

ONEIDA INDIAN NATION
BUSINESS CORPORATION CODE

**CHAPTER 1-SHORT TITLE; DEFINITIONS; APPLICATIONS; CERTIFICATES;
MISCELLANEOUS**

101. SHORT TITLE

This Code shall be known as the "Business Corporation Code".

102. DEFINITIONS

(a) As used in this Code, unless the context otherwise requires, the term:

- (1) "Bonds" includes secured and unsecured bonds, debentures, and notes.
- (2) "Capital surplus" means the surplus other than earned surplus.
- (3) "Certificate of incorporation" includes (A) the original certificate of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, as amended, supplemented or restated by certificates of amendment, merger or consolidation or other certificates or instruments filed or issued under any statute; or (B) a special act or charter creating a domestic or foreign corporation, as amended, supplemented or restated.
- (4) "Corporation" or "domestic corporation" means a corporation for profit formed under this chapter, or existing on its effective date and theretofore formed under any other statute or by any special act of the Nation for a purpose or purposes for which a corporation may be formed under this Code.
- (5) "Court" means the Oneida Nation Court.
- (6) "Director" means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term "board" means "board of directors".
- (7) "Earned surplus" means the portion of the surplus that represents the net earnings, gains or profits, after deduction of all losses, that have not been distributed to the shareholders as dividends, or transferred to stated capital or capital surplus, or applied to other purposes permitted by law. Unrealized appreciation of assets is not included in earned surplus.

- (8) "Foreign corporation" means a corporation for profit formed under laws other than the statutes of the Nation, which has as its purpose or among its purposes a purpose for which a corporation may be formed under this chapter, other than a corporation which, if it were to be formed currently under the laws of the Nation, could not be formed under this chapter. "Authorized", when used with respect to a foreign corporation, means having authority under Chapter 13 (Foreign corporations) to do business in the Nation.
- (9) "Infant" means a person who has not attained the age of eighteen years.
- (10) "Insolvent" means being unable to pay debts as they become due in the usual course of the debtor's business.
- (11) "Net assets" means the amount by which the total assets exceed the total liabilities. Stated capital and surplus are not liabilities.
- (12) "Office of a corporation" means the office the location of which is stated in the certificate of incorporation of a domestic corporation, or in the application for authority of a foreign corporation or an amendment thereof. Such office need not be a place where business activities are conducted by such corporation.
- (13) "Nation" means the Oneida Indian Nation.
- (14) "Oneida Indian Nation Clerk" and "Nation Clerk" mean the Clerk of the Oneida Indian Nation.
- (15) "Process" means judicial process and all orders, demands, notices or other papers required or permitted by law to be personally served on a domestic or foreign corporation, for the purpose of acquiring jurisdiction of such corporation in any action or proceeding, civil or criminal, whether judicial, administrative, arbitrate or otherwise, in the Nation.
- (16) "Stated capital" means the sum of (A) the par value of all shares with par value that have been issued, (B) the amount of the consideration received for all shares without par value that have been issued, except such part of the consideration therefore as may have been allocated to surplus in a manner permitted by law, and (C) such amounts not included in clauses (A) and (B) as have been transferred to stated capital, whether upon the distribution of shares or otherwise, minus all reductions from such sums as have been effected in a manner permitted by law.
- (17) "Surplus" means the excess of net assets over stated capital.
- (18) "Treasury shares" means shares which have been issued, have been subsequently acquired, and are retained uncanceled by the corporation. Treasury shares are issued

shares, but not outstanding shares, and are not assets.

103. APPLICATION

(a) This Code applies to every domestic corporation and to every foreign corporation which is authorized or does business in the Nation. This Code also applies to any other domestic corporation or foreign corporation of any type or kind to the extent, if any, provided under this Code or any law governing such corporation.

(b) This Code also applies to a corporation of any type or kind, formed for profit under the laws of the Nation.

(c) The enactment of this Code shall not affect the duration of a corporation which is existing on the effective date of this Code. Any such existing corporation, its shareholders, directors and officers shall have the same rights and be subject to the same limitations, restrictions, liabilities and penalties as a corporation formed under this Code, its shareholders, directors and officers.

(d) This Code shall not affect any cause or action, liability, penalty or action or special proceeding, which on the effective date of this Code, is accrued, existing, incurred or pending but the same may be asserted, enforced, prosecuted or defended as if this Code had not been enacted.

104. CERTIFICATES; REQUIREMENTS, SIGNING, FILING, EFFECTIVENESS

(a) Whenever such instrument is required to set forth an address, it shall include the street and number, or other particular description instead of a street and number. This requirement does not apply where a post office address is specified to be set forth.

(b) Whenever such instrument is required to set forth the date when a certificate of incorporation was filed by the Nation Clerk, the original certificate of incorporation is meant. This requirement shall be satisfied, in the case of a corporation created by special act, by setting forth the ordinance number and year of passage of such ordinance.

(c) Every such certificate required under this Code to be signed and delivered to the Nation Clerk shall, except as otherwise specified in the section providing for such certificate, be signed either (1) by the holders of all outstanding shares entitled to vote thereon, or (2) by the chairman of the board, the president or a vice president and by the secretary or an assistant secretary, or (3) if there are no such officers by a majority of the directors or such directors as are designated by a majority of the directors in office, or (4) if also there are no directors, by the holders, or such of them as are designated by the holders, of record of a majority of all outstanding shares entitled to vote thereon, or (5) if also there is no shareholder of record, by a subscriber for shares whose subscription has been accepted or his successor in interest or (6) if also no subscription for shares has been accepted, by an incorporator or anyone acting in his stead under paragraph (c) of section 615 (Written consent of shareholders, subscribers or incorporators without a meeting). His name and the capacity in which any person signs such certificate shall be stated beneath or opposite his signature. The

person signing such certificate or, if more than one person signs it, one of such persons shall verify or acknowledge the certificate if required by the section providing for such certificate. In lieu of being signed and verified or acknowledged, the certificate may be subscribed by such person and affirmed by him as true under the penalties of perjury.

(d) If an instrument which is delivered to the Nation Clerk for filing complies as to form with the requirements of law and there has been attached to it the consent or approval of the Nation official, department, board, agency or other body, if any, whose consent to or approval of such instrument or the filing thereof is required by any statute of the Nation and the filing fee and tax, if any, required by any statute of the Nation in connection therewith have been paid, the instrument shall be filed and indexed by the Nation Clerk. No certificate of authentication or conformity or other proof shall be required with respect to any verification, oath or acknowledgment of any instrument delivered to the Nation Clerk under this Code, if such verification, oath or acknowledgment purports to have been made before a notary public. Without limiting the effect of section four hundred three of this Code, filing and indexing by the Nation Clerk shall not be deemed a finding that a certificate conforms to law, nor shall it be deemed to constitute an approval by the Nation Clerk of the name of the corporation or the contents of the certificate, nor shall it be deemed to prevent any person with appropriate standing from contesting the legality thereof in an appropriate forum.

(e) Except as otherwise provided in this Code, such instrument shall become effective upon the filing thereof by the Nation Clerk.

104-A. FEES

Except as otherwise provided, the Nation Clerk shall collect the following fees pursuant to this Code:

(a) For the reservation of a corporate name pursuant to section three hundred three of this Code, twenty dollars.

(b) For the resignation of a registered agent for service of process pursuant to section three hundred five of this Code, sixty dollars.

(c) For service of process on the Nation Clerk pursuant to section three hundred six or three hundred seven of this Code, forty dollars.

(d) For filing a certificate of incorporation pursuant to section four hundred two of this Code, one hundred twenty-five dollars.

(e) For filing a certificate of amendment pursuant to section eight hundred five of this Code, sixty dollars.

(f) For filing a certificate of change pursuant to section eight hundred five-A of this Code, thirty dollars.

(g) For filing a restated certificate of incorporation pursuant to section eight hundred seven of this Code, sixty dollars.

(h) For filing a certificate of merger or consolidation pursuant to section nine hundred four of this Code, sixty dollars.

(i) For filing a certificate of merger of a subsidiary corporation pursuant to section nine hundred five of this Code, sixty dollars.

(j) For filing a certificate of merger or consolidation of domestic and foreign corporations pursuant to section nine hundred seven of this Code, sixty dollars.

(k) For filing a certificate of dissolution pursuant to section one thousand three of this Code, twenty dollars.

(l) For filing an application by a foreign corporation for authority to do business in the Nation pursuant to section thirteen hundred four of this Code, two hundred twenty-five dollars.

(m) For filing a certificate of amendment of an application for authority by a foreign corporation pursuant to section thirteen hundred nine of this Code, sixty dollars.

(n) For filing a certificate of change of application for authority by a foreign corporation pursuant to section thirteen hundred nine-A of this Code, thirty dollars.

(o) For filing a certificate of surrender of authority pursuant to section thirteen hundred ten of this Code, sixty dollars.

(p) For filing a statement of the termination of existence of a foreign corporation pursuant to section thirteen hundred eleven of this Code, sixty dollars. There shall be no fee for the filing by an authorized officer of the jurisdiction of incorporation of a foreign corporation of a certificate that the foreign corporation has been dissolved or its authority or existence has been otherwise terminated or cancelled in the jurisdiction of its incorporation.

(q) For filing any other certificate or document, forty dollars.

105. CERTIFICATES; CORRECTIONS

Any certificate or other instrument relating to a domestic or foreign corporation filed by the Nation Clerk under this Code may be corrected with respect to any informality or error apparent on the face, incorrect statement or defect in the execution thereof including the deletion of any matter not permitted to be stated therein. A certificate, entitled "Certificate of correction of....(correct title of certificate and name of corporation)" shall be signed, verified and delivered to the Nation Clerk.

It shall set forth the name of the corporation, the date the certificate to be corrected was filed by the Nation Clerk, a statement as to the nature of the informality error, incorrect statement or defect, the provision in the certificate as corrected or eliminated and if the execution was defective, the proper execution. The filing of the certificate by the Nation Clerk shall not alter the effective time of the instrument being corrected, which shall remain as its original effective time, and shall not affect any right or liability accrued or incurred before such filing. A corporate name may not be changed or corrected under this section. The provisions of this section shall apply to all instruments and certificates heretofore and hereafter filed with the Nation Clerk.

106. CERTIFICATES AS EVIDENCE

(a) Any certificate or other instrument filed by the Nation Clerk relating to a domestic or foreign corporation and containing statements of fact required or permitted by law to be contained therein, shall be received in all courts, public offices and official bodies as prima facie evidence of such facts and of the execution of such instrument.

(b) Whenever by the laws of any jurisdiction other than the Nation, any certificate by any officer in such jurisdiction or a copy of any instruments certified or exemplified by any such officer, may be received as prima facie evidence of the incorporation, existence or capacity of any foreign corporation incorporated in such jurisdiction, or claiming so to be, such certificate when exemplified, or such copy of such instrument when exemplified shall be received in all courts, public offices and official bodies of the Nation, as prima facie evidence with the same force as in such jurisdiction. Such certificate or certified copy of such instrument shall be so received, without being exemplified, if it is certified by the Nation Clerk, or official performing the equivalent function as to corporate records, of such jurisdiction.

107. CORPORATE SEAL AS EVIDENCE

The presence of the corporate seal on a written instrument purporting to be executed by authority of a domestic or foreign corporation shall be prima facie evidence that the instrument was so executed.

108. WHEN NOTICE OR LAPSE OF TIME UNNECESSARY; NOTICES DISPENSED WITH WHEN DELIVERY IS PROHIBITED

(a) Whenever, under this Code or the certificate of incorporation or by-laws of any corporation or by the terms of any agreement or instrument, a corporation or the board or any committee thereof authorized to take any action after notice to any person or persons or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time, if at any time before or after such action is completed the person or persons entitled to such notice or entitled to participate in the action to be taken or, in the case of a shareholder, by his attorney-in-fact, submit a signed waiver of notice of such requirements.

(b) Whenever any notice or communication is required to be given to any person by this Code, the certificate of incorporation or by-laws, or by the terms of any agreement or instrument, or as a condition precedent to taking any corporate action and communication with such person is then unlawful under any statute of the Nation or any regulation, proclamation or order issued under said statutes, then the giving of such notice or communication to such person shall not be required and there shall be no duty to apply for license or other permission to do so. Any affidavit, certificate or other instrument which is required to be made or filed as proof of the giving of any notice or communication required under this Code shall, if such notice or communication to any person is dispensed with under this paragraph, include a statement that such notice or communication was not given to any person with whom communication is unlawful. Such affidavit, certificate or other instrument shall be as effective for all purposes as though such notice or communication has been personally given to such person.

(c) Whenever any notice or communication is required or permitted by this Code to be given by mail, it shall, except as otherwise expressly provided in this Code, be mailed to the person to whom it is directed at the address designated by him for that purpose or, if none is designated, at his last known address. Such notice or communication is given when deposited, with postage thereon prepaid, in a post office or official depository under the exclusive care and custody of the United States post office department. Such mailing shall be by first class mail except where otherwise required by this Code.

109. ACTIONS OR SPECIAL PROCEEDINGS BY NATION PROSECUTOR

(a) The Nation Prosecutor may maintain an action or special proceeding:

- (1) To annul the corporate existence or dissolve a corporation that has acted beyond its capacity or power or to restrain it from the doing of unauthorized business;
- (2) To annul the corporate existence or dissolve any corporation that has not been duly formed;
- (3) To restrain any person or persons from acting as a domestic or foreign corporation within the territorial jurisdiction of the Nation without being duly incorporated or from exercising in the territorial jurisdiction of the Nation any corporate rights, privileges or franchises not granted to them by the law of the Nation;

- (4) To procure a judgment removing a director of a corporation for cause under section 706 (Removal of directors);
- (5) To dissolve a corporation under Code 11 (Judicial dissolution);
- (6) To restrain a foreign corporation or to annul its authority to do business within the territorial jurisdiction of the Nation under section 1303 (Violations).
- (7) Upon written application, ex parte, for an order to the Oneida Indian Nation court and if the court so orders, to inspect the books and records of the corporation to the extent that such inspection is available to shareholders and directors under the law of the Nation. This paragraph applies to every corporation, no shares of which are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association. This paragraph does not apply to a corporation all shares of which are owned either directly or through a wholly owned subsidiary by a corporation or corporations to which this paragraph does not apply.
- (8) To collect any fines payable to the Nation Clerk pursuant to section four hundred nine of this Code.

(b) In an action or special proceeding brought by the Nation Prosecutor under any of the provisions of this Code:

- (1) The court may confer immunity.
- (2) A temporary restraining order to restrain the commission or continuance of the unlawful acts which form the basis of the action or special proceeding may be granted upon proof, by affidavit, that the defendant or defendants have committed or are about to commit such acts. Application for such restraining order may be made ex parte or upon such notice as the court may direct.
- (3) If the action or special proceeding is against a foreign corporation, the Nation Prosecutor may apply to the court at any stage thereof for the appointment of a temporary receiver of the assets in the Nation of such foreign corporation, whenever it has assets or property of any kind whatsoever, tangible or intangible, within the Nation.
- (4) When final judgment in such action or special proceeding is rendered against the defendant or defendants, the court may direct the costs to be collected by execution against any or all of the defendants or by order of attachment or other process against the person of any director or officer of a corporate defendant.
- (5) In connection with any such proposed action or special proceeding, the Nation Prosecutor may take proof and issue subpoenas in accordance with the Oneida Indian

Nation Rules of Civil Procedure.

(c) In any such action or special proceeding against a foreign corporation which has not designated the Nation Clerk as its agent for service of process under section 304 (Statutory designation of Nation Clerk as agent for service of process), any of the following acts within the territorial jurisdiction of the Nation by such foreign corporations shall constitute the appointment by it of the Nation Clerk as its agent upon whom process against such foreign corporation may be served:

- (1) As used in this paragraph the term "resident" shall include individuals, domestic corporations and foreign corporations authorized to do business in the Nation.
- (2) Any act done, or representation made as part of a course of the solicitation of orders, or the issuance, or the delivery, of contracts for, or the sale of, property, or the performance of services to residents which involves or promotes a plan or scheme to defraud residents in violation of the laws or the public policy of the Nation.
- (3) Any act done as part of a course of conduct of business in the solicitation of orders from residents for property, goods or services, to be delivered or rendered within the Nation to, or on their behalf, where the orders or contracts are executed by such residents within the Nation and where such orders or contracts are accompanied or followed by an earnest money deposit or other down payment or any installment payment thereon or any other form of payment, which payment is either delivered in or transmitted from the territorial jurisdiction of the Nation.
- (4) Any act done as part of the conduct of a course of business with residents which defrauds such residents or otherwise involves or promotes an attempt by such foreign corporation to circumvent the laws of the Nation.

(d) Paragraphs (b), (c), (d) and (e) of section 307 (Service of process on unauthorized foreign corporation) shall apply to process served under paragraph (c).

110. RESERVATION OF POWER

The Oneida Indian Nation reserves the right, at pleasure, to alter, amend, suspend or repeal in whole or in part this Code, or any certificate of incorporation or any authority to do business in the Nation, of any domestic or foreign corporation, whether or not existing or authorized on the effective date of this Code.

111. EFFECT OF INVALIDITY OF PART OF CODE; SEVERABILITY

If any provision of this Code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared severable.

112. REFERENCES

Unless otherwise stated, all references in this Code to chapters or sections refer to the chapters or sections of this Code, and all references in any section of this Code to a lettered or numbered paragraph or subparagraph refer to the paragraph or subparagraph so lettered or numbered in such section.

113. CODE NOT APPLICABLE TO CORPORATION CREATED BY NATION ORDINANCES

Corporate or other bodies created as instrumentalities of the Nation by Nation ordinance shall not be governed by the provisions of this Code.

114. SOVEREIGN IMMUNITY

The Nation does not by enacting this Code waive in any respect its sovereign immunity, or that of its agents, in any manner, under any law, for any purpose, nor in any place.