

1 **Sec. 55B-5.1 Interim Distributions.**

2 Except as provided in this ~~Part~~Chapter, a Member is entitled to receive distributions from an LLC before
3 the Member's dissociation from the LLC and before its dissolution and winding up to the extent and at the
4 times or upon the events specified in the Operating Agreement, or to the extent and at the times determined
5 by the Kituwah Economic Development Board.
6

7 **Sec. 55B-5.2 Allocation of Distributions.**

8 (a) Distributions of cash or other assets of an LLC shall be allocated among the Members as provided
9 in Operating Agreement, or if the Operating Agreement does not so provide, on the basis of the
10 value of the contributions made by each Member.

11 (b) No distribution of corporate property among the members of the tribal members shall be made,
12 except out of the net profit of corporate enterprises after all corporate debts then due have been
13 paid.
14

15 **Sec. 55B-5.3 Distribution upon Partial Redemption.**

16 Except as provided in this ~~Part~~Chapter, upon the distribution in partial liquidation of a Member's interest,
17 the redeeming Member is entitled to receive the amount to which the Member is entitled under the
18 Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair value of the
19 redeemed interest based on the Member's right to share in distributions from the LLC.
20

21 **Sec. 55B-5.4 Distribution upon Dissociation.**

22 Except as otherwise provided in this ~~Part~~Chapter, upon an event of dissociation that does not cause
23 dissolution of the LLC, a dissociating Member is entitled to receive any distribution to which Member is
24 entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair
25 market value of the Member's interest in the LLC based on the Member's rights to share in distributions
26 from the LLC.
27

28 **Sec. 55B-5.5 Distribution in Kind.**

29 Unless otherwise provided in the Operating Agreement:

30 (a) A Member may not demand and receive any distribution from an LLC in the form of cash until all
31 corporate debts to include contractually obligated payroll liabilities, have been paid.

32 (b) A Member may not be compelled to accept a distribution of any asset in kind except for a
33 liquidating distribution made proportionately.
34

35 **Sec. 55B- 5.6 Right to Distribution.**

36 At the time that a Member becomes entitled to receive a distribution from an LLC, the Member has the
37 status of and is entitled to all remedies available to a creditor of the LLC with respect to the distribution;
38 provided, however, that such right shall not in any way limit any other remedy.
39

40 **Sec. 55B-5.7 Limitations of Distributions.**

41 (a) An LLC may not declare or make a distribution to any of its Members, if after giving effect to the
42 distribution, any of the following would occur:

43 (1)The LLC would be unable to pay its debts as they become due in the usual course of
44 business.

45 (2)The fair market value of the LLC's total assets would be less than the sum of its total
46 liabilities plus, unless the Operating Agreement provides otherwise, the amount that would
47 be needed for the preferential rights upon dissolution of Members, if any.
48

49 (b) An LLC may base a determination that a distribution is not prohibited by subsection (a), above, on
50 any of the following:

- (1) Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
- (2) A fair market valuation or other method that is reasonable under the circumstances.

- (c) An LLC's indebtedness to a Member incurred by reason of a distribution made in accordance with this Sec. is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Sec. does not affect the validity or priority of a security interest in an LLC's property that is created to secure the indebtedness to the Member.

Sec. 55B-5.8 Liability for Wrongful Distribution.

- (a) Except as provided in subsection (b) below, a Member (other than the Tribe or Tribal Entity), Appointed Board Member, or Manager who votes to a distribution in violation of Sec. 5.7 or of the Operating Agreement is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other Managers or Members participating in such action.
- (b) An action to recover under this section may be brought before the Eastern Band of Cherokee Indians Cherokee Court for further action; however, a proceeding under this Sec. is barred unless it is brought within one (1) year after the date of the distribution.
- (c) Nothing in this Chapter serves to waive any aspect of the Tribes' sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement or Articles of Organization.

Sec. 55B-6. Membership and Transfer of LLC Company Property.

Sec. 55B-6.1 Membership of LLC Property.

- (a) All property originally transferred to or acquired by an LLC is property of the LLC and not the Members individually.
- (b) Property acquired with LLC funds is presumed to be LLC property.
- (c) Property may be acquired, held, and conveyed in the name of the LLC.

Sec. 55B-6.2 Transfer of Property.

The property of an LLC may be transferred by an instrument of transfer executed by resolution of the Kituwah Economic Development Board and filed with the Office of the Attorney General in the name of the LLC, subject to any limitation that may be imposed by the Operating Agreement. Notwithstanding the above sentence, any LLC may transfer or sell property in the normal course of business using appropriate instruments of common to the industry.

Sec. 55B-6.3 Nature of Interest.

An LLC interest is personal property.

Sec. 55B-6.4 RESERVED Assignment of LLC Interest

~~A. Unless otherwise provided in the Operating Agreement:~~

~~1. An LLC interest is assignable in part of 49% or less~~

~~2. An assignment of an LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignee would be entitled with respect to the assigned interest.~~

~~3. An assignment of an LLC interest does not dissolve the LLC.~~

~~4. Unless and until the assignee becomes a Member of the LLC under Sec. 6.5, the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of a Member.~~

5. ~~Unless and until the assignee of an LLC interest becomes a Member of the LLC under Sec. 6.5, the assignor continues to be a Member.~~

6. ~~The assignor of an LLC interest is not released from any personal liability arising under this Code as a Member of the LLC solely as a result of the assignment.~~

B. ~~Unless otherwise provided in the Operating Agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of a Member's LLC interest is not assignable and shall not cause the Member to cease to have the power to exercise any rights or powers of a Member.~~

Sec. 55B-6.5 RESERVED Right of Assignee to Become a Member

A. ~~Unless otherwise provided in the Operating Agreement, an assignee of an LLC interest may become a Member only if the other Members unanimously consent.~~

B. ~~An assignee of an LLC interest who becomes a Member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the Operating Agreement and this Code.~~

C. ~~Unless otherwise provided in the Operating Agreement, an assignor of an LLC interest is not released from any liability to the LLC without the written consent of all the Members, whether or not the assignee becomes a Member.~~

Sec. 55B-6.6 Powers of Legal Representative.

If a Member who is an individual dies or a court of competent jurisdiction adjudges the Member to be incompetent to manage his or her person or property, the Member's personal representative, administrator, guardian, conservator, trustee, or other legal representative shall have all the rights of an assignee of the Member's interest. If a Member is a corporation, trust, partnership, limited liability company, or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

Sect. 55B-7 Dissolution.

Sec. 55B-7.1 Dissolution.

A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first of the following:

- (a) The occurrence of dissolution events specified in the Operating Agreement.
- (b) The written consent of the Principal Chief with agreement of the Tribal Council and The Kituwah Economic Development Board.
- (c) An event of dissociation of a Member, unless otherwise provided in the Operating Agreement or continuation is consented to by all remaining Members.

Sec. 55B-7.2 Judicial Dissolution.

(a) In a proceeding by or for a Member, the Kituwah Economic Development Board or court of competent jurisdiction may order dissolution of an LLC if any of the following is established:

- (1) That it is not reasonably practicable to carry on the business of the LLC.
- (2) That the LLC is not acting in conformity with its Operating Agreement.
- (3) That one or more Managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.
- (4) That one or more Members in control of the LLC are acting or will Chapter in a manner that is illegal, oppressive, or fraudulent.
- (5) That LLC assets are being misapplied or wasted.

- (b) If the Tribe is a Member of the LLC, any action under this Sec. must be brought before the Kituwah Economic Development Board to determine if action by the Cherokee Court is Necessary, unless otherwise provided in the Operating Agreement. Nothing in this Sec. may be construed as the acquiescence of the Tribe to any other jurisdiction or a waiver of the Tribe's sovereign immunity from suit.

Sec. 55B-7.3 Winding Up.

- (a) A dissolved LLC continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business.
- (b) Unless otherwise provided in its Operating Agreement:
- (1) The business of the LLC may be wound up by any of the following:
 - a. The Members or Managers who have authority to manage the LLC before dissolution.
 - b. In a judicial dissolution, the person(s) designated by Cherokee Court.
 - (2) The persons winding up the business of the LLC may do all of the following in the name of and on behalf of the LLC:
 - a. Collect its assets.
 - b. Prosecute and defend suits.
 - c. Take any action necessary to settle and close the business of the LLC.
 - d. Dispose of and transfer the property of the LLC.
 - e. Discharge or make provision for discharging the liabilities of the LLC.
 - f. Distribute to the Members any remaining assets of the LLC.
- (c) Dissolution of an LLC does not do any of the following:
- (1) Transfer title to the LLC's property.
 - (2) Prevent transfer of all or part of a Member's interest.
 - (3) Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the LLC.
 - (4) Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC at the time of dissolution.
 - (5) Terminate the authority of the registered agent of the LLC.
 - (6) Alter the limited liability of a Member.

Sec. 55B-7.4 Distribution of Assets.

Upon the winding up of an LLC, the assets shall be distributed in the following order:

- (a) To creditors, including to the extent permitted by law, Members, and former Members in satisfaction of liabilities of the LLC.
- (b) Unless otherwise provided in the Operating Agreement, to Members and former Members in satisfaction of liabilities for distributions under Sections 55B-5.1, 55B-5.3, and 55B-5.4
- (c) Unless otherwise provided in the Operating Agreement, to Members and former Members first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

Sec. 55B-7.5 Articles of Dissolution.

After the dissolution of an LLC under Section 55B-7.1, the LLC may file Articles of Dissolution with the Office of the Attorney General that includes the following:

- (a) The name of the LLC.
- (b) The date of filing of its Articles of Organization.
- (c) The statutory grounds under Sec. 7.1 for dissolution.

1 (d) ~~A~~Effective date of dissolution.

2
3 **Sec. 55B-7.6 Known Claims Against Dissolved LLC.**

4 (a) A dissolved LLC may notify its known claimants in writing of the dissolution and specify a
5 procedure for making claims.

6 (b) A claim against the LLC is barred if:

7 (1) A claimant who was given written notice under subsection (a) above, does not deliver the
8 claim, in writing, to the LLC by the deadline specified in the notice; or

9 (2) A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce
10 the claim within ninety (90) days after receipt of the rejection notice.

11
12 **Sec. 55B-7.7 Unknown or Contingent Claims.**

13 A claim not barred under Section 55B-7.6 may be enforced:

14 (a) Against the dissolved LLC, to the extent of its undistributed assets.

15 (b) If the dissolved LLC's assets have been distributed in liquidation, against a Member of the LLC,
16 other than the Band, to the extent of the Member's proportionate share of the claim or of the assets
17 of the LLC distributed to the Member in liquidation, whichever is less. A Member's total liability
18 for all claims under this Sec. may not exceed the total value of assets at the time distributed to the
19 Member.

20
21 **Sec. 55B-8 ~~{Reserved}~~ Merger and Conversion.**

22
23 **Sec. 55B-8.1 Definitions.**

24 (a) "Business Entity" means both a Domestic business entity and a foreign business entity.

25 (b) "Domestic business entity" means a Company, incorporated under the laws of the Eastern Band of
26 Cherokee Indians; a Domestic LLC organized under this Code; a tribally-charted entity of the Tribe,
27 an unincorporated cooperative of the Tribe; or other tribally-formed entity that is party to the
28 merger.

29 (c) "Foreign business entity" means a Foreign Limited Liability Company, a Foreign limited
30 partnership, or a Foreign Corporation.

31 (d) Unless the context requires otherwise, "LLC" includes a Domestic LLC and a Foreign LLC.

32 (e) "Organizational Documents" include Articles of Organization, Operating Agreements, Articles of
33 Incorporation, Bylaws, partnership agreements, agreements of trust and declarations of trust, and
34 any other basic records that create a Business Entity's organization and determine its internal
35 governance and relations among persons that own it, have an interest in it, or are Members of it.

36
37 **Sec. 55B-8.2 Merger.**

38 (a) Unless otherwise provided in its Operating Agreement, one or more LLCs may merge with or into
39 one or more other Business Entities if the action of merger is a process permitted under the
40 applicable laws of the jurisdiction that governs each such other Business Entity and each such
41 Business Entity approves the plan of merger in accordance with its Organizational Documents.

42 (b) Interests or shares in an LLC that is a party to a merger may be exchanged for or converted into
43 cash, property, obligations, or interest in the surviving Business Entity.

44
45
46 **Sec. 55B-8.3 Approval of Merger.**

47 (a) Unless otherwise provided in the Operating Agreement, a Domestic LLC that is a party to a
48 proposed merger shall approve the plan of merger by an affirmative vote by all of the Members.

49 (b) Unless otherwise provided in the Operating Agreement, the manager or managers of a Domestic
50 LLC may not approve a merger without also obtaining the approval of the LLC's Members under
51 subsection above.

- 1 (c) Each Business Entity, other than a Domestic LLC, that is a party to a proposed merger shall approve
2 the merger in the manner and by the vote required by the laws applicable to the Business Entity
3 and in accordance with their respective Organizational Documents.
4 (d) Each Business Entity that is a party to the merger shall have any rights to abandon the merger as
5 provided for in the plan of merger or in the laws applicable to the Business Entity or in accordance
6 with its Organizational Documents.
7 (e) Upon approval of a merger, the LLC shall notify its Members of the approval and of the effective
8 date of the merger.
9 (f) After a merger is authorized, and at any time before the Articles of Merger are filed with the Office
10 of the Attorney General, the planned merger may be abandoned, subject to any contractual rights,
11 without further action on the part of the shareholders or other Members, in accordance with the
12 procedures set forth in the plan of merger or, if none is set forth, in the manner determined by the
13 governing body of any Business Entity that is a party to the merger.
14

15 **Sec. 55B-8.4 Plan of Merger.**

- 16 (a) Each Business Entity must enter into a written plan of merger, which must include all of the
17 following:
18 (1) The name, form of Business Entity, and identity of the jurisdiction governing each Business
19 Entity that is a party to the merger and the name, form of business entity, and identity of
20 the jurisdiction of the surviving business entity with, or into, which each other business
21 entity proposes to merge.
22 (2) The terms and conditions of the proposed merger.
23 (3) The manner and basis of converting the interests in each business entity that is a party to
24 the merger into shares, interests, obligations, or other securities of the surviving Business
25 Entity or into cash or other property in whole or in part.
26 (4) Amendments to the Articles of Organization or other similar governing document of the
27 surviving Business Entity.
28 (5) Other necessary or desirable provisions relating to the proposed merger.
29

30 **55B- 8.5 Articles of Merger.**

- 31 (a) The surviving Business Entity shall deliver to the Office of the Attorney General the Articles of
32 Merger, executed by each party to the plan of merger, which shall include all of the following:
33 (1) The name and jurisdiction of organization for each Business Entity,
34 (2) The plan of merger,
35 (3) The name of the surviving or resulting LLC,
36 (4) The effective date and time of the merger,
37 (5) A statement as to whether the surviving Business Entity is Tribally Owned,
38 (6) If Tribally-Owned, a statement as to whether the surviving Business Entity enjoys the
39 Tribe's sovereign immunity, and
40 (7) A statement that the plan of merger was approved by each Domestic LLC that is a party
41 to the merger in accordance with Section 8.3.
42 (b) Once filed with the Office of the Attorney General, a merger takes effect upon the effective date of
43 the Articles of Merger.
44

45
46 **55B- 8.6 Effects of Merger.**

47 A merger has the following effects:

- 48 (a) The Business Entities must become a single Entity, which shall be the Entity designated in the plan
49 of merger as the surviving LLC.
50 (b) Each Business Entity, except the surviving LLC, ceases to exist.

- 1 (c) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged
2 Business Entity and is subject to all of the restrictions, disabilities, and duties of each merged
3 Business Entity.
4 (d) All property and all debts, including contributions, and each interest belonging to or owed to each
5 of the Business Entities are vested in the surviving LLC without further act.
6 (e) Title to all real estate and any interest in real estate, vested in any Business Entity, does not revert,
7 and is not in any way impaired because of the merger.
8 (f) The surviving LLC has all the liabilities and obligations of each of the Business Entity and any
9 claim existing or action or proceedings pending by or against any merged Business Entity may be
10 prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the
11 action.
12 (g) The rights of creditors and any liens on the property of any Business Entity survive the merger.
13 (h) The interests in a Business Entity that are to be converted or exchanged into interest, cash,
14 obligations, or other property under the terms of the plan of merger are converted and the former
15 interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise
16 provided by law.
17 (i) The Articles of Organization of the surviving LLC is amended to the extent provided in the Articles
18 of Merger.
19

20 **55B- 8.7 Right to Object.**

21 Unless otherwise provided in the Operating Agreement, upon receipt of the notice required by Section
22 8.3(e), a Member who did not vote in favor of the merger may, within twenty (20) days after the date of the
23 notice, voluntarily dissociate from the LLC under Section 3.7(c) and receive fair value for the Member's
24 LLC interest under Section 5.4.
25

26 **55B- 8.8 Conversion.**

- 27 (a) Unless otherwise provided in its Organizational Documents, a Domestic LLC may convert to
28 another form of Business Entity if it:
29 (1) Satisfies the requirements under this Chapter relating to conversions; and,
30 (2) If the conversion is permitted under the applicable law of the jurisdiction that
31 governs the organization of the Business Entity into which the Domestic LLC is
32 converting.
33 (b) Unless otherwise provided in its Organizational Documents, a Business Entity other than a
34 Domestic LLC may convert into a Domestic LLC if it:
35 (1) Satisfies the requirements under this Chapter relating to conversions; and
36 (2) If the conversion is permitted under the applicable law of the jurisdiction that
37 governs the Business Entity.
38 (c) The filing requirements of Section 1.9 apply to conversions under this Chapter.
39 (d) Notwithstanding its prior approval, a plan of conversion under this Chapter may be amended before
40 the conversion takes effect if the amendment is approved by the members of the converting
41 Domestic LLC or Business Entity in the same manner as was required for the approval of the
42 original plan of conversion.
43

44 **55B-8.9 Plan of Conversion for Domestic LLC into Another Business Entity.**

- 45 (a) Unless subsection (c) applies, the Domestic LLC proposing to convert shall adopt a plan of
46 conversion that includes all of the following:
47 (1) The name of the Domestic LLC; the name of the Business Entity into which the
48 Domestic LLC is converting; the type of Business Entity into which the Domestic
49 LLC is converting; identification of the statute that will govern the internal affairs
50 of the surviving Business Entity; the street address of the surviving Business Entity;
51 the street address of the Domestic LLC, if different from the street address of the

1 surviving Business Entity; and, the principal place of business of the surviving
2 Business Entity.

3
4 (2) The terms and conditions of the proposed conversion, including the manner and
5 basis of converting the membership interest of the Domestic LLC into Membership
6 interests or obligations of the surviving Business Entity, into cash, into other
7 consideration that may include Membership interests or obligations of an entity that
8 is not a party to the conversion, or into a combination of cash and other
9 consideration.

10
11 (3) The terms and conditions of the Organizational Documents that are to govern the
12 surviving Business Entity.

13
14 (4) Any other provisions, with respect to the proposed conversion that the Domestic
15 LLC considers as necessary or desirable.

16
17 (b) A vote of the Members of the Domestic LLC is required to adopt a plan of conversion under
18 subsection (a). A unanimous vote of the Members entitled to vote is required to approve a plan of
19 conversion, unless its Organizational Documents provide otherwise.

20
21 (c) Subsections (a) and (b) do not apply if: the Domestic LLC has not commenced business; has not
22 issued any membership interests; has no debts or other liabilities; and has not received any
23 payments, or has returned any payments it has received after deducting any amount disbursed for
24 payment of expenses, for subscriptions for its membership interests. In the event that all of these
25 conditions apply, the Members of the Domestic LLC, may approve of the conversion of the
26 Domestic LLC into another Business Entity by majority vote.

27
28 (d) To effect the conversion, a majority of the Members must execute and file a certificate of
29 conversion under Section 8.10.

30
31 **55B 8.10 Filing of Certificate of Conversion for Domestic LLC.**

32 (a) If the plan of conversion is approved under Section 8.10(b), the Domestic LLC shall file any
33 formation documents required to be filed under the laws governing the internal affairs of the
34 surviving Business Entity, in the manner prescribed by those company documents, and shall file a
35 certificate of conversion with the Office of the Attorney General.

36
37 (b) The certificate of conversion shall include all of the following:

38 (1) A copy of the plan of conversion, unless Section 8.9(c) applies.

39 (2) The name of the Domestic LLC that is converting into another business entity.

40 (3) The name of the surviving Business Entity.

41 (4) The type of business entity the Domestic LLC is converting into and the
42 jurisdiction under which the surviving Business Entity shall be governed.

43 (5) A statement that the members of the Domestic LLC have adopted the plan of
44 conversion under Section 8.9(b), or that the Members of the Domestic LLC have
45 approved of the conversion under Section 8.9(c), as applicable.

46 (6) A statement that the surviving Business Entity will furnish a copy of the plan of
47 conversion, on request and without cost, to any Member of the Domestic LLC.

48 (7) The registered agent and registered office, of the Domestic LLC before and after
49 conversion.

50 (8) A Statement whether the Domestic LLC is Tribally-Owned.
51

1 **55 B 8.11 Effect of Conversion of Domestic LLC into Another Business Entity.**

2 All of the following apply, when a Domestic LLC's conversion into another Business Entity takes effect:

- 3 (a) The Domestic LLC converts into the surviving Business Entity, and the Organizational Documents
4 of the Domestic LLC are canceled.
- 5 (b) Except as otherwise provided in the Code, the surviving Business Entity is organized under and
6 subject to the organizational laws of the jurisdiction of the surviving Business Entity as stated in
7 the Certificate of Conversion.
- 8 (c) The surviving Business Entity has all of the liabilities of the Domestic LLC. The conversion of the
9 Domestic LLC into a Business Entity under this Section shall not be considered to affect any
10 obligations or liabilities of the Domestic LLC incurred before the conversion or the personal
11 liability of any person incurred before the conversion, and the conversion shall not be considered
12 to affect the choice of law applicable to the Domestic LLC with respect to matters arising before
13 the conversion.
- 14 (d) The title to all real estate and other property and rights owned by the Domestic LLC remain vested
15 in the surviving Business Entity without reversion or impairment.
- 16 (e) The surviving Business Entity is considered to be the same entity that existed before the conversion
17 and is considered to be organized on the date that the Domestic LLC was originally organized.
- 18 (f) The membership interests of the Domestic LLC that were to be converted into
- 19 (g) Membership interest or obligations of the surviving Business Entity or into cash or other property
20 are converted.
- 21 (h) Unless otherwise provided in the plan of conversion, the Domestic LLC is not required to wind up
22 its affairs or pay its liabilities and distribute its assets on account of the conversion, and the
23 conversion does not constitute a dissolution of the Domestic LLC.
- 24 (i) The Organizational Documents of the surviving Business Entity are as provided in the plan of
25 conversion.
- 26 (j) All other provisions of the plan of conversion apply.
- 27

28 **55B - 8.12 Plan of Conversion for a Business Entity into a Domestic LLC.**

- 29 (a) A Business Entity proposing to convert into a Domestic LLC must adopt a plan of conversion that
30 includes all of the following:
- 31 (1) The name of the Business Entity, the type of Business Entity that is converting,
32 identification of the statute that governs the internal affairs of the Business Entity,
33 the name of the surviving Domestic LLC into which the Business Entity is
34 converting, the street address of the surviving Domestic LLC company, the street
35 address of the Business Entity if different from the street address of the surviving
36 Domestic LLC, and the principal place of business of the surviving Domestic LLC.
- 37
- 38 (2) The terms and conditions of the proposed conversion, including the manner and
39 basis of converting the Membership interests of the Business Entity into
40 membership interests of the surviving Domestic LLC, into cash, into other
41 consideration that may include Membership interests or obligations of an entity
42 that is not a party to the conversion, or into a combination of cash and other
43 consideration.
- 44
- 45 (3) The terms and conditions of the Organizational Documents that are to govern the
46 surviving Domestic LLC.
- 47
- 48 (4) Any other provisions with respect to the proposed conversion that the Business
49 Entity considers necessary or desirable.
- 50

- 1 (b) If a plan of conversion is adopted by the Business Entity under subsection (a), the plan of
2 conversion is submitted for approval in the manner required by the law governing the internal
3 affairs of that Business Entity.
4
5 (c) If the plan of conversion is approved under subsections (a) and (b), the Business Entity shall file a
6 Certificate of Conversion with the Office of the Attorney General. The Certificate of Conversion
7 shall include all of the following:
8 (1) A copy of the plan of conversion.
9 (2) A statement that the Business Entity has obtained approval of the plan of
10 conversion under subsection (b).
11 (3) A statement that the surviving Domestic LLC will furnish a copy of the plan of
12 conversion, on request and without cost, to any Member of the Business Entity.
13 (4) The registered agent and registered office, record agent and record office, or other
14 similar agent and office of the surviving Domestic LLC before and after
15 conversion.
16 (5) The type of Business Entity, as well as the date and location of jurisdiction where
17 the Business Entity was formed, prior to converting into a Domestic LLC.
18 (6) A statement whether the surviving Domestic LLC is Tribally-Owned.
19 (7) Submission of Articles of Organization for the surviving Domestic LLC that meet
20 all of the requirements of this Code.
21

22 **55 B- 8.13 Effect of Conversion of Business Entity into Domestic LLC.**

23 All of the following apply when a Business Entity's conversion into a Domestic LLC takes effect:

- 24 (a) The Business Entity converts into the surviving Domestic LLC. Except as otherwise provided in
25 this Section, the surviving Domestic LLC is organized under and subject to the Code.
26 (b) The surviving Domestic LLC has all of the liabilities of the Business Entity. The conversion of the
27 Business Entity into a Domestic LLC under this Section shall not be considered to affect any
28 obligations or liabilities that the Business Entity incurred before the conversion, or the personal
29 liability of any person incurred before the conversion; and, the conversion shall not be considered
30 to affect the choice of law applicable to the Business Entity with respect to matters arising before
31 conversion.
32 (c) The title to all real estate and other property and rights owned by the Business Entity remains vested
33 in the surviving Domestic LLC without reversion or impairment.
34 (d) A proceeding pending against the Business Entity may be continued as if the conversion had not
35 occurred, or the surviving Domestic LLC may be substituted in the pending proceeding for the
36 Business Entity.
37 (e) The surviving Domestic LLC is considered to be the same entity that existed before the conversion,
38 and is considered to be organized on the date that the Business Entity was originally organized.
39 (f) The Membership interests of the Business Entity that were to be converted into membership
40 interests or obligations of the surviving Domestic LLC or into cash or other property are converted.
41 (g) Unless otherwise provided in a plan of conversion, the Business Entity is not required to wind up
42 its affairs or pay its liabilities and distribute its assets on account of the conversion, and the
43 conversion does not constitute a dissolution of the Business Entity.
44 (h) The Organizational Documents of the Domestic LLC are as provided in the plan of conversion.
45 (i) All other provisions of the plan of conversion apply.

46 **Sec. 55B-9 Effective Date and Authority.**

47 This Chapter may be amended only by resolution pass with majority vote of the Tribal Council at the
48 advisement of the Kituwah Economic Development Board.
49

1 **Sec. 55B-9.1 Effective Date.**

2 This Chapter shall be in full force and effect according to its terms upon ratification by the Principal Chief
3 with agreement of the Tribal Council.
4

5 **Sec. 55B-9.2 Certificated and Certified Copies to be received into Evidence.**

6 All certificates or documents issued by the Office of the Attorney General shall be in accordance with the
7 provisions of this Chapter and all copies of documents filed in the Office of the Attorney General in
8 accordance with the provisions of this Chapter, when certified, shall be taken and received in all Courts,
9 public offices, and official bodies as prima facie evidence of the fact therein stated. A certificate by the
10 Office of the Attorney General, as to the existence or non-existence of the fact relating to Companies which
11 would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and
12 received in all courts, public offices and official bodies as prima facie evidence of the existence or non-
13 existence of the fact therein stated.
14

15 **Sec. 55B-9.3 Forms to be furnished by the Office of the Attorney General.**

16 The Office of the Attorney General shall have the authority to prescribe certain forms for documents
17 required by this Chapter to be filed in the Office of the Attorney General; such forms shall be furnished by
18 the Secretary of the Kituwah Economic Development Board and used by the public for such filing.
19

20 **Sec. 55B-10. Miscellaneous.**

- 21 (a) In construing this Chapter, the present tense includes the past and future tenses, and the future tense
22 includes the present tense.
23 (b) When reference is made to any portion of this Chapter, the reference shall apply to all amendments
24 made hereafter.
25 (c) Section headings shall not be used in construing this Chapter.
26 (d) If any part of this Chapter is invalidated by a court of competent jurisdiction, all valid parts that are
27 severable from the invalid part remain in effect. If a part of this Chapter is invalid in one or more
28 of its applications, that part remains in effect in all valid applications that are severable from the
29 invalid applications.
30

31 **Sec. 55B-10. Relationship to the TERO ordinance.**

- 32 (a) Any LLC of the Tribe organized under this Chapter shall only be deemed an enterprise of the Tribe
33 when acting to procure goods, services, or employment occurring on Trust Lands and such
34 performance is on Trust Lands.
35 (b) Any LLC of the Tribe organized under this Chapter managed by the Kituwah Economic
36 Development Board shall be considered a Priority 1 Certified Economic Entity under Article 5
37 Section 92 of the Cherokee Code when providing good or services on Trust Lands, provided they
38 submit of liability insurance as required by Article 3 Section 92 of the Cherokee Code.
39 (c) Any other LLC may be considered a Priority 1 Certified Economic Entity when providing good or
40 services on Trust Lands provided, they meet the requirements contained in Article 3 Section 92 of
41 the Cherokee Code.
42

1 Sec. 55B-11. Kituwah, LLC Subsidiaries.

- 2 (a) Recognizing that the Kituwah Economic Development Board has caused to be formed Kituwah,
3 LLC, a wholly owned tribal LLC under this Chapter with the Articles of Organization having been
4 appropriately adopted and filed, and the Operating Agreement executed by the Principal Chief and
5 the Chair of the Kituwah Economic Development Board, the Tribe hereby conveys upon Kituwah,
6 LLC the right to form such subsidiary LLCs as the Kituwah Economic Development Board may
7 from time to time deem to be in the best interests of the Company.
8 (b) Notwithstanding any previous provisions to the contrary, each subsidiary of Kituwah, LLC shall
9 be wholly-owned by the Tribe, but its Articles of Organization may allow that Kituwah, LLC is the
10 member of such subsidiary, and the Manager of each subsidiary shall be the Kituwah Economic
11 Development Board.

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15 BE IT FURTHER ORDANIED, that the Principal Chief shall take the necessary and appropriate steps to
16 carry out the intent of this ordinance, and

17
18 BE IT FINALLY ORDANIED that all ordinances and resolutions that are inconsistent with this ordinance
19 are rescinded, and that this ordinance shall become effective with ratified by the Principal Chief.
20

21 *Submitted by the Office of the Attorney General*