

1 (2) contribution or recoupment under subsection (b) is barred unless it is commenced  
2 within one year after the liability of the claimant has been finally adjudicated under subsection  
3 (a).

4 **§28819. Officers.**

5 (a) A corporation has the offices described in its bylaws or designated by the board of  
6 directors in accordance with the bylaws.

7 (b) The board of directors may elect individuals to fill one or more offices of the  
8 corporation. An officer may appoint one or more officers if authorized by the bylaws or the  
9 board of directors.

10 (c) The bylaws or the board of directors shall assign to one of the officers responsibility  
11 for preparing minutes of the directors' and shareholders' meetings and for maintaining and  
12 authenticating the records of the corporation

13 (d) The same individual may simultaneously hold more than one office in a corporation.

14 **§28820. Duties of Officers.** Each officer has the authority and shall perform the duties  
15 set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the  
16 board of directors or by direction of an officer authorized by the board of directors to prescribe  
17 the duties of other officers.

18 **§28821. Standards of Conduct for Officers.**

19 (a) An officer with discretionary authority shall discharge the officer's duties under that  
20 authority:

21 (1) In good faith;



1 agent of the corporation, or is or was serving at the request of the corporation as a director,  
2 officer, employee or agent of another corporation, partnership, joint venture, trust or other  
3 enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in  
4 settlement actually and reasonably incurred by the person in connection with such action, suit or  
5 proceeding if the person acted in good faith and in a manner the person reasonably believed to be  
6 in or not opposed to the best interests of the corporation, and, with respect to any criminal action  
7 or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The  
8 termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon  
9 a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the  
10 person did not act in good faith and in a manner which the person reasonably believed to be in or  
11 not opposed to the best interests of the corporation, and, with respect to any criminal action or  
12 proceeding, had reasonable cause to believe that the person's conduct was unlawful.

13 (b) A corporation shall have power to indemnify any person who was or is a party or is  
14 threatened to be made a party to any threatened, pending or completed action or suit by or in the  
15 right of the corporation to procure a judgment in its favor by reason of the fact that the person is  
16 or was a director, officer, employee or agent of the corporation, or is or was serving at the  
17 request of the corporation as a director, officer, employee or agent of another corporation,  
18 partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees)  
19 actually and reasonably incurred by the person in connection with the defense or settlement of  
20 such action or suit if the person acted in good faith and in a manner the person reasonably  
21 believed to be in or not opposed to the best interests of the corporation and except that no

1 indemnification shall be made in respect of any claim, issue or matter as to which such person  
2 shall have been adjudged to be liable to the corporation unless and only to the extent that the  
3 Superior Court of Guam or the court in which such action or suit was brought shall determine  
4 upon application that, despite the adjudication of liability but in view of all the circumstances of  
5 the case, such person is fairly and reasonably entitled to indemnity for such expenses which the  
6 Superior Court of Guam or such other court shall deem proper.

7 (c) To the extent that a present or former director or officer of a corporation has been  
8 successful on the merits or otherwise in defense of any action, suit or proceeding referred to in  
9 subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such  
10 person shall be indemnified against expenses (including attorneys' fees) actually and reasonably  
11 incurred by such person in connection therewith.

12 (d) Any indemnification under subsections (a) and (b) of this section (unless ordered by a  
13 court) shall be made by the corporation only as authorized in the specific case upon a  
14 determination that indemnification of the present or former director, officer, employee or agent is  
15 proper in the circumstances because the person has met the applicable standard of conduct set  
16 forth in subsections (a) and (b) of this section. Such determination shall be made, with respect to  
17 a person who is a director or officer at the time of such determination, (1) by a majority vote of  
18 the directors who are not parties to such action, suit or proceeding, even though less than a  
19 quorum, or (2) by a committee of such directors designated by majority vote of such directors,  
20 even though less than a quorum, or (3) if there are no such directors, or if such directors so  
21 direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

1 (e) Expenses (including attorneys' fees) incurred by an officer or director in defending  
2 any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the  
3 corporation in advance of the final disposition of such action, suit or proceeding upon receipt of  
4 an undertaking by or on behalf of such director or officer to repay such amount if it shall  
5 ultimately be determined that such person is not entitled to be indemnified by the corporation as  
6 authorized in this section. Such expenses (including attorneys' fees) incurred by former directors  
7 and officers or other employees and agents may be so paid upon such terms and conditions, if  
8 any, as the corporation deems appropriate.

9 (f) The indemnification and advancement of expenses provided by, or granted pursuant  
10 to, the other subsections of this section shall not be deemed exclusive of any other rights to  
11 which those seeking indemnification or advancement of expenses may be entitled under any  
12 bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action  
13 in such person's official capacity and as to action in another capacity while holding such office.

14 (g) A corporation shall have power to purchase and maintain insurance on behalf of any  
15 person who is or was a director, officer, employee or agent of the corporation, or is or was  
16 serving at the request of the corporation as a director, officer, employee or agent of another  
17 corporation, partnership, joint venture, trust or other enterprise against any liability asserted  
18 against such person and incurred by such person in any such capacity, or arising out of such  
19 person's status as such, whether or not the corporation would have the power to indemnify such  
20 person against such liability under this section.

21 (h) For purposes of this section, references to "the corporation" shall include, in addition

1 to the resulting corporation, any constituent corporation (including any constituent of a  
2 constituent) absorbed in a consolidation or merger which, if its separate existence had continued,  
3 would have had power and authority to indemnify its directors, officers, and employees or  
4 agents, so that any person who is or was a director, officer, employee or agent of such constituent  
5 corporation, or is or was serving at the request of such constituent corporation as a director,  
6 officer, employee or agent of another corporation, partnership, joint venture, trust or other  
7 enterprise, shall stand in the same position under this section with respect to the resulting or  
8 surviving corporation as such person would have with respect to such constituent corporation if  
9 its separate existence had continued.

10 (i) For purposes of this section, references to "other enterprises" shall include employee  
11 benefit plans; references to "fines" shall include any excise taxes assessed on a person with  
12 respect to any employee benefit plan; and references to "serving at the request of the  
13 corporation" shall include any service as a director, officer, employee or agent of the corporation  
14 which imposes duties on, or involves services by, such director, officer, employee or agent with  
15 respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in  
16 good faith and in a manner such person reasonably believed to be in the interest of the  
17 participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a  
18 manner "not opposed to the best interests of the corporation" as referred to in this section.

19 (j) The indemnification and advancement of expenses provided by, or granted pursuant  
20 to, this section shall, unless otherwise provided when authorized or ratified, continue as to a  
21 person who has ceased to be a director, officer, employee or agent and shall inure to the benefit

1 of the heirs, executors and administrators of such a person.

2 (k) The Superior Court of Guam is hereby vested with exclusive jurisdiction to hear and  
3 determine all actions for advancement of expenses or indemnification brought under this section  
4 or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise. The  
5 Superior Court of Guam may summarily determine a corporation's obligation to advance  
6 expenses (including attorneys' fees).

7 **CHAPTER 9 [Reserved]**

8 **CHAPTER 10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS**

9 **§281001. Authority to Amend.**

10 (a) A corporation may amend its articles of incorporation at any time to add or change a  
11 provision that is required or permitted in the articles of incorporation as of the effective date of  
12 the amendment or to delete a provision that is not required to be contained in the articles of  
13 incorporation.

14 (b) A shareholder of the corporation does not have a vested property right resulting from  
15 any provision in the articles of incorporation, including provisions relating to management,  
16 control, capital structure, dividend entitlement, or purpose or duration of the corporation.

17 **§281002. Amendment Before Issuance of Shares.** If a corporation has not yet issued  
18 shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or  
19 more amendments to the corporation's articles of incorporation.

20 **§281003 Amendment by Board of Directors and Shareholders.** If a corporation has  
21 issued shares, an amendment to the articles of incorporation shall be adopted in the following

1 manner:

2 (a) The proposed amendment must be adopted by the board of directors.

3 (b) Except as provided in section 281005 after adopting the proposed amendment the  
4 board of directors must submit the amendment to the shareholders for their approval. The board  
5 of directors must also transmit to the shareholders a recommendation that the shareholders  
6 approve the amendment, unless the board of directors makes a determination that because of  
7 conflicts of interest or other special circumstances it should not make such a recommendation, in  
8 which case the board of directors must transmit to the shareholders the basis for that  
9 determination.

10 (c) The board of directors may condition its submission of the amendment to the  
11 shareholders on any basis.

12 (d) If the amendment is required to be approved by the shareholders, and the approval is  
13 to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to  
14 vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The  
15 notice must state that the purpose, or one of the purposes, of the meeting is to consider the  
16 amendment and must contain or be accompanied by a copy of the amendment.

17 (e) Unless the articles of incorporation, or the board of directors acting pursuant to  
18 subsection (c), requires a greater vote or a greater number of shares to be present, approval of the  
19 amendment requires the approval of the shareholders at a meeting at which a quorum consisting  
20 of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or  
21 series of shares is entitled to vote as a separate group on the amendment, except as provided in



1 section 281004(c), the approval of each such separate voting group at a meeting at which a  
2 quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the  
3 amendment by that voting group exists.

4 **§281004. Voting on Amendments by Voting Groups.**

5 (a) If a corporation has more than one class of shares outstanding, the holders of the  
6 outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting  
7 is otherwise required by this Act) on a proposed amendment to the articles of incorporation if the  
8 amendment would:

9 (1) effect an exchange or reclassification of all or part of the shares of the class into  
10 shares of another class;

11 (2) effect an exchange or reclassification, or create the right of exchange, of all or part  
12 of the shares of another class into shares of the class;

13 (3) change the rights, preferences, or limitations of all or part of the shares of the  
14 class;

15 (4) change the shares of all or part of the class into a different number of shares of the  
16 same class;

17 (5) create a new class of shares having rights or preferences with respect to  
18 distributions or to dissolution that are prior or superior to the shares of the class;

19 (6) increase the rights, preferences, or number of authorized shares of any class that,  
20 after giving effect to the amendment, have rights or preferences with respect to distributions or to  
21 dissolution that are prior or superior to the shares of the class;

1 (7) limit or deny an existing preemptive right of all or part of the shares of the class;

2 or

3 (8) cancel or otherwise affect rights to distributions that have accumulated but not yet  
4 been authorized on all or part of the shares of the class.

5 (b) If a proposed amendment would affect a series of a class of shares in one or more of  
6 the ways described in subsection (a), the holders of shares of that series are entitled to vote as a  
7 separate voting group on the proposed amendment.

8 (c) If a proposed amendment that entitles the holders of two or more classes or series of  
9 shares to vote as separate voting groups under this section would affect those two or more classes  
10 or series in the same or a substantially similar way, the holders of shares of all the classes or  
11 series so affected must vote together as a single voting group on the proposed amendment, unless  
12 otherwise provided in the articles of incorporation or required by the board of directors.

13 (d) A class or series of shares is entitled to the voting rights granted by this section  
14 although the articles of incorporation provide that the shares are nonvoting shares.

15 **§281005 Amendment by Board of Directors.** Unless the articles of incorporation  
16 provide otherwise, a corporation's board of directors may adopt the following amendments to the  
17 corporations articles of incorporation without shareholder approval:

18 (a) to delete the names and addresses of the initial directors;

19 (b) if the corporation has only one class of shares outstanding:

20 (1) to change each issued and unissued authorized share of the class into a greater  
21 number of whole shares of that class; or

1           (2) to increase the number of authorized shares of the class to the extent necessary to  
2 permit the issuance of shares as a share dividend;

3           (c) to change the corporate name by substituting the word corporation, incorporated,  
4 company, limited, or the abbreviation corp., inc., co., or ltd., for a similar word or abbreviation in  
5 the name, or by adding, deleting, or changing a geographical attribution for the name;

6           (d) to reflect a reduction in authorized shares, as a result of the operation of section  
7 28615(b), when the corporation has acquired its own shares and the articles of incorporation  
8 prohibit the reissue of the acquired shares;

9           (e) to delete a class of shares from the articles of incorporation, as a result of the  
10 operation of section 28615(b), when there are no remaining shares of the class because the  
11 corporation has acquired all shares of the class and the articles of incorporation prohibit the  
12 reissue of the acquired shares; or

13           (f) to make any change expressly permitted by section 28602(d) to be made without  
14 shareholder approval.

15           **§281006. Amended Articles of Incorporation.** After an amendment to the articles of  
16 incorporation has been adopted and approved in the manner required by this Act and by the  
17 articles of incorporation, the corporation shall deliver to the Director of Revenue & Taxation, for  
18 filing a copy of the articles of incorporation, as amended, duly certified to be correct by the  
19 President and Secretary.

20           **§281007. Amendment Pursuant to Reorganization.**

21           (a) A corporation's articles of incorporation may be amended without action by the board

1 of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of  
2 competent jurisdiction under the authority of a law of the United States.

3 (b) The individual or individuals designated by the court shall deliver to the Director of  
4 Revenue & Taxation for filing articles of amendment setting forth:

5 (1) the name of the corporation;

6 (2) the text of each amendment approved by the court;

7 (3) the date of the court's order or decree approving the articles of amendment;

8 (4) the title of the reorganization proceeding in which the order or decree was entered;

9 and

10 (5) a statement that the court had jurisdiction of the proceeding under a law of the  
11 United States federal statute.

12 (c) This section does not apply after entry of a final decree in the reorganization  
13 proceeding even though the court retains jurisdiction of the proceeding for limited purposes  
14 unrelated to consummation of the reorganization plan.

15 **§281008. Effect of Amendment.** An amendment to the articles of incorporation does  
16 not affect a cause of action existing against or in favor of the corporation, a proceeding to which  
17 the corporation is a party, or the existing rights of persons other than shareholders of the  
18 corporation. An amendment changing a corporation's name does not abate a proceeding brought  
19 by or against the corporation in its former name.

20 **§281009. Amendment of Bylaws by Board of Directors or Shareholders.**

21 (a) A corporation's shareholders may amend or repeal the corporation's bylaws.

1 (b) A corporation's board of directors may amend or repeal the corporation's bylaws,  
2 unless:

3 (1) the articles of incorporation or section 281010 reserve that power exclusively to  
4 the shareholders in whole or part; or

5 (2) the shareholders in amending, repealing, or adopting a bylaw expressly provide  
6 that the board of directors may not amend, repeal, or reinstate that bylaw.

7 **§281010. Bylaw Increasing Quorum or Voting Requirement for Directors.**

8 (a) A bylaw that increases a quorum or voting requirement for the board of directors may  
9 be amended or repealed:

10 (1) if adopted by the shareholders, only by the shareholders, unless the bylaw  
11 otherwise provides;

12 (2) if adopted by the board of directors, either by the shareholders or by the board of  
13 directors.

14 (b) A bylaw adopted or amended by the shareholders that increases a quorum or voting  
15 requirement for the board of directors may provide that it can be amended or repealed only by a  
16 specified vote of either the shareholders or the board of directors.

17 (c) Action by the board of directors under subsection (a) to amend or repeal a bylaw that  
18 changes the quorum or voting requirement for the board of directors must meet the same quorum  
19 requirement and be adopted by the same vote required to take action under the quorum and  
20 voting requirement then in effect or proposed to be adopted, whichever is greater.

21 **CHAPTER 11. MERGERS AND SHARE EXCHANGES**

1           **§281101. Definitions.** As used in this chapter:

2           (a) Interests means the proprietary interests in an other entity.

3           (b) Merger means a business combination pursuant to section 281102.

4           (c) Organizational documents means the basic document or documents that create, or  
5 determine the internal governance of, an other entity.

6           (d) Other entity means any association or legal entity, other than a domestic or foreign  
7 corporation, organized to conduct business, including, without limitation, limited partnerships,  
8 general partnerships, limited liability partnerships, limited liability companies, joint ventures,  
9 joint stock companies, and business trusts.

10          (e) Party to a merger or party to a share exchange means any domestic or foreign  
11 corporation or other entity that will either:

12           (1) merge under a plan of merger;

13           (2) acquire shares or interests of another corporation or an other entity in a share  
14 exchange; or

15           (3) have all of its shares or interests or all of one or more classes or series of its shares  
16 or interests acquired in a share exchange.

17          (f) Share exchange means a business combination pursuant to section 281103.

18          (g) Survivor in a merger means the corporation or other entity into which one or more  
19 other corporations or other entities are merged. A survivor of a merger may preexist the merger  
20 or be created by the merger.

21           **§281102. Merger.**

1 (a) One or more domestic corporations may merge with a domestic or foreign corporation  
2 or other entity pursuant to a plan of merger.

3 (b) A foreign corporation, or a domestic or foreign other entity, may be a party to the  
4 merger, or may be created by the terms of the plan of merger, only if:

5 (1) the merger is permitted by the laws under which the corporation or other entity is  
6 organized or by which it is governed; and

7 (2) in effecting the merger, the corporation or other entity complies with such laws  
8 and with its articles of incorporation or organizational documents.

9 (c) The plan of merger must include:

10 (1) the name of each corporation or other entity that will merge and the name of the  
11 corporation or other entity that will be the survivor of the merger;

12 (2) the terms and conditions of the merger;

13 (3) the manner and basis of converting the shares of each merging corporation and  
14 interests of each merging other entity into shares or other securities, interests, obligations, rights  
15 to acquire shares or other securities, cash, other property, or any combination of the foregoing;

16 (4) the articles of incorporation of any corporation, or the organizational documents  
17 of any other entity, to be created by the merger, or if a new corporation or other entity is not to  
18 be created by the merger, any amendments to the survivor's articles of incorporation or  
19 organizational documents; and

20 (5) any other provisions required by the laws under which any party to the merger is  
21 organized or by which it is governed, or by the articles of incorporation or organizational

1 documents of any such party.

2 (d) The terms described in subsections (c)(2) and (c)(3) may be made dependent on facts  
3 ascertainable outside the plan of merger, provided that those facts are objectively ascertainable.  
4 The term facts includes, but is not limited to, the occurrence of any event, including a  
5 determination or action by any person or body, including the corporation.

6 (e) The plan of merger may also include a provision that the plan may be amended prior  
7 to filing the articles of merger with the Director of Revenue & Taxation, provided that if the  
8 shareholders of a domestic corporation that is a party to the merger are required or permitted to  
9 vote on the plan, the plan must provide that subsequent to approval of the plan by such  
10 shareholders the plan may not be amended to:

11 (1) change the amount or kind of shares or other securities, interests, obligations,  
12 rights to acquire shares or other securities, cash, or other property to be received by the  
13 shareholders of or owners of interests in any party to the merger upon conversion of their shares  
14 or interests under the plan;

15 (2) change the articles of incorporation of any corporation, or the organizational  
16 documents of any other entity, that will survive or be created as a result of the merger, except for  
17 changes permitted by section 281005 or by comparable provisions of the laws under which the  
18 foreign corporation or other entity is organized or governed; or

19 (3) change any of the other terms or conditions of the plan if the change would  
20 adversely affect such shareholders in any material respect.

21 **§281103. Share Exchange.**



1 (a) Through a share exchange:

2 (1) a domestic corporation may acquire all of the shares of one or more classes or  
3 series of shares of another domestic or foreign corporation, or all of the interests of one or more  
4 classes or series of interests of a domestic or foreign other entity, in exchange for shares or other  
5 securities, interests, obligations, rights to acquire shares or other securities, cash, other property,  
6 or any combination of the foregoing, pursuant to a plan of share exchange, or

7 (2) all of the shares of one or more classes or series of shares of a domestic  
8 corporation may be acquired by another domestic or foreign corporation or other entity, in  
9 exchange for shares or other securities, interests, obligations, rights to acquire shares or other  
10 securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share  
11 exchange.

12 (b) A foreign corporation, or a domestic or foreign other entity, may be a party to the  
13 share exchange only if:

14 (1) the share exchange is permitted by the laws under which the corporation or other  
15 entity is organized or by which it is governed; and

16 (2) in effecting the share exchange, the corporation or other entity complies with such  
17 laws and with its articles of incorporation or organizational documents.

18 (c) The plan of share exchange must include:

19 (1) the name of each corporation or other entity whose shares or interests will be  
20 acquired and the name of the corporation or other entity that will acquire those shares or  
21 interests;

1 (2) the terms and conditions of the share exchange;

2 (3) the manner and basis of exchanging shares of a corporation or interests in an other  
3 entity whose shares or interests will be acquired under the share exchange into shares or other  
4 securities, interests, obligations, rights to acquire shares or other securities, cash, other property,  
5 or any combination of the foregoing; and

6 (4) any other provisions required by the laws under which any party to the share  
7 exchange is organized or by the articles of incorporation or organizational documents of any  
8 such party.

9 (d) The terms described in subsections (c)(2) and (c)(3) may be made dependent on facts  
10 ascertainable outside the plan of share exchange, provided that those facts are objectively  
11 ascertainable. The term facts includes, but is not limited to, the occurrence of any event,  
12 including a determination or action by any person or body, including the corporation.

13 (e) The plan of share exchange may also include a provision that the plan may be  
14 amended prior to filing of the articles of share exchange with the Director of Revenue &  
15 Taxation, provided that if the shareholders of a domestic corporation that is a party to the share  
16 exchange are required or permitted to vote on the plan, the plan must provide that subsequent to  
17 approval of the plan by such shareholders the plan may not be amended to:

18 (1) change the amount or kind of shares or other securities, interests, obligations,  
19 rights to acquire shares or other securities, cash, or other property to be issued by the corporation  
20 or to be received by the shareholders of or owners of interests in any party to the share exchange  
21 in exchange for their shares or interest under the plan; or

1 (2) change any of the terms or conditions of the plan if the change would adversely  
2 affect such shareholders in any material respect.

3 (f) Section 281103 does not limit the power of a domestic corporation to acquire shares  
4 of another corporation or interests in another entity in a transaction other than a share exchange.

5 **§281104. Action on a Plan of Merger or Share Exchange.** In the case of a domestic  
6 corporation that is a party to a merger or share exchange:

7 (a) The plan of merger or share exchange must be adopted by the board of directors.

8 (b) Except as provided in subsection (g) and in section 281105, after adopting the plan of  
9 merger or share exchange the board of directors must submit the plan to the shareholders for  
10 their approval. The board of directors must also transmit to the shareholders a recommendation  
11 that the shareholders approve the plan, unless the board of directors makes a determination that  
12 because of conflicts of interest or other special circumstances it should not make such a  
13 recommendation, in which case the board of directors must transmit to the shareholders the basis  
14 for that determination.

15 (c) The board of directors may condition its submission of the plan of merger or share  
16 exchange to the shareholders on any basis.

17 (d) If the plan of merger or share exchange is required to be approved by the  
18 shareholders, and if the approval is to be given at a meeting, the corporation must notify each  
19 shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to  
20 be submitted for approval. The notice must state that the purpose, or one of the purposes, of the  
21 meeting is to consider the plan and must contain or be accompanied by a copy or summary of the

1 plan. If the corporation is to be merged into an existing corporation or other entity, the notice  
2 shall also include or be accompanied by a copy or summary of the articles of incorporation or  
3 organizational documents of that corporation or other entity. If the corporation is to be merged  
4 into a corporation or other entity that is to be created pursuant to the merger, the notice shall  
5 include or be accompanied by a copy or a summary of the articles of incorporation or  
6 organizational documents of the new corporation or other entity.

7 (e) Unless the articles of incorporation, or the board of directors acting pursuant to  
8 subsection (c), requires a greater vote or a greater number of votes to be present, approval of the  
9 plan of merger or share exchange requires the approval of the shareholders at a meeting at which  
10 a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and,  
11 if any class or series of shares is entitled to vote as a separate group on the plan of merger or  
12 share exchange, the approval of each such separate voting group at a meeting at which a quorum  
13 of the voting group consisting of at least a majority of the votes entitled to be cast on the merger  
14 or share exchange by that voting group is present.

15 (f) Separate voting by voting groups is required whether or not a voting group otherwise  
16 has voting rights of any kind:

17 (1) on a plan of merger, by each class or series of shares that (A) are to be converted,  
18 pursuant to the provisions of the plan of merger, into shares or other securities, interests,  
19 obligations, rights to acquire shares or other securities, cash, other property, or any combination  
20 of the foregoing, or (B) would have a right to vote as a separate group on a provision in the plan  
21 that, if contained in a proposed amendment to articles of incorporation, would require action by

1 separate voting groups under section 281004;

2 (2) on a plan of share exchange, by each class or series of shares included in the  
3 exchange, with each class or series constituting a separate voting group; and

4 (3) on a plan of merger or share exchange, if the voting group is entitled under the  
5 articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

6 (g) Unless the articles of incorporation otherwise provide, approval by the corporation's  
7 shareholders of a plan of merger or share exchange is not required if:

8 (1) the corporation will survive the merger or is the acquiring corporation in a share  
9 exchange;

10 (2) except for amendments permitted by section 281005, its articles of incorporation  
11 will not be changed;

12 (3) each shareholder of the corporation whose shares were outstanding immediately  
13 before the effective date of the merger or share exchange will hold the same number of shares,  
14 with identical preferences, limitations, and relative rights, immediately after the effective date of  
15 change; and

16 (4) the issuance in the merger or share exchange of shares or other securities  
17 convertible into or rights exercisable for shares does not require a vote under section 28606.

18 (h) If as a result of a merger or share exchange one or more shareholders of a domestic  
19 corporation would become subject to personal liability for the obligations or liabilities of any  
20 other person or entity, approval of the plan of merger shall require the execution, by each such  
21 shareholder, of a separate written consent to become subject to such personal liability.

1           **§281105. Merger Between Parent and Subsidiary or Between Subsidiaries.**

2           (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary  
3 corporation that carry at least 90 percent of the voting power of each class and series of the  
4 outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself  
5 or into another such subsidiary, or merge itself into the subsidiary, without the approval of the  
6 board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of  
7 the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by  
8 the subsidiary's board of directors or shareholders is required by the laws under which the  
9 subsidiary is organized.

10          (b) If under subsection (a) approval of a merger by the subsidiary's shareholders is not  
11 required, the parent corporation shall, within ten days after the effective date of the merger,  
12 notify each of the subsidiary's shareholders that the merger has become effective.

13          (c) Except as provided in subsections (a) and (b), a merger between a parent and a  
14 subsidiary shall be governed by the provisions of chapter 11 applicable to mergers generally.

15           **§281106. Articles of Merger or Share Exchange.**

16          (a) After a plan of merger or share exchange has been adopted and approved as required  
17 by this Act, articles of merger or share exchange shall be executed on behalf of each party to the  
18 merger or share exchange by any officer or other duly authorized representative. The articles  
19 shall set forth:

20           (1) the names of the parties to the merger or share exchange and the date on which the  
21 merger or share exchange occurred or is to be effective;

1 (2) if the articles of incorporation of the survivor of a merger are amended, or if a new  
2 corporation is created as a result of a merger, the amendments to the survivor's articles of  
3 incorporation or the articles of incorporation of the new corporation;

4 (3) if the plan of merger or share exchange required approval by the shareholders of a  
5 domestic corporation that was a party to the merger or share exchange, a statement that the plan  
6 was duly approved by the shareholders and, if voting by any separate voting group was required,  
7 by each such separate voting group, in the manner required by this Act and the articles of  
8 incorporation;

9 (4) if the plan of merger or share exchange did not require approval by the  
10 shareholders of a domestic corporation that was a party to the merger or share exchange, a  
11 statement to that effect; and

12 (5) as to each foreign corporation and each other entity that was a party to the merger  
13 or share exchange, a statement that the plan and the performance of its terms were duly  
14 authorized by all action required by the laws under which the corporation or other entity is  
15 organized, or by which it is governed, and by its articles of incorporation or organizational  
16 documents.

17 (b) Articles of merger or share exchange shall be delivered to the Director of Revenue &  
18 Taxation for filing by the survivor of the merger or the acquiring corporation in a share exchange  
19 and shall take effect on the effective date.

20 **§281107. Effect of Merger or Share Exchange.**

21 (a) When a merger becomes effective:

- 1           (1) the corporation or other entity that is designated in the plan of merger as the  
2 survivor continues or comes into existence, as the case may be;
- 3           (2) the separate existence of every corporation or other entity that is merged into the  
4 survivor ceases;
- 5           (3) all property owned by, and every contract right possessed by, each corporation or  
6 other entity that merges into the survivor is vested in the survivor without reversion or  
7 impairment;
- 8           (4) all liabilities of each corporation or other entity that is merged into the survivor  
9 are vested in the survivor;
- 10          (5) the name of the survivor may, but need not be, substituted in any pending  
11 proceeding for the name of any party to the merger whose separate existence ceased in the  
12 merger;
- 13          (6) the articles of incorporation or organizational documents of the survivor are  
14 amended to the extent provided in the plan of merger;
- 15          (7) the articles of incorporation or organizational documents of a survivor that is  
16 created by the merger become effective; and
- 17          (8) the shares of each corporation that is a party to the merger, and the interests in an  
18 other entity that is a party to a merger, that are to be converted under the plan of merger into  
19 shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or  
20 any combination of the foregoing, are converted, and the former holders of such shares or  
21 interests are entitled only to the rights provided to them in the plan of merger or to any rights



1 they may have under chapter 13.

2 (b) When a share exchange becomes effective, the shares of each domestic corporation  
3 that are to be exchanged for shares or other securities, interests, obligations, rights to acquire  
4 shares or other securities, cash, other property, or any combination of the foregoing, are entitled  
5 only to the rights provided to them in the plan of share exchange or to any rights they may have  
6 under chapter 13.

7 (c) Any shareholder of a domestic corporation that is a party to a merger or share  
8 exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations  
9 of such corporation, shall not be released from such liabilities or obligations by reason of the  
10 merger or share exchange.

11 (d) Upon a merger becoming effective, a foreign corporation, or a foreign other entity,  
12 that is the survivor of the merger in the absence of an appointment of a local agent for service is  
13 deemed to:

14 (1) appoint the Director of Revenue & Taxation as its agent for service of process in a  
15 proceeding to enforce the rights of shareholders of each domestic corporation that is a party to  
16 the merger who exercise appraisal rights, and

17 (2) agree that it will promptly pay the amount, if any, to which such shareholders are  
18 entitled under chapter 13.

19 **§281108. Abandonment of a Merger or Share Exchange.**

20 (a) Unless otherwise provided in a plan of merger or share exchange or in the laws under  
21 which a foreign corporation or a domestic or foreign other entity that is a party to a merger or a

1 share exchange is organized or by which it is governed, after the plan has been adopted and  
2 approved as required by this chapter, and at any time before the merger or share exchange has  
3 become effective, it may be abandoned by any party thereto without action by the party's  
4 shareholders or owners of interests, in accordance with any procedures set forth in the plan of  
5 merger or share exchange or, if no such procedures are set forth in the plan, in the manner  
6 determined by the board of directors of a corporation, or the managers of an other entity, subject  
7 to any contractual rights of other parties to the merger or share exchange.

8 (b) If a merger or share exchange is abandoned under subsection (a) after articles of  
9 merger or share exchange have been filed with the Director of Revenue & Taxation but before  
10 the merger or share exchange has become effective, a statement that the merger or share  
11 exchange has been abandoned in accordance with this section, executed on behalf of a party to  
12 the merger or share exchange by an officer or other duly authorized representative, shall be  
13 delivered to the Director of Revenue & Taxation for filing prior to the effective date of the  
14 merger or share exchange. Upon filing, the statement shall take effect and the merger or share  
15 exchange shall be deemed abandoned and shall not become effective.

16 **CHAPTER 12. DISPOSITION OF ASSETS**

17 **§281201. Disposition of Assets Not Requiring Shareholder Approval.** No approval  
18 of the shareholders of a corporation is required, unless the articles of incorporation otherwise  
19 provide:

20 (a) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets  
21 in the usual and regular course of business;

1 (b) to mortgage, pledge, dedicate to the repayment of indebtedness (whether with or  
2 without recourse), or otherwise encumber any or all of the corporation's assets, whether or not in  
3 the usual and regular course of business;

4 (c) to transfer any or all of the corporation's assets to one or more corporations or other  
5 entities all of the shares or interests of which are owned by the corporation; or

6 (d) to distribute assets pro rata to the holders of one or more classes or series of the  
7 corporation's shares.

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

9 (a) A sale, lease, exchange, or other disposition of assets, other than a disposition  
10 described in section 281201, requires approval of the corporation's shareholders if the  
11 disposition would leave the corporation without a significant continuing business activity. If a  
12 corporation retains a business activity that represented at least 25 percent of total assets at the  
13 end of the most recently completed fiscal year, and 25 percent of either income from continuing  
14 operations before taxes or revenues from continuing operations for that fiscal year, in each case  
15 of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively  
16 be deemed to have retained a significant continuing business activity.

17 (b) A disposition that requires approval of the shareholders under subsection (a) shall be  
18 initiated by a resolution by the board of directors authorizing the disposition. After adoption of  
19 such a resolution, the board of directors shall submit the proposed disposition to the shareholders  
20 for their approval. The board of directors shall also transmit to the shareholders a  
21 recommendation that the shareholders approve the proposed disposition, unless the board of

1 directors makes a determination that because of conflicts of interest or other special  
2 circumstances it should not make such a recommendation, in which case the board of directors  
3 shall transmit to the shareholders the basis for that determination.

4 (c) The board of directors may condition its submission of a disposition to the  
5 shareholders under subsection (b) on any basis.

6 (d) If a disposition is required to be approved by the shareholders under subsection (a),  
7 and if the approval is to be given at a meeting, the corporation shall notify each shareholder,  
8 whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be  
9 submitted for approval. The notice shall state that the purpose, or one of the purposes, of the  
10 meeting is to consider the disposition and shall contain a description of the disposition, including  
11 the terms and conditions thereof and the consideration to be received by the corporation.

12 (e) Unless the articles of incorporation or the board of directors acting pursuant to  
13 subsection (c) requires a greater vote, or a greater number of votes to be present, the approval of  
14 a disposition by the shareholders shall require the approval of the shareholders at a meeting at  
15 which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition  
16 exists.

17 (f) After a disposition has been approved by the shareholders under subsection (b), and at  
18 any time before the disposition has been consummated, it may be abandoned by the corporation  
19 without action by the shareholders, subject to any contractual rights of other parties to the  
20 disposition.

21 (g) A disposition of assets in the course of dissolution under chapter 14 is not governed

1 by this section.

2 (h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of  
3 the parent corporation for the purposes of this section.

## 4 **CHAPTER 13. APPRAISAL RIGHTS**

### 5 **Subchapter A. Right to Appraisal and Payment for Shares**

6 **§281301. Definitions.** In this chapter:

7 (1) “Affiliate” means a person that directly or indirectly through one or more  
8 intermediaries controls, is controlled by, or is under common control with another person or is a  
9 senior executive thereof. For purposes of section 281302(b)(4), a person is deemed to be an  
10 affiliate of its senior executives.

11 (2) “Beneficial shareholder” means a person who is the beneficial owner of shares held in  
12 a voting trust or by a nominee on the beneficial owner’s behalf.

13 (3) “Corporation” means the issuer of the shares held by a shareholder demanding  
14 appraisal and, for matters covered in sections 281306-281312, includes the surviving entity in a  
15 merger.

16 (4) “Fair value” means the value of the corporation’s shares determined:

17 (i) immediately before the effectuation of the corporate action to which the  
18 shareholder objects excluding any appreciation or depreciation in anticipation of the corporate  
19 action objected to;

20 (ii) using customary and current valuation concepts and techniques generally  
21 employed for similar businesses in the context of the transaction requiring appraisal; and

1 (iii) without discounting for lack of marketability or minority status except, if  
2 appropriate, for amendments to the articles pursuant to section 281302(a)(5).

3 (5) "Interest" means interest from the effective date of the corporate action until the date  
4 of payment, at the rate of interest on judgments in Guam on the effective date of the corporate  
5 action.

6 (6) "Preferred shares" means a class or series of shares whose holders have preference  
7 over any other class or series with respect to distributions.

8 (7) "Record shareholder" means the person in whose name shares are registered in the  
9 records of the corporation or the beneficial owner of shares to the extent of the rights granted by  
10 a nominee certificate on file with the corporation.

11 (8) "Senior executive" means the chief executive officer, chief operating officer, chief  
12 financial officer, and anyone in charge of a principal business unit or function.

13 (9) "Shareholder" means both a record shareholder and a beneficial shareholder.

14 **§281302. Right to Appraisal.**

15 (a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of  
16 that shareholder's shares, in the event of any of the following corporate actions:

17 (1) consummation of a merger to which the corporation is a party (i) if shareholder  
18 approval is required for the merger by section 281104 and the shareholder is entitled to vote on  
19 the merger, except that appraisal rights shall not be available to any shareholder of the  
20 corporation with respect to shares of any class or series that remain outstanding after  
21 consummation of the merger, or (ii) if the corporation is a subsidiary and the merger is governed

1 by section 281105;

2 (2) consummation of a share exchange to which the corporation is a party as the  
3 corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange,  
4 except that appraisal rights shall not be available to any shareholder of the corporation with  
5 respect to any class or series of shares of the corporation that is not exchanged;

6 (3) consummation of a disposition of assets pursuant to section 281202 if the  
7 shareholder is entitled to vote on the disposition;

8 (4) an amendment of the articles of incorporation with respect to a class or series of  
9 shares that reduces the number of shares of a class or series owned by the shareholder to a  
10 fraction of a share if the corporation has the obligation or right to repurchase the fractional share  
11 so created; or

12 (5) any other amendment to the articles of incorporation, merger, share exchange or  
13 disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution  
14 of the board of directors.

15 (b) Notwithstanding subsection (a), the availability of appraisal rights under subsections  
16 (a)(1), (2), (3) and (4) shall be limited in accordance with the following provisions:

17 (1) Appraisal rights shall not be available for the holders of shares of any class or  
18 series of shares which is:

19 (i) listed on the New York Stock Exchange or the American Stock Exchange or  
20 designated as a national market system security on an interdealer quotation system by the  
21 National Association of Securities Dealers, Inc.; or

1 (ii) not so listed or designated, but has at least 2,000 shareholders and the  
2 outstanding shares of such class or series has a market value of at least \$20 million (exclusive of  
3 the value of such shares held by its subsidiaries, senior executives, directors and beneficial  
4 shareholders owning more than 10 percent of such shares).

5 (2) The applicability of subsection (b)(1) shall be determined as of:

6 (i) the record date fixed to determine the shareholders entitled to receive notice  
7 of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal  
8 rights; or

9 (ii) the day before the effective date of such corporate action if there is no  
10 meeting of shareholders.

11 (3) Subsection (b)(1) shall not be applicable and appraisal rights shall be available  
12 pursuant to subsection (a) for the holders of any class or series of shares who are required by the  
13 terms of the corporate action requiring appraisal rights to accept for such shares anything other  
14 than cash or shares of any class or any series of shares of any corporation, or any other  
15 proprietary interest of any other entity, that satisfies the standards set forth in subsection (b)(1) at  
16 the time the corporate action becomes effective.

17 (4) Subsection (b)(1) shall not be applicable and appraisal rights shall be available  
18 pursuant to subsection (a) for the holders of any class or series of shares where:

19 (i) any of the shares or assets of the corporation are being acquired or converted,  
20 whether by merger, share exchange or otherwise, pursuant to the corporate action by a person, or  
21 by an affiliate of a person, who:



1                   (A) is, or at any time in the one-year period immediately preceding approval  
2 by the board of directors of the corporate action requiring appraisal rights was, the beneficial  
3 owner of 20 percent or more of the voting power of the corporation, excluding any shares  
4 acquired pursuant to an offer for all shares having voting power if such offer was made within  
5 one year prior to the corporate action requiring appraisal rights for consideration of the same  
6 kind and of a value equal to or less than that paid in connection with the corporate action; or

7                   (B) directly or indirectly has, or at any time in the one-year period  
8 immediately preceding approval by the board of directors of the corporation of the corporate  
9 action requiring appraisal rights had, the power, contractually or otherwise, to cause the  
10 appointment or election of 25 percent or more of the directors to the board of directors of the  
11 corporation; or

12                   (ii) any of the shares or assets of the corporation are being acquired or  
13 converted, whether by merger, share exchange or otherwise, pursuant to such corporate action by  
14 a person, or by an affiliate of a person, who is, or at any time in the one-year period immediately  
15 preceding approval by the board of directors of the corporate action requiring appraisal rights  
16 was, a senior executive or director of the corporation or a senior executive of any affiliate  
17 thereof, and that senior executive or director will receive, as a result of the corporate action, a  
18 financial benefit not generally available to other shareholders as such, other than:

19                   (A) employment, consulting, retirement or similar benefits established  
20 separately and not as part of or in contemplation of the corporate action; or

21                   (B) employment, consulting, retirement or similar benefits established in

1 contemplation of, or as part of, the corporate action that are not more favorable than those  
2 existing before the corporate action; or

3 (C) in the case of a director of the corporation who will, in the corporate  
4 action, become a director of the acquiring entity in the corporate action or one of its affiliates,  
5 rights and benefits as a director that are provided on the same basis as those afforded by the  
6 acquiring entity generally to other directors of such entity or such affiliate.

7 (5) For the purposes of paragraph (4) only, the term beneficial owner means any  
8 person who, directly or indirectly, through any contract, arrangement, or understanding, other  
9 than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares,  
10 provided that a member of a national securities exchange shall not be deemed to be a beneficial  
11 owner of securities held directly or indirectly by it on behalf of another person solely because  
12 such member is the record holder of such securities if the member is precluded by the rules of  
13 such exchange from voting without instruction on contested matters or matters that may affect  
14 substantially the rights or privileges of the holders of the securities to be voted. When two or  
15 more persons agree to act together for the purpose of voting their shares of the corporation, each  
16 member of the group formed thereby shall be deemed to have acquired beneficial ownership, as  
17 of the date of such agreement, of all voting shares of the corporation beneficially owned by any  
18 member of the group.

19 (c) Notwithstanding any other provision of section 281302, the articles of incorporation  
20 as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class  
21 or series of preferred shares, but any such limitation or elimination contained in an amendment to

1 the articles of incorporation that limits or eliminates appraisal rights for any of such shares that  
2 are outstanding immediately prior to the effective date of such amendment or that the corporation  
3 is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other  
4 right existing immediately before the effective date of such amendment shall not apply to any  
5 corporate action that becomes effective within one year of that date if such action would  
6 otherwise afford appraisal rights.

7 (d) A shareholder entitled to appraisal rights under this chapter may not challenge a  
8 completed corporate action for which appraisal rights are available unless such corporate action:

9 (1) was not effectuated in accordance with the applicable provisions of chapters 10,  
10 11 or 12 of this Part or the corporation's articles of incorporation, bylaws or board of directors'  
11 resolution authorizing the corporate action; or

12 (2) was procured as a result of fraud or material misrepresentation.

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

14 (a) A record shareholder may assert appraisal rights as to fewer than all the shares  
15 registered in the record shareholder's name but owned by a beneficial shareholder only if the  
16 record shareholder objects with respect to all shares of the class or series owned by the beneficial  
17 shareholder and notifies the corporation in writing of the name and address of each beneficial  
18 shareholder on whose behalf appraisal rights are being asserted. The rights of a record  
19 shareholder who asserts appraisal rights for only part of the shares held of record in the record  
20 shareholder's name under this subsection shall be determined as if the shares as to which the  
21 record shareholder objects and the record shareholder's other shares were registered in the names

1 of different record shareholders.

2 (b) A beneficial shareholder may assert appraisal rights as to shares of any class or series  
3 held on behalf of the shareholder only if such shareholder:

4 (1) submits to the corporation the record shareholder's written consent to the assertion  
5 of such rights no later than the date referred to in section 281306(b)(2)(ii); and

6 (2) does so with respect to all shares of the class or series that are beneficially owned  
7 by the beneficial shareholder.

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

9 **§281304. Notice of Appraisal Rights.**

10 (a) If proposed corporate action described in section 281302(a) is to be submitted to a  
11 vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded  
12 that shareholders are, are not or may be entitled to assert appraisal rights under this chapter. If  
13 the corporation concludes that appraisal rights are or may be available, a copy of this chapter  
14 must accompany the meeting notice sent to those record shareholders entitled to exercise  
15 appraisal rights.

16 (b) In a merger pursuant to section 281105, the parent corporation must notify in writing  
17 all record shareholders of the subsidiary who are entitled to assert appraisal rights that the  
18 corporate action became effective. Such notice must be sent within ten days after the corporate  
19 action became effective and include the materials described in section 281306.

20 **§281305. Notice of Intent to Demand Payment.**

21 (a) If proposed corporate action requiring appraisal rights under section 281302 is

1 submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal  
2 rights with respect to any class or series of shares:

3 (1) must deliver to the corporation before the vote is taken written notice of the  
4 shareholder's intent to demand payment if the proposed action is effectuated; and

5 (2) must not vote, or cause or permit to be voted, any shares of such class or series in  
6 favor of the proposed action.

7 (b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled  
8 to payment under this chapter.

9 **§281306. Appraisal Notice and Form.**

10 (a) If proposed corporate action requiring appraisal rights under section 281302(a)  
11 becomes effective, the corporation must deliver a written appraisal notice and form required by  
12 subsection (b)(1) to all shareholders who satisfied the requirements of section 281305. In the  
13 case of a merger under section 281105, the parent must deliver a written appraisal notice and  
14 form to all record shareholders who may be entitled to assert appraisal rights.

15 (b) The appraisal notice must be sent no earlier than the date the corporate action became  
16 effective and no later than ten days after such date and must:

17 (1) Supply a form that specifies the date of the first announcement to the public, the  
18 news media or the shareholders, whichever first occurred, of the principal terms of the proposed  
19 corporate action and requires the shareholder asserting appraisal rights to certify (i) whether or  
20 not beneficial ownership of those shares for which appraisal rights are asserted was acquired  
21 before that date and (ii) that the shareholder did not vote for the transaction;

1 (2) state:

2 (i) where the form must be sent and where certificates for certificated shares  
3 must be deposited and the date by which those certificates must be deposited, which date may  
4 not be earlier than the date for receiving the required form under subsection (2)(ii);

5 (ii) a date by which the corporation must receive the form which date may not  
6 be fewer than 40 nor more than 60 days after the date the subsection (a) appraisal notice and  
7 form are sent, and state that the shareholder shall have waived the right to demand appraisal with  
8 respect to the shares unless the form is received by the corporation by such specified date;

9 (iii) the corporation's estimate of the fair value of the shares;

10 (iv) that, if requested in writing, the corporation will provide, to the shareholder  
11 so requesting, within ten days after the date specified in subsection (2)(ii) the number of  
12 shareholders who return the forms by the specified date and the total number of shares owned by  
13 them; and

14 (v) the date by which the notice to withdraw under section 281307 must be  
15 received, which date must be within 20 days after the date specified in subsection (2)(ii); and

16 (3) be accompanied by a copy of this chapter.

17 **§281307. Perfection of Rights; Right to Withdraw.**

18 (a) A shareholder who receives notice pursuant to section 281306 and who wishes to  
19 exercise appraisal rights must certify on the form sent by the corporation whether the beneficial  
20 owner of such shares acquired beneficial ownership of the shares before the date required to be  
21 set forth in the notice pursuant to section 281306(b)(1). If a shareholder fails to make this

1 certification, the corporation may elect to treat the shareholder's shares as after-acquired shares  
2 under section 281309. In addition, a shareholder who wishes to exercise appraisal rights must  
3 execute and return the form and, in the case of certificated shares, deposit the shareholder's  
4 certificates in accordance with the terms of the notice by the date referred to in the notice  
5 pursuant to section 281306(b)(2). Once a shareholder deposits that shareholder's certificates or,  
6 in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as  
7 a shareholder, unless the shareholder withdraws pursuant to subsection (b).

8 (b) A shareholder who has complied with subsection (a) may nevertheless decline to  
9 exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation  
10 in writing by the date set forth in the appraisal notice pursuant to section 281306(b)(2)(v). A  
11 shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw  
12 without the corporation's written consent.

13 (c) A shareholder who does not execute and return the form and, in the case of  
14 certificated shares, deposit that shareholder's share certificates where required, each by the date  
15 set forth in the notice described in section 281306(b)(2), shall not be entitled to payment under  
16 this chapter.

17 **§281308. Payment.**

18 (a) Except as provided in section 281309, within 30 days after the form required by  
19 section 281306(b) is due, the corporation shall pay in cash to those shareholders who complied  
20 with section 281307(a) the amount the corporation estimates to be the fair value of their shares,  
21 plus interest.

1 (b) The payment to each shareholder pursuant to subsection (a) must be accompanied by:

2 (1) financial statements of the corporation that issued the shares to be appraised,  
3 consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before  
4 the date of payment, an income statement for that year, a statement of changes in shareholders'  
5 equity for that year, and the latest available interim financial statements, if any;

6 (2) a statement of the corporations estimate of the fair value of the shares, which  
7 estimate must equal or exceed the corporation's estimate given pursuant to section  
8 281306(b)(2)(iii);

9 (3) a statement that shareholders described in subsection (a) have the right to demand  
10 further payment under section 281310 and that if any such shareholder does not do so within the  
11 time period specified therein, such shareholder shall be deemed to have accepted such payment  
12 in full satisfaction of the corporation's obligations under this chapter.

13 **§281309. After-Acquired Shares.**

14 (a) A corporation may elect to withhold payment required by section 281308 from any  
15 shareholder who did not certify that beneficial ownership of all of the shareholder's shares for  
16 which appraisal rights are asserted was acquired before the date set forth in the appraisal notice  
17 pursuant to section 281306(b)(1).

18 (b) If the corporation elected to withhold payment under subsection (a), it must, within 30  
19 days after the form required by section 281306(b) is due, notify all shareholders who are  
20 described in subsection (a):

21 (1) of the information required by section 281308(b)(1);



1 (2) of the corporation's estimate of fair value pursuant to section 281308(b)(2);

2 (3) that they may accept the corporation's estimate of fair value, plus interest, in full  
3 satisfaction of their demands or demand appraisal under section 281310;

4 (4) that those shareholders who wish to accept such offer must so notify the  
5 corporation of their acceptance of the corporation's offer within 30 days after receiving the offer;  
6 and

7 (5) that those shareholders who do not satisfy the requirements for demanding  
8 appraisal under section 281310 shall be deemed to have accepted the corporation's offer.

9 (c) Within ten days after receiving the shareholder's acceptance pursuant to subsection  
10 (b), the corporation must pay in cash the amount it offered under subsection (b)(2) to each  
11 shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's  
12 demand.

13 (d) Within 40 days after sending the notice described in subsection (b), the corporation  
14 must pay in cash the amount it offered to pay under subsection (b)(2) to each shareholder  
15 described in subsection (b)(5).

16 **§281310. Procedure if Shareholder Dissatisfied With Payment or Offer.**

17 (a) A shareholder paid pursuant to section 281308 who is dissatisfied with the amount of  
18 the payment must notify the corporation in writing of that shareholder's estimate of the fair value  
19 of the shares and demand payment of that estimate plus interest (less any payment under section  
20 281308). A shareholder offered payment under section 281309 who is dissatisfied with that offer  
21 must reject the offer and demand payment of the shareholder's stated estimate of the fair value of

1 the shares plus interest.

2 (b) A shareholder who fails to notify the corporation in writing of that shareholder's  
3 demand to be paid the shareholder's stated estimate of the fair value plus interest under  
4 subsection (a) within 30 days after receiving the corporation's payment or offer of payment  
5 under section 281308 or section 281309, respectively, waives the right to demand payment under  
6 this section and shall be entitled only to the payment made or offered pursuant to those  
7 respective sections.

8 **§281311. Court Action.**

9 (a) If a shareholder makes demand for payment under section 281310 which remains  
10 unsettled, the corporation shall commence a proceeding within 60 days after receiving the  
11 payment demand and petition the Superior Court of Guam to determine the fair value of the  
12 shares and accrued interest. If the corporation does not commence the proceeding within the 60-  
13 day period, it shall pay in cash to each shareholder the amount the shareholder demanded  
14 pursuant to section 281310 plus interest.

15 (b) The corporation shall commence the proceeding in the Superior Court of Guam. If the  
16 corporation is a foreign corporation without a registered office in Guam, it shall commence the  
17 proceeding where the principal office or registered office of the domestic corporation merged  
18 with the foreign corporation was located at the time of the transaction.

19 (c) The corporation shall make all shareholders (whether or not residents of Guam)  
20 whose demands remain unsettled parties to the proceeding as in an action against their shares,  
21 and all parties must be served with a copy of the petition. Nonresidents may be served by

1 registered or certified mail or by publication as provided by law.

2 (d) The jurisdiction of the court in which the proceeding is commenced under subsection  
3 (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive  
4 evidence and recommend a decision on the question of fair value. The appraisers shall have the  
5 powers described in the order appointing them, or in any amendment to it. The shareholders  
6 demanding appraisal rights are entitled to the same discovery rights as parties in other civil  
7 proceedings. There shall be no right to a jury trial.

8 (e) Each shareholder made a party to the proceeding is entitled to judgment (i) for the  
9 amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest,  
10 exceeds the amount paid by the corporation to the shareholder for such shares or (ii) for the fair  
11 value, plus interest, of the shareholder's shares for which the corporation elected to withhold  
12 payment under section 281309.

13 **§281312. Court Costs and Counsel Fees.**

14 (a) The court in an appraisal proceeding commenced under section 281311 shall  
15 determine all costs of the proceeding, including the reasonable compensation and expenses of  
16 appraisers appointed by the court. The court shall assess the costs against the corporation, except  
17 that the court may assess costs against all or some of the shareholders demanding appraisal, in  
18 amounts the court finds equitable, to the extent the court finds such shareholders acted  
19 arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

20 (b) The court in an appraisal proceeding may also assess the fees and expenses of counsel  
21 and experts for the respective parties, in amounts the court finds equitable:

1 (1) against the corporation and in favor of any or all shareholders demanding  
2 appraisal if the court finds the corporation did not substantially comply with the requirements of  
3 sections 281304, 281306, 281308 or 281309; or

4 (2) against either the corporation or a shareholder demanding appraisal, in favor of  
5 any other party, if the court finds that the party against whom the fees and expenses are assessed  
6 acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this  
7 chapter.

8 (c) If the court in an appraisal proceeding finds that the services of counsel for any  
9 shareholder were of substantial benefit to other shareholders similarly situated, and that the fees  
10 for those services should not be assessed against the corporation, the court may award to such  
11 counsel reasonable fees to be paid out of the amounts awarded the shareholders who were  
12 benefitted.

13 (d) To the extent the corporation fails to make a required payment pursuant to sections  
14 281308, 281309, or 281310, the shareholder may sue directly for the amount owed and, to the  
15 extent successful, shall be entitled to recover from the corporation all costs and expenses of the  
16 suit, including counsel fees.

17 **CHAPTER 14. DISSOLUTION**

18 **§281401. Dissolution by Incorporators or Initial Directors.** A majority of the  
19 incorporators or initial directors of a corporation that has not issued shares or has not  
20 commenced business may dissolve the corporation by delivering to the Director of Revenue &  
21 Taxation for filing articles of dissolution that set forth:

- 1 (1) the name of the corporation;
- 2 (2) the date of its incorporation;
- 3 (3) either (i) that none of the corporation's shares has been issued or (ii) that the
- 4 corporation has not commenced business;
- 5 (4) that no debt of the corporation remains unpaid;
- 6 (5) that the net assets of the corporation remaining after winding up have been distributed
- 7 to the shareholders, if shares were issued; and
- 8 (6) that a majority of the incorporators or initial directors authorized the dissolution.

9 **§281402. Dissolution by Board of Directors and Shareholders.**

10 (a) A corporation's board of directors may propose dissolution for submission to the

11 shareholders.

12 (b) For a proposal to dissolve to be adopted:

13 (1) the board of directors must recommend dissolution to the shareholders unless the

14 board of directors determines that because of conflict of interest or other special circumstances it

15 should make no recommendation and communicates the basis for its determination to the

16 shareholders; and

17 (2) the shareholders entitled to vote must approve the proposal to dissolve as provided

18 in subsection (e).

19 (c) The board of directors may condition its submission of the proposal for dissolution on

20 any basis.

21 (d) The corporation shall notify each shareholder, whether or not entitled to vote, of the

1 proposed shareholders' meeting. The notice must also state that the purpose, or one of the  
2 purposes, of the meeting is to consider dissolving the corporation.

3 (e) Unless the articles of incorporation or the board of directors acting pursuant to  
4 subsection (c) require a greater vote, a greater number of shares to be present, or a vote by voting  
5 groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a  
6 meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

7 **§281403. Articles of Dissolution.**

8 (a) At any time after dissolution is authorized, the corporation may dissolve by delivering  
9 to the Director of Revenue & Taxation for filing articles of dissolution setting forth:

10 (1) the name of the corporation;

11 (2) the date dissolution was authorized;

12 (3) if dissolution was approved by the shareholders, a statement that the proposal to  
13 dissolve was duly approved by the shareholders in the manner required by this Act and by the  
14 articles of incorporation.

15 (b) A corporation is dissolved upon the effective date of its articles of dissolution.

16 (c) For purposes of this subchapter, dissolved corporation means a corporation whose  
17 articles of dissolution have become effective and includes a successor entity to which the  
18 remaining assets of the corporation are transferred subject to its liabilities for purposes of  
19 liquidation.

20 **§281404. Revocation of Dissolution.**

21 (a) A corporation may revoke its dissolution within 120 days of its effective date.

1 (b) Revocation of dissolution must be authorized in the same manner as the dissolution  
2 was authorized unless that authorization permitted revocation by action of the board of directors  
3 alone, in which event the board of directors may revoke the dissolution without shareholder  
4 action.

5 (c) After the revocation of dissolution is authorized, the corporation may revoke the  
6 dissolution by delivering to the Director of Revenue & Taxation for filing articles of revocation  
7 of dissolution, together with a copy of its articles of dissolution, that set forth:

8 (1) the name of the corporation;

9 (2) the effective date of the dissolution that was revoked;

10 (3) the date that the revocation of dissolution was authorized;

11 (4) if the corporation's board of directors (or incorporators) revoked the dissolution, a  
12 statement to that effect;

13 (5) if the corporation's board of directors revoked a dissolution authorized by the  
14 shareholders, a statement that revocation was permitted by action by the board of directors alone  
15 pursuant to that authorization; and

16 (6) if shareholder action was required to revoke the dissolution, the information  
17 required by section 281403(a)(3).

18 (d) Revocation of dissolution is effective upon the effective date of the articles of  
19 revocation of dissolution.

20 (e) When the revocation of dissolution is effective, it relates back to and takes effect as of  
21 the effective date of the dissolution and the corporation resumes carrying on its business as if

1 dissolution had never occurred.

2 **§281405. Effect of Dissolution.**

3 (a) A dissolved corporation continues its corporate existence but may not carry on any  
4 business except that appropriate to wind up and liquidate its business and affairs, including:

5 (1) collecting its assets;

6 (2) disposing of its properties that will not be distributed in kind to its shareholders;

7 (3) discharging or making provision for discharging its liabilities;

8 (4) distributing its remaining property among its shareholders according to their  
9 interests; and

10 (5) doing every other act necessary to wind up and liquidate its business and affairs.

11 (b) Dissolution of a corporation does not:

12 (1) transfer title to the corporation's property;

13 (2) prevent transfer of its shares or securities, although the authorization to dissolve  
14 may provide for closing the corporation's share transfer records;

15 (3) subject its directors or officers to standards of conduct different from those  
16 prescribed in chapter 8;

17 (4) change quorum or voting requirements for its board of directors or shareholders;  
18 change provisions for selection, resignation, or removal of its directors or officers or both; or  
19 change provisions for amending its bylaws;

20 (5) prevent commencement of a proceeding by or against the corporation in its  
21 corporate name;



1 (6) abate or suspend a proceeding pending by or against the corporation on the  
2 effective date of dissolution; or

3 (7) terminate the authority of the registered agent of the corporation.

4 **§281406. Known Claims Against Dissolved Corporation.**

5 (a) A dissolved corporation may dispose of the known claims against it by notifying its  
6 known claimants in writing of the dissolution at any time after its effective date.

7 (b) The written notice must:

8 (1) describe information that must be included in a claim;

9 (2) provide a mailing address where a claim may be sent;

10 (3) state the deadline, which may not be fewer than 120 days from the effective date  
11 of the written notice, by which the dissolved corporation must receive the claim; and

12 (4) state that the claim will be barred if not received by the deadline.

13 (c) A claim against the dissolved corporation is barred:

14 (1) If a claimant who was given written notice under subsection (b) does not deliver  
15 the claim to the dissolved corporation by the deadline;

16 (2) if a claimant whose claim was rejected by the dissolved corporation does not  
17 commence a proceeding to enforce the claim within 90 days from the effective date of the  
18 rejection notice.

19 (d) For purposes of this section, claim does not include a contingent liability or a claim  
20 based on an event occurring after the effective date of dissolution.

21 **§281407. Other Claims Against Dissolved Corporation.**

1 (a) A dissolved corporation may also publish notice of its dissolution and request that  
2 persons with claims against the dissolved corporation present them in accordance with the notice.

3 (b) The notice must:

4 (1) be published one time in a newspaper of general circulation in Guam;

5 (2) describe the information that must be included in a claim and provide a mailing  
6 address where the claim may be sent; and

7 (3) state that a claim against the dissolved corporation will be barred unless a  
8 proceeding to enforce the claim is commenced within three years after the publication of the  
9 notice.

10 (c) If the dissolved corporation publishes a newspaper notice in accordance with  
11 subsection (b), the claim of each of the following claimants is barred unless the claimant  
12 commences a proceeding to enforce the claim against the dissolved corporation within three  
13 years after the publication date of the newspaper notice:

14 (1) a claimant who was not given written notice under section 281406;

15 (2) a claimant whose claim was timely sent to the dissolved corporation but not acted  
16 on;

17 (3) a claimant whose claim is contingent or based on an event occurring after the  
18 effective date of dissolution.

19 (d) A claim that is not barred by section 281406(b) or section 281407(c) may be  
20 enforced:

21 (1) against the dissolved corporation, to the extent of its undistributed assets; or

1           (2) except as provided in section 281408(d), if the assets have been distributed in  
2 liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's  
3 pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation,  
4 whichever is less, but a shareholder's total liability for all claims under this section may not  
5 exceed the total amount of assets distributed to the shareholder.

6           **§281408. Court Proceedings.**

7           (a) A dissolved corporation that has published a notice under section 281407 may file an  
8 application with the Superior Court of Guam for a determination of the amount and form of  
9 security to be provided for payment of claims that are contingent or have not been made known  
10 to the dissolved corporation or that are based on an event occurring after the effective date of  
11 dissolution but that, based on the facts known to the dissolved corporation, are reasonably  
12 estimated to arise after the effective date of dissolution. Provision need not be made for any  
13 claim that is or is reasonably anticipated to be barred under section 281407(c).

14           (b) Within 10 days after the filing of the application, notice of the proceeding shall be  
15 given by the dissolved corporation to each claimant holding a contingent claim whose contingent  
16 claim is shown on the records of the dissolved corporation.

17           (c) The court may appoint a guardian ad litem to represent all claimants whose identities  
18 are unknown in any proceeding brought under this section. The reasonable fees and expenses of  
19 such guardian, including all reasonable expert witness fees, shall be paid by the dissolved  
20 corporation.

21           (d) Provision by the dissolved corporation for security in the amount and the form

1 ordered by the court under section 281408(a) shall satisfy the dissolved corporation's obligations  
2 with respect to claims that are contingent, have not been made known to the dissolved  
3 corporation or are based on an event occurring after the effective date of dissolution, and such  
4 claims may not be enforced against a shareholder who received assets in liquidation.

5 **§281409. Director Duties.**

6 (a) Directors shall cause the dissolved corporation to discharge or make reasonable  
7 provision for the payment of claims and make distributions of assets to shareholders after  
8 payment or provision for claims.

9 (b) Directors of a dissolved corporation which has disposed of claims under sections  
10 281406 281407, or 281408 shall not be liable for breach of section 281409(a) with respect to  
11 claims against the dissolved corporation that are barred or satisfied under sections 281406,  
12 281407 or 281408.

13 **Subchapter B. Judicial Dissolution**

14 **§281410. Grounds for Judicial Dissolution.** The Superior Court of Guam may  
15 dissolve a corporation:

16 (1) in a proceeding by the attorney general if it is established that:

17 (i) the corporation obtained its articles of incorporation through fraud; or

18 (ii) the corporation has continued to exceed or abuse the authority conferred upon it  
19 by law;

20 (2) in a proceeding by a shareholder if it is established that:

21 (i) the directors are deadlocked in the management of the corporate affairs, the

1 shareholders are unable to break the deadlock, and irreparable injury to the corporation is  
2 threatened or being suffered, or the business and affairs of the corporation can no longer be  
3 conducted to the advantage of the shareholders generally, because of the deadlock;

4 (ii) the directors or those in control of the corporation have acted, are acting, or will  
5 act in a manner that is illegal, oppressive, or fraudulent;

6 (iii) the shareholders are deadlocked in voting power and have failed, for a period that  
7 includes at least two consecutive annual meeting dates, to elect successors to directors whose  
8 terms have expired; or

9 (iv) the corporate assets are being misapplied or wasted;

10 (3) in a proceeding by a creditor if it is established that:

11 (i) the creditor's claim has been reduced to judgment, the execution on the judgment  
12 returned unsatisfied, and the corporation is insolvent; or

13 (ii) the corporation has admitted in writing that the creditor's claim is due and owing  
14 and the corporation is insolvent; or

15 (4) in a proceeding by the corporation to have its voluntary dissolution continued under  
16 court supervision.

17 **§281411. Procedure for Judicial Dissolution.**

18 (a) It is not necessary to make shareholders parties to a proceeding to dissolve a  
19 corporation unless relief is sought against them individually.

20 (b) A court in a proceeding brought to dissolve a corporation may issue injunctions,  
21 appoint a receiver or custodian pendente lite with all powers and duties the court directs, take

1 other action required to preserve the corporate assets wherever located, and carry on the business  
2 of the corporation until a full hearing can be held.

3 (c) Within 10 days of the commencement of a proceeding under section 281410(2) to  
4 dissolve a corporation that has no shares listed on a national securities exchange or regularly  
5 traded in a market maintained by one or more members of a national securities exchange, the  
6 corporation must send to all shareholders, other than the petitioner, a notice stating that the  
7 shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the  
8 petitioner's shares under section 281414 and accompanied by a copy of section 281414.

9 **§281412. Receivership or Custodianship.**

10 (a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or  
11 more receivers to wind up and liquidate, or one or more custodians to manage, the business and  
12 affairs of the corporation. The court shall hold a hearing, after notifying all parties to the  
13 proceeding and any interested persons designated by the court, before appointing a receiver or  
14 custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the  
15 corporation and all of its property wherever located.

16 (b) The court may appoint an individual or a domestic or foreign corporation (authorized  
17 to transact business in Guam) as a receiver or custodian. The court may require the receiver or  
18 custodian to post bond, with or without sureties, in an amount the court directs.

19 (c) The court shall describe the powers and duties of the receiver or custodian in its  
20 appointing order, which may be amended from time to time. Among other powers:

21 (1) the receiver (i) may dispose of all or any part of the assets of the corporation

1 wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and  
2 defend in his own name as receiver of the corporation in all courts of Guam;

3 (2) the custodian may exercise all of the powers of the corporation, through or in  
4 place of its board of directors or officers, to the extent necessary to manage the affairs of the  
5 corporation in the best interests of its shareholders and creditors.

6 (d) The court during a receivership may redesignate the receiver a custodian, and during a  
7 custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the  
8 corporation, its shareholders, and creditors.

9 (e) The court from time to time during the receivership or custodianship may order  
10 compensation paid and expense disbursements or reimbursements made to the receiver or  
11 custodian and his counsel from the assets of the corporation or proceeds from the sale of the  
12 assets.

13 **§281413. Decree of Dissolution.**

14 (a) If after a hearing the court determines that one or more grounds for judicial  
15 dissolution described in section 281410 exist, it may enter a decree dissolving the corporation  
16 and specifying the effective date of the dissolution, and the clerk of the court shall deliver a  
17 certified copy of the decree to the Director of Revenue & Taxation, who shall file it.

18 (b) After entering the decree of dissolution, the court shall direct the winding up and  
19 liquidation of the corporation's business and affairs in accordance with section 281405 and the  
20 notification of claimants in accordance with sections 281406 and 281407.

21 **§281414. Election to Purchase in Lieu of Dissolution.**

1 (a) In a proceeding under section 281410(2) to dissolve a corporation that has no shares  
2 listed on a national securities exchange or regularly traded in a market maintained by one or  
3 more members of a national or affiliated securities association, the corporation may elect or, if it  
4 fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning  
5 shareholder at the fair value of the shares. An election pursuant to this section shall be  
6 irrevocable unless the court determines that it is equitable to set aside or modify the election.

7 (b) An election to purchase pursuant to this section may be filed with the court at any  
8 time within 90 days after the filing of the petition under section 281410(2) or at such later time  
9 as the court in its discretion may allow. If the election to purchase is filed by one or more  
10 shareholders, the corporation shall, within 10 days thereafter, give written notice to all  
11 shareholders, other than the petitioner. The notice must state the name and number of shares  
12 owned by the petitioner and the name and number of shares owned by each electing shareholder  
13 and must advise the recipients of their right to join in the election to purchase shares in  
14 accordance with this section. Shareholders who wish to participate must file notice of their  
15 intention to join in the purchase no later than 30 days after the effective date of the notice to  
16 them. All shareholders who have filed an election or notice of their intention to participate in the  
17 election to purchase thereby become parties to the proceeding and shall participate in the  
18 purchase in proportion to their ownership of shares as of the date the first election was filed,  
19 unless they otherwise agree or the court otherwise directs. After an election has been filed by the  
20 corporation or one or more shareholders, the proceeding under section 281410(2) may not be  
21 discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his



1 shares, unless the court determines that it would be equitable to the corporation and the  
2 shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other  
3 disposition.

4 (c) If, within 60 days of the filing of the first election, the parties reach agreement as to  
5 the fair value and terms of purchase of the petitioner's shares, the court shall enter an order  
6 directing the purchase of petitioner's shares upon the terms and conditions agreed to by the  
7 parties.

8 (d) If the parties are unable to reach an agreement as provided for in subsection (c), the  
9 court, upon application of any party, shall stay the section 281410(2) proceedings and determine  
10 the fair value of the petitioner's shares as of the day before the date on which the petition under  
11 section 281410(2) was filed or as of such other date as the court deems appropriate under the  
12 circumstances.

13 (e) Upon determining the fair value of the shares, the court shall enter an order directing  
14 the purchase upon such terms and conditions as the court deems appropriate, which may include  
15 payment of the purchase price in installments, where necessary in the interest of equity,  
16 provision for security to assure payment of the purchase price and any additional costs, fees, and  
17 expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the  
18 allocation of shares among them. In allocating petitioner's shares among holders of different  
19 classes of shares, the court should attempt to preserve the existing distribution of voting rights  
20 among holders of different classes insofar as practicable and may direct that holders of a specific  
21 class or classes shall not participate in the purchase. Interest may be allowed at the rate and from

1 the date determined by the court to be equitable, but if the court finds that the refusal of the  
2 petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good  
3 faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable  
4 grounds for relief under paragraphs (ii) or (iv) of section 281410(2), it may award to the  
5 petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by  
6 him.

7 (f) Upon entry of an order under subsections (c) or (e), the court shall dismiss the petition  
8 to dissolve the corporation under section 281410, and the petitioning shareholder shall no longer  
9 have any rights or status as a shareholder of the corporation, except the right to receive the  
10 amounts awarded to him by the order of the court which shall be enforceable in the same manner  
11 as any other judgment.

12 (g) The purchase ordered pursuant to subsection (e), shall be made within 10 days after  
13 the date the order becomes final unless before that time the corporation files with the court a  
14 notice of its intention to adopt articles of dissolution pursuant to sections 281402 and 281403,  
15 which articles must then be adopted and filed within 50 days thereafter. Upon filing of such  
16 articles of dissolution, the corporation shall be dissolved in accordance with the provisions of  
17 section 281405 through 281407, and the order entered pursuant to subsection (e) shall no longer  
18 be of any force or effect, except that the court may award the petitioning shareholder reasonable  
19 fees and expenses in accordance with the provisions of the last sentence of subsection (e) and the  
20 petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

21 (h) Any payment by the corporation pursuant to an order under subsections (c) or (e),

1 other than an award of fees and expenses pursuant to subsection (e), is subject to the provisions  
2 of section 28616.

3 **§281415. Deposit With Treasurer of Guam.**

4 Assets of a dissolved corporation that should be transferred to a creditor, claimant, or  
5 shareholder of the corporation who cannot be found or who is not competent to receive them  
6 shall be reduced to cash and deposited with the treasurer of Guam or other appropriate Guam  
7 official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof  
8 of entitlement to the amount deposited, the treasurer of Guam or other appropriate Guam official  
9 shall pay him or his representative that amount.

10 **CHAPTER 15. FOREIGN CORPORATIONS**

11 **§281501. Application of Provisions of General Corporation Law of Guam as to**  
12 **Foreign Corporations.**

13 The provisions of 18 Guam Code Annotated, Chapter 7, Part 3, Division 1, of the General  
14 Corporation Law of Guam shall apply to a foreign corporation governed by this Act.

15 **CHAPTER 16. RECORDS AND REPORTS**

16 **§281601. Inspection of books and records.**

17 (a) Any stockholder, in person or by attorney or other agent, shall, upon written demand  
18 under oath stating the purpose thereof, have the right during the usual hours for business to  
19 inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its  
20 other books and records, and to make copies or extracts therefrom. A proper purpose shall mean  
21 a purpose reasonably related to such person's interest as a stockholder. In every instance where

1 an attorney or other agent shall be the person who seeks the right to inspection, the demand  
2 under oath shall be accompanied by a power of attorney or such other writing which authorizes  
3 the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be  
4 directed to the corporation at its registered office in Guam or at its principal place of business.

5 (b) If the corporation, or an officer or agent thereof, refuses to permit an inspection  
6 sought by a stockholder or attorney or other agent acting for the stockholder pursuant to  
7 subsection (b) of this section or does not reply to the demand within 10 business days after the  
8 demand has been made, the stockholder may apply to the Superior Court of Guam for an order to  
9 compel such inspection. The Superior Court of Guam is hereby vested with exclusive jurisdiction  
10 to determine whether or not the person seeking inspection is entitled to the inspection sought.  
11 The Court may summarily order the corporation to permit the stockholder to inspect the  
12 corporation's stock ledger, an existing list of stockholders, and its other books and records, and  
13 to make copies or extracts therefrom; or the Court may order the corporation to furnish to the  
14 stockholder a list of its stockholders as of a specific date on condition that the stockholder first  
15 pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other  
16 conditions as the Court deems appropriate. Where the stockholder seeks to inspect the  
17 corporation's books and records, other than its stock ledger or list of stockholders, such  
18 stockholder shall first establish (1) that such stockholder has complied with this section  
19 respecting the form and manner of making demand for inspection of such documents; and (2)  
20 that the inspection such stockholder seeks is for a proper purpose. Where the stockholder seeks  
21 to inspect the corporation's stock ledger or list of stockholders and such stockholder has

1 complied with this section respecting the form and manner of making demand for inspection of  
2 such documents, the burden of proof shall be upon the corporation to establish that the inspection  
3 such stockholder seeks is for an improper purpose. The Court may, in its discretion, prescribe  
4 any limitations or conditions with reference to the inspection, or award such other or further  
5 relief as the Court may deem just and proper. The Court may order books, documents and  
6 records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within  
7 this State and kept in this State upon such terms and conditions as the order may prescribe.

8 (c) Any director shall have the right to examine the corporation's stock ledger, a list of its  
9 stockholders and its other books and records for a purpose reasonably related to the director's  
10 position as a director. The Superior Court of Guam is hereby vested with the exclusive  
11 jurisdiction to determine whether a director is entitled to the inspection sought. The Court may  
12 summarily order the corporation to permit the director to inspect any and all books and records,  
13 the stock ledger and the list of stockholder's and to make copies or extracts therefrom. The Court  
14 may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or  
15 award such other and further relief as the Court may deem just and proper including to protect  
16 trade secrets, proprietary information or the confidentiality of information concerning the  
17 corporation or third parties.

18 **§281602. Annual Reports.** The provisions of 11 GCA §4304 of the General  
19 Corporation Law of Guam shall apply to a corporation governed by this Act.

20 **CHAPTER 17. TRANSITION PROVISIONS**

21 **§281701. Effective Date.** This Act shall take effect 90 days after its enactment into law.

1           **§281702. Application to Domestic Corporations.** This Act shall apply except as  
2 provided in section 281703(2) to all corporations incorporated on or after the effective date of  
3 this Act. This Act shall not apply to any corporation incorporated prior to the effective date of  
4 this Act, except that it shall apply (1) to any corporation incorporated after the enactment of this  
5 Act into law and prior to its effective date, if the articles of incorporation of such corporation  
6 state that this Act shall apply to such corporation (2) to any other corporation if its articles of  
7 incorporation are amended, in accordance with the provisions of its articles of incorporation,  
8 bylaws, and law applicable to such corporation, without regard to this Act, to provide that this  
9 Act shall apply to such corporation (3) to any corporation incorporated prior to the effective date  
10 of this Act and of limited duration, which extends its duration upon such extension and (4) to any  
11 corporation which engages as acquiring or surviving corporation in a share exchange or merger  
12 under this Act with a corporation subject to this Act.

13           **§281703. Application of General Corporation Law of Guam.** After the effective date  
14 of this Act no corporation shall be organized under or be governed by the General Corporation  
15 Law of Guam as defined in 18 GCA § 1101, including 18 GCA Division I, Part I, Chapters 1-9,  
16 except those provisions of the General Corporation Law of Guam expressly made applicable by  
17 the terms of this Act other than (1) a corporation organized under the General Corporation Law  
18 of Guam prior to the effective date of this Act, and which has not become subject to this Act in  
19 the manner provided in section 281702; (2) a not for profit, non-stock corporation, or an  
20 international finance company or investment company as defined in Section 1102 of the General  
21 Corporation Law of Guam, which is organized after the effective date of this Act but which

1 elects to be governed by the General Corporation Law of Guam in its articles of incorporation. *I*  
2 *Liheslaturan Guåhan* has the power as to any such corporation organized after the effective date  
3 of this Act to amend or repeal all or any part of the General Corporation Law of Guam at any  
4 time and all such corporations shall be subject to and governed by such amendment or repeal.

5 **§281704. Professional Corporations.** A professional corporation may be organized  
6 after the effective date of this Act and governed by this Act and as provided by 18 GCA Division  
7 I, Part I, Chapter 8, of the General Corporation Law of Guam except that all references therein to  
8 the General Corporation Law of Guam shall be deemed to be references to this Act.

9 **§281705. Application to Foreign Corporations.** This Act shall apply to all foreign  
10 corporations doing business in Guam including a foreign corporation which commenced doing  
11 business in Guam or obtained a foreign corporation license and certificate of registration prior to  
12 the effective date of this Act.

13 **§281706. Saving Provisions.**

14 (a) Except as provided in subsection (b), the repeal of a statute by this Act does not  
15 affect:

16 (1) the operation of the statute or any action taken under it before its repeal;

17 (2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued,  
18 or incurred under the statute before its repeal;

19 (3) any violation of the statute, or any penalty, forfeiture, or punishment incurred  
20 because of the violation, before its repeal;

21 (4) any proceeding, reorganization, or dissolution commenced under the statute

1 before its repeal, and the proceeding, reorganization, or dissolution may be completed in  
2 accordance with the statute as if it had not been repealed.

3 (b) If a penalty or punishment imposed for violation of a statute repealed by this Act is  
4 reduced by this Act, the penalty or punishment if not already imposed shall be imposed in  
5 accordance with this Act.

6 **§281707. Severability.** If any provision of this Act or its application to any person or  
7 circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect  
8 other provisions or applications of the Act that can be given effect without the invalid provision  
9 or application, and to this end the provisions of the Act are severable.

10 **Section 3.** A new Section 1101a is added to Chapter 1, Part 1, Division 1 of 18 GCA to  
11 read as follows:

12 No corporation organized in Guam after the effective date of the Guam  
13 Business Corporation Act, 18 GCA, Division 1, Part 5, shall be organized  
14 under or governed by the provisions of this Part, except as provided in the  
15 Guam Business Corporation Act. A corporation organized in Guam prior to  
16 the effective date of the Guam Business Corporation Act shall not be subject  
17 to the Guam Business Corporation Act, and shall continue to be governed by  
18 this part, except as provided in the Guam Business Corporation Act.

19 **Section 4.** This Act shall take effect ninety (90) days after its enactment into law.