

TRIBAL CODE
CHAPTER 44
BUSINESS CORPORATION

CONTENTS:

- 44.101 Definitions.
- 44.102 Eligibility for Incorporation.
- 44.103 Procedures.
- 44.104 Corporate Powers.
- 44.105 Effect of Unauthorized Corporate Acts.
- 44.106 Revocation of Charter.
- 44.107 Requirements of the Articles of Incorporation.
- 44.108 Rules of Decision.
- 44.109 Stock Subscriptions.
- 44.110 Annual Report.
- 44.111 Corporate Records.

HISTORY NOTE:

Current Ordinance:

Adopted February 20, 1984, Resolution No. 81(94), effective immediately.

Amendments:

Resolution 1(05), January 3, 2005. 44.104 Corporate Powers, 44.112 Jurisdiction of Lac du Flambeau Tribal Court.

December 17, 2012, the Tribal Council, pursuant to Resolution No. 548A(12), amended Chapter 44 by adopting and enacting Chapter 44a – Tribally Owned Business Organization Code. It should be noted that, according to Tribal Council Resolution No. 198(16), adopted on July 5, 2016, “the Tribal Council cannot locate a certified and signed version of Resolution No. 548(A)(12) within the official records of the Tribal Council.”

The Lac du Flambeau Business Development Corporation has proposed amendments to Chapter 44 for Tribal-Owned Business Organization Code, Resolution No. 549(12), effective December 17, 2012.

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CHAPTER 44
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44.101 Definitions.

For purposes of this ordinance, the following terms are defined:

- (1) An “Indian corporation” is a corporation of which the majority of stockholders are tribal members.
- (2) A “tribal member” shall include any natural person who is enrolled as a member of the Tribe, and any Indian corporation organized pursuant to this ordinance.
- (3) The “tribal council” is the elected representative body of the Tribe who shall act upon corporations pursuant to this code.
- (4) The “tribe” is the Lac du Flambeau Band of Lake Superior Chippewa Indians.
- (5) A “business purpose” shall mean any lawful purpose of a corporation which generates income or other valuable benefit, whether precuniary or otherwise, to stockholders of the Indian corporation.
- (6) The “registered agent” shall be a person designated of record by an Indian corporation and residing within the exterior boundaries of the Tribe’s reservation who is authorized to accept service of litigation documents against an Indian corporation. If service upon the registered agent cannot be effected within the reservation after reasonable attempts, the registered agent shall be deemed to be the Tribal Secretary, who shall make reasonable attempts to notify the registered agent or any officer of the corporation, and deliver copies of documents to such agent or officer.
- (7) “Treasury stock” refers to so many shares as have been authorized and issued by the corporation to tribal members and subsequently repurchased by the issuing Indian corporation. Treasury stock shall not be counted for voting purposes or for purposes of Section 44.102(1).

44.102 Eligibility for Incorporation.

An Indian corporation shall be accepted by the tribal council and a certificate of incorporation issued for any corporation satisfying the following requirements:

- (1) The corporation shall be owned primarily by members of the Tribe. For this purpose “primarily” shall mean that more than 50% of the authorized, issued, and outstanding stock, other than treasury stock, shall be owned by one or more members of the Tribe.
- (2) The articles of incorporation shall contain restrictions on sale of stock requiring that the authorized, issued and outstanding stock, shall be primarily owned by a tribal member.
- (3) The articles of incorporation shall include a location of the principal business office and registered agent within the boundaries of the Tribe’s reservation. Such location description shall describe both an actual location and a mailing address within the reservation.
- (4) The articles of incorporation shall state a business purpose of the corporation in accordance with the definitions under this code.
- (5) Foreign corporations may file as Indian corporations pursuant to this ordinance, upon filing a certified copy of the articles of incorporation as on file with any other jurisdiction, together with a sworn written certificate of compliance with the eligibility requirements of this ordinance, including provisions complying with the requirements of the articles of incorporation pursuant to this ordinance.

44.103 Procedures.

- (1) Proposed articles of incorporation, or any certificate and attachments of any foreign corporation, shall be submitted to the Tribal Secretary in duplicate original.
- (2) Upon submission, and payment of a filing fee as determined by the Tribal Council, the Tribal Secretary shall mark the date and time of filing, and shall inform the proponent of the articles or certificate of the date on which the articles of incorporation will be considered by the Tribal Council.
- (3) Articles of incorporation or certificate of foreign corporations shall be considered by the Tribal Council at an appropriate time with due notice to the proponent, and the proponent of said articles or certificate may be present at the time of consideration.
- (4) If the Tribal Council determines that the requirements of this ordinance have been satisfied, it may accept the articles of incorporation or

certificate of incorporation by the Tribal President and Secretary.

- (5) Upon authority of the Tribal Council, the President and Secretary shall issue a certificate of incorporation for the named corporation and affix the tribal seal thereto. One original articles of incorporation or certificate of a foreign corporation shall be retained in the files of the Tribal Secretary. The second original articles of incorporation or certificate of a foreign corporation shall be returned to the registered agent of the corporation.
- (6) Minor failures in the incorporation procedure shall not affect the corporate existence or powers, other than in a proceeding brought by the tribal attorney to require compliance with the provisions of this ordinance.
- (7) Stock ownership other than as required by this ordinance and failure to file articles of incorporation shall not be considered minor failures of procedure, and shall render the purported corporation claiming Indian corporation status, together with any directors, stockholders, and officers, personally liable for the debts of the corporation in any action by a creditor.

44.104 Corporate Powers.

To make contracts including contracts of guaranty, suretyship and indemnity and incur liabilities; to borrow money; to issue notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property or income, except for property or income held in trust subject to legal restrictions on hypothecation.” *Resolution No. 1(05), January 3, 2005.*

44.105 Effect of Unauthorized Corporate Acts.

- (1) No act of an Indian corporation and no conveyance of real or personal property to or by an Indian corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such, or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted in a proceeding in Tribal Court by a stockholder against the corporation. In any such proceeding before the tribal court, all interested persons or entities may be parties, and the court may adjust rights and duties as it may find equitable.
- (2) A corporation may assert its own lack of capacity in any proceeding for damages or injunctive relief against incumbent or former officers or directors of the corporation.
- (3) The tribal attorney may assert lack of corporate capacity in a proceeding to enjoin the corporation from the transaction of unauthorized business.

44.106 Revocation of Charter.

- (1) Voluntary. A corporation may surrender its charter by submission of articles of dissolution in accordance with the procedures enumerated in Section 44.103. Articles of dissolution shall include the names of current directors, stockholders, and officers, and shall include a representation by an officer responsible for the financial affairs of the corporation, that the debts of the corporation have been paid and/or discharged as provided by law. Acceptance of articles of dissolution shall render both the corporation and any directors or officers of the corporation liable for such debts of the corporation as may be proved to have come into existence, whether liquidated or unliquidated, prior to acceptance of the articles of dissolution.
- (2) Involuntary. Upon petition of the Tribal Attorney and proof of lack of compliance with any provision of this ordinance, the tribal court shall have the authority to require compliance, payment of appropriate civil penalties by the corporation or its directors and officers, and such other remedies as may be just and equitable. Upon a showing of major violations of the provisions of the ordinance, the tribal court may declare the corporation null and void from the beginning. Upon a showing of minor failure in procedure, and failure to rectify, the tribal court may revoke the articles of incorporation as of the date of judgment.

44.107 Requirements of the Articles of Incorporation.

The articles of incorporation submitted to the tribe for acceptance shall state the following items:

- (1) A corporation name, including the words “an Indian corporation” and the words “Inc.”, “Incorporated”, “Corporation”, “Limited” or “LTD”.
- (2) The duration of the corporation, if other than perpetual.
- (3) The purpose of the corporation, if restricted in any way.
- (4) The business purpose of the corporation, as defined in this ordinance.
- (5) The initial stock issuance and any restrictions on the sale of stock as required by this ordinance, together with a statement that no stock will be sold until after acceptance of the articles of incorporation by the tribal council.
- (6) The names and addresses of the initial board of directors.

- (7) The name, mailing address and location of the registered agent for service on the reservation.
- (8) The names and mailing addresses of incorporators or proponents of the corporation.
- (9) The number of shares authorized.
- (10) Procedures for amendment of the articles of corporation.
- (11) Any restrictions on the corporate powers or purpose.

44.108 Rules of Decision.

In any dispute before the tribal court concerning corporate formation, existence, obligations, stockholders' rights, duties of officers or employees, or dissolution of the corporation, the tribal court shall decide the dispute according to the general corporate law of the State of Wisconsin, in so far as it does not conflict with established tribal ordinances or judicial decisions. For purposes of court jurisdiction, an Indian corporation shall occupy the status of a natural tribal member.

44.109 Stock Subscriptions.

Other than the original sale of stock to persons enumerated as stockholders in the original articles of incorporation, any sales of stock shall be subject to the securities laws of the State of Wisconsin and the United States of America, insofar as they may be applicable. Provisions of the securities laws of the State of Wisconsin shall not apply to any stock to tribal members residing on the Tribe's reservation.

44.110 Annual Report.

The registered agent as listed on the first accepted articles of incorporation shall be responsible for the first annual report to the tribe. Annual reports will be due during the month of January of each calendar year and shall state the name of the current registered agent, all current directors, all stockholders, identifying band members, the number of shares owned, and the total outstanding stock of the corporation. The annual report shall be accompanied by a filing fee of ten dollars. After the initial annual report the registered agent designated on the preceding annual report shall be responsible for the filing of the corporation's annual report. Failure to file an annual report may subject a corporation to penalties under Section 44.106(2).

44.111 Corporate Records.

Records of the corporation, including articles of incorporation, bylaws, and books of account, shall be kept at the principal office of the corporation, as designated in the articles of incorporation. Such records shall be open to inspection at reasonable times by the appropriately designated official of the tribe and any stockholder and any officer or director of the corporation. In case of refusal to allow inspection, any such person may commence an action in tribal court to require production of the corporate records, and if refusal to allow inspection was without good cause, the tribal court may impose an appropriate civil penalty, costs, and attorney fees against the custodian of such records.

44.112 Jurisdiction of Lac du Flambeau Tribal Court.

The court shall have original jurisdiction to the extent permitted by due process over any action against, or by, any domestic or foreign corporation, or for actions arising under this chapter.” *Resolution 1(05). January 3, 2005.*