

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN  
2012 (SECOND) REGULAR SESSION

2012 APR 10 AM 8:36  
HULL

Bill No. 444-31(COR)

Introduced by:

V.C. Pangelinan 

AN ACT TO *REPEAL* SECTION 106155 OF CHAPTER 106  
11 GUAM CODE ANNOTATED AND TO *ADD* CHAPTER  
162 TO TITLE 11 OF THE GUAM CODE ANNOTATED,  
RELATIVE TO ESTABLISHING THE COLLECTIVE  
INVESTMENT FUNDS ACT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 SECTION 1. Section 106155 of Chapter 106, Title 11, Guam Code Annotated,  
2 is hereby *repealed*.

3 ~~§ 106155. Common Trust Funds. A bank or trust company may create one or more~~  
4 ~~common trust funds in which individuals may participate and invest.~~

5 SECTION 2. Chapter 162 is hereby *added* to Title 11 of the Guam Code  
6 Annotated to read as follows:

7 "CHAPTER 162

8 Collective Investment Funds Act

9 § 162101. Definitions.

10 § 162102. Establishment of Common Trust Funds.

11 § 162103. Establishment of Collective Investment Funds.

12 § 162104. Plans for Operation of Funds

13 § 162105. Management of the Fund.

1 § 162106. Internal Controls.

2 § 162107. Investment Options.

3 § 162108. Rights and Interests of Participating Accounts.

4 § 162109. Interests of a Financial Institution,

5 § 162110. Annual Financial Reports.

6 § 162111. Mistakes in administration of funds.

7 **§ 162101. Definitions.** As used in this chapter, unless the context otherwise  
8 requires:

9 (a) "*Collective investment fund*" means a fund maintained by a financial  
10 institution that consists solely of assets of retirement, pension, profit sharing, stock  
11 bonus or other trusts that are exempt from federal income tax.

12 (b) "*Commissioner*" means the Commissioner of Banking and Insurance,  
13 appointed under Title 11, Section 103102 of the Guam Code Annotated.

14 (c) "*Common trust fund*" means a fund maintained by a financial institution, or  
15 by one or more affiliated financial institutions, exclusively for the collective  
16 investment and reinvestment of money contributed to the fund by the financial  
17 institution, or by one or more affiliated financial institutions, in its capacity as a  
18 fiduciary or co-fiduciary.

19 (d) "*Fiduciary*" means a financial institution or other person acting in the  
20 capacity of guardian, conservator, personal representative, or trustee, either solely or  
21 together with others, or custodian under a uniform gifts or transfer to minors ac of  
22 any state or territory.

23 (e) "*Financial institution*" means a territorial bank, a state bank, a national  
24 bank, a state or federally chartered savings and loan association, or a trust company  
25 under the Guam-Based Trust Companies Act that, in each case, is authorized to act in  
26 a fiduciary capacity in Guam.

1 (f) "*Fund*" means a common trust fund or a collective investment fund.

2 (g) "*Participating Account*" means a trust or other fiduciary account that has  
3 contributed assets to a common trust fund or a collective investment fund.

4 (h) "*Plan*" means the written plan for a fund described in Section 162104.

5 (i) "*Proportionate Undivided Interest*" means the manner by which ownership  
6 interests in a fund are divided among participating accounts. A "proportionate"  
7 interest indicates each participating account's proportionate or pro rata ownership  
8 interest, designated in units, in the assets of the fund.

9 **§ 162102. Establishment of Common Trust Funds.** A financial institution  
10 may establish and maintain common trust funds for the purpose of furnishing  
11 *investments* to itself as fiduciary, or to itself and others, as co-fiduciaries; and may,  
12 as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment  
13 in interests in such common trust funds, if such investment is not prohibited by the  
14 instrument, judgment, decree, or order creating such fiduciary relationship, and if, in  
15 the case of co-fiduciaries, the financial institution procures the consent of its co-  
16 fiduciaries to such investment.

17 **§ 162103. Establishment of Collective Investment Funds.** A financial  
18 institution may establish and maintain collective investment funds for the investment  
19 of assets of retirement, pension, profit sharing, stock bonus or other trusts that are  
20 exempt from federal income tax and may invest assets of retirement, pension, profit  
21 sharing, stock bonus, or other employee benefit trusts exempt from federal income  
22 tax and that the financial institution holds in any capacity (including agent) in such  
23 collective investment funds.

24 **§ 162104. Written Plan.**

25 (a) A financial institution shall establish and maintain a fund in accordance  
26 with a written plan approved by resolution by the board of directors of the financial

1 institution or by a committee authorized by the board. The plan's provisions shall be  
2 consistent with the provisions of this chapter, as well as the rules and regulations of  
3 the Office of the Comptroller of the Currency, 12 C.F.R. § 9.18 (or any successor  
4 provision), and such rules and regulations as may from time to time be promulgated  
5 by the Commissioner, to the extent that such respective rules and regulations are not  
6 inconsistent with the provisions of this chapter.

7 (b) The plan shall contain appropriate provisions as to the manner in which  
8 the financial institution will operate the fund, including, but not limited to, provisions  
9 relating to all of the following:

- 10 (1) Investment powers and policies with respect to the fund;
- 11 (2) Allocation of income, profits, and losses;
- 12 (3) Fees and expenses that will be charged to the fund and to  
13 participating accounts;
- 14 (4) Terms and conditions governing the admission and withdrawal of  
15 participating accounts;
- 16 (5) Audits of participating accounts;
- 17 (6) Basis and method of valuing assets in the fund;
- 18 (7) Expected frequency of income distribution from the fund to  
19 participating accounts;
- 20 (8) Minimum frequency of valuation of fund assets;
- 21 (9) Amount of time following a valuation date in which a valuation of  
22 fund assets must be made;
- 23 (10) Bases upon which the financial institution may terminate the funds;
- 24 (11) Any other matters necessary to define clearly the rights of  
25 participating accounts.

26 (c) The financial institution shall make a copy of the plan available at its

1 principal office for inspection during all regular business hours and shall provide a  
2 copy of the plan to any person who requests it.

3 **§ 162105. Management of the Fund.** The financial institution shall have the  
4 exclusive management and control of each fund administered by it, and the sole right  
5 at any time to sell, convert, exchange, transfer, or otherwise change or dispose of the  
6 assets comprising within the fund, except as a prudent person might delegate  
7 responsibilities to others. The ownership of the fund's assets shall be solely in the  
8 financial institution as fiduciary and shall be considered as assets held by it as  
9 fiduciary.

10 **§162106. Internal Controls.** A financial institution shall implement and  
11 maintain effective operational controls to ensure:

12 (a) The fund is valued regularly. For a fund that holds investments with daily  
13 valuations, such as mutual funds and publicly traded stocks, bonds, and exchange-  
14 traded funds, values shall be updated each business day. Values shall in any case be  
15 determined no less often than quarterly, except that for a fund that holds assets that  
16 are not readily marketable, such as real estate, values shall be determined no less  
17 often than annually.

18 (b) Contributions and withdrawals are executed on a timely basis, as specified  
19 by the terms of the plan.

20 (c) Each participating account is eligible and authorized to participate in the  
21 fund.

22 (d) An annual audit and fund report are completed in a timely manner.

23 (e) Assets are invested in accordance with the plan and the fund's written  
24 investment policy.

25 (f) Fund documents are maintained in a central repository.

26 (g) A formal process is in place for the board of director of the bank, or a

1 committee appointed by the board, to approve and oversee major fund decisions and  
2 the operation of the fund.

3 **§162107. Investment Options.** Sponsoring financial institutions may invest  
4 fund assets in any and all investments subjects to the following conditions,

5 (a) The investments are consistent with the stated objectives of the fund's  
6 investment policy statement.

7 (b) The investments are not prohibited as investment by judgment, decree, or  
8 order of the courts of Commissioner of the Insurance and Banking.

9 (c) The investments are consistent with the sponsoring financial institutions  
10 fiduciary relationship with participating accounts in its role as trustee.

11 (d) If in the case of co-fiduciary status, the financial institution procures the  
12 consent of the co-fiduciary or co-fiduciaries to such investment.

13 **§162109. Rights and Interests of Participating Accounts,**

14 (a) All participating accounts *in a* fund shall have a proportionate undivided  
15 interest in all the fund's assets, which shall be reported in units of beneficial interest.  
16 No participating account shall have individual ownership of any asset in the fund.

17 (b) A hardcopy or electronic statement of participation shall be issued to each  
18 participating account at least quarterly. The statement of participation shall indicate  
19 that the statement valuation is not guaranteed by the financial institution; that the units  
20 of beneficial interest held by the participating account are not negotiable or  
21 assignable; and that the statement is a representation of the participating account's  
22 undivided interest in the fund and does not represent individual ownership of any asset  
23 in the fund.

24 **§162110. Interests of a Financial Institution.** A financial institution  
25 administering a fund shall not have an interest in that fund other than in its fiduciary  
26 capacity. However, a financial institution may invest assets that it holds as fiduciary

1 for its own employees in a fund.

2 **§ 162111. Annual Financial Reports.**

3 (a) At least once during each 12-month period, the financial institution  
4 administering a fund shall arrange for an audit of the fund by auditors responsible  
5 only to the board of directors of the financial institution.

6 (b) At least once during each 12-month period, the financial institution shall  
7 prepare an annual financial report based on the audit required by subsection (a) and  
8 containing the following information:

9 (1) The fund's fees and expenses.

10 (2) A list of the investments in the fund with their costs  
11 and market values on the date of closing of the report.

12 (3) A statement summary of transactions for the year,  
13 organized by type of investment, including the following transactions:

14 (i) A summary of purchases, including costs.

15 (ii) A summary of sales including profit or loss and  
16 any other investment changes.

17 (iii) Income to and disbursements from the fund.

18 (iv) A description of any investments in default.

19 (c) The financial institution shall provide a copy of the annual report (or provide  
20 notice that a copy of the report is available upon request or online) to each person or  
21 entity who would ordinarily receive a regular periodic accounting statement.

22 (d) A copy of the annual report shall be filed with the Commissioner.

23 **§ 162112. Mistakes in Administration of Funds.** A mistake made in good faith  
24 and in the exercise of due care *in* connection with the administration of a fund is not a  
25 violation of this chapter or any rules or regulations issued under this chapter, if  
26 promptly after discovery of the mistake the financial institution takes whatever action

1 is reasonable under the circumstances to remedy the mistake.”

2           **SECTION 3. Severability.** If any of the provisions of this Act or the  
3 application thereof to any person or circumstance is held invalid, such invalidity *shall*  
4 not affect any other provision or application of this Act which can be given effect  
5 without the invalid provision or application, and to this end the provisions of this Act  
6 are severable.