

Pat



Office of the Governor of Guahan

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2010 MAY 27 AM 10:25
W

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

MAY 26 2010

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Trenta Na Liheslaturan Guahan
155 Hessler Street
Hagåtña, GU 96910

Dear Speaker Won Pat:

Transmitted herewith is Bill No. 325-30 (COR) "AN ACT TO AMEND §281601(b), AND TO ADD A NEW §28817A AND A NEW SUBARTICLE B TO CHAPTER 28, PART 5, DIVISION 1 OF TITLE 18 OF THE GUAM CODE ANNOTATED, RELATIVE TO INCLUDING DIRECTORS' LIABILITY AN CONFLICT PROVISIONS IN THE REVISED MODEL BUSINESS, CORPORATION ACT" which was signed into law on April 1, 2010 as **Public Law 30-124.**

Sinseru yan Magâhet,

MICHAEL W. CRUZ, M.D.
I Maga'lâhen Guahan para pa'go
Acting Governor of Guahan

Attachment: copy of Bill

30-10-0478
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date _____
Time 5/28/10
Received by [Signature]

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 325-30 (COR), "AN ACT TO AMEND §281601(b), AND TO ADD A NEW §28817A AND A NEW SUBARTICLE B TO CHAPTER 28, PART 5, DIVISION 1 OF TITLE 18 OF THE GUAM CODE ANNOTATED, RELATIVE TO INCLUDING DIRECTORS' LIABILITY AND CONFLICT PROVISIONS IN THE REVISED MODEL BUSINESS CORPORATION ACT," was on the 19th day of March, 2010, duly and regularly passed.

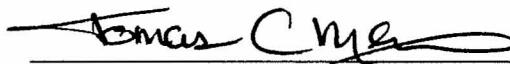


Judith T. Won Pat, Ed. D.
Speaker

Attested:

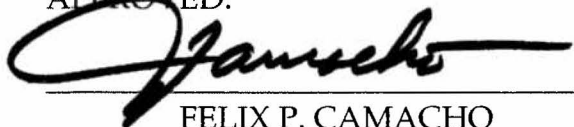

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 22nd day of March, 2010, at
2:15 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: APR 01 2010

Public Law No. P.L. 30-124

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

Bill No. 325-30 (COR)

As amended on the Floor.

Introduced by:

v. c. pangelinan
T. C. Ada
F. B. Aguon, Jr.
F. F. Blas, Jr.
E. J.B. Calvo
B. J.F. Cruz
J. V. Espaldon
Judith P. Guthertz, DPA
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
R. J. Respicio
Telo Taitague
Ray Tenorio
Judith T. Won Pat, Ed.D.

AN ACT TO *AMEND* §281601(b), AND TO *ADD* A NEW §28817A AND A NEW SUBARTICLE B TO CHAPTER 28, PART 5, DIVISION 1 OF TITLE 18 OF THE GUAM CODE ANNOTATED, RELATIVE TO INCLUDING DIRECTORS' LIABILITY AND CONFLICT PROVISIONS IN THE REVISED MODEL BUSINESS CORPORATION ACT.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the addition of a new Part 5 to Title 18 of the Guam Code Annotated, which is
4 designated as Public Law 29-144, and known as the Guam Corporation Business
5 Act, was substantively patterned after the Revised Model Business Corporation

1 Act (RMBCA). The Guam Corporation Business Act omitted certain provisions of
2 the RMBCA, including provisions governing the standards of liability for directors
3 and directors' conflicting interest transactions. *I Liheslaturan Guåhan* further
4 finds that it is necessary to amend §28817 which contained technical drafting
5 errors. It is the intent of *I Liheslaturan Guåhan* to empower the Compiler of Laws
6 to assign Chapter and subchapter headings consistent with the Revised Model
7 Business Corporation Act.

8 **Section 2.** A new §28817A is hereby *added* to Chapter 28, Part 5, Division
9 1 of Title 18, of the Guam Code Annotated, to read as follows:

10 **“§28817A. Standards of Liability for Directors.** (a) A director
11 *shall not* be liable to the corporation *or* its shareholders for any decision to
12 take *or* not to take actions, *or* any failure to take any action, as a director,
13 unless the party asserting liability in a proceeding establishes that:

14 (1) any provision in the Articles of Incorporation authorized by
15 §28202(b)(4) *or* protection afforded by §28861 for action taken
16 in compliance with §§28862 *or* 28863, if interposed as a bar to
17 the proceeding by the director, *does not* preclude liability; and

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

19 (A) action not in good faith; or

20 (B) a decision

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

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

26 (C) a lack of objectivity due to the director's familial,
27 financial *or* business relationship with, *or* a lack of

1 independence due to the director's domination or control
2 by, another person having a material interest in the
3 challenged conduct

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

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

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

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

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

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

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

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

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

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

15 (c) Nothing contained in this Section *shall*

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

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

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

1 **Section 3.** A new SubArticle B is hereby *added* to Chapter 28, Part 5,
2 Division 1 of Title 18 of the Guam Code Annotated to read as follows:

3 **“SubArticle B**

4 **Directors’ Conflicting Interest Transactions**

5 **§28860. SubArticle Definitions.**

6 **§28861. Judicial Action.**

7 **§28862. Directors’ Action.**

8 **§28863. Shareholders’ Action.**

9 **§28860. SubArticle Definitions.** For this SubArticle the
10 following definitions apply:

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

16 (1) whether or not the transaction is brought before the board
17 of directors of the corporation for action, the director knows at the
18 time of commitment that he or a related person is a party to the
19 transaction or has a beneficial financial interest in or so closely linked
20 to the transaction and of such financial significance to the director or a
21 related person that the interest would reasonably be expected to exert
22 an influence on the director’s judgment if he were called upon to vote
23 on the transaction; or

24 (2) the transaction is brought (or is of such character and
25 significance to the corporation that it would in the normal course be
26 brought) before the board of directors of the corporation for action,
27 and the director knows at the time of commitment that any of the

1 following persons is either a party to the transaction or has a
2 beneficial financial interest in or so closely linked to transaction and
3 of such financial significance to the person that the interest would
4 reasonably be expected to exert an influence on the director's
5 judgment if he were called upon to vote on the transaction:

- 6 (i) an entity (other than the corporation) of which the
7 director is a director, general partner, agent, or employee;
- 8 (ii) a person that controls one or more of the entities
9 specified in sub-clause (i) or an entity that is controlled
10 by, or is under common control with, one or more of the
11 entities specified in sub-clause (i); or
- 12 (iii) an individual who is a general partner, principal, or
13 employer of the Director.

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

19 (c) *Related person of a director* means:

- 20 (1) the spouse (or a parent or sibling thereof) of the director,
21 or a child, grandchild, sibling, parent (or spouse of any
22 thereof) of the director, or an individual having the same
23 home as the director, or a trust or estate of which an
24 individual specified in this clause (1) is a substantial
25 beneficiary; or
- 26 (2) a trust, estate, incompetent, conservatee, or minor of
27 which the director is a fiduciary.

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

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

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

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

14 **§28861. Judicial Action.** (a) A transaction effected or proposed
15 to be effected by a corporation (or by a subsidiary of the corporation or any
16 other entity in which the corporation has a controlling interest) that is not a
17 director's conflicting interest transaction may not be enjoined, set aside, or
18 give rise to an award of damages or other sanctions, in a proceeding by a
19 shareholder or by or in the right of the corporation, because a director of the
20 corporation, or any person with whom or which he has personal, economic,
21 or other association, has an interest in the transaction.

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

- 1 (1) directors' action respecting the transaction was at any time
2 taken in compliance with §28862;
- 3 (2) shareholders' action respecting the transaction was at any time
4 taken in compliance with §28863; or
- 5 (3) the transaction, judged according to the circumstances at the
6 time of commitment, is established to have been fair to the
7 corporation.

8 **§28862. Directors' Action.** (a) Directors' action respecting a
9 transaction is effective for purposes of §28861(b)(1) if the transaction
10 received the affirmative vote of a majority but no fewer than two (2) of those
11 qualified directors on the board of directors or on a duly empowered
12 committee of the board who voted on the transaction after either required
13 disclosure to them (to the extent the information was not known by them) or
14 compliance with Subsection (b); provided that action by a committee is so
15 effective only if:

- 16 (1) all its members are qualified directors, and
- 17 (2) its members are either all the qualified directors on the board or
18 are appointed by the affirmative vote of a majority of the
19 qualified directors on the board.

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

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

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

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

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

15 (1) a conflicting interest respecting the transaction, or

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

21 **§28863. Shareholders' Action.** (a) Shareholders' action
22 respecting a transaction is effective for purposes of §28861(b)(2) if a
23 majority of the votes entitled to be cast by the holders of all qualified shares
24 were cast in favor of the transaction after

25 (1) notice to shareholders describing the director's conflicting
26 interest transaction,

27 (2) provision of the information referred to in Subsection (d), and

1 (3) required disclosure to the shareholders who voted on the
2 transaction (to the extent the information was not known by
3 them).

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

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

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

24 (e) If a shareholders’ vote does not comply with Subsection (a)
25 solely because of a failure of a director to comply with Subsection (d), and if
26 the director establishes that his failure did not determine and was not
27 intended by him to influence the outcome of the vote, the court may, with or

1 without further proceedings respecting §28861(b)(3), take such action
2 respecting the transaction and the director, and give such effect, if any, to the
3 shareholders' vote, as it considers appropriate in the circumstances.”

4 **Section 4.** §28817 of Chapter 28, Part 5, Division 1 of Title 18 of the
5 Guam Code Annotated is hereby *amended* to read as follows:

6 “§28817. **Standards of Conduct for Directors.** (a) Each member
7 of the board of directors, when discharging the duties of a director, shall act

8 (1) in good faith; and

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

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

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

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

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

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

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

10 (i) within the particular person's professional or
11 expert competence, or

12 (ii) as to which the particular person merits
13 confidence; or

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

17 **Section 5. Empowerment.** The Compiler of Laws is empowered to
18 assign chapter and subchapter headings consistent with the Revised Model
19 Business Corporation Act.

20 **Section 6.** Subsection (b) of §281601 of Article 16 of Chapter 28, Title 18,
21 Guam Code Annotated, is hereby *amended* to read:

22 “(b) If the corporation, or an officer or agent thereof, refuses to
23 permit an inspection sought by a stockholder or attorney or other agent
24 acting for the stockholder pursuant to Subsection (a) of this Section, or does
25 not reply to the demand within ten (10) business days after the demand has
26 been made, the stockholder may apply to the Superior Court of Guam for an
27 order to compel such inspection.”

1 **Section 7. Effective Date.** This Act *shall* be effective upon its enactment.

6

I MINA' TRENTA NA LIHESLATURAN GUAHAN
2010 (SECOND) Regular Session

Date: 3/19/10

VOTING SHEET

Bill No. 373-30 (COR)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BLAS, Frank F., Jr. //	✓				
CALVO, Edward J.B. /	✓				
CRUZ, Benjamin J. F.	✓				
ESPALDON, James V. //	✓				
GUTHERTZ, Judith Paulette	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RESPICIO, Rory J.	✓				
TAITAGUE, Telo	✓				
TENORIO, Ray /	✓				
WON PAT, Judith T.	✓				

TOTAL

14

CERTIFIED TRUE AND CORRECT:


 Clerk of the Legislature

* 3 Passes = No vote
 EA = Excused Absence



Mina'Trenta Na Liheslaturan Guåhan

Senator vicente (ben) c. pangelinan (D)

March 15, 2010

The Honorable Judith T. Won Pat, Ed.D.

Speaker
I Mina'trenta na Liheslaturan Guåhan
155 Hesler Place
Hagåtña, Guam 96910

Chairman
Committee on
Appropriations, Taxation,
Banking, Insurance, and
Land

Member
Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
Recreation

Member
Committee on Labor, the
Public Structure,
Public Libraries, and
Technology

VIA: The Honorable Rory J. Respicio
Chairperson, Committee on Rules

RE: Committee Report on Bill No. 325-30 (COR)

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on Bill No. 325-30 (COR) "An act to add a new §28817A and a new subarticle B to Chapter 28, Part 5, Division 1 of Title 18 of the Guam Code Annotated and for other purposes" and which was referred to the Committee on Appropriations, Taxation, Banking, Insurance, Retirement, and Land.

Committee votes are as follows:

2 TO PASS
____ NOT TO PASS
4 TO REPORT OUT ONLY
____ TO ABSTAIN
____ TO PLACE IN INACTIVE FILE

Si Yu'us Ma'åse,

vicente c. pangelinan
Senator

COMMITTEE
REPORT
ON

BILL NO. 325-30 (COR)

“AN ACT TO ADD A NEW §28817A
AND A NEW SUBARTICLE B TO
CHAPTER 28, PART 5, DIVISION 1 OF
TITLE 18 OF THE GUAM CODE
ANNOTATED AND FOR OTHER
PURPOSES”



Mina'Trenta Na Liheslaturan Guåhan

Senator vicente (ben) c. pangelinan (D)

March 15, 2010

MEMORANDUM

To: All Members
Committee on Appropriations, Taxation, Banking, Insurance,
Retirement, and Land

From: Senator vicente "ben" c. pangelinan
Committee Chairperson

Subject: Committee Report on Bill No. 325-30 (COR)

Chairman
Committee on
Appropriations, Taxation,
Banking, Insurance, and
Land

Member
Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
Recreation

Member
Committee on Labor, the
Public Structure,
Public Libraries, and
Technology

Transmitted herewith for your consideration is the Committee Report on Bill No. 325-30 (COR) "An act to add a new §28817A and a new subarticle B to Chapter 28, Part 5, Division I of Title 18 of the Guam Code Annotated and for other purposes" sponsored by Senator vicente "ben" c. pangelinan

This report includes the following:

- Committee Voting Sheet
- Committee Report Narrative
- Copy of Bill No. 325-30 (COR)
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony & Supporting Documents
- Copy of COR Referral of Bill No. 325-30 (COR)
- Notices of Public Hearing
- Copy of the Public Hearing Agenda

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact my office.

Si Yu'us Ma'åse,

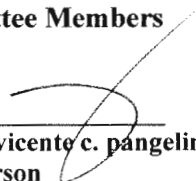

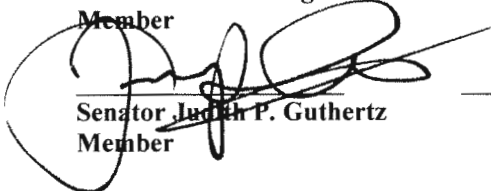
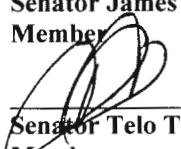
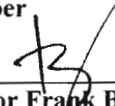
vicente e. pangelinan
Senator

I MINA' TRENTA NA LIHESLATURAN GUÅHAN

Committee Voting Sheet

Committee on Appropriations, Taxation, Banking, Insurance, Retirement,
and Land

Bill No.325-30 (COR):
**“An act to add a new §28817A and a new subarticle B to Chapter 28, Part 5,
 Division 1 of Title 18 of the Guam Code Annotated and for other purposes”**

Committee Members	To Pass	Not To Pass	Report Out	Abstain	Inactive Files
 Senator Vicente C. Pangelinan Chairperson	✓				
Speaker Judith T. Won Pat, Ed.D Vice Chairperson					
 Vice Speaker Benjamin J.F. Cruz Member			✓		
Senator Tina Rose Muña-Barnes Member	✓				
Senator Frank B. Aguon Jr. Member					
 Senator Judith P. Guthertz Member			✓		
Senator James V. Espaldon Member					
 Senator Telo T. Taitague Member			✓		
 Senator Frank Blas, Jr. Member			✓		



Mina'Trenta Na Liheslaturan Guåhan

Senator vicente (ben) c. pangelinan (D)

Committee Report

Bill No.325-30 (COR): "An act to add a new §28817A and a new SubArticle B to Chapter 28, Part 5, Division 1 of Title 18 of the Guam Code Annotated and for other purposes"

I. OVERVIEW

The Committee on Appropriations, Taxation, Banking, Insurance, Retirement, and Land convened a public hearing on March 10, 2010 at 8:30 am in *I Liheslatura's* Public Hearing Room.

Public Notice Requirements

Notices were disseminated via hand-delivery and e-mail to all senators and all main media broadcasting outlets on March 3 (5-Day Notice), and again on March 8 (48 Hour Notice).

(a) Committee Members and Senators Present

Senator vicente "ben" pangelinan, Chairman
Senator Telo Taitague, member
Senator Ada
Senator Adolpho B. Palacios, Sr.

(b) Appearing before the Committee

None

(c) Written Testimonies Submitted

Department of Revenue and Taxation
William J. Blair

II. COMMITTEE PROCEEDINGS

(a) Bill Sponsor Summary

Senator vicente pangelinan: The next Bill on the agenda that was published and announced for a public hearing is Bill 325-30(COR) An Act to Add a New §28817A and a New SubArticle B to Chapter 28, Part 5, Division 1 of Title 18 of the Guam Code Annotated and for other purposes.

This bill would amend the Business Corporations Law, which I authored which clearly defines the conflicts of interest and duties and responsibilities of Directors of

corporations. It is based upon the revised model business code and while the conflicts of interest statute are most commonly found in what we term common law, the model business code has endeavored to be more specific in those areas and the bill would enact that what is normally practiced and placed into law in statute rather than relying on just common law for those companies that domicile and decide to do business in our territory. For the record, the Department of Revenue and Taxation has submitted written testimony on Bill No. 325 in favor of the bill.

If there is anybody else that wishes to testify we remain open to receiving public testimony either in writing or via email. Once again, Bill 325 being no further testimony to be presented has duly received its public hearing.

III. FINDINGS & RECOMMENDATIONS

The Committee on Appropriation, Taxation, Banking, Insurance, Retirement, and Land, hereby reports Bill No. 325-30 (COR) by the Committee, with the recommendation TO REPORT OUT ONLY.

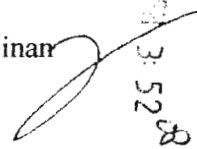
MINA' TRENTA NA LIHESLATURAN GUÅHAN

2010 (SECOND) REGULAR SESSION

BILL NO. 325 -30(COR)

Introduced by:

v.c. pangelinan


2010 FEB 11 09:35:28

AN ACT TO ADD A NEW §28817A AND A NEW SUBARTICLE B TO CHAPTER 28, PART 5, DIVISION 1 OF TITLE 18 OF THE GUAM CODE ANNOTATED AND FOR OTHER PURPOSES.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that the addition of a new Part 5 to Title 18 of the Guam Code Annotated,
4 which is designated as Public Law 29-144 and known as the Guam Corporation
5 Business Act, was substantively patterned after the Revised Model Business
6 Corporation Act (RMBCA). The Guam Corporation Business Act omitted certain
7 provisions of the RMBCA, including provisions governing the standards of
8 liability for directors and directors' conflicting interest transactions. *I*
9 *Liheslaturan Guåhan* further finds that it is necessary to amend §28817 which
10 contained technical drafting errors. It is the intent of *I Liheslaturan Guåhan* to
11 empower the Compiler of Laws to assign chapter and subchapter headings
12 consistent with the Revised Model Business Corporation Act.

13
14 **Section 2. Addition of new §28817A.** A new §28817A is hereby added
15 to Chapter 28, Part 5, Division 1 of Title 18 of the Guam Code Annotated to read
16 as follows:

17
18 **“§28817A. Standards of Liability for Directors.** (a) A director shall not
19 be liable to the corporation or its shareholders for any decision to take or not to
20 take actions, or any failure to take any action, as a director, unless the party
21 asserting liability in a proceeding establishes that:

- 22
23 1) any provision in the articles of incorporation authorized by
24 §28202(b)(4) or protection afforded by §28861 for action
25 taken in compliance with §§ 28862 or 28863, if interposed as a
26 bar to the proceeding by the director, does not preclude
27 liability; and
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- 2) the challenged conduct consisted or was the result of:
 - (i) action not in good faith; or
 - (ii) a decision
 - (A) which the director did not reasonably believe to be in the best interest of the corporation, or
 - (B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or
 - (iii) a lack of objectivity due to the director’s familial, financial or business relationship with, or a lack of independence due to the director’s domination or control by, another person having a material interest in the challenged conduct
 - (A) which relationship or which domination or control could reasonably be expected to have affected the director’s judgment respecting the challenged conduct in a manner adverse to the corporation, and
 - (B) after a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interest of the corporation, or
 - (iv) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making (or causing to be made) appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefore; or
 - (v) receipt of a financial benefit to which the director was not entitled or any other breach of the director’s duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

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

- (1) for money damages, shall also have the burden of establishing that:
 - (i) harm to the corporation or its shareholders has been suffered, and
 - (ii) the harm suffered was proximately caused by the director’s challenged conduct;

- 1 (2) for other money payment under a legal remedy, such as
- 2 compensation for the unauthorized use of corporate assets,
- 3 shall also have whatever persuasion burden may be called for
- 4 to establish that the payment sought is appropriate in the
- 5 circumstances; or
- 6
- 7 (3) for other money payment under an equitable remedy, such as
- 8 profit recovery by or disgorgement to the corporation, shall
- 9 also have whatever persuasion burden may be called for to
- 10 establish that the equitable remedy sought is appropriate in the
- 11 circumstances.

12 (c) Nothing contained in this section shall

- 13
- 14
- 15 (1) in any instance where fairness is at issue, such as consideration
- 16 of the fairness of a transaction to the corporation under
- 17 §28861(b)(3), alter the burden of proving the fact or lack of
- 18 fairness otherwise applicable,
- 19
- 20 (2) alter the fact or lack of liability of a director under another
- 21 section of this Act, such as the provisions governing the
- 22 consequences of an unlawful distribution under §28818 or a
- 23 transactional interest under §28861, or
- 24
- 25 (3) affect any rights to which the corporation or a share holder may
- 26 be entitled under another statute of this territory or the United
- 27 States.”
- 28

29 **Section 3. Addition of new SubArticle B.** A new SubArticle B is hereby
30 added to Chapter 28, Part 5, Division 1 of Title 18 of the Guam Code Annotated
31 to read as follows:

32

33 **“SUBARTICLE B**

34 **DIRECTORS’ CONFLICTING INTEREST TRANSACTIONS**

35

- 36 §28860. SubArticle Definitions.
- 37 §28861. Judicial Action.
- 38 §28862. Directors’ Action.
- 39 §28863. Shareholders’ Action.
- 40

41 **§28860. SubArticle Definitions.** For this SubArticle the following
42 definitions apply:

- 43
- 44 (a) “Conflicting Interest” with respect to a corporation means the
- 45 interest a director of the corporation has respecting a transaction
- 46 effected or proposed to be effected by the corporation (or by a

1 subsidiary of the corporation or any other entity in which the
2 corporation has a controlling interest) if
3

4 (1) whether or not the transaction is brought before the board of
5 directors of the corporation for action, the director knows at the
6 time of commitment that he or a related person is a party to the
7 transaction or has a beneficial financial interest in or so closely
8 linked to the transaction and of such financial significance to
9 the director or a related person that the interest would
10 reasonably be expected to exert an influence on the director's
11 judgment if he were called upon to vote on the transaction; or
12

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

- 23 (i) an entity (other than the corporation) of which the
24 director is a director, general partner, agent, or
25 employee;
26 (ii) a person that controls one or more of the entities
27 specified in sub-clause (i) or an entity that is
28 controlled by, or is under common control with, one
29 or more of the entities specified in sub-clause (i); or
30 (iii) an individual who is a general partner, principal,
31 or employer of the director.
32

33 (b) "Directors conflicting interest transaction" with respect to a
34 corporation means a transaction effected or proposed to be effected
35 by the corporation (or by a subsidiary of the corporation or any other
36 entity in which the corporation has a controlling interest) respecting
37 which a director of the corporation has a conflicting interest.
38

39 (c) "Related person" of a director means:
40

- 41 (1) the spouse (or a parent or sibling thereof) of the director, or a
42 child, grandchild, sibling, aren't (or spouse of any thereof) of
43 the director, or an individual having the same home as the
44 director, or a trust or estate of which an individual specified in
45 this clause(1) is a substantial beneficiary' or;
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(2) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

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

- (1) the existence and nature of his conflicting interest, and
- (2) all facts known to him respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

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

§28861. Judicial Action. (a) A transaction effected or proposed to be effected by a corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) that is not a director’s conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which he has personal, economic, or other association, has an interest in the transaction.

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

- (1) directors’ action respecting the transaction was at any time taken in compliance with §28862;
- (2) shareholders’ action respecting the transaction was at any time taken in compliance with §28863; or
- (3) the transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

§28862. Directors’ Action. (a) Directors’ action respecting a transaction is effective for purposes of §28861(b)(1) if the transaction received

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

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

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

- (1) discloses to the directors voting on the transaction the existence and nature of his conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and
- (2) plays no part, directly or indirectly, in their deliberations or vote.

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

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

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

1 **§28863. Shareholders' Action.** (a) Shareholders' action respecting a
2 transaction is effective for purposes of §28861(b)(2) if a majority of the
3 votes entitled to be cast by the holders of all qualified shares were cast in
4 favor of the transaction after

5
6 (1) notice to shareholders describing the director's conflicting
7 interest transaction,

8
9 (2) provision of the information referred to in subsection (d), and

10
11 (3) required disclosure to the shareholders who voted on the
12 transaction (to the extent the information was not known by
13 them).

14
15 (b) For purposes of this section, "qualified shares" means any shares
16 entitled to vote with respect to the director's conflicting interest
17 transaction except shares that, to the knowledge, before the vote, of the
18 secretary (or other officer or agent of the corporation authorized to
19 tabulate votes), are beneficially owned (or the voting of which is
20 controlled) by a director who has a conflicting interest respecting the
21 transaction or by a related person of the director, or both.

22
23 (c) A majority of the votes entitled to be cast by the holders of all qualified
24 shares constitutes a quorum for purposes of action that complies with
25 this section. Subject to the provisions of subsections (d) and (e),
26 shareholders' action that otherwise complies with this section is not
27 affected by the presence of holders, or the voting, of shares that are not
28 qualified shares.

29
30 (d) For purposes of compliance with subsection (a), a director who has a
31 conflicting interest respecting the transaction shall, before the
32 shareholders' vote, inform the secretary (or other officer or agent of
33 the corporation authorized to tabulate votes) of the number, and the
34 identity of persons holding or controlling the vote, of all shares that the
35 director knows are beneficially owned (or the voting of which is
36 controlled) by the director or by a related person of the director or
37 both.

38
39 (e) If a shareholders' vote does not comply with subsection (a) solely
40 because of a failure of a director to comply with subsection (d), and if
41 the director establishes that his failure did not determine and was not
42 intended by him to influence the outcome of the vote, the court may,
43 with or without further proceedings respecting §28861(b)(3), take such
44 action respecting the transaction and the director, and give such effect,
45 if any, to the shareholders' vote, as it considers appropriate in the
46 circumstances."

1
2 **Section 4. Amendment of §28817.** Section 28817 of Chapter 28, Part 5,
3 Division 1 of Title 18 of the Guam Code Annotated is hereby amended to read as
4 follows:
5

6 “**§28817. Standards of Conduct for Directors.** (a) Each member of the
7 board of directors, when discharging the ~~A director shall discharge the director's~~
8 duties of as a director, shall act including the director's duties as a member of a
9 committee:

- 10 (1) In good faith;
11 ~~(2) With the care and ordinarily prudent person in a like position would~~
12 ~~exercise under similar circumstances; and~~
13 ~~(2)~~ (3) In a manner the director reasonably believes to be in the best
14 interest of the corporation.
15 ~~(b) In determining the best interest of the corporation, a director, in~~
16 ~~addition to considering the interest of the corporation's shareholder,~~
17 ~~may consider, in the director's discretion, any of the following factors:~~
18 ~~(1) The interest of the corporation's employees, customers, suppliers,~~
19 ~~and creditors;~~
20 ~~(2) The economy of Guam and the nation;~~
21 ~~(3) Community and societal considerations, including, without~~
22 ~~limitations, the impact of any action upon the communities in or~~
23 ~~near which the corporation has offices or operations, and~~
24 ~~(4) The long-term as well as short-term interests of the corporation and~~
25 ~~its shareholders, including, without limitation, the possibility that~~
26 ~~these interests may be best served by the continued independence~~
27 ~~of the corporation.~~
28 ~~(c) In discharging duties as a director, the director is entitled to rely on~~
29 ~~information, opinions, reports, or statements, including financial~~
30 ~~statements and other financial data, if prepared or presented by:~~
31 ~~(1) One or more officers or employees of the corporation whom the~~
32 ~~director reasonably believes to be reliable and competent in the~~
33 ~~matters presented;~~
34 ~~(2) Legal counsel, public accountants, or other persons as to matters~~
35 ~~the director reasonably believes are within the person's~~
36 ~~professional or expert competence; or~~
37 ~~(3) A committee of the board of directors of which the director is not a~~
38 ~~member if the director reasonably believes the committee merits~~
39 ~~confidence.~~
40 ~~(d) A director is not acting in good faith if the director has knowledge~~
41 ~~concerning the matter in question that makes reliance otherwise~~
42 ~~permitted by subsection (c) unwarranted.~~
43 ~~(e) A director is not liable for any action taken as a director, or any failure~~
44 ~~to take any action, if the director performed the duties of the director's~~
45 ~~office in compliance with this section.~~

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

6
7 (c) In discharging board or committee duties a director, who does not have
8 knowledge that makes reliance unwarranted, is entitled to rely on the
9 performance by any of the persons specified in subsection (e)(1) or
10 subsection (e)(3) to whom the board may have delegated, formally or
11 informally by course of conduct, the authority or duty to perform one
12 or more of the board's functions that are delegable under applicable
13 law.

14
15 (d) In discharging board or committee duties a director, who does not have
16 knowledge that makes reliance unwarranted, is entitled to rely on
17 information, opinions, reports or statements, including financial
18 statements and other financial data, prepared or presented by any of
19 the persons specified in subsection (e).

20
21 (e) A director is entitled to rely, in accordance with subsection (c) or (d),
22 on:

23
24 (1) one or more officers or employees of the corporation whom the
25 director reasonably believes to be reliable and competent in the
26 functions performed or the information, opinions, reports or
27 statements provided;

28
29 (2) legal counsel, public accountants, or other persons retained by the
30 corporation as to matters involving skills or expertise the
31 director reasonably believes are matters

32 (i) within the particular person's professional or expert
33 competence or

34 (ii) as to which the particular person merits confidence;
35 or

36
37 (3) a committee of the board of directors of which the director is not
38 a member if the director reasonably believes the committee
39 merits confidence."

40
41 **Section 5. Empowerment.** The Compiler of Laws is empowered to
42 assign chapter and subchapter headings consistent with the Revised Model
43 Business Corporation Act.

44
45 **Section 6. Effective Date.** This Act shall be effective upon enactment.



Mina' Trenta Na Liheslaturan Guahan
THIRTIETH GUAM LEGISLATURE

Senator vicente "ben" c. pangelinan

COMMITTEE ON APPROPRIATIONS, TAXATION, BANKING, INSURANCE, RETIREMENT AND LAND
PUBLIC HEARING
Wednesday, March 10, 2010
BILL NO. 325-30 (COR)
SIGN UP SHEET

NAME	ADDRESS	PHONE	EMAIL	WRITTEN	ORAL	SUPPORT	
						Yes	No

-----Original Message-----

From: "William J. Blair" <wjblair@kbsilaw.com>

Date: Mon, 15 Mar 2010 09:07:45

To: 'Ben Pangelinan' <senbenp@guamlegislature.org>

Cc: <compiler@guamsupremecourt.com>

Subject: Bill 325-30

Ben,

I was off-island for the public hearing on Bill 325. Please accept these belated comments.

The bill, as drafted, is fine. There may be some additional technical glitches in the original law. Attached are some comments I received from the Compiler of Laws, Serge Quenga. I don't know if Serge provided these to you already.

There are some incorrect cross references in the existing statute that should be corrected:

1. The cross references in 18 GCA 28401, 28402 and 28403 should be to 18 GCA 2110, 2110.1 and 2110.2, not 11 GCA etc. (See PL27-57:11-13)
2. The cross reference in 18 GCA 281602 to 11 GCA 4304 should be to 18 GCA 4304.

A concern has been raised as to whether the statutory business judgment rule

provisions should also be made applicable to old corporations still subject to the old law which do not elect to opt in to the new statute. My belief is that courts would find that the business judgment rule, as it has evolved in the common law and which is generally codified in the new language would

be the applicable standard, but that would have to be battled out in litigation. To avoid any uncertainty, it might be good policy to either make that law also applicable to existing corporations or include some legislative finding that the statute reflects the codification of the common law which the Legislature would expect the courts to apply to existing corporations. On the other hand, the inclusion of this provision provides an incentive to opt in that you might want to offer. Reasonable persons

could differ on this policy call.

I again express my gratitude for your attention to this un-sexy, but very important area of Guam law.

Bill

BLAIR STERLING JOHNSON
MARTINEZ & LEON GUERRERO
A Professional Corporation
Suite 1008 DNA Building
238 Archbishop F.C. Flores Street
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Facsimile: (671) 472-4290
Mobile: (671) 687-5957
E-mail: wjblair@kbsjlaw.com



Dipáttamenton Kontribusion yan Adu'ána

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

FELIX P. CAMACHO, Governor Maga'láhi
MICHAEL W. CRUZ, M.D., LL Governor Tifente Gubetnadot

ARTEMIO B. ILAGAN, Director
Direktot
Paul J. Pablo, Deputy Director
Segundo Direktot

March 10, 2010

The Honorable Vicente C. Pangelinan
Chairman, Committee on Appropriations,
Taxation, Banking, Insurance and Land
Thirtieth Guam Legislature
324 West Soledad Avenue, Suite 100
Hagatna, Guam 96910

Re: Bill No. 325-30 "AN ACT TO ADD A NEW §28817A AND A NEW SUBARTICLE B TO CHAPTER 28, PART 5 DIVISION 1 OF TITLE 18 OF THE GUAM CODE ANNOTATED AND FOR OTHER PURPOSES".

Dear Senator Pangelinan:

My name is Artemio B. Ilagan. I am the director of the Department of Revenue and Taxation. I am in favor of Bill No. 325 for the following reasons:

1. This bill appears to have been developed substantially from the Revised Model Business Corporation Act (RMBCA):
2. It establishes standards of liability for directors and requires any party seeking to hold a director liable to establish harm to the corporation or its shareholder and the harm was proximately caused by the director's challenged conduct.
3. It defines conflicting interest and related person with respect to an interest of a director to a transaction proposed to be effected or effected. In this regard, our office invites the attention of the Committee to some words that appears to be typographical errors:

Page 4, line 42, the word "aren't" should be written as "parent".

Page 5, line 34, the word "whim" should be written as "whom".

With the provisions that are contained in this bill, both the directors and shareholders of the corporation are given clear and transparent directions for corporate governance. In summary, I am in favor of Bill No. 325.

Sincerely,


ARTEMIO B. ILAGAN
Director

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932**FELIX PEREZ CAMACHO**
GOVERNOR**BERTHA M. DUENAS**
DIRECTOR**MICHAEL W. CRUZ, M.D.**
LIEUTENANT GOVERNOR**FEB 26 2010**

The Bureau requests that Bill No(s). 325-30 (COR) be granted a waiver pursuant to Public Law 12-229 as amended for the following reason(s):

The Bill proposes to add a new §28817A and Sub-Article B to Chapter 28, Part 5, Division 1 of the Guam Code Annotated relative to the Revised Model Business Corporation Act.

The intent of the Bill is administrative in nature, as submitted for Legislative consideration.

8/24/10

BERTHA M. DUENAS
Director



COMMITTEE ON RULES

I Mina' Trenta na Liheslaturan Guåhan • 30th Guam Legislature

155 Hesler Place, Hagatña, Guam 96910 • tel: (671)472-7679 • fax: (671)472-3547 • roryforguam@gmail.com

**SENATOR
RORY J.
RESPICIO
CHAIRPERSON**

**SENATOR
Judith P. Guthertz
VICE
CHAIRPERSON**

**MAJORITY
MEMBERS:**

**Judith T. Won Pat
SPEAKER**

**Benjamin J. E. Cruz
VICE SPEAKER**

**Tina Rose Muña Barnes
LEGISLATIVE SECRETARY**

**Thomas C. Ada
SENATOR**

**Frank B. Aguon, Jr.
SENATOR**

**Adolpho B. Palacios, Sr.
SENATOR**

**Vicente C. Pangelinan
SENATOR**

**Matthew Rector
SENATOR**

**MINORITY
MEMBERS:**

**Frank F. Blas, Jr.
SENATOR**

**James V. Espaldon
SENATOR**

February 9, 2010

MEMORANDUM

To: Pat Santos
Clerk of the Legislature

*Attorney Therese M. Terlaje
Legislative Legal Counsel*

From: Senator Rory J. Respicio
Chairperson, Committee on Rules

Subject: Referral of Bill No. 325-30 (COR)

As Chairperson of the Committee on Rules, I am forwarding my referral of Bill No. 325-30 (COR).

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all Senators of *I Mina' Trenta Na Liheslaturan Guåhan*.

Should you have any questions, please contact Stephanie Mendiola or Elaine Tajalle at 472-7679.

Si Yu'os Ma'åse'!

(1) Attachment

Handwritten signature/initials



COMMITTEE ON RULES

I Mina' Trenta na Liheslaturan Guåhan • 30th Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • tel: (671)472-7679 • fax: (671)472-3547 • roryforguam@gmail.com

**SENATOR
RORY J.
RESPICIO
CHAIRPERSON**

**SENATOR
Judith P. Guthertz
VICE
CHAIRPERSON**

**MAJORITY
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SPEAKER**

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LEGISLATIVE SECRETARY**

**Thomas C. Ada
SENATOR**

**Frank B. Aguon, Jr.
SENATOR**

**Adolpho B. Palacios, Sr.
SENATOR**

**Vicente C. Pangelinan
SENATOR**

**MINORITY
MEMBERS:**

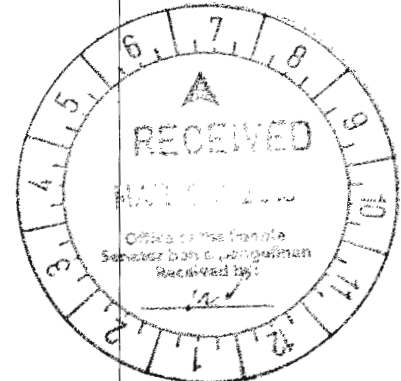
**Frank F. Blas, Jr.
SENATOR**

**James V. Espaldon
SENATOR**

March 3, 2010

OK

The Honorable vicente c. pangelinan
I Mina' Trenta na Liheslaturan Guåhan
324 W. Soledad Ave., Ste. 100
Hagåtña, Guam 96910



RE: Referral of Bill No. 325-30 (COR)

Hafa Adai Senator pangelinan:

Thank you for your letter dated March 2, 2010 requesting the reconsideration of the referral of **Bill No. 325-30 (COR)** – “An act to add a new §28817a and a new Subarticle B to Chapter 28, Part 5, Division 1 of Title 18 of the Guam Code Annotated and for other purposes.”

As this bill relates to how a corporation is created, it falls under the Civil Code and was accordingly referred to Senator Frank B. Aguon, Jr.’s Committee on Economic Development, Health & Human Services, and Judiciary. This referral is upheld.

Please contact me should you wish to discuss this matter further.

Very Truly Yours,

Rory J. Respicio

cc: Senator Frank B. Aguon, Jr.



COMMITTEE ON RULES

I Mina'Trenta na Liheslaturan Guåhan • 30th Guam Legislature

155 Hesler Place, Hagatña, Guam 96910 • tel: (671)472-7679 • fax: (671)472-3547 • roryforguam@gmail.com

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SENATOR**

March 5, 2010

MEMORANDUM

To: Pat Santos
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: Senator Rory J. Respicio
Chairperson, Committee on Rules

Subject: Re-Referral of Bill No. 325-30 (COR)

As Chairperson of the Committee on Rules, I am forwarding my re-referral of Bill No. 325-30(COR). This will replace the original referral transmitted on February 9, 2010.

Please ensure that the subject bill is re-referred in my name to the respective committee as shown on the attachment. I also request that the same be forwarded to all Senators of *I Mina' Trenta Na Liheslaturan Guåhan*.

Should you have any questions, please contact Stephanie Mendiola or Elaine Tajalle at 472-7679.

Si Yu'os Ma'åse'!

(1) Attachment

2010 MAR 05 PM 14:56

I Mina'Trenta Na Liheslaturan Guåhan

Bill Log Sheet

Page 1 of 1

Bill No.	Sponsor(s)	Title	Date Introduced	Date Referred	Committee Re-ferred	Public Hearing Date	Date Committee Report Filed	Status (Date)
B325-30 (COR)	v. c. pangelinan.	An act to add a new §28817a and a new Subarticle b to Chapter 28, Part 5, Division 1 of Title 18 of the Guam Code Annotated and for other purposes --	2/08/10 3:52 p.m.	2/9/10 3/5/10	Committee on Economic Development, Health and Human Services, and Judiciary Committee on Appropriations, Taxation, Banking, Insurance, Retirement, and Land			



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Committee on
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Land

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Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
Recreation

Member
Committee on Labor, the
Public Structure,
Public Libraries, and
Technology

Mina'Trenta Na Liheslaturan Guåhan

Senator vicente (ben) c. pangelinan (D)

March 3, 2010

Memorandum

To: All Senators
From: ~~Senator vicente c. pangelinan~~
Re: Public Hearing

The Committee on Appropriations, Taxation, Banking, Insurance and Land will conduct a public hearing on numerous bills beginning at **8:30am on Wednesday, March 10, 2010** and at **3:00pm** will conduct an oversight of the **Chamorro Land Trust Commission** at the Guam Legislature's Public Hearing Room.

On **Thursday, March 11, 2010**, the Committee will receive testimonies for the **Official Zoning Map and Amendments of the "Dos Amantes" Planning Area, Municipality beginning at 5:30pm** in the Guam Legislature Public Hearing Room.

Copies of the Agenda for March 10 and March 11 are attached for your review.


For copies of the bill, you can log onto www.guamlegislature.com or www.senbenp.com

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
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Office of Senator ben pangelinan will hold a public hearing on Wednesday, March 10, 2010 beginning at 8:30am.

Public Hearing Notice Wednesday, March 10, 2010 Guam Legislature Public Hearing Room

Agenda

8:30am

Bill No. 239-30(COR): An Act to appropriate Two Hundred Fifty Five Thousand Nine Hundred Thirty Dollars (\$255,930) from the General Fund to the University of Guam for the purpose of funding the local portion of the start-up plan of the Farmer's Cooperative Association of Guam.

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Bill No. 316-30 (COR): An act to add new definitions (j), (k), and (jj) to §1102 of Chapter 1, Title 16; to add a new §3102.2, §3102.3, §3102.4 to Chapter 3, Title 16, to add a new §6233 of Article 2, Chapter 6, Title 4; all of Guam Code Annotated relative to establishing charges and compensation for Department of Revenue and Taxation examiners who perform off-duty examinations.

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3:00pm
Oversight of Chamorro Land Trust Commission

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
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COVER OF SALE contained in the above mortgage.
The property described below will be sold, WITHOUT WARRANTY BEING GIVEN, express or implied, regarding title, possession, rights of redemption or encumbrances, to the highest bidder at public auction, to be held at the Mayor's office in Mangilao, Guam at 3:00 p.m. on March 10, 2010, in order to satisfy the amount due on the mortgage and its promissory note at the time of the sale. Terms of the sale are cash, certified check or other terms deemed acceptable by Mortgagee. The Mortgagee reserves the right to bid all or part of the amount due on the mortgage at the time of the sale; to reject any bid made at the sale and to withdraw this notice and postpone the sale from time to time. The property subject to the mortgage and to be sold at sale is as follows:

Unit No. D-6, Villa De Oro Condominium, situated on Lot No. 5370-1-2-R3, Mangilao (formerly Barrigada), Guam, as said lot is marked and designated on Map Drawing No. ES-9235, recorded in the Department of Land Management, Government of Guam on March 11, 1993 under Document No. 485643.

The amount due the Mortgagee is for the sum of \$114,885.60, accrued interest as of October 20, 2009 of \$3,129.01, interest at the rate of 7.21% from October 20, 2009 to the date of full payment, attorney fees, and costs of this sale.

The undersigned are the attorneys for the Mortgagee and hereby give notice that they are attempting to collect a debt and any information that is obtained will be used for that purpose.

Dated this 11th day of February, 2010.

McCULLY & BEGGS, P.C.,
Attorneys for Citibank, N.A.
By /s/ MARK S. BEGGS
GUAM

On this 11th day of February, 2010, before me, the undersigned Notary, personally appeared, MARK S. BEGGS, the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as attorney for Citibank, N.A.

/s/ MAUREEN E. TAITANO
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires:
Aug. 15, 2010

Ste. 200, 139 Murray Blvd., Hagåtña



Mina' Trenta Na Liheslaturan Guahan
THIRTIETH GUAM LEGISLATURE
Senator vicente "ben" c. pangelinan

Public Hearing Notice

Wednesday, March 10, 2010, Guam Legislature Public Hearing Room

8:30am

Agenda

Bill No. 239-30 (COR): An Act to appropriate Two Hundred Fifty Five Thousand Nine Hundred Thirty Dollars (\$255,930) from the General Fund to the University of Guam for the purpose of funding the local portion of the start-up plan of the Farmer's Cooperative Association of Guam.

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3:00pm Oversight of Chanorro Land Trust Commission

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Mina' Trenta Na Liheslaturan Guåhan

Senator vicente (ben) c. pangelinan (D)

March 8, 2010

Memorandum

To: All Senators

From: Senator vicente c. pangelinan

Re: SECOND NOTICE Public Hearing

Chairman
Committee on
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Banking, Insurance, and
Land

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Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
Recreation

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Public Libraries, and
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The Committee on Appropriations, Taxation, Banking, Insurance and Land will conduct a public hearing on numerous bills beginning at **8:30am on Wednesday, March 10, 2010** and at **3:00pm** will conduct an oversight of the **Chamorro Land Trust Commission** at the Guam Legislature's Public Hearing Room.

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Copies of the Agenda for March 10 and March 11 are attached for your review.

For copies of the bill, you can log onto www.guamlegislature.com or www.senbenp.com

Si Yu'os Ma'ase,



Angelica Okada <aokada@guamlegislature.org>

Second Public Hearing Notice_All Senators

Anjelica Kulani Okada <aokada@guamlegislature.org>

Mon, Mar 8, 2010 at 8:50 AM

To: "Senator Tom C. Ada" <tom@senatorada.org>, "Senator Frank B. Aguon, Jr." <aguon4guam@gmail.com>, "Senator Frank F. Blas, Jr." <frank.blasjr@gmail.com>, "Senator Edward J.B. Calvo" <sencalvo@gmail.com>, "Vice-Speaker Benjamin J. Cruz" <senadotbjcruz@gmail.com>, "Senator James V. Espaldon" <senator@espaldon.com>, "Senator Juith T. Guthertz, DPA" <judiguthertz@pticom.com>, "Senator Tina R. Muna-Barnes" <tinamunabarnes@gmail.com>, "Senator Adolpho B. Palacios" <ABPalacios@gmail.com>, "Senator Rory J. Respicio" <rorjfor Guam@gmail.com>, Senator Ray Tenorio <ray@raytenorio.com>, Senator Telo Taitague <senatortelo@gmail.com>, "Speaker Judith T. Won Pat" <info@judiwonpat.com>, Senator ben pangelinan <senbenp@guam.net>

Cc: COS - Frank Torres <fbtorres@yahoo.com>, Lisa Cipollone <cipo@guamlegislature.org>

Please see attached.

--

Anjelica Kulani I. Okada
Policy Research Analyst
I MINA'TRENTA NA LIHESLATURAN GUAHAN
senator vicente "ben" c. pangelinan
Committee on Appropriations, Taxation, Retirement, Banking, Insurance, and Land.
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8:30am

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Dump in their backyards.

Bill No. 316-30 (COR): An act to add *new* definitions (j), (k), and (jj) to §1102 of Chapter 1, Title 16; to *add* a new §3102.2, §3102.3, §3102.4 to Chapter 3, Title 16, to *add* a new §6233 of Article 2, Chapter 6, Title 4; all of Guam Code Annotated relative to establishing charges and compensation for Department of Revenue and Taxation examiners who perform off-duty examinations.

Bill No. 319-30 (COR): An Act to Amend Section 30103 of Chapter 30, 22 Guam Code Annotated to Amend Section 104203 and Section 104208 and to Repeal Section 104210 of Chapter 104, 21 Guam Code Annotated Relative to Real Estate Broker Licensing Requirements and other purposes.

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3:00pm

Oversight of Chamorro Land Trust Commission

**Thursday, March 11, 2010
Guam Legislature Public Hearing Room
Agenda**

5:30pm

Official Zoning Map and Amendments of the “Dos Amantes Planning Area, Municipality of Dededo

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Anjelica Kulani I. Okada
Policy Research Analyst

I MINA'TRENTA NA LIHESLATURAN GUAHAN

senator vicente "ben" c. pangelinan

Committee on Appropriations, Taxation, Retirement, Banking, Insurance, and Land.

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2 attachments



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SPORTS

NOTES

A Continued from Page 30

Champion Sporting Goods, 1101 W. Wai, Big ... All tournament fees must be paid at the Guam Education Center...

12 at the Hagler's pool. Fee is \$50 per student. Limit 10 students per class. Classes are Tuesdays and Thursdays from March 16 through April 15...

ON THE AIR

TODAY

- NASCAR: Atlanta Motor Speedway, 3 a.m. on FOX3
College basketball: Florida at Kentucky, 3 a.m.; Missouri Valley Conference championship game, 5 a.m.; and Michigan at Michigan State, 7 a.m. on TV11.

Invitational, 11 a.m. on G3&TV Channels 42/452. NBA: Washington Wizards at Boston Celtics, 11 a.m.; and Portland Trail Blazers at Denver Nuggets, 1:30 p.m. on G3&TV Channels 30/400.

TOMORROW

- NHL: Dallas at Washington, 10 a.m. on G3&TV Channels 42/452. Information for On the Air is provided by ABC7, FOX6, G3&TV, K-57, KUAM and MCV. The Pacific Daily News is not responsible for any changes in scheduling.

NOTICE OF TEMPORARY JOB OPPORTUNITIES WITH 2 YEARS EXPERIENCE

3 BAKERS - \$8,800/mo. Prepare and bake ingredients according to recipes to produce breads, pastries and other baked goods. Measure and mix to prepare batters, doughs, fillings and icings...

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Ministramba No Lhasaturan Qashan TIONITH GUAM LEGISLATURE Senator vicenote 'ben' L. pangalban Public Hearing Notice Wednesday, March 10, 2010, Guam Legislature Public Hearing Room Agenda

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Mina' Trenta Na Liheslaturan Guahan
THIRTIETH GUAM LEGISLATURE

Senator vicente "ben" c. pangelinan

Public Hearing Notice
Wednesday, March 10, 2010
Guam Legislature Public Hearing Room

Agenda

8:30am

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3:00pm

Oversight of Chamorro Land Trust Commission

MINA' TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) REGULAR SESSION

BILL NO. 325 -30(COR)

Introduced by:

v.c. pangelinan

2010 FEB - 1
PM 3:52
JR

**AN ACT TO ADD A NEW §28817A AND A NEW SUBARTICLE B
TO CHAPTER 28, PART 5, DIVISION 1 OF TITLE 18 OF THE
GUAM CODE ANNOTATED AND FOR OTHER PURPOSES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that the addition of a new Part 5 to Title 18 of the Guam Code Annotated,
4 which is designated as Public Law 29-144 and known as the Guam Corporation
5 Business Act, was substantively patterned after the Revised Model Business
6 Corporation Act (RMBCA). The Guam Corporation Business Act omitted certain
7 provisions of the RMBCA, including provisions governing the standards of
8 liability for directors and directors' conflicting interest transactions. *I*
9 *Liheslaturan Guåhan* further finds that it is necessary to amend §28817 which
10 contained technical drafting errors. It is the intent of *I Liheslaturan Guåhan* to
11 empower the Compiler of Laws to assign chapter and subchapter headings
12 consistent with the Revised Model Business Corporation Act.
13

14 **Section 2. Addition of new §28817A.** A new §28817A is hereby added
15 to Chapter 28, Part 5, Division 1 of Title 18 of the Guam Code Annotated to read
16 as follows:
17

18 **“§28817A. Standards of Liability for Directors.** (a) A director shall not
19 be liable to the corporation or its shareholders for any decision to take or not to
20 take actions, or any failure to take any action, as a director, unless the party
21 asserting liability in a proceeding establishes that:
22

- 23 1) any provision in the articles of incorporation authorized by
24 §28202(b)(4) or protection afforded by §28861 for action
25 taken in compliance with §§ 28862 or 28863, if interposed as a
26 bar to the proceeding by the director, does not preclude
27 liability; and
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- 2) the challenged conduct consisted or was the result of:
 - (i) action not in good faith; or
 - (ii) a decision
 - (A) which the director did not reasonably believe to be in the best interest of the corporation, or
 - (B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or
 - (iii) a lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct
 - (A) which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation, and
 - (B) after a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interest of the corporation, or
 - (iv) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making (or causing to be made) appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefore; or
 - (v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

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

- (1) for money damages, shall also have the burden of establishing that:
 - (i) harm to the corporation or its shareholders has been suffered, and
 - (ii) the harm suffered was proximately caused by the director's challenged conduct;

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

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

(c) Nothing contained in this section shall

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

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

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

Section 3. Addition of new SubArticle B. A new SubArticle B is hereby added to Chapter 28, Part 5, Division 1 of Title 18 of the Guam Code Annotated to read as follows:

**“SUBARTICLE B
DIRECTORS’ CONFLICTING INTEREST TRANSACTIONS**

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

§28860. SubArticle Definitions. For this SubArticle the following definitions apply:

(a) “Conflicting Interest” with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation (or by a

1 subsidiary of the corporation or any other entity in which the
2 corporation has a controlling interest) if
3

4 (1) whether or not the transaction is brought before the board of
5 directors of the corporation for action, the director knows at the
6 time of commitment that he or a related person is a party to the
7 transaction or has a beneficial financial interest in or so closely
8 linked to the transaction and of such financial significance to
9 the director or a related person that the interest would
10 reasonably be expected to exert an influence on the director's
11 judgment if he were called upon to vote on the transaction; or
12

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

- 23 (i) an entity (other than the corporation) of which the
24 director is a director, general partner, agent, or
25 employee;
26 (ii) a person that controls one or more of the entities
27 specified in sub-clause (i) or an entity that is
28 controlled by, or is under common control with, one
29 or more of the entities specified in sub-clause (i); or
30 (iii) an individual who is a general partner, principal,
31 or employer of the director.
32

33 (b) "Directors conflicting interest transaction" with respect to a
34 corporation means a transaction effected or proposed to be effected
35 by the corporation (or by a subsidiary of the corporation or any other
36 entity in which the corporation has a controlling interest) respecting
37 which a director of the corporation has a conflicting interest.
38

39 (c) "Related person" of a director means:
40

41 (1) the spouse (or a parent or sibling thereof) of the director, or a
42 child, grandchild, sibling, aren't (or spouse of any thereof) of
43 the director, or an individual having the same home as the
44 director, or a trust or estate of which an individual specified in
45 this clause(1) is a substantial beneficiary' or;
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(2) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

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

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

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

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

§28861. Judicial Action. (a) A transaction effected or proposed to be effected by a corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which he has personal, economic, or other association, has an interest in the transaction.

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

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

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

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

§28862. Directors' Action. (a) Directors' action respecting a transaction is effective for purposes of §28861(b)(1) if the transaction received

1 the affirmative vote of a majority (but no fewer than two) of those
2 qualified directors on the board of directors or on a duly empowered
3 committee of the board who voted on the transaction after either
4 required disclosure to them (to the extent the information was not
5 known by them) or compliance with subsection (b); provided that
6 action by a committee is so effective only if:

- 7 (1) all its members are qualified directors, and
8 (2) its members are either all the qualified directors on the board or
9 are appointed by the affirmative vote of a majority of the
10 qualified directors on the board.
11

12 (b) If a director has a conflicting interest respecting a transaction, but
13 neither he nor a related person of the director specified in
14 §28860(c)(1) is a party to the transaction, and if the director has a
15 duty under law or professional canon, or a duty of confidentiality to
16 another person, respecting information relating to the transaction
17 such that the director may not make the disclosure described in
18 §28860(d)(2), then disclosure is sufficient for purposes of subsection
19 (a) if the director:
20

21 (1) discloses to the directors voting on the transaction the
22 existence and nature of his conflicting interest and informs
23 them of the character and limitations imposed by that duty
24 before their vote on the transaction, and
25

26 (2) plays no part, directly or indirectly, in their deliberations or
27 vote.
28

29 (c) A majority (but no fewer than two) of all the qualified directors on the
30 board of directors, or on the committee, constitutes a quorum for
31 purposes of action that complies with this section. Directors' action
32 that otherwise complies with this section is not affected by the
33 presence or vote of a director who is not a qualified director.
34

35 (d) For purposes of this section, "qualified director" means, with respect
36 to a director's conflicting interest transaction, any director who does
37 not have either
38

39 (1) a conflicting interest respecting the transaction, or
40

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

1 **§28863. Shareholders' Action.** (a) Shareholders' action respecting a
2 transaction is effective for purposes of §28861(b)(2) if a majority of the
3 votes entitled to be cast by the holders of all qualified shares were cast in
4 favor of the transaction after
5

6 (1) notice to shareholders describing the director's conflicting
7 interest transaction,
8

9 (2) provision of the information referred to in subsection (d), and
10

11 (3) required disclosure to the shareholders who voted on the
12 transaction (to the extent the information was not known by
13 them).
14

15 (b) For purposes of this section, "qualified shares" means any shares
16 entitled to vote with respect to the director's conflicting interest
17 transaction except shares that, to the knowledge, before the vote, of the
18 secretary (or other officer or agent of the corporation authorized to
19 tabulate votes), are beneficially owned (or the voting of which is
20 controlled) by a director who has a conflicting interest respecting the
21 transaction or by a related person of the director, or both.
22

23 (c) A majority of the votes entitled to be cast by the holders of all qualified
24 shares constitutes a quorum for purposes of action that complies with
25 this section. Subject to the provisions of subsections (d) and (e),
26 shareholders' action that otherwise complies with this section is not
27 affected by the presence of holders, or the voting, of shares that are not
28 qualified shares.
29

30 (d) For purposes of compliance with subsection (a), a director who has a
31 conflicting interest respecting the transaction shall, before the
32 shareholders' vote, inform the secretary (or other officer or agent of
33 the corporation authorized to tabulate votes) of the number, and the
34 identity of persons holding or controlling the vote, of all shares that the
35 director knows are beneficially owned (or the voting of which is
36 controlled) by the director or by a related person of the director or
37 both.
38

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

1
2 **Section 4. Amendment of §28817.** Section 28817 of Chapter 28, Part 5,
3 Division 1 of Title 18 of the Guam Code Annotated is hereby amended to read as
4 follows:
5

6 “**§28817. Standards of Conduct for Directors.** (a) Each member of the
7 board of directors, when discharging the A director ~~shall discharge the director's~~
8 duties of as a director, shall act including the director's duties as a member of a
9 committee:

- 10 (1) In good faith;
11 (2) ~~With the care and ordinarily prudent person in a like position would~~
12 ~~exercise under similar circumstances; and~~
13 (2) (3) In a manner the director reasonably believes to be in the best
14 interest of the corporation.
15 (b) ~~In determining the best interest of the corporation, a director, in~~
16 ~~addition to considering the interest of the corporation's shareholder,~~
17 ~~may consider, in the director's discretion, any of the following factors:~~
18 (1) ~~The interest of the corporation's employees, customers, suppliers,~~
19 ~~and creditors;~~
20 (2) ~~The economy of Guam and the nation;~~
21 (3) ~~Community and societal considerations, including, without~~
22 ~~limitations, the impact of any action upon the communities in or~~
23 ~~near which the corporation has offices or operations, and~~
24 (4) ~~The long term as well as short term interests of the corporation and~~
25 ~~its shareholders, including, without limitation, the possibility that~~
26 ~~these interests may be best served by the continued independence~~
27 ~~of the corporation.~~
28 (c) ~~In discharging duties as a director, the director is entitled to rely on~~
29 ~~information, opinions, reports, or statements, including financial~~
30 ~~statements and other financial data, if prepared or presented by:~~
31 (1) ~~One or more officers or employees of the corporation whom the~~
32 ~~director reasonably believes to be reliable and competent in the~~
33 ~~matters presented;~~
34 (2) ~~Legal counsel, public accountants, or other persons as to matters~~
35 ~~the director reasonably believes are within the person's~~
36 ~~professional or expert competence; or~~
37 (3) ~~A committee of the board of directors of which the director is not a~~
38 ~~member if the director reasonably believes the committee merits~~
39 ~~confidence.~~
40 (d) ~~A director is not acting in good faith if the director has knowledge~~
41 ~~concerning the matter in question that makes reliance otherwise~~
42 ~~permitted by subsection (c) unwarranted.~~
43 (e) ~~A director is not liable for any action taken as a director, or any failure~~
44 ~~to take any action, if the director performed the duties of the director's~~
45 ~~office in compliance with this section.~~

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- (b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.
 - (c) In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on the performance by any of the persons specified in subsection (e)(1) or subsection (e)(3) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.
 - (d) In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (e).
 - (e) A director is entitled to rely, in accordance with subsection (c) or (d), on:

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

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

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34

- (i) within the particular person's professional or expert competence or

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

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

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Section 5. Empowerment. The Compiler of Laws is empowered to assign chapter and subchapter headings consistent with the Revised Model Business Corporation Act.

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Section 6. Effective Date. This Act shall be effective upon enactment.