

Training & Instruction



Tribal Government Section 17: Authority & Control Measures

Introduction

Tribal governments hold the highest fiduciary and legal responsibility granted by its people. Therefore, tribal government must create the future, but manage the present. Tribal governments must rely heavily on the expertise of essential qualified staff and board members. Through a Section 17 incorporation, the tribe creates a separate legal entity to divide its governmental and business activities. The newly organized corporation will have its own articles of incorporation and bylaws that identify its purpose.

Leadership Authority & Control Process

- Create vision and policy
- Challenge the process, growth and priorities, constant evaluation.
- Enable others to work, provide resources, empowerment, and freedom to get the job done
- Treat the business as a business

Things Authority/Control must do

- Produce results and outcomes
- Follow policy/law
- Create practices and methods to stay accountable
- Create governing structure and documents such as a charter, articles of incorporation, operating agreements, policies, procedures that reflect the entity as a separate business
- Evaluate existing businesses and consolidate under the new business economic entity

ACHIEVABLE BY:

- Hiring the best, qualified people
- Appointment of board members, proper Council representation
- Monthly, quarterly, annual updates
- Progress reports, budgets and presentations
- Approval process: votes, resolutions, tribal council directives

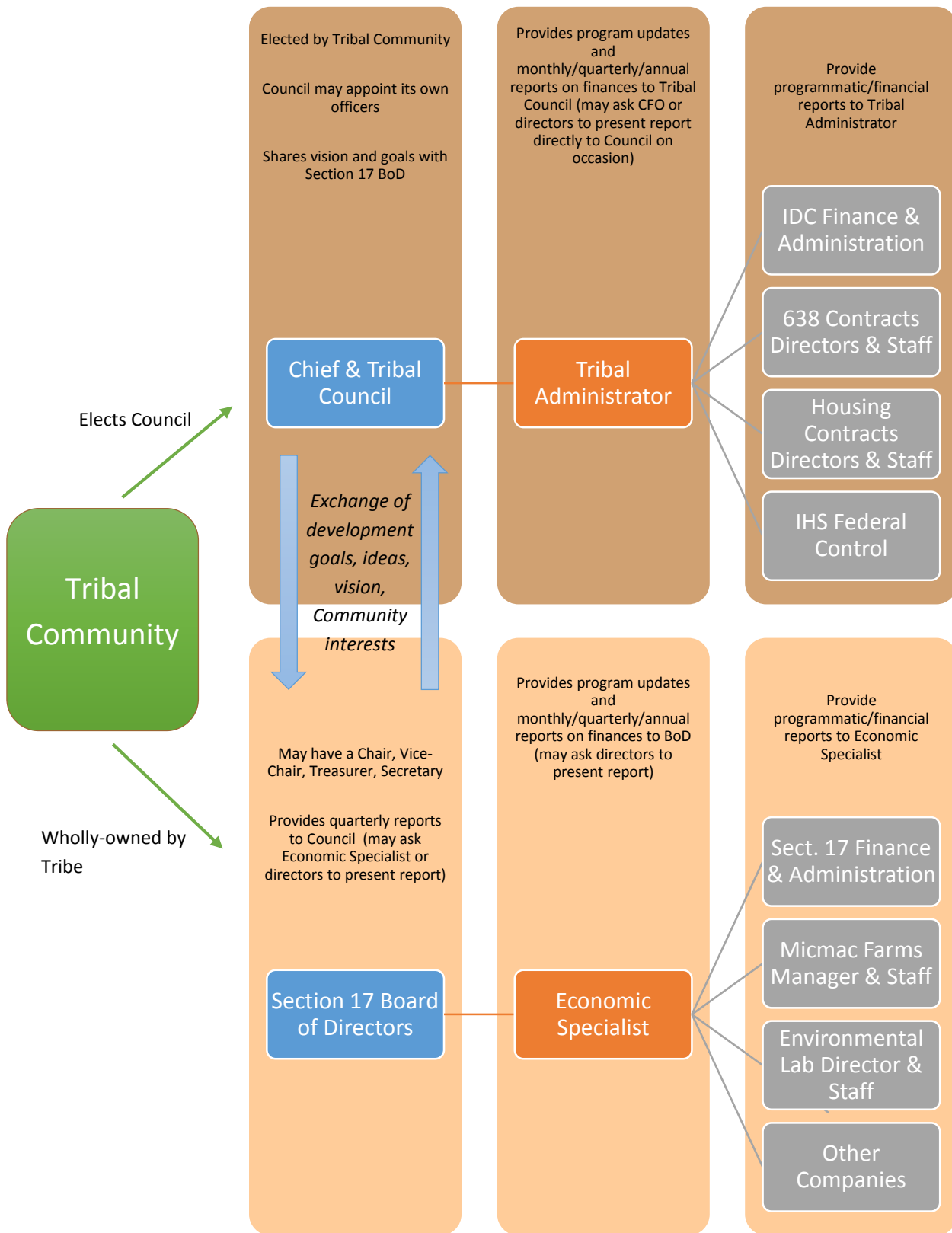
Separation of the Entity

The Section 17 will stand on its own. The separation between government and business is essential. Points to remember:

- The Section 17 will share the tribe's sovereign immunity
- Allows for segregation of tribal government operations, assets and liabilities from tribal business operations, assets and liabilities
- Section 17 charter defines the powers of the corporation, which can include the power to buy and sell real and personal property incidental to the conduct of corporate business or enter into leases/mortgages and contracts

- Although wholly-owned by the tribe, the Section 17 will have separate bank accounts, directors and assets
- Assets can be separately pledged as collateral
- Free to waive sovereign immunity for a particular transaction to allow the ability to compete fairly for investors and credit
- Free of tribal contracting/administrative structure (it will have its own)
- Free of ever-changing political temperatures, staff turnover and elections
- Very difficult to revoke—a new tribal council can't easily come in and say, "we want to change everything done previously"
- Operates under the guidance of the tribal council, however the board of directors has oversight
 - BoD can consist of several elected tribal officials, but also may have other tribal or non-tribal members who are handpicked for their expertise (CPA, banker, broad business experience)
 - Tribal Council is typically not involved in day-to-day management decisions either directly or indirectly
- Quick and strong dispute resolution process free of cumbersome internal process—business time is different than council and administration time

The management is doing things right and tribal leadership is doing the right things.



Notes: