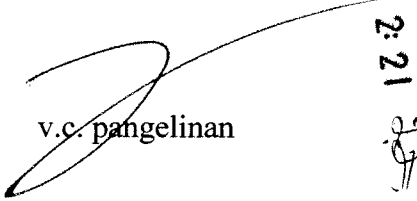


I MINA' BENTE NUEBI NA LIHESLATURAN GUAHAN  
2008 (SECOND) Regular Session

Bill No. 296 (EC)

Introduced by:

  
v.c. pangelinan

2008 MAY 13 PM 2:21

**AN ACT TO ADD A NEW PART 5 TO TITLE 18, DIVISION 1 OF  
THE GUAM CODE ANNOTATED TO PROVIDE FOR A NEW  
GUAM BUSINESS CORPORATION ACT UNDER THE LAWS OF  
GUAM.**

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

1 **Section 1. Legislative Findings.**

2 **Section 2.** A new Part 5 is added to Title 18, Division 1 of the Guam Code Annotated to

3 read:

4 **“GUAM BUSINESS CORPORATION ACT**

5 **CHAPTER 1. GENERAL PROVISIONS**

6 **§28101. Short Title.**

7 **§28102. Reservation of Power to Amend or Repeal.**

8 **§28103. Filing Requirements.**

9 **§28104. Forms.**

10 **§28105. Filing, Service, and Copying Fees.**

11 **§28106. Effective Time and Date of Document.**

12 **§28107. Evidentiary Effect of Copy of Filed Document.**

13 **§28108. Certificate of Existence.**

1           §28109. Powers.

2           §28110. Act Definitions.

3           §28111. Notice.

4                                   **CHAPTER 2. INCORPORATION**

5           §28201. Incorporators.

6           §28202. Articles of Incorporation.

7           §28203. Organization of Corporation.

8           §28204. Bylaws.

9           §28205. Emergency Bylaws.

10                                   **CHAPTER 3. PURPOSES AND POWERS**

11          §28301. Purposes.

12          §28302. General Powers.

13          §28303. Emergency Powers.

14          §28304. Ultra Vires.

15                                   **CHAPTER 4. NAME**

16          §28401. Corporate Name.

17          §28402. Reserved Name.

18          §28403. Registered Name.

19                                   **CHAPTER 5. DESIGNATION OF AGENT AND SERVICE OF PROCESS**

20          §28501. Designation of Agent for Service of Process.

21                                   **CHAPTER 6. SHARES AND DISTRIBUTION**









1           **§281104. Action on a Plan of Merger or Share Exchange.**

2           **§281105. Merger Between Parent and Subsidiary or Between Subsidiaries.**

3           **§281106. Articles of Merger or Share Exchange.**

4           **§281107. Effect of Merger or Share Exchange.**

5           **§281108. Abandonment of a Merger or Share Exchange.**

6                                   **CHAPTER 12. DISPOSITION OF ASSETS**

7           **§281201. Disposition of Assets Not Requiring Shareholder Approval.**

8           **§281202. Shareholder Approval of Certain Dispositions.**

9                                   **CHAPTER 13. APPRAISAL RIGHTS**

10                           **Subchapter A. Right to Appraisal and Payment for Shares**

11           **§281301. Definitions.**

12           **§281302. Right to Appraisal.**

13           **§281303. Assertion of Rights by Nominees and Beneficial Owners.**

14                           **Subchapter B. Procedure for Exercise of Appraisal Rights**

15           **§281304. Notice of Appraisal Rights.**

16           **§281305. Notice of Intent to Demand Payment.**

17           **§281306. Appraisal Notice and Form.**

18           **§281307. Perfection of Rights; Right to Withdraw.**

19           **§281308. Payment.**

20           **§281309. After-Acquired Shares.**

21           **§281310. Procedure if Shareholder Dissatisfied With Payment or Offer.**





1 **Foreign Corporations.**

2 **CHAPTER 16. RECORDS AND REPORTS**

3 **§281601. Inspection of books and records.**

4 **§281602. Annual Reports.**

5 **CHAPTER 17. TRANSITION PROVISIONS**

6 **§281701. Effective Date.**

7 **§281702. Application to Domestic Corporations.**

8 **§281703. Application of General Corporation Law of Guam.**

9 **§281704. Professional Corporations.**

10 **§281705. Application to Foreign Corporations.**

11 **§281706. Saving Provisions.**

12 **§281707. Severability.**

13 **§28101. Short Title.** This Act shall be known and may be cited as the “Guam Business  
14 Corporation Act.”

15 **§28102. Reservation of Power to Amend or Repeal.** *I Liheslaturan Guåhan* has power  
16 to amend or repeal all or part of this Act at any time and all domestic and foreign corporations  
17 subject to this Act are governed by the amendment or repeal.

18 **§28103. Filing Requirements.** A document to be entitled to filing by the Director of  
19 Revenue & Taxation must be type written or printed, unless the Director has by regulation  
20 provided for filing by electronic transmission. A document filed by electronic transmission must  
21 be in a format that can be retrieved or reproduced in typewritten or printed form.

1           **§28104. Forms.** The Director of Revenue & Taxation may prescribe and furnish on  
2 request forms for documents required or permitted to be filed by this Act but their use is not  
3 mandatory.

4           **§28105. Filing, Service, and Copying Fees.**

5           (a) The Director of Revenue & Taxation shall collect the following fees when the  
6 documents described in this subsection are delivered to him for filing:

7	Document	Fee
8	(1) Articles of incorporation	\$100.00
9	(2) Application for reserved name	\$25.00
10	(3) Application for registered name or renewal	
11	of registered name	\$25.00
12	(4) Corporation's statement of registered agent or	
13	of change of registered agent	No Fee
14	(5) Agent's statement of resignation	No Fee
15	(6) Amended articles of incorporation	\$25.00
16	(7) Articles of merger or share exchange	\$100.00
17	(8) Articles of dissolution	\$25.00
18	(9) Articles of revocation of dissolution	\$100.00
19	(10) Certificate of judicial dissolution	No fee
20	(11) Application of a foreign corporation for	
21	certificate of authority	\$100.00

1	(12) Application of a foreign corporation for	
2	amended certificate of authority	\$25.00
3	(13) Application for certificate of withdrawal of	
4	foreign corporation	\$25.00
5	(14) Amended articles of incorporation of foreign	
6	or domestic corporation	\$50.00
7	(15) Annual report of foreign or domestic corporation	\$100.00
8	(16) Late fee for annual report of foreign or domestic	
9	corporation	\$50.00
10	(17) Application for certificate of existence or	
11	authorization	\$25.00

12 (b) The Director of Revenue & Taxation shall collect a fee of \$50.00 each time process is  
13 served on the Director under this Act. The party to a proceeding causing service of process is  
14 entitled to recover this fee as costs if he prevails in the proceeding.

15 (c) Authorization to Establish and Collect Fees. The Director of the Department of  
16 Revenue and Taxation is authorized to establish and collect fees for any document required or  
17 permitted to be filed in accordance with this Act for which the fee has *not* been specifically  
18 established in accordance with the Administrative Adjudication law; *provided*, that no fee shall  
19 be in excess of Fifty Dollars (\$50.00) and only temporarily until the Administrative Adjudication  
20 Law process shall have become effective relative to fees in this Section.

21 **§28106. Effective Time and Date of Document.** A document accepted for filing is

1 effective at the date and time of filing, as evidenced by such means as the Director of Revenue &  
2 Taxation may use for the purpose of recording the date and time of filing.

3 **§28107. Evidentiary Effect of Copy of Filed Document.** A certificate from the  
4 Director of Revenue & Taxation delivered with a copy of a document filed by the Director of  
5 Revenue & Taxation is conclusive evidence that the original document is on file with the  
6 Director of Revenue & Taxation.

7 **§28108. Certificate of Existence.**

8 (a) Anyone may apply to the Director of Revenue & Taxation to furnish a certificate of  
9 existence for a domestic corporation or a certificate of authorization for a foreign corporation.

10 (b) A certificate of existence or authorization sets forth:

11 (1) the domestic corporation's corporate name or the foreign corporation's corporate  
12 name;

13 (2) that (i) the domestic corporation is duly incorporated under the laws of Guam, the  
14 date of its incorporation, and the period of its duration if less than perpetual; or (ii) that the  
15 foreign corporation is authorized to transact business in Guam;

16 (3) that articles of dissolution have not been filed; and

17 (4) other facts of record in the office of the Director of Revenue & Taxation that may  
18 be requested by the applicant.

19 (c) Subject to any qualification stated in the certificate, a certificate of existence or  
20 authorization issued by the Director of Revenue & Taxation may be relied upon as conclusive  
21 evidence that the domestic or foreign corporation is in existence or is authorized to transact

1 business in Guam.

2           **§28109. Powers.** The Director of Revenue & Taxation has the power reasonably  
3 necessary to perform the duties required of him by this Act.

4           **§28110. Act Definitions.** In this Act:

5           (1) Articles of incorporation include amended articles of incorporation and articles of  
6 merger.

7           (2) Authorized shares means the shares of all classes a domestic or foreign corporation is  
8 authorized to issue.

9           (3) Corporation or domestic corporation means a corporation for profit which is not a  
10 foreign corporation incorporated under or subject to the provisions of this Act.

11           (4) Deliver or delivery means any method of delivery used in conventional commercial  
12 practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

13           (5) Distribution means a direct or indirect transfer of money or other property (except its  
14 own shares) or incurrence of indebtedness by a corporation to or for the benefit of its  
15 shareholders in respect of any of its shares. A distribution may be in the form of a declaration or  
16 payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of  
17 indebtedness; or otherwise.

18           (6) Effective date of notice is defined in section 28111.

19           (6A) Electronic transmission or electronically transmitted means any process of  
20 communication not directly involving the physical transfer of paper that is suitable for the  
21 retention, retrieval, and reproduction of information by the recipient.

1           (7) Employee includes an officer but not a director. A director may accept duties that  
2 make him also an employee.

3           (8) Entity includes corporation and foreign corporation; not-for-profit corporation; profit  
4 and not-for-profit unincorporated association; business trust, estate, partnership, limited liability  
5 company, limited partnership, trust, and two or more persons having a joint or common  
6 economic interest; and state, United States, and foreign government.

7           (9) Foreign corporation means a corporation for profit incorporated under a law other  
8 than the law of Guam.

9           (10) Includes denotes a partial definition.

10          (11) Individual includes the estate of an incompetent or deceased individual.

11          (12) Means denotes an exhaustive definition.

12          (13) Notice is defined in section 28111.

13          (14) Person includes individual and entity.

14          (15) Proceeding includes civil suit and criminal, administrative, and investigatory action.

15          (16) Record date means the date established under this Act on which a corporation  
16 determines the identity of its shareholders and their shareholdings for purposes of this Act. The  
17 determinations shall be made as of the close of business on the record date unless another time  
18 for doing so is specified when the record date is fixed.

19          (17) Secretary means the corporate officer to whom the board of directors has delegated  
20 responsibility under section 28819(c) for custody of the minutes of the meetings of the board of  
21 directors and of the shareholders and for authenticating records of the corporation.

1 (18) Shareholder means the person in whose name shares are registered in the records of  
2 a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee  
3 certificate on file with a corporation.

4 (19) Shares means the units into which the proprietary interests in a corporation are  
5 divided.

6 (19A) Sign or signature includes any manual, facsimile, conformed or electronic  
7 signature.

8 (20) State, when referring to a part of the United States, includes a state and  
9 commonwealth (and their agencies and governmental subdivisions) and a territory and insular  
10 possession (and their agencies and governmental subdivisions) of the United States.

11 (21) Subscriber means a person who subscribes for shares in a corporation, whether  
12 before or after incorporation.

13 (22) United States includes district, authority, bureau, commission, department, and any  
14 other agency of the United States.

15 (23) Voting group means all shares of one or more classes or series that under the articles  
16 of incorporation or this Act are entitled to vote and be counted together collectively on a matter  
17 at a meeting of shareholders. All shares entitled by the articles of incorporation or this Act to  
18 vote generally on the matter are for that purpose a single voting group.

19 (24) Voting power means the current power to vote in the election of directors.

20 **§28111. Notice.**

21 (a) Notice under this Act must be in writing unless oral notice is reasonable under the

1 circumstances. Notice by electronic transmission is written notice.

2 (b) Written notice by a domestic or foreign corporation to its shareholder, if in a  
3 comprehensible form, is effective (i) upon deposit in the United States mail, if mailed postpaid  
4 and correctly addressed to the shareholder's address shown in the corporation's current record of  
5 shareholders, or (ii) when electronically transmitted to the shareholder in a manner authorized by  
6 the shareholder.

7 (c) Except as provided in subsection (b), written notice, if in a comprehensible form, is  
8 effective at the earliest of the following:

9 (1) when received;

10 (2) five days after its deposit in the United States Mail, if mailed postpaid and  
11 correctly addressed;

12 (3) on the date shown on the return receipt, if sent by registered or certified mail,  
13 return receipt requested, and the receipt is signed by or on behalf of the addressee.

14 (d) Oral notice is effective when communicated if communicated in a comprehensible  
15 manner.

16 (e) If this Act prescribes notice requirements for particular circumstances, those  
17 requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not  
18 inconsistent with this section or other provisions of this Act, those requirements govern.



1 **CHAPTER 2. INCORPORATION**

2 **§28201. Incorporators.** One or more persons may act as the incorporator or  
3 incorporators of a corporation by delivering articles of incorporation to the Director of Revenue  
4 & Taxation for filing.

5 **§28202. Articles of Incorporation.**

6 (a) The articles of incorporation must set forth:

7 (1) a corporate name for the corporation that satisfies the requirements of section  
8 28401;

9 (2) the number of shares the corporation is authorized to issue;

10 (3) the corporation's initial place of business; and

11 (4) the name and address of each incorporator.

12 (b) The articles of incorporation may set forth:

13 (1) the names and addresses of the individuals who are to serve as the initial directors;

14 (2) provisions not inconsistent with law regarding:

15 (i) the purpose or purposes for which the corporation is organized;

16 (ii) managing the business and regulating the affairs of the corporation;

17 (iii) defining, limiting, and regulating the powers of the corporation, its board of  
18 directors, and shareholders;

19 (iv) a par value for authorized shares or classes of shares;

20 (v) the imposition of personal liability on shareholders for the debts of the  
21 corporation to a specified extent and upon specified conditions;

1           (3) any provision that under this Act is required or permitted to be set forth in the  
2 bylaws;

3           (4) a provision eliminating or limiting the liability of a director to the corporation or  
4 its shareholders for money damages for any action taken, or any failure to take any action, as a  
5 director, except liability for (A) the amount of a financial benefit received by a director to which  
6 he is not entitled; (B) an intentional infliction of harm on the corporation or the shareholders; (C)  
7 a violation of section 28818; or (D) an intentional violation of criminal law; and

8           (5) a provision permitting or making obligatory indemnification of a director for  
9 liability to any person for any action taken, or any failure to take any action, as a director, except  
10 liability for (A) receipt of a financial benefit to which he is not entitled, (B) an intentional  
11 infliction of harm on the corporation or its shareholders, (C) a violation of section 28818 or (D)  
12 an intentional violation of criminal law.

13           (c) The articles of incorporation need not set forth any of the corporate powers  
14 enumerated in this Act.

15           **§28203. Organization of Corporation.**

16           (a) After incorporation:

17           (1) if initial directors are named in the articles of incorporation, the initial directors  
18 shall hold an organizational meeting, at the call of a majority of the directors, to complete the  
19 organization of the corporation by appointing officers, adopting bylaws, and carrying on any  
20 other business brought before the meeting;

21           (2) if initial directors are not named in the articles, the incorporator or incorporators

1 shall hold an organizational meeting at the call of a majority of the incorporators:

2 (i) to elect directors and complete the organization of the corporation; or

3 (ii) to elect a board of directors who shall complete the organization of the  
4 corporation.

5 (b) Action required or permitted by this Act to be taken by incorporators at an  
6 organizational meeting may be taken without a meeting if the action taken is evidenced by one or  
7 more written consents describing the action taken and signed by each incorporator.

8 (c) An organizational meeting may be held in or out of Guam.

9 **§28204. Bylaws.**

10 (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for  
11 the corporation.

12 (b) The bylaws of a corporation may contain any provision for managing the business and  
13 regulating the affairs of the corporation that is not inconsistent with law or the articles of  
14 incorporation.

15 **§28205. Emergency Bylaws.**

16 (a) Unless the articles of incorporation provide otherwise, the board of directors of a  
17 corporation may adopt bylaws to be effective only in an emergency defined in subsection (d).

18 The emergency bylaws, which are subject to amendment or repeal by the shareholders, may  
19 make all provisions necessary for managing the corporation during the emergency, including:

20 (1) procedures for calling a meeting of the board of directors;

21 (2) quorum requirements for the meeting; and

1 (3) designation of additional or substitute directors.

2 (b) All provisions of the regular bylaws consistent with the emergency bylaws remain  
3 effective during the emergency. The emergency bylaws are not effective after the emergency  
4 ends.

5 (c) Corporate action taken in good faith in accordance with the emergency bylaws:

6 (1) binds the corporation; and

7 (2) may not be used to impose liability on a corporate director, officer, employee, or  
8 agent.

9 (d) An emergency exists for purposes of this section if a quorum of the corporation's  
10 directors cannot readily be assembled because of some catastrophic event.

11 **CHAPTER 3. PURPOSES AND POWERS**

12 **§28301. Purposes.**

13 (a) Every corporation incorporated under this Act has the purpose of engaging in any  
14 lawful business unless a more limited purpose is set forth in the articles of incorporation.

15 (b) A corporation engaging in a business that is subject to regulation under another statute  
16 of Guam may incorporate under this Act only if permitted by, and subject to all limitations of,  
17 the other statute.

18 **§28302. General Powers.** Unless its articles of incorporation provide otherwise, every  
19 corporation has perpetual duration and succession in its corporate name and has the same powers  
20 as an individual to do all things necessary or convenient to carry out its business and affairs,  
21 including without limitation power:

- 1 (a) to sue and be sued, complain and defend in its corporate name;
- 2 (b) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of  
3 it, by impressing or affixing it or in any other manner reproducing it;
- 4 (c) to make and amend bylaws, not inconsistent with its articles of incorporation or with  
5 the laws of Guam, for managing the business and regulating the affairs of the corporation;
- 6 (d) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and  
7 otherwise deal with, real or personal property, or any legal or equitable interest in property,  
8 wherever located;
- 9 (e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any  
10 part of its property;
- 11 (f) to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell,  
12 mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in,  
13 or obligations of, any other entity;
- 14 (g) to make contracts and guarantees, incur liabilities, borrow money, issue its notes,  
15 bonds, and other obligations (which may be convertible into or include the option to purchase  
16 other securities of the corporation), and secure any of its obligations by mortgage or pledge of  
17 any of its property, franchises, or income;
- 18 (h) to lend money, invest and reinvest its funds, and receive and hold real and personal  
19 property as security for repayment;
- 20 (i) to be a promoter, partner, member, associate, or manager of any partnership, joint  
21 venture, trust, or other entity;

1 (j) to conduct its business, locate offices, and exercise the powers granted by this Act  
2 within or without Guam;

3 (k) to elect directors and appoint officers, employees, and agents of the corporation,  
4 define their duties, fix their compensation, and lend them money and credit;

5 (l) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share  
6 bonus plans, share option plans, and benefit or incentive plans for any or all of its current or  
7 former directors, officers, employees, and agents;

8 (m) to make donations for the public welfare or for charitable, scientific, or educational  
9 purposes;

10 (n) to transact any lawful business that will aid governmental policy;

11 (o) to make payments or donations, or do any other act, not inconsistent with law, that  
12 furthers the business and affairs of the corporation.

13 **§28303. Emergency Powers.**

14 (a) In anticipation of or during an emergency defined in subsection (d), the board of  
15 directors of a corporation may:

16 (1) modify lines of succession to accommodate the incapacity of any director, officer,  
17 employee, or agent; and

18 (2) relocate the principal office, designate alternative principal offices or regional  
19 offices, or authorize the officers to do so.

20 (b) During an emergency defined in subsection (d), unless emergency bylaws provide  
21 otherwise:

1           (1) notice of a meeting of the board of directors need be given only to those directors  
2 whom it is practicable to reach and may be given in any practicable manner, including by  
3 publication and radio; and

4           (2) one or more officers of the corporation present at a meeting of the board of  
5 directors may be deemed to be directors for the meeting, in order of rank and within the same  
6 rank in order of seniority, as necessary to achieve a quorum.

7           (c) Corporate action taken in good faith during an emergency under this section to further  
8 the ordinary business affairs of the corporation:

9           (1) binds the corporation; and

10           (2) may not be used to impose liability on a corporate director, officer, employee, or  
11 agent.

12           (d) An emergency exists for purposes of this section if a quorum of the corporation's  
13 directors cannot readily be assembled because of some catastrophic event.

14           **§28304. Ultra Vires.**

15           (a) Except as provided in subsection (b), the validity of corporate action may not be  
16 challenged on the ground that the corporation lacks or lacked power to act.

17           (b) A corporation's power to act may be challenged:

18           (1) in a proceeding by a shareholder against the corporation to enjoin the act;

19           (2) in a proceeding by the corporation, directly, derivatively, or through a receiver,  
20 trustee, or other legal representative, against an incumbent or former director, officer, employee,  
21 or agent of the corporation; or

1 (3) in a proceeding by the Attorney General under section 281410.

2 (c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized  
3 corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are  
4 parties to the proceeding, and may award damages for loss (other than anticipated profits)  
5 suffered by the corporation or another party because of enjoining the unauthorized act.

6 **CHAPTER 4. NAME**

7 **§28401. Corporate Name.** The provisions of 11 GCA §2110 of the General  
8 Corporation Law of Guam shall apply to a corporation governed by this Act.

9 **§28402. Reserved Name.** The provisions of 11 GCA §2110.1 of the General  
10 Corporation Law of Guam shall apply to a corporation governed by this Act.

11 **§28403. Registered Name.** The provisions of 11 GCA §2110.2 of the General  
12 Corporation Law of Guam shall apply to a corporation governed by this Act.

13 **CHAPTER 5. DESIGNATION OF AGENT AND SERVICE OF PROCESS**

14 **§28501. Designation of Agent for Service of Process.** Every domestic corporation may  
15 file with the Director of Revenue & Taxation a designation of a natural person, residing at a  
16 stated address in Guam, as its agent, for the purpose of service of process, and the delivery, to  
17 such agent, of a copy of any process against such corporation shall constitute valid service on  
18 such corporation. Such corporation shall file with the Director of Revenue & Taxation notice of  
19 any change in the address of the person thus designated, and may revoke any such designation by  
20 filing notice thereof with the Director of Revenue & Taxation.

21 If such designation has not been filed with the Director of Revenue & Taxation, or if



1 process against any domestic corporation cannot, with the exercise of due diligence, be served  
2 upon the person designated or in any other manner provided by law, service may be had upon  
3 such corporation by delivering to the Director of Revenue & Taxation, or to any person  
4 employed in his office in the capacity of a deputy, duplicate copies of such process, together with  
5 any fee required by law, which shall be included in the taxable costs of the suit, action, or  
6 proceeding. Upon the receipt of such process and fee, the Director of Revenue & Taxation shall  
7 forthwith give notice of the service of such process to the corporation at its principal office in  
8 Guam, and shall deliver to such office, a copy of such process. The defendant shall appear and  
9 answer within thirty (30) days after such service upon the Director of Revenue & Taxation.

## 10 **CHAPTER 6. SHARES AND DISTRIBUTION**

### 11 **§28601. Authorized Shares.**

12 (a) The articles of incorporation must prescribe the classes of shares and the number of  
13 shares of each class that the corporation is authorized to issue. If more than one class of shares is  
14 authorized, the articles of incorporation must prescribe a distinguishing designation for each  
15 class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative  
16 rights of that class must be described in the articles of incorporation. All shares of a class must  
17 have preferences, limitations, and relative rights identical with those of other shares of the same  
18 class except to the extent otherwise permitted by section 28602.

19 (b) The articles of incorporation must authorize (1) one or more classes of shares that  
20 together have unlimited voting rights, and (2) one or more classes of shares (which may be the  
21 same class or classes as those with voting rights) that together are entitled to receive the net

1 assets of the corporation upon dissolution.

2 (c) The articles of incorporation may authorize one or more classes of shares that:

3 (1) have special, conditional, or limited voting rights, or no right to vote, except to the  
4 extent prohibited by this Act;

5 (2) are redeemable or convertible as specified in the articles of incorporation (i) at the  
6 option of the corporation, the shareholder, or another person or upon the occurrence of a  
7 designated event; (ii) for cash, indebtedness, securities, or other property; (iii) in a designated  
8 amount or in an amount determined in accordance with a designated formula or by reference to  
9 extrinsic data or events;

10 (3) entitle the holders to distributions calculated in any manner, including dividends  
11 that may be cumulative, noncumulative, or partially cumulative;

12 (4) have preference over any other class of shares with respect to distributions,  
13 including dividends and distributions upon the dissolution of the corporation.

14 (d) The description of the designations, preferences, limitations, and relative rights of  
15 share classes in subsection (c) is not exhaustive.

16 **§28602. Terms of Class or Series Determined by Board of Directors.**

17 (a) If and to the extent the articles of incorporation so provide, the board of directors may  
18 determine, in whole or part, the preferences, limitations, and relative rights (within the limits set  
19 forth in section 28601) of (1) any class of shares before the issuance of any shares of that class or  
20 (2) one or more series within a class before the issuance of any shares of that series.

21 (b) Each series of a class must be given a distinguishing designation.

1 (c) All shares of a series must have preferences, limitations, and relative rights identical  
2 with those of other shares of the same series and, except to the extent otherwise provided in the  
3 description of the series, with those of other series of the same class.

4 (d) Before issuing any shares of a class or series created under this section, the  
5 corporation must deliver to the Director of Revenue & Taxation for filing amended articles of  
6 incorporation, which are effective without shareholder action as provided in section 281005.  
7 Such amended articles of incorporation shall include provisions determining the terms of the  
8 class or series of shares as duly adopted by the board of directors. When any shares of a class or  
9 series created under this section are no longer outstanding, the corporation may deliver to the  
10 Director of Revenue & Taxation for filing amended articles of incorporation which are effective  
11 without shareholder action, omitting the provisions determining the terms of the class or series of  
12 shares no longer outstanding.

13 **§28603. Issued and Outstanding Shares.**

14 (a) A corporation may issue the number of shares of each class or series authorized by the  
15 articles of incorporation. Shares that are issued are outstanding shares until they are reacquired,  
16 redeemed, converted, or cancelled.

17 (b) The reacquisition, redemption, or conversion of outstanding shares is subject to the  
18 limitations of subsection (c) of this section and to section 28616.

19 (c) At all times that shares of the corporation are outstanding, one or more shares that  
20 together have unlimited voting rights and one or more shares that together are entitled to receive  
21 the net assets of the corporation upon dissolution must be outstanding.

1           **§28604. Fractional Shares.**

2           (a) A corporation may:

3                 (1) issue fractions of a share or pay in money the value of fractions of a share;

4                 (2) arrange for disposition of fractional shares by the shareholders;

5                 (3) issue scrip in registered or bearer form entitling the holder to receive a full share

6 upon surrendering enough scrip to equal a full share.

7           (b) Each certificate representing scrip must be conspicuously labeled scrip and must

8 contain the information required by section 28610(b).

9           (c) The holder of a fractional share is entitled to exercise the rights of a shareholder,

10 including the right to vote, to receive dividends, and to participate in the assets of the corporation

11 upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip

12 provides for them.

13           (d) The board of directors may authorize the issuance of scrip subject to any condition

14 considered desirable, including:

15                 (1) that the scrip will become void if not exchanged for full shares before a specified

16 date; and

17                 (2) that the shares for which the scrip is exchangeable may be sold and the proceeds

18 paid to the scripholders.

19           **§28605. Subscription for Shares Before Incorporation.**

1 (a) A subscription for shares entered into before incorporation is irrevocable for six  
2 months unless the subscription agreement provides a longer or shorter period or all the  
3 subscribers agree to revocation.

4 (b) The board of directors may determine the payment terms of subscriptions for shares  
5 that were entered into before incorporation, unless the subscription agreement specifies them. A  
6 call for payment by the board of directors must be uniform so far as practicable as to all shares of  
7 the same class or series, unless the subscription agreement specifies otherwise.

8 (c) Shares issued pursuant to subscriptions entered into before incorporation are fully  
9 paid and nonassessable when the corporation receives the consideration specified in the  
10 subscription agreement.

11 (d) If a subscriber defaults in payment of money or property under a subscription  
12 agreement entered into before incorporation, the corporation may collect the amount owed as any  
13 other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation  
14 may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days  
15 after the corporation sends written demand for payment to the subscriber.

16 (e) A subscription agreement entered into after incorporation is a contract between the  
17 subscriber and the corporation subject to section 28606.

18 **§28606. Issuance of Shares.**

19 (a) The powers granted in this section to the board of directors may be reserved to the  
20 shareholders by the articles of incorporation.

21 (b) The board of directors may authorize shares to be issued for consideration consisting

1 of any tangible or intangible property or benefit to the corporation, including cash, promissory  
2 notes, services performed, contracts for services to be performed, or other securities of the  
3 corporation.

4 (c) Before the corporation issues shares, the board of directors must determine that the  
5 consideration received or to be received for shares to be issued is adequate. That determination  
6 by the board of directors is conclusive insofar as the adequacy of consideration for the issuance  
7 of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

8 (d) When the corporation receives the consideration for which the board of directors  
9 authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

10 **§28607. Liability of Shareholders.**

11 (a) A purchaser from a corporation of its own shares is not liable to the corporation or its  
12 creditors with respect to the shares except to pay the consideration for which the shares were  
13 authorized to be issued or specified in the subscription agreement.

14 (b) Unless otherwise provided in the articles of incorporation, a shareholder of a  
15 corporation is not personally liable for the acts or debts of the corporation except that he may  
16 become personally liable by reason of his own acts or conduct.

17 **§28608. Share Dividends.**

18 (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata  
19 and without consideration to the corporation's shareholders or to the shareholders of one or more  
20 classes or series. An issuance of shares under this subsection is a share dividend.

21 (b) Shares of one class or series may not be issued as a share dividend in respect of shares

1 of another class or series unless (1) the articles of incorporation so authorize, (2) a majority of  
2 the votes entitled to be cast by the class or series to be issued approve the issue, or (3) there are  
3 no outstanding shares of the class or series to be issued.

4 (c) If the board of directors does not fix the record date for determining shareholders  
5 entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

6 **§28609. Share Options.** A corporation may issue rights, options, or warrants for the  
7 purchase of shares of the corporation. The board of directors shall determine the terms upon  
8 which the rights, options, or warrants are issued, their form and content, and the consideration  
9 for which the shares are to be issued.

10 **§28610. Form and Content of Certificates.**

11 (a) Shares may but need not be represented by certificates. Unless this Act or another  
12 statute expressly provides otherwise, the rights and obligations of shareholders are identical  
13 whether or not their shares are represented by certificates.

14 (b) At a minimum each share certificate must state on its face:

15 (1) the name of the issuing corporation and that it is organized under the law of  
16 Guam;

17 (2) the name of the person to whom issued; and

18 (3) the number and class of shares and the designation of the series, if any, the  
19 certificate represents

20 (c) If the issuing corporation is authorized to issue different classes of shares or different  
21 series within a class, the designations, relative rights, preferences, and limitations applicable to

1 each class and the variations in rights, preferences, and limitations determined for each series  
2 (and the authority of the board of directors to determine variations for future series) must be  
3 summarized on the front or back of each certificate. Alternatively, each certificate may state  
4 conspicuously on its front or back that the corporation will furnish the shareholder this  
5 information on request in writing and without charge.

6 (d) Each share certificate (1) must be signed (either manually or in facsimile) by two  
7 officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal  
8 or its facsimile.

9 (e) If the person who signed (either manually or in facsimile) a share certificate no longer  
10 holds office when the certificate is issued, the certificate is nevertheless valid.

11 **§28611. Shares Without Certificates.**

12 (a) Unless the articles of incorporation or bylaws provide otherwise, the board of  
13 directors of a corporation may authorize the issue of some or all of the shares of any or all of its  
14 classes or series without certificates. The authorization does not affect shares already represented  
15 by certificates until they are surrendered to the corporation.

16 (b) Within a reasonable time after the issue or transfer of shares without certificates, the  
17 corporation shall send the shareholder a written statement of the information required on  
18 certificates by section 28610(b) and (c), and, if applicable, section 28612.

19 **§28612. Restriction on Transfer of Shares and Other Securities.**

20 (a) The articles of incorporation, bylaws, an agreement among shareholders, or an  
21 agreement between shareholders and the corporation may impose restrictions on the transfer or



1 registration of transfer of shares of the corporation. A restriction does not affect shares issued  
2 before the restriction was adopted unless the holders of the shares are parties to the restriction  
3 agreement or voted in favor of the restriction.

4 (b) A restriction on the transfer or registration of transfer of shares is valid and  
5 enforceable against the holder or a transferee of the holder if the restriction is authorized by this  
6 section and its existence is noted conspicuously on the front or back of the certificate or is  
7 contained in the information statement required by section 28611(b). Unless so noted, a  
8 restriction is not enforceable against a person without knowledge of the restriction.

9 (c) A restriction on the transfer or registration of transfer of shares is authorized:

10 (1) to maintain the corporation's status when it is dependent on the number or identity  
11 of its shareholders;

12 (2) to preserve exemptions under federal or state securities law;

13 (3) for any other reasonable purpose.

14 (d) A restriction on the transfer or registration of transfer of shares may:

15 (1) obligate the shareholder first to offer the corporation or other persons (separately,  
16 consecutively, or simultaneously) an opportunity to acquire the restricted shares;

17 (2) obligate the corporation or other persons (separately, consecutively, or  
18 simultaneously) to acquire the restricted shares;

19 (3) require the corporation, the holders of any class of its shares, or another person to  
20 approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;

21 (4) prohibit the transfer of the restricted shares to designated persons or classes of

1 persons, if the prohibition is not manifestly unreasonable.

2 (e) For purposes of this section, shares includes a security convertible into or carrying a  
3 right to subscribe for or acquire shares.

4 **§28613. Expense of Issue.** A corporation may pay the expenses of selling or  
5 underwriting its shares, and of organizing or reorganizing the corporation, from the consideration  
6 received for shares.

7 **§28614. Shareholders' Preemptive Rights.**

8 (a) The shareholders of a corporation do not have a preemptive right to acquire the  
9 corporation's unissued shares except to the extent the articles of incorporation so provide.

10 (b) A statement included in the articles of incorporation that the corporation elects to  
11 have preemptive rights (or words of similar import) means that the following principles apply  
12 except to the extent the articles of incorporation expressly provide otherwise:

13 (1) The shareholders of the corporation have a preemptive right, granted on uniform  
14 terms and conditions prescribed by the board of directors to provide a fair and reasonable  
15 opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued  
16 shares upon the decision of the board of directors to issue them.

17 (2) A shareholder may waive his preemptive right. A waiver evidenced by a writing is  
18 irrevocable even though it is not supported by consideration.

19 (3) Unless the articles expressly provide there is no preemptive right with respect to:

20 (i) shares issued as compensation to directors, officers, agents, or employees of  
21 the corporation, its subsidiaries or affiliates;

1 (ii) shares issued to satisfy conversion or option rights created to provide  
2 compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or  
3 affiliates;

4 (iii) shares authorized in articles of incorporation that are issued within six  
5 months from the effective date of incorporation;

6 (iv) shares sold otherwise than for money.

7 (4) Holders of shares of any class without general voting rights but with preferential  
8 rights to distributions or assets have no preemptive rights with respect to shares of any class.

9 (5) Holders of shares of any class with general voting rights but without preferential  
10 rights to distributions or assets have no preemptive rights with respect to shares of any class with  
11 preferential rights to distributions or assets unless the shares with preferential rights are  
12 convertible into or carry a right to subscribe for or acquire shares without preferential rights.

13 (6) Shares subject to preemptive rights that are not acquired by shareholders may be  
14 issued to any person for a period of one year after being offered to shareholders at a  
15 consideration set by the board of directors that is not lower than the consideration set for the  
16 exercise of preemptive rights. An offer at a lower consideration or after the expiration of one  
17 year is subject to the shareholders' preemptive rights.

18 (c) For purposes of this section, shares includes a security convertible into or carrying a  
19 right to subscribe for or acquire shares.

20 **§28615. Corporation's Acquisition of its Own Shares.**

21 (a) A corporation may acquire its own shares and shares so acquired constitute authorized

1 but unissued shares.

2 (b) If the articles of incorporation prohibit the reissue of acquired shares, the number of  
3 authorized shares is reduced by the number of shares acquired.

4 **§28616. Distributions to Shareholders.**

5 (a) A board of directors may authorize and the corporation may make distributions to its  
6 shareholders subject to restriction by the articles of incorporation and the limitation in subsection  
7 (c).

8 (b) If the board of directors does not fix the record date for determining shareholders  
9 entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of  
10 the corporation's shares), it is the date the board of directors authorizes the distribution.

11 (c) No distribution may be made if, after giving it effect:

12 (1) the corporation would not be able to pay its debts as they become due in the usual  
13 course of business; or

14 (2) the corporation's total assets would be less than the sum of its total liabilities plus  
15 the amount that would be needed, if the corporation were to be dissolved at the time of the  
16 distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential  
17 rights are superior to those receiving the distribution.

18 (d) The board of directors may base a determination that a distribution is not prohibited  
19 under subsection (c) either on financial statements prepared on the basis of accounting practices  
20 and principles that are reasonable in the circumstances or on a fair valuation or other method that  
21 is reasonable in the circumstances.

1 (e) Except as provided in subsection (g), the effect of a distribution under subsection (c)

2 is measured:

3 (1) in the case of distribution by purchase, redemption, or other acquisition of the  
4 corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt  
5 incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect  
6 to the acquired shares;

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

9 (3) in all other cases, as of (i) the date the distribution is authorized if the payment  
10 occurs within 120 days after the date of authorization or (ii) the date the payment is made if it  
11 occurs more than 120 days after the date of authorization.

12 (f) A corporation's indebtedness to a shareholder incurred by reason of a distribution  
13 made in accordance with this section is at parity with the corporation's indebtedness to its  
14 general, unsecured creditors except to the extent subordinated by agreement.

15 (g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not  
16 considered a liability for purposes of determination under subsection (c) if its terms provide that  
17 payment of principal and interest are made only if and to the extent that payment of a distribution  
18 to shareholders could then be made under this section. If the indebtedness is issued as a  
19 distribution, each payment of principal or interest is treated as a distribution, the effect of which  
20 is measured on the date the payment is actually made.

21 (h) This section shall not apply to distributions in liquidation under chapter 14.

1 **CHAPTER 7. SHAREHOLDERS**

2 **§28701. Annual Meeting.**

3 (a) A corporation shall hold a meeting of shareholders annually at a time stated in or  
4 fixed in accordance with the bylaws.

5 (b) Annual shareholders' meetings may be held in or out of Guam at the place stated in or  
6 fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the  
7 bylaws, annual meetings shall be held at the corporation's principal office, or at a place  
8 determined by the board of directors.

9 (c) The failure to hold an annual meeting at the time stated in or fixed in accordance with  
10 a corporation's bylaws does not affect the validity of any corporate action.

11 **§28702. Special Meeting.**

12 (a) A corporation shall hold a special meeting of shareholders:

13 (1) on call of its board of directors or the person or persons authorized to do so by the  
14 articles of incorporation or bylaws; or

15 (2) if the holders of at least 10 percent of all the votes entitled to be cast on any issue  
16 proposed to be considered at the proposed special meeting sign, date, and deliver to the  
17 corporation's secretary one or more written demands for the meeting describing the purpose or  
18 purposes for which it is to be held, provided that the articles of incorporation may fix a lower  
19 percentage or a higher percentage not exceeding 25 percent of all the votes entitled to be cast on  
20 any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a  
21 written demand for a special meeting may be revoked by a writing to that effect received by the

1 corporation prior to the receipt by the corporation of demands sufficient in number to require the  
2 holding of a special meeting.

3 (b) If not otherwise fixed under section 28707, the record date for determining  
4 shareholders entitled to demand a special meeting is the date the first shareholder signs the  
5 demand.

6 (c) Special shareholders' meetings may be held in or out of Guam at the place stated in or  
7 fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws,  
8 special meetings shall be held at the corporation's principal office, or at a place determined by  
9 the board of directors.

10 (d) Only business within the purpose or purposes described in the meeting notice required  
11 by section 28705(c) may be conducted at a special shareholders' meeting.

12 **§28703. Court-Ordered Meeting.**

13 (a) The Superior Court of Guam may summarily order a meeting to be held:

14 (1) on application of any shareholder of the corporation entitled to participate in an  
15 annual meeting if an annual meeting was not held within the earlier of 6 months after the end of  
16 the corporation's fiscal year or 15 months after its last annual meeting; or

17 (2) on application of a shareholder who signed a demand for a special meeting valid  
18 under section 28702 if:

19 (i) notice of the special meeting was not given within 30 days after the date the  
20 demand was delivered to the corporation's secretary; or

21 (ii) the special meeting was not held in accordance with the notice.

1           **§28704. Action Without Meeting.**

2           (a) Action required or permitted by this Act to be taken at a shareholders' meeting may  
3 be taken without a meeting if the action is taken by all the shareholders entitled to vote on the  
4 action. The action must be evidenced by one or more written consents describing the action  
5 taken, signed by all the shareholders entitled to vote on the action, and delivered to the  
6 corporation for inclusion in the minutes or filing with the corporate records.

7           (b) A written consent may be revoked by a writing to that effect received by the  
8 corporation prior to the receipt by the corporation of unrevoked written consents sufficient in  
9 number to take corporate action. The bylaws may further regulate the manner in which consents  
10 are given or action by consent undertaken.

11           (c) A consent signed under this section has the effect of a meeting vote and may be  
12 described as such in any document.

13           (d) If this Act requires that notice of proposed action be given to nonvoting shareholders  
14 and the action is to be taken by unanimous consent of the voting shareholders, the corporation  
15 must give its nonvoting shareholders written notice of the proposed action at least 10 days before  
16 the action is taken. The notice must contain or be accompanied by the same material that, under  
17 this Act, would have been required to be sent to nonvoting shareholders in a notice of meeting at  
18 which the proposed action would have been submitted to the shareholders for action.

19           **§28705. Notice of Meeting.**



1 (a) A corporation shall notify shareholders of the date, time, and place of each annual and  
2 special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date.  
3 Unless this Act or the articles of incorporation require otherwise, the corporation is required to  
4 give notice only to shareholders entitled to vote at the meeting.

5 (b) Unless this Act or the articles of incorporation require otherwise, notice of an annual  
6 meeting need not include a description of the purpose or purposes for which the meeting is  
7 called.

8 (c) Notice of a special meeting must include a description of the purpose or purposes for  
9 which the meeting is called.

10 (d) If not otherwise fixed under section 28707, the record date for determining  
11 shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the  
12 day before the first notice is delivered to shareholders.

13 (e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is  
14 adjourned to a different date, time, or place, notice need not be given of the new date, time, or  
15 place if the new date, time, or place is announced at the meeting before adjournment. If a new  
16 record date for the adjourned meeting is or must be fixed under section 28707, however, notice  
17 of the adjourned meeting must be given under this section to persons who are shareholders as of  
18 the new record date.

19 **§28706. Waiver of Notice.**

20 (a) A shareholder may waive any notice required by this Act, the articles of  
21 incorporation, or bylaws before or after the date and time stated in the notice. The waiver must

1 be in writing, be signed by the shareholder entitled to the notice, and be delivered to the  
2 corporation for inclusion in the minutes or filing with the corporate records.

3 (b) A shareholder's attendance at a meeting:

4 (1) waives objection to lack of notice or defective notice of the meeting, unless the  
5 shareholder at the beginning of the meeting objects to holding the meeting or transacting  
6 business at the meeting;

7 (2) waives objection to consideration of a particular matter at the meeting that is not  
8 within the purpose or purposes described in the meeting notice, unless the shareholder objects to  
9 considering the matter when it is presented.

10 **§28707. Record Date.**

11 (a) The bylaws may fix or provide the manner of fixing the record date for one or more  
12 voting groups in order to determine the shareholders entitled to notice of a shareholders'  
13 meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not  
14 fix or provide for fixing a record date, the board of directors of the corporation may fix a future  
15 date as the record date.

16 (b) A record date fixed under this section may not be more than 70 days before the  
17 meeting or action requiring a determination of shareholders.

18 (c) A determination of shareholders entitled to notice of or to vote at a shareholders'  
19 meeting is effective for any adjournment of the meeting unless the board of directors fixes a new  
20 record date, which it must do if the meeting is adjourned to a date more than 120 days after the  
21 date fixed for the original meeting.

1 (d) If a court orders a meeting adjourned to a date more than 120 days after the date fixed  
2 for the original meeting, it may provide that the original record date continues in effect or it may  
3 fix a new record date.

4 **§28708. Shareholders' List for Meeting.**

5 (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical  
6 list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The  
7 list must be arranged by voting group (and within each voting group by class or series of shares)  
8 and show the address of and number of shares held by each shareholder.

9 (b) The shareholders' list must be available for inspection by any shareholder, beginning  
10 two business days after notice of the meeting is given for which the list was prepared and  
11 continuing through the meeting, at the corporation's principal office or at a place identified in the  
12 meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is  
13 entitled on written demand to inspect and, subject to the requirements of section 281601, to copy  
14 the list, during regular business hours and at his expense, during the period it is available for  
15 inspection.

16 (c) The corporation shall make the shareholders' list available at the meeting, and any  
17 shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or  
18 any adjournment.

19 (d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the  
20 shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the  
21 Superior Court of Guam, on application of the shareholder, may summarily order the inspection

1 or copying at the corporation's expense and may postpone the meeting for which the list was  
2 prepared until the inspection or copying is complete.

3 (e) Refusal or failure to prepare or make available the shareholders' list does not affect  
4 the validity of action taken at the meeting.

5 **§28709. Voting Entitlement of Shares.**

6 (a) Except as provided in subsections (b) and (c) or unless the articles of incorporation  
7 provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each  
8 matter voted on at a shareholders' meeting. Only shares are entitled to vote.

9 (b) Absent special circumstances, the shares of a corporation are not entitled to vote if  
10 they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first  
11 corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of  
12 the second corporation.

13 (c) Subsection (b) does not limit the power of a corporation to vote any shares, including  
14 its own shares, held by it in a fiduciary capacity.

15 (d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the  
16 holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company,  
17 or other financial institution under an irrevocable obligation to pay the holders the redemption  
18 price on surrender of the shares.

19 **§28710. Proxies.**

20 (a) A shareholder may vote his shares in person or by proxy.

21 (b) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or

1 otherwise act for the shareholders by signing an appointment form or by an electronic  
2 transmission if electronic transfer is permitted by the board of directors. An electronic  
3 transmission must contain or be accompanied by information from which one can determine that  
4 the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the  
5 electronic transmission.

6 (c) An appointment of a proxy is effective when a signed appointment form or an  
7 electronic transmission of the appointment is received. An appointment is valid for 11 months  
8 unless a longer period is expressly provided in the appointment. The bylaws or notice of a  
9 meeting may designate a place or officer of the corporation for receipt of proxies and procedures  
10 for electronic transmission of proxies.

11 (d) An appointment of a proxy is revocable unless the appointment form or electronic  
12 transmission states that it is irrevocable and the appointment is coupled with an interest.

13 Appointments coupled with an interest include the appointment of:

14 (1) a pledgee;

15 (2) a person who purchased or agreed to purchase the shares;

16 (3) a creditor of the corporation who extended it credit under terms requiring the  
17 appointment;

18 (4) an employee of the corporation whose employment contract requires the  
19 appointment; or

20 (5) a party to a voting agreement created under section 28718.

21 (f) The death or incapacity of the shareholder appointing a proxy does not affect the right

1 of the corporation to accept the proxy's authority unless notice of the death or incapacity is  
2 received by the secretary or other officer or agent authorized to tabulate votes before the proxy  
3 exercises his authority under the appointment.

4 (g) An appointment made irrevocable under subsection (d) is revoked when the interest  
5 with which it is coupled is extinguished.

6 (h) A transferee for value of shares subject to an irrevocable appointment may revoke the  
7 appointment if he did not know of its existence when he acquired the shares and the existence of  
8 the irrevocable appointment was not noted conspicuously on the certificate representing the  
9 shares or on the information statement for shares without certificates.

10 (i) Subject to section 28712 and to any express limitation on the proxy's authority stated  
11 in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's  
12 vote or other action as that of the shareholder making the appointment.

13 **§28711. Shares Held by Nominees.**

14 (a) A corporation may establish a procedure by which the beneficial owner of shares that  
15 are registered in the name of a nominee is recognized by the corporation as the shareholder. The  
16 extent of this recognition may be determined in the procedure.

17 (b) The procedure may set forth:

- 18 (1) the types of nominees to which it applies;  
19 (2) the rights or privileges that the corporation recognizes in a beneficial owner;  
20 (3) the manner in which the procedure is selected by the nominee;  
21 (4) the information that must be provided when the procedure is selected;

1 (5) the period for which selection of the procedure is effective; and

2 (6) other aspects of the rights and duties created.

3 **§28712. Remote Communication.**

4 (a) If authorized by the board of directors in its sole discretion, and subject to such  
5 guidelines and procedures as the board of directors may adopt, stockholders and proxyholders  
6 not physically present at a meeting of stockholders may, by means of remote communication;

7 (b) Participate in a meeting of stockholders; and

8 (c) Be deemed present in person and vote at a meeting of stockholders, whether such  
9 meeting is to be held at a designated place or solely by means of remote communication,  
10 provided that (i) the corporation shall implement reasonable measures to verify that each person  
11 deemed present and permitted to vote at the meeting by means of remote communication is a  
12 stockholder or proxyholder, (ii) the corporation shall implement reasonable measures to provide  
13 such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to  
14 vote on matters submitted to the stockholders, including an opportunity to read or hear the  
15 proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any  
16 stockholder or proxyholder votes or takes other action at the meeting by means of remote  
17 communication, a record of such vote or other action shall be maintained by the corporation.

18 **§28713. Quorum and Voting Requirements for Voting Groups.**

19 (a) Shares entitled to vote as a separate voting group may take action on a matter at a  
20 meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of  
21 incorporation or this Act provide otherwise, a majority of the votes entitled to be cast on the

1 matter by the voting group constitutes a quorum of that voting group for action on that matter.

2 (b) Once a share is represented for any purpose at a meeting, it is deemed present for  
3 quorum purposes for the remainder of the meeting and for any adjournment of that meeting  
4 unless a new record date is or must be set for that adjourned meeting.

5 (c) If a quorum exists, action on a matter (other than the election of directors) by a voting  
6 group is approved if the votes cast within the voting group favoring the action exceed the votes  
7 cast opposing the action, unless the articles of incorporation or this Act require a greater number  
8 of affirmative votes.

9 (d) An amendment of articles of incorporation adding, changing, or deleting a quorum or  
10 voting requirement for a voting group greater than specified in subsection (a) or (c) is governed  
11 by section 28715.

12 (e) The election of directors is governed by section 28716.

13 **§28714. Action by Single and Multiple Voting Groups.**

14 (a) If the articles of incorporation or this Act provide for voting by a single voting group  
15 on a matter, action on that matter is taken when voted upon by that voting group as provided in  
16 section 28713.

17 (b) If the articles of incorporation or this Act provide for voting by two or more voting  
18 groups on a matter, action on that matter is taken only when voted upon by each of those voting  
19 groups counted separately as provided in section 28713. Action may be taken by one voting  
20 group on a matter even though no action is taken by another voting group entitled to vote on the  
21 matter.



1           **§28715. Greater Quorum or Voting Requirements.**

2           (a) The articles of incorporation may provide for a greater quorum or voting requirement  
3 for shareholders (or voting groups of shareholders) than is provided for by this Act.

4           (b) An amendment to the articles of incorporation that adds, changes, or deletes a greater  
5 quorum or voting requirement must meet the same quorum requirement and be adopted by the  
6 same vote and voting groups required to take action under the quorum and voting requirements  
7 then in effect or proposed to be adopted, whichever is greater.

8           **§28716. Voting for Directors; Cumulative Voting.**

9           (a) Unless otherwise provided in the articles of incorporation, directors are elected by a  
10 plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a  
11 quorum is present.

12           (b) Shareholders do not have a right to cumulate their votes for directors unless the  
13 articles of incorporation so provide.

14           (c) A statement included in the articles of incorporation that shareholders are entitled to  
15 cumulate their votes for directors (or words of similar import) means that the shareholders  
16 designated are entitled to multiply the number of votes they are entitled to cast by the number of  
17 directors for whom they are entitled to vote and cast the product for a single candidate or  
18 distribute the product among two or more candidates.

19           **§28717. Voting Trusts.**

20           (a) One or more shareholders may create a voting trust, conferring on a trustee the right  
21 to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust

1 (which may include anything consistent with its purpose) and transferring their shares to the  
2 trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and  
3 addresses of all owners of beneficial interests in the trust, together with the number and class of  
4 shares each transferred to the trust, and deliver copies of the list and agreement to the  
5 corporation's principal office.

6 (b) A voting trust becomes effective on the date the first shares subject to the trust are  
7 registered in the trustee's name. A voting trust is valid for not more than 10 years after its  
8 effective date unless extended under subsection (c).

9 (c) All or some of the parties to a voting trust may extend it for additional terms of not  
10 more than 10 years each by signing an extension agreement and obtaining the voting trustee's  
11 written consent to the extension. An extension is valid for 10 years from the date the first  
12 shareholder signs the extension agreement. The voting trustee must deliver copies of the  
13 extension agreement and list of beneficial owners to the corporation's principal office. An  
14 extension agreement binds only those parties signing it.

15 **§28718. Voting Agreements.**

16 (a) Two or more shareholders may provide for the manner in which they will vote their  
17 shares by signing an agreement for that purpose. A voting agreement created under this section is  
18 not subject to the provisions of section 28717.

19 (b) A voting agreement created under this section is specifically enforceable.

20 (c) No agreement made pursuant to subsection(a) shall be held to be invalid or  
21 unenforceable on the ground that it is a voting trust or a shareholder agreement that does not

1 comply with section 28717 or 28719, or that it is a proxy that does not comply with section  
2 28710. Neither this section nor sections 28717 or 28719 shall invalidate any voting or other  
3 agreement among shareholders or any irrevocable proxy complying with section 28710, which  
4 agreement or proxy is not otherwise illegal.

5 **§28719. Shareholder Agreements.**

6 (a) An agreement among the shareholders of a corporation that complies with this section  
7 is effective among the shareholders and the corporation even though it is inconsistent with one or  
8 more other provisions of this Act in that it:

9 (1) eliminates the board of directors or restricts the discretion or powers of the board  
10 of directors;

11 (2) governs the authorization or making of distributions whether or not in proportion  
12 to ownership of shares, subject the limitations in section 28616;

13 (3) establishes who shall be directors or officers of the corporation, or their terms of  
14 office or manner of selection or removal;

15 (4) governs, in general or in regard to specific matters, the exercise or division of  
16 voting power by or between the shareholders and directors or by or among any of them,  
17 including use of weighted voting rights or director proxies;

18 (5) establishes the terms and conditions of any agreement for the transfer or use of  
19 property or the provision of services between the corporation and any shareholder, director,  
20 officer or employee of the corporation or among any of them;

21 (6) transfers to one or more shareholders or other persons all or part of the authority

1 to exercise the corporate powers or to manage the business and affairs of the corporation,  
2 including the resolution of any issue about which there exists a deadlock among directors or  
3 shareholders;

4 (7) requires dissolution of the corporation at the request of one or more of the  
5 shareholders or upon the occurrence of a specified event or contingency; or

6 (8) otherwise governs the exercise of the corporate powers or the management of the  
7 business and affairs of the corporation or the relationship among the shareholders, the directors  
8 and the corporation, or among any of them, and is not contrary to public policy.

9 (b) An agreement authorized by this section shall be:

10 (1) set forth (A) in the articles of incorporation or bylaws and approved by all persons  
11 who are shareholders at the time of the agreement or (B) in a written agreement that is signed by  
12 all persons who are shareholders at the time of the agreement and is made known to the  
13 corporation;

14 (2) subject to amendment only by all persons who are shareholders at the time of the  
15 amendment, unless the agreement provides otherwise; and

16 (3) valid for 10 years, unless the agreement provides otherwise.

17 (c) The existence of an agreement authorized by this section shall be noted conspicuously  
18 on the front or back of each certificate for outstanding shares or on the information statement  
19 required by section 28611(b). If at the time of the agreement the corporation has shares  
20 outstanding represented by certificates, the corporation shall recall the outstanding certificates  
21 and issue substitute certificates that comply with this subsection. The failure to note the existence

1 of the agreement on the certificate or information statement shall not affect the validity of the  
2 agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of  
3 purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission  
4 of the purchase. A purchaser shall be deemed to have knowledge of the existence of the  
5 agreement if its existence is noted on the certificate or information statement for the shares in  
6 compliance with this subsection and, if the shares are not represented by a certificate, the  
7 information statement is delivered to the purchaser at or prior to the time of purchase of the  
8 shares. An action to enforce the right of rescission authorized by this subsection must be  
9 commenced within the earlier of 90 days after discovery of the existence of the agreement or two  
10 years after the time of purchase of the shares.

11 (d) An agreement authorized by this section shall cease to be effective when shares of the  
12 corporation are listed on a national securities exchange or regularly traded in a market  
13 maintained by one or more members of a national or affiliated securities association. If the  
14 agreement ceases to be effective for any reason, the board of directors may, if the agreement is  
15 contained or referred to in the corporation's articles of incorporation or bylaws, adopt an  
16 amendment to the articles of incorporation or bylaws, without shareholder action, to delete the  
17 agreement and any references to it.

18 (e) An agreement authorized by this section that limits the discretion or powers of the  
19 board of directors shall relieve the directors of, and impose upon the person or persons in whom  
20 such discretion or powers are vested, liability for acts or omissions imposed by law on directors  
21 to the extent that the discretion or powers of the directors are limited by the agreement.

1 (f) The existence or performance of an agreement authorized by this section shall not be a  
2 ground for imposing personal liability on any shareholder for the acts or debts of the corporation  
3 even if the agreement or its performance treats the corporation as if it were a partnership or  
4 results in failure to observe the corporate formalities otherwise applicable to the matters  
5 governed by the agreement.

6 (g) Incorporators or subscribers for shares may act as shareholders with respect to an  
7 agreement authorized by this section if no shares have been issued when the agreement is made.

8 **Subchapter D. Derivative Proceedings**

9 **§28720. Subchapter Definitions.** In this subchapter:

10 (a) Derivative proceeding means a civil suit in the right of a domestic corporation.

11 (b) Shareholder includes a beneficial owner whose shares are held in a voting trust or  
12 held by a nominee on the beneficial owner's behalf.

13 **§28721. Standing.** A shareholder may not commence or maintain a derivative  
14 proceeding unless the shareholder:

15 (a) was a shareholder of the corporation at the time of the act or omission complained of  
16 or became a shareholder through transfer by operation of law from one who was a shareholder at  
17 that time; and

18 (b) fairly and adequately represents the interests of the corporation in enforcing the right  
19 of the corporation.

20 **§28722. Demand.** No shareholder may commence a derivative proceeding until:

21 (a) a written demand has been made upon the corporation to take suitable action; and

1 (b) 90 days have expired from the date the demand was made unless the shareholder has  
2 earlier been notified that the demand has been rejected by the corporation or unless irreparable  
3 injury to the corporation would result by waiting for the expiration of the 90 day period.

4 **§28723. Stay of Proceedings.** If the corporation commences an inquiry into the  
5 allegations made in the demand or complaint, the court may stay any derivative proceeding for  
6 such period as the court deems appropriate.

7 **§28724. Dismissal.**

8 (a) A derivative proceeding shall be dismissed by the court on motion by the corporation  
9 if one of the groups specified in subsections (b) or (f) has determined in good faith after  
10 conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the  
11 derivative proceeding is not in the best interests of the corporation.

12 (b) Unless a panel is appointed pursuant to subsection (f), the determination in subsection  
13 (a) shall be made by:

14 (1) a majority vote of independent directors present at a meeting of the board of  
15 directors if the independent directors constitute a quorum; or

16 (2) a majority vote of a committee consisting of two or more independent directors  
17 appointed by majority vote of independent directors present at a meeting of the board of  
18 directors, whether or not such independent directors constituted a quorum.

19 (c) None of the following shall by itself cause a director to be considered not independent  
20 for purposes of this section:

21 (1) the nomination or election of the director by persons who are defendants in the

1 derivative proceeding or against whom action is demanded;

2 (2) the naming of the director as a defendant in the derivative proceeding or as a  
3 person against whom action is demanded; or

4 (3) the approval by the director of the act being challenged in the derivative  
5 proceeding or demand if the act resulted in no personal benefit to the director.

6 (d) If a derivative proceeding is commenced after a determination has been made  
7 rejecting a demand by a shareholder, the complaint shall allege with particularity facts  
8 establishing either (1) that a majority of the board of directors did not consist of independent  
9 directors at the time the determination was made or (2) that the requirements of subsection (a)  
10 have not been met.

11 (e) If a majority of the board of directors does not consist of independent directors at the  
12 time the determination is made, the corporation shall have the burden of proving that the  
13 requirements of subsection (a) have been met. If a majority of the board of directors consists of  
14 independent directors at the time the determination is made, the plaintiff shall have the burden of  
15 proving that the requirements of subsection (a) have not been met.

16 (f) The court may appoint a panel of one or more independent persons upon motion by  
17 the corporation to make a determination whether the maintenance of the derivative proceeding is  
18 in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving  
19 that the requirements of subsection (a) have not been met.

20 **§28725. Discontinuance or Settlement.** A derivative proceeding may not be  
21 discontinued or settled without the court's approval. If the court determines that a proposed





1 and affairs of the corporation managed by or under the direction of, its board of directors, subject  
2 to any limitation set forth in the articles of incorporation or in an agreement authorized under  
3 section 28719.

4 (c) A corporation having 50 or fewer shareholders may dispense with or limit the  
5 authority of a board of directors by describing in its articles of incorporation who will perform  
6 some or all of the duties of a board of directors.

7 **§28802. Qualifications of Directors.** The articles of incorporation or bylaws may  
8 prescribe qualifications for directors. A director need not be a resident of Guam or a shareholder  
9 of the corporation unless the articles of incorporation or bylaws so prescribe.

10 **§28803. Number and Election of Directors.**

11 (a) A board of directors must consist of one or more individuals, with the number  
12 specified in the articles of incorporation or bylaws.

13 (b) Directors are elected at the first annual shareholders' meeting and at each annual  
14 meeting thereafter unless their terms are staggered under section 28806.

15 **§28804. Election of Directors by Certain Classes of Shareholders.** If the articles of  
16 incorporation authorize dividing the shares into classes, the articles may also authorize the  
17 election of all or a specified number of directors by the holders of one or more authorized classes  
18 of shares. A class (or classes) of shares entitled to elect one or more directors is a separate voting  
19 group for purposes of the election of directors.

20 **§28805. Terms of Directors Generally.**

21 (a) The terms of the initial directors of a corporation expire at the first shareholders'

1 meeting at which directors are elected.

2 (b) The terms of all other directors expire at the next annual shareholders' meeting  
3 following their election unless their terms are staggered under section 28806.

4 (c) A decrease in the number of directors does not shorten an incumbent director's term.

5 (d) The term of a director elected to fill a vacancy expires at the next shareholders'  
6 meeting at which directors are elected.

7 (e) Despite the expiration of a director's term, he continues to serve until his successor is  
8 elected and qualifies or until there is a decrease in the number of directors.

9 **§28806. Staggered Terms for Directors.** The articles of incorporation may provide for  
10 staggering the terms of directors by dividing the total number of directors into two or three  
11 groups, with each group containing one-half or one-third of the total, as near as may be. In that  
12 event, the terms of directors in the first group expire at the first annual shareholders' meeting  
13 after their election, the terms of the second group expire at the second annual shareholders'  
14 meeting after their election, and the terms of the third group, if any, expire at the third annual  
15 shareholders' meeting after their election. At each annual shareholders' meeting thereafter,  
16 directors shall be chosen for a term of two years or three years, as the case may be, to succeed  
17 those whose terms expire.

18 **§28807. Resignation of Directors.**

19 (a) A director may resign at any time by delivering written notice to the board of  
20 directors, its chairman, or to the corporation.

21 (b) A resignation is effective when the notice is delivered.

1           **§28808. Removal of Directors by Shareholders.**

2           (a) The shareholders may remove one or more directors with or without cause unless the  
3 articles of incorporation provide that directors may be removed only for cause.

4           (b) If a director is elected by a voting group of shareholders, only the shareholders of that  
5 voting group may participate in the vote to remove him.

6           (c) If cumulative voting is authorized, a director may not be removed if the number of  
7 votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative  
8 voting is not authorized, a director may be removed only if the number of votes cast to remove  
9 him exceeds the number of votes cast not to remove him.

10          (d) A director may be removed by the shareholders only at a meeting called for the  
11 purpose of removing him and the meeting notice must state that the purpose, or one of the  
12 purposes, of the meeting is removal of the director.

13           **§28809. Vacancy on Board.**

14          (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board  
15 of directors, including a vacancy resulting from an increase in the number of directors:

16                   (1) the shareholders may fill the vacancy;

17                   (2) the board of directors may fill the vacancy; or

18          (b) If the vacant office was held by a director elected by a voting group of shareholders,  
19 only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled  
20 by the shareholders.

21           **§28810. Compensation of Directors.** Unless the articles of incorporation or bylaws

1 provide otherwise, the board of directors may fix the compensation of directors.

2 **§28811. Meetings.**

3 (a) The board of directors may hold regular or special meetings in or out of Guam.

4 (b) Unless the articles of incorporation or bylaws provide otherwise, the board of  
5 directors may permit any or all directors to participate in a regular or special meeting by, or  
6 conduct the meeting through the use of, any means of communication by which all directors  
7 participating may simultaneously hear each other during the meeting. A director participating in  
8 a meeting by this means is deemed to be present in person at the meeting.

9 **§28812. Action Without Meeting.**

10 (a) Unless the articles of incorporation or bylaws provide otherwise, action required or  
11 permitted by this Act to be taken at a board of directors' meeting may be taken without a meeting  
12 if the action is taken by all members of the board. The action must be evidenced by one or more  
13 written consents describing the action taken, signed by each director, and included in the minutes  
14 or filed with the corporate records reflecting the action taken.

15 (b) Action taken under this section is effective when the last director signs the consent,  
16 unless the consent specifies a different effective date.

17 (c) A consent signed under this section has the effect of a meeting vote and may be  
18 described as such in any document.

19 (d) Unless otherwise restricted by the certificate of incorporation or bylaws, any action  
20 required or permitted to be taken at any meeting of the board of directors or of any committee  
21 thereof may be taken without a meeting if all members of the board or committee, as the case

1 may be, consent thereto in writing, or by electronic transmission and the writing or writings or  
2 electronic transmission or transmissions are filed with the minutes of proceedings of the board,  
3 or committee.

4 **§28813. Notice of Meeting.**

5 (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of  
6 the board of directors may be held with notice of the date, time, place, or purpose of the meeting.

7 (b) Unless the articles of incorporation or bylaws provide for a longer or shorter period,  
8 special meetings of the board of directors must be preceded by at least two days' notice of the  
9 date, time, and place of the meeting. The notice shall describe the purpose of the special meeting  
10 unless required by the articles of incorporation or bylaws.

11 **§28814. Waiver of Notice.**

12 (a) A director may waive any notice required by this Act, the articles of incorporation, or  
13 bylaws before or after the date and time stated in the notice.

14 (b) A director's attendance at or participation in a meeting waives any required notice to  
15 him of the meeting unless the director at the beginning of the meeting (or promptly upon his  
16 arrival) objects to holding the meeting or transacting business at the meeting and does not  
17 thereafter vote for or assent to action taken at the meeting.

18 **§28815. Quorum and Voting.**

19 (a) Unless the articles of incorporation or bylaws require a greater number or unless  
20 otherwise specifically provided in this Act, a quorum of a board of directors consists of a  
21 majority of the number of directors specified in the articles of incorporation or bylaws.

1 (b) If a quorum is present when a vote is taken, the affirmative vote of a majority of  
2 directors present is the act of the board of directors unless the articles of incorporation or bylaws  
3 require the vote of a greater number of directors.

4 **§28816. Committees.**

5 (a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors  
6 may create one or more committees and appoint members of the board of directors to serve on  
7 them. Each committee must have two or more members, who serve at the pleasure of the board  
8 of directors.

9 (b) Sections 28811 to 28815 apply to committees and their members as well.

10 (c) To the extent specified by the board of directors or in the articles of incorporation or  
11 bylaws, each committee may exercise the authority of the board of directors under section 28801.

12 (d) A committee may not, however:

13 (1) Authorize distributions;

14 (2) Approve or propose to shareholders action that this chapter requires be approved  
15 by shareholders;

16 (3) Fill vacancies on the board of directors or on any of its committees;

17 (4) Amend articles of incorporation pursuant to section 281005;

18 (5) Adopt, amend, or repeal bylaws;

19 (6) Approve a plan of merger not requiring shareholder approval;

20 (7) Authorize or approve reacquisition of shares, except according to a formula or  
21 method prescribed by the board of directors; or

1           (8) Authorize or approve the issuance or sale or contract for sale of shares, or  
2 determine the designation and relative rights, preferences, and limitations of a class or series of  
3 shares, except that the board of directors may authorize a committee (or a senior executive  
4 officer of the corporation) to do so within limits specifically prescribed by the board of directors.

5           (e) The creation of, delegation of authority to, or action by a committee does not alone  
6 constitute compliance by a director with the standards of conduct described in section 28816.

7           (f) The board of directors may appoint one or more directors as alternate members of any  
8 committee to replace any absent or disqualified member during the member's absence or  
9 disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the  
10 committee provide otherwise, in the event of the absence or disqualification of a member of a  
11 committee, the member or members present at any meeting and not disqualified from voting,  
12 unanimously, may appoint another director to act in place of the absent or disqualified member.

13           **§28817. General Standards for Directors.**

14           (a) A director shall discharge the director's duties as a director, including the director's  
15 duties as a member of a committee:

16           (1) In good faith;

17           (2) With the care an ordinarily prudent person in a like position would exercise under  
18 similar circumstances; and

19           (3) In a manner the director reasonably believes to be in the best interests of the  
20 corporation.

21           (b) In determining the best interests of the corporation, a director, in addition to



1 considering the interests of the corporation's shareholders, may consider, in the director's  
2 discretion, any of the following factors:

3 (1) The interests of the corporation's employees, customers, suppliers, and creditors;

4 (2) The economy of Guam and the nation;

5 (3) Community and societal considerations, including, without limitation, the impact  
6 of any action upon the communities in or near which the corporation has offices or operations;  
7 and

8 (4) The long-term as well as short-term interests of the corporation and its  
9 shareholders, including, without limitation, the possibility that these interests may be best served  
10 by the continued independence of the corporation.

11 (c) In discharging duties as a director, the director is entitled to rely on information,  
12 opinions, reports, or statements, including financial statements and other financial data, if  
13 prepared or presented by:

14 (1) One or more officers or employees of the corporation whom the director  
15 reasonably believes to be reliable and competent in the matters presented;

16 (2) Legal counsel, public accountants, or other persons as to matters the director  
17 reasonably believes are within the person's professional or expert competence; or

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

20 (d) A director is not acting in good faith if the director has knowledge concerning the  
21 matter in question that makes reliance otherwise permitted by subsection (c) unwarranted.

1 (e) A director is not liable for any action taken as a director, or any failure to take any  
2 action, if the director performed the duties of the director's office in compliance with this  
3 section.

4 **§28818. Directors' Liability for Unlawful Distributions.**

5 (a) A director who votes for or assents to a distribution in excess of what may be  
6 authorized and made pursuant to section 28616(a) or 281409(a) is personally liable to the  
7 corporation for the amount of the distribution that exceeds what could have been distributed  
8 without violating section 28616 or 281409(a) if the party asserting liability establishes that when  
9 taking the action the director did not comply with section 28816.

10 (b) A director held liable under subsection (a) for an unlawful distribution is entitled to:

11 (1) contribution from every other director who could be held liable under subsection  
12 (a) for the unlawful distribution; and

13 (2) recoupment from each shareholder of the pro-rata portion of the amount of the  
14 unlawful distribution the shareholder accepted, knowing the distribution was made in violation  
15 of section 28616(a) or 281409(a).

16 (c) A proceeding to enforce:

17 (1) the liability of a director under subsection (a) is barred unless it is commenced  
18 within two years after the date (i) on which the effect of the distribution was measured under  
19 section 28616(e) or (g), (ii) as of which the violation of section 28616(a) occurred as the  
20 consequence of disregard of a restriction in the articles of incorporation, or (iii) on which the  
21 distribution of assets to shareholders under section 281409(a) was made; or