

TRIBAL CODE

CHAPTER 44a

TRIBALLY-OWNED BUSINESS ORGANIZATION CODE

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##### HISTORY NOTE:

##### Current Ordinance:

Resolution No. 198(16), July 15, 2016 approves the Tribally Owned Business Organization Code's creation and amendments through reaffirmation and restatement as amended.

##### Amendments:

February 20, 1984 The Business Corporation Code, Chapter 44 was Adopted, Resolution No. 81(94), effective immediately.

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.

August 26, 2014 Resolution No. 454(14) amends Chapter 44a.106(35) Tribally-owned definition.

TRIBAL CODE

CHAPTER 44a

TRIBALLY-OWNED BUSINESS ORGANIZATION CODE

**Subchapter 1 - General**

**44a.101**Short Title.

- (1) This Title shall be known as the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin ("LDF" or "Tribe") Tribally-Owned Business Organization Code ("Code").

**44a.102**Authority, Purpose and Scope.

- (1) **Authority.** The Tribal Council, the governing body of the Tribe, being possessed of the inherent sovereign powers of self-government pursuant to Articles III, VI, VII of the LDF Constitution and Article I of the LDF Bylaws, is empowered to exercise its authority pursuant to the Constitution to enact this Code governing the creation, form, and administration and oversight of corporations, limited liability companies and other business entities that are Tribally-owned. For purposes of this Code, Tribally-owned requires majority ownership by the Tribe or a subdivision thereof.
- (2) **Purpose.** The purpose of this Code is to provide for economic development of the Tribe by:
  - (a) Providing the legal framework for organizing Tribally-owned corporations, limited liability companies and other business entities in which the Tribe has a majority ownership interest.
  - (b) Authorizing the formation of Tribally-owned corporations, limited liability companies and other Business Organizations to manage LDF's economic development and other business activities separate and independent from the affairs of the Tribe, with the ability of the aforementioned Business Organizations to enter into legally-binding contracts and commercial relationships for the purpose under which they are created pursuant to the requirements and limitations of this Code, and the Business Organizations' formation and creation documents..
- (3) **Scope.**
  - (a) This Code shall apply to Tribally-owned corporations, limited liability companies and other Business Organizations in which the Tribe, or a subdivision thereof, has a majority ownership interest and was organized pursuant to this Code.

- (b) Private businesses are excluded from organizing under this Code, including those owned by enrolled Tribal members, members of other tribes or non-natives.

#### **44a.103 Sovereign Immunity.**

- (1) Adoption of this Code does not waive the Tribe's sovereign immunity or effectuate a consent to suit in any federal, tribal or state court; and neither the adoption of this Code, nor incorporation of any corporation, limited liability company or other Business Organization herein shall be construed to be a waiver of the Tribe or a consent to suit against the Tribe in any Federal, Tribal or State court.
- (2) Business Organizations formed under this Code may be granted the ability to waive the sovereign immunity of the business entity in accordance with its formation documents. Any waiver of the sovereign immunity of a Tribally-owned Business Organization must be:
  - (a) Explicit and in writing; and
  - (b) Approved by written resolution of the governing board or officers of the Business Organization as required by its Formation Documents; and
  - (c) Limited in scope and duration to the fullest extent allowable; provided however, no Tribally-owned Business Organization shall be granted the authority to waive the sovereign immunity of the Tribe without formal consent and written resolution of the Tribe authorizing such a waiver.

#### **44a.104 Privileges and Immunities.**

- (1) All Tribally-owned Business Organizations established under this Code shall be considered governmental agencies and instrumentalities of the Tribe; and their officers and employees considered officers and employees of the Tribe, created to carry out authorities and responsibilities of the Tribe for economic development for the Tribe on behalf of the Tribal Membership.
- (2) All officers and employees of any Tribally-owned Business Organization established under this Code are entitled to the privileges and immunities enjoyed by the Tribe, including but not limited to immunities from suit in Federal, Tribal and State courts and from Federal, State and local taxation and regulation.

#### **44a.105 Powers.**

- (1) All Tribally-owned corporations, limited liability companies or other Business Organizations organized and existing under this Code may:

- (a) Sue and be sued, complaint and defend, in its name subject to the limitations contained in Section 44a.103;
- (b) Purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or an interest in it, wherever situated;
- (c) Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
- (d) Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares or other interests in or obligations of other companies, domestic or foreign corporations, associations, general or limited partnerships or individuals, or direct or indirect obligations of the United States or of any government, tribe, state, territory, governmental district or municipality or of any instrumentality of it;
- (e) Make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the entity may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises and income;
- (f) Lend money for its proper purposes, invest and reinvest its funds and take and hold real property and personal property for the payment of funds so loaned or invested;
- (g) Conduct its business, carry on its operations and have and exercise the powers granted by this Code in any Indian reservations, state, territory, district or possession of the United States, or in any foreign country;
- (h) Elect or appoint managers, officers, employees and agents of the entity, and define their duties and authority, which may include authority also delegated to the board, members or managers under this Code, and fix their compensation;
- (i) Make and alter operating agreements, not inconsistent with articles of incorporation or organization or other formation documents or with the laws of the Tribe, for the administration and regulation of the affairs of the entity;
- (j) Indemnify a current or former director, member or manager of the entity against expenses actually and reasonably incurred by him/her or it in connection with the defense of an action, suit or proceeding, civil or criminal, in which he/she or it is made a party by reason of being or having been such director, member or manager, except in relation to matters as to which he/she or it shall be adjudged in the action, suit or proceeding to be liable to the entity

for negligence or misconduct in the performance of a duty or to have received improper personal benefit on account thereof; and to make any other indemnification that is authorized by the articles of incorporation, organization or other Formation Documents or resolution adopted by the board of director or members after notice as described within its formation documents;

- (k) Cease its activities and surrender its certificate of organization or certificate of incorporation;
- (l) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the entity is organized;
- (m) Become a member of a general partnership, limited liability company, partnership or similar association, or any entity;
- (n) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, ownership interest bonus plans and option plans, and benefit or incentive plans for any or all of its current or former managers, officers, employees and agents;
- (o) Make donations for the public welfare or for charitable or scientific or educational purposes.
- (p) Sell, convey, mortgage assets of the Business Organization pursuant to the powers granted in the Business Organizations' formation documents.

#### **44a.106**Definitions.

As used in this Code:

- (1) "Agreement" means a contract reduced to writing providing the terms by which the parties thereto and there subject therein is bound.
- (2) "Articles of Incorporation" means the articles filed to create a corporation under this Code and any amendments thereto.
- (3) "Article of Organization" means the articles filed to create a limited-liability company and any amendments thereto.
- (4) "Bylaws" means the rules or administrative provisions adopted by a corporation for its internal governance.
- (5) "Board of Directors" means the person(s) or entity(ies) designated to manage the corporation or other business entity pursuant to the Articles of Incorporation and Bylaws.

- (6) **“Business Organization”** means any corporation, limited liability company or other business entity created under this Code.
- (7) **“Business Purpose”** means any lawful purpose of a corporation, limited liability company or other business entity that generates income or other valuable benefit, whether pecuniary or otherwise.
- (8) **“Corporation”** means an organization formed under this Code that is a tribally chartered business with limited liability for the owners, transferability of ownership interests, centralized management by a board of directors, perpetual existence until dissolved, and whose legal existence is separate from its owners and shareholders. For purposes of this Code, **“Corporation”** may also include S-corporations or C-corporations.
- (9) **“Court”** includes every federal, Tribal and state Court and there judges therein.
- (10) **“Distribution”** means a direct or indirect transfer by a limited liability company of money or other property to or for the benefit of its owners in respect of their interests.
- (11) **“Domestic”** refers to any Business Organization formed under this Code or the general LDF Business Corporation Code at Chapter 44.
- (12) **“Entity”** includes an individual, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity formed under this Code or Subchapters herein.
- (13) **“Foreign”** refers to the corporations, limited liability companies and other business entities formed and organized under the laws of a jurisdiction other than the Tribe.
- (14) **“Formation Documents”** means those documents necessary for the creation of a Business Organization approved by the Tribal Council and filed with the Tribal Secretary as provided by this Code.
- (15) **“Indian-owned”** means a corporation, limited liability company or other business entity of which the majority shareholders, members or other owners are citizens of a federally-recognized Indian tribe.
- (16) **“Interest”** means an owners right in any corporation, limited liability company or other business entity, including rights in distributions, profits and losses, and to participate in management as specified in the Bylaws, operating agreements or other documents.
- (17) **“Limited Liability Company”** or **“LLC”** means tribally organized business with limited liability for the owners, transferability of ownership interests, centralized management by managers, perpetual existence until dissolved, and whose legal existence is separate from its owners and members.

- (18) "Majority Interest" means an owner or owners holding more than fifty percent (50%) of total voting and ownership interest in the corporation, limited liability company or other business entity.
- (19) "Manager" means the person(s) or entity(ies) designated to manage the LLC or other business entity pursuant to Articles of Organization and an Operating Agreement.
- (20) "Member" means the owner of the limited liability corporation.
- (21) "Operating Agreement" means the document governing the management of a Limited Liability Company organized pursuant to this Code.
- (22) "Owners" means the person(s) or entity(ies) having an interest in the shares, profits and losses, and voting rights in a Business Organization.
- (23) "Person" includes a natural person, Tribal entity and any business or other organization such as a general partnership, limited partnership, a domestic or foreign corporation or company, limited liability or otherwise, a trust, an estate, or an association.
- (24) "Reservation" means all lands under the jurisdiction of the Tribe, including all lands within the boundaries of the Tribe's Reservation, all land held in fee by the Tribe, all lands held in trust by the United States for the benefit of the Tribe, and all lands and territory ceded by the Tribe to the United States pursuant to any treaty, agreement or settlement.
- (25) "Shareholders" means those individuals or entities who own an interest in a corporation formed pursuant to this Code as dictated by the corporation's articles of incorporation filed with the Tribal Secretary as provided in this Code. If the corporation is wholly owned by the Tribe, then the Tribe is the sole shareholder.
- (26) "State" includes a state, territory, or possession of the United States and the District of Columbia.
- (27) "Tribal Bylaws" means the rules or administrative provisions adopted by the Tribe for its internal governance of the Tribal Council adopted and amended by the Tribal members on September 9, 2005.
- (28) "Tribal Constitution" or "Constitution" means the Constitution of the Lac Du Flambeau Band of Lake Superior Chippewa Indians as adopted and amended by the Secretarial Election on July 26, 2005, and approved by the Bureau of Indian Affairs on September 9, 2005 and effective on September 9, 2005.
- (29) "Tribal Land" means all lands within the LDF Reservation and all lands held in trust by the United States government for the benefit of the Tribe or individual members of the Tribe over which the Tribe exercises jurisdiction or fee land owned by the Tribe.

- (30) "Tribal member" means any natural person who is enrolled within the Tribe.
- (31) "Tribe" or "Tribal" means the federally-recognized Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin.
- (32) "Tribal Council" means the elected governmental body as established by Tribal Constitution at Articles III, IV, V, VI and VII of the Tribal Constitution and authorized to act on behalf of the Tribe and Tribal members.
- (33) "Tribal Council Secretary" or "LDF Secretary" means the individual who is an elected governmental official of the LDF Tribe and the Tribal Council, who is the keeper of records as authorized by the Tribal Constitution and Bylaws thereto.
- (34) "Tribal Court" means the judicial body and branch as established by Article XXIII of the Tribal Constitution and authorized to adjudicate matters on behalf of the Tribe and Tribal members.
- (35) "Tribally-owned" means a business in which the majority ownership and rights remain with the Tribe or with the Tribe and one or more federally-recognized Indian tribes or the economic arms and instrumentalities thereof.
- (36) "Trust Land" means land held in trust by the United States for the benefit of the Tribe or its Tribal members.
- (37) "Wholly-owned" means the business is owned entirely by the Tribe or a subdivision thereof.

#### **Subchapter 2 – Process to Organize and File**

##### **44a.201 Formation.**

- (1) The Tribal Council may form a corporation, partnership, limited liability company, or other Business Organization which shall have one (1) or more directors, members or other partners by:
  - (a) Authorizing the Formation Documents of the Business Organization pursuant to the authority vested in the Tribal Council by the Constitution and set forth in this Code;
  - (b) Executing a resolution to accompany said authorization; and
  - (c) Signing and delivering one (1) original and one (1) exact or conforming copy of the Formation Documents to the LDF Secretary for filing who shall:
    - (1) Endorse on each original and copy the word "filed" and the month, day and year of the filing;

- (2) File the original in his/her office;
  - (3) Return the copy to the Tribally-owned Business Organization.
- (2) All records filed pursuant this Code shall be available for inspection pursuant to applicable Tribal law.

**44a.202**Issuance and Effect of Certification.

- (1) Upon receipt of the duly authorized Formation Documents of the Tribally-owned Business Organization the Tribal Secretary shall issue a certificate of organization certifying that that Tribally-owned Business Organization is duly created and is in good standing under Tribal law.
- (2) Upon the issuance of a certificate of organization to a Tribally-owned Business Organization, it shall be considered organized and such certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the incorporators or organizers have been complied with and that the corporation has been legally organized under this Code.
- (3) A Tribally-owned Business Organization shall not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the LDF Secretary has issued a certificate of organization.

**44a.203**Registered Office and Registered Agent.

- (1) Each Tribally-owned Business Organization shall have and continuously maintain on the Reservation:
  - (a) A registered office which may be, but need not be, the same as its place of business;
  - (b) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office.

**44a.204**Change of Registered Office or Registered Agent.

- (1) A Tribally-owned Business Organization may change its registered office or agent, or both, upon filing with the LDF Secretary a statement setting forth:
  - (a) The name of the corporation, limited liability company or other business entity;
  - (b) The address of its then registered office;
  - (c) If the address of its registered office is changed, the address to which the new registered office is to be changed;

- (d) The name of its then registered agent;
  - (e) If the registered agent is changed; the name of the new successor registered agent;
  - (f) That the address of its registered office and the address of the registered agent will be identical;
  - (g) That the change was authorized by an affirmative majority vote of the board, members or partners of the corporation, limited liability company or business entity.
- (2) The statement shall be signed and delivered to the LDF Secretary. If the LDF Secretary finds the statement conforms to the provisions of this Code, he/she shall file the statement in his/her office, and upon filing the change of address of the registered office or the appointment of the new registered agent or both, the change shall be effective.

**44a.205**Service of Process.

- (1) The appointed registered agent of the Tribally-owned Business Organization shall be the individual to serve with any process, notice or demand required or permitted by law.
- (2) In the event the registered agent of the Tribally-owned Business Organization cannot without reasonable diligence be found at the registered office, then the LDF Secretary shall be an agent for the business entity. In the event notice or demand is served on the LDF Secretary by default, the process server is required to immediately cause one (1) copy of the notice or demand that was served upon the default LDF Secretary to be forwarded by registered mail, return receipt requested, to the principal office of the corporation, limited liability company or other business entity as defined and prescribed by the LDF Secretary; proof of service to the principal office of the corporation, limited liability company or other business entity shall be returned to the LDF Secretary not less than thirty (30) days after the LDF Secretary signs as the default registered agent.

**44a.206**Dissolution.

- (1) A Tribally-owned Business Organization organized under this Code shall be dissolved upon the occurrence of any of the following events:
- (a) The period fixed for the duration of the entity has expired;
  - (b) By unanimous vote of all the directors, members or partners and reduced to writing;
  - (c) Upon the death, retirement, resignation, expulsion, bankruptcy, dissolution of a director, member or partner or occurrence of any event which terminates the

corporation, limited liability company or other business entity, unless the business of the entity is continued by consent of the remaining directors, members or partners or pursuant to a right to do so stated in the articles of incorporation, organizing or other organizing document or operating agreement of the entity.

- (2) At the earliest practicable date following the occurrence of any event prompting dissolution, the Tribally-owned Business Organization shall execute a statement of intent to dissolve with the LDF Secretary.

**44a.207**Filing Statement of Intent to Dissolve.

- (1) One (1) original and one (1) copy of the statement of intent to dissolve shall be delivered to the LDF Secretary. If the LDF Secretary finds that such statement conforms to this Code, he/she shall:
  - (a) Endorse on each original and copy the word "filed" and the month, day and year of the filing;
  - (b) File the original in his/her office;
  - (c) Return the copy to the Tribally-owned corporation, limited liability company or other business entity.

**44a.208**Effect of Filing Intent to Dissolve.

Upon filing by the LDF Secretary of the statement of intent to dissolve the Tribally-owned Business Organization, the entity shall cease to carry on business except for matters to wind-up the business, but its separate existence shall continue until a certificate of dissolution has been issued by the LDF Secretary.

**44a.209**Distribution of Assets Upon Dissolution.

- (1) To settle accounts after dissolution, the liabilities of the Tribally owned Business Organization shall be paid in the following order:
  - (a) To creditors, in the order of priority as provided by this Code , except to those directors, members or partners of the entity on account of their contributions;
  - (b) To Shareholders, members or partners of the entity in respect of their share of the profits and other compensation by way of income on their contributions; and
  - (c) To Shareholders, members or partners of the entity in respect of their contributions to capital.

- (2) Subject to any statement in the Formation Documents, regarding claims of the Shareholders, members or partners share in the Tribally-owned corporation, limited liability company or other business entity assets in respect to the claims for capital and in respect to the claims for profits or for compensation by way of income on the contributions, respectively, in proportion to the respective amounts of the claims.

**44a.210 Articles of Dissolution.**

- (1) When all debts, liabilities and obligations of the Tribally-owned Business Organization have been paid and discharged or adequate provision has been made and all the remaining property and assets have been distributed to the shareholders, members or partners, articles of dissolution shall be delivered to the LDF Secretary. The statement shall provide:
  - (a) The name of the corporation, limited liability company or other business entity;
  - (b) That the LDF Secretary has received and filed a statement of intent to dissolve the Tribally owned corporation, limited liability company or other business entity and the date the statement was filed;
  - (c) That all debts, obligations and liabilities have been pad and discharged or that adequate provisions has been made thereto, and proof of the same, if applicable;
  - (d) That all remaining property and assets have been distributed to its shareholders, members or partners in accordance with their respective rights and interests, and proof of the same, if applicable;
  - (e) That there are no suits pending against the Tribally-owned corporation, limited liability company or business entity in any court or that adequate provisions have been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

**44a.211 Filing Articles of Dissolution.**

- (1) One (1) original and one (1) copy of the articles of dissolution shall be delivered to the LDF Secretary. If the LDF Secretary finds that such articles of dissolution conform to this Code, he/she shall:
  - (a) Endorse each original and copy with the word "FILED" and the month, day and year of the filing;
  - (b) File the original in his/her office;
  - (c) Issue a certificate of dissolution which he/she shall affix to the copy.

- (2) The LDF Secretary shall deliver the certificate of dissolution and the copy to the Tribally-owned corporation, limited liability company or other business entity. Upon the issuance of the certificate of dissolution, the existence of the entity shall cease, except for the purpose of suits, other proceedings and appropriate actions as provided in this Code. The officers, managers or other individuals in the office at the time of dissolution, or their successors, shall thereafter be trustees for the shareholders, members or partners and creditors for the dissolved company and shall have authority to distribute any company property discovered after dissolutions, convey real estate and take such other action as may be necessary on behalf of and in the name of such dissolved Tribally-owned corporation, limited liability company or other business entity.

### **Subchapter 3 – Tribally-Owned Corporations**

#### **44a.301 Organization.**

- (1) Tribally-owned Corporations established under this Code and Subchapter shall be managed by a Board of Directors.
- (2) The Tribal Council shall by resolution appoint the initial Board of Directors of all Tribally-owned Corporations created pursuant to this Code. The election or appointment of corporate officers and the election of subsequent directors shall be governed by the Formation Documents.
- (3) Bylaws for the Tribally-owned Corporation shall be drafted by the Board of Directors and approved by the Board of Directors and the Tribal Council and contain provisions:
  - (a) For the Board of Directors: the Board officers, compensation, voting action of the Board, quorum, regular and special meetings, manner of meetings, appointments, contracts, loans, deposits and any other items relevant to the Board of Directors.
  - (b) For the Corporate Officers: the corporate officers, compensation, terms of office, removal of offices, duties for the President, Vice-President, Secretary, Treasurer and other officers, and vacancies.

#### **44a.302 Name.**

- (1) The corporate name shall include words "Incorporated" or "Inc.," "Corporation" or "Corp.," or "Limited" or "Ltd." in the name of every Tribally-owned corporation formed under this Code and Subchapter and, in addition, the corporate name may not:
  - (a) Contain a word or phrase which indicates or implies that it is organized for a purpose other than the one (1) or more of the purposes contained in its articles of incorporation;

- (b) Be the same as, or deceptively similar to, any trademark or service mark registered with the LDF or any other tribe, state or other sovereign, and shall be distinguishable upon the records of the Secretary of the Tribe from other business entity names.

**44a.303 Articles of Incorporation.**

- (1) The Articles of incorporation for Tribally owned corporations shall set forth:
  - (a) The name of the corporation;
  - (b) The purpose for which the corporation is organized;
  - (c) The powers and/or limitations of the corporation;
  - (d) The privileges and immunities of the corporation;
  - (e) The immunity and waiver requirements, if any, of the corporation;
  - (f) The principal place of business and mailing address of the corporation;
  - (g) The duties and powers of the Board of Directors, including the power to adopt bylaws.
  - (h) The selection, number and tenure of the Board of Directors;
  - (i) The process to address resignation and removal of the Board of Directors;
  - (j) The type of stock issued and number of shares authorized to be issued.
  - (k) The operational requirements establishing the fiscal year and submission of the business plan to the Board of Directors;
  - (l) The duration of the corporation, if other than perpetual, and method for dissolution.
  - (m) The process to amend the articles of incorporation.
  - (n) The name and mailing address of the incorporator.
  - (o) The name, mailing address and location of the corporations registered agent;

**44a.304 Ownership.**

- (1) Every Tribally-owned Corporation created and organized under this Code shall have at all times at least fifty-one percent (51%) of the voting stock owned by the Tribe or subdivision thereof.

- (2) Voting stock in any Tribally-owned Corporation created pursuant to this chapter or owned by another LDF Tribally-owned Corporation may be alienated; provided that the Tribe maintains at least fifty-one percent (51%) Shareholder of the voting stock at all times.

**44a.305 Assets.**

- (1) The assets of any Tribally-owned Corporation created under this Code and Subchapter shall be separate and distinct from those of the Tribe.
- (2) Tribally assets not specifically pledged to the Tribally-owned corporation, in any manner permitted by law, shall not be considered assets of the corporation created under this Code or Subchapter for any purpose, except as otherwise provided by Tribal Council resolution.

**44a.306 Audit.**

The Tribal Council, by the terms of any Formation Documents or by duly adopted resolution, may require that any corporation created under this chapter be audited by an independent auditor hired by the Tribe at any time and shall retain the absolute right to require access to all corporate documents for any purpose.

**44a.307 Annual Meeting – Annual Report.**

- (1) The Board of Directors and management of any Tribally-owned corporation created pursuant to this Code and Subchapter shall hold at least one (1) open meeting per year, on ten (10) business days public notice, within the LDF Reservation, at which the Board of Directors shall answer any questions asked of them by Tribal members or the Tribal Council.
- (2) The Board of Directors shall also file a full report of the financial and operational activities of the Tribally-owned Corporation with the Tribal Council on an annual basis.

**44a.308 Contracts with Directors and Officers.**

- (1) All Directors or Officers of the Tribally-owned Corporations created under this Code and Subchapter, and any firm in which the Directors or Officers hold office, or are substantial shareholders or owners, shall be disqualified from dealing or contracting, as a vendor, purchaser or otherwise, and such contracts shall be void, unless such contract or transaction has been fully disclosed to and approved by the Tribally-owned Corporation's Board of Directors;
  - (a) This section does not apply if entity is another LDF Tribally-owned Business Organization created by this Code or the LDF Constitution.

- (b) This section does not apply to employment contracts of persons employed in full-time, management positions by the Tribally-owned Corporation.
- (2) Substantial Shareholders or Owners means greater than ten percent (10%) of the voting stock or ownership interest controlled by the Directors or Officers.
  - (a) Shares of interests owned by family members shall be attributable to an individual Director or Officer for the purpose of determining control of voting stock or interests.
  - (b) Family members shall mean the great grandparents, grandparents, parents, step-parents, brothers, sisters, children, grandchildren, grandchildren, and parents in-law and sisters/brothers in-law.

**44a.309**Subsidiary Corporation.

- (1) Provided that the Corporation's Formation Documents grant such powers, any corporation created pursuant to this Code and Subchapter may, by obtaining authorization pursuant to the provisions in this Code from the Tribal Council, establish a subsidiary corporation or corporations in which the Tribe or the parent corporation retains not less than fifty-one percent (51%) of the voting stock of each subsidiary corporation.
- (2) A subsidiary corporation, its Board, officers and employees shall have all the same, purposes, powers, privileges, immunities as any other corporation established pursuant to this Code and Subchapter.

**Subchapter 4 – Tribally-owned Limited Liability Companies**

**44a.401**Organization.

- (1) The Tribally-owned Limited Liability Companies established under this Code and Subchapter shall be either Manager-managed or Member-managed pursuant to the terms of the Limited Liability Company's Operating Agreement.
- (2) The Tribal Council shall by resolution appoint the initial organizing managers of all Tribally-owned Limited Liability Companies created pursuant to this Code and Subchapter. The election or appointment of subsequent company managers or officers shall be governed by the provisions of organization.
- (3) An Operating Agreement for the Tribally-owned Limited Liability Company setting forth whether the Limited Liability Company is member-managed or manager-managed, and the rights, duties and obligations of members and managers shall be drafted and approved by the members of the Limited Liability Company upon filing its Articles of Organization with the Tribal Secretary.

**44a.402**Name.

- (1) The company name shall include the words “limited liability company” or “LLC” in the name of every Tribally-owned limited liability company formed under this Code and Subchapter and, in addition, the company name may not:
  - (a) Contain a word or phrase which indicates or implies that it is organized for a purpose other than the one (1) or more of the purposes contained in its articles of organization;
  - (b) Be the same as, or deceptively similar to, any trademark or service mark registered with the LDF or any other tribe, state or other sovereign, and shall be distinguishable upon the records of the Secretary of the Tribe from other business entity names.

**44a.403**Articles of Organization.

- (1) The Articles of Organization for Tribally owned limited liability companies shall set forth:
  - (a) The name of the company;
  - (b) The purpose for which the company is organized;
  - (c) The powers and/or limitations of the company;
  - (d) The privileges and immunities of the company;
  - (e) The sovereign immunities and waivers, if any, of the company;
  - (f) The principal place of business and mailing address of the company;
  - (g) Whether the Limited Liability Company is member-managed or manager-managed;
  - (h) The duties and powers of the Managers, including the power to adopt bylaws.
  - (i) The selection, number and tenure of the Managers;
  - (j) The process to address resignation and removal of the Managers;
  - (k) A Tribal ownership interest in the company and a statement that the Tribe will retain majority member ownership and voting rights in the company.
  - (l) The operational requirements establishing the fiscal year and submission of the business plan to the members;

- (m) The duration of the company and method for dissolution.
- (n) The process to amend the articles of organization.
- (o) The name and mailing address of the organizers.
- (p) The name, mailing address and location of the company's registered agent;

**44a.404 Operating Agreement.**

- (1) Each Limited Liability Company shall draft and approve an Operating Agreement governing the day-to-day operational control of the Limited Liability Company.
- (2) The Operating Agreement shall designate whether the Limited Liability Company is member-managed or manager-managed.
  - (a) The Operating Agreement of a member-managed Limited Liability Company shall provide that all managerial control and business decisions shall be vested in a majority of the managers of the Limited Liability Company and that members have the ability to act on behalf of the Limited Liability Company.
  - (b) The Operating Agreement of a manager-managed Limited Liability Company shall provide that all managerial control and business decisions shall be vested in a manager(s) appointed and hired by a majority of the members of the Limited Liability Company and that the manager(s) shall have the ability to act on behalf of the Limited Liability Company to the full extent allowable under the Articles of Organization and that the members do not have the ability to act on behalf of the Limited Liability Company.

**44a.405 Ownership.**

- (1) Every Tribally-owned Limited Liability Company created and organized under this Code shall have at all times at least fifty-one percent (51%) membership interest owned and retained by Tribe or subdivision thereof.
- (2) Membership interests in any Tribally-owned Limited Liability Company created pursuant to this Code or owned by another LDF Tribally-owned Business Organization may be alienated; provided that the Tribe maintains at least fifty-one percent (51%) membership interest at all times.

**44a.406 Assets.**

- (1) The assets of any Tribally-owned limited liability company created under this Code and Subchapter shall be separate and distinct from those of the Tribe.

- (2) Tribal assets not specifically pledged to the Tribally-owned limited liability company, in any manner permitted by law, shall not be considered assets of the company created under this Code or Subchapter for any purpose, except as otherwise provided by Tribal Council resolution.

**44a.407 Audit.**

- (1) The Tribal Council, by the terms or any charter or by duly adopted resolution, may require that any limited liability company created under this chapter be audited by an independent auditor hired by the Tribe at any time and shall retain the absolute right to require access to all company documents for any purpose.

**44a.408 Annual Meeting – Annual Report.**

- (1) The members and management of any Tribally-owned corporation created pursuant to this Code and Subchapter shall hold at least one (1) open meeting per year, on ten (10) business days public notice, within the LDF Reservation, at which the Board shall answer any questions asked of them by Tribal members or the Tribal Council.
- (2) Each manager shall also file a full report of the financial and operational activities of the Tribally-owned limited liability company with the Tribal Council on a quarter-yearly basis.

**44a.409 Contracts with Managers and Officers.**

- (1) All Managers or Officers of the Tribally-owned Limited Liability Companies authorized under this Code and Subchapter, and any firm in which the Managers or Officers hold office, or are substantial shareholders or owners, shall be disqualified from dealing or contracting, as a vendor, purchaser or otherwise, and such contracts shall be void, unless such contract or transaction has been fully disclosed to and approved by the Tribally-owned Limited Liability Company – either by its members or manager, as dictated by the Operating Agreement;
  - (a) This section does not apply if entity is another LDF Tribally-owned corporation, limited liability company or other business entity created by this Code or the LDF Constitution.
  - (b) This section does not apply to employment contracts of persons employed in full-time, management positions by the Tribally-owned limited liability company.
- (2) Substantial shareholders or owners mean greater than ten percent (10%) of the voting stock or ownership interest controlled by the manager(s) or member.

- (3) Membership interests owned by family members shall be attributable to an individual Manager or Officer for the purpose of determining control of voting rights or interests.
- (4) Family members shall mean the great grandparents, grandparents, parents, step-parents, brothers, sisters, children, grandchildren, grandchildren, and parents in-law and sisters/brothers in-law.

**44a.410**Subsidiary Limited Liability Companies.

- (1) Provided that the Limited Liability Company's Formation Documents grant such powers any Limited Liability Company created pursuant to this Code and Subchapter may, by obtaining approval from the Tribal Council, establish a subsidiary Limited Liability Company in which the Tribe, subdivision thereof, or the parent Limited Liability Company retains not less than fifty-one percent (51%) membership interest of each subsidiary Limited Liability Company.
- (2) A subsidiary Limited Liability Company, its members, managers, officers and employees have all the same, purposes, powers, privileges, immunities as any other Limited Liability Company established pursuant to this Code and Subchapter.

**Subchapter 5 – Other Tribally Owned Business Entities**

**44a.501**Writing Required for Formation.

- (1) Formal agreements reduced to writing are required for any other Tribally-owned business entity that is not a Corporation or Limited Liability Company.
- (2) No person, entity or individual may infer an implied or apparent partnership or other Business Organization with the Tribe unless the Agreement is reduced to writing and in substantial compliance with this Code.

**44a.502**Minimum Requirements of Written Agreements.

Any other business entity that is not a Tribally-owned Corporation or Limited Liability Company but formed pursuant to this Code shall:

- (1) Substantially comply with all provisions in Subchapters one (1) and two (2) of this Code;
- (2) Require a written Agreement or Formation Documents that are substantially similar to those required of Corporations in Subchapter three (3) or Limited Liability Companies in Subchapter four (4) and submit such documentation to the Tribal Secretary for filing;
- (3) Require a written Agreement or Articles of Formation providing for Ownership rights are substantially similar to those required of Corporations in Subchapter three (3) or Limited

Liability Companies in Subchapter four (4) and submit such documentation to the Tribal Secretary for filing;

- (4) Require a written Agreement or Formation Documents providing for Assets that are substantially similar to those required of Corporations in Subchapter three (3) or Limited Liability Companies in Subchapter four (4) and submit such documentation to the Tribal Secretary for filing;
- (5) Require a written Agreement or Formation Documents providing for Annual Meetings and Annual Reports that are substantially similar to those required of Corporations in Subchapter three (3) or Limited Liability Companies in Subchapter four (4) and submit such documentation to the Tribal Secretary for filing;
- (6) Require a written Agreement or Formation Documents providing for Contracts with Managers or Officers that are substantially similar to those required of Corporations in Subchapter three (3) or Limited Liability Companies in Subchapter four (4) and submit such documentation to the Tribal Secretary for filing.

**44a.503**No Sub-Business Entities Permitted.

Unlike Corporations or Limited Liability Companies that are authorized to establish subsidiary corporations or companies, Business Organizations not formed as Corporations or Limited Liability Companies pursuant to this Code shall not form a subsidiary business entity.

**Subchapter 6 – Secured Transactions With Respect to Tribal Business Organizations**

**44a.601**Adoption by Reference.

- (1) The Tribe adopts and incorporates by reference Article 9 of the Wisconsin Uniform Commercial Code, Wis. Stat. § 409.101 *et seq.*, as it may be amended from time to time (the “Wisconsin UCC9”), but subject to the exceptions and qualifications provided in this Code. In the event there is any conflict between this Code and the Wisconsin UCC9, this Code shall control.
- (2) This Subchapter 6 may be referred to as the “Tribal UCC9.”

**44a.602**References.

- (1) All references to the State of Wisconsin in Wisconsin UCC9 shall mean the Tribe.
- (2) Any references in the Wisconsin UCC9 may be referenced for purposes of this Code with the prefix “44a.6” instead of 409. For example, Section 409.102 of the Wisconsin UCC may be cited as Section 44a.6102 of this Code.

**44a.603**Characterization of Transactions.

Any characterization of this Code of a transaction as a sale, lease, pawn, or other transaction shall control over any contrary provision in the Tribal UCC9.

**44a.604**Exceptions.

The Tribe’s adoption of the Wisconsin UCC9 is subject to the exceptions and comments listed in Appendix 1 to this Code.

**44a.605**Preservation of Sovereign Immunity and Exclusive Jurisdiction.

Nothing in this Section or the Wisconsin UCC9 as adopted in this Code and Section shall be construed:

- (1) As a waiver of the Tribe’s sovereign immunity or exclusive jurisdiction, including but not limited to the immunity of its entities, agents, officers, employees or elected officials; or
- (2) To grant jurisdiction to any other governmental agency or entity other than the Tribe.

**Chapter 44a – Appendix 1**

Wisconsin UCC9 Reference	Tribal UCC9 Exception or Comment
§ 409.501 Filing Office	<p>Tribal UCC9 § 44a.6501 shall read as follows:</p> <p>Sec. 501. Filing Office</p> <p>(1) Filing offices. , Unless otherwise provided by Tribal law, if the law of this Tribe governs perfection of a security interest, the office in which to file a financing statement to perfect the security interest is the office of the Tribal Secretary. The Tribal Secretary shall mark any security interests so filed with the date and time such security interest was received and maintain any such recorded interests in searchable files so that members of the public may reasonably research the priority of security interests with respect to any property subject to the Tribe’s jurisdiction that has also been the subject of some financing statement filed with the Tribal Secretary.</p> <p>(2) If the Tribal Secretary receives a financing statement under subsection (1) for filing, and any debtor identified on the financing statement is an individual, the Tribal Secretary shall provide written notice of the filing of the financing statement to that debtor. The Tribal Secretary shall determine the form of the written notice and the written notice shall contain at least all of the following information:</p>

	<p>(a) The debtor's name and address as shown on the financing statement.</p> <p>(b) The secured party's name and address as shown on the financing statement.</p> <p>(c) The remedies available to the debtor under this act if he or she believes that the financing statement is erroneously or fraudulently filed.</p> <p>(3) In addition to the written notice described in subsection (2), the Tribal Secretary shall provide at no charge to a debtor described in that subsection a copy or image of the filed financing statement and any attachments. If the debtor requests additional copies or searches, the fees provided in section 9525 apply to that request.</p> <p>(4) A person shall not knowingly or intentionally file a false or fraudulent financing statement with the office of the secretary of state under subsection (1). A violation of this subsection is punishable under Tribal law and/or other applicable laws.</p>
§ 409.612 Timeliness of notification before disposition of collateral	<p>Tribal UCC9 § 44a.6612 shall read as follows:</p> <p>Sec. 612 Timeliness of notification before disposition of collateral</p> <p>A notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.</p>
§ 409.620 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral	Tribal UCC9 § 44a.6620 shall not include subsections (5) or (7) and any related references to those subsections.
§ 440.624 Waiver	Tribal UCC9 § 44a.6624 shall not include any special treatment with respect to consumer-goods transactions.
§ 409.625 Remedies for secured party's failure to comply with article	Tribal UCC9 does not incorporate § 409.625
§ 409.626 Action in which deficiency or surplus is an issue	Tribal UCC9 does not incorporate § 409.626
Part VII. Transition	Tribal UCC9 does not incorporate Part VII.