

I Mina'trentai Siette Na Lihelaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
365-37 (COR)	Sabina Flores Perez	AN ACT TO ADD A NEW CHAPTER 17 TO PART 2, DIVISION 1, TITLE 18, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING <i>THE GUAM UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT</i> .	10/21/24 10:05 a.m.						

**I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2024 (SECOND) Regular Session**

Bill No. 365-37 (COR)

Introduced by:

Sabina Flores Perez *SFP*

**AN ACT TO *ADD* A NEW CHAPTER 17 TO PART
2, DIVISION 1, TITLE 18, GUAM CODE
ANNOTATED, RELATIVE TO ESTABLISHING
*THE GUAM UNIFORM LIMITED COOPERATIVE
ASSOCIATION ACT.***

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 17 is hereby *added* to Part 2 of Title 18, Guam
Code Annotated to read:

“CHAPTER 17

The Guam Uniform Limited Cooperative Association Act

Article 1. General Provisions.

Article 2. Filing and Other Reports.

Article 3. Organization of Limited Cooperative Association.

Article 4. Amendment of Articles of Organization or Bylaws of Limited
Cooperative Association.

Article 5. Members.

Article 6. Member’s Interest in Limited Cooperative Association.

Article 7. Marketing Contracts.

Article 8. Directors and Officers.

1 Article 9. Indemnification.

2 Article 10. Contribution, Allocations, and Distributions.

3 Article 11. Disassociation.

4 Article 12. Dissolution.

5 Article 13. Actions By Members.

6 Article 14. Disposition of Assets.

7 Article 15. Foreign Cooperative.

8 Article 16. Merger, Interest Exchange, Conversion, and Domestication.

9 Article 17. Limited Cooperative Association Board.

10 Article 18. Miscellaneous Provisions.

11 **ARTICLE 1**

12 **GENERAL PROVISIONS**

13 §17101. Title.

14 §17102. Definitions

15 §17103. Nature of Limited Cooperative Association.

16 §17104. Purpose and Duration of Limited Cooperative Association.

17 §17105. Powers.

18 §17106. Governing Law.

19 §17107. Requirements of Other Laws.

20 §17108. Relation to Restraint of Trade and Antitrust Law.

21 §17109. Effect of Organic Rules.

22 §17110. Required Information.

23 §17111. Business Transactions of Member with Limited Cooperative
24 Association.

25 §17112. Dual Capacity.

26 §17113. Permitted Names.

27 §17114. Reservation of Power to Amend or Repeal.

1 §17115. Supplemental Principles of Law.

2 §17116. Reservation of Name.

3 §17117. Registration of Name.

4 §17118. Registered Agent.

5 §17119. Change of Registered Agent or Address for Registered Agent by
6 Limited Cooperative Association.

7 §17120. Resignation of Registered Agent.

8 §17121. Change of Name or Address by Registered Agent.

9 §17122. Service of Process, Notice, or Demand.

10
11 **§ 17101. Title.**

12 This Chapter shall be known as the ‘Guam Uniform Limited Cooperative
13 Association Act.’

14 **§ 17102. Definitions.**

15 Unless the context otherwise requires, the definitions set forth herein shall
16 govern the construction and interpretation of this Chapter.

17 (a) ‘Articles of Organization’ means the articles of organization of a
18 limited cooperative association required by Section 17301 of this Act. The term
19 includes the articles as amended or restated.

20 (b) ‘Board of Directors’ means the board of directors of a limited
21 cooperative association.

22 (c) ‘Bylaws’ means the bylaws of a limited cooperative association. The
23 term includes the bylaws as amended or restated.

24 (d) ‘Contribution’ except as used in Section 171008(c), means a benefit
25 that a person provides to a limited cooperative association to become or remain a
26 member or in the person’s capacity as a member.

27 (e) ‘Cooperative’ means a limited cooperative association or an entity

1 organized under Guam law.

2 (f) 'Department' means the Guam Department of Revenue and Taxation.

3 (g) 'Director' means a director of a limited cooperative association, except
4 when used in reference to the 'Director' of the Guam Department of Revenue and
5 Taxation.

6 (h) 'Distribution' except as used in Section 171007(a), means a transfer of
7 money or other property from a limited cooperative association to a member
8 because of the member's financial rights or to a transferee of a member's financial
9 rights.

10 (i) 'Entity' means a person other than an individual.

11 (j) 'Financial Rights' means the right to participate in allocations and
12 distributions as provided in Articles 10 and 12 of this Act but does not include
13 rights or obligations under a marketing contract governed by Article 7 of this Act.

14 (k) 'Foreign cooperative' means an entity organized in a State other than
15 Guam under a limited cooperative association law similar to this Act.

16 (l) 'Governance rights' means the right to participate in governance of a
17 limited cooperative association.

18 (1) Investor members are restricted from exercising governance
19 rights except as explicitly provided in the organic rules which
20 shall ensure that the total voting power of investor members
21 does not exceed twenty percent (20%) of the total voting power
22 of the limited cooperative association.

23 (m) 'Investor Member' means a member that has made a contribution to a
24 limited cooperative association and:

25 (1) is not required by the organic rules to conduct patronage with
26 the association in the member's capacity as an investor member
27 in order to receive the member's interest; or

1 (2) is not permitted by the organic rules to conduct patronage with
2 the association in the member's capacity as an investor member
3 in order to receive the member's interest.

4 (n) 'Jurisdiction' means to refer to a political entity, means the United
5 States, or a State.

6 (o) 'Jurisdiction of Formation' means the jurisdiction whose law governs
7 the internal affairs of an entity.

8 (p) 'Limited cooperative association' means an association formed under
9 this Act or that becomes subject to this Act under Article 16.

10 (q) 'Member' means a person that is admitted as a patron member or
11 investor member in a limited cooperative association. The term does not include a
12 person that has dissociated as a member.

13 (r) 'Member's Interest' means the interest of a patron member or investor
14 member under Section 17601.

15 (s) 'Members Meeting' means an annual member meeting or special
16 meetings of members.

17 (t) 'Organic Law' means the statute providing for the creation of an entity
18 or principally governing its internal affairs. For purposes of this Act, the term shall
19 not be interpreted as a reference to the Organic Act of Guam, 48 U.S.C.A. §§ 1421-
20 1428e.

21 (u) 'Organic Rules' means the articles of organization and bylaws of a
22 limited cooperative association. For purposes of this Act, the term shall not be
23 interpreted as a reference to the Organic Act of Guam, 48 U.S.C.A. §§ 1421-1428e.

24 (v) 'Organizer' means an individual who signs the initial articles of
25 organization.

26 (w) 'Patron member' means a member that has made a contribution to a
27 limited cooperative association and:

1 (1) is required by the organic rules to conduct patronage with the
2 association in the member’s capacity as a patron member in
3 order to receive the member’s interest; or

4 (2) is permitted by the organic rules to conduct patronage with the
5 association in the member’s capacity as a patron member in
6 order to receive the member’s interest.

7 (x) ‘Patronage’ means business transactions between a limited
8 cooperative association and a person which entitle the person to receive financial
9 rights based on the value or quantity of business done between the association and
10 the person.

11 (y) ‘Person’ means an individual, business corporation, nonprofit
12 corporation, partnership, limited partnership, limited liability company, limited
13 cooperative association, unincorporated nonprofit association, statutory trust,
14 business trust, common-law business trust, estate, trust, association, joint venture,
15 public corporation, government or governmental subdivision, agency, or
16 instrumentality, or any other legal or commercial entity.

17 (z) ‘Principal Office’ means the principal executive office of a limited
18 cooperative association or foreign cooperative, whether or not the office is located
19 in this state.

20 (aa) ‘Property’ means all property, whether real, personal, or mixed or
21 tangible or intangible, or any right or interest therein.

22 (bb) ‘Record’, used as a noun, means information that is inscribed on a
23 tangible medium or that is stored in an electronic or other medium and is retrievable
24 in perceivable form.

25 (cc) ‘Registered Agent’ means an agent of an entity which is authorized to
26 receive service of any process, notice, or demand required or permitted by law to be
27 served on the entity.

1 (dd) 'Required Information' means the information a limited cooperative
2 association is required to maintain under Section 17110.

3 (ee) 'Registered Foreign Cooperative' means a foreign cooperative that is
4 registered to do business in Guam pursuant to a statement of registration filed by
5 the Director of the Guam Department of Revenue and Taxation.

6 (ff) 'Sign' means, with present intent to authenticate or adopt a record:

7 (1) to execute or adopt a tangible symbol; or

8 (2) to attach to or logically associate with the record an electronic
9 symbol, sound, or process.

10 (gg) 'State' means a state of the United States, the District of Columbia,
11 Guam, Puerto Rico, the United States Virgin Islands, or any territory or insular
12 possession subject to the jurisdiction of the United States.

13 (hh) 'Transfer' includes:

14 (1) an assignment;

15 (2) a conveyance;

16 (3) a sale;

17 (4) a lease;

18 (5) an encumbrance, including a mortgage or security interest;

19 (6) a gift; and

20 (7) a transfer by operation of law.

21 (ii) 'Voting Group' means any combination of one (1) or more voting
22 members in one (1) or more districts or classes that under the organic rules or this
23 Act, are entitled to vote and can be counted together collectively on a matter at a
24 members meeting.

25 (jj) 'Voting Member' means a member that, under the organic law or
26 organic rules, has a right to vote on matters subject to vote by members under the
27 organic law or organic rules.

1 (kk) 'Voting Power' means the total current power of members to vote on a
2 particular matter for which a vote may or is to be taken.

3 **§ 17103. Nature of Limited Cooperative Association.**

4 (a) A limited cooperative association organized under this Act is an
5 autonomous, unincorporated association of persons united to meet their mutual
6 interests through a jointly owned enterprise primarily controlled by those persons,
7 which permits combining:

8 (1) ownership, financing, and receipt of benefits by the members for
9 whose interests the association is formed; and

10 (2) separate investments in the association by members who may
11 receive returns on their investments and a share of control.

12 (b) The fact that a limited cooperative association does not have one (1) or
13 more of the characteristics described in Subsection (a) of this Section does not
14 alone prevent the association from being formed under and governed by this Act
15 nor does it alone provide a basis for an action against the association.

16 **§ 17104. Purpose and Duration of Limited Cooperative Association.**

17 (a) A limited cooperative association is an entity distinct from its
18 members.

19 (b) A limited cooperative association may be organized for any lawful
20 purpose, regardless of whether for profit, except designated prohibited purposes
21 under Guam law.

22 (c) Unless the articles of organization state a term for a limited
23 cooperative association's existence, the association has perpetual duration.

24 **§ 17105. Powers.**

25 A limited cooperative association has the capacity to sue and be sued in its
26 own name and has the power to do all things necessary or convenient to carry on its
27 activities and affairs. An association may maintain an action against a member for

1 harm caused to the association by the member's violation of a duty to the
2 association or of the organic law or organic rules.

3 **§ 17106. Governing Law.**

4 Guam law governs:

5 (a) the internal affairs of a limited cooperative association; and

6 (b) the liability of a member as member and a director as director
7 for the debts, obligations, or other liabilities of a limited cooperative
8 association.

9 **§ 17107. Requirements of Other Laws.**

10 (a) This Act does not alter or amend any law that governs the
11 licensing and regulation of an individual or entity in carrying on a specific
12 business or profession even if that law permits the business or profession to
13 be conducted by a limited cooperative association, a foreign cooperative, or
14 its members.

15 (b) A limited cooperative association may not conduct an activity
16 that, under Guam law other than this Act, may be conducted only by an entity
17 that meets specific requirements for the internal affairs of that entity unless
18 the organic rules of the association conform to those requirements.

19 **§ 17108. Relation to Restraint of Trade and Antitrust Law.**

20 To the extent a limited cooperative association or activities conducted by the
21 association in Guam meet the material requirements for other cooperatives entitled
22 to an exemption from or immunity under any provision of the restraint of trade or
23 antitrust laws of Guam, the association and its activities are entitled to the
24 exemption or immunity. This Section does not create any new exemption or
25 immunity for an association or affect any exemption or immunity provided to a
26 cooperative organized under any other law.

27 **§ 17109. Effect of Organic Rules.**

1 (a) The relations between a limited cooperative association and its
2 members are consensual. Unless required, limited, or prohibited by this Act, the
3 organic rules may provide for any matter concerning the relations among the
4 members of the association and between the members and the association, the
5 activities of the association, and the conduct of its activities.

6 (b) The matters referred to in Paragraphs (1) through (9) or (11) of this
7 Subsection shall be varied only in the articles of organization. The articles shall:

- 8 (1) state a term of existence for the association under Section
9 17104(c);
- 10 (2) limit or eliminate the acceptance of new or additional members
11 by the initial board of directors under Section 17302(b);
- 12 (3) vary the limitations on the obligations and liability of members
13 for association obligations under Section 17504;
- 14 (4) require a notice of an annual members meeting to state a
15 purpose of the meeting under Section 17508(b);
- 16 (5) vary the board of directors meeting quorum under Section
17 17815(a);
- 18 (6) vary the matters the board of directors may consider in making
19 a decision under Section 17820;
- 20 (7) specify causes of dissolution under Section 171202(1);
- 21 (8) delegate amendment of the bylaws to the board of directors
22 pursuant to Section 17405(f);
- 23 (9) provide for member approval of asset dispositions under
24 Section 171401;
- 25 (10) subject to Section 17820, provide for the elimination or
26 limitation of liability of a director to the association or its
27 members for money damages consistent with Section 17818;

1 (11) provide for permitting or making obligatory indemnification
2 under Section 17901(a); and

3 (12) provide for any matters that *may* be contained in the organic
4 rules, including those under Subsection (c) of this Section.

5 (c) The matters referred to in Paragraphs (1) through (25) of this
6 Subsection *may* be varied only in the organic rules. The organic rules *may*:

7 (1) require more information to be maintained under Section 17110
8 or provided to members under Section 17505(j);

9 (2) provide restrictions on transactions between a member and an
10 association under Section 17111;

11 (3) provide for the percentage and manner of voting on
12 amendments to the organic rules by district, class, or voting
13 group under Section 17404(a);

14 (4) provide for the percentage vote required to amend the bylaws
15 concerning the admission of new members under Section
16 17405(e)(5);

17 (5) provide for terms and conditions to become a member under
18 Section 17502;

19 (6) restrict the manner of conducting members meetings under
20 Sections 17506(c) and 17507(e);

21 (7) designate the presiding officer of members meetings under
22 Sections 17506(e) and 17507(g);

23 (8) require a statement of purposes in the annual meeting notice
24 under Section 17508(b);

25 (9) increase quorum requirements for members meetings under
26 Section 17510 and board of directors' meetings under Section
27 17815;

- 1 (10) allocate voting power among members, including patron
2 members and investor members, and provide for the manner of
3 member voting and action as permitted by Sections 17511
4 through 17517;
- 5 (11) authorize investor members and expand or restrict the
6 transferability of members' interests to the extent provided in
7 Sections 17602 through 17604;
- 8 (12) provide for enforcement of a marketing contract under Section
9 17704(a);
- 10 (13) provide for qualification, election, terms, removal, filling
11 vacancies, and member approval for compensation of directors
12 in accordance with Sections 17803 through 17805, 17807,
13 17809, and 17810;
- 14 (14) restrict the manner of conducting board meetings and taking
15 action without a meeting under Sections 17811 and 17812;
- 16 (15) provide for frequency, location, notice and waivers of notice for
17 board meetings under Sections 17813 and 17814;
- 18 (16) increase the percentage of votes necessary for board action
19 under Section 17816(b);
- 20 (17) provide for the creation of committees of the board of directors
21 and matters related to the committees in accordance with Section
22 17817;
- 23 (18) provide for officers and their appointment, designation, and
24 authority under Section 17822;
- 25 (19) provide for forms and values of contributions under Section
26 171002;
- 27 (20) provide for remedies for failure to make a contribution under

1 Section 171003(b);

2 (21) provide for the allocation of profits and losses of the
3 association, distributions, and the redemption or repurchase of
4 distributed property other than money in accordance with
5 Sections 171004 through 171007;

6 (22) specify when a member’s dissociation is wrongful and the
7 liability incurred by the dissociating member for damage to the
8 association under Section 171101(b) and (c);

9 (23) provide the personal representative, or other legal representative
10 of, a deceased member or a member adjudged incompetent with
11 additional rights under Section 171103;

12 (24) increase the percentage of votes required for board of director
13 approval of:

14 (A) a resolution to dissolve under Section 171205(a)(1);

15 (B) a proposed amendment to the organic rules under Section
16 17402(a)(1);

17 (C) transaction under Article 16 as required under Section
18 17518; and

19 (D) a proposed disposition of assets under Section 171403(1);
20 and

21 (25) vary the percentage of votes required for members approval of:

22 (A) a resolution to dissolve under Section 171205;

23 (B) an amendment to the organic rules under Section 17405;

24 (C) a transaction under Article 16 as required under Section
25 17518; and

26 (D) a disposition of assets under Section 171404.

27 (d) The organic rules must address members’ contributions pursuant to

1 Section 171001.

2 (e) The organic rules shall provide that investor members shall not hold
3 more than twenty percent (20%) of the total governance rights, regardless of capital
4 contributions, and that no investor member, individually or collectively, may take
5 control or exert significant influence over the decision-making process of the
6 association.

7 **§ 17110. Required Information.**

8 (a) Subject to Subsection (b) of this Section, a limited cooperative
9 association shall maintain in a record available at its principal office;

- 10 (1) a list containing the name, last known street address and, if
11 different, mailing address, and term of office of each director
12 and officer;
- 13 (2) the initial articles of organization and all amendments to and
14 restatements of the articles, together with a signed copy of any
15 power of attorney under which any article, amendment, or
16 restatement has been signed;
- 17 (3) the initial bylaws and all amendments to and restatements of the
18 bylaws;
- 19 (4) all filed articles of merger, interest exchange, conversion, and
20 domestication;
- 21 (5) all financial statements of the association for the six (6) most
22 recent years;
- 23 (6) the six (6) most recent annual reports delivered by the
24 association to the Director of Revenue and Taxation;
- 25 (7) the minutes of members meetings for the six (6) most recent
26 years;
- 27 (8) evidence of all actions taken by members after meetings for the

1 six (6) most recent years;

2 (9) a list containing:

3 (A) the name, in alphabetical order, and last known street
4 address and, if different, mailing address of each patron
5 member and each investor member; and

6 (B) if the association has districts or classes of members,
7 information from which each current member in a district
8 or class *may* be identified;

9 (10) the federal income tax returns, any state and local income tax
10 returns, and any tax reports of the association for the six (6)
11 most recent years;

12 (11) accounting records maintained by the association in the ordinary
13 course of its operations for the six (6) most recent years;

14 (12) the minutes of directors meetings for the six (6) most recent
15 years;

16 (13) evidence of all actions taken by directors after meetings for the
17 six (6) most recent years;

18 (14) the amount of money contributed and agreed to be contributed
19 by each member;

20 (15) a description and statement of the agreed value of contributions
21 or benefits other than money made or provided and agreed to be
22 made or provided by each member;

23 (16) the times at which, or events on the happening of which, any
24 additional contribution is to be made by each member;

25 (17) for each member, a description and statement of the member's
26 interest or information from which the description and statement
27 can be derived; and

1 (18) all communications concerning the association made in a record
2 to all members, or to all members in a district or class, for the
3 six (6) most recent years.

4 (b) If a limited cooperative association has existed for less than the period
5 for which records must be maintained under Subsection (a) of this Section, the
6 period records must be kept is the period of the association’s existence.

7 (c) The organic rules may require that more information be maintained.

8 **§ 17111. Business Transactions of Member With Limited Cooperative**
9 **Association.**

10 Subject to Sections 17818 and 17819 and except as otherwise provided in
11 organic rules or a specific contract relating to a transaction, a member may lend
12 money to and transact other business with a limited cooperative association in the
13 same manner as a person that is not a member.

14 **§ 17112. Dual Capacity Prohibited.**

15 A person shall not have a patron member’s interest and an investor member’s
16 interest. When such person acts as a patron member, the person is subject to this
17 Act and the organic rules governing patron members. When such person acts as an
18 investor member, the person is subject to this Act and organic rules governing
19 investor members.

20 **§ 17113. Permitted Names.**

21 (a) Use of the term ‘cooperative’ or its abbreviation under this Act is not a
22 violation of the provisions restricting the use of the term under 18 GCA § 13122 or
23 any other law or rule or regulation of Guam.

24 (b) The name of a limited cooperative association must contain the phrase
25 ‘limited cooperative association’ or ‘limited cooperative’ or the abbreviation
26 ‘L.C.A.’ or ‘LCA.’ ‘Limited’ may be abbreviated as ‘Ltd.’. ‘Cooperative’ may be
27 abbreviated as ‘Co-op’ or ‘Coop’. ‘Association’ may be abbreviated as ‘Assoc.’ or

1 'Assn.' A limited cooperative association or a member *may* enforce the restrictions
2 on the use of the term 'cooperative' under this Act.

3 (c) Except as otherwise provided in Subsection (d) of this Section, the
4 name of a limited cooperative association, and the name under which a foreign
5 cooperative *may* register to do business in Guam, must be distinguishable on the
6 records of the Director of Revenue and Taxation from any:

7 (1) name of an existing person whose formation required the filing
8 of a record by the Director and which is not at the time
9 administratively dissolved;

10 (2) name of a limited liability partnership whose statement of
11 qualification is in effect;

12 (3) name under which a person is registered to do business in Guam
13 by the filing of a record by the Director;

14 (4) name reserved under Section 17116 or other law of Guam or
15 rule or regulation providing for the reservation of a name by the
16 filing of a record by the Director;

17 (5) name registered under Section 17117 or other law of this state
18 providing for the registration of a name by the filing of a record
19 by the Director; and

20 (6) name registered under 18 GCA § 7107 and 18 GCA Chapter 26.

21 (d) If a person consents in a record to the use of its name and submits an
22 undertaking in a form satisfactory to the Director of Revenue and Taxation to
23 change its name to a name that is distinguishable on the records of the Director
24 from any name in any category of names in Subsection (c) of this Section, the name
25 of the consenting person *may* be used by the person to which the consent was given.

26 (e) Except as otherwise provided in Subsection (f) of this Section, in
27 determining whether a name is the same as or not distinguishable on the records of

1 the Director from the name of another person, words, phrases, or abbreviations
2 indicating a type of entity, such as ‘corporation’, ‘corp.’, ‘incorporated’, ‘Inc.’,
3 ‘professional corporation’, ‘P.C.’, ‘PC’, ‘professional association’, ‘P.A.’, ‘PA’,
4 ‘Limited’, ‘Ltd.’, ‘limited partnership’, ‘L.P.’, ‘LP’, ‘limited liability partnership’,
5 ‘L.L.P.’, ‘LLP’, ‘registered limited liability partnership’, ‘R.L.L.P.’, ‘RLLP’,
6 ‘limited liability limited partnership’, ‘L.L.L.P.’, ‘LLLLP’, ‘registered limited
7 liability limited partnership’, ‘R.L.L.L.P.’ ‘RLLLLP’, ‘limited liability company’,
8 ‘L.L.C.’, or ‘LLC’, ‘limited cooperative association’, ‘limited cooperative’,
9 ‘L.C.A.’, or ‘LCA’ may not be taken into account.

10 (f) A person may consent in a record to the use of a name that is not
11 distinguishable on the records of the Director of Revenue and Taxation from its
12 name except for the addition of a word, phrase, or abbreviation indicating the type
13 of entity as provided in Subsection (e) of this Section. In such a case, the person
14 need not change its name pursuant to Subsection (c).

15 (g) A limited cooperative association or foreign cooperative may use a
16 name that is not distinguishable from a name described in Subsection (c)(1) through
17 (6) of this Section if the association or foreign cooperative delivers to the Director
18 of Revenue and Taxation a certified copy of a final judgment of a court of
19 competent jurisdiction establishing the right of the association or foreign
20 cooperative to use the name in Guam.

21 **§ 17114. Reservation of Power to Amend or Repeal.**

22 *I Liheslaturan Guåhan* has the power to amend or repeal all or part of this
23 Act at any time, and all limited cooperative associations and foreign cooperatives
24 subject to this Act are governed by the amendment or repeal of this Act.

25 **§ 17115. Supplemental Principles of Law.**

26 Unless displaced by particular provisions of this Act, the principles of law
27 and equity supplement this Act.

1 **§ 17116. Reservation of Name.**

2 (a) A person *may* reserve the exclusive use of a name that complies with
3 Section 17113 of this Act by delivering an application to the Director of Revenue
4 and Taxation for filing. The application must set forth the name and address of the
5 applicant and the name to be reserved. If the Director finds that the name is
6 available, the Director *shall* reserve the name for the applicant’s exclusive use for a
7 period of one hundred and twenty (120) calendar days.

8 (b) The owner of a reserved name *may* transfer the reservation to another
9 person by delivering to the Director of Revenue and Taxation a signed notice in a
10 record of the transfer which states the name and address of the person to which the
11 reservation is being transferred.

12 **§ 17117. Registration of Name.**

13 (a) A foreign cooperative not registered to do business in Guam under
14 Article 15 of this Act *may* register its name, or an alternate name adopted pursuant
15 to Section 171506, if the name is distinguishable upon on the records of the
16 Director of Revenue and Taxation from the names that are not available under
17 Section 17113.

18 (b) To register its name or an alternate name adopted pursuant to Section
19 171506, a foreign cooperative must deliver to the Director for filing an application
20 stating the cooperative’s name, the jurisdiction and date of its formation, and any
21 alternate name adopted pursuant to Section 171506. If the Director finds that the
22 name applied for is available, the Director *shall* register the name for the applicant’s
23 exclusive use.

24 (c) The registration of a name under this Section is effective for one (1)
25 year after the date of registration.

26 (d) A foreign cooperative whose name registration is effective *may* renew
27 the registration for successive one (1) year periods by delivering, not earlier than

1 three (3) months before the expiration of the registration, to the Director for filing a
2 renewal application that complies with this Section. When filed, the renewal
3 application renews the registration for a succeeding one (1) year period.

4 (e) A foreign cooperative whose name registration is effective may
5 register as a foreign cooperative under the registered name or consent in a signed
6 record to the use of that name by another person that is not an individual.

7 **§ 17118. Registered Agent.**

8 (a) Each limited cooperative association and each registered foreign
9 cooperative shall designate and maintain a registered agent in Guam. The
10 designation of a registered agent is an affirmation of fact by the association or
11 foreign cooperative that the agent has consented to serve.

12 (b) A registered agent for a limited cooperative association or registered
13 foreign cooperative must have a place of business in Guam.

14 (c) The only duties under this Act of a registered agent that has complied
15 with this Act are:

16 (1) to forward to the limited cooperative association or registered
17 foreign cooperative at the address most recently supplied to the
18 agent by the association or foreign cooperative any process,
19 notice, or demand pertaining to the association or foreign
20 cooperative which is served on or received by the agent;

21 (2) If the registered agent resigns, to provide the notice required by
22 Section 17120(c) of this Act to the limited cooperative
23 association or foreign cooperative at the address most recently
24 supplied to the agent by the association or foreign cooperative;
25 and

26 (3) to keep current the information with respect to the agent in the
27 articles of organization or foreign registration statement.

1 **§ 17119. Change of Registered Agent or Address for Registered**
2 **Agent by Limited Cooperative Association.**

3 (a) A limited cooperative association or registered foreign cooperative
4 may change its registered agent or the address of its registered agent by delivering
5 to the Director of Revenue and Taxation for filing a statement of change that states:

- 6 (1) the name of the association or foreign cooperative; and
7 (2) the information that is to be in effect as a result of the filing of
8 the statement of change.

9 (b) The members or directors of a limited cooperative association need not
10 approve the filing of:

- 11 (1) a statement of change under this Section; or
12 (2) a similar filing changing the registered agent or registered office,
13 if any, of the association in any other jurisdiction.

14 (c) A statement of change under this Section designating a new registered
15 agent is an affirmation of fact by the limited cooperative association or registered
16 foreign cooperative that the agent has consented to serve.

17 (d) As an alternative to using the procedure in this Section, a limited
18 cooperative association may amend its articles of organization.

19 **§ 17120. Resignation of Registered Agent.**

20 (a) A registered agent may resign as agent for a limited cooperative
21 association or registered foreign cooperative by delivering to the Director of
22 Revenue and Taxation for filing a statement of resignation that states:

- 23 (1) the name of the association or foreign cooperative;
24 (2) the name of the agent;
25 (3) that the agent resigns from serving as registered agent for the
26 association or foreign cooperative; and
27 (4) the address of the association or foreign cooperative to which

1 the agent will send the notice required by Subsection (c) of this
2 Section.

3 (b) A statement of resignation takes effect on the earlier of:

4 (1) the thirty-first working day after the day on which it is filed by
5 the Director; or

6 (2) the designation of a new registered agent for the limited
7 cooperative association or registered foreign cooperative.

8 (c) A registered agent promptly shall furnish to the limited cooperative
9 association or registered foreign cooperative notice in a record of the date on which
10 a statement of resignation was filed.

11 (d) When a statement of resignation takes effect, the registered agent
12 ceases to have responsibility under this Act for any matter thereafter tendered to it
13 as agent for the limited cooperative association or registered foreign cooperative.
14 The resignation does not affect any contractual rights the association or foreign
15 cooperative has against the agent or that the agent has against the association or
16 foreign cooperative.

17 (e) A registered agent may resign with respect to a limited cooperative
18 association or registered foreign cooperative whether or not the association or
19 foreign cooperative is in good standing.

20 **§ 17121. Change of Name or Address by Registered Agent.**

21 (a) If a registered agent changes its name or address, the agent may deliver
22 to the Director of Revenue and Taxation for filing a statement of change that states:

23 (1) the name of the limited cooperative association or registered
24 foreign cooperative represented by the registered agent;

25 (2) the name of the agent as currently shown in the records of the
26 Director for the association or foreign cooperative;

27 (3) if the name of the agent has changed, its new name; and

1 (4) if the address of the agent has changed, its new address.

2 (b) A registered agent promptly shall furnish notice to the represented
3 limited cooperative association or registered foreign cooperative of the filing by the
4 Director of the statement of change and the changes made by the statement.

5 **§ 17122. Service of Process, Notice, or Demand.**

6 (a) A limited cooperative association or registered foreign cooperative
7 may be served with any process, notice, or demand required or permitted by law by
8 serving its registered agent.

9 (b) If a limited cooperative association or registered foreign cooperative
10 ceases to have a registered agent, or if its registered agent cannot with reasonable
11 diligence be served, the association or foreign cooperative may be served by
12 registered or certified mail, return receipt requested, or by similar commercial
13 delivery service, addressed to the association or foreign cooperative at its principal
14 office. The address of the principal office must be as shown on the association's or
15 cooperative's most recent annual report filed by the Director of Revenue and
16 Taxation. Service is effected under this Subsection on the earliest of:

17 (1) the date the association or foreign cooperative receives the mail
18 or delivery by the commercial delivery service;

19 (2) the date shown on the return receipt, if signed by the association
20 or foreign cooperative; or

21 (3) five (5) calendar days after its deposit with the United States
22 Postal Service or with the commercial delivery service, if
23 correctly addressed and with sufficient postage or payment.

24 (c) If process, notice, or demand cannot be served on a limited cooperative
25 association or registered foreign cooperative pursuant to Subsection (a) or (b),
26 service may be made by handing a copy to the individual in charge of any regular
27 place of business or activity of the association or foreign cooperative if the

1 individual served is not a plaintiff in the action.

2 (d) Service of process, notice, or demand on a registered agent must be in
3 a written record.

4 (e) Service of process, notice, or demand may be made by other means
5 under law other than this Act.

6 **ARTICLE 2**

7 **FILING AND OTHER REPORTS**

8 §17201. Signing of Records to Be Delivered for Filing to the Director of
9 Revenue and Taxation.

10 §17202. Signing and Filing Pursuant to Judicial Oder.

11 §17203. Liability for Inaccurate Information in Filed Record.

12 §17204. Filing Requirements.

13 §17205. Effective Date and Time.

14 §17206. Withdrawal of Filed Record before Effectiveness.

15 §17207. Correcting Filing Record.

16 §17208. Duty of the Director to File; Review of Refusal to File; Deliver
17 of Record by Director.

18 §17209. Certificate of Good Standing or Registration.

19 §17210. Annual Report for the Director.

20 §17211. Filing Fees.

21
22 **§ 17201. Signing of Records to be Delivered for Filing to Director of**
23 **Revenue and Taxation.**

24 (a) A record delivered to the Director of Revenue and Taxation for filing
25 pursuant to this Act must be signed as follows:

26 (1) A limited cooperative association's initial articles of
27 organization must be signed by at least one (1) person acting as

1 an organizer.

2 (2) A statement of withdrawal under Section 17206 must be signed
3 as provided in that Section.

4 (3) Except as otherwise provided in Paragraph (4) of this
5 Subsection, a record signed by an existing association must be
6 signed by an officer.

7 (4) A record filed on behalf of a dissolved association must be
8 signed by a person winding up activities under Section
9 171206(b) or a person appointed under Section 171206(c) to
10 wind up those activities.

11 (5) Any other record delivered on behalf of a person to the Director
12 for filing must be signed by that person.

13 (b) A record delivered for filing under this Act may be signed by an agent.
14 Whenever this Act requires a particular individual to sign a record and the
15 individual is deceased or incompetent, the record may be signed by a legal
16 representative of the individual.

17 (c) A person that signs a record as an agent or legal representative affirms
18 as a fact that the person is authorized to sign the record.

19 **§ 17202. Signing and Filing Pursuant to Judicial Order.**

20 (a) If a person required by this Act to sign or deliver a record to the
21 Director of Revenue and Taxation for filing under this Act does not do so, any other
22 person that is aggrieved may petition the Superior Court of Guam to order:

23 (1) the person to sign the record;

24 (2) the person to deliver the record to the Director for filing; or

25 (3) the Director to file the record signed.

26 (b) If the petitioner under Subsection (a) of this Section is not the limited
27 cooperative association or foreign cooperative to which the record pertains, the

1 petitioner shall make the association or foreign cooperative a party to the action.

2 (c) A record filed under Subsection (a)(3) of this Section is not effective
3 without being signed.

4 **§ 17203. Liability for Inaccurate Information in Filed Record.**

5 (a) If a record delivered to the Director for filing under this Act and filed
6 by the Director contains inaccurate information, a person that suffers a loss by
7 reliance on the information may recover damages for the loss from a person that
8 signed the record or caused another to sign it on the person's behalf and knew at the
9 time the record was signed that the information was inaccurate.

10 (b) An individual who signs a record authorized or required to be filed
11 under this Act affirms under penalty of perjury that the information stated in the
12 record is accurate.

13 **§ 17204. Filing Requirements.**

14 (a) To be filed by the Director of Revenue and Taxation pursuant to this Act, a
15 record must be received by the Director, comply with this Act, and satisfy the
16 following:

17 (1) The filing of the record must be required or permitted by this
18 Act.

19 (2) The record must be physically delivered in written form unless
20 and to the extent the Director permits electronic delivery of
21 records.

22 (3) The words in the record must be in English, and numbers must
23 be in Arabic or Roman numerals, but the name of an entity need
24 not be in English if written in English letters or Arabic or
25 Roman numerals.

26 (4) The record must be signed by a person authorized or required
27 under this Act to sign the record.

1 (5) The record must state the name and capacity, if any, of each
2 individual who signed it, either on behalf of the individual or the
3 person authorized or required to sign the record, but need not
4 contain a seal, attestation, acknowledgment, or verification.

5 (b) If law other than this Act prohibits the disclosure by the Director of
6 information contained in a record delivered to the Director for filing, the Director
7 shall file the record if the record otherwise complies with this Act but may redact
8 the information.

9 (c) When a record is delivered to the Director for filing, any fee required
10 under this Act and any fee, tax, interest, or penalty required to be paid under this
11 Act or law other than this Act must be paid in a manner permitted by the Director or
12 by that law.

13 (d) The Director may require that a record delivered in written form be
14 accompanied by an identical or conformed copy.

15 (e) The Director may provide forms for entity filings required or
16 permitted to be made by this Act, but, except as otherwise provided in Subsection
17 (f) of this Section, their use is not required.

18 (f) The Director may require that a cover sheet for a filing be on a form
19 prescribed by the Director.

20 **§ 17205. Effective Date and Time.**

21 Except as otherwise provided in Section 17206 and subject to Section
22 17207(d), a record filed under this Act is effective:

23 (a) on the date and at the time of its filing by the Director, as
24 provided in Section 17208;

25 (b) on the date of filing and at the time specified in the record as its
26 effective time, if later than the time under Subsection (a);

27 (c) at a specified delayed effective time and date, which may not be

- 1 more than ninety (90) calendar days after the date of filing; or
2 (d) if a delayed effective date is specified, but no time is specified,
3 at 12:01 a.m. on the date specified, which may not be more than
4 ninety (90) calendar days after the date of filing.

5 **§ 17206. Withdrawal of Filed Record Before Effectiveness.**

6 (a) Except as otherwise provided in Sections 171624, 171634, 171644,
7 and 171654, a record delivered to the Director of Revenue and Taxation for filing
8 may be withdrawn before it takes effect by delivering to the Director for filing a
9 statement of withdrawal.

10 (b) A statement of withdrawal must:

- 11 (1) be signed by each person that signed the record being
12 withdrawn, except as otherwise agreed by those persons;
13 (2) identify the record to be withdrawn; and
14 (3) if signed by fewer than all the persons that signed the record
15 being withdrawn, state that the record is withdrawn in
16 accordance with the agreement of all the persons that signed the
17 record.

18 (c) On filing by the Director of a statement of withdrawal, the action or
19 transaction evidenced by the original record does not take effect.

20 **§ 17207. Correcting Filed Record.**

21 (a) A person on whose behalf a filed record was delivered to the Director
22 of Revenue and Taxation for filing may correct the record if:

- 23 (1) the record at the time of filing was inaccurate;
24 (2) the record was defectively signed; or
25 (3) the electronic transmission of the record to the Director was
26 defective.

27 (b) To correct a filed record, a person on whose behalf the record was

1 delivered to the Director must deliver to the Director for filing a statement of
2 correction.

3 (c) A statement of correction:

- 4 (1) may not state a delayed effective date;
5 (2) must be signed by the person correcting the filed record;
6 (3) must identify the filed record to be corrected;
7 (4) must specify the inaccuracy or defect to be corrected; and
8 (5) must correct the inaccuracy or defect.

9 (d) A statement of correction is effective as of the effective date of the
10 filed record that it corrects except as to persons relying on the uncorrected filed
11 record and adversely affected by the correction. For those purposes and as to those
12 persons, the statement of correction is effective when filed.

13 **§ 17208. Duty of Director to File; Review of Refusal to File; Delivery**
14 **of Record by Director.**

15 (a) The Director of Revenue and Taxation shall file a record delivered to
16 the Director for filing which satisfies this Act. The duty of the Director under this
17 Section is ministerial.

18 (b) When the Director files a record, the Director shall record it as filed
19 on the date and at the time of its delivery. After filing a record, the Director shall
20 deliver to the person that submitted the record a copy of the record with an
21 acknowledgment of the date and time of filing and, in the case of a statement of
22 denial, also to the limited cooperative association to which the statement pertains.

23 (c) If the Director refuses to file a record, the Director shall, not later than
24 fifteen (15) working days after the record is delivered:

- 25 (1) return the record or notify the person that submitted the record
26 of the refusal; and
27 (2) provide a brief explanation in a record of the reason for the

1 refusal.

2 (d) If the Director refuses to file a record, the person that submitted the
3 record may petition the Superior Court of Guam to compel filing of the record. The
4 record and the explanation of the Director of the refusal to file must be attached to
5 the petition. The court may decide the matter in a summary proceeding.

6 (e) The filing of or refusal to file a record does not:

- 7 (1) affect the validity or invalidity of the record in whole or in part;
8 or
9 (2) create a presumption that the information contained in the record
10 is correct or incorrect.

11 (f) Except as provided by Section 17122 or by law other than this Act, the
12 Director may deliver any record to a person by delivering it:

- 13 (1) in person to the person that submitted it;
14 (2) to the address of the person's registered agent;
15 (3) to the principal office of the person; or
16 (4) to another address the person provides to the Director for
17 delivery.

18 **§ 17209. Certificate of Good Standing or Registration.**

19 (a) On request of any person, the Director of Revenue and Taxation shall
20 issue a certificate of good standing for a limited cooperative association or a
21 certificate of registration for a registered foreign cooperative.

22 (b) A certificate under Subsection (a) of this Section must state:

- 23 (1) the limited cooperative association's name or the registered
24 foreign cooperative's name used in Guam;
25 (2) in the case of a limited cooperative association:
26 (a) that articles of organization have been filed and have
27 taken effect;

- 1 (b) the date the articles became effective;
2 (c) the period of the association's duration if the records of
3 the Director reflect that its period of duration is less than
4 perpetual; and
5 (d) That:
6 (i.) no statement of dissolution, statement of administrative
7 dissolution, or statement of termination has been filed;
8 (ii.) the records of the Director do not otherwise reflect that
9 the association has been dissolved or terminated; and
10 (iii.) a proceeding is not pending under Section 171214;
11 (3) in the case of a registered foreign cooperative, that it is
12 registered to do business in Guam;
13 (4) that all fees, taxes, interest, and penalties owed to Guam by the
14 limited cooperative association or foreign cooperative and
15 collected through the Director have been paid, if:
16 (a) payment is reflected in the records of Director; and
17 (b) nonpayment affects the good standing or registration of
18 the association or foreign cooperative;
19 (5) that the most recent annual report required by Section 17210
20 has been delivered to the Director for filing; and
21 (6) other facts reflected in the records of the Director pertaining to
22 the limited cooperative association or foreign cooperative which
23 the person requesting the certificate reasonably requests.
24 (c) Subject to any qualification stated in the certificate, a certificate issued
25 by the Director may be relied on as conclusive evidence of the facts stated in the
26 certificate.

27 **§ 17210. Annual report for the Director.**

1 (a) A limited cooperative association or registered foreign cooperative
2 shall deliver to the Director for filing an annual report that states:

- 3 (1) the name of the association or foreign cooperative;
4 (2) the name and street and mailing addresses of its registered agent
5 in Guam;
6 (3) the street and mailing addresses of its principal office;
7 (4) the name of at least one (1) director; and
8 (5) in the case of a foreign cooperative, its jurisdiction of formation
9 and any alternative name adopted under Section 17506.

10 (b) Information the annual report must be current as of the date the report
11 is signed by the limited cooperative association or registered foreign cooperative.

12 (c) The first annual report must be delivered to the Director for filing after
13 January 1 and before April 1 of the year following the calendar year in which the
14 limited cooperative association's articles of organization became effective, or the
15 registered foreign cooperative registered to do business in Guam. Subsequent
16 annual reports must be delivered to the Director for filing after January 1 and before
17 April 1 of each second calendar year thereafter.

18 (d) If an annual report does not contain the information required by this
19 Section, the Director promptly shall notify the reporting limited cooperative
20 association or registered foreign cooperative in a record and return the report for
21 correction.

22 (e) If an annual report under this Section contains the name or address of a
23 registered agent which differs from the information shown in the records of the
24 Director immediately before the report becomes effective, the differing information
25 is considered a statement of change under Section 17119.

26 **§ 17211. Filing Fees.**

27 The filing fee for records filed under this Article shall be determined by the

1 Director of Revenue and Taxation in accordance with the provisions of Chapter 9, 5
2 GCA.

3 **ARTICLE 3**

4 **ORGANIZATION OF LIMITED COOPERATIVE ASSOCIATION**

5
6 § 17301. Formation of Limited Cooperative Association; Articles of
7 Organization.

8 § 17302. Organization of Limited Cooperative Association.

9 §17303. Bylaws.

10
11 **§ 17301. Formation of Limited Cooperative Association; Articles of**
12 **Organization.**

13 (a) One (1) or more persons may act as organizers to form a limited
14 cooperative association by delivering to the Director of Revenue and Taxation for
15 filing articles of organization.

16 (b) The articles of organization must state:

17 (1) the name of the limited cooperative association, which must
18 comply with Section 17113;

19 (2) the purposes for which the association is formed;

20 (3) the street and mailing addresses in this state of the initial
21 registered agent;

22 (4) the street and mailing addresses of the initial principal office;

23 (5) the name and street and mailing addresses of each organizer;
24 and

25 (6) the term for which the association is to exist if other than
26 perpetual.

27 (c) Subject to Section 17109, articles of organization may contain any

1 other provisions in addition to those required by Subsection (b) of this Section.

2 (d) A limited cooperative association is formed after articles of
3 organization that comply with Subsection (b) of this Section are delivered to the
4 Director, are filed, and become effective under Section 17205.

5 **§ 17302. Organization of Limited Cooperative Association.**

6 (a) After a limited cooperative association is formed:

7 (1) if initial directors are named in the articles of organization, the
8 initial directors shall hold an organizational meeting to adopt
9 initial bylaws and carry on any other business necessary or
10 proper to complete the organization of the association; or

11 (2) if initial directors are not named in the articles of organization,
12 the organizers shall designate the initial directors and call a
13 meeting of the initial directors to adopt initial bylaws and carry
14 on any other business necessary or proper to complete the
15 organization of the association.

16 (b) Unless the articles of organization otherwise provide, the initial
17 directors may cause the limited cooperative association to accept members,
18 including those necessary for the association to begin business.

19 (c) Initial directors need not be members.

20 (d) An initial director serves until a successor is elected and qualified at a
21 members meeting or the director is removed, resigns, is adjudged incompetent, or
22 dies.

23 **§ 17303. Bylaws.**

24 (a) Bylaws must be in a record and, if not stated in the articles of
25 organization, must include:

26 (1) a statement of the capital structure of the limited cooperative
27 association, including:

1 (A) the classes or other types of members' interests and
2 relative rights, preferences, and restrictions granted to or
3 imposed upon each class or other type of member's
4 interest; and

5 (B) the rights to share in profits or distributions of the
6 association;

7 (2) a statement of the method for admission of members;

8 (3) a statement designating voting and other governance rights,
9 including which members have voting power and any restriction
10 on voting power;

11 (4) a statement that a member's interest is transferable, if it is to be
12 transferable, and a statement of the conditions upon which it
13 may be transferred;

14 (5) a statement concerning the manner in which profits and losses
15 are allocated and distributions are made among patron members
16 and, if investor members are authorized, the manner in which
17 profits and losses are allocated and how distributions are made
18 among investor members and between patron members and
19 investor members;

20 (6) a statement concerning:

21 (A) whether persons that are not members but conduct
22 business with the association may be permitted to share in
23 allocations of profits and losses and receive distributions;
24 and

25 (B) the manner in which profits and losses are allocated and
26 distributions are made with respect to those persons; and

27 (7) a statement of the number and terms of directors or the method

1 by which the number and terms are determined.

2 (b) Subject to Section 17109(c) and the articles of organization, bylaws
3 may contain any other provision for managing and regulating the affairs of the
4 association.

5 (c) In addition to amendments permitted under Article 4, the initial board
6 of directors may amend the bylaws by a majority vote of the directors at any time
7 before the admission of members.

8
9 **ARTICLE 4**

10 **AMENDMENT OF ARTICLES OF ORGANIZATION OR BYLAWS OF**
11 **LIMITED COOPERATIVE ASSOCIATION**

12 §17401. Authority to Amend the Organic Rules.

13 §17402. Notice and Action on Amendment of the Organic Rules.

14 §17403. Method of Voting on Amendment of Organic Rules.

15 §17404. Voting by District, Class, or Voting Group.

16 §17405. Approval of Amendment.

17 §17406. Restated Articles of Organization.

18 §17407. Amendment of Restatement of Articles of Organization; Filing.

19 **§ 17401. Authority to Amend Organic Rules.**

20 (a) A limited cooperative association may amend organic rules under this
21 Article for any lawful purpose. In addition, the initial board of directors may amend
22 the bylaws of an association under Section 17303.

23 (b) Unless the organic rules otherwise provide, a member does not have a
24 vested property right resulting from any provision in the organic rules, including a
25 provision relating to the management, control, capital structure, distribution,
26 entitlement, purpose, or duration of the limited cooperative association.

27 **§ 17402. Notice and Action on Amendment of Organic Rules.**

1 (a) Except as provided in Sections 17401(a), the organic rules of a limited
2 cooperative association may be amended only at a members meeting. An
3 amendment may be proposed by either:

- 4 (1) a majority of the board of directors, or a greater percentage if
5 required by the organic rules; or
6 (2) one (1) or more petitions signed by at least ten (10) percent of
7 the patron members or at least ten (10) percent of the investor
8 members.

9 (b) The board of directors shall call a members meeting to consider an
10 amendment proposed pursuant to Subsection (a) of this Section. The meeting must
11 be held not later than ninety (90) calendar days following the proposal of the
12 amendment by the board or receipt of a petition. The board must mail or otherwise
13 transmit or deliver in a record to each member:

- 14 (1) the proposed amendment, or a summary of the proposed
15 amendment and a statement of the manner in which a copy of
16 the amendment in a record may be reasonably obtained by a
17 member;
18 (2) a recommendation that the members approve the amendment, or
19 if the board determines that because of conflict of interest or
20 other special circumstances it should not make a favorable
21 recommendation, the basis for that determination;
22 (3) a statement of any condition of the board's submission of the
23 amendment to the members; and
24 (4) notice of the meeting at which the proposed amendment will be
25 considered, which must be given in the same manner as notice
26 for a special meeting of members.

27 **§ 17403. Method of Voting on Amendment of Organic Rules.**

1 (a) A substantive change to a proposed amendment of the organic rules
2 may not be made at the members meeting at which a vote on the amendment
3 occurs.

4 (b) A non-substantive change to a proposed amendment of the organic
5 rules may be made at the members meeting at which the vote on the amendment
6 occurs and need not be separately voted upon by the board of directors.

7 (c) A vote to adopt a non-substantive change to a proposed amendment to
8 the organic rules must be by the same percentage of votes required to pass a
9 proposed amendment.

10 **§ 17404. Voting by District, Class, or Voting Group.**

11 (a) This Section applies if the articles of organization or bylaws provide
12 for voting by district or class, or if there is one (1) or more identifiable voting
13 groups that a proposed amendment to the articles of organization or bylaws would
14 affect differently from other members with respect to matters identified in Section
15 17405(e)(1) through (5). Approval of the amendment requires the same percentage
16 of votes of the members of that district, class, or voting group required in Sections
17 17405 and 17514.

18 (b) If a proposed amendment to the organic rules would affect members
19 in two (2) or more districts or classes entitled to vote separately under Subsection
20 (a) of this Section in the same or a substantially similar way, the districts or classes
21 affected must vote as a single voting group unless the organic rules otherwise
22 provide for separate voting.

23 **§ 17405. Approval of Amendment.**

24 (a) Subject to Section 17404 and Subsections (c) and (d) of this Section,
25 an amendment to the articles of organization must be approved by:

- 26 (1) at least two-thirds of the voting power of patron members
27 present at a members meeting called under Section 17402; and

1 (2) if the limited cooperative association has investor members, the
2 approval of investor members shall be limited to no more than
3 20% of the total voting power, with the remainder controlled by
4 patron members, ensuring that patron members retain at least
5 80% of the total voting power, unless the organic rules require a
6 greater percentage vote by patron members.

7 (b) Subject to Section 17404 and Subsections (c), (d), (e) and (f) of this
8 Section, an amendment to the bylaws must be approved by:

9 (1) at least a majority vote of the voting power of patron members
10 present at a members meeting called under Section 17402,
11 unless the organic rules require a greater percentage; and

12 (2) if a limited cooperative association has investor members, the
13 approval of investor members shall not exceed 20% of the total
14 voting power, with the remaining voting power held by patron
15 members. The approval of amendments shall require a majority
16 of votes cast by patron members, unless the organic rules require
17 a larger affirmative vote by patron members, unless the organic
18 rules require a larger affirmative vote by patron members.

19 (c) The organic rules may require that the percentage of votes under
20 Subsection (a)(1) or (b)(1) of the same be:

21 (1) a different percentage that is not less than a majority of patron
22 members voting at the meeting;

23 (2) measured against the voting power of patron members,
24 excluding investor members; or

25 (3) a combination of Paragraphs (1) and (2).

26 (d) Consent in a record by a member must be delivered to a limited
27 cooperative association before delivery of an amendment to the articles of

1 organization or restated articles of organization for filing pursuant to Section 17407,
2 if as a result of the amendment the member will have:

- 3 (1) personal liability for an obligation of the association; or
- 4 (2) an obligation or liability for an additional contribution.

5 (e) The vote required to amend bylaws must satisfy the requirements of
6 Subsection (a) of this Section if the proposed amendment modifies:

- 7 (1) the equity capital structure of the limited cooperative
8 association, including the rights of the association's members to
9 share in profits or distributions, or the relative rights,
10 preferences, and restrictions granted to or imposed upon one or
11 more districts, classes, or voting groups of similarly situated
12 members;
- 13 (2) the transferability of a member's interest;
- 14 (3) the manner or method of allocation of profits or losses among
15 members;
- 16 (4) the quorum for a meeting and the rights of voting and
17 governance; or
- 18 (5) unless otherwise provided in the articles of organization or
19 bylaws, the terms for admission of new members.

20 (f) Except for the matters described in Subsection (e) of this Section, The
21 amendments to the articles of organization or by-laws shall not be delegated in
22 whole or in part to the board of directors. Operational agreements may be delegated
23 to the board of directors with approval by members.

24 **§ 17406. Restated Articles of Organization.**

25 A limited cooperative association, by the affirmative vote of a majority of the
26 board of directors taken at a meeting for which the purpose is stated in the notice of
27 the meeting, may adopt restated articles of organization that contain the original

1 articles as previously amended. Restated articles *may* contain amendments if the
2 restated articles are adopted in the same manner and with the same vote as required
3 for amendments to the articles under Section 17405(a). Upon filing, restated
4 articles supersede the existing articles and all amendments.

5 **§ 17407. Amendment of Restatement of Articles of Organization;**
6 **Filing.**

7 (a) To amend its articles of organization, a limited cooperative association
8 must deliver to the Director for filing an amendment of the articles, or restated
9 articles of organization or articles of merger, interest exchange, conversion, or
10 domestication pursuant to Article 16, which contain one (1) or more amendments of
11 the articles of organization, stating:

- 12 (1) the name of the association;
- 13 (2) the date of filing of the association's initial articles; and
- 14 (3) the text of the amendment.

15 (b) Before the beginning of the initial meeting of the board of directors, an
16 organizer who knows that information in the filed articles of organization was
17 inaccurate when the articles were filed or has become inaccurate due to changed
18 circumstances *shall* promptly:

- 19 (1) cause the articles to be amended; or
- 20 (2) if appropriate, deliver an amendment to the Director for filing
21 pursuant to Section 17204.

22 (c) To restate its articles of organization, a limited cooperative association
23 must deliver to the Director for filing a restatement designated as such in its
24 heading.

25 (d) Upon filing, an amendment of the articles of organization or other
26 record containing an amendment of the articles which has been properly adopted by
27 the members is effective as provided in Section 17205.

1 **ARTICLE 5**

2 **MEMBERS**

3 § 17501. Members.

4 § 17502. Becoming a Member.

5 § 17503. No Agency Power of Member as Member.

6 § 17504. Liability of Members and Directors.

7 § 17505. Right of Members and Dissociated Members to Information.

8 § 17506. Annual Meeting of Members.

9 § 17507. Special Meeting of Members.

10 § 17508. Notice of Members Meetings.

11 § 17509. Waiver of Members Meeting Notice.

12 § 17510. Quorum of Members.

13 § 17511. Voting by Patron Members.

14 § 17512. Allocation of Voting Power of Patron Member.

15 § 17513. Voting by Investor Members.

16 § 17514. Voting Requirements for Members.

17 § 17515. Manner of Voting.

18 § 17516. Action Without a Meeting Prohibited.

19 § 17517. Districts and Delegates; Classes of Members.

20 § 17518. Approval of Transaction Under Article 16.

21 **§ 17501. Members.**

22 To begin business, a limited cooperative association must have at least two
23 (2) patron members.

24 **§ 17502. Becoming a Member.**

25 (a) For a limited cooperative association with more than one (1) member
26 upon formation, those persons become members as agreed by the persons before the
27 formation of the association. The organizer acts on behalf of the persons in forming

1 the association and *may* be, but need not be, one (1) of the persons.

2 (b) After formation of a limited cooperative association, a person becomes
3 a member:

4 (1) as provided in the organic rules;

5 (2) as the result of a transaction effective under Article 16;

6 (3) with the affirmative vote or consent of all the members; or

7 (4) as provided in Section 171202(3).

8 **§ 17503. No Agency Power of Member as Member.**

9 (a) A member is not an agent of a limited cooperative association solely
10 by reason of being a member.

11 (b) A person's status as a member does not prevent or restrict law other
12 than this Act from imposing liability on a limited cooperative association because
13 of the person's conduct.

14 **§ 17504. Liability of Members and Directors.**

15 (a) A debt, obligation, or other liability of a limited cooperative
16 association is solely the debt, obligation, or other liability of the association. A
17 member or director is not personally liable, directly or indirectly, by way of
18 contribution or otherwise, for a debt, obligation, or other liability of the association
19 solely by reason of being or acting as a member or director of the association. This
20 Subsection applies regardless of the dissolution of the association.

21 (b) The failure of a limited cooperative association to observe formalities
22 relating to the exercise of its powers or management of its activities and affairs is
23 not a ground for imposing liability on any member or director for a debt, obligation,
24 or other liability of the association.

25 **§ 17505. Right of Members and Dissociated Members to Information.**

26 (a) On reasonable notice, a member *may* inspect and copy during regular
27 business hours, at the principal office or a reasonable location specified by the

1 limited cooperative association, required information listed in Sections 17110(a)(1)
2 through (8). A member need not have any particular purpose for seeking the
3 information. The association is not required to provide the same information listed
4 in Section 17110(a)(1) through (8) to the same member more than once during a six
5 (6)-month period.

6 (b) On reasonable notice, a member may inspect and copy during regular
7 business hours, at the principal office or a reasonable location specified by the
8 limited cooperative association, required information listed in Section 17110(a)(9),
9 (10), (12), (13), (16), and (18), if:

10 (1) the member seeks the information in good faith and for a proper
11 purpose reasonably related to the member's interest;

12 (2) the demand includes a description with reasonable particularity
13 of the information sought and the purpose for seeking the
14 information;

15 (3) the information sought is directly connected to the member's
16 purpose; and

17 (4) the demand is reasonable.

18 (c) Not later than ten (10) working days after receipt of a demand pursuant
19 to Subsection (b) of this Section, a limited cooperative association shall provide, in
20 a record, the following information to the member that made the demand:

21 (1) if the association agrees to provide the demanded information:

22 (A) what information the association will provide in response
23 to the demand; and

24 (B) a reasonable time and place at which the association will
25 provide the information; or

26 (2) if the association declines to provide some or all of the
27 demanded information, the association's reasons for declining.

1 (d) On ten (10) working days' demand made in a record received by a
2 limited cooperative association, a dissociated member *may* have access to
3 information to which the person was entitled while a member if the information
4 pertains to the period during which the person was a member, the person seeks the
5 information in good faith, and the person satisfies the requirements imposed on a
6 member by Subsection (b)(2) of this Section. The association *shall* respond to a
7 demand made pursuant to this subsection in the manner provided in Subsection (c)
8 of this Section.

9 (e) Not later than ten (10) working days after receipt by a limited
10 cooperative association of a demand made by a member in a record, but not more
11 often than once in a six (6)-month period calculated by calendar days, the
12 association *shall* deliver to the member a record stating the information with respect
13 to the member required by Section 17110(a)(17).

14 (f) In addition to any restriction or condition stated in its organic rules, a
15 limited cooperative association, as a matter within the ordinary course of its
16 activities and affairs, *may* impose reasonable restrictions and conditions on access
17 to and use of information to be furnished under this Section, including designating
18 information confidential and imposing nondisclosure and safeguarding obligations
19 on the recipient. In a dispute concerning the reasonableness of a restriction under
20 this Subsection, the association has the burden of proving reasonableness.

21 (g) A limited cooperative association *may* charge a person that makes a
22 demand under this Section reasonable costs of copying, limited to the costs of labor
23 and material.

24 (h) A member or dissociated member *may* exercise rights under this
25 Section through an agent or, in the case of an individual under legal disability, a
26 legal representative. Any restriction or condition imposed by the organic rules or
27 under Subsection (g) of this Section applies both to the agent or legal representative

1 and the member or dissociated member.

2 (i) The rights stated in this Section do not extend to a person as transferee.

3 (j) The organic rules may require a limited cooperative association to
4 provide more information than required by this section and may establish conditions
5 and procedures for providing the information.

6 **§ 17506. Annual Meeting of Members.**

7 (a) Members shall meet annually at a time provided in the organic rules or
8 set by the board of directors not inconsistent with organic rules.

9 (b) An annual members meeting may be held inside or outside Guam at
10 the place stated in the organic rules or selected by the board of directors not
11 inconsistent with organic rules.

12 (c) Unless organic rules otherwise provide, members may attend or
13 conduct an annual members meeting through any means of communication if all
14 members attending the meeting can communicate with each other during the
15 meeting.

16 (d) The board of directors shall report, or cause to be reported, at the
17 association's annual members meeting the association's business and financial
18 condition as of the close of the most recent fiscal year.

19 (e) Unless the organic rules otherwise provide, the board of directors
20 shall designate the presiding officer of the association's annual members meeting.

21 (f) Failure to hold an annual members meeting does not affect the validity
22 of any action by the limited cooperative association.

23 **§ 17507. Special Meeting of Members.**

24 (a) A special meeting of members may be called only:

25 (1) as provided in the organic rules;

26 (2) by a majority vote of the board of directors on a proposal stating
27 the purpose of the meeting;

1 (3) by demand in a record signed by members holding at least
2 twenty (20) percent of the voting power of the persons in any
3 district or class entitled to vote on the matter that is the purpose
4 of the meeting stated in the demand; or

5 (4) by demand in a record signed by members holding at least ten
6 (10) percent of the total voting power of all the persons entitled
7 to vote on the matter that is the purpose of the meeting stated in
8 the demand.

9 (b) A demand under Subsection (a)(3) or (4) of this Section must be
10 submitted to the officer of the limited cooperative association charged with keeping
11 its records.

12 (c) Any voting member may withdraw its demand under Subsection (a)(3)
13 or (4) of this Section before receipt by the limited cooperative association of
14 demands sufficient to require a special meeting of members.

15 (d) A special meeting of members may be held inside or outside Guam at
16 the place stated in the organic rules or selected by the board of directors not
17 inconsistent with the organic rules.

18 (e) Unless the organic rules otherwise provide, members may attend or
19 conduct a special meeting of members through the use of any means of
20 communication if all members attending the meeting can communicate with each
21 other during the meeting.

22 (f) Only business within the purpose or purposes stated in the notice of a
23 special meeting of members may be conducted at the meeting.

24 (g) Unless the organic rules otherwise provide, the presiding officer of a
25 special meeting of members shall be designated by the board of directors.

26 **§ 17508. Notice of Members Meeting.**

27 (a) A limited cooperative association shall notify each member of the

1 time, date, and place of a members meeting at least fifteen (15) calendar days and
2 not more than sixty (60) calendar days before the meeting.

3 (b) Unless the organic rules otherwise provide, notice of an annual
4 members meeting shall include the purpose of the meeting.

5 (c) Notice of a special meeting of members must include each purpose of
6 the meeting as contained in the demand under Section 17507(a)(3) or (4) or as
7 voted upon by the board of directors under Section 17507(a)(2).

8 (d) Notice of a members meeting must be given in a record unless oral
9 notice is reasonable under the circumstances.

10 **§ 17509. Waiver of Members Meeting Notice.**

11 (a) A member may waive notice of a members meeting by providing a
12 written or electronic waiver either before, during, or after the meeting. Such waiver
13 must be delivered to the limited cooperative association in written or electronic
14 form. The waiver shall be effective regardless of whether it is executed before or
15 after the time set for the meeting.

16 (b) A member's attendance or participation in a members meeting is a
17 waiver of notice of that meeting unless the member objects to the meeting at the
18 beginning of the meeting or promptly upon the member's arrival at the meeting and
19 does not thereafter vote for or assent to action taken at the meeting.

20 (c) An objection must be explicitly stated on the record at the meeting for
21 it to be recognized as valid under this Section.

22 **§ 17510. Quorum of Members.**

23 Organic rules shall require the following in meeting a quorum:

24 (a) majority of members present at a meeting are patron members; and

25 (b) minimum percentage of patron members present at a members meeting
26 to constitute a quorum.

27 **§ 17511. Voting by Patron Members.**

1 Each patron member has one (1) vote. The organic rules *may* allocate voting
2 power among patron members as provided in Section 17512.

3 **§ 17512. Allocation of Voting Power of Patron Member.**

4 (a) The organic rules *may* allocate voting power among patron members
5 on the basis of one (1) member, one (1) vote.

6 (b) The organic rules *may* provide for the allocation of patron member
7 voting power by districts or class, or any combination thereof.

8 **§ 17513. Voting by Investor Members.**

9 If the organic rules provide for investor members, each investor member has
10 one (1) vote, unless the organic rules otherwise provide. The organic rules *may*
11 provide for the allocation of investor member voting power by class, classes, or any
12 combination of classes. In no event shall the aggregate voting power of all investor
13 members exceed 20% of the total voting power of the association

14 **§ 17514. Voting Requirements for Members.**

15 If a limited cooperative association has both patron and investor members,
16 the following rules apply:

17 (a) the total voting power of all patron members may not be less than
18 eighty percent (80%) of a majority of the entire voting power entitled to vote.

19 (b) action on any matter is approved only upon the affirmative vote of at
20 least a majority of:

21 (1) all members voting at the meeting unless more than a majority
22 is required by Articles 4, 12, 14, or 16, or the organic rules; and

23 (2) votes cast by patron members unless the articles of organization
24 or bylaws require a larger affirmative vote by patron members.

25 (c) The organic rules *may* provide for the percentage of the affirmative
26 votes that must be cast by investor members to approve the matter.

27 **§ 17515. Manner of Voting.**

1 (a) Unless the organic rules otherwise provide, voting by a proxy at a
2 members meeting is prohibited. This Subsection does not prohibit delegate voting
3 based on district or class.

4 (b) If voting by a proxy is permitted, a patron member may appoint only
5 another patron member as a proxy and, if investor members are permitted, an
6 investor member may appoint only another investor member as a proxy.

7 (c) The organic rules may provide for the manner of and provisions
8 governing the appointment of a proxy.

9 (d) The organic rules may provide for voting on any question by ballot
10 delivered by mail or voting by other means on questions that are subject to vote by
11 members.

12 **§ 17516. Action Without a Meeting Prohibited.**

13 Any action by the members shall not be taken without a meeting.

14 **§ 17517. Districts and Delegates; Classes of Members.**

15 (a) The organic rules may provide for the formation of geographic districts
16 of patron members and:

17 (1) for the conduct of patron member meetings by districts and the
18 election of directors at the meetings; or

19 (2) that districts may elect district delegates to represent and vote for
20 the district at members meetings.

21 (b) A delegate elected under Subsection (a)(2) of this Section has one (1)
22 vote unless voting power is otherwise allocated by the organic rules.

23 (c) The organic rules may provide for the establishment of classes of
24 members, for the preferences, rights, and limitations of the classes, and:

25 (1) for the conduct of members meetings by classes and the election
26 of directors at the meetings; or

27 (2) that classes may elect class delegates to represent and vote for

1 the class in members meetings.

2 (d) A delegate elected under Subsection (c)(2) of this Section has one (1)
3 vote unless voting power is otherwise allocated by the organic rules.

4 **§ 17518. Approval of Transaction Under Article 16.**

5 (a) For a limited cooperative association to approve a plan for a
6 transaction under Article 16, the plan must be approved by a majority of the board
7 of directors, or a greater vote if required by the organic rules, and the board shall
8 call a members meeting to consider the plan, hold the meeting not later than ninety
9 (90) calendar days after approval of the plan by the board, and mail or otherwise
10 transmit or deliver in a record to each member:

11 (1) the plan, or a summary of the plan and a statement of the manner
12 in which a copy of the plan in a record reasonably may be
13 obtained by a member;

14 (2) a recommendation that the members approve the plan, or if the
15 board determines that because of a conflict of interest or other
16 circumstances it should not make a favorable recommendation,
17 the basis for that determination;

18 (3) a statement of any condition of the board's submission of the
19 plan to the members; and

20 (4) notice of the meeting at which the plan will be considered,
21 which must be given in the same manner as notice of a special
22 meeting of members.

23 (b) Subject to Subsections (c) and (d) of this Section, a plan must be
24 approved by:

25 (1) at least two-thirds of the voting power of members present at a
26 members meeting called under Subsection (a) of this Section;
27 and

1 (2) if the limited cooperative association has investor members, at
2 least a majority of the votes cast by patron members, unless the
3 organic rules require a greater percentage vote by patron
4 members.

5 (c) The organic rules may provide that the required vote under Subsection
6 (b)(1) of this Section be:

7 (1) a different fraction that is not less than a majority of members
8 voting at the meeting;

9 (2) measured against the voting power of all members; or

10 (3) a combination of Paragraphs (1) and (2) of this Subsection.

11 (d) The vote required under Subsections (b) and (c) of this Section to
12 approve a plan may not be less than the vote required for the members of the
13 limited cooperative association to amend the articles of organization.

14 (e) A member's consent in a record to a plan must be delivered to the
15 limited cooperative association before delivery to the Director of Revenue and
16 Taxation for filing of articles of merger, interest exchange, conversion, or
17 domestication if, as a result of the merger, interest exchange, conversion, or
18 domestication, the member will have interest holder liability for debts, obligations,
19 or other liabilities that are incurred after the transaction becomes effective.

20 (f) The voting requirements for districts, classes, or voting groups under
21 Section 17404 apply to approval of a transaction under this Article.

22 **ARTICLE 6**

23 **MEMBER'S INTEREST IN LIMITED COOPERATIVE ASSOCIATION**

24 §17601. Member's Interest.

25 §17602. Patron and Investor Members' Interests.

26 §17603. Transferability of Member's Interest.

27 §17604. Security Interest and Set-Off.

1 §17605. Charging Order.

2
3 **§ 17601. Member's Interest.**

4 A member's interest:

5 (a) is personal property;

6 (b) consists of:

7 a. governance rights;

8 b. financial rights; and

9 c. the right or obligation, if any, to do business with the limited
10 cooperative association; and

11 (c) may be in certificated or uncertificated form.

12 **§ 17602. Patron and Investor Members' Interests.**

13 (a) Unless the organic rules establish investor members' interests, a
14 member's interest is a patron member's interest.

15 (b) If a limited cooperative association has investor members, while a
16 person is a member of the association, the person:

17 (1) if admitted as a patron member, remains a patron member; and

18 (2) if admitted as an investor member, remains an investor member.

19 **§ 17603. Transferability of Member's Interest.**

20 (a) The provisions of this Act relating to the transferability of a member's
21 interest are subject to the *Uniform Commercial Code of Guam*, 13 GCA §§ 1101
22 through 10104.

23 (b) Unless the organic rules otherwise provide, a member's interest other
24 than financial rights is not transferable.

25 (c) Unless a transfer is restricted or prohibited by the organic rules, a
26 member may transfer its financial rights in the limited cooperative association.

27 (d) The terms of any restriction on transferability of financial rights must

1 be:

2 (1) set forth in the organic rules and the member records of the
3 association; and

4 (2) conspicuously noted on any certificates evidencing a member's
5 interest.

6 (e) A transferee of a member's financial rights, to the extent the rights are
7 transferred, has the right to share in the allocation of profits or losses and to receive
8 the distributions to the member transferring the interest to the same extent as the
9 transferring member.

10 (f) A transferee of a member's financial rights does not become a member
11 upon transfer of the rights unless the transferee is admitted as a member by the
12 limited cooperative association.

13 (g) A limited cooperative association need not give effect to a transfer
14 under this Section until the association has notice of the transfer.

15 (h) A transfer of a member's financial rights in violation of a restriction on
16 transfer contained in the organic rules is ineffective if the intended transferee has
17 notice of the restriction at the time of transfer.

18 **§ 17604. Security Interest and Set-Off.**

19 (a) A member or transferee may create an enforceable security interest in
20 its financial rights in a limited cooperative association.

21 (b) Unless the organic rules otherwise provide, a member may not create
22 an enforceable security interest in the member's governance rights in a limited
23 cooperative association.

24 (c) The organic rules may provide that a limited cooperative association
25 has a security interest in the financial rights of a member to secure payment of any
26 indebtedness or other obligation of the member to the association. A security
27 interest provided for in the organic rules is enforceable under, and governed by, 13

1 GCA Division 9 of the *Uniform Commercial Code of Guam.*

2 (d) Unless the organic rules otherwise provide, a member may not compel
3 the limited cooperative association to offset financial rights against any
4 indebtedness or obligation owed to the association.

5 **§ 17605. Charging Order.**

6 (a) On application by a judgment creditor of a member or transferee, The
7 Superior Court of Guam may enter a charging order against the financial rights of
8 the judgment debtor for the unsatisfied amount of the judgment. Except as
9 otherwise provided in Subsection (f) of this Section, a charging order constitutes a
10 lien on the judgment debtor's financial rights and requires the limited cooperative
11 association to pay over to the person to which the charging order was issued any
12 distribution that otherwise would be paid to the judgment debtor.

13 (b) To the extent necessary to effectuate the collection of distributions
14 pursuant to a charging order under Subsection (a) of this Section, the court may:

- 15 (1) appoint a receiver of the distributions subject to the charging
16 order, with the power to make all inquiries the judgment debtor
17 might have made; and
18 (2) make all other orders necessary to give effect to the charging
19 order.

20 (c) Upon a showing that distributions under a charging order will not pay
21 the judgment debt within a reasonable time, the court may foreclose the lien and
22 order the sale of the financial rights. Except as otherwise provided in Subsection (f)
23 of this Section, the purchaser at the foreclosure sale obtains only the financial rights
24 that are subject to the charging order, does not thereby become a member, and is
25 subject to Section 17603.

26 (d) At any time before foreclosure under Subsection (c) of this Section, the
27 member or transferee whose financial rights are subject to a charging order under

1 Subsection (a) may extinguish the charging order by satisfying the judgment and
2 filing a certified copy of the satisfaction with the court that issued the charging
3 order.

4 (e) At any time before foreclosure under Subsection (c) of this Section, the
5 limited cooperative association or one (1) or more members whose financial rights
6 are not subject to the charging order may pay to the judgment creditor the full
7 amount due under the judgment and thereby succeed to the rights of the judgment
8 creditor, including the charging order. Unless the organic rules otherwise provide,
9 the association may act under this Subsection only with the consent of all members
10 whose financial rights are not subject to the charging order.

11 (f) If a court forecloses a charging order lien against the sole member of a
12 limited cooperative association:

- 13 (1) the court shall confirm the sale;
- 14 (2) the purchaser at the sale obtains the member's entire interest, not
15 only the member's financial rights;
- 16 (3) the purchaser thereby becomes a member; and
- 17 (4) the person whose interest was subject to the foreclosed charging
18 order is dissociated as a member.
- 19 (5) This Act does not deprive any member or transferee of the
20 benefit of any exemption law applicable to the member's or
21 transferee's financial rights.

22 (g) This Section provides the exclusive remedy by which a person seeking
23 in the capacity of judgment creditor to enforce a judgment against a member or
24 transferee may satisfy the judgment from the judgment debtor's financial rights.

25 ARTICLE 7

26 MARKETING CONTRACTS

27 §17701. Authority.

1 §17702. Marketing Contracts.

2 §17703. Duration of Marketing Contract.

3 §17704. Remedies for Breach of Contract.

4
5 **§ 17701. Authority.**

6 (a) In this Article, ‘marketing contract’ means a contract between a limited
7 cooperative association and another person that need not be a patron member:

8 (1) requiring the other person to sell, or deliver for sale or marketing
9 on the person’s behalf, a specified part of the person’s products,
10 commodities, or goods exclusively to or through the association
11 or any facilities furnished by the association; or

12 (2) authorizing the association to act for the person in any manner
13 with respect to the products, commodities, or goods.

14 **§ 17702. Marketing Contracts.**

15 (a) If a marketing contract provides for the sale of products, commodities,
16 or goods to a limited cooperative association, the sale transfers title to the
17 association upon delivery or at any other specific time expressly provided by the
18 contract.

19 (b) A marketing contract may:

20 (1) authorize a limited cooperative association to create an
21 enforceable security interest in the products, commodities, or
22 goods delivered; and

23 (2) allow the association to sell the products, commodities, or goods
24 delivered and pay the sales price on a pooled or other basis after
25 deducting selling costs, processing costs, overhead, expenses,
26 and other charges.

27 (c) Some or all of the provisions of a marketing contract between a patron

1 member and a limited cooperative association may be contained in the organic
2 rules.

3 **§ 17703. Duration of Marketing Contract.**

4 The initial duration of a marketing contract may not exceed ten (10) years,
5 but the contract may be self-renewing for additional periods not exceeding five (5)
6 years each. Unless the contract provides for another manner or time for termination,
7 either party may terminate the contract by giving notice in a record at least ninety
8 (90) calendar days before the end of the current term.

9 **§ 17704. Remedies for Breach of Contract.**

10 (a) Damages to be paid to a limited cooperative association for breach or
11 anticipatory repudiation of a marketing contract may be liquidated, but only at an
12 amount or under a formula that is reasonable in light of the actual or anticipated
13 harm caused by the breach or repudiation. A provision that so provides is not a
14 penalty.

15 (b) Upon a breach of a marketing contract, whether by anticipatory
16 repudiation or otherwise, a limited cooperative association may seek:

- 17 (1) an injunction to prevent further breach; and
18 (2) specific performance.

19 (c) The remedies in this Section are in addition to any other remedies
20 available to an association under law other than this Act.

21 **ARTICLE 8**

22 **DIRECTORS AND OFFICERS**

23 §17801. Board of Directors.

24 §17802. No Liability as Director for Limited Cooperative Association's
25 Obligations.

26 §17803. Qualifications of Directors.

27 §17804. Election of Directors and Composition of Board.

- 1 §17805. Term of Director.
- 2 §17806. Resignation of Director.
- 3 §17807. Removal of Director.
- 4 §17808. Suspension of Director by Board.
- 5 §17809. Vacancy on Board.
- 6 §17810. Remuneration of Directors.
- 7 §17811. Meetings.
- 8 §17812. Action Without Meeting Prohibited.
- 9 §17813. Meetings and Notice.
- 10 §17814. Waiver of Notice of Meeting.
- 11 §17815. Quorum.
- 12 §17816. Voting.
- 13 §17817. Committees.
- 14 §17818. Standards of Conduct and Liability.
- 15 §17819. Conflict of Interest.
- 16 §17820. Other Considerations of Directors.
- 17 §17821. Right of Director or Committee Member to Information.
- 18 §17822. Appointment and Authority of Officers.
- 19 §17823. Resignation and Removal of Officers.

20

21 **§ 17801. Board of Directors.**

22 (a) A limited cooperative association must have a board of directors of at
23 least three (3) individuals, unless the association has fewer than three (3) members.
24 If the association has fewer than three (3) members, the number of directors may
25 not be fewer than the number of members.

26 (b) The affairs of a limited cooperative association must be managed by,
27 or under the direction of, the board of directors. The board may adopt policies and

1 procedures that do not conflict with the organic rules or this Act.

2 (c) An individual is not an agent for a limited cooperative association
3 solely by being a director.

4 **§ 17802. No Liability as Director for Limited Cooperative**
5 **Association's Obligations.**

6 A debt, obligation, or other liability of a limited cooperative association is
7 solely that of the association and is not a debt, obligation, or liability of a director
8 solely by reason of being a director. An individual is not personally liable, directly
9 or indirectly, for an obligation of an association solely by reason of being a director.

10 **§ 17803. Qualifications of Directors.**

11 (a) Unless the organic rules otherwise provide, and subject to Subsection
12 (c) of this Section, each director of a limited cooperative association must be an
13 individual who is a member of the association or an individual who is designated by
14 a member that is not an individual for purposes of qualifying and serving as a
15 director. Initial directors need not be members.

16 (b) Unless the organic rules otherwise provide, a director may be an
17 officer or employee of the limited cooperative association.

18 (c) If the organic rules provide for nonmember directors, the number of
19 nonmember directors may not exceed:

20 (1) one (1), if there are two (2) through four (4) directors;

21 (2) two (2), if there are five (5) through eight (8) directors; or

22 (3) one-third of the total number of directors if there are at least nine
23 (9) directors.

24 (d) The organic rules may provide qualifications for directors in addition
25 to those in this Section.

26 **§ 17804. Election of Directors and Composition of Board.**

27 (a) Unless the organic rules require a greater number:

1 (1) the number of directors that must be patron members may not be
2 fewer than:

3 (A) one (1), if there are two (2) or three (3) directors;

4 (B) two (2), if there are four (4) or five (5) directors;

5 (C) three (3), if there are six (6) through eight (8) directors; or

6 (D) one-third of the directors if there are at least nine (9)
7 directors;

8 (2) a majority of the board of directors must be elected exclusively
9 by patron members; and

10 (3) the board of directors shall be composed of at least eighty
11 percent (80%) patron members. If organic rules provide that
12 investor members *may* serve on the board of directors, investor
13 members *shall* not hold more than twenty percent (20%) of
14 board seats and may not serve as a chairperson or any executive
15 office of the board.

16 (b) Unless the organic rules otherwise provide, if a limited cooperative
17 association has investor members, the directors who are not elected exclusively by
18 patron members are elected by the investor members.

19 (c) Subject to Subsection (a) of this Section, the organic rules *may* provide
20 for the election of all or a specified number of directors by one (1) or more districts
21 or classes of members.

22 (d) Subject to Subsection (a) of this Section, the organic rules *may* provide
23 for the nomination or election of directors by districts or classes, directly or by
24 district delegates.

25 (e) If a class of members consists of a single member, the organic rules
26 *may* provide for the member to appoint a director or directors.

27 (f) Unless the organic rules otherwise provide, cumulative voting for

1 directors is prohibited.

2 (g) Except as otherwise provided by the organic rules, Subsection (e) of
3 this Section, or Sections 17302, 17516, 17517, and 17809, member directors must
4 be elected at an annual members meeting.

5 **§ 17805. Term of Director.**

6 (a) Unless the organic rules otherwise provide, and subject to Subsections
7 (c) and (d) of this Section and Section 17302(d), the term of a director expires at the
8 annual members meeting following the director's election or appointment. The term
9 of a director may not exceed three (3) years.

10 (b) Unless the organic rules otherwise provide, a director *may* be
11 reelected.

12 (c) Except as otherwise provided in Subsection (d) of this Section, a
13 director continues to serve until a successor director is elected or appointed and
14 qualifies or the director is removed, resigns, is adjudged incompetent, or dies.

15 (d) Unless the organic rules otherwise provide, a director does not serve
16 the remainder of the director's term if the director ceases to qualify to be a director.

17 **§ 17806. Resignation of Director.**

18 A director *may* resign at any time by giving notice in a record to the limited
19 cooperative association. Unless the notice states a later effective date, a resignation
20 is effective when the notice is received by the association.

21 **§ 17807. Removal of Director.**

22 (a) Unless organic rules otherwise provide, the following rules apply:

23 (1) Members *may* remove a director with or without cause.

24 (2) A member or members holding at least ten (10) percent of the
25 total voting power entitled to be voted in the election of a
26 director *may* demand removal of the director by one (1) or more
27 signed petitions submitted to the officer of the limited

1 cooperative association charged with keeping its records.

2 (3) Upon receipt of a petition for removal of a director, an officer
3 of the association or the board of directors shall:

4 (A) call a special meeting of members to be held not later than
5 ninety (90) calendar days after receipt of the petition by
6 the association; and

7 (B) mail or otherwise transmit or deliver in a record to the
8 members entitled to vote on the removal, and to the
9 director to be removed, notice of the meeting which
10 complies with Section 17508.

11 (4) A director is removed if the votes in favor of removal are equal
12 to or greater than the votes required to elect the director.

13 **§ 17808. Suspension of Director by Board.**

14 (a) A board of directors may suspend a director if, considering the
15 director's course of conduct and the inadequacy of other available remedies,
16 immediate suspension is necessary for the best interests of the association and the
17 director is engaging, or has engaged, in:

18 (1) fraudulent conduct with respect to the association or its
19 members;

20 (2) gross abuse of the position of director;

21 (3) intentional or reckless infliction of harm on the association; or

22 (4) any other behavior, act, or omission as provided by the organic
23 rules.

24 (b) A suspension under Subsection (a) of this Section is effective for thirty
25 (30) calendar days unless the board of directors calls and gives notice of a special
26 meeting of members for removal of the director before the end of the thirty (30)-day
27 period in which case the suspension is effective until adjournment of the meeting or

1 the director is removed.

2 **§ 17809. Vacancy on Board.**

3 (a) Unless the organic rules otherwise provide, a vacancy on the board of
4 directors must be filled:

5 (1) within a reasonable time by majority vote of the remaining
6 directors until the next annual members meeting or a special
7 meeting of members called to fill the vacancy; and

8 (2) for the unexpired term by members at the next annual members
9 meeting or a special meeting of members called to fill the
10 vacancy.

11 (b) Unless the organic rules or bylaws otherwise provide, if a vacating
12 director was elected or appointed by a class of members or a district:

13 (1) the new director must be of that class or district; and

14 (2) the selection of the director for the unexpired term must be
15 conducted in the same manner as would the selection for that
16 position without a vacancy.

17 (c) If a member appointed a vacating director, the organic rules *may*
18 provide for that member to appoint a director to fill the vacancy.

19 **§ 17810. Remuneration of Directors.**

20 Unless the organic rules otherwise provide, the board of directors *may* set the
21 remuneration of directors and of nondirector committee members appointed under
22 Section 17817(a).

23 **§ 17811. Meetings.**

24 (a) A board of directors *shall* meet at least annually and *shall* hold
25 meetings on Guam.

26 (b) Unless the organic rules otherwise provide, a board of directors *may*
27 permit directors to attend or conduct board meetings through the use of any means

1 of communication, if all directors attending the meeting can communicate with each
2 other during the meeting.

3 **§ 17812. Action without Meeting Prohibited.**

4 (a) Any action by a board of directors shall not be taken without a
5 meeting.

6 **§ 17813. Meetings and Notice.**

7 (a) The board of directors shall establish a time, date, and place for regular
8 board meetings, and notice of the time, date, place, and purpose of those meetings is
9 required.

10 (b) The notice of the time, date, and place of a special meeting of a board
11 of directors must be given to all directors at least three (3) days before the meeting,
12 the notice must contain a statement of the purpose of the meeting, and the meeting
13 is limited to the matters contained in the statement.

14 **§ 17814. Waiver of Notice of Meeting.**

15 (a) Unless the organic rules otherwise provide, a director may waive any
16 required notice of a meeting of the board of directors in a record before, during, or
17 after the meeting.

18 (b) Unless the organic rules otherwise provide, a director's participation
19 in a meeting is a waiver of notice of that meeting unless:

20 (1) the director objects to the meeting at the beginning of the
21 meeting or promptly upon the director's arrival at the meeting
22 and does not thereafter vote in favor of or otherwise assent to the
23 action taken at the meeting; or

24 (2) the director promptly objects upon the introduction of any matter
25 for which notice under Section 17813 has not been given and
26 does not thereafter vote in favor of or otherwise assent to the
27 action taken on the matter.

1 **§ 17815. Quorum.**

2 (a) Unless the articles of organization provide for a greater number, a
3 majority of the total number of directors specified by the organic rules constitutes a
4 quorum for a meeting of the directors.

5 (b) If a quorum of the board of directors is present at the beginning of a
6 meeting, any action taken by the directors present is valid even if withdrawal of
7 directors originally present results in the number of directors being fewer than the
8 number required for a quorum.

9 (c) A director present at a meeting but objecting to notice under Section
10 17814(b)(1) or (2) does not count toward a quorum.

11 **§ 17816. Voting.**

12 (a) Each director shall have one (1) vote for purposes of decisions made
13 by the board of directors.

14 (b) Unless the organic rules otherwise provide, the affirmative vote of a
15 majority of directors present at a meeting is required for action by the board of
16 directors.

17 **§ 17817. Committees.**

18 (a) Unless the organic rules otherwise provide, a board of directors may
19 create one (1) or more committees and appoint one (1) or more individuals to serve
20 on a committee.

21 (b) Unless the organic rules otherwise provide, an individual appointed to
22 serve on a committee of a limited cooperative association need not be a director but
23 shall be member.

24 (c) An individual who is not a director and is serving on a committee has
25 the same rights, duties, and obligations as a director serving on the committee.

26 (d) Each committee of a limited cooperative association may exercise the
27 powers delegated to it by the board of directors, but a committee may not:

- 1 (1) approve allocations or distributions except according to a
2 formula or method prescribed by the board of directors;
- 3 (2) approve or propose to members action requiring approval of
4 members; or
- 5 (3) fill vacancies on the board of directors or any of its committees.

6 **§ 17818. Standards of Conduct and Liability.**

7 Except as otherwise provided in Section 17820 of this Act:

8 (a) the discharge of the duties of a director or member of a committee of
9 the board of directors is governed by the law applicable to directors of entities
10 organized under the *Guam Business Corporation Act*, 18 GCA Chapter 28, and

11 (b) the liability of a director or member of a committee of the board of
12 directors is governed by the law applicable to directors of entities organized under
13 the *Guam Business Corporation Act*, 18 GCA Chapter 28.

14 **§ 17819. Conflict of Interest.**

15 (a) The law applicable to conflicts of interest between a director of an
16 entity organized under the *Guam Business Corporation Act*, 18 GCA Chapter 28,
17 governs conflicts of interest between a limited cooperative association and a
18 director or member of a committee of the board of directors.

19 (b) A director does not have a conflict of interest under this Act or the
20 organic rules solely because the director's conduct relating to the duties of the
21 director *may* further the director's own interest.

22 **§ 17820. Other Considerations of Directors.**

23 (a) Unless the articles of organization otherwise provide, in considering
24 the best interests of a limited cooperative association, a director of the association in
25 discharging the duties of director, in conjunction with considering the long and
26 short term interest of the association and its patron members, *shall* consider:

- 27 (1) the interest of employees, customers, and suppliers of the

1 association;

2 (2) the interest of the community in which the association operates;

3 and

4 (3) other cooperative principles and values that *may* be applied in
5 the context of the decision.

6 **§ 17821. Right of Director or Committee Member to Information.**

7 A director or a member of a committee appointed under Section 17817 may
8 obtain, inspect, and copy all information regarding the state of activities and
9 financial condition of the limited cooperative association and other information
10 regarding the activities of the association if the information is reasonably related to
11 the performance of the director’s duties as director or the committee member’s
12 duties as a member of the committee. Information obtained in accordance with this
13 Section may not be used in any manner that would violate any duty of or to the
14 association.

15 **§ 17822. Appointment and Authority of Officers.**

16 (a) A limited cooperative association has the officers:

17 (1) provided in organic rules; or

18 (2) established by the board of directors in a manner not
19 inconsistent with the organic rules.

20 (b) organic rules may designate or, if either do not designate, the board of
21 directors shall designate, one of the association’s officers for preparing all records
22 required by Section 17110 and for the authentication of records.

23 (c) Unless the organic rules otherwise provide, the board of directors *shall*
24 appoint the officers of the limited cooperative association.

25 (d) Officers of a limited cooperative association *shall* perform the duties
26 the organic rules prescribe or as authorized by the board of directors not in a
27 manner inconsistent with the organic rules.

1 (e) The election or appointment of an officer of a limited cooperative
2 association does not of itself create a contract between the association and the
3 officer.

4 (f) Unless the organic rules otherwise provide, an individual may
5 simultaneously hold more than one (1) office in a limited cooperative association.

6 **§ 17823. Resignation and Removal of Officers.**

7 (a) The board of directors may remove an officer at any time with or
8 without cause.

9 (b) An officer of a limited cooperative association may resign at any time
10 by giving notice in a record to the association. Unless the notice specifies a later
11 time, the resignation is effective when the notice is given.

12 **ARTICLE 9**

13 **INDEMNIFICATION**

14 §17901. Indemnification and Advancement of Expenses; Insurance.

15
16 **§ 17901. Indemnification and Advancement of Expenses; Insurance.**

17 (a) Indemnification and advancement of expenses of an individual who
18 has incurred liability or is a party, or is threatened to be made a party, to litigation
19 because of the performance of a duty to, or activity on behalf of, a limited
20 cooperative association is governed by 18 GCA § 28822 of the *Guam Business*
21 *Corporation Act.*

22 (b) A limited cooperative association may purchase and maintain
23 insurance on behalf of any individual against liability asserted against or incurred
24 by the individual to the same extent and subject to the same conditions as provided
25 by 18 GCA § 28822 of the *Guam Business Corporation Act.*

26 **ARTICLE 10**

27 **CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS**

- 1 §171001. Member’s Contributions.
- 2 §171002. Contribution and Valuation.
- 3 §171003. Contribution Agreements.
- 4 §171004. Allocations of Profits and Losses.
- 5 §171005. Distributions.
- 6 §171006. Redemption or Repurchase.
- 7 §171007. Limitations on Distributions.
- 8 §171008. Liability for Improper Distributions; Limitation of Action.
- 9 §171009. Relation to Guam Securities Law (Reserved).
- 10 §171010. Alternative Distribution of Unclaimed Property (Reserved).

11

12 **§ 171001. Members’ contributions.**

13 The organic rules must establish the amount, manner, or method of
14 determining any contribution requirements for members or must authorize the board
15 of directors to establish the amount, manner, or other method of determining any
16 contribution requirements for members.

17 **§ 171002. Contribution and Valuation.**

18 (a) Unless the organic rules otherwise provide, the contributions of a
19 member to a limited cooperative association may consist of property transferred to,
20 services performed for, or another benefit provided to the association or an
21 agreement to transfer property to, perform services for, or provide another benefit to
22 the association.

23 (b) The receipt and acceptance of contributions and the valuation of
24 contributions must be reflected in a limited cooperative association’s records.

25 (c) Unless the organic rules otherwise provide, the board of directors shall
26 determine the value of a member’s contributions received or to be received and the
27 determination by the board of directors of valuation is conclusive for purposes of

1 determining whether the member's contribution obligation has been met.

2 **§ 171003. Contribution Agreements.**

3 (a) Except as otherwise provided in the agreement, the following rules
4 apply to an agreement made by a person before formation of a limited cooperative
5 association to make a contribution to the association:

6 (1) The agreement is irrevocable for six (6) months after the
7 agreement is signed by the person unless all parties to the
8 agreement consent to the revocation.

9 (2) If a person does not make a required contribution:

10 (A) the person is obligated, at the option of the association,
11 once formed, to contribute money equal to the value of
12 that part of the contribution that has not been made, and
13 the obligation may be enforced as a debt to the
14 association; or

15 (B) the association, once formed, may rescind the agreement
16 if the debt remains unpaid more than twenty (20) calendar
17 days after the association demands payment from the
18 person, and upon rescission the person has no further
19 rights or obligations with respect to the association.

20 (C) Unless the organic rules or an agreement to make a
21 contribution other than money to a limited cooperative
22 association otherwise provide, if a person does not make a
23 required contribution to an association, the person or the
24 person's estate is obligated, at the option of the
25 association, to contribute money equal to the value of the
26 part of the contribution which has not been made.

27 **§ 171004. Allocations of Profits and Losses.**

1 (a) The organic rules may provide for allocating profits of a limited
2 cooperative association among members, to an unallocated account, or to any
3 combination thereof. Unless the organic rules otherwise provide, losses of the
4 association must be allocated in the same proportion as profits.

5 (b) Unless the organic rules otherwise provide, all profits and losses of a
6 limited cooperative association must be allocated to patron members.

7 (c) If a limited cooperative association has investor members, the organic
8 rules may not reduce the allocation to patron members to less than fifty percent
9 (50%) of profits. For purposes of this Subsection, the following rules apply:

10 (1) amounts paid or due on contracts for the delivery to the
11 association by patron members of products, goods, or services
12 are not considered amounts allocated to patron members.

13 (2) amounts paid, due, or allocated to investor members as a stated
14 fixed return on equity are not considered amounts allocated to
15 investor members.

16 (d) Unless prohibited by the organic rules, in determining the profits for
17 allocation under Subsections (a), (b), and (c) of this Section, the board of directors
18 may first deduct and set aside a part of the profits to create or accumulate:

19 (1) an unallocated capital reserve; and

20 (2) reasonable unallocated reserves for specific purposes,
21 including expansion and replacement of capital assets;
22 education, training, cooperative development; creation
23 and distribution of information concerning principles of
24 cooperation; and community responsibility.

25 (e) Subject to Subsections (b) and (f) of this Section and the organic rules,
26 the board of directors shall allocate the amount remaining after any deduction or
27 setting aside of profits for unallocated reserves under Subsection (d):

- 1 (1) to patron members in the ratio of each member's
2 patronage to the total patronage of all patron members
3 during the period for which allocations are to be made;
4 and
5 (2) to investor members, if any, in the ratio of each investor
6 member's contributions to the total contributions of all
7 investor members.

8 (f) For purposes of allocation of profits and losses or specific items of
9 profits or losses of a limited cooperative association to members, the organic rules
10 may establish allocation units or methods based on separate classes of members or,
11 for patron members, on class, function, division, district, department, allocation
12 units, pooling arrangements, members' contributions, or other equitable methods.

13 **§ 171005. Distributions.**

14 (a) Unless the organic rules otherwise provide and subject to Section
15 171007, the board of directors may authorize, and the limited cooperative
16 association may make, distributions to members.

17 (b) Unless the organic rules otherwise provide, distributions to members
18 may be made in any form, including money, capital credits, allocated patronage
19 equities, revolving fund certificates, and the limited cooperative association's own
20 or other securities.

21 **§ 171006. Redemption or Repurchase.**

22 Property distributed to a member by a limited cooperative association, other
23 than money, may be redeemed or repurchased as provided in the organic rules but a
24 redemption or repurchase may not be made without authorization by the board of
25 directors. The board may withhold authorization for any reason in its sole
26 discretion. A redemption or repurchase is treated as a distribution for purposes of
27 Section 171007.

1 **§ 171007. Limitations on Distributions.**

2 (a) In this Section, ‘distribution’ does not include reasonable
3 compensation for present or past services or other payments made in the ordinary
4 course of business for commodities or goods or under a bona fide retirement or
5 other bona fide benefits program.

6 (b) A limited cooperative association may not make a distribution,
7 including a distribution under Section 171208, if after the distribution:

8 (1) the association would not be able to pay its debts as they become
9 due in the ordinary course of the association’s activities and
10 affairs; or

11 (2) the association’s total assets would be less than the sum of its
12 total liabilities plus the amount that would be needed, if the
13 association were to be dissolved and wound up at the time of the
14 distribution, to satisfy the preferential rights upon dissolution
15 and winding up of members whose preferential rights are
16 superior to the rights of persons receiving the distribution.

17 (c) A limited cooperative association may base a determination that a
18 distribution is not prohibited under Subsection (b) of this Section on:

19 (1) financial statements prepared on the basis of accounting
20 practices and principles that are reasonable under the
21 circumstances; or

22 (2) a fair valuation or other method that is reasonable under the
23 circumstances.

24 (d) Except as otherwise provided in Subsection (e) of this Section, the
25 effect of a distribution allowed under Subsection (b) of this Section is measured:

26 (1) in the case of a distribution by purchase, redemption, or other
27 acquisition of financial rights in the limited cooperative

1 association, as of the earlier of:

2 (A) the date money or other property is transferred, or debt is
3 incurred by the association; or

4 (B) the date the person entitled to the distribution ceases to
5 own the financial rights being acquired by the association
6 in return for the distribution;

7 (2) in the case of any other distribution of indebtedness, as of the
8 date the indebtedness is distributed; and

9 (3) in all other cases, as of the date:

10 (A) distribution is authorized, if the payment occurs not later
11 than one hundred twenty (120) calendar days after that
12 date; or

13 (B) the payment is made, if the payment occurs more than one
14 hundred twenty (120) calendar days after the distribution
15 is authorized.

16 (e) A limited cooperative association's indebtedness incurred by reason of
17 a distribution made in
18 accordance with this Section is at parity with the association's indebtedness to its
19 general, unsecured creditors except to the extent subordinated by agreement.

20 (f) A limited cooperative association's indebtedness, including
21 indebtedness issued as a distribution, is not a liability for purposes of Subsection (b)
22 of this Section if the terms of the indebtedness provide that payment of principal
23 and interest is made only if and to the extent that payment of a distribution could
24 then be made under this Section. If the indebtedness is issued as a distribution,
25 each payment of principal or interest is treated as a distribution, the effect of which
26 is measured on the date the payment is made.

27 (g) In measuring the effect of a distribution under Section 171208, the

1 liabilities of a dissolved limited cooperative association do not include any claim
2 that has been disposed of under Section 171209, 171210, or 171211.

3 **§ 171008. Liability for Improper Distributions; Limitation of Action.**

4 (a) If a director of a limited cooperative association consents to a
5 distribution made in violation of Section 171007 and in consenting to the
6 distribution fails to comply with Section 17818, the director is personally liable to
7 the association for the amount of the distribution that exceeds the amount that could
8 have been distributed without the violation of Section 171007.

9 (b) A person that receives a distribution knowing that the distribution
10 violated Section 171007 is personally liable to the limited cooperative association
11 but only to the extent that the distribution received by the person exceeded the
12 amount that could have been properly paid under Section 171007.

13 (c) A director against whom an action is commenced because the director
14 is liable under Subsection (a) of this Section may:

15 (1) implead any other director that is liable under Subsection (a) of
16 this Section and seek to enforce a right of contribution from the
17 director; and

18 (2) implead any person that received a distribution in violation of
19 Subsection (b) of this Section and seek to enforce a right of
20 contribution from the person in the amount the person received
21 in violation of Subsection (b) of this Section.

22 (d) An action under this Section is barred unless commenced not later
23 than two (2) years after the distribution.

24 **§171009. Relation to Guam Securities Law (Reserved).**

25 **§171010. Alternative Distribution of Unclaimed Property (Reserved).**

26 **ARTICLE 11**

27 **DISSOCIATION**

1 §171101. Member’s Dissociation.

2 §171102. Effect of Dissociation.

3 §171102. Power of Legal Representative of Deceased Member.

4
5 **§ 171101. Member’s Dissociation.**

6 (a) A person has the power to dissociate as a member at any time.

7 (b) Unless the organic rules otherwise provide, a member’s dissociation
8 from a limited cooperative association is wrongful only if:

9 (1) it is in breach of an express provision of the organic rules; or

10 (2) it occurs before the termination of the limited cooperative
11 association and:

12 (A) the person is expelled as a member under Subsection
13 (d)(3) or (4) of this Section; or

14 (B) in the case of a person that is not an individual, trust other
15 than a business trust, or estate, the person is expelled or
16 otherwise dissociated as a member because it dissolved or
17 terminated in bad faith.

18 (c) A person that wrongfully dissociates as a member is liable to the
19 limited cooperative association and to the other members for damages caused by the
20 dissociation. The liability is in addition to any other debt, obligation, or liability of
21 the person to the association.

22 (d) A member is dissociated as a member when:

23 (1) the limited cooperative association receives notice in a record of
24 the member’s express will to dissociate as a member, or if the
25 member specifies in the notice an effective date later than the
26 date the association received notice, on that later date;

27 (2) an event stated in the organic rules as causing the person’s

1 dissociation occurs;

2 (3) the person's entire interest is transferred in a foreclosure sale
3 under Section 17605(f);

4 (4) the person is expelled as a member under the organic rules;

5 (5) the person is expelled as a member by the board of directors if:

6 (A) it is unlawful to carry on the limited cooperative
7 association's activities and affairs with the person as a
8 member;

9 (B) there has been a transfer of all the member's financial
10 rights in the association, other than:

11 (i.) a transfer for security purposes; or

12 (ii.) a charging order in effect under Section 17605
13 which has not been foreclosed;

14 (C) person is an unincorporated entity that has been dissolved
15 and its activities and affairs are being wound up; or

16 (D) the person is a corporation or cooperative and:

17 (i.) the person filed a certificate of dissolution or the
18 equivalent, or the jurisdiction of formation revoked
19 the person's charter or right to conduct business;

20 (ii.) the association sends a notice to the person that it
21 will be expelled as a member for a reason described
22 in Subsection (d)(5)(D)(i) of this Section; and

23 (iii.) not later than ninety (90) calendar days after the
24 notice was sent under Subsection (d)(5)(D)(ii) of
25 this Section, the person did not revoke its certificate
26 of dissolution or the equivalent, or the jurisdiction
27 of formation did not reinstate the person's charter

1 or right to conduct business; or

2 (E) the member is an individual and is adjudged incompetent;

3 (6) in the case of an individual, the individual dies;

4 (7) in the case of a member that is a testamentary or inter vivos trust
5 or is acting as a member by virtue of being a trustee of a trust,
6 the trust's entire financial rights in the limited cooperative
7 association are distributed;

8 (8) in the case of a person that is an estate or is acting as a member
9 by virtue of being a personal representative of an estate, the
10 estate's entire financial interest in the association is distributed;

11 (9) in the case of a person that is not an individual, partnership,
12 limited liability company, cooperative, corporation, trust, or
13 estate, the existence of the person terminates; or

14 (10) the association's participation in a transaction under Article 16
15 that causes the person to cease to be a member.

16 **§ 171102. Effect of Dissociation.**

17 (a) When a person is dissociated as a member:

18 (1) the person's right to participate as a member in the management
19 and conduct of the limited cooperative association's activities
20 and affairs terminates; and

21 (2) subject to Section 171103 and Article 16, any financial rights
22 owned by the person in the person's capacity as a member
23 immediately before dissociation are owned by the person as a
24 transferee.

25 (b) A person's dissociation as a member does not of itself discharge the
26 person from any debt, obligation, or other liability to the limited cooperative
27 association or the other members which the person incurred while a member.

1 **§ 171103. Power of Legal Representative of Deceased Member.**

2 If a member dies, the deceased member’s legal representative may exercise
3 for the purposes of settling the estate, the rights the deceased member had under
4 Section 17505.

5 **ARTICLE 12**
6 **DISSOLUTION**

7 §171201. Dissolution and Winding Up.

8 §171202. Nonjudicial Dissolution.

9 §171203. Judicial Dissolution.

10 §171204. Voluntary Dissolution before Commencement of Activity.

11 §171205. Voluntary Dissolution by the Board and Members.

12 §171206. Winding Up.

13 §171207. Rescinding Dissolution.

14 §171208. Distribution of Assets in Winding Up.

15 §171209. Known Claims Against Dissolved Limited Cooperative
16 Association.

17 §171210. Other Claims Against Dissolved Limited Cooperative
18 Association.

19 §171211. Court Proceedings.

20 §171212. Statement of Dissolution.

21 §171213. Statement of Termination.

22 §171214. Administrative Dissolution.

23 §171215. Reinstatement.

24 §171216. Judicial Review of Denial of Reinstatement.

25
26 **§ 171201. Dissolution and Winding up.**

27 A limited cooperative association is dissolved only as provided in this Article

1 and upon dissolution winds up in accordance with this Article.

2 **§ 171202. Nonjudicial Dissolution.**

3 (a) Except as otherwise provided in Sections 171203 and 171215, a
4 limited cooperative association is dissolved and its activities must be wound up:

- 5 (1) upon the occurrence of an event or at a time specified in the
6 articles of organization;
- 7 (2) upon the action of the association's organizers, board of
8 directors, or members under Section 171204 or 171205; or
- 9 (3) Ninety (90) calendar days after the dissociation of a member,
10 which results in the association having one (1) patron member
11 and no other members, unless the association, not later than the
12 end of the ninety (90)-day period, admits at least one (1)
13 member in accordance with the organic rules and has at least
14 two (2) members, at least one (1) of which is a patron member.

15 **§ 171203. Judicial Dissolution.**

16 (a) The Superior Court of Guam may dissolve a limited cooperative
17 association or order any action that under the circumstances is appropriate and
18 equitable:

- 19 (1) in a proceeding initiated by the Attorney General of Guam, if:
- 20 (A) the association obtained its articles of organization
21 through fraud; or
- 22 (B) the association has continued to exceed or abuse the
23 authority conferred upon it by law; or
- 24 (2) in a proceeding initiated by a member, if:
- 25 (A) the directors are deadlocked in the management of the
26 association's affairs, the members are unable to break the
27 deadlock, and irreparable injury to the association is

1 occurring or is threatened because of the deadlock;

2 (B) the directors or those in control of the association have
3 acted, are acting, or will act in a manner that is illegal,
4 oppressive, or fraudulent;

5 (C) the members are deadlocked in voting power and have
6 failed to elect successors to directors whose terms have
7 expired for two consecutive periods during which annual
8 members meetings were held or were to be held; or

9 (D) the assets of the association are being misapplied or
10 wasted.

11 **§ 171204. Voluntary Dissolution before Commencement of Activity.**

12 A majority of the organizers or initial directors of a limited cooperative
13 association that has not yet begun business activity or the conduct of its affairs may
14 dissolve the association.

15 **§ 171205. Voluntary Dissolution by the Board and Members.**

16 (a) Except as otherwise provided in Section 171204, for a limited
17 cooperative association to voluntarily dissolve:

18 (1) a resolution to dissolve must be approved by a majority vote of
19 the board of directors unless a greater percentage is required by
20 the organic rules;

21 (2) the board of directors must call a members meeting to consider
22 the resolution, to be held not later than ninety (90) calendar days
23 after adoption of the resolution; and

24 (3) the board of directors must mail or otherwise transmit or deliver
25 to each member in a record that complies with Section 17508:

26 (A) the resolution required by Subsection (a)(1) of this
27 Section;

1 (B) a recommendation that the members vote in favor of the
2 resolution or, if the board determines that because of
3 conflict of interest or other special circumstances it should
4 not make a favorable recommendation, the basis of that
5 determination; and

6 (C) notice of the members meeting, which must be given in
7 the same manner as notice of a special meeting of
8 members.

9 (b) Subject to Subsection (c) of this Section, a resolution to dissolve must
10 be approved by:

11 (1) at least two-thirds of the voting power of members present at a
12 members meeting called under Subsection (a)(2) of this Section;
13 and

14 (2) if the limited cooperative association has investor members, at
15 least a majority of the votes cast by patron members, unless the
16 organic rules require a greater percentage.

17 (c) The organic rules may require that the percentage of votes under
18 Subsection (b)(1) of this Section is:

19 (1) a different percentage that is not less than a majority of members
20 voting at the meeting; or

21 (2) measured against the voting power of all members; or

22 (3) a combination of Paragraphs (1) and (2) of this Subsection.

23 **§ 171206. Winding Up.**

24 (a) A dissolved limited cooperative association shall wind up its activities
25 and affairs, and except as provided in Section 171207, the association continues
26 after dissolution only for the purpose of winding up.

27 (b) In winding up its activities and affairs, the board of directors:

1 (1) shall discharge the association's debts, obligations, or other
2 liabilities, settle and close the association's activities, and
3 marshal and distribute the assets of the association; and

4 (2) may:

5 (A) deliver to the Director of Revenue and Taxation for filing
6 a statement of dissolution stating the name of the
7 association and that the association is dissolved;

8 (B) preserve the association's activities, affairs and property
9 as a going concern for a reasonable time;

10 (C) prosecute and defend actions and proceedings, whether
11 civil, criminal, or administrative;

12 (D) transfer the association's property;

13 (E) settle disputes by mediation or arbitration;

14 (F) deliver to the Director of Revenue and Taxation for filing
15 a statement of termination stating the name of the
16 company and that the company is terminated; and

17 (G) perform other acts necessary or appropriate to the winding
18 up.

19 (c) After dissolution and upon application of a limited cooperative
20 association, a member, or a holder of financial rights, the Superior Court of Guam
21 may order judicial supervision of the winding up of the association, including the
22 appointment of a person to wind up the association's activities, if:

23 (1) after a reasonable time, the association has not wound up its
24 activities; or

25 (2) the applicant establishes other good cause.

26 (d) If a person is appointed pursuant to Subsection (c) of this Section to
27 wind up the activities of a limited cooperative association, the association shall

1 promptly deliver to the Director of Revenue and Taxation for filing an amendment
2 to the articles of organization to reflect the appointment.

3 **§ 171207. Rescinding Dissolution.**

4 (a) A limited cooperative association may rescind its dissolution, unless a
5 statement of termination applicable to the association is effective, the Superior
6 Court of Guam has entered an order under Section 171203 dissolving the
7 association, or the Director of Revenue and Taxation has dissolved the association
8 under Section 171214.

9 (b) Rescinding dissolution under this Section requires:

10 (1) the affirmative vote or consent of each member;

11 (2) if a statement of dissolution applicable to the limited cooperative
12 association has been filed by the Director but has not become
13 effective, the delivery to the Director of Revenue and Taxation
14 for filing of a statement of withdrawal applicable to the
15 statement of dissolution; and

16 (3) if a statement of dissolution applicable to the limited cooperative
17 association is effective, the delivery to the Director of Revenue
18 and Taxation for filing of a statement of rescission stating the
19 name of the association and that dissolution has been rescinded
20 under this Section.

21 (c) If a limited cooperative association rescinds its dissolution:

22 (1) the association resumes carrying on its activities and affairs as if
23 dissolution had never occurred;

24 (2) subject to Paragraph (3) of this Subsection, and any liability
25 incurred by the association after the dissolution and before the
26 rescission is effective is determined as if dissolution had never
27 occurred; and

1 (3) the rights of a third party arising out of conduct in reliance on
2 the dissolution before the third party knew or had notice of the
3 rescission may not be adversely affected.

4 **§171208. Distribution of Assets in Winding Up.**

5 (a) In winding up its activities and affairs, the limited cooperative
6 association shall apply its assets to discharge its obligations to creditors, including
7 members that are creditors. The association shall apply any remaining assets to pay
8 in money the net amount distributable to members in accordance with their right to
9 distributions under Subsection (b) of this Section.

10 (b) Unless the organic rules otherwise provide, in this Subsection
11 ‘financial interests’ means the amounts recorded in the names of members in the
12 records of a limited cooperative association at the time a distribution is made,
13 including amounts paid to become a member, amounts allocated but not distributed
14 to members, and amounts of distributions authorized but not yet paid to members.
15 Unless the organic rules otherwise provide, each member is entitled to a distribution
16 from the association of any remaining assets in the proportion of the member’s
17 financial interests to the total financial interests of the members after all other
18 obligations are satisfied.

19 **§ 171209. Known Claims against Dissolved Limited Cooperative**
20 **Association.**

21 (a) Except as otherwise provided in Subsection (d) of this Section, a
22 dissolved limited cooperative association may give notice of a known claim under
23 Subsection (b) of this Section, which has the effect provided in Subsection (c) of
24 this Section.

25 (b) A dissolved limited cooperative association in a record may notify its
26 known claimants of the dissolution. The notice must:

27 (1) specify the information required to be included in a claim;

- 1 (2) state that a claim must be in writing and provide a mailing
2 address to which the claim is to be sent;
- 3 (3) state the deadline for receipt of a claim, which may not be less
4 than one hundred (120) calendar days after the date the notice is
5 received by the claimant; and
- 6 (4) state that the claim will be barred if not received by the deadline.

7 (c) A claim against a dissolved limited cooperative association is barred if
8 the requirements of Subsection (b) of this Section are met, and:

- 9 (1) the claim is not received by the specified deadline; or
- 10 (2) if the claim is timely received but rejected by the association:
 - 11 (A) the association causes the claimant to receive a notice in a
12 record stating that the claim is rejected and will be barred unless
13 the claimant commences an action against the association to
14 enforce the claim not later than ninety (90) calendar days after
15 the claimant receives the notice; and
 - 16 (B) the claimant does not commence the required action not
17 later than ninety (90) calendar days after the claimant
18 receives the notice.

19 (d) This Section does not apply to a claim based on an event occurring
20 after the date of dissolution or a liability that on that date is contingent.

21 **§ 171210. Other Claims Against Dissolved Limited Cooperative**
22 **Association.**

23 (a) A dissolved limited cooperative association may publish notice of its
24 dissolution and request persons having claims against the association to present
25 them in accordance with the notice.

26 (b) A notice authorized under Subsection (a) of this Section must:

- 27 (1) be published at least once in a newspaper of general circulation

1 in Guam or, if the principal office and registered agent are not
2 located in Guam, in the county in which the office of the
3 association's registered agent is or was last located;

4 (2) describe the information required to be contained in a claim,
5 state that the claim must be in writing, and provide a mailing
6 address to which the claim is to be sent; and

7 (3) state that a claim against the association is barred unless an
8 action to enforce the claim is commenced not later than three (3)
9 years after publication of the notice.

10 (c) If a dissolved limited cooperative association publishes a notice in
11 accordance with Subsection (b) of this Section, the claim of each of the following
12 claimants is barred unless the claimant commences an action to enforce the claim
13 against the association not later than three (3) years after the publication date of the
14 notice:

15 (1) a claimant that did not receive notice in a record under Section
16 171209;

17 (2) a claimant whose claim was timely sent to the company but not
18 acted on; and

19 (3) a claimant whose claim is contingent at, or based on an event
20 occurring after, the effective date of dissolution.

21 (d) A claim not barred under this section or Section 171209 may be
22 enforced:

23 (1) against a dissolved limited cooperative association, to the extent
24 of its undistributed assets; and

25 (2) except as provided in Section 171211, if the assets of the
26 association have been distributed after dissolution, against a
27 member or holder of financial rights to the extent of that

1 person's proportionate share of the claim or the assets
2 distributed to the person after dissolution, whichever is less, but
3 a person's total liability for all claims under this Paragraph may
4 not exceed the total amount of assets distributed to the person
5 after dissolution.

6 **§ 171211. Court Proceedings.**

7 (a) A dissolved limited cooperative association that has published a notice
8 under Section 171210 may file an application with the Superior Court of Guam or,
9 if the principal office or the registered agent are not located in Guam, where the
10 office of its registered agent is or was last located, for a determination of the
11 amount and form of security to be provided for payment of claims that are
12 reasonably expected to arise after the date of dissolution based on facts known to
13 the association and:

14 (1) at the time of the application:

15 (A) are contingent; or

16 (B) have not been made known to the association; or

17 (2) are based on an event occurring after the date of dissolution.

18 (b) Security is not required for a claim that is or is reasonably anticipated
19 to be barred under Section 171210.

20 (c) Not later than ten (10) calendar days after filing an application under
21 Subsection (a) of this Section, the dissolved limited cooperative association shall
22 give notice of the proceeding to each claimant holding a contingent claim known to
23 the association.

24 (d) In a proceeding under this Section, the court may appoint a guardian ad
25 litem to represent all claimants whose identities are unknown. The reasonable fees
26 and expenses of the guardian, including all reasonable expert witness fees, must be
27 paid by the dissolved limited cooperative association.

1 (e) A dissolved limited cooperative association that provides security in
2 the amount and form ordered by the court under Subsection (a) of this Section
3 satisfies the association’s obligations with respect to claims that are contingent,
4 have not been made known to the association, or are based on an event occurring
5 after the effective date of dissolution. Such claims may not be enforced against a
6 member or holder of financial rights on account of assets received in liquidation.

7 **§ 171212. Statement of Dissolution.**

8 (a) A limited cooperative association that has dissolved or is about to
9 dissolve may deliver to the Director of Revenue and Taxation for filing a statement
10 of dissolution that states:

- 11 (1) the name of the association;
- 12 (2) the date the association dissolved or will dissolve; and
- 13 (3) any other information the association considers relevant.

14 (b) A person has notice of a limited cooperative association’s dissolution
15 on the later of:

- 16 (1) ninety (90) calendar days after a statement of dissolution is
17 filed; or
- 18 (2) the effective date stated in the statement of dissolution.

19 **§ 171213. Statement of Termination.**

20 (a) A dissolved limited cooperative association that has completed
21 winding up may deliver to the Director for filing a statement of termination that
22 states:

- 23 (a) the name of the association;
- 24 (b) the date of filing of its initial articles of organization; and
- 25 (c) that the association is terminated.

26 (b) The filing of a statement of termination does not itself terminate the
27 limited cooperative association.

1 **§ 171214. Administrative Dissolution.**

2 (a) The Director of Revenue and Taxation may commence a proceeding
3 under Subsection (b) of this Section to dissolve a limited cooperative association
4 administratively if the association does not:

5 (1) pay any fee, tax, interest, or penalty required to be paid to the
6 Director not later than six (6) months after it is due;

7 (2) deliver a annual report to the Director not later than six (6)
8 months after it is due; or

9 (3) have a registered agent in Guam for sixty (60) consecutive
10 calendar days.

11 (b) If the Director determines that one (1) or more grounds exist for
12 administratively dissolving a limited cooperative association, the Director shall
13 serve the association with notice in a record of such determination.

14 (c) If a limited cooperative association, not later than sixty (60) days after
15 service of the notice under Subsection (b) of this Section, does not cure or
16 demonstrate to the satisfaction of the Director the nonexistence of each ground
17 determined by the Director, they shall administratively dissolve the association by
18 signing a statement of administrative dissolution that recites the grounds for
19 dissolution and the effective date of dissolution. The Director shall file the
20 statement and serve a copy on the association pursuant to Section 17122.

21 (d) A limited cooperative association that is administratively dissolved
22 continues in existence as an entity but may not carry on any activities except as
23 necessary to wind up its activities and affairs and liquidate its assets under Sections
24 171206 and 171208 through 171213, or to apply for reinstatement under Section
25 171215.

26 (e) The administrative dissolution of a limited cooperative association
27 does not terminate the authority of its registered agent.

1 **§ 171215. Reinstatement.**

2 (a) A limited cooperative association that is administratively dissolved
3 under Section 171214 may apply to the Director of Revenue and Taxation for
4 reinstatement not later than two (2) years after the effective date of dissolution. The
5 application must state:

6 (1) the name of the association at the time of its administrative
7 dissolution and, if needed, a different name that satisfies Section
8 17115;

9 (2) the address of the principal office of the association and the
10 name and street and mailing addresses of its registered agent;

11 (3) the effective date of the association's administrative dissolution;
12 and

13 (4) that the grounds for dissolution did not exist or have been cured.

14 (b) To be reinstated, a limited cooperative association must pay all fees,
15 taxes, interest, and penalties that were due to the Director at the time of the
16 association's administrative dissolution and all fees, taxes, interest, and penalties
17 that would have been due to the Director while the association was administratively
18 dissolved.

19 (c) If the Director determines that an application under Subsection (a) of
20 this Section contains the required information, is satisfied that the information is
21 correct, and determines that all payments required to be made to the Director by
22 Subsection (b) of this Section have been made, the Director shall:

23 (1) cancel the statement of administrative dissolution and prepare a
24 statement of reinstatement that states the determination and the
25 effective date of reinstatement; and

26 (2) file the statement of reinstatement and serve a copy on the
27 limited cooperative association.

1 (d) When reinstatement under this Section is effective the following rules
2 apply:

3 (1) The restatement relates back to and takes effect as of the
4 effective date of the administrative dissolution.

5 (2) The limited cooperative association resumes carrying on its
6 activities and affairs as if the administrative dissolution had not
7 occurred.

8 (3) The rights of a person arising out of an act or omission in
9 reliance on the dissolution before the person knew or had notice
10 of the reinstatement are not affected.

11 **§ 171216. Judicial Review of Denial of Reinstatement.**

12 (a) If the Director of Revenue and Taxation denies a limited liability
13 cooperative association's application for reinstatement following administrative
14 dissolution, the Director shall serve the association with a notice in a record that
15 explains the reasons for the denial.

16 (b) A limited cooperative association may seek judicial review of denial of
17 reinstatement in the Superior Court of Guam not later than thirty (30) calendar days
18 after service of the notice of denial.

19 **ARTICLE 13**

20 **ACTIONS BY MEMBERS**

21 §171301. Direct Action by Member.

22 §171302. Derivative Action.

23 §171303. Proper Plaintiff.

24 §171304. Pleading.

25 §171305. Approval for Discontinuance or Settlement.

26 §171306. Proceeds and Expenses.

27 §171307. Special Litigation Committee.

1
2 **§ 171301. Direct Action by Member.**

3 (a) Subject to Subsection (b) of this Section, a member may maintain a
4 direct action against another member, director, or the limited cooperative
5 association to enforce the member's rights and protect the member's interests,
6 including rights and interests under the organic rules or this Act or arising
7 independently of the membership relationship.

8 (b) A member maintaining a direct action under this Section must plead
9 and prove an actual or threatened injury that is not solely the result of an injury
10 suffered or threatened to be suffered by the limited cooperative association.

11 **§ 171302. Derivative Action.**

12 (a) A member may maintain a derivative action to enforce a right of a
13 limited cooperative association if:

14 (1) the member first makes a demand on the directors requesting
15 that they cause the association to bring an action to enforce the
16 right and the directors do not bring the action within a
17 reasonable time; or

18 (2) a demand under paragraph (1) of this Section would be futile.

19 **§ 171303. Proper Plaintiff.**

20 (a) A derivative action to enforce a right of a limited cooperative
21 association may be maintained only by a person that is a member at the time the
22 action is commenced and:

23 (1) was a member when the conduct giving rise to the action
24 occurred; or

25 (2) whose status as a member devolved on the person by operation
26 of law or pursuant to the terms of the organic rules from a person that was a
27 member at the time of the conduct.

1 **§ 171304. Pleading.**

2 (a) In a derivative action to enforce a right of a limited cooperative
3 association, the complaint must state with particularity:

4 (1) the date and content of plaintiff’s demand and the response to
5 the demand by the directors; or

6 (2) why demand should be excused as futile.

7 **§ 171305. Approval for Discontinuance or Settlement.**

8 A derivative action on behalf of a limited cooperative association may not be
9 voluntarily dismissed or settled without the court’s approval.

10 **§ 171306. Proceeds and Expenses.**

11 (a) Except as otherwise provided in Subsection (b) of this Section:

12 (1) any proceeds or other benefits of a derivative action, whether by
13 judgment, compromise, or settlement, belong to the limited
14 cooperative association and not to the plaintiff; and

15 (2) if the plaintiff receives any proceeds, the plaintiff shall remit
16 them immediately to the association.

17 (b) If a derivative action is successful in whole or in part, the court may
18 award the plaintiff reasonable expenses, including reasonable attorney’s fees and
19 costs, from the recovery of the limited cooperative association.

20 **§ 171307. Special Litigation Committee.**

21 (a) If a limited cooperative association is named as or made a party in a
22 derivative proceeding, the association may appoint a special litigation committee to
23 investigate the claims asserted in the proceeding and determine whether pursuing
24 the action is in the best interests of the company. If the association appoints a
25 special litigation committee, on motion by the committee made in the name of the
26 association, except for good cause shown, the court shall stay discovery for the time
27 reasonably necessary to permit the committee to make its investigation. This

1 Subsection does not prevent the court from:

2 (1) enforcing a person’s right to information under Section 17505;

3 or

4 (2) granting extraordinary relief in the form of a temporary
5 restraining order or preliminary injunction.

6 (b) A special litigation committee must be composed of one (1) or more
7 disinterested and independent individuals, who *may* be members.

8 (c) A special litigation committee *may* be appointed:

9 (1) by a majority of the directors not named as parties in the
10 proceeding; or

11 (2) if all directors are named as parties in the proceeding, by a
12 majority of the directors named as defendants.

13 (d) After appropriate investigation, a special litigation committee *may*
14 determine that it is in the best interests of the limited cooperative association that
15 the proceeding:

16 (1) continue under the control of the plaintiff;

17 (2) continue under the control of the committee;

18 (3) be settled on terms approved by the committee; or

19 (4) be dismissed.

20 (e) After making a determination under Subsection (d) of this Section, a
21 special litigation committee *shall* file with the court a statement of its determination
22 and its report supporting its determination and *shall* serve each party with a copy of
23 the determination and report. The court *shall* determine whether the members of the
24 committee were disinterested and independent and whether the committee
25 conducted its investigation and made its recommendation in good faith,
26 independently, and with reasonable care, with the committee having the burden of
27 proof. If the court finds that the members of the committee were disinterested and

1 independent and that the committee acted in good faith, independently, and with
2 reasonable care, the court shall enforce the determination of the committee.
3 Otherwise, the court shall dissolve the stay of discovery entered under Subsection
4 (a) of this Section and allow the action to continue under the control of the plaintiff.

5 **ARTICLE 14**

6 **DISPOSITION OF ASSETS**

7 §171401. Disposition of Asset Not Requiring Member Approval.

8 §171402. Member Approval of Other Disposition of Assets.

9 §171403. Notice and Action by Board of Directors on Disposition of
10 Assets Requiring Member Approval.

11 §171404. Member Action on Disposition of Assets.

12

13 **§ 171401. Disposition of Assets not Requiring Member Approval.**

14 (a) Unless the articles of organization otherwise provide, member
15 approval under Section 171402 is not required for a limited cooperative association
16 to:

17 (1) sell, lease, exchange, license, or otherwise dispose of all or any
18 part of the assets of the association in the usual and regular
19 course of business; or

20 (2) mortgage, pledge, dedicate to the repayment of indebtedness, or
21 encumber in any way all or any part of the assets of the
22 association whether or not in the usual and regular course of
23 business.

24 **§ 171402. Member Approval of Other Disposition of Assets.**

25 A sale, lease, exchange, license, or other disposition of assets of a limited
26 cooperative association, other than a disposition described in Section 171401,
27 requires approval of the association's members under Sections 171403 and 171404

1 if the disposition leaves the association without significant continuing business
2 activity.

3 **§ 171403. Notice and Action by Board of Directors on Disposition of**
4 **Assets Requiring Member Approval.**

5 (a) For a limited cooperative association to dispose of assets under Section
6 171402:

7 (1) a majority of the board of directors, or a greater percentage if
8 required by the organic rules, must approve the proposed
9 disposition; and

10 (2) the board of directors must call a members meeting to consider
11 the proposed disposition, hold the meeting *not later than ninety*
12 (90) calendar days after approval of the proposed disposition by
13 the board, and mail or otherwise transmit or deliver in a record
14 to each member:

15 (A) the terms of the proposed disposition;

16 (B) a recommendation that the members approve the
17 disposition, or if the board determines that because of
18 conflict of interest or other special circumstances it should
19 not make a favorable recommendation, the basis for that
20 determination;

21 (C) a statement of any condition of the board's submission of
22 the proposed disposition to the members; and

23 (D) notice of the meeting at which the proposed disposition
24 will be considered, which must be given in the same manner as
25 notice of a special meeting of members.

26 **§ 171404. Member Action on Disposition of Assets.**

27 (a) Subject to Subsection (b) of this Section, a disposition of assets under

1 Section 171402 must be approved by:

- 2 (1) at least two-thirds of the voting power of members present at a
3 members meeting called under Section 171403(2); and
4 (2) if the limited cooperative association has investor members, at
5 least a majority of the votes cast by patron members, unless the
6 organic rules require a greater percentage vote by patron
7 members.

8 (b) The organic rules may require that the percentage of votes under
9 Subsection (a)(1) of this Section is:

- 10 (1) a different percentage that is not less than a majority of members
11 voting at the meeting;
12 (2) measured against the voting power of all members; or
13 (3) a combination of Paragraphs (1) and (2) of this Subsection.

14 (c) Subject to any contractual obligations, after a disposition of assets is
15 approved and at any time before the consummation of the disposition, a limited
16 cooperative association may approve an amendment to the contract for disposition
17 or the resolution authorizing the disposition or approve abandonment of the
18 disposition:

- 19 (1) as provided in the contract or the resolution; and
20 (2) except as prohibited by the resolution, with the same affirmative
21 vote of the board of directors and of the members as was
22 required to approve the disposition.

23 (d) The voting requirements for districts, classes, or voting groups under
24 Section 17404 apply to approval of a disposition of assets under this Article.

25 **ARTICLE 15**

26 **FOREIGN COOPERATIVES**

27 §171501. Governing Law

1 §171502. Registration to do Business in Guam.

2 §171503. Foreign Registration Statement.

3 §171504. Amendment of Foreign Registration Statement.

4 §171505. Activities not Constituting Doing Business.

5 §171506. Noncomplying Name of Foreign Cooperative

6 §171507. Withdrawal of Registration of Registered Foreign Cooperative.

7 §171508. Withdrawal Deemed on Conversion to Domestic Filing Entity or
8 Domestic Limited Liability Partnership.

9 §171509. Withdrawal on Dissolution or Conversion to Non-Filing Entity
10 other than Limited Liability Partnership.

11 §171510. Transfer of Registration.

12 §171511. Termination of Registration.

13 §171512. Action by Attorney General.

14
15 **§ 171501. Governing Law.**

16 (a) The law of the jurisdiction of formation of a foreign cooperative
17 governs:

18 (1) the internal affairs of the cooperative; and

19 (2) the liability that a person has as a member or director for a debt,
20 obligation, or liability of the cooperative.

21 (b) A foreign cooperative is not precluded from registering to do business
22 in Guam because of any difference between the law of its jurisdiction of formation
23 and the law of Guam.

24 (c) Registration of a foreign cooperative to do business in Guam does not
25 authorize the foreign cooperative to engage in any activities and affairs or exercise
26 any power that a limited cooperative association may not engage in or exercise in
27 Guam.

1 **§ 171502. Registration to do Business in Guam.**

2 (a) A foreign cooperative may not do business in Guam until it registers
3 with the Director of Department of Revenue and Taxation under this Article. A
4 foreign cooperative shall not transact business in Guam until it obtains both a
5 business license and a certificate of authority to do so from the Director.

6 (b) A foreign cooperative doing business in Guam may not maintain an
7 action or proceeding in Guam unless it is registered to do business in Guam.

8 (c) The failure of a foreign cooperative to register to do business in Guam
9 does not impair the validity of a contract or act of the foreign cooperative or
10 preclude it from defending an action or proceeding in Guam.

11 (d) A limitation on the liability of a member or director of a foreign
12 cooperative is not waived solely because the foreign cooperative does business in
13 Guam without registering to do business in Guam.

14 (e) Subsections 171501(a) and (b) apply even if a foreign cooperative fails
15 to register under this Article.

16 **§ 171503. Foreign Registration Statement.**

17 (a) To register to do business in Guam, a foreign cooperative must deliver
18 a foreign registration statement to the Director of Revenue and Taxation for filing.
19 The statement must state:

20 (1) the name of the cooperative and, if the name does not comply
21 with Section 17115, an alternate name adopted pursuant to
22 Section 171506;

23 (2) that the cooperative is a foreign cooperative;

24 (3) the cooperative's jurisdiction of formation;

25 (4) the street and mailing addresses of the cooperative's principal
26 office and, if the law of the cooperative's jurisdiction of
27 formation requires the cooperative to maintain an office in that

1 jurisdiction, the street and mailing addresses of the required
2 office; and

- 3 (5) the name and street and mailing addresses of the cooperative's
4 registered agent in Guam.

5 **§ 171504. Amendment of Foreign Registration Statement.**

6 (a) A registered foreign cooperative shall deliver to the Director of
7 Revenue and Taxation for filing an amendment to its foreign registration statement
8 if there is a change in:

- 9 (1) the name of the cooperative;
10 (2) the cooperative's jurisdiction of formation;
11 (3) an address required by Section 171503(4); or
12 (4) the information required by Section 171503(5).

13 **§ 171505. Activities not Constituting Doing Business.**

14 (a) activities of a foreign cooperative which do not constitute doing
15 business in Guam under this Article include:

- 16 (1) maintaining, defending, mediating, arbitrating, or settling an
17 action or proceeding;
18 (2) carrying on any activity concerning its internal affairs, including
19 holding meetings of its members or directors;
20 (3) maintaining accounts in financial institutions;
21 (4) maintaining offices or agencies for the transfer, exchange, and
22 registration of securities of the cooperative or maintaining
23 trustees or depositories with respect to those securities;
24 (5) selling through independent contractors;
25 (6) soliciting or obtaining orders by any means if the orders require
26 acceptance outside Guam before they become contracts;
27 (7) creating or acquiring indebtedness, mortgages, or security

1 interests in property;

2 (8) securing or collecting debts or enforcing mortgages or security
3 interests in property securing the debts, and holding, protecting,
4 or maintaining property;

5 (9) conducting an isolated transaction that is not in the course of
6 similar transactions;

7 (10) owning, without more, property; and

8 (11) doing business in interstate commerce.

9 (b) A person does not do business in Guam solely by being a member or
10 director of a foreign cooperative that does business in Guam.

11 (c) This Section does not apply in determining the contacts or activities
12 that may subject a foreign cooperative to service of process, taxation, or regulation
13 under laws of Guam other than this Act.

14 **§ 171506. Noncomplying Name of Foreign Cooperative.**

15 (a) A foreign cooperative whose name does not comply with Section
16 17113 may not register to do business in Guam until it adopts, for the purpose of
17 doing business in Guam, an alternate name that complies with Section 17117. A
18 cooperative that registers under an alternate name under this Subsection need not
19 comply with 18 GCA § 26101. After registering to do business in Guam with an
20 alternate name, a cooperative shall do business in Guam under:

21 (1) the alternate name;

22 (2) the cooperative's name, with the addition of its jurisdiction of
23 formation; or

24 (3) a name the cooperative is authorized to use under 18 GCA §
25 26101.

26 (b) If a registered foreign cooperative changes its name to one that does
27 not comply with Section 17113, it may not do business in Guam until it complies

1 with Subsection (a) of this Section by amending its registration to adopt an alternate
2 name that complies with Section 17117.

3 **§ 171507. Withdrawal of Registration of Registered Foreign**
4 **Cooperative.**

5 (a) A registered foreign cooperative may withdraw its registration by
6 delivering a statement of withdrawal to the Director of Department of Revenue and
7 Taxation for filing. The statement of withdrawal must state:

- 8 (1) the name of the cooperative and its jurisdiction of formation;
9 (2) that the cooperative is not doing business in Guam and that it
10 withdraws its registration to do business in Guam;
11 (3) that the cooperative revokes the authority of its registered agent
12 to accept service on its behalf in Guam; and
13 (4) an address to which service of process may be made under
14 subsection (b).

15 (b) After the withdrawal of the registration of a foreign cooperative,
16 service of process in any action or proceeding based on a cause of action arising
17 during the time the cooperative was registered to do business in Guam may be made
18 pursuant to Section 17122.

19 **§ 171508. Withdrawal Deemed on Conversion to Domestic Filing**
20 **Entity or Domestic Limited Liability Partnership.**

21 A registered foreign cooperative that converts to a domestic limited liability
22 partnership or to a domestic entity whose formation requires delivery of a record to
23 the Director of Revenue and Taxation for filing is deemed to have withdrawn its
24 registration on the effective date of the conversion.

25 **§ 171509. Withdrawal on Dissolution or Conversion to Non-filing**
26 **Entity other than Limited Liability Partnership.**

27 (a) A registered foreign cooperative that has dissolved and completed

1 winding up or has converted to a domestic or foreign entity whose formation does
2 not require the public filing of a record, other than a limited liability partnership,
3 shall deliver a statement of withdrawal to the Director for filing. The statement
4 must be signed by the dissolved or converted foreign cooperative and state:

5 (1) in the case of a cooperative that has completed winding up:

6 (A) its name and jurisdiction of formation; and

7 (B) that the cooperative surrenders its registration to do
8 business in Guam; and

9 (2) in the case of a cooperative that has converted:

10 (A) the name of the converting cooperative and its jurisdiction
11 of formation;

12 (B) the type of entity to which the cooperative has converted
13 and its jurisdiction of formation;

14 (C) that the converted entity surrenders the converting
15 cooperative's registration to do business in Guam and
16 revokes the authority of the converting cooperative's
17 registered agent to act as registered agent in Guam on
18 behalf of the cooperative or the converted entity; and

19 (D) a mailing address to which service of process may be
20 made under Subsection (b).

21 (b) After a withdrawal under this Section is effective, service of process in
22 any action or proceeding based on a cause of action arising during the time the
23 foreign cooperative was registered to do business in Guam may be made pursuant to
24 Section 17122.

25 **§ 171510. Transfer of Registration.**

26 (a) When a registered foreign cooperative has merged into a foreign entity
27 that does not have a certificate of authority to transact business and is not licensed

1 to do business in Guam, the foreign entity shall deliver to the Director of Revenue
2 and Taxation for filing an application for transfer of registration. The application
3 must state:

- 4 (1) the name of the registered foreign cooperative before the merger
5 or conversion;
- 6 (2) that before the merger or conversion the registration pertained to
7 a foreign cooperative;
- 8 (3) the name of the applicant foreign entity into which the foreign
9 cooperative has merged or to which it has been converted and, if
10 the name does not comply with Section 17117, an alternate
11 name adopted pursuant to Section 171506;
- 12 (4) the type of entity of the applicant foreign entity and its
13 jurisdiction of formation;
- 14 (5) the street and mailing addresses of the principal office of the
15 applicant foreign entity and, if the law of the entity's jurisdiction
16 of formation requires the entity to maintain an office in that
17 jurisdiction, the street and mailing addresses of that office; and
- 18 (6) the name and street and mailing addresses of the foreign entity's
19 registered agent in Guam.

20 (b) When an application for transfer of registration takes effect, the
21 registration of the foreign cooperative to do business in Guam is transferred without
22 interruption to the foreign entity into which the cooperative has merged or to which
23 it has been converted.

24 **§ 171511. Termination of Registration.**

- 25 (a) The Director may terminate the registration of a registered foreign
26 cooperative in the manner provided in Subsections (b) and (c) if the
27 cooperative does not:

- 1 (1) pay, not later than sixty (60) calendar days after the due date,
2 any fee, tax, interest, or penalty required to be paid to the
3 Director under this Act or law other than this Act;
- 4 (2) deliver to the Director for filing, not later than sixty (60)
5 calendar days after the due date, an annual report required under
6 Section 17210;
- 7 (3) have a registered agent as required by Section 17118; or
- 8 (4) deliver to the Director for filing a statement of change under
9 Section 17119 not later than thirty (30) calendar days after a
10 change has occurred in the name or address of the registered
11 agent.

12 (b) The Director may terminate the registration of a registered foreign
13 cooperative by:

- 14 (1) filing a notice of termination or noting the termination in the
15 records of the Department of Revenue and Taxation; and
- 16 (2) delivering a copy of the notice or the information in the notation
17 to the cooperative's registered agent or, if the cooperative does
18 not have a registered agent, to the foreign cooperative's
19 principal office.

20 (c) The notice must state or the information in the notation must include:

- 21 (1) the effective date of the termination, which must be at least sixty
22 (60) calendar days after the date the Director delivers the copy;
23 and
- 24 (2) the grounds for termination under Subsection (a).

25 (d) The authority of a registered foreign cooperative to do business in
26 Guam ceases on the effective date of the notice of termination or notation under
27 Subsection (b), unless before that date the foreign cooperative cures each ground

1 for termination stated in the notice or notation. If the foreign cooperative cures each
2 ground, the Director shall file a record so stating.

3 **§ 171512. Action by Attorney General.**

4 The Attorney General of Guam may maintain an action to enjoin a foreign
5 cooperative from doing business in Guam in violation of this Article.

6 **ARTICLE 16**

7 **MERGER, INTEREST EXCHANGE, CONVERSION**

8 **AND DOMESTICATION**

9 **PART 1**

10 **GENERAL PROVISIONS**

11 §171601. Definitions.

12 §171602. Relationship of Article to Other Laws.

13 §171603. Required Notice or Approval.

14 §171604. Nonexclusively.

15 §171605. Appraisal Rights.

16
17 **§ 171601. Definitions.**

18 In this Article:

19 (a) 'Acquired entity' means the entity, all of one (1) or more classes or
20 series of interests of which are acquired in an interest exchange.

21 (b) 'Acquiring entity' means the entity that acquires all of one (1) or more
22 classes or series of interests of the acquired entity in an interest exchange.

23 (c) 'Conversion' means a transaction authorized by Part 4.

24 (d) 'Converted Entity' means the converting entity as it continues in
25 existence after a conversion.

26 (e) 'Converting Entity' means the domestic entity that approves a plan of
27 conversion pursuant to Section 171643 or the foreign entity that approves a

1 conversion pursuant to the law of its jurisdiction of formation.

2 (f) 'Distributional Interest' means the right under an unincorporated
3 entity's organic law and organic rules to receive distributions from the entity.

4 (g) 'Domestic' with respect to an entity, means governed as to its internal
5 affairs by the law of Guam.

6 (h) 'Domesticated Limited Cooperative Association' means the
7 domesticating limited cooperative association as it continues in existence after a
8 domestication.

9 (i) 'Domesticating Limited Cooperative Association' means the domestic
10 limited cooperative association that approves a plan of domestication pursuant to
11 Section 171653 or the foreign limited cooperative association that approves a
12 domestication pursuant to the law of its jurisdiction of formation.

13 (j) 'Domestication' means a transaction authorized by Part 5.

14 (k) 'Entity' means :

15 (1) a business corporation;

16 (2) a nonprofit corporation;

17 (3) a general partnership, including a limited liability partnership;

18 (4) a limited partnership, including a limited liability limited
19 partnership;

20 (5) a limited liability company;

21 (6) a nonprofit cooperative association;

22 (7) a limited cooperative association;

23 (8) an unincorporated nonprofit association;

24 (9) a statutory trust, business trust, or common-law business trust;

25 or

26 (10) any other person that has:

27 (A) a legal existence separate from any interest holder of that

1 person; or

2 (B) the power to acquire an interest in real property in its own
3 name; and

4 (11) does not include:

5 (A) an individual;

6 (B) a trust with a predominantly donative purpose or
7 charitable trust;

8 (C) an association or relationship that is not an entity listed in
9 Subparagraph (A) and is not a partnership under Division
10 1 of Part 4, Title 18 Guam Code Annotated, or a similar
11 provision of the law of another jurisdiction;

12 (D) a decedent's estate; or

13 (E) a government or a governmental subdivision, agency, or
14 instrumentality.

15 (l) 'Filing Entity' means an entity whose formation requires the filing of a
16 public organic record. The term does not include a limited liability partnership.

17 (m) 'Foreign', with respect to an entity, means an entity governed as to its
18 internal affairs by the law of a jurisdiction other than Guam.

19 (n) 'Governance Interest' means a right under the organic law or organic
20 rules of an unincorporated entity, other than as a governor, agent, assignee, or
21 proxy, to:

22 (1) receive or demand access to information concerning, or the
23 books and records of, the entity;

24 (2) vote for or consent to the election of the governors of the entity;
25 or

26 (3) receive notice of or vote on or consent to an issue involving the
27 internal affairs of the entity.

1 (o) 'Governor' means:

- 2 (1) a director of a business corporation;
3 (2) a director or trustee of a nonprofit corporation;
4 (3) a general partner of a general partnership;
5 (4) a general partner of a limited partnership;
6 (5) a manager of a manager-managed limited liability company;
7 (6) a member of a member-managed limited liability company;
8 (7) a director of a nonprofit cooperative association;
9 (8) a director of a limited cooperative association;
10 (9) a manager of an unincorporated nonprofit association;
11 (10) a trustee of a statutory trust, business trust, or common-law
12 business trust; or
13 (11) any other person under whose authority the powers of an entity
14 are exercised and under whose direction the activities and affairs of the entity
15 are managed pursuant to the organic law and organic rules of the entity.

16 (p) 'Interest' means:

- 17 (1) a share in a business corporation;
18 (2) a membership in a nonprofit corporation;
19 (3) a partnership interest in a general partnership;
20 (4) a partnership interest in a limited partnership;
21 (5) a membership interest in a limited liability company;
22 (6) a share in a nonprofit cooperative association;
23 (7) a member's interest in a limited cooperative association;
24 (8) a membership in an unincorporated nonprofit association;
25 (9) a beneficial interest in a statutory trust, business trust, or
26 common-law business trust; or
27 (10) a governance interest or distributional interest in any other type

1 of unincorporated entity.

2 (q) 'Interest exchange' means a transaction authorized by Part 3.

3 (r) 'Interest holder' means:

4 (1) a shareholder of a business corporation;

5 (2) a member of a nonprofit corporation;

6 (3) a general partner of a general partnership; a general partner of a
7 limited partnership;

8 (4) a limited partner of a limited partnership;

9 (5) a member of a limited liability company;

10 (6) a shareholder of a nonprofit cooperative association;

11 (7) a member of a limited cooperative association;

12 (8) a member of an unincorporated nonprofit association;

13 (9) a beneficiary or beneficial owner of a statutory trust, business
14 trust, or common-law business trust; or

15 (10) any other direct holder of an interest.

16 (s) 'Interest Holder Liability' means:

17 (1) personal liability for a liability of an entity which is imposed on
18 a person:

19 (A) solely by reason of the status of the person as an interest
20 holder; or

21 (B) by the organic rules of the entity which make one (1) or
22 more specified interest holders or categories of interest
23 holders liable in their capacity as interest holders for all or
24 specified liabilities of the entity; or

25 (2) an obligation of an interest holder under the organic rules of an
26 entity to contribute to the entity.

27 (t) 'Merger' means a transaction authorized by Part 2.

1 (u) 'Merging Entity' means an entity that is a party to a merger and exists
2 immediately before the merger becomes effective.

3 (v) 'Organic Law' means the law of an entity's jurisdiction of formation
4 governing the internal affairs of the entity.

5 (w) 'Organic Rules' means the public organic record and private organic
6 rules of an entity.

7 (x) 'Plan' means a plan of merger, plan of interest exchange, plan of
8 conversion, or plan of domestication.

9 (y) 'Plan of Conversion' means a plan under Section 171642.

10 (z) 'Plan of Domestication' means a plan under Section 171652.

11 (aa) 'Plan of Interest Exchange' means a plan under Section 171632.

12 (bb) 'Plan of Merger' means a plan under Section 171622.

13 (cc) 'Private Organic Rules' means the rules, whether or not in a record,
14 that govern the internal affairs of an entity, are binding on all its interest holders,
15 and are not part of its public organic record, if any. The term includes:

16 (1) the bylaws of a business corporation;

17 (2) the bylaws of a nonprofit corporation;

18 (3) the partnership agreement of a general partnership;

19 (4) the partnership agreement of a limited partnership;

20 (5) the operating agreement of a limited liability company;

21 (6) the bylaws of a nonprofit cooperative association;

22 (7) the bylaws of a limited cooperative association;

23 (8) the governing principles of an unincorporated nonprofit
24 association; and

25 (9) the trust instrument of a statutory trust or similar rules of a
26 business trust or common-law business trust.

27 (dd) 'Protected Agreement' means:

- 1 (1) a record evidencing indebtedness and any related agreement in
2 effect on the effective date of this Act;
- 3 (2) an agreement that is binding on an entity on the effective date of
4 this Act;
- 5 (3) the organic rules of an entity in effect on the effective date of
6 this Act; or
- 7 (4) an agreement that is binding on any of the governors or interest
8 holders of an entity on the effective date of this Act.

9 (ee) 'Public Organic Record' means the record the filing of which by the
10 Director is required to form an entity and any amendment to or restatement
11 of that record. The term includes:

- 12 (1) the articles of incorporation of a business corporation;
- 13 (2) the articles of incorporation of a nonprofit corporation;
- 14 (3) the certificate of limited partnership of a limited partnership;
- 15 (4) the certificate of organization of a limited liability company;
- 16 (5) the articles of incorporation of a nonprofit cooperative
17 association;
- 18 (6) the articles of organization of a limited cooperative association;
19 and
- 20 (7) the certificate of trust of a statutory trust or similar record of a
21 business trust.

22 (ff) 'Registered Foreign Entity' means a foreign entity that is registered to
23 do business in Guam pursuant to a record filed by the Director.

24 (gg) 'Statement of Conversion' means a statement under Section 171645.

25 (hh) 'Statement of Domestication' means a statement under Section 171655.

26 (ii) 'Statement of Interest Exchange' means a statement under Section
27 171635.

1 (jj) 'Statement of Merger' means a statement under Section 171625.

2 (kk) 'Surviving Entity' means the entity that continues in existence after or
3 is created by a merger.

4 (ll) 'Type of Entity' means a generic form of entity:

5 (1) recognized at common law; or

6 (2) formed under an organic law, whether or not some entities
7 formed under that organic law are subject to provisions of that
8 law that create different categories of the form of entity.

9 **§ 171602. Relationship of Article to other laws.**

10 (a) This Article does not authorize an act prohibited by, and does not
11 affect the application or requirements of law other than this Article.

12 (b) A transaction effected under this Article may not create or impair a
13 right, duty, or obligation of a person under the statutory law of Guam relating to a
14 change in control, takeover, business combination, control-share acquisition, or
15 similar transaction involving a domestic merging, acquired, converting, or
16 domesticating business corporation unless:

17 (1) if the corporation does not survive the transaction, the
18 transaction satisfies any requirements of the law; or

19 (2) if the corporation survives the transaction, the approval of the
20 plan is by a vote of the shareholders or directors which would be
21 sufficient to create or impair the right, duty, or obligation
22 directly under law.

23 **§ 171603. Required Notice or Approval.**

24 (a) A domestic or foreign entity that is required to give notice to, or obtain
25 the approval of, a governmental agency or officer of Guam to be a party to a merger
26 must give the notice or obtain the approval to be a party to an interest exchange,
27 conversion, or domestication.

1 (b) Property held for a charitable purpose under the law of Guam by a
2 domestic or foreign entity immediately before a transaction under this Article
3 becomes effective may not, as a result of the transaction, be diverted from the
4 objects for which it was donated, granted, devised, or otherwise transferred unless,
5 to the extent required by or pursuant to the law of Guam concerning *cy pres* or other
6 law dealing with nondiversion of charitable assets, the entity obtains an appropriate
7 order of the Superior Court of Guam specifying the disposition of the property.

8 (c) A bequest, devise, gift, grant, or promise contained in a will or other
9 instrument of donation, subscription, or conveyance which:

10 (1) is made to a merging entity that is not the surviving entity; and

11 (2) takes effect or remains payable after the merger inures to the
12 surviving entity.

13 (d) A trust obligation that would govern property if transferred to a
14 nonsurviving entity applies to property that is transferred to the surviving entity
15 under this Section.

16 **§ 171604. Nonexclusively.**

17 The fact that a transaction under this Article produces a certain result does
18 not preclude the same result from being accomplished in any other manner
19 permitted by law other than this Article.

20 **§ 171605. Reference to External Facts.**

21 A plan may refer to facts ascertainable outside the plan if the manner in
22 which the facts will operate upon the plan is specified in the plan. The facts may
23 include the occurrence of an event or a determination or action by a person, whether
24 or not the event, determination, or action is within the control of a party to the
25 transaction.

26 **§ 171606. Appraisal Rights.**

27 An interest holder of a domestic merging, acquired, converting, or

1 domesticating limited cooperative association is entitled to contractual appraisal
2 rights in connection with a transaction under this Article to the extent provided in
3 the entity’s organic rules or the plan.

4 **PART 2**
5 **MERGER**

6
7 §171621. Merger Authorized.

8 §171622. Plan of Merger.

9 §171623. Approval of Merger.

10 §171624. Amendment or Abandonment of Plan of Merger.

11 §171625. Statement of Merger; Effective Date of Merger.

12 §171626. Effect of Merger.

13
14 **§ 171621. Merger Authorized.**

15 (a) By complying with this Part:

16 (1) one (1) or more domestic limited cooperative associations may
17 merge with one (1) or more domestic or foreign entities into a
18 domestic or foreign surviving entity;

19 (2) two (2) or more foreign entities may merge into a domestic
20 limited cooperative association; and

21 (3) two (2) or more domestic entities may merge into a domestic
22 limited cooperative.

23 (b) By complying with the provisions of this Part applicable to foreign
24 entities a foreign entity may be a party to a merger under this Part or may be the
25 surviving entity in such a merger if the merger is authorized by the law of the
26 foreign entity’s jurisdiction of formation.

27 **§ 171622. Plan of Merger.**

1 (a) A domestic limited cooperative association may become a party to a
2 merger under this Part by approving a plan of merger. The plan must be in a record
3 and contain:

4 (1) as to each merging entity, its name, jurisdiction of formation,
5 and type of entity;

6 (2) if the surviving entity is to be created in the merger, a statement
7 to that effect and its name, jurisdiction of formation, and type of
8 entity;

9 (3) the manner of converting the interests in each party to the
10 merger into interests, securities, obligations, money, other
11 property, rights to acquire interests or securities, or any
12 combination of the foregoing;

13 (4) if the surviving entity exists before the merger, any proposed
14 amendments to:

15 (A) its public organic record, if any; and

16 (B) its private organic rules that are, or are proposed to be, in
17 a record;

18 (5) if the surviving entity is to be created in the merger:

19 (A) its proposed public organic record, if any; and

20 (B) the full text of its private organic rules that are proposed
21 to be in a record;

22 (6) the other terms and conditions of the merger; and

23 (7) any other provision required by the law of a merging entity's
24 jurisdiction of formation or the organic rules of a merging entity.

25 (b) In addition to the requirements of Subsection (a) of this Section, a
26 plan of merger may contain any other provision not prohibited by law.

27 **§ 171623. Approval of Merger.**

1 (a) A plan of merger is not effective unless it has been approved by a
2 domestic merging limited cooperative association as provided in Section 17518.

3 (b) A merger involving a domestic merging entity that is not a limited
4 cooperative association is not effective unless the merger is approved by that entity
5 in accordance with its organic law.

6 (c) A merger involving a foreign merging entity is not effective unless the
7 merger is approved by the foreign entity in accordance with the law of the foreign
8 entity's jurisdiction of formation.

9 **§ 171624. Amendment or Abandonment of Plan of Merger.**

10 (a) A plan of merger *may* be amended only with the consent of each party
11 to the plan except as otherwise provided in the plan.

12 (b) A domestic merging limited cooperative association *may* approve an
13 amendment to a plan of merger:

14 (1) in the same manner as the plan was approved, if the plan does
15 not provide for the manner in which it *may* be amended; or

16 (2) by its directors or members in the manner provided in the plan,
17 but a member that was entitled to vote on or consent to approval
18 of the merger is entitled to vote on or consent to any amendment
19 of the plan that will change:

20 (A) the amount or kind of interests, securities, obligations,
21 money, other property, rights to acquire interests or
22 securities, or any combination of the foregoing, to be
23 received by the members of any party to the plan;

24 (B) the public organic record, if any, or private organic rules
25 of the surviving entity that will be in effect immediately
26 after the merger becomes effective, except for changes
27 that do not require approval of the interest holders of the

1 surviving entity under its organic law or organic rules; or

2 (C) any other terms or conditions of the plan, if the change
3 would adversely affect the member in any material
4 respect.

5 (c) After a plan of merger has been approved and before a statement of
6 merger becomes effective, the plan may be abandoned as provided in the plan.
7 Unless prohibited by the plan, a domestic merging limited cooperative association
8 may abandon the plan in the same manner as the plan was approved.

9 (d) If a plan of merger is abandoned after a statement of merger has been
10 delivered to the Director for filing and before the statement becomes effective, a
11 statement of abandonment, signed by a party to the plan, must be delivered to the
12 Director for filing before the statement of merger becomes effective. The statement
13 of abandonment takes effect on filing, and the merger is abandoned and does not
14 become effective. The statement of abandonment must contain:

15 (1) the name of each party to the plan of merger;

16 (2) the date on which the statement of merger was filed by the
17 Director; and

18 (3) a statement that the merger has been abandoned in accordance
19 with this Section.

20 **§ 171625. Statement of Merger; Effective Date of Merger.**

21 (a) A statement of merger must be signed by each merging entity and
22 delivered to the Director for filing.

23 (b) A statement of merger must contain:

24 (1) the name, jurisdiction of formation, and type of entity of each
25 merging entity that is not the surviving entity;

26 (2) the name, jurisdiction of formation, and type of entity of the
27 surviving entity;

- 1 (3) a statement that the merger was approved by each domestic
2 merging entity, if any, in accordance with this Part and by each
3 foreign merging entity, if any, in accordance with the law of its
4 jurisdiction of formation;
- 5 (4) if the surviving entity exists before the merger and is a domestic
6 filing entity, any amendment to its public organic record
7 approved as part of the plan of merger;
- 8 (5) if the surviving entity is created by the merger and is a domestic
9 filing entity, its public organic record, as an attachment;
- 10 (6) if the surviving entity is created by the merger and is a domestic
11 limited liability partnership, its statement of qualification, as an
12 attachment; and
- 13 (7) if the surviving entity is a foreign entity that is not a registered
14 foreign entity, a mailing address to which the Director may send
15 any process served on the Director pursuant to Section
16 171626(e).

17 (c) In addition to the requirements of Subsection (b) of this Section, a
18 statement of merger may contain any other provision not prohibited by law.

19 (d) If the surviving entity is a domestic entity, its public organic record, if
20 any, must satisfy the requirements of the law of Guam, except that the public
21 organic record does not need to be signed.

22 (e) A plan of merger that is signed by all the merging entities and meets
23 all the requirements of Subsection (b) of this Section may be delivered to the
24 Director for filing instead of a statement of merger and on filing has the same
25 effect. If a plan of merger is filed as provided in this Subsection, references in this
26 Article to a statement of merger refer to the plan of merger filed under this
27 Subsection.

1 (f) If the surviving entity is a domestic limited cooperative association, the
2 merger becomes effective when the statement of merger is effective. In all other
3 cases, the merger becomes effective on the later of:

- 4 (1) the date and provided by the organic law of the surviving entity;
5 or
6 (2) when the statement is effective.

7 **§ 171626. Effect of Merger.**

8 (a) When a merger becomes effective:

- 9 (1) the surviving entity continues or comes into existence;
10 (2) each merging entity that is not the surviving entity ceases to
11 exist;
12 (3) all property of each merging entity vests in the surviving entity
13 without transfer, reversion, or impairment;
14 (4) all debts, obligations, and other liabilities of each merging entity
15 are debts, obligations, and other liabilities of the surviving
16 entity;
17 (5) except as otherwise provided by law or the plan of merger, all
18 the rights, privileges, immunities, powers, and purposes of each
19 merging entity vest in the surviving entity;
20 (6) if the surviving entity exists before the merger:
21 (A) all its property continues to be vested in it without
22 transfer, reversion, or impairment;
23 (B) it remains subject to all its debts, obligations, and other
24 liabilities; and
25 (C) all its rights, privileges, immunities, powers, and purposes
26 continue to be vested in it;
27 (7) the name of the surviving entity may be substituted for the name

1 of any merging entity that is a party to any pending action or
2 proceeding;

3 (8) if the surviving entity exists before the merger:

4 (A) its public organic record, if any, is amended to the extent
5 provided in the statement of merger; and

6 (B) its private organic rules that are to be in a record, if any,
7 are amended to the extent provided in the plan of merger;

8 (9) if the surviving entity is created by the merger, its private
9 organic rules are effective; and:

10 (A) if it is a filing entity, its public organic record is effective;
11 and

12 (B) if it is a limited liability partnership, its statement of
13 qualification is effective; and

14 (10) the interests in each merging entity which are to be converted in
15 the merger are converted, and the interest holders of those
16 interests are entitled only to the rights provided to them under
17 the plan of merger and to any appraisal rights they have under
18 Section 171608 and the merging entity's organic law.

19 (b) Except as otherwise provided in the organic law or organic rules of a
20 merging entity, the merger does not give rise to any rights that an interest holder,
21 governor, or third party would have upon a dissolution, liquidation, or winding up
22 of the merging entity.

23 (c) When a merger becomes effective, a person that did not have interest
24 holder liability with respect to any of the merging entities and becomes subject to
25 interest holder liability with respect to a domestic entity as a result of the merger
26 has interest holder liability only to the extent provided by the organic law of that
27 entity and only for those debts, obligations, and other liabilities that are incurred

1 after the merger becomes effective.

2 (d) When a merger becomes effective, the interest holder liability of a
3 person that ceases to hold an interest in a domestic merging limited cooperative
4 association with respect to which the person had interest holder liability is subject
5 to the following rules:

6 (1) The merger does not discharge any interest holder liability under
7 this Act to the extent the interest holder liability was incurred
8 before the merger became effective.

9 (2) The person does not have interest holder liability under this Act
10 for any debt, obligation, or other liability that is incurred after
11 the merger becomes effective.

12 (3) This Act continues to apply to the release, collection, or
13 discharge of any interest holder liability preserved under
14 Paragraph (1) as if the merger had not occurred.

15 (4) The person has whatever rights of contribution from any other
16 person as are provided by this Act, law other than this Act, or
17 the organic rules of the domestic merging limited cooperative
18 association with respect to any interest holder liability preserved
19 under Paragraph (1) as if the merger had not occurred.

20 (e) When a merger becomes effective, a foreign entity that is the surviving
21 entity may be served with process in Guam for the collection and enforcement of
22 any debts, obligations, or other liabilities of a domestic merging limited cooperative
23 association as provided in Section 17122.

24 (f) When a merger becomes effective, the registration to do business in
25 Guam of any foreign merging entity that is not the surviving entity is canceled.

26 **PART 3**

27 **INTEREST EXCHANGE**

1
2 §171631. Interest Exchange Authorized.

3 §171632. Plan of Interest Exchange.

4 §171633. Approval of Interest Exchange.

5 §171634. Amendment or Abandonment of Plan of Interest Exchange.

6 §171635. Statement of Interest Exchange; Effective Date of Interest
7 Exchange.

8 §171636. Effect of Interest Exchange.

9
10 **§ 171631. Interest Exchange Authorized.**

11 (a) By complying with this Part:

12 (1) a domestic limited cooperative association may acquire all of
13 one (1) or more classes or series of interests of another domestic
14 entity or a foreign entity in exchange for interests, securities,
15 obligations, money, other property, rights to acquire interests or
16 securities, or any combination of the foregoing; or

17 (2) all of one (1) or more classes or series of interests of a domestic
18 limited cooperative association may be acquired by another
19 domestic entity or a foreign entity in exchange for interests,
20 securities, obligations, money, other property, rights to acquire
21 interests or securities, or any combination of the foregoing.

22 (b) By complying with the provisions of this Part applicable to foreign
23 entities, a foreign entity may be the acquiring or acquired entity in an interest
24 exchange under this Part if the interest exchange is authorized by the law of the
25 foreign entity's jurisdiction of formation.

26 (c) If a protected agreement contains a provision that applies to a merger
27 of a domestic limited cooperative association but does not refer to an interest

1 exchange, the provision applies to an interest exchange in which the domestic
2 limited cooperative association is the acquired entity as if the interest exchange
3 were a merger until the provision is amended.

4 **§ 171632. Plan of Interest Exchange.**

5 (a) A domestic limited cooperative association may be the acquired entity
6 in an interest exchange under this Part by approving a plan of interest exchange.

7 The plan must be in a record and contain:

- 8 (1) the name of the acquired entity;
9 (2) the name, jurisdiction of formation, and type of entity of the
10 acquiring entity;
11 (3) the manner of converting the interests in the acquired entity into
12 interests, securities, obligations, money, other property, rights to
13 acquire interests or securities, or any combination of the
14 foregoing;
15 (4) any proposed amendments to:
16 (A) the articles of organization of the acquired entity; and
17 (B) the organic rules of the acquired entity that are, or are
18 proposed to be, in a record;
19 (5) the other terms and conditions of the interest exchange; and
20 (6) any other provision required by the law of Guam or the organic
21 rules of the acquired entity.

22 (b) In addition to the requirements of Subsection (a), a plan of interest
23 exchange may contain any other provision not prohibited by law.

24 **§ 171633. Approval of Interest Exchange.**

25 (a) A plan of interest exchange is not effective unless it has been approved
26 by a domestic converting limited cooperative association as provided in Section
27 17518.

1 (b) An interest exchange involving a domestic acquired entity that is not a
2 limited cooperative association is not effective unless it is approved by the domestic
3 entity in accordance with its organic law.

4 (c) An interest exchange involving a foreign acquired entity is not
5 effective unless it is approved by the foreign entity in accordance with the law of
6 the foreign entity's jurisdiction of formation.

7 (d) Except as otherwise provided in its organic law or organic rules, the
8 interest holders of the acquiring entity are not required to approve the interest
9 exchange.

10 **§ 171634. Amendment or Abandonment of Plan of Interest Exchange.**

11 (a) A plan of interest exchange may be amended only with the consent of
12 each party to the plan, except as otherwise provided in the plan.

13 (b) A domestic acquired limited cooperative association may approve an
14 amendment to a plan of interest exchange:

15 (1) in the same manner as the plan was approved, if the plan does
16 not provide for the manner in which it may be amended; or

17 (2) by its directors or members in the manner provided in the plan,
18 but a member that was entitled to vote on or consent to approval
19 of the interest exchange is entitled to vote on or consent to any
20 amendment of the plan that will change:

21 (A) the amount or kind of interests, securities, obligations,
22 money, other property, rights to acquire interests or
23 securities, or any combination of the foregoing, to be
24 received by any of the members under the plan;

25 (3) the organic rules of the acquired association that will be in effect
26 immediately after the interest exchange becomes effective,
27 except for changes that do not require approval of the members

1 of the acquired association under this Act or the organic rules; or

2 (A) any other terms or conditions of the plan, if the change
3 would adversely affect the member in any material
4 respect.

5 (c) After a plan of interest exchange has been approved and before a
6 statement of interest exchange becomes effective, the plan may be abandoned as
7 provided in the plan. Unless prohibited by the plan, a domestic acquired limited
8 cooperative association may abandon the plan in the same manner as the plan was
9 approved.

10 (d) If a plan of interest exchange is abandoned after a statement of interest
11 exchange has been delivered to the Director for filing and before the statement
12 becomes effective, a statement of abandonment, signed by the acquired limited
13 cooperative association, must be delivered to the Director for filing before the
14 statement of interest exchange becomes effective. The statement of abandonment
15 takes effect on filing, and the interest exchange is abandoned and does not become
16 effective. The statement of abandonment must contain:

17 (1) the name of the association;

18 (2) the date on which the statement of interest exchange was filed
19 by the Director; and

20 (3) a statement that the interest exchange has been abandoned in
21 accordance with this Section.

22 **§ 171635. Statement of Interest Exchange; Effective Date of Interest**
23 **Exchange.**

24 (a) A statement of interest exchange must be signed by a domestic
25 acquired limited cooperative association and delivered to the Director for filing.

26 (b) A statement of interest exchange must contain:

27 (1) the name of the acquired limited cooperative association;

- 1 (2) the name, jurisdiction of formation, and type of entity of the
2 acquiring entity;
- 3 (3) if the statement of interest exchange is not to be effective upon
4 filing, the later date and time on which it will become effective
5 pursuant to Section 171636;
- 6 (4) a statement that the plan of interest exchange was approved by
7 the acquired association in accordance with this Part; and
- 8 (5) any amendments to the acquired association's articles of
9 organization approved as part of the plan of interest exchange.

10 (c) In addition to the requirements of Subsection (b), a statement of
11 interest exchange may contain any other provision not prohibited by law.

12 (d) A plan of interest exchange that is signed by a domestic acquired
13 limited cooperative association and meets all the requirements of Subsection (b)
14 may be delivered to the Director for filing instead of a statement of interest
15 exchange and on filing has the same effect. If a plan of interest exchange is filed as
16 provided in this Subsection, references in this Article to a statement of interest
17 exchange refer to the plan of interest exchange filed under this Subsection.

18 (e) An interest exchange becomes effective when the statement of interest
19 exchange is effective.

20 **§ 171636. Effect of Interest Exchange.**

21 (a) When an interest exchange in which the acquired entity is a domestic
22 limited cooperative association becomes effective:

- 23 (1) the interests in the acquired association which are the subject of
24 the interest exchange are converted, and the members holding
25 those interests are entitled only to the rights provided to them
26 under the plan of interest exchange and to any appraisal rights
27 they have under Section 171606;

1 (2) the acquiring entity becomes the interest holder of the interests
2 in the acquired association stated in the plan of interest exchange
3 to be acquired by the acquiring entity; and

4 (3) the organic rules of the acquired entity are amended to the extent
5 provided in the statement of interest exchange.

6 (b) Except as otherwise provided in the organic rules of a domestic
7 acquired limited cooperative association, the interest exchange does not give rise to
8 any rights that a member, director, or third party would have upon a dissolution,
9 liquidation, or winding up of the acquired association.

10 (c) When an interest exchange becomes effective, a person that did not
11 have interest holder liability with respect to a domestic acquired limited cooperative
12 association and becomes subject to interest holder liability with respect to a
13 domestic entity as a result of the interest exchange has interest holder liability only
14 to the extent provided by the organic law of the entity and only for those debts,
15 obligations, and other liabilities that are incurred after the interest exchange
16 becomes effective.

17 (d) When an interest exchange becomes effective, the interest holder
18 liability of a person that ceases to hold an interest in a domestic acquired limited
19 cooperative association with respect to which the person had interest holder liability
20 is subject to the following rules:

21 (1) The interest exchange does not discharge any interest holder
22 liability under this Act to the extent the interest holder liability
23 was incurred before the interest exchange became effective.

24 (2) The person does not have interest holder liability under this Act
25 for any debt, obligation, or other liability that is incurred after
26 the interest exchange becomes effective.

27 (3) This Act continues to apply to the release, collection, or

1 discharge of any interest holder liability preserved under
2 Paragraph (1) as if the interest exchange had not occurred.

- 3 (4) The person has whatever rights of contribution from any other
4 person as are provided by this Act, law other than this Act or the
5 organic rules of the acquired association with respect to any
6 interest holder liability preserved under Paragraph (1) as if the
7 interest exchange had not occurred.

8 **PART 4**

9 **CONVERSION**

10
11 §171641. Conversion Authorized.

12 §171642. Plan of Conversion.

13 §171643. Approval of Conversion.

14 §171644. Amendment or Abandonment of Plan of Conversion.

15 §171645. Statement of Conversion; Effective Date of Conversion.

16 §171646. Effect of Conversion.

17
18 **§ 171641. Conversion Authorized.**

19 (a) By complying with this Part, a domestic limited cooperative
20 association may become:

21 (1) a domestic entity that is a different type of entity; or

22 (2) a foreign entity that is a different type of entity, if the conversion
23 is authorized by the law of the foreign entity's jurisdiction of
24 formation.

25 (b) By complying with the provisions of this Part applicable to foreign
26 entities a foreign entity that is not a foreign limited cooperative association may
27 become a domestic limited cooperative association if the conversion is authorized

1 by the law of the foreign entity's jurisdiction of formation.

2 (c) If a protected agreement contains a provision that applies to a merger
3 of a domestic limited cooperative association but does not refer to a conversion, the
4 provision applies to a conversion of the association as if the conversion were a
5 merger until the provision is amended.

6 (d) A domestic entity may become a domestic limited cooperative
7 association.

8 **§ 171642. Plan of Conversion.**

9 (a) A domestic limited cooperative association may convert to a different
10 type of entity under this Part by approving a plan of conversion. A domestic or
11 foreign entity may convert to a domestic limited cooperative association by
12 approving a plan of conversion. A plan of conversion must be in a record and
13 contain:

- 14 (1) the name of the converting entity;
- 15 (2) the name, jurisdiction of formation, and type of entity of the
16 converted entity;
- 17 (3) the manner of converting the interests in the converting entity
18 into interests, securities, obligations, money, other property,
19 rights to acquire interests or securities, or any combination of the
20 foregoing;
- 21 (4) the proposed public organic record of the converted entity if it
22 will be a filing entity;
- 23 (5) the full text of the private organic rules of the converted entity
24 which are proposed to be in a record;
- 25 (6) the other terms and conditions of the conversion; and
- 26 (7) any other provision required by the law of Guam or the organic
27 rules of the converting entity.

1 (b) In addition to the requirements of Subsection (a) of this Section, a
2 plan of conversion may contain any other provision not prohibited by law.

3 **§ 171643. Approval of Conversion.**

4 (a) A plan of conversion is not effective unless it has been approved by a
5 domestic converting limited cooperative association as provided in Section 17518.

6 (b) A plan of conversion involving a domestic converting entity that is not
7 a limited cooperative association is not effective unless it is approved by the
8 domestic converting entity in accordance with its organic law.

9 (c) A plan of conversion of a foreign converting entity is not effective
10 unless it is approved by the foreign entity in accordance with the law of the foreign
11 entity's jurisdiction of formation.

12 **§ 171644. Amendment or Abandonment of Plan of Conversion.**

13 (a) A plan of conversion may be amended:

14 (1) in the same manner as the plan was approved, if the plan does
15 not provide for the manner in which it may be amended; or

16 (2) by its directors or members in the manner provided in the plan,
17 but an interest holder that was entitled to vote on or consent to
18 approval of the conversion is entitled to vote on or consent to
19 any amendment of the plan that will change:

20 (A) amount or kind of interests, securities, obligations,
21 money, other property, rights to acquire interests or securities, or any
22 combination of the foregoing, to be received by any of the members of
23 the converting entity under the plan;

24 (B) the public organic record, if any, or private organic rules
25 of the converted entity which will be in effect immediately after the
26 conversion becomes effective, except for changes that do not require
27 approval of the interest holders of the converted entity under its

1 organic law or organic rules; or

2 (C) any other terms or conditions of the plan, if the change
3 would adversely affect the member in any material respect.

4 (b) After a plan of conversion has been approved and before a statement of
5 conversion becomes effective, the plan may be abandoned as provided in the plan.
6 Unless prohibited by the plan, a converting entity may abandon the plan in the same
7 manner as the plan was approved.

8 (c) If a plan of conversion is abandoned after a statement of conversion
9 has been delivered to the Director for filing and before the statement becomes
10 effective, a statement of abandonment, signed by the entity, must be delivered to the
11 Director for filing before the statement of conversion becomes effective. The
12 statement of abandonment takes effect on filing, and the conversion is abandoned
13 and does not become effective. The statement of abandonment must contain:

14 (1) the name of the converting entity;

15 (2) the date on which the statement of conversion was filed by the
16 Director; and

17 (3) a statement that the conversion has been abandoned in
18 accordance with this Section.

19 **§ 171645. Statement of Conversion; Effective Date of Conversion.**

20 (a) A statement of conversion must be signed by the converting entity and
21 delivered to the Director for filing.

22 (b) A statement of conversion must contain:

23 (1) the name, jurisdiction of formation, and type of entity of the
24 converting entity;

25 (2) the name, jurisdiction of formation, and type of entity of the
26 converted entity;

27 (3) if the converting entity is a domestic limited cooperative

1 association, a statement that the plan of conversion was
2 approved in accordance with this Part or, if the converting entity
3 is a foreign entity, a statement that the conversion was approved
4 by the foreign converting entity in accordance with the law of its
5 jurisdiction of formation;

6 (4) if the converted entity is a domestic filing entity, its public
7 organic record, as an attachment;

8 (5) if the converted entity is a domestic limited liability partnership,
9 its public organic record, as an attachment; and

10 (6) if the converted entity is a foreign entity, a mailing address to
11 which the Director *may* send any process served on the Director
12 pursuant to Section 171646(e).

13 (c) In addition to the requirements of Subsection (b), a statement of
14 conversion *may* contain any other provision not prohibited by law.

15 (d) If the converted entity is a domestic entity, its public organic record, if
16 any, must satisfy the requirements of the law of Guam, except that the public
17 organic record does not need to be signed and *may* omit any provision that is not
18 required to be included in a restatement of the public organic record.

19 (e) A plan of conversion that is signed by a domestic converting limited
20 cooperative association and meets all the requirements of Subsection (b) of this
21 Section *may* be delivered to the Director for filing instead of a statement of
22 conversion and on filing has the same effect. If a plan of conversion is filed as
23 provided in this Subsection, references in this Article to a statement of conversion
24 refer to the plan of conversion filed under this Subsection.

25 (f) If the converted entity is domestic limited cooperative association, the
26 conversion becomes effective when the statement of conversion is effective. In all
27 other cases, the conversion becomes effective on the later of:

- 1 (1) the date and time provided by the organic law of the converted
2 entity; or
- 3 (2) when the statement is effective.

4 **§ 171646. Effect of Conversion.**

5 (a) When a conversion becomes effective:

- 6 (1) the converted entity is:
 - 7 (A) organized under and subject to the organic law of the
8 converted entity; and
 - 9 (B) the same entity without interruption as the converting
10 entity;
- 11 (2) all property of the converting entity continues to be vested in the
12 converted entity without transfer, reversion, or impairment;
- 13 (3) all debts, obligations, and other liabilities of the converting
14 entity continue as debts, obligations, and other liabilities of the
15 converted entity;
- 16 (4) except as otherwise provided by law or the plan of conversion,
17 all the rights, privileges, immunities, powers, and purposes of
18 the converting entity remain in the converted entity;
- 19 (5) the name of the converted entity may be substituted for the name
20 of the converting entity in any pending action or proceeding;
- 21 (6) the organic rules of the converted entity are effective; and
- 22 (7) the interests in the converting entity are converted, and the
23 interest holders of the converting entity are entitled only to the
24 rights provided to them under the plan of conversion and to any
25 appraisal rights they have under Section 171606.

26 (b) Except as otherwise provided in the organic rules of a domestic
27 converting limited cooperative association, the conversion does not give rise to any

1 rights that a member, director, or third party would have upon a dissolution,
2 liquidation, or winding up of the converting entity.

3 (c) When a conversion becomes effective, a person that did not have
4 interest holder liability with respect to the converting entity and becomes subject to
5 interest holder liability with respect to a domestic entity as a result of the
6 conversion has interest holder liability only to the extent provided by the organic
7 law of the entity and only for those debts, obligations, and other liabilities that are
8 incurred after the conversion becomes effective.

9 (d) When a conversion becomes effective, the interest holder liability of a
10 person that ceases to hold an interest in a domestic converting limited cooperative
11 association with respect to which the person had interest holder liability is subject
12 to the following rules:

13 (1) The conversion does not discharge any interest holder liability
14 under this Act to the extent the interest holder liability was
15 incurred before the conversion became effective.

16 (2) The person does not have interest holder liability under this Act
17 for any debt, obligation, or other liability that is incurred after
18 the conversion becomes effective;

19 (3) This Act continues to apply to the release, collection, or
20 discharge of any interest holder liability preserved under
21 Paragraph (1) as if the conversion had not occurred.

22 (4) The person has whatever rights of contribution from any other
23 person as are provided by this Act, law other than this Act, or
24 the organic rules of the domestic converting limited cooperative
25 association with respect to any interest holder liability preserved
26 under Paragraph (1) as if the conversion had not occurred.

27 (e) When a conversion becomes effective, a foreign entity that is the

1 converted entity may be served with process in Guam for the collection and
2 enforcement of any of its debts, obligations, and other liabilities as provided in
3 Section 17122.

4 (f) If the converting entity is a registered foreign entity, its registration to
5 do business in Guam is canceled when the conversion becomes effective.

6 (g) A conversion does not require the entity to wind up its affairs and does
7 not constitute or cause the dissolution of the entity.

8 **PART 5**
9 **DOMESTICATION**

10
11 §171651. Domestication Authorized.

12 §171652. Plan of Domestication.

13 §171653. Approval of Domestication.

14 §171654. Amendment or Abandonment of Plan of Domestication.

15 §171655. Statement of Domestication; Effective Date of Domestication.

16 §171656. Effect of Domestication.

17
18 **§ 171651. Domestication Authorized.**

19 (a) By complying with this Part, a domestic limited cooperative
20 association may become a foreign limited cooperative association if the
21 domestication is authorized by the law of the foreign jurisdiction.

22 (b) By complying with the provisions of this Part applicable to foreign
23 limited cooperative associations a foreign limited cooperative association may
24 become a domestic limited cooperative association if the domestication is
25 authorized by the law of the foreign limited cooperative association's jurisdiction of
26 formation.

27 (c) If a protected agreement contains a provision that applies to a merger

1 of a domestic limited cooperative association but does not refer to a domestication,
2 the provision applies to a domestication of the limited cooperative association as if
3 the domestication were a merger until the provision is amended.

4 **§ 171652. Plan of Domestication.**

5 (a) A domestic limited cooperative association may become a foreign
6 limited cooperative association in a domestication by approving a plan of
7 domestication. The plan must be in a record and contain:

- 8 (1) the name of the domesticating limited cooperative association;
- 9 (2) the name and jurisdiction of formation of the domesticated
10 limited cooperative association;
- 11 (3) the manner of converting the interests in the domesticating
12 limited cooperative association into interests, securities,
13 obligations, money, other property, rights to acquire interests or
14 securities, or any combination of the foregoing;
- 15 (4) the proposed organic rules of the domesticated limited
16 cooperative association;
- 17 (5) the other terms and conditions of the domestication; and
- 18 (6) any other provision required by the law or the organic rules of
19 the domesticating limited cooperative association.

20 (b) In addition to the requirements of Subsection (a) of this Section, a plan
21 of domestication may contain any other provision not prohibited by law.

22 **§ 171653. Approval of Domestication.**

23 (a) A plan of domestication of a domestic domesticating limited
24 cooperative association is not effective unless it has been approved as provided in
25 Section 17518.

26 (b) A domestication of a foreign domesticating limited cooperative
27 association is not effective unless it is approved in accordance with the law of the

1 foreign limited cooperative association's jurisdiction of formation.

2 **§ 171654. Amendment or Abandonment of Plan of Domestication.**

3 (a) A plan of domestication of a domestic domesticating limited
4 cooperative association may be amended:

5 (1) in the same manner as the plan was approved, if the plan does
6 not provide for the manner in which it may be amended; or

7 (2) by its directors or members in the manner provided in the plan,
8 but a member that was entitled to vote on or consent to approval
9 of the domestication is entitled to vote on or consent to any
10 amendment of the plan that will change:

11 (A) the amount or kind of interests, securities, obligations,
12 money, other property, rights to acquire interests or
13 securities, or any combination of the foregoing, to be
14 received by any of the members of the domesticating
15 limited cooperative association under the plan;

16 (B) the organic rules of the domesticated limited cooperative
17 association that will be in effect immediately after the
18 domestication becomes effective, except for changes that
19 do not require approval of the members of the
20 domesticated limited cooperative association under its
21 organic rules; or

22 (C) any other terms or conditions of the plan, if the change
23 would adversely affect the member in any material
24 respect.

25 (b) After a plan of domestication has been approved by a domestic
26 domesticating limited cooperative association and before a statement of
27 domestication becomes effective, the plan may be abandoned as provided in the

1 plan. Unless prohibited by the plan, a domestic domesticating limited cooperative
2 association may abandon the plan in the same manner as the plan was approved.

3 (c) If a plan of domestication is abandoned after a statement of
4 domestication has been delivered to the Director for filing and before the statement
5 becomes effective, a statement of abandonment, signed by the domesticating
6 limited cooperative association, must be delivered to the Director filing before the
7 statement of domestication becomes effective. The statement of abandonment takes
8 effect on filing, and the domestication is abandoned and does not become effective.
9 The statement of abandonment must contain:

10 (1) the name of the domesticating limited cooperative association;

11 (2) the date on which the statement of domestication was filed by
12 the Director; and

13 (3) a statement that the domestication has been abandoned in
14 accordance with this Section.

15 **§ 171655. Statement of Domestication; Effective Date of**
16 **Domestication.**

17 (a) A statement of domestication must be signed by the domesticating
18 limited cooperative association and delivered to the Director for filing.

19 (b) A statement of domestication must contain:

20 (1) the name and jurisdiction of formation of the domesticating
21 limited cooperative association;

22 (2) the name and jurisdiction of formation of the domesticated
23 limited cooperative association;

24 (3) if the domesticating limited cooperative association is a
25 domestic limited cooperative association, a statement that the
26 plan of domestication was approved in accordance with this Part
27 or, if the domesticating limited cooperative association is a

1 foreign limited cooperative association, a statement that the
2 domestication was approved in accordance with the law of its
3 jurisdiction of formation; the articles of organization of the
4 domesticated limited cooperative association, as an attachment;
5 and

6 (4) if the domesticated entity is a foreign limited cooperative
7 association, a mailing address to which the Director *may* send
8 any process served on the Director pursuant to Section
9 171656(e).

10 (c) In addition to the requirements of Subsection (b) of this Section, a
11 statement of domestication *may* contain any other provision not prohibited by law.

12 (d) The articles of organization of a domestic domesticated limited
13 cooperative association must satisfy the requirements of this Act, but the articles do
14 not need to be signed.

15 (e) A plan of domestication that is signed by a domestic domesticating
16 limited cooperative association and meets all the requirements of Subsection (b) of
17 this Section *may* be delivered to the Director for filing instead of a statement of
18 domestication and on filing has the same effect. If a plan of domestication is filed as
19 provided in this Subsection, references in this Article to a statement of
20 domestication refer to the plan of domestication filed under this Subsection.

21 (f) If the domesticated entity is a domestic limited cooperative
22 association, the domestication becomes effective when the statement of
23 domestication is effective. In all other cases, the domestication becomes effective
24 on the later of:

25 (1) the date and time provided in the organic law of the
26 domesticated entity; or

27 (2) when the statement is effective.

1 **§ 171656. Effect of Domestication.**

2 (a) When a domestication becomes effective:

3 (1) the domesticated entity is:

4 (A) organized under and subject to the organic law of the
5 domesticated entity; and

6 (B) the same entity without interruption as the domesticating
7 entity;

8 (2) all property of the domesticating entity continues to be vested in
9 the domesticated entity without transfer, reversion, or
10 impairment;

11 (3) all debts, obligations, and other liabilities of the domesticating
12 entity continue as debts, obligations, and other liabilities of the
13 domesticated entity;

14 (4) except as otherwise provided by law or the plan of
15 domestication, all the rights, privileges, immunities, powers, and
16 purposes of the domesticating entity remain in the domesticated
17 entity;

18 (5) the name of the domesticated entity may be substituted for the
19 name of the domesticating entity in any pending action or
20 proceeding;

21 (6) the organic rules of the domesticated entity are effective; and

22 (7) the interests in the domesticating entity are converted to the
23 extent and as approved in connection with the domestication,
24 and the interest holders of the domesticating entity are entitled
25 only to the rights provided to them under the plan of
26 domestication and to any appraisal rights they have under
27 Section 171606.

1 (b) Except as otherwise provided in the organic law or organic rules of the
2 domesticating entity, the domestication does not give rise to any rights that an
3 interest holder, director, or third party would have upon a dissolution, liquidation,
4 or winding-up of the domesticating entity.

5 (c) When a domestication becomes effective, a person that did not have
6 interest holder liability with respect to the domesticating limited cooperative
7 association and becomes subject to interest holder liability with respect to a
8 domestic entity as a result of the domestication has interest holder liability only to
9 the extent provided by this Act and only for those debts, obligations, and other
10 liabilities that are incurred after the domestication becomes effective.

11 (d) When a domestication becomes effective, the interest holder liability
12 of a person that ceases to hold an interest in a domestic domesticating limited
13 cooperative association with respect to which the person had interest holder liability
14 is subject to the following rules:

15 (1) The domestication does not discharge any interest holder
16 liability under this Act to the extent the interest holder liability
17 was incurred before the domestication became effective.

18 (2) A person does not have interest holder liability under this Act
19 for any debt, obligation, or other liability that is incurred after
20 the domestication becomes effective.

21 (3) This Act continues to apply to the release, collection or
22 discharge of any interest holder liability preserved under
23 Paragraph (1) as if the domestication had not occurred.

24 (4) A person has whatever rights of contribution from any other
25 person as are provided by this Act, law other than this Act or the
26 organic rules of a domestic domesticating limited cooperative
27 association with respect to any interest holder liability preserved

1 under Paragraph (1) as if the domestication had not occurred.

2 (e) When a domestication becomes effective, a foreign limited cooperative
3 association that is the domesticated association may be served with process in
4 Guam for the collection and enforcement of any of its debts, obligations, and other
5 liabilities as provided in Section 17122.

6 (f) If the domesticating limited cooperative association is a registered
7 entity, the registration of the entity is canceled when the domestication becomes
8 effective.

9 A domestication does not require a domestic domesticating limited cooperative
10 association to wind up its affairs and does not constitute or cause the dissolution of
11 the association.

12 **ARTICLE 17**

13 **LIMITED COOPERATIVE ASSOCIATION BOARD-RESERVE**

14 **ARTICLE 18**

15 **MISCELLANEOUS PROVISIONS**

16 §171801. Uniformity of Application and Construction.

17 §171802. Relation to Electronic Signatures in Global and National
18 Commerce Act.

19 §171803. Savings Clause.

20 §171804. Severability Clause.

21 §171805. Effective Date.

22
23 **§ 171801. Uniformity of Application and Construction.**

24 In applying and construing this uniform act, consideration must be given to
25 the need to promote uniformity of the law with respect to its subject matter among
26 States that enact it.

27 **§ 171802. Relation to Electronic Signatures in Global and National**

1 **Commerce Act.**

2 This Act modifies, limits, and supersedes the Electronic Signatures in Global
3 and National Commerce act, 15 U.S.C. Section 7001 *et seq.*, but does not modify,
4 limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c) or
5 authorize electronic delivery of any of the notices described in Section 103(b) of
6 that act, 15 U.S.C. Section 7003(b).

7 **§ 171803. Savings Clause.**

8 This Act does not affect an action commenced, or proceeding brought, or
9 right accrued before the effective date of this Act.”

10 **Section 2. Severability Clause.** If any provision of this Act or its
11 application to any person or circumstance is found to be invalid or inorganic, such
12 invalidity *shall not* affect other provisions or applications of this Act that can be
13 given effect without the invalid provision or application, and to this end the
14 provisions of this Act are severable.

15 **Section 3. Effective Date.** This Act *shall* be effective upon enactment.’