

**TITLE 8**  
**COMMERCE AND TRADE**  
**Table of Contents**

**CHAPTER I – NISQUALLY TRIBAL CORPORATIONS**

<u>8.01</u>	<u>TITLE AND APPLICABILITY</u>	
8.01.010	Short Title .....	1
8.01.020	Applicability .....	1
8.01.030	Remedial Formation.....	1
<u>8.02</u>	<u>GENERAL PROVISIONS</u>	
8.02.010	Definitions.....	1
8.02.020	Purposes .....	3
8.02.030	General Powers .....	3
8.02.040	Defense of Ultra Vires .....	4
8.02.050	Corporate Name .....	5
8.02.060	Registered Office and Registered Agent.....	5
8.02.070	Service of Process on Corporations .....	5
8.02.080	Authorized Shares .....	5
8.02.090	Consideration for Shares .....	6
8.02.100	Payment of Shares.....	6
8.02.110	Determination of Amount of Stated Capital .....	6
8.02.120	Certificate Representing Shares .....	6
8.02.130	By-laws .....	6
8.02.140	Meetings of Shareholders .....	7
8.02.150	Notice of Shareholder's Meetings .....	7
8.02.160	Closing of Transfer Books and Fixing Record Date.....	7
8.02.170	Voting Record.....	7
8.02.180	Quorum of Shareholders .....	8
8.02.190	Voting of Shares .....	8
8.02.200	Board of Directors.....	8
8.02.210	Number and Election of Directors .....	8
8.02.220	Vacancies .....	9
8.02.230	Removal of Directors.....	9
8.02.240	Quorum of Directors .....	9
8.02.250	No Contract Void or Voidable.....	9
8.02.260	Executive and Other Committees .....	10

8.02.270	Place and Notice of Director's Meetings.....	10
8.02.280	Action by Directors Without a Meeting.....	10
8.02.290	Dividends .....	10
8.02.300	Distribution from Capital Surplus.....	11
8.02.310	Loans to Employees and Directors .....	11
8.02.320	Liability of Directors in Certain Cases .....	11
8.02.330	Officers .....	13
8.02.340	Removal of Officers.....	13
8.02.350	Books and Records .....	13
8.02.360	Incorporators .....	14
8.02.370	Articles of Incorporation.....	14
8.02.380	Filing of Articles of Incorporation.....	15
8.02.390	Effect of Issuance of Certificate of Incorporation .....	15
8.02.400	Organization Meeting of Directors .....	15
8.02.410	Right to Amend Articles of Incorporation .....	15
8.02.420	Procedure to Amend Articles of Incorporation.....	16
8.02.430	Articles of Amendment.....	16
8.02.440	Filing of Articles of Amendment.....	17
8.02.450	Effect of Certificate of Amendment .....	17
8.02.460	Restated Articles of Incorporation .....	17
8.02.480	Reduction of Stated Capital in Certain Cases .....	18
8.02.490	Special Provisions Relating to Surplus and Reserves.....	19
8.02.500	Sale of Assets in Regular Course of Business and Mortgage or Pledge of Assets.....	20
8.02.510	Sale of Assets other than in Regular Course of Business .....	20
8.02.520	Voluntary Dissolution by Incorporators .....	21
8.02.530	Voluntary Dissolution by Consent of Shareholders.....	21
8.02.540	Voluntary Dissolution by Act of Corporation .....	22
8.02.550	Filing of Statement of Intent to Dissolve.....	23
8.02.560	Effect of Statement of Intent to Dissolve.....	23
8.02.570	Procedure After Filing of Statement of Intent to Dissolve .....	23
8.02.580	Revocation of Voluntary Dissolution Proceedings by Consent of Shareholders .....	23
8.02.590	Revocation of Voluntary Dissolution Proceedings by Act of Corporation .....	24
8.02.600	Filing of Statement of Revocation of Voluntary Dissolution Proceedings.....	25
8.02.610	Effect of Statement of Revocation of Voluntary Dissolution Proceedings.....	25
8.02.620	Articles of Dissolution .....	25
8.02.630	Filing of Articles of Dissolution .....	26
8.02.640	Involuntary Dissolution .....	26
8.02.650	Notification to the Tribal Treasurer .....	27

8.02.660	Jurisdiction of Court to Liquidate Assets and Affairs of Corporation.....	27
8.02.670	Procedure in Liquidation of Corporation by Court.....	28
8.02.680	Qualification of Receivers .....	28
8.02.690	Filing of Claims in Liquidation Proceedings.....	28
8.02.700	Discontinuance of Liquidation Proceedings .....	29
8.02.710	Decree of Involuntary Dissolution.....	29
8.02.720	Filing of Decree Dissolution.....	29
8.02.730	Deposits with Tribal Treasurer .....	29
8.02.740	Survival of Remedy After Dissolution .....	29
8.02.750	Annual Report of Domestic and Foreign Corporations .....	30
8.02.760	Filing of Annual Report of Corporation .....	31
8.02.770	Fees, Franchise Taxes and Charges to be Collected by the Tribal Treasurer .....	31
8.02.780	Fees for Filing Documents and Issuing Certificates .....	31
8.02.790	Miscellaneous Charges .....	32
8.02.800	License Fees Payable by Domestic Corporations.....	32
8.02.810	Franchise Taxes Payable by Domestic Corporation .....	33
8.02.820	Assessment and Collection of Annual Franchise Taxes.....	33
8.02.830	Penalties Imposed Upon Corporations.....	34
8.02.840	Penalties Imposed Upon Officers and Directors.....	35
8.02.850	Interrogatories by the Tribal Treasurer .....	35
8.02.860	Information Disclosed by Interrogatories .....	35
8.02.870	Certificates and Certified Copies to be Received in Evidence .....	35
8.02.880	Forms to be Furnished by the Tribal Treasurer .....	36
8.02.890	Greater Voting Requirements .....	36
8.02.900	Waiver of Notice.....	36
8.02.910	Action by Members or Directors without a Meeting.....	36
8.02.920	Effect of Invalidity of Part of this Title .....	36
8.02.930	Jurisdiction of Nisqually Tribal Courts.....	36

## CHAPTER II - GOVERNMENTAL CORPORATIONS

### 8.50 GOVERNMENTAL CORPORATIONS

8.50.010	Short Title .....	37
8.50.020	Applicability .....	37
8.50.030	Interpretation.....	37
8.50.040	Purpose.....	37
8.50.050	Privileges and Immunities.....	37
8.50.060	Tribal Taxation.....	38
8.50.070	Subsidiary Corporation .....	38
8.50.080	Ownership .....	38
8.50.090	Voting Stock .....	38

8.50.100	Organization.....	38
8.50.110	Powers, Duration.....	38
8.50.120	Lands.....	38
8.50.130	Tribal Courts - Jurisdiction, Enforcement of Chapter .....	39
8.50.140	Agent.....	39
8.50.150	Assets .....	39
8.50.160	Audit .....	39
8.50.170	Annual Meeting, Annual Report.....	39
8.50.180	Contracts with Officers .....	39
8.50.190	Bonding.....	40
8.50.200	Severance Compensation .....	40
8.50.210	Record of Proceedings .....	40
8.50.220	Board Meetings of Corporation .....	40
8.50.230	Filing of Resolutions.....	41
8.50.240	Violation of Charter .....	41
8.50.250	Term of Directors.....	41
8.50.260	Duty of Loyalty .....	41
8.50.270	Real Estate Purchase .....	41
8.50.280	Conflict of Interest .....	41
8.50.290	Arbitration Agreements .....	42

### CHAPTER III -NON-PROFIT CORPORATIONS

8.75.010	Short Title .....	43
8.75.020	Applicability .....	43
8.75.010	Short Title.....	43
8.75.020	Applicability.....	43
8.75.030	Formation, Generally .....	43
8.75.040	Prohibitions .....	44
8.75.050	Limitations on Private Foundations .....	44
8.75.060	Remedial Formation.....	44
8.75.070	Contents of articles and other documents of non-profit corporations.....	44
8.75.080	Articles of Incorporation .....	45
8.75.090	Election of an existing business corporation to become a non-profit corporations.....	45
8.75.100	Termination of non-profit corporation status .....	45
8.75.110	Classes of membership.....	46
8.75.120	Evidence of membership; liability of members .....	46
8.75.130	Voting rights of members.....	47
8.75.140	Director Conflict of Interest .....	47
8.75.150	Inapplicability of certain provisions to non-profit corporations .....	47

8.75.160	Distribution of Assets.....	48
8.75.170	Plan for Distribution.....	48

**CHAPTER IV - CONSTRUCTION AND SEVERABILITY**

8.100 CONSTRUCTION AND SEVERABILITY

8.100.010	Severability .....	50
8.100.020	Repealer .....	50

**CHAPTER V - NISQUALLY LIMITED LIABILITY COMPANIES**

8.200 GENERAL PROVISIONS

8.200.010	Definitions.....	51
8.200.020	Standards for electronic filing – Rules.....	52
8.200.030	Name set forth in certificate of formation.....	52
8.200.040	Reserved name – Registered name .....	53
8.200.050	Registered office – Registered agent .....	54
8.200.060	Service of process on domestic limited liability companies .....	56
8.200.070	Nature of business permitted -- Powers .....	56
8.200.080	Business transaction of member or manager with limited liability company .....	56
8.200.090	Limitation of liability and indemnification.....	57
8.200.100	Professional limited liability companies .....	57
8.200.110	Member agreements.....	59
8.200.120	Membership residency.....	59
8.200.130	Piercing the Veil .....	59

8.210 FORMATION: CERTIFICATE OF FORMATION, AMENDMENT, FILING AND EXECUTION

8.210.010	Certificate of formation.....	59
8.210.020	Amendment to certificate of formation.....	60
8.210.030	Execution .....	60
8.210.040	Execution, amendment, or cancellation by judicial order.....	61
8.210.050	Filing .....	62
8.210.060	Restated certificate.....	63
8.210.070	Initial and annual reports .....	64

8.220 MEMBERS

8.220.010	Admission of members .....	65
-----------	----------------------------	----

8.220.020	Voting and classes of membership .....	65
8.220.030	Liability of members and managers to third parties .....	66
8.220.040	Events and dissociation.....	66
8.220.050	Records and Information.....	68
8.220.060	Remedies for breach of limited liability company agreement member .....	69
<u>8.230</u>	<u>MANAGEMENT AND MANAGERS</u>	
8.230.010	Management.....	69
8.230.020	Liability of mangers and members .....	70
8.230.030	Manager- Members’ rights and duties .....	70
8.230.040	Voting and classes of managers .....	70
8.230.050	Remedies for breach of limited liability company agreement by manager.....	71
8.230.060	Reliance on reports and information by member or manager.....	71
8.230.070	Resignation of manager .....	71
8.230.080	Loss of sole remaining manager .....	72
<u>8.240</u>	<u>FINANCE</u>	
8.240.010	Form of contribution .....	72
8.240.020	Liability for contribution.....	72
8.240.030	Allocation of profits and losses.....	73
8.240.040	Allocation of distributions .....	73
<u>8.250</u>	<u>DISTRIBUTIONS AND RESIGNATION</u>	
8.250.010	Interim distributions.....	73
8.250.020	Distribution on event of dissociation .....	73
8.250.030	Distribution in-kind.....	74
8.250.040	Right to distribute .....	74
8.250.050	Limitations on distributions .....	74
<u>8.260</u>	<u>ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS</u>	
8.260.010	Nature of limited liability company interest – Certificate of interest .....	75
8.260.020	Assignment of limited liability company interest .....	75
8.260.030	Rights of judgment creditor .....	76
8.260.040	Right of assignee to become member .....	76

<u>8.270</u>	<u>DISSOLUTION</u>	
8.270.010	Dissolution .....	76
8.270.020	After dissolution under NTC 8.270.030 .....	77
8.270.030	Judicial dissolution.....	77
8.270.040	Administrative dissolution – Commencement of proceeding.....	77
8.270.050	Administrative dissolution – Notice – Opportunity to correct deficiencies .....	78
8.270.060	Administrative dissolution – Reinstatement – Application – When effective .....	78
8.270.070	Dissolution under NTC 8.270.010 – Revocation – Approval Required – When effective .....	79
8.270.080	Winding up.....	80
8.270.090	Disposing of known claims - Definition.....	81
8.270.100	Distribution of assets.....	82
8.270.110	Remedies available after dissolution .....	83
<u>8.280</u>	<u>FOREIGN LIMITED LIABILITY COMPANIES</u>	
8.280.010	Law governing .....	83
8.280.020	Registration required -- Application .....	83
8.280.030	Issuance of registration .....	84
8.280.040	Name – Registered office – Registered agent.....	84
8.280.050	Amendments to application .....	86
8.280.060	Cancellation of registration.....	86
8.280.070	Doing business without registration.....	86
8.280.080	Foreign limited liability companies doing business without having qualified -- Injunctions.....	87
8.280.090	Transactions not constituting transacting business .....	87
8.280.100	Service of process on registered foreign limited liability companies .....	88
8.280.110	Service of process on unregistered foreign limited liability companies .....	89
8.280.120	Revocation of registration – Requirements for commencement.....	89
8.280.130	Revocation of registration – Procedure – Notice – Correction of grounds – Certificate of revocation – Authority of agent.....	90
<u>8.290</u>	<u>DERIVATIVE ACTIONS</u>	
8.290.010	Right to bring action .....	90
8.290.020	Proper plaintiff.....	91
8.290.030	Complaint.....	91
8.290.040	Expenses .....	91

<u>8.300</u>	<u>MERGERS</u>	
8.300.010	Merger – Plan – Effective date .....	91
8.300.020	Merger – Plan – Approval.....	92
8.300.030	Articles of merger - Filing .....	92
8.300.040	Effect of merger .....	94
8.300.050	Merger – Foreign and domestic .....	94
<u>8.310</u>	<u>DISSENTERS’ RIGHTS<sup>4</sup></u>	
8.310.010	Definitions.....	94
8.310.020	Member – Dissent – Payment of fair value .....	95
8.310.030	Dissenters’ rights – Notice - Timing.....	95
8.310.040	Member – Dissent – Voting restrictions .....	96
8.310.050	Members – Dissenters’ notice - Requirements .....	96
8.310.060	Member – Payment demand - Entitlement .....	96
8.310.070	Member’s interest – Transfer restriction.....	96
8.310.080	Payment of fair value – Requirements for compliance.....	97
8.310.090	Merger – Not effective within sixty days – Transfer restrictions .....	97
8.310.100	Dissenter’s estimate of fair value - Notice.....	97
8.310.110	Unsettled demand for payment – Proceeding – Parties - Appraiser .....	98
8.310.120	Unsettled demand for payment – Costs – Fees and expenses of counsel .....	98
<u>8.320</u>	<u>MISCELLANEOUS</u>	
8.320.010	Construction and application of chapter and limited liability company agreement .....	99
8.320.020	Establishment of filing fees and miscellaneous charges.....	99
8.320.030	Authority to adopt rules .....	100
8.320.040	Effective date – March 31, 2011 .....	100
8.320.050	Short title.....	100
8.320.060	Severability .....	100

**TITLE 8  
BUSINESS CORPORATIONS**

**CHAPTER I – NISQUALLY TRIBAL CORPORATIONS**

8.01 TITLE AND APPLICABILITY

8.01.010 Short Title

This Chapter shall be known and may be cited as the Nisqually Tribal Corporations Chapter.

**HISTORICAL NOTE**

Chapter 8.01, 8.02, 8.100 adopted by Tribal Council Resolution 88-2006 September 12, 2006.

8.01.020 Applicability

All business entities privately chartered under Nisqually Tribal law shall conform to this Title and its amendments. No private corporation shall exist under Nisqually Tribal law not in conformance with this Title.

8.01.030 Remedial Formation

Any corporation existing at the time of passage of this Title shall reform its chartering documents and business practices to conform with this Title within 60 days of adopting this Title by vote of the Tribal Council.

8.02 GENERAL PROVISIONS

8.02.010 Definitions

As used in this Chapter, the following terms shall have the following respective meanings:

- (a) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this Title.
- (b) "Articles of Incorporation" means the original or reinstated articles of incorporation or articles of consolidations and all amendments thereto including articles of merger.
- (c) "Shares" means the units into which the proprietary interests in a corporation are divided.

- (d) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.
- (e) "Shareholder" means one who is a holder of record or shares in a corporation.
- (f) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.
- (g) "Net assets" means the amount by which the total assets of a corporation is authorized to issue.
- (h) "Stated capital" or "legal capital" means, at any particular time, the sum of:
  - (i) The par value of all shares that have been issued; and
  - (ii) Such amounts not included in clause (i) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sums as have been affected in a manner permitted by law.
- (i) "Surplus" means the excess of the net assets of a corporation over its stated capital.
- (j) "Earned surplus" means surplus which has been generated from profits and represents net earnings, gains or profits, after deduction of all losses, but has not been distributed as dividends, or transferred to stated capital or stated surplus, or applied to other purposes as permitted by law.
- (k) "Capital surplus" means the portions of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfer to stated capital and capital surplus to the extent such distribution and transfers are made out of earned surplus.
- (l) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.
- (m) "Employee" includes officers, but not directors. A director may accept duties which make him also an employee. A person in the service of another under any contract of hire where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.
- (n) "Tribal Treasurer" means the Treasurer of the Tribal Council of the Nisqually Indian Tribe.
- (o) "Profit" or "for profit" means, for purposes of taxation, gross receipts of the corporation.
- (p) "Gross receipts" means the total amount of money or the value of other considerations from doing business.

**HISTORICAL NOTE**

Numbering of clauses as (1), (2), (3), etc. changed to (i), (ii), (iii), etc. during 2009 reformatting.

#### 8.02.020 Purposes

Corporations may be organized under this Title for any lawful purpose or purposes, except for the purpose of banking or insurance.

#### 8.02.030 General Powers

Each corporation shall have the power:

- (a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;
- (b) To sue and be sued, complain and defend, in its corporate name;
- (c) To have a corporate seal which may be altered at pleasure, and use the same by causing it, or a facsimile thereof, to be impressed or affixed in any other manner reproduced;
- (d) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;
- (e) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
- (f) To lend money and otherwise use its credit to assist its employees;
- (g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, obligations of corporations (whether or not incorporated under this Title), associations, partnerships, or individuals, or direct or indirect obligation of the United States, or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof, or of any Indian tribe;
- (h) To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchise and income;
- (i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
- (j) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Title within or without the reservation;
- (k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;

- (l) To make and alter by-laws, not inconsistent with its articles of incorporation or with this Title or any other law, ordinance, or regulations of the Nisqually Tribe for the administration and regulation of the affairs of the corporation;
- (m) To make donations for the public welfare or for charitable, scientific, or educational purposes;
- (n) To transact any lawful business which the board of directors shall find will be in aid of governmental policy;
- (o) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees;
- (p) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust or other enterprise; and
- (q) To have and exercise all powers necessary or convenient to effect its purpose.

#### 8.02.040 Defense of Ultra Vires

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

- (a) In a proceeding by a shareholder against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the Court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in doing so may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damages sustained by either of them which may result from the action of the Court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damages sustained;
- (b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through share holders in a representative suit, against the incumbent or former officers or directors of the corporation; and
- (c) In a proceeding by the Tribal Treasurer as provided in this Title, to dissolve the corporation for a lawful reason, or in a proceeding by the Tribal Treasurer to enjoin the corporation for a lawful reason from the transaction of an authorized business.

8.02.050 Corporate Name

The corporate name:

- (a) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain the abbreviation of one of such words ("corp.," "co.," "inc.," "ltd.");
- (b) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation; and
- (c) Shall not be the same as, or deceptively similar to the name of any corporation, existing under this Title or any other corporation authorized to transact business on the Nisqually Indian Reservation.

8.02.060 Registered Office and Registered Agent

Each corporation shall have and continuously maintain on this reservation:

- (a) A registered office; and
- (b) A registered agent.

8.02.070 Service of Process on Corporations

The registered agent so appointed by a corporation upon whom any process, notice or demand required or permitted by law, to be served upon the corporation, may be served. Whenever a corporation shall fail to appoint or maintain a registered agent on this reservation or whenever its registered agent cannot, with reasonable diligence, be found at the registered office, then the Tribal Treasurer shall be an agent of such corporation upon whom any such process, notice, or demand shall be served.

Service on the Tribal Treasurer of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department or his office, duplicate copies of such process, notice or demand. In the event that any such process, notice or demand is served on the Tribal Treasurer, he/she shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Tribal Treasurer shall be returnable in not less than thirty (30) days.

The Tribal Treasurer shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and his action with reference thereto.

8.02.080 Authorized Shares

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares shall be of only one class and shall be shares with par value.

8.02.090      Consideration for Shares

Shares may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

8.02.100      Payment of Shares

The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation; such shares shall be deemed to be fully paid and non-assessable.

Neither promissory notes or future services shall constitute payment or part-payment for the issuance of shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors of the shareholders, as the case may be, as to the value of the consideration received for share will be conclusive.

8.02.110      Determination of Amount of Stated Capital

The consideration received for shares shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

8.02.120      Certificate Representing Shares

- (a) The shares of a corporation shall be represented by certificates signed by the president or vice-president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof.
- (b) Each certificate representing shares shall state upon the face thereof:
  - (i) That the corporation is organized under Title 8 of the Nisqually Tribe.
  - (ii) The name of the person to whom issued;
  - (iii) The number of shares, which such certificate represents; and
  - (iv) The par value of each share represented by such certificate.
- (c) No certificate shall be issued for any share until such share is fully paid.

**HISTORICAL NOTE**

1. "Title 7-3" changed to "Title 8" for accuracy during 2009 reformatting.
2. Numbering of clauses as (1), (2), (3), etc. changed to (i), (ii), (iii), etc. during 2009 reformatting.

8.02.130      By-laws

The initial by-laws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the by-laws or adopt new by-laws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved by the shareholders by the articles

of incorporation. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with this Title or the articles of incorporation.

#### 8.02.140 Meetings of Shareholders

Meetings of shareholders may be held at such place on this reservation as may be stated in, or fixed in accordance with the by-laws. If no other place is stated in or so fixed, meetings shall be held at the registered office of the corporation.

An annual meeting of shareholders shall be held at such time as may be stated in or fixed in accordance with the by-laws. If the annual meeting is not held within any thirteen (13) month period, the Tribal Court may, on the application of any shareholder, summarily order a meeting to be held.

Special meetings of the shareholders may be called by the board of directors, the holders of not less than one-tenth (1/10) of all the shares entitled to vote at the meeting, or such other persons as may be authorized in the articles of incorporation or the by-laws.

#### 8.02.150 Notice of Shareholder's Meetings

Written notice stating the place, day and hour of the meeting, and, in case of a special meeting, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail; or at the direction of the president, secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

#### 8.02.160 Closing of Transfer Books and Fixing Record Date

For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, ten (10) days.

#### 8.02.170 Voting Record

The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete record of the shareholders entitled to vote at such meetings or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each. Such record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

An officer or agent having charge of the stock transfer books who shall fail to prepare the record of shareholders, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

#### 8.02.180 Quorum of Shareholders

Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present, affirmative vote of a majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number is required by this Title or the articles of incorporation or the by-laws.

#### 8.02.190 Voting of Shares

Each outstanding share shall be entitled to one vote on each matter submitted to a vote at the meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles of incorporation provided for more or less than one vote for any share, on any matter, every reference in this Title to a majority or other proportion of votes entitled to be cast.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleventh (11) months from the date of its execution, unless otherwise provided in the proxy.

#### 8.02.200 Board of Directors

The business and affairs of a corporation shall be managed by a board of directors. Directors except as may be otherwise provided in the articles of incorporation. The board of directors shall have the authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

#### 8.02.210 Number and Election of Directors

The board of directors of a corporation shall consist of one or more members. The number of directors of a corporation shall be fixed by or in the manner provided in, the articles of incorporation or the by-laws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in the articles of incorporation or the by-laws, but no decrease shall have the effect of shortening the term of any incumbent director. The names and addresses of the members of the board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by the Title. Each director shall hold office for the term for which he is elected and qualified.

#### 8.02.220 Vacancies

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

#### 8.02.230 Removal of Directors

At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of the directors.

#### 8.02.240 Quorum of Directors

A majority of the number of directors fixed by, or in the manner provided in, the by-laws, or in the absence of a by-law fixing or providing for the number of directors, of the number stated in the articles of incorporation shall constitute a quorum for the transaction of business, unless a greater number is required by the articles of incorporation or the by-laws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or by-laws.

#### 8.02.250 No Contract Void or Voidable

No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers, or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

- (a) The fact of such relationship or interest is disclosed or known to the board of directors or a committee thereof which authorizes, approves, or ratifies, the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or
- (b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or
- (c) The contract or transaction is fair and reasonable to the corporation. Common or interested directors may be counted in determination of the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, ratifies, or approves such contract or transaction.

#### 8.02.260 Executive and Other Committees

If the articles of incorporation or the by-laws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and/or other committees, each of which, to the extent provided in such resolution or in the articles of incorporation or the by-laws of the corporation, shall have and may exercise all authority of the board of directors, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation; adopting a plan for merger or consolidation; recommending to the shareholders the sale, lease, exchange, or other disposition of all or substantially all the property and assets of the corporation, otherwise than in the usual and regular course of its business; recommending to the shareholders a voluntary dissolution of the corporation, or a revocation thereof; or amending the by-laws of the corporation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any members thereof, of any responsibility imposed by law.

#### 8.02.270 Place and Notice of Director's Meetings

Meetings of the board of directors, regular or special, may be held within or without the reservation.

Regular meetings of the board of directors may be held with or without notice as prescribed by the by-laws. Special meetings of the board of directors shall be held upon such notices as is prescribed in the by-laws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted, nor the purpose of, any regular meeting of the board of directors need be specified in the notice or waiver of such notice, of such meeting, unless otherwise provided in the articles of incorporation or the by-laws.

#### 8.02.280 Action by Directors Without a Meeting

Unless otherwise provided by the articles of incorporation or by-laws, any action required by this Title to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting, if a consent, in writing, setting forth the action so taken, shall be signed by all the directors, or all of the members of the committee, as the case may be. Such consent shall have the same effect as a unanimous vote.

#### 8.02.290 Dividends

The board of directors of a corporation may from time to time, declare; and the corporation may pay dividends in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent, or when the payment thereof would be contrary to any restriction contained in the articles of incorporation.

#### 8.02.300 Distribution from Capital Surplus

The Board of Directors of a corporation may from time to time distribute to its shareholders out of capital surplus of the corporation, a portion of its assets, in cash or property, subject to the following provisions:

- (a) No such distribution shall be made at the time when the corporation is insolvent or when such distribution would render the corporation insolvent;
- (b) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation;
- (c) No such distribution shall be made to the holders of any class unless all cumulative dividends accrued on all preferred or special classes or shares entitled to preferential dividends shall have been fully paid;
- (d) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of involuntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation; and
- (e) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share is disclosed to the shareholders receiving the same, concurrently with the distribution thereof. The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash, out of the capital surplus of the corporation; if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

#### 8.02.310 Loans to Employees and Directors

A corporation shall not lend money to or use its credit to assist its directors or employees without authorization in the particular case by its shareholders.

#### 8.02.320 Liability of Directors in Certain Cases

- (a) In addition to any other liabilities imposed by law upon directors of a corporation:
  - (i) Directors of a corporation who vote for an assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this Title, or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of

the amount of such dividends or distribution, which could have been paid or distributed without a violation of this act or the restrictions in the articles of incorporation;

- (ii) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this Title shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefore without a violation of the provisions of this Title; and
  - (iii) The directors of a corporation who vote for, or assent to any distribution of assets or a corporation to its shareholders during the liquidation of the corporation, without the payment and discharge of, or making adequate provisions for all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.
- (b) A director of a corporation who is present at a meeting of its Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting, or unless he shall file his written dissent to such action with the Secretary of the meeting before adjournment thereof or shall forward after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.
  - (c) A director shall not be liable under subsection (a)(i), (ii), or (iii) of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by: the president of, or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants, which fail to reflect the financial condition of such corporation, nor shall he be so liable if, in good faith in determining the amount available for any such dividend or distribution, he considered the assets to be of their book value.
  - (d) Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this Title in proportion to the amounts received by them.
  - (e) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

#### HISTORICAL NOTE

Numbering of clauses as (1), (2), (3), etc. changed to (i), (ii), (iii), etc. during 2009 reformatting.

#### 8.02.330 Officers

The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the by-laws, a secretary, and a treasurer; each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the by-laws. Such other officers and assistant officers and agents as may be deemed necessary, may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the by-laws. Any two or more offices may be held by the same person, except the offices of president or secretary.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws, or as may be determined by resolution of the board of directors not inconsistent with the by-laws.

#### 8.02.340 Removal of Officers

Any officer or agent may be removed by the board of directors whenever, in its judgement, the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not, of itself, create contract rights.

#### 8.02.350 Books and Records

Each corporation shall keep correct and complete books and records of each account and shall keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its registered office or principle place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of shares held by each. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

Any person who shall have been a holder of record of shares or of voting trust certificates therefore at least six (6) months immediately preceding his demand, or shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent (5%) of all the outstanding shares of the corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its relevant books and records of account, minutes and record of shareholders and to make transactions there from.

Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder or holder of voting trust certificates, or his agent or attorney, to examine and make extracts from its books and records of accounts, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder or holder of voting trust certificates in a penalty of ten percent (10%) of the value of the shares owned by such shareholders, or in respect of which such voting trust certificates are issued, in addition to any other damages or remedy afforded him by law. It shall be a defenses to any action for penalties under this section that the person suing therefore, has, within two (2) years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation, or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose; or has improperly used any information secured

through any prior examination of the books and records of accounts, or minutes or record of shareholders or of holders of voting trust certificates for shares of such corporation, or any other corporation; or was not acting in good faith or for a proper purpose in making his demand. Nothing contained in this section shall impair the power of any court of competent jurisdiction, upon proof by a shareholder or holder of voting trust certificates, of proper purpose, irrespective of the period of time during which such shareholder or holder of voting trust certificates shall have been a shareholder of record or holder of voting trust certificates and irrespective of the number of shares held by him or represented by voting trust certificates held by him to compel the production for examination by such shareholder or holder of voting trust certificates of the books and accounts, minutes and record of shareholders of a corporation.

Upon written request of any shareholder or holder of voting trust certificates for shares of a corporation, the corporations shall mail to such shareholders or holders of voting trust certificates, its most recent financial statement showing, in reasonable detail, its assets and liabilities and the result of its operations.

#### 8.02.360 Incorporators

One or more members of the Tribe of the Nisqually Reservation may act as incorporator or incorporators of a corporation by signing, certifying, and delivering in duplicate to the Tribal Treasurer, articles of incorporation of such corporation.

#### 8.02.370 Articles of Incorporation

The articles of incorporation shall set forth:

- (a) The name of the corporation;
- (b) The period of duration, which may be perpetual;
- (c) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Title;
- (d) The aggregate number of shares which the corporation shall have the authority to issue a statement of the par value of the shares;
- (e) Any provision, inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for restricting the transfer of shares and any provisions which, under this Title, is required or permitted to be set forth in the by-laws;
- (f) The address of its initial registered office, and the name of its initial registered agent at such address;

- (g) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and
- (h) The name and address of each incorporator. It shall not be necessary to set forth in the articles of incorporation of any of the incorporated powers enumerated in this Title.

#### 8.02.380 Filing of Articles of Incorporation

Duplicate original of the articles of incorporation shall be delivered to the Tribal Treasurer. If the Tribal Treasurer finds that the articles of incorporation conform to law, he or she shall, when all fees and charges have been paid as under this Title prescribed:

- (a) Endorse on each of such duplicate originals the word "filed" and the month, day, and year of filing thereof;
- (b) File one of each such duplicate original in his or her office; and
- (c) Issue a certificate of incorporation to which he/she shall affix the other duplicate original.

The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Tribal Treasurer, shall be returned to the incorporators of their representative.

If the Tribal Treasurer finds the Article of Incorporation lacking, the Tribal Treasurer shall, within 3 calendar days of the delivery of the Article of Incorporation, give written reasons the Article do not conform to law.

#### 8.02.390 Effect of Issuance of Certificate of Incorporation

Upon the issuance of certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Title, except as against the Tribal Treasurer in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

#### 8.02.400 Organization Meeting of Directors

After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the directors named in the articles, for the purpose of adopting by-laws, electing officers, and the transacting of such other business as may come before the meeting. The directors calling the meeting shall give at least three (3) days notice thereof, by mail to each director so named, stating the time and place of the meeting.

#### 8.02.410 Right to Amend Articles of Incorporation

A corporation may amend its articles of incorporation, from time to time.

8.02.420 Procedure to Amend Articles of Incorporation

- (a) Amendment to the articles of incorporation shall be made in the following manner:
- (i) The board of directors shall adopt a resolution setting forth the proposed amendment and, directing that it is to be submitted to a vote, at a meeting of shareholders, which may be either an annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by the shareholders shall not apply. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that, except for the designated amendment, the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto;
  - (ii) Written or printed notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Title for the giving of notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting; and
  - (iii) At such meeting, a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.
- (b) Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting.

**HISTORICAL NOTE**

Numbering of clauses as (1), (2), (3), etc. changed to (i), (ii), (iii), etc. during 2009 reformatting.

8.02.430 Articles of Amendment

The articles of amendment shall be executed in duplicate by its president or vice-president, and by its secretary or an assistant secretary, and verified by one of the officers signing such articles and shall set forth:

- (a) The name of the corporation;
- (b) The amendments so adopted;

- (c) The date of the adoption of the amendment by the shareholders; or by the board of directors where no shares have been issued;
- (d) The number of shares outstanding and the number of shares entitled to vote thereon;
- (e) The number of shares voted for and against such amendment respectively, or if no shares have been issued, a statement to that effect;
- (f) If such amendment provides for an exchange, cancellation of issued shares, and if the manner in which the name shall be affected is not set forth in the amendment, then a statement of the manner in which the name shall be affected; and
- (g) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is affected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

#### 8.02.440 Filing of Articles of Amendment

Duplicate originals of the articles of amendment shall be delivered to the Tribal Treasurer. If the Tribal Treasurer finds that the articles of amendment conform to law, he or she shall, when all fees and franchise taxes have been paid, as in this Title prescribed:

- (a) Endorse on each of such duplicate originals the word "filed", and the month, day, and year of the filing thereof;
- (b) File one of such duplicate originals in his or her office;
- (c) Issue a certificate of amendment to which he or she shall affix the other duplicate original.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Tribal Treasurer, shall be returned to the corporation or its representative.

#### 8.02.450 Effect of Certificate of Amendment

Upon the issuance of the certificate of amendment by the Tribal Treasurer, the amendment shall become effective and the articles of incorporation shall be deemed accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

#### 8.02.460 Restated Articles of Incorporation

A domestic corporation may, at any time, restate its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.

Upon the adoption of such a resolution, restated articles of incorporation shall be executed in duplicate by the corporation; by its president, vice-president, and by its secretary, and verified by one of the officers signing such articles; and shall set forth all of the operative provisions of the articles of incorporation as theretofore amended, together with a statement that the restated articles correctly set forth, without change, the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles supersede the original articles of incorporation and all amendments thereto.

Duplicate originals of the restated articles of incorporation shall be delivered to the Tribal Treasurer. If the Tribal Treasurer finds that such restated articles of incorporation conform to law, he/she shall, when all fees and franchise taxes have been paid, as in this Title prescribed:

- (a) Endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;
- (b) File one of such duplicate originals in his or her office;
- (c) Issue a restated certificate of incorporation, to which he or she shall affix the other duplicate original.

The restated certificate or incorporation, together with the duplicate original together with the duplicate original of the restated articles of incorporation affixed thereto by the Tribal Treasurer, shall be returned to the corporation or its representative.

Upon the issuance of the restated certificate of incorporation by the Tribal Treasurer, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

#### 8.02.480 Reduction of Stated Capital in Certain Cases

A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring amendment of the articles of incorporation, and not accompanied by a cancellation of shares, may be made in the following manner:

- (a) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
- (b) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Title for the giving of notice of meetings of shareholders; and

- (c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall be required for its adoption, the affirmative vote of the holders of a majority of the shares entitled to vote thereon;
- (d) Where a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in duplicate by the corporation; by its president, vice-president, and by its secretary or assistant secretary, and certified by one of its officers signing such statement and shall set forth:
  - (i) The name of the corporation;
  - (ii) A copy of the resolution of the shareholders approving such reduction and the date of its adoption;
  - (iii) The number of shares outstanding and the number of shares entitled to vote thereon;
  - (iv) The number of shares voted for and against such reduction, respectively; and
  - (v) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction;
- (e) Duplicate originals of such statement shall be delivered to the Tribal Treasurer. If the Tribal Treasurer finds that such statement conforms to law, he or she shall, when all fees and franchise taxes have been paid, as in this Title prescribed:
  - (i) Endorse on each of such duplicate originals the word "Filed" and the month, day and year of the filing thereof;
  - (ii) File one of such duplicate originals in his or her office;
  - (iii) Return the other duplicate original to the corporation or its representative;
- (f) Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth:
  - (i) No reduction of the stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregated par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

**HISTORICAL NOTE**

Numbering of clauses as (1), (2), (3), etc. changed to (i), (ii), (iii), etc. during 2009 reformatting.

**8.02.490 Special Provisions Relating to Surplus and Reserves**

The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus.

The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

A corporation may, by resolution of its board of directors, create a reserve out of its earned surplus for any proper purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this Title.

#### 8.02.500 Sale of Assets in Regular Course of Business and Mortgage or Pledge of Assets

The sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in any such case, no authorization or consent of the shareholders shall be required.

#### 8.02.510 Sale of Assets other than in Regular Course of Business

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations, or other securities of any other corporation, domestic or foreign, as may be authorized, in the following manner:

- (a) The board of directors shall adopt a resolution recommending such sale, lease, exchange or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or special meeting;
- (b) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting not less than twenty (20) days before such meeting, in the manner provided in this Title for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition;
- (c) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof, and the consideration to be received by the corporation therefore. Such authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the

shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon; and

- (d) After such authorization by a vote of shareholders, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

#### 8.02.520 Voluntary Dissolution by Incorporators

A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time in the following manner:

- (a) Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by the, and shall set forth:
  - (i) The name of the corporation;
  - (ii) The date of issuance of its certificate of incorporation;
  - (iii) That none of its shares have been issued;
  - (iv) That the corporation has not commenced business;
  - (v) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;
  - (vi) That no debts of the corporation remain unpaid; and
  - (vii) That a majority of the incorporators elect that the corporation be dissolved.
- (b) Duplicate originals of such articles of dissolution shall be delivered to the Tribal Treasurer. If the Tribal Treasurer finds that such articles of dissolution conform to law, he/she shall, when all fees and franchise taxes have been paid as in this Title prescribed:
  - (i) Endorse on each of such duplicate originals the word "filed", and the month, day, and year of the filing thereof;
  - (ii) File one of such duplicate original in his/her office; and
  - (iii) Issue a certificate of dissolution to which he/she shall affix the other duplicate original.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Tribal Treasurer, shall be returned to the incorporators or their representative. Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease.

#### **HISTORICAL NOTE**

Numbering of clauses as (1), (2), (3), etc. changed to (i), (ii), (iii), etc. during 2009 reformatting.

#### 8.02.530 Voluntary Dissolution by Consent of Shareholders

A corporation may be voluntarily dissolved by the written consent of all its shareholders.

Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation; by its president or vice-president and by its secretary or assistance secretary and verified by one of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation;
- (b) The names and respective addresses of its officers;
- (c) The names and respective addresses of its directors;
- (d) A copy of the written consent signed by all shareholders of the corporation; and
- (e) A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

8.02.540 Voluntary Dissolution by Act of Corporation

A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

- (a) The board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual meeting or a special meeting;
- (b) Written notice shall be given to each shareholder of record entitled to vote at such meeting, within the time and in the manner provided in this Title for the giving of notice of meetings to shareholders, and whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation;
- (c) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon; and
- (d) Upon the adoption of such resolution by the members, a statement of intent to dissolve shall be executed in duplicate by the corporation; by its president or vice- president and by its secretary or assistance secretary, and verified by one of the officers signing such statement, which statement shall set forth:
  - (i) The name of the corporation;
  - (ii) The names and respective addresses of its officers;
  - (iii) The names and respective addresses of its directors;
  - (iv) A copy of the resolution adopted by all shareholders authorizing the dissolution of the corporation;
  - (v) The number of shares outstanding, and if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and
  - (vi) The number of shares voted for and against the resolution, respectively.

**HISTORICAL NOTE**

Numbering of clauses as (1), (2), (3), etc. changed to (i), (ii), (iii), etc. during 2009 reformatting.

8.02.550 Filing of Statement of Intent to Dissolve

Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Tribal Treasurer. If the Tribal Treasurer finds that such articles of dissolution conform to law, he or she shall, when all fees and franchise taxes have been paid as in this Title prescribed:

- (a) Endorse on each of such duplicate original the word "filed", and the month, day, and year of the filing thereof;
- (b) File one of such duplicate original in his or her office;
- (c) Return the other duplicate original to the corporation or representative.

8.02.560 Effect of Statement of Intent to Dissolve

Upon the filing by the Tribal Treasurer of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the Tribal Treasurer or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this Title provided.

8.02.570 Procedure After Filing of Statement of Intent to Dissolve

After the filing by the Tribal Treasurer of a statement of intent to dissolve:

- (a) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation;
- (b) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders; pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs; and after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests; and
- (c) The corporation, at any time during the liquidation of its business and affairs, may make application to the Nisqually Tribal Court, to have liquidation continued under the supervision of the Court, as provided in this Title.

8.02.580 Revocation of Voluntary Dissolution Proceedings by Consent of Shareholders

By the written consent of all its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Tribal Treasurer, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation; by its president or a vice-president, and its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation;
- (b) The names and respective addresses of its officers;
- (c) The names and respective addresses of its directors;
- (d) A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings; and
- (e) That such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly recognized.

8.02.590 Revocation of Voluntary Dissolution Proceedings by Act of Corporation

By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Tribal Treasurer, revoke voluntary dissolution proceeding theretofore taken, in the following manner:

- (a) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders;
- (b) Written notice, stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder entitled to vote at such meeting within the time and in the manner provided in this Title for the giving of notice of special meetings to shareholders;
- (c) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require, for the adoption, the affirmative vote of the holders of a majority of the shares entitled to vote thereon; and
- (d) Upon adoption of such resolution by the members, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation; by its president or vice-president and by its secretary or assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:
  - (i) The name of the corporation;
  - (ii) The names and respective addresses of its officers;
  - (iii) The names and respective addresses of its directors;
  - (iv) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

- (v) The number of shares outstanding; and
- (vi) The number of shares voted for and against the resolution, respectively.

**HISTORICAL NOTE**

Numbering of clauses as (1), (2), (3), etc. changed to (i), (ii), (iii), etc. during 2009 reformatting.

8.02.600 Filing of Statement of Revocation of Voluntary Dissolution Proceedings

Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the Tribal Treasurer. If the Tribal Treasurer finds that such statement conforms to law, he/she shall, when all fees and franchise taxes have been paid as in this Title prescribed:

- (a) Endorse on each of such duplicate original the word "filed", and the month, day, and year of such filing thereof;
- (b) File one of such duplicate originals to the corporation or its representative.

8.02.610 Effect of Statement of Revocation of Voluntary Dissolution Proceedings

Upon the filing by the Tribal Treasurer of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

8.02.620 Articles of Dissolution

If voluntary dissolution proceedings have not been revoked; when all debts, liabilities, and obligations of the corporation shall have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation; by its president or a vice-president, and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which such statement shall set forth:

- (a) The name of the corporation;
- (b) That the Tribal Treasurer theretofore filed a statement of intent to dissolve the corporation, and the date on which such statement was filed;
- (c) That all debts, obligations, and liabilities and obligations of the corporation have been paid and discharged or that adequate provisions have been made therefore;
- (d) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; and

- (e) That there are no suits pending against the corporation in any Court, or that adequate provisions have been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

#### 8.02.630 Filing of Articles of Dissolution

Duplicate originals of such articles of dissolution shall be delivered to the Tribal Treasurer.

The Tribal Treasurer finds that such articles of dissolution conform to law, he or she shall, when all fees and franchise taxes have been paid as in this Title prescribed:

- (a) Endorse on each of such duplicate originals the word "filed", and the month, day, and year of such filing thereof;
- (b) File one of such duplicate original in his office; and
- (c) Issue a certificate of dissolution to which he/she shall affix the other duplicate original.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Tribal Treasurer shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors and officers as provided in this Title.

#### 8.02.640 Involuntary Dissolution

A corporation may be dissolved involuntarily by a decree of the Nisqually Tribal Court in an action instituted by the Tribal Treasurer when it is established that:

- (a) The corporation has failed to file its annual report within the time required by this Title, or has failed to pay its franchise tax on or before the first day of August of the year in which such franchise tax becomes due and payable; or
- (b) The corporation procured its articles of incorporation through fraud; or
- (c) The corporation has continued to exceed or abuse the authority conferred upon it by law; or
- (d) The corporation has failed for thirty (30) days to appoint and maintain a registered office or registered agent on this reservation; or
- (e) The corporation has failed for thirty (30) days, after change of its registered office or registered agent to file in the office of the Tribal Treasurer, a statement of such change.

8.02.650 Notification to the Tribal Treasurer

If on or before the last day of December, a corporation shall have failed to file its annual reports or to pay franchise taxes in accordance with the provisions of this Title or shall have given cause for dissolution as provided in this Title the Tribal Treasurer shall file an action in the name of the Tribe against such corporation for its dissolution.

If, after such action has been filed, the corporation shall file its annual report or pay its franchise tax, together with all penalties thereon, or shall appoint or maintain a registered agent as provided in this Title, or shall file with the Tribal Treasurer the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate.

8.02.660 Jurisdiction of Court to Liquidate Assets and Affairs of Corporation

The Nisqually Tribal Court shall have full power to liquidate the assets and business of a corporation:

- (a) In any action by a shareholder when it is established:
  - (i) That the directors are deadlocked in the management of the corporation affairs and that the shareholders are unable to break the deadlock; and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
  - (ii) That the acts of the director or those in control of the corporation are illegal, oppressive or fraudulent; or
  - (iii) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
  - (iv) That the corporation assets are being misapplied or wasted.
- (b) In an action by a creditor:
  - (i) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent;
- (c) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this Title, to have its liquidation continued under the supervision of the Court; and
- (d) When an action has been commenced by the Tribal Treasurer to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution;

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

**HISTORICAL NOTE**

Numbering of clauses as (1), (2), (3), etc. changed to (i), (ii), (iii), etc. during 2009 reformatting.

#### 8.02.670 Procedure in Liquidation of Corporation by Court

In proceedings to liquidate the assets and business of a corporation, the Court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the Court, from time to time, may direct and to take such other proceedings as may be requested to preserve the corporate assets wherever situated, and carry on business of the corporation until a full hearing can be held.

After a hearing had upon such notice as the Court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the Court, the Court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver shall have authority, subject to the order of the Court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation of the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver shall state their powers and duties. Such power and duties may be increased or diminished at any time during the proceedings.

The Court shall have power to allow, from time to time, as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceedings, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The Court appointing such receiver(s) shall have exclusive jurisdiction of the corporation and its property, wherever situated.

#### 8.02.680 Qualification of Receivers

A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, domestic, and shall in all cases give such bond as the Court may direct with such sureties as the Court may require.

#### 8.02.690 Filing of Claims in Liquidation Proceedings

In proceedings to liquidate the assets and business of a corporation, the Court may require all creditors of the corporation to file with the Clerk of Court, or with the receiver, in such form as the Court may prescribe, proof under oath of their respective claims. If the Court requires the filing of claims it shall fix a date, which shall be not less than four (4) months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the Court may extend the time for the filing of claims. Creditors and claimants failing to file proofs or claims on or before the date so fixed may be barred, by order of the Court, from participating in the distribution of the assets of the Corporation.

#### 8.02.700 Discontinuance of Liquidation Proceedings

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists. In such event the Court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

#### 8.02.710 Decree of Involuntary Dissolution

In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders; or in the case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, all the property and assets have been applied so far as they will go to their payment, the Court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

#### 8.02.720 Filing of Decree Dissolution

In case the Court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such Court to cause a certified copy of the decree to be filed with the Tribal Treasurer. No fee shall be charged by the Tribal Treasurer for the filing thereof.

#### 8.02.730 Deposits with Tribal Treasurer

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or a shareholder who is unknown or cannot be found, or who are under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and be deposited with the Tribal Treasurer and shall be paid over to such creditor or shareholder or his legal representative upon proof satisfactory to the Tribal Treasurer of his rights thereto.

#### 8.02.740 Survival of Remedy After Dissolution

The dissolution of a corporation either:

- (a) By the issuance of a certificate of dissolution by the Tribal Treasurer; or
- (b) By a decree of the Court when the Court has not liquidated the assets and business of the corporation as provided in this Title; or
- (c) By expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing; or any liability incurred, prior to such dissolution action or other proceeding thereon if commenced within two (2) years after the date of such dissolution, any action or proceeding by or against the corporation in its corporate name.

The shareholders, directors, and officers shall have the power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved at the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two (2) years so as to extend its period of duration.

8.02.750 Annual Report of Domestic and Foreign Corporations

Each domestic corporation shall prepare, within the time prescribed by this Title, an annual report setting forth:

- (a) The name of the corporation;
- (b) The address of its registered office and the name of its registered agent;
- (c) A brief statement of the character of the business which the corporation is actually engaged;
- (d) The names and respective addresses of the directors and officers of the corporation;
- (e) A statement of the aggregate number of shares which the corporation has authority to issue and par value of the shares;
- (f) A statement of the aggregate number of issued shares;
- (g) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Title;
- (h) A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this Reservation, and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the twelve (12) months ended on the thirty-first (31st) day of December preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business on this Reservation.
- (i) If, on the thirty-first (31st) day of December preceding the time herein provided for the filing of such report, the corporation had not been in existence for a period of twelve (12) months, or in the case of a foreign corporation having not been authorized to transact business on this Reservation, as the case may be, and such thirty-first (31st) day of December. If all the property of the corporation is located in this Reservation and all of its business is transacted at or from places of business on this Reservation, or if the corporation elects to pay the annual franchise tax on the basis of its entire stated capital, then the information required by this subparagraph need not be set forth in such report; and
- (j) Such additional information as may be necessary or appropriate in order to enable the Tribal Treasurer to determine and assess the proper amount of franchise taxes payable by such corporation. Such annual report shall be made on forms prescribed and furnished by the Tribal Treasurer and the information therein contained shall be given as of the date of the execution of

the report, except as to the information required by subparagraphs (h), (i), and (j) which shall be given as of the close of business on the thirty-first (31st) day of December next preceding the date herein provided for the filing of such report. It shall be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer, and verified by the officer executing the report, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation and certified by such receiver or trustee.

8.02.760 Filing of Annual Report of Corporation

Such annual report of a corporation shall be delivered to the Tribal Treasurer, between the first day of January and the first day of March of each year, except that the first annual report of a corporation shall be filed between the first day of January and the first day of March preceding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the Tribal Treasurer.

If the Tribal Treasurer finds that such report conforms to law, he or she shall file the same. If he/she finds that it does not so conform, he/she shall promptly return the same to the corporation for any necessary correction, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this Title and returned to the Tribal Treasurer within thirty (30) days from the date on which it was mailed to the corporation by the Tribal Treasurer.

8.02.770 Fees, Franchise Taxes and Charges to be Collected by the Tribal Treasurer

The Tribal Treasurer shall charge corporations and collect from corporations in accordance with the provisions of this Title:

- (a) Fees for filing documents and issuing certificates;
- (b) Miscellaneous charges;
- (c) License fees; and
- (d) Franchise taxes.

8.02.780 Fees for Filing Documents and Issuing Certificates

The Tribal Treasurer shall charge and collect for:

- (a) Filing articles of incorporation and issuing a certificate of incorporation, \$175.00;
- (b) Filing articles of amendment and issuing a certificate of amendment, \$125.00;
- (c) Filing a restated articles of incorporation, \$125.00;

- (d) Filing a statement of change of address of registered office or change of registered agent, or both, \$50.00;
- (e) Filing a statement of reduction of stated capital, \$50.00;
- (f) Filing a statement of intent to dissolve, \$100.00;
- (g) Filing a statement of revocation of voluntary dissolution proceedings, \$50.00;
- (h) Filing articles of dissolution, \$50.00.

8.02.790 Miscellaneous Charges

The Tribal Treasurer shall charge and collect:

- (a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, .50 cents per page, and, \$5.00 for the certificate and affixing the seal thereto; and
- (b) At the time of service of process on him or her as resident agent of a corporation, \$25.00 which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

8.02.800 License Fees Payable by Domestic Corporations

The Tribal Treasurer shall charge and collect from each domestic corporation license fees, based on the number of shares which it will have authority to issue or the increase in the number shares it will have authority to issue, at the time of:

- (a) Filing articles of incorporation;
- (b) Filing articles of amendment increasing the number of authorized shares; and
- (c) Filing articles of merger or consolidation increasing the number of authorized shares which the surviving or new corporation, if a domestic corporation, will have the authority to issue above the aggregate number of shares which the constituent domestic corporations authorized to transact business on this reservation had authority to issue. The license fees shall be at the rate of ten (10) cents per share up to and including the first 10,000 authorized shares; 10,000 shares and twenty-five (25) cents per share for each authorized share in excess of 100,000 shares whether the shares are of par value or without par value.

The license fees payable on an increase in the number of authorized shares shall be imposed only on the increased number of shares, and the number of previously authorized shares shall be taken into account in determining the rate applicable to the increased number of authorized shares.

#### 8.02.810 Franchise Taxes Payable by Domestic Corporation

The Tribal Treasurer shall charge and collect from each domestic corporation an initial franchise tax at the time of filing its articles of incorporation at the rate of one-twelfth (1/12) of one-half (1/2) of the license fee payable by such corporation under the provisions of this Title at the time of filing its articles of incorporation, for each calendar month, or fraction thereof, between the date of the issuance of the certificate of incorporation by the Tribal Treasurer and the first day of July of the next succeeding calendar year.

The Tribal Treasurer shall charge and collect from each domestic corporation an annual franchise tax, payable in advance for the period from July 1st in each year to July 1st in the succeeding year, beginning July 1st in the calendar year in which such corporation is required to file its first annual report under this Title at the rate of one (1) per cent of the amount represented on this reservation of the stated capital of the corporation, as disclosed by the latest report filed by the corporation with the Tribal Treasurer.

The amount represented on this reservation of the stated capital of the corporation shall be that proportion of its stated capital which the sum of the value of its property located on this reservation and the gross amount of business transacted by it at or from places of business on this reservation bears to the sum of the value of all of its property, wherever transacted, except as follows:

- (a) If the corporation elects in its annual report in any year to pay its annual franchise tax on its entire stated capital, all franchise taxes accruing against the corporation after the filing of such annual report shall be assessed accordingly, until the corporation elects otherwise in an annual report for a subsequent year; and
- (b) If the corporation fails to file its annual report in any year within the time prescribed by this Title, the proportion of its stated capital represented on this reservation shall be deemed to be its entire stated capital, unless its annual report is thereafter filed and its franchise tax thereafter adjusted by the Tribal Treasurer in accordance with the provisions of this Title in which case the proportion shall likewise be adjusted to the same proportion that would have prevailed if the corporation had filed its annual report within the time prescribed by this Title.

#### 8.02.820 Assessment and Collection of Annual Franchise Taxes

It shall be the duty of the Tribal Treasurer to collect all annual franchise taxes and penalties imposed by, or assessed in accordance with this Title.

Between the first day of March and the first day of June of each year, the Tribal Treasurer shall assess against each corporation required to file an annual report in such year, the franchise tax payable by it for the period from July 1st of such year to July 1st of the succeeding year in accordance with the provisions of this Title. If it has failed to file its annual report within the time prescribed by this Title, the penalty imposed by this Title upon such corporation for its failure to do so; and shall mail a written notice to each corporation against which such tax is assessed, addressed to such corporation at its registered office on this Reservation notifying the corporation:

- (a) Of the amount of franchise tax assessed against it for the ensuing year and the amount of penalty, if any, assessed against it for failure to file its annual report;
- (b) That objections, if any, to such assessment will be heard by the officer making the assessment on or before the fifteenth day of June of such year, upon receipt of a request from the corporation; and
- (c) That such tax and penalty shall be payable to the Tribal Treasurer on the first day of July next succeeding the date of the notice. Failure to receive such notice shall not relieve the corporation of its obligation to pay the tax and penalty assessed, or invalidate the assessment thereof.

The Tribal Treasurer shall have power to hear and determine objections to any assessment and, after hearing, to change and modify and such assessment. In the event of any adjustment of franchise tax with respect to which a penalty has been assessed for failure to file an annual report, the penalty shall be adjusted in accordance with the provisions of this Title imposing such penalty.

All annual franchise taxes and all penalties for failure to file annual reports shall be due and payable on the first day of July each year. If the annual franchise tax assessed against any corporation subject to the provisions of this Title together with all penalties assessed thereon, shall not be paid to the Tribal Treasurer on or before the thirty-first day of July of the year in which such tax is due and payable, the Tribal Treasurer may institute an action against such corporation in the name of the Tribe, in any Court of competent jurisdiction, for the recovery of the amount of such franchise taxes and penalties, together with the cost of suit, and prosecute the same to final judgment.

For the purpose of endorsing collection, all annual franchise taxes assessed in accordance with the Title, and all penalties assessed thereon and all interest and costs that shall accrue in connection with the collection thereof, shall be a prior and first lien on the real and personal property of the corporation from and including the first day of July of the year when such franchise taxes become due and payable until such taxes, penalties and interests and costs have been paid.

#### 8.02.830 Penalties Imposed Upon Corporations

Each corporation that fails or refuses to file its annual report for any year within the time prescribed by this Title shall be subject to a penalty of ten percent (10%) of the amount of the franchise tax assessed against it for the period beginning July 1st of the year in which such report should have been filed. Such penalty shall be assessed by the Tribal Treasurer at the time of the assessment of the franchise tax as originally assessed against such corporation, thereafter adjusted in accordance with the provisions of this Title, the amount of the penalty shall be likewise adjusted to ten percent (10%) of that amount of the adjusted franchise tax; the amount of the franchise tax and the amount of the penalty shall be separately stated in any notice to the corporation with respect thereto.

If the franchise tax assessed in accordance with the provisions of this Title shall not be paid on or before the thirty-first day of July, it shall be deemed delinquent, and there shall be added a penalty of one percent (1%) for each month that the same is delinquent commencing with the month of August.

Each corporation that fails to or refuses to answer truthfully and fully within the time prescribed by this Title interrogatories propounded by the Tribal Treasurer in accordance with the provisions of this Title, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in an amount not to exceed five hundred dollars (\$500.00).

8.02.840 Penalties Imposed Upon Officers and Directors

Each officer and director of a corporation, who fails or refuses within the time prescribed by this Title, to answer truthfully and fully interrogatories propounded to him by the Tribal Treasurer in accordance with the provisions of this Title, or who signs any articles, statements, report, application, or other document filed with the Tribal Treasurer which is known to such officer or director to be false in any material aspect, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any amount not exceeding five hundred dollars (\$500.00).

8.02.850 Interrogatories by the Tribal Treasurer

The Tribal Treasurer may, upon affirmative vote of the Tribal Council, propound to any corporation, domestic or foreign, subject to the provisions of this Title and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this Title applicable to such corporation. Such interrogatories shall be answered within thirty (30) days after the mailing thereof, or within such additional time as shall be fixed by the Tribal Treasurer, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice-president, secretary, or assistant secretary thereof. The Tribal Treasurer need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and then if the answers disclose that such document is not in conformity with the provisions of this Title.

8.02.860 Information Disclosed by Interrogatories

Interrogatories propounded by the Tribal Treasurer and the answers thereto shall not be open to public inspection nor shall the Tribal Treasurer disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatory or the answers thereto are required for evidence in any criminal proceedings or in any other action by the Tribe.

Appeals from all final orders and judgments entered by the Tribal Court under this section in review of any ruling or decisions of the Tribal Treasurer may be taken as in other civil actions.

8.02.870 Certificates and Certified Copies to be Received in Evidence

All certificates issued by the Tribal Treasurer in accordance with the provisions of this Title and all copies of documents filed in his/her office in accordance with the provisions of this Title, when certified by him or her, shall be taken and received in all Courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Tribal Treasurer under the seal of the Tribe, as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all

courts, public offices and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

8.02.880 Forms to be Furnished by the Tribal Treasurer

All reports required by this Title to be filed in the office of the Tribal Treasurer shall be made on forms which shall be prescribed and furnished by the Tribal Treasurer. Forms for all other documents to be filed in the office of the Tribal Treasurer shall be furnished by the Tribal Treasurer on request therefore, but the use thereof, unless otherwise specifically prescribed in this Title, shall not be mandatory.

8.02.890 Greater Voting Requirements

Whenever, with respect to any action to be taken by the shareholders of a corporation require the vote or concurrence of a greater proportion of the shares than required by this Title, with respect to such action, the provisions of the articles of incorporation shall control.

8.02.900 Waiver of Notice

Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this Title or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof shall be in writing signed by the person or persons entitled to such notice.

8.02.910 Action by Members or Directors without a Meeting

Any action required by this Title to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting, if consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof

Such consent shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the Tribal Treasurer under this Title.

8.02.920 Effect of Invalidity of Part of this Title

If the Nisqually Tribal Courts shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this Title, such judgment or decree shall not effect, impair, invalidate, or nullify the remainder of this Title, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this Title so adjudged to be invalid or unconstitutional.

8.02.930 Jurisdiction of Nisqually Tribal Courts

The Courts of the Nisqually Tribe shall have jurisdiction over any corporation, its directions, officers or employees, organized under this Title for enforcement of this Title or for any matter having to do with the administration, operations or business of the Corporation.

## **TITLE 8 BUSINESS CORPORATIONS**

### **CHAPTER 8.50 - GOVERNMENTAL CORPORATIONS**

#### 8.50.010 Short title

This Chapter shall be known and may be cited as the Tribal Government Corporation Chapter.

#### 8.50.020 Applicability

All corporations which will be agencies and instrumentalities of the Nisqually Tribal Government shall conform to this Title and its amendments. No government corporation shall exist under Nisqually Tribal law not in conformance with this Title.

#### 8.50.030 Interpretation

The corporations organized and created under this Chapter shall be subject to Tribal law, this Chapter and, to the extent consistent with this Chapter and other tribal law, the Chapters ID, 2, 3, 4, 5, 6, 7, 8, 12, 13, 14, and 16 of the 1983 Revised Model Business Corporation Act, Annotated, as adopted by the Committee on Corporate Laws Of the American Bar Association. The right to repeal, alter or amend this Chapter at any time is expressly reserved.

#### 8.50.040 Purpose

For efficiency and wise stewardship, it is necessary for the management of the economic development of tribal resources to be separated from other governmental functions of the Tribe and placed within the responsibility of persons or entities different from the Council, so that commercial development may take place within, and be based upon, the sphere of the economic marketplace rather than within the sphere of tribal political concerns. Therefore, Tribal Government Corporation may be organized under this Title for any lawful purpose or purposes, except for banking and insurance, that the Tribe determines is in its best economic interest.

#### 8.50.050 Privileges and Immunities

The corporations established under this Chapter shall be considered to be governmental agencies and instrumentalities of the Tribe; and their officers and employees considered officers and employees of the Tribe, notwithstanding the fact that their work rules and conditions may differ from that of other tribal employees; carrying out responsibilities imposed upon the Council for economic advancement of the Tribe and their members by the Constitution and By-laws of the Nisqually Indian Tribe. Such corporations, their officers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe; including but not limited to, immunities from suit in federal and state courts, and federal and state taxation, or regulation, except as specifically set out in the corporate charters granted pursuant to this Chapter.

8.50.060 Tribal Taxation

All activities of corporations created under this Chapter shall be subject to taxation by the Tribe.

8.50.070 Subsidiary Corporation

Any corporation created pursuant to this Chapter may, by obtaining a charter from the Tribal Council pursuant to this Chapter, establish a subsidiary corporation in which the Tribe or the parent corporation retain not less than sixty percent of the voting stock of the subsidiary corporation. A subsidiary corporation and its officers and employees have all the same purposes, powers, privileges and immunities, as any other corporation established pursuant to this Chapter.

8.50.080 Ownership

Every corporation created pursuant to this Chapter shall have at all times at least sixty percent of its voting stock owned by the Tribe or a tribal corporation created pursuant to this Chapter. Shareholders at all times reserve the right unto themselves to alter, amend or append the Bylaws and Articles of Incorporation of a Government Corporation by majority vote of the Shareholders.

**HISTORICAL NOTE**

This section 8.50.080 amended by Tribal Council Resolution 84-2008, September 3, 2008.

8.50.090 Voting Stock—Alienation

No voting stock in any corporation created pursuant to this Chapter and owned by a corporation created pursuant to this Chapter may be alienated.

8.50.100 Organization

The Tribal Council shall by resolution appoint the initial, incorporating directors of all corporations created pursuant to this Chapter. The election or appointment of corporate officers and the election of subsequent directors shall be governed by the provisions of the charter of the corporation.

8.50.110 Powers, Duration

The powers of corporations created pursuant to this Chapter shall be set out in the charters of the corporations. The duration of corporations created under this Chapter shall be perpetual unless a different duration is stated in the charter.

8.50.120 Lands

Real property acquired by a corporation created pursuant to this Chapter may be transferred; where permitted by the federal law governing the ability of the Tribe to make such a transfer, to the ownership of the United States in trust for the Tribe and shall be by appropriate, lawful transfer be placed into the control of the corporation by the Tribe.

8.50.130 Tribal Courts—Jurisdiction, Enforcement of Chapter

Notwithstanding the immunity from suit conveyed upon corporations created pursuant to this Chapter, the provisions of this Chapter, the Model Corporations Act, tribal regulatory acts, or tribal enactments pursuant to this Chapter, may be enforced against any such corporation, parent or subsidiary, its directors or officers by an action in law or equity in the Nisqually Tribal Court, when brought by any member of the Council or a director of a parent corporation.

8.50.140 Agent

All corporations created under this Chapter shall publicly designate and maintain a registered agent for service of documents at the Nisqually Indian Reservation.

8.50.150 Assets

The assets of each and every corporation created under this Chapter shall be separate and distinct from those of the Tribe. In no case shall tribal assets not specifically pledged in a manner permitted by law be considered assets of a corporation created under this Chapter for any purpose.

8.50.160 Audit

Any corporation created under this Chapter shall be audited by an independent auditor at the close of each fiscal year. For purposes of this section, “fiscal year” shall be the same as the Tribe’s fiscal year.

The Council, by duly adopted resolution, may at any time require that any corporation created under this Chapter be audited by an independent auditor hired by the Council at any time and shall have the absolute right to require access to all corporate documents necessary for such an audit.

8.50.170 Annual Meeting, Annual Report

The board of directors and management of each corporation created pursuant to this Chapter shall hold at least one open meeting per year, on ten days public notice, within the boundaries of the Nisqually Indian Reservation, at which the board shall answer any questions asked of them by members of the General Council. Each board shall also file a full report of the financial and production activities of the corporation with the Tribal Council on an annual basis.

8.50.180 Contracts with Officers

Notwithstanding any other provision of this Chapter or charters or articles of incorporation granted pursuant to provisions of this Chapter, all directors or officers of any governmental corporation chartered or licensed under this Chapter, and any firm in which said directors or officers hold office, or are shareholders or owners, shall be disqualified from dealing or contracting with tribal governmental corporations, or subsidiaries thereof, as either a vendor,

purchaser, or otherwise; and such contracts or transactions shall be void, unless such contract or transaction has been fully disclosed to, and approved by, the Tribal Council; provided, this section shall not apply to the employment contracts of persons employed in full time, management positions, by a governmental corporation or a subsidiary thereof.

#### 8.50.190 Bonding

Notwithstanding any other provision of this Chapter, or charters or articles of incorporation (and supplementing by-laws) granted pursuant to provisions of this Chapter; all directors, officers, contractors and employees of any governmental corporation chartered or licensed under this Chapter who are: 1) Authorized, either individually or in conjunction with others, to expend funds on behalf of the governmental corporation or any of its subsidiaries or agencies, or 2) responsible for accounting for the funds of a governmental corporation or any of its subsidiaries or agencies; shall at all times be bonded or insured by the corporation to protect the assets of the corporation in an amount consistent with the financial responsibilities of the director, officer, contractor or employee. Such bonds or policies of insurance shall be obtained at the expense of the governmental corporation or the contractor.

No director, officer, contractor, or employee of a governmental corporation shall have authority under this Chapter, or a charter granted under this Chapter, to expend or account for corporate funds unless bonded or insured in compliance with this section. Any signature of a corporate director, officer, contractor or employee purporting to authorize expenditure of corporate funds shall be void if at the time the signature is given the director, officer, contractor or employee is not bonded or insured as required by this section.

#### 8.50.200 Severance Compensation

No corporation chartered under this Chapter shall pay any type of severance from unemployment compensation to any person.

#### 8.50.210 Record of Proceedings

All corporations chartered under this Chapter shall record the complete proceedings of every board of directors meeting and the verbatim, unapproved records of those proceedings shall be filed with the Treasurer of the Nisqually Tribal Council within twenty (20) days after the date of the board meeting; provided, that this section shall not require the publication to the Council of recordings of board executive sessions in which personnel, business strategy, or legal strategy is discussed as defined in NTC 1.01.090 (a)(i)-(iii) and (a)(vi).

#### 8.50.220 Board Meetings of Corporation

All regular board meetings of corporation chartered under this Chapter shall be conducted within the boundaries of the Nisqually Indian Reservation.

#### 8.50.230 Filing of Resolutions

All duly enacted resolutions of the board of directors of corporations chartered under this Chapter shall be filed within twenty (20) days of enactment with the Treasurer of the Nisqually Tribal Council. Resolutions with a confidential content shall be marked confidential and shall be subject to public disclosure only for good cause shown at a court of competent jurisdiction.

#### 8.50.240 Violation of Charter

After the date of enactment of this section, directors of corporations chartered under this Chapter found, at a fair and open hearing on the record called for the purpose of finding facts, by a quorum of the board of directors or by a quorum of the Tribal Council, to have willfully violated any provision of this Chapter or their corporate charter shall be terminated from corporate employment. For purposes of this hearing, a director accused of willful misconduct shall have a right to counsel.

#### 8.50.250 Term of Directors

After the date of enactment of this section no director of a corporation chartered under this Chapter shall be appointed by the Tribal Council to a term the length of which exceeds two years. This section is not intended to limit the number of terms to which a Director may be appointed.

#### 8.50.260 Duty of Loyalty

Directors and officers of corporations chartered under this Chapter when exercising their powers and duties under the corporate charter shall owe a fiduciary duty to both the corporation by which they are employed and to the Nisqually Indian Tribe and its members.

#### 8.50.270 Real Estate Purchase

Corporations chartered under this Chapter shall obtain approval from the Tribal Council for all real estate purchases. Real estate purchased by a corporation chartered under this Chapter shall be placed in the ownership of the United States in trust for the Nisqually Indian Tribe as soon as the legal status of the real estate makes them eligible under federal law to be taken into trust.

#### 8.50.280 Conflict of Interest

Directors and officers of all corporations chartered under this Chapter shall excuse themselves from voting or participating in any board discussion concerning an issue wherein the director or officer, or the immediate family of such director or officer, has a business or personal interest or conflict of interest. To knowingly fail to do so shall be a willful violation of this Title and subject to NTC 8.50.240.

8.50.290 Arbitration Agreements

Notwithstanding the immunity from suit conveyed upon corporations created pursuant to this Chapter, any arbitration agreement approved by a corporation created under this Chapter and any arbitration award made under such arbitration agreement shall be enforceable against such corporation exclusively in the Nisqually Tribal Court.

**CHAPTER 8.75**  
**NON-PROFIT CORPORATIONS**

8.75.010 Short Title

This Chapter shall be known and may be cited as the Nisqually Tribal Non-Profit Corporations Chapter.

**HISTORICAL NOTE**

Chapter 8.75 adopted by Tribal Council Resolution 2011-73, dated July 7, 2011.

8.75.020 Applicability

(a) All non-profit business entities privately chartered under Nisqually Tribal law shall conform to this Title and its amendments. No private non-profit corporation shall exist under Nisqually Tribal law not in conformance with this Title.

(b) The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not a non-profit corporation. This chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not a non-profit corporation.

(c) Except as otherwise provided in this chapter, this subpart shall be generally applicable to all non-profit corporations. The specific provisions of this chapter shall control over the general provisions of this Title. In the case of a non-profit corporation, references in this Title to "shares," "shareholder," "share register," "share ledger," "transfer book for shares," "number of shares entitled to vote" or "class of shares" shall mean memberships, member, membership register, membership ledger, membership transfer book, number of votes entitled to be cast or class of members, respectively. Except as otherwise provided in this article, a non-profit corporation may be simultaneously subject to this chapter and one or more other chapters of this Title.

8.75.030 Formation, Generally

(a) General rule—a non-profit corporation shall be formed in accordance with Title 8 (relating to business corporations generally) except that its articles shall contain: (1) a heading stating the name of the corporation and that it is a non-profit corporation, and (2) the provisions required by Section 8.75.050 (relating to contents of articles and other documents of non-profit corporations).

(b) Initial members—upon the filing of articles of a non-profit corporation, the subscribers to the minimum guaranteed capital of the corporation, if any, and the incorporators shall be the initial members of the corporation.

#### 8.75.040 Prohibitions

(a) A corporation organized under this Chapter shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation, including pensions, in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation, may make distribution to its members or others as permitted by this Chapter.

(b) No loans shall be made by a corporation organized under this Chapter to its directors or officers. The directors of a corporation who vote or assent to the making of a loan to a director or an officer of the corporation, and any officer participating in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(c) A corporation organized under this Chapter may confer benefits upon its members only in conformity with its purposes.

#### 8.75.050 Limitations on Private Foundations

A corporation which is a private foundation as defined in Section 509(a) of the Internal Revenue Code of 1954:

(a) Shall distribute such amounts for each taxable year at such time and in such manner as to avoid subjecting the corporation to tax under Section 4942 of the Code;

(b) Shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code;

(c) Shall not retain any excess business holdings as defined in Section 4943(c) of the Code;

(d) Shall not make any taxable expenditures as defined in Section 4944 of the Code;

(e) Shall not make any taxable expenditures as defined in Section 4945(d) of the Code;

All references in this section to sections of the Code shall be to such sections of the Internal Revenue Code of 1954 as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

#### 8.75.060 Remedial Formation

Any non-profit corporation existing at the time of passage of this Chapter shall reform its chartering documents and business practices to conform to this Chapter within 60 days of adoption by vote of the Tribal Council.

#### 8.75.070 Contents of articles and other documents of non-profit corporations

In lieu of required statements relating to shares or share structure, a non-profit corporation shall set forth in any document permitted or required to be filed under this Title the fact that the corporation is

organized on a non-stock basis. A non-stock corporation may, but need not, have a minimum guaranteed capital which shall be furnished by the subscribers thereto in such proportions as they may agree.

#### 8.75.080 Articles of Incorporation

The articles of incorporation shall set forth, in addition to the other requirements of this Title:

- (a) A heading stating the name of the corporation and that it is a non-profit corporation;
- (b) A statement that the corporation is organized on a non-stock basis; and
- (c) Such other changes, if any, that may be desired in the articles.

#### 8.75.090 Election of an existing business corporation to become a non-profit corporation

- (a) General rule—any business corporation may become a non-profit corporation under this Chapter by:
  - (i) Adopting a plan of conversion providing for the redemption by the corporation of all of its shares whether or not redeemable by the terms of its articles and adjusting its affairs so as to comply with the requirements of this Chapter applicable to non-profit corporations; and
  - (ii) Filing articles of amendment which shall conform with the requirements of this Chapter.
- (b) Procedure—the plan of conversion of the corporation into a non-profit corporation (which plan shall include the amendment of the articles shall be adopted in accordance with the requirements of Title 8 except that:
  - (i) The holders of shares of every class shall be entitled to vote on the plan regardless of any limitations stated in the articles or bylaws on the voting rights of any class;
  - (ii) The plan must be approved by two-thirds of the votes cast by all shares of each class;
  - (iii) If any shareholder of a business corporation that adopts a plan of conversion into a non-profit corporation objects to the plan of conversion and complies with the provisions of Title 8, the shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided; and
  - (iv) The plan shall not impose any additional liability upon any existing patron of the business of the corporation, whether or not that person becomes a member of the corporation pursuant to the plan, unless the patron expressly assumes such liability.

#### 8.75.100 Termination of non-profit corporation status

- (a) General rule—a non-profit corporation may terminate its status as such and cease to be subject to this chapter by:

(i) Adopting a plan of conversion providing for the issue of appropriate shares to its members and adjusting its affairs so as to comply with the requirements of this subpart applicable to business corporations that are not non-profit corporations.

(ii) Amending its articles to delete therefrom the additional provisions required or permitted by Title 8 to be stated in the articles of a non-stock corporation. The plan of conversion (which plan shall include the amendment of the articles required by this Chapter) shall be adopted in accordance with Title 8 except that:

A. The members of every class shall be entitled to vote on the plan regardless of any limitations stated in the articles or bylaws, or in a document evidencing membership, on the voting rights of any class; and

B. The plan must be approved by a majority of the votes cast by the members of each class.

(b) Increased vote requirements—the bylaws of a non-profit corporation adopted by the members may provide that on any amendment to terminate its status as a non-profit corporation, a vote greater than that specified in subsection (a) shall be required. If the bylaws contain such a provision, that provision shall not be amended, repealed or modified by any vote less than that required to terminate the status of the corporation as a non-profit corporation.

#### 8.75.110 Classes of membership

The bylaws of a non-profit corporation adopted by the members may vest in the board of directors the power to establish classes of membership and to fix the several rights and liabilities thereof.

#### 8.75.120 Evidence of membership; liability of members

(a) General rule—every member of record of a non-profit corporation shall be entitled to a written document evidencing his membership in the corporation. The document shall state:

(i) That the corporation is a non-profit corporation incorporated under the laws of this Tribe;

(ii) The name of the person to whom issued; and

(iii) The class of membership, if any, held by the member.

(b) Notice of variation in rights—if the membership of the corporation is divided into classes, the document shall set forth (or shall state that the corporation will furnish to any member, upon request and without charge) a full or summary statement of the special rights and liabilities of membership between classes. If a membership is not fully paid or if the member is otherwise liable to assessment, the document evidencing the membership shall so state.

(c) Liability—a subscriber to the minimum guaranteed capital of or member of a non-profit corporation shall not be under any liability to the corporation or any creditor thereof other than the obligations of

complying with the terms of the subscription to the minimum guaranteed capital, if any, and with the terms of the document evidencing his membership. Otherwise, the members of a non-profit corporation shall not be personally liable for the debts, liabilities, or obligations of the corporation.

(d) Dissenters rights—the document evidencing membership shall constitute a share certificate for the purposes of Title 8.

#### 8.75.130 Voting rights of members

Except as otherwise provided in a bylaw adopted by the members or in a written document evidencing membership, every member of record of a non-profit corporation shall have the right, at every meeting of members, to one vote.

#### 8.75.140 Director Conflict of Interest

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsections (b) or (c).

(b) A transaction in which a director of a non-profit corporation has a conflict of interest may be approved in advance by the vote of the board of directors or a committee of the board if:

(i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation.

(c) For purposes of this section, votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction.

(d) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

#### 8.75.150 Inapplicability of certain provisions to non-profit corporations

(a) Share structure—the provisions of Title 8 (relating to shares and other securities) shall not be applicable to a non-profit corporation. A non-profit corporation shall not create or issue shares.

(b) Corporate finance—a patronage rebate or dividend that is, or is equivalent to, a reduction in the charge made by a non-profit corporation to a member for goods or services shall not constitute a dividend or distribution within the meaning of Title 8 (relating to distributions to shareholders).

#### 8.75.160 Distribution of Assets

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

- (a) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provisions shall be made therefore;
- (b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;
- (c) Assets received and held by the corporation subject to limitations, permitting their use only for charitable, religious, missionary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Chapter;
- (d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others; and
- (e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as may be specified if a plan of distribution is adopted as provided in this Chapter.

#### 8.75.170 Plan for Distribution

A plan providing for the distribution of assets, not inconsistent with the provisions of this Chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Chapter requires a plan for distribution, in the following manner:

- (a) Where there are members having voting rights the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at the meeting of members having voting rights, which may be either an annual or special meeting. Written or printed notice stating that the purpose, or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such a meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(b) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceeding shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office; and

(c) Upon adoption of such resolution by the members, or by the board of directors, where there are no members or no members with voting rights, the corporation may there upon again conduct its affairs. If the articles of dissolution have been delivered to the Tribal Secretary, notice of such revocation shall be given to them in writing.

**TITLE 8  
BUSINESS CORPORATIONS**

**CHAPTER III – CONSTRUCTION AND SEVERABILITY**

8.100.010 Severability

If any provision of this Title, or its application to any person, corporation or circumstance is held invalid, the remainder of the Title, or the application to other persons or circumstances is not affected.

8.100.020 Repealer

This Title is to be interpreted to supersede and replace all conflicting laws, rules or regulations of the Nisqually Indian Tribe.

**TITLE 8  
BUSINESS CORPORATIONS**

**CHAPTER IV – NISQUALLY LIMITED LIABILITY COMPANIES**

8.200 GENERAL PROVISIONS

8.200.010 Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Certificate of formation" means the certificate referred to in NTC 8.210.010, and the certificate as amended.

(b) "Event of dissociation" means an event that causes a person to cease to be a member as provided in NTC 8.220.040.

(c) "Foreign limited liability company" means an entity that is formed under:

(i) The limited liability company laws of any Tribe or state other than this Tribe; or

(ii) The laws of any foreign country that is: (i) An unincorporated association, (ii) formed under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and (iii) not required, in order to transact business or conduct affairs within this Tribe, to be registered or qualified under NTC 8, or any other chapter of the NTC authorizing the formation of a domestic entity and the registration or qualification in this Tribe of similar entities formed under the laws of a jurisdiction other than this Tribe.

(d) "Limited liability company" and "domestic limited liability company" means a limited liability company having one or more members that is organized and existing under this chapter.

(e) "Limited liability company agreement" means any written agreement of the members, or any written statement of the sole member, as to the affairs of a limited liability company and the conduct of its business which is binding upon the member or members.

(f) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(g) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its certificate of formation that it is to be managed by managers, the person, or persons

designated in accordance with NTC 8.230.010(2).

(h) "Member" means a person who has been admitted to a limited liability company as a member as provided in NTC 8.220.010 and who has not been dissociated from the limited liability company.

(i) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, or any other legal or commercial entity.

(j) "Professional limited liability company" means a limited liability company which is organized for the purpose of rendering professional service and whose certificate of formation sets forth that it is a professional limited liability company subject to NTC 8.200.100.

(k) "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.

**Note: Effective date – March 31, 2011:** "This act is necessary for the support of the Tribal government and its existing public institutions, and shall take effect March 31, 2011."

#### **HISTORICAL NOTE**

This chapter was enacted by Tribal Council Resolution 26-2011, dated March 22, 2011.

#### 8.200.020 Standards for electronic filing — Rules

The Tribal Council Secretary may adopt rules to facilitate electronic filing. The rules will detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the Secretary will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted.

#### 8.200.030 Name set forth in certificate of formation

(a) The name of each limited liability company as set forth in its certificate of formation:

(i) Must contain the words "Limited Liability Company," the words "Limited Liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC";

(ii) Except as provided in subsection (1)(d) of this section, may contain the name of a member or manager;

(iii) Must not contain language stating or implying that the limited liability company is organized for a purpose other than those permitted by Tribal law;

(iv) Must not contain any of the words or phrases: "Bank," "banking," "banker," "trust,"

"cooperative," "partnership," "corporation," "incorporated," or the abbreviations "corp.," "Ltd.," or "inc.," or "LP," "L.P.," "LLP," "L.L.P.," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(v) Must be distinguishable upon the records of the Secretary from the names of pre-existing Tribal companies, and the names of any limited liability company reserved, registered, or formed under the laws of this Tribe or qualified to do business as a foreign limited liability company in this state.

(b) A limited liability company may apply to the Secretary authorization to use any name which is not distinguishable upon the records of the Secretary from one or more of the names described in subsection (1)(e) of this section. The Secretary shall authorize use of the name applied for if the other corporation, limited partnership, limited liability partnership, or limited liability company consents in writing to the use and files with the Secretary documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the Secretary from the name of the applying limited liability company.

(c) A name shall not be considered distinguishable upon the records of the Secretary by virtue of:

(i) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "inc.," "co.," "Ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," or "L.L.C.";

(ii) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(iii) Punctuation, capitalization, or special characters or symbols in the same name; or

(iv) Use of abbreviation or the plural form of a word in the same name.

(d) This chapter does not control the use of assumed business names or "trade names."

#### 8.200.040      Reserved name — Registered name

(a) Reserved Name.

(i) A person may reserve the exclusive use of a limited liability company name by delivering an application to the Secretary of for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary finds that the limited liability company name applied for is available, the Secretary shall reserve the name for the

applicant's exclusive use for a nonrenewable one hundred eighty-day period.

(ii) The owner of a reserved limited liability company name may transfer the reservation to another person by delivering to the Secretary a signed notice of the transfer that states the name and address of the transferee.

(b) Registered Name.

(i) A foreign limited liability company may register its name if the name is distinguishable upon the records of the Secretary.

(ii) A foreign limited liability company registers its name by delivering to the Secretary for filing an application that:

A. Sets forth its name and the Tribe, state or country and date of its organization; and

B. Is accompanied by a certificate of existence, or a document of similar import, from the Tribe, state or country of organization.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(d) A foreign limited liability company whose registration is effective may renew it for successive years by delivering to the Secretary for filing a renewal application, which complies with the requirements of (b) of this subsection, between October 1st and December 31st of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign limited liability company whose registration is effective may thereafter qualify as a foreign limited liability company under the registered name, or consent in writing to the use of that name by a limited liability company thereafter organized under this chapter, by a corporation thereafter formed under NTC Title 8, Chapters I or II, by a limited partnership thereafter formed this Chapter, or by another foreign limited liability company, foreign corporation, or foreign limited partnership thereafter authorized to transact business in this state. The registration terminates when the domestic limited liability company is organized, the domestic corporation is incorporated, or the domestic limited partnership is formed, or the foreign limited liability company qualifies or consents to the qualification of another foreign limited liability company, corporation, or limited partnership under the registered name.

8.200.050 Registered office — Registered agent

(a) Each limited liability company shall continuously maintain within this Tribe:

(i) A registered office, which may but need not be a place of its business within this Tribe's Reservation. The registered office shall be at a specific geographic location within this Tribe's

Reservation, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the Secretary may permit the use of a post office address in conjunction with the registered office address if the limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(ii) A registered agent for service of process on the limited liability company, which agent may be either an individual whose business office is identical with the limited liability company's registered office, or a domestic corporation, limited partnership, or limited liability company, or a government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, or a foreign corporation, limited partnership, or limited liability company authorized to do business within this Tribe having a business office identical with such registered office; and

(iii) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the Secretary in such form as the Secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent.

(b) A limited liability company may change its registered office or registered agent by delivering to the Secretary for filing a statement of change that sets forth:

(i) The name of the limited liability company;

(ii) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (1) of this section;

(iii) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(iv) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(c) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any limited liability company for which the agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary for filing a statement that complies with the requirements of subsection (2) of this section and recites that the limited liability company has been notified of the change.

(d) A registered agent may resign as agent by signing and delivering to the Secretary for filing a statement that the registered office is also discontinued. After filing the statement the Secretary shall mail a copy of the statement to the limited liability company at its principal office. The

agency appointment is terminated, and the registered office discontinued is so provided, on the thirty-first day after the date on which the statement was filed.

8.200.060 Service of process on domestic limited liability companies

(a) A limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

(b) The Secretary shall be an agent of a limited liability company upon whom any such process, notice, or demand may be served if:

(i) The limited liability company fails to appoint or maintain a registered agent in this state;  
or

(ii) The registered agent cannot with reasonable diligence be found at the registered office.

(b) Service on the Secretary of any such process, notice, or demand shall be made by delivering to and leaving with the Secretary, or with any duly authorized clerk of the Secretary's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the Secretary, the Secretary shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the limited liability company at its principal place of business as it appears on the records of the Secretary. Any service so had on the Secretary shall be returnable in not less than thirty days.

(c) The Secretary shall keep a record of all processes, notices, and demands served upon the Secretary under this section, and shall record therein the time of such service and the Secretary action with reference thereto.

(d) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

8.200.070 Nature of business permitted — Powers

(a) Every limited liability company formed under this chapter may carry on any lawful business or activity unless a more limited purpose is set forth in the certificate of formation. A limited liability company may not be formed under this chapter for the purposes of engaging in business as an insurer.

(b) Unless this chapter, its certificate of formation, or its limited liability company agreement provides otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs.

8.200.080 Business transactions of member or manager with the limited liability company

Except as provided in a limited liability company agreement, a member or manager may lend

money to, act as a surety, guarantor, or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

#### 8.200.090 Limitation of liability and indemnification

(a) The limited liability company agreement may contain provisions not inconsistent with law that:

(i) Eliminate or limit the personal liability of a member or manager to the limited liability company or its members for monetary damages for conduct as a member or manager, provided that such provisions shall not eliminate or limit the liability of a member or manager for acts or omissions that involve intentional misconduct or a knowing violation of law by a member or manager, or for any transaction from which the member or manager will personally receive a benefit in money, property, or services to which the member or manager is not legally entitled; or

(ii) Indemnify any member or manager from and against any judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which an individual is a party because he or she is, or was, a member or a manager, provided that no such indemnity shall indemnify a member or a manager from or on account of acts or omissions of the member or manager finally adjudged to be intentional misconduct or a knowing violation of law by the member or manager, or any transaction with respect to which it was finally adjudged that such member or manager received a benefit in money, property, or services to which such member or manager was not legally entitled.

(b) To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating thereto to a limited liability company or to another member or manager (a) any such member or manager acting under a limited liability company agreement shall not be liable to the limited liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreement, and (b) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

#### 8.200.100 Professional limited liability companies

(a) A person or group of persons licensed or otherwise legally authorized to render professional services within this or any other Tribe may organize and become a member or members of a professional limited liability company under the provisions of this chapter for the purposes of rendering professional service. A "professional limited liability company" is subject to all the provisions of NTC Title 8 that apply to a professional corporation, and its managers, members, agents, and employees shall be subject to all the provisions of NTC Title 8 that apply to the directors, officers, shareholders, agents, or employees of a professional corporation, except as provided otherwise in this section. Nothing in this section prohibits a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this

Tribe from becoming a member of a professional limited liability company organized for the purpose of rendering the same professional services. Nothing in this section prohibits a professional limited liability company from rendering professional services outside this Tribe through individuals who are not duly licensed or otherwise legally authorized to render such professional services within this state. Persons engaged in a profession and otherwise meeting the requirements of this chapter may operate under this chapter as a professional limited liability company so long as each member personally engaged in the practice of the profession in this Tribe is duly licensed or otherwise legally authorized to practice the profession in this Tribe and:

(i) At least one manager of the company is duly licensed or otherwise legally authorized to practice the profession in this state of Washington; or

(ii) Each member in charge of an office of the company in this Tribe is duly licensed or otherwise legally authorized to practice the profession within the state of Washington.

(b) If the company's members are required to be licensed to practice such profession, and the company fails to maintain for itself and for its members practicing in this Tribe a policy of professional liability insurance, bond, or other evidence of financial responsibility of a kind designated by rule by the Tribe and in the amount of at least one million dollars or a greater amount as the Tribe may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the business, then the company's members are personally liable to the extent that, had the insurance, bond, or other evidence of responsibility been maintained, it would have covered the liability in question.

(c) For purposes of applying the provisions of NTC Title 8 to a professional limited liability company, the terms "director" or "officer" means manager, "shareholder" means member, "corporation" means professional limited liability company, "articles of incorporation" means certificate of formation, "shares" or "capital stock" means a limited liability company interest, "incorporator" means the person who executes the certificate of formation, and "bylaws" means the limited liability company agreement.

(d) The name of a professional limited liability company must contain either the words "Professional Limited Liability Company," or the words "Professional Limited Liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC" provided that the name of a professional limited liability company organized to render dental services shall contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C." or "PLLC."

(e) Subject to the provisions of section 8.260 of this chapter, the following may be a member of a professional limited liability company and may be the transferee of the interest of an ineligible person or deceased member of the professional limited liability company:

(i) A professional corporation, if its shareholders, directors, and its officers other than the Secretary and the treasurer, are licensed or otherwise legally authorized to render the same specific professional services as the professional limited liability company; and

(ii) Another professional limited liability company, if the managers and members of both professional limited liability companies are licensed or otherwise legally authorized to render the same specific professional services.

8.200.110 Member agreements

In addition to agreeing among themselves with respect to the provisions of this chapter, the members of a limited liability company or professional limited liability company may agree among themselves to any otherwise lawful provision governing the company which is not in conflict with this chapter. Such agreements include, but are not limited to, buy-sell agreements among the members and agreements relating to expulsion of members.

8.200.120 Membership residency

Nothing in this chapter requires a limited liability company or a professional limited liability company to restrict membership to persons residing in or engaging in business within this Tribe's Reservation.

8.200.130 Piercing the veil

Members of a limited liability company shall be personally liable for any act, debt, obligation, or liability of the limited liability company to the extent that shareholders of a Nisqually business corporation would be liable in analogous circumstances. In this regard, the court may consider the factors and policies set forth in established case law with regard to piercing the corporate veil, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any act, debt, obligation, or liability of the limited liability company if the certificate of formation and limited liability company agreement do not expressly require the holding of meetings of members or managers.

8.210 FORMATION: CERTIFICATE OF FORMATION, AMENDMENT, FILING AND EXECUTION

8.210.010 Certificate of formation

(a) In order to form a limited liability company, one or more persons must execute a certificate of formation. The certificate of formation shall be filed in the office of the Secretary and set forth:

(i) The name of the limited liability company;

(ii) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by NTC 8.200.020;

- (iii) The address of the principal place of business of the limited liability company;
- (iv) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve;
- (v) If management of the limited liability company is vested in a manager or managers, a statement to that effect;
- (vi) Any other matters the members decide to include therein; and
- (vii) The name and address of each person executing the certificate of formation.

(a) Effect of filing:

- (i) Unless a delayed effective date is specified, a limited liability company is formed when its certificate of formation is filed by the Secretary. A delayed effective date for a certificate of formation may be no later than the ninetieth day after the date it is filed.
- (ii) The Secretary's filing of the certificate of formation is conclusive proof that the persons executing the certificate satisfied all conditions precedent to the formation.
- (iii) A limited liability company formed under this chapter shall be a separate legal entity.

8.210.020 Amendment to certificate of formation

(a) A certificate of formation is amended by filing a certificate of amendment thereto with the Secretary. The certificate of amendment shall set forth:

- (i) The name of the limited liability company; and
  - (ii) The amendment to the certificate of formation.
- (b) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, shall promptly amend the certificate of formation.
- (c) A certificate of formation may be amended at any time for any other proper purpose.
- (d) Unless otherwise provided in this chapter or unless a later effective date (which shall be a date not later than the ninetieth day after the date it is filed) is provided for in the certificate of amendment, a certificate of amendment shall be effective when filed by the Secretary.

8.210.030 Execution

(a) Each document required by this chapter to be filed in the office of the Secretary shall be

executed in the following manner:

(i) Each original certificate of formation must be signed by the person or persons forming the limited liability company;

(ii) A reservation of name may be signed by any person;

(iii) A transfer of reservation of name must be signed by, or on behalf of, the applicant for the reserved name;

(iv) A registration of name must be signed by any member or manager of the foreign limited liability company;

(v) A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members;

(vi) A certificate of dissolution must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to NTC 8.270.070(3);

(vii) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited liability company, limited partnership, or corporation; and

(viii) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the Tribe must be signed by any member or manager of the foreign limited liability company.

(b) Any person may sign a certificate, articles of merger, limited liability company agreement, or other document by an attorney-in-fact or other person acting in a valid representative capacity, so long as each document signed in such manner identifies the capacity in which the signator signed.

(c) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the Secretary.

(d) The execution of a certificate or articles of merger by any person constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

8.210.040 Execution, amendment, or cancellation by judicial order

(a) If a person required to execute a certificate required by this chapter fails or refuses to do so,

any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary to record an appropriate certificate.

(b) If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the limited liability company agreement or amendment thereof. If the court finds that the limited liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

#### 8.210.050 Filing

(a) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, of the certificate of formation or any other document required to be filed pursuant to this chapter, except as set forth under NTC 8.210.070 or unless a duplicate is not required under rules adopted under NTC 8.200.020, shall be delivered to the Secretary . If the Secretary determines that the documents conform to the filing provisions of this chapter, he or she shall, when all required filing fees have been paid:

(i) Endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(ii) Retain the signed original in the Secretary's files; and

(iii) Return the duplicate copy to the person who filed it or the person's representative.

(b) If the Secretary is unable to make the determination required for filing by subsection (1) of this section at the time any documents are delivered for filing, the documents are deemed to have been filed at the time of delivery if the Secretary subsequently determines that:

(i) The documents as delivered conform to the filing provisions of this chapter; or

(ii) Within twenty days after notification of nonconformance is given by the Secretary to the person who delivered the documents for filing or the person's representative, the documents are brought into conformance.

(c) If the filing and determination requirements of this chapter are not satisfied completely within the time prescribed in subsection (2)(b) of this section, the documents shall not be filed.

(d) Upon the filing of a certificate of amendment (or judicial decree of amendment) or restated certificate in the office of the Secretary , or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein.

8.210.060 Restated certificate

(a) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having theretofore been filed with the Secretary one or more certificates or other instruments pursuant to any of the sections referred to in this chapter and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

(b) If a restated certificate of formation merely restates and integrates but does not amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this chapter, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in NTC 8.210.050 in the office of the Secretary . If a restated certificate restates and integrates and also amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in NTC 8.210.050 in the office of the Secretary .

(c) A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of formation with the Secretary , and the future effective date (which shall be a date not later than the ninetieth day after the date it is filed) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(d) Upon the filing of a restated certificate of formation with the Secretary, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

(e) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

8.210.070 Initial and annual reports

(a) Each domestic limited liability company, and each foreign limited liability company authorized to transact business in this state, must deliver to the Secretary for filing, both initial and annual reports that set forth:

(i) The name of the company and the Tribe, state or country under whose law it is organized;

(ii) The street address of its registered office and the name of its registered agent at that office in this state;

(iii) In the case of a foreign company, the address of its principal office in the Tribe, state or country under the laws of which it is organized;

(iv) The address of the principal place of business of the company;

(v) The names and addresses of the company's members, or if the management of the company is vested in a manager or managers, then the name and address of its manager or managers;

(vi) A brief description of the nature of its business.

(b) Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the company.

(c) A company's initial report must be delivered to the Secretary within one hundred twenty days of the date on which a domestic company's certificate of formation was filed, or on which a foreign company's application for registration was submitted. Subsequent annual reports must be delivered to the Secretary on a date determined by the Secretary, and at such additional times as the company elects.

(d)(i) The Secretary may allow a company to file an initial or annual report through electronic means. If allowed, the Secretary must adopt rules detailing the circumstances under which the electronic filing of the reports is permitted and how the reports may be filed.

(ii) For purposes of this section only, a person executing an electronically filed annual report may deliver the report to the office of the Secretary without a signature and without an exact or conformed copy, but the person's name must appear in the electronic filing as the person executing the filing, and the filing must state the capacity in which the person is executing the filing.

## 8.220 MEMBERS

### 8.220.010 Admission of members

(a) In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

(i) The formation of the limited liability company; or

(ii) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when the person's admission is reflected in the records of the limited liability company.

(b) After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(i) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; or

(ii) In the case of an assignee of a limited liability company interest who meets the conditions for membership set forth in NTC 8.260.040(1), at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when any such assignee's admission as a member is reflected in the records of the limited liability company.

### 8.220.020 Voting and classes of membership

(a) Except as provided in this chapter, or in the limited liability company agreement, and subject to subsection (2) of this section, the affirmative vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to NTC 8.220.050) of the contributions made, or required to be made, by all members shall be necessary for actions requiring member approval.

(b) Except as provided in the limited liability company agreement, the affirmative vote, approval, or consent of all members shall be required to:

(i) Amend the limited liability company agreement; or

(ii) Authorize a manager, member, or other person to do any act on behalf of the limited liability company that contravenes the limited liability company agreement, including any provision thereof which expressly limits the purpose, business, or affairs of the limited liability

company or the conduct thereof.

(c) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(d) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. If the limited liability company agreement so provides, voting by members may be on a per capita, number, profit share, class, group, or any other basis.

(e) A limited liability company agreement which contains provisions related to voting rights of members may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

#### 8.220.030 Liability of members and managers to third parties

(a) Except as otherwise provided by this chapter, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations, and liabilities of the limited liability company; and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation, or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(b) A member or manager of a limited liability company is personally liable for his or her own torts.

#### 8.220.040 Events of dissociation

(a) A person ceases to be a member of a limited liability company, and the person or its successor in interest attains the status of an assignee as set forth in NTC 8.260.020(2), upon the occurrence of one or more of the following events:

(i) The member dies or withdraws by voluntary act from the limited liability company as

provided in subsection (3) of this section;

(ii) The member ceases to be a member as provided in NTC 8.260.020(2)(b) following an assignment of all the member's limited liability company interest;

(iii) The member is removed as a member in accordance with the limited liability company agreement;

(iv) Unless otherwise provided in the limited liability company agreement, or with the written consent of all other members at the time, the member (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order for relief in bankruptcy proceedings; (iv) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of the nature described in (d) (i) through (iv) of this subsection; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(v) Unless otherwise provided in the limited liability company agreement, or with the consent of all other members at the time, one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety days after the expiration of any stay, the appointment is not vacated;

(vi) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member who is an individual, the entry of an order by a court of competent jurisdiction adjudicating the member incapacitated;

(vii) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is another limited liability company, the dissolution and commencement of winding up of such limited liability company;

(viii) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period authorized for application for reinstatement; or

(ix) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a limited partnership, the dissolution and commencement of winding up of such limited partnership.

(b) The limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(c) A member may withdraw from a limited liability company at the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the time for the dissolution and commencement of winding up of the limited liability company, without the written consent of all other members at the time.

8.220.050      Records and information

(a) A limited liability company shall keep at its principal place of business the following:

(i) A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any;

(ii) A copy of its certificate of formation and all amendments thereto;

(iii) A copy of its current limited liability company agreement and all amendments thereto, and a copy of any prior agreements no longer in effect;

(iv) Unless contained in its certificate of formation or limited liability company agreement, a written statement of:

(v) The amount of cash and a description of the agreed value of the other property or services contributed by each member (including that member's predecessors in interest), and which each member has agreed to contribute;

(vi) The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made; and

(vii) Any right of any member to receive distributions which include a return of all or any part of the member's contribution.

(viii) A copy of the limited liability company's federal, state, and local tax returns and reports, if any, for the three most recent years; and

(ix) A copy of any financial statements of the limited liability company for the three most recent years.

(b) The records required by subsection (1) of this section to be kept by a limited liability company are subject to inspection and copying at the reasonable request, and at the expense, of any member during ordinary business hours. A member's agent or attorney has the same inspection and copying rights as the member.

(c) Each manager shall have the right to examine all of the information described in subsection (1) of this section for a purpose reasonably related to his or her position as a manager.

(d) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(e) Any action to enforce any right arising under this section shall be brought in the Tribal Courts.

#### 8.220.060 Remedies for breach of limited liability company agreement by member

A limited liability company agreement may provide that (1) a member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

### 8.230 MANAGEMENT AND MANAGERS

#### 8.230.010 Management

(a) Unless the certificate of formation vests management of the limited liability company in a manager or managers: (a) Management of the business or affairs of the limited liability company shall be vested in the members; and (b) each member is an agent of the limited liability company for the purpose of its business and the act of any member for apparently carrying on in the usual way the business of the limited liability company binds the limited liability company unless the member so acting has in fact no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority. Subject to any provisions in the limited liability company agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.

(b) If the certificate of formation vests management of the limited liability company in one or more managers, then such persons shall have such power to manage the business or affairs of the limited liability company as is provided in the limited liability company agreement. Unless otherwise provided in the limited liability company agreement, such persons:

(i) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to NTC 8.220.050) of the contributions made, or required to be made, by all members at the time of such action;

(ii) Need not be members of the limited liability company or natural persons; and

(iii) Unless they have been earlier removed or have earlier resigned, shall hold office until

their successors shall have been elected and qualified.

(c) If the certificate of formation vests management of the limited liability company in a manager or managers, no member, acting solely in the capacity as a member, is an agent of the limited liability company.

8.230.020 Liability of managers and members

Unless otherwise provided in the limited liability company agreement:

(a) A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless such act or omission constitutes gross negligence, intentional misconduct, or a knowing violation of law.

(b) Every member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by him or her without the consent of a majority of the disinterested managers or members, or other persons participating in the management of the business or affairs of the limited liability company from (a) any transaction connected with the conduct or winding up of the limited liability company or (b) any use by him or her of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to him or her as a result of his or her status as manager or member.

8.230.030 Manager — Members' rights and duties

A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of his or her participation in the limited liability company as a member.

8.230.040 Voting and classes of managers

(a) Unless the limited liability company agreement provides otherwise, the affirmative vote, approval, or consent of more than one-half by number of the managers shall be required to decide any matter connected with the business and affairs of the limited liability company.

(b) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company

agreement a class or group of limited liability company interests that was not previously outstanding.

(c) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. If the limited liability company agreement so provides, voting by managers may be on a financial interest, class, group, or any other basis.

(d) A limited liability company agreement which contains provisions related to voting rights of managers may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

#### 8.230.050 Remedies for breach of limited liability company agreement by manager

A limited liability company agreement may provide that (1) a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or specified consequences.

#### 8.230.060 Reliance on reports and information by member or manager

In discharging the duties of a manager or a member, a member or manager of a limited liability company is entitled to rely in good faith upon the records of the limited liability company and upon such information, opinions, reports, or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

#### 8.230.070 Resignation of manager

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement,

in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager.

#### 8.230.080 Loss of sole remaining manager

In the event of the death, resignation, or removal of the sole remaining manager, or if one of the events described in NTC 8.220.040(1) (d) through (i) occurs with regard to the sole remaining manager, and unless the limited liability company agreement provides otherwise, the limited liability company shall become member-managed unless one or more managers are appointed by majority vote of the members within ninety days after the occurrence of such an event.

### 8.240 FINANCE

#### 8.240.010 Form of contribution

The contribution of a member to a limited liability company may be made in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

#### 8.240.020 Liability for contribution

(a) Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to NTC 8.220.050) of the contribution that has not been made. This option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(b) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after either the certificate of formation, limited liability company agreement or an amendment thereto, or records required to be kept under NTC 8.220.050 reflect the obligation, and before the amendment of any thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability

company prior to the time the call occurs.

(c) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of nondefaulting members, a forced sale of the member's limited liability company interest, forfeiture of the member's limited liability company interest, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's limited liability company interest by appraisal or by formula and redemption or sale of the member's limited liability company interest at such value, or other penalty or consequence.

#### 8.240.030 Allocation of profits and losses

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated in proportion to the agreed value (as stated in the records of the limited liability company required to be kept pursuant to NTC 8.220.050) of the contributions made, or required to be made, by each member.

#### 8.240.040 Allocation of distributions

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made in proportion to the agreed value (as stated in the records of the limited liability company required to be kept pursuant to NTC 8.220.050) of the contributions made, or required to be made, by each member.

### 8.250 DISTRIBUTIONS AND RESIGNATION

#### 8.250.010 Interim distributions

Except as provided in this article, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before the member's dissociation from the limited liability company and before the dissolution and winding up thereof.

#### 8.250.020 Distribution on event of dissociation

Unless otherwise provided in the limited liability company agreement, upon the occurrence of an event of dissociation under NTC 8.220.040 which does not cause dissolution (other than an event of dissociation specified in NTC 8.220.040 (1)(b) where the dissociating member's assignee is admitted as a member), a dissociating member (or the member's assignee) is entitled

to receive any distribution to which an assignee would be entitled.

8.250.030 Distribution in-kind

Except as provided in a limited liability company agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in-kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset which is equal to the percentage in which he or she shares in distributions from the limited liability company.

8.250.040 Right to distribution

Subject to NTC 8.250.050 and 8.270.090, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

8.250.050 Limitations on distribution

(a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution (i) the limited liability company would not be able to pay its debts as they became due in the usual course of business, or (ii) all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

(b) A member who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (3) of this section, this subsection (2) shall not affect any obligation or liability of a member under a limited liability company agreement or other applicable law for the amount of a distribution.

(c) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action

to recover the distribution from such member is commenced prior to the expiration of the said three-year period and an adjudication of liability against such member is made in the said action.

## 8.260 ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

### 8.260.010 Nature of limited liability company interest — Certificate of interest

(a) A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

(b) A limited liability company agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

### 8.260.020 Assignment of limited liability company interest

(a) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except:

(i) Upon the approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(ii) As provided in a limited liability company agreement.

(b) Unless otherwise provided in a limited liability company agreement:

(i) An assignment entitles the assignee to share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(ii) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.

(c) For the purposes of this chapter, unless otherwise provided in a limited liability company agreement:

(i) The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the limited liability company interest of a member shall not be deemed to be an assignment of the member's limited liability company interest, but a foreclosure or execution sale or exercise of similar rights with respect to all of a member's limited liability company interest shall be deemed to be an assignment of the member's limited liability company interest to the transferee pursuant to such foreclosure or execution sale or exercise of similar rights;

(ii) Where a limited liability company interest is held in a trust or estate, or is held by a trustee, personal representative, or other fiduciary, the transfer of the limited liability company interest, whether to a beneficiary of the trust or estate or otherwise, shall be deemed to be an assignment of such limited liability company interest, but the mere substitution or replacement of the trustee, personal representative, or other fiduciary shall not constitute an assignment of any portion of such limited liability company interest.

(d) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

#### 8.260.030 Rights of judgment creditor

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest.

#### 8.260.040 Right of assignee to become member

(a) An assignee of a limited liability company interest may become a member upon:

(i) The approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(ii) Compliance with any procedure provided for in the limited liability company agreement.

(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. An assignee who becomes a member is liable for the obligations of his or her assignor to make contributions as provided in NTC 8.240.020, and for the obligations of his or her assignor under article VI of this chapter.

(c) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his or her liability to a limited liability company under articles V and VI of this chapter.

### 8.270 DISSOLUTION

#### 8.270.010 Dissolution

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

(a) The dissolution date, if any, specified in the certificate of formation. If a dissolution date is not specified in the certificate of formation, the limited liability company's existence will continue until the first to occur of the events described in subsections (2) through (6) of this section. If a dissolution date is specified in the certificate of formation, the certificate of formation may be amended and the existence of the limited liability company may be extended by vote of all the members.

(b) The happening of events specified in a limited liability company agreement;

(c) The written consent of all members;

(d) Unless the limited liability company agreement provides otherwise, ninety days following an event of dissociation of the last remaining member, unless those having the rights of assignees in the limited liability company under NTC 8.220.040 (1) have, by the ninetieth day, voted to admit one or more members, voting as though they were members, and in the manner set forth in NTC 8.220.020(1);

(e) The entry of a decree of judicial dissolution under NTC 8.270.030; or

(f) The administrative dissolution of the limited liability company by the Secretary under NTC 8.270.050(2) unless the limited liability company is reinstated by the Secretary under NTC 8.270.060.

8.270.020 After dissolution under NTC 8.270.010

(a) After dissolution occurs under NTC 8.270.010, the limited liability company may deliver to the Secretary for filing a certificate of dissolution signed in accordance with NTC 8.210.030.

(b) A certificate of dissolution filed under subsection (1) of this section must set forth:

(i) The name of the limited liability company; and

(ii) A statement that the limited liability company is dissolved under NTC 8.270.010

8.270.030 Judicial dissolution

On application by, or for a member or manager, the Tribal Courts\ may decree dissolution of a limited liability company whenever: (1) It is not reasonably practicable to carry on the business in conformity with a limited liability company agreement; or (2) other circumstances render dissolution equitable.

8.270.040 Administrative dissolution — Commencement of proceeding

The Secretary may commence a proceeding under NTC 8.270.050 to administratively dissolve a limited liability company if:

- (a) The limited liability company does not pay any license fees or penalties, imposed by this chapter, when they become due;
- (b) The limited liability company does not deliver its completed initial report or annual report to the Secretary when it is due;
- (c) The limited liability company is without a registered agent or registered office in accordance with Tribal law for sixty days or more; or
- (d) The limited liability company does not notify the Secretary within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

8.270.050 Administrative dissolution — Notice — Opportunity to correct deficiencies

- (a) If the Secretary determines that one or more grounds exist under NTC 8.270.040 for dissolving a limited liability company, the Secretary shall give the limited liability company written notice of the determination by first-class mail, postage prepaid, reciting the grounds there for. Notice shall be sent to the address of the principal place of business of the limited liability company as it appears in the records of the Secretary.
- (b) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary that each ground determined by the Secretary does not exist within sixty days after notice is sent, the limited liability company is thereupon dissolved. The Secretary shall give the limited liability company written notice of the dissolution that recites the ground or grounds there for and its effective date.
- (c) A limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs.
- (d) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

8.270.060 Administrative dissolution — Reinstatement — Application — When effective

- (a) A limited liability company that has been administratively dissolved under NTC 8.270.050 may apply to the Secretary for reinstatement within five years after the effective date of dissolution. The application must be delivered to the Secretary for filing and state:
  - (i) The name of the limited liability company and the effective date of its administrative dissolution;
  - (ii) That the ground or grounds for dissolution either did not exist or have been eliminated;and

(iii) That the limited liability company's name satisfies the requirements of NTC 8.210.060.

(b) If the Secretary determines that an application contains the information required by subsection (1) of this section and that the name is available, the Secretary shall reinstate the limited liability company and give the limited liability company written notice, as provided in NTC 8.270.050(1), of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited liability company must file with its application for reinstatement an amendment to its certificate of formation reflecting a change of name.

(c) When 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 carrying on its activities as if the administrative dissolution had never occurred.

8.270.070 Dissolution under NTC 8.270.010 — Revocation — Approval required — When effective

(a) A limited liability company dissolved under NTC 8.270.010 (2) or (3) that has filed a certificate of dissolution under NTC 8.270.020 may revoke its dissolution within one hundred twenty days of filing its certificate of dissolution.

(b)(i) Except as provided in (ii) of this subsection, revocation of dissolution must be approved in the same manner as the dissolution was approved unless that approval permitted revocation in some other manner, in which event the dissolution may be revoked in the manner permitted.

(c) If dissolution occurred upon the happening of events specified in the limited liability company agreement, revocation of dissolution must be approved in the manner necessary to amend the provisions of the limited liability company agreement specifying the events of dissolution.

(d) After the revocation of dissolution is approved, the limited liability company may revoke the dissolution and the certificate of dissolution by delivering to the Secretary for filing a certificate of revocation of dissolution that sets forth:

(e) The name of the limited liability company and a statement that the name satisfies the requirements of NTC 8.200.030; if the name is not available, the limited liability company must file a certificate of amendment changing its name with the certificate of revocation of dissolution;

(i) The effective date of the dissolution that was revoked;

(ii) The date that the revocation of dissolution was approved;

(iii) If the limited liability company's managers revoked the dissolution, a statement to that effect;

(iv) If the limited liability company's managers revoked a dissolution approved by the

company's members, a statement that revocation was permitted by action by the managers alone pursuant to that approval; and

(v) If member approval was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the members in accordance with subsection (2) of this section.

(f) Revocation of dissolution and revocation of the certificate of dissolution are effective upon the filing of the certificate of revocation of dissolution.

(g) When the revocation of dissolution and revocation of the certificate of dissolution are effective, they relate back to and take effect as of the effective date of the dissolution and the limited liability company resumes carrying on its activities as if the dissolution had never occurred.

#### 8.270.080 Winding up

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

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

(i) May file a certificate of dissolution with the Secretary to provide notice that the limited liability company is dissolved, preserve the limited liability company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited liability company's property, settle disputes, and perform other necessary acts; and

(ii) Shall discharge the limited liability company's liabilities, settle and close the limited liability company's activities, and marshal and distribute the assets of the company.

(c) Unless otherwise provided in a limited liability company agreement, the persons responsible for managing the business and affairs of a limited liability company under NTC 8.230.010 are responsible for winding up the activities of a dissolved limited liability company. If a dissolved limited liability company does not have any managers or members, the legal representative of the last person to have been a member may wind up the activities of the dissolved limited liability company, in which event the legal representative is a manager for the purposes of NTC 8.230.020.

(d) If the persons responsible for winding up the activities of a dissolved limited liability company under subsection (3) of this section decline or fail to wind up the limited liability company's activities, a person to wind up the dissolved limited liability company's activities may be appointed by the consent of the transferees owning a majority of the rights to receive distributions as transferees at the time consent is to be effective. A person appointed under this subsection:

- (i) Is a manager for the purposes of NTC 8.230.020; and
- (ii) Shall promptly amend the certificate of formation to state:
  - A. The name of the person who has been appointed to wind up the limited liability company; and
  - B. The street and mailing address of the person.
- (e) The Tribal Court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited liability company's activities, if:

- (i) On application of a member, the applicant establishes good cause; or
- (ii) On application of a transferee, a limited liability company does not have any managers or members and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (3) or (4) of this section.

8.270.090          Disposing of known claims — Definition

- (a) A dissolved limited liability company that has filed a certificate of dissolution with the Secretary may dispose of the known claims against it by following the procedure described in subsection (2) of this section.
- (b) A dissolved limited liability company may notify its known claimants of the dissolution in a record. The notice must:
  - (i) Specify the information required to be included in a known claim;
  - (ii) Provide a mailing address to which the known claim must be sent;
  - (iii) State the deadline for receipt of the known claim, which may not be fewer than one hundred twenty days after the date the notice is received by the claimant; and
  - (iv) State that the known claim will be barred if not received by the deadline.
- (c) A known claim against a dissolved limited liability company is barred if the requirements of subsection (2) of this section are met and:
  - (i) The known claim is not received by the specified deadline; or
  - (ii) In the case of a known claim that is timely received but rejected by the dissolved limited liability company, the claimant does not commence an action to enforce the known claim against the limited liability company within ninety days after the receipt of the notice of rejection.

(d) For purposes of this section, "known claim" means any claim or liability that either:

(i) Has matured sufficiently, before or after the effective date of the dissolution, to be legally capable of assertion against the dissolved limited liability company, whether or not the amount of the claim or liability is known or determinable; or (ii) is unmatured, conditional, or otherwise contingent but may subsequently arise under any executory contract to which the dissolved limited liability company is a party, other than under an implied or statutory warranty as to any product manufactured, sold, distributed, or handled by the dissolved limited liability company; and

(ii) As to which the dissolved limited liability company has knowledge of the identity and the mailing address of the holder of the claim or liability and, in the case of a matured and legally assertable claim or liability, actual knowledge of existing facts that either (i) could be asserted to give rise to, or (ii) indicate an intention by the holder to assert, such a matured claim or liability.

8.270.100            Distribution of assets

(a) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(i) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under NTC 8.250.010 or 8.250.040;

(ii) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under NTC 8.250.010 or 8.250.040; and

(iii) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(b) A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available there for. Unless otherwise provided in a limited liability company agreement, any remaining assets shall be distributed as provided in this chapter. Any person winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited

liability company by reason of such person's actions in winding up the limited liability company.

8.270.110 Remedies available after dissolution

Except as provided in NTC 8.270.090, the dissolution of a limited liability company does not take away or impair any remedy available to or against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless the limited liability company has filed a certificate of dissolution under NTC 8.270.020, that has not been revoked under NTC 8.270.070, and an action or other proceeding thereon is not commenced within three years after the filing of the certificate of dissolution. Such an action or proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its own name.

8.280 FOREIGN LIMITED LIABILITY COMPANIES

8.280.010 Law governing

(a) Subject to the Constitution of the Nisqually Indian Tribe:

(i) The laws of the Tribe, state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers; and

(ii) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this Tribe.

(b) A foreign limited liability company is subject to NTC 8.200.070 and, notwithstanding subsection (1)(a) of this section, a foreign limited liability company rendering professional services within this Tribe is also subject to NTC 8.200.10(2).

(c) A foreign limited liability company and its members and managers doing business within this Tribe thereby submit to personal jurisdiction of the courts of this Tribe and are subject to NTC 8.230.020.

8.280.020 Registration required — Application

Before doing business within this Tribe, a foreign limited liability company shall register with the Secretary. In order to register, a foreign limited liability company shall submit to the Secretary, an application for registration as a foreign limited liability company executed by any member or manager of the foreign limited liability company, setting forth:

(a) The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business within this Tribe;

(b) The Tribe, state, territory, possession, or other jurisdiction or country where formed, the

date of its formation and a duly authenticated statement from the Secretary or other official having custody of limited liability company records in the jurisdiction under whose law it was formed, that as of the date of filing the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

(c) The nature of the business or purposes to be conducted or promoted within this Tribe;

(d) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by NTC 8.280.040(2);

(e) The address of the principal place of business of the foreign limited liability company;

(f) A statement that the Secretary is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in NTC 8.280.100(2); and

(g) The date on which the foreign limited liability company first did, or intends to do, business within this Tribe.

8.280.030 Issuance of registration

(a) If the Secretary finds that an application for registration conforms to law and all requisite fees have been paid, the Secretary shall:

(i) Certify that the application has been filed in his or her office by endorsing upon the original application the word "Filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(ii) File the endorsed application.

(b) The duplicate of the application, similarly endorsed, shall be returned to the person who filed the application or that person's representative.

8.280.040 Name — Registered office — Registered agent

(a) A foreign limited liability company may register with the Secretary under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company.

(b) Each foreign limited liability company shall continuously maintain within this Tribe:

(i) A registered office, which may but need not be a place of its business within this Tribe's Reservation. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may

not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the Secretary may permit the use of a post office address in conjunction with the registered office address if the foreign limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(ii) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of this Tribe's Reservation whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, a limited partnership or limited liability company, or a foreign corporation authorized to do business within this Tribe having a business office identical with such registered office; and

(iii) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the Secretary in such form as the Secretary may prescribe. The written consent shall be filled with or as a part of the document first appointing a registered agent. In the event any individual, limited liability company, limited partnership, or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the Secretary.

(c) A foreign limited liability company may change its registered office or registered agent by delivering to the Secretary for filing a statement of change that sets forth:

(i) The name of the foreign limited liability company;

(ii) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (2)(a) of this section;

(iii) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(iv) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(d) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary for filing a statement that complies with the requirements of subsection (3) of this section and recites that the foreign limited liability company has been notified of the change.

(e) A registered agent of any foreign limited liability company may resign as agent by signing and delivering to the Secretary for filing a statement that the registered office is also discontinued. After filing the statement the Secretary shall mail a copy of the statement to the

foreign limited liability company at its principal place of business shown in its application for certificate of registration if no annual report has been filed. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

8.280.050 Amendments to application

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly file in the office of the Secretary a certificate, executed by any member or manager, correcting such statement.

8.280.060 Cancellation of registration

(a) A foreign limited liability company may cancel its registration by filing with the Secretary a certificate of cancellation, executed by any member or manager. A cancellation does not terminate the authority of the Secretary to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business within this Tribe.

(b) The certificate of cancellation shall set forth:

- (i) The name of the foreign limited liability company;
- (ii) The date of filing of its certificate of registration;
- (iii) The reason for filing the certificate of cancellation;
- (iv) The future effective date (not later than the ninetieth day after the date it is filed) of cancellation if it is not to be effective upon filing of the certificate;
- (v) The address to which service of process may be forwarded; and
- (vi) Any other information the person filing the certificate of cancellation desires.

8.280.070 Doing business without registration

(a) A foreign limited liability company doing business within this Tribe may not maintain any action, suit, or proceeding within this Tribe until it has registered in accordance with this Chapter, and has paid to this Tribe all fees and penalties for the years or parts thereof, during which it did business within this Tribe without having registered.

(b) Neither the failure of a foreign limited liability company to register with this Tribe nor the issuance of a certificate of cancellation with respect to a foreign limited liability company's registration with this Tribe impairs:

- (i) The validity of any contract or act of the foreign limited liability company;
  - (ii) The right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or
  - (iii) The foreign limited liability company from defending any action, suit, or proceeding in any court of this state.
- (c) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business within this Tribe without registration.

8.280.080 Foreign limited liability companies doing business without having qualified — Injunctions.

The Tribal Courts shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business within this Tribe if such foreign limited liability company has failed to register under this article or if such foreign limited liability company has secured a certificate of registration from the Secretary under NTC 8.280.030 on the basis of false or misleading representations. The Secretary shall, upon the Secretary's own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited liability company is doing or has done business.

8.280.090 Transactions not constituting transacting business

- (a) The following activities, among others, do not constitute transacting business within the meaning of this article:
- (i) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
  - (ii) Holding meetings of the members, or managers if any, or carrying on other activities concerning internal limited liability company affairs;
  - (iii) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;
  - (iv) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositaries with respect to those securities or interests;
  - (v) Selling through independent contractors;
  - (vi) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this Tribe's Reservation before

becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;

(vii) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

(viii) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(ix) Owning, without more, real or personal property;

(x) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(xi) Transacting business in intertribal commerce;

(xii) Owning a controlling interest in a corporation or a foreign corporation that transacts business within this state;

(xiii) Participating as a limited partner of a domestic or foreign limited partnership that transacts business within this state; or

(xiii) Participating as a member or a manager of a domestic or foreign limited liability company that transacts business within this state.

(b) The list of activities in subsection (1) of this section is not exhaustive.

#### 8.280.100 Service of process on registered foreign limited liability companies

(a) A foreign limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

(b) The Secretary shall be an agent of a foreign limited liability company upon whom any such process, notice, or demand may be served if:

(i) The foreign limited liability company fails to appoint or maintain a registered agent in this state; or

(ii) The registered agent cannot with reasonable diligence be found at the registered office.

(c) Service on the Secretary of any such process, notice, or demand shall be made by delivering to and leaving with the Secretary, or with any duly authorized clerk of the Secretary's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the Secretary, the Secretary shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the foreign limited liability company at the address of its principal place of

business as it appears on the records of the Secretary. Any service so had on the Secretary shall be returnable in not less than thirty days.

(d) The Secretary shall keep a record of all processes, notices, and demands served upon the Secretary under this section, and shall record therein the time of such service and the Secretary's action with reference thereto.

(e) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign limited liability company in any other manner now or hereafter permitted by law.

8.280.110 Service of process on unregistered foreign limited liability companies

(a) Any foreign limited liability company which shall do business within this Tribe without having registered under NTC 8.280.020 shall be deemed to have thereby appointed and constituted the Secretary its agent for the acceptance of legal process in any civil action, suit, or proceeding against it in any Tribal, state or federal court arising or growing out of any business done by it within this state. The doing of business within this Tribe by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon a registered agent personally within this state.

(b) In the event of service upon the Secretary in accordance with subsection (1) of this section, the Secretary shall forthwith notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the Secretary by the plaintiff in such action, suit, or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the Secretary. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary that service is being made pursuant to this subsection.

8.280.120 Revocation of registration — Requirements for commencement

The Secretary may commence a proceeding in accordance with NTC 8.280.130 to revoke registration of a foreign limited liability company authorized to transact business within this Tribe if:

(a) The foreign limited liability company is without a registered agent or registered office within this Tribe for sixty days or more;

(b) The foreign limited liability company does not inform the Secretary under NTC 8.280.050 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(c) A manager or other agent of the foreign limited liability company signed a document knowing it was false in any material respect with intent that the document be delivered to the

Secretary for filing; or

(d) The Secretary receives a duly authenticated certificate from the Secretary or other official having custody of limited liability company records in the jurisdiction under which the foreign limited liability company was organized stating that the foreign limited liability company has been dissolved or its certificate or articles of formation canceled.

8.280.130 Revocation of registration — Procedure — Notice — Correction of grounds — Certificate of revocation — Authority of agent

(a) If the Secretary determines that one or more grounds exist under NTC 8.280.120 for revocation of a foreign limited liability company's registration, the Secretary shall give the foreign limited liability company written notice of the determination by first-class mail, postage prepaid, stating in the notice the ground or grounds for and effective date of the Secretary's determination, which date shall not be earlier than the date on which the notice is mailed.

(b) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary that each ground determined by the Secretary does not exist within sixty days after notice is effective, the Secretary shall revoke the foreign limited liability company's registration by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary shall file the original of the certificate and mail a copy to the foreign limited liability company.

(c) Documents to be mailed by the Secretary to a foreign limited liability company for which provision is made in this section shall be sent to the foreign limited liability company at the address of the agent for service of process contained in the application or certificate of this limited liability company which is most recently filed with the Secretary.

(d) The authority of a foreign limited liability company to transact business within this Tribe ceases on the date shown on the certificate revoking its registration.

(e) The Secretary revocation of a foreign limited liability company's registration appoints the Secretary the foreign limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business in this state.

(f) Revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the foreign limited liability company.

8.290 DERIVATIVE ACTIONS

8.290.010 Right to bring action

A member may bring an action in the Tribal Court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not

likely to succeed.

8.290.020 Proper plaintiff

In a derivative action, the plaintiff must be a member at the time of bringing the action and:

- (a) At the time of the transaction of which the plaintiff complains; or
- (b) The plaintiff's status as a member had devolved upon him or her by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member at the time of the transaction.

8.290.030 Complaint

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

8.290.040 Expenses

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise, or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, from any recovery in any such action or from a limited liability company.

8.300 MERGERS

8.300.010 Merger — Plan — Effective date

(a) One or more domestic limited liability companies may merge with one or more domestic partnerships, domestic limited partnerships, domestic limited liability companies, or domestic corporations pursuant to a plan of merger approved or adopted as provided in NTC 8.300.020.

(b) The plan of merger must set forth:

(i) The name of each partnership, limited liability company, limited partnership, and corporation planning to merge and the name of the surviving partnership, limited liability company, limited partnership, or corporation into which the other partnership, limited liability company, limited partnership, or corporation plans to merge;

(ii) The terms and conditions of the merger; and

(iii) The manner and basis of converting the interests of each member of each limited liability company, the partnership interests in each partnership or limited partnership, and the shares of each corporation party to the merger into the interests, shares, obligations, or other securities of the surviving or any other partnership, limited liability company, limited

partnership, or corporation or into cash or other property in whole or part.

(c) The plan of merger may set forth:

- (i) Amendments to the certificate of formation of the surviving limited liability company;
- (ii) Amendments to the certificate of limited partnership of the surviving limited partnership;
- (iii) Amendments to the articles of incorporation of the surviving corporation; and
- (iv) Other provisions relating to the merger.

(d) If the plan of merger does not specify a delayed effective date, it shall become effective upon the filing of articles of merger. If the plan of merger specifies a delayed effective time and date, the plan of merger becomes effective at the time and date specified. If the plan of merger specifies a delayed effective date but no time is specified, the plan of merger is effective at the close of business on that date. A delayed effective date for a plan of merger may not be later than the ninetieth day after the date it is filed.

#### 8.300.020 Merger — Plan — Approval

Unless otherwise provided in the limited liability company agreement, approval of a plan of merger by a domestic limited liability company party to the merger shall occur when the plan is approved by the members, or if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to NTC 8.220.050) of the contributions made, or obligated to be made, by all members or by the members in each class or group, as appropriate.

#### 8.300.030 Article of merger — Filing

After a plan of merger is approved or adopted, the surviving partnership, limited liability company, limited partnership, or corporation shall deliver to the Secretary for filing articles of merger setting forth:

- (a) The plan of merger;
- (b) If the approval of any members, partners, or shareholders of one or more partnerships, limited liability companies, limited partnerships, or corporations party to the merger was not required, a statement to that effect; or
- (c) If the approval of any members, partners, or shareholders of one or more of the partnerships, limited liability companies, limited partnerships, or corporations party to the merger was required, a statement that the merger was duly approved by such members, partners, and shareholders.

8.300.040 Effect of merger

(a) When a merger takes effect:

(i) Every other partnership, limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving partnership, limited liability company, limited partnership, or corporation and the separate existence of every partnership, limited liability company, limited partnership, or corporation except the surviving partnership, limited liability company, limited partnership, or corporation ceases;

(ii) The title to all real estate and other property owned by each partnership, limited liability company, limited partnership, and corporation party to the merger is vested in the surviving partnership, limited liability company, limited partnership, or corporation without reversion or impairment;

(iii) The surviving partnership, limited liability company, limited partnership, or corporation has all liabilities of each partnership, limited liability company, limited partnership, and corporation that is party to the merger;

(iv) A proceeding pending against any partnership, limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving partnership, limited liability company, limited partnership, or corporation may be substituted in the proceeding for the partnership, limited liability company, limited partnership, or corporation whose existence ceased;

(v) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(vi) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(vii) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(viii) The former members of every limited liability company party to the merger, holders of the partnership interests of every domestic partnership or domestic limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the extent of the rights provided in the plan of merger and under this Chapter.

(b) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under NTC 8.270.080 or pay its liabilities and distribute its assets under NTC 8.270.090.

(c) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic

limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under or pay its liabilities and distribute its assets.

(d) Unless otherwise agreed, a merger of a domestic partnership, including a domestic partnership which is not the surviving entity in the merger, shall not require the domestic partnership to wind up its affairs.

(e) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs.

#### 8.300.050 Merger — Foreign and domestic

(a) One or more foreign partnerships, one or more foreign limited liability companies, one or more foreign limited partnerships, and one or more foreign corporations may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations if:

(i) The merger is permitted by the law of the jurisdiction under which each foreign limited liability company was formed, each foreign partnership or foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign limited liability company, foreign partnership, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;

(ii) The surviving entity complies with NTC 8.300.030;

(iii) Each domestic limited liability company complies with NTC 8.300.020; and

(iv) Each domestic corporation complies with NTC Title 8.

(b) Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the Secretary as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners or shareholders of each domestic limited liability company, domestic limited partnership, or domestic corporation party to the merger.

#### 8.310 DISSENTERS' RIGHTS

##### 8.310.010 Definitions

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

(a) "Limited liability company" means the domestic limited liability company in which the dissenter holds or held a membership interest, or the surviving limited liability company, limited partnership, or corporation by merger, whether foreign or domestic, of that limited liability company.

(b) "Dissenter" means a member who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.

(c) "Fair value," with respect to a dissenter's limited liability company interest, means the value of the member's limited liability company interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.

(d) "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the limited liability company on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

#### 8.310.020 Member — Dissent — Payment of fair value

(a) Except as provided in NTC 8.310.040 or 8.310.060(2), a member of a domestic limited liability company is entitled to dissent from, and obtain payment of, the fair value of the member's interest in a limited liability company in the event of consummation of a plan of merger to which the limited liability company is a party as permitted by NTC 8.300.010 or 8.300.040.

(b) A member entitled to dissent and obtain payment for the member's interest in a limited liability company under this article may not challenge the merger creating the member's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, or the limited liability company agreement, or is fraudulent with respect to the member or the limited liability company.

(c) The right of a dissenting member in a limited liability company to obtain payment of the fair value of the member's interest in the limited liability company shall terminate upon the occurrence of any one of the following events:

(i) The proposed merger is abandoned or rescinded;

(ii) A court having jurisdiction permanently enjoins or sets aside the merger; or

(iii) The member's demand for payment is withdrawn with the written consent of the limited liability company.

#### 8.310.030 Dissenters' rights — Notice — Timing

(a) Not less than ten days prior to the approval of a plan of merger, the limited liability company must send a written notice to all members who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.

(b) The limited liability company shall notify in writing all members not entitled to vote on or

approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by NTC 8.310.050.

8.310.040 Member — Dissent — Voting restriction

A member of a limited liability company who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A member who does not satisfy the requirements of this section is not entitled to payment for the member's interest in the limited liability company under this article.

8.310.050 Members — Dissenters' notice — Requirements

(a) If the plan of merger is approved, the limited liability company shall deliver a written dissenters' notice to all members who satisfied the requirements of NTC 8.310.040.

(i) The dissenters' notice required by NTC 8.310.030(2) or by subsection (1) of this section must be sent within ten days after the approval of the plan of merger, and must:

(ii) State where the payment demand must be sent;

(iii) Inform members as to the extent transfer of the member's interest in the limited liability company will be restricted as permitted by NTC 8.310.070 after the payment demand is received;

(iv) Supply a form for demanding payment;

(v) Set a date by which the limited liability company must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice under this section is delivered; and

(vi) Be accompanied by a copy of this article.

8.310.060 Member — Payment demand — Entitlement

(a) A member of a limited liability company who demands payment retains all other rights of a member of such company until the proposed merger becomes effective.

(b) A member of a limited liability company sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the member's interest in the limited liability company under this article.

8.310.070 Member's interests — Transfer restriction

The limited liability company agreement may restrict the transfer of members' interests in the limited liability company from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article.

8.310.080 Payment of fair value — Requirements for compliance

(a) Within thirty days of the later of the date the proposed merger becomes effective, or the payment demand is received, the limited liability company shall pay each dissenter who complied with NTC 8.310.060 the amount the limited liability company estimates to be the fair value of the dissenting member's interest in the limited liability company, plus accrued interest.

(b) The payment must be accompanied by:

(i) Copies of the financial statements for the limited liability company for its most recent fiscal year;

(ii) An explanation of how the limited liability company estimated the fair value of the member's interest in the limited liability company;

(iii) An explanation of how the accrued interest was calculated;

(iv) A statement of the dissenter's right to demand payment; and

(v) A copy of this article.

8.310.090 Merger — Not effective within sixty days — Transfer restrictions

(a) If the proposed merger does not become effective within sixty days after the date set for demanding payment, the limited liability company shall release any transfer restrictions imposed as permitted by NTC 8.310.070.

(b) If, after releasing transfer restrictions, the proposed merger becomes effective, the limited liability company must send a new dissenters' notice as provided in NTC 8.310.030(2) and 8.310.050 and repeat the payment demand procedure.

8.310.100 Dissenter's estimate of fair value — Notice

(a) A dissenting member may notify the limited liability company in writing of the dissenter's own estimate of the fair value of the dissenter's interest in the limited liability company, and amount of interest due, and demand payment of the dissenter's estimate, less any payment under NTC 8.310.080, if:

(i) The dissenter believes that the amount paid is less than the fair value of the dissenter's interest in the limited liability company, or that the interest due is incorrectly calculated;

(ii) The limited liability company fails to make payment within sixty days after the date set for demanding payment; or

(iii) The limited liability company, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on members' interests as permitted by NTC 8.310.070

within sixty days after the date set for demanding payment.

(b) A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited liability company of the dissenter's demand in writing under subsection (1) of this section within thirty days after the limited liability company made payment for the dissenter's interest in the limited liability company.

8.310.110 Unsettled demand for payment — Proceeding — Parties — Appraisers

(a) If a demand for payment under NTC 8.310.060 remains unsettled, the limited liability company shall commence a proceeding within sixty days after receiving the payment demand and petition the Tribal Court to determine the fair value of the dissenting member's interest in the limited liability company, and accrued interest. If the limited liability company does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The limited liability company shall commence the proceeding in the Tribal Court.

(c) The limited liability company shall make all dissenters (whether or not residents of this Tribe's Reservation) whose demands remain unsettled parties to the proceeding as in an action against their membership interests in the limited liability company and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The limited liability company may join as a party to the proceeding any member who claims to be a dissenter but who has not, in the opinion of the limited liability company, complied with the provisions of this article. If the court determines that such member has not complied with the provisions of this article, the member shall be dismissed as a party.

(e) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(f) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of the dissenter's membership interest in the limited liability company, plus interest, exceeds the amount paid by the limited liability company.

8.310.120 Unsettled demand for payment — Costs — Fees and expenses of counsel

(a) The court in a proceeding commenced under NTC 8.310.110 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in

good faith in demanding payment.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(i) Against the limited liability company and in favor of any or all dissenters if the court finds the limited liability company did not substantially comply with the requirements of this article; or

(ii) Against either the limited liability company or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

## 8.320 MISCELLANEOUS

### 8.320.010 Construction and application of chapter and limited liability company agreement

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(c) Unless the context otherwise requires, as used in this chapter, the singular shall include the plural and the plural may refer to only the singular. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this chapter and do not constitute part of the law.

### 8.320.020 Establishment of filing fees and miscellaneous charges

(a) The Secretary shall adopt rules establishing fees which shall be charged and collected for:

(i) Filing of a certificate of formation for a domestic limited liability company or an application for registration of a foreign limited liability company;

(ii) Filing of a certificate of dissolution for a domestic limited liability company;

(iii) Filing a certificate of cancellation for a foreign limited liability company;

(iv) Filing of a certificate of amendment or restatement for a domestic or foreign limited liability company;

- (v) Filing an application to reserve, register, or transfer a limited liability company name;
- (vi) Filing any other certificate, statement, or report authorized or permitted to be filed;
- (vii) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

(b) In the establishment of a fee schedule, the Secretary shall, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations governed by NTC Title 8. Fees for copies, certified copies, certificates of record, and service of process filings shall also be established.

(c) All fees collected by the Secretary shall be deposited with the Tribe's Chief Financial Officer.

8.320.030 Authority to adopt rules

The Secretary shall adopt such rules as are necessary to implement the transfer of duties and records required by this chapter.

8.320.040 Effective date — March 31, 2011

This act shall take effect March 31, 2011.

8.320.050 Short title

This chapter may be cited as the "Nisqually Limited Liability Company Act."

8.320.060 Severability

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.