

TITLE 6 – CORPORATIONS

CHAPTER 6-2 LIMITED LIABILITY COMPANY ACT

ARTICLE 1

GENERAL PROVISIONS

6-2-1 DEFINITIONS.

(a) “Certificate of organization” means the certificate required by CLUSITC 6-2-9. The term includes the certificate as amended or restated.

(b) “Contribution” means any benefit provided by a person to a limited liability company:

(1) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(2) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(3) in the person’s capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

(c) “Designated office” means the office that a limited liability company is required to designate and maintain under CLUSITC 6-2-7.

(d) “Distribution” means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(e) “Limited liability company” means an entity formed under this act.

(f) “Manager” means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in CLUSITC 6-2-22(c).

(g) “Manager-managed limited liability company” means a limited liability company that qualifies under CLUSITC 6-2-22(a).

(h) “Member” means a person that has become a member of a limited liability company and has not dissociated.

- (i) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.
- (j) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in CLUSITC 6-2-6(a). The term includes the agreement as amended or restated.
- (k) “Organizer” means a person that acts under CLUSITC 6-2-9 to form a limited liability company.
- (l) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (m) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (n) “Sign” means, with the present intent to authenticate or adopt a record:
- (1) to execute or adopt a tangible symbol; or
 - (2) to attach to or logically associate with the record an electronic symbol, sound, or process.
 - (3) “Transfer” means any transfer and includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.
- (o) “Transferable interest” means the right, as originally associated with a person’s capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.
- (p) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.
- (q) “Tribes” or “Tribal” means the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians or pertaining thereto.
- (r) “Tribal Secretary” means the person authorized by the Tribal Council of the Tribes to carry out the office of the Tribal Secretary under this act.

6-2-2 NATURE, PURPOSE, AND DURATION OF LIMITED LIABILITY COMPANY.

- (a) A limited liability company is an entity distinct from its members.

- (b) A limited liability company may have any lawful purpose.
- (c) A limited liability company has perpetual duration.

6-2-3 POWERS.

A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities; provided that a limited liability company whose sole member or whose members all have sovereign immunity is subject to the same sovereign immunity as such member or members.

6-2-4 GOVERNING LAW.

Unless displaced by particular provisions of this act, the principles of law and equity of the Tribes supplement this act. The law of the Tribes governs this act, the internal affairs of a limited liability company, and the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

6-2-5 NAME.

- (a) The name of a limited liability company must contain the words “limited liability company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”. “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.
- (b) The name of a limited liability company must be distinguishable in the records of the Tribal Secretary from:
 - (1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in the Tribes;
 - (2) the limited liability company name stated in each certificate of organization that has not lapsed; and
 - (3) the name of the Tribes.

6-2-6 OPERATING AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.

- (a) To the extent the operating agreement does not otherwise provide for a matter described in this subsection (a), this act governs the matter. Except as otherwise provided in subsections (b) and (c), the operating agreement governs:
 - (1) relations among the members as members and between the members and the limited liability company;
 - (2) the rights and duties under this act of a person in the capacity of manager;
 - (3) the activities of the company and the conduct of those activities; and

- (4) the means and conditions for amending the operating agreement.
- (b) The operating agreement may vary from the terms of this act to the extent that the operating agreement governs under subsection (a) except that an operating agreement may not:
- (1) vary a limited liability company's capacity under CLUSITC 6-2-3;
 - (2) vary the law applicable under CLUSITC 6-2-4;
 - (3) vary the power of the court under this act;
 - (4) subject to subsection (c), eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;
 - (5) subject to subsection (c), eliminate the contractual obligation of good faith and fair dealing under CLUSITC 6-2-24(d);
 - (6) unreasonably restrict the duties and rights stated in CLUSITC 6-2-25;
 - (7) vary the requirement to wind up a limited liability company's business as specified in CLUSITC 6-2-32(a) and (b)(1);
 - (8) unreasonably restrict the right of a member to maintain an action under Article 8;
 - (9) restrict the right to approve a merger under Article 8 to a member that will have personal liability with respect to a surviving organization; or
 - (10) except as otherwise provided in CLUSITC 6-2-8(b), restrict the rights under this act of a person other than a member or manager.
- (c) If not manifestly unreasonable, the operating agreement may:
- (1) restrict or eliminate the duty in CLUSITC 6-2-24(b) and (g);
 - (2) identify specific types or categories of activities that do not violate the duty of loyalty;
 - (3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;
 - (4) alter any other fiduciary duty, including eliminating particular aspects of that duty;
 - (5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under CLUSITC 6-2-24(d);

(6) specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts;

(7) alter or eliminate the indemnification for a member or manager provided by CLUSITC 6-2-23(a) and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for:

- (A) breach of the duty of loyalty;
- (B) a financial benefit received by the member or manager to which the member or manager is not entitled;
- (C) intentional infliction of harm on the company or a member; or
- (D) an intentional violation of criminal law.

(d) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement. A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(e) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. An amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(f) If a record that has been delivered by a limited liability company to the Tribal Secretary for filing and has become effective under this act contains a provision that would be ineffective under this act if contained in the operating agreement, the provision is likewise ineffective in the record.

(g) if a record that has been delivered by a limited liability company to the Tribal Secretary for filing and has become effective under this act conflicts with a provision of the operating agreement:

- (1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and
- (2) the record prevails as to other persons to the extent they reasonably rely on the record.

6-2-7 OFFICE AND AGENT FOR SERVICE OF PROCESS.

(a) A limited liability company shall designate and continuously maintain within one hundred (100) miles from Coos Bay, Oregon:

- (1) an office; and
 - (2) an agent for service of process.
- (b) A limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the Tribal Secretary for filing a statement of change, effective when filed, containing:
- (1) the name of the company;
 - (2) the street and mailing addresses of its current designated office;
 - (3) if the current designated office is to be changed, the street and mailing addresses of the new designated office;
 - (4) the name and street and mailing addresses of its current agent for service of process; and
 - (5) if the current agent for service of process or an address of the agent is to be changed, the new information.
- (c) To resign as an agent for service of process of a limited liability company, the agent must deliver to the Tribal Secretary for filing a statement of resignation containing the company name and stating that the agent is resigning.
- (d) The Tribal Secretary shall file a statement of resignation, effective 31 days after the Tribal Secretary files the statement of resignation, delivered under subsection (a) and mail or otherwise provide or deliver a copy to the designated office of the limited liability company.
- (e) When a record designating a new agent for service of process is delivered to the Tribal Secretary for filing on behalf of the limited liability company and becomes effective, any prior designation terminates.

6-2-8 SERVICE OF PROCESS.

- (a) An agent for service of process appointed by a limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served on the company.
- (b) If a limited liability company or does not appoint or maintain an agent for service of process or the agent for service of process cannot with reasonable diligence be found at the agent's street address, the Tribal Secretary is an agent of the company upon whom process, notice, or demand may be served.
- (c) Service of any process, notice, or demand on the Tribal Secretary as agent for a limited liability company may be made by delivering to the Tribal Secretary duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on

the Tribal Secretary, the Tribal Secretary shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its designated office.

- (d) Service is effected under subsection (c) at the earliest of:
- (1) the date the limited liability company receives the process, notice, or demand;
 - (2) the date shown on the return receipt, if signed on behalf of the company;
or
 - (3) five days after the process, notice, or demand is deposited with the United States Postal Service, if correctly addressed and with sufficient postage.
- (e) The Tribal Secretary shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.
- (f) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

Article 2

FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

6-2-9 FORMATION OF LIMITED LIABILITY COMPANY; CERTIFICATE OF ORGANIZATION.

(a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the Tribal Secretary for filing a certificate of organization. A limited liability company is formed when the Tribal Council has approved the certificate of organization and the Tribal Secretary has filed the certificate of organization.

(b) A certificate of organization must state:

(1) the name of the limited liability company, which must comply with Section 108;

(2) the street and mailing addresses of the initial designated office and the name and street and mailing addresses of the initial agent for service of process of the company; and

(3) (3) the names of the initial member or members and, if any, the initial manager or managers.

6-2-10 AMENDMENT OF CERTIFICATE OF ORGANIZATION.

(a) A certificate of organization may be amended at any time.

(b) To amend its certificate of organization, a limited liability company must deliver to the Tribal Secretary for filing an amendment stating:

(1) the name of the company;

(2) the date of filing of its certificate of organization; and

(3) the changes the amendment makes to the certificate as most recently amended or restated.

(c) An amendment of a certificate of organization is effective when approved by the Tribal Council and filed by the Tribal Secretary.

(d) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly cause the certificate to be amended.

6-2-11 SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO TRIBAL SECRETARY.

(a) A record delivered to the Tribal Secretary for filing pursuant to this act must be signed as follows:

(1) Except as otherwise provided in paragraphs (2) and (3), a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

(2) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

(3) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities.

(b) If a person required by this act to sign a record or deliver a record to the Tribal Secretary for filing under this act does not do so, any other person that is aggrieved may petition the Tribal Court to order:

(1) the person to sign the record;

(2) the person to deliver the record to the Tribal Secretary for filing; or

(3) the Tribal Secretary to file the record unsigned.

(c) If a petitioner under subsection (b) is not the limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

6-2-12 DELIVERY TO AND FILING OF RECORDS BY TRIBAL SECRETARY; APPROVAL BY TRIBAL COUNCIL; EFFECTIVE TIME AND DATE.

(a) A record authorized or required to be delivered to the Tribal Secretary for filing under this act must be captioned to describe the record's purpose, be in a medium permitted by the Tribal Secretary, and be delivered to the Tribal Secretary. If the filing fees have been paid, unless the Tribal Secretary determines that a record does not comply with the filing requirements of this act, the Tribal Secretary shall present the record to the Tribal Council for approval or denial of the filing.

(b) The Tribal Council may in its sole discretion approve the filing or deny the filing. Upon the vote of the Tribal Council, the Tribal Secretary shall:

(1) for a statement of denial, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(2) for all other records, file the record and send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(c) Upon request and payment of the requisite fee, the Tribal Secretary shall send to the requester a certified copy of a requested record.

(d) A record filed by the Tribal Secretary is effective after approval by the Tribal Council on the date and at the time the record is filed as evidenced by the Tribal Secretary's endorsement of the date and time on the record.

6-2-13 CERTIFICATE OF EXISTENCE OR AUTHORIZATION.

(a) The Tribal Secretary, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed with the Tribal Secretary show that the company has been formed under this act and the Tribal Secretary has not filed a statement of termination pertaining to the company. A certificate of existence shall state:

- (1) the company's name;
- (2) that the company was duly formed under the laws of the Tribes and the date of formation;
- (3) whether the company's most recent annual report required by CLUSITC 6-2-14 has been filed by the Tribal Secretary;
- (4) whether the Tribal Secretary has administratively dissolved the company;
- (5) whether the company has delivered to the Tribal Secretary for filing a statement of dissolution; and
- (6) that a statement of termination has not been filed by the Tribal Secretary.

(b) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the Tribal Secretary is conclusive evidence that the limited liability company is in existence is authorized to transact business by the Tribes.

6-2-14 ANNUAL REPORT FOR TRIBAL SECRETARY.

(a) Each year, a limited liability company authorized to transact business under this act shall deliver to the Tribal Secretary for filing a report that states:

- (1) the name of the company; and
- (2) the street and mailing addresses of the company's designated office and the name and street and mailing addresses of its agent for service of process in this state.

(b) Information in an annual report under this section must be current as of the date the report is delivered to the Tribal Secretary for filing.

(c) The first annual report under this section must be delivered to the Tribal Secretary between January 1 and April 1 of the year following the calendar year in which a limited liability company was formed. A report must be delivered to the Tribal Secretary between January 1 and April 1 of each subsequent calendar year.

(d) If an annual report under this section does not contain the information required in subsection (a), the Tribal Secretary shall promptly notify the reporting limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) and delivered to the Tribal Secretary within 30 days after the effective date of the notice, it is timely delivered.

(e) If an annual report under this section contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Tribal Secretary immediately before the annual report becomes effective, the differing information in the annual report is considered an amendment under CLUSITC 6-2-10.

Article 3

RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH
LIMITED LIABILITY COMPANY

6-2-15 NO AGENCY POWER OF MEMBER AS MEMBER.

A member is not an agent of a limited liability company solely by reason of being a member.

6-2-16 LIABILITY OF MEMBERS AND MANAGERS.

(a) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

- (1) are solely the debts, obligations, or other liabilities of the company; and
- (2) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.

ARTICLE 4

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

6-2-17 BECOMING A MEMBER.

- (a) The person or persons named in the certificate of formation as a member or members become members upon filing of the certificate of formation. The organizer need not be one of those persons. If different, the organizer acts on behalf of the initial member or members.
- (b) After formation of a limited liability company, a person becomes a member:
- (1) as provided in the operating agreement;
 - (2) as the result of a merger effective under Article 8;
 - (3) with the consent of all the members; or
 - (4) if, within 90 consecutive days after the company ceases to have any members, the last person to have been a member, or the legal representative of that person, designates a person to become a member, and the designated person consents to become a member.

6-2-18 LIABILITY FOR CONTRIBUTIONS.

- (a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.
- (b) A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection (a) may enforce the obligation.

6-2-19 SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.

- (a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under CLUSITC 6-2-26.
- (b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.
- (c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in

CLUSITC 6-2-37, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

6-2-20 LIMITATIONS ON DISTRIBUTION.

(a) A limited liability company may not make a distribution if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under this subsection on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(c) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(d) In subsection (a), "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

6-2-21 LIABILITY FOR IMPROPER DISTRIBUTIONS.

(a) Except as otherwise provided in subsection (b), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of CLUSITC 6-2-20 and in consenting to the distribution fails to comply with CLUSITC 6-2-24, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of CLUSTIC 6-2-20.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to

distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of CLUSITC 6-2-20 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under CLUSITC 6-2-20.

6-2-22 MANAGEMENT OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is a member-managed limited liability company unless the operating agreement expressly provides that:

- (1) the company is or will be “manager-managed”;
- (2) the company is or will be “managed by managers”; or
- (3) management of the company is or will be “vested in managers”; or
- (4) includes words of similar import.

(b) In a member-managed limited liability company, the following rules apply:

- (1) The management and conduct of the company are vested in the members.
- (2) Each member has equal rights in the management and conduct of the company’s activities.
- (3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.
- (4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
- (5) The operating agreement may be amended only with the consent of all members.

(c) In a manager-managed limited liability company, the following rules apply:

- (1) Except as otherwise expressly provided in this act, any matter relating to the activities of the company is decided exclusively by the managers.
- (2) Each manager has equal rights in the management and conduct of the activities of the company.
- (3) A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.

- (4) The consent of all members is required to:
- (A) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities;
 - (B) approve a merger under Article 8;
 - (C) undertake any other act outside the ordinary course of the company's activities; and
 - (D) amend the operating agreement.
- (5) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.
- (6) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.
- (7) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.
- (d) An action requiring the consent of members under this act may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.
- (e) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.
- (f) This act does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

6-2-23 INDEMNIFICATION AND INSURANCE.

- (a) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or

incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in Sections 405 and 409.

(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Section 110(g), the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

6-2-24 STANDARDS OF CONDUCT FOR MEMBERS AND MANAGERS.

(a) A member of a member-managed limited liability company owes to the company and the other members the fiduciary duties of loyalty and care stated in subsections (b) and (c).

(b) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:

(A) in the conduct or winding up of the company's activities;

(B) from a use by the member of the company's property; or

(C) from the appropriation of a limited liability company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

(c) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

(d) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this act or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(f) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) In a manager-managed limited liability company, the following rules apply:

(1) Subsections (a), (b), (c), and (e) apply to the manager or managers and not the members.

(2) The duty stated under subsection (b)(3) continues until winding up is completed.

(3) Subsection (d) applies to the members and managers.

(4) Subsection (f) applies only to the members.

(5) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

6-2-25 RIGHT OF MEMBERS, MANAGERS, AND DISSOCIATED MEMBERS TO INFORMATION.

(a) In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this act.

(2) The company shall furnish to each member:

(A) without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this act, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(B) on demand, any other information concerning the company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

- (3) The duty to furnish information under paragraph (2) also applies to each member to the extent the member knows any of the information described in paragraph (2).
- (b) In a manager-managed limited liability company, the following rules apply:
- (1) The informational rights stated in subsection (a) and the duty stated in subsection (a)(3) apply to the managers and not the members.
- (2) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if:
- (A) the member seeks the information for a purpose material to the member's interest as a member;
- (B) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and
- (C) the information sought is directly connected to the member's purpose.
- (3) Within 10 days after receiving a demand pursuant to subsection (2)(B), the company shall in a record inform the member that made the demand:
- (A) of the information that the company will provide in response to the demand and when and where the company will provide the information; and
- (B) if the company declines to provide any demanded information, the company's reasons for declining.
- (4) Whenever this act or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.
- (c) On 10 days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (b)(2). The company shall respond to a demand made pursuant to this subsection in the manner provided in subsection (b)(3).

(d) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(e) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (g) applies both to the agent or legal representative and the member or dissociated member.

(f) The rights under this section do not extend to a person as transferee.

(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

ARTICLE 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

6-2-26 TRANSFERABLE INTERESTS.

- (a) A transfer, in whole or in part, of a transferable interest:
 - (1) is permissible;
 - (2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and
 - (3) subject to CLUSITC 6-2-27, does not entitle the transferee to:
 - (A) participate in the management or conduct of the company's activities; or
 - (B) except as otherwise provided in subsection (c), have access to records or other information concerning the company's activities.
- (b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.
- (c) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.
- (d) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.
- (e) A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.
- (f) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.
- (g) Except as otherwise provided in CLUSITC 6-2-29(4)(B), when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.
- (h) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under CLUSITC 6-2-18 and CLUSITC 6-2-21(c) known to the transferee or of which the transferee should have known when the transferee becomes a member.

6-2-27 POWER OF PERSONAL REPRESENTATIVE OF DECEASED MEMBER.

If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in CLUSITC 6-2-26(c) and, for the purposes of settling the estate, the rights of a current member under CLUSITC 6-2-25.

Article 6

MEMBER'S DISSOCIATION

6-2-28 MEMBER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.

- (a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under this section.
- (b) A person's dissociation from a limited liability company is wrongful only if the dissociation:
- (1) is in breach of an express provision of the operating agreement; or
 - (2) occurs before the termination of the company and:
 - (A) the person withdraws as a member by express will;
 - (B) the person is expelled as a member by judicial order under Section 602(5);
 - (C) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.
- (c) A person that wrongfully dissociates as a member is liable to the limited liability company and to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

6-2-29 EVENTS CAUSING DISSOCIATION.

A person is dissociated as a member from a limited liability company when:

- (1) the company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;
- (2) an event stated in the operating agreement as causing the person's dissociation occurs;
- (3) the person is expelled as a member pursuant to the operating agreement;
- (4) the person is expelled as a member by the unanimous consent of the other members if:
 - (A) it is unlawful to carry on the company's activities with the person as a member;

- (B) there has been a transfer of all of the person's transferable interest in the company;
 - (C) the person is a corporation and, within 90 days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or
 - (D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
- (5) on application by the company, the person is expelled as a member by judicial order because the person:
- (A) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;
 - (B) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under CLUSITC 6-2-24; or
 - (C) has engaged in, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;
- (6) in the case of a person who is an individual:
- (A) the person dies; or
 - (B) in a member-managed limited liability company:
 - (i) a guardian or general conservator for the person is appointed; or
 - (ii) there is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under [this act] or the operating agreement;
- (7) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

- (8) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;
- (9) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;
- (10) the company participates in a merger under Article 8, if:
 - (A) the company is not the surviving entity; or
 - (B) otherwise as a result of the merger, the person ceases to be a member;
- (11) the company terminates.

6-2-30 EFFECT OF PERSON'S DISSOCIATION AS MEMBER.

- (a) When a person is dissociated as a member of a limited liability company:
 - (1) the person's right to participate as a member in the management and conduct of the company's activities terminates;
 - (2) if the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and
 - (3) subject to Section 6-2-27 and Article 8, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.
- (b) A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members which the person incurred while a member.

ARTICLE 7

DISSOLUTION AND WINDING UP

6-2-31 EVENTS CAUSING DISSOLUTION.

(a) A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

- (1) an event or circumstance that the operating agreement states causes dissolution;
- (2) the consent of all the members;
- (3) the passage of 90 consecutive days during which the company has no members;
- (4) on application by a member or the Tribes, the entry by Tribal Court of an order dissolving the company on the grounds that:
 - (A) the conduct of all or substantially all of the company's activities is unlawful; or
 - (B) it is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement; or
- (5) on application by a member or the Tribes, the entry by Tribal Court of an order dissolving the company on the grounds that the managers or those members in control of the company:
 - (A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
 - (B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

(b) In a proceeding brought under subsection (a)(5), the court may order a remedy other than dissolution.

6-2-32 WINDING UP.

(a) A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

(b) In winding up its activities, a limited liability company:

(1) shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and

(2) may:

(A) deliver to the Tribal Secretary for filing a statement of dissolution stating the name of the company and that the company is dissolved;

(B) preserve the company activities and property as a going concern for a reasonable time;

(C) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(D) transfer the company's property;

(E) settle disputes by mediation or arbitration;

(F) deliver to the Tribal Secretary for filing a statement of termination stating the name of the company and that the company is terminated; and

(G) perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under CLUSITC 6-2-22(c) and is deemed to be a manager for the purposes of CLUSITC 6-2-16(a)(2).

(d) If the legal representative under subsection (c) declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under CLUSITC 6-2-22 (c) and is deemed to be a manager for the purposes of CLUSITC 6-2-16 (a)(2); and

(2) shall promptly deliver to the Tribal Secretary for approval of the Tribal Council and, if approved, filing by the Tribal Secretary an amendment to the company's certificate of organization to:

(A) state that the company has no members;

(B) state that the person has been appointed pursuant to this subsection to wind up the company; and

(C) provide the street and mailing addresses of the person.

(e) The Tribal Court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:

- (1) on application of a member or on application of the Tribes, if the applicant establishes good cause;
- (2) on the application of a transferee or on application of the Tribes, if:
 - (A) the company does not have any members;
 - (B) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and
 - (C) within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (D); or
- (3) in connection with a proceeding under CLUSITC 6-2-31(a)(4) or (5).

6-2-33 KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

(a) Except as otherwise provided in subsection (d), a dissolved limited liability company may give notice of a known claim under subsection (b), which has the effect as provided in subsection (c).

(b) A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:

- (1) specify the information required to be included in a claim;
- (2) provide a mailing address to which the claim is to be sent;
- (3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and
- (4) state that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) are met and:

- (1) the claim is not received by the specified deadline; or
- (2) if the claim is timely received but rejected by the company:
 - (A) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within 90 days after the claimant receives the notice; and

(B) the claimant does not commence the required action within the 90 days.

(d) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

6-2-34 OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

(a) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) The notice authorized by subsection (a) must:

(1) be published at least once in a newspaper of general circulation in the county in which the dissolved limited liability company's principal executive office is located and, if another county, in Lane County;

(2) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(3) state that a claim against the company is barred unless an action to enforce the claim is commenced within five years after publication of the notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b), unless the claimant commences an action to enforce the claim against the company within five years after the publication date of the notice, the claim of each of the following claimants is barred:

(1) a claimant who did not receive notice in a record under CLUSITC 6-2-33;

(2) a claimant whose claim was timely sent to the company but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

6-2-35 ADMINISTRATIVE DISSOLUTION.

(a) The Tribal Secretary may dissolve a limited liability company administratively if the company does not:

(1) pay, within 60 days after the due date, any fee, tax, or penalty due to the Tribal Secretary under this act or law other than this act; or

(2) deliver, within 60 days after the due date, its annual report to the Tribal Secretary.

(b) If the Tribal Secretary determines that a ground exists for administratively dissolving a limited liability company, the Tribal Secretary shall file a record of the determination and serve the company with a copy of the filed record.

(c) If within 60 days after service of the copy pursuant to subsection (b) a limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Tribal Secretary that each ground determined by the Tribal Secretary does not exist, the Tribal Secretary shall dissolve the company administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The Tribal Secretary shall serve the company with a copy of the filed declaration.

(d) A limited liability company that has been administratively dissolved continues in existence but, subject to CLUSITC 6-2-36, may carry on only activities necessary to wind up its activities and liquidate its assets under CLUSITC 6-2-32 and 6-2-37 and to notify claimants under CLUSITC 6-2-33 and 6-2-34.

(e) The administrative dissolution of a limited liability company does not terminate the authority of its agent for service of process.

6-2-36 REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

(a) A limited liability company that has been administratively dissolved may apply to the Tribal Secretary for reinstatement within two years after the effective date of dissolution. The application must be delivered to the Tribal Secretary for filing and state:

(1) the name of the company and the effective date of its dissolution;

(2) that the grounds for dissolution did not exist or have been eliminated; and

(3) that the company's name satisfies the requirements of CLUSITC 6-2-5.

(b) If the Tribal Secretary determines that an application under subsection (a) contains the required information and that the information is correct, the Tribal Secretary shall present the filing to the Tribal Council pursuant to CLUSITC 6-2-12(b). If the Tribal Council, within its sole discretion, approves, then the Tribal Secretary shall prepare a

declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(c) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

6-2-37 DISTRIBUTION OF ASSETS IN WINDING UP LIMITED LIABILITY COMPANY'S ACTIVITIES.

(a) In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a), any surplus must be distributed in the following order:

(1) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) in equal shares among members and dissociated members.

(c) If a limited liability company does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(d) All distributions made under subsections (b) and (c) must be paid in money.

ARTICLE 8

MERGER AND DOMESTICATION

6-2-38 MERGER.

- (a) A limited liability company may merge with one or more other limited liability companies formed under this act and a plan of merger.
- (b) A plan of merger must be in a record and must include:
 - (1) the name and form of each organization;
 - (2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;
 - (3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;
 - (4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and
 - (5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

6-2-39 ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED LIABILITY COMPANY.

- (a) Subject to subsection (c), a plan of merger or amendment to plan of merger must be consented to by all the members of a constituent limited liability company.
- (b) If a member of a constituent limited liability company will have personal liability with respect to a surviving organization, approval or amendment of a plan of merger is ineffective without the consent of the member.

6-2-40 FILINGS AND APPROVALS REQUIRED FOR MERGER; EFFECTIVE DATE.

- (a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of each constituent limited liability company.
- (b) Articles of merger under this section must include:
 - (1) the name and form of each constituent organization;
 - (2) the name and form of the surviving organization, and, if the surviving organization is created by the merger, a statement to that effect;

- (3) the date the merger is effective;
- (4) if the surviving organization is to be created by the merger, the company's certificate of organization under this act;
- (5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record; and
- (6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute.

(c) Each constituent limited liability company shall deliver the articles of merger for filing with the Tribal Secretary. If the Tribal Secretary determines that the articles of merger contain the required information and that the information is correct, the Tribal Secretary shall present the filing to the Tribal Council pursuant to CLUSITC 6-2-12(b). If the Tribal Council, within its sole discretion, approves, then the Tribal Secretary shall file the applicable records, and serve the limited liability company with a copy.

6-2-41 EFFECT OF MERGER. WHEN A MERGER BECOMES EFFECTIVE:

- (a) the surviving organization continues or comes into existence;
- (b) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;
- (c) all property owned by each constituent organization that ceases to exist vests in the surviving organization;
- (d) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;
- (e) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;
- (f) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;
- (g) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;
- (h) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of Article 7;

- (i) if the surviving organization is created by the merger, the certificate of organization becomes effective; and
- (j) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

6-2-42 DOMESTICATION.

No foreign limited liability company may become a limited liability company pursuant to this act. A limited liability company formed pursuant to this act may register, become domesticated, or otherwise engage in business in other jurisdictions pursuant to the laws and regulations of the applicable jurisdiction.

ARTICLE 9

MISCELLANEOUS

6-2-43 SOVEREIGN IMMUNITY.

Nothing in this Code shall be construed to have waived the sovereign immunity of the Tribes, any tribal entity, department or program, or any tribal official or employee, except as specifically and explicitly described herein.

6-2-44 SEVERABILITY.

If a court of competent jurisdiction finds any provision of this code to be invalid or illegal under applicable federal or Tribal law, such provision shall be severed from this code and the remainder of this code shall remain in full force and effect.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

LIMITED LIABILITY COMPANY ACT

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the Limited Liability Company Act Code by Ordinance No. 091 at a Tribal Council meeting on June 29, 2011. Vote was 7 (for), 0 (against) and 0 (abstaining).

P0242317.DOC;2