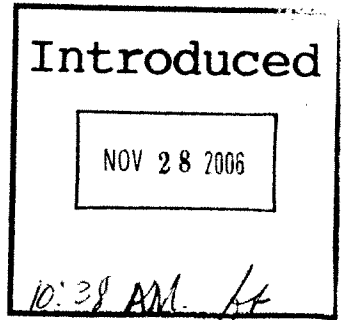


MLC

**MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (Second) Regular Session**



Bill No. 396 (EC)

Introduced by:

Edward J.B. Calvo *JF*

AN ACT TO ADD A NEW § 15138 TO CHAPTER 15, PART 2; TO REPEAL AND REENACT CHAPTER 9, PART 1, DIVISION 1; TO ADD A NEW § 4111 AND § 4112 TO ARTICLE 1, CHAPTER 4, PART 1; AND TO ADD NEW ARTICLES 3 THROUGH 5 TO CHAPTER 3, PART 1, ALL IN TITLE 18 OF THE GUAM CODE ANNOTATED, RELATIVE TO UPDATING THE GENERAL CORPORATIONS LAW

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

2 **Section 1. Legislative Findings.** It is the goal of *I Liheslaturan Guåhan* to facilitate
3 and promote continual economic growth on Guam. However, *I Liheslaturan Guåhan* finds that
4 there are various inconsistencies, outdated provisions, gaps and uncertainties in Guam's General
5 Corporations Law which may hinder Guam's economic growth. Laws governing corporations
6 transacting business on Guam have been enacted singly and without regard for the overall
7 coherence of this body of law on which Guam's corporate climate is based.

8 *I Liheslaturan Guåhan* finds that it is important for Guam's economic growth and to
9 promote and attract off-island investment that Guam's corporate and business related laws are
10 consistent with those of other U.S. jurisdictions. Such action will place Guam in a favorable
11 position to accommodate the anticipated expansion of Guam's local business community and to
12 attract off-island investors.

13 *I Liheslaturan Guåhan* finds that Guam law requires that domestic and foreign
14 corporations file annual reports with the Director of the Department of Revenue and Taxation to
15 disclose changes in a corporation's principal office, ownership structure, character of business,
16 officers and directors, and to make current corporate information readily available to the public.
17 The filing fees for these corporate annual reports generate much needed revenue for the
18 government of Guam. However, unlike other U.S. jurisdictions, Guam law imposes no similar

1 annual reporting requirement on domestic or foreign limited liability companies, both of which
2 are becoming more common on the island. To encourage disclosure of current limited liability
3 company information to the public, and to generate additional revenue, *I Liheslaturan Guåhan*
4 finds that an annual reporting requirement should be imposed on these entities.

5 *I Liheslaturan Guåhan* also finds that Guam’s General Corporations Law does not
6 contain statutory provisions pertaining specifically to mergers of independently owned
7 corporations or sales of corporate assets. Unlike corporations in all fifty of the United States and
8 the Commonwealth of the Northern Marianas Islands, corporations transacting business on
9 Guam are not provided with a statutory roadmap to facilitate these very common corporate
10 transactions. In addition, enacting general merger statutes will attract off-island investments and
11 facilitate investments in local businesses. It is the intent of *I Liheslaturan Guåhan* to update
12 Guam’s General Corporations Law and create uniformity with other U.S. jurisdictions.

13 **Section 2.** § 15138 is hereby *added* to Chapter 15, Part 2, Title 18 of the Guam Code
14 Annotated, to read as follows:

15 **“§ 15138. Annual Report of Domestic and Foreign Limited Liability**
16 **Companies.**

17 (a) Each domestic limited liability company and each foreign limited
18 liability company authorized to transact business on Guam shall deliver to the
19 Director of the Department of Revenue and Taxation (Director) for filing a sworn
20 annual report that sets forth:

21 (1) The name of the limited liability company and, *if* a foreign
22 limited liability company, the state or country under whose law it is
23 organized;

24 (2) The date of organization or, *if* a foreign limited liability
25 company, the date on which it was authorized to transact business on
26 Guam;

27 (3) The address of the principal office of the limited liability
28 company;

29 (4) If the management of the limited liability company is
30 vested in its members, the name and address of each member;

31 (5) If the management of the limited liability company is

1 vested in one or more managers, the name and address of each manager;
2 and

3 (6) A brief statement of the character of the business in which
4 the limited liability company is actually transacted on Guam.

5 (b) The information contained in the annual report shall be current as
6 of the date the annual report is executed on behalf of the limited liability
7 company.

8 (c) The first annual report must be delivered to the Director between
9 July 1 and September 1, or such other date as the Director may specify by rule or
10 regulation, of the year following the calendar year in which a domestic limited
11 liability company was organized, or a foreign limited liability company was
12 authorized to transact business on Guam. Subsequent annual reports must be
13 delivered to the Director between July 1 and September 1, or such other date as
14 the Director may specify by rule or regulation, of the following calendar years.

15 (d) If an annual report does not contain the information required by
16 this Section, the Director shall notify the reporting limited liability company in
17 writing, and return the annual report to it for correction. If the annual report is
18 corrected to contain the information required by this Section and delivered to the
19 Director within thirty (30) days after the effective date of notice, it shall be
20 deemed to be timely filed.

21 (e) A limited liability company may deliver to the office for filing an
22 amendment to the annual report if a change in the information set forth in the
23 annual report occurs after the annual report is delivered to the office for filing and
24 before the next anniversary. This Subsection applies only to a change that is not
25 required to be made by an amendment to the Articles of Incorporation. The
26 amendment to the annual report must set forth:

27 (1) the name of the limited liability company, as shown on the
28 records of the Department of Revenue and Taxation; and

29 (2) the information as changed.

30 (f) Any limited liability company failing to file an annual report that
31 complies with the requirements of this Section, within sixty (60) days after it is

1 due, shall pay, in addition to the regular annual report fee, the sum of Fifty
2 Dollars (\$50.00), providing the annual report is received by the Director prior to
3 revocation as provided in this Title, and shall be subject to dissolution or
4 cancellation of its Certificate of Authority to transact business as provided in this
5 Chapter.

6 (g) The filing fee for an annual report shall be One Hundred Dollars
7 (\$100.00).

8 (h) Any limited liability company which is required to file or provide
9 an annual report with another government agency or regulating body may satisfy
10 the annual report required by this Section by filing the same report with the
11 Director; provided, the Director has determined in writing that the report contains
12 the same or substantially similar information pursuant to this Section.”

13 **Section 3.** Chapter 9 of Part 1, Division 1, Title 18 of the Guam Code Annotated is
14 hereby *repealed* and *reenacted*, to read as follows:

15 **“CHAPTER 9.**
16 **MERGER AND SHARE EXCHANGE**

17 § 9101. Merger.

18 § 9102. Share Exchange.

19 § 9103. Action on Plan.

20 § 9104. Merger of Subsidiary.

21 § 9105. Articles of Merger or Share Exchange.

22 § 9106. Effect of Merger or Share Exchange.

23 § 9107. Merger or Share Exchange with Foreign Corporation.

24 **§ 9101. Merger.**

25 (a) One or more corporations may merge into another corporation if
26 the board of directors of each corporation adopts and its stockholders, if required
27 by § 9103 of this Chapter, approve a plan of merger.

28 (b) The plan of merger must set forth:

29 (1) The name of each corporation planning to merge and the
30 name of the surviving corporation into which each other corporation plans
31 to merge;

32 (2) The term and conditions of the merger; and

33 (3) The manner and basis of converting the shares of each

1 corporation into shares, obligations, or other securities of the surviving
2 corporation or any other corporation or into cash or other property in
3 whole or in part.

4 (c) The plan of merger may set forth:

5 (1) Restatements of, or amendments to, the Articles of
6 Incorporation of the surviving corporation; and

7 (2) Other provisions relating to the merger.

8 **§ 9102. Share Exchange.**

9 (a) A corporation may acquire all of the outstanding shares of one or
10 more classes or series of another corporation if the board of directors of each
11 corporation adopts and its stockholders, if required by § 9103 of this Chapter,
12 approve the plan of share exchange.

13 (b) The plan of exchange must set forth:

14 (1) The name of the corporation whose shares will be acquired
15 and the name of the acquiring corporation;

16 (2) The terms and conditions of the exchange; and

17 (3) The manner and basis of exchanging the shares to be
18 acquired for shares, obligations, or other securities of the acquiring
19 corporation or any other corporation or for cash or other property in whole
20 or part.

21 (c) The plan of exchange may set forth other provisions relating to the
22 exchange and, if not otherwise set forth in the Articles of Incorporation of the
23 acquiring company as theretofore in effect, shall include an amendment to such
24 Articles of Incorporation setting forth any rights, privileges, limitations and
25 preferences of the class or series of securities to be issued in the exchange.

26 (d) This Section does not limit the power of a corporation to acquire
27 all or part of the shares of one or more classes or series of another corporation
28 through a voluntary exchange or otherwise.

29 **§ 9103. Action on Plan.**

30 (a) After adopting a plan of merger or share exchange, the board of
31 directors of the corporation whose shares will be acquired in the share exchange,

1 shall submit the plan of the merger (except as provided in Subsection (g) of this
2 Section) or share exchange for approval by its stockholders.

3 (b) For a plan of merger or share exchange to be approved:

4 (1) The board of directors must recommend the plan of merger
5 or share exchange to the stockholders, unless the board of directors
6 determines that because of a conflict of interest or other special
7 circumstance it should make no recommendation and communicates the
8 basis for its determination to the stockholders with the plan; and

9 (2) The stockholders entitled to vote must approve the plan.

10 (c) The board of directors may condition its submission of the
11 proposed merger or share exchange on any basis.

12 (d) The corporation shall notify each stockholder, whether or not
13 entitled to vote, of the proposed stockholders' meeting in accordance with Title
14 18 G.C.A. § 3105. The notice must also state that the purpose, or one of the
15 purposes, of the meeting is to consider the plan of merger or share exchange and
16 contain or be accompanied by a copy or summary of the plan.

17 (e) Unless this part, the Articles of Incorporation, or the board of
18 directors acting pursuant to Subsection (c) of this Section, require a greater vote
19 or a vote by voting groups, the plan of merger or share exchange to be authorized
20 requires the approval of the shareholders by a majority of all the votes entitled to
21 be cast on the plan.

22 (f) Action by the stockholders of the surviving corporation on a plan
23 of merger is not required if:

24 (1) The Articles of Incorporation of the surviving corporation
25 will not differ (except for amendments enumerated in Title 18 G.C.A. §
26 9104(e)) from its Articles before the merger;

27 (2) Each stockholder of the surviving corporation whose shares
28 were outstanding immediately before the effective date of the merger will
29 hold the same number of shares, with identical designations, preferences,
30 limitations, and relative rights immediately after;

31 (3) The number of voting shares outstanding immediately after

1 the merger, plus the number of voting shares issuable as a result of the
2 merger either by the conversion of securities issued pursuant to the merger
3 or the exercise of rights and warrants issued pursuant to the merger, will
4 not exceed by more than twenty percent (20%) the total number of voting
5 shares of the surviving corporation outstanding immediately before the
6 merger; and

7 (4) The number of participating shares outstanding
8 immediately after the merger, plus the number of participating shares
9 issuable as a result of the merger either by the conversion of securities
10 issued pursuant to the merger or the exercise of rights and warrants issued
11 pursuant to the merger, will not exceed by more than twenty percent
12 (20%) the total number of participating shares outstanding immediately
13 before the merger.

14 (g) As used in Subsection (f) of this Section:

15 (1) "Participating shares" means shares that entitle their
16 holders to participate without limitation in distributions.

17 (2) "Voting shares" means shares that entitle their holders to
18 vote unconditionally in elections of directors.

19 (i) After a merger or share exchange is authorized, and
20 at any time before articles of merger or share exchange are filed,
21 the planned merger or share exchange may be abandoned, subject
22 to any contractual rights, without further stockholder action, in
23 accordance with the procedure set forth in the plan of merger or
24 share exchange or, if none is set forth, in the manner determined by
25 the board of directors.

26 **§ 9104. Merger of Subsidiary.**

27 (a) A parent corporation owning at least ninety percent (90%) of the
28 outstanding shares of each class of a subsidiary corporation may merge the
29 subsidiary into itself, or itself into the subsidiary, without approval of the
30 stockholders of either constituent corporation if each constituent corporation shall
31 adopt a plan of merger that sets forth:

1 (1) The names of the parent and subsidiary; and

2 (2) The manner and basis of converting the shares of the
3 disappearing corporation into shares, obligations, or other securities of the
4 surviving corporation or any other corporation or into cash or other
5 property in whole or part.

6 (c) The surviving corporation shall mail a copy or summary of the
7 plan of merger to each stockholder of the disappearing corporation who does not
8 waive the mailing requirement in writing.

9 (d) The surviving corporation may not deliver articles of merger to the
10 Director of the Department of Revenue and Taxation (Director) for filing until at
11 least thirty (30) days after the date it mailed a copy of the plan of merger to each
12 stockholder of the disappearing corporation who did not waive the mailing
13 requirement.

14 (e) Articles of merger under this Section may not contain amendments
15 to the Articles of Incorporation of the surviving corporation, except for the
16 following:

17 (i) To extend the duration of the corporation if it was
18 incorporated at a time when limited duration was required by law;

19 (ii) To delete the names and addresses of the initial directors;

20 (iii) To delete the name and address of the initial registered
21 agent or registered office, if a statement of change is on file with the
22 Director;

23 (iv) To change each issued and unissued authorized share of an
24 outstanding class into a greater number of whole shares if the corporation
25 has only shares of that class outstanding;

26 (v) To change the corporate name by substituting the word
27 "corporation," "incorporated," "company," "limited," or the abbreviation
28 "corp," "inc," "co.," or "ltd." for a similar word or abbreviation in the
29 name, or by adding, deleting, or changing a geographical attribution for
30 the name; or

31 (vi) To change the name of the surviving corporation, providing

1 the same does not otherwise violate general corporation law, regardless of
2 whether the name so adopted is the same as or similar to that of the parent
3 corporation.

4 **§ 9105. Articles of Merger or Share Exchange.**

5 (a) After a plan of merger or share exchange is approved by the
6 stockholders, or adopted by the board of directors if stockholder approval is not
7 required, the surviving or acquiring corporation shall deliver to the Director for
8 filing articles of merger or share exchange setting forth:

9 (1) The plan of merger or share exchange;

10 (2) If stockholder approval was not required, a statement to
11 that effect;

12 (3) If approval of the stockholders of one or more corporations
13 party to the merger or share exchange was required:

14 (i) The designation, number of outstanding shares, and
15 number of votes entitled to be cast by each voting group entitled to
16 vote separately on the plan as to each corporation; and

17 (ii) Either the total number of votes cast for and against
18 the plan by each voting group entitled to vote separately on the
19 plan or the total number of undisputed votes cast for the plan
20 separately by each voting group and a statement that the number
21 cast for the plan by each voting group was sufficient for approval
22 by that voting group.

23 (b) A merger or share exchange takes effect upon the later to occur of
24 the date the plan of merger or share exchange is accepted for filing by the
25 Director or the date specified for effectiveness in such plan of merger or share
26 exchange.

27 **§ 9106. Effect of Merger or Share Exchange.**

28 (a) When a merger takes effect:

29 (1) Every other corporation party to the merger merges into the
30 surviving corporation and the separate existence of every corporation
31 except the surviving corporation ceases;

1 (2) The title to sell all real estate and other property owned by
2 each corporation party to the merger is vested in the surviving corporation
3 without reversion or impairment;

4 (3) The surviving corporation has all liabilities of each
5 corporation party to the merger;

6 (4) A proceeding pending against any corporation party to the
7 merger may be continued as if the merger did not occur or the surviving
8 corporation may be substituted in the proceeding for the corporation
9 whose existence ceased;

10 (5) The Articles of Incorporation of the surviving corporation
11 are amended to the extent provided in the plan of merger; and

12 (6) The shares of each corporation party to the merger that are
13 to be converted into shares, obligations, or other securities of the surviving
14 or any other corporation into cash or other property are converted, and the
15 former holders of the shares are entitled only to the rights provided in the
16 articles of merger or to their rights under Title 18 G.C.A. §§ 3301 through
17 3502.

18 (b) When a share exchange takes effect, the shares of each acquired
19 corporation are exchanged as provided in the plan, and the former holders of the
20 shares are entitled only to the exchange rights provided in the articles of share
21 exchange or to their rights under Title 18 G.C.A. §§ 3301 through 3502.

22 **§ 9107. Merger or Share Exchange with Foreign Corporation.**

23 (a) One or more foreign corporations may merge or enter into a share
24 exchange with one or more domestic corporations if:

25 (1) In a merger, the merger is permitted by the law of the state
26 or country under whose law each foreign corporation is incorporated and
27 each foreign corporation complies with that law in effecting the merger;

28 (2) In a share exchange, the corporation whose shares will be
29 acquired is a domestic corporation, whether or not a share exchange is
30 permitted by the law of the state or country under whose law the acquiring
31 corporation is incorporated;

1 (3) The foreign corporation complies with § 9105 of this
2 Chapter if it is the surviving corporation of the merger or acquiring
3 corporation of the share exchange; and

4 (4) Each domestic corporation complies with the applicable
5 provisions of §§ 9101 through 9104 of this Chapter and, if it is the
6 surviving corporation of the merger or acquiring corporation of the share
7 exchange, with § 9105.

8 (b) Upon the effectiveness of a merger or share exchange in which the
9 surviving corporation of a merger or the acquiring corporation in a share
10 exchange is a foreign corporation, the surviving corporation or the acquiring
11 corporation, as the case may be, is deemed:

12 (1) To appoint the Director as its agent for service of
13 process in a proceeding to enforce any obligation or the rights of
14 dissenting stockholders of each domestic corporation party to the
15 merger or share exchange; and

16 (2) To agree that it will promptly pay to the dissenting
17 stockholder of each domestic corporation party to the merger or
18 share exchange the amount, if any, to which they are entitled under
19 Title 18 G.C.A. §§ 3301 through 3502.

20 (c) This Section does not limit the power of a foreign corporation to
21 acquire all or part of the shares of one or more classes or series of a domestic
22 corporation through a voluntary exchange or otherwise.”

23 **Section 4.** Section 4111 is hereby *added* to Article 1, Chapter 4, Part 1, Title 18 of
24 the Guam Code Annotated, to read as follows:

25 **“§ 4111. Sale of Assets in Regular Course of Business and Mortgage of**
26 **Assets.**

27 (a) A corporation may, on the terms and conditions and for the
28 consideration determined by the board of directors:

29 (1) Sell, lease, exchange, or otherwise dispose of all, or
30 substantially all, of its property in the usual and regular course of business;

31 (2) Mortgage, pledge, dedicate to the repayment of

1 indebtedness (whether with or without recourse), or otherwise encumber
2 any or all of its property whether or not in the usual and regular course of
3 business; or

4 (3) Transfer any or all of its property to a corporation all the
5 shares of which are owned by the corporation.

6 (b) Unless the Articles of Incorporation require it, approval by the
7 stockholders of a transaction described in Subsection (a) of this Section is not
8 required.”

9 **Section 5.** Section 4112 is hereby *added* to Article 1, Chapter 4, Part 1, Title 18 of
10 the Guam Code Annotated, to read as follows:

11 **“§ 4112. Sale of Assets Other Than in Regular Course of Business.**

12 (a) A corporation may sell, lease, exchange, or otherwise dispose of
13 all, or substantially all, of its property with or without the good will, otherwise
14 that in the usual and regular course of business, on the terms and conditions and
15 for the consideration determined by the corporation’s board of directors, if the
16 board of directors proposes and its stockholders approve the proposed transaction.

17 (b) For a transaction to be authorized:

18 (1) The board of directors must recommend the proposed
19 transaction to the stockholders unless the board of directors determines
20 that because of conflict of interest or other special circumstances it should
21 make no recommendation and communicates the basis for its
22 determination to the stockholders with the submission of the proposed
23 transaction; and

24 (2) The stockholders entitled to vote must approve the
25 transaction.

26 (c) The board of directors may condition its submission of the
27 proposed transaction on any basis.

28 (d) The corporation shall notify each stockholder, whether or not
29 entitled to vote, of the proposed stockholders meeting in accordance with Title 18
30 G.C.A. § 3105. The notice must also state that the purpose, or one of the
31 purposes, of the meeting is to consider the sale, lease, exchange, or other

1 disposition of all, or substantially all, the property of the corporation and contain
2 of be accompanied by a description of the transaction.

3 (e) Unless the Articles of Incorporation or the board of directors,
4 acting pursuant to Subsection (c) of this Section, require a greater vote or a vote
5 by voting groups, the transaction to be authorized must be approved by a majority
6 of all the votes entitled to be cast on the transaction.

7 (f) After a sale, lease, exchange, or other disposition of property is
8 authorized, the transaction may be abandoned, subject to any contractual rights,
9 without further stockholder action.

10 (g) A transaction that constitutes a distribution is governed by a
11 corporation's Articles of Incorporation and not by this Section."

12 **Section 6.** A New Article 3 is hereby *added* to Chapter 3, Part 1, Title 18 of the
13 Guam Code Annotated, to read as follows:

14 **"Article 3. Right to Dissent and Obtain Payment for Shares.**

15 § 3301. Definitions.

16 § 3302. Right to Dissent.

17 § 3303. Dissent by Nominees and Beneficial Owners.

18 **§ 3301. Definitions.**

19 In this chapter:

20 (a) "Beneficial stockholder" means the person who is a beneficial
21 owner of shares held in a voting trust or by a nominee as the record stockholder.

22 (b) "Corporation" means the issuer of the shares held by a dissenter
23 before the corporate action, or the surviving or acquiring corporation by merger or
24 share exchange of that issuer.

25 (c) "Dissenter" means a stockholder who is entitled to dissent from
26 corporate action under § 3302 and who exercises that right when and in the
27 manner required by §§ 3401 through 3409 of this Chapter.

28 (d) "Fair value," with respect to a dissenter's shares, means the value
29 of the shares immediately before the effectuation of the corporate action to which
30 the dissenter objects, excluding any appreciation or depreciation in anticipation of
31 the corporate action.

32 (e) "Interest" means interest from the effective date of the corporate

1 action until the date of payment, at the average rate currently paid by the
2 corporation on its principal bank loans or, if none, at a rate that is fair and
3 equitable under all the circumstances.

4 (f) "Record stockholder" means the person in whose name shares are
5 registered in the records of a corporation or the beneficial owner of shares to the
6 extent of the rights granted by a nominee certificate on file with a corporation.

7 (g) "Stockholder" means the record stockholder or the beneficial
8 stockholder.

9 **§ 3302. Right to Dissent.**

10 (a) A stockholder is entitled to dissent from, and obtain payment of the
11 fair value of his shares in the event of, any of the following corporate actions:

12 (1) Consummation of a plan of merger to which the
13 corporation is a party:

14 (i) If stockholder approval is required for the merger
15 by Title 18 G.C.A. § 9103 or the Articles of Incorporation and the
16 stockholder is entitled to vote on the merger; or

17 (ii) If the corporation is a subsidiary that is merged with
18 its parent under Title 18 G.C.A. § 9104;

19 (2) Consummation of a plan of share exchange to which the
20 corporation is a party as the corporation whose shares will be acquired, if
21 the stockholder is entitled to vote on the plan;

22 (3) Consummation of a sale or exchange of all, or substantially
23 all, of the property of the corporation other than in the usual and regular
24 course of business, if the stockholder is entitled to vote in the sale or
25 exchange, including a sale in dissolution, but not including a sale pursuant
26 to court order or a sale for cash pursuant to a plan by which all or
27 substantially all of the net proceeds of the sale will be distributed to the
28 stockholders within one year after the date of sale;

29 (4) An amendment of the Articles of Incorporation that
30 materially and adversely affects rights in respect of a dissenter's shares
31 because it:

- 1 (i) Alters or abolishes a preferential right of the shares;
2 (ii) Creates, alters, or abolishes a right in respect of
3 redemption, including a provision respecting a sinking fund for the
4 redemption or repurchase, of the shares;
5 (iii) Alters or abolishes a preemptive right of the holder
6 of the shares to acquire shares or other securities;
7 (iv) Excludes or limits the right of the shares to vote on
8 any matter, or to cumulate votes, other than a limitation by dilution
9 through issuance of shares or other securities with similar voting
10 rights; or
11 (v) Reduces the number of shares owned by the
12 stockholder to a fraction of a share if the fractional share so created
13 is to be acquired for cash under § 3106 of this Chapter; or

14 (5) Any corporate action taken pursuant to a stockholder vote
15 to the extent the Articles of Incorporation, Bylaws, or a resolution of the
16 board of directors provides that voting or nonvoting stockholders are
17 entitled to dissent and obtain payment for their shares.

18 (b) A stockholder entitled to dissent and obtain payment for his shares
19 under this chapter may not challenge the corporate action creating his entitlement
20 unless the action is unlawful or fraudulent with respect to the stockholder or the
21 corporation.

22 **§ 3303. Dissent by Nominees and Beneficial Owners.**

23 (a) A record stockholder may assert the dissenter's right as to fewer
24 than all the shares registered in his name only if he dissents with respect to all
25 shares beneficially owned by any one person and notifies the corporation in
26 writing of the name and address of each person on whose behalf he asserts
27 dissenters' rights. The rights of a partial dissenter under this Subsection are
28 determined as if the shares as to which he dissents and his other shares were
29 registered in the names of different stockholders.

30 (b) A beneficial stockholder may assert dissenters' rights as to shares
31 held on his behalf only if:

1 (1) He submits to the corporation the record stockholder's
2 written consent to the dissent not later than the time the beneficial
3 stockholder asserts dissenters' rights; and

4 (2) He does so with respect to all shares of which he is the
5 beneficial stockholder or over which he has power to direct the vote."

6 **Section 7.** A New Article 4 is hereby *added* to Chapter 3, Part 1, Title 18 of the
7 Guam Code Annotated, to read as follows:

8 **"Article 4. Procedure for Exercise of Dissenters' Rights.**

9 § 3401. Notice of Dissenters' Rights.

10 § 3402. Notice of Intent to Demand Payment.

11 § 3403. Dissenters' Notice.

12 § 3404. Duty to Demand Payment.

13 § 3405. Share Restrictions.

14 § 3406. Payment.

15 § 3407. Failure to Take Action.

16 § 3408. After-Acquired Shares.

17 § 3409. Procedure if Stockholder Dissatisfied with Payment of Offer.

18 **§ 3401. Notice of Dissenters' Rights.**

19 (a) If proposed corporate action creating dissenters' rights under §
20 3302 is submitted to a vote at a stockholders' meeting, the meeting notice must
21 state that stockholders are or may be entitled to assert dissenters' rights under
22 Articles 3 and 4 of this Chapter and be accompanied by a copy of §§ 3301
23 through 3502 of this Chapter.

24 (b) If corporate action creating dissenters' rights under § 3302 is taken
25 without a vote of the stockholders, the corporation shall notify in writing all
26 stockholders entitled to assert dissenters' rights that the action was taken and send
27 them the dissenters' rights notice described in § 3403 of this Article.

28 **§ 3402. Notice of Intent to Demand Payment.**

29 (a) If proposed corporate action creating dissenters' rights under §
30 3302 of this Chapter is submitted to a vote at a stockholders' meeting, a
31 stockholder who wishes to assert dissenters' rights:

32 (1) Must deliver to the corporation before the vote is taken
33 written notice of his intent to demand payment for his shares if the
34 proposed action is effectuated; and

1 (2) Must not vote his shares in favor of the proposed action.

2 (b) A stockholder who does not satisfy the requirements of Subsection
3 (a) of this Section is not entitled to payment for his shares under Articles 3 and 4
4 of this Chapter.

5 **§ 3403. Dissenters' Notice.**

6 (a) If proposed corporate action creating dissenters' rights under §
7 3302 of this Chapter is authorized at a stockholders' meeting, the corporation
8 shall deliver a written dissenters' notice to all stockholders who satisfied the
9 requirements of § 3402 of this Article.

10 (b) The dissenters' notice must be sent no later than ten (10) days after
11 the corporate action was taken, and must:

12 (1) State where the payment demand must be sent and where
13 and when certificates for certificated shares must be deposited;

14 (2) Inform holders of uncertificated shares to what extent
15 transfer of the shares will be restricted after the payment demand is
16 received;

17 (3) Supply a form for demanding payment that includes the
18 date of the first announcement to news media or to stockholders of the
19 terms of the proposed corporate action and requires that the person
20 asserting dissenters' rights certify whether or not he acquired beneficial
21 ownership of the shares before that date;

22 (4) Set a date by which the corporation must receive the
23 payment demand, which date may not be fewer than thirty (30) nor more
24 than sixty (60) days after the date the Subsection (a) notice is delivered;
25 and

26 (5) Be accompanied by a copy of §§ 3301 through 3502 of this
27 Chapter.

28 **§ 3404. Duty to Demand Payment.**

29 (a) A stockholder sent a dissenters' notice described in § 3403 of this
30 Article must demand payment, certify whether he acquired beneficial ownership
31 of the shares before the date required to be set forth in the dissenters' notice

1 pursuant to § 3403(b)(3), and deposit his certificates in accordance with the terms
2 of the notice.

3 (b) The stockholder who demands payment and deposits his shares
4 under Subsection (a) of this Section retains all other rights of a stockholder until
5 their rights are canceled or modified by the taking of the proposed corporate
6 action.

7 (c) A stockholder who does not demand payment or deposit his share
8 certificates where required, each by the date set in the dissenters' notice, is not
9 entitled to payment for his shares under Articles 3 and 4 of this Chapter.

10 **§ 3405. Share Restrictions.**

11 (a) The corporation may restrict the transfer of uncertificated shares
12 from the date the demand for their payment is received until the proposed
13 corporate action is taken or the restrictions released under § 3407 of this Article.

14 (b) The person for whom dissenters' rights are asserted as to
15 uncertificated shares retains all other rights of a stockholder until these rights are
16 canceled or modified by the taking of the proposed corporate action.

17 **§ 3406. Payment.**

18 (a) Except as provided in § 3408 of this Article, as soon as the
19 proposed corporate action is taken, or upon receipt of a payment demand, the
20 corporation shall pay each dissenter who complied with § 3404 the amount the
21 corporation estimates to be the fair value of his shares, plus interest, in cash.

22 (b) The payment must be accompanied by:

23 (1) The corporation's balance sheet as of the end of a fiscal
24 year ending not more than 16 months before the date of payment, an
25 income statement for that year, a statement of changes in stockholders'
26 equity for that year and the latest available interim financial statements, if
27 any;

28 (2) A statement of the corporation's estimate of the fair value
29 of the shares;

30 (3) An explanation of how the interest was calculated;

31 (4) A statement of the dissenter's right to demand payment

1 under § 3409; and

2 (5) A copy of §§ 3301 through 3502 of this Chapter.

3 **§ 3407. Failure to Take Action.**

4 (a) If the corporation does not take the proposed action within sixty
5 (60) days after the date set for demanding payment and depositing share
6 certificates, the corporation shall return the deposited certificates and release the
7 transfer restrictions imposed on uncertificated shares.

8 (b) If after returning deposited certificates and releasing transfer
9 restrictions, the corporation takes the proposed action, it must send a new
10 dissenters' notice under § 3403 of this Article and repeat the payment demand
11 procedure.

12 **§ 3408. After-Acquired Shares.**

13 A dissenter who was not the beneficial owner of the shares before the
14 date set forth in the dissenters' notice as the date of the first announcement to
15 news media or to stockholders of the terms of the proposed corporate action
16 waives his right to demand payment with respect to such shares under § 3301
17 through § 3502 of this Chapter unless the plan of merger or share exchange
18 expressly provides for such payment.

19 **§ 3409. Procedure if Stockholder Dissatisfied with Payment of Offer.**

20 (a) A dissenter may notify the corporation in writing of his own
21 estimate of the fair value of his shares and amount of interest due, and demand
22 payment of his estimate less any payment under § 3406 of this Article, or reject
23 the corporation's offer under § 3408 and demand payment of the fair value of his
24 shares and interest due, if:

25 (1) The dissenter believes that the amount paid under § 3406 or
26 offered under § 3408 is less than the fair value of his shares or that the
27 interest due is incorrectly calculated;

28 (2) The corporation fails to make payment under § 3406 within
29 sixty (60) days after the date set for demanding payment; or

30 (3) The corporation, having failed to take the proposed action,
31 does not return the deposited certificates or release the transfer restrictions

1 imposed on uncertificated shares within sixty (60) days after the date set
2 for demanding payment.

3 (b) A dissenter waives his right to demand payment under this
4 Section unless he notifies the corporation of his demand in writing under
5 Subsection (a) of this Section within thirty (30) days after the corporation
6 made or offered payment for his shares.”

7 **Section 8.** A New Article 5 is hereby *added* to Chapter 3, Part 1, Title 18 of the
8 Guam Code Annotated, to read as follows:

9
10 **“Article 5. Judicial Appraisal of Shares.**

11 § 3501. Court Action.

12 § 3502. Court Costs and Counsel Fees.

13 **§ 3501. Court Action.**

14 (a) If a demand for payment under § 3409 of this Chapter remains
15 unsettled, the corporation shall commence a proceeding within sixty (60) days
16 after receiving the payment demand and petition the court to determine the fair
17 value of the shares and accrued interest. If the corporation does not commence
18 the proceeding within the sixty (60) day period, it shall pay each dissenter whose
19 demand remains unsettled the amount demanded.

20 (b) The corporation shall commence the proceeding in the Superior
21 Court of Guam.

22 (c) The corporation shall make all dissenters, whether or not residents
23 of Guam, whose demands remain unsettled parties to the proceeding as in an
24 action against their shares and all parties must be served with a copy of the
25 petition. Nonresidents may be served by registered or certified mail or by
26 publication as provided by law.

27 (d) The jurisdiction of the court in which the proceeding is
28 commenced under Subsection (b) of this Section is plenary and exclusive. The
29 court may appoint one or more persons as appraisers to receive evidence and
30 recommend decision on the question of fair value. The appraisers have the
31 powers described in the order appointing them, or in any amendment to it. The

1 dissenters are entitled to the same discovery rights as parties in other civil
2 proceedings.

3 (e) Each dissenter made a party to the proceeding is entitled to
4 judgment:

5 (1) For the amount, if any, by which the court finds the fair
6 value of his shares, plus interest, exceeds the amount paid by the
7 corporation; or

8 (2) For the fair value, elected to withhold payment under §
9 3408 of this Chapter.

10 **§ 3502. Court Costs and Counsel Fees.**

11 (a) The court in an appraisal proceeding commenced under § 3501
12 shall determine all costs of the proceeding, including the reasonable compensation
13 and expenses of appraisers appointed by the court. The court shall assess the
14 costs against the corporation, except that the court may assess costs against all or
15 some of the dissenters, in amounts the court finds equitable, to the extent the court
16 finds the dissenters acted arbitrarily, vexatiously, or not in good faith in
17 demanding payment under § 3409 of this Chapter.

18 (b) The court may also assess the fees and expenses of counsel and
19 experts for the respective parties, in amounts the court finds equitable:

20 (1) Against the corporation and in favor of any or all dissenters
21 if the court finds the corporation did not substantially comply with the
22 requirements of § 3401 through § 3409 of this Chapter; and

23 (2) Against either the corporation or a dissenter in favor of any
24 other party, if the court finds that the party against whom the fees and
25 expenses are assessed acted arbitrarily, vexatiously, or not in good faith
26 with respect to the rights provided by this Chapter.

27 (c) If the court finds that the services of counsel for any dissenter were of
28 substantial benefit to other dissenters similarly situated, and that the fees for those
29 services should not be assessed against the corporation, the court may award to
30 these counsel reasonable fees to be paid out of the amount awarded the dissenters
31 who were benefited.”