

CHAPTER 5
PROHIBITED PRACTICES, SANCTIONS

- §5101. Unauthorized Conduct of Banking Business.
- §5102. Unauthorized Assumption of Liability.
- §5103. Receipt of Deposits While Insolvent.
- §5104. Unauthorized Dealing In Securities.
- §5105. Unlawful Service as Officer or Director.
- §5106. Unlawful Gratuity or Compensation; Transactions of Persons Connected with Territorial Bank.
- §5107. Unlawful Concealment of Transactions.
- §5108. Improper Maintenance of Accounts; False or Deceptive Entries and Statements.
- §5109. Unlawful payment of Penalties and Judgements Against Others, Including Directors and Officers.
- §5110. Unlawful Use of Words "Safe Deposit".
- §5111. Unlawful Operation of Off-Shore Lending Facility.
- §5112. Unlawful Solicitation or Negotiation for Off-Shore Lending Facility Loans.
- §5113. Criminal Sanctions, Violations of Rules and Orders.
- §5114. Injunction.

§5101. Unauthorized conduct of banking business. It shall be unlawful for any unauthorized person to engage in the business of receiving deposits, discounting evidences of indebtedness or receiving money for transmission, to represent that he is or is acting for a bank or to use an artificial or corporate name which purports to be or suggests that it is the name of a bank.

§5102. Unauthorized assumption of liability. Except as expressly permitted in this Title, a territorial bank shall not assume liability as an insurer or as a guarantor or indorser of any security instrument or obligation in which or with respect to which it has no property interest.

§5103. Receipt of deposits while solvent. It shall be unlawful for a bank to receive any deposit while insolvent or for an officer, director or employee who knows or, in the proper performance of his duty, should know of such insolvency to receive or authorize the receipt of such deposit.

§5104. Unauthorized dealing in securities. It shall be unlawful for a bank or an officer, director, employee or affiliate of a bank to engage in the business of issuing, floating, underwriting, distributing or promoting the sale of stocks, bonds or other securities, except securities issued or guaranteed as to principal and interest by the United States or any agency thereof or by a state or territory of the United States, or a subdivision or instrumentality, or public authority organized under the laws of, such state or territory, or pursuant to an interstate compact between two or more states, or to be an officer, trustee, director, employee, stockholder, or partner of any person engaged principally in any such business.

§5105. Unlawful service as officer, or director. It shall be unlawful for any person to serve as an officer or director of a bank who:

- (1) Is an officer, director or employee of a directly competitive bank.
- (2) Has been convicted of an offense constituting in the jurisdiction in which the judgment was rendered a violation of the banking laws, a felony having as one of its necessary elements a fraudulent act or an act of dishonesty in the

solicitation of, acceptance, custody or payment of money or property or a breach of trust. [Amended by P.L. 13-187, effective January 1, 1978.]

(3) Is indebted to the bank for more than thirty days (30) days upon a judgment that has become final.

(4) Has an interest adverse to the bank unless such interest is promptly and fully disclosed in writing to its board of directors or trustees.

§5106. Unlawful gratuity or compensation; transactions of persons connected with territorial bank. (a) It shall be unlawful for an affiliate of a bank or for an officer, director or employee of a bank or affiliate of a bank:

(1) To solicit, accept or agree to accept, directly or indirectly, from any person other than the institution any gratuity, compensation or other personal benefit for any action taken by the institution or for endeavoring to procure any such action.

(2) To have any interest, directly or indirectly, in the proceeds of a loan or of a purchase or sale made by the bank, unless such loan, purchase or sale is expressly authorized by this Title or by rule of the Board and is approved in advance by vote of two-thirds (2/3) of all the directors of the bank, any interested director or trustee taking no part in such vote.

(3) To have any interest, direct or indirect, in the purchase at less than its face value of any evidence of indebtedness issued by the institution.

(4) To discount or make any loan, directly or indirectly, upon any note or other evidence of indebtedness known to have been offered to the institution for discount or as security for a loan and to have been refused by it.

(b) In this section and §5104 the term affiliate shall include:

(1) Any person who holds a majority of the stock of a bank or has been determined by the Board to hold a controlling interest therein, any other corporation in which such person owns a majority of the stock and any partnership in which he has an interest.

(2) Any corporation in which the institution or an officer, director or employee thereof holds a majority of the stock and any partnership in which such person has an interest.

(3) Any corporation of which a majority of the directors are officers, directors or employees of the institution or of which officers, directors, trustees or employees constitute a majority of the directors of the institution.

§5107. Unlawful concealment of transactions. It shall be unlawful for an officer, director, employee, attorney or agent of a bank to conceal or endeavor to conceal any transaction of the bank from any officer, director or employee of the bank or any official or employee of the Division to whom it should properly be disclosed.

§5108. Improper maintenance of accounts; false or deceptive entries and statements. It shall be unlawful for an officer, director, employee or agent of a bank:

(1) To maintain or authorize the maintenance of any account of the bank in a manner which, to his knowledge, does

not conform to the requirements prescribed by this Title or by the Commissioner or the Board.

(2) With intent to deceive, to make any false or misleading statement or entry or omit any statement or entry that should be made in any book, account, report or statement of the institution.

(3) To obstruct or endeavor to obstruct a lawful examination of the institution by an officer or employee of the Division.

§5109. Unlawful payment of penalties and judgments against others, including directors and officers. It shall unlawful for a territorial bank to pay a fine or penalty imposed by law upon any other person or any judgment against such person or to reimburse directly or indirectly any person by whom such fine, penalty or judgment has been paid, except in settlement of its own liability or in connection with the acquisition of property against which such judgment is a lien, or as provided in §4112.

§5110. Unlawful use of words safe deposit. It is a criminal offense against this Title for any person to use the words safe deposit, safety deposit or other words deceptively similar thereto, in connection with the rental or storage space, or in the title or name under which business was done, except (1) a person subject to the jurisdiction of the Division; or (2) a manufacturer or dealer in safe deposit facilities or equipment; or (3) an association, the membership of which is composed of officers or institutions subject to the jurisdiction of the Division or of the banking department or other territories or states.

§5111. Unlawful operation of off-shore lending facility. It shall be unlawful for any person to operate on Guam an off-shore lending facility, as defined in §6104(a) of this Title, without the express written authorization of the Banking Board issued pursuant to §6104(b) of this Title. [Added by P.L. 15-11, effective March 20, 1979.]

§5112. Unlawful solicitation or negotiation for off-shore lending facility loans. It shall be unlawful for any person who is an officer, employee or agent in Guam of any bank operating in Guam an off-shore lending facility, as defined in §6104(a) of this Title, to actively solicit or negotiate with any person for a loan with that off-shore lending facility. [Added by P.L. 15-11, effective March 20, 1979.]

§5113. Criminal sanctions, violations of rules and orders. (a) Any corporate entity responsible for an act or omission expressly declared to be a criminal offense by this Act shall be guilty:

(1) Of a misdemeanor punishable by a fine not exceeding fifty thousand dollars (\$50,000.00).

(2) If the act or omission was intended to defraud, of a felony punishable by fine not exceeding one hundred thousand dollars (\$100,000.00).

(b) Violation of this Act by an individual shall be a misdemeanor if the amount involved is less than one thousand dollars (\$1,000.00). Violations where the sum involved exceeds one thousand dollars (\$1,000.00) shall be a felony.

SOURCE: Amended by P.L. 13-187, effective January 1, 1978. (c) An officer, director, employee, agent or attorney of a bank shall be

responsible for an act or omission of the institution declared to be a criminal offense against this Title whenever, knowing that such act or omission is unlawful, he participates in authorizing, executing, ratifying or concealing such act, or in authorizing or ratifying such omission or, having a duty to take the required action, omits to do so.

A director shall be deemed to participate in any action of which he has knowledge taken or omitted to be taken by the board of which he is a member unless he dissents therefrom in writing and promptly notifies the Commissioner of his dissent.

(d) It shall be a criminal offense against this Title to violate any lawful order of the Board of the Commissioner, served upon it, or knowingly violate any lawful rule, regulation or order of the Board.

(e) Unless otherwise provided in this Title, it shall be no defense to a criminal prosecution hereunder that the defendant did not know the facts establishing the criminal character of the act or omission charged if he could and should have known such facts in the proper performance of his duty.

§5114. Injunction. Whenever a violation of this Title by a bank or an officer, director or employee thereof is threatened or impending and will cause substantial injury to the institution or to the depositors, creditors, or stockholders thereof, the District Court of Guam shall, upon suit instituted by the Commissioner, issue an injunction restraining such violation.