

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

JUN 07 2013

2013 JUN 10 PM 4:32

32-13-379

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Dos Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 6/10/13
Time 4:05 PM
Received by R. TUPAZ

Dear Madame Speaker:

Transmitted herewith is Bill No.59-32 (COR) "AN ACT TO ADD A NEW CHAPTER 162 TO TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT" which I signed into law on June 7, 2013 as **Public Law 32-038**.

Senseramente,


EDDIE BAZA CALVO
I Maga'lahañ Guåhan
Governor of Guam

2013 JUN 10 PM 4:32

OW

Attachment: copy of Bill

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Substitute Bill No. 59-32 (COR)**, "AN ACT TO ADD A NEW CHAPTER 162 TO TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT", was on the 28th day of May, 2013, duly and regularly passed.

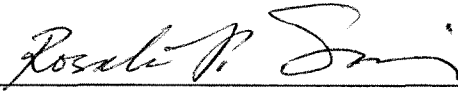


Judith T. Won Pat, Ed.D.
Speaker

Attested:


Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 29 day of May,
2013, at 12:40 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


EDWARD J.B. CALVO
I Maga'lahaen Guåhan

Date: JUN 07 2013

Public Law No. 32-038

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 59-32 (COR)

As amended; substituted
by the Committee on Aviation, Ground
Transportation, Regulatory Concerns,
and Future Generations; and further amended on the Floor.

Introduced by:

Vicente (ben) C. Pangelinan

Michael F. Q. San Nicolas

T. C. Ada

V. Anthony Ada

Frank B. Aguon, Jr.

B. J.F. Cruz

Chris M. Dueñas

Michael T. Lintiacó

Brant T. McCreadie

Tommy Morrison

T. R. Muña Barnes

R. J. Respicio

Dennis G. Rodriguez, Jr.

Aline A. Yamashita, Ph.D.

Judith T. Won Pat, Ed.D.

**AN ACT TO ADD A NEW CHAPTER 162 TO TITLE 11,
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING THE COLLECTIVE INVESTMENT
FUNDS ACT.**

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

2 **Section 1.** A new Chapter 162 is hereby *added* to Title 11, Guam Code
3 Annotated, to read as follows:

4 **“CHAPTER 162**

5 **COLLECTIVE INVESTMENT FUNDS ACT**

- 1 § 162101. Definitions.
- 2 § 162102. Establishment of Collective Investment Funds.
- 3 § 162103. Written Plan.
- 4 § 162104. Management of the Fund.
- 5 § 162105. Internal Controls.
- 6 § 162106. Rights and Interests of Participating Accounts and
- 7 Contributors to the Participating Accounts.
- 8 § 162107. Interests of a Financial Institution.
- 9 § 162108. Annual Financial Reports.
- 10 § 162109. Management Fees.
- 11 § 162110. Mistakes in Administration of Funds.
- 12 § 162111. Regulation.

13 **§ 162101. Definitions.** As used in this Chapter, *unless* the context
14 otherwise requires:

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

19 (b) *Commissioner* means the Commissioner of Banking and
20 Insurance, appointed under §103102 of Chapter 103 of Title 11, Guam Code
21 Annotated.

22 (c) *Fiduciary* means a financial institution or other person acting in
23 the capacity of guardian, conservator, personal representative, or trustee,
24 either solely or together with others, or custodian under a uniform gifts or
25 transfer to minors act of any state or territory.

26 (d) *Financial institution* means a territorial bank, a state bank, a
27 national bank, a state or federally chartered savings and loan association, or

1 a trust company under the Guam-Based Trust Companies Act that, in each
2 case, is authorized to act in a fiduciary capacity in Guam.

3 (e) *Fund* means a collective investment fund.

4 (f) *Participating Account* means a trust or other fiduciary account
5 that has contributed assets to a collective investment fund.

6 (g) *Plan* means the written plan for a fund described in §162103.

7 **§ 162102. Establishment of Collective Investment Funds.** A
8 financial institution may establish and maintain collective investment funds
9 for the investment of assets of retirement, pension, profit sharing, stock
10 bonus or other trusts that are exempt from federal income tax, and may
11 invest assets of retirement, pension, profit sharing, stock bonus, or other
12 employee benefit trusts exempt from federal income tax, and that the
13 financial institution holds in any capacity (including agent) in such
14 collective investment funds, maintained pursuant to 15 USC §80(c)(10) (B).

15 **§ 162103. Written Plan.**

16 (a) A financial institution *shall* establish and maintain a fund in
17 accordance with a written plan approved by resolution by the board of
18 directors of the financial institution, or by a committee authorized by the
19 board. The plan's provisions *shall* be consistent with the provisions of this
20 Chapter, as well as the rules and regulations of the Office of the Comptroller
21 of the Currency, 12 C.F.R. § 9.18 (or any successor provision), and such
22 rules and regulations as may from time to time be promulgated by the
23 Commissioner, to the extent that such respective rules and regulations are
24 *not* inconsistent with the provisions of this Chapter. The plan *shall* be
25 updated quarterly, as needed, to reflect the recently available information
26 relevant to the plan.

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

4 (1) Investment powers and policies with respect to the fund;

5 (2) Allocation of income, profits, and losses;

6 (3) Fees and expenses that will be charged to the fund and to
7 participating accounts, and the individuals contributing to the
8 participating accounts stated as an expense ratio of the fund, inclusive
9 of the expense ratios of all underlying investments;

10 (4) Terms and conditions governing the admission and
11 withdrawal of participating accounts;

12 (5) Audits of participating accounts;

13 (6) Basis and method of valuing assets in the fund;

14 (7) Expected frequency of income distribution from the fund
15 to participating accounts;

16 (8) Minimum frequency of valuation of fund assets;

17 (9) Amount of time following a valuation date in which a
18 valuation of fund assets must be made;

19 (10) Basis upon which the financial institution may terminate
20 the funds;

21 (11) Any other matters necessary to define clearly the rights
22 of participating accounts and contributors to the participating
23 accounts; and

24 (12) Annual performance history of the Fund, if any, for each
25 year up to 10 years, and since inception net of all fees.

1 (c) The financial institution *shall* make a copy of the plan available
2 at its principal office for inspection during all regular business hours, and
3 *shall* provide a copy of the plan to any person who requests it.

4 (d) The financial institution *shall* submit a copy of the written plan,
5 and any amendments made to the written plan, to the Commissioner upon
6 adoption of such amendments.

7 (e) The financial institution *shall* provide to the investor a copy of
8 the plan prior to any initial investment, and *shall* provide the most recently
9 available copy of the plan to each investor annually, *no later than* the
10 anniversary date of the initial investment.

11 **§ 162104. Management of the Fund.** The financial institution *shall*
12 have the exclusive management and control of each fund administered by it,
13 and the sole right at any time to sell, convert, exchange, transfer, or
14 otherwise change or dispose of the assets comprising within the fund, *except*
15 as a prudent person might delegate responsibilities to others. The ownership
16 of the fund's assets *shall* be solely in the financial institution as fiduciary,
17 and *shall* be considered as assets held by it as fiduciary. No assets of the
18 fund shall be pledged as collateral.

19 **§ 162105. Internal Controls.** A financial institution *shall* implement
20 and maintain effective operational controls to ensure that:

21 (a) The fund is valued regularly. For a fund that holds investments
22 with daily valuations, such as mutual funds and publicly traded stocks,
23 bonds, and exchange-traded funds, values *shall* be updated each business
24 day. For a fund that holds assets that are *not* readily marketable, such as real
25 estate, values *shall* be determined no less often than annually. The Net Asset
26 Value of the fund *shall* be determined based on such valuations, and all

1 investor redemptions *shall* be for an amount *no less than* the most recent net
2 asset value of record.

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

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

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

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

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

12 (g) A formal process is in place for the board of directors of the
13 bank, or a committee appointed by the board, to approve and oversee major
14 fund decisions and the operation of the fund.

15 **§ 162106. Rights and Interests of Participating Accounts and**
16 **Contributors to the Participating Accounts.**

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

21 (b) A hard copy or electronic statement of participation *shall* be
22 issued to each participating account and contributors to the participating
23 accounts at least quarterly. The statement of participation *shall* indicate that
24 the statement valuation is *not* guaranteed by the financial institution; that the
25 units of beneficial interest held by the participating account are *not*
26 negotiable or assignable; and that the statement is a representation of the

1 participating account's undivided interest in the fund, and *does not* represent
2 individual ownership of any asset in the fund.

3 **§ 162107. Interests of a Financial Institution.** A financial institution
4 administering a fund *shall not* have an interest in that fund other than in its
5 fiduciary capacity. If, because of a creditor relationship or otherwise, the
6 bank acquires an interest in a participating account, the participating account
7 must be withdrawn on the next withdrawal date. However, a financial
8 institution may invest assets that it holds as fiduciary for its own employees
9 in a fund.

10 **§ 162108. Annual Financial Reports.**

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

14 (b) At least once during each 12-month period, the financial
15 institution *shall* prepare an annual financial report based on the audit
16 required by Subsection (a) and containing the following information:

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

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

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

22 (A) a summary of purchases, including costs;

23 (B) a summary of sales, including profit or loss and
24 any other investment changes;

25 (C) income to and disbursements from the fund; and

26 (D) a description of any investments in default.

1 (c) The financial institution may include in the financial report a
2 description of the fund's value on previous dates, as well as its income and
3 disbursements during previous accounting periods. The financial institution
4 *may not* publish in the financial report any predictions or representations as
5 to future performance.

6 (d) The financial institution *shall* provide a copy of the annual
7 report (or provide notice that a copy of the report is available upon request
8 or online) to each person or entity who would ordinarily receive a regular
9 periodic accounting statement.

10 (e) A copy of the annual financial report *shall* be filed with the
11 Commissioner.

12 **§ 162109. Management Fees.** The financial institution
13 administering a collective investment fund may charge a reasonable fund
14 management fee *only* if the amount of the fee *does not* exceed an amount
15 commensurate with the value of legitimate services of tangible benefit to the
16 participating fiduciary accounts that would not have been provided to the
17 accounts were they not invested in the fund. No fees shall be assessed based
18 on fund performance. The aggregate expenses of the fund, to include
19 management fees and administrative services to all accounts, but *not*
20 inclusive of the expense ratio of underlying investments, *shall not* exceed
21 two percent (2%).

22 **§ 162110. Mistakes in Administration of Funds.** A mistake made
23 in good faith and in the exercise of due care in connection with the
24 administration of a fund is *not* a violation of this Chapter or any rules or
25 regulations issued under this Chapter, if promptly after discovery of the
26 mistake the financial institution takes whatever action is reasonable under
27 the circumstances to remedy the mistake and reports the mistake to the

1 Commissioner and appropriate federal regulatory agencies as required by
2 this Act.

3 **§ 162111. Regulation.** The Division of Insurance, Securities and
4 Banking *shall* regulate all aspects of this Chapter, and *shall* inspect all such
5 funds *no less than* annually for compliance. Audits of funds by the
6 respective federal authorities of the parent companies of such funds *shall*
7 suffice to meet this requirement.”

8 **Section 2. Severability.** If any of the provisions of this Act or the
9 application thereof to any person or circumstance is held invalid, such invalidity
10 *shall* not affect any other provision or application of this Act which can be given
11 effect without the invalid provision or application, and to this end the provisions of
12 this Act are severable.