

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 28 GUAM BUSINESS CORPORATION ACT

PART 5

CHAPTER 28
GUAM BUSINESS CORPORATION ACT

SOURCE: This Part and Chapter were added by P.L. 29-144:2 (Jan. 30, 2009), effective 90 days from the date of enactment pursuant to § 281701 of this Chapter and P.L. 29-144:4.

2009 NOTE: The effect of this Act on corporations formed after the effective date is generally set forth in Article 17 of this Chapter.

Pursuant to § 1101.1 of this Title (as enacted by P.L. 29-144:3):

“A corporation organized in Guam prior to the effective date of the Guam Business Corporation Act *shall not* be subject to the Guam Business Corporation Act, and *shall* continue to be governed by this part [Chapter 1, (The General Corporation Law) of Title 18], except as provided in the Guam Business Corporation Act.”

- Article 1. General Provisions.
- Article 2. Incorporation.
- Article 3. Purposes and Powers.
- Article 4. Name.
- Article 5. Designation of Agent and Service of Process.
- Article 6. Shares and Distribution.
- Article 7. Shareholders.
 - Subarticle A. Derivative Proceedings.
- Article 8. Directors and Officer.
 - Subarticle A. Indemnification.
- Article 9. [Reserved]
- Article 10. Amendment of Articles of Incorporation and Bylaws.
- Article 11. Mergers and Share Exchanges.
- Article 12. Disposition of Assets.
- Article 13. Appraisal Rights.
 - Subarticle A. Right to Appraisal and Payment for Shares.
 - Subarticle B. Procedure for Exercise of Appraisal Rights.
- Article 14. Dissolution.
 - Subarticle A. Judicial Dissolution.
- Article 15. Foreign Corporations.
- Article 16. Records and Reports.
- Article 17. Transition Provisions.

ARTICLE 1
GENERAL PROVISIONS

- § 28101. Short Title.
- § 28102. Reservation of Power to Amend or Repeal.
- § 28103. Filing Requirements.
- § 28104. Forms.
- § 28105. Filing, Service, and Copying Fees.
- § 28106. Effective Time and Date of Document.
- § 28107. Evidentiary Effect of Copy of Filed Document.
- § 28108. Certificate of Existence.
- § 28109. Powers.
- § 28110. Act Definitions.
- § 28111. Notice.

§ 28101. Short Title.

This Act shall be known and may be cited as the “Guam Business Corporation Act.”

§ 28102. Reservation of Power to Amend or Repeal.

I Liheslaturan Guåhan has power to amend or repeal all or part of this Act at any time and all domestic and foreign corporations subject to this Act are governed by the amendment or repeal.

§ 28103. Filing Requirements.

A document to be entitled to filing by the Director of Revenue & Taxation must be type written or printed, unless the Director has by regulation provided for filing by electronic transmission. A document filed by electronic transmission must be in a format that can be retrieved or reproduced in typewritten or printed form.

§ 28104. Forms.

The Director of Revenue & Taxation may prescribe and furnish on request forms for documents required or permitted to be filed by this Act but their use is not mandatory.

§ 28105. Filing, Service, and Copying Fees.

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(a) The Director of Revenue & Taxation shall collect the following fees when the documents described in this subsection are delivered to him for filing:

Document	
(1) Articles of incorporation	\$100.00
(2) Application for reserved name	\$ 25.00
(3) Application for registered name or renewal of registered name	\$ 25.00
(4) Corporation's statement of registered Agent or of change of registered agent	No Fee
(5) Agent's statement of resignation	No Fee
(6) Amended articles of incorporation	\$ 25.00
(7) Articles of merger or share exchange	\$100.00
(8) Articles of dissolution	\$ 25.00
(9) Articles of revocation of dissolution	\$100.00
(10) Certificate of judicial dissolution	No Fee
(11) Application of a foreign corporation for certificate of authority	\$100.00
(12) Application of a foreign corporation for amended certificate of authority	\$ 25.00
(13) Application for certificate of withdrawal of foreign corporation	\$ 25.00
(14) Amended articles of incorporation of foreign or domestic corporation	\$ 50.00
(15) Annual report of foreign or domestic corporation	\$100.00
(16) Late fee for annual report of foreign or domestic corporation	\$ 50.00
(17) Application for certificate of existence or authorization	\$ 25.00

(b) The Director of Revenue & Taxation shall collect a fee of \$50.00 each time process is served on the Director under this Act. The party to a

proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) Authorization to Establish and Collect Fees. The Director of the Department of Revenue and Taxation is authorized to establish and collect fees for any document required or permitted to be filed in accordance with this Act for which the fee has not been specifically established in accordance with the Administrative Adjudication law; provided, that no fee shall be in excess of Fifty Dollars (\$50.00) and only temporarily until the Administrative Adjudication Law process shall have become effective relative to fees in this Section.

§ 28106. Effective Time and Date of Document.

A document accepted for filing is effective at the date and time of filing, as evidenced by such means as the Director of Revenue & Taxation may use for the purpose of recording the date and time of filing.

§ 28107. Evidentiary Effect of Copy of Filed Document.

A certificate from the Director of Revenue & Taxation delivered with a copy of a document filed by the Director of Revenue & Taxation is conclusive evidence that the original document is on file with the Director of Revenue & Taxation.

§ 28108. Certificate of Existence.

(a) Anyone may apply to the Director of Revenue & Taxation to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) the domestic corporation's corporate name or the foreign corporation's corporate name;

(2) that:

(A) the domestic corporation is duly incorporated under the laws of Guam, the date of its incorporation, and the period of its duration if less than perpetual; or

(B) that the foreign corporation is authorized to transact business in Guam;

(3) that articles of dissolution have not been filed; and

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(4) other facts of record in the office of the Director of Revenue & Taxation that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Director of Revenue & Taxation may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in Guam.

§ 28109. Powers.

The Director of Revenue & Taxation has the power reasonably necessary to perform the duties required of him by this Act.

§ 28110. Act Definitions.

In this Act:

(a) Articles of incorporation include amended articles of incorporation and articles of merger.

(b) Authorized shares means the shares of all classes a domestic or foreign corporation is authorized to issue.

(c) Corporation or domestic corporation means a corporation for profit which is not a foreign corporation incorporated under or subject to the provisions of this Act.

(d) Deliver or delivery means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

(e) Distribution means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(f) Effective date of notice is defined in § 28111.

(g) Electronic transmission or electronically transmitted means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

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(h) Employee includes an officer but not a director. A director may accept duties that make him also an employee.

(i) Entity includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, limited liability company, limited partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

(j) Foreign corporation means a corporation for profit incorporated under a law other than the law of Guam.

(k) Includes denotes a partial definition.

(l) Individual includes the estate of an incompetent or deceased individual.

(m) Means denotes an exhaustive definition.

(n) Notice is defined in § 28111.

(o) Person includes individual and entity.

(p) Proceeding includes civil suit and criminal, administrative, and investigatory action.

(q) Record date means the date established under this Act on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this Act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(r) Secretary means the corporate officer to whom the board of directors has delegated responsibility under § 28819 (c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(s) Shareholder means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(t) Shares means the units into which the proprietary interests in a corporation are divided.

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(u) Sign or signature includes any manual, facsimile, conformed or electronic signature.

(v) State, when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.

(w) Subscriber means a person who subscribes for shares in a corporation, whether before or after incorporation.

(x) United States includes district, authority, bureau, commission, department, and any other agency of the United States.

(y) Voting group means all shares of one or more classes or series that under the articles of incorporation or this Act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this Act to vote generally on the matter are for that purpose a single voting group.

(z) Voting power means the current power to vote in the election of directors.

§ 28111. Notice.

(a) Notice under this Act must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(b) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective:

(1) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or

(2) when electronically transmitted to the shareholder in a manner authorized by the shareholder.

(c) Except as provided in subsection (b), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) when received;

(2) five days after its deposit in the United States Mail, if mailed

postpaid and correctly addressed;

(3) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(d) Oral notice is effective when communicated if communicated in a comprehensible manner.

(e) If this Act prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this Act, those requirements govern.

ARTICLE 2 INCORPORATION

- § 28201. Incorporators.
- § 28202. Articles of Incorporation.
- § 28203. Organization of Corporation.
- § 28204. Bylaws.
- § 28205. Emergency Bylaws.

§ 28201. Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Director of Revenue & Taxation for filing.

§ 28202. Articles of Incorporation.

- (a) The articles of incorporation must set forth:
 - (1) a corporate name for the corporation that satisfies the requirements of § 28401;
 - (2) the number of shares the corporation is authorized to issue;
 - (3) the corporation's initial place of business; and
 - (4) the name and address of each incorporator.
- (b) The articles of incorporation may set forth:

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(1) the names and addresses of the individuals who are to serve as the initial directors;

(2) provisions not inconsistent with law regarding:

(A) the purpose or purposes for which the corporation is organized;

(B) managing the business and regulating the affairs of the corporation;

(C) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(D) a par value for authorized shares or classes of shares;

(E) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(3) any provision that under this Act is required or permitted to be set forth in the bylaws;

(4) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(A) the amount of a financial benefit received by a director to which he is not entitled;

(B) an intentional infliction of harm on the corporation or the shareholders;

(C) a violation of § 28818; or

(D) an intentional violation of criminal law; and

(5) a provision permitting or making obligatory indemnification of a director for liability to any person for any action taken, or any failure to take any action, as a director, except liability for:

(A) receipt of a financial benefit to which he is not entitled,

(B) an intentional infliction of harm on the corporation or its shareholders,

(C) a violation of § 28818 or

(D) an intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this Act.

§ 28203. Organization of Corporation.

(a) After incorporation:

(1) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(2) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(A) to elect directors and complete the organization of the corporation; or

(B) to elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of Guam.

§ 28204. Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

§ 28205. Emergency Bylaws.

(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d). The emergency bylaws, which are

subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (1) procedures for calling a meeting of the board of directors;
- (2) quorum requirements for the meeting; and
- (3) designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) binds the corporation; and
- (2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

ARTICLE 3 PURPOSES AND POWERS

- § 28301. Purposes.
- § 28302. General Powers.
- § 28303. Emergency Powers.
- § 28304. Ultra Vires.

§ 28301. Purposes.

(a) Every corporation incorporated under this Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of Guam may incorporate under this Act only if permitted by, and subject to all limitations of, the other statute.

§ 28302. General Powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

- (a) to sue and be sued, complain and defend in its corporate name;
- (b) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (c) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of Guam, for managing the business and regulating the affairs of the corporation;
- (d) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (f) to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (g) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (h) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (i) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (j) to conduct its business, locate offices, and exercise the powers granted by this Act within or without Guam;
- (k) to elect directors and appoint officers, employees, and agents

of the corporation, define their duties, fix their compensation, and lend them money and credit;

(l) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(m) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(n) to transact any lawful business that will aid governmental policy;

(o) to make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

§ 28303. Emergency Powers.

(a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

(1) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) one or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

§ 28304. Ultra Vires.

(a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) in a proceeding by a shareholder against the corporation to enjoin the act;

(2) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) in a proceeding by the Attorney General under § 281410.

(c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

ARTICLE 4
NAME

NOTE: In enacting this article, P.L. 29-144 (Jan. 30, 2009) erroneously referred to Title 11 GCA. Pursuant to the authority granted by 1 GCA § 1606, the references have been corrected to Title 18 GCA, which contains the General Corporation Law.

- § 28401. Corporate Name.
- § 28402. Reserved Name.
- § 28403. Registered Name.

§ 28401. Corporate Name.

The provisions of 18 GCA § 2110 of the General Corporation Law of Guam shall apply to a corporation governed by this Act.

§ 28402. Reserved Name.

The provisions of 18 GCA § 2110.1 of the General Corporation Law of Guam shall apply to a corporation governed by this Act.

§ 28403. Registered Name.

The provisions of 18 GCA § 2110.2 of the General Corporation Law of Guam shall apply to a corporation governed by this Act.

**ARTICLE 5
DESIGNATION OF AGENT AND SERVICE OF PROCESS**

§ 28501. Designation of Agent for Service of Process.

§ 28501. Designation of Agent for Service of Process.

Every domestic corporation may file with the Director of Revenue & Taxation a designation of a natural person, residing at a stated address in Guam, as its agent, for the purpose of service of process, and the delivery, to such agent, of a copy of any process against such corporation shall constitute valid service on such corporation. Such corporation shall file with the Director of Revenue & Taxation notice of any change in the address of the person thus designated, and may revoke any such designation by filing notice thereof with the Director of Revenue & Taxation.

If such designation has not been filed with the Director of Revenue & Taxation, or if process against any domestic corporation cannot, with the exercise of due diligence, be served upon the person designated or in any other manner provided by law, service may be had upon such corporation by delivering to the Director of Revenue & Taxation, or to any person employed in his office in the capacity of a deputy, duplicate copies of such process, together with any fee required by law, which shall be included in the taxable costs of the suit, action, or proceeding. Upon the receipt of such process and fee, the Director of Revenue & Taxation shall forthwith give notice of the service of such process to the corporation at its principal office in Guam, and

shall deliver to such office, a copy of such process. The defendant shall appear and answer within thirty (30) days after such service upon the Director of Revenue & Taxation.

ARTICLE 6
SHARES AND DISTRIBUTION

- § 28601. Authorized Shares.
- § 28602. Terms of Class or Series Determined by Board of Directors.
- § 28603. Issued and Outstanding Shares.
- § 28604. Fractional Shares.
- § 28605. Subscription for Shares Before Incorporation.
- § 28606. Issuance of Shares.
- § 28607. Liability of Shareholders.
- § 28608. Share Dividends.
- § 28609. Share Options.
- § 28610. Form and Content of Certificates.
- § 28611. Shares Without Certificates.
- § 28612. Restriction on Transfer of Shares and Other Securities.
- § 28613. Expense of Issue.
- § 28614. Shareholders' Preemptive Rights.
- § 28615. Corporation's Acquisition of its Own Shares.
- § 28616. Distributions to Shareholders.

§ 28601. Authorized Shares.

(a) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by § 28602.

(b) The articles of incorporation must authorize:

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(1) one or more classes of shares that together have unlimited voting rights, and

(2) one or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes of shares that:

(1) have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this Act;

(2) are redeemable or convertible as specified in the articles of incorporation:

(A) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(B) for cash, indebtedness, securities, or other property;

(C) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(3) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative;

(4) have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(d) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (c) is not exhaustive.

§ 28602. Terms of Class or Series Determined by Board of Directors.

(a) If and to the extent the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights (within the limits set forth in § 28601) of:

(1) any class of shares before the issuance of any shares of that class or

(2) one or more series within a class before the issuance of any shares of that series.

(b) Each series of a class must be given a distinguishing designation.

(c) All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(d) Before issuing any shares of a class or series created under this section, the corporation must deliver to the Director of Revenue & Taxation for filing amended articles of incorporation, which are effective without shareholder action as provided in § 281005. Such amended articles of incorporation shall include provisions determining the terms of the class or series of shares as duly adopted by the board of directors. When any shares of a class or series created under this section are no longer outstanding, the corporation may deliver to the Director of Revenue & Taxation for filing amended articles of incorporation which are effective without shareholder action, omitting the provisions determining the terms of the class or series of shares no longer outstanding.

§ 28603. Issued and Outstanding Shares.

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to § 28616.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

§ 28604. Fractional Shares.

(a) A corporation may:

(1) Issue fractions of a share or pay in money the value of fractions of a share;

(2) Arrange for disposition of fractional shares by the shareholders;

(3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled scrip and must contain the information required by § 28610(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(1) that the scrip will become void if not exchanged for full shares before a specified date; and

(2) that the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

§ 28605. Subscription for Shares Before Incorporation.

(a) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than

twenty (20) days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to § 28606.

§ 28606. Issuance of Shares.

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

§ 28607. Liability of Shareholders.

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

§ 28608. Share Dividends.

(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

- (1) the articles of incorporation so authorize,
- (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or
- (3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

§ 28609. Share Options.

A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

§ 28610. Form and Content of Certificates.

(a) Shares may but need not be represented by certificates. Unless this Act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

- (1) the name of the issuing corporation and that it is organized under the law of Guam;
- (2) the name of the person to whom issued; and
- (3) the number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the

corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate:

(1) must be signed (either manually or in facsimile) by two officers designated in the bylaws or by the board of directors and

(2) may bear the corporate seal or its facsimile.

(e) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

§ 28611. Shares Without Certificates.

(a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by § 28610 (b) and (c), and, if applicable, § 28612.

§ 28612. Restriction on Transfer of Shares and Other Securities.

(a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by § 28611 (b). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(2) to preserve exemptions under federal or state securities law;

(3) for any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(1) Obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;

(2) Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;

(3) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, shares includes a security convertible into or carrying a right to subscribe for or acquire shares.

§ 28613. Expense of Issue.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

§ 28614. Shareholders' Preemptive Rights.

(a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(b) A statement included in the articles of incorporation that the corporation elects to have preemptive rights (or words of similar import) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of

directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(2) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) Unless the articles expressly provide there is no preemptive right with respect to:

(A) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(B) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(C) shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation;

(D) shares sold otherwise than for money.

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, shares includes a security convertible into or carrying a right to subscribe for or acquire shares.

§ 28615. Corporation's Acquisition of its Own Shares.

(a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired.

§ 28616. Distributions to Shareholders.

(a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c).

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's shares), it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) the corporation's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g), the effect of a distribution under subsection (c) is measured:

(1) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(A) the date money or other property is transferred or debt incurred by the corporation or

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- (B) the date the shareholder ceases to be a shareholder with respect to the acquired shares;
- (2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
- (3) in all other cases, as of:
 - (A) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or
 - (B) the date the payment is made if it occurs more than 120 days after the date of authorization.
- (f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.
- (g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determination under subsection (c) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.
- (h) This section shall not apply to distributions in liquidation under Article 14.

ARTICLE 7
SHAREHOLDERS

- § 28701. Annual Meeting.
- § 28702. Special Meeting.
- § 28703. Court-Ordered Meeting.
- § 28704. Action Without Meeting.
- § 28705. Notice of Meeting.
- § 28706. Waiver of Notice.
- § 28707. Record Date.
- § 28708. Shareholders' List for Meeting.

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- § 28709. Voting Entitlement of Shares.
- § 28710. Proxies.
- § 28711. Shares Held by Nominees.
- § 28712. Remote Communication.
- § 28713. Quorum and Voting Requirements for Voting Groups.
- § 28714. Action by Single and Multiple Voting Groups.
- § 28715. Greater Quorum or Voting Requirements.
- § 28716. Voting for Directors; Cumulative Voting.
- § 28717. Voting Trusts.
- § 28718. Voting Agreements.
- § 28719. Shareholder Agreements.

§ 28701. Annual Meeting.

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of Guam at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office, or at a place determined by the board of directors.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

§ 28702. Special Meeting.

(a) A corporation shall hold a special meeting of shareholders:

(1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) if the holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25 percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked

by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(b) If not otherwise fixed under § 28707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of Guam at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office, or at a place determined by the board of directors.

(d) Only business within the purpose or purposes described in the meeting notice required by § 28705 (c) may be conducted at a special shareholders' meeting.

§ 28703. Court-Ordered Meeting.

(a) The Superior Court of Guam may summarily order a meeting to be held:

(1) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(2) on application of a shareholder who signed a demand for a special meeting valid under § 28702 if:

(A) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(B) the special meeting was not held in accordance with the notice.

§ 28704. Action Without Meeting.

(a) Action required or permitted by this Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to

the corporation for inclusion in the minutes or filing with the corporate records.

(b) A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporate action. The bylaws may further regulate the manner in which consents are given or action by consent undertaken.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) If this Act requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this Act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

§ 28705. Notice of Meeting.

(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this Act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this Act or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under § 28707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or

place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under § 28707, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

§ 28706. Waiver of Notice.

(a) A shareholder may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

§ 28707. Record Date.

(a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original

record date continues in effect or it may fix a new record date.

§ 28708. Shareholders' List for Meeting.

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of § 281601, to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the Superior Court of Guam, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

§ 28709. Voting Entitlement of Shares.

(a) Except as provided in subsections (b) and (c) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second

corporation.

(c) Subsection (b) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

§ 28710. Proxies.

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholders by signing an appointment form or by an electronic transmission if electronic transfer is permitted by the board of directors. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the electronic transmission.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment. The bylaws or notice of a meeting may designate a place or officer of the corporation for receipt of proxies and procedures for electronic transmission of proxies.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) a pledgee;
- (2) a person who purchased or agreed to purchase the shares;
- (3) a creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) an employee of the corporation whose employment contract requires the appointment; or

(5) a party to a voting agreement created under § 28718.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to § 28712 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

§ 28711. Shares Held by Nominees.

(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

- (1) the types of nominees to which it applies;
- (2) the rights or privileges that the corporation recognizes in a beneficial owner;
- (3) the manner in which the procedure is selected by the nominee;
- (4) the information that must be provided when the procedure is selected;
- (5) the period for which selection of the procedure is effective; and
- (6) other aspects of the rights and duties created.

§ 28712. Remote Communication.

(a) If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication;

(b) Participate in a meeting of stockholders; and

(c) Be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:

(1) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder;

(2) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and

(3) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

§ 28713. Quorum and Voting Requirements for Voting Groups.

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this Act provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this Act require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) is governed by § 28715.

(e) The election of directors is governed by § 28716.

§ 28714. Action by Single and Multiple Voting Groups.

(a) If the articles of incorporation or this Act provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § 28713.

(b) If the articles of incorporation or this Act provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § 28713. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

§ 28715. Greater Quorum or Voting Requirements.

(a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by this Act.

(b) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

§ 28716. Voting for Directors; Cumulative Voting.

(a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(c) A statement included in the articles of incorporation that shareholders are entitled to cumulate their votes for directors (or words of similar import) means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

§ 28717. Voting Trusts.

(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date unless extended under subsection (c).

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

§ 28718. Voting Agreements.

(a) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of § 28717.

(b) A voting agreement created under this section is specifically enforceable.

(c) No agreement made pursuant to subsection(a) shall be held to be invalid or unenforceable on the ground that it is a voting trust or a shareholder agreement that does not comply with § 28717 or § 28719, or that it is a proxy that does not comply with § 28710. Neither this section nor sections 28717 or 28719 shall invalidate any voting or other agreement among shareholders or any irrevocable proxy complying with § 28710, which agreement or proxy is not otherwise illegal.

§ 28719. Shareholder Agreements.

(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this Act in that it:

(1) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject the limitations in § 28616;

(3) establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(4) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;

(6) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(7) requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(1) set forth:

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(A) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement or

(B) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(2) subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(3) valid for 10 years, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by § 28611 (b). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

SUBARTICLE A
DERIVATIVE PROCEEDINGS

- § 28720. Subarticle Definitions.
- § 28721. Standing.
- § 28722. Demand.
- § 28723. Stay of Proceedings.
- § 28724. Dismissal.
- § 28725. Discontinuance or Settlement.
- § 28726. Payment of Expenses.

§ 28720. Subarticle Definitions.

In this subarticle:

(a) Derivative proceeding means a civil suit in the right of a domestic corporation.

(b) Shareholder includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

§ 28721. Standing.

A shareholder may not commence or maintain a derivative proceeding

unless the shareholder:

(a) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(b) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

§ 28722. Demand.

No shareholder may commence a derivative proceeding until:

(a) a written demand has been made upon the corporation to take suitable action; and

(b) 90 days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90 day period.

§ 28723. Stay of Proceedings.

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

§ 28724. Dismissal.

(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsections (b) or (f) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (f), the determination in subsection (a) shall be made by:

(1) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum;
or

(2) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not

such independent directors constituted a quorum.

(c) None of the following shall by itself cause a director to be considered not independent for purposes of this section:

(1) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(2) the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(3) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either:

(1) that a majority of the board of directors did not consist of independent directors at the time the determination was made, or

(2) that the requirements of subsection (a) have not been met.

(e) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (a) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

(f) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

§ 28725. Discontinuance or Settlement.

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

§ 28726. Payment of Expenses.

On termination of the derivative proceeding the court may:

(a) order the corporation to pay the plaintiff's reasonable expenses (including counsel fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(b) order the plaintiff to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(c) order a party to pay an opposing party's reasonable expenses (including counsel fees) incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading, motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

**ARTICLE 8
DIRECTORS AND OFFICER**

- § 28801. Requirement for and Duties of Board of Directors.
- § 28802. Qualifications of Directors.
- § 28803. Number and Election of Directors.
- § 28804. Election of Directors by Certain Classes of Shareholders.
- § 28805. Terms of Directors Generally.
- § 28806. Staggered Terms for Directors.
- § 28807. Resignation of Directors.
- § 28808. Removal of Directors by Shareholders.
- § 28809. Vacancy on Board.
- § 28810. Compensation of Directors.
- § 28811. Meetings.
- § 28812. Action Without Meeting.
- § 28813. Notice of Meeting.
- § 28814. Waiver of Notice.

- § 28815. Quorum and Voting.
- § 28816. Committees.
- § 28817. General Standards for Directors.
- § 28817.1. Standards of Liability for Directors.
- § 28818. Directors' Liability for Unlawful Distributions.
- § 28819. Officers.
- § 28820. Duties of Officers.
- § 28821. Standards of Conduct for Officers.

§ 28801. Requirement for and Duties of Board of Directors.

(a) Except as provided in § 28719, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under § 28719.

(c) A corporation having 50 or fewer shareholders may dispense with or limit the authority of a board of directors by describing in its articles of incorporation who will perform some or all of the duties of a board of directors.

§ 28802. Qualifications of Directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of Guam or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

§ 28803. Number and Election of Directors.

(a) A board of directors must consist of one or more individuals, with the number specified in the articles of incorporation or bylaws.

(b) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under § 28806.

§ 28804. Election of Directors by Certain Classes of Shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class

(or classes) of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

§ 28805. Terms of Directors Generally.

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under § 28806.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

§ 28806. Staggered Terms for Directors.

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

§ 28807. Resignation of Directors.

(a) A director may resign at any time by delivering written notice to the board of directors, its chairman, or to the corporation.

(b) A resignation is effective when the notice is delivered.

§ 28808. Removal of Directors by Shareholders.

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be

removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing him and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

§ 28809. Vacancy on Board.

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (1) the shareholders may fill the vacancy;
- (2) the board of directors may fill the vacancy; or

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

§ 28810. Compensation of Directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

§ 28811. Meetings.

(a) The board of directors may hold regular or special meetings in or out of Guam.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

§ 28812. Action Without Meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) Unless otherwise restricted by the certificate of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board, or committee.

§ 28813. Notice of Meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held with notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice shall describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

§ 28814. Waiver of Notice.

(a) A director may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice.

(b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent

to action taken at the meeting.

§ 28815. Quorum and Voting.

(a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this Act, a quorum of a board of directors consists of a majority of the number of directors specified in the articles of incorporation or bylaws.

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

§ 28816. Committees.

(a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee must have two or more members, who serve at the pleasure of the board of directors.

(b) Sections 28811 to 28815 apply to committees and their members as well.

(c) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § 28801.

(d) A committee may not, however:

- (1) Authorize distributions;
- (2) Approve or propose to shareholders action that this Article requires be approved by shareholders;
- (3) Fill vacancies on the board of directors or on any of its committees;
- (4) Amend articles of incorporation pursuant to § 281005;
- (5) Adopt, amend, or repeal bylaws;
- (6) Approve a plan of merger not requiring shareholder approval;
- (7) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or

(8) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.

(e) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 28816.

(f) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

§ 28817. General Standards for Directors.

(a) Each member of the board of directors, when discharging the duties of a director, shall act

(1) in good faith; and

(2) in a manner the director reasonably believes to be in the best interests of the corporation.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties, a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on the performance by any of the persons specified in Subsection (e)(1) or Subsection (e)(3) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one (1) or more of the board's functions that are delegable under applicable law.

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(d) In discharging board or committee duties, a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in Subsection (e).

(e) A director is entitled to rely, in accordance with Subsection (c) or (d), on:

(1) one (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(2) legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters

(A) within the particular person's professional or expert competence, or

(B) as to which the particular person merits confidence; or

(3) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

SOURCE: Amended by P.L. 30-124:4 (Apr. 1, 2010).

2013 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered in subsection (e)(2) to adhere to the Compiler's alpha-numeric scheme.

§ 28817.1. Standards of Liability for Directors.

(a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take actions, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) any provision in the Articles of Incorporation authorized by § 28202(b)(4) or protection afforded by § 28861 for action taken in compliance with §§ 28862 or 28863, if interposed as a bar to the proceeding by the director, does not preclude liability; and

(2) the challenged conduct consisted or was the result of:

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(A) action not in good faith; or

(B) a decision

(i) which the director did not reasonably believe to be in the best interest of the corporation, or

(ii) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(C) a lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct

(i) which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation, and

(ii) after a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interest of the corporation, or

(D) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making (or causing to be made) appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefore; or

(E) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) for money damages, shall also have the burden of establishing that:

(A) harm to the corporation or its shareholders has been suffered, and

(B) the harm suffered was proximately caused by the director's challenged conduct;

(2) for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this Section shall

(1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under § 28861(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable,

(2) alter the fact or lack of liability of a director under another section of this Act, such as the provisions governing the consequences of an unlawful distribution under §28818 or a transactional interest under § 28861, or

(3) affect any rights to which the corporation or a share holder may be entitled under another statute of this territory or the United States.

SOURCE: Added by P.L. 30-124:2 (Apr. 1, 2010).

§ 28818. Directors' Liability for Unlawful Distributions.

(a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to §§ 28616 (a) or 281409 (a) is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating §§ 28616 or 281409 (a) if the party asserting liability establishes that when taking the action the director did not comply with § 28816.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to:

(1) contribution from every other director who could be held liable under subsection (a) for the unlawful distribution; and

(2) recoupment from each shareholder of the pro-rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of §§ 28616 (a) or 281409(a).

(c) A proceeding to enforce:

(1) the liability of a director under subsection (a) is barred unless it is commenced within two years after the date:

(A) on which the effect of the distribution was measured under § 28616 (e) or (g),

(B) as of which the violation of § 28616 (a) occurred as the consequence of disregard of a restriction in the articles of incorporation, or

(C) on which the distribution of assets to shareholders under § 281409 (a) was made; or

(2) contribution or recoupment under subsection (b) is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a).

SOURCE: Added by P.L. 30-124:2 (Apr. 1, 2010) as § 28817A. Renumbered by Compiler to harmoniously fit this chapter.

§ 28819. Officers.

(a) A corporation has the offices described in its bylaws or designated by the board of directors in accordance with the bylaws.

(b) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall assign to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation

(d) The same individual may simultaneously hold more than one office in a corporation.

§ 28820. Duties of Officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

§ 28821. Standards of Conduct for Officers.

(a) An officer with discretionary authority shall discharge the officer's duties under that authority:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the officer reasonably believes to be in the best interests of the corporation.

(b) In discharging the duties of an officer, the officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
- (2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section.

**SUBARTICLE A
INDEMNIFICATION**

§ 28822. Indemnification of Officers, Directors, Employees and Agents; Insurance.

§ 28822. Indemnification of Officers, Directors, Employees and Agents; Insurance.

(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Superior Court of Guam or the court in which such action or suit was brought shall determine upon

application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Superior Court of Guam or such other court shall deem proper.

(c) To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

(d) Any indemnification under subsections (a) and (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of this section. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination:

(1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or

(2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or

(3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or

(4) by the stockholders.

(e) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section.

(h) For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this section with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a

manner "not opposed to the best interests of the corporation" as referred to in this section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(k) The Superior Court of Guam is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise. The Superior Court of Guam may summarily determine a corporation's obligation to advance expenses (including attorneys' fees).

SUBARTICLE B
DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

SOURCE: Entire subarticle added by P.L. 30-124:3 (Apr. 1, 2010).

- § 28860. SubArticle Definitions.
- § 28861. Judicial Action.
- § 28862. Directors' Action.
- § 28863. Shareholders' Action.

§ 28860. Subarticle Definitions.

For this Subarticle the following definitions apply:

(a) Conflicting interest with respect to a corporation, means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) if

(1) whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or a related person is a party to the transaction or has a beneficial financial interest in or so closely

linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called upon to vote on the transaction; or

(2) the transaction is brought (or is of such character and significance to the corporation that it would in the normal course be brought) before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called upon to vote on the transaction:

(A) an entity (other than the corporation) of which the director is a director, general partner, agent, or employee;

(B) a person that controls one or more of the entities specified in sub-clause (A) or an entity that is controlled by, or is under common control with, one or more of the entities specified in sub-clause (A); or

(C) an individual who is a general partner, principal, or employer of the Director.

(b) Directors conflicting interest transaction, with respect to a corporation, means a transaction effected or proposed to be effected by the corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) respecting which a director of the corporation has a conflicting interest.

(c) Related person of a director means:

(1) the spouse (or a parent or sibling thereof) of the director, or a child, grandchild, sibling, parent (or spouse of any thereof) of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified in this clause (1) is a substantial beneficiary; or

(2) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

(d) Required disclosure means disclosure by the director who has a conflicting interest of

(1) the existence and nature of his conflicting interest; and

(2) all facts known to him respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(e) Time of commitment respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation (or its subsidiary or the entity in which it has controlling interest) becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

2013 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered in subsection (a)(2) to adhere to the Compiler's alpha-numeric scheme.

§ 28861. Judicial Action.

(a) A transaction effected or proposed to be effected by a corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which he has personal, economic, or other association, has an interest in the transaction.

(b) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because the director, or any person with whom or which he has a personal, economic, or other association, has an interest in the transaction, if;

(1) directors' action respecting the transaction was at any time taken in compliance with § 28862;

(2) shareholders' action respecting the transaction was at any time taken in compliance with § 28863; or

(3) the transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

§ 28862. Directors' Action.

(a) Directors' action respecting a transaction is effective for purposes of § 28861(b)(1) if the transaction received the affirmative vote of a majority but no fewer than two (2) of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them (to the extent the information was not known by them) or compliance with Subsection (b); provided that action by a committee is so effective only if:

(1) all its members are qualified directors, and

(2) its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) If a director has a conflicting interest respecting a transaction, but neither he nor a related person of the director specified in § 28860(c)(1) is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in § 28860(d)(2), then disclosure is sufficient for purposes of Subsection (a) if the director:

(1) discloses to the directors voting on the transaction the existence and nature of his conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and

(2) plays no part, directly or indirectly, in their deliberations or vote.

(c) A majority (but no fewer than two (2) of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this Section. Directors' action that otherwise complies with this Section is not affected by the presence or vote of a director who is not a qualified director.

(d) For purposes of this Section, "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either

- (1) a conflicting interest respecting the transaction, or
- (2) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

§ 28863. Shareholders' Action.

(a) Shareholders' action respecting a transaction is effective for purposes of § 28861(b)(2) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after

- (1) notice to shareholders describing the director's conflicting interest transaction,
- (2) provision of the information referred to in Subsection (d), and
- (3) required disclosure to the shareholders who voted on the transaction (to the extent the information was not known by them).

(b) For purposes of this Section, "qualified shares" means any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary (or other officer or agent of the corporation authorized to tabulate votes), are beneficially owned (or the voting of which is controlled) by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

(c) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this Section. Subject to the provisions of Subsections (d) and (e), shareholders' action that otherwise complies with this Section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.

(d) For purposes of compliance with Subsection (a), a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary (or other officer or agent of the corporation authorized to tabulate votes) of the number, and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned (or the voting of which is controlled) by the director or by a related person of the director or both.

(e) If a shareholders' vote does not comply with Subsection (a) solely because of a failure of a director to comply with Subsection (d), and if the director establishes that his failure did not determine and was not intended by him to influence the outcome of the vote, the court may, with or without further proceedings respecting § 28861(b)(3), take such action respecting the transaction and the director, and give such effect, if any, to the shareholders' vote, as it considers appropriate in the circumstances.

ARTICLE 9
[RESERVED]

ARTICLE 10
AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

- § 281001. Authority to Amend.
- § 281002. Amendment Before Issuance of Shares.
- § 281003. Amendment by Board of Directors and Shareholders.
- § 281004. Voting on Amendments by Voting Groups.
- § 281005. Amendment by Board of Directors.
- § 281006. Amended Articles of Incorporation.
- § 281007. Amendment Pursuant to Reorganization.
- § 281008. Effect of Amendment.
- § 281009. Amendment of Bylaws by Board of Directors or Shareholders.
- § 281010. Bylaws Increasing Quorum or Voting Requirement for Directors.

§ 281001. Authority to Amend.

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend

entitlement, or purpose or duration of the corporation.

§ 281002. Amendment Before Issuance of Shares.

If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

§ 281003 Amendment by Board of Directors and Shareholders.

If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

(a) The proposed amendment must be adopted by the board of directors.

(b) Except as provided in § 281005 after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of the amendment to the shareholders on any basis.

(d) If the amendment is required to be approved by the shareholders, and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy of the amendment.

(e) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in § 281004(c),

the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

§ 281004. Voting on Amendments by Voting Groups.

(a) If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting is otherwise required by this Act) on a proposed amendment to the articles of incorporation if the amendment would:

(1) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(2) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(3) change the rights, preferences, or limitations of all or part of the shares of the class;

(4) change the shares of all or part of the class into a different number of shares of the same class;

(5) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

(6) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

(7) limit or deny an existing preemptive right of all or part of the shares of the class; or

(8) cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

§ 281005 Amendment by Board of Directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt the following amendments to the corporations articles of incorporation without shareholder approval:

- (a) to delete the names and addresses of the initial directors;
- (b) if the corporation has only one class of shares outstanding:
 - (1) to change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or
 - (2) to increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;
- (c) to change the corporate name by substituting the word corporation, incorporated, company, limited, or the abbreviation corp., inc., co., or ltd., for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name;
- (d) to reflect a reduction in authorized shares, as a result of the operation of § 28615 (b), when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;
- (e) to delete a class of shares from the articles of incorporation, as a result of the operation of § 28615 (b), when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(f) to make any change expressly permitted by § 28602 (d) to be made without shareholder approval.

§ 281006. Amended Articles of Incorporation.

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this Act and by the articles of incorporation, the corporation shall deliver to the Director of Revenue & Taxation, for filing a copy of the articles of incorporation, as amended, duly certified to be correct by the President and Secretary.

§ 281007. Amendment Pursuant to Reorganization.

(a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(b) The individual or individuals designated by the court shall deliver to the Director of Revenue & Taxation for filing articles of amendment setting forth:

- (1) the name of the corporation;
- (2) the text of each amendment approved by the court;
- (3) the date of the court's order or decree approving the articles of amendment;
- (4) the title of the reorganization proceeding in which the order or decree was entered; and
- (5) a statement that the court had jurisdiction of the proceeding under a law of the United States federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§ 281008. Effect of Amendment.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's

name does not abate a proceeding brought by or against the corporation in its former name.

§ 281009. Amendment of Bylaws by Board of Directors or Shareholders.

(a) A corporation's shareholders may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws, unless:

(1) the articles of incorporation or § 281010 reserve that power exclusively to the shareholders in whole or part; or

(2) the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

§ 281010. Bylaw Increasing Quorum or Voting Requirement for Directors.

(a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(1) if adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides;

(2) if adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a) to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

ARTICLE 11
MERGERS AND SHARE EXCHANGES

- § 281101. Definitions.
- § 281102. Merger.
- § 281103. Share Exchange.
- § 281104. Action on a Plan of Merger or Share Exchange.
- § 281105. Merger Between Parent and Subsidiary or Between Subsidiaries.
- § 281106. Articles of Merger or Share Exchange.
- § 281107. Effect of Merger or Share Exchange.
- § 281108. Abandonment of a Merger or Share Exchange.

§ 281101. **Definitions.** As used in this Article:

- (a) Interests means the proprietary interests in an other entity.
- (b) Merger means a business combination pursuant to § 281102.
- (c) Organizational documents means the basic document or documents that create, or determine the internal governance of, an other entity.
- (d) Other entity means any association or legal entity, other than a domestic or foreign corporation, organized to conduct business, including, without limitation, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, and business trusts.
- (e) Party to a merger or party to a share exchange means any domestic or foreign corporation or other entity that will either:
 - (1) merge under a plan of merger;
 - (2) acquire shares or interests of another corporation or an other entity in a share exchange; or
 - (3) have all of its shares or interests or all of one or more classes or series of its shares or interests acquired in a share exchange.
- (f) Share exchange means a business combination pursuant to § 281103.
- (g) Survivor in a merger means the corporation or other entity into which one or more other corporations or other entities are merged. A

survivor of a merger may preexist the merger or be created by the merger.

§ 281102. Merger.

(a) One or more domestic corporations may merge with a domestic or foreign corporation or other entity pursuant to a plan of merger.

(b) A foreign corporation, or a domestic or foreign other entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if:

(1) the merger is permitted by the laws under which the corporation or other entity is organized or by which it is governed; and

(2) in effecting the merger, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of merger must include:

(1) the name of each corporation or other entity that will merge and the name of the corporation or other entity that will be the survivor of the merger;

(2) the terms and conditions of the merger;

(3) the manner and basis of converting the shares of each merging corporation and interests of each merging other entity into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(4) the articles of incorporation of any corporation, or the organizational documents of any other entity, to be created by the merger, or if a new corporation or other entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organizational documents; and

(5) any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any such party.

(d) The terms described in subsections (c)(2) and (c)(3) may be made dependent on facts ascertainable outside the plan of merger, provided that those facts are objectively ascertainable. The term facts includes, but is not limited to, the occurrence of any event, including a determination or action

by any person or body, including the corporation.

(e) The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the Director of Revenue & Taxation, provided that if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders of or owners of interests in any party to the merger upon conversion of their shares or interests under the plan;

(2) change the articles of incorporation of any corporation, or the organizational documents of any other entity, that will survive or be created as a result of the merger, except for changes permitted by § 281005 or by comparable provisions of the laws under which the foreign corporation or other entity is organized or governed; or

(3) change any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

§ 281103. Share Exchange.

(a) Through a share exchange:

(1) a domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange, or

(2) all of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(b) A foreign corporation, or a domestic or foreign other entity, may be a party to the share exchange only if:

(1) the share exchange is permitted by the laws under which the corporation or other entity is organized or by which it is governed; and

(2) in effecting the share exchange, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of share exchange must include:

(1) the name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests;

(2) the terms and conditions of the share exchange;

(3) the manner and basis of exchanging shares of a corporation or interests in an other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organizational documents of any such party.

(d) The terms described in subsections (c)(2) and (c)(3) may be made dependent on facts ascertainable outside the plan of share exchange, provided that those facts are objectively ascertainable. The term facts includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(e) The plan of share exchange may also include a provision that the plan may be amended prior to filing of the articles of share exchange with the Director of Revenue & Taxation, provided that if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received by

the shareholders of or owners of interests in any party to the share exchange in exchange for their shares or interest under the plan; or

(2) change any of the terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) § 281103 does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

§ 281104. Action on a Plan of Merger or Share Exchange.

In the case of a domestic corporation that is a party to a merger or share exchange:

(a) The plan of merger or share exchange must be adopted by the board of directors.

(b) Except as provided in subsection (g) and in § 281105, after adopting the plan of merger or share exchange the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(d) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger,

the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.

(e) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(f) Separate voting by voting groups is required whether or not a voting group otherwise has voting rights of any kind:

(1) on a plan of merger, by each class or series of shares that:

(A) are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, or

(B) would have a right to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under § 281004;

(2) on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(3) on a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(g) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

(1) the corporation will survive the merger or is the acquiring corporation in a share exchange;

(2) except for amendments permitted by § 281005, its articles of incorporation will not be changed;

(3) each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(4) the issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under § 28606.

(h) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of merger shall require the execution, by each such shareholder, of a separate written consent to become subject to such personal liability.

§ 281105. Merger Between Parent and Subsidiary or Between Subsidiaries.

(a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least 90 percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

(b) If under subsection (a) approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall, within ten days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(c) Except as provided in subsections (a) and (b), a merger between a parent and a subsidiary shall be governed by the provisions of Article 11 applicable to mergers generally.

§ 281106. Articles of Merger or Share Exchange.

(a) After a plan of merger or share exchange has been adopted and approved as required by this Act, articles of merger or share exchange shall be executed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth:

(1) the names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective;

(2) if the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

(3) if the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this Act and the articles of incorporation;

(4) if the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) as to each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the plan and the performance of its terms were duly authorized by all action required by the laws under which the corporation or other entity is organized, or by which it is governed, and by its articles of incorporation or organizational documents.

(b) Articles of merger or share exchange shall be delivered to the Director of Revenue & Taxation for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall take effect on the effective date.

§ 281107. Effect of Merger or Share Exchange.

(a) When a merger becomes effective:

(1) the corporation or other entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(2) the separate existence of every corporation or other entity that is merged into the survivor ceases;

(3) all property owned by, and every contract right possessed by, each corporation or other entity that merges into the survivor is vested in the survivor without reversion or impairment;

(4) all liabilities of each corporation or other entity that is merged into the survivor are vested in the survivor;

(5) the name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) the articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger;

(7) the articles of incorporation or organizational documents of a survivor that is created by the merger become effective; and

(8) the shares of each corporation that is a party to the merger, and the interests in an other entity that is a party to a merger, that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Article 13.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Article 13.

(c) Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for

the liabilities or obligations of such corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign other entity, that is the survivor of the merger in the absence of an appointment of a local agent for service is deemed to:

(1) appoint the Director of Revenue & Taxation as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights, and

(2) agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Article 13.

§ 281108. Abandonment of a Merger or Share Exchange.

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign other entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this Article, and at any time before the merger or share exchange has become effective, it may be abandoned by any party thereto without action by the party's shareholders or owners of interests, in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of a corporation, or the managers of an other entity, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) after articles of merger or share exchange have been filed with the Director of Revenue & Taxation but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Director of Revenue & Taxation for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

ARTICLE 12
DISPOSITION OF ASSETS

- § 281201. Disposition of Assets Not Requiring Shareholder Approval.
§ 281202. Shareholder Approval of Certain Dispositions.

§ 281201. Disposition of Assets Not Requiring Shareholder Approval.

No approval of the shareholders of a corporation is required, unless the articles of incorporation otherwise provide:

- (a) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;
- (b) to mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business;
- (c) to transfer any or all of the corporation's assets to one or more corporations or other entities all of the shares or interests of which are owned by the corporation; or
- (d) to distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

§ 281202. Shareholder Approval of Certain Dispositions.

(a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in § 281201, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least 25 percent of total assets at the end of the most recently completed fiscal year, and 25 percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their

approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of a disposition to the shareholders under subsection (b) on any basis.

(d) If a disposition is required to be approved by the shareholders under subsection (a), and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(f) After a disposition has been approved by the shareholders under subsection (b), and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under Article 14 is not governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

ARTICLE 13
APPRAISAL RIGHTS

SUBARTICLE A
RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

- § 281301. Definitions.
- § 281302. Right to Appraisal.
- § 281303. Assertion of Rights by Nominees and Beneficial Owners.

§ 281301. Definitions. In this Article:

(a) “Affiliate” means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of § 281302 (b)(4), a person is deemed to be an affiliate of its senior executives.

(b) “Beneficial shareholder” means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner’s behalf.

(c) “Corporation” means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 281306-281312, includes the surviving entity in a merger.

(d) “Fair value” means the value of the corporation’s shares determined:

(1) immediately before the effectuation of the corporate action to which the shareholder objects excluding any appreciation or depreciation in anticipation of the corporate action objected to;

(2) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(3) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to § 281302 (a)(5).

(e) “Interest” means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in Guam on the effective date of the corporate action.

(f) “Preferred shares” means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

(g) “Record shareholder” means the person in whose name shares are

registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(h) “Senior executive” means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

(i) “Shareholder” means both a record shareholder and a beneficial shareholder.

§ 281302. Right to Appraisal.

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder’s shares, in the event of any of the following corporate actions:

(1) consummation of a merger to which the corporation is a party:

(A) if shareholder approval is required for the merger by § 281104 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger, or

(B) if the corporation is a subsidiary and the merger is governed by § 281105;

(2) consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) consummation of a disposition of assets pursuant to § 281202 if the shareholder is entitled to vote on the disposition;

(4) an amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; or

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(5) any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors.

(b) Notwithstanding subsection (a), the availability of appraisal rights under subsections (a)(1), (2), (3) and (4) shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(A) listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

(B) not so listed or designated, but has at least 2,000 shareholders and the outstanding shares of such class or series has a market value of at least \$20 million (exclusive of the value of such shares held by its subsidiaries, senior executives, directors and beneficial shareholders owning more than 10 percent of such shares).

(2) The applicability of subsection (b)(1) shall be determined as of:

(A) the record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(B) the day before the effective date of such corporate action if there is no meeting of shareholders.

(3) Subsection (b)(1) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (b)(1) at the time the corporate action becomes effective.

(4) Subsection (b)(1) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares where:

(A) any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

(i) is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within one year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

(ii) directly or indirectly has, or at any time in the one-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

(B) any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(i) employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action; or

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(ii) employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action; or

(iii) in the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(5) For the purposes of paragraph (4) only, the term beneficial owner means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(c) Notwithstanding any other provision of § 281302, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

(d) A shareholder entitled to appraisal rights under this Article may not challenge a completed corporate action for which appraisal rights are available unless such corporate action:

(1) was not effectuated in accordance with the applicable provisions of Articles 10, 11 or 12 of this Part or the corporation's articles of incorporation, bylaws or board of directors' resolution authorizing the corporate action; or

(2) was procured as a result of fraud or material misrepresentation.

§ 281303. Assertion of Rights by Nominees and Beneficial Owners.

(a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(1) submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in § 281306 (b)(2)(B); and

(2) does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

**SUBARTICLE B
PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS**

- § 281304. Notice of Appraisal Rights.
- § 281305. Notice of Intent to Demand Payment.
- § 281306. Appraisal Notice and Form.
- § 281307. Perfection of Rights; Right to Withdraw.
- § 281308. Payment.

- § 281309. After-Acquired Shares.
- § 281310. Procedure if Shareholder Dissatisfied With Payment or Offer.
- § 281311. Court Action.
- § 281312. Court Costs and Counsel Fees.

§ 281304. Notice of Appraisal Rights.

(a) If proposed corporate action described in § 281302 (a) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not or may be entitled to assert appraisal rights under this Article. If the corporation concludes that appraisal rights are or may be available, a copy of this Article must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to § 281105, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten days after the corporate action became effective and include the materials described in § 281306.

§ 281305. Notice of Intent to Demand Payment.

(a) If proposed corporate action requiring appraisal rights under § 281302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(1) must deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(2) must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment under this Article.

§ 281306. Appraisal Notice and Form.

(a) If proposed corporate action requiring appraisal rights under § 281302(a) becomes effective, the corporation must deliver a written appraisal notice and form required by subsection (b)(1) to all shareholders who satisfied the requirements of § 281305. In the case of a merger under § 281105, the parent must deliver a written appraisal notice and form to all

record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice must be sent no earlier than the date the corporate action became effective and no later than ten days after such date and must:

(1) Supply a form that specifies the date of the first announcement to the public, the news media or the shareholders, whichever first occurred, of the principal terms of the proposed corporate action and requires the shareholder asserting appraisal rights to certify:

(A) whether or not beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date and

(B) that the shareholder did not vote for the transaction;

(2) state:

(A) where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (2)(B);

(B) a date by which the corporation must receive the form which date may not be fewer than 40 nor more than 60 days after the date the subsection (a) appraisal notice and form are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(C) the corporation's estimate of the fair value of the shares;

(D) that, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten days after the date specified in subsection (2)(B) the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(E) the date by which the notice to withdraw under § 281307 must be received, which date must be within 20 days after the date specified in subsection (2)(B); and

(3) be accompanied by a copy of this Article.

§ 281307. Perfection of Rights; Right to Withdraw.

(a) A shareholder who receives notice pursuant to § 281306 and who wishes to exercise appraisal rights must certify on the form sent by the corporation whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to § 281306 (b)(1). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under § 281309. In addition, a shareholder who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to § 281306 (b)(2). Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (b).

(b) A shareholder who has complied with subsection (a) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to § 281306 (b)(2)(E). A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in § 281306 (b)(2), shall not be entitled to payment under this Article.

§ 281308. Payment.

(a) Except as provided in § 281309, within 30 days after the form required by § 281306 (b) is due, the corporation shall pay in cash to those shareholders who complied with § 281307 (a) the amount the corporation estimates to be the fair value of their shares, plus interest.

(b) The payment to each shareholder pursuant to subsection (a) must be accompanied by:

(1) financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income

statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(2) a statement of the corporations estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to § 281306 (b)(2)(C);

(3) a statement that shareholders described in subsection (a) have the right to demand further payment under § 281310 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this Article.

§ 281309. After-Acquired Shares.

(a) A corporation may elect to withhold payment required by § 281308 from any shareholder who did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice pursuant to § 281306(b)(1).

(b) If the corporation elected to withhold payment under subsection (a), it must, within 30 days after the form required by § 281306 (b) is due, notify all shareholders who are described in subsection (a):

(1) of the information required by § 281308 (b)(1);

(2) of the corporation's estimate of fair value pursuant to § 281308 (b)(2);

(3) that they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under § 281310;

(4) that those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

(5) that those shareholders who do not satisfy the requirements for demanding appraisal under § 281310 shall be deemed to have accepted the corporation's offer.

(c) Within ten days after receiving the shareholder's acceptance pursuant to subsection (b), the corporation must pay in cash the amount it

offered under subsection (b)(2) to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within 40 days after sending the notice described in subsection (b), the corporation must pay in cash the amount it offered to pay under subsection (b)(2) to each shareholder described in subsection (b)(5).

§ 281310. Procedure if Shareholder Dissatisfied With Payment or Offer.

(a) A shareholder paid pursuant to § 281308 who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest (less any payment under § 281308). A shareholder offered payment under § 281309 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(b) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (a) within 30 days after receiving the corporation's payment or offer of payment under § 281308 or § 281309, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

§ 281311. Court Action.

(a) If a shareholder makes demand for payment under § 281310 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the Superior Court of Guam to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to § 281310 plus interest.

(b) The corporation shall commence the proceeding in the Superior Court of Guam. If the corporation is a foreign corporation without a registered office in Guam, it shall commence the proceeding where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(c) The corporation shall make all shareholders (whether or not

residents of Guam) whose demands remain unsettled parties to the proceeding as in an action against their shares, 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 jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each shareholder made a party to the proceeding is entitled to judgment:

(1) for the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares or

(2) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under § 281309.

§ 281312. Court Costs and Counsel Fees.

(a) The court in an appraisal proceeding commenced under § 281311 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 corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this Article.

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

(1) against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of sections 281304, 281306, 281308 or 281309; or

(2) against either the corporation or a shareholder demanding appraisal, 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 in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefitted.

(d) To the extent the corporation fails to make a required payment pursuant to sections 281308, 281309, or 281310, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

ARTICLE 14
DISSOLUTION

- § 281401. Dissolution by Incorporators or Initial Directors.
- § 281402. Dissolution by Board of Directors and Shareholders.
- § 281403. Articles of Dissolution.
- § 281404. Revocation of Dissolution.
- § 281405. Effect of Dissolution.
- § 281406. Known Claims Against Dissolved Corporation.
- § 281407. Other Claims Against Dissolved Corporation.
- § 281408. Court Proceedings.
- § 281409. Director Duties.

§ 281401. Dissolution by Incorporators or Initial Directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Director of Revenue & Taxation for filing articles of dissolution that set forth:

- (a) the name of the corporation;

- (b) the date of its incorporation;
- (c) either:
 - (1) that none of the corporation's shares has been issued or
 - (2) that the corporation has not commenced business;
- (d) that no debt of the corporation remains unpaid;
- (e) that the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (f) that a majority of the incorporators or initial directors authorized the dissolution.

§ 281402. Dissolution by Board of Directors and Shareholders.

- (a) A corporation's board of directors may propose dissolution for submission to the shareholders.
- (b) For a proposal to dissolve to be adopted:
 - (1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and
 - (2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).
- (c) The board of directors may condition its submission of the proposal for dissolution on any basis.
- (d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.
- (e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

§ 281403. Articles of Dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Director of Revenue & Taxation for filing articles of dissolution setting forth:

- (1) the name of the corporation;
- (2) the date dissolution was authorized;
- (3) if dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this Act and by the articles of incorporation.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

(c) For purposes of this subarticle, dissolved corporation means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

§ 281404. Revocation of Dissolution.

(a) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Director of Revenue & Taxation for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) the name of the corporation;
- (2) the effective date of the dissolution that was revoked;
- (3) the date that the revocation of dissolution was authorized;
- (4) if the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was

permitted by action by the board of directors alone pursuant to that authorization; and

(6) if shareholder action was required to revoke the dissolution, the information required by § 281403 (a)(3).

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

§ 281405. Effect of Dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) collecting its assets;
- (2) disposing of its properties that will not be distributed in kind to its shareholders;
- (3) discharging or making provision for discharging its liabilities;
- (4) distributing its remaining property among its shareholders according to their interests; and
- (5) doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

- (1) transfer title to the corporation's property;
- (2) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) subject its directors or officers to standards of conduct different from those prescribed in Article 8;
- (4) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(5) prevent commencement of a proceeding by or against the corporation in its corporate name;

(6) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(7) terminate the authority of the registered agent of the corporation.

§ 281406. Known Claims Against Dissolved Corporation.

(a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(b) The written notice must:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;

(2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section, claim does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

§ 281407. Other Claims Against Dissolved Corporation.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

(1) be published one time in a newspaper of general circulation in Guam;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the publication date of the newspaper notice:

(1) a claimant who was not given written notice under § 281406;

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

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

(d) A claim that is not barred by § 281406 (b) or § 281407 (c) may be enforced:

(1) against the dissolved corporation, to the extent of its undistributed assets; or

(2) except as provided in § 281408 (d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

§ 281408. Court Proceedings.

(a) A dissolved corporation that has published a notice under § 281407 may file an application with the Superior Court of Guam for a determination of the amount and form of security to be provided for payment of claims that

are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under § 281407 (c).

(b) Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under § 281408 (a) shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

§ 281409. Director Duties.

(a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation which has disposed of claims under sections 281406, 281407, or 281408 shall not be liable for breach of § 281409 (a) with respect to claims against the dissolved corporation that are barred or satisfied under sections 281406, 281407 or 281408.

SUBARTICLE B
JUDICIAL DISSOLUTION

§ 281410. Grounds for Judicial Dissolution.

§ 281411. Procedure for Judicial Dissolution.

- § 281412. Receivership or Custodianship.
- § 281413. Decree of Dissolution.
- § 281414. Election to Purchase in Lieu of Dissolution.
- § 281415. Deposit With Treasurer of Guam.

§ 281410. Grounds for Judicial Dissolution.

The Superior Court of Guam may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(1) the corporation obtained its articles of incorporation through fraud; or

(2) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) in a proceeding by a shareholder if it is established that:

(1) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(2) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(3) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(4) the corporate assets are being misapplied or wasted;

(c) in a proceeding by a creditor if it is established that:

(1) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(2) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 281411. Procedure for Judicial Dissolution.

(a) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(b) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(c) Within 10 days of the commencement of a proceeding under § 281410 (b) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities exchange, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under § 281414 and accompanied by a copy of § 281414.

§ 281412. Receivership or Custodianship.

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in Guam) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) the receiver:

(A) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(B) may sue and defend in his own name as receiver of the corporation in all courts of Guam;

(2) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

§ 281413. Decree of Dissolution.

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in § 281410 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Director of Revenue & Taxation, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with § 281405 and the notification of claimants in accordance with sections 281406 and 281407.

§ 281414. Election to Purchase in Lieu of Dissolution.

(a) In a proceeding under § 281410 (b) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning

shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under § 281410 (b) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under § 281410 (b) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(c) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c), the court, upon application of any party, shall stay the § 281410 (b) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under § 281410 (b) was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court

deems appropriate, which may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under paragraphs (2) or (4) of § 281410 (b), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by him.

(f) Upon entry of an order under subsections (c) or (e), the court shall dismiss the petition to dissolve the corporation under § 281410, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e), shall be made within 10 days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 281402 and 281403, which articles must then be adopted and filed within 50 days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of § 281405 through 281407, and the order entered pursuant to subsection (e) shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsections (c) or (e), other than an award of fees and expenses pursuant to subsection (e), is subject to the provisions of § 28616.

§ 281415. Deposit With Treasurer of Guam.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the treasurer of Guam or other appropriate Guam official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of Guam or other appropriate Guam official shall pay him or his representative that amount.

**ARTICLE 15
FOREIGN CORPORATIONS**

§ 281501. Application of Provisions of General Corporation Law of Guam as to Foreign Corporations.

§ 281501. Application of Provisions of General Corporation Law of Guam as to Foreign Corporations.

The provisions of 18 Guam Code Annotated, Chapter 7, Part 3, Division 1, of the General Corporation Law of Guam shall apply to a foreign corporation governed by this Act.

**ARTICLE 16
RECORDS AND REPORTS**

§ 281601. Inspection of books and records.

§ 281602. Annual Reports.

§ 281601. Inspection of books and records.

(a) Any stockholder, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall

mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Guam or at its principal place of business.

(b) If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder pursuant to Subsection (a) of this Section, or does not reply to the demand within ten (10) business days after the demand has been made, the stockholder may apply to the Superior Court of Guam for an order to compel such inspection.

(c) Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to the director's position as a director. The Superior Court of Guam is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the list of stockholder's and to make copies or extracts there from. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper including to protect trade secrets, proprietary information or the confidentiality of information concerning the corporation or third parties.

SOURCE: Subsection (b) amended by P.L. 30-124:6 (Apr. 1, 2010).

§ 281602. Annual Reports.

The provisions of 18 GCA § 4304 of the General Corporation Law of Guam shall apply to a corporation governed by this Act.

ARTICLE 17
TRANSITION PROVISIONS

- § 281701. Effective Date.
- § 281702. Application to Domestic Corporations.

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- § 281703. Application of General Corporation Law of Guam.
- § 281704. Professional Corporations.
- § 281705. Application to Foreign Corporations.
- § 281706. Saving Provisions.
- § 281707. Severability.

§ 281701. Effective Date.

This Act shall take effect 90 days after its enactment into law.

§ 281702. Application to Domestic Corporations.

This Act shall apply except as provided in § 281703 (b) to all corporations incorporated on or after the effective date of this Act. This Act shall not apply to any corporation incorporated prior to the effective date of this Act, except that it shall apply:

(a) to any corporation incorporated after the enactment of this Act into law and prior to its effective date, if the articles of incorporation of such corporation state that this Act shall apply to such corporation;

(b) to any other corporation if its articles of incorporation are amended, in accordance with the provisions of its articles of incorporation, bylaws, and law applicable to such corporation, without regard to this Act, to provide that this Act shall apply to such corporation;

(c) to any corporation incorporated prior to the effective date of this Act and of limited duration, which extends its duration upon such extension; and

(d) to any corporation which engages as acquiring or surviving corporation in a share exchange or merger under this Act with a corporation subject to this Act.

§ 281703. Application of General Corporation Law of Guam.

After the effective date of this Act no corporation shall be organized under or be governed by the General Corporation Law of Guam as defined in 18 GCA § 1101, including 18 GCA Division I, Part I, Chapters 1-9, except those provisions of the General Corporation Law of Guam expressly made applicable by the terms of this Act other than:

(a) a corporation organized under the General Corporation Law of Guam prior to the effective date of this Act, and which has not become subject to this Act in the manner provided in § 281702;

(b) a not for profit, non-stock corporation, or an international finance company or investment company as defined in Section 1102 of the General Corporation Law of Guam, which is organized after the effective date of this Act but which elects to be governed by the General Corporation Law of Guam in its articles of incorporation.

I Liheslaturan Guåhan has the power as to any such corporation organized after the effective date of this Act to amend or repeal all or any part of the General Corporation Law of Guam at any time and all such corporations shall be subject to and governed by such amendment or repeal.

§ 281704. Professional Corporations.

A professional corporation may be organized after the effective date of this Act and governed by this Act and as provided by 18 GCA Division I, Part I, Chapter 8, of the General Corporation Law of Guam except that all references therein to the General Corporation Law of Guam shall be deemed to be references to this Act.

§ 281705. Application to Foreign Corporations.

This Act shall apply to all foreign corporations doing business in Guam including a foreign corporation which commenced doing business in Guam or obtained a foreign corporation license and certificate of registration prior to the effective date of this Act.

§ 281706. Saving Provisions.

(a) Except as provided in subsection (b), the repeal of a statute by this Act does not affect:

(1) the operation of the statute or any action taken under it before its repeal;

(2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

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(4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this Act.

§ 281707. Severability.

If any provision of this Act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of the Act are severable.
