

# Mille Lacs Band Statutes Annotated

Amendments received through: October 28, 2014

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## TITLE 16 - CORPORATIONS

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### Historical and Statutory Notes

The Preamble to Band Statute 1202-MLC-16 It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians a statute to establish the position of the Commissioner for Corporate Affairs

“The District III Representative introduced the following bill on the seventh day of March 1991

“It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians a statute to establish the position of the Commissioner for Corporate Affairs; to set forth the ministerial duties of the Commissioner for Corporate Affairs; to establish and empower the Corporate Commission; and to set forth the corporate duties of the Commissioner for Corporate Affairs; to provide for the Incorporation of Business Corporations, Corporate Body Politic Business Corporations, Non-Profit Corporations, and Nonprofit Corporate Body Politic Corporations.

“Whereas, in 1981, the Non-Removable Mille Lacs Band of Chippewa Indians, in a historic step, adopted a form of government based on the principle of division of powers; and

“Whereas, that form of government has proven to be highly satisfactory, but experience with a large body of law which was necessary to establish the system has revealed a number of flaws and ambiguities; and

“Whereas, as times change, Band statutes must necessarily be modified to adopt to those changing times; and

“Whereas, the Band Assembly has determined to improve Band government by adopting an entire Corporate Code, revising and replacing the former Code, NOW THEREFORE BE IT ENACTED BY THE BAND ASSEMBLY:”

Band Statute 1202-MLC-16, § § 1 and 2 provide.

“Section 1. Purpose: the purpose of this Act is to promote the general welfare of the Non-Removable Mille Lacs Band of Chippewa Indians and its members by establishing a more effective form of commerce, to control the economic affairs of the Band, and to establish, operate, and incorporate such commercial enterprises as is may deem to be for the benefit of the Mille Lacs Band of Chippewa Indians.

“Section 2: Scope of the Amending Provisions. The previously enacted chapter 16 (1077-MLC-16) is hereby repealed. This Act shall become effective the day after its passage.

The Title of Band Ordinance 23-06 is “An ordinance to amend Title 16 (Corporations) of the Mille Lacs Band of Ojibwe statutes to delete or change sections that are in direct conflict with the intent and scope of Title 15 (Gaming Regulatory Act) which was adopted on August 19, 2003.”

The Preamble of Band Ordinance 23-06 provides: “It is enacted by the Band Assembly for the purpose of correcting Title 16(Corporations) so as to delete or change sections that are in direct conflict with the intent and scope of Title 15 (Gaming Regulatory Act).”

The Title of Band Ordinance 04-15 is “An Ordinance to amend Mille Lacs Band Statute, §101 of Title 16 – Corporations, pursuant to legislative process articulated in 3 MLBS §16.”

The Preamble of Band Ordinance 04-15 provides: “Be it enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of formally renaming the Corporate Commission of the Mille Lacs Band of Chippewa Indians to Mille Lacs Corporate Ventures.”

### **Cross References**

Gasoline excise tax, imposition, *see* 22 MLBS § 303.

General powers and duties of Commissioner of Finance, *see* 22 MLBS § 104.

Public service contracts, award to businesses organized under this title, *see* 7 MLBS § 1.

Sales and use taxes, *see* 22 MLBS § 501 et seq.

## **CHAPTER 1**

### **GENERAL PROVISIONS**

#### **Subchapter**

- 1. Commissioner for Corporate Affairs**
- 2. Corporate Commission**

#### **Section**

- 1**
- 101**

## **SUBCHAPTER 1**

### **COMMISSIONER FOR CORPORATE AFFAIRS**

#### **Section**

- 1. Establishment.**
- 2. Appointment.**
- 3. Removal.**
- 4. Powers and Duties.**
- 5. Ministerial Powers and Duties of Commissioner for Corporate Affairs.**
- 6. Commissioner’s Orders.**

**§ 1. Establishment.**

The position of Commissioner for Corporate Affairs is established.

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 3.

**§ 2. Appointment.**

The Commissioner for Corporate Affairs shall be appointed to a four-year term by the Chief Executive with the ratification of the Band Assembly.

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 3.01.

**§ 3. Removal.**

The Commissioner for Corporate Affairs may be removed from office pursuant to 3 MLBS § 25.

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 3.02.

**§ 4. Powers and Duties.**

The Commissioner for Corporate Affairs shall have the powers and duties which are set forth in this title.

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 3.03.

**§ 5. Ministerial powers and Duties of Commissioner for Corporate Affairs.**

The Commissioner for Corporate Affairs shall have the following ministerial duties:

- (a) To provide an effective and efficient system of administration for the Mille Lacs Band Business Corporation Act (16 MLBS § 1001 et seq.);
- (b) To provide an effective and efficient system of administration for the Mille Lacs Band Nonprofit Corporation Act (16 MLBS § 2001 et seq.);
- (c) To provide reporting and accounting for a Net Revenue Allocation Schedule in a form prescribed by the Band Assembly pursuant to 16 MLBS § 108.
- (d) To provide an effective and efficient administrative system to license and certify Foreign Corporations under the Band’s Commercial Licensing Statute (18 MLBS § 1 et seq.).

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 4.  
Band Ordinance 23-06, § 1.

**Cross References**

Corporate powers and duties of Corporate Commissioner, *see* 16 MLBS § 111.

**§ 6. Commissioner’s Orders.**

- (a) The Commissioner of Corporate Affairs shall issue regulations to accomplish the duties under 16 MLBS § 5, in the form of Commissioner’s Orders.
- (b) Such Commissioner’s Orders shall be subject to annulment by the Band Assembly pursuant to 3 MLBS § 17.

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 4.06.

**Cross References**

Corporate Orders, *see* 16 MLBS § 111.

**SUBCHAPTER 2**

**CORPORATE COMMISSION**

**Section**

- 101. Establishment.**
- 102. Purposes.**
- 103. Board Composition.**
- 104. Corporate Body Politic.**
- 105. Limited Liability and Indemnification.**
- 106. Enumerated Powers.**
- 107. Corporate Charter.**
- 108. Net Revenue Allocation Schedule.**
- 109. Sovereign Immunity.**
- 110. Assets and Liabilities of the Band.**
- 111. Corporate Powers and Duties of Corporate Commissioner.**

### **Cross References**

Gaming activity regulation, *see* 15 MLBS 101.

### **§ 101 Establishment.**

- (a) The Corporate Commission of the Mille Lacs Band of Chippewa Indians is established as a Corporate Body Politic. As a Corporate Body Politic, the Corporate Commission is both a political subdivision, clothed by federal and tribal law with all the privileges and immunities of the Band, except as expressly limited; and a separately chartered corporation under 16 MLBS § 1101(1)).
- (b) Effective October 28, 2014, the name under which the Corporate Commission conducts business shall now be “Mille Lacs Corporate Ventures”, and all powers, duties, privileges, and immunities of the Corporate Commission provided for in Band statutes and laws shall inure to such entity; and all references in Band laws, resolutions, or policy to the Corporate Commission shall include such entity.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 5, § 8.  
Band Ordinance 04-15.

### **§ 102. Purposes.**

The Corporate Commission of the Mille Lacs Band of Chippewa Indians is established:

- (a) to exercise a more effective form of commerce;
- (b) to control and manage the economic affairs of the Mille Lacs Band of Chippewa Indians;

- (c) to establish and operate commercial enterprises as it may deem to be for the benefit of the Mille Lacs Band of Chippewa Indians;
- (d) to make sound business and economic development decisions in a way that is insulated from day to day political considerations faced by Band elected leaders;
- (e) to avail the Band of the benefits of engaging in business and economic development without subjecting the Band government, qua government, to erosion of Band sovereignty.
- (f) to insulate Band assets from liability assumed in the conduct of business operations of the Corporate Commission or as wholly owned subsidiary thereof.
- (g) for any other purposes set forth in the Charter or bylaws of the Corporate Commission that are not inconsistent with this title.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 5.01.

#### **§ 103. Board Composition.**

The Corporate Commission shall be comprised of 5 board members and the Commissioner of Corporate Affairs. The 5 Board members shall be nominated by the Chief Executive and ratified by the Band Assembly. The term of the Commissioner of Corporate Affairs serving at the time of the passage of Band Statute 1202-MLC-16 shall continue until January 1, 1993. The Commissioners serving at the time of the passage of Band Statute 1202-MLC-16 shall remain as Commissioners. Any vacancies existing on the Corporate Board shall be filled in a manner prescribed in this title. The Corporate Board shall select one among its members who shall serve a four-year term, one who shall serve a three-year term, two who shall serve a two-year term, and one who shall serve a one-year term; subsequent appointments after these terms expire shall run for four years. At least one member of the Board shall be a Band member residing in District 1; At least one member of the Board shall be a Band member residing in District 2; At least one member of the Board shall be a Band member residing in District 3. The Commissioner of Corporate Affairs shall serve as Chairman and Chief Operating Office of the Corporation. The Board shall elect from its membership an individual to serve as the Chief Financial Officer of the Corporation.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 5.02.

## **Cross References**

Designation of Band Districts, *see* 2 MLBS § 11.

### **§ 104. Corporate Body Politic.**

The Corporate Commission shall be incorporated as a Corporate Body Politic under 16 MLBS § 1101(1)). As a Corporate Body Politic the Corporate Commission shall have membership who will consist of the Chief Executive, the Speaker of the Band Assembly, and the District Representative instead of shareholders.

## **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-1 6, § 8.01.

### **§ 105 Limited Liability and Indemnification.**

The corporation shall indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding either civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, agent or employee acting on behalf of the corporation, or is or was serving at the request of the corporation as a director or officer of another enterprise or corporation, against expenses, including attorneys' fees and costs, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, to the extent that such person is not otherwise indemnified. The corporation shall not be required to indemnify such director, officer, agent or employee if independent counsel shall determine pursuant to a judicial decision in any such action, suit or proceeding or independently, in case of settlement, that the director, officer, agent or employee has failed to act in good faith and with that degree of diligence, care and skill which ordinary prudent people would exercise under similar circumstances in like positions.

## **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 5.03.

### **§ 106. Enumerated Powers.**

The Corporate Commission shall have the following specifically enumerated powers:

- (a) To engage in business and economic development endeavors;

- (b) To enter any contracts or agreements necessary for business or economic development endeavors;
- (c) To enter into compacts or other agreements with the state or federal government in furtherance of engaging in business or economic development endeavors;
- (d) To form and incorporate wholly owned subsidiary business corporations and non-profit corporations with separate articles, bylaws, board of directors, and separate employer ID numbers to conduct the affairs of individual business endeavors and to insulate the Corporate Commission from liability of those endeavors.
  - (1) The Corporate Commission shall name the Board of Directors of any such corporations and shall approve the articles and bylaws of any such corporation before the same shall become effective.
  - (2) The Corporate Commission may assign any duties and/or privileges of any agreement or contract the commission has entered into to a wholly owned subsidiary whose specific business purpose is relevant to such agreement or contract.
- (e) Any additional powers necessary to carry out the purposes as described in 16 MLBS § 102. Such additional powers will be specifically enumerated in a set of articles and bylaws to be approved by the Corporate Commission. Such articles and bylaws and any additional specifically enumerated powers contained therein must be approved by the Band Assembly resolution before they shall become effective.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1 202-MLC-16, § 5.04.  
 Band Ordinance 23-06, § 2.  
 Section 2 of Band Ordinance 23-06.

#### **Cross References**

Tobacco products, Corporate Commission as sole licensed distributor, *see* 22 MLBS § 201 et seq.

### **§ 107. Corporate Charter.**

The Corporate Commission shall draft and approve a charter and bylaws to be submitted to the Band Assembly for ratification. Such a charter and bylaws shall not become effective until ratified by the Band Assembly.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 6.

**§ 108. Net Revenue Allocation Schedule.**

The Band Assembly shall by resolution adopt a Net Revenue Allocation Schedule to provide for the allocation of net revenue from any business conducted by the corporation or any wholly owned subsidiary of the Corporate Commission.

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 7.

**Cross References**

Reporting and accounting, *see* 16 MLBS § 5.

**§ 109. Sovereign Immunity.**

- (a) The Corporate Commission shall be clothed by federal and tribal law with all the privileges and immunities of the Band, except as specifically limited by this title, including sovereign immunity from suit in any state, federal or tribal court. Nothing contained in this title shall be deemed or construed to be a waiver of sovereign immunity by the Corporate Commission from suit which may be waived only in accordance with this title, the Corporate Commission Charter and Bylaws. Nothing in this chapter shall be deemed or construed to be a consent of the Corporate Commission to the jurisdiction of the United States or of any State or of any tribe or band other than the Band with regard to the business or affairs of the corporation.
  
- (b)
  - (1) Sovereign immunity of the Corporate Commission may be waived only by formal resolution of the corporation's Board of Directors. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the corporation.
  
  - (2) Any waiver of sovereign immunity shall be specific and limited as to:
    - (A) duration,
    - (B) the grantee,
    - (C) the particular transaction,
    - (D) definite property or funds, if any, of the corporation,

- (E) a particular court having jurisdiction pursuant thereto and
  - (F) the law that shall be applicable thereto.
- (3) Any express waiver of sovereign immunity by resolution of the Board, shall not be deemed a consent to the levy of any judgment, lien or attachment upon property of the corporation other than property specifically pledged or assigned, or a consent to suit in respect of any land within the Reservation or a consent to the alienation, attachment or encumbrance of any such land.

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 9.

**§ 110. Assets and Liabilities of the Band.**

The corporation shall have only those assets specifically assigned to it by the Band or acquired in its name by the Band or the Corporate Commission or on its own behalf. Nothing in this chapter nor any activity of the corporation shall implicate or in any way involve the credit or assets of the Band or obligate the Band for the obligations of this corporation except for any liability or obligation specifically assumed in writing.

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § 10.

**§ 111. Corporate Powers and Duties of Corporate Commissioner.**

- (a) The Corporate Commissioner shall have the following corporate duties and responsibilities:
  - (1) The Commissioner of Corporate Affairs shall serve as the Chief Operating Officer of the Corporate Commission.
  - (2) The Corporate Commissioner or the Corporate Commissioners Designee shall serve as the Chief Operating Officer, or, if at the discretion of the Corporate Commissioner, as a Board Member other than the CEO of any wholly owned subsidiary.
  - (3) Any additional powers necessary to carry out the purposes as described in this chapter.
- (b)

- (1) The Commissioner of Corporate Affairs shall issue regulations and other directives to accomplish the above duties in the form of Corporate Orders.
- (2) Such Corporate Order shall be subject to voidance by a majority of the Board members of the Corporate Commission provide that such rejection of the Corporate Order on made in writing by a majority of board members within 3 days of the board members receiving constructive notice of the corporate order.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16, § Ii.

### **Cross References**

Commercial practices, Investigations, *see* 18 MLBS § 11 [Digitizer's note: Section not in digital copy].

Rules and regulations, *see* 18 MLBS § 4.

Commissioner's Orders, *see* 16 MLBS § 6.

Ministerial powers and duties of Commissioner for Corporate Affairs, *see* 16 MLBS § 5.

Power to license commercial entities, *see* 18 MLBS § 101.

Prohibition of introduction of goods, *see* 18 MLBS § 208.

Use of information, commercial practices, *see* 18 MLBS § 9.

## **CHAPTER 2**

### **BUSINESS CORPORATIONS**

#### **Subchapter**

**1. General Provisions**

**2. Incorporation and Article**

#### **Section**

**1001**

**1101**

### **Cross References**

Administration system, *see* 16 MLBS § 5.

## **SUBCHAPTER 1**

### **GENERAL PROVISIONS**

#### **Section**

**1001. Citation.**

**1002. Definitions.**

**1003. Regulations.**

**1004. Foreign Corporations.**

**§ 1001 Citation.**

This chapter may be cited as the “Mille Lacs Band of Chippewa Indians business corporation act.”

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16A, § 1.

**§ 1002. Definitions.**

For the purposes of this chapter, and any regulations issued pursuant to this chapter, unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

- (a) **“Address”** means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which shall not be a post office box.
- (b) **“Affiliate”** means a person that directly or indirectly controls, is controlled by, or is under common control with, a specified person.
- (c) **“Band”** means the Mille Lacs Band of Chippewa Indians.
- (d) **“Board of Directors, or Board”** means the group of persons vested with the general management of the internal affairs of the corporation, regardless of how designated.
- (e) **“Bylaws”** means the code adopted for the regulation or management of the internal affairs of the corporation, regardless of how designated.
- (f) **“Class”**, when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
- (g) **“Closely held corporation”** means a corporation which does not have more than 35 shareholders.
- (h) **“Commissioner”** means the Commissioner of Corporate Affairs.
- (i)

- (1) **“Corporation”** means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
- (2) **“Corporation”** means a corporation that is governed by this chapter.
- (j) **“Director”** means a member of the board.
- (k) **“Foreign corporation”** means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under this chapter.
- (l) **“Good faith”** means honesty in fact in the conduct of the act or transaction concerned.
- (m) **“Intentionally”** means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person “intentionally” violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
- (n) A person **“knows”** or has **“knowledge”** of a fact when the person has actual knowledge of it. A person does not “know” or have “knowledge” of a fact merely because the person has reason to know of the fact.
- (o) **“Officer”** means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to this chapter.
- (p) **“Organization”** means a domestic or foreign corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
- (q) **“Person”** includes a natural person and an organization.
- (r) **“Principal executive office”** means an office where the elected or appointed chief executive officer of a corporation has an office. If the corporation has no elected or appointed chief executive officer, “principal executive office” means the registered office of the corporation.
- (s) **“Publicly held corporation”** means a corporation that has a class of equity securities registered pursuant to section 12 (15 U.S.C.A. § 78l), or is subject to section 15(d) (15 U.S.C.A. § 78o(d)), of the Securities Exchange Act of 1934.
- (t) **“Registered office”** means the place within the jurisdiction of the Band designated in the articles of a corporation as the registered office of the corporation.

- (u) **“Related corporation”** of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.
- (v) **“Share”** means one of the units, however designated, into which the shareholders’ proprietary interests in a corporation are divided.
- (w) **“Shareholder”** means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.
- (x) **“Subsidiary”** of a specified corporation means a corporation having more than 50 percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations, by the specified corporation.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16A, § 2.

### **§ 1003. Regulations.**

- (a) The Commissioner of Corporate Affairs shall promulgate regulations with regard to Business Corporations governing:
  - (1) powers (not inconsistent with other applicable law);
  - (2) board of directors;
  - (3) officers;
  - (4) shares, shareholders;
  - (5) loans, obligations, distribution;
  - (6) merger, exchange, transfer;
  - (7) dissolution;
  - (8) extension;
  - (9) corporate registration; and
  - (10) actions against corporations.

- (b) Such regulations shall closely parallel the Minnesota Business Corporation Act (MINN. STAT. § 302A.001 et seq.).

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16A, § 14.

**§ 1004 Foreign Corporations.**

Foreign corporations conducting business within the jurisdiction of the Band need not file with the Commissioner as a foreign corporation. A foreign corporation shall be required to acquire a license to conduct business within the jurisdiction of the Band as is provided by 18 MLBS § 1 et seq.

**Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16A, § 15.

**SUBCHAPTER 2**

**INCORPORATION AND ARTICLES**

**Section**

**1101. Purposes.**

**1102. Incorporators.**

**1103. Articles.**

**1104. Corporate Name.**

**1105. Reserved Name.**

**1106. Registered Office; Registered Agent.**

**1107. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.**

**1108. Amendment of Articles.**

**1109. Filing Articles.**

**1110. Effective Date of Articles.**

**1111. Presumption; Certificate of Incorporation.**

**§ 1101. Purposes.**

- (a) A corporation may be incorporated under this chapter for any business purpose or purposes, unless some other statute of Band requires incorporation for any of those

purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

- (b) A corporation may also be incorporated under this chapter as a Corporate Body Politic. A Corporate Body Politic shall be the same in all respects as any other corporation incorporated under this chapter except that:
- (1) Such Corporate Body Politic shall also be a political subdivision of the Band conferred with all privileges and immunities contained as such; and
  - (2) Such Corporate Body Politic will have members instead of shareholders. The members shall consist of the Chief Executive, the Speaker of the Band Assembly, and the District Representatives of Districts 1, 2 and 3. These individuals shall serve as members in their official capacity as elected leaders of the Mille Lacs Band of Chippewa Indians.
  - (3) There shall be no voting rights for the members. The members shall have the power to appoint or delegate the appointment of the board of director of such Corporate Body Politic in accord with applicable Band Statutes.
  - (4) Incorporators shall not be required for the Corporate Body Politic. The Corporate Body Politic shall be established in accord with Band Statute, or as delegated by Band Statute.
  - (5) Any revenues from such a Corporate Body Politic shall inure to the Mille Lacs Band of Chippewa Indians to be allocated for governmental purposes and the general welfare of the Mille Lacs Band people, according to a net revenue allocation schedule to be enacted by the Band.
  - (6) Such Corporate Body Politic shall not be required to pay any fees listed in this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16A, § 3.

#### **Cross References**

Corporate Commission as Corporate Body Politic, *see* 16 MLBS §§ 101, 108.

#### **§ 1102. Incorporators.**

One or more natural persons of full age may act as incorporators of a corporation by filing with the Commissioner articles of incorporation for the corporation.

## Historical and Statutory Notes

**Source:**

Band Statute 1202-MLC-16A, § 4.

**§ 1103. Articles.**

- (a) **Required provisions.** The articles of incorporation shall contain:
- (1) The name of the corporation;
  - (2) The address of the registered office of the corporation and the name of its registered agent, if any, at that address;
  - (3) The aggregate number of shares that the corporation has authority to issue; and
  - (4) The name and address of each incorporator.
- (b) **Statutory provisions that may be modified only in articles.** The following provisions govern a corporation unless modified in the articles:
- (1) A corporation has general business purposes;
  - (2) A corporation has perpetual existence and certain powers;
  - (3) The power to adopt, amend, or repeal the bylaws is vested in the board;
  - (4) A corporation must not allow cumulative voting for directors;
  - (5) The affirmative vote of a majority of directors present is required for an action of the board;
  - (6) A written action by the board taken without a meeting must be signed by all directors;
  - (7) The board may authorize the issuance of securities and rights to purchase securities;
  - (8) All shares are common shares entitled to vote and are of one class and one series;
  - (9) All shares have equal rights and preferences in all matters not otherwise provided for by the board;

- (10) The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes;
  - (11) The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, and determine the value of nonmonetary consideration;
  - (12) Shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued;
  - (13) A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board;
  - (14) A shareholder has certain preemptive rights, unless otherwise provided by the board;
  - (15) The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a majority of the voting power of all shares entitled to vote;
  - (16) Shares of a corporation acquired by the corporation may be reissued;
  - (17) Each share has one vote unless otherwise provided in the terms of the share; and
  - (18) A corporation may issue shares for a consideration less than the par value, if any, of the shares.
- (c) **Statutory provisions that may be modified either in articles or in bylaws.** The following provisions govern a corporation unless modified either in the articles or in the bylaws:
- (1) Directors serve for an indefinite term that expires at the next regular meeting of shareholders;
  - (2) The compensation of directors is fixed by the board;
  - (3) A certain method must be used for removal of directors;
  - (4) A certain method must be used for filling board vacancies;
  - (5) If the board fails to select a place for a board meeting, it must be held at the principal executive office;

- (6) A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting;
  - (7) A majority of the board is a quorum for a board meeting;
  - (8) A committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present;
  - (9) The board may establish a special litigation committee;
  - (10) The chief executive officer and chief financial officer have specified duties, until the board determines otherwise;
  - (11) Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so;
  - (12) The board may establish uncertificated shares;
  - (13) Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions;
  - (14) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten-days' notice is required for a meeting of shareholders;
  - (15) The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting;
  - (16) The board may fix a date up to 60 days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting;
  - (17) Indemnification of certain persons is required; and
  - (18) The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement.
- (d) **Optional provisions; specific subjects.** The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board, fixing a greater than majority director or shareholder vote, or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:

- (1) The members of the first board may be named in the articles;
- (2) A manner for increasing or decreasing the number of directors may be provided;
- (3) Additional qualifications for directors may be imposed;
- (4) Directors may be classified;
- (5) The day or date, time, and place of board meetings may be fixed;
- (6) Absent directors may be permitted to give written consent or opposition to a proposal;
- (7) A larger than majority vote may be required for board action;
- (8) Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the chief executive officer;
- (9) Additional officers may be designated;
- (10) Additional powers, rights, duties, and responsibilities may be given to officers;
- (11) A method for filling vacant offices may be specified;
- (12) A certain officer or agent may be authorized to sign share certificates;
- (13) The transfer or registration of transfer of securities may be restricted;
- (14) The day or date, time, and place of regular shareholder meetings may be fixed;
- (15) Certain persons may be authorized to call special meetings of shareholders;
- (16) Notices of shareholder meetings may be required to contain certain information;
- (17) A larger than majority vote may be required for shareholder action;
- (18) Voting rights may be granted in or pursuant to the articles to persons who are not shareholders;
- (19) Corporate actions giving rise to dissenter rights may be designated;

- (20) The rights and priorities of persons to receive distributions may be established; and
- (21) A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles.
- (e) **Optional provisions: generally.** The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.
- (f) **Powers need not be stated.** It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-1 6A, § 5.

#### **§ 1104. Corporate Name.**

- (a) **Requirements; prohibitions.** The corporate name:
  - (1) Shall be in the English language, the Ojibwe language, or in any other language expressed in English letters or characters;
  - (2) Shall contain the word "corporation, incorporated," or "limited," or shall contain an abbreviation of one or more of these words, or the word company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&"
  - (3) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;
  - (4) Shall be distinguishable upon the records in the office of the Commissioner from the name of a domestic corporation or limited partnership whether profit or nonprofit, or a foreign corporation or limited partnership authorized or registered to do business within the jurisdiction of the Band, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved or provided for in Band Statute or regulations promulgated pursuant to this chapter unless exempted by the Commissioner.
- (b) **Determination.** The Commissioner shall determine whether a name is "distinguishable" from another name for purposes of this chapter.

### Historical and Statutory Notes

**Source:**

Band Statute 1202-MLC-16A, § 6.

### § 1105. Reserved Name.

- (a) **Who may reserve.** The exclusive right to the use of a corporate name otherwise permitted by this chapter may be reserved by:
  - (1) a person doing business within the jurisdiction of the Band under that name;
  - (2) a person intending to incorporate under this chapter;
  - (3) a domestic corporation intending to change its name;
- (b) **Method of reservation.** The reservation shall be made by filing with the Commissioner a request that the name be reserved. If the name is available for use by the applicant, the Commissioner shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12-month periods.
- (c) **Transfer of reservation.** The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the Commissioner a notice of the transfer and specifying the name and address of the transferee.

### Historical and Statutory Notes

**Source:**

Band Statute 1202-MLC-1 6A, § 7.

### § 1106. Registered Office; Registered Agent.

- (a) **Registered office.** A corporation shall continuously maintain a registered office within the jurisdiction of the Band. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.
- (b) **Registered agent.** A corporation may designate in its articles a registered agent. he registered agent may be a natural person residing within the jurisdiction of the Band, a domestic corporation, or a foreign corporation authorized to transact business within the jurisdiction of the Band. The registered agent must maintain a business office that is identical with the registered office.

## Historical and Statutory Notes

### Source:

Band Statute 1202-MLC-16A, § 8.

### § 1107. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.

- (a) **Statement.** A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the Commissioner a statement containing:
- (1) The name of the corporation;
  - (2) If the address of its registered office is to be changed, the new address of its registered office;
  - (3) If its registered agent is to be designated or changed, the name of its new registered agent;
  - (4) If the name of its registered agent is to be changed, the name of its registered agent as changed;
  - (5) A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
  - (6) A statement that the change of registered office or registered agent was authorized by resolution approved by the affirmative vote of a majority of the directors present.
- (b) **Resignation of agent.** A registered agent of a corporation may resign by filing with the Commissioner a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates 30 days after the notice is filed with the Commissioner.
- (c) **Change of business address or name of agent.** If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the Commissioner a statement as required in subsection (a), except that it need be signed only by the registered agent, need not be responsive to paragraph (3) or (6) of subsection (a), and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16A, § 9.

### **§ 1108. Amendment of Articles.**

The articles of a corporation organized under this chapter may be amended in a manner prescribed by the Commissioner.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16A, § 10.

### **§ 1109 Filing Articles.**

Articles of incorporation and articles of amendment shall be filed with the Commissioner.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16A, § 11.

### **§ 1110. Effective Date of Articles.**

Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the Commissioner accompanied by a payment of \$75, which includes a \$45 incorporation fee in addition to the \$30 filing fee.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1202-MLC-16A, § 12.

### **§ 1111. Presumption; Certificate of Incorporation.**

When the articles of incorporation have been filed with the Commissioner and the required fee has been paid to the Commissioner, it is presumed that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the Commissioner shall issue a certificate of incorporation to the corporation, but this presumption does not apply against Band in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation.

## Historical and Statutory Notes

**Source:**

Band Statute 1202-MLC-16A, § 13.

### CHAPTER 3

## NONPROFIT CORPORATIONS

**Subchapter**

**1. General Provisions**

**2. Incorporation and Articles**

**Section**

**2001**

**2101**

#### Cross References

Administration system, *see* 16 MLBS § 5.

### SUBCHAPTER 1

## GENERAL PROVISIONS

**Section**

**2001. Citation.**

**2002. Definitions.**

**2003. Scope of Chapter.**

**2004. Regulations.**

**2005. Foreign Corporations.**

**§ 2001. Citation.**

This chapter may be cited as the Mule Lacs Band of Chippewa Indians nonprofit corporation act.

## Historical and Statutory Notes

**Source:**

Band Statute 1077-MLC-16B, § I.

**§ 2002. Definitions.**

For purposes of this chapter, the terms in this section have the meanings given them, unless the language or context clearly shows that a different meaning is intended.

- (a) **“Address”** means mailing address, including a zip code, except that in the case of a registered office, address means the mailing address and the actual office location, which may not be a post office box.
- (b) **“Band”** means the Mille Lacs Band of Chippewa Indians.
- (c) **“Board of Directors”** or **“Board”** means the group of persons vested with the general management of the internal affairs of a corporation, regardless of how they are identified.
- (d) **“Bylaws”** means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.
- (e) **“Commissioner”** means the Commissioner of Corporate Affairs.
- (f) **“Corporation”** means a corporation that is governed by this chapter. A corporation may not:
  - (1) be formed for a purpose involving pecuniary gain to its members, other than to members that are nonprofit organizations or subdivisions, units, or agencies of the United States or a tribal government or subdivision thereof; and
  - (2) pay dividends or other pecuniary remuneration, directly or indirectly, to its members, other than to members that are nonprofit organizations or subdivisions, units, or agencies of the United States or a tribal government or a subdivision thereof.
- (g) **“Director”** means a member of the board.
- (h) **“Foreign corporation”** means a corporation that is formed under laws other than the laws of this state.
- (i) **“Good faith”** means honesty in fact in the conduct of an act or transaction
- (j) **“Member”** means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.
- (k) **“Members with voting rights”** or **“voting members”** means members or a class of members that has voting rights with respect to the purpose or matter involved.
- (l) **“Officer”** means a person elected, appointed, or otherwise designated as an officer by the board or the members, and a person considered elected an officer under this chapter.

- (m) **“Organization”** means a domestic or foreign business or nonprofit corporation, partnership, limited partnership, joint venture, association, trust, estate, enterprise, or other legal or commercial entity.
- (n) **“Registered office”** means the place within the jurisdiction of the Band designated in the articles of a corporation as the registered office of the corporation.
- (o) **“Written action”** means a written document signed by all of the persons required to take the action. The term also means the counterparts of a written document signed by any of the persons taking the action. A counterpart is the action of the persons signing it, and all the counterparts are one written action by all of the persons signing them.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 2.

#### **§ 2003. Scope of Chapter.**

- (a) **General.** This chapter does not apply to cooperative associations, public cemetery corporations and associations, and private cemeteries.
- (b) **Religious corporations.** This chapter does not apply to a religious corporation unless it is formed under this chapter or elects to be governed by this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 3.

#### **§ 2004 Regulations.**

- (a) The Commissioner of Corporate Affairs shall issue regulations with regard to Nonprofit Corporations governing the:
  - (1) powers (not inconsistent with other applicable law);
  - (2) organization, bylaws;
  - (3) board of directors;
  - (4) officers;
  - (5) members;

- (6) loans, obligations;
  - (7) merger, consolidation, transfer;
  - (8) dissolution; extension; corporate registration;
  - (9) actions against corporations; and
  - (10) special provisions.
- (b) These regulations shall closely parallel the Nonprofit Corporations Act' enacted by the State of Minnesota. MINN. STAT. § 317A.001 et seq.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 15.

#### **§ 2005. Foreign Corporations.**

Foreign corporations conducting business within the jurisdiction of the Band need not file with the Commissioner as a foreign corporation. A foreign corporation shall be required to acquire a license to conduct business within the jurisdiction of the Band as is provided by 18 MLBS § 1 et seq.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 2005.

## **SUBCHAPTER 2**

### **INCORPORATION AND ARTICLES**

**Section**

**2101. Purposes.**

**2102. Incorporators.**

**2103. Articles.**

**2104. Private Foundations; Provisions Considered Contained in Articles.**

**2105. Corporate Name.**

**2106. Reserved Name.**

**2107. Registered Office; Registered Agent.**

**2108. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.**

**2109. Amendment of Articles.**

**2110. Filing; Effective Date of Articles.**

**2111. Presumption; Certificate of Incorporation.**

**§ 2101. Purposes.**

- (a) A corporation may be incorporated under this chapter for any lawful purpose, unless another statute requires incorporation for a purpose under a different law. Unless otherwise limited in its articles, a corporation has a general purpose of engaging in any lawful activity. A corporation engaging in conduct that is regulated by another statute is subject to the limitations of the other statute.
  
- (b) A corporation may also be incorporated under this chapter as a Nonprofit Corporate Body Politic. A Nonprofit Corporate Body Politic shall be the same in all respects as any other corporation incorporated under this chapter except that:
  - (1) Such Nonprofit Corporate Body Politic shall also be a political subdivision of the Band conferred with all privileges and immunities contained as such; and
  - (2) Such Nonprofit Corporate Body Politic will have members instead of shareholders. The members shall consist of the Chief Executive, the Speaker of the Band Assembly, and the District Representatives of Districts 1, 2 and 3. These individuals shall serve as members in their official capacity as elected leaders of the Mille Lacs Band of Chippewa Indians.
  - (3) There shall be no voting rights for the members. The members shall have the power to appoint or delegate the appointment of the board of directors of such Nonprofit Corporate Body Politic in accord with applicable Band Statutes.
  - (4) Incorporators shall not be required for the Nonprofit Corporate Body Politic. The Corporate Body Politic shall be established in accord with Band Statute, or as delegated by Band Statute.
  - (5) Any revenues from such a Nonprofit Corporate Body Politic shall inure to the Mille Lacs Band of Chippewa Indians to be allocated for governmental purposes and the general welfare of the Mille Lacs Band people, according to a net revenue allocation schedule to be enacted by the Band.
  - (6) Such Nonprofit Corporate Body Politic shall not be required to pay any fees listed in this chapter.

**Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 4.

## § 2102. Incorporators.

One or more adult natural persons may act as incorporators of a corporation by filing articles of incorporation for the corporation with the Commissioner.

### Historical and Statutory Notes

#### Source:

Band Statute 1077-MLC-16B, § 5.

## § 2103. Articles.

- (a) **Required provisions.** The articles of incorporation must contain:
  - (1) the name of the corporation;
  - (2) the address of the registered office of the corporation and the name of its registered agent, if any, at that address;
  - (3) the name and address of each incorporator; and
  - (4) a statement that the corporation is organized under this chapter.
- (b) **Statutory provisions that may be modified only in articles.** The following provisions govern a corporation unless modified in the articles:
  - (1) a corporation has a general purpose of engaging in any lawful activity;
  - (2) the power to initially adopt, amend, or repeal the bylaws is vested in the board;
  - (3) cumulative voting for directors is prohibited;
  - (4) a written action by the board taken without a meeting must be signed by all directors; and
  - (5) members are of one class.
- (c) **Statutory provisions that may be modified in articles or bylaws.** The following provisions govern a corporation unless modified in the articles or bylaws:
  - (1) a certain method must be used for amending the articles;
  - (2) a corporation has perpetual duration and certain powers;

- (3) certain procedures apply to the adoption, amendment, or repeal of bylaws by the members;
- (4) a director holds office until expiration of the director's term and election of a successor;
- (5) the term of a director filling a vacancy expires at the end of the term the director is filling;
- (6) the compensation of directors is fixed by the board;
- (7) a certain method must be used for removal of directors;
- (8) a certain method must be used for filling board vacancies;
- (9) board meetings must be held at least once per Year and if the board fails to select a place for a board meeting, it must be held at the registered office;
- (10) a director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting;
- (11) a majority of the board is a quorum;
- (12) the affirmative vote of the majority of directors present is required for board action;
- (13) a committee consists of one or more persons, who need not be directors, appointed by the board;
- (14) the president and treasurer have certain duties, until the board determines otherwise;
- (15) officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so;
- (16) a corporation does not have members;
- (17) the board may determine the consideration required to admit members;
- (18) all members are entitled to vote and have equal rights and preferences in matters not otherwise provided for by the board or members;
- (19) memberships may not be transferred;
- (20) a corporation with voting members must hold a regular meeting of voting members annually;

- (21) if a specific minimum notice period has not been fixed by law, at least five days' notice is required for a meeting of members;
  - (22) the board may fix a date up to 60 days before the date of a members meeting as the date for determination of the members entitled to notice of and entitled to vote at the meeting;
  - (23) each member has one vote;
  - (24) the affirmative vote of the majority of members with voting rights present and entitled to vote is required for action of the members, unless this chapter or the articles or bylaws require a greater vote or voting by class;
  - (25) members may take action at a meeting by voice or ballot, by unanimous action without a meeting, by mailed ballot, or by electronic communication;
  - (26) the number of members required for a quorum is ten percent of the members entitled to vote;
  - (27) certain procedures govern acceptance of member acts; and
  - (28) indemnification of certain persons is required.
- (d) **Optional provisions; specific subjects.** The following provisions relating to the management or regulation of the affairs of a corporation may be included in the articles or, except for naming members of the first board, in the bylaws:
- (1) the first board of directors may be named in the articles;
  - (2) additional qualifications for directors may be imposed;
  - (3) terms of directors may be staggered;
  - (4) the day or date, time, and place of board meetings may be fixed;
  - (5) in addition to the president; authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation;
  - (6) additional officers may be designated;
  - (7) additional powers, rights, duties, and responsibilities may be given to officers;
  - (8) a method for filling vacant offices may be specified;
  - (9) membership criteria and procedures for admission may be established;

- (10) membership terms may be fixed;
  - (11) a corporation may levy dues, assessments, or fees on members;
  - (12) a corporation may buy memberships;
  - (13) a corporation may have delegates with some or all the authority of members;
  - (14) the day or date, time, and place of regular member meetings or the place of special meetings may be fixed;
  - (15) certain persons may be authorized to call special meetings of members;
  - (16) notices of special member meetings may be required to contain certain information,
  - (17) a larger than majority vote may be required for member action;
  - (18) members may vote by proxy; and
  - (19) members may enter into voting agreements.
- (e) **Optional provisions; generally.** The articles may contain other provisions consistent with law relating to the management or regulation of the affairs of the corporation.
  - (f) **Powers need not be stated.** It is not necessary to state the corporate powers granted by this chapter in the articles.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 6.

#### **§ 2104. Private Foundations; Provisions Considered Contained in Articles.**

- (a) **Provisions required.** The articles of incorporation of a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986 and an instrument governing the use, retention, or disposition by the corporation of its income or property must contain the provisions contained in this section. If the articles and instrument do not contain these provisions they are considered to have incorporated the language in paragraphs graphs (1) to (5) with the same effect as though the language was set forth verbatim. Except as provided in subsection (b), these provisions govern the corporation as to the use, retention, and disposition of its income and property regardless of provisions of the articles or instrument or other law of this state to the contrary:

- (1) the corporation shall distribute for each of its taxable years amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1986;<sup>2</sup>
  - (2) the corporation may not engage in an act of “self-dealing” as defined in section 4941(d) of the Internal Revenue Code of 1986 that would give rise to liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1986;
  - (3) the corporation may not retain “excess business holdings” as defined in section 4943(c) of the Internal Revenue Code of 1986 that would give rise to liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1986;
  - (4) the corporation may not make investments that would jeopardize the carrying out of the exempt purposes of the corporation, within the meaning of section 4944 of the Internal Revenue Code of 1986, so as to give rise to liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1986; and
  - (5) the corporation may not make a “taxable expenditure” as defined in section 4945(d) of the Internal Revenue Code of 1986 that would give rise to liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1986.
- (b) **Exception.** Subsection (a) does not apply to a corporation if a court of competent jurisdiction determines that the application would be contrary to the terms of an instrument described in subsection (a) and that the instrument may not properly be changed to conform to subsection (a). Subsection (a) does not apply to nonprofit Corporate Body Politic organizations described in 16 MLBS § 2101).
- (c) **Future references.** A reference in subsection (a) to a particular section of the Internal Revenue Code of 1986 includes the corresponding provision of a future United States Internal Revenue law.
- (d) **Rights reserved.** This section does not impair the rights and powers of the Solicitor General or the Court of Central Jurisdiction with respect to a corporation.
- (1) 26 U.S.C.A. § 509(a).
  - (2) 26 U.S.C.A. § 4942(a).
  - (3) 26 U.S.C.A. § 4941(d).
  - (4) 26 U.S.C.A. § 4941(a).
  - (5) 26 U.S.C.A. § 4943(c).

- (6) 26 U.S.C.A. § 4943(a).
- (7) 26 U.S.C.A. § 4944.
- (8) 26 U.S.C.A. § 4945(d).
- (9) 26 U.S.C.A. § 4945(a).

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-1 6B, § 7.

### **§ 2105 Corporate Name.**

(a) **Requirements.**

- (1) The corporate name must be in the English language, the Ojibwe language, or in another language expressed in English letters or characters.
- (2) A corporate name may not contain a word or phrase that shows or implies that it may not be incorporated under this chapter.
- (3) A corporate name need not contain the word “corporation,” “incorporated” “company” or an abbreviation of one of these words.

- (b) **Name must be distinguishable.** A corporate name must be distinguishable upon the records in the office of Commissioner from the name of a domestic corporation or limited partnership, a foreign corporation or limited partnership authorized or registered to do business within the jurisdiction of the Band, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved, registered, or provided for in Band Statute or regulations promulgated pursuant thereto unless exempted by the Commissioner.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 8.

### **§ 2106. Reserved Name.**

- (a) **Who may reserve.** A corporate name permitted by this chapter may be reserved in the records of the Commissioner by:

- (1) a person doing business within the jurisdiction of the Band under that name;
  - (2) a person intending to incorporate under this chapter;
  - (3) a domestic corporation intending to change its name.
- (b) **Method of reservation.** The reservation must be made by filing with the Commissioner a request that the name be reserved. If the name is available for reservation by the applicant, the Commissioner shall reserve the name for the applicant for 12 months. The reservation may be renewed for successive 12-month periods.
- (c) **Transfer of reservation.** The right to a corporate name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the Commissioner a notice of the transfer and specifying the name and address of the transferee.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 9.

#### **§ 2107. Registered Office; Registered Agent.**

- (a) **Registered office.** A corporation shall continuously maintain a registered office within the jurisdiction of the Band. A registered office need not be the same as the principal place of business of the corporation.
- (b) **Registered agent.** A corporation may designate in its articles a registered agent. The registered agent may be a natural person residing within the jurisdiction of the Band, a domestic corporation, or a foreign corporation authorized to transact business within the jurisdiction of the Band. The registered agent must maintain an office that is identical with the registered office.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B. § 10.

#### **§ 2108. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.**

- (a) **Statement.** A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the Commissioner a statement containing:

- (1) the name of the corporation;
  - (2) if the address of its registered office is to be changed, the new address of its registered office;
  - (3) if its registered agent is to be designated or changed, the name of its new registered agent;
  - (4) if the name of its registered agent is to be changed, the name of its registered agent as changed;
  - (5) a statement that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and
  - (6) a statement that the change of registered office or registered agent was authorized by resolution approved by the board.
- (b) **Resignation of agent.** A registered agent of a corporation may resign by filing with the Commissioner a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its registered office. The appointment of the agent ends 30 days after the notice is filed with the Commissioner.
- (c) **Change of address or name of agent.** If the address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent of a corporation represented by that agent by filing with the Commissioner the statement required in subsection (a), except that it need be signed only by the registered agent, need not be responsive to paragraph (3) or (6) of subsection (a), and must state that a copy of the statement has been mailed to the corporation.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 11.

#### **§ 2109. Amendment of Articles.**

The Articles of a Corporation organized under this chapter may be amended in a manner prescribed by the Commissioner.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 12.

**§ 2110. Filing; Effective Date of Articles.**

- (a) **Filing required.** Articles of incorporation and articles of amendment must be filed with the Commissioner.
- (b) **Effective date.** Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the Commissioner accompanied by a payment of which includes a \$ incorporation fee in addition to the \$ \_\_\_ filing fee.

**Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 13.

**§ 2111 Presumption; Certificate of Incorporation.**

When the articles of incorporation have been filed with the Commissioner and the required fee has been paid to the Commissioner, it is presumed that conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the Commissioner shall issue a certificate of incorporation to the corporation. This presumption does not apply against the Band in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation.

**Historical and Statutory Notes**

**Source:**

Band Statute 1077-MLC-16B, § 14.