

CHAPTER 146
REORGANIZATION

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§ 146101. Definitions.

The terms *plan* and *plan of reorganization*, as used in this Chapter, are hereby defined to mean a plan for the rehabilitation, readjustment, reorganization or liquidation of an association, or for the readjustment, modification or reorganization of the rights or interests of any or all of the investors and creditors of an association, or for any or more of the foregoing purposes, Without limiting the generality of the foregoing, a plan may provide with respect to all or any part of the business, properties and assets of an association for any one or more of the following: (1) The return thereof to such association; (2) the retention thereof by the Commissioner; (3) the transfer thereof to another insured corporation or to two or more other insured corporations; (4) the transfer thereof to a trustee or trustees named in or appointed pursuant to the provisions of such plan; (5) the issuance of new securities in lieu of outstanding investment certificates, shares, stock or other obligations of such association.

The terms *creditor* or *creditors*, as used in this Chapter, shall include the holder or holders of claims of whatever character against an association or its property, whether secured or unsecured, liquidated or unliquidated, fixed or contingent, except shares, stock or investment certificates.

As used in this Chapter. (a) the terms *investment certificates*, *shares* and *stock* shall include claims filed under §141112 of this Act in respect of investment certificates, shares and stock, respectively; (b) the term *investors* shall include holders of such claims; and (c) the terms *certificate holder*, *shareholder* and *stockholder* shall include holders of such claims in respect of investment certificates, shares and stock, respectively.

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The *term securities*, as used in this Chapter, shall include not only shares, stock and investment certificates issuable by associations under other provisions of this Act but also shares of Federal savings and loan associations and stock of one or more classes, issuable by corporations generally, and also bonds, notes, debentures, warrants, or evidences of indebtedness or of beneficial interest or of any other claims or rights. An association may issue, pursuant to a plan approved under this Chapter, and for any consideration specified in such plan, any one or more of the above mentioned kinds of securities, regardless of any provisions of this Act to the contrary.

SOURCE: GC §41750.

§ 146102. Reorganization by Commissioner.

As a condition to restoration of possession and resumption of business pursuant to Section 141107 of this act, the commissioner may require an association, the business, property and assets of which are in his possession, to adopt and agree to carry out a plan of reorganization proposed by the commissioner.

A. Proposal of Plan. The commissioner, upon proposing a plan of reorganization pursuant to this section, shall file such plan in his office and shall fix a time and place for a hearing before him on such plan, and shall give at least 30 day's notice to investors and creditors of such hearing, which notice shall include a copy or summary of such plan. Such hearing shall be held in the municipality in which such association maintains its principal office.

B. Hearing. At the time and place fixed for such hearing, or at the time and place to which such hearing may be continued by the commissioner, the commissioner shall hear the parties interested therein and, if he deems it necessary, may take testimony and/or may receive depositions relative thereto. If at the time fixed for Such hearing written dissents from such plan (other than dissents, if any, withdrawn after the filing thereof) shall have been filed by holders or more than one-third in value of the investment certificates of such association then outstanding, or by holders of more than one-third in value of the shares of such association then outstanding, or by holders of more than one-half of the stock of such association then outstanding, then such hearing shall not be held, such plan shall

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not be approved by the commissioner, and no further proceedings shall be taken in respect of such plan.

After the completion of such hearing the commissioner shall approve or disapprove such plan, and if he disapproves such plan he may modify such plan and propose it as modified or propose a different plan. If he proposes such plan as modified or a different plan, the provisions of this section (including among other provisions, the provisions of Subsections A and B thereof) shall apply to such modified or different plan in same manner and with the same effect as if it had been the original plan proposed by the commissioner.

Notwithstanding anything to the contrary contained in this Subsection B, dissents of shareholders shall have no effect if the value of the assets of such association shall be less than the liabilities of such association, including the value of its investment certificates but not including the value of its shares; and dissents of stockholders shall have no effect if the value of the assets of such association shall be less than the liabilities thereof, including the value of all outstanding shares and investment certificates.

C. Conditions of Approval. No plan shall be approved by the commissioner unless he is satisfied that the plan is fair and equitable, and feasible.

D. Effect of Approval. When any plan under this section shall have been approved by the commissioner, such plan shall be binding upon the commissioner, such association and all of the investors and creditors of such association, other than investors and creditors who shall have filed with the commissioner written dissents from such plan within the time specified in Subsection B of this section and shall not have withdrawn such dissents. Thereupon such steps shall be taken by the commissioner, such association and all other persons affected by such plan, and all acts shall be done, all instruments executed and all securities issued, as may be required by such plan so approved and as may be necessary or desirable for the consummation of such plan. The commissioner shall supervise and direct the consummation of such plan.

E. Rights of Dissenters. No investor or creditor who shall have filed with the commissioner his written dissent from such plan

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within the time specified in Subsection B of this section, shall be entitled to receive any securities or other participation under such plan (except from payments to the commissioner pursuant to provisions of the plan referred to in the next paragraph) unless such dissent shall be withdrawn, but the commissioner shall set apart and shall thereafter liquidate for such dissenters that part of the assets of such association which in value shall bear the same proportion to all of the assets of such association (due provision being made for any liens, charges, liabilities and expenses entitled to payment in preference to certificate holders and unsecured creditors) as the value of investment certificates in respect of which dissents have been duly filed plus the amount of claims of unsecured creditors in respect of which dissents shall have been duly filed bears to the total sum of the value of all investment certificates of such association plus the amount of all unsecured creditor's claims against such association (such proportion being hereinafter referred to as the "proportion of dissenting certificate holders and, unsecured creditors"); provided, that in all cases the assets so set apart for liquidation shall be of such amount and value that the probable result of the liquidation of such assets for the benefit of the dissenting investors and creditors and of any payments to the commissioner pursuant to the provisions of the plan referred to in the next paragraph shall be not less favorable to the dissenting investors and creditors than the probable result of a liquidation, in the absence of a plan, of all the assets for the benefit of all investors and creditors.

It is recognized that the proportion of dissenting certificate holders and unsecured creditors may not be the same proportion which the value of shares in respect of which dissents have been duly filed bears to the total value of all shares of such association (hereinafter referred to as the "proportion of dissenting shareholders") or as the proportion which the value of stock in respect of which dissents have been duly filed bears to the total stock of such association (hereinafter referred to as the "proportion of dissenting stockholders"). Accordingly any plan approved under this section shall provide that if the liquidation of assets set apart pursuant to this Subsection E shall result in the distribution to dissenting certificate holders and unsecured creditors of the full amounts to which they are entitled and leave additional amounts

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available for distribution to shareholders or stockholders such additional amounts shall be either (a) increased (in the event the proportion of dissenting shareholders or the proportion of dissenting stockholders shall be greater than the proportion of dissenting certificate holders and unsecured creditors) by payments from the association, or from a corporation or trustee to whom assets of such association are to be transferred pursuant to such plan to the commissioner for distribution to dissenting shareholders or dissenting stockholders or (b) decreased (in the event the proportion of dissenting shareholders or the proportion of dissenting stockholders shall be less than the proportion of dissenting certificate holders and unsecured creditors), by payments from the commissioner to the association, or to a corporation or trustee to whom assets of such association are to be transferred pursuant to such plan. In either case the amounts to be so paid shall be determined by the amounts available for distribution to shareholders or stockholders, respectively, as the result of liquidation by the commissioner of the assets set apart pursuant to this Subsection E and shall be such as to overcome any inequity which would exist in the absence of such payment by reason of the differences between the proportion of dissenting certificate holders and unsecured creditors, the proportion of dissenting shareholders, and the proportion of dissenting Stockholders.

Upon approving a plan of reorganization the commissioner shall determine what assets shall be set apart pursuant to this Subsection E and shall cause a written statement of such determination including a description of the properties to be so set apart, to be filed in his office. Thereupon the commissioner shall cause notice of the fact that he has made such determination (which notice shall include in general terms a statement of the properties to be so set apart) to be given as follows: Such notice shall be posted in three public places in the territory in which such association maintains its office, shall be published at least once in a newspaper of general circulation, and shall be mailed to all investors and creditors whose respective addresses appear on the books of such association.

F. Action in District Court. Within 30 days after such notice shall have been posted, published and mailed as aforesaid any investor or creditor may apply to the District Court of the territory

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of Guam for a determination as to whether the assets set apart pursuant to Subsection E of this section are sufficient in amount and value to conform to the" requirement of such subsection. Thereafter such application or applications shall be sent for hearing. At least 30 day's notice of such hearing shall be given by posting in three public places in said territory, and, if the court shall so require, notice shall also be given by publication and/or mailing at such time or times and in such manner as the court shall prescribe. At such hearing the written statement of the commissioner of his determination as to the assets to be set apart shall be received and shall be prima facie evidence of the correctness of such determination, but the commissioner, the association and any investor or creditor (whether or not dissenting) may introduce evidence in support or in opposition to the commissioner's determination. After the conclusion of such hearing the court shall make its order either approving or disapproving such determination by the commissioner, and if the court shall disapprove such determination, the court shall determine and specify in such order the assets to be set apart pursuant to Subsection E of this section.

G. Appeals. No appeal from such order of court shall stay or postpone the consummation of the plan, unless such court shall deem it necessary to delay such consummation for the proper protection of the appellant or appellants, but in lieu of requiring the consummation of the plan to be delayed such court may restrain the sale, transfer or other disposition by the commissioner, the association or a corporation or trustee to whom assets are to be transferred of any assets specified by the court, if the retention of such assets is found by the court necessary or advisable to protect the rights of the appellant or appellants.

SOURCE: GC §41751.

§ 146103. Priorities and Value.

In any plan proposed pursuant to Section 146102 due consideration shall be given to the rights and interests of all persons affected thereby (with due regard to the feasibility of such plan and the condition of such association), in the following order of priorities: First, secured creditors and other persons, if any, entitled to preference over investment certificate holders and unsecured creditors in the event of liquidation; second, investment certificate holders and unsecured creditors, without

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preference to one over the other; third, shareholders; and fourth, stockholders, provided, however, that within their respective classes hereinabove set forth there shall be no preference among investment certificate holders and shareholders based upon whether or not notice of intention to withdraw may have been filed or matured, or the order in which any such notice may have been filed or matured; provided, further, that provision may be made in any such plan for the payment in full of all taxes, assessments, insurance, alterations, repairs and other operating expenses, for the payment of expenses of the commissioner in connection with such association or its property, business or assets or in connection with any application of such association under Section 141108 of this act, and for the payment of expenses in connection with such plan as authorized by this chapter; and provided further, that provision may be made in any such plan for the payment in cash full of all certificate holders, shareholders and creditors each of whose investment certificates, shares or claim is of such value, not to exceed twenty-five dollars (\$25) as shall be specified in such plan.

No plan which provides for the issuance of securities to holders of stock shall be approved unless such securities contain express provision that no interest, dividends or other distribution shall be paid or made thereon unless and until all securities issued in exchange for claims of investment certificate holders, claims of unsecured creditors, and claims of shareholders, if any, have been retired; it being the intent that under such plan each investment certificate holder and unsecured creditor (except those who shall sell or otherwise dispose of their new securities) shall receive the full amount of their original investment, with interest, dividends, or other return thereon before any interest, dividends or other distribution is paid or made on securities issued to shareholders or stockholders, or both, as aforesaid. A plan may provide, however, for the issuance of such securities to the stockholders that after all creditors, certificate holders and shareholders (except those who shall sell or otherwise dispose of their new securities) shall receive the full amount of their original investment of claims, with interest, dividends or other return thereon, the stockholders or their assigns shall own in effect, through their ownership of such securities issued to the stockholders, the remaining assets. Unless the court finds that the stockholders have an existing equity in the assets of the association, the securities issued to the shareholders shall contain express provision that such securities shall have no voting power until such corporation shall have retired all

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securities issued in exchange for claims of certificate holders and unsecured creditors, and, unless the court finds that the stockholders have an existing equity in the assets, the securities issued to the stockholders shall contain express provision that such securities shall have no voting power until such corporation shall have retired all securities issued in exchange for claims of shareholders, certificate holders and unsecured creditors.

For the purpose of this chapter, real property, contracts for the sale of real property, loans, and all other assets (whether like or unlike the foregoing) shall be valued at fair market value, and any assets subject to encumbrance shall be valued with due allowance for the amount of such encumbrance. In determining such fair market value, the court or the commissioner as the case may be, shall give due consideration to the earning power of the property, past, present and prospective.

SOURCE: GC §41752.

§ 146104. Hearing.

At any hearing before the commissioner pursuant to Section 146102 any interested certificate holder, shareholder, stockholder or creditor shall have the right to appear either in support of the plan or plans or petition or in opposition thereto; and any such hearing shall be, among other things, upon the fairness of the terms and conditions of the issuance of all securities to be issued pursuant to such plan or plans or petition and of the exchange thereof for outstanding securities, claims or property interests, or partly in such exchange and partly for cash and all persons to whom it is proposed to issue securities in such exchange shall have the right to appear at such hearing; and the commissioner or court (as the case may be) is hereby authorized to determine whether the terms and conditions of such proposed issuance and exchange of securities are fair and, if so, to grant approval of such terms and conditions.

SOURCE: GC §41753.

§ 146105. Notices.

Wherever provision is made in this chapter for at least a specified number of day's notice to investors and creditors of a hearing, such notice shall state the time and place of such hearing and shall be (a) mailed by first class mail in sealed envelopes, postage pre-paid, to each investor and creditor at his address as shown by the books of such association, or, if no address be there shown, at the municipality in which

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such association has or last had its principal place of business; (b) posted in three public places in the territory; and (c) published once in a newspaper of general circulation published in said territory. Such mailing, posting and publication shall be made at least the specified number of days before the date fixed for such hearing. Section 127107 of this act shall not apply to such notices.

SOURCE: GC §41754.

§ 146106. Savings and Loan Commissioner.

The Commissioner shall have and may exercise the same jurisdiction, authority and powers with respect to any business, properties or assets retained by or delivered to the commissioner pursuant to any plan as the commissioner shall have with respect to the business, properties and assets of any association of which the commissioner has taken possession; and the commissioner shall have and may exercise the same jurisdiction, authority and powers with respect to any association (excepting a Federal savings and loan association) formed pursuant to any plan or by or to which any business, properties or assets may be retained or returned or transferred pursuant to any plan (excepting a Federal savings and loan association or an association which, pursuant to the plan, is to cease being an association) as the commissioner would have such association if it had been formed or had acquired its business properties and assets by means other than a plan.

There shall be paid from the assets of the association directly affected by a proposed plan under this chapter, all expenses incurred by the commissioner in connection therewith; provided such expenses shall be reasonable and proper.

SOURCE: GC §41755.

§ 146107. Appeals.

No appeal from an order of court referred to in this chapter shall be effectual for any purpose unless the appellant or appellants, within 30 days after the entry of the order appealed from, shall file with the clerk of such a bond executed on the part of the appellant or appellants by at least two sureties to the effect that the appellant or appellants, in the event such order is affirmed on appeal will pay all of the respondent's costs and expenses arising from such appeal, not including, however, respondent's attorneys fees. The form and amount of such bond and the sureties thereon shall be approved by the court. No appeal from an order

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disapproving a plan of reorganization or a petition for the withdrawal of assets shall operate as a stay of further proceedings in liquidation by the commissioner. Appeals from such orders shall be given preference in hearing on appeal over all other appeals, except contested election cases and cases in which the people of the territory are parties. Except as otherwise provided by this chapter, the provisions of Title 7, Guam Code Annotated are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter with regard to appeals.

SOURCE: GC §41756.
