



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT
Received By [Signature]
Time 3:25
Date 12-6-95

DEC 06 1995

The Honorable Ted S. Nelson
Acting Speaker
Twenty-Third Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

Office of
VICE-SPEAKER TED S. NELSON
Received By [Signature]
Print Name [Signature] Initial [Signature]
Date: 12-6-95 Time: 3:10 pm

Dear Speaker Nelson:

Enclosed please find a copy of Substitute Bill No. 257 (LS), "AN ACT TO AMEND §§25102, 25201(1), 25307, 25401(a), 25606, 25608(4), 25612(d) AND TO ADD A NEW §25616 TO CHAPTER 25, TITLE 18, GUAM CODE ANNOTATED, TO PROVIDE FOR THE FORMATION, REGISTRATION, AND REGULATION OF REGISTERED LIMITED LIABILITY PARTNERSHIPS (LLP's) ON GUAM", which I have signed into law today as **Public Law No. 23-65**.

This legislation provides further flexibility to the world of business by making it possible for each partner of a partnership to limit his or her liability within the partnership to his or her own actions or omissions. Normally, each partner in a partnership is liable for all actions taken or negligent omissions committed on behalf of the partnership by any one or more of the partners.

This new business organization, the "limited liability partnership (LLP)", is particularly useful when a small venture is starting up. It may prevent the failure of the business when one partner commits an act of misconduct or negligence. In that case, the partner who committed the act of misconduct or negligence is liable for the consequences of his or her own behavior, while allowing the innocent partner to maintain financial equilibrium.

The LLP particularly encourages start-up businesses by persons who may not be as experienced in the world of business as those who are able to easily operate under a regular partnership or corporate form of business,

thereby increasing economic activity within the territory and providing some protections to new business people.

Very truly yours,


Carl T. C. Gutierrez

Attachment

230897

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 257 (LS), "AN ACT TO AMEND §§25102, 25201(1), 25307, 25401(a), 25606, 25608(4), 25612(d) AND TO ADD A NEW §25616 TO CHAPTER 25, TITLE 18, GUAM CODE ANNOTATED, TO PROVIDE FOR THE FORMATION, REGISTRATION, AND REGULATION OF REGISTERED LIMITED LIABILITY PARTNERSHIPS (LLP's) ON GUAM," was on the 22nd day of November, 1995, duly and regularly passed.




DON PARKINSON
Speaker

Attested:



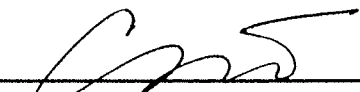
JUDITH WON PAT-BORJA
Senator and Legislative Secretary

This Act was received by the Governor this 29th day of November,
1995, at 4:55 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ
Governor of Guam

Date: 12-6-95

Public Law No. 23-65

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. 257 (LS)

As substituted by the
Author and the Committee
on Ways and Means

Introduced by:

F. P. Camacho
A. C. Blaz
T. S. Nelson
T. C. Ada
J. P. Aguon
E. Barrett-Anderson
J. M. S. Brown
M. C. Charfauros
H. A. Cristobal
M. Forbes
A. C. Lamorena V
C. Leon Guerrero
L. Leon Guerrero
S. L. Orsini
V. C. Pangelinan
D. Parkinson
J. T. San Agustin
A. L. G. Santos
F. E. Santos
A. R. Unpingco
J. Won Pat-Borja

AN ACT TO AMEND §§25102, 25201(1), 25307, 25401(a),
25606, 25608(4), 25612(d) AND TO ADD A NEW §25616 TO
CHAPTER 25, TITLE 18, GUAM CODE ANNOTATED,
TO PROVIDE FOR THE FORMATION,
REGISTRATION, AND REGULATION OF
REGISTERED LIMITED LIABILITY PARTNERSHIPS
(LLP's) ON GUAM.

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

2 **Section 1.** The Legislature finds that maximum flexibility in organizing
3 business entities contributes to Guam's economic development and growth.
4 The three basic organizational structures recognized by Guam law,
5 Corporations, Partnerships, and Limited Liability Partnerships, do not
6 adequately meet the needs of many small business and start-up ventures.

7 The Legislature finds that a principal reason that business ventures do
8 not utilize a partnership form is because of the vicarious liability of partners
9 for the negligence or misconduct of others who are not under their direct
10 supervision or control.

11 The Legislature further finds that while the other forms of organization
12 can provide liability protection for a business owner, said forms carry with
13 them greater costs and require more sophistication to create and operate
14 than an LLP. Consequently, the LLP should appeal to the types of businesses
15 that are now operating as partnerships.

16 Adoption of a Limited Liability Partnership law will provide a favorable
17 business climate by adding to the number of organizational entities which a
18 businessman can choose from, shielding owners of businesses from vicarious
19 liability and permitting them to operate with less formality.

20 **Section 2.** §25102 of Title 18, Guam Code Annotated, is amended to
21 read as follows:

22 "**§25102. Definitions.** In this Chapter, *court* includes every court and
23 judge having jurisdiction in the case.

24 *Business* includes every trade, occupation, or profession.

25 *Person* includes individuals, partnerships, corporations, and other
26 associations.

1 *Bankrupt* includes bankrupt under the United States Bankruptcy Act or
2 insolvent under the insolvency law of Guam [7 GCA Chapter 50].

3 *Conveyance* includes every assignment, lease, mortgage, or
4 incumbrance.

5 *Real Property* includes land and any interest or estate in land.

6 *Registered Limited Liability Partnership* means a partnership formed
7 pursuant to an agreement governed by the laws of Guam, registered under
8 §25615 of this Title."

9 **Section 3.** Subsection (1) of 18 GCA §25201 is amended to read:

10 "(1) A *partnership* is an association of two or more persons to carry on
11 as co-owners a business for profit and includes a registered limited liability
12 partnership."

13 **Section 4.** §25307 of Title 18, Guam Code Annotated, is amended to
14 read:

15 "§25307. Nature of partner's liability. Except as provided in paragraph
16 (c) of this Section all partners are liable:

17 (a) Jointly and severally for everything chargeable to the partnership
18 under §25305 and §25306.

19 (b) Jointly for all other debts and obligations of the partnership; but any
20 partner may enter in a separate obligation to perform a partnership contract.

21 (c) A partner in a registered limited liability partnership is not liable
22 directly or indirectly (including by way of indemnification, contribution,
23 assessment or otherwise) for debts, obligations, and liabilities of or
24 chargeable to the partnership, whether in tort, contract or otherwise, arising
25 from omissions, negligence, wrongful acts, misconduct or malpractice
26 committed while the partnership is a registered limited liability partnership
27 and in the course of the partnership business by another partner, or an

1 employee, agent, or representative of the partnership not under his direct
2 supervision and control.

3 (1) This Section shall not affect the liability of a partner in a
4 registered limited liability partnership for his own omissions,
5 negligence, wrongful acts, misconduct, or malpractice, or that of
6 any person under his direct supervision and control.

7 (2) A partner in a registered limited liability partnership is
8 not a proper party to a proceeding by or against a registered
9 limited liability partnership, the object of which is to recover
10 damages arising from the acts, omissions, malpractice, or
11 misconduct unless such partner is personally liable under item (1)
12 of this Subsection (c)."

13 **Section 5.** Subsection (a) of 18 GCA §25401 is amended to read as
14 follows:

15 "(a) Each partner shall be repaid his contributions, whether by way of
16 capital or advances to the partnership property, and share equally in the
17 profits and surplus remaining after all liabilities, including those to partners,
18 and except for liabilities which are chargeable to one partner only under
19 Section 25307(c), are satisfied; and must contribute toward the losses,
20 whether of capital or otherwise, sustained by the partnership according to his
21 share in the profits."

22 **Section 6.** Subsection (b) of 18 GCA §25606 is amended to read:

23 "(b) The dissolution being by the death or bankruptcy of a partner, the
24 partner acting for the partnership had knowledge or notice of the death or
25 bankruptcy; or"

26 **Section 7.** A new Subsection (c) is added to 18 GCA §25606 to read as
27 follows:

1 "(c) The liability is for a debt, obligation, or liability for which the
2 partner is not liable as provided in §25307 (c)."

3 **Section 8.** Subsection (4) of 18 GCA §25608 is amended to read as
4 follows:

5 "(4) The individual property of a deceased partner shall be liable for all
6 obligations of the partnership incurred while he was a partner but subject to
7 the prior payment of his separate debts including those debts for which he is
8 liable under §25307(c) herein."

9 **Section 9.** Subsection (d) of 18 GCA §25612(d) is amended to read:

10 "(d) Except as provided in §25307(c), the partners shall contribute, as
11 provided by §25401(a), the amount necessary to satisfy the liabilities; but, if
12 any, but not all, of the partners are insolvent, or, not being subject to process,
13 refuse to contribute, the other partners shall contribute their share of the
14 liabilities and, in the relative proportions in which they share the profits, the
15 additional amount necessary to pay the liability."

16 **Section 10.** A new §25616 is added to Title 18, Guam Code Annotated, to
17 read as follows:

18 "§25616. Registered Limited Liability Partnerships.

19 (a) To become and to continue as a registered limited
20 liability partnership, a partnership shall file with the Department
21 of Revenue and Taxation an application stating the name of the
22 partnership; the address of its principal office; the number of the
23 partners; a brief statement of the business in which the
24 partnership engages; any other matters that the partnership
25 wishes to include; and that the partnership thereby applied for
26 status as a registered limited liability partnership. If the
27 partnership's principal office is not located on Guam, it shall

1 provide the name and address of a registered agent on Guam for
2 service of process.

3 (1) The application shall be executed by a majority
4 in interest of the partners or by one or more partners
5 authorized to execute an application.

6 (2) The application shall be accompanied by a fee
7 which shall be established and collected by the
8 Department of Revenue and Taxation.

9 (3) The Department of Revenue and Taxation shall
10 register as a registered limited liability partnership any
11 partnership that submits a completed application with
12 the required fee.

13 (4) A partnership registered under this Section shall
14 pay, in each year following the year in which its
15 application is filed, on a date specified by the Department
16 of Revenue and Taxation, an annual fee determined by
17 the Department of Revenue and Taxation for each
18 partner, but in no event shall the fee payable by an LLP in
19 a given year be more than \$1,000 regardless of the
20 number of partners, with a reasonable periodic increase
21 at the discretion of the Director of the Department of
22 Revenue and Taxation. Payment of the fee must be
23 accompanied by a notice, on a form provided by the
24 Department of Revenue and Taxation, of the number of
25 partners currently in the partnership and of any material
26 changes in the information contained in the partnership's
27 application for registration.

1 (5) Registration is effective immediately after the
2 date an application is filed, and remains effective until: (i)
3 It is voluntarily withdrawn by the limited liability
4 partnership filing with the Department of Revenue and
5 Taxation a written withdrawal notice executed by a
6 majority in interest of the partners or by one or more
7 partners authorized to execute a withdrawal notice; or
8 (ii) 30 days after receipt by the partnership of a notice
9 from the Department of Revenue and Taxation (which
10 notice shall be sent by certified mail, return receipt
11 requested) that the partnership has failed to make timely
12 payment of the annual fee specified in Subsection (e),
13 unless the fee is paid within such a 30 day period.

14 (6) The status of a partnership as a registered
15 limited liability partnership, and the liability of the
16 partners thereof, shall not be affected by (i) errors in the
17 information stated in an application under Subsection (1)
18 of this Section or a notice under Subsection (a) of this
19 Section, or (ii) changed after the filing of such an
20 application or notice in the information stated in the
21 application or notice.

22 (7) The Department of Revenue and Taxation may
23 provide forms for the application under Subsection (a) of
24 this Section or a notice under Subsection (e) of this
25 Section.

26 (8) A limited liability partnership is a "business" as
27 defined in Section 26101 of Article I of Chapter 26 of Title

1 11, Guam Code Annotated, and is subject to the taxes
2 imposed under Chapter 26 of Title 11, Guam Code
3 Annotated.

4 (b) The name of a registered limited liability partnership shall contain
5 the words 'Registered Limited Liability Partnership' or the abbreviation
6 'L.L.P.' or 'LLP' as the last words or letters of its name.

7 (c) A registered limited liability partnership may conduct its business,
8 carry on its operations, and have and exercise the powers granted by this act
9 in any state, territory, or possession of the United States or in any foreign
10 country.

11 (1) The internal affairs of a registered limited
12 liability partnership, including the liability of partners for
13 debts, obligations, and liabilities of or chargeable to the
14 partnership, shall be subject to and governed by the laws
15 of Guam.

16 (2) Subject to relevant law regarding the regulation
17 and control of specific types of business, registered
18 limited liability partnerships which are formed and
19 existing under the laws of another jurisdiction, may do
20 business on Guam.

21 (3) The internal affairs of such partnerships,
22 including the liability of partners for debts, obligations,
23 and liabilities of or chargeable to partnerships, shall be
24 subject to and governed by the laws of such other
25 jurisdiction."

TWENTY-THIRD GUAM LEGISLATURE

1995 (FIRST) Regular Session

Date: 11/22/95

VOTING SHEET

Bill No. 257

Resolution No. _____

Question: on the passage

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, -MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou	✓			
NELSON, Ted S.	✓			
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.				✓
UNPINGCO, Antonio R.				✓
WONPAT-BORJA, Judith	✓			

TOTAL 19 0 0 2

CERTIFIED TRUE AND CORRECT:

Recording Secretary



**TWENTY-THIRD
GUAM LEGISLATURE**
155 Hesler St.
Agana, Guam 96910

Member,
Committee on
Economic-Agricultural
Development & Insurance

Member,
Committee on
Electrical Power &
Consumer Protection

Member,
Committee on Federal
& Foreign Affairs

Member,
Committee on Rules

Member,
Committee on
Tourism & Transportation

Member,
Commission on
Self-Determination

Member,
Guam Finance Commission

Senator Francis E. Santos

Chairperson, Committee on Ways & Means

Phone: (671) 472-3414/5 Fax: (671) 477-3048

September 14, 1995

Honorable W. Don Parkinson
Speaker,
Twenty - Third Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Speaker Parkinson:

The Committee on Way and Means, now reports its findings on Substitute Bill #257 An act to amend to title 18, Chapter 25 of the Guam Code Annotated to Provide for the Formation, Registration, and Regulation of Limited Liability Partnerships (LLP's) on Guam, to the full legislature with the recommendation to do Pass.

Votes of the Committee members are as follows:

To Pass:	<u>9</u>
Not To Pass:	<u>0</u>
Abstain:	<u>0</u>
Inactive File:	<u>0</u>
Off Island:	<u>0</u>
Unavailable	<u>1</u>
Report out only	<u>0</u>

Copies of the Committee Report and all pertinent documents are attached for your information.

Respectfully,

Francis E. Santos



**TWENTY-THIRD
GUAM LEGISLATURE**
155 Hesler St.
Agana, Guam 96910

Senator Francis E. Santos

Chairperson, Committee on Ways & Means

Phone: (671) 472-3414/5 Fax: (671) 477-3048

VOTING SHEET

ON SUBSTITUTE BILL #257 AN ACT TO AMEND TITLE 18 CHAPTER 25 OF THE GUAM CODE ANNOTATED TO PROVIDE FOR THE FORMATION, REGISTRATION, AND REGULATION OF LIMITED LIABILITY PARTNERSHIPS (LLP'S) ON GUAM.

Member,
Committee on
Economic-Agricultural
Development & Insurance

Member,
Committee on
Electrical Power &
Consumer Protection





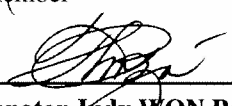
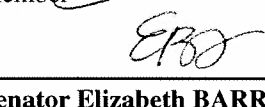
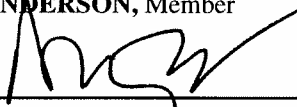

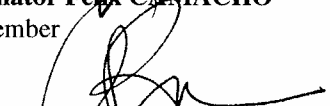
Member,
Committee on Federal
& Foreign Affairs

Member,
Committee on Rules

Member,
Committee on
Tourism & Transportation

Member,
Commission on
Self-Determination

Member,
Guam Finance Commission

<u>COMMITTEE MEMBERS</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO ABSTAIN</u>	<u>TO PLACE IN THE INACTIVE</u>
 Senator Francis E. SANTOS Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Joe T. SAN AGUSTIN Vice-Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Speaker Don PARKINSON Ex-Officio Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator John P. AGDON Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Sonny L. ORSINI Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Judy WON PAT-BORJA Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
 Senator Elizabeth BARRETT-ANDERSON , Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Anthony C. BLAZ Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Felix CAMACHO Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Antonio R. UNPINGCO Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

TWENTY-THIRD GUAM LEGISLATURE

Committee on Ways & Means
Chairperson, Senator Francis E. Santos

COMMITTEE REPORT

On Bill #257 An Act to amend Title 18 Chapter 25 of the Guam Code Annotated to provide for the formation, registration and regulation of registered Limited Liability Partnerships (LLP's) on Guam.

A Public Hearing was held on Tuesday, August 8, 1995, at 1:30 p.m. by the Committee on Ways & Means to discuss Bill # 257. The hearing was held in the Public Hearing Room in the Legislative Building in Agana.

COMMITTEE MEMBERS PRESENT

Senator Francis E. Santos, Chairman; Senator Felix P. Camacho; Senator Anthony C. Blaz; Senator Sonny Lujan Orsini; and Senator Judith Won Pat Borja.

WITNESSES PRESENT

Mr. Oscar Miyashita, Managing Partner of Ernst and Young Guam, Saipan and Micronesia; Ms. Taling Taitano presenting only written testimony.

TESTIMONY/QUESTIONS/COMMENTS

Mr. Miyashita presented both oral and written testimony on behalf of the firm of Ernst and Young Guam, Saipan and Micronesia. He stated that he was in favor of Bill # 257, but with certain recommended minor modifications. Senator Anthony C. Blaz announced that he would like to co-sponsor Bill # 257.

RECOMMENDATION

Based on these findings the Committee on Ways and Means recommends that the Bill # 257 be reported out to the full Legislature for discussion.


Attachments to this report:

- Committee on Rules Memorandum to Committee on Ways and Means transmitting referral of Bill # 257
- Bill # 257
- Public Hearing Notice as published in the Pacific Daily News
- Public Hearing Witness Sign In Sheet
- Written Testimony as presented by Mr. Oscar Miyashita, Managing Partner of Ernst and Young Guam, Saipan and Micronesia; Mr. Todd S. Smith, Chairman/Chief Executive Officer of Deloitte Touche Tohmatsu International; and Ms. Taling Taitano

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Substitute Bill No. 257

Introduced by:
as substituted by the author
and the Committee on Ways and Means

F.P. Camacho 
A.C. Blaz

**AN ACT TO AMEND TITLE 18 CHAPTER 25 OF THE GUAM CODE ANNOTATED
TO PROVIDE FOR THE FORMATION, REGISTRATION AND REGULATION OF
REGISTERED LIMITED LIABILITY PARTNERSHIPS (LLP's) ON GUAM.**

1 BE IT ENACTED ON BY THE PEOPLE OF THE TERRITORY OF GUAM:
2

3 **Section 1.** The Legislature finds that maximum flexibility in organizing business entities
4 contributes to Guam's economic development and growth. The three basic organizational
5 structures recognized by Guam law, corporations, partnerships, and limited liability partnerships,
6 do not adequately meet the needs of many small business and start-up ventures.
7

8 The Legislature finds that a principal reason that business ventures do not utilize a
9 partnership form is because of the vicarious liability of partners for the negligence or misconduct
10 of others who are not under their direct supervision or control.
11

12 The Legislature further finds that while the other forms of organization can provide
13 liability protection for a business owner, said forms carry with them greater costs and require
14 more sophistication to create and operate than an LLP. Consequently, the LLP should appeal to
15 the types of businesses that are now operating as partnerships.
16

17 Adoption of a Limited Liability Partnership law will provide a favorable business climate
18 by adding to the number of organizational entities which a businessman can choose from,
19 shielding owners of businesses from vicarious liability and permitting them to operate with less
20 formality.
21

22 **Section 2.** Amend Title 18 Chapter 25 of the Guam Code Annotated as follows:
23

24 A. Amend section 25102 by adding at the end of the section the following new
25 definition: "Registered limited liability partnership' means a partnership formed pursuant to
26 an agreement governed by the laws of Guam, registered under section 25615 of this title.
27

28 B. Amend section 25201 (1) by adding the phrase "and includes a registered limited
29 liability partnership after the word profit.

1 C. Amend section 25307 by adding the phrase (1) Except as provided in paragraph (c)
2 of this section, before the phrase all partners are liable , and by adding a new Section (C) to read
3 as follows:
4

5 (C) A partner in a registered limited liability partnership is not liable directly or
6 indirectly (including by way of indemnification, contribution, assessment or otherwise) for debts,
7 obligations, and liabilities of or chargeable to the partnership, whether in tort, contract or
8 otherwise, arising from omissions, negligence, wrongful acts, misconduct or malpractice
9 committed while the partnership is a registered limited liability partnership and in the course of
10 the partnership business by another partner; or an employee, agent, or representative of the
11 partnership not under his direct supervision and control.

12 (1) This section shall not affect the liability of a partner in a registered limited liability
13 partnership for his own omissions, negligence, wrongful acts, misconduct, or malpractice or that
14 of any person under his direct supervision and control.

15 (2) A partner in a registered limited liability partnership is not a proper party to a
16 proceeding by or against a registered limited liability partnership, the object of which is to
17 recover damages arising from the acts, omissions, malpractice, or misconduct unless such partner
18 is personally liable under paragraph (c) (1) of this section.
19

20 D. Amend section 25401(a) by adding the phrase "and except for liabilities which are
21 chargeable to one partner only under section 25307(c), after the phrase to partners, and before
22 the phrase are satisfied: .
23

24 E. Amend section 25606 by deleting the period at the end of section 25606(b) and
25 substituting in lieu thereof the phrase " ; or ", and by adding a new clause c to read as follows: "
26 (c) The liability is for a debt, obligation, or liability for which the partner is not liable as
27 provided in section 25307 (c)."
28

29 F. Amend section 25608(4) by adding the phrase "including those debts for which he is
30 liable under section 25307 (c) herein" after the phrase payment of his separate debts.
31

32 G. Amend section 25612(d) by adding at the beginning of the paragraph, following (d) ,
33 the phrase Except as provided in section 25307 (c).
34

35 H. Amend Title 18 Chapter 25 of the Guam Code Annotated by adding thereto new
36 sections 25616 to read as follows:
37

38 Section 25616. Registered Limited Liability Partnerships.
39

40 (a) To become and to continue as a registered limited liability partnership, a partnership
41 shall file with the Department of Revenue and Taxation an application stating the name of the
42 partnership; the address of its principal office; the number of the partners; a brief statement of
43 the business in which the partnership engages; any other matters that the partnership wishes to

1 include; and that the partnership thereby applied for status as a registered limited liability
2 partnership. If the partnership's principal office is not located on Guam, it shall provide the
3 name and address of a registered agent on Guam for service of process.
4

5 (1) The application shall be executed by a majority in interest of the partners or
6 by one or more partners authorized to execute an application.
7

8 (2) The application shall be accompanied by a fee which shall be established and
9 collected by the Department of Revenue and Taxation.
10

11 (3) The Department of Revenue and Taxation shall register as a registered limited
12 liability partnership any partnership that submits a completed application with the required fee.
13

14 (4) A partnership registered under this section shall pay, in each year following
15 the year in which its application is filed, on a date specified by the Department of Revenue and
16 Taxation, an annual fee determined by the Department of Revenue and Taxation for each partner,
17 but in no event shall the fee payable by an LLP in a given year be more than \$1,000 regardless of
18 the number of partners, with a reasonable periodic increase at the discretion of the Director of the
19 Department of Revenue and Taxation. Payment of the fee must be accompanied by a notice, on a
20 form provided by the Department of Revenue and Taxation, of the number of partners currently
21 in the partnership and of any material changes in the information contained in the partnership's
22 application for registration.
23

24 (5) Registration is effective immediately after the date an application is filed, and
25 remains effective until: (I) it is voluntarily withdrawn by the limited liability partnership filing
26 with the Department of Revenue and Taxation a written withdrawal notice executed by a
27 majority in interest of the partners or by one or more partners authorized to execute a withdrawal
28 notice; or (ii) 30 days after receipt by the partnership of a notice from the Department of
29 Revenue and Taxation (which notice shall be sent by certified mail, return receipt requested) that
30 the partnership has failed to make timely payment of the annual fee specified in subsection (e),
31 unless the fee is paid within such a 30 day period.
32

33 (6) The status of a partnership as a registered limited liability partnership, and the
34 liability of the partners thereof, shall not be affected by (I) errors in the information stated in an
35 application under subsection (1) of this section or a notice under subsection (a) of this section, or
36 (ii) changed after the filing of such an application or notice in the information stated in the
37 application or notice.
38

39 (7) The Department of Revenue and Taxation may provide forms for the
40 application under subsection (a) of this section or a notice under subsection (e) of this section.
41

42 (8) A limited liability partnership is a "business" as defined in section 26101 of
43 Article I of Chapter 26 of Title 11 Guam Code Annotated and is subject to the taxes imposed

1 under Chapter 26 of Title 11 Guam Code Annotated.

2
3 (b) The name of a registered limited liability partnership shall contain the words
4 'Registered Limited Liability Partnership' or the abbreviation 'L.L.P.' or 'LLP' as the last words or
5 letters of its name.

6
7 (c) A registered limited liability partnership may conduct its business, carry on its
8 operations, and have and exercise the powers granted by this act in any state, territory or
9 possession of the United States or in any foreign country.


10
11 (1) The internal affairs of a registered limited liability partnership including the
12 liability of partners for debts, obligations, and liabilities of or chargeable to the partnership, shall
13 be subject to and governed by the laws of Guam.

14
15 (2) Subject to relevant law regarding the regulation and control of specific types
16 of business, registered limited liability partnerships which are formed and existing under the laws
17 of another jurisdiction, may do business on Guam.

18
19 (3) The internal affairs of such partnerships, including the liability of partners for
20 debts, obligations, and liabilities of or chargeable to partnerships, shall be subject to and
21 governed by the laws of such other jurisdiction.

Bill No 257(LS)

Introduced by:

F.P. Camacho 

AN ACT TO AMEND TITLE 18 CHAPTER 25 OF THE GUAM CODE ANNOTATED TO PROVIDE FOR THE FORMATION, REGISTRATION AND REGULATION OF REGISTERED LIMITED LIABILITY PARTNERSHIPS (LLP's).

1 BE IT ENACTED ON BY THE PEOPLE OF THE TERRITORY OF GUAM:
2

3 **Section 1.** The Legislature finds that maximum flexibility in organizing business entities is an
4 important factor in Guam's economic development and growth. Guam law recognizes three main
5 organizational structures: corporations, partnerships, and limited partnerships. The Legislature
6 finds that these three basic organizational options do not adequately meet the needs of many small
7 businesses and start-up ventures.
8

9 The Legislature finds that a principal reason that business ventures do not utilize a
10 partnership form is because of the disproportionate liability associated with this type of entity,
11 where partners are held liable for the negligence or misconduct of others who are not under their
12 direct supervision or control. A Limited Liability Partnership organizational entity will eliminate
13 this disproportionate liability in that the partners in an LLP will not be personally liable for the
14 debts and obligations of the LLP arising out of errors, omissions, negligence, incompetence, or
15 malfeasance committed in the course of the partnership business by another partner or
16 representative of the partnership who is not under their direction or supervision.
17

18 The Legislature further finds that while the other forms of organization can provide that
19 liability protection for a business owner, these forms also carry with them greater costs and
20 require a level of greater sophistication to set up and operate when compared to an LLP.
21 Consequently, the LLP should appeal to the types of businesses that are now operating as
22 partnerships.
23

24 The Legislature finds that a bill to allow for the formation of Limited Liability Companies
25 (LLC's) on Guam, if passed, would be a significant step toward providing a favorable business
26 climate for Guam's entrepreneurs and business owners. Adoption of a Limited Liability
27 Partnership law will provide an even more favorable business climate by adding to the number of
28 organizational entities to which a business owner can choose from.
29

30 **Section 2.** Amend Title 18 Chapter 25 of the Guam Code Annotated as follows:
31

32 A. Amend section 25102 by adding at the end of the section the following new definition:
33 "Registered limited liability partnership" means a partnership formed pursuant to an
34 agreement governed by the laws of this state, registered under section 25615 (A) and complying

1 with sections 25615 (B) and 25615 (C).
2

3 B. Amend section 25201 (1) by adding the phrase "and includes, for all purposes of the
4 laws of Guam, a registered limited liability partnership" after the word "profit."
5

6 C. Amend section 25307 by deleting the phrase "All partners are liable" as said phrase
7 appears therein and substituting in lieu thereof the phrase "(1) Except as provided in paragraph
8 (2) of this section, all partners are liable", and by adding new paragraphs (2), (3), and (4) to read
9 as follows:

10 " (2) Subject to paragraph (3) of this section, a partner in a registered limited liability partnership
11 is not liable directly or indirectly (including by way of indemnification, contribution, assessment or
12 otherwise) for debts, obligations, and liabilities of or chargeable to the partnership, whether in
13 tort, contract or otherwise, arising from omissions, negligence, wrongful acts, misconduct or
14 malpractice committed while the partnership is a registered limited liability partnership and in the
15 course of the partnership business by another partner or an employee, agent, or representative of
16 the partnership.

17 (3) Paragraph (2) of this section shall not affect the liability of a partner in a registered limited
18 liability partnership for his own omissions, negligence, wrongful acts, misconduct, or malpractice
19 or that of any person under his direct supervision and control.

20 (4) A partner in a registered limited liability partnership is not a proper party to a proceeding by
21 or against a registered limited liability partnership, the object of which is to recover damages or
22 enforce the obligations arising out of the acts, omissions, malpractice, or misconduct of the type
23 described in paragraph (2) of this section, unless such partner is personally liable under paragraph
24 (3) of this section."
25

26 D. Amend section 25401(a) by adding the phrase "except as provided in paragraph (2) of
27 section 25307, each partner" after the phrase "are satisfied; and".
28

29 E. Amend section 25606 by deleting the word "or" appearing at the end of section
30 25606(a) by deleting the period appearing at the end of section 25606(b) and substituting in lieu
31 thereof the phrase "; or", and by adding a new clause c to read as follows: " (c) The liability is
32 for a debt, obligation, or liability for which the partner is not liable as provided in paragraph (2) of
33 section 25307."
34

35 F. Amend section 25608(4) by deleting the word "all" appearing in the clause and
36 substituting in lieu thereof the word "those", and by adding the phrase "and for which he was
37 liable under section 25307" after the words "while he was a partner".
38

39 G. Amend section 25612(a)(ii) by deleting the phrase "necessary for the payment of all
40 the liabilities", and by substituting "d" for "b" appearing in the clause.
41

42 H. Amend section 25612(d) by adding at the beginning of the paragraph, following "d",
43 the phrase "Except as provided in paragraph (2) of section 25307: (i)", and by deleting the phrase
44 "but if" which appears after the phrase "liabilities," and substituting in lieu thereof the phrase "and
45 (ii) If".

1 I. Amend Title 18 Chapter 25 of the Guam Code Annotated by adding thereto new
2 sections 25615 (A) through 25615 (C) to read as follows:
3

4 Section 25615 (A). Registered Limited Liability Partnerships.
5

6 (a) To become and to continue as a registered limited liability partnership, a partnership
7 shall file with the Department of Revenue and Taxation an application stating the name of the
8 partnership; the address of its principal office; if the partnership's principal office is not located in
9 Guam, the address of a registered office and the name and address of a registered agent for
10 service of process on Guam, which the partnership will be required to maintain; the number of
11 partners; a brief statement of the business in which the partnership engages; any other matters
12 that the partnership determines to include; and that the partnership thereby applied for status as a
13 registered limited liability partnership.
14

15 (b) The application shall be executed by a majority in interest of the partners or by one or
16 more partners authorized to execute an application.
17

18 (c) The application shall be accompanied by a fee which shall be determined and collected
19 by the Department of Revenue and Taxation.
20

21 (d) The Department of Revenue and Taxation shall register as a registered limited liability
22 partnership any partnership that submits a completed application with the required fee.
23

24 (e) A partnership registered under this section shall pay, in each year following the year in
25 which its application is filed, on a date specified by the Department of Revenue and Taxation, an
26 annual fee determined by the Department of Revenue and Taxation for each partner, but in no
27 event shall the fee payable in any year be more than an amount which will be determined by the
28 Department of Revenue and Taxation. The fee must be accompanied by a notice, on a form
29 provided by the Department of Revenue and Taxation, of the number of partners currently in the
30 partnership and of any material changes in the information contained in the partnership's
31 application for registration.
32

33 (f) Registration is effective immediately after the date an application is filed, and remains
34 effective until: (i) it is voluntarily withdrawn by filing with the Department of Revenue and
35 Taxation a written withdrawal notice executed by a majority in interest of the partners or by one
36 or more partners authorized to execute a withdrawal notice; or (ii) 30 days after receipt by the
37 partnership of a notice from the Department of Revenue and Taxation (which notice shall be sent
38 by certified mail, return receipt requested) that the partnership has failed to make timely payment
39 of the annual fee specified in subsection (5), unless the fee is paid within such a 30 day period.
40

41 (g) The status of a partnership as a registered limited liability partnership, and the liability
42 of the partners thereof, shall not be affected by (i) errors in the information stated in an
43 application under subsection (1) of this section or a notice under subsection (a) of this section, or
44 (ii) changed after the filing of such an application or notice in the information stated in the
45 application or notice.

1 (h) The Department of Revenue and Taxation may provide forms for the application
2 under subsection (a) of this section or a notice under subsection (e) of this section.
3

4 (i) A limited liability partnership is a "business" as defined in section 26101 of Article I of
5 Chapter 26 of Title 11 Guam Code Annotated and is subject to the taxes imposed under Chapter
6 26 of Title 11 Guam Code Annotated.
7

8 Section 25615 (B). Name of Registered Limited Liability Partnership.
9

10 The name of a registered limited liability partnership shall contain the words 'Registered Limited
11 Liability Partnership' or the abbreviation 'L.L.P.' or 'LLP' as the last words or letters of its name.
12

13 Section 25615 (C). Applicability of act to foreign and interstate commerce.
14

15 (a) A partnership, including a registered limited liability partnership, formed and existing
16 under this act, may conduct its business, carry on its operations, and have and exercise the powers
17 granted by this act in any state, territory, district, or possession of the United States or in any
18 foreign country.
19

20 (b) It is the intent of the Legislature that the legal existence of registered limited liability
21 partnerships formed and existing under this act be recognized outside the boundaries of Guam and
22 that the laws of Guam governing such registered limited liability partnerships transacting business
23 outside Guam be granted the protection of full faith and credit under the Constitution of the
24 United States.
25

26 (c) The internal affairs of a partnership, including registered limited liability partnerships,
27 formed and existing under this act, including the liability of partners for debts, obligations, and
28 liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of
29 Guam.
30

31 (d) Subject to any statutes for the regulation and control of specific types of business,
32 registered limited liability partnerships, formed and existing under the laws of another jurisdiction,
33 may do business on Guam and are not required to register with the Department of Revenue and
34 Taxation under this act.
35

36 (e) It is the policy of Guam that the internal affairs of partnerships, including registered
37 limited liability partnerships, formed and existing under the laws of another jurisdiction, including
38 the liability of partners for debts, obligations and liabilities of or chargeable to partnerships, shall
39 be subject to and governed by the laws of such other jurisdiction."

August 8, 1995

The Honorable Francis Santos
Chairman
Committee on Ways and Means
23rd Guam Legislature
155 Hessler Street
Agana, Guam 96910

Re: **Bill No. 257, An Act to Amend Title 18 Chapter 25 of the Guam Code Annotated to Provide for the Formation, Registration and Regulation of Registered Limited Liability Partnerships (LLP's) on Guam**

Dear Senator Santos:

I am writing in support of Bill 257 which allows for the organization of Registered Limited Liability Partnerships (LLP's).

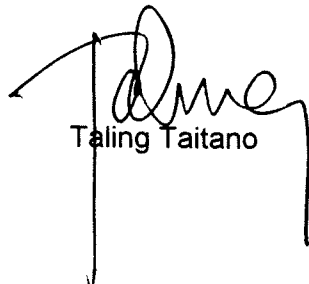
The LLP is a new type of general partnership that has many positive attributes of a general partnership. LLP's have low start-up costs, are flexible, and are relatively easy to operate and therefore appeal to small businesses and start-up ventures. They are taxed like a partnership in that the tax liability is carried by the partners and there is no tax at the entity level.

An LLP also has many positive attributes of more complicated business forms. Like any other business form, the partners in an LLP remain responsible for their own actions and the partnership remains responsible for the actions taken on behalf of its employees or partners. However, partners are not personally liable for the debts and obligations of the LLP arising out of errors, omissions, negligence, incompetence or malfeasance committed in the course of the partnership by another partner or representative of the partnership who is not under their direction or supervision.

Allowing business entities flexibility in organizing should be an important part of Guam's economic development program. Adopting a Limited Liability Partnership law will provide for a more favorable business environment and will especially benefit the portion of the economy growing the fastest, small businesses and start-up ventures.

I hope that you and the members of your committee and the legislature will look favorably on the passage of this bill. Thank you for your support in this matter.

Sincerely,


Taling Taitano

Deloitte & Touche



Bank of Guam Building, Suite 800
111 Chalan Santo Papa
Agana, Guam 96910

Telephone: (671) 472-2910
Telecopier: (671) 472-2918

July 31, 1995

The Honorable Felix P. Camacho
Senator, Twenty-Third Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Senator Camacho:

I am writing to express my support and the support of my firm for Bill No. 257, which would amend the Guam partnership law to provide for limited liability partnerships (LLP).

The provision for LLP's will provide another alternative and more flexibility in organizing business entities. General partnerships are an attractive form of business because of their simplicity in form and ease and flexibility of conducting business. The more onerous aspect of such a business entity is that partners are held responsible and liable for acts of negligence or misconduct of others in the partnership, over whom they may have no control. The LLP provision would alleviate that concern by providing protection for partners with respect to such acts which are not their own.

A number of states have passed similar legislation in the past several years and LLP's have been very well received.

We support your effort for Guam to join with the rest of the country in this progressive step toward enhancing business operations and continuation.

Very truly yours,

Todd S. Smith
Chairman/Chief Executive Officer

Deloitte Touche
Tohmatsu
International

received
8/3/95 - R/S



**GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS**

May 10, 1995

Senator Felix P. Camacho
23rd Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Senator Camacho:

I am writing to provide you with the Guam Chamber of Commerce's comments and recommendations on Bill No. 206 which will allow for the formation of Limited Liability Companies in Guam.

The Chamber's Board of Directors recently discussed your bill and expressed support of its intent and provisions. In fact, we are seeking your consideration to expand the scope of the bill to include partnerships as well. We look forward to passage of Bill No. 206 with the inclusion of the suggestion noted herein.

Thank you for providing us with an advance copy of Bill No. 206 and look forward to more of this form of dialogue with you. Si Yuus Maase.

Sincerely yours,

OVIDIO R.A. CALVO, JR.
Chairman of the Board

Post-it* Fax Note	7671	Date	7-7-95	# of pages	1
To	DEMAIS MALINA	From	REINA Laddy		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	472-6202	Fax #	472-9947		

Testimony on Bill 257

Good afternoon Chairman Santos and members of the committee. My name is Oscar Miyashita and I am the managing partner of Ernst & Young Guam, Saipan and Micronesia. I truly appreciate the opportunity to appear before you today to speak in favor of bill number 257, the proposed registered limited liability partnership law, with certain recommended minor modifications.

Selecting a form of organization in which to operate is one of the most significant decisions an individual starting a business, or continuing an existing one, will have to make with respect to his or her business. There are a variety of considerations, both tax and non-tax, including the application of relevant federal or territorial law, as well as the objectives and desires of the business owner.

The choice of organization will have broad implications. It will affect how the business is conducted, the personal affairs of its owners, and will even impact the business' employees. Consequently, it is important that Guam provides businesses with a full choice of forms in which they may operate.

The limited liability partnership (LLP) is a fairly new type of general partnership. However, it is my understanding that more than 20 states have adopted its own limited liability partnership legislation and 49 states have allowed LLPs to register and conduct business in their jurisdictions.

The LLP form is particularly appealing to the segment of the economy that is growing the fastest -- small businesses and start-up ventures. This is because LLPs have low start-up costs, are flexible and are relatively easy to operate.

The complications associated with organizing a business and keeping it operating are often a major reason for small business failures. LLPs provide a flexible form of organization for small businesses that helps them obtain parity with larger, better capitalized organizations which can afford the ancillary benefits of more complicated business organizations.

The limited liability partnership has many of the positive attributes of a general partnership.

It is simple to form -- one needs only to file the required registration with the Department of Revenue and Taxation and pay appropriate fees to organize as an LLP.

It is simple to operate -- unlike general corporations, there are no required articles of incorporation, board of directors meetings, etc.

And it is taxed like a partnership -- meaning that the tax liability flows through directly to the LLP's partners and there is no tax at the entity level.

The limited liability partnership also has many of the positive attributes of more complicated business forms.

Partners in an LLP are not personally liable for the debts and obligations of the LLP arising out of errors, omissions, negligence, incompetence or malfeasance committed in the course of the partnership business by another partner or representative of the partnership who is not under their direction or supervision.

While the other forms of organization that provide protection for the personal assets of a business owner are more comprehensive, generally covering any action against the entity, these forms also carry with them greater costs and require a level of greater sophistication to set up and operate when compared to an LLP.

Consequently, the limited liability partnership should appeal to the types of business that are now operating as partnership, from mom and pop grocery stores, architectural and engineering offices, law offices, accounting firms and other small businesses.

From Guam's perspective, it will be a tremendous advantage to offer businesses the LLP form for the following reasons:

- 1) States at the forefront of economic development are there because they offer an expansive menu of organizational alternatives for doing business -- corporations, limited liability companies, limited partnerships, professional corporations, limited liability partnerships, and so on. They enable the businesses in their states to be competitive with businesses from other states and abroad by enabling them to use the business form most suitable to their business situation.
- 2) The LLP should be revenue positive to Guam. The types of businesses that would use an LLP are typically partnerships. Partners in the partnerships currently do not have to pay annual fees to operate here. An LLP on the other hand would be required to pay annual fees to register in Guam.
- 3) Enactment of an LLP is consistent with public policy positions already adopted by Guam. Like any business form, the partners in an LLP always remain responsible for their own actions and the partnership remains responsible for the actions taken on its behalf by employees or partners.
- 4) An LLP will enable Guam to keep pace with the rest of the nation and allow businesses that are resident here to better compete with out-of-state firms.

Modifications I would like to recommend to Bill 257 are as follows:

- ✓ 1) Section (2)c(c). A partner in a registered limited liability partnership is not liable under his supervision and control.

Should add a word **direct** before supervision in conformity with (c) (1) which reads direct supervision and control.

- ✓ 2) Section (2) (H) (a) To become and continue as a registered limited partnership, a partnership shall file with the Department of Revenue and Taxation an application stating the name of partnership; the address of its principal office; the number and name of the partners.....

Should delete the word **name** to read as "number of the partners".

- ✓ 3) Section (2)(H)(a)(4) A partnership registered under this section shall pay an annual fee determined by the Department of Revenue and Taxation for each partner.

Should add after the above sentence, **but in no event shall the fee payable by an LLP in a given year be more than \$1,000 regardless of the number of partners, with a reasonable periodic increase at the discretion of the Director of the Department of Revenue and Taxation.**

*typical #
ic w/co. 7*

- ✓ 4) Section (2)(H)(a)(4) Payment of the fee must be accompanied by a notice, on a form provided by the Department of Revenue and Taxation, of the names of partners currently in the partnership and of any material changes in the information contained in the partnership's application for registration.

Should delete **name of partners** and insert **number of partners**.

I am recommending the changes to section (2)(H)(a) (Numbers 2 to 4 above) since there are numerous US limited liability partnerships which have more than 100 partners that are likely to register with the Department of Revenue and Taxation. Accordingly, the bill as it stands now will create undue financial and administrative hardship to such limited liability partnerships with a large number of partners.

At this time, I would like to express my sincere gratitude to Chairman Santos and the members of the Ways and Means Committee for allowing me to appear before you.

Thank you.



N. Oscar Miyashita
Managing Partner

*Inquire: BBMR re: fiscal note!
call Joe Rivera*

FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH

AUG 7 1995 BBMR-F7

Bill No.: 257
Amendatory Bill: Yes

Date Received: July 26, 1995
Date Reviewed: August 1, 1995

Department/Agency Affected: Department of Revenue & Taxation
Department/Agency Head: Joseph Duenas, Director
Total FY Appropriation to Date: \$13,000,644

Bill Title (preamble): AN ACT TO AMEND TITLE 18 CHAPTER 25 OF THE GUAM CODE ANNOTATED TO PROVIDE FOR THE FORMATION, REGISTRATION AND REGULATION OF REGISTERED LIMITED LIABILITY PARTNERSHIPS (LLP's) ON GUAM.

Change in Law: The formation, registration and regulation of registered limited liability partnerships as a business entity on Guam.

Bill's Impact on Present Program Funding:
Increase _____ Decrease _____ Reallocation XXX No Change _____

Bill is for:
Operations _____ Capital Improvement _____ Other XXX

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
Economics & Finance	<u>1/</u>		

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL	<u>1/</u>					
OTHER						
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? N/A -- IF NO, ADD'L AMOUNT REQUIRED \$ _____
AGENCY/PERSON/DATE CONTACTED: Dept. of Revenue & Taxation, Antonio Aguon, August 3, 1995

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND	<u>1/</u>					
OTHER						
TOTAL						

ANALYST M DATE 8/2/95 DIRECTOR Joseph Rivera DATE AUG 07 1995
Maerica M. Dizon Joseph E. Rivera, Acting

FOOTNOTES: See attached.

1/ Bill 257 proposes to establish Limited Liability Partnerships (LLP's) as an alternate business entity on Guam. Currently, the fiscal impact of such a proposal is undeterminable. However, it is noted that in order to ensure that LLP's are assessed the proper Business Privilege Taxes, LLP's must be specifically included in the general provisions of the Business Privilege Tax Law.

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. 257 (LS)

Introduced by:

F.P. Camacho *Famroh*

AN ACT TO AMEND TITLE 18 CHAPTER 25 OF THE GUAM CODE ANNOTATED TO PROVIDE FOR THE FORMATION, REGISTRATION AND REGULATION OF REGISTERED LIMITED LIABILITY PARTNERSHIPS (LLP'S) ON GUAM.

1 BE IT ENACTED ON BY THE PEOPLE OF THE TERRITORY OF GUAM:
2

3 **Section 1.** The Legislature finds that maximum flexibility in organizing business entities
4 contributes to Guam's economic development and growth. The three basic organizational
5 structures recognized by Guam law, corporations, partnerships, and limited liability partnerships,
6 do not adequately meet the needs of many small business and start-up ventures.
7

8 The Legislature finds that a principal reason that business ventures do not utilize a
9 partnership form is because of the vicarious liability of partners for the negligence or misconduct
10 of others who are not under their direct supervision or control.
11

12 The Legislature further finds that while the other forms of organization can provide
13 liability protection for a business owner, said forms carry with them greater costs and require
14 more sophistication to create and operate than an LLP. Consequently, the LLP should appeal to
15 the types of businesses that are now operating as partnerships.
16

17 Adoption of a Limited Liability Partnership law will provide a favorable business climate
18 by adding to the number of organizational entities which a businessman can choose from,
19 shielding owners of businesses from vicarious liability and permitting them to operate with less
20 formality.
21

22 **Section 2.** Amend Title 18 Chapter 25 of the Guam Code Annotated as follows:
23

24 A. Amend section 25102 by adding at the end of the section the following new definition:
25 "Registered limited liability partnership' means a partnership formed pursuant to an
26 agreement governed by the laws of Guam, registered under section 25615 of this title."
27

28 B. Amend section 25201 (1) by adding the phrase "and includes a registered limited
29 liability partnership" after the word "profit."
30

31 C. Amend section 25307 by adding the phrase "(1) Except as provided in paragraph (c)
32 of this section," before the phrase "all partners are liable", and by adding a new Section (C) to

1 read as follows:
2

3 “(C) A partner in a registered limited liability partnership is not liable directly or
4 indirectly (including by way of indemnification, contribution, assessment or otherwise) for debts,
5 obligations, and liabilities of or chargeable to the partnership, whether in tort, contract or
6 otherwise, arising from omissions, negligence, wrongful acts, misconduct or malpractice
7 committed while the partnership is a registered limited liability partnership and in the course of the
8 partnership business by another partner; or an employee, agent, or representative of the
9 partnership not under his supervision and control.

10 (1) This section shall not affect the liability of a partner in a registered limited liability
11 partnership for his own omissions, negligence, wrongful acts, misconduct, or malpractice or that
12 of any person under his direct supervision and control.

13 (2) A partner in a registered limited liability partnership is not a proper party to a
14 proceeding by or against a registered limited liability partnership, the object of which is to recover
15 damages arising from the acts, omissions, malpractice, or misconduct unless such partner is
16 personally liable under paragraph (c) (1) of this section. “
17

18 D. Amend section 25401(a) by adding the phrase "and except for liabilities which are
19 chargeable to one partner only under section 25307(c). “ after the phrase “to partners,” and
20 before the phrase “are satisfied.”
21

22 E. Amend section 25606 by deleting the period at the end of section 25606(b) and
23 substituting in lieu thereof the phrase " ; or ", and by adding a new clause c to read as follows: "
24 (c) The liability is for a debt, obligation, or liability for which the partner is not liable as provided
25 in section 25307 (c)."
26

27 F. Amend section 25608(4) by adding the phrase "including those debts for which he is
28 liable under section 25307 (c) herein" after the phrase “payment of his separate debts.”
29

30 G. Amend section 25612(d) by adding at the beginning of the paragraph, following “(d)”,
31 the phrase “Except as provided in section 25307 (c).”
32

33 H. Amend Title 18 Chapter 25 of the Guam Code Annotated by adding thereto new
34 sections 25616 to read as follows:
35

36 “Section 25616. Registered Limited Liability Partnerships.
37

38 (a) To become and to continue as a registered limited liability partnership, a partnership
39 shall file with the Department of Revenue and Taxation an application stating the name of the
40 partnership; the address of its principal office; the number and names of the partners; a brief
41 statement of the business in which the partnership engages; any other matters that the partnership
42 wishes to include; and that the partnership thereby applied for status as a registered limited
43 liability partnership. If the partnership’s principal office is not located on Guam, it shall provide

1 the name and address of a registered agent on Guam for service of process.“

2
3 (1) The application shall be executed by a majority in interest of the partners or by
4 one or more partners authorized to execute an application.

5
6 (2) The application shall be accompanied by a fee which shall be established and
7 collected by the Department of Revenue and Taxation.

8
9 (3) The Department of Revenue and Taxation shall register as a registered limited
10 liability partnership any partnership that submits a completed application with the required fee.

11
12 (4) A partnership registered under this section shall pay, in each year following the
13 year in which its application is filed, on a date specified by the Department of Revenue and
14 Taxation, an annual fee determined by the Department of Revenue and Taxation for each partner.
15 Payment of the fee must be accompanied by a notice, on a form provided by the Department of
16 Revenue and Taxation, of the names of partners currently in the partnership and of any material
17 changes in the information contained in the partnership's application for registration.

18
19 (5) Registration is effective immediately after the date an application is filed, and
20 remains effective until: (I) it is voluntarily withdrawn by the limited liability partnership filing with
21 the Department of Revenue and Taxation a written withdrawal notice executed by a majority in
22 interest of the partners or by one or more partners authorized to execute a withdrawal notice; or
23 (ii) 30 days after receipt by the partnership of a notice from the Department of Revenue and
24 Taxation (which notice shall be sent by certified mail, return receipt requested) that the
25 partnership has failed to make timely payment of the annual fee specified in subsection (e), unless
26 the fee is paid within such a 30 day period.

27
28 (6) The status of a partnership as a registered limited liability partnership, and the
29 liability of the partners thereof, shall not be affected by (I) errors in the information stated in an
30 application under subsection (1) of this section or a notice under subsection (a) of this section, or
31 (ii) changed after the filing of such an application or notice in the information stated in the
32 application or notice.

33
34 (7) The Department of Revenue and Taxation may provide forms for the
35 application under subsection (a) of this section or a notice under subsection (e) of this section.

36
37 (8) A limited liability partnership is a "business" as defined in section 26101 of
38 Article I of Chapter 26 of Title 11 Guam Code Annotated and is subject to the taxes imposed
39 under Chapter 26 of Title 11 Guam Code Annotated.

40
41 (b) The name of a registered limited liability partnership shall contain the words
42 'Registered Limited Liability Partnership' or the abbreviation 'L.L.P.' or 'LLP' as the last words or
43 letters of its name.

1 (c) A registered limited liability partnership may conduct its business, carry on its
2 operations, and have and exercise the powers granted by this act in any state, territory or
3 possession of the United States or in any foreign country.
4

5 (1) The internal affairs of a registered limited liability partnership including the
6 liability of partners for debts, obligations, and liabilities of or chargeable to the partnership, shall
7 be subject to and governed by the laws of Guam.
8

9 (2) Subject to relevant law regarding the regulation and control of specific types
10 of business, registered limited liability partnerships which are formed and existing under the laws
11 of another jurisdiction, may do business on Guam.
12

13 (3) The internal affairs of such partnerships, including the liability of partners for
14 debts, obligations, and liabilities of or chargeable to partnerships, shall be subject to and governed
15 by the laws of such other jurisdiction. “
16