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CHAPTER 2
FORMATION OF CORPORATIONS

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§ 2101. Corporations Defined.

A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incident to its existence.

SOURCE: CC § 283.

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§ 2102. Private Corporations.

All corporations authorized in Guam are private corporations. Private corporations are those formed for some private purpose, benefit, aim, or end. Private corporations are divided into stock corporations and nonstock corporations.

SOURCE: CC §2 84.

CROSS-REFERENCES: Title 12 GCA contains a number of government instrumentalities which have been declared by their own organic laws to be types of "public corporations".

§ 2103. Private Corporations, How Formed.

Corporations may be formed by the voluntary association of any three (3) or more persons in the manner prescribed in this Part for any lawful purpose or purposes.

SOURCE: CC § 285; amended by P.L. 8-51 (10/2/65).

§ 2104. Articles of Incorporation, Filed.

The articles of incorporation be filed in the Department of Revenue and Taxation, duly executed and acknowledged before any person authorized to administer oaths.

SOURCE: CC § 289. §§ 286-288 did not exist in the former Civil Code.

NOTE: Department of Finance changed to Revenue and Taxation in the Civil Code pursuant to P.L. 9-228 (10/7/68).

§ 2105. Articles of Incorporation.

Articles of incorporation shall state:

- (1) The name of the corporation.
- (2) The purpose for which it is formed.
- (3) The place where the principal office of the corporation is to be established or located, which place must be in Guam.
- (4) The term for which it is to exist, not exceeding fifty (50) years, except as otherwise provided in this Part.
- (5) The names and residences of the incorporators.
- (6) Unless otherwise provided in this Part, the number of its directors, not less than three (3) nor more than seven (7), and the

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names and residences of the persons who are appointed to act as such until the first annual meeting of the shareholders or until the election and qualification of their successors as provided by the bylaws; Provided, however, that at any time during the existence of the corporation the number of directors may be increased to any number not exceeding fifteen (15) or diminished to any number not less than three (3) in the case of a nonstock corporation by the formal assent of a majority of the members at a regular or special meeting of the membership, and in the case of a stock corporation the number of directors may be increased to any number not exceeding eleven (11) or diminished to any number not less than three (3) by the formal assent of the stockholders of the corporation at a regular or special meeting of stockholders representing or holding a majority of the stock; and provided, further, that a certificate setting out such increase or diminution in the numbers of directors of any corporation shall be duly signed and sworn to by the president, managing agent, secretary or clerk, or treasurer of such corporation and forthwith filed in the Department of Revenue and Taxation.

(7) If it be a stock corporation, the amount of its capital stock in United States currency, and the number of shares into which it is divided.

(8) If it be a stock corporation, the amount of capital stock actually subscribed, the names and residences of the persons subscribing, the amount subscribed by each, and the sum paid by each on his subscription.

(9) If the corporation is either or both an Investment Company or International Finance Company, its articles of incorporation shall state in compliance with the requirement of subsection (2) of this section, and in addition to any other statements in compliance therewith, that its purpose is to be an Investment Company or an International Finance Company, or both, as the case may be.

SOURCE: CC § 290; subsection (9) added by P.L. 16-115:2 (10/21/82).

§ 2106. Corporation.

Before any corporation may file with the Director of Revenue and Taxation its articles or an amendment to its articles, or an agreement for consolidation or merger, which would permit the corporation to conduct the business of acting as executor, administrator, guardian of estates, assignee,

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receiver, depository or trustee under appointment of any court or by authority of law, there must be attached thereto a certificate of approval of the Governor of Guam.

Before any corporation whose purpose includes, or is to include, that of an investment company or international finance company, or both, may file with the Director of Revenue & Taxation its articles or an amendment to its articles, or an agreement for consolidation or merger which would permit the corporation to conduct the business of acting as an investment company or international finance company, or both, there must be attached thereto a certificate of approval by the Administrator under the Uniform Securities Act indicating compliance with and satisfaction of the requirements of [§ 45202 of the Government Code and any rules relating thereto prescribed by the Administrator pursuant to [§ 45412 of the Government Code.

SOURCE: CC § 290a; final paragraph added by P.L. 16-115:3 (10/21/82).

§ 2107. Fee for Filing Articles.

Before filing the articles of incorporation, the Director of Revenue and Taxation *shall* collect and receive for filing such articles in accordance with provisions of this Part, a fee of One Hundred Dollars (\$100.00).

SOURCE: CC § 290b; amended by P.L. 16-47:2 (10/24/81). Amended by P.L. 29-002:V:1:53 (May 18, 2007).

§ 2108. Directors Named Must Sign Articles.

Each person named therein as director must sign the articles of incorporation and acknowledge such execution before a person authorized by law to administer oaths.

SOURCE: CC § 292. No § 291 existed in the Civil Code.

CROSS-REFERENCES: See 6 GCA § 4308 relative to unsworn declarations under the penalty of perjury.

§ 2109. Statement of Treasurer. Condition Precedent to Filing.

The Director of Revenue and Taxation shall not file the articles of incorporation unless accompanied by a sworn statement of the treasurer elected by the subscribers showing that at least twenty percentum (20%) of the entire capital stock has been subscribed, and that at least twenty-five percentum (25%) of the subscription has been paid to him for the benefit and to the credit of the corporation.

SOURCE: CC § 293. See cross-reference to § 2108.

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§ 2110. Corporate Name.

The Director of the Department of Revenue and Taxation shall not file any Articles of Incorporation submitted by a corporation unless the corporate name of such corporation meets all of the following requirements:

(a) shall contain the word 'corporation,' 'incorporated,' 'company,' or 'limited,' or the abbreviation 'corp.,' 'inc.,' 'co.,' or 'ltd.,' or words or abbreviations of like import in another language; provided, however, that if the word 'company' or its abbreviation is used, it shall not be immediately preceded by the word 'and' or by an abbreviation of or symbol representing the word '*and*,'

(b) shall not contain any word or phrase stating or implying that the corporation is organized for a purpose other than that permitted by its Articles of Incorporation and all applicable laws of Guam;

(c) except as authorized by Subsections (d) and (e) of this Section, a corporate name shall not be the same as, or deceptively similar to:

(1) the corporate name of a corporation incorporated or authorized to transact business on Guam;

(2) a name reserved under § 2110.1 or registered under § 2110.2;

(3) the fictitious name adopted by a foreign corporation authorized to transact business on Guam because its real name is unavailable;

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business on Guam; or

(5) the name of any partnership, limited partnership, limited liability partnership or limited liability company, domestic or foreign, which is organized under the laws of Guam or registered to transact business on Guam;

(d) A corporation may apply to the Director of the Department of Revenue and Taxation for authorization to use a name that is the same as, or deceptively similar to, one (1) or more of the names described in Subsection (c) of this Section; the Director of Revenue and Taxation shall authorize use of the name applied for if:

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(1) the other corporation, holder of a reserved or registered name, limited partnership, limited liability partnership or limited liability company consents to the use in writing and submits an undertaking in form satisfactory to the Director of the Department of Revenue and Taxation to change its name to a name that is the same as, or deceptively similar to, the name of the applying corporation; or

(2) the applicant delivers to the Director of the Department of Revenue and Taxation a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for on Guam;

(e) a corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used on Guam if the other corporation or limited liability company is organized or authorized to transact business on Guam and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all, or substantially all, of the assets, including the name, of the other corporation or limited liability company;

(f) The provisions of this Section do not control the use of fictitious names;

(g) Nothing in this Section shall abrogate or limit the law as to unfair competition or unfair practice in the use of trade names, nor derogate from the common law, the principles of equity, or the statutes of Guam or of the United States with respect to the right to acquire and protect trade names; and

(h) the assumption of a name in violation of this Section shall not affect or vitiate the corporate existence, but the courts of Guam, having equity jurisdiction, may, upon the application of the government, or of any person, unincorporated association, or corporation interested or affected, enjoin such corporation in violation from transacting business under any name assumed in violation of this Section.

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(i) The Director of Revenue and Taxation *shall* charge a fee of Twenty-five Dollars (\$25.00) for a name change resulting from a merger between two (2) companies, groups or associations.

SOURCE: CC § 295. No § 294 existed in the Civil Code. Amended by P.L. 27-57:11. Subsection (i) added by P.L. 29-002:V:I:54 (May 18, 2007).

§ 2110.1. Reserved Name.

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name, for a foreign corporation whose corporate name is not available, by delivering an application to the Director of the Department of Revenue and Taxation for filing. The application must set forth the name and address of the applicant, and the name proposed to be reserved. If the Director of the Department of Revenue and Taxation finds that the corporate name applied for is available, the Director of the Department of Revenue and Taxation shall reserve the name for the applicant's exclusive use for a non-renewable one hundred twenty (120) day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Director of the Department of Revenue and Taxation a signed notice of the transfer that states the name and address of the transferee.

(c) The filing fee for every application for a reserved name shall be Twenty-five Dollars (\$25.00).

SOURCE: Added by P.L. 27-57:12.

§ 2110.2. Registered Name.

(a) A foreign corporation may register its corporate name, or its corporate name with any addition required by § 7107, if the name is distinguishable upon the records of the Director of the Department of Revenue and Taxation from the corporate names that are not available under § 2110(c)(3).

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by § 7107, by delivering to the Director of the Department of Revenue and Taxation for filing an application:

(1) setting forth its corporate name, or its corporate name with any addition required by § 7107, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

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(2) accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Director of the Department of Revenue and Taxation for filing a renewal application, which complies with the requirements of Subsection (b), between April 1 and June 30 of the preceding calendar year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name, or consent in writing to the use of that name by a corporation thereafter incorporated under the laws of Guam or by another foreign corporation thereafter authorized to transact business on Guam. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

(f) The filing fee for every application for a registered name and for a renewal of registered name shall be Twenty-five Dollars (\$25.00).

SOURCE: Added by P.L. 27-57:13.

§ 2111. Director of Revenue and Taxation to Issue Certificates.

The Director of Revenue and Taxation on filing of the articles of incorporation provided by this Part to be filed, shall issue to the incorporators a certificate, under the seal of his office, setting forth that such articles of incorporation have been duly filed in his office in accordance with law; and thereupon the persons signing the articles of incorporation and their associates and successors shall constitute a body politic and corporate, under the name stated in the certificate, for the term specified in the articles of incorporation, not exceeding fifty (50) years, unless sooner legally dissolved or unless otherwise provided in this Part.

SOURCE: CC § 296.

§ 2112. Articles as Prima Facie Evidence.

A copy of any articles of incorporation filed with the Director of Revenue and Taxation in pursuance of this Part and duly certified by the

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Director shall be received in the courts and all other places as prima facie evidence of the facts therein stated.

SOURCE: CC § 297.

§ 2113. Powers of an Investment Company or International Finance Company.

Notwithstanding any other provision of this Part, an Investment Company or an International Finance Company may, if its articles of incorporation so provide, as to any of the following:

(a) Authorize the issuance of one or more classes of stock or one or more series of stock within any class thereof:

(1) any or all of which classes may be of stock with par value or stock without par value (in which case such amount as shall be capital of the issuer shall be designated not later than sixty (60) days following issue) and which classes or series may have such voting powers, full or limited, or no voting powers and such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations, restrictions or prohibitions including, without limitation, restrictions or prohibitions on transfer, based upon the nationality or country of residence of a transferee thereof or other factors, as shall be stated and expressed in the articles of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issuance of such stock adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of its articles of incorporation;

(2) which are redeemable or convertible into other securities, in whole or in part, at the option of the issuer;

(3) which are redeemable at the option of the holder at a price approximately equal to the shares' proportionate interest in the net assets of the issuer, or convertible at the option of the holder into other securities, and a stockholder may compel redemption or conversion of such shares in accordance with their terms;

(4) which if redeemed or converted may be retired or held as treasury shares as determined from time to time by the Board of Directors; and

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(5) which provide that no stockholder shall be entitled to cumulate votes in the election of directors as otherwise provided by § 2207 of this Title;

(b) Issue fractional shares; and

(c) Grant preemptive rights, if any, to the holders of any of its securities to subscribe to any or all additional issues of securities of the issuer or to any or all classes or series thereof.

SOURCE: CC § 298 added by P.L. 16-115:4.

§ 2114. Investment Company or International Finance Company: Stock and Stockholders.

Except as may otherwise be provided in the articles of incorporation of an Investment Company or an International Finance Company, the stockholders or members of any such corporation shall not be personally liable for the payment of the debts of any such corporation except as they may be liable by reason of their own conduct or acts, and, notwithstanding any other provision of this Part, an Investment Company or an International Finance Company, unless its articles of incorporation expressly exclude the application of any of the following provisions:

(a) May issue shares of its authorized but previously unissued stock and may dispose of treasury shares for such consideration (including cash, services rendered, personal or real property or leases thereof, or a combination of any of the foregoing) as is determined from time to time by the Board of Directors, provided that in the case of issuance of shares, such consideration shall have a value not less than the par value or capital value of such shares, as the case may be;

(b) May amend its articles of incorporation by the affirmative vote of the holders of a majority of the stock entitled to vote; the holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences or special rights of the shares of such class so as to affect them adversely; if any proposed amendment would alter or change the powers, preferences or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then

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only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this Subsection; and, if more than one class of stock or more than one series of any class are issued, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights shall be set forth in full or summarized on the face or back of the certificate representing shares of such class or series of stock, provided that in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate a statement that the issuer will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights;

(c) May authorize and make distributions to stockholders in cash, in-kind or in securities issued by it whenever and to the extent that:

(1) immediately after authorization thereof, its net assets, valued at the higher of either market or book and after giving effect to the proposed distribution, shall be at least equal in value to the aggregate par value and capital value of the outstanding shares of its stock and, in the case of distribution of securities issued by it, such distribution would not reduce its net assets below the aggregate par and capital values of its outstanding stock as adjusted to reflect such distribution;

(2) the total amount or value thereof (excluding distributions of shares of its stock) does not exceed its net profits for the fiscal year in which such distribution is authorized or the preceding fiscal year; or

(3) the effect thereof would be to distribute up to all of the amount of which a specified portion thereof would have to be distributed to satisfy the requirements of Section 852(a)(1) of the Guam Territorial Income Tax Law; provided, however, that no stockholder shall be liable to any person with respect to any distribution received whether or not in violation hereof unless such stockholder shall have had actual knowledge at the time of receipt that such distribution was made in violation hereof;

(d) May adopt, amend or repeal its bylaws by the affirmative vote of a majority of its entire Board of Directors or in such other manner as may be specified in its articles of incorporation; provided, however, that a copy of

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its bylaws, as amended, and certified by an officer of the corporation, shall be kept in the principal office of the corporation;

(e) May issue, register and deliver certificates representing shares of its stock or any other securities either in registered form or, subject to any rules made from time to time by the Administrator under the Uniform Securities Act governing the issuance of bearer securities by an Investment Company or an International Finance Company, in bearer form;

(f) May authorize the use of facsimiles for any or all signatures on certificates representing securities of the corporation; and if any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, the certificate may be issued by the issuer with the same effect as if such person were an officer, transfer agent or registrar at the date of issue;

(g) May, in addition to or in lieu of the issuance of certificates representing securities of the corporation, adopt a system of issuance, recordation or transfer of its securities by electronic or other means not involving any issuance of certificates, including provisions for notice to purchasers in substitution for the delivery of such certificates and for any statement thereon necessary to comply with Subsection (b) of this Section; and

(h) May issue a new certificate representing securities of the corporation in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

SOURCE: CC § 299 added by P.L. 16-115:5.

§ 2115. Law relative to Investment Companies and International Finance Companies.

(a) The following provisions of this Part shall not apply to any Investment Company or to any International Finance Company:

(1) § 2108;

(2) § 2109;

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(3) § 2110(c);

(4) § 2201;

(5) § 2202, to the extent (i) that notice to any stockholder whether in or absent from Guam may be delivered and served by depositing the same with any office or collection facility of the United States mail, first class postage prepaid addressed to such stockholder at his address of record as shown by the books of the corporation and service of said notice may be proved prima facie by an affidavit of the person making such deposit, and (ii) no posting of any notice shall be required;

(6) § 2204;

(7) § 2205, to the extent (i) that directors need not be elected from among the holders of stock, or, where there is no stock, from the members of the corporation, and (ii) that any contractual arrangement duly authorized by the Board of Directors shall otherwise provide for the management or administration of its business or property;

(8) § 2206, and no officer shall be required to own any shares of the capital stock of the corporation of which he is an officer;

(9) § 2208, to the extent that the president need not be a director and neither the secretary nor the treasurer need be a resident of Guam;

(10) § 2216, to the extent that the meeting of the stockholders or members of a corporation need not be held in Guam, but may be held in such other place as may be fixed by the Board of Directors, if an annual meeting of stockholders or members of the corporation was held in Guam within the past two (2) calendar years;

(11) § 3102;

(12) § 3104;

(13) § 3105, to the extent set out in § 2115(5);

(14) § 4101(e), to the extent that there shall be no restrictions applicable to real estate located outside Guam;

(15) § 4105;

(16) § 4108;

(17) § 4201; and

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(18) § 4202.

(b) Notwithstanding any other provisions of this Part:

(1) No Investment Company or International Finance Company shall issue shares having par value unless the consideration received for such shares includes cash in an amount not less than the sum of the par value of such shares;

(2) No individual shall serve as director of a Public Finance Corporation unless such individual owns at least one (1) share of the capital stock of such corporation;

(3) At least one director of a Public Finance Corporation shall be a resident of Guam; and

(4) As used in this Subsection, the term 'Public Finance Corporation' means a stock corporation that is an Investment Company and has more than thirty-five (35) share holders of record.

SOURCE: CC § 300 added by P.L. 16-115:6.

§ 2116. Law not Applicable to FSC.

The following provisions of this Part shall not apply to any FSC:

§ 2205, to the extent that directors need not be elected from among the holders of stock;

§ 2206; [and]

§ 2208, to the extent that the president need not be a director.

In addition to the above exemptions, no officer of a FSC shall be required to own any shares of the capital stock of the Corporation of which he is an officer.

SOURCE: CC § 300.1 added by P.L. 17-63:4.

§ 2117. Indemnification of Directors and officers of FSCs.

(a) As used in this section:

(1) *Director* means any person who is or was a director or nominee director of a FSC and any person who, while a director of the FSC, is or was serving at the request of the FSC as a director, nominee director, officer, partner, trustee, employee or agent of another foreign

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or domestic corporation, partnership, joint venture, trust, other enterprise or employee benefit plan.

(2) *Corporation* includes any domestic or foreign predecessor entity of the FSC in a merger, consolidation, or other transaction in which the predecessor's existence ceased upon consummation of such transaction.

(3) *Expenses* includes attorneys' fees.

(4) *official capacity* means

(A) when used with respect to a director: the office of director in the corporation; or

(B) when used with to a person other than a director, as contemplated in subsection (i) of this section: the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation.

official capacity does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.

(5) *Party* includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(6) *Proceeding* means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative.

(b) A corporation shall have the power to indemnify any person made a party to any proceeding by reason of the fact that he is or was a director if

(1) he conducted himself in good faith; and

(2) he reasonably believed

(A) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(B) in all cases, that his conduct was at least not opposed to its best interests; and

(3) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

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Indemnification may be made against judgments, penalties, fines, settlements and reasonable expenses actually incurred by the person in connection with the proceeding; except that if the proceeding was by or in the right of the corporation, indemnification may be made only against such reasonable expenses and shall not be made in respect to any proceeding in which the person shall have been adjudged liable to the corporation. The termination to any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

(c) A director shall not be indemnified under subsection (b) of this section in respect to any proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he shall have been adjudged to be liable on the basis that personal benefit was improperly received by him.

(d) Unless limited by the articles of incorporation,

(1) a director who has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in Subsection (b) of this Section shall be indemnified against reasonable expenses incurred by him in connection with the proceeding; and

(2) a court of appropriate jurisdiction, upon application of a director and such notice as the court shall require, shall have authority to order indemnification in the following circumstances:

(A) if the Court determines a director is entitled to reimbursement under clause (1) of this Subsection (d), the court shall order indemnification, in which case the director shall also be entitled to recover the expenses of securing such reimbursement; or

(B) if the Court determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the standard of conduct set forth in Subsection (b) of this Section or has been adjudged liable in the circumstances described in Subsection (c) of this Section, the court may order such indemnification as the court shall deem proper, except that indemnification with respect to any proceeding by or in the right of the corporation or in which

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liability shall have been adjudged in the circumstances described in Subsection (c) of this Section shall be limited to expenses.

A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

(e) No indemnification under Subsection (b) of this Section shall be made by the corporation unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in Subsection (b). Such determination shall be made:

(1) by the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; or

(2) if such a quorum cannot be obtained, then by a majority vote of a committee of the board, duly designated to act in the matter by a majority vote of the full board in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding; or

(3) by special legal counsel, selected by the board of directors or a committee thereof by vote as set forth in clauses (1) and (2) of this Subsection (e), or, if the requisite quorum of the full board cannot be obtained and such committee cannot be established, by a majority vote of the full board in which selection directors who are parties may participate; or

(4) by the shareholders.

Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in clause (3) of this Subsection (e) for the selection of such counsel. Shares held by directors who are parties to the proceeding shall not be voted on the subject matter under this Subsection (e).

(f) Reasonable expenses incurred by a director who is a party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such proceeding upon receipt by the corporation of

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(1) a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation as authorized in this Section, and

(2) a written undertaking by or on behalf of the director to repay such amount if it shall ultimately be determined that he has not met such standard of conduct, and

(3) after a determination that the facts then known to those making the determination would not preclude indemnification under this Section.

The undertaking required by clause (2) of this Subsection shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payments under this Subsection (f) shall be made in the manner specified in Subsection (e) of this Section.

(g) No provision for the corporation to indemnify or to advance expenses to a director who is made a part to a proceeding, whether contained in the articles of incorporation, the by-laws, a resolution of shareholders or directors, an agreement or otherwise, except as contemplated by Subsection (j), shall be valid unless consistent with this Section or, to the extent that indemnity hereunder is limited by the articles of incorporation, consistent therewith. Nothing contained in this Section shall limit the corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding.

(h) For purposes of this Section, the corporation shall be deemed to have requested a director to serve an employee benefit plan whenever the performance by him of his duties to the corporation also imposes duties on, or otherwise involves services by, him to the plan or participants or beneficiaries of the plan; excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be deemed 'fines', and action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

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(i) Unless limited by the articles of incorporation,

(1) an officer of the corporation shall be indemnified as and to the same extent provided in Subsection (d) of this Section for a director and shall be entitled to the same extent as a director to seek indemnification pursuant to the provisions of Subsection (d) of this Section;

(2) a corporation shall have the power to indemnify and to advance expenses to an officer, employee or agent of the corporation to the same extent that it may indemnify and advance expenses to directors pursuant to this Section; and

(3) a corporation, in addition, shall have the power to indemnify and to advance expenses to an officer, employee or agent who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, by-laws, general or specific action of its boards of directors, or contract.

(j) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Section.

(k) Any indemnification of, or advance of expenses to, a director in accordance with this Section, if arising out of a proceeding by or in the right of the corporation, shall be reported in writing to the shareholders with or before the notice of the next shareholders' meeting.

(l) Notwithstanding any other provision of this Section, the provisions of this Section shall apply only to indemnification by Foreign Sales Corporations or FSCs, as such terms are defined in [§ 16500 of the Government Code, as amended from time to time.

SOURCE: CC § 300.2 added by P.L. 17-75:24.

§ 2118. Executive and Other Committees of FSCs.

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If the articles of incorporation or the by-laws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the by-laws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have authority to (i) authorize distributions, (ii) approve or recommend to shareholders actions or proposals required by law to be approved by shareholders, (iii) designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof, (iv) amend the by-laws, (v) approve a plan of merger not requiring shareholder approval, (vi) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors, or (vii) authorize or approve the issuance or sale of, or any contract to issue or sell, shares or designate the terms of a series of a class of shares, provided that the board of directors, having acted regarding general authorization for the issuance or sale of shares, or any contract therefor, and, in the case of a series, the designation thereof, may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including, without limitation, the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares, or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the Director of Revenue and Taxation.

Neither the designation of any such committee, the delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors, not a member of the committee in question, with his responsibility to act in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

Except as may be otherwise restricted by the articles of incorporation or by-laws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means

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of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

Notwithstanding any other provisions of this Section, the provisions of this Section shall apply only to Foreign Sales Corporations or FSCs, as such terms are defined in [§ 16500 of the Government Code, as the same may be amended from time to time.

SOURCE: CC § 300.3 added by P.L. 17-75:25.

ARTICLE 2
BYLAWS, DIRECTORS, ELECTIONS & MEETINGS

- § 2201. Bylaws: Adoption.
- § 2202. Directors' Election; Notice of Election.
- § 2203. Bylaws: Provisions.
- § 2204. Bylaws: Amendment or Repeal.
- § 2205. Corporation Management; Directors.
- § 2206. Qualifications of Directors.
- § 2207. Elections; Method of Voting.
- § 2208. Organization.
- § 2209. Directors: How Removed.
- § 2210. Meetings Ordered.
- § 2211. Incapable Owners Represented.
- § 2212. New Election Generally.
- § 2213. Failure to Hold Meetings; Special Meeting.
- § 2214. False Entries, Etc.
- § 2215. Validity of Proceedings.
- § 2216. Meetings, Where Held.
- § 2217. Directors' Meeting; Waiver of Notice.

§ 2201. Bylaws: Adoption.

Every corporation formed under this Part must, within one (1) month after the filing of articles of incorporation with the Director of Revenue and

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Taxation, adopt a code of bylaws for its government. These bylaws *shall* be consistent with its articles of incorporation and *shall* not be inconsistent with the provisions of this Part or other provisions of law. For the adoption of any bylaw or bylaws by the corporation, the affirmative vote of the stockholders representing a majority of all the paid-up capital stock, entitled to vote, or a majority of the members if there be no capital stock, is necessary. The bylaws *shall* be signed by the stockholders or members voting for them and *shall* be kept in the principal office of the corporation, subject to the inspection of the stockholders or members during office hours and a copy thereof, duly certified to by a majority of the directors and countersigned by the secretary of the corporation, *shall* be filed with the Director of the Revenue and Taxation, who *shall* attach the same to the original articles of incorporation and charge a fee of Seventy-five Dollars (\$75.00) for the filing thereof.

SOURCE: CC § 301; amended by P.L. 4-88 (7/14/58) and by P.L. 16-47:3 (11/24/81). Latter amendment raised the filing fee from \$1 to \$10. *Director of Finance* amended to *Revenue and Taxation* pursuant to P.L. 9-228 (8/7/68). Amended by P.L. 29-002:V:1:55 (May 18, 2007).

§ 2202. Directors' Election; Notice of Election.

At the meeting for the adoption of the original bylaws, or at such subsequent meeting as may be then determined, directors shall be elected to hold their offices for one (1) year and until their successors are elected and qualified. Thereafter the directors of the corporation shall be elected annually by the stockholders if it be a stock corporation or by the members if it be a nonstock corporation, and if no provision is made in the bylaws for the time of election the same shall be held on the first Tuesday after the first Monday in January; unless otherwise provided in the bylaws, ten (10) days' notice of the election of directors must be given to stockholders. All such notices to stockholders in Guam shall be written or printed and delivered personally to such stockholders. Service of said notices may be proved prima facie by affidavit of the person serving the notice. Written or printed notice must be addressed to each stockholder, absent from Guam, at his place of residence as shown by the books of the corporation and registered and deposited so addressed in the post office with postage prepaid. Service of said notice may be proved prima facie by the post office receipt of the registered letter. A notice of the election of directors shall be posted for a period of three (3) weeks, immediately preceding the election in at least three (3) public places, in the place where the principal office of the corporation is located.

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SOURCE: CC § 302.

§ 2203. Bylaws: Provisions.

A corporation may, unless otherwise prescribed by this Part, in its bylaws prescribe:

(1) For the time, place, and manner of calling and conducting regular or special meeting of its directors, and the time and manner of calling and conducting regular or special meetings of stockholders or members;

(2) The number of stockholders or members necessary to constitute a quorum for the transaction of business at meetings of stockholders or members;

(3) The conditions upon which members of nonstock corporations shall be entitled to vote;

(4) The mode of securing proxies of stockholders or members and voting them;

(5) The qualifications, duties, and compensation of directors, officers, and employees;

(6) The time for holding the annual election of directors and the mode and manner of giving notice thereof;

(7) The manner of election and the term of office of all officers other than directors and those elected by the directors or trustees;

(8) The penalties for violation of bylaws, not exceeding in any case the sum of one hundred dollars (\$100.00);

(9) In the case of stock corporations, the manner of issuing stock certificates or shares of stock;

(10) Such other matters not otherwise provided for in this Part as may be necessary for the proper or convenient transaction of the business of the corporation;

(11) In the case of an Investment Company or an International Finance Company (i) such rights of inspection, if any, by a director or stockholder of the corporation's bylaws, list of stockholders, stock and transfer books, records of business transactions and any other books and records of the corporation, and (ii) provision for the

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indemnification of directors, officers, employees and agents of the corporation against liabilities arising or asserted against them as such, and expenses arising in connection therewith.

SOURCE: CC § 303; item (11) added by P.L. 16-115:8.

§ 2204. Bylaws: Amendment or Repeal.

The owners, of a majority of the paid up capital stock, entitled to vote, or a majority of the members if there be no capital stock, may, at a regular or special meeting duly called for the purpose, amend or repeal any bylaw or adopt new bylaws. The owners of two-thirds (2/3) of the paid up capital stock entitled to vote, or two-thirds (2/3) of the members if there be no capital stock, may delegate to the board of directors the power to amend or repeal any bylaw or to adopt new bylaws; provided, however, that any power delegated to the board of directors to amend or repeal any bylaw or to adopt new bylaws shall be considered as revoked whenever a majority of the stockholders or the members of the corporation shall so vote at a regular or special meeting.

Whenever any amendment of the articles of incorporation or a new bylaw is adopted, such amendment or bylaw *shall* be attached to the original articles or bylaws in the office of the corporation and a copy thereof duly certified to by a majority of the directors and countersigned by the secretary or clerk of the corporation, *shall* be filed with the Director of Revenue and Taxation, who *shall* attach the same to the original articles of incorporation and original bylaws on file in his office and charge the sum of Twenty Dollars (\$20.00) for this service.

SOURCE: CC § 304; amended by P.L. 4-88 (7/14/58). Reference to *Director of Finance* changed to *Revenue and Taxation* pursuant to P.L. 9-228 (8/7/68). Amended by P.L. 29-002:V:I:56 (May 18, 2007).

§ 2205. Corporation Management; Directors.

Unless otherwise provided in this Part, the corporate powers of all corporations formed under this Part shall be exercised, all business of such corporations conducted, and all property of such corporations controlled and held by a board of not less than three (3) nor more than eleven (11) directors to be elected from among the holders of stock, or, where there is no stock, from the members of the corporation.

SOURCE: CC § 305.

§ 2206. Qualifications of Directors.

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The Articles of Incorporation or Bylaws may prescribe qualifications for directors. A director need not be a resident of Guam unless the Articles of Incorporation or Bylaws so prescribe.

SOURCE: CC § 306; amended by P.L. 3-15 (7/14/55); and by P.L. 8-51 (8/2/65). Repealed and reenacted by P.L. 28-169:2 (Jan. 29, 2007).

§ 2207. Elections; Method of Voting.

At elections of directors there must be present, either in person or by representative authorized to act by written proxy, the owners of the majority of the paid up capital stock entitled to vote, or, if there be no capital stock, then a majority of the members entitled to vote. The elections must be by ballot and every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing at the time fixed in the bylaws in his own name on the stock books of the corporation, and said stockholder may vote such number of shares for as many persons as there are directors or he may cumulate said shares and give one candidate as many votes as the number of directors to be elected, multiplied by the number of his shares, shall equal, or he may distribute them in the same principle among as many candidates as he shall see fit: Provided, that the whole number of votes cast by him shall not exceed the number of shares owned by him as shown by the books of the corporation multiplied by the whole number of directors to be elected. Members of corporations which have no capital stock may cast as many votes for one director as there are directors to be elected. Any meeting of the stockholders or members called for an election may adjourn from day to day or from time to time if for any reason no election is had or if there are not present or represented by proxy at the meeting the owners of the majority of the paid up capital stock entitled to vote or if there be no capital stock, a majority of the members entitled to vote.

SOURCE: CC § 307; amended by P.L. 4-88 (7/14/58).

§ 2208. Organization.

Immediately after election the directors of a corporation must organize by the election of the president, who must be one of their number, a secretary or treasurer who shall be a resident of Guam and such other officers as may be provided for in the bylaws. The directors and officers so elected shall perform the duties enjoined on them by law and by the bylaws of the corporation. A majority of the directors shall constitute a quorum for

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the transaction of corporate business, and every decision of a majority of the quorum duly assembled as a board shall be valid as a corporate act.

SOURCE: CC § 308; amended by P.L. 8-51 (8/2/65).

§ 2209. Directors: How Removed.

Directors of a corporation may be removed from office by a vote of two-thirds (2/3) of the members entitled to vote, or, if the corporation be a stock corporation, by the vote of the stockholders holding or representing two-thirds (2/3) of the paid up capital stock entitled to vote: Provided, however, that such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the intention to propose such removal at the meeting. A special meeting of the stockholders or members of a corporation for the purpose of removal of directors, or any of them, must be called by the secretary or clerk on order of the president or on the written demand of a majority of the members entitled to vote, or, if it be a stock corporation, on the written demand of the stockholders representing or holding at least one-half (1/2) of the shares entitled to be voted. Should the secretary or clerk fail or refuse to call the special meeting demanded or fail or refuse to give notice, or if there is no secretary or clerk, the call for the meeting may be addressed directly to the members or stockholders by any member or stockholder of the corporation signing the demand. Notice of the time and place of any such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice as prescribed by § 2202 hereof. In case of removal on the vote of stockholders or the members, as the case may be, the vacancy so created may be filled by election at the same meeting without further notice, or at any general meeting or at any special meeting called for the purpose, after giving notice as prescribed by said § 2202 hereof.

SOURCE: CC § 310; amended by P.L. 4-88 (7/14/58). No § 309 existed in the Civil Code.

§ 2210. Meetings Ordered.

Whenever, from any cause, there is no person authorized to call a meeting, or when the officer authorized to do so refuses, fails, or neglects to call a meeting, the judge of the Superior Court, on the showing of good cause thereof, may issue an order to any stockholder or member of a corporation, directing him to call a meeting of the corporation by giving the proper notice required by this Part or the bylaws; and if there be no person

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legally authorized to preside at such meeting, the judge of the Superior Court may direct the person calling the meeting to preside at the same until a majority of the members of stockholders representing a majority of the stock present and permitted by law to be voted have chosen one of their number to act as presiding officer for the purpose of the meeting.

SOURCE: CC § 311; amended by P.L. 9-256 (1/8/69). *Island Court* replaced by *Superior Court* pursuant to P.L. 12-85. No § 312 existed in the Civil Code.

§ 2211. Incapable Owners Represented; Executors, Etc.

Executors, administrators, guardians, or other persons in a position of trust, and legally authorized may vote as stockholders upon stock held in their representative capacity.

SOURCE: CC § 313.

§ 2212. New Election Generally.

Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the Superior Court must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five (5) days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party, or those to be affected thereby.

SOURCE: CC § 314.

§ 2213. Failure to Hold Meetings; Special Meeting.

If for any cause no meeting is held on the day fixed and appointed by law or by the bylaws of the corporation for holding the election of directors a meeting may be called for that purpose either by the directors or as provided in § 2210 hereof; and, at the meeting held in pursuance of such call the election may be had with the same effect as if it had taken place on the day fixed by law or by the bylaws of the corporation.

SOURCE: CC § 315.

§ 2214. False Entries, Etc.

Any officer of a corporation who willfully gives a certificate or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its busi-

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ness, which is false in any material representation shall be liable for all the damages resulting therefrom to any person injured thereby, and if two (2) or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

SOURCE: CC § 316.

§ 2215. Validity of Proceedings.

The proceedings had and the business transacted at any meeting of the stockholders or members of a corporation, if within the powers of the corporation, shall be valid even if the meeting be improperly held or called: Provided, that the stockholders or members of the corporation are present at the meeting. At any such meeting the stockholders or members of the corporation may elect officers and fill vacancies then existing, and may transact such other business of the corporation as might lawfully be transacted at a regular meeting thereof.

SOURCE: CC § 317.

§ 2216. Meetings, Where Held.

The meeting of the members or stockholders of a corporation shall be held at the place where the principal office of the corporation is established or located and where practicable, in the principal office of the corporation. Directors' meeting may be held at the place fixed in the bylaws.

SOURCE: CC § 319.

§ 2217. Directors' Meeting; Waiver of Notice.

When all the directors of a corporation are present at any directors' meeting, however called or noticed, and sign a written consent thereto, on the record of such meeting, or if the majority of the directors are present, and if those not present sign in writing a waiver of notice of such meeting, whether prior to or after the holding of such meeting, which said waiver shall be filed with the secretary of the corporation, the transactions of such meeting are as valid as if had at a meeting regularly called and noticed.

SOURCE: CC § 320.