

## LIMITED PARTNERSHIPS

### 121-101 DEFINITIONS

As used in this Code, unless the context otherwise requires:

(a) "Certificate of limited partnership" means the certificate referred to in section 121-201 of this Code, and the certificate as amended.

(b) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to render services, which a partner contributes to a limited partnership in his capacity as a partner.

(c) "Court" means the Oneida Indian Nation Court.

(d) "Distribution" means the transfer of property by a limited partnership to one or more of its partners in his capacity as a partner.

(e) "Event of withdrawal of a general partner" means an event that caused a person to cease to be a general partner as provided in section 121-402 of this Code.

(f) "Foreign limited partnership" means a partnership formed under the laws of any jurisdiction, including any foreign country, other than the laws of the Nation and having as partners one or more general partners and one or more limited partners.

(g) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and, if required by the law of the jurisdiction under which the limited partnership or foreign limited partnership, as the case may be, is organized, is so named in the certificate of limited partnership or similar instrument.

(h) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement or as otherwise provided by the law of the jurisdiction under which the limited partnership or foreign limited partnership, as the case may be, is organized.

(i) "Limited partnership" and "domestic limited partnership" mean, unless the context otherwise requires, a partnership (i) formed by two or more persons pursuant to this Code or which complies with subdivision (a) of section 121-1202 of this Code and (ii) having one or more general partners and one or more limited partners.

(j) "Majority in interest of the limited partners" and "two-thirds in interest of the limited partners" mean limited partners whose aggregate share of current profits of the partnership constitute more than one-half or two-thirds respectively, of the aggregate shares of all limited partners.

(k) "Nation" means the Oneida Indian Nation.

(l) "Office of limited partnership" means the office of the location of which is stated in the certificate of limited partnership of a domestic limited partnership, or in the application for authority of a foreign limited partnership or an amendment thereof. Such office need not be a place where business activities are conducted by such limited partnership.

(m) "Oneida Indian Nation Clerk" means the Nation Clerk of the Oneida Indian Nation. Heretofore referred to as Nation Clerk.

(n) "Partner" means a limited or general partner.

(o) "Partnership agreement" means any written agreement of the partner as to the affairs of a limited partnership and the conduct of its business.

(p) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and right to receive distributions.

(q) "Person" means a natural person, partnership, limited partnership (domestic or foreign), limited liability company (domestic or foreign), trust, estate, custodian, nominee, association, corporation or any other individual or entity in its own or any representative capacity.

(r) "Process" means judicial process and all orders, demands, notices or other papers required or permitted by law to be personally served on a limited partnership (domestic or foreign), for the purpose of acquiring jurisdiction of such limited partnership in any action or proceeding, civil or criminal, whether judicial, administrative, arbitative or otherwise, in the Nation courts.

(s) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

#### **121-102 PARTNERSHIP NAME**

The name of each limited partnership as set forth in its certificate of limited partnership:

(a) (1) shall contain without abbreviation the words "Limited Partnership" or the abbreviation "L.P.";

(2) shall be such as to distinguish it from the name of (i) any limited partnership as defined in subdivision (h) of section 121-101 of this Code, or (ii) any foreign limited partnership authorized to do business as a foreign limited partnership in the Nation;

(3) (A) may not contain the following phrases or any abbreviation or derivative thereof:

board of trade	police	urban development
chamber of commerce	trooper	urban relocation
community renewal	tenant relocation	

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

acceptance	endowment	lawyer
annuity	fidelity	loan
assurance	finance	mortgage
bank	guaranty	Nation
benefit	indemnity	Oneida
bond	insurance	savings
casualty	investment	title
doctor	trust	underwriter

unless the approval of the Nation Clerk is attached to the certificate of limited partnership or unless the word "doctor" or "lawyer" or an abbreviation or derivative thereof is used in a context which clearly denotes a purpose other than the practice of law or medicine.

(C) shall not, unless the approval of the Nation Clerk is attached to the certificate of limited partnership or application for authority or amendment thereof, contain the word "blind" or "handicapped". Such approval shall be granted by the Nation Clerk if in its opinion the work "blind" or "handicapped" as used in the limited partnership name proposed will not tend to mislead or confuse the public into believing that the limited partnership is organized for charitable or nonprofit purposes related to the blind or the handicapped.

(D) shall not, unless the approval of the Nation Clerk is attached to the certificate of limited partnership 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 Nation Clerk if in his or her opinion the use of the word "exchange" in the proposed limited partnership name would falsely imply that the limited partnership conducts its business in a place where trade is carried on in securities or commodities by brokers, dealers, or merchants.

(b) (1) No person shall hereafter carry on or conduct or transact business in this state under any name or designation other than his or its real name, unless:

(A) Such person, if a limited partnership, shall file, in the office of the Nation Clerk

a certificate setting forth the name or designation under which business is carried on or transacted, its limited partnership name, and the location including number and street, of its principal place of business. Each certificate shall be executed and duly acknowledged by a general partner.

(c) A limited partnership organized under the laws of any jurisdiction prior to the effective date of this Code which shall file a certificate under section 121-1202 of this Code within one year of the effective date of this Code may file under its name as provided in its certificate of limited partnership on the effective date of this Code and thereafter may continue to use such name and a foreign limited partnership which has been authorized to do business in the Nation prior to the effective date of this Code may continue to use the name under which it has heretofore done business in the Nation.

(d) No person or persons shall hereafter use or file a certificate for the use of any name or designation to carry on or conduct or transact business in the Nation which consists of or includes words, or initials and a word or words, which are or appear to be the full name or names, or the initial or initials and family name of a person or persons, or a colorable simulation thereof, unless:

(1) the words or initials and word or words appearing to be the full name or initials and family name of a person included, are the true full name or the initials and family name of the person or one of the persons conducting the business; or

(2) the words or initials and words so included, which are or appear to be the full name, or the initials and family name, of any person, have a secondary, historic or geographic meaning or connotation apart from that of a name of a person, and the name or designation so used contains a word or words clearly signifying such secondary, historic or geographic meaning or connotation, or is followed by the abbreviation "a.m.", and said secondary, historic or geographic meaning or connotation is stated in the certificate; or

(3) the person or persons conducting the business are successors in interest to the person or persons theretofore using such name or names to carry on or conduct or transact business, in which case the certificate filed shall so state.

(e) Whenever a certificate which has been filed under this section does not accurately set forth the facts required by this section, or within thirty days after there has been a change in such facts, an amended certificate shall be filed which shall identify the original certificate and incorporate the corrections or changes. If such amended certificate is filed for the purpose of adding or withdrawing the name of any person to the original certificate as a person conducting a business or as a partner, such amended certificate must be executed and acknowledged by such person and by any one or more of the other persons named in the original or last amended certificate, unless otherwise provided by an order of the supreme court. Any other amended certificate may be executed and acknowledged by any one or more of the persons names therein a person conducting the business or as a partner.

(f) A certified copy of the original certificate, or if an amended certificate has been filed, then of the most recent amended certificate filed, then of the most recent amended certificate filed shall be conspicuously displayed on the premises at each place in which the business for which the same was filed is conducted.

(g) The Nation Clerk shall keep an alphabetical index of all certificates filed by limited partnerships together with appropriate notations of the nature of amended certificates and certificates of discontinuance; and for the indexing and filing of such certificates, the Nation Clerk shall receive a fee of twenty-five dollars (\$25.00).

(h) A copy of a certificate filed under the provisions of this section, duly certified to by the Nation Clerk, shall be presumptive evidence in all courts of this state of the facts therein contained; provided, however, that neither the certificate itself nor the filing thereof shall, for any purpose other than this section, constitute or be construed as an admission by the filing person, or be used as evidence, that such person does or has done business or has carried on, conducted or transacted business or intended to do so.

(i) The failure to comply with the provisions of this section shall in no way affect the rights of third persons, nor shall this section be deemed or construed to limit the liability of partners under the provisions of the partnership law.

(j) The acceptance of a certificate by the Nation Clerk for filing pursuant to the provisions of this section shall not be construed to confer any right to or interest in any trade name; nor shall any of the provisions of this section be construed to affect the rights to, or the enforcement of any rights to, any trade name acquired at any time.

(k) Any person or persons carrying on, conducting or transacting business as aforesaid, who knowingly fails to comply with the provisions of this section or who knowingly makes a false statement in a certificate filed thereunder shall be guilty of a misdemeanor. Any person or persons carrying on, conducting or transacting business as aforesaid who fails to comply with the provisions of this section shall be prohibited from maintaining any action or proceeding on any contract, account or transaction made in a name other than its real name until the certificate required by this section has been executed and filed in accordance with the provisions set forth herein.

(l) If the business for which a certificate is filed under this section is discontinued, or the conditions under which it is conducted are such that the filing of a certificate with the Nation Clerk is no longer required, a certificate of discontinuance may be filed with the Nation Clerk, identifying such certificate and also identifying the amended certificate, if any, last previously filed and certifying the facts by reason of which the filing of a certificate is no longer required. The certificate of discontinuance shall be executed and acknowledged in the same manner as an original certificate and shall specify the date on which the discontinuance occurred or the conditions under which the business is conducted changed so that the filing of a certificate is no longer required. The Nation Clerk shall note the discontinuance. A certificate of discontinuance shall be executed by a majority of the persons named in the original certificate or the amended certificate last previously

filed as persons conducting or transacting the business or as partners. Such signatures may be dispensed with by order of the Nation court.

### **121-103. RESERVATION OF PARTNERSHIP NAME**

(a) Subject to section 121-102 of this Code, the exclusive right to the use of a name may be reserved by:

- (1) Any person intending to organize a domestic limited partnership under this Code;
- (2) Any domestic limited partnership or any foreign limited partnership authorized to do business in the Nation intending to change its name;
- (3) Any foreign limited partnership intending to apply for authority to do business in the Nation and to adopt that name; and
- (4) Any person intending to organize a foreign limited partnership and intending to have it apply for authority to do business in the Nation.

(b) A fictitious name for use pursuant to section 121-902 of this Code may be reserved by:

- (1) Any foreign limited partnership intending to apply for authority to do business in the Nation pursuant to subdivision (a) of section 121-902 of this Code.
- (2) Any authorized foreign limited partnership intending to change its fictitious name under which it does business in the Nation.
- (3) Any authorized foreign limited partnership which has changed its name in its jurisdiction, such new name not being available in the Nation.

(c) Application to reserve a limited partnership 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 for the application under subdivision (a) or (b) of this section. 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 limited partnership. If the name is available for limited partnership 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 section 121-102 of this Code 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 reservation. The certificate of reservation (or in lieu thereof an affidavit by the applicant or by his or her agent or attorney that the certificate of reservation has been lost or destroyed) shall accompany the certificate of limited partnership 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 or his or her attorney or agent delivered to the Nation Clerk, to be filed before expiration of the reservation period then in effect. Such request shall have attached to it the certificate of reservation of name. No more than two such extensions shall be granted.

#### **121-104. STATUTORY DESIGNATION OF NATION CLERK AS AGENT FOR SERVICE OF PROCESS**

(a) The Nation Clerk shall be the agent for every domestic limited partnership which has filed with the Nation Clerk a certificate making such designation and every foreign limited partnership upon whom process may be served pursuant to this Code.

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

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

(d) The change authorized by subdivision (c) of this section may be accomplished by filing a certificate entitled "Certificate of change of .... (name of limited partnership under subdivision (d) of section 121-104 of Limited Partnerships," which shall be executed by a general partner.

#### **121-105. REGISTERED AGENT**

(a) In addition to the designation of the Nation Clerk, each limited partnership or authorized foreign limited partnership may designate a registered agent upon whom process against the limited partnership may be served. The agent must be (i) a natural person who is a resident of the Nation or has a business address in the Nation, or (ii) a domestic corporation or a foreign corporation authorized to do business within the territorial jurisdiction of the Nation.

(b) The registered agent may change such registered agent's address provided the address being changed is the address of the person or corporation who had previously been designated as registered agent for the limited partnership or authorized foreign limited partnership. The registered agent shall file with the Nation Clerk, a certificate entitled "Certificate of change of .... (name of limited partnership) under subdivision (b) of section 121-105 of Limited Partnerships" which shall be executed by such registered agent. It shall set forth:

(1) The name of the limited partnership, and if it has been changed, the name under which it was organized. A foreign limited partnership must set forth its name and the fictitious name the foreign limited partnership has agreed to use in the Nation

pursuant to section 121-902 of this Code.

(2) The date its certificate of limited partnership or certificate of application for authority was filed by the Nation Clerk.

(3) The new address of the registered agent.

(4) That a notice of the proposed change was mailed to the domestic limited partnership or foreign limited partnership by the party signing the certificate not less than thirty days prior to the date of delivery to the Nation Clerk and that such domestic limited partnership or foreign limited partnership has not objected thereto.

(c) The registered agent of a limited partnership may resign as such agent. The registered agent shall file a certificate with the Nation Clerk entitled "Certificate of resignation of registered agent of... (name of designating limited partnership) under subdivision (c) of section 121-105 of Limited Partnerships" which shall be executed by such registered agent. It shall set forth:

(1) The name of the limited partnership, and if it has been changed, the name under which it was organized. A foreign limited partnership must set forth its name and the fictitious name and foreign limited partnership has agreed to use in the Nation pursuant to section 121-902 of this Code.

(2) The date the certificate of limited partnership or certificate of application for authority of the limited partnership was filed by the Nation Clerk.

(3) That he resigns as registered agent for the limited partnership.

(4) That he has sent a copy of the certificate of resignation by registered mail to the limited partnership 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 limited partnership and the jurisdiction of its organization.

(d) The designation of a registered agent shall terminate thirty days after the filing by the Nation Clerk of the certificate of resignation. A certificate designating a new registered agent may be delivered to the Nation Clerk by the limited partnership within the thirty days or thereafter.

#### **121-106. RECORDS**

(a) Each domestic limited partnership shall maintain the following records which may, but need not, be maintained in the Nation:

(1) a current list of the full name and last known mailing address of each partner set forth in alphabetical order together with the contribution and the share in profits and



losses of each partner or information from which such share can be readily derived;

(2) a copy of the certificate of limited partnership and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any certificate of amendment has been executed;

(3) a copy of the partnership agreement, any amendments thereto and a amended and restated partnership agreements; and

(4) a copy of the limited partnership's Nation, federal, state, and local income tax information returns and reports, if any, for the three most recent fiscal years.

(b) Any partner may, subject to reasonable standards as may be set forth in the partnership agreement or otherwise established by the general partners, inspect and copy at its own expense for any purpose reasonably related to the partner's interest as a partner the records referred to in subdivision (a) of the section, any financial statements maintained by the limited partnership for the three most recent fiscal years and other information regarding the affairs of the limited partnership as is just and reasonable.

#### **121-107. NATURE OF BUSINESS**

Except as prohibited by Nation law, a limited partnership may carry on any business that a partnership without limited partners may carry on.

#### **121-108. BUSINESS TRANSACTIONS OF PARTNER WITH THE PARTNERSHIP**

Except as may be provided in the partnership agreement, a partnership may lend money to, borrow money from, act as guarantor or surety for, provided collateral for the obligations of, and transact other business with the limited partnership, and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

#### **121-109. SERVICE OF PROCESS ON LIMITED PARTNERSHIPS**

(a) Service of legal process upon any domestic or foreign limited partnership authorized (or required to be authorized) to be business within the territorial jurisdiction of the Nation shall be made by delivering a copy personally to any managing or general agent or general partner of the limited partnership within the territorial jurisdiction of the Nation, or the registered agent of the limited partnership in the Nation, in the manner provided by law for the service of summons, as if such person was defendant.

(b) Service of process on the Nation Clerk as agent of a domestic or authorized foreign limited partnership shall be made as follows:

(1) By personally delivering to and leaving with him or his deputy, or with any

person authorized by the Nation Clerk to receive such service, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement.

(2) The service on the limited partnership is complete when the Nation Clerk is so served.

(3) The Nation Clerk shall promptly send one of such copies by certified mail, return receipt requested, addressed to the limited partnership at the post office address, on file with the Nation Clerk, specified for that purpose.

(c) In any case in which a non-domiciliary would be subject to the personal or other jurisdiction of the Court under the Oneida Indian Nation Rules of Civil Procedure, a foreign limited partnership not authorized to do business in the Nation is subject to a like jurisdiction. In any such case, process against such foreign limited partnership may be served upon the Nation Clerk as its agent. Such process may issue in the court. Service of process upon the Nation Clerk shall be made by personally delivering to and leaving with him or his deputy, or with any person authorized by the Nation Clerk to receive such service, a copy of such process together with the fee. Such service shall be sufficient if notice thereof and a copy of the process are:

(1) Delivered personally without the Nation to such foreign limited partnership 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 limited partnership by registered mail with return receipt requested, at the post office address specified for the purpose of mailing process, on file with the Nation Clerk or with any official or body performing the equivalent function, in the jurisdiction of its creation, or if no such address is specified, to its registered or other office there specified, or if no such office is specified, to the last address of such foreign limited partnership known to the plaintiff.

(3) 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 in which the action or special proceeding is pending. Service of process shall be complete ten days after such papers are filed with the clerk of the court.

(4) 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 limited partnership, or other official proof of delivery or of the original envelope mailed. If a copy of the 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 limited partnership 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 limited partnership 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 effect the validity of the service and such foreign limited partnership refusing to accept such registered mail shall be charged with knowledge of the contents thereof.

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

(d) The Nation Clerk shall keep a record of all process served upon her under this section and shall record therein the date of such service and her action with reference thereto.

(e) Nothing contained in this section shall limit or affect the right to serve any process required or permitted by law to be served upon the limited partnership in any other manner now or hereafter permitted by law or applicable rules of procedure.

#### **121-110. THE PARTNERSHIP AGREEMENT**

(a) The partnership agreement shall be signed by all general partners, in person or by attorneys in fact, and may, but need not, be signed by the limited partners.

(b) A limited partnership shall have a written partnership agreement. Except as provided in sections 121-702 and 121-705 of this Code, no person shall have any rights, or be subject to the liabilities, of a general partner who shall have any rights, or be subject to the liabilities, of a general partner who has not signed the partnership agreement in person or by attorney in fact.

(c) The partnership agreement of a limited partnership may be amended from time to time as provided therein; provided, however, that, except as may be provided otherwise in the partnership agreement, without the written consent of each partner adversely affected thereby, no amendment of the partnership agreement shall be made which (i) increases the obligations of any limited partner to make contributions, (ii) alters the allocation for tax purposes of any items of income, gain, loss, deduction or credit, (iii) alters the manner of computing the distributions of any partner, (iv) alters, except as provided in any subdivision (a) of section 121-302 of this Code, the voting or other rights of any limited partner, (v) allows the obligation of a partner to make a contribution to be compromised by consent of fewer than all partners or (vi) alters the procedures for amendment of the partnership agreement.