

CHAPTER 10-NON-JUDICIAL DISSOLUTION

1001. AUTHORIZATION OF DISSOLUTION

A corporation may be dissolved under this chapter. Such dissolution shall be authorized at a meeting of shareholders by the vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, except as otherwise provided under section 1002 (Dissolution under provision in certificate of incorporation).

1002. DISSOLUTION UNDER PROVISION IN CERTIFICATE OF INCORPORATION

(a) The certificate of incorporation may contain a provision that any shareholder, or the holders of any specified number or proportion of shares, or of any specified number or proportion of shares of any class or series thereof, may require the dissolution of the corporation at will or upon the occurrence of a specified event. If the certificate of incorporation contains such a provision, a certificate of dissolution under section 1003 (Certificate of dissolution; contents) may be signed, verified and delivered to the Nation Clerk as provided in section 104 (Certificate; requirements, signing, filing, effectiveness) when authorized by a holder or holders of the number or proportion of shares specified in such provision, given in such manner as may be specified therein, or if no manner is specified therein, when authorized on written consent signed by such holder or holders; or such certificate may be signed, verified and delivered to the Nation Clerk by such holder or holders or by such of them as are designated by them.

(b) An amendment of the certificate of incorporation which adds a provision permitted by this section, or which changes or strikes out such a provision, shall be authorized at a meeting of shareholders by vote of all outstanding shares, whether or not otherwise entitled to vote on any amendment, or of such lesser proportion of shares and of such class or series of shares, but not less than a majority of all outstanding shares entitled to vote on any amendment, as may be provided specifically in the certificate of incorporation for adding, changing or striking out a provision permitted by this section.

(c) If the certificate of incorporation of any corporation contains a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

1003. CERTIFICATE OF DISSOLUTION; CONTENTS

(a) A certificate of dissolution, entitled "Certificate of dissolution of (name of corporation) under section 1003 of the Business Corporation Code", shall be signed, verified and delivered to the Nation Clerk. It shall set forth:

(1) The name of the corporation and, if its name has been changed, the name under which it

was formed.

- (2) The date its certificate of incorporation was filed by the Nation Clerk.
- (3) The name and address of each of its officers and directors.
- (4) That the corporation elects to dissolve.
- (5) The manner in which the dissolution was authorized.

1004. CERTIFICATE OF DISSOLUTION; FILING

The Nation Clerk shall not file such certificate unless all Nation taxes have been paid. Upon payment of all Nation taxes, or a statement from the Chief Financial Officer of the Nation that no taxes are due, the certificate shall be filed.

1005. PROCEDURE AFTER DISSOLUTION

(a) After dissolution:

- (1) The corporation shall carry on no business except for the purpose of winding up its affairs.
- (2) The corporation shall proceed to wind up its affairs, with power to fulfill or discharge its contracts, collect its assets, sell its assets for cash at public or private sale, discharge or pay its assets for cash at public or private sale, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business.
- (3) After payment or adequately providing for the payment of its liabilities:
 - (A) The corporation, if authorized at a meeting of shareholders by a vote of the holders of a majority of all outstanding shares entitled to vote thereon may sell its remaining assets, or any part thereof, for cash, shares, bonds or other securities or partly for cash and partly for shares, bonds or other securities, and distribute the same among the shareholders according to their respective rights. In the case of a sale under this subparagraph where the consideration is in whole or in part other than cash, any shareholder, entitled to vote thereon, who does not vote for or consent in writing to such sale, thereon, who does not vote for or consent in writing to such sale, shall, subject to and by complying with the provisions of section 623 (Procedure to enforce shareholder's right to receive payment for shares), have the right to receive payment for his shares. Section 909 (Sale, lease, exchange or other disposition of assets) is not applicable to a sale of assets under this paragraph.

(B) The corporation, whether or not it has made a sale under subparagraph (A), may distribute any remaining assets, in cash or in kind or partly each, among its shareholders according to their respective rights.

(b) When there are no shareholders, upon dissolution all subscriptions for shares shall be cancelled and all obligations of the corporation to issue shares or of the subscribers to pay their subscriptions shall terminate, except for such payments as may be required to enable the corporation to pay its liabilities.

(c) Upon the winding up of the affairs of the corporation, any assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and for whom there is no legal representative, shall be paid to the Nation as payment of the final liquidating distribution, and be subject to the provisions of the abandoned property law.

1006.CORPORATE ACTION AND SURVIVAL OF REMEDIES AFTER DISSOLUTION

(a) A dissolved corporation, its directors, officers and shareholders may continue to function for the purpose of winding up the affairs of the corporation in the same manner as if the dissolution had not taken place, except as otherwise provided in this chapter or by court order. In particular, and without limiting the generality of the foregoing:

- (1) The directors of a dissolved corporation shall not be deemed to be trustees of its assets; title to such assets shall not vest in them, but shall remain in the corporation until transferred by it in its corporate name.
- (2) Dissolution shall not change quorum or voting requirements for the board of shareholders, or provisions regarding election, appointment, resignation or removal of, or filling vacancies among, directors or officers, or provisions regarding amendment or repeal of by-laws or adoption of new by-laws.
- (3) Shares may be transferred and determinations of shareholders for any purpose may be made without closing the record of shareholders until such time, if any, as such record may be closed, and either the board or the shareholders may close it.
- (4) The corporation may sue or be sued in all courts and participate in actions and proceedings, whether judicial, administrative, arbitral or otherwise, in its corporate name, and process may be served by or upon it.

(b) The dissolution of a corporation shall not affect any remedy available to or against such corporation, its directors, officers or shareholders for any right or claim existing or any liability incurred before such dissolution, except as provided in sections 1007 (Notice to creditors; filing or barring claims) or 1008 (Jurisdiction of Nation court to supervise dissolution and liquidation).

1007. NOTICE TO CREDITORS; FILING OR BARRING CLAIMS

(a) At any time after dissolution, the corporation may give a notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day. The giving of such notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid, or operate as a recognition of the validity of, or a waiver of any defense or counterclaim in respect of any claim against the corporation, its assets, directors, officers or shareholders, which has been barred by any statute of limitations or become invalid by any cause, or in respect of which the corporation, its directors, officers or shareholders, has any defense or counterclaim.

(b) Any claims which shall have been filed as provided in such notice and which shall be disputed by the corporation may be submitted for determination to the Nation court. A claim filed by the trustee or paying agent for the holders of bonds or coupons shall have the same effect as if filed by the holder of any such bond or coupon. Any person whose claim is, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section or section 1008. The claim of any such person and all other claims which are not timely filed as provided in such notice except claims which are the subject of litigation, and all claims which are so filed but are disallowed by the court under section 1008, shall be forever barred as against the corporation, its assets, directors, officers and shareholders, except to such extent, if any, as the court may allow them against any remaining assets of the corporation in the case of a creditor who shows satisfactory reason for his failure to file his claim as so provided.

(c) Notwithstanding this section and section 1008 tax claims and other claims of the Nation, another Indian Nation, any state and of the United States shall not be required to be filed under those sections, and such claims shall not be barred because not so filed, and distribution of the assets of the corporation, or any part thereof, may be deferred until determination of any such claims.

(d) Laborer's wages shall be preferred claims and entitled to payment before any other creditors out of the assets of the corporation in excess of valid prior liens or encumbrances.

1008. JURISDICTION OF ONEIDA NATION COURT TO SUPERVISE DISSOLUTION AND LIQUIDATION

(a) At any time after the filing of a certificate of dissolution under this chapter the Nation court, in a special proceeding instituted under this section, upon the petition of the corporation, or, in a situation approved by the court, upon the petition of a creditor, claimant, director, officer, shareholder, subscriber for shares, incorporator or the Nation Prosecutor, may suspend or annul the dissolution or continue the liquidation of the corporation under the supervision of the court and may make all such order as it may deem proper in all matters in connection with the dissolution or the winding up of the affairs of the corporation, and in particular, and without limitation of the generality thereof, in respect of the following:

- (1) The determination of the validity of the authorization of the dissolution of the corporation and of the execution and delivery of the certificate of dissolution under this chapter.
- (2) The adequacy of the notice given to creditors and claimants and if it is determined to have been inadequate, the requirement of such further notice as the court may deem proper.
- (3) The determination of the validity and amount or invalidity of any claims which have been presented to the corporation.
- (4) The barring of all creditors and claimants who have not timely filed claims as provided in any such notice, or whose claims have been disallowed by the court, as against the corporation, its assets, directors, officers and shareholders.
- (5) The determination and enforcement of the liability of any director, officer, shareholder or subscriber for shares, to the corporation or for the liabilities of the corporation.
- (6) The payment, satisfaction or compromise of claims against the corporation, the retention of assets for such purpose, and the determination of the adequacy of provisions made for payment of the liabilities of the corporation.
- (7) The disposition or destruction of records, documents and papers of the corporation.
- (8) The appointment and removal of a receiver under chapter 12 (Receivership) who may be a director, officer or shareholder of the corporation.
- (9) The issuance of injunctions for one or more of the purposes and as provided in section 1115 (Injunction).
- (10) The return of subscription payments to subscribers for shares, and the making of distributions, in cash or in kind or partly each, to the shareholders.
- (11) The payment to the Oneida Indian Nation, as abandoned property, of assets under paragraph (c) of section 1005 (Procedure after dissolution).

(b) Orders under this section may be entered ex parte, except that if such special proceeding was not instituted upon petition of the corporation, notice shall be given to the corporation in such manner as the court may direct. Notice shall be given to such other persons interested, and in such manner, as the court may deem proper, of any hearings and of the entry of any orders on such matters as the court shall deem proper. All orders made by the court under this section shall be binding upon the Nation, the corporation, its officers, directors, shareholders, subscribers for shares, incorporators, creditors and claimants.

- (c) (1) Simultaneously with the institution of such special proceeding for annulment of the dissolution, the petitioner shall apply to the Nation Clerk to reserve the corporation name to the corporation. If such name shall not be available for use, the petitioner forthwith upon being notified thereof shall apply to such department for the reservation of another and available name and any judgment or order of annulment made in such proceeding shall order and direct the petitioner to execute a certificate of change of the corporate name to such other name.
- (2) The clerk of the court, shall transmit a certified copy of the judgment or order of annulment of the dissolution, together with the certificate of change of corporate name in the appropriate case, to the Nation Clerk. Upon filing by the Nation Clerk, the annulment of dissolution shall be effected.

1009. APPLICABILITY TO DISSOLUTION UNDER OTHER PROVISIONS

The provisions of sections 1005 (Procedure after dissolution), 1006 (Corporate action and survival of remedies after dissolution), 1007 (Notice to creditors; filing or barring claims) and 1008 (Jurisdiction of Nation court to supervise dissolution and liquidation) shall apply to a corporation dissolved by expiration of its period of duration.