

CHAPTER 4
BANK ORGANIZATION

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Article 1
Organization and Corporation Functions of Bank

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§4101. General corporate powers. (a) A territorial bank may be organized to exercise the powers provided in this Title and such general corporate powers as are appropriate to its purpose.

(b) A territorial bank shall, without specific mention thereof in its charter, have all the powers conferred by this Title and the following additional general corporate powers:

(1) To continue perpetually as a corporation, subject to the power of the Legislature under the Organic Act of Guam.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed, or in any manner reproduced.

(4) To make, alter, amend, and repeal by-laws, not inconsistent with its charter or with law, for the administration and regulation of the affairs of the corporation.

(5) To elect or appoint and remove officers and agents of the bank and to define their duties and fix their compensation.

(6) To adopt and operate reasonable bonus and pension plans for officers and employees.

(7) To make contributions to or for the use or benefit of: (a) the United States, any state, territory, or political subdivision thereof, or the District of Columbia or any possession of the United States for exclusively public purposes, or (b) a corporation, trust or community chest fund, or foundation created or organized in the United States or of any state or territory or of the District of Columbia, or of any possession of the United States and organized and operated exclusively for the religious, charitable, scientific, veteran rehabilitation service, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; to the extent authorized, approved or ratified by action of the board of directors of the corporation, except as otherwise specifically provided or limited by its articles of incorporation, or its by-laws or by resolution duly adopted by its stockholders.

(c) In addition to its other powers, a territorial bank which is authorized by its charter to exercise trust powers shall, upon proper qualification under this Title have the power to act as fiduciary in any capacity, including but without limitation as registrar or transfer agent, as fiscal agent or attorney-in-fact and the power to receive, manage and apply sinking funds.

§4102. State and National Banks. Subject to the approval of the Commissioner, a state or national bank may establish an office on Guam and engage in the business of banking on Guam, subject to the provisions of this Title applicable to banks in general. Any state or national bank desiring to engage in the business of banking on Guam shall make application for approval by the Commissioner on such forms as may be designated by the Commissioner. The application shall contain such information as the Commissioner may require.

SOURCE: Added by P.L. 13-138, effective February 26, 1976. **§4103. Locally Chartered and Territorial Bank.** A locally chartered bank or territorial bank operating under this Title shall, in addition to all specific powers conferred by this Title, have the following power:

To exercise, notwithstanding the provisions of §3301 of this rule and 18 GCA §2105, all powers necessary to qualify as a trustee or custodial under the Federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, and the Employee Retirement Income Security Act of 1974; provided that any funds held in such capacity shall be invested only in a savings account or time deposit of the institution.

SOURCE: Added by P.L. 13-138, effective February 26, 1976. **§4104. Capital structure.** (a) A bank shall have such capital structure as the Board shall deem adequate but not less than the following:

- (1) Capital consisting of common stock as follows: Paid-up-in-cash of not less than five hundred thousand dollars.
- (2) Paid-in surplus amounting to not less than forty percent of its capital stock.

(b) The issuance of preferred stock shall be authorized by the Board only when it appears that necessary capital cannot be obtained by the insurance of common stock. Preferred stock shall have such preferences, powers and rights as the Board may approve. It shall not be retired without the approval of the board and the requirement of such approval shall be stated in the stock certificates, but the Board may give advance approval to sinking funds payable exclusively out of earnings available for dividends.

§4105. Incorporators. A territorial bank may be organized by five (5) or more individual incorporators. All incorporators shall be United States citizens and residents of Guam. Each incorporator shall subscribe and pay in full in cash for stock having a par value not less than one-half of one percent (½ of 1%) of the minimum capital and paid-in surplus requirements. Stock of a territorial bank may be legally and beneficially owned only by citizens of the United States, citizens of the Northern Marianas or citizens of the Trust Territory of the Pacific.

SOURCE: Amended by P.L. 13-176, effective August 2, 1976. **§4106.**

Notice of intention. (a) The incorporators shall file with the Commissioner a notice of intention to organize a territorial bank, signed by each of them. The notice shall state:

(1) The name, residence and occupation of each incorporator, and the amount of stock subscribed and paid for by each.

(2) The name and address of an individual within Guam to whom notice to all the incorporators may be sent.

(3) The total capital, the number of shares of each class and the par value of the shares of each class of the proposed territorial bank.

(4) Whether it is intended that the proposed territorial bank shall have trust powers.

(5) The municipality in which the proposed territorial bank is to be located.

(b) The Commissioner may order the incorporators not to accept any stock subscriptions or to cease accepting subscriptions if he shall determine that the notice does not comply with the provisions of this section, or that the incorporators are proceeding or are not acting in good faith. If the notice of intention or any accompanying documents do not comply with the requirements of this section, the Commissioner shall within twenty (20) days after the receipt thereof return them to the incorporators, calling attention to the defect or defects therein.

(c) It shall be a criminal offense against this Title to accept any stock subscription until thirty (30) days after filing a notice of intention or in violation of an order of the Commissioner; and any such subscription shall be enforceable only by the Commissioner and only to the extent he determines it to be necessary to protect depositors or the public.

§4107. Organization expenses. (a) Each subscriber at the time he subscribes to the stock of a proposed territorial bank shall pay in cash a sum at least equal to five percent (5%) of the par value of such stock into a fund to be used to defray the expenses of organization. No organization expense shall be paid out of any other funds of the

bank. Upon the grant of a charter any unexpended balance shall be transferred to surplus. If no application for a charter has been made within six (6) months of the filing of a notice of intention, or any additional period allowed by the Commissioner, or if the application has been fully denied, any unexpended balance shall be distributed among the contributors in proportion to their respective payments. The Commissioner may require an account of disbursements from the fund and may order the incorporators to restore any sum which has been expended for other than proper organization expenses.

(b) No payment shall be made from the organization expense fund for securing subscriptions to stock.

§4108. Application for charter. (a) After the capital stock has been fully subscribed, the incorporators may apply to the Commissioner for the charter. The incorporators shall submit:

(1) A proposed charter in triplicate in such form as the Commissioner shall prescribe containing the following information: (a) the name of territorial bank; (b) if the territorial bank is to exercise trust powers, a statement to that effect; (c) the municipality in which it is to be located; (d) the amount of capital, the number of shares of each class, the relative preferences, powers and rights of each class, the par value of the shares of each class and the amount of the paid-in surplus; (e) a statement whether voting for directors shall or shall not be cumulative and the extent of the preemptive rights of the stockholders; (f) such other proper provisions to govern the business and affairs of the territorial bank as may be desired by the incorporators.

(2) An application in such form and containing such information as the Board requires, including the following: (a) The name, residence and occupation of each subscriber and the number of shares for which he has subscribed; (b) the past and present connections with any bank other than as a customer on terms generally available to the public, of each director and each subscriber to more than five percent (5%) of the capital stock; (c) the address at which it is proposed that the territorial bank do business, or, if such address is not known, the area within the municipality in which it is proposed that the business be located.

(b) If the application, the proposed charter or any other accompanying documents do not comply with the requirements of this Title, the Commissioner shall within twenty (20) days after the receipt thereof return them to the incorporators, calling attention to the defect or defects therein. If such application, proposed charter and accompanying documents, if any, are not so returned by the Commissioner within twenty (20) days of the receipt thereof they shall be deemed to have been filed with the Commissioner.

(c) The incorporators shall mail such notice of the application as the Commissioner may prescribe to each bank doing business in the municipality in which the proposed bank is to be located, and also to such persons and organizations as he may designate. The Commissioner may also require publication of the notice.

§4109. Determination on application for charter. (a) When an application for a charter has been filed with the Commissioner he

shall make or cause to be made a careful investigation and examination relative to the following:

(1) The character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed territorial bank.

(2) The character, financial responsibility, banking or trust experience, and business qualifications of those proposed as officers of the bank.

(3) The character, financial responsibility, business experiences and standing in the community of the prospective stockholders and of those proposed as directors of the bank.

(4) The need in the municipality where the bank would be located for banking or banking and trust facilities, or additional banking or banking and trust facilities as the case may be, giving particular consideration to the adequacy of existing banking and trust facilities therein.

(5) The ability of the territory to support the proposed bank, giving consideration to (a) the competition offered by existing banks and other financial institutions; (b) the banking history of the territory; (c) the opportunities for profitable employment of bank funds as indicated by the average demand for credit, the number of potential depositors, the volume of bank transactions, and the business and industries of the territory, with particular regard to their stability, diversification and size; and (d) if the bank is to exercise trust powers, the opportunities for profitable employment of fiduciary services.

(6) Such other facts and circumstances bearing on the proposed bank and its relation to the territory as in the opinion of the Commissioner or the Board may be relevant.

(b) The Commissioner shall submit a report of the results of his investigation to the Board, together with all papers, correspondence and information in his possession relating to the application for a charters, and shall include therewith his recommendation in the matter.

(c) Within ninety (90) days after the filing of the application, the Board shall consider the Commissioner's findings and recommendations and all other relevant information available to them, and the Board shall in its discretion approve or disapprove the application, but it shall not approve the application until it has ascertained to its satisfaction:

(1) That the public need and advantage will be promoted by the establishment of the proposed bank.

(2) That conditions in Guam and in the municipality in which the bank would transact business afford reasonable promise of successful operation.

(3) That the bank is being formed for no other purpose than the legitimate objects contemplated by this Title.

(4) That the proposed capital and surplus are not less than the required minimum and adequate in the light of current and prospective banking conditions.

(5) That those proposed as officers and directors have sufficient experience, ability and standing to afford reasonable promise of successful operation.

(6) That the name of the proposed bank does not resemble, so closely as to be likely to cause confusion, the name of any other bank transacting business in Guam or which previously had transacted business in Guam during the last twenty (20) years; and

(7) That the applicants have complied with all applicable provisions of this Title.

(d) If the Board shall approve the application the Commissioner shall grant a charter by indorsing his approval on all copies thereof, retaining one copy in the department's files, and returning one copy to the incorporators within twenty (20) days of the action of the Board approving the application.

(e) If the Board shall disapprove the application the Commissioner shall mail notice of such disapproval to the incorporators within twenty (20) days after the action of the Board disapproving the application.

§4110. Subscription calls. After a charter has been granted, the directors may call for the payment of the subscriptions in full within thirty (30) days from the date of the notice. No share shall be issued until the par value and the pro rata portion of the paid-in surplus specified in the charter have been paid in full in cash.

§4111. First meetings of stockholders and directors; adoption of by-laws. (a) After the capital and surplus have been fully paid a meeting of the stockholders shall be called by the incorporators on ten (10) days' notice to elect directors and adopt by-laws, and direct the call, on five (5) days' notice, of the first meeting of directors for the election of officers.

(b) By-laws shall be adopted and may be amended by a vote of the holders of a majority of the outstanding voting shares voted at a meeting of the stockholders, but the by-laws may provide for amendment by the board of directors of any provisions other than those relating to the duties, term of office, remuneration, reimbursement or indemnification of a director.

§4112. Reimbursement of officer, director or employee for expenses in defending suits. The by-laws of a territorial bank may provide that it shall indemnify every officer, director or employee, his heirs, executors and administrators, against judgments resulting from and the expenses reasonably incurred by him in connection with any action based upon any alleged act or omission on his part as an officer, director or employee of the territorial bank, except in relation to matters as to which he shall be finally adjudged in such action to be liable for his negligence or his misconduct, and except that, in the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the territorial bank is advised by counsel that in the opinion of counsel the person to be indemnified was not liable for such negligence or misconduct. The foregoing right of indemnification shall not be exclusive of other rights to which officers, directors or employees may be entitled.

§4113. Certificate of authority. (a) It shall be a criminal offense against this Title for a territorial bank to perform any act other than to perfect its organization, obtain and equip a place of business and

otherwise prepare to do business before receiving a certificate of authority to operate.

(b) Application for a certificate of authority shall be made to the Commissioner and shall contain:

(1) A statement that the capital and surplus have been paid in.

(2) The name, address and business and professional affiliations of each Director and executive officer.

(3) The name and address of each stockholder and the number of shares held by him.

(4) The address at which the bank will operate.

(5) A statement that all of the by-laws adopted have been attached as an exhibit to the application.

(6) Such other information as the Commissioner may require to enable him to determine whether a certificate of authority should be issued.

(c) If the application for a certificate of authority or any accompanying documents do not comply with the requirements of this Title the Commissioner shall within twenty within twenty (20) days after the receipt thereof return them to the incorporators, calling attention to the defect or defects therein. If the application and accompanying documents are not so returned within such twenty (20) day period they shall be deemed to have been filed with the Commissioner.

(d) The Commissioner shall approve or deny the application for a certificate of authority within ninety (90) days after such application has been filed. He shall approve the application if:

(1) The capital and surplus have been fully paid in cash.

(2) Appropriate by-laws have been adopted.

(3) Any conditions imposed by the Board in granting the charter have been fulfilled.

(4) The requirements of this Title have been satisfied.

(e) If the Commissioner shall approve such application he shall within twenty (20) days of such action issue a certificate of authority and mail the same to the incorporators. If the Commissioner shall deny the application he shall within twenty (20) days of such action mail a notice of denial to the incorporators, stating therein the reason or reasons for denying the application.

(f) If no application for a certificate of authority is filed within six (6) months following the grant of a charter or any additional period allowed by the Commissioner or if a certificate of authority has been denied, or if the bank shall fail to commence business within six (6) months after the issuance of a certificate of authority or any additional period allowed by the Commissioner, the charter shall be forfeited, and the bank shall be liquidated in accordance with the orders of the Commissioner. If any improper expenditure has been made, the Commissioner any order the persons who were incorporators or directors at the time to restore the sum by equal contributions.

§4114. Amendment of charter; change of location. (a) A territorial bank may apply to the Commissioner to amend its charter or to change its location.

(b) An application for an amendment of the charter changing the authorized capital or the number and par value of the shares or to acquire or abandon trust powers or to change its location must be authorized by the vote of two-thirds (2/3) of the outstanding voting stock voted at a meeting of the stockholders. Any other application may be authorized by the vote of a majority of the outstanding voting stock voted at a meeting of the stockholders.

(c) Notice of the application shall be sent to such persons and organizations as the Commissioner may require.

(d) The Commissioner shall approve an application:

(1) To change the name of the corporation if the proposed name is not deceptive or misleading.

(2) To change the number and par value of the shares without altering the total capital unless such change will inequitably affect the interest of any stockholder and the bank does not have sufficient surplus and undivided profits to pay dissenting shareholders the fair value of their shares determined in accordance with §4205 and have remaining the required minimum paid-in surplus.

(3) To increase the total capital by increasing the amount of common stock, but an amendment increasing the total capital shall not become effective until the Commissioner finds that the new capital has been fully paid in cash. In other cases, the Commissioner shall present the application to the Board.

(e) In making its determination the Board shall consider whether the public convenience and advantage would be served by granting the application and shall be guided by the standards prescribed for the approval of an application for a charter, insofar as they are reasonably applicable.

§4115. Meetings of stockholders; voting; proxies; voting trust; preemptive right; transfer of stock; report of holdings. (a) Regular meetings of stockholders shall be held annually and at such additional times as the by-laws direct at such place as may be designated by the by-laws. A special meeting may be called at any time by the Commissioner, one-third (1/3) of the directors, or the holder or holders of five percent (5%) of the outstanding voting shares. Notice shall be mailed at least ten (10) days before a meeting to every person who was a stockholder of record twenty (20) days before the date of the meeting or at such longer period as may be provided in the by-laws. No business shall be transacted at a special meeting which is not specified in the notice thereof or necessary or proper in connection with or incidental to the business specified. The holders of a majority of the outstanding voting shares or their authorized representative shall constitute a quorum. In the absence of a quorum a meeting may be adjourned from time to time without notice to the stockholders.

(b) Except on the election of directors each share of common stock shall have one vote which may be cast by the owner or record on the record date, or by his authorized representative, whether or not the owner of record has the beneficial interest therein. The bank may not vote shares which it holds in any capacity other than a fiduciary.

(c) A stockholder authorized to vote may by his proxy executed in writing appoint a representative to cast his vote. The Board may promulgate rules governing proxies and the solicitation thereof.

(d) No shares deposited under a voting trust agreement shall be voted by the trustee unless the agreement has been approved by the Board. Approval shall be withheld, or if previously granted, revoked whenever it appears that the existence of the trust would tend to reduce competition among lending institutions or to affect adversely the character or competence of the management or the bank's policies or operating procedures.

(e) Unless otherwise provided in the charter whenever additional stock of a class is offered for sale, stockholders of record of the same class on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding stock. This right shall be transferable but shall terminate if not exercised within thirty (30) days of the offer. If the right is not exercised, the stock shall not be offered for sale to others at a lower price without the stockholders again being accorded a preemptive right to subscribe.

(f) Shares of stock shall be transferable in accordance with the by-laws but no transfer shall be effective with respect to the bank until it has been entered upon the transfer books. The stock book shall be available for examination by a stockholder of the corporation at the principal place of business during business hours.

§4116. Directors and officers. (a) The affairs of a territorial bank shall be managed by a board of directors which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not less than five (5) not more than twenty-five (25), shall be fixed by the by-laws and the number so fixed shall be the board, regardless of vacancies. At least three-fourths (3/4) of the directors shall be citizens of the United States, two-thirds (2/3) shall be residents of Guam and a majority shall reside within one hundred (100) miles of the place of business of the bank. Each incumbency or repurchase agreement of common stock of the bank of the par value of at least one thousand dollars (\$1,000.00). Any director who becomes disqualified shall forthwith resign his office but upon removal of such disqualification he shall be eligible for election. A director who is disqualified may be removed by the board of directors or by the Board. No action taken by a director prior to resignation or removal shall be subject to attack on the ground of his disqualification.

(b) Directors shall receive such reasonable compensation as the by-laws may prescribe and shall serve until their successors are elected and qualified.

(c) Directors shall be elected by the stockholders at the first meeting and thereafter at the annual meeting or at a special meeting called for the purpose. If the charter provides for cumulative voting the votes of each share may be cast for one person or divided among two (2) or more, as the stockholder may choose. The person or persons having the largest number of votes shall be elected.

(d) The term of office of directors shall be one (1) year or, if the by-laws so provide, three (3) years, in which case one-third (1/3) of the directors, or as nearly one-third (1/3) as possible shall be elected

for each year following the first election of directors. Vacancies at any one time to the number of one-third (1/3) of board may be filled by vote of the board of directors until the next meeting of the stockholders. The Commissioner may designate a director to fill a vacancy which has continued for longer than three (3) months and a director so designated shall serve until a successor is elected and has qualified.

(e) A director may be removed by the stockholders at a meeting. Where cumulative voting for directors is provided in the charter no director shall be removed unless the votes cast against a motion for his removal are less than the total number of shares outstanding divided by the number of authorized directors, but all of the directors shall be removed if a majority of the outstanding shares approves a motion for the removal of all.

(f) The officers designated by the by-laws shall be elected by the board of directors. A member of the board of directors shall be elected president. An officer may be removed by the board of directors at any time but removal shall not prejudice any rights that he may have to damage for breach of contract of employment.

SOURCE: Amended by P.L. 14-66, effective September 26, 1977. (g)

A bank shall report promptly to the Commissioner any changes among executive officers and directors, including in its report a statement of the business and professional affiliations of new executive officers and directors.

§4117. Directors; meetings and duties. (a) The board of directors shall meet at least once every month. The Commissioner, a director or an executive officer may call a special meeting. A majority of the board of directors shall constitute a quorum. The board shall keep minutes of each meeting, including a record of attendance and of all votes cast by each director.

(b) The board of director or an executive committee of not less than one-third (1/3) of the board shall review at least monthly the following transactions occurring since the last review:

(1) Each loan, advance, discount, overdraft and purchase or sale of a security which exceeds in amount one-tenth (1/10) of one percent (1%) of the capital and surplus of the corporation, or twenty-five thousand dollars (\$25,000), whichever is larger.

(2) Every increase in loans, advances, discounts and overdrafts which exceed this amount or with the increase will exceed it and every purchase or sale of a security which, together with other such transactions in the security during the preceding two (2) months, involves such amount.

(c) The board of directors shall examine at least once in each calendar year at intervals of not more than fifteen (15) months, all the affairs of the territorial bank including the character and value of investments and loans, the efficiency of operating procedures and such other matters as the Commissioner prescribes. A report of the examination shall be submitted promptly to the Commissioner and shall embody such information as the Commissioner requires. The board of directors may provide that the examination shall be conducted by a committee of not less than three (3) directors of

whom none is an officer of the territorial bank and may employ the services of persons not regularly employed by the bank.

(d) A territorial bank authorized to exercise trust powers shall not accept or voluntarily relinquish a fiduciary account without the approval or ratification of the board of directors or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptance or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than three (3) qualified officers or directors to supervise the investment of fiduciary funds. No such investment shall be made, retained or disposed of without the approval of a committee. At least once in every calendar year at intervals of not more than fifteen (15) months the committee shall review all the assets of each fiduciary account and shall determine their current value, safety and suitability and whether the investments should be modified or retained. The committee shall keep minutes of its meetings and shall report at each monthly meeting of the board of directors its conclusions on all questions considered and all action taken since the previous meeting of the board.

§4118. Fidelity bonds and other insurance. (a) The directors of a territorial bank shall direct and require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be in individual, schedule or blanket form, and the premiums therefore may be paid by the bank.

(b) The said directors shall also direct and require suitable insurance protection to the bank against burglary, robbery, theft and other similar insurable hazards to which the bank may be exposed in the operations of its business on the premises or elsewhere.

(c) The directors shall be responsible for prescribing at least once in each year the amount of penal sum of such bonds or policies and the sureties and underwriters thereon, after giving due and careful consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors and thereafter be reported to the Commissioner and be subject to his approval.

§4119. Authority to declare dividends. The board of directors of a territorial bank may declare dividends not more than once in each calendar quarter from undivided profits if:

- (1) The undivided profits account has been maintained in accordance with the provisions of this Title.
- (2) The reserve against deposits required by this Title is not and will not thereby be impaired.

§4120. Capital, surplus and undivided profits; accounting requirements. (a) No credit shall be entered in the undivided profits account of a territorial bank founded upon an unrealized appreciation in the value of any type of asset. Before any net profits are credited to the undivided profits account, proper deduction shall be made for all expenditures, accrued expenses, accrued taxes, losses, bad debts and any write-offs or other deductions (including interest accrued and uncollected) required by the Commissioner.

(b) At the end of any accounting period a debit balance in the undivided profits account shall be charged to the surplus account, but no charge reducing the surplus account to less than forty percent (40%) of the capital stock account shall be made without the prior written consent of the Commissioner; for the purpose of this sentence, the surplus account shall be considered the surplus remaining after the book value of the bank premises, and of the furniture and fixtures, and of any stock in a corporation owning the bank's premises, vaults, safe deposit boxes, and furniture and fixtures shall have been deducted from the capital stock account and any excess over such account shall have been deducted from the capital stock account and any excess over such account shall have been deducted from the surplus account. No transfer shall be made from the surplus account to the undivided profits account or to any but the capital stock account if the surplus after the transfer would be less than the capital stock. Prior to determining that undivided profits are available for the declaration of dividends the following transfers shall be made:

(1) A net loss shall be deducted from the undivided profits account.

(2) There shall be transferred from the undivided profits account to the surplus account (a) the amount required to raise the surplus to forty percent (40%) of the capital stock; and (b) an amount, not less than ten percent (10%) of net profits, until the surplus equals the capital stock.

§4121. Deposit Insurance: membership in Federal Reserve System. A bank shall obtain insurance of its deposits by the United or any agency thereof and may acquire and hold membership in the Federal Reserve System. The insurance provision of this section shall not apply to deposits held by foreign banking corporations pursuant to §7208 of this code.

SOURCE: Amended by P.L. 13-111, effective December 11, 1975.

§4122. Waivers; corporate action by unanimously signed writing. When a notice is required to be given to stockholders or directors under this Title, or the charter or by-laws of any territorial bank, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Whenever the vote of stockholders or directors at a meeting thereof is required or permitted to be taken in connection with any corporate action, by any section of this Title, the meeting and vote of stockholders or directors may be dispensed with, if all the stockholders or directors who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such corporate action being taken. In the event that the action which is consented to is such as would have

required the filing of a certificate under any of the other sections of this Title, if such action had been voted upon by the stockholders or directors at a meeting thereof, the certificate filed under such other section shall state that written consent has been given hereunder, in lieu of stating that the stockholders have voted upon the corporate action in question, if such last mentioned statement is required thereby.

Article 2

Merger, Consolidation and Conversion of National and Territorial Banks and Trust Companies

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- §4211. Nonconforming Assets or Business.
- §4212. Book Value of Assets.

§4201. Additional definitions. As used in this Chapter, unless the context otherwise requires:

- (1) *Bank* means a territorial or national bank. The singular bank includes the plural banks as the context warrants.
- (2) *Continuing bank* means a merging bank the charter of which becomes the charter of the resulting bank.
- (3) *Converting bank* means a bank converting from a territorial to a national bank, or the reverse.
- (4) *Merger* includes consolidation.
- (5) *Merging bank* means a party to a merger.
- (6) *National bank* means a national banking association located in Guam.
- (7) *Resulting bank* means the bank resulting from a merger or conversion.
- (8) *Territorial bank* means a bank or trust company chartered by this territory.

§4202. Resulting national bank. (a) Nothing in the law of Guam shall restrict the right of a territorial bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting territorial bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of Guam, except that a vote of the holders of two-thirds (2/3) of each class of voting stock of a territorial bank shall be required for the merger or conversion, and that on conversion by a territorial into a national bank the rights of dissenting stockholders shall be those specified in §4209.

(b) Upon the completion of the merger or conversion, the franchise of any merging or converting territorial bank shall automatically terminate.

§4203. Resulting territorial bank. Upon approval by the Commissioner banks may be merged to result in a territorial bank or a national bank may convert into a territorial bank as hereafter

prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting stockholders.

§4204. Merger procedure; resulting territorial bank. (a) The board of directors of each merging territorial bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(1) The name of each merging bank and location of each office.

(2) With respect to the resulting bank: (a) its name and the location of the principal and of each additional office which shall not be at places other than pre-existing offices of any merging bank; (b) the name and residence of each director to serve until the next annual meeting of the stockholders; (c) the name and residence of each officer; (d) the amount of capital, the number of shares and the par value of each share; (e) whether preferred stock is to be issued and the amount, terms, and preferences; (f) the designation of the continuing bank, the charter of which is to be the charter of the resulting bank, together with the amendments to the continuing charter and to the continuing by-laws.

(3) Provisions governing the manner of converting the shares of the merging banks into shares of the resulting territorial bank.

(4) A statement that the agreement is subject to approval by the Commissioner and by the stockholders of each merging bank.

(5) Provisions governing the manner of disposing of the shares of the resulting territorial bank not taken by dissenting stockholders of merging banks.

(6) Such other provisions as the Commissioner requires to enable it to discharge its duties with respect to the merger.

(b) After approval by the board of directors of each merging territorial bank, the merger agreement shall be submitted to the Commissioner for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank.

(c) Within thirty (30) days after receipt by the Commissioner of the paper specified in Subsection (a), the Commissioner shall approve or disapprove the merger agreement, and if no action is taken the agreement shall be deemed approved. The Commissioner shall approve the agreement if it appears that:

(1) The resulting territorial bank meets the requirements of Guam law as to the formation of a new territorial bank.

(2) The agreement provides an adequate capital structure, including surplus, in relation to the deposit liabilities of the resulting territorial bank and its other activities which are to continue or are to be undertaken.

(3) The agreement is fair.

(4) The merger is not contrary to the public interest.

(d) If the Commissioner disapproves an agreement, he shall state his objections and give an opportunity to the merging banks to amend the merger agreement to obviate such objections.

§4205. Merger; approval by stockholders of territorial banks.

(a) To be effective, a merger which is to result in a territorial bank must be approved by the stockholders of each merging territorial bank by a vote of two-thirds (2/3) of the outstanding voting stock of each class at a meeting called to consider such action which vote shall constitute the adoption of the charter and by-laws of the continuing territorial bank, including the amendments in the merger agreement, as the charter and by-laws of the resulting bank.

(b) Notice of the meeting of the stockholders shall be given by publication in a newspaper of general circulation in Guam, at least once a week for four (4) successive weeks, and by mail, at least fifteen (15) days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank, who has not waived such notice in writing; no notice by publication need be given if written waivers are received by holders of two-thirds (2/3) of the outstanding shares of each class of voting stock. The notice shall state that dissenting stockholders (other than those of the continuing bank) will be entitled to payment of the value of only those shares which are voted against approval of the plan.

§4206. Effective date of merger; filing of approved agreement certificate of merger as evidence. (a) A merger which is to result in a territorial bank shall, unless a later date is specified in the agreement, become effective upon filing with the Commissioner of the executed agreement together with copies of the resolutions of the stockholders of each merging bank approving it, certified by the bank's president or vice-president and secretary. The charters of the merging banks, other than the continuing banks shall thereupon automatically terminate.

(b) The Commissioner shall thereupon issue to the resulting bank a certificate of merger, which shall constitute a continuing charter, specifying the name of each merging bank and the name of the resulting territorial bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging banks is held.

§4207. Conversion of national into territorial bank. (a) Except as provided in §4210, a national bank located in Guam which follows the procedure prescribed by the laws of the United States to convert into a territorial bank, may be granted a charter by the Commissioner if the Commissioner finds that each office of the national bank is legally in operation, that the resulting territorial bank will have an adequate capital structure, including surplus, in relation to its deposit liabilities and its other activities, not less than the capital structure

required for a new territorial bank and that the officers and directors of the resulting bank are persons of sound judgment and discretion.

(b) The national bank may apply for such charter by filing with the Commissioner (1) a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of a national to a territorial bank, and (2) the plan of conversion and the proposed articles of incorporation approved by the stockholders, for the operation of the bank as a territorial bank.

§4208. Continuation of corporate entity; use of old name. (a)

A resulting territorial or national bank shall be considered the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers, duties, and obligations of each merging bank or the converting bank, except as affected by Guam law in the case of a resulting territorial bank or the Federal law in the case of a resulting national bank, and by the charter and by-laws of the resulting bank.

(b) A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it deems it more convenient to do so.

(c) Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the provisions of such writing.

§4209. Dissenting stockholders. (a)

The owner of shares of a territorial bank, (other than the continuing bank) which were voted against a merger to result in a territorial bank, or against the conversion of a territorial bank in to a national bank, shall be entitled to receive their value in cash, if and when the merger or conversion becomes effective, upon written demand, made to the resulting territorial or national bank at any time within thirty (30) days after the effective date of the merger or conversion accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the stockholders' meeting approving the merger or conversion, by three (3) appraisers, one to be selected by the owners of two-thirds (2/3) of the shares involved, one by the board of directors of the resulting territorial or national bank, and the third by the two so chosen. The valuation agreed upon by any two (2) appraisers shall govern. If the appraisal is not complete within ninety (90) days after the merger or conversion becomes effective, the Board shall cause an appraisal to be made.

(b) The expenses of appraisal shall be paid by the resulting bank.

(c) The resulting territorial or national bank may fix an amount which it considers to be not more than the fair market value of the shares of a merging or the converting bank at the time of the stockholder's meeting approving the merger or conversion which it will pay dissenting stockholders of that bank entitled to payment in cash. The amount due under such accepted offer or under the

appraisal shall constitute a debt of the resulting territorial or national bank.

§4210. Trust powers. Where a resulting territorial bank is not to exercise trust powers, the Commissioner shall not approve a merger or conversion until satisfied that adequate provision has been made for successors to fiduciary positions held by the merging banks or the converting banks.

§4211. Nonconforming assets or business. If a merging or converting bank has assets which do not conform to the requirements of Guam law for the resulting territorial bank or carries on business activities which are not permitted for the resulting territorial bank, the Commissioner may permit a reasonable time to conform with Guam law.

§4212. Book value of assets. Without approval by the Commissioner no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of a merging or converting bank at the time of its last examination by a territorial or national bank examiner before the effective date of the merger or conversion.

Article 3
Liquidation, Dissolution and Reorganization

§4301. Voluntary Liquidation and Dissolution.

§4302. Commissioner in Possession.

§4303. Requirements of Reorganization Plan.

§4304. Liquidation by Commissioner.

§4301. Voluntary liquidation and dissolution. (a) With the approval of the Commissioner, a territorial bank may liquidate and dissolve. The Commissioner shall grant such approval if it appears that:

(1) The proposal to liquidate and dissolve has been approved by a vote of two-thirds (2/3) of the outstanding voting stock at a meeting called for the purpose of considering such action.

(2) The territorial bank is solvent and has sufficient liquid assets to pay off depositors and creditors immediately.

(b) Upon approval by the Commissioner, the bank shall forthwith cease to do business, shall have only the powers necessary to effect an orderly liquidation and shall proceed to pay its depositors and creditors and to wind up its affairs.

(c) Within thirty (30) days of the approval, a notice of liquidation shall be sent by mail to each depositor, creditor, person interested in funds held as a fiduciary, lessee of a safe deposit box or bailor of property. The notice shall be posted conspicuously on the premises of the bank and shall be given such publication as the Commissioner may require. The bank shall send with the notice a statement of the amount on the books to be the claim of the depositor or creditor. The notice shall demand that property held by the bank as bailee or in a safe deposit box be withdrawn by the person entitled thereto and that claims or depositors and creditors, if the amount claimed differs from that stated in the notice to be due, be filed with the bank before a specified date not earlier than sixty (60) days thereafter in accordance with the procedure prescribed in the notice.

(d) As soon after approval as may be practicable the territorial bank shall resign all fiduciary positions and take such action as may be necessary to settle its fiduciary positions and take such action as may be necessary to settle its fiduciary accounts.

(e) Safe deposit boxes the contents of which have not been removed within sixty (60) days after demand shall be opened and the contents dealt with in the manner provided for boxes upon which the payment of rental is in default and the sealed packages containing the contents and the certificates together with any other unclaimed property held by the bank as bailee and certified inventories thereof shall be transferred to the Commissioner who shall retain it for two (2) years unless sooner claimed by the person entitled to it. After two (2) years the Commissioner shall sell or otherwise appropriately dispose of the property. The proceeds of any sale shall be transferred to the Treasurer of Guam as abandoned funds.

(f) The approval of an application for liquidation shall not impair any right of a depositor or creditor to payment in full and all lawful claims of creditors and depositors shall promptly be paid. The

unearned portion of the rental of a safe deposit box shall be returned to the lessee.

(g) Any assets remaining after the discharge of all obligations shall be distributed to the stockholders in accordance with their respective interests. No such distribution shall be made before (a) all claims of depositors and creditors have been paid or, in the case of any disputed claim, the bank has transmitted to the Commissioner a sum adequate to meet any liability that may be judicially determined and (b) any funds payable to a depositor or creditor and unclaimed have been transmitted to the Commissioner. Any unclaimed distribution to a stockholder or depositor shall be held until ninety (90) days after the final distribution and then transmitted to the Commissioner. Such unclaimed funds shall be held by the Commissioner for five (5) years and, unless sooner claimed by the person entitled thereto, shall be transferred to the Treasurer of Guam as abandoned funds.

(h) If the Commissioner finds that the assets will be insufficient for the full discharge of all obligations or that completion of the liquidation has been unduly delayed, he may take possession and complete the liquidation in the manner provided in this Title for involuntary liquidations.

(i) The Commissioner may require reports of the progress of liquidation and whenever he is satisfied that the liquidation has been properly completed he shall cancel the charter and enter an order of dissolution.

§4302. Commissioner in possession. (a) The Commissioner may take possession of a territorial bank if, after a hearing, he shall find:

- (1) Its capital is impaired or it is otherwise in an unsound condition.
- (2) Its business is being conducted in an unlawful or unsound manner.
- (3) It is unable to continue normal operations.
- (4) Its examination has been obstructed or impeded.

(b) The Commissioner shall take possession by posting upon the premises a notice reciting that he is assuming possession pursuant to this Title and the time, not earlier than the posting of the notice, when his possession shall be deemed to commence. A copy of the notice shall be filed in the District Court of Guam. The Commissioner shall notify the Federal Reserve Bank of the district of taking possession of any territorial bank which is a member of the Federal Reserve System.

(c) When the Commissioner has taken possession of a territorial bank he shall be vested with the full and exclusive power of management and control, including the power to continue or to discontinue the business, to stop or to limit the payment of its obligations, to employ any necessary assistants, to execute any instrument in the name of the bank, to commence, defend and conduct in its name any action or proceeding in which it may be a party, to terminate his possession by restoring the bank to its board of directors and to reorganize or liquidate the bank in accordance with this Title. As soon as practicable after taking possession the

Commissioner shall make an inventory of the assets and file a copy thereof with the District Court of Guam.

(d) When the Commissioner has taken possession there shall be a postponement until six (6) months after the commencement of such possession of the date upon which any period of limitation fixed by a statute or agreement would otherwise expire on a claim or right of action of the bank, or upon which an appeal must be taken or a pleading or other document must be filed by the bank in any pending action or proceeding.

(e) If, in the opinion of the Commissioner, an emergency exists which will result in serious losses to the depositors, he may take possession of a territorial bank without a prior hearing. Within ten (10) days after the Commissioner has taken possession any interested party may file an application with the Board for an order vacating such possession. The Board shall grant the application if it finds that the action of the Commissioner was unauthorized under this Title.

(f) If the Commissioner shall determine to liquidate the territorial bank, he shall give such notice of his determination to the directors, stockholders, depositors and creditors as the Board may prescribe. Any objection to the liquidation shall be filed with the Board within thirty (30) days after such notice. Unless within thirty (30) days thereafter the Board issues an order staying the liquidation, the Commissioner shall proceed to liquidate the institution.

(g) If the Commissioner determines to reorganize the territorial bank, or the Board after staying its liquidation, orders such reorganization, the Commissioner, after according a hearing to all interested parties, shall enter an order proposing a reorganization plan. A copy of the plan shall be sent to each depositor and creditor who will not receive payment of his claim in full under the plan together with notice that unless within thirty (30) days the plan is disapproved in writing by persons holding one-third (1/3) or more the aggregate amount of such claims, the Commissioner will proceed to effect the reorganization. A department or agency of the government of Guam holding a claim which will not be paid in full is authorized to participate as any other creditor.

(h) No judgment, lien or attachment shall be executed upon any asset of the territorial bank while it is in the possession of the Commissioner. Upon the election of the Commissioner in connection with a liquidation or reorganization:

(1) Any lien or attachment, other than an attorney's or mechanic's lien, obtained upon any asset of the territorial bank during the Commissioner's possession or within four (4) months prior to the commencement thereof shall be vacated except liens created by the Commissioner while in possession.

(2) Any transfer of an asset of the territorial bank made after or in contemplation of its insolvency with intent to effect a preference shall be voided.

(i) With the approval of the Board, the Commissioner may borrow money in the name of the territorial bank and may pledge its assets as security for the loan.

(j) All necessary and reasonable expenses of the Commissioner's possession of a territorial bank and of its reorganization or liquidation shall be defrayed from the assets thereof.

§4303. Requirements of reorganization plan. (a) A plan of reorganization shall not be prescribed under this Title unless:

(1) The plan is feasible and fair to all classes of depositors, creditors, and stockholders.

(2) The face amount of the interest accorded to any class of depositors, creditors or stockholders under the plan does not exceed the value of the assets upon liquidation less the full amount of the claims of all prior classes, subject, however to any fair adjustment for new capital that any class will pay in under the plan.

(3) The plan provides for the issuance of common stock in an that will provide an adequate ratio to deposits.

(4) Any exchange of new common stock for obligations or stock of the bank will be effected in inverse order to the priorities in liquidation of the classes that will retain an interest in the bank and upon terms that fairly adjust any change in the relative interests of the respective classes that will be produced by the exchange.

(5) The plan assures the removal of any director, officer or employee responsible for any unsound or unlawful action or the existence of an unsound condition.

(6) Any merger or consolidation provided by the plan conforms to the requirements of this Title.

(b) Whenever in the course of reorganization supervening conditions render the plan unfair or its execution impractical, the Commissioner may modify the plan or liquidate the institution. Any such action shall be taken by order upon appropriate notice.

§4304. Liquidation by Commissioner. (a) In liquidating a territorial bank the Commissioner may exercise any power thereof but he shall not, without the approval of the District Court of Guam:

(1) Sell any asset of the organization having a value in excess of one thousand dollars (\$1,000.00).

(2) Compromise or release any claim if the amount of the claim exceed five hundred dollars (\$500.00), exclusive of interest.

(3) Make any payment on any claim, other than a claim upon an obligation incurred by the Commissioner, before preparing and filing a schedule of his determinations in accordance with this Title.

(b) Within six (6) months of the commencement of liquidation, the Commissioner may by his election terminate any executory contract for services or advertising to which the territorial bank is a party or any obligation of the bank as a lessee. A lessor who receives sixty (60) days notice of the Commissioner's election to terminate the lease shall have no claim for rent other than rent accrued to the date of termination nor for damages for such termination.

(c) As soon after the commencement of liquidation as is practicable, the Commissioner shall take the necessary steps to terminate all fiduciary positions held by the territorial bank and take such action as may be necessary to surrender all property held by the bank as a fiduciary and to settle its fiduciary accounts.

(d) The right of any agency of the United States insuring deposits to be subrogated to the rights of depositors upon payment of

their claim shall not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payment.

(e) As soon after the commencement of liquidation as practicable the Commissioner shall send notice of the liquidation to each known depositor, creditor and lessee of a safe deposit box or bailor of property held by the bank at the address shown on the books of the institution. The notice shall also be published in a newspaper of general circulation in Guam once a week for three (3) successive weeks. The Commissioner shall send with the notice a statement of the amount shown on the books of the institution to be the claim of the depositor or creditor. The notice shall demand that property held by the bank as bailee or in a safe deposit box be withdrawn by the person entitled thereto and that claims of depositors and creditors, if the amount claimed differs from that stated in the notice to be due, be filed with the Commissioner before a specified date not earlier than sixty (60) days thereafter in accordance with the procedure described in the notice.

(f) Safe deposit boxes the contents of which have not been removed before the date specified shall be opened by the Commissioner in the manner provided for boxes upon which the payment of rental is in default and the sealed packages containing the contents and the certificates together with any unclaimed property held by the bank as bailee and certified inventories thereof shall be held by the Commissioner for two (2) years unless sooner claimed by the person entitled thereto. After two (2) years the Commissioner may sell or otherwise appropriately dispose of the property. The proceeds of a sale shall be transferred to the Treasurer of Guam as abandoned funds.

(g) Within six (6) months after the last day specified in the notice for the filing of claims or such longer periods as may be allowed by the court in which notice of possession has been filed, the Commissioner shall:

- (1) Reject any claim if he doubts the validity thereof.
- (2) Determine the amount, if any, owing to each known creditor or depositor and the priority class of his claim under this Title.
- (3) Prepare a schedule of his determinations for filing the court in which notice of possession was filed.
- (4) Notify each person whose claim has not been allowed in full and publish once a week for three (3) successive weeks a notice of the time when and the place where the schedule of determinations will be available for inspection and the date, not sooner than thirty (30) days thereafter, when the Commissioner will file his schedule in court.

(h) Within thirty (30) days after the filing of the Commissioner's schedule, any creditor, depositor or stockholder may file an objection to any determination made. Any objections so filed shall be held and determined by the court, upon such notice to the Commissioner and interested claimants as the court may prescribe. If the objection is sustained the court shall direct an appropriate modification of the schedule. After filing his schedule the Commissioner may, from time to time, make partial distribution to the holders of claims which are

undisputed or have been allowed by the court, if a proper reserve is established for the payment of disputed claim. As soon as is practicable after the determination of all objections the Commissioner shall make final distribution.

(i) The following claims shall have priority: (a) obligations incurred by the Commissioner; (b) wages and salaries of officers and employees earned during the four (4) month period preceding the Commissioner's possession in an amount not exceeding three thousand dollars (\$3,000.00) for any one person; (c) fees and assessments due to the division; (d) deposits to the extent of ten dollars (\$10.00) for each depositor.

(j) After the payment of all other claims with interest at the maximum rate permitted by the Board on time deposits, the Commissioner shall pay claims otherwise proper which were not filed within the time prescribed.

If the sum available for any class is insufficient to provide payment in full, such sum shall be distributed to the claimants in the class pro rata.

(k) Any assets remaining after all claims have been paid shall be distributed to the stockholders in accordance with their respective interests.

(l) Unclaimed funds remaining after completion of the liquidation shall be retained for five (5) years by the Commissioner unless sooner claimed by the owner. At the expiration of such period the remaining sum shall be transferred to the Treasurer of Guam as abandoned funds.

(m) When the assets have been distributed in accordance with this Title, the Commissioner shall file an account with the court. Upon approval thereof, the Commissioner shall be relieved of liability in connection with the liquidation and the charter shall be cancelled.