the certificate of incorporation provides for more or less than one vote for any share on any matter, every reference in the Muscogee (Creek) Nation General Corporation Act to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

B. Each shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for the shareholder by proxy, but no proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

C. Without limiting the manner in which a shareholder may authorize another person or persons to act as a proxy pursuant to subsection B of this section, the following shall constitute a valid means by which a shareholder may grant such authority:

1. A shareholder may execute a writing authorizing another person or persons to act for him or her as proxy. Execution may be accomplished by the shareholder or the shareholder's authorized officer, director, employee, or agent signing the writing or causing his or her signature to be affixed to the writing by any reasonable means including, but not limited to, by facsimile signature.

2. A shareholder may authorize another person or persons to act for him or her as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or like agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided, that any telegram, cablegram, or other means of electronic transmission must either set forth, or be submitted with information from which it can be determined, that the telegram, cablegram, or other electronic transmission was authorized by the shareholder. If it is determined that telegrams, cablegrams, or other electronic transmissions are valid, the inspectors or, if there are no inspectors, any other person making that determination shall specify the information upon which they relied.

D. Any copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created pursuant to subsection C of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, that the copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original writing or transmission.

E. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Duties of inspectors and voting procedures, see Title 3, § 1-1075.1.

Oklahoma Statutes Annotated

Voting rights of shareholders, proxies, limitations, see 18 Okl.St. Ann. § 1057.

Library References

Corporations \S 197, 198.
Westlaw Topic No. 101.

C.J.S. Corporations \S 456 to 459, 463 to 466, 472 to 478, 481.

§ 1-1058. Fixing date for determination of shareholders of record

A. In order that the corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any

adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

B. 1. In order that the corporation may determine the shareholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by the Muscogee (Creek) Nation General Corporation Act, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in this Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by the Muscogee (Creek) Nation General Corporation Act, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

2. The provisions of this subsection shall be effective with respect to corporate actions taken by written consent, and to such written consent or consents, as to which the first written consent is executed or solicited after November 1, 1988.

C. In order that the corporation may determine the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fixing date for determination of shareholders of record, see 18 Okl.St. Ann. § 1058.

Library References

Corporations ☞ 197.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 456 to 459, 463 to 466, 481.

§ 1-1059. Cumulative voting

The certificate of incorporation of any corporation may provide that at all elections of directors of the corporation, or at elections held under specified circumstances, each holder of stock or of any class or classes or of a series or series thereof shall be entitled to as many votes as shall equal the number of votes which, except for such provision as to cumulative voting, he would be entitled to cast for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected by him, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two (2) or more of them as he may see fit.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Cumulative voting, see 18 Okl.St. Ann. § 1059.

Library References

Corporations ⇌ 200, 283(2).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 462, 524 to 527.

§ 1-1060. Voting rights of members of nonstock corporations; quorum; proxies

A. The provisions of Sections 1-1056 through 1-1059 and 1-1061 of this Title shall not apply to corporations not authorized to issue stock.

B. Unless otherwise provided for in the certificate of incorporation of a nonstock corporation, each member shall be entitled at every meeting of members to one vote in person or by proxy, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period.

C. Unless otherwise provided for in the Muscogee (Creek) Nation General Corporation Act, the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation:

1. One-third (1/3) of the members of the corporation shall constitute a quorum at a meeting of the members;

2. In all matters other than the election of the governing body of the corporation, the affirmative vote of a majority of the members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by the provisions of the Muscogee (Creek) Nation General Corporation Act, the certificate of incorporation or bylaws; and

3. Members of the governing body shall be elected by a plurality of the votes of the members of the corporation present in person or represented by proxy at the meeting and entitled to vote.

D. If the election of the governing body of any nonstock corporation shall not be held on the day designated by the bylaws, the governing body shall cause the election to be held as soon thereafter as convenient. The failure to hold such an election at the designated time shall not work any forfeiture or dissolution of the corporation, but the district court may summarily order such an election to be held upon the application of any member of the corporation. At any election pursuant to such order the persons entitled to vote in such election who shall be present at such meeting, either in person or by proxy, shall constitute a quorum for such meeting, notwithstanding any provision of the certificate of incorporation or the bylaws of the corporation to the contrary. [Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Powers of court, election of directors, see 18 Okl.St. Ann. § 1072.

Summary order, election of directors, prior election invalid, see 18 Okl.St. Ann. § 1070.

Voting rights of members of nonstock corporations, quorum, proxies, see 18 Okl.St. Ann. § 1060.

Library References

Corporations ⇌ 195 to 198.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 445, 453 to 459, 461,
463 to 466, 472 to 478, 481.

§ 1-1061. Quorum and required vote for stock corporations

Subject to the provisions of the Muscogee (Creek) Nation General Corporation Act, in respect of the vote that shall be required for a specified action, the certificate of incorporation or bylaws of any corporation authorized to issue stock may specify the number of shares and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business, but in no event shall a quorum consist of less than one-third (1/3) of the shares entitled to vote at the meeting, except that, where a separate vote by a class or series or classes or series is required, a quorum shall consist of no less than one-third (1/3) of the share of that class or series or classes or series. In the absence of such specification in the certificate of incorporation or bylaws of the corporation:

1. A majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of shareholders;
2. In all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the shareholders;
3. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and
4. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or series or classes or series present in

person or represented by proxy at the meeting shall be the act of such class or series or classes or series.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Quorum and required vote for stock corporations, see 18 Okl.St. Ann. § 1061.

Library References

Corporations ☞195.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 454, 461.

§ 1-1062. Voting rights of fiduciaries, pledgors and joint owners of stock

A. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he has expressly empowered the pledgee, to vote thereon, in which case only the pledgee, or his proxy may represent such stock and vote thereon.

B. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

1. If only one (1) vote, his act binds all; or
2. If more than one (1) vote, the act of the majority so voting binds all; or
3. If more than one (1) vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or any person voting the shares, or a beneficiary, if any, may apply to the Muscogee (Creek) Nation District Court to appoint an additional person to act with the persons so voting the shares, which shall then be voted as determined by a majority of such persons and the person appointed by such Court. If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection shall be a majority or even-split in interest.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Voting rights of fiduciaries, pledgors and joint owners of stock, see 18 Okl.St. Ann. § 1062.

Library References

Corporations ☞197.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 456 to 459, 463 to 466, 481.

§ 1-1063. Voting trusts and other voting agreements

A. One (1) or more shareholders, by agreement in writing, may deposit capital stock of an original issue with or transfer capital stock to any person or

persons, or corporation or corporations authorized to act as trustee, for the purpose of vesting in the person or persons, corporation or corporations, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by the agreement, upon the terms and conditions stated in the agreement. The agreement may contain any other lawful provisions not inconsistent with its purpose. After the filing of a copy of the agreement in the registered office of the corporation in this Nation, which copy shall be open to the inspection of any shareholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with the trustee or trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and canceled and new certificates or uncertificated stock shall be issued therefor to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to the agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy. In voting the stock, the voting trustee, or trustees shall incur no responsibility as shareholder, trustee or otherwise, except for his or their own individual malfeasance. In any case where two (2) or more persons are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided or the right and manner of voting the stock in any particular case, the vote of the stock shall be divided equally among the trustees.

B. Any amendment to a voting trust agreement shall be made by a written agreement, a copy of which shall be filed in the registered office of the corporation in this Nation.

C. An agreement between two (2) or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them.

D. This section shall not be construed to invalidate any voting or other agreement among shareholders or any irrevocable proxy which is not otherwise illegal.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Classes and series of stock, shareholder rights, see Title 3, § 1–1032.

Oklahoma Statutes Annotated

Voting trusts and other voting agreements, see 18 Okl.St. Ann. § 1063.

Written notice of rights and restrictions, uncertificated stock, see 18 Okl.St. Ann. § 1032.

Library References

Corporations Ⓒ198.1.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 467 to 471.

§ 1-1064. List of shareholders entitled to vote; penalty for refusal to produce; stock ledger

A. The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Nothing contained in this section shall require the corporation to include electronic mail addresses or other electronic contact information on the list. The list shall be open to the examination of any shareholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting:

1. On a reasonably accessible electronic network; provided that the information required to gain access to the list is provided with the notice of the meeting; or

2. During ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that the information is available only to shareholders of the corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any shareholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any shareholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting.

B. Upon the willful neglect or refusal of the directors to produce such a list at any meeting for the election of directors held at a place, or to open such a list to examination on a reasonably accessible electronic network during any meeting for the election of directors held solely by means of remote communication, they shall be ineligible for election to any office at the meeting.

C. The stock ledger shall be the only evidence as to who are the shareholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote in person or by proxy at any meeting of shareholders.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

List of shareholders entitled to vote, penalty for refusal to produce, stock ledger, see 18 Okl.St. Ann. § 1064.

Library References

Corporations Ⓒ181, 311.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 409 to 419, 594 to 595.

§ 1-1065. Inspection of books and records

A. As used in this section:

1. "Shareholder" means:

- a. a shareholder of record in a stock corporation, and
- b. a member of a nonstock corporation as reflected on the records of the nonstock corporation; and

2. "List of shareholders" includes a list of members in a nonstock corporation.

B. Any shareholder, in person or by attorney or other agent, upon written demand under oath stating the purpose thereof, shall have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its shareholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a shareholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the shareholder. The demand under oath shall be directed to the corporation at its registered office in this Nation or at its principal place of business.

C. 1. If the corporation or an officer or agent thereof refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to the provisions of subsection B of this section or does not reply to the demand within five (5) business days after the demand has been made, the shareholder may apply to the Muscogee (Creek) Nation District Court for an order to compel an inspection. The court may summarily order the corporation to permit the shareholder to inspect the corporation's stock ledger, an existing list of shareholders, and its other books and records, and to make copies or extracts therefrom; or the Court may order the corporation to furnish to the shareholder a list of its shareholders as of a specific date on condition that the shareholder first pay to the corporation the reasonable cost of obtaining and furnishing the list and on other conditions as the Court deems appropriate.

2. Where the shareholder seeks to inspect the corporation's books and records, other than its stock ledger or list of shareholders, the shareholder shall first establish that:

- a. the shareholder has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents; and

- b. the inspection the shareholder seeks is for a proper purpose.

3. Where the shareholder seeks to inspect the corporation's stock ledger or list of shareholders and he has complied with the provisions of this section respecting the form and manner of making demand for inspection of the documents, the burden of proof shall be upon the corporation to establish that

the inspection the shareholder seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions upon the inspection, or award such other or further relief as the Court may deem just and proper. The Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this Nation and kept in this Nation upon such terms and conditions as the order may prescribe.

D. Any director, including a member of the governing body of a nonstock corporation shall have the right to examine the corporation's stock ledger, a list of its shareholders and its other books and records for a purpose reasonably related to his or her position as a director. The Muscogee (Creek) Nation District Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the list of shareholders and to make copies or extracts therefrom. The Court, in its discretion, may prescribe any limitations or conditions with reference to the inspection, or award other or further relief as the Court may deem just and proper.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Inspection of books and records, see 18 Okl.St. Ann. § 1065.

Library References

Corporations ⌘181.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 409 to 419.

§ 1-1066. Voting, inspection and other rights of bondholders and debenture holders

Every corporation, in its certificate of incorporation, may confer upon the holders of any bonds, debentures or other obligations issued or to be issued by the corporation the power to vote in respect to the corporate affairs and management of the corporation to the extent and in the manner provided in the certificate of incorporation, and may confer upon such holders of bonds, debentures or other obligations the same right of inspection of its books, accounts and other records, and also any other rights, which the shareholders of the corporation have or may have by reason of the provisions of the Muscogee (Creek) Nation General Corporation Act or of its certificate of incorporation. If the certificate of incorporation so provides, such holders of bonds, debentures or other obligations shall be deemed to be shareholders, and their bonds, debentures or other obligations shall be deemed to be shares of stock, for the purpose of any provision of the Muscogee (Creek) Nation General Corporation Act which requires the vote of shareholders as a prerequisite to any corporate action and the certificate of incorporation may divest the holders of capital stock, in whole or in part, of their right to vote on any corporate matter whatsoever.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Voting, inspection and other rights of bondholders and debenture holders, see 18 Okl.St. Ann. § 1066.

Library References

Corporations *§* 181(3), 473.
Westlaw Topic No. 101.
C.J.S. Corporations *§§* 415, 755.

§ 1–1067. Notice of meetings and adjourned meetings

A. Whenever shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at the meetings and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

B. Unless otherwise provided for in this Act, the written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each shareholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the shareholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given, in the absence of fraud, shall be prima facie evidence of the facts stated therein.

C. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at the adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Certificate of incorporation, amendment, see 18 Okl.St. Ann. § 1077.
Election of directors following renewal or revival of certificate of incorporation, see 18 Okl.St. Ann. § 1120.
Merger or consolidation, domestic corporations, see 18 Okl.St. Ann. § 1081.
Notice of meetings and adjourned meetings, see 18 Okl.St. Ann. § 1067.
Revocation of voluntary dissolution, see 18 Okl.St. Ann. § 1119.

Library References

Corporations *§§* 193, 194, 197.
Westlaw Topic No. 101.
C.J.S. Corporations *§§* 443 to 444, 447 to 452, 455 to 459, 463 to 466, 481.

§ 1-1068. Vacancies and newly created directorships

A. 1. Unless otherwise provided in the certificate of incorporation or bylaws:

a. Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the shareholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director; and

b. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one (1) or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

2. If at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any officer or any shareholder or an executor, administrator, trustee or guardian of a shareholder, or other fiduciary entrusted with like responsibility for the person or estate of a shareholder, may call a special meeting of shareholders in accordance with the provisions of the certificate of incorporation or the bylaws, or may apply to the Muscogee (Creek) Nation District Court for a decree summarily ordering an election as provided for in this act.

B. In the case of a corporation the directors of which are divided into classes, any directors chosen under subsection A of this section shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified.

C. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board, as constituted immediately prior to any such increase, the district court, upon application of any shareholder or shareholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, may summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office, which election shall be governed by the provisions of this act as far as applicable.

D. Unless otherwise provided in the certificate of incorporation or bylaws, when one or more directors shall resign from the board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided for in this section in the filling of other vacancies.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Boards of directors, generally, see 18 Okl.St. Ann. § 1027.

Vacancies and newly created directorships, see 18 Okl.St. Ann. § 1068.

Library References

Corporations ⌘281, 283, 291 to 295.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 518 to 530, 535 to
542.

§ 1-1069. Form of records

Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept in, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, or any other information storage device, provided that the records so kept can be converted into clearly legible written form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect the same. Where records are kept in such manner, a clearly legible written form produced from the cards, tapes, photographs, microphotographs or other information storage device shall be admissible in evidence and shall be accepted for all other purposes, to the same extent as an original written record of the same information would have been, when said written form accurately portrays the record.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Certificates filed with Oklahoma Secretary of State, evidence, see 18 Okl.St. Ann. § 1009.

Form of records, see 18 Okl.St. Ann. § 1069.

Penalty for destroying or concealing corporate records, books, etc., see 17 Okl.St. Ann. § 16.

Shareholder right to inspect records, see 18 Okl.St. Ann. § 1065.

Library References

Corporations ⌘59.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 150 to 153.

§ 1-1070. Contested election of directors; proceedings to determine validity

A. Upon application of any shareholder or director, or any officer whose title to office is contested, or any member of a corporation without capital stock, the Muscogee (Creek) Nation District Court may hear and determine the validity of any election of any director, member of the governing body, or officer of any corporation, and the right of any person to hold such office, and, in case any such office is claimed by more than one person, may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the Muscogee (Creek) Nation District Court may order an election to be held in accordance with this act. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office; and the registered agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such

person at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant shareholder. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

B. Upon application of any shareholder or any member of a corporation without capital stock, the Muscogee (Creek) Nation District Court may hear and determine the result of any vote of shareholders or members, as the case may be, upon matters other than the election of directors, officers or members of the governing body. Service of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting notice of the application as it deems proper under the circumstances.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Contested election of directors, proceedings to determine validity, see 18 Okl.St. Ann. § 1070.
Registered agent, see 18 Okl.St. Ann. § 1022.

Library References

Corporations ☞283.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 518 to 529.

§ 1-1071. Appointment of custodian or receiver of corporation on deadlock or for other cause

A. The Muscogee (Creek) Nation District Court, upon application of any shareholder, may appoint one or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of and for any corporation when:

1. at any meeting held for the election of directors the shareholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or
2. the business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the shareholders are unable to terminate this division; or
3. the corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

B. A custodian appointed pursuant to the provisions of this section shall have all the powers and title of a receiver appointed by the Court under applicable law, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the Court shall otherwise order and except in cases arising pursuant to paragraph 3 of subsection A of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appointment of custodian or receiver of corporation on deadlock or for other cause, see 18 Okl.St. Ann. § 1071.

Receivers,

Dissolved corporations, see 18 Okl.St. Ann. § 1100 et seq.

Insolvent corporations, see 18 Okl.St. Ann. § 1106 et seq.

Library References

Corporations ⇨551.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 841 to 870.

§ 1–1072. Powers of court in elections of directors

A. The Muscogee (Creek) Nation District Court, in any proceeding instituted pursuant to the provisions of this act, may determine the right and power of persons claiming to own stock, or in the case of a corporation without capital stock, of the persons claiming to be members, to vote at any meeting of the shareholders or members.

B. The Muscogee (Creek) Nation District Court may appoint a master to hold any election provided for in this act under such orders and powers as it deems proper; and it may punish any officer or director for contempt in case of disobedience of any order made by the Court; and, in case of disobedience by a corporation of any order made by the Court, may enter a decree against such corporation for a penalty of not more than five thousand dollars (\$5,000.00).

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Powers of court in elections of directors, see 18 Okl.St. Ann. § 1072.

Library References

Corporations ⇨201, 283.

Indians ⇨501, 533, 539.

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 479 to 481, 518 to 529.

C.J.S. Indians §§ 151 to 179.

§ 1–1073. Consent of shareholders in lieu of meeting

A. Except as provided in subsection B of this section or unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Muscogee (Creek) Nation General Corporation Act to be taken at any annual or special meeting of shareholders of a corporation or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

B. With respect to a domestic corporation with a class of voting stock listed or traded on a national securities exchange or registered under Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as amended, which has one thousand or more shareholders of record, unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Muscogee (Creek) Nation General Corporation Act to be taken at any annual or special meeting of shareholders of the corporation or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of all outstanding stock entitled to vote thereon and shall be delivered to the corporation by delivery to its registered office in this Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. The provisions of this subsection shall be effective with respect to corporate actions by written consent, and to such written consent or consents, as to which the first written consent is executed or solicited after September 1, 1991.

C. Unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Muscogee (Creek) Nation General Corporation Act to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

D. Every written consent shall bear the date of signature of each shareholder or member who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to its registered office in this Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

E. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those shareholders or members, as the case may be, who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of

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the meeting if the record date for the meeting had been the date that written consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in subsection C of this section. In the event that the action for which consent is given is an action that would have required the filing of a certificate under any other section of this title if the action had been voted on by shareholders or by members at a meeting thereof, the certificate filed under the other section shall state, in lieu of any statement required by the section concerning any vote of shareholders or members, that written consent has been given in accordance with the provisions of this section.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, see 18 Okl.St. Ann. § 1091.

Consent of shareholders in lieu of meeting, see 18 Okl.St. Ann. § 1073.

Revocation of voluntary dissolution, see 18 Okl.St. Ann. § 1119.

Library References

Corporations ⌘191.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 442, 446.

§ 1–1074. Waiver of notice

Whenever notice is required to be given under any provision of the Muscogee (Creek) Nation General Corporation Act or of the certificate of incorporation or bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the shareholders, directors, or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or the bylaws.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Waiver of notice, see 18 Okl.St. Ann. § 1074.

Library References

Corporations ⌘194, 298(3).

Westlaw Topic No. 101.

C.J.S. Corporations §§ 444, 447 to 452, 547.

§ 1–1075. Exception to requirements of notice

A. Whenever notice is required to be given, pursuant to any provision of Title 3 of the Muscogee (Creek) Nation Statutes or of the certificate of incorporation or bylaws of any corporation, to any person with whom communication

is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of Title 3 of the Muscogee (Creek) Nation Statutes, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

B. Whenever notice is required to be given pursuant to any provision of the Muscogee (Creek) Nation General Corporation Act or the certificate of incorporation or bylaws of any corporation, to any shareholder or, if the corporation is a nonstock corporation, to any member to whom:

1. notice of two consecutive annual meetings and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings; or

2. All, and at least two, payments, if sent by first-class mail, of dividends or interest on securities during a twelve-month period, have been mailed addressed to such person at his address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of the Muscogee (Creek) Nation General Corporation Act, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to the provisions of this subsection.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Exception to requirements of notice, see 18 Okl.St. Ann. § 1075.

Library References

Corporations \S 194, 298(3).
Westlaw Topic No. 101.
C.J.S. Corporations $\S\S$ 444, 447 to 452, 547.

§ 1–1075.1. Duties of inspectors and voting procedures

A. The corporation shall, in advance of any meeting of shareholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of shareholders, the person presiding at the

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meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

B. The inspectors shall:

1. Ascertain the number of shares outstanding and the voting power of each;
2. Determine the shares represented at a meeting and the validity of proxies and ballots;
3. Count all votes and ballots;
4. Determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and
5. Certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

C. The date and time of the opening and the closing of the polls for each matter upon which the shareholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the district court upon application by a shareholder shall determine otherwise.

D. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with subsection E of Section 1-1056 or paragraph 2 of subsection C of Section 1-1057 of this Title, or any information provided pursuant to divisions (1) or (3) of subparagraph b of paragraph 2 of subsection A of Section 1-1056 of this Title, ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the shareholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to paragraph 5 of subsection B of this section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that the information is accurate and reliable.

E. Unless otherwise provided in the certificate of incorporation or bylaws, this section shall not apply to a corporation that does not have a class of voting stock that is:

1. Listed on a national securities exchange;

2. Authorized for quotation on an interdealer quotation system of a registered national securities association; or

3. Held of record by more than 2,000 shareholders.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Voting procedures and inspectors of elections, see 18 Okl.St. Ann. § 1075.1.

Library References

Corporations ⌘196.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 445, 453, 455.

§ 1-1075.2. Electronic notice

A. Without limiting the manner of which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation under any provision of this act, the certificate of incorporation, or the bylaws shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given. The consent shall be revocable by the shareholder by written notice to the corporation. The consent shall be deemed revoked if:

1. The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with the consent; and

2. The inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat the inability as a revocation shall not invalidate any meeting or other action.

B. Notice given pursuant to subsection A of this section shall be deemed given if by:

1. Facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice;

2. Electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;

3. A posting on an electronic network together with separate notice to the shareholder of the specific posting, upon the later of:

a. the posting, and

b. the giving of the separate notice; and

4. Any other form of electronic transmission, when directed to the shareholder in accordance with the shareholder's consent. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

C. For purposes of this act, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that

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creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

D. This section shall apply to a domestic corporation that is not authorized to issue capital stock, and when so applied, all references to shareholders shall be deemed to refer to members of such a corporation.

E. This section shall not apply to Sections 1–1045 or 1–1111 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Electronic notice, effectiveness, revocation of consent, see 18 Okl.St. Ann. § 1075.2.

Library References

Corporations \Leftrightarrow 194.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 444, 447 to 452.

§ 1–1076. Amendment of certificate of incorporation before receipt of payment for stock

A. Before a corporation has received any payment for any of its stock, it may amend its certificate of incorporation at any time or times, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of filing the amendment.

B. The amendment of certificate of incorporation authorized by the provisions of this section shall be adopted by a majority of the incorporators, if directors were not named in the original certificate of incorporation or have not yet been elected, or, if directors were named in the original certificate of incorporation or have been elected and have qualified, by a majority of the directors. A certificate setting forth the amendment and certifying that the corporation has not received any payment for any of its stock and that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged and filed in accordance with the provisions of this act. Upon such filing, the corporation's certificate of incorporation shall be deemed to be amended accordingly as of the date on which the original certificate of incorporation became effective, except as to those persons who are substantially and adversely affected by the amendment and as to those persons the amendment shall be effective from the filing date.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Amendment of certificate of incorporation before receipt of payment for stock, see 18 Okl.St. Ann. § 1076.

Certificate of incorporation,

 Certificate of merger, see 18 Okl.St. Ann. § 1081.

 Contents, see 18 Okl.St. Ann. § 1006.

 Defined, see 18 Okl.St. Ann. § 1008.

Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ⌘40.
Westlaw Topic No. 101.
C.J.S. Corporations § 58.

§ 1-1077. Amendment of certificate of incorporation after receipt of payment for stock; nonstock corporations

A. 1. After a corporation has received payment for any of its capital stock, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and if a change in stock or the rights of shareholders, or an exchange, reclassification, subdivision, combination, or cancellation of stock or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, subdivision, combination, or cancellation. In particular, and without limitation upon the general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

- a. to change its corporate name,
- b. to change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes,
- c. to increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares or by subdividing or combining the outstanding shares of any class or series of a class of shares into a greater or lesser number of outstanding shares,
- d. to cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared,
- e. to create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued, or
- f. to change the period of its duration.

2. Any or all changes or alterations provided for in paragraph 1 of this subsection may be effected by one certificate of amendment.

B. Every amendment authorized by the provisions of subsection A of this section shall be made and effected in the following manner:

1. If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the shareholders entitled to vote in respect thereof for the consideration of the amendment or directing that the amendment proposed be considered at the next annual meeting of shareholders. The special or annual meeting shall be called and held upon notice in accordance

with the provisions of Section 1-1067 of this Title. The notice shall set forth the amendment in full or a brief summary of the changes to be effected thereby, as the directors shall deem advisable. At the meeting a vote of the shareholders entitled to vote thereon shall be taken for and against the proposed amendment. If a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title.

2. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of the class, increase or decrease the par value of the shares of the class, or alter or change the powers, preferences or special rights of the shares of the class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any the class or classes of stock may be increased or decreased, but not below the number of shares thereof then outstanding, by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of the provisions of this paragraph, if so provided in the original certificate of incorporation, in any amendment thereto which created the class or classes of stock or which was adopted prior to the issuance of any shares of the class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of the class or classes of stock.

3. If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body, shall vote in favor of the amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title. The certificate of incorporation of a corporation without capital stock may contain a provision requiring an amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of the corporation in which event the proposed amendment shall be submitted to the members or to any specified class of members of the corporation without capital stock in the same manner, so far as applicable, as is provided for in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by the members, a certificate evidencing the amendment shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title.

4. Whenever the certificate of incorporation shall require for action by the board of directors, by the holders of any class or series of shares or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by the provisions of the Muscogee (Creek) Nation General Corporation Act, the provision of the certificate of incorporation requiring a greater vote shall not be altered, amended or repealed except by such greater vote.

C. The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the Secretary of the Nation, notwithstanding authorization of the proposed amendment by the shareholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon the proposed amendment without further action by the shareholders or members.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Amendment of certificate of incorporation after receipt of payment for stock, nonstock corporations, see 18 Okl.St. Ann. § 1077.

Certificate of merger, see 18 Okl.St. Ann. § 1081.

Holders of bonds and debentures, voting rights, see 18 Okl.St. Ann. § 1066.

Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ¶40.

Westlaw Topic No. 101.

C.J.S. Corporations § 58.

§ 1-1078. Retirement of stock

A. A corporation, by resolution of its board of directors, may retire any shares of its capital stock that are issued but are not outstanding.

B. Whenever any shares of the capital stock of a corporation are retired, they shall resume the status of authorized and unissued shares of the class or series to which they belong unless the certificate of incorporation otherwise provides. If the certificate of incorporation prohibits the reissuance of such shares, or prohibits the reissuance of such shares as a part of a specific series only, a certificate stating that reissuance of the shares, as part of the class or series, is prohibited identifying the shares and reciting their retirement shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title. When such certificate becomes effective, it shall have the effect of amending the certificate of incorporation so as to reduce accordingly the number of authorized shares of the class or series to which such shares belong or, if such retired shares constitute all of the authorized shares of the class or series to which they belong, of eliminating from the certificate of incorporation all reference to such class or series of stock.

C. If the capital of the corporation will be reduced by or in connection with the retirement of shares, the reduction of capital shall be effected pursuant to the provisions of Section 1-1079 of this Title.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Corporation's powers respecting ownership, voting, etc. of its own stock, rights of stock called for redemption, see Title 3, § 1–1041.

Oklahoma Statutes Annotated

Corporate purchase or redemption of stock out of capital, see 18 Okl.St. Ann. § 1041.
Retirement of stock, see 18 Okl.St. Ann. § 1078.

Library References

Corporations Ⓒ68.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 245 to 248.

§ 1–1079. Reduction of capital

A. A corporation, by resolution of its board of directors, may reduce its capital in any of the following ways:

1. By reducing or eliminating the capital represented by shares of capital stock which have been retired; or

2. By applying to an otherwise authorized purchase or redemption of outstanding shares of its capital stock some or all of the capital represented by the shares being purchased or redeemed, or any capital that has not been allocated to any particular class of its capital stock; or

3. By applying to an otherwise authorized conversion or exchange of outstanding shares of its capital stock some or all of the capital represented by the shares being converted or exchanged, or some or all of any capital that has not been allocated to any particular class of its capital stock, or both, to the extent that such capital in the aggregate exceeds the total aggregate par value or the stated capital of any previously unissued shares issuable upon such conversion or exchange; or

4. By transferring to surplus:

a. some or all of the capital not represented by any particular class of its capital stock; or

b. some or all of the capital represented by issued shares of its par value capital stock, which capital is in excess of the aggregate par value of such shares; or

c. some of the capital represented by issued shares of its capital stock without par value.

B. Notwithstanding the other provisions of this section, no reduction of capital shall be made or effected unless the assets of the corporation remaining after such reduction shall be sufficient to pay any debts of the corporation for which payment has not been otherwise provided. No reduction of capital shall release any liability of any shareholder whose shares have not been fully paid.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Corporation's powers respecting ownership, voting, etc. of its own stock, rights of stock called for redemption, see Title 3, § 1–1041.

Dividends, payment, see Title 3, § 1-1049.

Oklahoma Statutes Annotated

Amount of stated capital, see 18 Okl.St. Ann. § 1035.

Consolidation or merger, see 18 Okl.St. Ann. § 1089.

Corporate purchase or redemption of stock out of capital, see 18 Okl.St. Ann. § 1041.

Dividends, payment, see 18 Okl.St. Ann. § 1049.

Reduction of capital, see 18 Okl.St. Ann. § 1079.

Library References

Corporations ☞67.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 243 to 244.

§ 1-1080. Restated certificate of incorporation

A. A corporation, whenever desired, may integrate into a single instrument all of the provisions of its certificate of incorporation which are then in effect and operative as a result of there having up to that time been filed with the Secretary of the Nation one or more certificates or other instruments pursuant to any of the sections referred to in Section 1-1008 of this Title, and it may at the same time also further amend its certificate of incorporation by adopting a restated certificate of incorporation.

B. If the restated certificate of incorporation merely restates and integrates but does not further amend the certificate of incorporation, as up to that time amended or supplemented by any instrument that was filed pursuant to any of the sections mentioned in Section 1-1008 of this Title, it may be adopted by the board of directors without a vote of the shareholders, or it may be proposed by the directors and submitted by them to the shareholders for adoption, in which case the procedure and vote required by Section 1-1077 of this Title for amendment of the certificate of incorporation shall be applicable. If the restated certificate of incorporation restates and integrates and also further amends in any respect the certificate of incorporation, as up to that time amended or supplemented, it shall be proposed by the directors and adopted by the shareholders in the manner and by the vote prescribed by Section 1-1077 of this Title or, if the corporation has not received any payment for any of its stock, in the manner and by the vote prescribed by Section 1-1076 of this Title.

C. A restated certificate of incorporation shall be specifically designated as such in its heading. It shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the Secretary of the Nation. If it was adopted by the board of directors without a vote of the shareholders, unless it was adopted pursuant to the provisions of Section 1-1076 of this Title, it shall state that it only restates and integrates and does not further amend the provisions of the corporation's certificate of incorporation as up to that time amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated certificate. A restated certificate of incorporation may omit:

1. Such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares; and

2. Such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective. Any such omissions shall not be deemed a further amendment.

D. A restated certificate of incorporation shall be executed, acknowledged and filed in accordance with the provisions of this act. Upon its filing with the Secretary of the Nation, the original certificate of incorporation, as up to that time amended or supplemented, shall be superseded. From that time forward, the restated certificate of incorporation, including any further amendments or changes made thereby, shall be the certificate of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

E. Any amendment or change effected in connection with the restatement and integration of the certificate of incorporation shall be subject to any other provision of the Muscogee (Creek) Nation General Corporation Act, not inconsistent with the provisions of this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Classes and series of stock, shareholder rights, see Title 3, § 1–1032.

Oklahoma Statutes Annotated

Amendment of certificate, see 18 Okl.St. Ann. §§ 1076, 1077.

Certificate of merger, domestic corporations, see 18 Okl.St. Ann. § 1081 et seq.

Consent of shareholders in lieu of meeting, see 18 Okl.St. Ann. § 1073.

Notice,

Exception, see 18 Okl.St. Ann. § 1075.

Waiver, see 18 Okl.St. Ann. § 1074.

Restated certificate of incorporation, see 18 Okl.St. Ann. § 1080.

Stock issue resolutions not prohibited by prior filing of restated certificate of incorporation, see 18 Okl.St. Ann. § 1032.

Library References

Corporations ⇌40.

Westlaw Topic No. 101.

C.J.S. Corporations § 58.

§ 1–1081. Merger or consolidation of domestic corporations

A. Any two or more corporations existing under the laws of this Nation may merge into a single corporation, which may be any one of the constituent corporations or may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation and declaring its advisability. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
 2. The mode of carrying the same into effect;
 3. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation of the surviving or resulting corporation;
 4. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
 5. The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights or securities of any other corporation which the holders of the shares are to receive in exchange for or upon conversion of the shares and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and
 6. Other details or provisions as are deemed desirable, including without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of Section 1-1036 of this Title. The agreement so adopted shall be executed and acknowledged in accordance with the provisions of Section 1-1007 of this Title. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement; provided, that the manner in which these facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The terms "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.
- C. The agreement required by the provisions of subsection B of this section shall be submitted to the shareholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. The terms of the agreement may require that the agreement be submitted to the shareholders whether or not the board of directors determines at any time subsequent to declaring its advisability that the agreement is no longer advisable and recommends that the shareholders reject it. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock whether voting or nonvoting, of the corporation at the address which appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable; provided, however, the notice shall be effective only with respect to mergers or consolidations for which the notice of the shareholders meeting to vote thereon has been mailed after November 1, 1988. At the meeting the agreement shall be considered and

a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or the assistant secretary of the corporation. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title. In lieu of filing an agreement of merger or consolidation required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of Section 1-1007 of this Title and which states:

1. The name and state of incorporation of each of the constituent corporations;
2. that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the provisions of this section;
3. The name of the surviving or resulting corporation;
4. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;
6. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation, stating the address thereof; and
7. That a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation. For purposes of Sections 1-1084 and 1-1086 of this Title, the term "shareholder" shall be deemed to include "member".

D. Any agreement of merger or consolidation may contain a provision that at any time prior to the time that the agreement, or a certificate filed with the Secretary of the Nation in lieu thereof, becomes effective in accordance with Section 1-1007 of this Title, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the shareholders of all or any of the constituent corporations; provided, if the agreement of merger or consolidation is terminated after the filing of the agreement, or a certificate filed with the Secretary of the Nation in lieu thereof, but before the agreement or certificate has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with Section 1-1007 of this Title. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the time that the agreement, or a certificate, filed with the Secretary of the Nation in lieu thereof, becomes effective in accordance with Section 1-1007 of this Title; provided, that an

amendment made subsequent to the adoption of the agreement by the shareholders of any constituent corporation shall not:

1. Alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation;
2. Alter or change any term of the certificate of incorporation of the surviving corporation to be effected by the merger or consolidation; or
3. Alter or change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series thereof of the constituent corporation.

If the agreement of merger or consolidation is amended after the filing of the agreement, or a certificate in lieu thereof, with the Secretary of State, but before the agreement or certificate has become effective, a certificate of amendment of merger or consolidation shall be filed in accordance with Section 1-1007 of this Title.

E. In the case of a merger, the certificate of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the certificate of incorporation are set forth in the certificate of merger.

F. Notwithstanding the requirements of subsection C of this section, unless required by its certificate of incorporation, no vote of shareholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if:

1. The agreement of merger does not amend in any respect the certificate of incorporation of the constituent corporation;
2. Each share of stock of the constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and
3. Either no shares of common stock of the surviving corporation and no shares, securities, or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under the plan do not exceed twenty percent (20%) of the shares of common stock of the constituent corporation outstanding immediately prior to the effective date of the merger. No vote of shareholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of the corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its shareholders pursuant to the provisions of this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to the provisions of this subsection and:

a. if it has been adopted pursuant to paragraph 1 of this subsection, that the conditions specified have been satisfied, or

b. if it has been adopted pursuant to paragraph 2 of this subsection, that no shares of stock of the corporation were issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation.

The agreement so adopted and certified shall then be filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title. Filing shall constitute a representation by the person who executes the certificate that the facts stated in the certificate remain true immediately prior to such filing.

G. 1. Notwithstanding the requirements of subsection C of this section, unless expressly required by its certificate of incorporation, no vote of shareholders of a constituent corporation shall be necessary to authorize a merger with or into a single direct or indirect wholly owned subsidiary of the constituent corporation if

a. the constituent corporation and the direct or indirect wholly owned subsidiary of the constituent corporation are the only constituent corporations to the merger,

b. each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers, and preferences, and the qualifications, limitations, and restrictions thereof, as the share of stock of the constituent corporation being converted in the merger,

c. the holding company and each of the constituent corporations to the merger are corporations of this Nation,

d. the certificate of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the certificate of incorporation and bylaws of the constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of stock, if a change, exchange, reclassification, or cancellation has become effective, as a result of the merger, the constituent corporation or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company,

f. the directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger,

g. the certificate of incorporation of the surviving corporation immediately following the effective time of the merger is identical to the certificate of incorporation of the constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial

board of directors, and the initial subscribers of shares and provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of stock, if a change, exchange, reclassification, or cancellation has become effective; provided, however, that:

(1) the certificate of incorporation of the surviving corporation other than the election or removal of directors of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation that requires for its adoption under this title or its certificate of incorporation the approval of the shareholders of the surviving corporation shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company or any successor by merger, by the same vote as is required by this title or by the certificate of incorporation of the surviving corporation, and

(2) the certificate of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares of capital stock that the surviving corporation is authorized to issue, and

h. the shareholders of the constituent corporation do not recognize gain or loss for federal income tax purposes as determined by the board of directors of the constituent corporation.

Neither division (1) of subparagraph g of paragraph 1 of subsection G of this section nor any provision of the surviving corporation's certificate of incorporation required by division (1) of subparagraph g of paragraph 1 of subsection G of this section shall be deemed or construed to require approval of the shareholders of the holding company to elect or remove directors of the surviving corporation.

2. As used in this subsection, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this subsection, was at all times a direct or indirect wholly owned subsidiary of the constituent corporation and whose capital stock is issued in a merger.

3. From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this subsection:

a. to the extent the restriction of Section 1-1090.3 of this Title applied to the constituent corporation and its shareholders at the effective time of the merger, restrictions shall apply to the holding company and its shareholders immediately after the effective time of the merger as though I were the constituent corporation, and all shareholders of stock of the holding company acquired in the merger shall for purposes of Section 1-1090.3 of this Title be deemed to have been acquired at the time that the shareholder of stock of the constituent corporation converted in the merger was acquired; provided, that any shareholder who immediate prior to the effective time of the merger was not an interested shareholder within the meaning of Section 1-1090.3 of this Title shall not solely by reason of the merger become an interested shareholder of the holding company, and

b. if the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted shall be represented by the stock certificates that previously represented the shares of capital stock of the constituent corporation. If any agreement of merger is adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this subsection, the secretary or assistant secretary of the constituent corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in this subparagraph have been satisfied. The agreement so adopted and certified shall then be filed and become effective in accordance with Section 1–1007 of this Title. Filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to the filing.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, see 18 Okl.St. Ann. § 1091.
 Banks, see 6 Okl.St. Ann. § 1101 et seq.
 Board of directors, committees, powers, see 18 Okl.St. Ann. § 1027.
 Burial associations, see 8 Okl.St. Ann. § 217.
 Consent of shareholders in lieu of meeting, see 18 Okl.St. Ann. § 1073.
 Dissenting shareholders, appraisal rights, see 18 Okl.St. Ann. § 1091.
 Domestic and foreign stock and nonstock corporations, see 18 Okl.St. Ann. § 1087.
 Fees for filing articles, see 18 Okl.St. Ann. § 1142.
 Insurance,
 Limited stock accident, health and life insurers, see 36 Okl.St. Ann. § 2509.
 Mutual insurers, see 36 Okl.St. Ann. § 2133.
 Merger or consolidation of domestic corporations, see 18 Okl.St. Ann. § 1081.
 National bank, conversion into state bank, see 6 Okl.St. Ann. § 1107.
 Notice,
 Exception, see 18 Okl.St. Ann. § 1075.
 Waiver, see 18 Okl.St. Ann. § 1074.
 Public service corporations, consolidation, see Okl.St. Ann. Const. Art. 9, § 8.
 Railroads, competing lines, see Okl.St. Ann. Const. Art. 9, §§ 8, 9.
 Required filing with county clerk, see 18 Okl.St. Ann. § 1144.
 Rural electric cooperatives, merger or consolidation, see 18 Okl.St. Ann. §§ 437.12, 437.13.
 Rural telephone cooperatives, merger or consolidation, see 18 Okl.St. Ann. §§ 438.17, 438.18.
 Sales tax, transfers pursuant to consolidation or merger, exemptions, see 68 Okl.St. Ann. § 1360.
 Savings and loan associations, see 18 Okl.St. Ann. § 381.61.
 Street railways, see 66 Okl.St. Ann. § 202.
 Take-over offers, see 71 Okl.St. Ann. § 451 et seq.

Library References

Corporations ⇄581 to 591.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 885 to 913.

§ 1–1082. Merger or consolidation of domestic and foreign corporations; service of process upon surviving or resulting corporation

A. Any one or more corporations of this state may merge or consolidate with one or more other corporations of any other state or states of the United States, or of the District of Columbia if the laws of the other state or states or of

the District permit a corporation of the jurisdiction to merge or consolidate with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. In addition, any one or more corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of this Nation if the surviving or resulting corporation will be a corporation of this Nation, and if the laws under which the other corporation or corporations are formed permit a corporation of that jurisdiction to merge or consolidate with a corporation of another jurisdiction.

B. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;
3. The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights, or securities of any other corporation which the holder of the shares are to receive in exchange for, or upon conversion of, the shares and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;
4. Other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of Section 1-1036 of this Title; and
5. Other provisions or facts as shall be required to be set forth in the certificate of incorporation by the laws of the Nation which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement, provided that the manner in which the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement shall be adopted, approved, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of an Muscogee (Creek) Nation corporation, in the same manner as is provided for in Section 1-1081 of this Title. The agreement shall be filed and shall become effective for all purposes of the laws of this Nation when and as provided for in Section 1-1081 of this Title with respect to the merger or consolidation of corporations of this Nation. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of Section 1-1007 of this Title, which states:

1. The name and state of incorporation of each of the constituent corporations;

2. That an agreement of merger or consolidation has been approved, adopted, executed and acknowledged by each of the constituent corporations in accordance with the provisions of this subsection;

3. The name of the surviving or resulting corporation;

4. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation and the address thereof;

7. That a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation;

8. If the corporation surviving or resulting from the merger or consolidation is to be a corporation of this Nation, the authorized capital stock of each constituent corporation which is not a corporation of this Nation; and

9. The agreement, if any, required by the provisions of subsection D of this section. For purposes of Section 1-1085 of this Title, the term "shareholder" in subsection D of this section shall be deemed to include "member".

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any nation other than this Nation, it shall agree that it may be served with process in this Nation in any proceeding for enforcement of any obligation of any constituent corporation of this Nation, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1-1091 of this Title, and shall irrevocably appoint the Secretary of the Nation as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of process shall be mailed by the Secretary of the Nation. In the event of service upon the Secretary of the Nation in

accordance with the provisions of this subsection, the Secretary of the Nation shall immediately notify the surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to the surviving or resulting corporation at its address specified unless the surviving or resulting corporation shall have designated in writing to the Secretary of the Nation a different address for this purpose, in which case it shall be mailed to the last address so designated. The notice shall include a copy of the process and any other papers served on the Secretary of the Nation pursuant to the provisions of this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of the Nation that service is being effected pursuant to the provisions of this subsection and to pay the Secretary of the Nation the fee provided for in paragraph 7 of Section 1-1142 of this Title, which fee shall be taxed as part of the costs in the proceeding. The Secretary of the Nation shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of the Nation, the fact that service has been effected pursuant to the provisions of this subsection, the return date thereof, and the date service was made. The Secretary of the Nation shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Secretary of the Nation.

E. The provisions of subsections C and D of Section 1-1081 of this Title shall apply to any merger or consolidation pursuant to the provisions of this section. The provisions of subsection E of Section 1-1081 of this Title shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is a corporation of this Nation. The provisions of subsection F of Section 1-1081 of this Title shall apply to any merger pursuant to the provisions of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Board of directors, committees, powers, see 18 Okl.St. Ann. § 1027.
 Merger or consolidation of domestic and foreign corporations, service of process upon surviving or resulting corporation, see 18 Okl.St. Ann. § 1082.
 Required filing with county clerk, see 18 Okl.St. Ann. § 1144.
 Service, generally, see 12 Okl.St. Ann. §§ 2004, 2005.
 Take-over offers, see 71 Okl.St. Ann. § 451 et seq.

Library References

Corporations ☞581 to 591, 690.	C.J.S. Corporations §§ 885 to 913, 1016.
Indians ☞510.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 101, 209.	

§ 1-1083. Merger of parent corporation and subsidiary or subsidiaries

A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of the stock of a corporation or corporations, other than a corporation which has in its certificate of incorporation the provision required by division (1) of subparagraph g of paragraph 1 of Section 1-1081 of this Title of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by another corporation and one of

the corporations is a corporation of this Nation and the other or others are corporations of this Nation or of any other nation or nations or of the District of Columbia and the laws of the other nation or nations or of the District of Columbia, permit a corporation of that jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge the other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of the other corporations, into one of the other corporations by executing, acknowledging, and filing, in accordance with the provisions of Section 1-1007 of this Title, a certificate of ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of its adoption; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, which are parties to the merger, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation. Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. The term "facts", as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefore, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after twenty (20) days' notice of the purpose of the meeting is mailed to each such shareholder at the shareholder's address as it appears on the records of the corporation if the parent corporation is a corporation of this Nation or nation that the proposed merger has been adopted, approved, certified, executed and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is not a corporation of this Nation. If the surviving corporation exists under the laws of the District of Columbia or any nation other than this Nation, the provisions of subsection D of Section 1-1082 of this Title shall also apply to a merger pursuant to the provisions of this section.

B. Subject to the provisions of paragraph 1 of subsection A of Section 1-1006 of this Title, if the surviving corporation is a Muscogee (Creek) Nation corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be so changed.

C. The provisions of subsection D of Section 1-1081 of this Title shall apply to a merger pursuant to the provisions of this section, and the provisions of

subsection E of Section 1-1081 of this Title shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is the subsidiary corporation and is a corporation of this Nation. For purposes of this subsection, references to “agreement of merger” in subsections D and E of Section 1-1081 of this Title shall mean the resolution of merger adopted by the board of directors of the parent corporation. Any merger which effects any changes other than those authorized by the provisions of this section or made applicable by this subsection shall be accomplished in accordance with the provisions of Section 1-1081 or 1-1082 of this Title. The provisions of Section 1-1091 of this Title shall not apply to any merger effected pursuant to the provisions of this section, except as provided for in subsection D of this section.

D. In the event all of the stock of a subsidiary Muscogee (Creek) Nation corporation party to a merger effected pursuant to the provisions of this section is not owned by the parent corporation immediately prior to the merger, the shareholders of the subsidiary Muscogee (Creek) Nation corporation party to the merger shall have appraisal rights as set forth in Section 1-1091 of this Title.

E. A merger may be effected pursuant to the provisions of this section although one or more of the corporate parties to the merger is a corporation organized under the laws of a jurisdiction other than one of the United States; provided, that the laws of that jurisdiction permit a corporation of that jurisdiction to merge with a corporation of another jurisdiction.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Board of directors, committees, powers, see 18 Okl.St. Ann. § 1027.
 Dissolution of joint venture corporation having two shareholders, see 18 Okl.St. Ann. § 1094.
 Insurance companies, subsidiaries, see 36 Okl.St. Ann. § 1651 et seq.
 Merger of parent corporation and subsidiary or subsidiaries, see 18 Okl.St. Ann. § 1083.
 Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ¶581 to 590.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 885 to 913.

§ 1-1084. Merger or consolidation of domestic nonstock, not for profit corporations

A. Any two or more nonstock corporations of this Nation, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. 1. The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

- a. the terms and conditions of the merger or consolidation;

- b. the mode of carrying the same into effect;
- c. other provisions or facts required or permitted by the Muscogee (Creek) Nation General Corporation Act to be stated in a certificate of incorporation for nonstock corporations as can be stated in the case of a merger or consolidation, stated in an altered form as the circumstances of the case require;
- d. the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation; and
- e. other details or provisions as are deemed desirable.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement, provided that the manner in which the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination of action by any person or body, including the corporation.

C. The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting for the purpose of acting on the agreement. Notice of the time, place and purpose of the meeting shall be mailed to each member of each such corporation who has the right to vote for the election of the members of the governing body of the corporation, at the member's address as it appears on the records of the corporation at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable. At the meeting, the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement. If a majority of the voting power of voting members of each such corporation shall be for the adoption of the agreement, that fact shall be certified on the agreement by the officer performing the duties ordinarily performed by the secretary or assistant secretary of a corporation. The agreement shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of Section 1-1007 of this Title. The provisions of paragraphs 1 through 6 of subsection C of Section 1-1081 of this Title shall apply to a merger or consolidation under this section.

D. If, under the provisions of the certificate of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided for in subsection B of this section shall be submitted to the members of the governing body of the corporation or corporations, at a meeting thereof. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting two-thirds (2/3) of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the

agreement by the vote of the members of a corporation and thereafter the same procedure shall be followed to consummate the merger or consolidation.

E. The provisions of subsection E of Section 1-1081 of this Title shall apply to a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if the charitable nonstock corporation would thereby have its charitable status lost or impaired; but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Merger or consolidation of domestic nonstock, not for profit corporations, see 18 Okl.St. Ann. § 1084.
 Required filing with county clerk, see 18 Okl.St. Ann. § 1144.
 Rural electric cooperative corporations, merger or consolidation, see 18 Okl.St. Ann. § 437.12 et seq.
 Rural telephone cooperative corporations, merger or consolidation, see 18 Okl.St. Ann. §§ 438.17, 438.18.

Library References

Corporations ☞ 581 to 590.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 885 to 913.

§ 1-1085. Merger or consolidation of domestic and foreign nonstock, not for profit corporations; service of process upon surviving or resulting corporation

A. Any one or more nonstock, not for profit corporations of this Nation may merge or consolidate with one or more other nonstock, not for profit corporations of any other Nation or Nations of the United States or of the District of Columbia, if the laws of such other Nation or Nations or of the District of Columbia permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock, not for profit corporation formed by the consolidation, which may be a corporation of the Nation of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. In addition, any one or more nonstock, not for profit corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more nonstock, not for profit corporations of this Nation if the surviving or resulting corporation will be a corporation of this Nation, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.

B. 1. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

- a. the terms and conditions of the merger or consolidation;

- b. the mode of carrying the same into effect;
- c. the manner of converting the memberships of each of the constituent corporations into members of the corporation surviving or resulting from such merger or consolidation;
- d. such other details and provisions as shall be deemed desirable; and
- e. such other provisions or facts as shall then be required to be stated in a certificate of incorporation by the laws of the Nation which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed and, in the case of an Oklahoma corporation, in the same manner as is provided for in this act. The agreement shall be filed and shall become effective for all purposes of the laws of this Nation when and as provided for in this act with respect to the merger of nonstock, not for profit corporations of this Nation.

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any Nation other than this Nation, it shall agree that it may be served with process in this Nation in any proceeding for enforcement of any obligation of any constituent corporation of this Nation, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation and shall irrevocably appoint the Secretary of the Nation as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of the Nation. In the event of such service upon the Secretary of the Nation in accordance with the provisions of this subsection, the Secretary of the Nation shall immediately notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of the Nation a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of the Nation. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of the Nation that service is being made pursuant to the provisions of this subsection, and to pay the Secretary of the Nation the fee prescribed by this act, which fee shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of the Nation shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to the provisions of this

subsection, the return date thereof, and the date when the service was made. The Secretary of the Nation shall not be required to retain such information for a period longer than five (5) years from his receipt of service of process.

E. This act shall apply to a merger pursuant to the provisions of this section if the corporation surviving the merger is a corporation of this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Merger or consolidation of domestic and foreign nonstock, not for profit corporations, service of process upon surviving or resulting corporation, see 18 Okl.St. Ann. § 1085.
Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ⇄581 to 591, 690.
Indians ⇄510.
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 885 to 913, 1016.
C.J.S. Indians §§ 151 to 179.

§ 1-1086. Merger or consolidation of domestic stock and nonstock corporations

A. Any one or more nonstock corporations of this Nation, whether or not organized for profit, may merge or consolidate with one or more stock corporations of this Nation, whether or not organized for profit. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving constituent corporation or a new corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

B. The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

1. the terms and conditions of the merger or consolidation;
2. the mode carrying the same into effect;
3. such other provisions or facts required or permitted by the Muscogee (Creek) Nation General Corporation Act to be stated in the certificate of incorporation as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;
4. the manner of converting the shares of stock of a stock corporation and the interests of the members of nonstock corporation into shares or other securities of a stock corporation or membership interests of a nonstock corporation surviving or resulting from such merger or consolidation, and if any shares of any such stock corporation or membership interests of any such nonstock corporation are not to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other corporation or entity which the

holders of shares of any such stock corporation or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and

5. such other details or provisions as are deemed desirable.

C. In a merger or consolidation provided for in this section, the interests of members of a constituent nonstock corporation may be treated in various ways so as to convert such interests into interests of value, other than shares of stock, in the surviving or resulting stock corporation or into shares of stock in the surviving or resulting stock corporation, voting or nonvoting, or into creditor interests or any other interests of value equivalent to their membership interests in their nonstock corporation. The voting rights of members of a constituent nonstock corporation need not be considered an element of value in measuring the reasonable equivalence of the value of the interests received in the surviving or resulting stock corporation by members of a constituent nonstock corporation, nor need the voting rights of shares of stock in a constituent stock corporation be considered as an element of value in measuring the reasonable equivalence of the value of the interests in the surviving or resulting nonstock corporations received by shareholders of a constituent stock corporation, and the voting or nonvoting shares of a stock corporation may be converted into voting or nonvoting regular, life, general, special or other type of membership, however designated, creditor interests or participating interests, in the nonstock corporation surviving or resulting from such merger or consolidation of a stock corporation and a nonstock corporation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

D. The agreement, required by subsection B of this section in the case of each constituent stock corporation, shall be adopted, approved, certified, executed and acknowledged by each constituent corporation in the same manner as is provided for in Section 1-1081 of this Title and, in the case of each constituent nonstock corporation, shall be adopted, approved, certified, executed and acknowledged by each of said constituent corporations in the same manner as is provided for in Section 1-1084 of this Title. The agreement shall be filed and shall become effective for all purposes of the laws of this Nation when and as provided for in Section 1-1081 of this Title with respect to the merger of stock corporations of this Nation. Insofar as they may be applicable, the provisions of paragraphs 1 through 7 of subsection C of Section 1-1081 of this Title shall apply to a merger under this section.

E. The provisions of subsection E of Section 1-1081 of this Title shall apply to a merger pursuant to the provisions of this section, if the surviving corporation is a corporation of this Nation. The provisions of subsections C and D of Section 1-1081 of this Title shall apply to any constituent stock corporation participating in a merger or consolidation pursuant to the provisions of this

section. The provisions of subsection F of Section 1-1081 of this Title shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, see 18 Okl.St. Ann. § 1091.

Merger or consolidation of domestic stock and nonstock corporations, see 18 Okl.St. Ann. § 1086.

Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ⇌ 581 to 590.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 885 to 913.

§ 1-1087. Merger or consolidation of domestic and foreign stock and nonstock corporations

A. Any one or more corporations of this Nation, whether stock or nonstock corporations and whether or not organized for profit, may merge or consolidate with one or more other corporations of any other Nation or Nations of the United States or of the District of Columbia, whether stock or nonstock corporations and whether or not organized for profit, if the laws under which the other corporation or corporations are formed shall permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the place of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving or new corporation may be either a stock corporation or a membership corporation, as shall be specified in the agreement of merger required by the provisions of subsection B of this section.

B. The method and procedure to be followed by the constituent corporations so merging or consolidating shall be as prescribed in Section 1-1086 of this Title in the case of Muscogee (Creek) Nation corporations. The agreement of merger or consolidation shall also set forth such other matters or provisions as shall then be required to be set forth in certificates of incorporation by the laws of the Nation which are stated in the agreement to be the laws which shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. The agreement, in the case of foreign corporations, shall be adopted, approved, executed and acknowledged by each of the constituent foreign corporations in accordance with the laws under which each is formed.

C. The requirements of the provisions of this Title as to the appointment of the Secretary of the Nation to receive process and the manner of serving the same in the event the surviving or new corporation is to be governed by the laws of any other Nation shall also apply to mergers or consolidations effected pursuant to the provisions of this section. The provisions of this Title shall apply to mergers effected pursuant to the provisions of this section if the surviving corporation is a corporation of this Nation. The provisions of this Title shall apply to any constituent stock corporation participating in a merger of consolidation pursuant to the provisions of this section. The provisions of this Title shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

D. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, see 18 Okl.St. Ann. § 1091.

Merger or consolidation of domestic and foreign stock and nonstock corporations, see 18 Okl.St. Ann. § 1087.

Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ¶¶ 581 to 590, 690.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 885 to 913, 1016.

§ 1–1088. Status, rights, liabilities, etc. of constituent and surviving or resulting corporations following merger or consolidation

When any merger or consolidation shall have become effective pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act, for all purposes of the laws of this Nation the separate existence of all the constituent corporations, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, possessing all the rights, privileges, powers and franchises as well of public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated; and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation surviving or resulting from such merger or consolidation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the surviving or resulting corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or

otherwise, under the laws of this Nation, in any of such constituent corporations, shall not revert or be in any way impaired by reason of the provisions of the Muscogee (Creek) Nation General Corporation Act; but all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations, from that time forward, shall attach to said surviving or resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, dissenting shareholders, see 18 Okl.St. Ann. § 1091.

Effect of merger on pending action, see 18 Okl.St. Ann. § 1090.

Status, rights, liabilities, etc. of constituent and surviving or resulting corporations following merger or consolidation, see 18 Okl.St. Ann. § 1088.

Transfer of vehicle title in merger or consolidation without excise tax, see 68 Okl.St. Ann. § 2105.

Library References

Corporations ⌘586.

Westlaw Topic No. 101.

C.J.S. Corporations § 907.

§ 1–1089. Powers of corporation surviving or resulting from merger or consolidation; issuance of stock, bonds or other indebtedness

When two or more corporations are merged or consolidated, the corporation surviving or resulting from the merger may issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all payments it will be required to make, or obligations it will be required to assume, in order to effect the merger or consolidation. For the purpose of securing the payment of any such bonds and obligations, it shall be lawful for the surviving or resulting corporation to mortgage its corporate franchise, rights, privileges and property, real, personal or mixed. The surviving or resulting corporation may issue certificates of its capital stock or uncertificated stock if authorized to do so and other securities to the shareholders of the constituent corporations in exchange or payment for the original shares, in such amount as shall be necessary in accordance with the terms of the agreement of merger or consolidation in order to effect such merger or consolidation in the manner and on the terms specified in the agreement.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Mortgage or pledge of assets, see 18 Okl.St. Ann. § 1093.

Powers of corporation surviving or resulting from merger or consolidation, issuance of stock, bonds or other indebtedness, see 18 Okl.St. Ann. § 1089.

Library References

Corporations ⌘588.

Westlaw Topic No. 101.

C.J.S. Corporations § 909.

§ 1-1090. Effect of merger upon pending actions

Any action or proceeding, whether civil, criminal or administrative, pending by or against any corporation which is a party to a merger or consolidation shall be prosecuted as if such merger or consolidation had not taken place, or the corporation surviving or resulting from such merger or consolidation may be substituted in such action or proceeding.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Effect of merger upon pending actions, see 18 Okl.St. Ann. § 1090.

Library References

Corporations ⇌590.

Indians ⇌509.

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 910 to 913.

C.J.S. Indians §§ 151 to 179.

§ 1-1090.1. Share acquisitions by domestic corporations

A. One or more corporations may acquire all or part of the outstanding shares of one or more other corporations, if the board of directors of each corporation adopts and its shareholders approve, if required by subsection C of this section, the agreement of acquisition.

B. The agreement of acquisition shall set forth:

1. the name or names of the corporation or corporations whose shares will be acquired and the name or names of the acquiring corporation or corporations;
2. the terms and conditions of the acquisitions;
3. the manner and basis of exchanging the shares to be acquired for the consideration proffered;
4. any amendments or changes in the certificate of incorporation of a corporation which is a party to the agreement; and
5. such other provisions as the directors shall deem advisable.

C. After adopting an agreement of acquisition, the board of directors of each corporation whose shares are to be acquired, in whole or in part, or whose certificate of incorporation is to be amended, shall submit the agreement of acquisition for approval by the shareholders entitled to vote thereon. Due notice of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at his address as it appears on the records of the corporation, at least twenty (20) days prior to the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable. At the meeting, the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation. If the agreement shall be adopted and approved in accordance with the provisions of this section, it shall then be filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title. In lieu of filing an agreement of acquisition required by this

section, the acquiring corporation may file a certificate of acquisition, executed in accordance with the provisions of Section 1-1007 of this Title, which states:

1. the name and jurisdiction of incorporation of each corporation which is a party to the agreement;
2. that the agreement of acquisition has been adopted, approved, certified, executed, and acknowledged in accordance with the provisions of this section;
3. whether the corporation is an acquiring corporation or a corporation whose shares are to be acquired;
4. the amendments or changes, if any, in the certificate of incorporation that are to be effected by the agreement of acquisition;
5. that the executed agreement of acquisition is on file at the principal place of business of each corporation, stating the address thereof; and
6. that a copy of the agreement of acquisition will be furnished by each corporation, on request and without cost, to any of its shareholders.

D. Any agreement of acquisition may contain a provision that at any time prior to the filing of the agreement with the Secretary of the Nation, the agreement may be terminated by the board of directors of any affected corporation notwithstanding approval of the agreement by the shareholders of one or more of the affected corporations. Any agreement of acquisition may contain a provision that the board of directors of the affected corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the Secretary of the Nation, provided that an amendment made subsequent to the adoption of the agreement by the shareholders of any affected corporation shall not:

1. alter or change the amount or kind of consideration to be received in exchange for or on conversion of all or part of the shares to be acquired;
2. alter or change any term of the certificate of incorporation of the affected corporations; or
3. alter or change any of the terms and consideration of the agreement if such alteration or change would adversely affect the holders of any class or series of a corporation whose shares are to be acquired.

E. The holders of the outstanding shares of a class shall be entitled to vote as a class upon an agreement of acquisition, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the agreement provides for the acquisition of all or part of the shares of the class.

F. This section shall not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

G. Any shareholder whose shares are to be acquired pursuant to an agreement of acquisition adopted and approved in accordance with this section and who has complied with the procedural steps specified in subsection D of Section 1-1091 of this Title for mergers and consolidations and who has neither voted in favor of the share acquisition nor consented thereto in writing shall be entitled to an appraisal by the district court of the fair value of his shares in compliance with the same provisions and procedures and with the same rights

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and limitations as set out in subsections E through K of Section 1–1091 of this Title.

H. If the entity acquiring shares pursuant to this section is governed by the laws of the District of Columbia or any nation other than this Nation, the entity shall agree that it may be served with process in this Nation in any proceeding for enforcement of any obligation of the acquiring corporation arising from the share acquisition, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1–1091 of this Title, and shall irrevocably appoint the Secretary of the Nation as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of the Nation. In the event of such service upon the Secretary of the Nation in accordance with this subsection, the Secretary of the Nation shall forthwith notify such acquiring corporation thereof by letter sent by certified mail, with return receipt requested, directed to such acquiring corporation at its address so specified, unless such acquiring corporation shall have designated in writing to the Secretary of the Nation a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Secretary of the Nation pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of the Nation that service is being effected pursuant to this subsection and to pay the Secretary of the Nation the fee provided for in paragraph 7 of Section 1–1142 of this Title, which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of Nation shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of the Nation, the fact that service has been served upon the Secretary of Nation, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Secretary of the Nation shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

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Share acquisitions, see 18 Okl.St. Ann. § 1090.1.

Library References

Corporations \S 115, 377.
Westlaw Topic No. 101.
C.J.S. Corporations $\S\S$ 301 to 318, 658.

§ 1–1090.2. Merger or consolidation of domestic corporation and limited partnership

A. Any one or more corporations of this Nation may merge or consolidate with one or more business entities of this Nation or of any other Nation or Nations of the United States, or of the District of Columbia, unless the laws of

the other Nation or Nations or the District of Columbia forbid the merger or consolidation. A corporation or corporations and one or more business entities may merge with or into a corporation, which may be any one of the corporations, or they may merge with or into a business entity, which may be any one of the business entities, or they may consolidate into a new corporation or business entity formed by the consolidation, which shall be a corporation or business entity of this Nation or any other Nation of the United States, or the District of Columbia, which permits the merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more business entities formed under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of this Nation if the surviving or resulting corporation will be a corporation of this Nation and the laws under which the business entity or entities are formed permit a business entity of such jurisdiction to merge or consolidate with a corporation of another jurisdiction. As used in this section, "business entity" means a domestic or foreign partnership whether general or limited, limited liability company, business trust, common law trust, or other unincorporated business.

B. Each corporation and business entity merging or consolidating shall enter into a written agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the consolidation into effect;
3. The manner of converting the shares of stock of each such corporation and the ownership interests of each business entity into shares, ownership interests or other securities of the entity surviving or resulting from such merger or consolidation, and if any shares of any such corporation or any partnership interests of any such business entity are not to be converted solely into shares, partnership interests or other securities of the entity surviving or resulting from the merger or consolidation, the cash, property, rights, or securities of any other rights or securities of any other corporation or entity which the holders of the shares or ownership interests are to receive in exchange for, or upon conversion of, the shares or ownership interests and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation or entity may be in addition to or in lieu of shares, ownership interests or other securities of the entity surviving or resulting from the merger or consolidation; and
4. Other details or provisions as are deemed desirable, including but not limited to, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or business entity. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement required by subsection B of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporations in the same manner as is provided in Section 1-1081 of this Title and, in the case of the business entities, in accordance with their constituent agreements and in accordance with the laws of the jurisdiction under which they are formed, as the case may be; provided that no holder of securities or an interest in a constituent entity who has not voted for or consented to the merger or consolidation shall be required to accept an interest in the surviving or resulting business entity if acceptance would expose the holder to personal liability for the debts of the surviving business entity. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this Nation when and as provided in Section 1-1081 of this Title with respect to the merger or consolidation of corporations of this Nation. In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation or business entity may file a certificate of merger or consolidation, executed in accordance with Section 1-1007 of this Title if the surviving or resulting entity is a corporation, or by a person authorized to act for the business entity, if the surviving or resulting entity is a business entity, which states:

1. The name and jurisdiction of formation of each of the constituent entities;
2. That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;
3. The name of the surviving or resulting corporation or business entity;
4. In the case of a merger in which a corporation is the surviving entity, any amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
5. In the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as set forth in an attachment to the certificate;
6. In the case of a consolidation in which a business entity other than a corporation is the resulting entity, that the charter of the resulting entity shall be as set forth in an attachment to the certificate;
7. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation or business entity and the address thereof;
8. That a copy of the agreement of consolidation or merger shall be furnished by the surviving or resulting entity, on request and without cost, to any shareholder of any constituent corporation or any partner of any constituent business entity; and
9. The agreement, if any, required by subsection D of this section.

D. If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any nation other than this Nation, the entity shall agree that it may be served with process in this

Nation in any proceeding for enforcement of any obligation of any constituent corporation or business entity of this Nation, as well as for enforcement of any obligation of the surviving or resulting corporation or business entity arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1-1091 of this Title, and shall irrevocably appoint the Secretary of the Nation as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of any process shall be mailed by the Secretary of the Nation. In the event of service upon the Secretary of the Nation pursuant to this subsection, the Secretary of the Nation shall forthwith notify the surviving or resulting corporation or business entity by a letter, sent by certified mail with return receipt requested, directed to the surviving or resulting corporation or business entity at its specified address, unless the surviving or resulting corporation or business entity shall have designated in writing to the Secretary of the Nation a different address for that purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Secretary of the Nation pursuant to this subsection. It shall be the duty of the plaintiff in the event of any service to serve process and any other papers in duplicate, to notify the Secretary of the Nation that service is being effected pursuant to this subsection and to pay the Secretary of the Nation the fee provided for in paragraph 7 of subsection A of Section 1-1142 of this Title, which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of the Nation shall maintain an alphabetical record of any such service, setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of the Nation, the fact that service has been served upon the Secretary of the Nation, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Secretary of the Nation shall not be required to retain this information longer than five (5) years from the date of receipt of the service of process by the Secretary of the Nation.

E. Subsections C, D, E, F and G of Section 1-1081 of this Title and Sections 1-1088 through 1-1090 and 1-1127 of this Title, insofar as they are applicable, shall apply to mergers or consolidations between corporations and business entities.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Merger or consolidation of domestic corporation and business entity, see 18 Okl.St. Ann. § 1090.2.

Library References

Corporations ☞ 581 to 590.

Partnership ☞ 363.

Westlaw Topic Nos. 101, 289.

C.J.S. Corporations §§ 885 to 913.

C.J.S. Partnership §§ 417, 427.

§ 1-1090.3. Business combinations with interested shareholders

A. Notwithstanding any other provisions of this Title, a corporation shall not engage in any business combination with any interested shareholder for a

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period of three (3) years following the time that the person became an interested shareholder, unless:

1. Prior to that time, the board of directors of the corporation approved either the business combination or the transaction which resulted in the person becoming an interested shareholder;

2. Upon consummation of the transaction which resulted in the person becoming an interested shareholder, the interested shareholder owned of record or beneficially at least eighty-five percent (85%) of the outstanding voting stock of the corporation at the time the transaction commenced, excluding for purposes of determining the voting power the votes attributable to those shares owned of record or beneficially by:

- a. persons who are directors and also officers, and
- b. employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

3. At or subsequent to such time, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least two-thirds (2/3) of the outstanding voting stock which is not attributable to shares owned of record or beneficially by the interested shareholder.

B. The restrictions contained in this section shall not apply if:

1. The corporation's original certificate of incorporation contains a provision expressly electing not to be governed by this section;

2. The corporation, by action of its board of directors, adopts an amendment to its bylaws within ninety (90) days of the effective date of this section, expressly electing not to be governed by this section, which amendment shall not be further amended by the board of directors;

3. a. The corporation, by action of its shareholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by this section, provided that, in addition to any other vote required by law, an amendment to the certificate of incorporation or bylaws must be approved by the affirmative vote of a majority of the outstanding voting stock of the corporation.

b. An amendment adopted pursuant to this paragraph shall be effective immediately in the case of a corporation that both:

(1) has never had a class of voting stock that falls within any of the three categories set out in paragraph 4 of this subsection, and

(2) has not elected by a provision in its original certificate of incorporation or any amendment thereto to be governed by this section.

c. In all other cases, an amendment adopted pursuant to this paragraph shall not be effective until twelve (12) months after the adoption of the amendment and shall not apply to any business combination between a corporation and any person who became an interested shareholder of the corporation on or prior to the adoption. A bylaw amendment adopted pursuant to this paragraph shall not be further amended by the board of directors;

4. The corporation does not have a class of voting stock that is:
 - a. listed on a national securities exchange,
 - b. authorized for quotation on the NASDAQ stock market, or
 - c. held of record by one thousand or more shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder;
5. A person becomes an interested shareholder inadvertently and:
 - a. as soon as practicable divests itself of ownership of sufficient shares so that the person ceases to be an interested shareholder, and
 - b. would not, at any time within the three-year period immediately prior to a business combination between the corporation and the person, have been an interested shareholder but for the inadvertent acquisition;
6. a. The business combination is proposed prior to the consummation or abandonment of, and subsequent to the earlier of the public announcement or the notice required hereunder of, a proposed transaction which:
 - (1) constitutes one of the transactions described in subparagraph b of this paragraph,
 - (2) is with or by a person who:
 - (a) was not an interested shareholder during the previous three (3) years, or
 - (b) became an interested shareholder with the approval of the corporation's board of directors or during the period described in paragraph 7 of this subsection, and
 - (3) is approved or not opposed by a majority of the members of the board of directors then in office, but not less than one, who were directors prior to any person becoming an interested shareholder during the previous three (3) years or were recommended for election or elected to succeed the directors by a majority of the directors;
- b. The proposed transactions referred to in subparagraph a of this paragraph are limited to:
 - (1) a share acquisition pursuant to Section 1-1090.1 of this Title, or a merger or consolidation of the corporation, except for a merger in respect of which, pursuant to subsection F or G of Section 1-1081 of this Title, no vote of the shareholders of the corporation is required,
 - (2) a sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to any direct or indirect wholly-owned subsidiary or to the corporation, having an aggregate market value equal to fifty percent (50%) or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation, or
 - (3) a proposed tender or exchange offer for outstanding stock of the corporation which represents fifty percent (50%) or more of the outstanding voting

stock of the corporation. The corporation shall give not less than twenty (20) days' notice to all interested shareholders prior to the consummation of any of the transactions described in divisions (1) or (2) of this subparagraph.

7. The business combination is with an interested shareholder who became an interested shareholder at a time when the restriction contained in this section did not apply by reason of any paragraphs 1 through 4 of this subsection; provided, however, that this paragraph shall not apply if, at the time the interested shareholder became an interested shareholder, the corporation's certificate of incorporation contained a provision authorized by subsection C of this section.

C. Notwithstanding paragraphs 1, 2, 3 and 4 of subsection B of this section, a corporation may elect by a provision of its original certificate of incorporation or any amendment thereto to be governed by this section; provided, that any such amendment to the certificate of incorporation shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became an interested shareholder prior to the effective date of the amendment.

D. As used in this section:

1. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person;

2. "Associate", when used to indicate a relationship with any person, means:

a. any corporation, partnership, unincorporated association, or other entity of which the person is a director, officer or partner or is the owner, of record or beneficially of twenty percent (20%) or more of any class of voting stock of the corporation,

b. any trust or other estate in which the person has at least a twenty-percent (20%) or as to which the person serves as trustee or in a similar fiduciary capacity, and

c. any relative or spouse of the person, or any relative of the spouse, who has the same residence as the person;

3. "Business combination", when used in reference to any corporation and any interested shareholder of the corporation, means:

a. any merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with:

(1) the interested shareholder, or

(2) any other corporation, partnership, unincorporated association, or other entity if the merger or consolidation is caused by the interested shareholder and, as a result of the merger or consolidation subsection A of this section is not applicable to the surviving entity,

b. any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of the corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any

direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation,

c. any transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of the subsidiary to the interested shareholder, except:

(1) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the corporation or any such subsidiary which securities were outstanding prior to the time that the interested shareholder became an interested shareholder,

(2) pursuant to a merger under subsection G of Section 1-1081 of this Title,

(3) pursuant to a dividend or distribution paid or made, or the exercise, exchange, or conversion of securities exercisable for, exchangeable for or convertible into stock of the corporation or any subsidiary which security is distributed, pro rata, to all holders of a class or series of stock of the corporation subsequent to the time the interested shareholder became an interested shareholder, or

(4) pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of the stock;

(5) any issuance or transfer of stock by the corporation; provided, however, that in no case under divisions (3) through (5) of this subparagraph shall there be an increase in the interested shareholder's proportionate share of the stock of any class or series of the corporation or of the voting stock of the corporation,

d. any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, or the outstanding voting stock, of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested shareholder,

e. any receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of the corporation, of any loans, advances, guarantees, pledges, or other financial benefits, other than those expressly permitted in subparagraphs a through d of this paragraph, provided by or through the corporation or any direct or indirect majority-owned subsidiary, or

f. any share acquisition by the interested shareholder from the corporation or any direct or indirect majority-owned subsidiary of the corporation pursuant to Section 1-1090.1 of this Title;

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4. "Control", including the terms "controlling", "controlled by" and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of twenty percent (20%) or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of the entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where the person holds stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of the entity;

5. a. "Interested shareholder" means:

(1) any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that:

(a) is the owner of fifteen percent (15%) or more of the outstanding voting stock of the corporation, or

(b) is an affiliate or associate of the corporation and was the owner of fifteen percent (15%) or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether the person is an interested shareholder, and

(2) the affiliates and associates of the person;

b. "Interested shareholder" shall not mean:

(1) any person who:

(a) owned shares in excess of the fifteen-percent (15%) limitation set forth herein as of, or acquired such shares pursuant to a tender offer commenced prior to, September 1, 1991, or pursuant to an exchange offer announced prior to September 1, 1991, and commenced within ninety (90) days thereafter and either:

i. continued to own shares in excess of the fifteen-percent (15%) limitation or would have but for action by the corporation, or

ii. is an affiliate or associate of the corporation and so continued, or so would have continued but for action by the corporation, to be the owner of fifteen percent (15%) or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether the person is an interested shareholder, or

(b) acquired the shares from a person described in subdivision (a) of this division by gift, inheritance or in a transaction in which no consideration was exchanged, or

(2) any person whose ownership of shares in excess of the fifteen-percent (15%) limitation set forth herein is the result of action taken solely by the corporation; provided, that the person shall be an interested shareholder if thereafter the person acquires additional shares of voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by the person;

c. For the purpose of determining whether a person is an interested shareholder, the stock of the corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of paragraph 8 of this subsection, but shall not include any other unissued stock of the corporation which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise;

6. "Person" means any individual, corporation, partnership, unincorporated association, any other entity, any group and any member of a group.

7. "Stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest;

8. "Voting stock" means, with respect to any corporation, stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any entity interest entitled to vote generally in the election of the governing body of the entity; and

9. "Owner", including the terms "own" and "owned", when used with respect to any stock, means a person who individually or with or through any of its affiliates or associates:

a. beneficially owns the stock, directly or indirectly, or

b. has:

(1) the right to acquire the stock, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered stock is accepted for purchase or exchange, or

(2) the right to vote the stock pursuant to any agreement, arrangement, or understanding; provided, however, that a person shall not be deemed the owner of any stock because of the person's right to vote the stock if the agreement, arrangement, or understanding to vote the stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more persons, or

c. has any agreement, arrangement, or understanding for the purpose of acquiring, holding, or voting, except voting pursuant to a revocable proxy or consent as described in division (2) of subparagraph b of this paragraph, or disposing of the stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the stock.

E. No provisions of a certificate of incorporation or bylaw shall require, for any vote of shareholders required by this section, a greater vote of shareholders than that specified in this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

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Business combinations with interested shareholders, see 18 Okl.St. Ann. § 1090.3.

Library References

Corporations ☞ 115, 186, 441, 581 to 590.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 301 to 318, 386 to
387, 396 to 398, 742, 744 to 747, 885 to
913.

§ 1-1090.4. Conversion of business entity to corporation

A. As used in this section, the term “business entity” means a domestic partnership, whether general or limited, limited liability company, business trust, common law trust, or other unincorporated association.

B. Any business entity may convert to a corporation incorporated under the laws of this Nation by complying with subsection G of this section and filing in the office of the Secretary of the Nation a certificate of conversion that has been executed in accordance with subsection H of this section and filed in accordance with Section 1-1007 of this Title, to which shall be attached, a certificate of incorporation that has been prepared, executed and acknowledged in accordance with Section 1-1007 of this Title.

C. The certificate of conversion shall state:

1. The date on which the business entity was first formed;
2. The name of the business entity immediately prior to the filing of the certificate of conversion;
3. The name of the corporation as set forth in its certificate of incorporation filed in accordance with subsection B of this section; and
4. The future effective date or time, which shall be a date or time certain, of the conversion to a corporation if the conversion is not to be effective upon the filing of the certificate of conversion and the certificate of incorporation provides for the same future effective date as authorized in subsection D of Section 1-1007 of this Title.

D. Upon the effective time of the certificate of conversion and the certificate of incorporation, the business entity shall be converted into a corporation of this state and the corporation shall thereafter be subject to all of the provisions of this title, except that notwithstanding Section 1-1007 of this Title, the existence of the corporation shall be deemed to have commenced on the date the business entity commenced its existence.

E. The conversion of any business entity into a corporation of this Nation shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a corporation of this Nation or the personal liability of any person incurred prior to such conversion.

F. Unless otherwise agreed or otherwise provided by any laws of this Nation applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such business entity and shall constitute a continuation of the existence of the converting business entity in the form of a corporation of this Nation.

G. Prior to filing a certificate of conversion with the Secretary of the Nation, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, govern-

ing the internal affairs of the business entity and the conduct of its business or by applicable law, as appropriate, and a certificate of incorporation shall be approved by the same authorization required to approve the conversion.

H. The certificate of conversion shall be signed by an officer, director, trustee, manager, partner, or other person performing functions equivalent to those of an officer or director of a corporation of this Nation, however named or described, and who is authorized to sign the certificate of conversion on behalf of the business entity.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Conversion of a domestic business entity to a domestic corporation, see 18 Okl.St. Ann. § 1090.4.

Library References

Associations ↻24.	Westlaw Topic Nos. 41, 225, 241E, 289.
Joint–Stock Companies and Business Trusts ↻21.	C.J.S. Associations § 106.
Limited Liability Companies ↻49.	C.J.S. Joint Stock Companies §§ 41 to 42.
Partnership ↻20, 363.	C.J.S. Partnership §§ 8, 417, 427.

§ 1–1090.5. Conversion of corporation to business entity

A. A corporation of this Nation may, upon the authorization of such conversion in accordance with this section, convert to a business entity. As used in this section, the term “business entity” means a domestic partnership, whether general or limited, limited liability company, business trust, common law trust, or other unincorporated association.

B. The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving such conversion, specifying the type of business entity into which the corporation shall be converted and recommending the approval of the conversion by the shareholders of the corporation. The resolution shall be submitted to the shareholders of the corporation at an annual or special meeting. Due notice of the time, and purpose of the meeting shall be mailed to each holder of shares, whether voting or nonvoting, of the corporation at the address of the shareholder as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or rejection. If all outstanding shares of stock of the corporation, whether voting or nonvoting, shall be voted for the adoption of the resolution, the corporation shall file with the Secretary of the Nation a certificate of conversion executed in accordance with Section 1–1007 of this Title which certifies:

1. The name of the corporation, and if it has been changed, the name under which it was originally incorporated;
2. The date of filing of its original certificate of incorporation with the Secretary of the Nation;
3. The name of the business entity into which the corporation shall be converted;

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4. That the conversion has been approved in accordance with the provisions of this section; and

5. If the business entity into which the corporation is converting was required to make a filing with the Secretary of the Nation as a condition of its information, the type and date of such filing.

C. Upon the filing of a certificate of conversion in accordance with subsection B of this section and payment to the Secretary of the Nation of all fees prescribed under this title, the Secretary of the Nation shall certify that the corporation has filed all documents and paid all fees required by this title, and thereupon the corporation shall cease to exist as a corporation of this Nation at the time the certificate of conversion becomes effective in accordance with Section 1-1007 of this Title. The certificate of the Secretary of the Nation shall be *prima facie* evidence of the conversion by the corporation.

D. The conversion of a corporation pursuant to a certificate of conversion under this section shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to such conversion or the personal liability of any person incurred prior to the conversion.

E. After the time the certificate of conversion becomes effective the corporation shall continue to exist as a business entity of this Nation, and the laws of this Nation shall apply to the entity to the same extent as prior to the time.

F. Unless otherwise provided in a resolution of conversion adopted in accordance with this section, the converting corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute a dissolution of such corporation and shall constitute a continuation of the existence of the converting corporation in the form of the applicable business entity of this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Conversion of domestic corporation to a domestic business entity, see 18 Okl.St. Ann. § 1090.5.

Library References

Associations ◊3.	Westlaw Topic Nos. 41, 101, 225, 241E, 289.
Corporations ◊572 to 579.	C.J.S. Associations § 7.
Joint-Stock Companies and Business Trusts ◊3.	C.J.S. Business Trusts §§ 12 to 13.
Limited Liability Companies ◊3.	C.J.S. Joint Stock Companies § 4.
Partnership ◊20, 352.	C.J.S. Partnership §§ 8, 406, 418.

§ 1-1091. Appraisal rights

A. Any shareholder of a corporation of this state who holds shares of stock on the date of the making of a demand pursuant to the provisions of subsection D of this section with respect to the shares, who continuously holds the shares through the effective date of the merger or consolidation, who has otherwise complied with the provisions of subsection D of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to the provisions of Section 1-1073 of this Title shall be entitled to an appraisal by the Muscogee (Creek) Nation District Court of the

fair value of the shares of stock under the circumstances described in subsections B and C of this section. As used in this section, the word "shareholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and "depository receipt" means an instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository. The provisions of this subsection shall be effective only with respect to mergers or consolidations consummated pursuant to an agreement of merger or consolidation entered into after November 1, 1988.

B. 1. Except as otherwise provided for in this subsection, appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation, or of the acquired corporation in a share acquisition, to be effected pursuant to the provisions of Section 1-1081 other than a merger effected pursuant to subsection G of Section 1081, and Sections 1-1082, 1-1086, 1-1087, 1-1090.1 or 1-1090.2 of this Title.

2. a. No appraisal rights under this section shall be available for the shares of any class or series of stock which stock, or depository receipts in respect thereof, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders to act upon the agreement of merger or consolidation, were either:

(1) listed on a national securities exchange or designated as a national market system security or an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

(2) held of record by more than two thousand holders.

No appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the shareholders of the surviving corporation as provided in subsection G of Section 1-1081 of this Title.

b. In addition, no appraisal rights shall be available for any shares of stock, or depository receipts in respect thereof, of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the shareholders of the surviving corporation as provided for in subsection F of Section 1-1081 of this Title.

3. Notwithstanding the provisions of paragraph 2 of this subsection, appraisal rights provided for in this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to the provisions of Sections 1-1081, 1-1082, 1-1086, 1-1087, 1-1090.1 or 1-1090.2 of this Title to accept for the stock anything except:

a. shares of stock of the corporation surviving or resulting from such merger or consolidation or depository receipts thereof, or

b. shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock or depository receipts at the effective date of the

merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Security Dealers, Inc. or held of record by more than two thousand holders, or

c. cash in lieu of fractional shares or fractional depository receipts described in subparagraphs a and b of this paragraph, or

d. any combination of the shares of stock, depository receipts, and cash in lieu of the fractional shares or depository receipts described in subparagraphs a, b and c of this paragraph.

4. In the event all of the stock of a subsidiary Muscogee (Creek) Nation corporation party to a merger effected pursuant to the provisions of Section 1-1083 of this Title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Muscogee (Creek) Nation corporation.

C. Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections D and E of this section, shall apply as nearly as is practicable.

D. Appraisal rights shall be perfected as follows:

1. If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of shareholders, the corporation, not less than twenty (20) days prior to the meeting, shall notify each of its shareholders entitled to the appraisal rights that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in the notice a copy of this section. Each shareholder electing to demand the appraisal of the shares of the shareholder shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of the shares of the shareholder. The demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends thereby to demand the appraisal of the shares of the shareholder. A proxy or vote against the merger or consolidation shall not constitute such a demand. A shareholder electing to take such action must do so by a separate written demand as herein provided. Within ten (10) days after the effective date of the merger or consolidation, the surviving or resulting corporation shall notify each shareholder of each constituent corporation who has complied with the provisions of this subsection and has not voted in favor of or consented to the merger or consolidation as of the date that the merger or consolidation has become effective; or

2. If the merger or consolidation is approved pursuant to the provisions of Section 1-1073 or 1-1083 of this Title, each constituent corporation, either before the effective date of the merger or consolidation or within ten (10) days thereafter, shall notify each of the holders of any class or series of stock of such

constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all of the shares of the class or series of stock of the constituent corporation, and shall include in such notice a copy of this section; provided if the notice is given on or after the effective date of the merger or consolidation, the notice shall be given by the surviving or resulting corporation to all the holders of any class or series of stock of a constituent corporation that are entitled to appraisal rights. The notice may, and, if given on or after the effective date of the merger or consolidation, shall also notify the shareholders of the effective date of the merger or consolidation. Any shareholder entitled to appraisal rights may, within twenty (20) days after the date of mailing of the notice, demand in writing from the surviving or resulting corporation the appraisal of the holder's shares. The demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends to demand the appraisal of the holder's shares. If the notice does not notify shareholders of the effective date of the merger or consolidation either:

a. each constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of the constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation, or

b. the surviving or resulting corporation shall send a second notice to all holders on or within ten (10) days after the effective date of the merger or consolidation; provided, however, that if the second notice is sent more than twenty (20) days following the mailing of the first notice, the second notice need only be sent to each shareholder who is entitled to appraisal rights and who has demanded appraisal of the holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the shareholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than ten (10) days prior to the date the notice is given; provided, if the notice is given on or after the effective date of the merger or consolidation, the record date shall be the effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

E. Within one hundred twenty (120) days after the effective date of the merger or consolidation, the surviving or resulting corporation or any shareholder who has complied with the provisions of subsections A and D of this section and who is otherwise entitled to appraisal rights, may file a petition in district court demanding a determination of the value of the stock of all such shareholders; provided, however, at any time within sixty (60) days after the effective date of the merger or consolidation, any shareholder shall have the right to withdraw the demand of the shareholder for appraisal and to accept the terms offered upon the merger or consolidation. Within one hundred twenty (120) days after the effective date of the merger or consolidation, any shareholder who has complied with the requirements of subsections A and D of

this section, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of the shares. The written statement shall be mailed to the shareholder within ten (10) days after the shareholder's written request for a statement is received by the surviving or resulting corporation or within ten (10) days after expiration of the period for delivery of demands for appraisal pursuant to the provisions of subsection D of this section, whichever is later.

F. Upon the filing of any such petition by a shareholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which, within twenty (20) days after such service, shall file in the office of the Clerk of Court of the Muscogee (Creek) Nation District Court in which the petition was filed a duly verified list containing the names and addresses of all shareholders who have demanded payment for their shares and with whom agreements regarding the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Clerk of Court, if so ordered by the Court, shall give notice of the time and place fixed for the hearing on the petition by registered or certified mail to the surviving or resulting corporation and to the shareholders shown on the list at the addresses therein stated. Notice shall also be given by one or more publications at least one (1) week before the day of the hearing, in a newspaper of general circulation published in the City of Okmulgee, Oklahoma, or other publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

G. At the hearing on the petition, the Court shall determine the shareholders who have complied with the provisions of this section and who have become entitled to appraisal rights. The Court may require the shareholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Clerk of Court for notation thereon of the pendency of the appraisal proceedings; and if any shareholder fails to comply with this direction, the Court may dismiss the proceedings as to that shareholder.

H. After determining the shareholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining the fair value, the Court shall take into account all relevant factors. In determining the fair rate of interest, the Court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any shareholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the

appraisal prior to the final determination of the shareholder entitled to an appraisal. Any shareholder whose name appears on the list filed by the surviving or resulting corporation pursuant to the provisions of subsection F of this section and who has submitted the certificates of stock of the shareholder to the Clerk of Court, if required, may participate fully in all proceedings until it is finally determined that the shareholder is not entitled to appraisal rights pursuant to the provisions of this section.

I. The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the shareholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be made to each shareholder, in the case of holders of uncertificated stock immediately, and in the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing the stock. The Court's decree may be enforced as other decrees in the Muscogee (Creek) Nation District Court may be enforced, whether the surviving or resulting corporation be a corporation of this Nation or of any other Nation.

J. The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a shareholder, the Court may order all or a portion of the expenses incurred by any shareholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all of the shares entitled to an appraisal.

K. From and after the effective date of the merger or consolidation, no shareholder who has demanded appraisal rights as provided for in subsection D of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock, except dividends or other distributions payable to shareholders of record at a date which is prior to the effective date of the merger or consolidation; provided, however, that if no petition for an appraisal shall be filed within the time provided for in subsection E of this section, or if the shareholder shall deliver to the surviving or resulting corporation a written withdrawal of the shareholder's demand for an appraisal and an acceptance of the merger or consolidation, either within sixty (60) days after the effective date of the merger or consolidation as provided for in subsection E of this section or thereafter with the written approval of the corporation, then the right of the shareholder to an appraisal shall cease; provided further, no appraisal proceeding in the Muscogee (Creek) Nation District Court shall be dismissed as to any shareholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

L. The shares of the surviving or resulting corporation into which the shares of any objecting shareholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, see 18 Okl.St. Ann. § 1091.
Mortgage or pledge of assets, see 18, § 1093.

Library References

Corporations Ⓒ584.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 899 to 906.

§ 1–1092. Sale, lease or exchange of assets; consideration; procedure

A. Every corporation, at any meeting of its board of directors or governing body, may sell, lease, or exchange all or substantially all of its property and assets, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property, including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors or governing body deems expedient and for the best interests of the corporation, when and as authorized by a resolution adopted by the holders of a majority of the outstanding stock of the corporation entitled to vote thereon or, if the corporation is a nonstock corporation, by a majority of the members having the right to vote for the election of the members of the governing body, at a meeting duly called upon at least twenty (20) days' notice. The notice of the meeting shall state that such a resolution will be considered.

B. Notwithstanding authorization or consent to a proposed sale, lease or exchange of a corporation's property and assets by the shareholders or members, the board of directors or governing body may abandon such proposed sale, lease or exchange without further action by the shareholders or members, subject to the rights, if any, of third parties under any contract relating thereto.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Authority of corporations to convey real property, see 16 Okl.St. Ann. §§ 1, 91 et seq.
Consent of shareholders in lieu of meeting, see 18 Okl.St. Ann. § 1073.

Notice,

Exception, see 18 Okl.St. Ann. § 1075
Waiver, see 18 Okl.St. Ann. § 1074.

Sale, lease or exchange of assets, consideration, procedure, see 18 Okl.St. Ann. § 1092.

Transfer of vehicle title without excise tax, see 68 Okl.St. Ann. § 2105.

Voting,

Generally, see 18 Okl.St. Ann. § 1057 et seq.
Shares called for redemption, see 18 Okl.St. Ann. § 1041.

Library References

Corporations Ⓒ441.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 742, 744 to 747.

§ 1–1093. Mortgage or pledge of assets

The authorization or consent of shareholders to the mortgage or pledge of a corporation's property and assets shall not be necessary, except to the extent that the certificate of incorporation otherwise provides.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Mortgage or pledge of assets, see 18 Okl.St. Ann. § 1093.

Library References

Corporations ☞474 to 482.5.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 754, 761 to 773.

§ 1-1094. Dissolution of joint venture corporation having two shareholders

A. If the shareholders of a corporation of this Nation, having only two shareholders each of which owns fifty percent (50%) of the stock therein, shall be engaged in the prosecution of a joint venture and if the shareholders shall be unable to agree upon the desirability of discontinuing the joint venture and disposing of the assets used in the venture, either shareholder may, unless otherwise provided in the certificate of incorporation of the corporation or in a written agreement between the shareholders, file with the Muscogee (Creek) Nation District Court a petition stating that it desires to discontinue the joint venture and to dispose of the assets used in the venture in accordance with a plan to be agreed upon by both shareholders or that, if no such plan shall be agreed upon by both shareholders, the corporation be dissolved. The petition shall have attached thereto a copy of the proposed plan of discontinuance and distribution and a certificate stating that copies of the petition and plan have been transmitted in writing to the other shareholder and to the directors and officers of the corporation. The petition and certificate shall be executed and acknowledged in accordance with the provisions of Section 1-1007 of this Title.

B. 1. Unless both shareholders file with the Muscogee (Creek) Nation District Court, the Muscogee (Creek) Nation District Court may dissolve such corporation and may by appointment of one or more trustees or receivers with all the powers and title of a trustee or receiver appointed pursuant to the provisions of Section 1-1100 of this Title, administer and wind up its affairs:

a. within three (3) months of the date of the filing of the petition, a certificate similarly executed and acknowledged stating that they have agreed on the plan, or a modification thereof, and

b. within one (1) year from the date of the filing of the petition, a certificate similarly executed and acknowledged stating that the distribution provided by the plan has been completed.

2. Either or both of the periods provided for in paragraph 1 of this subsection may be extended by agreement of the shareholders, evidenced by a certificate similarly executed, acknowledged and filed with the Muscogee (Creek) Nation District Court prior to the expiration of the period.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissolution of joint venture corporation having two shareholders, see 18 Okl.St. Ann. § 1094.
Merger of parent corporation and subsidiary, see 18 Okl.St. Ann. § 1083.

Library References

Corporations ☞592 to 630. Westlaw Topic No. 101.

C.J.S. Corporations §§ 914 to 967.

§ 1-1095. Dissolution before the issuance of shares or beginning business; procedure

If a corporation has not issued shares or has not commenced the business for which the corporation was organized, a majority of the incorporators, or, if directors were named in the certificate of incorporation or have been elected, a majority of the directors, may surrender all of the corporation's rights and franchises by filing in the Office of the Secretary of the Nation a certificate, executed and acknowledged by a majority of the incorporators or directors, stating that no shares of stock have been issued or that the business of activity for which the corporation was organized has not begun; that no part of the capital of the corporation has been paid, or, if some capital has been paid, that the amount actually paid in for the corporation's shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto; that if the corporation has begun business but it has not issued shares, all debts of the corporation have been paid; that if the corporation has not begun business but has issued stock certificates all issued stock certificates, if any, have been surrendered and canceled; and that all rights and franchises of the corporation are surrendered. Upon such certificate becoming effective in accordance with the provisions of Section 1-1007 of this Title, the corporation shall be dissolved.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissolution before the issuance of shares or beginning business, procedure, see 18 Okl.St. Ann. § 1095.

Library References

Corporations ⌘596.
Westlaw Topic No. 101.

§ 1-1096. Dissolution; procedure

A. If it should be deemed advisable in the judgment of the board of directors of any corporation that it should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice to be mailed to each shareholder entitled to vote thereon of the adoption of the resolution and of a meeting of shareholders to take action upon the resolution.

B. At the meeting a vote shall be taken upon the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon shall vote for the proposed dissolution, a certificate of dissolution shall be filed with the Secretary of the Nation pursuant to subsection D of this section.

C. Dissolution of a corporation may also be authorized without action of the directors if all the shareholders entitled to vote thereon shall consent in writing and a certificate of dissolution shall be filed with the Secretary of the Nation pursuant to subsection D of this section.

D. If dissolution is authorized in accordance with this section, a certificate of dissolution shall be executed, acknowledged and filed, and shall become

effective, in accordance with Section 1-1007 of this Title. Such certificate of dissolution shall set forth:

1. the name of the corporation;
2. the date dissolution was authorized;
3. that the dissolution has been authorized by the board of directors and shareholders of the corporation, in accordance with subsections A and B of this section, or that the dissolution has been authorized by all of the shareholders of the corporation entitled to vote on a dissolution, in accordance with subsection C of this section; and
4. the names and addresses of the directors and officers of the corporation.

E. The resolution authorizing a proposed dissolution may provide that notwithstanding authorization or consent to the proposed dissolution by the shareholders, or the members of a nonstock corporation pursuant to Section 1-1097 of this Title, the board of directors or governing body may abandon such proposed dissolution without further action by the shareholders or members.

F. Upon a certificate of dissolution becoming effective in accordance with Section 1-1007 of this Title, the corporation shall be dissolved.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Action in the nature of quo warranto, dissolution of corporation, see 12 Okl.St. Ann. §§ 1532, 1537, 1538.

Consent of shareholders in lieu of meeting, see 18 Okl.St. Ann. § 1073.

Dissolution, procedure, see 18 Okl.St. Ann. § 1096.

Dissolved corporations, service by publication, see 12 Okl.St. Ann. § 2004.

Franchise tax, forfeiture of corporate rights for nonpayment, see 68 Okl.St. Ann. § 1212.

Notice,

Exception, see 18 Okl.St. Ann. § 1075.

Waiver, see 18 Okl.St. Ann. § 1074.

Revocation of voluntary dissolution, see 18 Okl.St. Ann. § 1119.

Sales tax, transfers pursuant to dissolution, see 68 Okl.St. Ann. § 1360.

Voting,

Generally, see 18 Okl.St. Ann. § 1057 et seq.

Shares called for redemption, nonvoting, see 18 Okl.St. Ann. § 1041.

Library References

Corporations ⌘610.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 919 to 922.

§ 1-1097. Dissolution of nonstock corporation; procedure

A. Whenever it shall be desired to dissolve any corporation having no capital stock, the governing body shall perform all the acts necessary for dissolution which are required by the provisions of Section 1-1096 of this Title to be performed by the board of directors of a corporation having capital stock. If the members of a corporation having no capital stock are entitled to vote for the election of members of its governing body, they shall perform all the acts necessary for dissolution which are required by the provisions of Section 1-1096 of this Title to be performed by the shareholders of a corporation

having capital stock. If there is no member entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the governing body, upon the adoption of a resolution to dissolve by the vote of a majority of members of its governing body then in office. In the event of the dissolution of a not for profit corporation, a notice of dissolution shall be published one (1) time in a newspaper having general circulation in the county in which the principal place of business of such corporation is located. In all other respects, the method and proceedings for the dissolution of a corporation having no capital stock shall conform as nearly as may be to the proceedings prescribed by the provisions of Section 1-1096 of this Title for the dissolution of corporations having capital stock.

B. If a corporation having no capital stock has not commenced the business for which the corporation was organized, a majority of the governing body or, if none, a majority of the incorporators may surrender all of the corporation rights and franchises by filing in the Office of the Secretary of the Nation a certificate, executed and acknowledged by a majority of the incorporators or governing body, conforming as nearly as may be to the certificate prescribed by Section 1-1095 of this Title.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissolution of nonstock corporation, procedure, see 18 Okl.St. Ann. § 1097.

Library References

Corporations ⌘610.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 919 to 922.

§ 1-1098. Reserved

§ 1-1099. Continuation of corporation after dissolution for purposes of suit and winding up affairs

All corporations, whether they expire by their own limitation or are otherwise dissolved, nevertheless shall be continued, for the term of three (3) years from such expiration or dissolution or for such longer period as the district court shall in its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to their shareholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit, or proceeding begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, the action shall not abate by reason of the expiration or dissolution of the corporation. The corporation, solely for the purpose of such action, suit or proceeding, shall be continued as a body corporate beyond the three-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Muscogee (Creek) Nation District Court.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Continuation of corporation after dissolution for purposes of suit and winding up affairs, see 18 Okl.St. Ann. § 1099.

Revocation of voluntary dissolution, see 18 Okl.St. Ann. § 1119.

Library References

Corporations Ⓒ618, 630.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 950, 952 to 953, 955,
958.

§ 1–1100. Trustees or receivers for dissolved corporations; appointment; powers; duties

When any corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act shall be dissolved in any manner whatever, the Muscogee (Creek) Nation District Court, on application of any creditor, shareholder or director of the corporation, or any other person who shows good cause therefore, at any time, may either appoint one or more of the directors of the corporation to be trustees, or appoint one or more persons to be receivers, of and for the corporation, to take charge of the corporation's property, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers may be continued as long as the Muscogee (Creek) Nation District Court shall think necessary for the purposes provided for in this section.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appointment of receivers or custodians, deadlock or other cause, see 18 Okl.St. Ann. § 1071.

Joint venture corporation, dissolution, see 18 Okl.St. Ann. § 1094.

Receiver, dissolved or insolvent corporation, see 12 Okl.St. Ann. § 1551.

Trustees or receivers for dissolved corporations, appointment, powers, duties, see 18 Okl.St. Ann. § 1100.

Voluntary dissolution, revocation, see 18 Okl.St. Ann. § 1119.

Library References

Corporations Ⓒ619 to 622.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 959 to 962, 964.

§ 1–1100.1. Notice to claimants; filing of claims

A. 1. After a corporation has been dissolved in accordance with the procedures set forth in the Muscogee (Creek) Nation General Corporation Act, the corporation or any successor entity may give notice of the dissolution requiring all persons having a claim against the corporation other than a claim against the corporation in a pending action, suit, or proceeding to which the corporation is a party to present their claims against the corporation in accordance with the notice. The notice shall state:

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a. that all such claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim;

b. the mailing address to which a claim must be sent;

c. the date by which a claim must be received by the corporation or successor entity, which date shall be no earlier than sixty (60) days from the date of the notice; and

d. that the claim will be barred if not received by the date referred to in subparagraph c of this paragraph,

e. that the corporation or a successor entity may make distributions to other claimants and the corporation's shareholders or persons interested as having been such without further notice to the claimant, and

f. the aggregate amount, on an annual basis, of all distributions made by the corporation to its shareholders for each of the three (3) years prior to the date the corporation dissolved.

2. The notice shall also be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the office of the corporation's last registered agent in this Nation is located and in the corporation's principal place of business and, in the case of a corporation having ten million dollars (\$10,000,000.00) or more in total assets at the time of its dissolution, at least once in an Oklahoma newspaper having a circulation of at least two hundred fifty thousand (250,000). On or before the date of the first publication of the notice, the corporation or successor entity shall mail a copy of the notice by certified or registered mail, return receipt requested, to each known claimant of the corporation, including persons with claims asserted against the corporation in a pending action, suit, or proceeding to which the corporation is a party.

3. Any claim against the corporation required to be presented pursuant to the subsection is barred if the claimant who was given actual notice under the subsection does not present the claim to the dissolved corporation or successor entity by the date referred to in subparagraph c of paragraph 1 of this subsection.

4. A corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this subsection by mailing notice of rejection by certified or registered mail return receipt requested to the claimant within ninety (90) days after receipt of the claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in Section 1-1099 of this Title of the Muscogee (Creek) Nation Statutes; provided, however, that in the case of a claim filed pursuant to Section 1-1110 of this Title against a corporation or successor entity for which a receiver or trustee has been appointed by the district court, the time period shall be as provided for in Section 1-1111 of this Title, and the thirty-day appeal period provided for in Section 1-1111 of this Title shall be applicable. A notice sent by a corporation or successor entity pursuant to this subsection shall state that any claim rejected will be barred if an action, suit, or proceeding with respect to the claim is not commenced within one hundred twenty (120) days of the date thereof,

and shall be accompanied by a copy of Sections 1-1099 through 1-1100.3 of this Title, and, in the case of a notice sent by a court-appointed receiver or trustee for a claim filed pursuant to Section 1-1110 of this Title, the notice shall be accompanied by copies of Sections 1-1110 and 1-1111 of this Title.

5. A claim against a corporation is barred if a claimant whose claim is rejected pursuant to paragraph 4 of this subsection does not commence an action, suit, or proceeding with respect to the claim within one hundred twenty (120) days after the mailing of the rejection notice.

B. 1. A corporation or successor entity electing to follow the procedures described in subsection A of this section shall also give notice of the dissolution of the corporation to persons with contractual claims contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request that those persons present their claims in accordance with the terms of the notice. As used in this section and Section 1-1100.2 of this Title, the term “contractual claims” shall not include any implied warranty as to any product manufactured, sold, distributed, or handled by the dissolved corporation. The notice shall be in substantially the form, and sent and published in the same manner, as described in paragraph 1 of subsection A of this section.

2. The corporation or successor entity shall offer any claimant whose claim is contingent, conditional or unmatured, such security as the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall mail the offer to the claimant by certified or registered mail, return receipt requested, within ninety (90) days of receipt of the claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in Section 1-1099 of this Title. If the claimant offered the security does not deliver in writing to the corporation or successor entity a notice rejecting the offer within one hundred twenty (120) days after receipt of the offer for security, the claimant shall be deemed to have accepted the security as the sole source from which to satisfy his claim against the corporation.

C. 1. A corporation or successor entity which has given notice in accordance with subsection A of this section shall petition the Muscogee (Creek) Nation District Court to determine the amount and form of security that will be reasonable likely to be sufficient to provide compensation for any claim against the corporation which is the subject of a pending action, suit, or proceeding to which the corporation is a party other than a claim barred pursuant to subsection A of this section.

2. A corporation or successor entity which has given notice in accordance with subsections A and B of this section shall petition the Muscogee (Creek) Nation District Court to determine the amount and form of security that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to paragraph 2 of subsection B of this section.

3. A corporation or successor entity which has given notice in accordance with subsection A of this section shall petition the Muscogee (Creek) Nation District Court to determine the amount and form of security which will be reasonably likely to be sufficient to provide compensation for claims that have

not been made known to the corporation or that have not arisen but that, based on facts known to the corporation or successor entity, are likely to arise or to become known to the corporation or successor entity within five (5) years after the date of dissolution or a longer period of time as the Muscogee (Creek) Nation District Court may determine not to exceed ten (10) years after the date of dissolution. The Muscogee (Creek) Nation District Court may appoint a guardian ad litem in respect of any such proceeding brought under this subsection. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the petitioner in the proceeding.

D. The giving of any notice or making of any offer pursuant to the provisions of this section shall not revive any claim then barred or constitute acknowledgment by the corporation or successor entity that any person to whom the notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom the notice is sent.

E. As used in this section, the term “successor entity” shall include any trust, receivership or other legal entity governed by the laws of this Nation to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of prosecuting and defending suits, by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation’s shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

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Notice to claimants, filing of claims, see 18 Okl.St. Ann. § 1100.1.

Library References

Corporations ☞610(4), 614(1), 626.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 927 to 928, 940, 942
to 943, 953.

§ 1–1100.2. Payment and distribution to claimants and shareholders

A. 1. A dissolved corporation or successor entity which has followed the procedures described in Section 1–1100.1 of this Title shall:

- a. pay the claims made and not rejected in accordance with subsection A of Section 1–1100.1 of this Title;
- b. post the security offered and not rejected pursuant to paragraph 2 of subsection B of Section 1–1100.1 of this Title;
- c. post any security ordered by the district court in any proceeding under subsection C of Section 1–1100.1 of this Title; and
- d. pay or make provision for all other claims that are mature, known, and uncontested or that have been finally determined to be owing by the corporation or successor entity.

2. Claims or obligations shall be paid in full and any provision for payment shall be made in full if there are sufficient assets. If there are insufficient assets, the claims and obligations shall be paid or provided for according to their priority, and, among claims of equal priority, ratably to the extent of assets legally available therefor. Any remaining assets shall be distributed to the shareholders of the dissolved corporation; provided, however, that such distribution shall not be made before the expiration of one hundred fifty (150) days from the date of the last notice of rejections given pursuant to paragraph 3 of subsection A of Section 1-1100.1 of this Title. In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of the successor entity as to the provision made for the payment of all obligations under paragraph 4 of this subsection shall be conclusive.

B. A dissolved corporation or successor entity which has not followed the procedures described in Section 1-1100.1 of this Title shall, prior to the expiration of the period described in Section 1-1099 of this Title, adopt a plan of distribution pursuant to which the dissolved corporation or successor entity:

1. Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured contractual claims known to the corporation or the successor entity;

2. Shall make provision as will be reasonably likely to be sufficient to provide compensation for any claim against the corporation which is the subject of a pending action, suit, or proceeding to which the corporation is a party; and

3. Shall make provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or successor entity or that have not arisen but that, based on facts known to the corporation or successor entity, are likely to arise or become known to the corporation or successor entity within ten (10) years after the date of dissolution. The plan of distribution shall provide that the claims shall be paid in full and any provision for payment made shall be made in full if there are sufficient assets. If there are insufficient assets, the plan shall provide that the claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets legally available therefor. Any remaining assets shall be distributed to the shareholders of the dissolved corporation.

C. Directors of a dissolved corporation or governing persons of a successor entity which has complied with subsection A or B of this section shall not be personally liable to the claimants of the dissolved corporation.

D. As used in this section, the term "successor entity" has the meaning set forth in subsection E of Section 1-1100.1 of this Title.

E. As used in this section, the term "priority" does not refer either to the order of payments set forth in paragraphs 1 through 4 of subsection A of this section or to the relative times at which any claims mature or are reduced to judgment.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

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Oklahoma Statutes Annotated

Payment and distribution to claimants and shareholders, see 18 Okl.St. Ann. § 1100.2.
Transfer of vehicle title without excise tax, distribution in kind to shareholders, see 68 Okl.St. Ann. § 2105.

Library References

Corporations ☞627 to 629.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 963, 965.

§ 1–1100.3. Liability of shareholders of dissolved corporations

A. A shareholder of a dissolved corporation the assets of which were distributed pursuant to subsection A or B of Section 1–1100.2 of this Title shall not be liable for any claim against the corporation in an amount in excess of the shareholder's pro rata share of the claim or the amount so distributed to the shareholder, whichever is less.

B. A shareholder of a dissolved corporation the assets of which were distributed pursuant to subsection A of Section 1–1100.2 of this Title shall not be liable for any claim against the corporation on which an action, suit or proceeding is not begun prior to the expiration of the period described in Section 1–1099 of this Title.

C. The aggregate liability of any shareholder of a dissolved corporation for claims against the dissolved corporation shall not exceed the amount distributed to the shareholder in dissolution.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability of shareholders of dissolved corporations, see 18 Okl.St. Ann. § 1100.3.

Library References

Corporations ☞629.
Westlaw Topic No. 101.
C.J.S. Corporations § 965.

§ 1–1101. Jurisdiction of Muscogee (Creek) Nation District Court

The Muscogee (Creek) Nation District Court shall have jurisdiction of the application prescribed in Section 1–1100 of this Title and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

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Jurisdiction of court, see 18 Okl.St. Ann. § 1101.
Voluntary dissolution, revocation, see 18 Okl.St. Ann. § 1119.

§ 1-1102. Repealed**§ 1-1103. Repealed****§ 1-1104. Revocation or forfeiture of charter; proceedings**

A. The Muscogee (Creek) Nation District Court shall have jurisdiction to revoke or forfeit the charter of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises. The Attorney General, upon his own motion or upon the relation of a proper party, shall proceed for this purpose by complaint in the county in which the registered office of the corporation is located.

B. The Muscogee (Creek) Nation District Court shall have power, by appointment of receivers or otherwise, to administer and wind up the affairs of any corporation whose charter shall be revoked or forfeited by any court pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act or otherwise, and to make such orders and decrees with respect thereto as shall be just and equitable respecting its affairs and assets and the rights of its shareholders and creditors.

C. No proceeding shall be instituted pursuant to the provisions of this section for nonuse of any corporation's powers, privileges or franchises during the first two (2) years after its incorporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Receivers, powers, see 18 Okl.St. Ann. § 1100.

Registered office, see 18 Okl.St. Ann. § 1021.

Revocation or forfeiture of charter, proceedings, see 18 Okl.St. Ann. § 1104.

§ 1-1105. Dissolution or forfeiture of charter by decree of court; filing

Whenever any corporation is dissolved or its charter forfeited by decree or judgment of the Muscogee (Creek) Nation District Court, the decree or judgment shall be immediately filed by the Clerk of Court in which the decree or judgment was entered, in the Office of the Secretary of the Nation, and a note thereof shall be made by the Secretary of the Nation on the corporation's charter or certificate of incorporation and on the index thereof.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

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Dissolution or forfeiture of charter by decree of court, filing, see 18 Okl.St. Ann. § 1105.

§ 1-1106. Receivers for insolvent corporations; appointment and powers

Whenever a corporation shall be insolvent, the Muscogee (Creek) Nation District Court may at any time upon the application of a shareholder or shareholders, severally or jointly, who have been registered owners for a period of not less than six (6) months, of not less than ten percent (10%) of the entire outstanding stock of the corporation or a creditor whose claim has been reduced to judgment and execution thereon has been issued, appoint one or

more persons to be receivers of and for the corporation, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts, claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper. The powers of the receivers shall be such and shall continue so long as the Court shall deem necessary.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Receivers for insolvent corporations, appointment and powers, see 18 Okl.St. Ann. § 1106.

Library References

Corporations ☞551.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 841 to 870.

§ 1-1107. Title to property; filing order of appointment; exception

A. Trustees of or receivers for any corporation, appointed by the Muscogee (Creek) Nation District Court, and their respective survivors and successors, upon their appointment and qualification or upon the death, resignation or discharge of any co-trustee or co-receiver, shall be vested by operation of law and without any act or deed, with the title of the corporation to all of its property, real, personal, or mixed of whatsoever nature, kind, class or description, and wheresoever situated, except real estate situated outside this Nation.

B. Trustees or receivers appointed by the Muscogee (Creek) Nation District Court, within twenty (20) days from the date of their qualification, shall file in the office of the Clerk of Court in this Nation in which any real estate belonging to the corporation may be situated, a certified copy of the order of their appointment and evidence of their qualification.

C. This section shall not apply to receivers appointed *pendente lite*.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Title to property, filing order of appointment, exception, see 18 Okl.St. Ann. § 1107.

Library References

Corporations ☞560(4).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 871, 874 to 876.

§ 1-1108. Notices to shareholders and creditors

All notices required to be given to shareholders and creditors in any action in which a receiver or trustee for a corporation was appointed shall be given by the Muscogee (Creek) Nation District Court, unless otherwise ordered by the Court.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Notices to shareholders and creditors, see 18 Okl.St. Ann. § 1108.

Library References

Corporations ⌘557(3).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 841, 856.

§ 1-1109. Receivers or trustees; inventory; list of debts and reports

Trustees or receivers, as soon as convenient, shall file in the Muscogee (Creek) Nation District Court a full and complete itemized inventory of all the assets of the corporation which shall show their nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained. Trustees or receivers shall make a report to the Muscogee (Creek) Nation District Court of their proceedings, whenever and as often as the Court shall direct.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Receivers or trustees, inventory, list of debts and reports, see 18 Okl.St. Ann. § 1109.

Library References

Corporations ⌘560. C.J.S. Corporations §§ 871 to 876, 883 to 884.
Westlaw Topic No. 101.

§ 1-1110. Creditors' proofs of claims; when barred; notice

All creditors shall make proof under oath of their respective claims against the corporation, and cause the same to be filed in the Muscogee (Creek) Nation District Court of the Nation or county in which the proceeding is pending within the time fixed by the order of the Muscogee (Creek) Nation District Court. All creditors and claimants failing to do so, within the time limited by the provisions of this section, or the time prescribed by the order of the Muscogee (Creek) Nation District Court, by direction of the Muscogee (Creek) Nation District Court, may be barred from participating in the distribution of the assets of the corporation. The Muscogee (Creek) Nation District Court may also prescribe what notice, by publication or otherwise, shall be given to the creditors of the time fixed for the filing and making proof of claims.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Creditors' proofs of claims, when barred, notice, see 18 Okl.St. Ann. § 1110.

Library References

Corporations ⌘565.
Westlaw Topic No. 101.

§ 1-1111. Adjudication of claims; appeal

A. The Muscogee (Creek) Nation District Court immediately upon the expiration of the time fixed for the filing of claims, in compliance with the

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provisions of this act, shall notify the trustee or receiver of the filing of the claims, and the trustee or receiver, within thirty (30) days after receiving the notice, shall inspect the claims, and if the trustee or receiver or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, the trustee or receiver shall immediately notify the creditors whose claims are disputed of his decision. The trustee or receiver shall require all creditors whose claims are disputed to submit themselves to such examination in relation to their claims as the trustee or receiver shall direct, and the creditors shall produce such books and papers relating to their claims as shall be required. The trustee or receiver shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

B. Every creditor or claimant who shall have received notice from the receiver or trustee that his claim has been disallowed in whole or in part may appeal to the Muscogee (Creek) Nation District Court within thirty (30) days thereafter. The Muscogee (Creek) Nation District Court, after hearing, shall determine the rights of the parties.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Electronic notice, see Title 3, § 1-1075.2.

Oklahoma Statutes Annotated

Adjudication of claims, appeal, see 18 Okl.St. Ann. § 1111.

Library References

Corporations ⇌ 565(7), 568, 569.
Westlaw Topic No. 101.

§ 1-1112. Sale of perishable or deteriorating property

Whenever the property of a corporation is at the time of the appointment of a receiver or trustee encumbered with liens of any character, and the validity, extent or legality of any lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting the lien, the Muscogee (Creek) Nation District Court may order the receiver or trustee to sell the property of the corporation, clear of all encumbrances, at public or private sale, for the best price that can be obtained therefor, and pay the net proceeds arising from the sale thereof after deducting the costs of the sale into the Muscogee (Creek) Nation District Court, there to remain subject to the order of the Muscogee (Creek) Nation District Court, and to be disposed of as the Muscogee (Creek) Nation District Court shall direct.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Sale of perishable or deteriorating property, see 18 Okl.St. Ann. § 1112.

Library References

Corporations ⌘560(5).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 871, 883.

§ 1-1113. Compensation, costs and expenses of receiver or trustee

The Muscogee (Creek) Nation District Court, before making distribution of the assets of a corporation among the creditors or shareholders thereof, shall allow a reasonable compensation to the receiver or trustee for his services, and the costs and expenses incurred in and about the execution of his trust, and the costs of the proceedings in the Muscogee (Creek) Nation District Court, to be first paid out of the assets.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Compensation, costs and expenses of receiver or trustee, see 18 Okl.St. Ann. § 1113.

Library References

Receivers ⌘195.
Westlaw Topic No. 323.
C.J.S. Receivers §§ 472 to 475, 482 to 486.

§ 1-1114. Substitution of trustee or receiver as party; abatement of actions

A trustee or receiver, upon application by him in the Court in which any suit is pending, shall be substituted as party plaintiff in the place of the corporation in any suit or proceeding which was so pending at the time of his appointment. No action against a trustee or receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts of the record, shall be continued against his successor or against the corporation in case no new trustee or receiver is appointed.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Substitution of trustee or receiver as party, abatement of actions, see 18 Okl.St. Ann. § 1114.

Library References

Corporations ⌘560(10).
Westlaw Topic No. 101.
C.J.S. Corporations § 871.

§ 1-1115. Liens for wages or products when corporation is insolvent

A. Whenever any corporation of this Nation, or any foreign corporation doing business in this Nation, shall become insolvent, the employees performing labor or services of whatever character in the regular employ of the corporation, and the producers of agricultural and dairy products, including cooperative marketing associations of such producers, shall have a lien upon the assets of such corporation for the amount of the wages or payments for agricultural and dairy products due to them, not exceeding four months' wages or payments for such products which shall have accrued prior to the adjudica-

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tion of the insolvency of such corporation, which lien shall be paid prior to any other debts, charges or claims against said corporation, except taxes due the United States government. The word “employee” shall not be construed to include any of the officers of the corporation.

B. The lien provided for in this section shall be enforced in the manner provided for by law for the enforcement of other liens for labor.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liens for wages or products when corporation is insolvent, see 18 Okl.St. Ann. § 1115.

Library References

Corporations ⇨566(1), 566(6), 568.
Westlaw Topic No. 101.

§ 1-1116. Discontinuance of liquidation

The liquidation of the assets and business of an insolvent corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the Muscogee (Creek) Nation District Court in its discretion, and subject to such condition as it may deem appropriate, may dismiss the proceedings and direct the receiver or trustee to redeliver to the corporation all of its remaining property and assets.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Discontinuance of liquidation, see 18 Okl.St. Ann. § 1116.

Library References

Corporations ⇨537, 610(5).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 819, 922.

§ 1-1117. Compromise or arrangement between corporation and creditors or shareholders

A. Whenever the provision provided for in paragraph 2 of subsection B of Section 1-1006 of this Title is included in the original certificate of incorporation of any corporation, all persons who become creditors or shareholders thereof shall be deemed to have become such creditors or shareholders subject in all respects to that provision and the same shall be absolutely binding upon them. Whenever that provision is inserted in the certificate of incorporation of any such corporation by an amendment of its certificate all persons who become creditors or shareholders of such corporation after such amendment shall be deemed to have become such creditors or shareholders subject in all respects to that provision and the same shall be absolutely binding upon them.

B. The Muscogee (Creek) Nation District Court may administer and enforce any compromise or arrangement made pursuant to the provision provided for in paragraph 2 of subsection B of Section 1-1006 of this Title and may restrain,

pendente lite, all actions and proceedings against any corporation with respect to which the Muscogee (Creek) Nation District Court shall have begun the administration and enforcement of that provision and may appoint a temporary receiver for such corporation and may grant the receiver such powers as it deems proper, and may make and enforce such rules as it deems necessary for the exercise of such jurisdiction.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Compromise or arrangement between corporation and creditors or shareholders, see 18 Okl.St. Ann. § 1117.

Library References

Compromise and Settlement ☞5.
Corporations ☞547 to 550.
Westlaw Topic Nos. 89, 101.

C.J.S. Compromise and Settlement §§ 1, 6 to 7, 9 to 13, 19 to 21.
C.J.S. Corporations §§ 825, 828 to 837, 840.

§ 1-1118. Bankruptcy proceedings under a statute of the United States; effectuation

A. Any corporation of this Nation, a plan of reorganization of which, pursuant to the provisions of any applicable statute of the United States relating to the bankruptcy of corporations, has been or shall be confirmed by the decree or order of a court of competent jurisdiction, may put into effect and carry out the plan and the decrees and orders of the court or judge relative thereto and may take any proceedings and do any act provided in the plan or directed by such decrees and orders, without further action by its directors or shareholders. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the trustee or trustees of such corporation appointed in the bankruptcy proceedings, or a majority thereof, or if none be appointed and acting, by designated officers of the corporation, or by a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation.

B. Such corporation, in the manner provided for in subsection A of this section, but without limiting the generality or effect of the foregoing, may alter, amend, or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its certificate of incorporation, and make any change in its capital or capital stock, or any other amendment, change, or alteration, or provision, authorized by the provisions of the Muscogee (Creek) Nation General Corporation Act; be dissolved, transfer all or part of its assets, merge or consolidate as permitted by the provisions of the Muscogee (Creek) Nation General Corporation Act, in which case, however, no shareholder shall have any statutory right of appraisal of his stock; change the location of its registered office, change its registered agent, and remove or appoint any agent to receive service of process; authorize and fix the terms, manner and conditions of, the issuance of bonds, debentures or other obligations, whether or not convertible into stock of any class, or bearing warrants or other evidences of optional rights to purchase or

subscribe for stock of any class; or lease its property and franchises to any corporation, if permitted by law.

C. A certificate of any amendment, change or alteration, or of dissolution, or any agreement of merger or consolidation, made by such corporation pursuant to the provisions of this section, shall be filed with the Secretary of the Nation in accordance with the provisions of this act, and, subject to the provisions of this act, shall thereupon become effective in accordance with its terms and the provisions of this section. Such certificate, agreement of merger or other instrument shall be made, executed and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees appointed in the reorganization or debtor in possession in the bankruptcy proceedings, or a majority thereof, or, if none be appointed and acting, by the officers of the corporation, or by a master or other representative appointed by the court or judge, and shall certify that provision for the making of such certificate, agreement or instrument is contained in a decree or order of a court or judge having jurisdiction of a proceeding under such applicable statute of the United States for the reorganization of such corporation.

D. The provisions of this section shall cease to apply to such corporation upon consummation of a plan of reorganization or the entry of a final decree in the bankruptcy proceedings closing the case and discharging the trustee, if any, or the debtor in possession.

E. On filing any certificate, agreement, report or other paper made or executed pursuant to the provisions of this section, there shall be paid to the Secretary of the Nation, for the use of the Nation, the same fees as are payable by corporations not in bankruptcy proceedings upon the filing of like certificates, agreements, reports or other papers.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Filing fees, see 18 Okl.St. Ann. § 1142.

Motor vehicle obtained by reorganization, excise tax exemption, see 68 Okl.St. Ann. § 2105.

Proceedings under Federal Bankruptcy Code, effectuation, see 18 Okl.St. Ann. § 1118.

Sales tax, transfers pursuant to reorganization, see 68 Okl.St. Ann. § 1360.

Library References

Bankruptcy 3501 to 3627.

Westlaw Topic No. 51.

C.J.S. Bankruptcy §§ 69, 83 to 87, 129 to 135,

359 to 362, 364, 414, 416, 422 to 425, 441

to 445, 451 to 452, 457, 459, 463 to 470,

473 to 474, 1126 to 1129, 1131 to 1164.

§ 1–1119. Revocation of voluntary dissolution

A. At any time prior to the expiration of three (3) years following the dissolution of a corporation pursuant to the provisions of Section 1–1096 of this act, or, at any time prior to the expiration of such longer period as the Muscogee (Creek) Nation District Court may have directed, a corporation may revoke the dissolution up to that time effected by it in the following manner:

1. The board of directors shall adopt a resolution recommending that the dissolution be revoked and directing that the question of the revocation be submitted to a vote at a special meeting of shareholders.

2. Notice of the special meeting of shareholders shall be given in accordance with the provisions of this act to each shareholder whose shares were entitled to vote upon a proposed dissolution before the corporation was dissolved.

3. At the meeting a vote of the shareholders shall be taken on a resolution to revoke the dissolution. If a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution shall be voted for the resolution, a certificate of revocation of dissolution shall be executed and acknowledged in accordance with the provisions of this act which shall state:

- a. the name of the corporation;
- b. the names and respective addresses of its officers;
- c. the names and respective addresses of its directors; and
- d. that a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution have voted in favor of a resolution to revoke the dissolution; or, if it be the fact, that, in lieu of a meeting and vote of shareholders, the shareholders have given their written consent to the revocation in accordance with the provisions of this act.

B. Upon the filing in the Office of the Secretary of the Nation of the certificate of revocation of dissolution, the Secretary of the Nation, upon being satisfied that the requirements of this section have been complied with, shall issue his certificate that the dissolution has been revoked. Upon the issuance of such certificate by the Secretary of the Nation, the revocation of the dissolution shall become effective and the corporation may again carry on its business.

C. If, after three (3) years from the date upon which the dissolution became effective, the name of the corporation is unavailable upon the records of the Secretary of the Nation, then, in such case, the corporation shall not be reinstated under the same name which it bore when its dissolution became effective, but shall adopt and be reinstated under some other name, and in such case the certificate to be filed pursuant to the provisions of this section shall set forth the name borne by the corporation at the time its dissolution became effective and the new name under which the corporation is to be reinstated.

D. Nothing in this section shall be construed to affect the jurisdiction or power of the Muscogee (Creek) Nation District Court pursuant to the provisions of this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Revocation of voluntary dissolution, see 18 Okl.St. Ann. § 1119.

Library References

- Corporations \S 610(5).
- Westlaw Topic No. 101.
- C.J.S. Corporations \S 922.

§ 1-1120. Renewal, revival, extension and restoration of certificate of incorporation

A. As used in this section, the term certificate of incorporation includes the charter of a corporation organized pursuant to the provisions of any law of this Nation.

B. Any corporation, at any time before the expiration of the time limited for its existence and any corporation whose certificate of incorporation has become forfeited by law for nonpayment of taxes and any corporation whose certificate of incorporation has expired by reason of failure to renew it or whose certificate of incorporation has been renewed, but, through failure to comply strictly with the provisions of the Muscogee (Creek) Nation General Corporation Act, the validity of whose renewal has been brought into question, may at any time procure an extension, restoration, renewal or revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto.

C. The extension, restoration, renewal or revival of the certificate of incorporation may be procured by executing, acknowledging and filing a certificate in accordance with the provisions of this act.

D. The certificate required by the provisions of subsection C of this section shall state:

1. The name of the corporation, which shall be the existing name of the corporation or the name it bore when its certificate of incorporation expired, except as provided for in subsection F of this section;

2. The address, including the street, city and county, of the corporation's registered office in this Nation and the name of its registered agent at such address;

3. Whether or not the renewal, restoration or revival is to be perpetual and if not perpetual the time for which the renewal, restoration or revival is to continue and, in case of renewal before the expiration of the time limited for its existence, the date when the renewal is to commence, which shall be prior to the date of the expiration of the old certificate of incorporation which it is desired to renew;

4. That the corporation desiring to be renewed or revived and so renewing or reviving its certificate of incorporation was organized pursuant to the laws of this Nation;

5. The date when the certificate of incorporation would expire, if such is the case, or such other facts as may show that the certificate of incorporation has become forfeited or that the validity of any renewal has been brought into question; and

6. That the certificate for renewal or revival is filed by authority of those who were directors or members of the governing body of the corporation at the time its certificate of incorporation expired or who were elected directors or

members of the governing body of the corporation as provided for in subsection H of this section.

E. Upon the filing of the certificate in accordance with the provisions of Section 1-1007, the corporation shall be renewed and revived with the same force and effect as if its certificate of incorporation had not become forfeited, or had not expired by limitation. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its certificate of incorporation by the corporation, its officers and agents during the time when its certificate of incorporation was forfeited or after its expiration by limitation, with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect. All real and personal property, rights and credits, which belonged to the corporation at the time its certificate of incorporation became forfeited, or expired by limitation and which were not disposed of prior to the time of its revival or renewal shall be vested in the corporation after the renewal or revival, as fully and amply as they were held by the corporation at and before the time its certificate of incorporation became forfeited, or expired by limitation, and the corporation after its renewal and revival shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its officers and agents prior to its reinstatement, as if its certificate of incorporation had at all times remained in full force and effect.

F. If, after three (3) years from the date upon which the certificate of incorporation became forfeited for nonpayment of taxes, or expired by limitation, the name of the corporation is unavailable upon the records of the Secretary of the Nation, then in such case the corporation to be renewed or revived shall not be renewed under the same name which it bore when its certificate of incorporation became forfeited, or expired but shall adopt or be renewed under some other name and in such case the certificate to be filed under the provisions of this section shall set forth the name borne by the corporation at the time its certificate of incorporation became forfeited, or expired and the new name under which the corporation is to be renewed or revived.

G. Any corporation that renews or revives its certificate of incorporation pursuant to the provisions of this section shall pay to this Nation the amounts provided in this statute of the Muscogee (Creek) Nation Statutes. No payment made pursuant to this subsection shall reduce the amount of franchise tax due pursuant to the provisions of the Muscogee (Creek) Nation Statutes for the year in which the renewal or revival is effected.

H. If a sufficient number of the last acting officers of any corporation desiring to renew or revive its certificate of incorporation are not available by reason of death, unknown address or refusal or neglect to act, the directors of the corporation or those remaining on the board, even if only one, may elect successors to such officers. In any case where there shall be no directors of the corporation available to renew or revive the certificate of incorporation of the corporation, the shareholders may elect a full board of directors, as provided by the bylaws of the corporation, and the board shall then elect such officers as are provided by law, by the certificate of incorporation or by the bylaws to

carry on the business and affairs of the corporation. A special meeting of the shareholders for the purposes of electing directors may be called by any officer, director or shareholder upon notice given in accordance with the provisions this act.

I. After a renewal or revival of the certificate of incorporation of the corporation shall have been effected, except where a special meeting of shareholders has been called in accordance with the provisions of subsection H of this section, the officers who signed the certificate of renewal or revival shall, jointly, immediately call a special meeting of the shareholders of the corporation upon notice given in accordance with the provisions of this act, and at the special meeting the shareholders shall elect a full board of directors, which board shall then elect such officers as are provided by law, by the certificate of incorporation or the bylaws to carry on the business and affairs of the corporation.

J. Whenever it shall be desired to renew or revive the certificate of incorporation of any corporation organized pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act not for profit and having no capital stock, the governing body shall perform all the acts necessary for the renewal or revival of the charter of the corporation which are performed by the board of directors in the case of a corporation having capital stock. The members of any corporation not for profit and having no capital stock who are entitled to vote for the election of members of its governing body, shall perform all the acts necessary for the renewal or revival of the certificate of incorporation of the corporation which are performed by the shareholders in the case of a corporation having capital stock. In all other respects, the procedure for the renewal or revival of the certificate of incorporation of a corporation not for profit or having no capital stock shall conform, as nearly as may be applicable, to the procedure prescribed in this section for the renewal or revival of the certificate of incorporation of a corporation having capital stock.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Renewal, revival, extension and restoration of certificate of incorporation, see 18 Okl.St. Ann. § 1120.

Library References

Corporations ☞18, 615.5.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 47 to 49, 56, 948 to 949.

§ 1-1121. Status of corporation

Any corporation desiring to renew, extend and continue its corporate existence, upon complying with the provisions of this act, shall be and continue for the time stated in its certificate of renewal, a corporation and, in addition to the rights, privileges and immunities conferred by its charter, shall possess and enjoy all the benefits of the provisions of the Muscogee (Creek) Nation General Corporation Act, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities prescribed by the provisions of the Muscogee (Creek) Nation General Corporation Act imposed on such corporations.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Status of corporation, see 18 Okl.St. Ann. § 1121.

Library References

Corporations ☞ 18, 615.5.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 47 to 49, 56, 948 to 949.

§ 1–1122. Failure of corporation to obey order of court; appointment of receiver

Whenever any corporation shall refuse, fail or neglect to obey any order or decree of any court of this Nation within the time fixed by the court for its observance, such refusal, failure or neglect shall be a sufficient ground for the appointment of a receiver of the corporation by a court of competent jurisdiction. If the corporation is a foreign corporation, such refusal, failure, or neglect shall be a sufficient ground for the appointment of a receiver of the assets of the corporation within this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Failure of corporation to obey order of court, appointment of receiver, see 18 Okl.St. Ann. § 1122.

Library References

Corporations ☞ 553(1).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 841, 845.

§ 1–1123. Failure of corporation to obey writ of mandamus; quo warranto proceedings for forfeiture of charter

If any corporation fails to obey the mandate of any peremptory writ of mandamus issued by a court of competent jurisdiction of this Nation for a period of thirty (30) days after the serving of the writ upon the corporation in any manner as provided by the laws of this Nation for the service of writs, any party in interest in the proceeding in which the writ of mandamus issued, either himself or through his or its attorney, may file a statement of such fact with the Attorney General of this Nation, and it shall thereupon be the duty of the Attorney General to immediately commence proceedings in the nature of quo warranto against the corporation in a court of competent jurisdiction, and the court, upon competent proof of such state of facts and proper proceedings had in such proceeding in the nature of quo warranto, shall decree the charter of the corporation forfeited.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Failure of corporation to obey writ of mandamus, quo warranto proceedings for forfeiture of charter, see 18 Okl.St. Ann. § 1123.

Library References

Corporations ☞ 592.
Indians ☞ 538.

Westlaw Topic Nos. 101, 209.
C.J.S. Corporations §§ 914 to 915, 932, 946.

C.J.S. Indians §§ 151 to 179.

§ 1–1124. Actions against officers, directors or shareholders to enforce liability of corporation; unsatisfied judgment against corporation

A. When the officers, directors or shareholders of any corporation shall be liable by the provisions of the Muscogee (Creek) Nation General Corporation Act to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action, at law or in equity, against any one or more of them, and the petition shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally.

B. No suit shall be brought against any officer, director or shareholder for any debt of a corporation of which he is an officer, director or shareholder, until judgment is obtained therefor against the corporation and execution thereon returned unsatisfied.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Actions against officers, directors or shareholders to enforce liability of corporation, unsatisfied judgment against corporation, see 18 Okl.St. Ann. § 1124.

Nonprofit corporations, immunity of directors, see 18 Okl.St. Ann. § 866.

Stock not paid in full, shareholders, liability, see 18 Okl.St. Ann. § 1043.

Library References

Corporations ⌘258, 350.

Westlaw Topic No. 101.

§ 1–1125. Action by officer, director or shareholder against corporation for corporate debt paid

When any officer, director or shareholder shall pay any debt of a corporation for which he is made liable by the provisions of the Muscogee (Creek) Nation General Corporation Act, he may recover the amount so paid in an action against the corporation for money paid for its use, and in such action only the property of a corporation shall be liable to be taken, and not the property of any shareholder.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Action by officer, director or shareholder against corporation for corporate debt paid, see 18 Okl.St. Ann. § 1125.

Library References

Corporations ⌘189, 319.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 431 to 434, 561.

§ 1–1126. Shareholder’s derivative action; allegation of stock ownership

In any derivative suit instituted by a shareholder of a corporation, it shall be averred in the petition that the plaintiff was a shareholder of the corporation at

the time of the transaction of which he complains or that his stock thereafter devolved upon him by operation of law.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Shareholder's derivative action, allegation of stock ownership, see 18 Okl.St. Ann. § 1126.

Library References

Corporations ⌘211(2).
Westlaw Topic No. 101.

§ 1-1127. Liability of corporation, etc.; impairment by certain transactions

The liability of a corporation of this Nation, or of the shareholders, directors or officers thereof, or the rights or remedies of the creditors thereof, or persons doing or transacting business with the corporation, shall not in any way be lessened or impaired by the sale of its assets, or by the increase or decrease in the capital stock of the corporation, or by its merger or consolidation with one or more corporations or by any change or amendment in its certificates of incorporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability of corporation, etc., impairment by certain transactions, see 18 Okl.St. Ann. § 1127.

Library References

Corporations ⌘40, 66, 67, 441, 590. C.J.S. Corporations §§ 58, 183, 242 to 244,
Westlaw Topic No. 101. 742, 744 to 747, 910 to 913.

§ 1-1128. Defective organization of corporation as defense

A. No corporation of this Nation and no person sued by any such organization shall be permitted to assert the want of legal organization as a defense to any claim.

B. This section shall not be construed to prevent judicial inquiry into the regularity or validity of the organization of a corporation, or its lawful possession of any corporate power it may assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain the challenge shall be admissible in any such suit or proceeding.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Defective organization of corporation as defense, see 18 Okl.St. Ann. § 1128.

Library References

Corporations ⌘34. C.J.S. Corporations §§ 93 to 98.
Westlaw Topic No. 101.
C.J.S. Building and Loan Associations; Savings and Loan Associations, and Credit Unions § 16.

§ 1-1129. Usury; pleading by corporation

No corporation shall plead any statute against usury in any court of law or equity in any suit instituted to enforce the payment of any bond, note or other evidence of indebtedness issued or assumed by it.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Usury, pleading by corporation, see 18 Okl.St. Ann. § 1129.

Library References

Usury ⇄83, 89.
Westlaw Topic No. 398.

C.J.S. Interest and Usury; Consumer Credit
§§ 278 to 283, 353, 367.

§ 1-1130. Foreign corporations; definition; qualification to do business in Nation; procedure

A. As used in the Muscogee (Creek) Nation General Corporation Act, the words “foreign corporation” mean a corporation organized pursuant to the laws of any jurisdiction other than this Nation.

B. No foreign corporation shall do any business in this Nation, through or by branch offices, agents or representatives located in this Nation, until it shall have paid to the Secretary of the Nation the fees prescribed in Section 1-1142 of this Title and shall have filed with the Secretary of the Nation:

1. A certificate issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto;

2. A statement executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of Section 1-1007 of this Title, setting forth:

a. the mailing address of the corporation’s principal place of business, wherever located;

b. the name and street address of its additional registered agent in this Nation, if any, which agent shall be either an individual resident in this Nation when appointed or another corporation, limited liability company, or limited partnership authorized to transact business in this Nation;

c. the aggregate number of its authorized shares itemized by classes, par value of shares, shares without par value, and series, if any, within any classes authorized, unless it has no authorized capital;

d. a statement, as of a date not earlier than six (6) months prior to the filing date, of the assets and liabilities of the corporation;

e. the business it proposes to do in this Nation and a statement that it is authorized to do that business in the jurisdiction of its incorporation; and

f. a statement of the maximum amount of capital such corporation intends and expects to invest in the Nation at any time during the current fiscal year. “Invested capital” is defined as the value of the maximum amount of funds, credits, securities and property of whatever kind existing at any time during the

fiscal year in the Muscogee (Creek) Nation and used or employed by such corporation in its business carried on in this Nation.

C. The Secretary of the Nation, upon payment to the Secretary of the Nation of the fees prescribed in Section 1-1142 of this Title, shall issue a sufficient number of certificates under the hand and official seal of the Secretary of the Nation, evidencing the filing of the statement required by the provisions of subsection B of this section. The certificate of the Secretary of the Nation shall be prima facie evidence of the right of the corporation to do business in this Nation; provided that the Secretary of the Nation shall not issue such certificate unless the name of the corporation is such as to distinguish it upon the records of the Office of the Secretary of the Nation in accordance with the provisions of Section 1-1141 of this Title.

D. A foreign corporation, upon receiving a certificate from the Secretary of the Nation, shall enjoy the same rights and privileges as, but not greater than, a corporation organized under the laws of this Nation for the purposes set forth in the statement filed by the corporation with the Secretary of the Nation pursuant to which such certificate is issued and, except as otherwise provided in the Muscogee (Creek) Nation General Corporation Act, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a corporation organized under the laws of this Nation with like purpose and of like character.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Attachment, actions against foreign corporations, see 12 Okl.St. Ann. §§ 1151, 1239.

Consolidation or merger,

Domestic and foreign corporations, see 18 Okl.St. Ann. § 1082.

Domestic and foreign nonstock corporations, see 18 Okl.St. Ann. § 1085.

Guaranty or surety companies, conditions precedent to transacting business, see 18 Okl.St. Ann. § 482.

Income tax, see 68 Okl.St. Ann. §§ 2362, 2365, 2368.

International bank agencies, applicability of provisions of Oklahoma General Corporation Act relating to foreign corporations notwithstanding definition under this section, see 6 Okl.St. Ann. § 1603.

Principal office or place of business, see 18 Okl.St. Ann. § 1021.

Registered agent,

Generally, see 18 Okl.St. Ann. § 1022.

Change, see 18 Okl.St. Ann. § 1023.

Venue of actions, see Okl.St. Ann. Const. Art. 9, § 43; 18 Okl.St. Ann. § 471; 12 Okl.St. Ann. § 137.

Library References

Corporations ☞ 632, 634, 638, 642 to 648.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 968, 971, 977 to 980,
985 to 989, 992 to 1003.

§ 1-1131. Additional requirements in case of change of name, mailing address, authorized capital or business purpose, or merger or consolidation

A. Every foreign corporation admitted to do business in this Nation which shall change its corporate name, the mailing address of its principal office, or its authorized capital, or shall enlarge, limit or otherwise change the business which it proposes to do in this Nation, within thirty (30) days after the time the change becomes effective, shall file with the Secretary of the Nation a statement

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executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of Section 1-1007 of this Title, setting forth:

1. The name of the foreign corporation as it appears on the records of the Secretary of the Nation;
2. The jurisdiction of its incorporation;
3. The date it was authorized to do business in this Nation;
4. If the name of the foreign corporation has been changed, a statement of the name relinquished, a statement of the new name and a statement that the change of name has been effected pursuant to the laws of the jurisdiction of its incorporation and the date the change was effected;
5. If the mailing address of its principal office has been changed, a statement of the mailing address relinquished and a statement of the new mailing address;
6. If the authorized capital of the corporation has been changed, a restatement of the corporate article which states its amended capitalization, a statement that the change has been effected pursuant to the laws of the jurisdiction of its incorporation and the date the change was effected;
7. If the business it proposes to do in this Nation is to be enlarged, limited or otherwise changed, a statement reflecting such change and a statement that it is authorized to do such business in the jurisdiction of its incorporation; and
8. If the name and/or address of the additional agent has changed, a statement of the new name and address.

B. Whenever a foreign corporation authorized to transact business in this Nation shall be the survivor of a merger permitted by the laws of the Nation or country in which it is incorporated, within thirty (30) days after the merger becomes effective, it shall file a certificate, issued by the proper officer of the Nation or country of its incorporation, attesting to the occurrence of such event. If the merger has changed the corporate name, mailing address, or authorized capital of such foreign corporation or has enlarged, limited or otherwise changed the business it proposes to do in this Nation, it shall also comply with the provisions of subsection A of this section.

C. Whenever a foreign corporation authorized to transact business in this Nation ceases to exist because of a statutory merger or consolidation with a foreign corporation not qualified to transact business in this Nation, it shall comply with the provisions of Section 1-1135 of this Title.

D. The Secretary of the Nation shall be paid the fee prescribed in Section 1-1142 of this Title for filing and indexing each statement or certificate required by the provisions of subsection A or B of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Additional requirements in case of change of name, mailing address, authorized capital or business purpose, or merger, consolidation or conversion, see 18 Okl.St. Ann. § 1131.

Principal place of business, see 18 Okl.St. Ann. § 1021.

Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ☞645, 646, 690.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 987, 1016.

§ 1-1132. Exceptions to requirements

A. No foreign corporation shall be required to comply with the provisions of this act, if:

1. it is the mail order or a similar business, merely receiving orders by mail or otherwise in pursuance of letters, circulars, catalogs, or other forms of advertising, or solicitation, accepting the orders outside this Nation, and filing them with goods shipped into this Nation; or

2. it employs salesmen, either resident or traveling, to solicit orders in this Nation, either by display of samples or otherwise, whether or not maintaining sales offices in this Nation, all orders being subject to approval at the offices of the corporation without this Nation, and all goods applicable to the orders being shipped in pursuance thereof from without this Nation, to the vendee or to the seller or his agent for delivery to the vendee, and if any samples kept within this Nation are for display or advertising purposes only, and no sales, repairs, or replacements are made from stock on hand in this Nation; or

3. it sells, by contract consummated outside this Nation, and agrees by the contract, to deliver into this Nation, machinery, plants or equipment, the construction, erection or installation of which within this Nation requires the supervision of technical engineers or skilled employees performing services not generally available, and as a part of the contract of sale agrees to furnish such services, and such services only, to the vendee at the time of construction, erection or installation; or

4. its business operations within this Nation are wholly interstate in character; or

5. it is an insurance company doing business in this Nation; or

6. it creates, as borrower or lender, or acquires, evidences of debt, mortgages or liens on real or personal property; or

7. it secures or collects debts or enforces any rights in property securing the same.

B. The provisions of this section shall have no application to the question of whether any foreign corporation is:

1. subject to service of process and suit in this Nation pursuant to the provisions of this act or any other law of this Nation; or

2. subject to the taxation laws of this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Exceptions to requirements, see 18 Okl.St. Ann. § 1132.

Library References

Corporations ☞631.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 968 to 970.

§ 1-1133. Change of registered agent upon whom process may be served

A. 1. Any foreign corporation which has qualified to do business in this Nation may change its registered agent and substitute therefor another registered agent by filing a certificate with the Secretary of the Nation, acknowledged in accordance with the provisions of Section 1-1007 of this Title, setting forth:

- a. The name and street address of its registered agent designated in this Nation upon whom process directed to the corporation may be served; and
- b. A revocation of all previous appointments of agent for such purposes.

2. The registered agent shall be either an individual residing in this Nation when appointed or a corporation, limited liability company, or limited partnership authorized to transact business in this Nation.

B. Any individual or corporation designated by a foreign corporation as its registered agent for service of process may resign by filing with the Secretary of the Nation a signed statement that the agent is unwilling to continue to act as the registered agent of the corporation for service of process, including in the statement the post office address of the main or headquarters office of the foreign corporation, but the resignation shall not become effective until thirty (30) days after the statement is filed. The statement shall be acknowledged by the registered agent and shall contain a representation that written notice of resignation was given to the corporation at least thirty (30) days prior to the filing of the statement by mailing or delivering the notice to the corporation at its address given in the statement.

C. If any agent designated and certified as required by the provisions of Section 1-1130 of this Title shall die, remove himself from this Nation or resign, then the foreign corporation for which the agent had been so designated and certified, within ten (10) days after the death, removal or resignation of its agent, shall substitute, designate and certify to the Secretary of the Nation, the name of another registered agent for the purposes of the Muscogee (Creek) Nation General Corporation Act, and all process, orders, rules and notices may be served on or given to the substituted agent with like effect.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Change of registered agent upon whom process may be served, see 18 Okl.St. Ann. § 1133.
Registered agent,

Generally, see 18 Okl.St. Ann. § 1022.
Change, see 18 Okl.St. Ann. § 1023.

Library References

Corporations ☞646.
Westlaw Topic No. 101.
C.J.S. Corporations § 987.

§ 1-1134. Violations and penalties

A. Any foreign corporation doing business of any kind in this Nation without first having complied with any provision of the Muscogee (Creek) Nation General Corporation Act applicable to it, shall be fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) for each such offense. Any agent of any foreign corporation that shall do any business in this Nation for any foreign corporation before the foreign corporation has complied with any provision of the Muscogee (Creek) Nation General Corporation Act applicable to it, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each such offense.

B. If any foreign corporation fails to file or cause to be filed a certificate as provided for in paragraphs 11 and 13 of subsection A of Section 1-1142 of this Title or fails to pay to the Secretary of the Nation any additional fees shown to be due by the certificate provided for in paragraph 13 of subsection A of Section 1-1142 of this Title, the corporation:

1. may be ousted from this Nation by the Secretary of the Nation and its certificate of authority to do business in this Nation revoked and canceled. Before such revocation the Secretary of the Nation shall give not less than thirty (30) days' notice sent by mail duly addressed to such corporation at its principal place of business or last address shown on the records of the Secretary of the Nation of the Secretary of the Nation's intent to revoke the corporation's authority to transact business in this Nation; and

2. after notice required in paragraph 1 above, shall be subject to a penalty and shall forfeit to the Nation for each day it fails to comply with the provisions of this subsection, the sum of twenty-five dollars (\$25.00) per day but not more than five hundred dollars (\$500.00) for each such offense.

C. All fines and penalties provided for by this section may be recovered in a suit brought therefore by the Attorney General, in the name of the Nation, against the corporation, in any Muscogee (Creek) Nation District Court of the Nation. Fines and penalties received or collected pursuant to this section by the Attorney General as a result of an action brought in the name of the Nation by the Attorney General, shall be paid into the Nation's Treasury. Such fines and penalties shall be properly accounted for and paid monthly by the Secretary of the Nation to the Nation's Treasurer for deposit into the Nation's Treasury.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Criminal liability, see 21 Okl.St. Ann. § 1644.

Violations and penalties, see 18 Okl.St. Ann. § 1134.

Library References

Corporations ☞652.

Indians ☞210, 501.

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 1004 to 1005, 1008.

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

§ 1–1135. Withdrawal of foreign corporation from Nation; procedure; service of process on Secretary of the Nation

A. Any foreign corporation which shall have qualified to do business in this Nation pursuant to the provisions of Section 1–1130 of this Title, may surrender its authority to do business in this Nation and may withdraw therefrom by filing with the Secretary of the Nation:

1. A certificate, executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of Section 1–1007 of this Title, stating that it surrenders its authority to transact business in this Nation and withdraws therefrom; and stating the address to which the Secretary of the Nation may mail any process against the corporation that may be served upon the Secretary of the Nation; or

2. A copy of a certificate of dissolution issued by the proper official of the Nation or other jurisdiction of its incorporation, together with a certificate, which shall be executed in accordance with the provisions of paragraph 1 of this subsection, stating the address to which the Secretary of the Nation may mail any process against the corporation that may be served upon the Secretary of the Nation; or

3. A copy of an order or decree of dissolution made by any court of competent jurisdiction or other competent authority of the Nation or other jurisdiction of its incorporation, certified to be a true copy under the hand of the Clerk of the Court or other official body, and the official seal of the court or official body or clerk thereof, together with a certificate executed in accordance with the provisions of paragraph 1 of this subsection, stating the address to which the Secretary of the Nation may mail any process against the corporation that may be served upon the Secretary of the Nation.

B. The Secretary of the Nation, upon payment to the Secretary of the Nation of the fees prescribed in Section 1–1142 of this Title, shall issue a sufficient number of certificates, under the hand and official seal of the Secretary of the Nation, evidencing the surrender of the authority of the corporation to do business in this Nation and its withdrawal therefrom.

C. Upon the issuance of the certificates by the Secretary of the Nation, the appointment of the registered agent of the corporation in this Nation, upon whom process against the corporation may be served, shall be revoked, and service on the corporation may be made by serving the Secretary of the Nation State as its agent.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Service, generally, see 12 Okl.St. Ann. §§ 2004, 2005.
 Withdrawal of foreign corporation from Oklahoma, procedure, service of process on Oklahoma Secretary of State, see 18 Okl.St. Ann. § 1135.

Library References

Corporations ☞651.	C.J.S. Corporations § 1004.
Indians ☞510.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 101, 209.	

§ 1-1136. Service of process on nonqualifying foreign corporations

A. If any foreign corporation shall transact business in this Nation without having qualified to do business in accordance with the provisions of Section 1-1130 of this Title, service on the corporation may be made by serving the Secretary of the Nation as its agent.

B. The provisions of Section 1-1132 of this Title shall not apply in determining whether any foreign corporation is transacting business in this Nation within the meaning of this section; and “the transaction of business” or “business transacted in this Nation”, by any such foreign corporation, whenever those words are used in this section, shall mean the course or practice of carrying on any business activities in this Nation, including, without limiting the generality of the foregoing, the solicitation of business or orders in this Nation. The provisions of this section shall not apply to any insurance company doing business in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Service, generally, see 12 Okl.St. Ann. §§ 2004, 2005.

Service of process on nonqualifying foreign corporations, see 18 Okl.St. Ann. § 1136.

Library References

Corporations ⇨668(14).

Indians ⇨510.

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 1023, 1035.

C.J.S. Indians §§ 151 to 179.

§ 1-1137. Actions by and against unqualified foreign corporations

A. A foreign corporation which is required to comply with the provisions of this act and which has done business in this Nation without authority shall not maintain any action or special proceeding in this Nation unless and until such corporation has been authorized to do business in this Nation, and has paid to the Nation all fees, penalties and franchise taxes for the years or parts thereof during which it did business in this Nation without authority. This prohibition shall not apply to any successor in interest of such foreign corporation.

B. The failure of a foreign corporation to obtain authority to do business in this Nation shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Actions,

By and against unqualified foreign corporations, see 18 Okl.St. Ann. § 1137.

Foreign corporations, generally, see Okl.St. Ann. Const. Art. 9, § 43; 18 Okl.St. Ann. § 471.

Nonresident defendants, see 12 Okl.St. Ann. § 187.

Library References

Corporations ⇨657, 661.

Westlaw Topic No. 101.

C.J.S. Conflict of Laws § 47.

C.J.S. Corporations §§ 1005 to 1006, 1009 to 1010, 1020.

§ 1–1138. Foreign corporations doing business without having qualified; injunctions

The Muscogee (Creek) Nation District Court shall have jurisdiction to enjoin any foreign corporation, or any agent thereof, from transacting any business in this Nation, if such corporation has failed to comply with any provision of the Muscogee (Creek) Nation General Corporation Act applicable to it or if such corporation has secured a certificate of the Secretary of the Nation pursuant to provisions of this act on the basis of false or misleading representations. The Attorney General, upon his own motion or upon the relation of proper parties, shall proceed for this purpose by petition in any county in which such corporation is doing business.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign corporations doing business without having qualified, injunctions, see 18 Okl.St. Ann. § 1138.

Injunctions, generally, see 12 Okl.St. Ann. § 1381 et seq.

Venue,

Foreign corporations, generally, see Okl.St. Ann. Const. Art. 9, § 43; 18 Okl.St. Ann. § 471.

Nonresident defendants, see 12 Okl.St. Ann. § 187.

Library References

Corporations ◊634, 651, 671.

Indians ◊537.

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 971, 1004, 1023.

C.J.S. Indians §§ 151 to 179.

§ 1–1139. Reservation of corporate name

A. The exclusive right to the use of a corporate name, in good faith, may be reserved by:

1. Any person intending to form a corporation under Title 3 of the Muscogee (Creek) Nation Statutes; or

2. Any corporation organized under the laws of this Nation intending to change its name; or

3. Any foreign corporation intending to qualify to transact business in this Nation under Title 3 of the Muscogee (Creek) Nation Statutes; or

4. Any foreign corporation qualified to transact business in this Nation intending to change its name; or

5. Any person intending to organize a foreign corporation and intending to have such corporation qualified to transact business in this Nation under the laws of this Nation; or

6. Any corporation whose charter has expired or has been forfeited intending to renew or revive the corporation under Title 3 of the Muscogee (Creek) Nation Statutes.

B. Such reservation shall be made by filing in the Office of the Secretary of the Nation an application to reserve a specified corporate name. If the

Secretary of the Nation finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of sixty (60) days.

C. The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person by filing in the Office of the Secretary of the Nation a notice of such transfer, executed by the person for whom such name was reserved and specifying the name and address of the transferee.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Banks, deception of public by use of words "Banker, bankers", etc., see 6 Okl.St. Ann. § 1401.
 Fee for name reservation, see 18 Okl.St. Ann. § 1142.
 Names, requirements, see 18 Okl.St. Ann. § 1006.
 Reservation of corporate name, see 18 Okl.St. Ann. § 1139.

Library References

Corporations ¶43 to 45.5.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 132, 134, 136 to 138.

§ 1-1140. Trade names

A. A corporation or other business entity doing business in this Nation under any name other than its legal name shall file a report with the Secretary of the Nation setting forth the legal name of the corporation or business entity, the jurisdiction of organization of the corporation or business entity, the trade name under which the business is carried on, a brief description of the kind of business transacted under the name, and the address wherein the business is to be carried on. The report shall be executed by a representative of the business entity authorized to sign on its behalf. In the case of a corporation, the report shall be signed and filed in accordance with Section 1-1007 of this Title. The trade name adopted shall be such as to be distinguishable upon the records in the Office of the Secretary of the Nation from:

1. Names of other business entities organized under the laws of this Nation and filed with the Secretary of the Nation then existing or which existed at any time during the preceding three (3) years; or
2. Names of foreign business entities qualified to do business in this Nation and filed with the Secretary of the Nation then existing or which existed at any time during the preceding three (3) years; or
3. Trade names or fictitious names filed with the Secretary of the Nation; or
4. Names reserved with the Secretary of the Nation.

B. As used in this section, "business entity" means a corporation, a business trust, a common law trust, a limited liability company, or any unincorporated business, including any form of partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Limited partnerships, registered names, see 54 Okl.St. Ann. § 304.

Title 3, § 1–1140

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Trademarks and tradenames, generally, see 60 Okl.St. Ann. § 314; 78 Okl.St. Ann. § 21 et seq.
Tradenames, see 18 Okl.St. Ann. § 1140.

Library References

Trademarks ⇌1001, 1026.
Westlaw Topic No. 382T.

C.J.S. Trademarks, Tradenames, and Unfair
Competition §§ 5, 14 to 18, 25, 27, 36 to
37.

§ 1–1140.1. Withdrawal of trade name; report

In the event a corporation or other business entity elects to cease doing business in this Nation under a trade name, it shall file a report, in duplicate, with the Secretary of the Nation withdrawing such trade name. The report shall be executed by a party duly authorized to sign on behalf of the corporation or other business entity. In the case of a corporation, the report shall be acknowledged and filed in accordance with Section 1–1007 of this Title. [Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Withdrawal of trade name, see 18 Okl.St. Ann. § 1140.1.

Library References

Trademarks ⇌1001, 1026.
Westlaw Topic No. 382T.

C.J.S. Trademarks, Tradenames, and Unfair
Competition §§ 5, 14 to 18, 25, 27, 36 to
37.

§ 1–1140.2. Transfer of trade name ownership; report

In the event a corporation or other business entity elects to transfer ownership of a trade name to another corporation or business entity, it shall file a report, in duplicate, with the Secretary of the Nation, specifying such transfer. The report shall be executed by a party duly authorized to sign on behalf of the corporation or other business entity. In the case of a corporation, the report shall be acknowledged and filed in accordance with Section 1–1007 of this Title. The report shall contain the name of the corporation to which the trade name is being transferred, and the address wherein such business is to be carried on.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Transfer of trade name, see 18 Okl.St. Ann. § 1140.2.

Library References

Trademarks ⇌1001, 1026, 1197.
Westlaw Topic No. 382T.

C.J.S. Trademarks, Tradenames, and Unfair
Competition §§ 5, 14 to 18, 25, 27, 36 to
37, 203 to 206.

§ 1–1140.3. Amending trade name report

A. A trade name report shall be amended when:

1. There is a false or erroneous statement in the trade name report;
2. There is a change in the kind of business transacted under the trade name; or

3. There is a change in or an additional address where the business is to be carried on under the trade name.

B. An amended trade name report shall set forth the trade name and specify the amendment therein. The report shall be executed by a party duly authorized to sign on behalf of the corporation or other business entity. In the case of a corporation, the report shall be acknowledged and filed in accordance with the Muscogee (Creek) Nation Statutes.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Amendment of trade name report, see 18 Okl.St. Ann. § 1140.3.

Library References

Trademarks ⇌1001, 1026.
Westlaw Topic No. 382T.

C.J.S. Trademarks, Tradenames, and Unfair
Competition §§ 5, 14 to 18, 25, 27, 36 to
37.

§ 1-1141. Prohibition on use of same or indistinguishable names; exceptions

The Secretary of the Nation shall not accept for reservation or filing a statement or certificate containing a name which is the same as or indistinguishable from the name of any business entity, as defined in this act, trade name, fictitious name, or reserved name filed with the Secretary of the Nation unless one of the following is filed with the Secretary of the Nation:

1. The written consent of the business entity or holder of the trade name, fictitious name, or reserved name to use the same or indistinguishable name with the addition of one or more words to make that name distinguishable upon the records of the Secretary of the Nation, except that the addition of words to make the name distinguishable shall not be required where the written consent states that the consenting entity is about to change its name, cease to do business, withdraw from the Nation, or be wound up;

2. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the business entity or holder of a reserved name, trade name, or fictitious name to the use of the name in this Nation;

3. In the case of any foreign business entity having a name prohibited by this section which intends to qualify to transact business within this Nation, a resolution adopting a fictitious name not prohibited by this section, which shall be used to the exclusion of its true name when transacting business within this Nation. Such resolution shall be executed by a representative or representatives of the business entity duly authorized to sign on its behalf.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign corporations, qualification to do business in state, see 18 Okl.St. Ann. § 1130.
Prohibition on use of same or indistinguishable names, exceptions, see 18 Okl.St. Ann. § 1141.

Library References

Trademarks ⇌1001, 1026.

Westlaw Topic No. 382T.

C.J.S. Trademarks, Tradenames, and Unfair
Competition §§ 5, 14 to 18, 25, 27, 36 to
37.

§ 1-1142. Filing and other service fees

A. The Secretary of the Nation, for services performed in the Office of the Secretary of the Nation and for expense of mailing, shall charge and collect the following fees:

1. **For any report, document, or other paper required to be filed in the Office of the Secretary of the Nation**, a fee of twenty-five dollars (\$25.00);
2. **For reservation of corporate name**, a fee of ten dollars (\$10.00);
3. **For issuing extra copies of any certificate not requiring any extra filing of papers or documents of any kind**, a fee of ten dollars (\$10.00);
4. **For issuing any other certificate**, a fee of ten dollars (\$10.00);
5. **For receiving a filing or indexing the annual certificate of a foreign corporation doing business in this Nation, or both when filed together**, a fee of ten dollars (\$10.00);
6. **For preclearance of any document for filing**, a fee of fifty dollars (\$50.00);
7. **For each service of process made upon and accepted by the Secretary of the Nation**, a fee of twenty-five dollars (\$25.00);
8. **For preparing and providing a report of a record search**, a fee of five dollars (\$5.00);
9. **For filing and issuing certificates of incorporation**, the fee shall be one-tenth of one percent (1/10 of 1%) of the authorized capital stock of such corporation; provided, that the minimum fee for any such service shall be fifty dollars (\$50.00); provided further, that not for profit corporations shall only be required to pay a fee of twenty-five dollars (\$25.00);
10. **For filing and issuing amended certificates of incorporation or certificates of restatement, reorganization, revival, extension or dissolution**, the fee shall be fifty dollars (\$50.00); provided, however, not for profit corporations shall only be required to pay a fee of twenty-five dollars (\$25.00). If an amendment shall provide for an increase in authorized capital in excess of fifty thousand dollars (\$50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such increase;
11. **For filing and issuing certificates of consolidation, if the resulting corporation is a domestic corporation, or merger, if the surviving corporation is a domestic corporation**, the fee shall be one hundred dollars (\$100.00); provided, however, not-for-profit corporations shall only be required to pay a fee of twenty-five dollars (\$25.00). If the merger or consolidation shall increase the authorized capital of the surviving or resulting corporation in excess of fifty thousand dollars (\$50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such increase;
12. **For filing and issuing a certificate of conversion, whenever the resulting corporation is a domestic corporation**, the minimum fee shall be one hundred dollars (\$100.00); provided, however, if the certificate of incorpo-

ration of the resulting corporation authorizes capital stock in excess of fifty thousand dollars (\$50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such authorized capital. If the resulting domestic corporation is not for profit, it shall only be required to pay a fee of fifty dollars (\$50.00);

13. **For issuing a certificate to a foreign corporation to do business in this Nation, and filing a certificate and statement of such corporation required pursuant to the provisions of Section 1-1130 of this Title**, the fee shall be one-tenth of one percent (1/10 of 1%) of the maximum amount of capital invested by such corporation in the Nation at any time during the fiscal year such certificate is issued to any such foreign corporation; provided, that the minimum fee for any such service shall be three hundred dollars (\$300.00); provided further, that no such corporation shall be required to pay a fee on an amount in excess of its authorized capital;

14. **For amended certificate of qualification of a foreign corporation**, a fee of two hundred dollars (\$200.00); provided, however, for a certificate solely reflecting a change of mailing address, a fee of ten dollars (\$10.00);

15. **For filing a certificate of consolidation, if the resulting corporation is a foreign corporation, or merger, if the surviving corporation is a foreign corporation**, the fee shall be one hundred dollars (\$100.00);

16. **For filing a certificate of withdrawal of a foreign corporation doing business in this Nation**, a fee of one hundred dollars (\$100.00);

17. Every foreign corporation on the anniversary of its qualification in this Nation each year, shall cause to be filed with the Secretary of the Nation a certificate of its president, vice-president or other managing officers, in which shall be stated and shown the maximum amount of capital the corporation had invested in the Nation at any time subsequent to the issuance to it of a certificate to do business in this Nation and the amount of capital previously paid upon. If the amount of capital so invested as shown by said certificate exceeds the amount formerly paid upon, the corporation, at the time of filing said certificate, shall pay to the Secretary of the Nation an additional fee equal to one-tenth of one percent (1/10 of 1%) of the amount of such excess capital so invested by the corporation in the Nation; provided, that no such corporation shall be required to pay a filing fee on an amount in excess of its authorized capital, or to file the certificate provided for in this paragraph after it shall have paid a filing fee on its total authorized capitalization;

18. **For acting as the registered agent**, a fee of one hundred dollars (\$100.00) payable on the first day of July each year, and if not paid before the next ensuing September 1st, the Secretary of the Nation shall suspend and forfeit the charter of the delinquent corporation pursuant to the procedures prescribed in the Muscogee (Creek) Nation Statutes. The Secretary of the Nation shall collect and audit the registered agent fee authorized pursuant to this paragraph in conjunction with the collection and audit of franchise taxes as provided for in the Muscogee (Creek) Nation Statutes. All monies received by the Secretary of the Nation pursuant to the provisions of this paragraph shall be paid to the Nation's Treasurer for deposit in the Nation's Treasury; and

19. **For any response by means of telecommunications to inquiries regarding information required to be maintained by the Secretary of the Nation**, a fee of five dollars (\$5.00), unless otherwise provided. Fees collected pursuant to this paragraph shall be deposited in the General Fund for the Office of the Secretary of the Nation.

B. Except as otherwise provided by law, fees paid to the Secretary of Nation in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act shall be properly accounted for and shall be paid monthly to the Nation's Financial Department for deposit in the Nation's account.

C. Reserved

D. In any court proceeding pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act requiring the filing of any decree, order, report or other document in the Office of the Secretary of the Nation or in the office of the Clerk of the Court of the Muscogee (Creek) Nation District Court, in addition to the usual court costs and the costs for filing in the office of the Clerk of the Court, fees equal to the amounts provided for in this section for such required filing shall be collected as costs in such proceedings and such amount shall be forwarded to the Secretary of the Nation and the Clerk of Court with the papers to be filed.

E. The provisions contained in this section relating to the payment of incorporation fees by foreign corporations are not intended and shall not be construed to relieve such corporations, where applicable, of the payment of the annual corporate franchise tax to the Secretary of the Nation.

F. For the purposes of computing the fees to be collected by the Secretary of the Nation pursuant to the provisions of this section, each share without par value shall be treated the same as a share with a par value of fifty dollars (\$50.00), and the fees thereon shall be collected accordingly.

G. Payments for any required fees except as otherwise provided by law may be made as follows:

1. By the applicant's personal or company check, cash, or money order; or
2. By a nationally recognized credit card issued to the applicant. The Secretary of the Nation may add a convenience fee, not to exceed four percent (4%) of the amount of such payment for services provided through telephonic or electronic media. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit which is accepted by over one thousand merchants in the State of Oklahoma. The Secretary of the Nation shall determine which nationally recognized credit cards will be accepted; provided, however, the Secretary of the Nation must ensure that no loss of the Nation's revenue will occur by the use of such card. The convenience fee collected pursuant to this paragraph shall be credited to the General Fund for the Office of the Secretary of the Nation, as established in the Muscogee (Creek) Nation Statutes.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Change of address or name of registered agent, see Title 3, § 1-1024.
Merger or consolidation of domestic and foreign corporations, service of process, see Title 3, § 1-1082.
Share acquisitions by domestic corporations, see Title 3, § 1-1090.1

Oklahoma Statutes Annotated

Certificate of incorporation,
Generally, see 18 Okl.St. Ann. § 1005 et seq.
Amended, see 18 Okl.St. Ann. §§ 1076, 1077.
Renewal, revival, extension, see 18 Okl.St. Ann. § 1120.
Restated, see 18 Okl.St. Ann. § 1080.
Certificate of merger or consolidation, see 18 Okl.St. Ann. § 1081 et seq.
Deposit of fees in Secretary of State Revolving Fund, see 62 Okl.St. Ann. § 276.1.
Filing and other service fees, see 18 Okl.St. Ann. § 1142.
Foreign corporations, certificate of change of name or mailing address, authorized capital or business purpose, merger, see 18 Okl.St. Ann. § 1131.
Franchise taxes, see 68 Okl.St. Ann. § 1204.
Registered agent, resignation not coupled with appointment of successor, see 18 Okl.St. Ann. § 1026.
Reservation of name, see 18 Okl.St. Ann. § 1139.
Service of process, corporation surviving merger,
Domestic and foreign corporations, see 18 Okl.St. Ann. § 1082.
Domestic and foreign nonstock, not for profit corporations, see 18 Okl.St. Ann. § 1085.
Service upon secretary of state, see 18 Okl.St. Ann. §§ 1022, 1135.

Library References

Corporations ¶17 to 23, 391. C.J.S. Corporations §§ 47 to 49, 56 to 57, 59
Westlaw Topic No. 101. to 60, 62, 679, 682.

§ 1-1142.1. Charges for telephone assistance service by Secretary of the Nation

The Secretary of the Nation is authorized to charge fees as provided by law for a telephone assistance service to provide information concerning records retained by the Secretary of the Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fees for telephone assistance, see 18 Okl.St. Ann. § 1142.1.

Library References

Corporations ¶17 to 23, 391. C.J.S. Corporations §§ 47 to 49, 56 to 57, 59
Westlaw Topic No. 101. to 60, 62, 679, 682.

§ 1-1143. Duplication of Muscogee (Creek) Nation General Corporation Act by Secretary of the Nation; distribution

The Secretary of the Nation shall make forms necessary for incorporation or registration available via electronic means through a publicly accessible webpage. The Secretary may have printed, from time to time as he deems necessary, pamphlet copies of the Muscogee (Creek) Nation General Corporation Act for distribution to persons and corporations desiring the same for a sum not exceeding the cost of printing. The money received from the sale of the copies shall be disposed of as are other fees of the Office of the Secretary of the Nation. Nothing in this section shall be construed to prevent the free

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distribution of single pamphlet copies of the Muscogee (Creek) Nation General Corporation Act by the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Deposit of fees in Secretary of State Revolving Fund, see 62 Okl.St. Ann. § 276.1.

Duplication of Oklahoma General Corporation Act by Secretary of State, distribution, see 18 Okl.St. Ann. § 1143.

Library References

Corporations ☞391.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 679, 682.

CHAPTER 2. MUSCOGEE (CREEK) NATION LIMITED LIABILITY COMPANY ACT

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- 2-2045. Name of foreign limited liability company; use of fictitious name.
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- 2-2051. Action brought by member to recover judgment; conditions.
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- 2-2054. Agreement of merger or consolidation.
- 2-2054.1. Conversion of business entity to limited liability company.
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- 2-2056. Petition to direct the execution and filing of articles or document.
- 2-2057. Application to commerce.
- 2-2058. Rules of construction; applicable law.

Historical and Statutory Notes

- NCA-92-191, § 101, provides:
- “§ 101. Findings:
“The National Council finds that:
“A. The Muscogee Nation has the power to charter profit or non-profit corporation under tribal law.
“B. An association known as the ‘Rural Fire Protection Association of Creek Indian Territory’ has been formed and the incorporators have submitted a request to the Muscogee National Council to be granted a charter as a non-profit corporation under the laws of the Muscogee Nation.
“C. The purposes of this corporation are compatible with the needs of rural Creek citizens who are without adequate rural fire protection.”

Oklahoma Statutes Annotated

Farming and ranching, authorization, see 18 Okl.St. Ann. § 955.
Franchise tax code, nonapplicability to limited liability companies, see 68 Okl.St. Ann. § 1201.
Revenue and taxation, limited liability company defined for tax purposes, see 68 Okl.St. Ann. § 202.

§ 2-2000. Short title

This act shall be known and may be cited as the “Muscogee (Creek) Nation Limited Liability Company Act”.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Oklahoma Limited Liability Company Act, short title, see 18 Okl.St. Ann. § 2000.

§ 2-2001. Definitions

As used in this act, unless the context otherwise requires:

1. “Articles of organization” means documents filed under Section 2-2004 of this Title for the purpose of forming a limited liability company;
2. “Bankrupt” means bankrupt under the United States Bankruptcy Code,¹ as amended, or insolvent under any state insolvency act;
3. “Business” means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood;

4. “Capital contribution” means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services;

5. “Capital interest” means the fair market value as of the date contributed of a member’s capital contribution as adjusted for any additional capital contributions or withdrawals;

6. “Corporation” means a corporation formed under the laws of this Nation or a foreign corporation as defined in this section;

7. “Court” includes every court and judge having jurisdiction in the case;

8. “Foreign corporation” means a corporation formed under the laws of any state, or under the laws of the District of Columbia or any foreign country;

9. “Foreign limited liability company” means an entity that is:

- a. an unincorporated association,
- b. organized under the laws of a state, District of Columbia or organized under the laws of any foreign country,
- c. organized under any state or District of Columbia pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and
- d. not required to be registered or organized under any statute of this Nation other than this act;

10. “Foreign limited partnership” means a limited partnership formed under the laws of any state, or under the laws of the District of Columbia or any foreign country;

11. “Limited liability company” or “domestic limited liability company” means an entity that is an unincorporated association or proprietorship having one or more members that is organized and existing under the laws of this Nation;

12. “Limited partnership” means a limited partnership formed under the laws of this Nation or a foreign limited partnership as defined in this section;

13. “Manager” or “managers” means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement;

14. “Member” means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this act;

15. “Membership interest” or “interest” means a member’s rights in the limited liability company, collectively, including the member’s share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company’s assets, and any right to vote or participate in management;

16. “Nation” means the Muscogee (Creek) Nation;

Title 3, § 2–2001

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17. “Operating agreement” means any agreement of the members as to the affairs of a limited liability company and the conduct of its business;

18. “Person” means an individual, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity;

19. “Secretary of the Nation” means the Secretary of the Nation of the Muscogee (Creek) Nation; and

20. “State” means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ See 11 U.S.C.A. § 101 et seq.

Oklahoma Statutes Annotated

Definitions, see 18 Okl.St. Ann. § 2001.

§ 2–2002. Purposes of limited liability companies

A limited liability company may be organized under the Muscogee (Creek) Nation General Corporation Act¹ for the purpose of carrying on any lawful business, purpose or activity, whether or not for property, except that a limited liability company may not conduct business as a bank or domestic insurer.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 3, § 1–1001 et seq.

Oklahoma Statutes Annotated

Purposes for formation, see 18 Okl.St. Ann. § 2002.

Library References

Limited Liability Companies ↻6.
Westlaw Topic No. 241E.

§ 2–2003. Limited liability company; powers

Each limited liability company may:

1. Sue, be sued, complain and defend in all courts of this Nation;
2. Transact its business, carry on its operations and have and exercise the powers granted by this section in any state, territory, district or possession of the United States, and in any foreign country;
3. Make contracts and guarantees, incur liabilities, and borrow money;
4. Sell, convey, lease, exchange, transfer, mortgage, pledge, and otherwise dispose of all or any part of its property and assets;
5. Acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;
6. Issue notes, bonds and other obligations and secure any of them by mortgage or deed of trust or security interest of any or all of its assets;

7. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;

8. Invest its surplus funds, lend money from time to time in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds so loaned or invested;

9. Elect or appoint agents and define their duties and fix their compensation;

10. Be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, limited liability company, joint venture, trust or other enterprise;

11. Indemnify and hold harmless any member, agent, or employee from and against any and all claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee which constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

12. Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of this Nation, for the administration and regulation of the affairs of the limited liability company;

13. Cease its activities and dissolve; and

14. Do every other act not inconsistent with law which is appropriate to promote and attain the purposes set forth in its articles of organization.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Powers and authority, see 18 Okl.St. Ann. § 2003.

Library References

Limited Liability Companies ◊32.

Westlaw Topic No. 241E.

§ 2-2004. Filing the articles of organization

A. One or more persons may form a limited liability company upon the filing of executed articles of organization with the Office of the Secretary of the Nation.

B. 1. When the Office of the Secretary of the Nation files the articles of organization, the proposed organization becomes a limited liability company under the name and subject to the purposes, conditions, and provisions stated in the articles.

2. Filing of the articles by the Secretary of the Nation is conclusive evidence of the formation of the limited liability company.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Conversion of business entity to limited liability company, see Title 3, § 2–42054.1.

Oklahoma Statutes Annotated

Articles of organization, filing, see 18 Okl.St. Ann. § 2004.

Library References

Limited Liability Companies ⇐3, 14.
Westlaw Topic No. 241E.

§ 2–2005. Required contents of the articles of organization

A. The articles of organization shall set forth:

1. The name of the limited liability company;
2. The term of the existence of the limited liability company which may be perpetual; and
3. The street address of its principal place of business, wherever located, and the name and street address of its resident agent which shall be identical to its registered office in this Nation.

B. It is not necessary to set out in the articles of organization any of the powers enumerated in this act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Conversion of business entity to limited liability company, see Title 3, § 2–42054.1.

Oklahoma Statutes Annotated

Articles of organization, contents, see 18 Okl.St. Ann. § 2005.

Library References

Limited Liability Companies ⇐14.
Westlaw Topic No. 241E.

§ 2–2006. Execution of the articles of organization

A. Articles required by this act to be filed with the Office of the Secretary of the Nation shall be executed in the following manner:

1. Articles of organization must be signed by at least one person who need not be a member of the limited liability company; and
2. Articles of amendment, merger, or dissolution must be signed by a manager.

B. Any person may sign any articles by an attorney in fact. Powers of attorney relating to the signing of articles by an attorney in fact need not be sworn to, verified or acknowledged, and need not be filed with the Office of the Secretary of the Nation.

C. The execution of any articles under this act constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

D. Any signature on any instrument authorized to be filed with the Secretary of the Nation under this act may be a facsimile.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Conversion of business entity to limited liability company, see Title 3, § 2–42054.1.

Oklahoma Statutes Annotated

Execution of articles, evidence of authority, signatures, see 18 Okl.St. Ann. § 2006.

Library References

Limited Liability Companies ⇐14.
Westlaw Topic No. 241E.

§ 2–2007. Articles of organization or other articles to be delivered to Secretary of the Nation; filing and fees; cancellation

A. Two signed copies of the articles of organization or any articles of amendment or dissolution or of any decree of judicial amendment or dissolution shall be delivered to the Secretary of the Nation. A person who executes articles as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Secretary of the Nation finds that any articles do not conform to law, upon receipt of all filing fees required by law he shall:

1. Endorse on each copy the word “filed” and the day, month and year of the filing thereof;
2. File one copy in his office; and
3. Return the other copy to the person who filed it or his representative.

B. Upon the filing of articles of amendment or a decree of judicial amendment in the Office of the Secretary of the Nation, the articles of organization shall be amended as set forth therein and upon the effective date of articles of dissolution or a decree of judicial dissolution, the articles of organization are cancelled.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Conversion of business entity to limited liability company, see Title 3, § 2–42054.1.

Oklahoma Statutes Annotated

Delivery of articles to Secretary of State, filing, time when effective, see 18 Okl.St. Ann. § 2007.

Library References

Limited Liability Companies ⇐14.
Westlaw Topic No. 241E.

§ 2–2008. Company name; restrictions

The name of each limited liability company as set forth in its articles of organization:

1. Shall contain either the words “limited liability company” or “limited company” or the abbreviations “LLC”, “LC”, “L.L.C.”, or “L.C.” The word “limited” may be abbreviated as “LTD.” and the word “Company” may be abbreviated as “CO.”; and
2. a. May not be the same as or indistinguishable from:

Title 3, § 2–2008

CORPORATIONS

(1) names upon the records in the Office of the Secretary of the Nation of then existing limited liability companies whether organized pursuant to the laws of this Nation or licensed or registered as foreign limited liability companies, or

(2) names upon the records in the Office of the Secretary of the Nation of corporations organized under the laws of this Nation or of foreign corporations registered in accordance with the laws of this Nation then existing or which existed at any time during the preceding three (3) years, or

(3) names upon the records in the Office of the Secretary of the Nation of limited partnerships formed under the laws of this Nation or of foreign limited partnerships registered in accordance with the laws of this Nation, or

(4) trade names, fictitious names, or other names reserved with the Secretary of the Nation.

b. The provisions of subparagraph a of this paragraph shall not apply if one of the following is filed with the Secretary of the Nation:

(1) the written consent of the other limited liability company, corporation, limited partnership, or holder of the trade name, fictitious name or other reserved name to use the same or indistinguishable name with the addition of one or more words, numerals, numbers or letters to make that name distinguishable upon the records of the Secretary of the Nation, except that the addition of words, numerals, numbers or letters to make the name distinguishable shall not be required where such written consent states that the consenting entity is about to change its name, cease to do business, withdraw from the Nation or be wound up, or

(2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such limited liability company or holder of a limited liability company name to the use of such name in this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Conversion of business entity to limited liability company, see Title 3, § 2–42054.1.
Name of foreign limited liability company, use of fictitious name, see Title 3, § 2–2045.

Oklahoma Statutes Annotated

Foreign limited liability company, satisfying requirements of this section, see 18 Okl.St. Ann. § 2045.
Name of company, restrictions, see 18 Okl.St. Ann. § 2008.

Library References

Limited Liability Companies ◊4.
Westlaw Topic No. 241E.

§ 2–2009. Reservation of company name; application

A. The exclusive right to use a specified name for a domestic or foreign limited liability company, in good faith, may be reserved by:

1. A person who intends to organize a domestic limited liability company or a foreign limited liability company to be registered in this Nation and to adopt that name;

2. A domestic limited liability company or a foreign limited liability company registered in this Nation which proposes to adopt that name; or

3. A foreign limited liability company which intends to register in this Nation and adopt that name.

B. A person seeking to reserve a specified name shall file an application executed by the applicant with the Secretary of the Nation and pay the filing fee required by law. If the Secretary of the Nation finds that the name is available for use by a domestic or foreign limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of sixty (60) days.

C. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Office of the Secretary of the Nation a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Reservation and transfer of company name, see 18 Okl.St. Ann. § 2009.

Library References

Limited Liability Companies ↻4.
Westlaw Topic No. 241E.

§ 2-2010. Principal office; resident agent; changes

A. Every domestic limited liability company and registered foreign limited liability company doing business with this Nation shall continuously maintain within this Nation:

1. A registered office which may be, but need not be, the same as its principal place of business; and

2. A resident agent for service of process on the limited liability company that may be the domestic limited liability company itself, an individual resident of this Nation, or a domestic or qualified foreign corporation, limited liability company, or limited partnership. Each registered agent shall maintain a business office identical with the registered office which is open during regular business hours to accept service of process and otherwise perform the functions of a registered agent.

B. 1. A limited liability company may designate or change its resident agent, registered office, or principal office by filing with the Office of the Secretary of the Nation a statement authorizing the designation or change and signed by any manager.

2. A limited liability company may change the street address of its registered office by filing with the Office of the Secretary of the Nation a statement of the change signed by any manager.

3. A designation or change of a principal office or resident agent or street address of the registered office for a limited liability company under this subsection is effective when the Office of the Secretary of the Nation files the statement.

Title 3, § 2–2010

CORPORATIONS

C. 1. A resident agent who changes his or her street address in the Nation may notify the Office of the Secretary of the Nation of the change by filing with the Office of the Secretary of the Nation a statement of the change signed by the agent or on the agent's behalf.

2. The statement shall include:

- a. the name of the limited liability company for which the change is effective,
- b. the new street address of the resident agent, and
- c. the date on which the change is effective, if to be effective after the filing date.

3. If the new address of the resident agent is the same as the new address of the principal office of the limited liability company, the statement may include a change of address of the principal office if:

- a. the resident agent notifies the limited liability company of the change in writing, and
- b. the statement recites that the resident agent has done so.

4. Unless otherwise provided in the statement, the change of address of the resident agent or principal office is effective when the Office of the Secretary of the Nation files the statement.

D. 1. A resident agent may resign by filing with the Office of the Secretary of the Nation a counterpart or photocopy of the signed resignation.

2. Unless a later time is specified in the resignation, it is effective thirty (30) days after it is filed.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Registered office and agent, see 18 Okl.St. Ann. § 2010.

Library References

Limited Liability Companies ⇐15.
Westlaw Topic No. 241E.

§ 2–2011. Amendment of articles of organization

A. The articles of organization shall be amended when:

1. There is a change in the name of the limited liability company;
2. There is a false or erroneous statement in the articles of organization;
3. There is a change in the time as stated in the articles of organization for the cancellation of the limited liability company; or
4. The members desire to restate the articles of organization in their entirety or to make a change in any other statement or to add a statement in the articles of organization in order to accurately represent their agreement.

B. An amendment to the articles of organization of a limited liability company shall set forth:

1. The name of the limited liability company;

2. The date of filing the articles of organization; and
3. The amendment to the articles of organization.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Articles of organization, amendment, see 18 Okl.St. Ann. § 2011.

Library References

Limited Liability Companies ◊14.
Westlaw Topic No. 241E.

§ 2–2012. Correction of typographical or technical errors; articles of correction

A. If any document filed with the Office of the Secretary of the Nation under this act contains any typographical error, error of transcription, or other technical error or has been defectively executed, the document may be corrected by the filing of articles of correction.

B. Articles of correction shall set forth:

1. The title of the document being corrected;
2. The date that the document being corrected was filed; and
3. The provision in the document as previously filed and as corrected and, if execution of the document was defective, the manner in which it was defective.

C. Articles of correction may not make any other change or amendment which would not have complied in all respects with the requirements of this act at the time the document being corrected was filed.

D. Articles of correction shall be executed in the same manner in which the document being corrected was required to be executed.

E. Articles of correction may not:

1. Change the effective date of the document being corrected; or
2. Affect any right or liability accrued or incurred before its filing, except that any right or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished by the filing if the person having the right has not detrimentally relied on the original document.

F. Notwithstanding that any instrument authorized to be filed with the Secretary of the Nation pursuant to the provisions of this act is, when filed inaccurately, defectively, or erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the Secretary of the Nation shall not be liable to any person for the preclearance for filing, or the filing and indexing of the instrument by the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Articles of correction, see 18 Okl.St. Ann. § 2012.

Library References

Limited Liability Companies ◊14.
Westlaw Topic No. 241E.

§ 2–2013. Management; qualifications; number of managers

A. Except as otherwise provided in the articles of organization, operating agreement, or this act, a limited liability company shall be managed by or under the authority of one or more managers who may but need not be members.

B. The articles of organization or operating agreement may prescribe qualifications for managers.

C. The number of managers shall be specified in or fixed in accordance with the articles of organization or operating agreement.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Managers, qualifications, powers, see 18 Okl.St. Ann. § 2013.

Library References

Limited Liability Companies ◊40.
Westlaw Topic No. 241E.

§ 2–2014. Election and removal of managers

Unless otherwise provided in the articles of organization or operating agreement:

1. The election of managers shall be by majority vote of the members; and
2. Any or all managers may be removed, with or without cause, by the written consent of the members.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Managers, election, removal, resignation, see 18 Okl.St. Ann. § 2014.

Library References

Limited Liability Companies ◊25, 41.
Westlaw Topic No. 241E.

§ 2–2015. Management without designated managers; provision

A. The articles of organization or operating agreement may provide that the business of the limited liability company shall be managed without designated managers. So long as such provision continues in effect:

1. The members shall be deemed to be managers for purposes of applying provisions of the Muscogee (Creek) Nation Limited Liability Company Act, unless the context clearly requires otherwise;

2. The members shall have and be subject to all duties and liabilities of managers; and

3. A member signing on behalf of the limited liability company shall sign as a manager.

B. A member of a member-managed limited liability company may resign as a member in accordance with the operating agreement or, if the operating agreement does not provide for the member's resignation, upon notice to the limited liability company. When a member of a member-managed limited liability company resigns, the member shall cease to have the rights and duties of a member and shall become an assignee; provided that the profits and losses of the limited liability company shall continue to be allocated to the member and any binding commitments for contributions shall continue as if the member had not resigned. If the resignation violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning member damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the resigning member. The member's resignation shall not constitute a withdrawal from the limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Management of company without designated managers, resignation of member, see 18 Okl.St. Ann. § 2015.

Library References

Limited Liability Companies ⇨22.
Westlaw Topic No. 241E.

§ 2–2016. Manager's duties; good faith; reliance; liability

Subject to the provisions of Section 2–2018 of this Title:

1. A manager shall discharge his duties as a manager in good faith, with the care an ordinary prudent person in a like position could exercise under similar circumstances, and in the manner he reasonably believes to be in the best interests of the limited liability company;

2. In discharging his duties, a manager may rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

a. one or more employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented,

b. legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence, or

c. a committee of managers of which he is not a member if the manager reasonably believes the committee merits confidence;

3. A manager is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph 2 of this section unwarranted;

Title 3, § 2–2016

CORPORATIONS

4. A manager is not liable for any action taken as a manager, or any failure to take any action, if he performed the duties of his office in compliance with this section; and

5. Except as otherwise provided in the articles of organization or operating agreement, every manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager without the informed consent of the members from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by him of its property.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Managers, duties, good faith, liability, see 18 Okl.St. Ann. § 2016.

Library References

Limited Liability Companies ⇐40.
Westlaw Topic No. 241E.

§ 2–2017. Elimination or limitation of liability

A. Subject to subsection B of this section, the articles of organization or operating agreement may:

1. Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in Section 2–2016 of this Title; and

2. Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in any proceeding because he is or was a member or manager.

B. No provision permitted under subsection A of this section shall limit or eliminate the liability of a manager for:

1. Any breach of the manager’s duty of loyalty to the limited liability company or its members;

2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

3. Any transaction from which the manager derived an improper personal benefit.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Member or manager, limitation or elimination of liability, indemnification, creation of series or groups, see 18 Okl.St. Ann. § 2017.

Library References

Limited Liability Companies ⇐24, 40.
Westlaw Topic No. 241E.

§ 2–2018. Majority vote of managers

Except as otherwise provided in the articles of organization or operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be made by majority vote of the managers.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Voting by managers, see 18 Okl.St. Ann. § 2018.

Library References

Limited Liability Companies ◊41.
Westlaw Topic No. 241E.

§ 2–2019. Managers as agents

A. Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for apparently carrying on the business of the limited liability company of which he is a manager, binds the limited liability company, unless the manager so acting lacks the authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority. The unauthorized acts of the manager shall bind the limited liability company as to persons acting in good faith who have no knowledge of the fact that the manager had no such authority.

B. Subject to the provisions of subsection A of this section, instruments and documents providing for the acquisition, mortgage, or disposition of real or personal property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more of its managers.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Manager as agent of limited liability company, unauthorized acts, property transactions, see 18 Okl.St. Ann. § 2019.

Transferred property, recovery, see 18 Okl.St. Ann. § 2019.1.

Library References

Limited Liability Companies ◊42.
Westlaw Topic No. 241E.

§ 2–2019.1. Transfer of title of property of the company

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.

B. Title to property of the limited liability company that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, even if the name of the limited liability company is not indicated,

Title 3, § 2–2019.1

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may be transferred by an instrument of transfer executed by the persons in whose name title is held.

C. Property transferred under subsections A or B of this section may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under the Muscogee (Creek) Nation Statutes, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

D. Title to property of the limited liability company that is held in the name of one or more persons other than the limited liability company without an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, may be transferred free of any claims of the limited liability company or the members by the person in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Title to property, transfer, see 18 Okl.St. Ann. § 2019.1.

Library References

Limited Liability Companies ↻37.
Westlaw Topic No. 241E.

§ 2–2020. Voting rights of members

A. Unless otherwise provided in the articles of organization or operating agreement, the members of a limited liability company shall vote in proportion to their respective capital interests. Except as otherwise provided in subsection D of this section or unless the context otherwise requires, references in the Muscogee (Creek) Nation Limited Liability Company Act to a vote or the consent of the members shall mean a vote or consent of the members holding a majority of the capital interests. The vote or consent may be evidenced in the minutes of a meeting of the members or by a written consent in lieu of a meeting.

B. Except as otherwise provided in subsection D of this section or in the articles of organization or operating agreement, a majority vote of the members shall be required to approve the following matters:

1. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company;
2. Merger of the limited liability company with another limited liability company or other business entity; and
3. An amendment to the articles of organization or operating agreement.

C. The articles of organization or operating agreement may alter the above voting rights and provide for any other voting rights of members.

D. Unless otherwise provided in the articles of organization or a written operating agreement, the unanimous vote or consent of the members shall be required to approve the following matters:

1. The dissolution of the limited liability company pursuant to paragraph 3 of Section 2–2037 of this Title; or

2. An amendment to the articles of organization or an amendment to a written operating agreement:

a. which reduces the term of the existence of the limited liability company,
b. which reduces the required vote of members to approve a dissolution, merger of sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company,

c. which permits a member or voluntarily withdraw from the limited liability company, or

d. which reduces the required vote of members to approve an amendment to the articles of organization or written operating agreement reducing the vote previously required on the matters described in this paragraph.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Members, voting rights, see 18 Okl.St. Ann. § 2020.

Library References

Limited Liability Companies ↻25.
Westlaw Topic No. 241E.

§ 2–2021. Records to be kept at principal place of business; access by members and managers

A. Unless otherwise provided in a written operating agreement, a limited liability company shall keep at its principal place of business the following:

1. A current and a past list of the full name and last-known mailing address of each member and manager;

2. Copies of records that would enable a member to determine the relative voting rights of the members;

3. A copy of the articles of organization, together with any amendments thereto;

4. Copies of the limited liability company’s federal, state and local income tax returns and financial statements, if any, for the three most recent years or, if such returns and statements were 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 their federal state and local tax returns for such period;

5. Copies of any effective written operating agreements and all amendments thereto and copies of any written operating agreements no longer in effect; and

6. Unless provided in writing in an operating agreement, a writing setting out:

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a. the amount of cash and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions agreed to be made by each member are to be made, and

b. the events upon the happening of which the limited liability company is to be dissolved and its affairs wound up, and

c. any other information prepared pursuant to a requirement in an operating agreement.

B. A member, for any purpose reasonably related to the member's interest, may:

1. At the member's own expense, inspect and copy any limited liability company record upon reasonable request during ordinary business hours;

2. Obtain from time to time upon reasonable demand:

a. true and complete information regarding the state of the business and financial condition of the limited liability company,

b. promptly after becoming available, a copy of the limited liability company's state and local income tax returns for each year, and

c. other information regarding the affairs of the limited liability company as is just and reasonable; and

3. Have a formal accounting of the limited liability company's affairs whenever circumstances render it just and reasonable.

C. A manager, for any purpose reasonably related to his position, may inspect and copy any limited liability company records upon reasonable request during ordinary business hours.

D. Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Records required to be kept, member access to information, managers may inspect and copy records, see 18 Okl.St. Ann. § 2021.

Library References

Limited Liability Companies ⇄23, 25, 41.

Westlaw Topic No. 241E.

§ 2–2022. Liability of member or manager

A person who is a member or manager, or both, of a limited liability company is not liable for the obligations of a limited liability company solely by reason of being such member or manager or both.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability solely as manager or member, see 18 Okl.St. Ann. § 2022.

Library References

Limited Liability Companies ⇨27, 43.
Westlaw Topic No. 241E.

§ 2–2023. Forms of contribution by member

The contribution of a member to a limited liability company may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Contribution of member, form, see 18 Okl.St. Ann. § 2023.

Library References

Limited Liability Companies ⇨29.
Westlaw Topic No. 241E.

§ 2–2024. Written promise of contribution; performance; compromise; failure to perform; remedy

A. 1. Except as otherwise provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any written promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or other reason.

2. If a member does not make the required contribution of property or services, he is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value, as stated in the operating agreement, of the stated contribution that has not been made.

B. 1. The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only upon compliance with the operating agreement, or, if the operating agreement does not so provide, with the unanimous consent of the members.

2. A compromise shall not impair the right of any creditor to enforce the obligation or to require the obligation to be enforced if:

a. such creditor relied upon the obligation and the absence in the operating agreement of the limited liability company's authority to compromise the obligation, or

b. a duty to the creditor was breached in the making of the compromise.

C. An operating agreement may provide that the capital interest of a member who fails to make any contribution or other payment that the member is required to make shall be subject to specified remedies for, or specified consequences of, the failure. The remedy or consequence may take the form of reducing the defaulting member's capital interest in the limited liability company, subordinating the defaulting member's capital interest in the limited liability

ty company to that of the nondefaulting members, a forced sale of the capital interest in the limited liability company, forfeiture of the capital interest in the limited liability company, the lending by the nondefaulting members of the amount necessary to meet the commitment, a fixing of the value of the member's capital interest in the limited liability company by appraisal or by formula and redemption and sale of the member's capital interest in the limited liability company at that value, or other remedy or consequences.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Assignee of interest in limited liability company not released from liability to company under this section, see 18 Okl.St. Ann. § 2035.

Performance of obligations, compromise, remedies for failure to perform, see 18 Okl.St. Ann. § 2024.

Library References

Limited Liability Companies ◊29.
Westlaw Topic No. 241E.

§ 2–2025. Profits and losses; distributions

Except as otherwise provided in the operating agreement:

1. The profits and losses of a limited liability company shall be allocated among the members in proportion to their respective capital interests; and
2. Distributions of the limited liability company shall be made to the members in proportion to their right to share in the profits of the limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Allocation of profits and losses, distributions, see 18 Okl.St. Ann. § 2025.

Library References

Limited Liability Companies ◊30.
Westlaw Topic No. 241E.

§ 2–2026. Distributions to members before withdrawal and dissolution

Except as otherwise provided in this act, a member is entitled to receive distributions from a limited liability company before the dissolution and winding up of the limited liability company to the extent and at the times upon which the members agree or as provided in the operating agreement.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distributions, time, see 18 Okl.St. Ann. § 2026.

Winding up of affairs, distribution of assets, see 18 Okl.St. Ann. § 2040.

Library References

Limited Liability Companies ◊30.
Westlaw Topic No. 241E.

§ 2–2027. Reserved**§ 2–2028. Form of distribution; asset in kind**

Except as otherwise provided in the operating agreement:

1. A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash; and

2. No member may be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage which the member's interest in the limited liability company is of all of the interests in the limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distribution, cash, asset in kind, see 18 Okl.St. Ann. § 2028.

Library References

Limited Liability Companies ⇨30.
Westlaw Topic No. 241E.

§ 2–2029. Status of member and distribution

At the time a member becomes entitled to receive a distribution, 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.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distribution, status and rights of member, see 18 Okl.St. Ann. § 2029.

Library References

Limited Liability Companies ⇨30.
Westlaw Topic No. 241E.

§ 2–2030. Restrictions on distribution; determination of prohibited distributions; effect of distribution; indebtedness

A. A distribution may not be made if, after giving effect to the distribution:

1. The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

2. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

B. The limited liability company may base a determination that a distribution is not prohibited under subsection A of this section on:

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1. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

2. A fair valuation or other method that is reasonable in the circumstances.

C. Except as provided in subsection E of this section, the effect of a distribution under subsection A of this section is measured as of:

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

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

D. A limited liability company's indebtedness to a member, incurred by reason of a distribution made in accordance with this section, is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

E. 1. If the terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection B of this section; and

2. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distribution, restrictions, effect on indebtedness, see 18 Okl.St. Ann. § 2030.

Library References

Limited Liability Companies ◊30.
Westlaw Topic No. 241E.

§ 2–2031. Wrongful distribution; liability; recovery action

If a member has received a distribution in violation of the operating agreement or Section 2–2030 of this Title, the member shall be liable to the limited liability company for the amount of the distribution wrongfully made. An action for the recovery of any wrongful distribution to a member must be brought within three (3) years from the date of the distribution.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Wrongful distribution, liability of member, action for recovery, see 18 Okl.St. Ann. § 2031.

Library References

Indians ◊508.
Westlaw Topic Nos. 209, 241E.
Limited Liability Companies ◊30.
C.J.S. Indians §§ 151 to 179.

§ 2-2032. Membership interest as personal property

A membership interest is personal property. A member has no interest in specific limited liability company property.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Membership interest, status, see 18 Okl.St. Ann. § 2032.

Library References

Limited Liability Companies ◊25.
Westlaw Topic No. 241E.

§ 2-2033. Assignability of membership interest

A. Unless otherwise provided in an operating agreement:

1. A membership interest is not transferable; provided, however, that a member may assign a membership interest in whole or in part;

2. An assignment of a membership interest does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights or powers of a member;

3. An assignment entitles the assignee to receive any distribution or distributions to which the assignor was entitled to the extent assigned;

4. Unless the assignee of an interest in a limited liability company becomes a member by virtue of that interest, the assignor continues to be a member and to have the power to exercise any rights of a member, unless the assignor is removed as a member either in accordance with the operating agreement or, after having assigned all of the membership interest, by an affirmative vote of the members who have not assigned their interests. The removal of an assignor shall not, by itself, cause the assignee to become a member;

5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

6. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

B. The operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and also may provide for the assignment or transfer of any membership interest represented by such a certificate and may make other provisions with respect to such certificates.

C. Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or cease to have the power to exercise any rights or powers of a member.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Assignment of membership interest, see 18 Okl.St. Ann. § 2033.

Library References

Limited Liability Companies ↻30.
Westlaw Topic No. 241E.

§ 2–2034. Judgment creditor; rights; exclusive remedy

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. This act does not deprive any member of the benefit of any exemption laws applicable to his membership interest. This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Judgment creditor, rights and interests, see 18 Okl.St. Ann. § 2034.

Library References

Limited Liability Companies ↻30.
Westlaw Topic No. 241E.

§ 2–2035. Assignee of interest becoming member; rights and powers, restrictions and liabilities; assignor's liabilities; time of admission of member

A. An assignee of an interest in a limited liability company may become a member if and to the extent that:

1. The operating agreement provides; or
2. The members representing a majority of the capital interests which are not the subject of the assignment consent in writing.

B. An assignee who becomes a member, to the extent assigned, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement and this act, Section 2–2000 et seq. of this Title; however, unless otherwise provided in writing in the operating agreement or other written agreement, an assignee who becomes a member also is liable for any obligations of the assignor to make contributions as provided in Section 2–2024 of this Title, but shall not be liable for the obligations of the assignor under Section 2–2031 of this Title; however, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and which could not be ascertained from a written operating agreement.

C. Regardless of whether an assignee of an interest becomes a member, the assignor is not released from liability to the limited liability company under Sections 2–2024, 2–2031, and 2–2033 of this Title.

D. Except as otherwise provided in writing in the operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a

member when any assignee of the interest becomes a member with respect to the assigned interest.

E. Subject to subsection F of this section, a person acquiring a limited liability company interest directly from the limited liability company may become a member in a limited liability company upon compliance with the operating agreement or, if the operating agreement does not so provide in writing, upon the written consent of the members.

F. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or
2. The time provided in the operating agreement, or if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Assignee of interest in limited liability company, membership rights, powers, restrictions and liabilities, rights and liability of assignor, admission to membership directly in limited liability company, see 18 Okl.St. Ann. § 2035.

Library References

Limited Liability Companies ↻30.
Westlaw Topic No. 241E.

§ 2-2036. Events causing cessation of membership; withdrawal; death or incapacity

A. Unless the operating agreement specifically permits in writing the power to withdraw voluntarily, a member may not withdraw at any time. If the operating agreement specifically provides in writing the power to withdraw voluntarily, but the withdrawal occurs as a result of wrongful conduct of the member, a member's voluntary withdrawal shall constitute a breach of the operating agreement and the limited liability company may recover from the withdrawing member damages, including the reasonable cost of replacing the services that the withdrawn member was obligated to perform. The limited liability company may offset its damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. The limited liability company shall not, however, be entitled to any equitable remedy that would prevent a member from exercising the power to withdraw if such power is permitted in the operating agreement.

B. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator, or other legal representative shall have all of the rights of an assignee of the member's interest.

C. The operating agreement may provide for the expulsion of a member, with or without cause, which shall include reasonable provision for the distributable interest.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Event of dissociation defined as event that causes person to cease to be member as provided in this section, see 18 Okl.St. Ann. § 2001.

Withdrawal as member, rights of legal representative of deceased or incompetent member, expulsion of member, see 18 Okl.St. Ann. § 2036.

Library References

Limited Liability Companies ⇄18, 30.

Westlaw Topic No. 241E.

§ 2–2037. Dissolution and winding up

A limited liability company is dissolved and its affairs shall be wound up upon the earlier of:

1. The occurrence of the latest date on which the limited liability company is to dissolve set forth in the articles of organization;
2. The occurrence of events specified in writing in the operating agreement;
3. The written consent of all of the members; or
4. Entry of a decree of judicial dissolution under Section 2–2038 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissolution, activities after dissolution, see 18 Okl.St. Ann. § 2037.

Dissolution of limited liability company pursuant to this section, filing articles of dissolution, see 18 Okl.St. Ann. § 2041.

Library References

Limited Liability Companies ⇄49.

Westlaw Topic No. 241E.

§ 2–2038. Dissolution upon application by member; decree

On application by or for a member, the Muscogee (Creek) Nation District Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Decree of dissolution, see 18 Okl.St. Ann. § 2038.

Library References

Limited Liability Companies ⇄49.

Westlaw Topic No. 241E.

§ 2–2039. Winding up of business or affairs; binding acts of managers; notice presumed

A. Except as otherwise provided in the articles of organization or operating agreement:

1. The business or affairs of the limited liability company may be wound up in one of the following ways:

- a. by the managers, or
- b. if one or more of the members or managers have engaged in conduct that casts reasonable doubt on their ability to wind up the business or affairs of the limited liability company, or upon other cause shown, by the Muscogee (Creek) Nation District Court on application of any member, his legal representative, or assignee; and

2. The persons winding up the business or affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

- a. prosecute and defend suits,
- b. settle and close the business of the limited liability company,
- c. dispose of and transfer the property of the limited liability company,
- d. discharge the liabilities of the limited liability company, and
- e. distribute to the members any remaining assets of the limited liability company.

B. Except as provided in subsections D and E of this section, after an event causing dissolution of the limited liability company any manager can bind the limited liability company:

1. By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

2. By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

C. The filing of the articles of dissolution shall be presumed to constitute notice of dissolution for purposes of paragraph 2 of subsection B of this section.

D. An act of a manager or member that is not binding on the limited liability company pursuant to subsection B of this section is binding if it is otherwise authorized by the limited liability company.

E. An act of a manager or member that would be binding under subsection B or would be otherwise authorized but that is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Winding up business or affairs, ways, acts and transactions of member or manager, presumptive notice, see 18 Okl.St. Ann. § 2039.

Library References

Limited Liability Companies ⇄49.
Westlaw Topic No. 241E.

§ 2–2040. Distribution of assets upon winding up

Upon the winding up of a limited liability company, the assets shall be distributed as follows:

1. Payment, or adequate provision for payment, shall be made to creditors, including to the extent permitted by law, members who are creditors, in satisfaction of liabilities of the limited liability company;
2. Except as provided in writing in the articles of organization or operating agreement, to members or former members in satisfaction of liabilities for distributions under Sections 2–2026 and 2–2027 of this Title; and
3. Except as provided in writing in the articles of organization or operating agreement, to members and former members first for the return of their contributions and second respecting their membership interests, in proportions in which the members share in distributions.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Winding up of affairs, distribution of assets, liability, see 18 Okl.St. Ann. § 2040.

Library References

Limited Liability Companies ◊49.
Westlaw Topic No. 241E.

§ 2–2041. Articles of dissolution; filing and contents

After the dissolution of the limited liability company, pursuant to Section 2–2037 of this Title, the limited liability company shall file articles of dissolution in the Office of the Secretary of the Nation upon payment of the filing fee required by Section 2–2055 of this Title, the articles of dissolution shall set forth:

1. The name of the limited liability company;
2. The date of filing of its articles of organization;
3. The reason for filing the articles of dissolution;
4. The effective date of the articles of dissolution if they are not to be effective upon the filing; and
5. Any other information the members or managers filing the certificate determine.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Articles of dissolution, see 18 Okl.St. Ann. § 2041.

Library References

Limited Liability Companies ◊49.
Westlaw Topic No. 241E.

§ 2–2042. Laws governing foreign limited liability company; rights and privileges; purposes

A. Subject to the Constitution of this Nation:

1. The laws of the Nation or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers and members; and

2. A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this Nation.

B. A foreign limited liability company holding a valid registration in this Nation shall have no greater rights and privileges than a domestic limited liability company. The registration shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, laws governing, powers, rights and privileges, see 18 Okl.St. Ann. § 2042.

Library References

Limited Liability Companies ⇄50.
Westlaw Topic No. 241E.

§ 2–2043. Foreign limited liability company; registration

Before transacting business in this Nation, a foreign limited liability company shall register with the Office of the Secretary of the Nation. In order to register, a foreign limited liability company shall:

1. Pay to the Secretary of the Nation a registration fee required by Section 2–2056 of this Title;

2. Provide the Secretary of the Nation with an original certificate from the certifying officer of the jurisdiction of the foreign limited liability company's organization attesting to the foreign limited liability company's organization under the laws of such jurisdiction; and

3. Submit to the Office of the Secretary of the Nation an application in duplicate for registration as a foreign limited liability company, signed by a manager, member, or other person, and setting forth:

a. the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this Nation,

b. the state or other jurisdiction and date of its organization,

c. the name and street address of a registered agent in this Nation which agent shall be an individual resident of this Nation, or a domestic or qualified foreign corporation, limited liability company, or limited liability partnership. Each registered agent shall maintain a business office identical with the registered office which is open during regular business hours to accept service of process and otherwise perform that functions of a registered agent. If an

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additional registered agent is designated, service of process shall be on that agent and not on the Secretary of the Nation,

d. a statement that the Office of the Secretary of the Nation is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed under subparagraph c of this paragraph, or if appointed, the agent’s authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence,

e. the address of the office required to be maintained in the state or Nation of its organization by the laws of that state or Nation or, if not so required, of the principal office of the foreign limited liability company, and

f. such additional information as may be necessary or appropriate in order to enable the Office of the Secretary of the Nation to determine whether such limited liability company is entitled to transact business in this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, registration procedure, see 18 Okl.St. Ann. § 2043.

Library References

Limited Liability Companies ⇌50.
Westlaw Topic No. 241E.

§ 2–2044. Conforming application for registration

If the Office of the Secretary of the Nation finds that an application for registration conforms to the provisions of this act and all requisite fees have been paid, it shall:

1. Endorse on the applications the word “filed”, and the month, day, and year of the filing;
2. File in its office one copy of the application;
3. Issue a certificate of registration to transact business in this Nation; and
4. Return the certificate of registration, together with a copy of the application to the person who filed the application or his representative.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, duties of Secretary of State, see 18 Okl.St. Ann. § 2044.

Library References

Limited Liability Companies ⇌50.
Westlaw Topic No. 241E.

§ 2–2045. Name of foreign limited liability company; use of fictitious name

Subject to the provisions of Section 2–2008 of this Title, foreign limited liability company may register with the Secretary of the Nation under the name which it is registered in its jurisdiction or organization and that could be registered by a domestic limited liability company. If the name of a foreign

limited liability company does not satisfy the requirements of Section 2-2008 of this Title, the foreign limited liability company may file with the Secretary of the Nation a statement by its manager duly adopting a fictitious name that is available, and which satisfies the requirements of Section 2-2008 of this Title, which shall be used to the exclusion of its true name when transacting business within this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, name, see 18 Okl.St. Ann. § 2045.

Library References

Limited Liability Companies ↻50.
Westlaw Topic No. 241E.

§ 2-2046. Foreign limited liability company; correction certificate for false statements; filing

A. If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file in the Office of the Secretary of the Nation a certificate, signed by a manager, member, or other person, correcting the statement and pay the fee provided for in Section 2-2055 of this Title.

B. A registered foreign limited liability company shall record any changes in its principal office, its registered agent, or the registered agent's address, by filing with the Office of the Secretary of the Nation statement of the change and paying the fee provided for in Section 2-2055 of this Title.

C. A foreign limited liability company authorized to transact business in this Nation shall promptly file a certificate, issued by the proper officer of the Nation or jurisdiction of its organization, attesting to the occurrence of a merger, in the Office of the Secretary of the Nation and pay the fee provided for in Section 2-2055 of this Title, whenever it is the surviving limited liability company and the merger:

1. Changes any statement in the application of registration of the foreign limited liability company; or
2. Involves any other foreign business entity authorized to transact business in this Nation.

D. If the merger changes any arrangements or other facts described in the application for registration of the surviving foreign limited liability company, it shall also comply with the provisions of this section; provided that it will not be required to pay an additional fee.

E. Whenever a foreign limited liability company authorized to transact business in this Nation ceases to exist because of a statutory merger or consolidation with a foreign business entity not qualified to transact business in this Nation, it shall comply with the provisions of Section 2-2047 of this Title.

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F. A registered agent of a foreign limited liability company may resign by filing with the Office of the Secretary of the Nation a copy of the resignation, signed and acknowledged by the agent, which contains a statement that notice of the resignation was given to the limited liability company at least thirty (30) days prior to the filing of the resignation by mailing or delivering the notice to the limited liability company at its address last known to the registered agent and specifying such address therein.

1. Unless a later time is specified in the resignation, it is effective thirty (30) days after it is filed.

2. If a foreign limited liability company fails to obtain and designate a new registered agent prior to the expiration of the thirty (30) days after the filing by the registered agent of a resignation statement, the Secretary of the Nation shall be deemed to be the registered agent of such limited liability company.

G. If a limited liability company has no registered agent or the registered agent cannot be found, then service of process on the limited liability company may be made by serving the Secretary of the Nation as its agent as provided in the Muscogee (Creek) Nation Statutes.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, correction certificate, recording changes, see 18 Okl.St. Ann. § 2046.

Library References

Limited Liability Companies ◊50.
Westlaw Topic No. 241E.

§ 2–2047. Certificate of withdrawal; foreign limited liability company; execution

A. A foreign limited liability company authorized to transact business in this Nation may withdraw from the Nation upon procuring from the Office of the Secretary of the Nation a certificate of withdrawal. In order to procure such certificate, the foreign limited liability company shall file with the Office of the Secretary of the Nation an application for withdrawal and pay the fee provided for in Section 2–2056 of this act. The application for withdrawal shall set forth:

1. The name of the foreign limited liability company and the Nation or other jurisdiction under the laws of which it is organized;

2. That the foreign limited liability company is not transacting business in this Nation;

3. That the foreign limited liability company surrenders its certificate of registration to transact business in this Nation;

4. That the foreign limited liability company revokes the authority of its registered agent for service of process in this Nation and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this Nation during the time the foreign limited liability company was authorized to transact business in this Nation may thereafter be made on such

foreign limited liability company by service thereof upon the Office of the Secretary of the Nation; and

5. An address to which a person may mail a copy of any process against the foreign limited liability company.

B. The application for withdrawal shall be executed by the foreign limited liability company by one of its managers, members, or other persons, or, if the foreign limited liability company is in the hands of a receiver or trustee, by such receiver or trustee on behalf of the foreign limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, certificate of withdrawal, see 18 Okl.St. Ann. § 2047.

Library References

Limited Liability Companies ◊50.
Westlaw Topic No. 241E.

§ 2–2048. Registration required to transact business in state; foreign limited liability company

A. A foreign limited liability company transacting business in this Nation may not maintain an action, suit, or proceeding in a court of this Nation until it has registered in this Nation as provided in this act.

B. The failure of a foreign limited liability company to register in this Nation does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this Nation.

C. A foreign limited liability company, by transacting business in this Nation without registration, appoints the Office of the Secretary of the Nation as its agent for service of process with respect to a cause of action arising out of the transaction of business in this Nation.

D. A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of such company's having transacted business in this Nation without a valid certificate of registration.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, necessity of registration to transact business in state, see 18 Okl.St. Ann. § 2048.

Library References

Limited Liability Companies ◊50.
Westlaw Topic No. 241E.

§ 2–2049. Activities not considered transacting business; foreign limited liability company

A. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of the Muscogee (Creek) Nation Limited Liability Company Act:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of its members or carrying on any other activities concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Nation before they become contracts;
7. Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
8. Securing or collecting debts or enforcing mortgages and security interest in property securing the debts;
9. Holding, protecting, renting, maintaining and operating real or personal property in this Nation so acquired;
10. Selling or transferring title to property in this Nation to any person; or
11. Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature.

B. For the purposes of this section, any foreign limited liability company which owns income-producing real or tangible personal property in this Nation, other than property exempted by subsection A of this section, will be considered transacting business in this Nation.

C. A person shall not be deemed to be doing business in this Nation solely by reason of being a member or manager of a domestic liability company or a foreign limited liability company.

D. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this Nation or to regulation under any other law of this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, acts not constituting transacting business in state, see 18 Okl.St. Ann. § 2049.

Library References

Limited Liability Companies ⇄50.
Westlaw Topic No. 241E.

§ 2-2050. Action to restrain foreign limited liability company

The Attorney General may maintain an action to restrain a foreign limited liability company from transacting business in this Nation in violation of this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, action to restrain transacting business in state, see 18 Okl.St. Ann. § 2050.

Library References

Limited Liability Companies ◊50.
Westlaw Topic No. 241E.

§ 2-2051. Action brought by member to recover judgment; conditions

A member may bring an action in the right of the limited liability company to recover a judgment in its favor if all of the following conditions are met:

1. Either:
 - a. management of the limited liability company is vested in a manager or managers who have the sole authority to cause the limited liability company to sue in its own right, or
 - b. management of the limited liability company is reserved to the members but the plaintiff does not have the authority to cause the limited liability company to sue in its own right under the provisions of an operating agreement; and
2. The plaintiff has made demand on those managers or those members with such authority requesting that such managers or such members cause the limited liability company to sue in its own right; and
3. The members or managers with such authority have wrongfully refused in the exercise of their business judgment to bring the action or, after adequate time to consider the demand, have failed to respond to such demand; and
4. The plaintiff:
 - a. is a member of the limited liability company at the time of bringing the action, and
 - b. was a member of the limited liability company at the time of the transaction of which he complains, or his status as a member of the limited liability company thereafter developed upon him pursuant to the terms of the operating agreement from a person who was a member at such time; and
5. The plaintiff fairly and adequately represents the interests of the members in enforcing the rights of the limited liability company.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Action to recover judgment, conditions, see 18 Okl.St. Ann. § 2051.

Library References

Limited Liability Companies ◊48.
Westlaw Topic No. 241E.

§ 2-2052. Complaint in a derivative action

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by the managers or the

members who would otherwise have the authority to cause the limited liability company to sue in its own right.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Derivative action, complaint, see 18 Okl.St. Ann. § 2052.

Library References

Indians ◊511.

Westlaw Topic Nos. 209, 241E.

Limited Liability Companies ◊48.

C.J.S. Indians §§ 151 to 179.

§ 2–2053. Reasonable expenses in a derivative action; remittance of proceeds

A. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, and shall direct him to remit to the limited liability company the remainder of those proceeds received by him.

B. In any action hereafter instituted in the right of any domestic or foreign limited liability company by a member or members thereof, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including attorneys' fees, incurred by them in the defense of such action.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Derivative action, expenses, disposition of proceeds, see 18 Okl.St. Ann. § 2053.

Library References

Limited Liability Companies ◊48.

Westlaw Topic No. 241E.

§ 2–2054. Agreement of merger or consolidation

A. Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic or foreign limited liability companies or other business entities. As used in this section, "business entity" means a domestic or foreign corporation, a business trust, a common law trust, or an unincorporated business including a partnership, whether general or limited.

B. Unless otherwise provided in the articles of organization or the operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by a majority of the members or, if there is more than one class or group of members, then by a majority of each class or group. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

C. If a domestic limited liability company is merging or consolidating pursuant to this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file articles of merger or consolidation with the Office of the Secretary of the Nation. The articles of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the limited liability companies or other business entities which are to merge or consolidate;

2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;

3. The name of the surviving or resulting domestic limited liability company or other business entity;

4. The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;

5. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;

6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other business entity, upon request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate;

7. In the case of a merger, any amendments or changes in the articles of organization of the surviving domestic limited liability company that are to be effected by the merger;

8. In the case of a consolidation, that the articles of organization of the resulting domestic limited liability company shall be as set forth in an attachment to the articles of consolidation; and

9. If the surviving or resulting entity is not a domestic limited liability company or business entity formed or organized pursuant to the laws of this Nation, a statement that the surviving or resulting other business entity agrees to be served with process in this Nation in any action, suit, or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate; irrevocably appoints the Secretary of the Nation as its agent to accept service of process in any action, suit, or proceeding; and specifies the address to which process shall be mailed to the entity by the Secretary of the Nation.

D. Any failure to file the articles of merger or consolidation in connection with a merger or consolidation which was effective prior to September 1, 1992, shall not affect the validity or effectiveness of any such merger or consolidation.

E. A merger or consolidation shall be effective upon the filing with the Secretary of the Nation of articles of merger or consolidation, unless a future effective date or time is provided in the articles of merger or consolidation.

F. Articles of merger or consolidation shall act as articles of dissolution for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

G. Once any merger or consolidation is effective pursuant to this section, for all purposes of the laws of this Nation, all of the rights, privileges, and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated and all property, real, personal and mixed, and all debts due to each domestic limited liability company or other business entity, as well as all other things and causes of action belonging to each domestic limited liability company or other business entity shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each domestic limited liability company or other business entity that has merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this Nation, in any domestic limited liability company or other business entity shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of each domestic limited liability company or other business entity shall be preserved unimpaired. All debts, liabilities and duties of each domestic limited liability company or other business entity that has merged or consolidated shall thereafter attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against the surviving or resulting limited liability company or other entity to the same extent as if the debts, liabilities and duties had been incurred or contracted by the surviving or resulting limited liability company or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited liability company to wind up its affairs pursuant to Section 2–2037 of this Title or pay its liabilities and distribute its assets pursuant to Section 2–2040 of this Title. [Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Merger or consolidation, see 18 Okl.St.Ann. § 2054.

Library References

Limited Liability Companies ◊49.
Westlaw Topic No. 241E.

§ 2–2054.1. Conversion of business entity to limited liability company

A. As used in this section, the term “business entity” means a domestic corporation, partnership, whether general or limited, business trust, common law trust, or other unincorporated association.

B. Any business entity may convert to a domestic limited liability company by complying with subsection H of this section and filing with the Secretary of the Nation in accordance with Section 2–2007 of this Title articles of conversion to a limited liability company that have been executed in accordance with

Section 2-2006 of this Title, to which shall be attached articles of organization that comply with Sections 2-2005 and 2-2008 of this Title and have been executed by one or more authorized persons in accordance with Section 2-2006 of this Title.

C. The articles of conversion to a limited liability company shall state:

1. The date on which the business entity was first formed;
2. The name of the business entity immediately prior to the filing of the articles of conversion to limited liability company; and
3. The name of the limited liability company as set forth in its articles of organization filed in accordance with subsection B of this section.

D. Upon the filing in the Office of the Secretary of the Nation of the articles of conversion to a limited liability company and the articles of organization, the business entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of the Muscogee (Creek) Nation Limited Liability Company Act, except that notwithstanding Section 2-2004 of this Title, the existence of the limited liability company shall be deemed to have commenced on the date the business entity was formed.

E. The conversion of any business entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

F. When any conversion shall have become effective under this section, for all purposes of the laws of this Nation, all of the rights, privileges and powers of the business entity that has converted, and all property, real, personal and mixed, and all debts due to such business entity, as well as all other things and causes of action belonging to such business entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the business entity that has converted, and the title to any real property vested by deed or otherwise in such business entity shall not revert or be in any way impaired by reason of this act, but all rights of creditors and all liens upon any property of such business entity shall be preserved unimpaired, and all debts, liabilities and duties of the business entity that has converted shall thenceforth attach to the domestic limited liability company and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

G. Unless otherwise agreed or otherwise provided by any laws of this Nation applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such business entity and shall constitute a continuation of the existence of the converting business entity in the form of a domestic limited liability company. When a business entity has been converted to a limited liability company pursuant to this section, the limited liability company shall,

Title 3, § 2–2054.1

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for all purposes of the laws of this Nation, be deemed to be the same entity as the converting business entity.

H. Prior to filing the articles of conversion of a business entity to a limited liability company with the Office of the Secretary of the Nation, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the business entity and the conduct of its business or by applicable law, as appropriate, and an operating agreement shall be approved by the same authorization required to approve the conversion.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Conversion of a business entity to a limited liability company, see 18 Okl.St. Ann. § 2054.1.

Library References

Limited Liability Companies ◀49.
Westlaw Topic No. 241E.

§ 2–2055. Fees

The Secretary of the Nation shall charge and collect the following fees:

1. For filing the original articles of organization, a fee of one hundred dollars (\$100.00);
2. For filing amended, corrected or restated articles of organization, a fee of fifty dollars (\$50.00);
3. For filing articles of merger or consolidation and issuing a certificate of merger or consolidation or filing articles of conversion, a fee of one hundred dollars (\$100.00);
4. For filing articles of dissolution and issuing a certificate of cancellation, a fee of fifty dollars (\$50.00);
5. For filing a certificate of correction of statements in an application for registration of a foreign limited liability company, a fee of one hundred dollars (\$100.00);
6. For issuing a certificate for any purpose whatsoever, a fee of ten dollars (\$10.00);
7. For filing an application for reservation of a name, or for filing a notice of the transfer or cancellation of any name reservation, a fee of ten dollars (\$10.00);
8. For filing a statement of change of address of the principal office or resident agent, or both, or the resignation of a resident agent, a fee of twenty-five dollars (\$25.00);
9. For filing an application for registration as a foreign limited liability company, a fee of three hundred dollars (\$300.00);
10. For filing an application of withdrawal as provided in Section 2–2047 of this Title, a fee of one hundred dollars (\$100.00);

11. For any service of notice, demand, or process upon the Secretary of the Nation as resident agent of a limited liability company, a fee of twenty-five dollars (\$25.00), which amount may be recovered as taxable costs by the party to be sued, action, or proceeding causing such service to be made if such party prevails therein; and

12. For acting as the registered agent, a fee of forty dollars (\$40.00) shall be paid on July 1 each year to the Office of the Secretary of the Nation. All fees shall be properly accounted for and shall be paid into the Nation's Treasury monthly. All fees received by the Secretary of the Nation pursuant to the provisions of this section shall be paid to the credit of the General Fund for the Office of the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fees, see 18 Okl.St. Ann. § 2055.

Foreign limited liability company,

Dissolution or winding up, filing fee pursuant to this section, see 18 Okl.St. Ann. § 2041.

Transacting business in state, payment of registration fee required by this section, see 18 Okl.St. Ann. § 2043.

Library References

Limited Liability Companies ◊23.

Westlaw Topic No. 241E.

§ 2–2055.1. Revocation of certificate of revocation; penalty; return to active status

A limited liability company for which the Secretary of the Nation acts as the registered agent that fails to pay the registered agent fee by the due date as provided in paragraph 12 of Section 2–2055 of this Title shall be subject to the provisions of this act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Failure to pay registered agent fees, see 18 Okl.St. Ann. § 2055.1.

Library References

Limited Liability Companies ◊23.

Westlaw Topic No. 241E.

§ 2–2055.2. Certificate for limited liability companies

A. Every domestic limited liability company and every foreign limited liability company registered to do business in this Nation shall file a certificate each year in the Office of the Secretary of the Nation which shall confirm it is an active business and include its principal place of business address.

B. The annual certificate shall be due on July 1 following the close of the calendar year until the dissolution of the articles of organization or the withdrawal of the foreign limited liability company has been filed with the Secretary of the Nation.

C. The Secretary of the Nation shall, at least sixty (60) days prior to July 1 of each year, cause to be mailed a notice of the annual certificate to each

domestic limited liability company and each foreign limited liability company required to comply with the provisions of this section in care of its registered agent; or, if there is no agent listed upon the records of the Secretary of the Nation, the last known principal place of business address of the limited liability company.

D. A domestic limited liability company or foreign limited liability company that neglects, refuses or fails to file the annual certificate within sixty (60) days after the date due shall cease to be in good standing as a domestic limited liability company or registered as a foreign limited liability company in this Nation.

E. Until dissolution or withdrawal, a domestic limited liability company that has ceased to be in good standing or a foreign limited liability company that has ceased to be registered by reason of the failure to file the annual certificate with the Secretary of the Nation may be restored to and have the status of a domestic limited liability company in good standing or a foreign limited liability company that is registered in this Nation upon the filing of the annual certificate for each year for which the domestic limited liability company or foreign limited liability company neglected, refused or failed to file the annual certificate within three (3) years from the date it is due.

F. A domestic limited liability company that has ceased to be in good standing by reason of its neglect, refusal or failure to file an annual certificate with the Secretary of the Nation or pay the registered agent fee to the Secretary of the Nation shall remain a domestic limited liability company formed under this act until dissolution of its articles of organization. The Secretary of the Nation shall not accept for filing any certificate or articles, except a resignation of a registered agent when a successor registered agent is not being appointed, required or permitted by this act to be filed in respect to any domestic limited liability company or foreign limited liability company which has neglected, refused or failed to file an annual certificate, and shall not issue any certificate of good standing with respect to the domestic limited liability company or foreign limited liability company, unless or until the domestic limited liability company or foreign limited liability company shall have been restored to and have the status of a domestic limited liability company in good standing or a foreign limited liability company duly registered in this Nation.

G. A domestic limited liability company that has ceased to be in good standing or a foreign limited liability company that has ceased to be registered in this Nation by reason of its neglect, refusal or failure to file an annual certificate or pay an annual registered agent fee to the Secretary of the Nation may not maintain any action, suit or proceeding in any court of this Nation until such domestic limited liability company or foreign limited liability company has been restored to and has the status of a domestic limited liability company or foreign limited liability company in good standing or duly registered in this Nation. An action, suit or proceeding may not be maintained in any court of this Nation by any successor or assignee of the domestic limited liability company or foreign limited liability company on any right, claim or demand arising out of the transaction of business by the domestic limited liability company after it has ceased to be in good standing or a foreign limited liability company that has ceased to be registered in this Nation until the

domestic limited liability company or foreign limited liability company, or any person that has acquired all or substantially all of its assets, has filed its annual certificate with the Secretary of the Nation or paid its registered agent fee to the Secretary of the Nation then due and payable, together with penalties.

H. The neglect, refusal or failure of a domestic limited liability company or foreign limited liability company to file an annual certificate or pay a registered agent fee to the Secretary of the Nation shall not impair the validity on any contract, deed, mortgage, security interest, lien or act of the domestic limited liability company or foreign limited liability company or prevent the domestic limited liability company or foreign limited liability company from defending any action, suit or proceeding with any court of this Nation.

I. A member or manager of a domestic limited liability company or foreign limited liability company is not liable for the debts, obligations or liabilities of the domestic limited liability company or foreign limited liability company solely by reason of the neglect, refusal or failure of the domestic limited liability company or foreign limited liability company to file an annual certificate or pay a registered agent fee to the Secretary of the Nation or by reason of the domestic limited liability company or foreign limited liability company ceasing to be in good standing or duly registered.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Annual certificate for domestic limited liability company and foreign limited liability company, see 18 Okl.St. Ann. § 2055.2.

Library References

Limited Liability Companies ◊23.
Westlaw Topic No. 241E.

§ 2-2056. Petition to direct the execution and filing of articles or document

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 act may petition the Muscogee (Creek) Nation District Court in the county where the registered office of the limited liability company is located or, if no such address is on file with the Secretary of the Nation, to direct the execution and filing of the articles or other document. If the Court finds that it is proper for the articles or other document to be executed and filed and that there has been failure or refusal to execute and file such document, it shall order the Secretary of the Nation to file the appropriate articles or other document.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Action to compel execution or filing of articles or other documents, see 18 Okl.St. Ann. § 2056.

Library References

Indians ◊507.
Limited Liability Companies ◊23.

Westlaw Topic Nos. 209, 241E.
C.J.S. Indians §§ 151 to 179.

§ 2–2057. Application to commerce

The provisions of this act shall apply to commerce with foreign Nations and among the several states and Nations only as permitted by law.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Application of Oklahoma Limited Liability Company Act to foreign and interstate commerce, see 18 Okl.St. Ann. § 2057.

Library References

Limited Liability Companies ⇄2.
Westlaw Topic No. 241E.

§ 2–2058. Rules of construction; applicable law

A. The rules that statutes in derogation of the common law are to be strictly construed shall have no application to the Muscogee (Creek) Nation General Corporation Act¹.

B. The law of estoppel shall apply to this act.

C. The law of agency shall apply under this act.

D. It is the policy of this act to give the maximum effect to the principle of freedom of contract and the the enforceability of operating agreements.

E. This act shall not be construed so as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 3, § 1–1001 et seq.

Oklahoma Statutes Annotated

Rules of construction of Oklahoma Limited Liability Company Act, see 18 Okl.St. Ann. § 2058.