

## CHAPTER 3-CORPORATE NAME AND SERVICE OF PROCESS

### 301. CORPORATE NAME; GENERAL

(a) Except as otherwise provided in this Code, the name of a domestic or foreign corporation:

- (1) Shall contain the word "corporation", "incorporated" or "limited", or an abbreviation of one of such words.
- (2) Shall not be the same as the name of a corporation of any type or kind, or a fictitious name of an authorized foreign corporation filed pursuant to chapter thirteen of this Code, as such name appears on the index of names of existing domestic and authorized foreign corporations of any type or kind, including fictitious names of authorized foreign corporations filed pursuant to chapter thirteen of this Code, in the Nation Clerk, or a name the right to which is reserved, or a name so similar to any such name as to tend to confuse or deceive.
- (2) Shall be such as to distinguish it from the names of corporations of any type or kind, as such names appear on the index of names of existing domestic and authorized foreign corporations of any type or kind in the Nation Clerk, or names the right to which are reserved.
- (3) Shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute or ordinance of the Nation, unless in the latter case the restrictions have been complied with.
- (4) Shall not contain any word or phrase, or any abbreviation or derivative thereof, in a context which indicates or implies that the corporation, if domestic, is formed or, if foreign, is authorized for any purpose or is possessed within the territorial jurisdiction of the Nation of any power other than a purpose for which, or a power with which, the domestic corporation may be and is formed or the foreign corporation is authorized.
- (5)(A) Shall not contain any of the following phrases, or any abbreviation or derivative thereof:

Nation  
Police  
Oneida  
Oneida Indian Nation

(B) Shall not contain any of the following words, or any abbreviation or derivative thereof:

acceptance    endowment    loan

annuity	fidelity	mortgage
assurance	finance	savings
bank	guaranty	surety
benefit	indemnity	title
bond	insurance	trust
casualty	investment	underwriter
doctor	lawyer	

unless the approval of the Oneida Indian Nation is attached to the certificate of incorporation, or application for authority or amendment thereof.

- (6) Shall not contain any words or phrases, or any abbreviation or derivation thereof in a context which will tend to mislead the public into believing that the corporation is an agency or instrumentality of the Oneida Indian Nation.
- (7) Shall not contain any word or phrase, or any abbreviation or derivation thereof, which, separately, or in context, shall be indecent or obscene, or shall ridicule or degrade any person, group, belief, business or agency of government, or indicate or imply any unlawful activity.
- (8) Shall not, unless the approval of the Oneida Indian Nation is attached to the certificate of incorporation, or application for authority or amendment thereof, contain the word "exchange" or any abbreviation or derivative thereof. Such approval shall not be granted by the Oneida Indian Nation, if in the opinion the use of the word "exchange" in the proposed corporate name would falsely imply that the corporation conducts its business at a place where trade is carried on in securities or commodities by brokers, dealers, or merchants.

### 302. CORPORATE NAME; EXCEPTIONS

(a) Any reference to a corporation in this section except as otherwise provided herein shall include both domestic and foreign corporations.

(b) The provisions of section 301 (Corporate Name; General):

(1) Shall not prevent a corporation with which another corporation is merged, or which is formed by the reorganization or consolidation of one or more other corporations or upon a sale, lease, exchange or other disposition to a domestic corporation of all or substantially all the assets of another domestic corporation, including its name, as provided in paragraph (b) of Section 909 (Sale, lease, exchange or other disposition of assets), from having the same name as any of such corporations if at the time such other corporation was authorized or existing under any statute of the Nation.

(2) Shall not prevent a foreign corporation from being authorized under a name which is

similar to the name of a corporation of any type or kind existing or authorized under any statute, if the Nation Clerk finds, upon proof by affidavit or otherwise as it may determine, that a difference between such names exists in the terms or abbreviations indicating corporate character or otherwise, that the applicant has engaged in business as a corporation under its said name for not less than ten consecutive years immediately prior to the date of its application that the business to be conducted in the Nation is not the same as or similar to the business conducted by the corporation with whose name it may conflict and that the public is not likely to be confused or deceived, and if the applicant shall agree in its application for authority to use with its corporate name, in the Nation, to be placed immediately under or following such name, the words "a ....(name of jurisdiction of incorporation) corporation".

- (3) Shall not prevent a "small business investment corporation" as such term is defined in the United States "Small Business Investment Act of 1958" from including the word "investment" as part of its name if such word is coupled with the words "small business".
- (4) Shall not prevent an "investment company" as such term is defined in the United States "Investment Company Act of 1940" from including the word "finance" or "bond" as part of its name, if the approved bank regulations is attached to the certificate of incorporation, application for authority, or amendment thereof.
- (5) Shall not prevent a broker or dealer in securities, as such term is defined in the United States "Securities Exchange Act of 1934", from including the words "investment" as part of its name if such word is coupled with the words "broker" or "brokers" and if such broker or dealer is registered under the United States law.
- (6) Shall not prevent an association of banks or trust companies organized as a non-profit membership corporation for the promotion of the interests of member banks from including the word "bankers" as part of its corporate name.
- (7) Shall not prevent a bank holding company, as long as it is required to be registered under the laws of other sovereigns as each may be amended from time to time, from using the words "bank", "banker" or "trusts" or any abbreviation, derivative or combination thereof as part of its corporate name, if the approval of the superintendent of banks of that sovereign is attached to the certificate of incorporation, application for authority, or amendment thereof.

### **303. RESERVATION OF NAME**

(a) A corporate name may be reserved by:

- (1) Any person intending to form a domestic corporation.

- (2) Any domestic corporation intending to change its name.
- (3) Any foreign corporation intending to apply for authority to do business within the territorial jurisdiction of the Nation.
- (4) Any authorized foreign corporation intending to change its name.
- (5) Any person intending to incorporate a foreign corporation and to have it apply for authority to do business within the territorial jurisdiction of the Nation.

(b) A fictitious name for use pursuant to section 1301 of this Code, may be reserved by:

- (1) Any foreign corporation intending to apply for authority to do business in the Nation, pursuant to paragraph (d) of section 1301 of this Code.
- (2) Any authorized foreign corporation intending to change its fictitious name under which it does business in the Nation.
- (3) Any authorized foreign corporation which has changed its corporate name in its jurisdiction, such new corporate name not being available in the Nation.

(c) Application to reserve a corporate or fictitious name shall be delivered to the Nation Clerk. It shall set forth the name and address of the applicant, the name to be reserved and a statement of the basis under paragraph (a) or (b) for the application. The Nation Clerk may require that there be included in the application a statement as to the nature of the business to be conducted by the corporation. If the name is available for corporate use, the Nation Clerk shall reserve the name for the use of the applicant for a period of sixty days and issue a certificate of reservation. The restrictions and qualifications set forth in subparagraphs (a)(3), (4), (5), (6), and (7) of section 301 (Corporate name; general) are not waived by the issuance of a certificate of reservation. The certificate of reservation shall include the name of the applicant, the name reserved and the date of the reservation. The certificate of reservation (or in lieu thereof an affidavit by the applicant or by his agent or attorney that the certificate of reservation has been lost or destroyed) shall accompany the certificate of incorporation or the application for authority when either is delivered to the Nation Clerk.

(d) The Nation Clerk may extend the reservation for additional periods of not more than sixty days each, upon the written request of the applicant, his attorney or agent delivered to the Nation Clerk, to be filed before the expiration of the reservation period in effect. Such request shall have attached to it the certificate of reservation of name. Not more than two such extensions shall be granted.

(e) Upon the request of the applicant, delivered to the Nation Clerk before the expiration of the reserved period, the Secretary shall cancel the reservation.

(f) Any application or request under this section shall be signed by the applicant, his attorney or

agent.

#### **304. STATUTORY DESIGNATION OF NATION CLERK AS AGENT FOR SERVICE OF PROCESS**

(a) The Nation Clerk shall be the agent of every domestic corporation and every authorized foreign corporation upon whom process against the corporation may be served.

(b) No domestic or foreign corporation may be formed or authorized to do business in the Nation under this Code unless in its certificate of incorporation or application for authority it designates the Nation Clerk as such agent.

(c) Any designation by a domestic or a foreign corporation of the Nation Clerk as such agent, which designation is in effect on the effective date of this chapter, shall continue. Every domestic or foreign corporation, existing or authorized on the effective date of this chapter, which has not designated the Nation Clerk as such agent, shall be deemed to have done so. Any designation prior to the effective date of this chapter by a foreign corporation of an agent other than the Nation Clerk shall terminate on the effective date of this chapter.

(d) Any designated post-office address to which the Nation Clerk shall mail a copy of process served upon him as agent of a domestic corporation or a foreign corporation, shall continue until the filing of a certificate under this chapter directing the mailing to a different post-office address.

#### **305. REGISTERED AGENT FOR SERVICE OF PROCESS**

(a) In addition to such designation of the Nation Clerk, every domestic corporation or authorized foreign corporation may designate a registered agent in the Nation upon whom process against such corporation may be served. The agent shall be a natural person who is a resident of or has a business address in the Nation or a domestic corporation or foreign corporation of any type or kind formed, or authorized to do business in the Nation, under this chapter or under any other statute of the Nation.

(b) Any such designation of a registered agent may be made, revoked or changed as provided in this chapter.

(c) A registered agent may resign as such agent. A certificate entitled "Certificate of resignation of registered agent of ...(name of designating corporation) under section 305 of the Business Corporation Code", shall be signed, verified by him and delivered to the Nation Clerk. It shall set forth:

- (1) That he resigns as registered agent for the designating corporation.
- (2) The date the certificate of incorporation or the application for authority of the designating corporation was filed by the Nation Clerk.

- (3) That he has sent a copy of the certificate of resignation by registered mail to the designating corporation at the post office address on file with the Nation Clerk specified for the mailing of process or if such address is the address of the registered agent, then to the office of the designating corporation in the jurisdiction of its formation or incorporation.

(d) The designation of a registered agent shall terminate thirty days after the filing by the Nation Clerk of a certificate of resignation or a certificate containing a revocation or change of the designation, whichever is filed earlier. A certificate designating a new registered agent may be delivered to the Nation Clerk by the corporation within the thirty days or thereafter.

### **306. SERVICE OF PROCESS**

Service of process on a registered agent may be made in the manner provided by the Oneida Indian Nation Rules of Civil Procedure for the service of summons, as if the registered agent was a defendant.

### **307. SERVICE OF PROCESS ON UNAUTHORIZED FOREIGN CORPORATION**

(a) In any case in which a non-domiciliary would be subject to the personal or other jurisdiction of the courts of the Nation, a foreign corporation not authorized to do business within the territorial jurisdiction of the Nation is subject to a like jurisdiction. In any such case, process against such foreign corporation may be served upon the Nation Clerk as its agent. Such process may issue in the Nation court.

(b) Service of such process upon the Nation Clerk shall be made by personally delivering to and leaving with him, a copy of such process. Such service shall be sufficient if notice thereof and a copy of the process are:

- (1) Delivered personally to such foreign corporation by a person and in the manner authorized to serve process by law of the jurisdiction in which service is made, or
- (2) Sent by or on behalf of the plaintiff to such foreign corporation by registered mail with return receipt requested, at the post office address specified for the purpose of mailing process, on file in the office of the Nation Clerk, or if no such address is there specified, to its registered or other office there specified, or if no such office is there specified, to the last address of such foreign corporation known to the plaintiff.

(c) 1. Where service of a copy of process was effected by personal service, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after such service, with the clerk of the court. Service of process shall be complete ten days after such papers are filed with the clerk.

2. Where service of a copy of process was effected by mailing in accordance with this section, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after receipt of the return receipt signed by the foreign corporation, or other official proof of delivery or of the original envelope mailed. If a copy of process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such foreign corporation or other official proof of delivery or, if acceptance was refused by it, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the notice and process together with notice of the mailing by registered mail and refusal to accept shall be promptly sent to such foreign corporation at the same address by ordinary mail and the affidavit of compliance shall so state. Service of process shall be complete ten days after such papers are filed with the clerk of the court. The refusal to accept delivery of the registered mail or to sign the return receipt shall not affect the validity of the service and such foreign corporation refusing to accept such registered mail shall be charged with knowledge of the contents thereof.

(d) Service made within the territorial jurisdiction of the Nation as provided in this section shall have the same force as personal service made within the Nation.

(e) Nothing in this section shall affect the right to serve process in any other manner permitted by law.

### **308. RECORDS AND CERTIFICATES OF NATION CLERK**

The Nation Clerk shall keep a record of each process served upon the Nation Clerk under this chapter, including the date of service. It shall, upon request made within ten years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service and the receipt of the statutory fee. Process served upon the Nation Clerk under this chapter shall be destroyed by him after a period of ten years from such service.