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Legislative Secretary

CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Office of the Speaker
ANTONIO R. UNPINGCO

Date: 10-19-99
Time: 1405
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Print Name: ALCONCEJON
0525/99-0331

OCT 19 1999

The Honorable Antonio R. Unpingco
Speaker
I Mina'Bente Singko na Liheslaturan Guåhan
Twenty-Fifth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagåtña, Guam 96910

Dear Speaker Unpingco:

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OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Time	<u>4:28 pm</u>
Date	<u>10.19.99</u>

Enclosed please find Substitute Bill No. 193 (COR), "AN ACT TO ADD CHAPTER 160 TO DIVISION 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE GUAM-BASED TRUST COMPANIES ACT", which I have signed into law as **Public Law No. 25-73**.

After a lengthy and unnecessary delay in passing this legislation on the part of i Liheslatura, finally, a new financial industry is created on our island.

This legislation is a piece of the overall "Vision" that our Administration has been creating for Guam since 1995 -- attracting a variety of financial industry businesses to Guam. Prior segments of this vision that we have already put into place include the development of the captive insurance program through the Guam Economic Development Authority, and the implementation of the U. S. domestic telephone area code, so that Guam can be a telecommunications hub in the Pacific. In a world where financial business is based on technology and instant communications, this is necessary in order for Guam to enter the world arena of financial business.

I signed another segment of the vision into law as Public Law No. 24-266. This legislation encourages the formation of Guam-based trusts, a new financial activity, as part of a group of economic incentives designed to stimulate the economy of Guam and make Guam a center for financial investment. The stimulus would be in the form of a rebate of income taxes, under a GEDA qualifying certificate, on trust earnings from either inside or outside of Guam. It will now be possible to attract trusts with large assets to locate on Guam.

I also signed Public Law No. 25-08 into law on May 12, 1999, thereby allowing Guam residents who are beneficiaries of trusts to also participate in the new program.

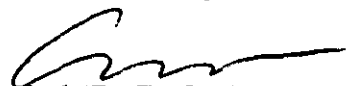
I am signing this last piece of legislation, Substitute Bill No. 193, in order to put into place the regulatory mechanisms for the creation and regulation of trust companies on Guam. A trust company organized under this legislation is a corporation whose business is acting as trustee (agent or asset manager) for another party's property. The trust company is licensed by the Guam Department of Revenue and Taxation, thereby generating licensing fees, and engages in the business of holding assets for another party, or investing the assets of the other party, depending upon the terms of the trust.

The Department of Revenue and Taxation regulates the trust industry, much as it does the banking industry and the insurance industry. For example, a trust company must keep a certain level of assets of its own on hand to ensure the safety of the assets that it holds or invests for another.

This legislation allows large sums of money to be held and managed on Guam. A Guam-based trust company, under this legislation, is required to deposit these sums of money in local banks or financial institutions.

This is an important step forward in attracting trust companies to Guam. It also encourages new trust companies to be set up under Guam law. This legislation will stimulate the finance industry and bring new income and many high paying jobs to Guam. As we move forward to a new Millennium, clean industries such as finance, insurance, telecommunications, and like-activities will join the visitor industry as cornerstones of our prosperity and our future.

Very truly yours,



Carl T. C. Gutierrez
I Maga'lahañ Guåhan
Governor of Guam

Attachment: copy attached for signed bill or overridden bill
 original attached for vetoed bill

cc: The Honorable Joanne M. S. Brown
 Legislative Secretary

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
1999 (FIRST) Regular Session

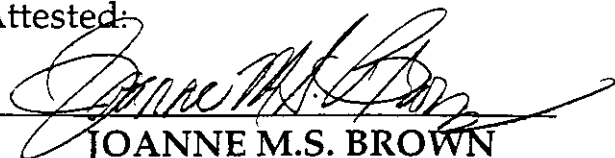
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Substitute Bill No. 193 (COR) "AN ACT TO ADD CHAPTER 160 TO DIVISION 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE GUAM-BASED TRUST COMPANIES ACT," was on the 13th day of October, 1999, duly and regularly passed.



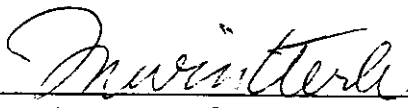
ANTONIO R. UNPINGCO
Speaker

Attested:



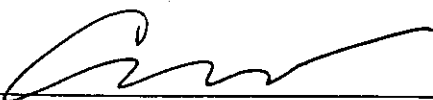
JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guahan* this 14th day of October, 1999,
at 9:05 o'clock 9 .M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date: 10-19-99

Public Law No. 25-73

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
1999 (FIRST) Regular Session

Bill No. 193 (COR)

As substituted by the Committee on
Tourism, Economic Development and Parks
and further substituted on the Floor and
amended in the Committee of the Whole.

Introduced by:

A. C. Lamorena, V
A. R. Unpingco
Mark Forbes
F. B. Aguon, Jr.
E. C. Bermudes
A. C. Blaz
J. M.S. Brown
E. B. Calvo
M. G. Camacho
L. F. Kasperbauer
C. A. Leon Guerrero
K. S. Moylan
V. C. Pangelinan
J. C. Salas
S. A. Sanchez, II

**AN ACT TO ADD CHAPTER 160 TO DIVISION 2 OF
TITLE 11 OF THE GUAM CODE ANNOTATED,
RELATIVE TO ESTABLISHING THE GUAM-BASED
TRUST COMPANIES ACT.**

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

2 **Section 1.** Chapter 160 is hereby *added* to Division 2 of Title 11 of the
3 Guam Code Annotated to read as follows:

1 and phrases, together with all of the common derivatives thereof (i.e.
2 verbs, plurals, feminine gender, etc.) shall have the meaning ascribed to
3 them as follows:

4 (a) *'Beneficiary'* means the person for whose benefit trust
5 property is held.

6 (b) *'Commissioner'* means the Commissioner of Banking of
7 the government of Guam.

8 (c) *'Court Trust'* means the action of a Trust Company
9 acting under appointment, order or decree of any court as
10 executor, administrator, guardian, conservator, assignee, receiver,
11 depository or trustee, or receiving on deposit money or property
12 from a public administrator under any provision of this Chapter
13 or from any executor, administrator, guardian, conservator,
14 assignee, receiver, depository or trustee under any order or decree
15 of any court.

16 (d) *'Equitable Duties'* include the common law duties of a
17 trustee, the duty to exercise reasonable care, skill and caution in
18 preserving and enhancing trust property, the duty to act with
19 undivided loyalty to the beneficiaries of a trust and the duty to act
20 with impartiality among all beneficiaries.

21 (e) *'Fiduciary'* means trustee, agent, executor,
22 administrator, committee, guardian, conservator for a minor or
23 other incompetent person, receiver, trustee in bankruptcy,
24 assignee for creditors or any holder of a similar position of trust.

1 (f) *'Investment Company'* means any issuer which is, or
2 holds itself out as, being engaged primarily, or proposes to engage
3 primarily, in the business of investing, reinvesting or trading in
4 securities.

5 (g) *'Investment Trust'* means a company which sells its
6 own stock and invest the money in stocks, real estate and other
7 investment.

8 (h) *'Net Worth'* means paid in capital plus paid in surplus
9 plus retained earnings, if any.

10 (i) *'Person'* means an individual, a partnership, a
11 corporation and any other entity established by law or otherwise
12 established for a stated purpose.

13 (j) *'Private Trust'* means every other trust, agency,
14 fiduciary relationship or representative capacity other than a court
15 trust.

16 (k) *'Settlor'* means a person who creates a trust.

17 (l) *'Trust'* means a fiduciary relationship with respect to
18 property, the trust property, which arises as a result of a
19 manifestation of an intention to create it and which subjects the
20 person by whom the property is held, the trustee, to equitable
21 duties to deal with the property for the benefit of another person,
22 the beneficiary.

1 (m) 'Trust Company' means a corporation organized and
2 licensed in Guam as provided in this Chapter and engaged in
3 Trust Company business.

4 (n) 'Trust Company Business' means acting as a trustee and
5 engaging in those activities stated in §160301.1.

6 (o) 'Trustee' means a person who is subject to equitable
7 duties and who holds trust property for a beneficiary.

8 (p) 'Trust Property' means property held in a trust.

9 **Section 160103. Applicability of Chapter.** This Chapter does
10 *not* apply to:

11 1. banks or banking institutions regulated under the
12 provisions of Chapter 100 of Title 11 of the Guam Code
13 Annotated;

14 2. savings and loan institutions regulated under Chapter
15 141 of Title 11 of the Guam Code Annotated;

16 3. title insurers, but only respecting escrows;

17 4. nonprofit, charitable trusts or trust associations; *or*

18 5. any person, *if*:

19 (a) the fiduciary relationship is *not* one of the
20 person's principal occupations; *or*

21 (b) that person serves as trustee for a relative by
22 blood or marriage.

23 **Article 2.**

24 **Organization and Licensing.**

1 provisions of this Chapter and having a license issued by the
2 Commissioner.

3 **Section 160202. Unlawful to Use or Advertise Word 'Trust' as**
4 **Part of Name; *Exceptions.***

5 1. *Except* as otherwise provided in Subsection 2, no
6 person, partnership, firm, association, corporation or other business
7 organization formed and doing business under the laws of Guam may:

8 (a) use the words 'Trust Company' or any direct
9 derivative of these words as a part of its name.

10 (b) advertise or use any sign with the words 'Trust
11 Company' used as a part of its name.

12 2. The provisions of Subsection 1 do *not* apply to a
13 person or business organization which is supervised by the
14 Commissioner pursuant to this Chapter.

15 **Section 160203. Minimum Capitalization.** No Trust Company
16 may be organized or operated with a capital of less than One Hundred
17 Thousand Dollars (\$100,000.00), or in such greater amount as may be
18 required by the Commissioner, and paid-up surplus of Fifty Thousand
19 Dollars (\$50,000.00), or in such greater amount as may be required by
20 the Commissioner. The full amount of the capital and surplus must be
21 paid in cash, exclusive of all organization expenses, before the Trust
22 Company is authorized to commence business.

23 **Section 160204. Incorporation; Required Number of Persons.**

1 Any three (3) or more persons, *except* in the case of a limited liability
2 company which may be incorporated with two (2) or more persons, may
3 execute articles of incorporation and be incorporated as a Trust
4 Company in the manner prescribed in this Chapter.

5 **Section 160205. Contents of Articles of Incorporation.**

6 1. The articles of incorporation must contain:

7 (a) the corporate name adopted by the corporation,
8 which must be such as to distinguish it from any other Trust
9 Company formed or incorporated on Guam, or engaged in
10 the trust business on Guam;

11 (b) the place where its business is to be conducted;

12 (c) the purpose for which it is formed;

13 (d) the amount of its capital stock, which must be
14 divided into shares of the par value of *not* less than Twenty-
15 five Dollars (\$25.00) each, *except* that upon the written
16 approval of the Commissioner the capital stock may be
17 divided into shares of the par value of not less than One
18 Dollar (\$1.00) each (The amount of capital stock must not be
19 less than One Hundred Thousand Dollars (\$100,000.00), and
20 must be assessable.);

21 (e) the amount of its original paid-in surplus, which
22 must *not* be less than fifty percent (50%) of its capital stock;

23 (f) the name and place of residence of, and the
24 number of shares subscribed by, each stockholder;

1 (g) the number of directors, which must not be less
2 than three (3), and the names of the stockholders selected to
3 act as the first board of directors, each of whom must be a
4 *bona fide* subscriber for at least One Thousand Dollars
5 (\$1,000.00) of the stock of the Trust Company, fully paid and
6 *not* hypothecated;

7 (h) the location of all branch offices as approved by
8 the Commissioner; *and*

9 (i) such other matters, not inconsistent with law, as
10 the incorporators may deem proper.

11 2. The articles of incorporation may also provide for the
12 issuance and sale of preferred stock in such amount as is fixed by
13 the articles or by amendments thereto, and the amount and
14 number of shares thereof, and the terms and conditions thereof
15 consistent with the provisions of this Chapter.

16 **Section 160206. Commissioner to Issue Certificate of**
17 **Incorporation; Commissioner Must Authorize Business Before**
18 **Company May Transact Business.**

19 1. The Commissioner shall issue a certificate in the form
20 provided by law for other corporations, and the existence of the
21 Trust Company as a corporation dates from the issuance of the
22 certificate by the Commissioner, from which time it has and may
23 exercise the powers conferred by law upon corporations generally,
24 *except* as limited or modified by this Chapter.

1 2. The Trust Company shall transact no business, *except*
2 the election of officers, and the taking and approving of their
3 official bonds, and the receipt of payments on account of the
4 subscriptions of the capital stock, and such other business as is
5 incidental to its organization, until it is authorized by the
6 Commissioner to commence the Trust Company business as
7 provided in this Chapter.

8 **Section 160207. Subscription, Acknowledgment and Filing of**
9 **Articles of Incorporation; Filing of Copies.** The articles of
10 incorporation must:

11 (a) be subscribed to by at least three (3) of the
12 stockholders of the proposed corporate Trust Company;

13 (b) be acknowledged by them before some person
14 competent to take an acknowledgment of deeds; *and*

15 (c) be filed in the office of the Commissioner.

16 **Section 160208. Application for License: Contents; Fees.**

17 1. The corporate Trust Company shall file an application
18 for a license to transact Trust Company business with the
19 Commissioner on forms prescribed by the Commissioner, which
20 must contain such information as the Commissioner requires.

21 2. A non refundable fee of One Thousand Dollars
22 (\$1,000.00) for the application and investigation must accompany
23 the application. The applicant shall also pay such additional

1 expenses incurred in the process of investigation as the
2 Commissioner deems necessary.

3 3. Notification of the location of a Trust Company branch
4 office shall be made to the Commissioner, accompanied by a non-
5 refundable fee in the amount of Two Hundred Fifty Dollars
6 (\$250.00).

7 4. All money received by the Commissioner pursuant to
8 this Section must be placed in a special purpose trust account,
9 pursuant to §160307 of this Act.

10 **Section 160209. Procedure for Granting or Denying License.**

11 1. Within forty-five (45) days following the filing of the
12 application for a license, the Commissioner shall investigate the
13 facts of the application and the other requirements of this Chapter
14 to determine:

15 (a) that the persons who will serve as directors or
16 officers are qualified by character and experience;

17 (b) that the financial strength of the significant
18 incorporators, ten percent (10%) or more ownership, are
19 commensurate with the undertaking;

20 (c) that the name of the proposed company is *not*
21 deceptively similar to that of another Trust Company or
22 otherwise misleading;

23 (d) that the capital and surplus are *not* less than the
24 required minimum; *and*

1 (e) such other matters concerning the proposed
2 Trust Company as the Commissioner may deem relevant.

3 2. Within thirty (30) days after the application is filed, the
4 Commissioner shall conduct a public hearing to consider the
5 application. The Commissioner shall give two (2) written notices
6 of the public hearing in a newspaper of general circulation on
7 Guam. Publication of such notices should be no more than fifteen
8 (15) days, nor less than two (2) complete days, before the hearing
9 date. Costs of publication and other directly related expenses
10 shall be paid by the applicant.

11 **Section 160210. Issuance or Denial of License; Renewal.**

12 1. *If* the Commissioner finds that the applicant has met
13 all the requirements of this Chapter and other applicable laws, the
14 Commissioner shall, within thirty (30) days after the conclusion of
15 the investigation, issue a license to the applicant to conduct a
16 Trust Company business upon the applicant's paying the required
17 license fee. *Otherwise*, the Commissioner shall deny the
18 application and notify the applicant in writing of the reasons for
19 the denial.

20 2. All licenses granted under the Act shall expire on the
21 June 30 following the date of issuance. On or before June 1 of each
22 year thereafter, every company holding a license that wishes to
23 renew the license for an additional year shall apply to the
24 Commissioner for a renewal of the license.

25 **Section 160211. License Fees; Renewals.**

1 1. The initial fee to be paid for a Trust Company license
2 must be in proportion to the authorized capitalization of the Trust
3 Company as follows:

4 (a) a Trust Company having a capitalization of more
5 than One Hundred Thousand Dollars (\$100,000.00), up to
6 and including Five Hundred Thousand Dollars
7 (\$500,000.00), shall pay a license fee of Five Hundred Dollars
8 (\$500.00);

9 (b) a Trust Company having a capitalization of more
10 than Five Hundred Thousand Dollars (\$500,000.00), up to
11 and including One Million Dollars (\$1,000,000.00), shall pay
12 a license fee of Seven Hundred Fifty Dollars (\$750.00); *and*

13 (c) a Trust Company having a capitalization of more
14 than One Million Dollars (\$1,000,000.00) shall pay a license
15 fee of One Thousand Dollars (\$1,000.00).

16 2. In addition, every Trust Company shall pay an initial
17 license fee of One Hundred Dollars (\$100.00) for each branch
18 office that may be authorized by the Commissioner.

19 3. Thereafter, every Trust Company shall pay annually,
20 on or before June 30 of each year, a license fee which must be in
21 proportion to its initial paid-in capital and surplus, or to its net
22 worth as of December 31st of the preceding year, whichever is
23 higher, as follows:

1 (a) a Trust Company having a capitalization of less
2 than One Hundred Thousand Dollars (\$100,000.00) shall pay
3 a license fee of Two Hundred Fifty Dollars (\$250.00);

4 (b) a Trust Company having a capitalization of more
5 than One Hundred Thousand Dollars (\$100,000.00), up to
6 and including Five Hundred Thousand Dollars
7 (\$500,000.00), shall pay a license fee of Five Hundred Dollars
8 (\$500.00);

9 (c) a Trust Company having a capitalization of more
10 than Five Hundred Thousand Dollars (\$500,000.00), up to
11 and including One Million Dollars (\$1,000,000.00), shall pay
12 a license fee of Seven Hundred Fifty Dollars (\$750.00); *and*

13 (d) A Trust Company having a capitalization of
14 more than One Million Dollars (\$1,000,000.00) shall pay a
15 license fee of One Thousand Dollars (\$1,000.00).

16 4. All money collected under the provisions of this
17 Section must be paid into the special purpose trust account as
18 directed under §160307.

19 **Section 160212. Cancellation of License If Trust Company Fails**
20 **to Open for Business.** *If a proposed Trust Company fails to open*
21 *for business within six (6) months after the date the license was issued,*
22 *or within an additional six (6) month extension granted by the*
23 *Commissioner upon written application and for good cause shown, the*
24 *Commissioner shall issue an order canceling the Trust Company's*
25 *license.*

1 **Article 3.**

2 **Powers and Miscellaneous Provisions.**

3 **Section 160301. Powers of Licensed Trust Companies; Banking**
4 **Business Prohibited.**

5 **Section 160302. Investments; General Requirements.**

6 **Section 160303. Investments; Purchase of Securities**
7 **Authorized.**

8 **Section 160304. Other Requirements.**

9 **Section 160305. Discontinuing Business.**

10 **Section 160306. Commissioner in Possession.**

11 **Section 160307. Requirements of Reorganization Plan.**

12 **Section 160308. Liquidation by Commissioner.**

13 **Section 160309. Fidelity Bonds; Insurance.**

14 **Section 160310. Income Tax Rebates.**

15 **Section 160311. Use of Funds.**

16 **Section 160312. Confidentiality Treatment of Trust**
17 **Information.**

18
19 **Section 160301. Powers of Licensed Trust Companies; Banking**
20 **Business Prohibited. (1) Each licensed Trust Company may:**

21 (a) act as trustee under any mortgage or bond of any
22 person or of any municipality or body politic;

23 (b) accept and execute any municipal or corporate or
24 individual trust consistent with the laws of Guam;

1 (c) act under the order or appointment of any court
2 as guardian, administrator, receiver or trustee;

3 (d) act as executor or trustee under any will or
4 intervivos trust;

5 (e) act as fiscal or transfer agent of any state,
6 municipality, body politic or corporation, and in such
7 capacity receive and disburse money and register, transfer
8 and countersign certificates of stock, bonds and other
9 evidences of indebtedness;

10 (f) act as local or resident agent of foreign
11 corporations;

12 (g) accept and execute any trust business;

13 (h) acquire the fiduciary rights, powers, duties and
14 liabilities of a bank, savings and loan association, thrift
15 company, or Trust Company licensed pursuant to Title 11 of
16 the Guam Code Annotated, and upon the effective date of
17 such an acquisition, the fiduciary rights, powers, duties and
18 liabilities of the bank, savings and loan association, thrift
19 company, or Trust Company vest in and must be performed
20 by the acquiring Trust Company; *and*

21 (i) do and perform all acts necessary to exercise the
22 powers enumerated in this Subsection and authorized by
23 this Chapter.

24 2. A Trust Company may *not* engage in any banking
25 business by accepting deposits or making loans.

1 **Section 160302. Investments; General Requirements.**

2 1. Every Trust Company:

3 (a) shall keep all trust funds and investments
4 separate from the assets of the Company (These funds shall
5 not be mingled with the securities and investments of any
6 other trust or of the corporation, and all investments made
7 by the Company as a fiduciary must be designated so that
8 the trust or estate to which the investments belong may be
9 clearly identified.);

10 (b) holding trust funds for more than twenty-four
11 (24) hours, awaiting investment or distribution, must
12 deposit or leave on deposit such funds with a local financial
13 institution (Such funds must *not* be deposited or left with the
14 Trust Company or with an affiliate corporation or
15 association, *unless* that affiliate corporation or association
16 first pledges, as security for the deposit, securities eligible
17 for investment by local financial institutions which have a
18 market value equal to that of the deposited funds. No
19 security is required with respect to any portion of such
20 deposits which is insured under the provisions of any law of
21 the United States.);

22 (c) acting in any capacity under a court trust or
23 private trust, *unless* the instrument creating the trust
24 provides otherwise, may cause any securities held by it in its

1 representative capacity to be registered in the name of a
2 nominee or nominees of the Company; *and*

3 (d) when acting as depositary or custodian for the
4 personal representative of a court trust or private trust,
5 *unless* the instrument creating the trust provides otherwise,
6 may with the consent of the personal representative of the
7 trust, cause any securities held by it to be registered in the
8 name of a nominee or nominees of the Company.

9 2. Every Trust Company is liable for any loss occasioned
10 by the acts of its nominees with respect to securities registered
11 under this Section.

12 3. No corporation or the registrar or transfer agent of the
13 corporation is liable for registering or causing to be registered on
14 the books of the corporation any securities in the name of any
15 nominee of a Trust Company, or for transferring or causing to be
16 transferred on the books of the corporation any securities
17 registered by the corporation in the name of any nominee of a
18 Trust Company, when the transfer is made on the authorization of
19 the nominee.

20 4. *Except* as provided in Subsection 5, a Trust Company's
21 investments of invested capital and earnings, must:

22 (a) be U.S. governmental obligations or Federally
23 insured deposits; *or*

24 (b) be investment grade securities and mature
25 within three (3) years after acquisition. The aggregate

1 market value of all investments must equal or exceed sixty
2 percent (60%) of the Company's current capital, surplus and
3 undivided profits, or sixty percent (60%) of the Company's
4 capital and surplus when it was organized, whichever is
5 greater.

6 5. A Trust Company may purchase or rent land, facilities
7 and equipment for use in the daily activities of the company.

8 **Section 160303. Investments; Purchase of Securities**
9 **Authorized.**

10 1. A Trust Company which is acting as a fiduciary or
11 agent shall, in its discretion or at the direction of another person
12 who is authorized to direct the investment of money held by the
13 Trust Company as a fiduciary or agent, make investments in
14 accordance with the Uniform Prudent Investors Act, as adopted in
15 1994 by the National Conference of Commissioners on Uniform
16 State Laws, *if*:

17 (a) the investment trust or investment company is
18 registered with the Commissioner; *and*

19 (b) the portfolio of the investment trust or
20 investment company consists substantially of investments
21 which are *not* prohibited by the instrument creating the
22 fiduciary or agency relationship.

23 2. A Trust Company or an affiliate of the Trust Company
24 may provide services to the investment trust or investment
25 company, including, without limitation, acting as an investment

1 adviser, custodian, transfer agent, registrar, sponsor, distributor or
2 manager, and may receive reasonable compensation for the
3 services. The manner in which the compensation is calculated
4 must be disclosed to the person who is currently receiving the
5 benefits of the fiduciary or agency relationship with the Trust
6 Company. The disclosure shall be made in a prospectus, a report
7 to the Trustor or manner prescribed by the Commissioner.

8 3. A Trust Company may deposit money held by the
9 Trust Company as a fiduciary or agent with an affiliate before
10 investing or making other disposition of the money.

11 **Section 160304. Other Requirements.**

12 1. **Annual Statement.** Every Trust Company that is
13 licensed under the Act shall, on or before May 1 of each year, file
14 with the Commissioner, a financial statement verified under oath
15 by two (2) executive officers of the company, setting forth its
16 financial condition, transactions and affairs as of the 31st day of
17 December immediately preceding, in accordance with generally
18 accepted accounting principles plus any additional information
19 required by the Commissioner.

20 2. **Annual Audit.** Every Trust Company that is licensed
21 under the Act shall file an annual audit report to accompany the
22 filing of an annual statement prior to May 1 of each year. The
23 audit report shall be rendered by its appointed, Independent
24 Auditor as approved by the Commissioner, and shall cover the
25 financial condition, transactions and affairs as of the 31st day of

1 December immediately preceding in accordance with generally
2 accepted auditing standards. The audited report shall include an
3 unqualified opinion with respect to the financial condition of the
4 Company, *except* that the Commissioner may accept qualified
5 opinions at the discretion of the Commissioner.

6 **3. Notification.** An auditor who is aware that the
7 Trust Company failed to meet the necessary capital and surplus
8 requirements of the Act, or who has rendered other than an
9 unqualified opinion on the financial condition of a Trust
10 Company, and the president of the Trust Company shall both
11 notify the Commissioner in writing within fifteen (15) days of the
12 discovery of failure of the Trust Company to meet the capital or
13 surplus requirements of the Act or within fifteen (15) days of the
14 issuance of such qualified opinion.

15 **Section 160305. Discontinuing Business.**

16 1. Whenever any Trust Company desires to discontinue
17 its trust business, it shall do the following:

18 (a) publish the intention of the company, once a
19 week for three (3) consecutive weeks in a newspaper of
20 general circulation on Guam; *and*

21 (b) submit an affidavit to the Commissioner that all
22 the obligations and indebtedness arising from its trust
23 business and operations on Guam have been satisfactorily
24 discharged.

1 2. After the Trust Company has furnished proof of
2 publication and the affidavit, and no objection to discontinue
3 business or no proof is submitted by any claimant of an
4 outstanding receivable or claim against the Trust Company, the
5 Commissioner shall enter an order canceling the Trust Company's
6 license.

7 **Section 160306. Commissioner in Possession.**

8 (a) The Commissioner may take possession of a Trust
9 Company *if*, after a hearing, the Commissioner shall find:

10 (1) its capital is impaired or it is otherwise in an
11 unsound condition;

12 (2) its business is being conducted in an unlawful or
13 unsound manner;

14 (3) it is unable to continue normal operations; *or*

15 (4) its examination has been obstructed or impeded.

16 (b) The Commissioner shall take possession by posting
17 upon the premises a notice reciting that the Commissioner is
18 assuming possession pursuant to this Act, and the time, *not* earlier
19 than the posting of the notice, when the Commissioner's
20 possession shall be deemed to commence. A copy of the notice
21 shall be filed in the U.S. District Court of Guam. The
22 Commissioner shall notify the trustor of all the trusts under the
23 management of the Trust Company.

24 (c) When the Commissioner has taken possession of a
25 Trust Company, the Commissioner shall be vested with the full

1 and exclusive power of management and control, including the
2 power to continue or to discontinue the business, to stop or to
3 limit the payment of its obligations, to employ any necessary
4 assistants, to execute any instrument in the name of the Trust
5 Company, to commence, defend and conduct in its name any
6 action or proceeding in which it may be a party, to terminate the
7 Commissioner's possession by restoring the Trust Company to its
8 board of directors and to reorganize or liquidate the Trust
9 Company in accordance with this Act. As soon as practicable after
10 taking possession, the Commissioner shall make an inventory of
11 the assets and file a copy thereof with the U.S. District Court of
12 Guam.

13 (d) When the Commissioner has taken possession there
14 shall be a postponement until six (6) months after the
15 commencement of such possession of the date upon which any
16 period of limitation fixed by a statute or agreement would
17 otherwise expire on a claim or right of action of the Trust
18 Company, or upon which an appeal must be taken or a pleading
19 or other document must be filed by the Trust Company in any
20 pending action or proceeding.

21 (e) *If*, in the opinion of the Commissioner, an emergency
22 exists which will result in serious losses to the trustors and
23 creditors, the Commissioner may take possession of the Trust
24 Company without a prior hearing. Within ten (10) days after the
25 Commissioner has taken possession, any interested party may file

1 an application with the U.S. District Court of Guam for an order
2 vacating such possession. The U.S. District Court of Guam shall
3 grant the application *if* it finds that the action of the Commissioner
4 was unauthorized under this Act.

5 (f) *If* the Commissioner shall determine to liquidate the
6 Trust Company, the Commissioner shall give such notice of the
7 Commissioner's determination to the directors, stockholders and
8 the trustors. Any objection to the liquidation shall be filed with
9 the U.S. District Court of Guam within thirty (30) days after such
10 notice. *Unless* within thirty (30) days thereafter, the U.S. District
11 Court of Guam issues an order staying the liquidation, the
12 Commissioner shall proceed to liquidate the Trust Company.

13 (g) *If* the Commissioner determines to reorganize the
14 Trust Company, or the U.S. District Court of Guam, after staying
15 its liquidation, orders such reorganization, the Commissioner,
16 after according a hearing to all interested parties, shall propose a
17 reorganization plan. A copy of the Plan shall be sent to each
18 trustor and creditor who will *not* receive payment of the
19 Commissioner's claim in full under the Plan, together with notice.
20 *Unless* within thirty (30) days the Plan is disapproved in writing
21 by persons holding one-third (1/3) or more of the aggregate
22 amount of such claims, the Commissioner will proceed to effect
23 the reorganization. A department or agency of the government of

1 Guam holding a claim which will *not* be paid in full is authorized
2 to participate as any other creditor.

3 (h) No judgment, lien or attachment shall be executed
4 upon any asset of the Trust Company while it is in the possession
5 of the Commissioner. Upon the election of the Commissioner in
6 connection with a liquidation or reorganization:

7 (1) any lien or attachment, other than a mechanic's
8 lien, obtained upon any asset of the Trust Company during
9 the Commissioner's possession or within four (4) months
10 prior to commencement thereof, shall be vacated, *except* liens
11 created by the Commissioner while in possession; *and*

12 (2) Any transfer of an asset of the Trust Company
13 made after or in contemplation of its insolvency with intent
14 to effect a preference shall be voided.

15 (i) With the approval of the U.S. District Court of Guam,
16 the Commissioner may borrow money in the name of the Trust
17 Company and may pledge its assets as security for the loan.

18 (j) All necessary and reasonable expenses of the
19 Commissioner's possession of a Trust Company and of its
20 reorganization or liquidation shall be defrayed from the assets
21 thereof.

22 **Section 160307. Requirements of Reorganization Plan.**

23 (a) A plan or reorganization shall *not* be prescribed under
24 this Act, *unless*:

1 (1) the plan is feasible and fair to all classes of
2 trustors, creditors and stockholders;

3 (2) the face amount of the interest accorded to any
4 trustors, creditors or stockholders under the Plan does *not*
5 exceed the value of the assets upon liquidation, less that full
6 amount of the claims of all prior classes, subject, *however*, to
7 any fair adjustment for new capital that any class will pay in
8 under the Plan;

9 (3) the Plan provides for the issuance of common
10 stock in an amount that will provide an adequate ratio to all
11 assets held in trust by the Trust Company;

12 (4) the Plan assures the removal of any director,
13 officer or employee responsible for any unsound or
14 unlawful action or the existence of an unsound condition;
15 *and*

16 (5) any merger or consolidation provided by the
17 Plan conforms to the requirements of this Act.

18 (b) Whenever in the course or reorganization supervening
19 conditions render the Plan unfair, or its execution impractical, the
20 Commissioner may modify the Plan or liquidate the institution.
21 Any such action shall be taken by order of the U.S. District Court
22 of Guam upon appropriate notice.

23 **Section 160308. Liquidation by Commissioner.**

1 (a) In liquidating a Trust Company, the Commissioner
2 may exercise any power thereof, but the Commissioner shall *not*,
3 without the approval of the U.S. District Court of Guam:

4 (1) sell any asset of the Trust Company having a
5 value in excess of One Thousand Dollars (\$1,000.00);

6 (2) compromise or release any claim, *if* the amount
7 of the claim exceeds Five Hundred Dollars (\$500.00),
8 exclusive of interest; *or*

9 (3) make any payment on any claim, other than a
10 claim upon an obligation incurred by the Commissioner,
11 before preparing and filing a schedule of the
12 Commissioner's determinations in accordance with this Act.

13 (b) Within six (6) months of the commencement of
14 liquidation, the Commissioner may by the Commissioner's
15 election terminate any executory contract for services or
16 advertising to which the Trust Company is a party, or any
17 obligation of the Trust Company as a lessee. A lessor who
18 receives sixty (60) days notice of the Commissioner's election to
19 terminate the lease shall have no claim for rent other than rent
20 accrued to the date of termination, nor for damages for such
21 termination.

22 (c) As soon after the commencement of liquidation as is
23 practicable, the Commissioner shall take the necessary steps to
24 terminate all fiduciary positions held by the Trust Company, and
25 take such action as may be necessary to surrender all property

1 held by the Trust Company as a fiduciary and to settle its
2 fiduciary accounts.

3 (d) As soon after the commencement of liquidation as
4 practicable, the Commissioner shall send notice of the liquidation
5 to each known trustor and creditor. The notice shall also be
6 published in a newspaper of general circulation on Guam once a
7 week for three (3) successive weeks. The Commissioner shall send
8 with the notice a statement of the amount shown on the books of
9 the Trust Company to be the claim of the trustor or creditor. The
10 notice shall demand that *if* the amount claimed differs from that
11 stated on the notice to be due, be filed with the Commissioner
12 before a specified date *not earlier than* sixty (60) days thereafter in
13 accordance with the procedure prescribed in the notice.

14 (e) Within six (6) months after the last day specified in the
15 notice for the filing of claims or such longer period as may be
16 allowed by the U.S. District Court of Guam in which notice of
17 possession has been filed, the Commissioner shall:

18 (1) reject any claim *if* the Commissioner doubts the
19 validity thereof;

20 (2) determine the amount, *if* any, owing to each
21 known Trustor or creditor;

22 (3) prepare a schedule of the Commissioner's
23 determination for filing in the U.S. District Court of Guam in
24 which notice of possession was filed; *and*

1 (4) notify each person whose claim has *not* been
2 allowed in full, and publish once a week for three (3)
3 successive weeks a notice of the time when and the place
4 where the schedule of determinations will be available for
5 inspection and the date, not sooner than thirty (30) days
6 thereafter, when the Commissioner will file the
7 Commissioner's schedule in Court.

8 (f) Within thirty (30) days after the filing of the
9 Commissioner's schedule, any trustor or creditor or stockholder
10 may file an objection to any determination made. Any objections
11 so filed shall be heard and determined by the Court, upon such
12 notice to the Commissioner and interested claimants as the Court
13 may prescribe. *If* the objection is sustained, the Court shall direct
14 an appropriate modification of the schedule. After filing the
15 Commissioner's schedule, the Commissioner may, from time to
16 time, make partial distribution to the holders of claims which are
17 undisputed or have been allowed by the Court, *if* a proper reserve
18 is established for the payment of disputed claims. As soon as is
19 practicable after the determination of all objections, the
20 Commissioner shall make final distribution.

21 (g) The following claims shall have priority:

22 (1) obligations incurred by the Commissioner;

23 (2) wages and salaries of officers and employees
24 earned during the four (4) month period preceding the
25 Commissioner's possession in an amount *not* exceeding

1 Three Thousand Dollars (\$3,000.00) for any one (1) person;
2 *and*

3 (3) fees and assessments due to the government of
4 Guam.

5 (h) After the payment of all other claims which were
6 timely filed, the Commissioner shall pay claims otherwise proper
7 which were *not* filed within the time prescribed. *If* the sum
8 available for any class is insufficient to provide payment in full,
9 such sum shall be distributed to the claimants in the class *pro rata*.

10 (i) Any assets remaining after all claims have been paid
11 shall be distributed to the stockholders in accordance with their
12 respective interests.

13 (j) Unclaimed funds remaining after completion of the
14 liquidation shall be retained for ten (10) years by the
15 Commissioner, *unless* sooner claimed by the owner. At the
16 expiration of such period, the remaining sum shall be transferred
17 to the Treasurer of Guam as abandoned funds.

18 (k) When the assets have been distributed in accordance
19 with this Act, the Commissioner shall file an account with the U.S.
20 District Court of Guam. Upon approval thereof the Commissioner
21 shall be relieved of liability in connection with the liquidation and
22 the charter of the Trust Company shall be canceled.

23 **Section 160309. Fidelity Bonds; Insurance.**

24 1. The directors of a Trust Company shall require good
25 and sufficient fidelity bonds in the amount of Twenty-five

1 Thousand Dollars (\$25,000.00) or more on all active officers and
2 employees, whether or not they receive a salary or other
3 compensation from the Company, to indemnify the Company
4 against loss because of any dishonest, fraudulent or criminal act or
5 omission by any officer or employee acting alone or in
6 combination with any other person. The bonds may be in any
7 form and may be paid for by the Trust Company.

8 2. The directors shall obtain suitable insurance for their
9 Company against burglary, robbery, theft and other hazards to
10 which it may be exposed in the operation of its business.

11 3. The directors shall at least annually prescribe the
12 amount of penal sum of the bonds or policies and designate the
13 sureties and underwriters thereof, after giving due and careful
14 consideration to all known elements and factors constituting a risk
15 or hazard. The directors' action must be recorded in the minutes
16 of the board of directors and reported to the Commissioner.

17 **Section 160310. Income Tax Rebates.**

18 1. Notwithstanding any other provisions of this Act,
19 Trust Companies licensed pursuant to the provisions of this
20 Chapter and any bank conducting trust business pursuant to
21 §§106151 *et seq.* of Title 11 of the Guam Code Annotated may
22 apply on behalf of the Guam-based trusts under their
23 management, for a Special Qualifying Certificate ('QC') from the
24 Guam Economic Development Authority, which would allow a
25 one hundred percent (100%) tax rebate as authorized under

1 §§58128.6(a) and (b) of Chapter 58 of Title 12 of the Guam Code
2 Annotated. Provided, *however*, notwithstanding any other
3 provision of this Section, the tax rebate shall *not* apply to trust
4 property which has been employed in a business in which the
5 settlor was engaged and trust property which is used to embark
6 upon a business for the settlor or the beneficiary. For the purposes
7 of this Subsection, '*business*' has the same meaning as '*engaging in*
8 *or carrying on a business*' as in the Business License Law in
9 §70103(e) of Title 11 of the Guam Code Annotated, and includes
10 only businesses which are required to be licensed, or are excepted
11 from obtaining a license pursuant to the policy and provisions of
12 §§70102 and 70130 of Title 11 of the Guam Code Annotated.

13 2. The Guam Economic Development Authority is
14 hereby authorized to promulgate rules and regulations to
15 implement a Special QC program to allow for expeditious
16 processing of requests by Trust Companies or trustees of Guam-
17 based trusts, for benefits as provided under §§58128.6(a) and (b) of
18 Chapter 58 of Title 12 of the Guam Code Annotated.

19 3. A true copy of the Special QC shall be attached to each
20 tax return of the Guam-based trust, and the amount of tax due
21 *prior to* the rebate shall be deposited with the government at the
22 time of filing of each income tax return. Taxes deposited on behalf
23 of a Guam-based trust shall *not* be placed in the General Fund or
24 commingled with other funds, but shall be deposited by the

1 Director of Revenue and Taxation in special purpose trust
2 accounts in one (1) or more FDIC insured banks with offices
3 within Guam, and shall be withdrawn from such accounts only
4 for the purpose of:

5 (a) making rebates as provided herein; *or*

6 (b) making payments as provided in §160308.

7 4. Upon the application of the Guam-based trust at the
8 completion of the one hundred eighty (180) days from the date of
9 filing of income tax returns, the Director of Revenue and Taxation
10 shall immediately thereafter cause the refund of the income tax to
11 the Guam-based trust.

12 **Section 160311. Use of Funds.**

13 1. The income tax payments made under the Special QC
14 program, shall be returned to the respective trusts at the
15 completion of the one hundred eighty (180) day period without
16 interest.

17 2. All other revenues generated from the implementation
18 of this Act, including, but not limited to, the initial and annual
19 License Fees, Examination Fees and interest earned from these
20 funds, shall be allocated as follows:

21 (a) *subject* to legislative appropriation, up to fifty
22 percent (50%) to the Chamorro Land Trust Commission, for
23 the purposes of infrastructure development (i.e. roads,
24 power, water, sewer and telephone services) on Chamorro
25 Land Trust properties;

1 (b) *subject* to legislative appropriation, up to ten
2 percent (10%) shall be earmarked for the Department of
3 Revenue and Taxation for maintaining the operational
4 functions of the government of Guam;

5 (c) *subject* to legislative appropriation, up to ten
6 percent (10%) of this revenue, shall be remitted *immediately*
7 to the Guam Economic Development Authority for the
8 development and promotion of Guam's financial services
9 industry; *and*

10 (d) all remaining revenues generated from the
11 implementation of this Act shall be remitted to the General
12 Fund to be appropriated by *I Liheslaturan Guåhan*.

13 **Section 160312. Confidentiality Treatment of Trust**
14 **Information.** All information pertaining to Guam-based trusts
15 shall be deemed proprietary and confidential *unless*:

16 (a) the Commissioner deems it in the public interest to
17 make such information available for public inspection; *or*

18 (b) the Grantor/Trust authorizes the Commissioner to
19 make available such information for public inspection.

20 **Article 4.**

21 **Examination and Regulation.**

22 **Section 160401. Examination; Powers and Duties of**
23 **Department of Revenue and Taxation.**

1 Commissioner shall charge and collect from the Trust
2 Company a fee for conducting the examination and in
3 preparing and typing the report of the examination at a
4 reasonable rate to be established by the Commissioner.

5 2. All money collected under this Section must be paid
6 directly to the General Fund of the government of Guam and
7 allocated pursuant to §160308.

8 3. The Commissioner shall examine a licensee as often
9 as the Commissioner deems necessary, with cause.

10 **Section 160403. Applicability of Other Provisions of Title.**

11 In addition to other provisions of this Title which are applicable
12 to this Title as a whole or specifically made applicable to Trust
13 Companies, the Commissioner may by regulation make applicable to
14 trust companies any regulatory provision contained therein, which
15 can be reasonably applied and which are *not* inconsistent with the
16 provisions of this Chapter.

17 **Section 160404. Regulations of Commissioner.** The
18 Commissioner may adopt such regulations as may be necessary to
19 carry out the purposes and provisions of this Chapter. Attached as
20 **Exhibit A** are Trust Company Rules and Regulations of the
21 Department of Revenue and Taxation. These Rules and Regulations
22 are hereby approved by *I Liheslaturan Guåhan* as the initial Rules and
23 Regulations for this Chapter.

24 **Article 5.**

1 3. Unlawful concealment of transactions.

2 4. Improper maintenance of accounts, false or
3 deceptive entries and statements.

4 **Section 160502. Penalty.** Every officer, employer, director
5 or agent of a Trust Company who knowingly or willfully neglects to
6 perform any duty required by this Chapter or other applicable law,
7 or who knowingly or willfully fails to conform to any material lawful
8 requirement made by the Commissioner, is subject to removal upon
9 order of the Commissioner, and upon conviction shall be punished
10 by either imprisonment of not less than one (1) year, and *not* to
11 exceed six (6) years, or by a fine of not more than Five Thousand
12 Dollars (\$5,000.00), or by both fine and imprisonment.

13 **Section 160503. Violation of This Chapter Shall Constitute a**
14 **Misdemeanor, *Unless Otherwise Specified.*** Where no other
15 punishment is otherwise provided by law, any person violating any
16 provision of this Chapter is guilty of a misdemeanor."

17 **Section 2. Severability.** *If* any provision of this Law or its
18 application to any person or circumstance is found to be invalid or
19 contrary to law, such invalidity shall *not* affect other provisions or
20 applications of this Law which can be given effect without the invalid
21 provisions or application, and to this end the provisions of this Law are
22 severable.

1 **EXHIBIT A**

2 **TRUST COMPANIES RULES & REGULATIONS.**

3 **Department of Revenue and Taxation.**

4 **Section 1. Definitions.** In these regulations, *unless* the context
5 specifically states otherwise,

6 (a) *'Act'* means *'The Guam Trust Companies Act.'*

7 (b) *'Affiliate'* means any company in the same corporate
8 system as a parent corporation, or under a partnership agreement or
9 member organization by virtue of common ownership, control,
10 operation or management.

11 (c) *'Commissioner'* means the Banking Commissioner of the
12 government of Guam.

13 (d) *'Company'* or *'Trust Company'* means a corporation
14 organized and licensed as provided in The Guam Trust Companies
15 Act.

16 (e) *'Control'* means (1) ownership of more than fifty percent
17 (50%) of the voting stock of a corporation, (2) ownership of stock of a
18 corporation constituting more than fifty percent (50%) of the fair
19 market value of all of said corporation's issued and outstanding
20 shares, (3) a contractual or other right to vote shares constituting
21 more than fifty percent (50%) of the voting shares of a corporation,
22 (4) the right under a management agreement or other contract to
23 make over fifty percent (50%) of the decisions governing the business
24 and financial affairs of a corporation, or to select all of its officers or

1 directors, or (5) any other right or arrangement that separately or in
2 conjunction with other rights creates the practical ability to determine
3 over fifty percent (50%) of the business and financial affairs of a
4 corporation or to select its officers or directors.

5 (f) *'Local financial institution'* means a bank or financial
6 service provider or establishment licensed by the Guam Department
7 of Revenue and Taxation to provide financial services.

8 **Section 2. Application for License; Contents; Procedures.**

9 (a) **Contents of Application.** Every applicant for a
10 corporate Trust Company license shall pay the statutory application
11 fee and file the following documents with the Commissioner:

12 (1) a completed application on the form prescribed by
13 the Commissioner (**Appendix A**);

14 (2) a certified copy of the articles of incorporation or
15 association of the Company, but *if* the Company is *not* yet
16 incorporated, a copy of the proposed articles of incorporation
17 or association of the Company; *and*

18 (3) a certified copy of the by-laws of the Company, but
19 *if* the Company is *not* yet incorporated, a copy of the proposed
20 by-laws of the Company.

21 (b) **Procedures.** Within thirty (30) days following the
22 filing of the completed application for a license the Commissioner
23 shall investigate the facts of the application and the other
24 requirements of this Act to determine that:

1 (1) the persons who will serve as directors or officers
2 are qualified by character and experience;

3 (2) the financial strength of the significant
4 incorporators, ten percent (10%) or more ownership, is
5 commensurate with the undertaking;

6 (3) the name of the proposed Company is *not*
7 deceptively similar to that of another Trust Company, or
8 otherwise misleading;

9 (4) the capital and surplus are *not* less than the
10 required minimum;

11 (5) the need for trust facilities or additional trust
12 facilities on Guam; *and*

13 (6) such other matters concerning the proposed Trust
14 Company in relation to its location as the Commissioner may
15 deem relevant.

16 **Section 2.1. Review of Application and Issuance of**
17 **License.**

18 **(a) Review of Commissioner.** After the conclusion of the
19 investigation, *if* the Commissioner finds that the applicant has met all
20 the requirements of this Act and other applicable laws, the
21 Commissioner shall promptly notify the applicant in writing of the
22 Commissioner's approval or disapproval of the application with
23 reasons for the denial. The Commissioner shall issue a license to the

1 applicant to conduct a Trust Company business upon the applicant's
2 compliance with the requirements under the Act.

3 (b) **Payment of Fees.** Within thirty (30) days after
4 the Commissioner notifies the applicant of the approval of the
5 application, the Trust Company shall pay the statutory initial license
6 fee as set forth in the Act.

7 **Section 2.2. Cancellation of License If Trust Company**
8 **Fails to Open for Business.** *If* a proposed Trust Company fails to open for
9 business within six (6) months after the date the license was issued, or
10 within an additional six (6) month extension granted by the Commissioner
11 upon written application and for good cause shown, the Commissioner
12 shall issue an order canceling the Trust Company's license.

13 **Section 2.3. Renewal.** The renewal application shall
14 consist of a letter identifying the Company and stating that it is applying to
15 renew its license, accompanied by adequate proof of compliance with the
16 requirements of §§160005 and 160018 of the Act, and expiring not later
17 than the end of the year for which renewal of the license is sought, together
18 with a check for the annual license fee in the amount set forth in §160013 of
19 the Act, and filing of clearance that taxes due are paid to obtain a license in
20 accordance with §70132 of Title 11 of the Guam Code Annotated. Each
21 application for the renewal of Trust Company license under this Act shall
22 be filed no later than June 1st of each year. Each application for a renewal
23 license shall be deemed to be granted, *unless* within thirty (30) days from
24 receipt of the application the Commissioner notifies the applicant in

1 writing that its application has been rejected and stating the reasons
2 therefore.

3 **Section 3. Annual Audited Report.**

4 **Section 3.1. Report Form.** The annual audit report
5 shall consist of the following:

6 **(a) Opinion of Independent Certified Public Accountant.**

7 1. Financial statements furnished pursuant to this
8 Section shall be prepared in accordance with generally
9 accepted accounting principles and be examined by an
10 Independent Auditor in accordance with generally accepted
11 auditing procedures.

12 2. The opinion of the Independent Auditor shall cover
13 all years presented.

14 3. The opinion shall be addressed to the Company on
15 stationery of the Independent Auditor showing the address of
16 issuer, shall bear original and manual signatures and shall be
17 dated.

18 **(b) Report of Evaluation of Internal Controls.**

19 1. This report shall include an evaluation of the
20 internal controls of the Company relating to the methods and
21 procedures used in the securing of assets and reliability of the
22 financial records, including, but not limited to, such controls as
23 the system of authorization and approval and the separation of
24 duties.

1 2. The review shall be conducted in accordance with
2 generally accepted auditing procedures. A copy of the report
3 must be filed with the Commissioner.

4 **(c) Letter of Independent Auditor.** The Independent
5 Auditor shall furnish the Company, for inclusion in the filing of the
6 audited annual report, a letter stating that:

7 1. the auditor is independent with respect to the
8 Company and conforms to the standards of that person's
9 profession as contained in the Code of Professional Ethics and
10 pronouncements of the American Institute of Certified Public
11 Accountants and pronouncements of the Financial Accounting
12 Standards Board;

13 2. the general background and experience of the staff
14 engaged in the audit including the experience in auditing Trust
15 Companies;

16 3. the accountant understands that the audited annual
17 report and the accountant's opinions thereon will be filed in
18 compliance with this regulation with the Commissioner;

19 4. the accountant consents to the requirements of §3 of
20 these regulations and further consents and agrees to make
21 available for review by the Commissioner, the auditor's
22 designee or the auditor's appointed agent, the work papers as
23 defined in §3.3 of the regulations; *and*

1 5. the accountant is properly licensed on Guam and
2 that the accountant is a member in good standing in the
3 American Institute of Certified Public Accountants.

4 **(d) Financial Statements.** Statements required shall be as
5 follows:

- 6 (1) balance sheet;
- 7 (2) statement of earnings or loss from operations;
- 8 (3) statement of cash flows;
- 9 (4) statement of changes in paid-in capital and
10 contributed surplus and unassigned funds; *and*
- 11 (5) notes to financial statements.

12 **Section 3.2. Change of Independent Auditor.** Each Trust
13 Company that is licensed under the Act shall notify the Commissioner in
14 writing of any change in the Independent Auditor appointed by the
15 Company. The change appointment of the Independent Auditor shall be
16 deemed to be approved by the Commissioner, *unless* notice is given to the
17 Company within thirty (30) days after receipt of the notice by the
18 Commissioner's Office, that the auditor is *not* approved, in which case the
19 Company shall appoint a substitute and notify the Commissioner of the
20 substitute auditor, which substitute shall be subject to the approval of the
21 Commissioner under this Subsection.

22 **Section 3.3. Access to and Maintenance of Working**
23 **Papers of Independent Auditor.** Each Trust Company that is
24 licensed under the Act shall require its Independent Auditor to make

1 available for review by the Commissioner, or the Commissioner's
2 appointed agent, the work papers prepared in the conduct of the audit of
3 the Company. The Trust Company shall require that the Independent
4 Auditor retain the audit work papers for a period of not less than five (5)
5 years after the period reported upon.

6 The aforementioned review by the Commissioner shall be considered
7 investigations, and all work papers obtained during the course of such
8 investigations shall be confidential. The Trust Company shall require that
9 the Independent Auditor provide photocopies of any of the work papers,
10 which the Commissioner considers relevant. Photocopies of such work
11 papers may be retained by the Commissioner.

12 'Work Papers' as referred to in this Section include, but are *not*
13 necessarily limited to, schedules, analysis, reconciliations, abstracts,
14 memoranda narratives, flow charts, copies of Company records or other
15 documents prepared or obtained by the accountant and the accountant's
16 employees in the conduct of their examination of the Company.

17 **Section 3.4. Security.** Whenever the Commissioner
18 deems that the financial condition of the Trust Company warrants
19 additional security, the Commissioner may require the Company to
20 deposit with the Treasurer of Guam, or an escrow agent approved by the
21 Commissioner, cash or securities approved by the Commissioner or,
22 *alternatively*, to furnish the Commissioner a clean irrevocable letter of credit
23 issued by a member bank of the Federal Reserve System which is licensed
24 on Guam, and approved by the Commissioner.

1 The Trust Company may receive interest or dividends from said
2 deposit or exchange the deposits for others of equal value with the
3 approval of the Commissioner.

4 *If such Company discontinues business and surrenders its license,*
5 *the Commissioner shall return such deposit only after being satisfied that*
6 *all obligations of the Company have been discharged.*

7 **Section 3.5. Notice of Adverse Financial Condition.**

8 Each Trust Company that is licensed under the Act shall require its
9 Independent Auditor to immediately notify in writing the president, or the
10 president's designee, and all members of the board of directors of the Trust
11 Company of any determination by the Independent Auditor that the
12 Company has materially misstated its financial condition in any of its
13 reports to the Commissioner. The president of the Trust Company, or the
14 president's designee, shall furnish such notification to the Commissioner
15 within fifteen (15) days of receipt of such information from the
16 Independent Auditor.

17 **Section 4. Other Requirements and Restrictions.**

18 **Section 4.1. Minutes of Annual Meeting of the Board of**
19 **Directors.** For a Trust Company that is licensed under the Act, copies of
20 the minutes of the annual meeting of the board of directors shall be filed
21 with the Commissioner within thirty (30) days after such meeting.

22 **Section 4.2. Principal Place of Business.** A Trust
23 Company shall have an office on Guam in which it maintains its business
24 and corporate records and financial books. A Trust Company may

1 establish its principal office on Guam in office space that it shares with
2 other businesses, including other Trust Companies or affiliates; *provided*,
3 that the office equipment, corporate records, and financial books of
4 accounts of the Trust Company are kept separate and distinct from those of
5 other businesses, including other Trust Companies or affiliates.

6 **Section 4.3. Resident Registered Agent for Service of**
7 **Process.**

8 The registered agent of a Trust Company shall be either a licensed
9 individual who resides on Guam or a corporation or a partnership or a
10 limited liability company formed on Guam that maintains an office on
11 Guam that is regularly open for business during normal business hours.
12 This registered agent may be an attorney, CPA, certified financial advisor
13 or other professional representative, who shall be responsible for
14 maintaining the corporate records and financial books for the Guam-based
15 trust. Both the registered agent for service of process and the Trust
16 Company licensed under the Act shall notify the Commissioner in writing
17 within ten (10) days of any change in the address of its registered agent for
18 service of process.

19 **Section 4.4. Deposits in Local Financial Institution.**

20 All payments and deposits of the Trust Company licensed under the
21 Act shall be made in a local financial institution as defined in §1(f), above.

22 **Section 5. Regulatory Fees.**

23 **Section 5.1. Amount.** The Commissioner will charge and
24 collect a fee from each Trust Company for conducting any examination,

1 supervision, audit or investigation which is required or authorized under this
2 Act, based on cost per hour per examiner, plus travel, *per diem* and other
3 expenses related to the such activity.

4 **Section 5.2. Payment.** The Commissioner will bill each
5 Trust Company upon the completion of the activity for the fee established in
6 §5.1, above. The fee must be paid within thirty (30) days after the date the bill
7 is received. *Except* as otherwise provided in this Subsection, any payment
8 received after that date must include a penalty of ten percent (10%) of the fee,
9 plus an additional one percent (1%) of the fee for each month, or portion of a
10 month, that the fee is *not* paid. The Commissioner may waive the penalty for
11 good cause.

12 **Section 5.3. Failure to Pay.** Failure of a Trust Company to
13 pay the fee required in §5.2, above, as provided in this Section constitutes
14 grounds for revocation of its license.

APPENDIX A

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

_____, 19____

TO: Commissioner

WE, THE UNDERSIGNED, intending to organize and establish a corporation to engage in the trust company business as provided in Guam Trust Companies Act, do hereby make application for permission to organize said trust company, and propose as follows:

1. That the main office of said trust company be located at

in the City of _____, Guam.

2. That, in order of preference, said trust company have one of the following three titles:

A. _____

B. _____

C. _____

All questions should be answered completely. If answer is no or none, this should be indicated. The questions should not be answered by referral to other documents. To the extent possible, they should be answered in the space provided with insert pages utilized as necessary. All dollar amounts should be rounded to the nearest hundred, unless other-wise noted.

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

(continued)

3. That the total consideration received by said trust company for the shares issued by it be allocated as follows:

Capital	_____
Surplus	_____
Total Capitalization	_____
Number of Shares Authorized	_____
Number of Shares Issued	_____
Par Value Per Share	_____
Sale Price Per Share	_____

4. That _____
Name of Agent
- Of _____, _____
Mailing Address City or Town
- _____ act as sole and exclusive
State and Zip Code

agent to represent and appear for the undersigned before the Banking Commissioner and to receive all correspondence and documents, in respect to this application, in accordance with annexed Appointment of Agent.

REPRESENTATIONS

THE UNDERSIGNED, in seeking approval to organize a trust company hereby jointly and severally represent and warrant to the Banking Commissioner as follows:

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

(continued)

FIRST, that the undersigned are not a party to any written or oral agreement or understanding providing for the sales, pledge, transfer, or other disposition of any stock in the said trust company to be owned by the undersigned except as follows:

<u>Named of Undersigned Parties to the Agreement</u>	<u>Names of Other Parties to the Agreement</u>	<u>Date and General Terms of Agreement</u>

SECOND, there is no agreement between any other party and the undersigned to sell, pledge, transfer or otherwise dispose of any stock in the said trust company to the undersigned except as follows:

<u>Names of Undersigned Parties to the Agreement</u>	<u>Names of Other Parties to the Agreement</u>	<u>Date and General Terms of Agreements</u>

THIRD, that the undersigned are not acting as representative of, or on behalf of, any person, partnership, association, or corporation undisclosed to the Banking Commissioner.

FOURTH, that the undersigned have not directly or indirectly paid, or agreed to pay to, or received, or agreed to receive, from any person partnership, association, or corporation any money or other thing of rendered, or to be rendered, or for any property transferred, or to be transferred, in connection with the organization of said trust company except as follows:

<u>Name(s) of Payor(s)</u>	<u>Name(s) of Payee(s)</u>	<u>Reason for Payment</u>	<u>Date Paid</u>	<u>Amount</u>

APPLICATION FOR PROPOSED NEW TRUST COMPANY

(continued)

APPOINTMENT OF AGENT

KNOW all persons by these presents, that the undersigned hereby make constitute, appoint, and designate

_____	_____	_____
(First Name)	(Middle Name)	(Last Name)
_____	_____	_____
(Number and Street)	(City and State)	(Zip Code)
_____	_____	_____
(Area Code)	(Telephone Number)	

as our sole and exclusive agent.

IN connection with this application, said Agent is hereby authorized to represent and appear for the undersigned before the Commissioner and except in instances where the Commissioner shall require personal actions by the undersigned, said Agent is hereby empowered and authorized to do and perform all and every act or thing whatsoever necessary, as fully and to all intents and purposes as the undersigned might or could do if personally present at the doing thereof, and to receive all correspondence and documents from the Banking Commissioner.

THE Agency created hereunder shall automatically terminate upon the date the proposed trust company shall become a body corporate and the interim directors thereof appointed in accordance with the law.

THE Agency created hereunder is, and shall be, irrevocable except by resolution adopted by a majority of the undersigned, which resolution shall be certified to the Commissioner by the undersigned voting for the same.

THE undersigned jointly and severally represent and warrant to the Banking Commissioner that the complete terms of the agreement with said Agent pertaining to compensation of said Agent for services performed, and to be performed by said Agent, are as follows, and that the undersigned are not directly or indirectly party to any other written or oral agreement or understanding with said Agent relating to such compensation including any agreement or understanding which provides for any payment to said Agent solely contingent upon any action, decision, or forbearance on the part of the Banking Commissioner.

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

(continued)

CERTIFICATE OF AGENT

THIS is to certify and warrant to the Banking Commissioner that the undersigned Agent is not directly or indirectly a party to any written or oral agreement in relation to this Application for a Proposed New Trust Company under the terms of which the undersigned Agent has been paid, or will be paid, any money or other thing of value solely contingent upon the taking of any action, decision or forbearance to take action on the part of the Banking Commissioner.

Signature of Agent

Date

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

(continued)

THE undersigned acknowledge that any misrepresentation or omission or a material fact, with respect to the foregoing, or with respect to any other documents or papers submitted by the undersigned, to the Banking Commissioner in connection with the organization of the said trust company shall, unless expressly waived by the Banking Commissioner constitute fraud in the inducement and be grounds for denial of a trust company charter in this or any other matter, grounds to require the resignation of the undersigned as directors or officers of the said trust company, and may subject the undersigned to other legal sanctions.

SIGNATURES OF PARTIES TO THIS APPLICATION

Signature _____

Signature _____

Typed Name _____

Typed Name _____

City _____

City _____

State and Zip Code _____

State and Zip Code _____

Signature _____

Signature _____

Typed Name _____

Typed Name _____

City _____

City _____

State and Zip Code _____

State and Zip Code _____

Signature _____

Signature _____

Typed Name _____

Typed Name _____

City _____

City _____

State and Zip Code _____

State and Zip Code _____

Signature _____

Signature _____

Typed Name _____

Typed Name _____

City _____

City _____

State and Zip Code _____

State and Zip Code _____

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

(continued)

ORGANIZERS, MANAGEMENT AND OWNERSHIP

Organizers and Proposed Directors

<u>Name</u>	<u>Residence City, State</u>	<u>Proposed Director (Yes or No)</u>	<u>Numbers of Years Trust Company Experience</u>	<u>Par Value Proposed Stock Subscription</u>	<u>Number Shares</u>
-------------	----------------------------------	--	--	--	--------------------------

Proposed Management

<u>Name</u>	<u>Residence City</u>	<u>Proposed Director (Yes or No)</u>	<u>Number of Years Trust Company Experience</u>	<u>Par Value Proposed Stock Subscription</u>	<u>Number Shares</u>
-------------	---------------------------	--	---	--	--------------------------

Total Number Shares #1 and #2 _____

Do not extend the number of shares of a proposed officer if listed under (#1) above.

PERSONAL FINANCIAL QUESTIONNAIRE

Date: _____

Name: _____

Address: _____

City/State/Zip: _____

Submitted in connection with application for:

_____ Trade Name

1. Amount to be invested in business \$ _____ Percentage of ownership this will represent:

2. Investment will be financed in the following manner:

3. Have you ever filed bankruptcy? Yes: _____ No: _____ If yes furnish particulars on page 4 or on a separate sheet.

Have you been associated as an officer, director, stockholders, partner or sole proprietor with any business entity that has filed for protection under the federal bankruptcy law?

Yes: _____ No: _____ If yes furnish particulars on page 4 or on a separate sheet.

4. Last Federal Income Tax Return was filed _____ for year _____
Date

At: _____
City State

Applicants are advised that Federal Income Tax Returns will be required during the licensing investigation.

5. Do you own or control any assets or liabilities located outside the United States?
Yes: _____ No: _____ If yes furnish particulars on page 4 or on separate sheet.

6. Do you control, manage, or hold in trust any assets or liabilities for another person or entity? Yes: _____
No: _____ If yes furnish particulars on page 4 or on separate sheet.

7. Annual Salary \$ _____, Describe other income and annual amount:

Source: _____ \$ _____

Source: _____ \$ _____

Source: _____ \$ _____

Source: _____ \$ _____

Source: _____ \$ _____

8. List any person or entity that controls or owns 10% or more of the applicant and percentage controlled or owned (25% of more ownership or control requires a separate History Record to be submitted):

Name	Address	City/State/Zip Code	%
------	---------	---------------------	---

9. Litigation's, Injunctions and Criminal Complaints:

- A. Has the applicant ever been charged, indicated or summoned to answer for any criminal offense or violation, or had litigation or lawsuit filed against it for any reason whatsoever, regardless of disposition or the event?
 Yes _____ No _____
 If yes, give details in space provided below. List all cases without exception.

Date	Charge or Plaintiff/Defendant and case no.	Location-City & State	Disposition
------	--	-----------------------	-------------

- B. Has a criminal indictment, information, or complaint ever been returned against applicant, but for which applicant was not charged or named as an unindicted co-party?
 Yes _____ No _____ If yes, furnish details on page 4.

- C. Has applicant ever been questioned by a city, state federal or law enforcement agency, commission or committee?
 Yes _____ No _____

- D. Has applicant ever be subpoenaed to appear or testify before a federal, state or country grand jury, board or commission? Yes _____ No _____

- E. Has applicant ever had a civil or criminal record expunged or sealed by a court order?
 Yes _____ No _____ If yes, when _____?
 City, Country & State? _____

- F. Has applicant ever received a pardon for any criminal offense? Yes _____ No _____
 If yes, when? _____ City, Country & State? _____

(If your answer to any of the above questions, A through F, is yes, furnish details on page 4)

Initials of Authorized Principal of Applicant: _____

10. Has applicant ever held a privileged or professional license in any state, including but not limited to the following:

Liquor	Securities Dealer
Real Estate Broker	Contractor
Accounting	Insurance Agency or Broker
Doctor	Lawyer
Mortgage Company	Installment Loan Company

Yes _____ No _____

If yes, state type of license, where, years held and the nature of any disciplinary actions taken against applicant:

11. Financial Questionnaire:

A. Amount to be invested in business? \$ _____
Percentage of ownership this will represent? _____

B. Investment will be financed in the following manner:

C. Has applicant ever filed bankruptcy? Yes _____ No _____
If yes, furnish particulars on separate sheet.

Has applicant been associated with any business entity that has ever filed for protection under the federal bankruptcy law? Yes _____ No _____

D. Last Federal Income Tax Return was filed _____, for year
_____ at _____
(City) (State)

Applicants are advised that Federal Income Tax Returns may be required during the licensing investigation.

E. Does applicant own or control any assets or liabilities located outside the United State?
Yes _____ No _____

F. Does applicant control, manage or hold in trust any assets or liabilities for another person or entity?
Yes _____ No _____

G. Provide copy of most recent financial statement (balances sheet and profit and loss statement). Must be less than a year old. (If applicant is newly formed entity, a start up balances sheet is required.)

H. Did applicant list all of it's assets and liabilities within the preceding schedules?
Yes _____ No _____

Initials of Authorized Principal of Applicant: _____

APPLICANTS' REQUEST TO RELEASE INFORMATION

To: _____

From: _____ (Applicant's Name)

1. I hereby authorize and request all persons to whom this request is presented having information relating to or concerning applicant to furnish such information to duly appointed agent of the Banking Commissioner, whether or not such information would otherwise be protected from disclosure by any constitutional statutory or common law privilege.
2. I hereby authorized and request all persons or entities to whom this request is presented having documents relating to or concerning applicant to permit a duly appointed agent to the Banking Commissioner to review and copy any such documents, whether or not such document would otherwise be protected by any constitutional, statutory, or common law privilege.
3. If the person to who this request is presented is a brokerage firm, bank, savings and loan, or other financial institution or as office of same, applicant hereby authorizes and request that a duly appointed agent of the Banking Commissioner be permitted to review and obtain copies of any and all documents, records or correspondence pertaining to applicant including but not limited to fast loan information notes co-signed by applicant check account records, savings deposit box record, passbook records, and general ledger folio sheets.
4. Applicant does hereby make, constitute and appoint any duly appointed agent of the Department of Revenue and Taxation its true and lawful attorney in fact for it and its name place and stead and on it's behalf and for it's and benefit:
 (a) To request review, copy, sign for, or otherwise act for investigative purposes with respect to documents and information in the possession of the person or entity to whom this request is presented as applicant might;
 (b) To name the person or entity to whom this request is presented and insert that person's name in the appropriate location on this request
5. Application grants to said attorney in fact full power and authority to do, take and perform all and every act and thing whatsoever requisite proper, or necessary to be done in the exercise of any of the rights and powers herein granted as fully to all intents and purposes as applicant might or could do if it were present, with full power of substitution or revocation hereby ratifying and confirming all that said attorney in fact, or his substitute or substitute, shall lawfully do or cause to be done by virtual of this power of attorney and the rights and powers herein granted.
6. This power of attorney ends eighteen (18) months from the date of execution.
7. Applicant has filed with the Department of Revenue and Taxation Insurance, Securities & Banking Division an "application" to be licensed or request for approval of key officer/director/majority owner. Applicant understand that it is seeking the granting of a privilege and acknowledges that the burden of providing it's qualifications for a favorable determination is at all times on it. Applicant accepts any risk or adverse public notice, embarrassment, criticism or other action of financial loss, which may remit from action with respect to this application.
8. Applicant does for itself its heirs, executors, administrators, successors and assignee, hereby release, and forever discharge the person or entity to whom this request is presented and his/it's agents and employees from all and all manner of actions, cause of action, suits, debts, judgements, execution, claims, and demands whatsoever, known or unknown, in law or equity, which applicant ever had, now have, may have, or claim to have against the person or entity to whom this request is presented or his/it's agents or employees arising out of or by reason of complying with this request.
9. Applicant agrees to indemnify and hold harmless the person or entity to whom this request is presented and his/it's agents and employees from and against all claim damages, losses and expenses, including reasonable attorney's fee arising out of or by reason of complying with this request.
10. A reproduction of this request by the Xerox or similar process shall be for all intents and purposes as valid as the original.

In witness whereof I, an authorized principal of the applicant, executed this request at _____,

On this _____ day of _____, 19_____.

Applicant Name: _____

By: _____ Title: _____
(Signature of authorized principal of applicant)

Subscribed and sworn to before me the _____ day of _____, 19_____.

Notary public in and for the country of _____, State of _____

Notary Signature: _____

Notary Seal:

Signature of Agent presenting this request:

_____ Date: _____



MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN
TWENTY-FIFTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

October 14, 1999


The Honorable Carl T.C. Gutierrez
I Maga'lahen Guahan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910



Dear *Maga'lahi* Gutierrez:

Transmitted herewith are Bill No. 335 (COR) and Substitute Bill No.193 (COR) which were passed by *I Mina'Bente Singko Na Liheslaturan Guahan* on October 13, 1999.

Sincerely,


JOANNE M.S. BROWN
Senator and Legislative Secretary

Enclosure (2)

25 pages Bill 335
26 pages of Exhibits
A-T
1 page declaration

2. Bill 193
49 pages of Bill
15 pages of Appendix

CLERK OF THE LEGISLATURE
TRANSMISSION CHECKLIST TO I MAGA'LAHEN GUAHAN
(Included in File w/ All Bills Transmitted)

BILL NO. 193

- EXHIBITS ATTACHED 15
- CONFIRM NUMBER OF PAGES 49
- CAPTION ON CERTIFICATION MATCHES BILL CAPTION
- ENGROSSED SIGN "*" REMOVED FROM BILL
- 15 SENATORS IN SPONSORSHIP OR CONFIRM OTHERWISE
- CERTIFICATION SIGNED BY SPEAKER & LEGIS. SECRETARY
- no EMERGENCY DECLARATION

Confirmed By: sg / JB

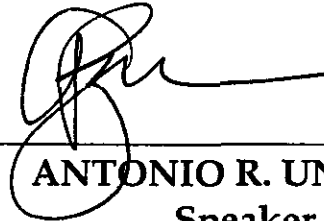
Dated: 10-14-99

- HAND CARRY BILL IN BLUEBACK (ORIGINAL & COPY)
TO THE GOVERNOR. (DANNY, ROBERT OR OTHERS)
- ACKNOWLEDGED COPY W/ ORIGINAL BLUEBACK
PLACED ON CLERK'S DESK. (Same copy given to Susan)
- FILED by: Danny, Robert or others

MINA'BENTE SINGKO NA LIHESLATURAN GUAHAN
1999 (FIRST) Regular Session


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

This is to certify that Substitute Bill No. 193 (COR) "AN ACT TO ADD CHAPTER 160 TO DIVISION 2 OF TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE GUAM-BASED TRUST COMPANIES ACT," was on the 13th day of October, 1999, duly and regularly passed.



ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guahan* this 14th day of October, 1999,
at 9:05 o'clock a.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:

CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date: _____

Public Law No. _____

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
1999 (FIRST) Regular Session

Bill No. 193 (COR)

As substituted by the Committee on
Tourism, Economic Development and Parks
and further substituted on the Floor and
amended in the Committee of the Whole.

Introduced by:

A. C. Lamorena, V
A. R. Unpingco
Mark Forbes
F. B. Aguon, Jr.
E. C. Bermudes
A. C. Blaz
J. M.S. Brown
E. B. Calvo
M. G. Camacho
L. F. Kasperbauer
C. A. Leon Guerrero
K. S. Moylan
V. C. Pangelinan
J. C. Salas
S. A. Sanchez, II

**AN ACT TO ADD CHAPTER 160 TO DIVISION 2 OF
TITLE 11 OF THE GUAM CODE ANNOTATED,
RELATIVE TO ESTABLISHING THE GUAM-BASED
TRUST COMPANIES ACT.**

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

2 **Section 1.** Chapter 160 is hereby *added* to Division 2 of Title 11 of the
3 Guam Code Annotated to read as follows:

1 and phrases, together with all of the common derivatives thereof (i.e.
2 verbs, plurals, feminine gender, etc.) shall have the meaning ascribed to
3 them as follows:

4 (a) *'Beneficiary'* means the person for whose benefit trust
5 property is held.

6 (b) *'Commissioner'* means the Commissioner of Banking of
7 the government of Guam.

8 (c) *'Court Trust'* means the action of a Trust Company
9 acting under appointment, order or decree of any court as
10 executor, administrator, guardian, conservator, assignee, receiver,
11 depository or trustee, or receiving on deposit money or property
12 from a public administrator under any provision of this Chapter
13 or from any executor, administrator, guardian, conservator,
14 assignee, receiver, depository or trustee under any order or decree
15 of any court.

16 (d) *'Equitable Duties'* include the common law duties of a
17 trustee, the duty to exercise reasonable care, skill and caution in
18 preserving and enhancing trust property, the duty to act with
19 undivided loyalty to the beneficiaries of a trust and the duty to act
20 with impartiality among all beneficiaries.

21 (e) *'Fiduciary'* means trustee, agent, executor,
22 administrator, committee, guardian, conservator for a minor or
23 other incompetent person, receiver, trustee in bankruptcy,
24 assignee for creditors or any holder of a similar position of trust.

1 (f) *'Investment Company'* means any issuer which is, or
2 holds itself out as, being engaged primarily, or proposes to engage
3 primarily, in the business of investing, reinvesting or trading in
4 securities.

5 (g) *'Investment Trust'* means a company which sells its
6 own stock and invest the money in stocks, real estate and other
7 investment.

8 (h) *'Net Worth'* means paid in capital plus paid in surplus
9 plus retained earnings, if any.

10 (i) *'Person'* means an individual, a partnership, a
11 corporation and any other entity established by law or otherwise
12 established for a stated purpose.

13 (j) *'Private Trust'* means every other trust, agency,
14 fiduciary relationship or representative capacity other than a court
15 trust.

16 (k) *'Settlor'* means a person who creates a trust.

17 (l) *'Trust'* means a fiduciary relationship with respect to
18 property, the trust property, which arises as a result of a
19 manifestation of an intention to create it and which subjects the
20 person by whom the property is held, the trustee, to equitable
21 duties to deal with the property for the benefit of another person,
22 the beneficiary.

1 (m) 'Trust Company' means a corporation organized and
2 licensed in Guam as provided in this Chapter and engaged in
3 Trust Company business.

4 (n) 'Trust Company Business' means acting as a trustee and
5 engaging in those activities stated in §160301.1.

6 (o) 'Trustee' means a person who is subject to equitable
7 duties and who holds trust property for a beneficiary.

8 (p) 'Trust Property' means property held in a trust.

9 **Section 160103. Applicability of Chapter.** This Chapter does
10 *not* apply to:

11 1. banks or banking institutions regulated under the
12 provisions of Chapter 100 of Title 11 of the Guam Code
13 Annotated;

14 2. savings and loan institutions regulated under Chapter
15 141 of Title 11 of the Guam Code Annotated;

16 3. title insurers, but only respecting escrows;

17 4. nonprofit, charitable trusts or trust associations; *or*

18 5. any person, *if*:

19 (a) the fiduciary relationship is *not* one of the
20 person's principal occupations; *or*

21 (b) that person serves as trustee for a relative by
22 blood or marriage.

23 **Article 2.**

24 **Organization and Licensing.**

1 Any three (3) or more persons, *except* in the case of a limited liability
2 company which may be incorporated with two (2) or more persons, may
3 execute articles of incorporation and be incorporated as a Trust
4 Company in the manner prescribed in this Chapter.

5 **Section 160205. Contents of Articles of Incorporation.**

6 1. The articles of incorporation must contain:

7 (a) the corporate name adopted by the corporation,
8 which must be such as to distinguish it from any other Trust
9 Company formed or incorporated on Guam, or engaged in
10 the trust business on Guam;

11 (b) the place where its business is to be conducted;

12 (c) the purpose for which it is formed;

13 (d) the amount of its capital stock, which must be
14 divided into shares of the par value of *not* less than Twenty-
15 five Dollars (\$25.00) each, *except* that upon the written
16 approval of the Commissioner the capital stock may be
17 divided into shares of the par value of not less than One
18 Dollar (\$1.00) each (The amount of capital stock must not be
19 less than One Hundred Thousand Dollars (\$100,000.00), and
20 must be assessable.);

21 (e) the amount of its original paid-in surplus, which
22 must *not* be less than fifty percent (50%) of its capital stock;

23 (f) the name and place of residence of, and the
24 number of shares subscribed by, each stockholder;

1 (g) the number of directors, which must not be less
2 than three (3), and the names of the stockholders selected to
3 act as the first board of directors, each of whom must be a
4 *bona fide* subscriber for at least One Thousand Dollars
5 (\$1,000.00) of the stock of the Trust Company, fully paid and
6 *not* hypothecated;

7 (h) the location of all branch offices as approved by
8 the Commissioner; *and*

9 (i) such other matters, not inconsistent with law, as
10 the incorporators may deem proper.

11 2. The articles of incorporation may also provide for the
12 issuance and sale of preferred stock in such amount as is fixed by
13 the articles or by amendments thereto, and the amount and
14 number of shares thereof, and the terms and conditions thereof
15 consistent with the provisions of this Chapter.

16 **Section 160206. Commissioner to Issue Certificate of**
17 **Incorporation; Commissioner Must Authorize Business Before**
18 **Company May Transact Business.**

19 1. The Commissioner shall issue a certificate in the form
20 provided by law for other corporations, and the existence of the
21 Trust Company as a corporation dates from the issuance of the
22 certificate by the Commissioner, from which time it has and may
23 exercise the powers conferred by law upon corporations generally,
24 *except* as limited or modified by this Chapter.

1 2. The Trust Company shall transact no business, *except*
2 the election of officers, and the taking and approving of their
3 official bonds, and the receipt of payments on account of the
4 subscriptions of the capital stock, and such other business as is
5 incidental to its organization, until it is authorized by the
6 Commissioner to commence the Trust Company business as
7 provided in this Chapter.

8 **Section 160207. Subscription, Acknowledgment and Filing of**
9 **Articles of Incorporation; Filing of Copies.** The articles of
10 incorporation must:

11 (a) be subscribed to by at least three (3) of the
12 stockholders of the proposed corporate Trust Company;

13 (b) be acknowledged by them before some person
14 competent to take an acknowledgment of deeds; *and*

15 (c) be filed in the office of the Commissioner.

16 **Section 160208. Application for License: Contents; Fees.**

17 1. The corporate Trust Company shall file an application
18 for a license to transact Trust Company business with the
19 Commissioner on forms prescribed by the Commissioner, which
20 must contain such information as the Commissioner requires.

21 2. A non refundable fee of One Thousand Dollars
22 (\$1,000.00) for the application and investigation must accompany
23 the application. The applicant shall also pay such additional

1 expenses incurred in the process of investigation as the
2 Commissioner deems necessary.

3 3. Notification of the location of a Trust Company branch
4 office shall be made to the Commissioner, accompanied by a non-
5 refundable fee in the amount of Two Hundred Fifty Dollars
6 (\$250.00).

7 4. All money received by the Commissioner pursuant to
8 this Section must be placed in a special purpose trust account,
9 pursuant to §160307 of this Act.

10 **Section 160209. Procedure for Granting or Denying License.**

11 1. Within forty-five (45) days following the filing of the
12 application for a license, the Commissioner shall investigate the
13 facts of the application and the other requirements of this Chapter
14 to determine:

15 (a) that the persons who will serve as directors or
16 officers are qualified by character and experience;

17 (b) that the financial strength of the significant
18 incorporators, ten percent (10%) or more ownership, are
19 commensurate with the undertaking;

20 (c) that the name of the proposed company is *not*
21 deceptively similar to that of another Trust Company or
22 otherwise misleading;

23 (d) that the capital and surplus are *not* less than the
24 required minimum; *and*

1 (e) such other matters concerning the proposed
2 Trust Company as the Commissioner may deem relevant.

3 2. Within thirty (30) days after the application is filed, the
4 Commissioner shall conduct a public hearing to consider the
5 application. The Commissioner shall give two (2) written notices
6 of the public hearing in a newspaper of general circulation on
7 Guam. Publication of such notices should be no more than fifteen
8 (15) days, nor less than two (2) complete days, before the hearing
9 date. Costs of publication and other directly related expenses
10 shall be paid by the applicant.

11 **Section 160210. Issuance or Denial of License; Renewal.**

12 1. *If* the Commissioner finds that the applicant has met
13 all the requirements of this Chapter and other applicable laws, the
14 Commissioner shall, within thirty (30) days after the conclusion of
15 the investigation, issue a license to the applicant to conduct a
16 Trust Company business upon the applicant's paying the required
17 license fee. *Otherwise*, the Commissioner shall deny the
18 application and notify the applicant in writing of the reasons for
19 the denial.

20 2. All licenses granted under the Act shall expire on the
21 June 30 following the date of issuance. On or before June 1 of each
22 year thereafter, every company holding a license that wishes to
23 renew the license for an additional year shall apply to the
24 Commissioner for a renewal of the license.

25 **Section 160211. License Fees; Renewals.**

1 1. The initial fee to be paid for a Trust Company license
2 must be in proportion to the authorized capitalization of the Trust
3 Company as follows:

4 (a) a Trust Company having a capitalization of more
5 than One Hundred Thousand Dollars (\$100,000.00), up to
6 and including Five Hundred Thousand Dollars
7 (\$500,000.00), shall pay a license fee of Five Hundred Dollars
8 (\$500.00);

9 (b) a Trust Company having a capitalization of more
10 than Five Hundred Thousand Dollars (\$500,000.00), up to
11 and including One Million Dollars (\$1,000,000.00), shall pay
12 a license fee of Seven Hundred Fifty Dollars (\$750.00); *and*

13 (c) a Trust Company having a capitalization of more
14 than One Million Dollars (\$1,000,000.00) shall pay a license
15 fee of One Thousand Dollars (\$1,000.00).

16 2. In addition, every Trust Company shall pay an initial
17 license fee of One Hundred Dollars (\$100.00) for each branch
18 office that may be authorized by the Commissioner.

19 3. Thereafter, every Trust Company shall pay annually,
20 on or before June 30 of each year, a license fee which must be in
21 proportion to its initial paid-in capital and surplus, or to its net
22 worth as of December 31st of the preceding year, whichever is
23 higher, as follows:

1 (a) a Trust Company having a capitalization of less
2 than One Hundred Thousand Dollars (\$100,000.00) shall pay
3 a license fee of Two Hundred Fifty Dollars (\$250.00);

4 (b) a Trust Company having a capitalization of more
5 than One Hundred Thousand Dollars (\$100,000.00), up to
6 and including Five Hundred Thousand Dollars
7 (\$500,000.00), shall pay a license fee of Five Hundred Dollars
8 (\$500.00);

9 (c) a Trust Company having a capitalization of more
10 than Five Hundred Thousand Dollars (\$500,000.00), up to
11 and including One Million Dollars (\$1,000,000.00), shall pay
12 a license fee of Seven Hundred Fifty Dollars (\$750.00); *and*

13 (d) A Trust Company having a capitalization of
14 more than One Million Dollars (\$1,000,000.00) shall pay a
15 license fee of One Thousand Dollars (\$1,000.00).

16 4. All money collected under the provisions of this
17 Section must be paid into the special purpose trust account as
18 directed under §160307.

19 **Section 160212. Cancellation of License If Trust Company Fails**
20 **to Open for Business.** *If a proposed Trust Company fails to open*
21 *for business within six (6) months after the date the license was issued,*
22 *or within an additional six (6) month extension granted by the*
23 *Commissioner upon written application and for good cause shown, the*
24 *Commissioner shall issue an order canceling the Trust Company's*
25 *license.*

1 **Article 3.**

2 **Powers and Miscellaneous Provisions.**

3 **Section 160301. Powers of Licensed Trust Companies; Banking**
4 **Business Prohibited.**

5 **Section 160302. Investments; General Requirements.**

6 **Section 160303. Investments; Purchase of Securities**
7 **Authorized.**

8 **Section 160304. Other Requirements.**

9 **Section 160305. Discontinuing Business.**

10 **Section 160306. Commissioner in Possession.**

11 **Section 160307. Requirements of Reorganization Plan.**

12 **Section 160308. Liquidation by Commissioner.**

13 **Section 160309. Fidelity Bonds; Insurance.**

14 **Section 160310. Income Tax Rebates.**

15 **Section 160311. Use of Funds.**

16 **Section 160312. Confidentiality Treatment of Trust**
17 **Information.**

18
19 **Section 160301. Powers of Licensed Trust Companies; Banking**
20 **Business Prohibited.** (1) Each licensed Trust Company may:

21 (a) act as trustee under any mortgage or bond of any
22 person or of any municipality or body politic;

23 (b) accept and execute any municipal or corporate or
24 individual trust consistent with the laws of Guam;

1 (c) act under the order or appointment of any court
2 as guardian, administrator, receiver or trustee;

3 (d) act as executor or trustee under any will or
4 intervivos trust;

5 (e) act as fiscal or transfer agent of any state,
6 municipality, body politic or corporation, and in such
7 capacity receive and disburse money and register, transfer
8 and countersign certificates of stock, bonds and other
9 evidences of indebtedness;

10 (f) act as local or resident agent of foreign
11 corporations;

12 (g) accept and execute any trust business;

13 (h) acquire the fiduciary rights, powers, duties and
14 liabilities of a bank, savings and loan association, thrift
15 company, or Trust Company licensed pursuant to Title 11 of
16 the Guam Code Annotated, and upon the effective date of
17 such an acquisition, the fiduciary rights, powers, duties and
18 liabilities of the bank, savings and loan association, thrift
19 company, or Trust Company vest in and must be performed
20 by the acquiring Trust Company; *and*

21 (i) do and perform all acts necessary to exercise the
22 powers enumerated in this Subsection and authorized by
23 this Chapter.

24 2. A Trust Company may *not* engage in any banking
25 business by accepting deposits or making loans.

1 **Section 160302. Investments; General Requirements.**

2 1. Every Trust Company:

3 (a) shall keep all trust funds and investments
4 separate from the assets of the Company (These funds shall
5 not be mingled with the securities and investments of any
6 other trust or of the corporation, and all investments made
7 by the Company as a fiduciary must be designated so that
8 the trust or estate to which the investments belong may be
9 clearly identified.);

10 (b) holding trust funds for more than twenty-four
11 (24) hours, awaiting investment or distribution, must
12 deposit or leave on deposit such funds with a local financial
13 institution (Such funds must *not* be deposited or left with the
14 Trust Company or with an affiliate corporation or
15 association, *unless* that affiliate corporation or association
16 first pledges, as security for the deposit, securities eligible
17 for investment by local financial institutions which have a
18 market value equal to that of the deposited funds. No
19 security is required with respect to any portion of such
20 deposits which is insured under the provisions of any law of
21 the United States.);

22 (c) acting in any capacity under a court trust or
23 private trust, *unless* the instrument creating the trust
24 provides otherwise, may cause any securities held by it in its

1 representative capacity to be registered in the name of a
2 nominee or nominees of the Company; *and*

3 (d) when acting as depositary or custodian for the
4 personal representative of a court trust or private trust,
5 *unless* the instrument creating the trust provides otherwise,
6 may with the consent of the personal representative of the
7 trust, cause any securities held by it to be registered in the
8 name of a nominee or nominees of the Company.

9 2. Every Trust Company is liable for any loss occasioned
10 by the acts of its nominees with respect to securities registered
11 under this Section.

12 3. No corporation or the registrar or transfer agent of the
13 corporation is liable for registering or causing to be registered on
14 the books of the corporation any securities in the name of any
15 nominee of a Trust Company, or for transferring or causing to be
16 transferred on the books of the corporation any securities
17 registered by the corporation in the name of any nominee of a
18 Trust Company, when the transfer is made on the authorization of
19 the nominee.

20 4. *Except* as provided in Subsection 5, a Trust Company's
21 investments of invested capital and earnings, must:

22 (a) be U.S. governmental obligations or Federally
23 insured deposits; *or*

24 (b) be investment grade securities and mature
25 within three (3) years after acquisition. The aggregate

1 market value of all investments must equal or exceed sixty
2 percent (60%) of the Company's current capital, surplus and
3 undivided profits, or sixty percent (60%) of the Company's
4 capital and surplus when it was organized, whichever is
5 greater.

6 5. A Trust Company may purchase or rent land, facilities
7 and equipment for use in the daily activities of the company.

8 **Section 160303. Investments; Purchase of Securities**
9 **Authorized.**

10 1. A Trust Company which is acting as a fiduciary or
11 agent shall, in its discretion or at the direction of another person
12 who is authorized to direct the investment of money held by the
13 Trust Company as a fiduciary or agent, make investments in
14 accordance with the Uniform Prudent Investors Act, as adopted in
15 1994 by the National Conference of Commissioners on Uniform
16 State Laws, *if*:

17 (a) the investment trust or investment company is
18 registered with the Commissioner; *and*

19 (b) the portfolio of the investment trust or
20 investment company consists substantially of investments
21 which are *not* prohibited by the instrument creating the
22 fiduciary or agency relationship.

23 2. A Trust Company or an affiliate of the Trust Company
24 may provide services to the investment trust or investment
25 company, including, without limitation, acting as an investment

1 adviser, custodian, transfer agent, registrar, sponsor, distributor or
2 manager, and may receive reasonable compensation for the
3 services. The manner in which the compensation is calculated
4 must be disclosed to the person who is currently receiving the
5 benefits of the fiduciary or agency relationship with the Trust
6 Company. The disclosure shall be made in a prospectus, a report
7 to the Trustor or manner prescribed by the Commissioner.

8 3. A Trust Company may deposit money held by the
9 Trust Company as a fiduciary or agent with an affiliate before
10 investing or making other disposition of the money.

11 **Section 160304. Other Requirements.**

12 1. **Annual Statement.** Every Trust Company that is
13 licensed under the Act shall, on or before May 1 of each year, file
14 with the Commissioner, a financial statement verified under oath
15 by two (2) executive officers of the company, setting forth its
16 financial condition, transactions and affairs as of the 31st day of
17 December immediately preceding, in accordance with generally
18 accepted accounting principles plus any additional information
19 required by the Commissioner.

20 2. **Annual Audit.** Every Trust Company that is licensed
21 under the Act shall file an annual audit report to accompany the
22 filing of an annual statement prior to May 1 of each year. The
23 audit report shall be rendered by its appointed, Independent
24 Auditor as approved by the Commissioner, and shall cover the
25 financial condition, transactions and affairs as of the 31st day of

1 December immediately preceding in accordance with generally
2 accepted auditing standards. The audited report shall include an
3 unqualified opinion with respect to the financial condition of the
4 Company, *except* that the Commissioner may accept qualified
5 opinions at the discretion of the Commissioner.

6 **3. Notification.** An auditor who is aware that the
7 Trust Company failed to meet the necessary capital and surplus
8 requirements of the Act, or who has rendered other than an
9 unqualified opinion on the financial condition of a Trust
10 Company, and the president of the Trust Company shall both
11 notify the Commissioner in writing within fifteen (15) days of the
12 discovery of failure of the Trust Company to meet the capital or
13 surplus requirements of the Act or within fifteen (15) days of the
14 issuance of such qualified opinion.

15 **Section 160305. Discontinuing Business.**

16 1. Whenever any Trust Company desires to discontinue
17 its trust business, it shall do the following:

18 (a) publish the intention of the company, once a
19 week for three (3) consecutive weeks in a newspaper of
20 general circulation on Guam; *and*

21 (b) submit an affidavit to the Commissioner that all
22 the obligations and indebtedness arising from its trust
23 business and operations on Guam have been satisfactorily
24 discharged.

1 2. After the Trust Company has furnished proof of
2 publication and the affidavit, and no objection to discontinue
3 business or no proof is submitted by any claimant of an
4 outstanding receivable or claim against the Trust Company, the
5 Commissioner shall enter an order canceling the Trust Company's
6 license.

7 **Section 160306. Commissioner in Possession.**

8 (a) The Commissioner may take possession of a Trust
9 Company *if*, after a hearing, the Commissioner shall find:

10 (1) its capital is impaired or it is otherwise in an
11 unsound condition;

12 (2) its business is being conducted in an unlawful or
13 unsound manner;

14 (3) it is unable to continue normal operations; *or*

15 (4) its examination has been obstructed or impeded.

16 (b) The Commissioner shall take possession by posting
17 upon the premises a notice reciting that the Commissioner is
18 assuming possession pursuant to this Act, and the time, *not* earlier
19 than the posting of the notice, when the Commissioner's
20 possession shall be deemed to commence. A copy of the notice
21 shall be filed in the U.S. District Court of Guam. The
22 Commissioner shall notify the trustor of all the trusts under the
23 management of the Trust Company.

24 (c) When the Commissioner has taken possession of a
25 Trust Company, the Commissioner shall be vested with the full

1 and exclusive power of management and control, including the
2 power to continue or to discontinue the business, to stop or to
3 limit the payment of its obligations, to employ any necessary
4 assistants, to execute any instrument in the name of the Trust
5 Company, to commence, defend and conduct in its name any
6 action or proceeding in which it may be a party, to terminate the
7 Commissioner's possession by restoring the Trust Company to its
8 board of directors and to reorganize or liquidate the Trust
9 Company in accordance with this Act. As soon as practicable after
10 taking possession, the Commissioner shall make an inventory of
11 the assets and file a copy thereof with the U.S. District Court of
12 Guam.

13 (d) When the Commissioner has taken possession there
14 shall be a postponement until six (6) months after the
15 commencement of such possession of the date upon which any
16 period of limitation fixed by a statute or agreement would
17 otherwise expire on a claim or right of action of the Trust
18 Company, or upon which an appeal must be taken or a pleading
19 or other document must be filed by the Trust Company in any
20 pending action or proceeding.

21 (e) *If*, in the opinion of the Commissioner, an emergency
22 exists which will result in serious losses to the trustors and
23 creditors, the Commissioner may take possession of the Trust
24 Company without a prior hearing. Within ten (10) days after the
25 Commissioner has taken possession, any interested party may file

1 an application with the U.S. District Court of Guam for an order
2 vacating such possession. The U.S. District Court of Guam shall
3 grant the application *if* it finds that the action of the Commissioner
4 was unauthorized under this Act.

5 (f) *If* the Commissioner shall determine to liquidate the
6 Trust Company, the Commissioner shall give such notice of the
7 Commissioner's determination to the directors, stockholders and
8 the trustors. Any objection to the liquidation shall be filed with
9 the U.S. District Court of Guam within thirty (30) days after such
10 notice. *Unless* within thirty (30) days thereafter, the U.S. District
11 Court of Guam issues an order staying the liquidation, the
12 Commissioner shall proceed to liquidate the Trust Company.

13 (g) *If* the Commissioner determines to reorganize the
14 Trust Company, or the U.S. District Court of Guam, after staying
15 its liquidation, orders such reorganization, the Commissioner,
16 after according a hearing to all interested parties, shall propose a
17 reorganization plan. A copy of the Plan shall be sent to each
18 trustor and creditor who will *not* receive payment of the
19 Commissioner's claim in full under the Plan, together with notice.
20 *Unless* within thirty (30) days the Plan is disapproved in writing
21 by persons holding one-third (1/3) or more of the aggregate
22 amount of such claims, the Commissioner will proceed to effect
23 the reorganization. A department or agency of the government of

1 Guam holding a claim which will *not* be paid in full is authorized
2 to participate as any other creditor.

3 (h) No judgment, lien or attachment shall be executed
4 upon any asset of the Trust Company while it is in the possession
5 of the Commissioner. Upon the election of the Commissioner in
6 connection with a liquidation or reorganization:

7 (1) any lien or attachment, other than a mechanic's
8 lien, obtained upon any asset of the Trust Company during
9 the Commissioner's possession or within four (4) months
10 prior to commencement thereof, shall be vacated, *except* liens
11 created by the Commissioner while in possession; *and*

12 (2) Any transfer of an asset of the Trust Company
13 made after or in contemplation of its insolvency with intent
14 to effect a preference shall be voided.

15 (i) With the approval of the U.S. District Court of Guam,
16 the Commissioner may borrow money in the name of the Trust
17 Company and may pledge its assets as security for the loan.

18 (j) All necessary and reasonable expenses of the
19 Commissioner's possession of a Trust Company and of its
20 reorganization or liquidation shall be defrayed from the assets
21 thereof.

22 **Section 160307. Requirements of Reorganization Plan.**

23 (a) A plan or reorganization shall *not* be prescribed under
24 this Act, *unless*:

1 (1) the plan is feasible and fair to all classes of
2 trustors, creditors and stockholders;

3 (2) the face amount of the interest accorded to any
4 trustors, creditors or stockholders under the Plan does *not*
5 exceed the value of the assets upon liquidation, less that full
6 amount of the claims of all prior classes, subject, *however*, to
7 any fair adjustment for new capital that any class will pay in
8 under the Plan;

9 (3) the Plan provides for the issuance of common
10 stock in an amount that will provide an adequate ratio to all
11 assets held in trust by the Trust Company;

12 (4) the Plan assures the removal of any director,
13 officer or employee responsible for any unsound or
14 unlawful action or the existence of an unsound condition;
15 *and*

16 (5) any merger or consolidation provided by the
17 Plan conforms to the requirements of this Act.

18 (b) Whenever in the course or reorganization supervening
19 conditions render the Plan unfair, or its execution impractical, the
20 Commissioner may modify the Plan or liquidate the institution.
21 Any such action shall be taken by order of the U.S. District Court
22 of Guam upon appropriate notice.

23 **Section 160308. Liquidation by Commissioner.**

1 (a) In liquidating a Trust Company, the Commissioner
2 may exercise any power thereof, but the Commissioner shall *not*,
3 without the approval of the U.S. District Court of Guam:

4 (1) sell any asset of the Trust Company having a
5 value in excess of One Thousand Dollars (\$1,000.00);

6 (2) compromise or release any claim, *if* the amount
7 of the claim exceeds Five Hundred Dollars (\$500.00),
8 exclusive of interest; *or*

9 (3) make any payment on any claim, other than a
10 claim upon an obligation incurred by the Commissioner,
11 before preparing and filing a schedule of the
12 Commissioner's determinations in accordance with this Act.

13 (b) Within six (6) months of the commencement of
14 liquidation, the Commissioner may by the Commissioner's
15 election terminate any executory contract for services or
16 advertising to which the Trust Company is a party, or any
17 obligation of the Trust Company as a lessee. A lessor who
18 receives sixty (60) days notice of the Commissioner's election to
19 terminate the lease shall have no claim for rent other than rent
20 accrued to the date of termination, nor for damages for such
21 termination.

22 (c) As soon after the commencement of liquidation as is
23 practicable, the Commissioner shall take the necessary steps to
24 terminate all fiduciary positions held by the Trust Company, and
25 take such action as may be necessary to surrender all property

1 held by the Trust Company as a fiduciary and to settle its
2 fiduciary accounts.

3 (d) As soon after the commencement of liquidation as
4 practicable, the Commissioner shall send notice of the liquidation
5 to each known trustor and creditor. The notice shall also be
6 published in a newspaper of general circulation on Guam once a
7 week for three (3) successive weeks. The Commissioner shall send
8 with the notice a statement of the amount shown on the books of
9 the Trust Company to be the claim of the trustor or creditor. The
10 notice shall demand that *if* the amount claimed differs from that
11 stated on the notice to be due, be filed with the Commissioner
12 before a specified date *not earlier than* sixty (60) days thereafter in
13 accordance with the procedure prescribed in the notice.

14 (e) Within six (6) months after the last day specified in the
15 notice for the filing of claims or such longer period as may be
16 allowed by the U.S. District Court of Guam in which notice of
17 possession has been filed, the Commissioner shall:

18 (1) reject any claim *if* the Commissioner doubts the
19 validity thereof;

20 (2) determine the amount, *if* any, owing to each
21 known Trustor or creditor;

22 (3) prepare a schedule of the Commissioner's
23 determination for filing in the U.S. District Court of Guam in
24 which notice of possession was filed; *and*

1 (4) notify each person whose claim has *not* been
2 allowed in full, and publish once a week for three (3)
3 successive weeks a notice of the time when and the place
4 where the schedule of determinations will be available for
5 inspection and the date, not sooner than thirty (30) days
6 thereafter, when the Commissioner will file the
7 Commissioner's schedule in Court.

8 (f) Within thirty (30) days after the filing of the
9 Commissioner's schedule, any trustor or creditor or stockholder
10 may file an objection to any determination made. Any objections
11 so filed shall be heard and determined by the Court, upon such
12 notice to the Commissioner and interested claimants as the Court
13 may prescribe. *If* the objection is sustained, the Court shall direct
14 an appropriate modification of the schedule. After filing the
15 Commissioner's schedule, the Commissioner may, from time to
16 time, make partial distribution to the holders of claims which are
17 undisputed or have been allowed by the Court, *if* a proper reserve
18 is established for the payment of disputed claims. As soon as is
19 practicable after the determination of all objections, the
20 Commissioner shall make final distribution.

21 (g) The following claims shall have priority:

22 (1) obligations incurred by the Commissioner;

23 (2) wages and salaries of officers and employees
24 earned during the four (4) month period preceding the
25 Commissioner's possession in an amount *not* exceeding

1 Three Thousand Dollars (\$3,000.00) for any one (1) person;

2 *and*

3 (3) fees and assessments due to the government of
4 Guam.

5 (h) After the payment of all other claims which were
6 timely filed, the Commissioner shall pay claims otherwise proper
7 which were *not* filed within the time prescribed. *If* the sum
8 available for any class is insufficient to provide payment in full,
9 such sum shall be distributed to the claimants in the class *pro rata*.

10 (i) Any assets remaining after all claims have been paid
11 shall be distributed to the stockholders in accordance with their
12 respective interests.

13 (j) Unclaimed funds remaining after completion of the
14 liquidation shall be retained for ten (10) years by the
15 Commissioner, *unless* sooner claimed by the owner. At the
16 expiration of such period, the remaining sum shall be transferred
17 to the Treasurer of Guam as abandoned funds.

18 (k) When the assets have been distributed in accordance
19 with this Act, the Commissioner shall file an account with the U.S.
20 District Court of Guam. Upon approval thereof the Commissioner
21 shall be relieved of liability in connection with the liquidation and
22 the charter of the Trust Company shall be canceled.

23 **Section 160309. Fidelity Bonds; Insurance.**

24 1. The directors of a Trust Company shall require good
25 and sufficient fidelity bonds in the amount of Twenty-five

1 Thousand Dollars (\$25,000.00) or more on all active officers and
2 employees, whether or not they receive a salary or other
3 compensation from the Company, to indemnify the Company
4 against loss because of any dishonest, fraudulent or criminal act or
5 omission by any officer or employee acting alone or in
6 combination with any other person. The bonds may be in any
7 form and may be paid for by the Trust Company.

8 2. The directors shall obtain suitable insurance for their
9 Company against burglary, robbery, theft and other hazards to
10 which it may be exposed in the operation of its business.

11 3. The directors shall at least annually prescribe the
12 amount of penal sum of the bonds or policies and designate the
13 sureties and underwriters thereof, after giving due and careful
14 consideration to all known elements and factors constituting a risk
15 or hazard. The directors' action must be recorded in the minutes
16 of the board of directors and reported to the Commissioner.

17 **Section 160310. Income Tax Rebates.**

18 1. Notwithstanding any other provisions of this Act,
19 Trust Companies licensed pursuant to the provisions of this
20 Chapter and any bank conducting trust business pursuant to
21 §§106151 *et seq.* of Title 11 of the Guam Code Annotated may
22 apply on behalf of the Guam-based trusts under their
23 management, for a Special Qualifying Certificate ('QC') from the
24 Guam Economic Development Authority, which would allow a
25 one hundred percent (100%) tax rebate as authorized under

1 §§58128.6(a) and (b) of Chapter 58 of Title 12 of the Guam Code
2 Annotated. Provided, *however*, notwithstanding any other
3 provision of this Section, the tax rebate shall *not* apply to trust
4 property which has been employed in a business in which the
5 settlor was engaged and trust property which is used to embark
6 upon a business for the settlor or the beneficiary. For the purposes
7 of this Subsection, '*business*' has the same meaning as '*engaging in*
8 *or carrying on a business*' as in the Business License Law in
9 §70103(e) of Title 11 of the Guam Code Annotated, and includes
10 only businesses which are required to be licensed, or are excepted
11 from obtaining a license pursuant to the policy and provisions of
12 §§70102 and 70130 of Title 11 of the Guam Code Annotated.

13 2. The Guam Economic Development Authority is
14 hereby authorized to promulgate rules and regulations to
15 implement a Special QC program to allow for expeditious
16 processing of requests by Trust Companies or trustees of Guam-
17 based trusts, for benefits as provided under §§58128.6(a) and (b) of
18 Chapter 58 of Title 12 of the Guam Code Annotated.

19 3. A true copy of the Special QC shall be attached to each
20 tax return of the Guam-based trust, and the amount of tax due
21 *prior to* the rebate shall be deposited with the government at the
22 time of filing of each income tax return. Taxes deposited on behalf
23 of a Guam-based trust shall *not* be placed in the General Fund or
24 commingled with other funds, but shall be deposited by the

1 Director of Revenue and Taxation in special purpose trust
2 accounts in one (1) or more FDIC insured banks with offices
3 within Guam, and shall be withdrawn from such accounts only
4 for the purpose of:

- 5 (a) making rebates as provided herein; *or*
- 6 (b) making payments as provided in §160308.

7 4. Upon the application of the Guam-based trust at the
8 completion of the one hundred eighty (180) days from the date of
9 filing of income tax returns, the Director of Revenue and Taxation
10 shall immediately thereafter cause the refund of the income tax to
11 the Guam-based trust.

12 **Section 160311. Use of Funds.**

13 1. The income tax payments made under the Special QC
14 program, shall be returned to the respective trusts at the
15 completion of the one hundred eighty (180) day period without
16 interest.

17 2. All other revenues generated from the implementation
18 of this Act, including, but not limited to, the initial and annual
19 License Fees, Examination Fees and interest earned from these
20 funds, shall be allocated as follows:

- 21 (a) *subject* to legislative appropriation, up to fifty
22 percent (50%) to the Chamorro Land Trust Commission, for
23 the purposes of infrastructure development (i.e. roads,
24 power, water, sewer and telephone services) on Chamorro
25 Land Trust properties;

1 (b) *subject* to legislative appropriation, up to ten
2 percent (10%) shall be earmarked for the Department of
3 Revenue and Taxation for maintaining the operational
4 functions of the government of Guam;

5 (c) *subject* to legislative appropriation, up to ten
6 percent (10%) of this revenue, shall be remitted *immediately*
7 to the Guam Economic Development Authority for the
8 development and promotion of Guam's financial services
9 industry; *and*

10 (d) all remaining revenues generated from the
11 implementation of this Act shall be remitted to the General
12 Fund to be appropriated by *I Liheslaturan Guåhan*.

13 **Section 160312. Confidentiality Treatment of Trust**
14 **Information.** All information pertaining to Guam-based trusts
15 shall be deemed proprietorial and confidential *unless*:

16 (a) the Commissioner deems it in the public interest to
17 make such information available for public inspection; *or*

18 (b) the Grantor/Trust authorizes the Commissioner to
19 make available such information for public inspection.

20 **Article 4.**

21 **Examination and Regulation.**

22 **Section 160401. Examination; Powers and Duties of**
23 **Department of Revenue and Taxation.**

1 Commissioner shall charge and collect from the Trust
2 Company a fee for conducting the examination and in
3 preparing and typing the report of the examination at a
4 reasonable rate to be established by the Commissioner.

5 2. All money collected under this Section must be paid
6 directly to the General Fund of the government of Guam and
7 allocated pursuant to §160308.

8 3. The Commissioner shall examine a licensee as often
9 as the Commissioner deems necessary, with cause.

10 **Section 160403. Applicability of Other Provisions of Title.**

11 In addition to other provisions of this Title which are applicable
12 to this Title as a whole or specifically made applicable to Trust
13 Companies, the Commissioner may by regulation make applicable to
14 trust companies any regulatory provision contained therein, which
15 can be reasonably applied and which are *not* inconsistent with the
16 provisions of this Chapter.

17 **Section 160404. Regulations of Commissioner.** The
18 Commissioner may adopt such regulations as may be necessary to
19 carry out the purposes and provisions of this Chapter. Attached as
20 **Exhibit A** are Trust Company Rules and Regulations of the
21 Department of Revenue and Taxation. These Rules and Regulations
22 are hereby approved by *I Liheslaturan Guåhan* as the initial Rules and
23 Regulations for this Chapter.

24 **Article 5.**

1 3. Unlawful concealment of transactions.

2 4. Improper maintenance of accounts, false or
3 deceptive entries and statements.

4 **Section 160502. Penalty.** Every officer, employer, director
5 or agent of a Trust Company who knowingly or willfully neglects to
6 perform any duty required by this Chapter or other applicable law,
7 or who knowingly or willfully fails to conform to any material lawful
8 requirement made by the Commissioner, is subject to removal upon
9 order of the Commissioner, and upon conviction shall be punished
10 by either imprisonment of not less than one (1) year, and *not* to
11 exceed six (6) years, or by a fine of not more than Five Thousand
12 Dollars (\$5,000.00), or by both fine and imprisonment.

13 **Section 160503. Violation of This Chapter Shall Constitute a**
14 **Misdemeanor, Unless Otherwise Specified.** Where no other
15 punishment is otherwise provided by law, any person violating any
16 provision of this Chapter is guilty of a misdemeanor."

17 **Section 2. Severability.** *If* any provision of this Law or its
18 application to any person or circumstance is found to be invalid or
19 contrary to law, such invalidity shall *not* affect other provisions or
20 applications of this Law which can be given effect without the invalid
21 provisions or application, and to this end the provisions of this Law are
22 severable.

1 **EXHIBIT A**

2 **TRUST COMPANIES RULES & REGULATIONS.**

3 **Department of Revenue and Taxation.**

4 **Section 1. Definitions.** In these regulations, *unless* the context
5 specifically states otherwise,

6 (a) *'Act'* means *'The Guam Trust Companies Act.'*

7 (b) *'Affiliate'* means any company in the same corporate
8 system as a parent corporation, or under a partnership agreement or
9 member organization by virtue of common ownership, control,
10 operation or management.

11 (c) *'Commissioner'* means the Banking Commissioner of the
12 government of Guam.

13 (d) *'Company'* or *'Trust Company'* means a corporation
14 organized and licensed as provided in The Guam Trust Companies
15 Act.

16 (e) *'Control'* means (1) ownership of more than fifty percent
17 (50%) of the voting stock of a corporation, (2) ownership of stock of a
18 corporation constituting more than fifty percent (50%) of the fair
19 market value of all of said corporation's issued and outstanding
20 shares, (3) a contractual or other right to vote shares constituting
21 more than fifty percent (50%) of the voting shares of a corporation,
22 (4) the right under a management agreement or other contract to
23 make over fifty percent (50%) of the decisions governing the business
24 and financial affairs of a corporation, or to select all of its officers or

1 directors, or (5) any other right or arrangement that separately or in
2 conjunction with other rights creates the practical ability to determine
3 over fifty percent (50%) of the business and financial affairs of a
4 corporation or to select its officers or directors.

5 (f) '*Local financial institution*' means a bank or financial
6 service provider or establishment licensed by the Guam Department
7 of Revenue and Taxation to provide financial services.

8 **Section 2. Application for License; Contents; Procedures.**

9 (a) **Contents of Application.** Every applicant for a
10 corporate Trust Company license shall pay the statutory application
11 fee and file the following documents with the Commissioner:

12 (1) a completed application on the form prescribed by
13 the Commissioner (**Appendix A**);

14 (2) a certified copy of the articles of incorporation or
15 association of the Company, but *if* the Company is *not* yet
16 incorporated, a copy of the proposed articles of incorporation
17 or association of the Company; *and*

18 (3) a certified copy of the by-laws of the Company, but
19 *if* the Company is *not* yet incorporated, a copy of the proposed
20 by-laws of the Company.

21 (b) **Procedures.** Within thirty (30) days following the
22 filing of the completed application for a license the Commissioner
23 shall investigate the facts of the application and the other
24 requirements of this Act to determine that:

1 (1) the persons who will serve as directors or officers
2 are qualified by character and experience;

3 (2) the financial strength of the significant
4 incorporators, ten percent (10%) or more ownership, is
5 commensurate with the undertaking;

6 (3) the name of the proposed Company is *not*
7 deceptively similar to that of another Trust Company, or
8 otherwise misleading;

9 (4) the capital and surplus are *not* less than the
10 required minimum;

11 (5) the need for trust facilities or additional trust
12 facilities on Guam; *and*

13 (6) such other matters concerning the proposed Trust
14 Company in relation to its location as the Commissioner may
15 deem relevant.

16 **Section 2.1. Review of Application and Issuance of**
17 **License.**

18 (a) **Review of Commissioner.** After the conclusion of the
19 investigation, *if* the Commissioner finds that the applicant has met all
20 the requirements of this Act and other applicable laws, the
21 Commissioner shall promptly notify the applicant in writing of the
22 Commissioner's approval or disapproval of the application with
23 reasons for the denial. The Commissioner shall issue a license to the

1 applicant to conduct a Trust Company business upon the applicant's
2 compliance with the requirements under the Act.

3 (b) **Payment of Fees.** Within thirty (30) days after
4 the Commissioner notifies the applicant of the approval of the
5 application, the Trust Company shall pay the statutory initial license
6 fee as set forth in the Act.

7 **Section 2.2. Cancellation of License If Trust Company**
8 **Fails to Open for Business.** *If* a proposed Trust Company fails to open for
9 business within six (6) months after the date the license was issued, or
10 within an additional six (6) month extension granted by the Commissioner
11 upon written application and for good cause shown, the Commissioner
12 shall issue an order canceling the Trust Company's license.

13 **Section 2.3. Renewal.** The renewal application shall
14 consist of a letter identifying the Company and stating that it is applying to
15 renew its license, accompanied by adequate proof of compliance with the
16 requirements of §§160005 and 160018 of the Act, and expiring not later
17 than the end of the year for which renewal of the license is sought, together
18 with a check for the annual license fee in the amount set forth in §160013 of
19 the Act, and filing of clearance that taxes due are paid to obtain a license in
20 accordance with §70132 of Title 11 of the Guam Code Annotated. Each
21 application for the renewal of Trust Company license under this Act shall
22 be filed no later than June 1st of each year. Each application for a renewal
23 license shall be deemed to be granted, *unless* within thirty (30) days from
24 receipt of the application the Commissioner notifies the applicant in

1 writing that its application has been rejected and stating the reasons
2 therefore.

3 **Section 3. Annual Audited Report.**

4 **Section 3.1. Report Form.** The annual audit report
5 shall consist of the following:

6 **(a) Opinion of Independent Certified Public Accountant.**

7 1. Financial statements furnished pursuant to this
8 Section shall be prepared in accordance with generally
9 accepted accounting principles and be examined by an
10 Independent Auditor in accordance with generally accepted
11 auditing procedures.

12 2. The opinion of the Independent Auditor shall cover
13 all years presented.

14 3. The opinion shall be addressed to the Company on
15 stationery of the Independent Auditor showing the address of
16 issuer, shall bear original and manual signatures and shall be
17 dated.

18 **(b) Report of Evaluation of Internal Controls.**

19 1. This report shall include an evaluation of the
20 internal controls of the Company relating to the methods and
21 procedures used in the securing of assets and reliability of the
22 financial records, including, but not limited to, such controls as
23 the system of authorization and approval and the separation of
24 duties.

1 2. The review shall be conducted in accordance with
2 generally accepted auditing procedures. A copy of the report
3 must be filed with the Commissioner.

4 **(c) Letter of Independent Auditor.** The Independent
5 Auditor shall furnish the Company, for inclusion in the filing of the
6 audited annual report, a letter stating that:

7 1. the auditor is independent with respect to the
8 Company and conforms to the standards of that person's
9 profession as contained in the Code of Professional Ethics and
10 pronouncements of the American Institute of Certified Public
11 Accountants and pronouncements of the Financial Accounting
12 Standards Board;

13 2. the general background and experience of the staff
14 engaged in the audit including the experience in auditing Trust
15 Companies;

16 3. the accountant understands that the audited annual
17 report and the accountant's opinions thereon will be filed in
18 compliance with this regulation with the Commissioner;

19 4. the accountant consents to the requirements of §3 of
20 these regulations and further consents and agrees to make
21 available for review by the Commissioner, the auditor's
22 designee or the auditor's appointed agent, the work papers as
23 defined in §3.3 of the regulations; *and*

1 5. the accountant is properly licensed on Guam and
2 that the accountant is a member in good standing in the
3 American Institute of Certified Public Accountants.

4 **(d) Financial Statements.** Statements required shall be as
5 follows:

6 (1) balance sheet;

7 (2) statement of earnings or loss from operations;

8 (3) statement of cash flows;

9 (4) statement of changes in paid-in capital and
10 contributed surplus and unassigned funds; *and*

11 (5) notes to financial statements.

12 **Section 3.2. Change of Independent Auditor.** Each Trust
13 Company that is licensed under the Act shall notify the Commissioner in
14 writing of any change in the Independent Auditor appointed by the
15 Company. The change appointment of the Independent Auditor shall be
16 deemed to be approved by the Commissioner, *unless* notice is given to the
17 Company within thirty (30) days after receipt of the notice by the
18 Commissioner's Office, that the auditor is *not* approved, in which case the
19 Company shall appoint a substitute and notify the Commissioner of the
20 substitute auditor, which substitute shall be subject to the approval of the
21 Commissioner under this Subsection.

22 **Section 3.3. Access to and Maintenance of Working**
23 **Papers of Independent Auditor.** Each Trust Company that is
24 licensed under the Act shall require its Independent Auditor to make

1 available for review by the Commissioner, or the Commissioner's
2 appointed agent, the work papers prepared in the conduct of the audit of
3 the Company. The Trust Company shall require that the Independent
4 Auditor retain the audit work papers for a period of not less than five (5)
5 years after the period reported upon.

6 The aforementioned review by the Commissioner shall be considered
7 investigations, and all work papers obtained during the course of such
8 investigations shall be confidential. The Trust Company shall require that
9 the Independent Auditor provide photocopies of any of the work papers,
10 which the Commissioner considers relevant. Photocopies of such work
11 papers may be retained by the Commissioner.

12 'Work Papers' as referred to in this Section include, but are *not*
13 necessarily limited to, schedules, analysis, reconciliations, abstracts,
14 memoranda narratives, flow charts, copies of Company records or other
15 documents prepared or obtained by the accountant and the accountant's
16 employees in the conduct of their examination of the Company.

17 **Section 3.4. Security.** Whenever the Commissioner
18 deems that the financial condition of the Trust Company warrants
19 additional security, the Commissioner may require the Company to
20 deposit with the Treasurer of Guam, or an escrow agent approved by the
21 Commissioner, cash or securities approved by the Commissioner or,
22 *alternatively*, to furnish the Commissioner a clean irrevocable letter of credit
23 issued by a member bank of the Federal Reserve System which is licensed
24 on Guam, and approved by the Commissioner.

1 The Trust Company may receive interest or dividends from said
2 deposit or exchange the deposits for others of equal value with the
3 approval of the Commissioner.

4 *If* such Company discontinues business and surrenders its license,
5 the Commissioner shall return such deposit only after being satisfied that
6 all obligations of the Company have been discharged.

7 **Section 3.5. Notice of Adverse Financial Condition.**

8 Each Trust Company that is licensed under the Act shall require its
9 Independent Auditor to immediately notify in writing the president, or the
10 president's designee, and all members of the board of directors of the Trust
11 Company of any determination by the Independent Auditor that the
12 Company has materially misstated its financial condition in any of its
13 reports to the Commissioner. The president of the Trust Company, or the
14 president's designee, shall furnish such notification to the Commissioner
15 within fifteen (15) days of receipt of such information from the
16 Independent Auditor.

17 **Section 4. Other Requirements and Restrictions.**

18 **Section 4.1. Minutes of Annual Meeting of the Board of**
19 **Directors.** For a Trust Company that is licensed under the Act, copies of
20 the minutes of the annual meeting of the board of directors shall be filed
21 with the Commissioner within thirty (30) days after such meeting.

22 **Section 4.2. Principal Place of Business.** A Trust
23 Company shall have an office on Guam in which it maintains its business
24 and corporate records and financial books. A Trust Company may

1 establish its principal office on Guam in office space that it shares with
2 other businesses, including other Trust Companies or affiliates; *provided*,
3 that the office equipment, corporate records, and financial books of
4 accounts of the Trust Company are kept separate and distinct from those of
5 other businesses, including other Trust Companies or affiliates.

6 **Section 4.3. Resident Registered Agent for Service of**
7 **Process.**

8 The registered agent of a Trust Company shall be either a licensed
9 individual who resides on Guam or a corporation or a partnership or a
10 limited liability company formed on Guam that maintains an office on
11 Guam that is regularly open for business during normal business hours.
12 This registered agent may be an attorney, CPA, certified financial advisor
13 or other professional representative, who shall be responsible for
14 maintaining the corporate records and financial books for the Guam-based
15 trust. Both the registered agent for service of process and the Trust
16 Company licensed under the Act shall notify the Commissioner in writing
17 within ten (10) days of any change in the address of its registered agent for
18 service of process.

19 **Section 4.4. Deposits in Local Financial Institution.**

20 All payments and deposits of the Trust Company licensed under the
21 Act shall be made in a local financial institution as defined in §1(f), above.

22 **Section 5. Regulatory Fees.**

23 **Section 5.1. Amount.** The Commissioner will charge and
24 collect a fee from each Trust Company for conducting any examination,

1 supervision, audit or investigation which is required or authorized under this
2 Act, based on cost per hour per examiner, plus travel, *per diem* and other
3 expenses related to the such activity.

4 **Section 5.2. Payment.** The Commissioner will bill each
5 Trust Company upon the completion of the activity for the fee established in
6 §5.1, above. The fee must be paid within thirty (30) days after the date the bill
7 is received. *Except* as otherwise provided in this Subsection, any payment
8 received after that date must include a penalty of ten percent (10%) of the fee,
9 plus an additional one percent (1%) of the fee for each month, or portion of a
10 month, that the fee is *not* paid. The Commissioner may waive the penalty for
11 good cause.

12 **Section 5.3. Failure to Pay.** Failure of a Trust Company to
13 pay the fee required in §5.2, above, as provided in this Section constitutes
14 grounds for revocation of its license.

APPENDIX A

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

_____, 19____

TO: Commissioner

WE, THE UNDERSIGNED, intending to organize and establish a corporation to engage in the trust company business as provided in Guam Trust Companies Act, do hereby make application for permission to organize said trust company, and propose as follows:

1. That the main office of said trust company be located at

in the City of _____, Guam.

2. That, in order of preference, said trust company have one of the following three

titles:

A. _____

B. _____

C. _____

All questions should be answered completely. If answer is no or none, this should be indicated. The questions should not be answered by referral to other documents. To the extent possible, they should be answered in the space provided with insert pages utilized as necessary. All dollar amounts should be rounded to the nearest hundred, unless other-wise noted.

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

(continued)

3. That the total consideration received by said trust company for the shares issued by it be allocated as follows:

Capital _____

Surplus _____

Total Capitalization _____

Number of Shares Authorized _____

Number of Shares Issued _____

Par Value Per Share _____

Sale Price Per Share _____

4. That _____
Name of Agent

Of _____, _____
Mailing Address City or Town

_____ act as sole and exclusive
State and Zip Code

agent to represent and appear for the undersigned before the Banking Commissioner and to receive all correspondence and documents, in respect to this application, in accordance with annexed Appointment of Agent.

REPRESENTATIONS

THE UNDERSIGNED, in seeking approval to organize a trust company hereby jointly and severally represent and warrant to the Banking Commissioner as follows:

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

(continued)

FIRST, that the undersigned are not a party to any written or oral agreement or understanding providing for the sales, pledge, transfer, or other disposition of any stock in the said trust company to be owned by the undersigned except as follows:

<u>Named of Undersigned Parties to the Agreement</u>	<u>Names of Other Parties to the Agreement</u>	<u>Date and General Terms of Agreement</u>

SECOND, there is no agreement between any other party and the undersigned to sell, pledge, transfer or otherwise dispose of any stock in the said trust company to the undersigned except as follows:

<u>Names of Undersigned Parties to the Agreement</u>	<u>Names of Other Parties to the Agreement</u>	<u>Date and General Terms of Agreements</u>

THIRD, that the undersigned are not acting as representative of, or on behalf of, any person, partnership, association, or corporation undisclosed to the Banking Commissioner.

FOURTH, that the undersigned have not directly or indirectly paid, or agreed to pay to, or received, or agreed to receive, from any person partnership, association, or corporation any money or other thing of rendered, or to be rendered, or for any property transferred, or to be transferred, in connection with the organization of said trust company except as follows:

<u>Name(s) of Payor(s)</u>	<u>Name(s) of Payee(s)</u>	<u>Reason for Payment</u>	<u>Date Paid</u>	<u>Amount</u>

APPLICATION FOR PROPOSED NEW TRUST COMPANY

(continued)

APPOINTMENT OF AGENT

KNOW all persons by these presents, that the undersigned hereby make constitute, appoint, and designate

(First Name)	(Middle Name)	(Last Name)
(Number and Street)	(City and State)	(Zip Code)
	(Area Code)	(Telephone Number)

as our sole and exclusive agent.

IN connection with this application, said Agent is hereby authorized to represent and appear for the undersigned before the Commissioner and except in instances where the Commissioner shall require personal actions by the undersigned, said Agent is hereby empowered and authorized to do and perform all and every act or thing whatsoever necessary, as fully and to all intents and purposes as the undersigned might or could do if personally present at the doing thereof, and to receive all correspondence and documents from the Banking Commissioner.

THE Agency created hereunder shall automatically terminate upon the date the proposed trust company shall become a body corporate and the interim directors thereof appointed in accordance with the law.

THE Agency created hereunder is, and shall be, irrevocable except by resolution adopted by a majority of the undersigned, which resolution shall be certified to the Commissioner by the undersigned voting for the same.

THE undersigned jointly and severally represent and warrant to the Banking Commissioner that the complete terms of the agreement with said Agent pertaining to compensation of said Agent for services performed, and to be performed by said Agent, are as follows, and that the undersigned are not directly or indirectly party to any other written or oral agreement or understanding with said Agent relating to such compensation including any agreement or understanding which provides for any payment to said Agent solely contingent upon any action, decision, or forbearance on the part of the Banking Commissioner.

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

(continued)

CERTIFICATE OF AGENT

THIS is to certify and warrant to the Banking Commissioner that the undersigned Agent is not directly or indirectly a party to any written or oral agreement in relation to this Application for a Proposed New Trust Company under the terms of which the undersigned Agent has been paid, or will be paid, any money or other thing of value solely contingent upon the taking of any action, decision or forbearance to take action on the part of the Banking Commissioner.

Signature of Agent

Date

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

(continued)

- c. Indicate the conditions in the community in which the proposed trust company will transact business that afford reasonable promise of successful operation.
- d. Indicate whether the proposed trust company will be affiliated with any bank, holding company, or other financial institution.

APPLICATION FOR A PROPOSED NEW TRUST COMPANY

(continued)

ORGANIZERS, MANAGEMENT AND OWNERSHIP

Organizers and Proposed Directors

<u>Name</u>	<u>Residence City, State</u>	<u>Proposed Director (Yes or No)</u>	<u>Numbers of Years Trust Company Experience</u>	<u>Par Value Proposed Stock Subscription</u>	<u>Number Shares</u>
-------------	----------------------------------	--	--	--	--------------------------

Proposed Management

<u>Name</u>	<u>Residence City</u>	<u>Proposed Director (Yes or No)</u>	<u>Number of Years Trust Company Experience</u>	<u>Par Value Proposed Stock Subscription</u>	<u>Number Shares</u>
-------------	---------------------------	--	---	--	--------------------------

Total Number Shares #1 and #2 _____

Do not extend the number of shares of a proposed officer if listed under (#1) above.

PERSONAL FINANCIAL QUESTIONNAIRE

Date: _____

Name: _____

Address: _____

City/State/Zip: _____

Submitted in connection with application for:

_____ Trade Name

1. Amount to be invested in business \$ _____ Percentage of ownership this will represent:

2. Investment will be financed in the following manner:

3. Have you ever filed bankruptcy? Yes: _____ No: _____ If yes furnish particulars on page 4 or on a separate sheet.

Have you been associated as an officer, director, stockholders, partner or sole proprietor with any business entity that has filed for protection under the federal bankruptcy law?

Yes: _____ No: _____ If yes furnish particulars on page 4 or on a separate sheet.

4. Last Federal Income Tax Return was filed _____ for year _____
Date

At: _____ City _____ State

Applicants are advised that Federal Income Tax Returns will be required during the licensing investigation.

5. Do you own or control any assets or liabilities located outside the United States?
Yes: _____ No: _____ If yes furnish particulars on page 4 or on separate sheet.

6. Do you control, manage, or hold in trust any assets or liabilities for another person or entity? Yes: _____
No: _____ If yes furnish particulars on page 4 or on separate sheet.

7. Annual Salary \$ _____, Describe other income and annual amount:

Source: _____ \$ _____

Source: _____ \$ _____

Source: _____ \$ _____

Source: _____ \$ _____

Source: _____ \$ _____

8. List any person or entity that controls or owns 10% or more of the applicant and percentage controlled or owned (25% of more ownership or control requires a separate History Record to be submitted):

Name	Address	City/State/Zip Code	%
------	---------	---------------------	---

9. Litigation's, Injunctions and Criminal Complaints:

- A. Has the applicant ever been charged, indicated or summoned to answer for any criminal offense or violation, or had litigation or lawsuit filed against it for any reason whatsoever, regardless of disposition or the event?

Yes _____ No _____

If yes, give details in space provided below. List all cases without exception.

Date	Charge or Plaintiff/Defendant and case no.	Location-City & State	Disposition
------	--	-----------------------	-------------

- B. Has a criminal indictment, information, or complaint ever been returned against applicant, but for which applicant was not charged or named as an unindicted co-party?

Yes _____ No _____ If yes, furnish details on page 4.

- C. Has applicant ever been questioned by a city, state federal or law enforcement agency, commission or committee?

Yes _____ No _____

- D. Has applicant ever be subpoenaed to appear or testify before a federal, state or country grand jury, board or commission? Yes _____ No _____

- E. Has applicant ever had a civil or criminal record expunged or sealed by a court order?

Yes _____ No _____ If yes, when _____?

City, Country & State? _____

- F. Has applicant ever received a pardon for any criminal offense? Yes _____ No _____

If yes, when? _____ City, Country & State? _____

(If your answer to any of the above questions, A through F, is yes, furnish details on page 4)

Initials of Authorized Principal of Applicant: _____

APPLICANTS' REQUEST TO RELEASE INFORMATION

To: _____

From: _____ (Applicant's Name)

1. I hereby authorize and request all persons to whom this request is presented having information relating to or concerning applicant to furnish such information to duly appointed agent of the Banking Commissioner, whether or not such information would otherwise be protected from disclosure by any constitutional statutory or common law privilege.
2. I hereby authorized and request all persons or entities to whom this request is presented having documents relating to or concerning applicant to permit a duly appointed agent to the Banking Commissioner to review and copy any such documents, whether or not such document would otherwise be protected by any constitutional, statutory, or common law privilege.
3. If the person to who this request is presented is a brokerage firm, bank, savings and loan, or other financial institution or as office of same, applicant hereby authorizes and request that a duly appointed agent of the Banking Commissioner be permitted to review and obtain copies of any and all documents, records or correspondence pertaining to applicant including but not limited to fast loan information notes co-signed by applicant check account records, savings deposit box record, passbook records, and general ledger folio sheets.
4. Applicant does hereby make, constitute and appoint any duly appointed agent of the Department of Revenue and Taxation its true and lawful attorney in fact for it and its name place and stead and on it's behalf and for it's and benefit:
(a) To request review, copy, sign for, or otherwise act for investigative purposes with respect to documents and information in the possession of the person or entity to whom this request is presented as applicant might;
(b) To name the person or entity to whom this request is presented and insert that person's name in the appropriate location on this request
5. Application grants to said attorney in fact full power and authority to do, take and perform all and every act and thing whatsoever requisite proper, or necessary to be done in the exercise of any of the rights and powers herein granted as fully to all intents and purposes as applicant might or could do if it were present, with full power of substitution or revocation hereby ratifying and confirming all that said attorney in fact, or his substitute or substitute, shall lawfully do or cause to be done by virtual of this power of attorney and the rights and powers herein granted.
6. This power of attorney ends eighteen (18) months from the date of execution.
7. Applicant has filed with the Department of Revenue and Taxation Insurance, Securities & Banking Division an "application" to be licensed or request for approval of key officer/director/majority owner. Applicant understand that it is seeking the granting of a privilege and acknowledges that the burden of providing it's qualifications for a favorable determination is at all times on it. Applicant accepts any risk or adverse public notice, embarrassment, criticism or other action of financial loss, which may remit from action with respect to this application.
8. Applicant does for itself its heirs, executors, administrators, successors and assignee, hereby release, and forever discharge the person or entity to whom this request is presented and his/it's agents and employees from all and all manner of actions, cause of action, suits, debts, judgements, execution, claims, and demands whatsoever, known or unknown, in law or equity, which applicant ever had, now have, may have, or claim to have against the person or entity to whom this request is presented or his/it's agents or employees arising out of or by reason of complying with this request.
9. Applicant agrees to indemnify and hold harmless the person or entity to whom this request is presented and his/it's agents and employees from and against all claim damages, losses and expenses, including reasonable attorney's fee arising out of or by reason of complying with this request.
10. A reproduction of this request by the Xerox or similar process shall be for all intents and purposes as valid as the original.

In witness whereof I, an authorized principal of the applicant, executed this request at _____

On this _____ day of _____, 19_____.

Applicant Name: _____

By: _____ Title: _____
(Signature of authorized principal of applicant)

Subscribed and sworn to before me the _____ day of _____, 19_____.

Notary public in and for the country of _____, State of _____

Notary Signature: _____

Notary Seal:

Signature of Agent presenting this request:

_____ Date: _____

I MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN

1999 (FIRST) Regular Session

Date: 10/13/99

VOTING SHEET

S Bill No. 193 (COR)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
AGUON, Frank B., Jr.	✓				
BERMUDES, Eulogio C.	✓				
BLAZ, Anthony C.	✓				
BROWN, Joanne M.S.	✓				
CALVO, Eduardo B.	✓				
CAMACHO, Marcel G.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.					✓
LAMORENA, Alberto C., V	✓				
LEON GUERRERO, Carlotta A.	✓				
MOYLAN, Kaleo Scott	✓				
PANGELINAN, Vicente C.	✓				
SALAS, John C.	✓				
SANCHEZ, Simon A., II	✓				
UNPINGCO, Antonio R.	✓				

TOTAL

14 0 0 0 ✓

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
TWENTY-FIFTH GUAM LEGISLATURE
155 Hesler Street, Hagåtña, Guam 96910

September 28, 1999
(DATE)

FILE

Memorandum

To: Senator ALBERTO C. LAMORENA, V

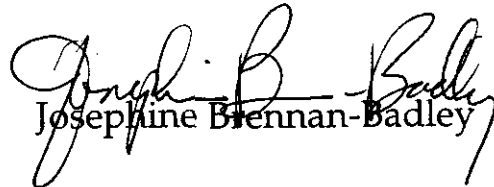
COPY

From: Clerk of the Legislature

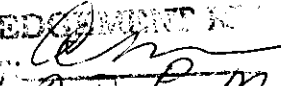
Subject: Report on Bill No. 193 (COR)

Pursuant to §7.04 of Rule VII of the 25th Standing Rules, transmitted herewith is a copy of the Committee Report on Bill No. 193 (COR), for which you are the prime sponsor.

Should you have any questions or need further information, please call the undersigned at 472-3464/5.


Josephine Brennan-Badley

Attachment

ACKNOWLEDGEMENT RECEIVED
Received By: 
Time: 3:10 PM
Date: 9/28/99



Ufisina Para I Minaolek Guahan

Senator Alberto "Tony" Cristobal Lamorena V

Mina Bente Singko Na Liheslaturan Guahan
(Twenty-Fifth Guam Legislature)



September 24, 1999

The Honorable Antonio R. Unpingco
Speaker
I Mina Bente Singko Na Liheslaturan Guahan
155 Hesler St.
Hagåtña, Guam 96932

Dear Mr. Speaker,

The Committee on Tourism, Economic Development and Parks, to which was referred *Bill No. 193, An Act to Add Chapter 160 to Title 11, Guam Code Annotated Relative to Establishing the Guam-Base Trust Companies Act*, has had the same under consideration, and now wishes to report back the same with the recommendation *To Pass, as Substituted by the Committee*.

The Committee votes are as follows:

To Pass	<u>6</u>
Not To Pass	<u>0</u>
Abstain	<u>0</u>
Inactive File	<u>0</u>

A copy of the Committee Report and all pertinent documents are attached for your information and file.

Sincerely,

ALBERTO C. LAMORENA, V

attachments



Senator Alberto "Tony" Cristobal Lamorena V
 Chairman
**COMMITTEE ON TOURISM, ECONOMIC DEVELOPMENT
 AND PARKS**
 Twenty-Fifth Guam Legislature

VOTING SHEET ON
 BILL NO. 193

**AN ACT TO ADD CHAPTER 160 TO TITLE
 11, GUAM CODE ANNOTATED RELATIVE
 TO ESTABLISHING THE GUAM-BASED
 TRUST COMPANIES ACT.**



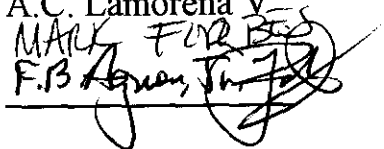
RECOMMENDATION TO

Committee Members	Signature	To pass	Not to pass	Abstain	Place in Inactive File
Senator Alberto "Tony" Lamorena Chairperson		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Joanne M.S. Brown Vice-Chairperson		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Speaker Antonio R. Unpingco		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vice-Speaker Anthony C. Blaz		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Mark Forbes		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Carlotta A. Leon Guerrero		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Kaleo Moylan		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator John C. Salas		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Simon A. Sanchez, II		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Frank B. Aguon, Jr		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL VOTES:		6			

MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
1999 (FIRST) Regular Session

Bill No. 193 (COR)
as substituted by the Committee on Tourism,
Economic Development and Parks

Introduced by:

A.C. Lamorena V.
MARK FORBES
F.B. Aguen, Jr.


AN ACT TO ADD CHAPTER 160 TO TITLE 11, GUAM CODE
ANNOTATED RELATIVE TO ESTABLISHING THE GUAM-BASED
TRUST COMPANIES ACT.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Chapter 160 is hereby added to Title 11, Guam Code
3 Annotated, to establish the Guam Trust Companies Act.

4 Chapter 160

5 Guam-Based Trust Companies

6 Article 1.

7 General Provisions

8 §160101. Declaration of Legislative Intent.

9 §160102. Definitions.

10 §160103. Applicability of Chapter

11 §160101. Declaration of legislative intent. *I Liheslatura* finds as
12 facts and determines that:

13 1. There exists in the island of Guam a need for the protection of the
14 public interest, to regulate companies which are engaged in the trust

1 company business;

2 2. Such trust companies should be licensed and regulated in such a
3 manner as to promote the public advantage and convenience; and

4 3. It is the purpose of the chapter to bring under public supervision
5 those persons who are engaged in or who desire to engage in the business
6 of a trust company, not in connection with banking business, and to insure
7 that there is established in Guam an adequate, efficient and competitive
8 trust company service.

9 **§160102. Definitions.** For the purposes of this Chapter, except as
10 otherwise specifically provided, the following words and phrases, together
11 with all of the common derivatives thereof (i.e., verbs, plurals, feminine
12 gender, etc.) shall have the meaning ascribed to them as follows:

13 (a) ***Beneficiary*** means the person for whose benefit trust property is
14 held.

15 (b) ***Commissioner*** means the Commissioner of Banking of the
16 Government of Guam.

17 (c) ***Court Trust*** means the action of a trust company acting under
18 appointment, order or decree of any court as executor, administrator,
19 guardian, conservator, assignee, receiver, depository or trustee, or
20 receiving on deposit money or property from a public administrator under
21 any provision of this chapter or from any executor, administrator,
22 guardian, conservator, assignee, receiver, depository or trustee under any
23 order or decree of any court.

24 (d) ***Equitable Duties*** include the common law duties of a trustee, the
25 duty to exercise reasonable care, skill and caution in preserving and

1 enhancing trust property, the duty to act with undivided loyalty to the
2 beneficiaries of a trust and the duty to act with impartiality among all
3 beneficiaries.

4 (e) **Fiduciary** means trustee, agent, executor, administrator,
5 committee, guardian, conservator for a minor or other incompetent
6 person, receiver, trustee in bankruptcy, assignee for creditors or any
7 holder of a similar position of trust.

8 (f) **Investment Company** means any issuer which is or holds itself out
9 as being engaged primarily, or proposes to engage primarily, in the
10 business of investing, reinvesting, or trading in securities.

11 (g) **Investment Trust** means a company which sells its own stock and
12 invest the money in stocks, real estate and other investment.

13 (h) **Net Worth** means paid in capital plus paid in surplus plus retained
14 earnings, if any.

15 (i) **Person** means an individual, a partnership, a corporation and any
16 other entity established by law or otherwise established for a stated
17 purpose.

18 (j) **Private Trust** means every other trust, agency, fiduciary
19 relationship or representative capacity other than a court trust.

20 (k) **Settlor** means a person who creates a trust.

21 (l) **Trust** means a fiduciary relationship with respect to property (*the*
22 *trust property*) which arises as a result of a manifestation of an intention
23 to create it and which subjects the person by whom the property is held
24 (*the trustee*) to equitable duties to deal with the property for the benefit
25 of another person (*the beneficiary*).

1 (m) *Trust Company* means a corporation organized and licensed in
2 Guam as provided in this chapter and engaged in trust company business.

3 (n) *Trust Company Business* means acting as a trustee and engaging
4 in those activities stated in §160301.1.

5 (o) *Trustee* means a person who is subject to equitable duties and who
6 holds trust property for a beneficiary.

7 (p) *Trust Property* means property held in a trust.

8 **§160103. Applicability of chapter.** This Chapter does not apply to:

9 1. Banks or banking institutions regulated under the provisions of
10 Chapter 100 of Title 11, Guam Code Annotated;

11 2. Savings and loan institutions regulated under Chapter 141 of Title
12 11, Guam Code Annotated;

13 3. Title insurers but only respecting escrows;

14 4. Nonprofit, charitable trusts or trust associations; or

15 5. Any person, if:

16 (a) The fiduciary relationship is not one of his principal
17 occupations; or

18 (b) He serves as trustee for a relative by blood or marriage.

19 **Article 2.**

20 **Organization and Licensing**

21 **§160201. Unlawful to Engage in Business of Trust Company**
22 **Without License.**

23 **§160202. Unlawful to Use or Advertise Word “Trust” as Part of**
24 **Name; Exceptions.**

25 **§160203. Minimum Capitalization.**

1 **§160204. Incorporation; Required Number of Persons.**

2 **§160205. Contents of Articles of Incorporation.**

3 **§160206. Commissioner to Issue Certificate of Incorporation;**
4 **Commissioner Must Authorize Business Before**
5 **Company May Transact Business.**

6 **§160207. Subscription, Acknowledgment and Filing of Articles of**
7 **Incorporation; Filing of Copies.**

8 **§160208. Application for License: Contents; Fees.**

9 **§160209. Procedure for Granting or Denying License.**

10 **§160210. Issuance or Denial of License; Renewal.**

11 **§160211. License Fees; Renewals.**

12 **§160212. Cancellation of License If Trust Company Fails to Open**
13 **for Business.**

14 **§160201. Unlawful to Engage in Business of Trust Company**
15 **Without License.** It is unlawful for any trust company to engage in the
16 business of a trust company without complying with the provisions of this
17 chapter and having a license issued by the Commissioner.

18 **§160202. Unlawful to Use or Advertise Word “Trust” as Part of**
19 **Name; Exceptions.**

20 1. Except as otherwise provided in subsection 2, no person,
21 partnership, firm, association, corporation or other business organization
22 formed and doing business under the laws of Guam may:

23 (a) Use the words “trust company” or any direct derivative of
24 these words as a part of its name.

25 (b) Advertise or use any sign with the words “trust company”

1 used as a part of its name.

2 2. The provisions of subsection 1 do not apply to a person or business
3 organization which is supervised by the Commissioner pursuant to this
4 Chapter.

5 **§160203. Minimum Capitalization.** No trust company may be
6 organized or operated with a capital of less than One Hundred Thousand
7 Dollars (\$100,000.00), or in such greater amount as may be required by the
8 Commissioner, and paid-up surplus of Fifty Thousand Dollars (\$50,000.00),
9 or in such greater amount as may be required by the Commissioner. The full
10 amount of the capital and surplus must be paid in cash, exclusive of all
11 organization expenses, before the trust company is authorized to commence
12 business.

13 **§160204. Incorporation; Required Number of Persons.** Any three
14 (3) or more persons (except in the case of a limited liability company which
15 may be incorporated with two (2) or more persons), may execute articles of
16 incorporation and be incorporated as a trust company in the manner
17 prescribed in this chapter.

18 **§160205. Contents of Articles of Incorporation.**

19 1. The articles of incorporation must contain:

20 (a) The corporate name adopted by the corporation, which must
21 be such as to distinguish it from any other trust company formed or
22 incorporated in Guam, or engaged in the trust business in Guam.

23 (b) The place where its business is to be conducted.

24 (c) The purpose for which it is formed.

25 (d) The amount of its capital stock, which must be divided into

1 shares of the par value of not less than Twenty-Five Dollars
2 (\$25.00) each, except that upon the written approval of the
3 Commissioner the capital stock may be divided into shares of the
4 par value of not less than One Dollar (\$1.00) each. The amount of
5 capital stock must not be less than One Hundred Thousand Dollars
6 (\$100,000.00), and must be assessable.

7 (e) The amount of its original paid-in surplus, which must not be
8 less than fifty percent (50%) of its capital stock.

9 (f) The name and place of residence of, and the number of
10 shares subscribed by, each stockholder.

11 (g) The number of directors, which must not be less than three
12 (3), and the names of the stockholders selected to act as the first
13 board of directors, each of whom must be a bona fide subscriber
14 for at least One Thousand Dollars (\$1,000.00) of the stock of the
15 trust company, fully paid and not hypothecated.

16 (h) The location of all branch offices as approved by the
17 Commissioner.

18 (i) Such other matters, not inconsistent with law, as the
19 incorporators may deem proper.

20 2. The articles of incorporation may also provide for the issuance and
21 sale of preferred stock in such amount as is fixed by the articles or by
22 amendments thereto, and the amount and number of shares thereof, and
23 the terms and conditions thereof not inconsistent with the provisions of
24 this Chapter.

25 **§160206. Commissioner to Issue Certificate of Incorporation;**

1 **Commissioner Must Authorize Business Before Company May Transact**
2 **Business.**

3 1. The Commissioner shall issue a certificate in the form provided by
4 law for other corporations, and the existence of the trust company as a
5 corporation dates from the issuance of the certificate by the
6 Commissioner, from which time it has and may exercise the powers
7 conferred by law upon corporations generally, except as limited or
8 modified by this Chapter.

9 2. The trust company shall transact no business, except the election
10 of officers, and the taking and approving of their official bonds, and the
11 receipt of payments on account of the subscriptions of the capital stock,
12 and such other business as is incidental to its organization, until it is
13 authorized by the Commissioner to commence the trust company business
14 as provided in this Chapter.

15 **§160207. Subscription, Acknowledgment and Filing of Articles of**
16 **Incorporation; Filing of Copies.** The articles of incorporation must:

17 (a) Be subscribed to by at least three (3) of the stockholders of the
18 proposed corporate trust company.

19 (b) Be acknowledged by them before some person competent to take
20 an acknowledgment of deeds.

21 (c) Be filed in the office of the Commissioner.

22 **§160208. Application for License: Contents; Fees.**

23 1. The corporate trust company shall file an application for a license
24 to transact trust company business with the Commissioner on forms
25 prescribed by the Commissioner, which must contain such information as

1 the Commissioner requires.

2 2. A non refundable fee of One Thousand Dollars (\$1,000.00) for the
3 application and investigation must accompany the application. The
4 applicant shall also pay such additional expenses incurred in the process
5 of investigation as the Commissioner deems necessary.

6 3. Notification of the location of a trust company branch office shall
7 be made to the Commissioner, accompanied by a non-refundable fee in
8 the amount of One Hundred Dollars (\$100.00).

9 4. All money received by the Commissioner pursuant to this section
10 must be placed in a special purpose trust account, pursuant to §160307 of
11 this Act.

12 **§160209. Procedure for Granting or Denying License.**

13 1. Within forty-five (45) days following the filing of the application
14 for a license, the Commissioner shall investigate the facts of the
15 application and the other requirements of this Chapter to determine:

16 (a) That the persons who will serve as directors or officers are
17 qualified by character and experience.

18 (b) That the financial strength of the significant incorporators
19 (10% or more ownership) are commensurate with the undertaking.

20 (c) That the name of the proposed company is not deceptively
21 similar to that of another trust company or otherwise misleading.

22 (d) That the capital and surplus are not less than the required
23 minimum.

24 (e) Such other matters concerning the proposed trust company
25 as the Commissioner may deem relevant.

1 2. Within thirty (30) days after the application is filed, the
2 Commissioner shall conduct a public hearing to consider the application.
3 The Commissioner shall give two (2) written notices of the public hearing
4 in a newspaper in general circulation on Guam. Publication of such
5 notices should be no more than fifteen (15) days nor less than two (2)
6 complete days before the hearing date. Costs of publication and other
7 directly related expenses shall be paid by the applicant.

8 **§160210. Issuance or Denial of License; Renewal.**

9 1. If the Commissioner finds that the applicant has met all the
10 requirements of this Chapter and other applicable laws, he shall, within
11 thirty (30) days after the conclusion of the investigation, issue a license
12 to the applicant to conduct a trust company business upon the applicant's
13 paying the required license fee. Otherwise, the Commissioner shall deny
14 the application and notify the applicant in writing of the reasons for the
15 denial.

16 2. All licenses granted under the Act shall expire on the June 30
17 following the date of issuance. On or before June 1 of each year
18 thereafter, every company holding a license that wishes to renew the
19 license for an additional year shall apply to the Commissioner for a
20 renewal of the license.

21 **§160211. License Fees; Renewals.**

22 1. The initial fee to be paid for a trust company license must be in
23 proportion to the authorized capitalization of the trust company as
24 follows:

25 (a) A trust company having a capitalization of more than One

1 Hundred Thousand Dollars (\$100,000.00), up to and including Five
2 Hundred Thousand Dollars (\$500,000.00) shall pay a license fee
3 of Five Hundred Dollars (\$500.00).

4 (b) A trust company having a capitalization of more than Five
5 Hundred Thousand Dollars (\$500,000.00), up to and including One
6 Million Dollars (\$1,000,000.00) shall pay a license fee of Seven
7 Hundred Fifty Dollars (\$750.00).

8 (c) A trust company having a capitalization of more than One
9 Million Dollars (\$1,000,000.00) shall pay license fee of One
10 Thousand Dollars (\$1,000.00).

11 2. In addition, every trust company shall pay an initial license fee of
12 One Hundred Dollars (\$100.00) for each branch office that may be
13 authorized by the Commissioner.

14 3. Thereafter, every trust company shall pay annually on or before
15 June 30 of each year, a license fee which must be in proportion to its
16 initial paid-in capital and surplus or to its net worth as of December 31st
17 of the preceding year, whichever is higher, as follows:

18 (a) A trust company having a capitalization of less than One
19 Hundred Thousand Dollars (\$100,000.00) shall pay a license fee
20 of Two Hundred Fifty Dollars (\$250.00).

21 (b) A trust company having a capitalization of more than One
22 Hundred Thousand Dollars (\$100,000.00), up to and including Five
23 Hundred Thousand Dollars (\$500,000.00) shall pay a license fee
24 of Five Hundred Dollars (\$500.00).

25 (c) A trust company having a capitalization of more than Five

1 **§160308. Liquidation by Commissioner**

2 **§160309. Fidelity Bonds; Insurance.**

3 **§160310. Income Tax Rebates.**

4 **§160311. Use of Funds.**

5 **§160312. Confidentiality Treatment of Trust Information.**

6 **§160301. Powers of Licensed Trust Companies; Banking Business**
7 **Prohibited.**

8 1. Each licensed trust company may:

9 (a) Act as trustee under any mortgage or bond of any person or
10 of any municipality or body politic.

11 (b) Accept and execute any municipal or corporate or individual
12 trust not inconsistent with the laws of Guam.

13 (c) Act under the order or appointment of any court as guardian,
14 administrator, receiver or trustee.

15 (d) Act as executor or trustee under any will or intervivos trust.

16 (e) Act as fiscal or transfer agent of any state, municipality,
17 body politic or corporation, and in such capacity receive and
18 disburse money and register, transfer and countersign certificates
19 of stock, bonds and other evidences of indebtedness.

20 (f) Act as local or resident agent of foreign corporations.

21 (g) Accept and execute any trust business.

22 (h) Acquire the fiduciary rights, powers, duties and liabilities of
23 a bank, savings and loan association, thrift company, or trust
24 company licensed pursuant to Title 11, Guam Code Annotated, and
25 upon the effective date of such an acquisition, the fiduciary rights,

1 powers, duties and liabilities of the bank, savings and loan
2 association, thrift company, or trust company vest in and must be
3 performed by the acquiring trust company.

4 (i) Do and perform all acts necessary to exercise the powers
5 enumerated in this subsection and authorized by this Chapter.

6 2. A trust company may not engage in any banking business by
7 accepting deposits or making loans.

8 **§160302. Investments; General Requirements.**

9 1. Every trust company:

10 (a) Shall keep all trust funds and investments separate from the
11 assets of the company. These funds shall not be mingled with the
12 securities and investments of any other trust or of the corporation,
13 and all investments made by the company as a fiduciary must be
14 designated so that the trust or estate to which the investments
15 belong may be clearly identified.

16 (b) Holding trust funds for more than twenty-four (24) hours,
17 awaiting investment or distribution, must deposit or leave on
18 deposit such funds with a local financial institution. Such funds
19 must not be deposited or left with the trust company or with an
20 affiliate corporation or association, unless that affiliate corporation
21 or association first pledges, as security for the deposit, securities
22 eligible for investment by local financial institutions which have a
23 market value equal to that of the deposited funds. No security is
24 required with respect to any portion of such deposits which is
25 insured under the provisions of any law of the United States.

1 (c) Acting in any capacity under a court trust or private trust,
2 unless the instrument creating the trust provides otherwise, may
3 cause any securities held by it in its representative capacity to be
4 registered in the name of a nominee or nominees of the company.

5 (d) When acting as depositary or custodian for the personal
6 representative of a court trust or private trust, unless the instrument
7 creating the trust provides otherwise, may with the consent of the
8 personal representative of the trust, cause any securities held by it
9 to be registered in the name of a nominee or nominees of the
10 company.

11 2. Every trust company is liable for any loss occasioned by the acts
12 of its nominees with respect to securities registered under this section.

13 3. No corporation or the registrar or transfer agent of the corporation
14 is liable for registering or causing to be registered on the books of the
15 corporation any securities in the name of any nominee of a trust company
16 or for transferring or causing to be transferred on the books of the
17 corporation any securities registered by the corporation in the name of any
18 nominee of a trust company when the transfer is made on the
19 authorization of the nominee.

20 4. Except as provided in subsection 5, a trust company's investments
21 of invested capital and earnings, must:

22 (a) Be U.S. governmental obligations or federally insured
23 deposits; or

24 (b) Be investment grade securities and mature within three (3)
25 years after acquisition. The aggregate market value of all

1 investments must equal or exceed sixty percent (60%) of the
2 company's current capital, surplus and undivided profits or sixty
3 percent (60%) of the company's capital and surplus when it was
4 organized, whichever is greater.

5 5. A trust company may purchase or rent land, facilities and
6 equipment for use in the daily activities of the company.

7 **§160303. Investments; Purchase of Securities Authorized.**

8 1. A trust company which is acting as a fiduciary or agent shall, in its
9 discretion or at the direction of another person who is authorized to direct
10 the investment of money held by the trust company as a fiduciary or
11 agent, make investments in accordance to the Uniform Prudent Investors
12 Act as adopted in 1994 by the National Conference of Commissioners on
13 Uniform State Laws, if:

14 (a) The investment trust or investment company is registered
15 with the Commissioner; and

16 (b) The portfolio of the investment trust or investment company
17 consists substantially of investments which are not prohibited by
18 the instrument creating the fiduciary or agency relationship.

19 2. A trust company or an affiliate of the trust company may provide
20 services to the investment trust or investment company, including, without
21 limitation, acting as an investment adviser, custodian, transfer agent,
22 registrar, sponsor, distributor or manager and may receive reasonable
23 compensation for the services. The manner in which the compensation is
24 calculated must be disclosed to the person who is currently receiving the
25 benefits of the fiduciary or agency relationship with the trust company.

1 The disclosure shall be made in a prospectus, a report to the Trustor, or
2 manner prescribed by the Commissioner.

3 3. A trust company may deposit money held by the trust company as
4 a fiduciary or agent with an affiliate before investing or making other
5 disposition of the money.

6 **§160304. Other Requirements.**

7 1. *Annual Statement.* Every trust company that is licensed under the
8 Act shall, on or before May 1 of each year, file with the Commissioner,
9 a financial statement verified under oath by two (2) executive officers of
10 the company, setting forth its financial condition, transactions and affairs
11 as of the 31st day of December immediately preceding, in accordance with
12 generally accepted accounting principles plus any additional information
13 required by the Commissioner.

14 2. *Annual Audit.* Every trust company that is licensed under the Act
15 shall file an annual audit report to accompany the filing of an annual
16 statement prior to May 1 of each year. The audit report shall be rendered
17 by its appointed Independent Auditor as approved by the Commissioner
18 and shall cover the financial condition, transactions and affairs as of the
19 31st day of December immediately preceding in accordance with generally
20 accepted auditing standards. The audited report shall include an
21 unqualified opinion with respect to the financial condition of the company,
22 except that the Commissioner may accept qualified opinions at the
23 discretion of the Commissioner.

24 3. *Notification.* An auditor who is aware that the trust company
25 failed to meet the necessary capital and surplus requirements of the Act

1 or who has rendered other than an unqualified opinion on the financial
2 condition of a trust company and the president of the trust company shall
3 both notify the Commissioner in writing within fifteen (15) days of the
4 discovery of failure of the trust company to meet the capital or surplus
5 requirements of the Act or within fifteen (15) days of the issuance of such
6 qualified opinion.

7 **§160305. Discontinuing Business.**

8 1. Whenever any trust company desires to discontinue its trust
9 business, it shall do the following:

10 (a) Publish the intention of the company, once a week for three
11 (3) consecutive weeks in a newspaper of general circulation in
12 Guam; and

13 (b) Submit an affidavit to the Commissioner that all the
14 obligations and indebtedness arising from its trust business and
15 operations in Guam have been satisfactorily discharged.

16 2. After the trust company has furnished proof of publication and the
17 affidavit, and no objection to discontinue business or no proof is
18 submitted by any claimant of an outstanding receivable or claim against
19 the Trust Company, the Commissioner shall enter an order canceling the
20 trust company's license.

21 **§160306. Commissioner in Possession.**

22 (a) The Commissioner may take possession of a Trust Company if,
23 after a hearing, he shall find:

24 (1) Its capital is impaired or it is otherwise in an unsound
25 condition.

1 (2) Its business is being conducted in an unlawful or unsound
2 manner.

3 (3) It is unable to continue normal operations.

4 (4) Its examination has been obstructed or impeded.

5 (b) The Commissioner shall take possession by posting upon the
6 premises a notice reciting that he is assuming possession pursuant to this
7 Act, and the time, not earlier than the posting of the notice, when his
8 possession shall be deemed to commence. A copy of the notice shall be
9 filed in the District Court of Guam. The Commissioner shall notify the
10 trustor of all the trusts under the management of the Trust Company.

11 (c) When the Commissioner has taken possession of a Trust Company
12 he shall be vested with the full and exclusive power of management and
13 control, including the power to continue or to discontinue the business, to
14 stop or to limit the payment of its obligations, to employ any necessary
15 assistants, to execute any instrument in the name of the Trust Company,
16 to commence, defend and conduct in its name any action or proceeding
17 in which it may be a party, to terminate his possession by restoring the
18 Trust Company to its board of directors and to reorganize or liquidate the
19 Trust Company in accordance with this Act. As soon as practicable after
20 taking possession the Commissioner shall make an inventory of the assets
21 and file a copy thereof with the District Court of Guam.

22 (d) When the Commissioner has taken possession there shall be a
23 postponement until six (6) months after the commencement of such
24 possession of the date upon which any period of limitation fixed by a
25 statute or agreement would otherwise expire on a claim or right of action

1 of the Trust company, or upon which an appeal must be taken or a
2 pleading or other document must be filed by the Trust company in any
3 pending action or proceeding.

4 (e) If, in the opinion of the Commissioner, an emergency exists which
5 will result in serious losses to the trustors and creditors, he may take
6 possession of the Trust company without a prior hearing. Within ten (10)
7 days after the Commissioner has taken possession, any interested party
8 may file an application with the District Court of Guam for an order
9 vacating such possession. The District Court of Guam shall grant the
10 application if it finds that the action of the Commissioner was
11 unauthorized under this Act.

12 (f) If the Commissioner shall determine to liquidate the Trust company
13 he shall give such notice of his determination to the directors,
14 stockholders, and the trustors. Any objection to the liquidation shall be
15 filed with the District Court of Guam within thirty (30) days after such
16 notice. Unless within thirty (30) days thereafter, the District Court of
17 Guam issues an order staying the liquidation, the Commissioner shall
18 proceed to liquidate the Trust Company.

19 (g) If the Commissioner determines to reorganize the Trust Company,
20 or the District Court of Guam after staying its liquidation, orders such
21 reorganization, the Commissioner, after according a hearing to all
22 interested parties, shall propose a reorganization plan. A copy of the plan
23 shall be sent to each trustor and creditor who will not receive payment of
24 his claim in full under the plan together with notice. Unless within thirty
25 (30) days the plan is disapproved in writing by persons holding one-third

1 or more of the aggregate amount of such claims, the Commissioner will
2 proceed to effect the reorganization. A department or agency of the
3 government of Guam holding a claim which will not be paid in full is
4 authorized to participate as any other creditor.

5 (h) No judgment, lien or attachment shall be executed upon any asset
6 of the Trust Company while it is in the possession of the Commissioner.
7 Upon the election of the Commissioner in connection with a liquidation
8 or reorganization:

9 (1) Any lien or attachment, other than a mechanic's lien,
10 obtained upon any asset of the Trust Company during the
11 Commissioner's possession or within four (4) months prior to
12 commencement thereof shall be vacated except liens created by the
13 Commissioner while in possession.

14 (2) Any transfer of an asset of the Trust Company made after
15 or in contemplation of its insolvency with intent to effect a
16 preference shall be voided.

17 (i) With the approval of the District Court of Guam, the Commissioner
18 may borrow money in the name of the Trust Company and may pledge its
19 assets as security for the loan.

20 (j) All necessary and reasonable expenses of the Commissioner's
21 possession of a Trust Company and of its reorganization or liquidation
22 shall be defrayed from the assets thereof.

23 **§160307. Requirements of Reorganization Plan.**

24 (a) A plan or reorganization shall not be prescribed under this Act
25 unless:

1 (1) The plan is feasible and fair to all classes of trustors,
2 creditors and stockholders.

3 (2) The face amount of the interest accorded to any trustors,
4 creditors or stockholders under the plan does not exceed the value
5 of the assets upon liquidation less that full amount of the claims of
6 all prior classes, subject, however to any fair adjustment for new
7 capital that any class will pay in under the plan.

8 (3) The plan provides for the issuance of common stock in an
9 amount that will provide an adequate ratio to all assets held in trust
10 by the Trust company.

11 (4) The plan assures the removal of any director, officer or
12 employee responsible for any unsound or unlawful action or the
13 existence of an unsound condition.

14 (5) Any merger or consolidation provided by the plan conforms
15 to the requirements of this Act.

16 (b) Whenever in the course or reorganization supervening conditions
17 render the plan unfair or its execution impractical, the Commissioner may
18 modify the plan or liquidate the institution. Any such action shall be
19 taken by order of the District Court upon appropriate notice.

20 **§160308. Liquidation by Commissioner.**

21 (a) In liquidating a Trust Company, the Commissioner may exercise
22 any power thereof/but he shall not, without the approval of the District
23 Court of Guam:

24 (1) Sell any asset of the Trust Company having a value in excess
25 of One Thousand Dollars (\$1,000).

1 (2) Compromise or release any claim if the amount of the claim
2 exceeds Five Hundred Dollars (\$500), exclusive of interest.

3 (3) Make any payment on any claim, other than a claim upon an
4 obligation incurred by the Commissioner, before preparing and
5 filing a schedule of his determinations in accordance with this Act.

6 (b) Within six (6) months of the commencement of liquidation, the
7 Commissioner may by his election terminate any executory contract for
8 services or advertising to which the Trust Company is a party or any
9 obligation of the Trust company as a lessee. A lessor who receives sixty
10 (60) days notice of the Commissioner's election to terminate the lease
11 shall have no claim for rent other than rent accrued to the date of
12 termination nor for damages for such termination.

13 (c) As soon after the commencement of liquidation as is practicable,
14 the Commissioner shall take the necessary steps to terminate all fiduciary
15 positions held by the Trust company and take such action as may be
16 necessary to surrender all property held by the Trust company as a
17 fiduciary and to settle its fiduciary accounts.

18 (d) As soon after the commencement of liquidation as practicable the
19 Commissioner shall send notice of the liquidation to each known trustor
20 and creditor. The notice shall also be published in a newspaper of general
21 circulation in Guam once a week for three (3) successive weeks. The
22 Commissioner shall send with the notice a statement of the amount shown
23 on the books of the Trust company to be the claim of the trustor or
24 creditor. The notice shall demand that if the amount claimed differs from
25 that stated on the notice to be due, be filed with the Commissioner before

1 a specified date not earlier than sixty (60) days thereafter in accordance
2 with the procedure prescribed in the notice.

3 (e) Within six (6) months after the last day specified in the notice for
4 the filing of claims or such longer period as may be allowed by the
5 District Court of Guam in which notice of possession has ben filed, the
6 Commissioner shall:

7 (1) Reject any claim if he doubts the validity thereof.

8 (2) Determine the amount, if any, owing to each known Trustor
9 or creditor.

10 (3) Prepare a schedule of his determination for filing in the
11 District Court of Guam in which notice of possession was filed.

12 (4) Notify each person whose claim has not been allowed in full
13 and publish once a week for three (3) successive weeks a notice of
14 the time when and the place where the schedule of determinations
15 will be available for inspection and the date, not sooner than thirty
16 (30) days thereafter, when the Commissioner will file his schedule
17 in Court.

18 (f) Within thirty (30) days after the filing of the Commissioner's
19 schedule, any trustor or creditor or stockholder may file an objection to
20 any determination made. Any objections so filed shall be heard and
21 determined by the court, upon such notice to the Commissioner and
22 interested claimants as the court may prescribe. If the objection is
23 sustained the court shall direct an appropriate modification of the
24 schedule. After filing his schedule the Commissioner may, from time to
25 time, make partial distribution to the holders of claims which are

1 undisputed or have been allowed by the court, if a proper reserve is
2 established for the payment of disputed claims. As soon as is practicable
3 after the determination of all objections the Commissioner shall make
4 final distribution.

5 (g) The following claims shall have priority. (1) obligations incurred
6 by the Commissioner; (2) wages and salaries of officers and employees
7 earned during the four month period preceding the Commissioner's
8 possession in an amount not exceeding Three Thousand Dollars (\$3,000)
9 for any one person; (3) fees and assessments due to the government of
10 Guam.

11 (h) After the payment of all other claims which were timely filed, the
12 Commissioner shall pay claims otherwise proper which were not filed
13 within the time prescribed. If the sum available for any class is
14 insufficient to provide payment in full, such sum shall be distributed to the
15 claimants in the class pro rata.

16 (i) Any assets remaining after all claims have been paid shall be
17 distributed to the stockholders in accordance with their respective
18 interests.

19 (j) Unclaimed funds remaining after completion of the liquidation shall
20 be retained for five (5) years by the Commissioner unless sooner claimed
21 by the owner. At the expiration of such period the remaining sum shall
22 be transferred to the Treasurer of Guam as abandoned funds.

23 (k) When the assets have been distributed in accordance with this Act,
24 the Commissioner shall file an account with the District Court of Guam.
25 Upon approval thereof, the Commissioner shall be relieved of liability in

1 connection with the liquidation and the charter of the Trust company shall
2 be canceled.

3 **§160309. Fidelity Bonds; Insurance.**

4 1. The directors of a trust company shall require good and sufficient
5 fidelity bonds in the amount of Twenty Five Thousand Dollars
6 (\$25,000.00) or more on all active officers and employees whether or not
7 they receive a salary or other compensation from the company, to
8 indemnify the company against loss because of any dishonest, fraudulent
9 or criminal act or omission by any officer or employee acting alone or in
10 combination with any other person. The bonds may be in any form and
11 may be paid for by the trust company.

12 2. The directors shall obtain suitable insurance for their company
13 against burglary, robbery, theft and other hazards to which it may be
14 exposed in the operation of its business.

15 3. The directors shall at least annually prescribe the amount of penal
16 sum of the bonds or policies and designate the sureties and underwriters
17 thereof, after giving due and careful consideration to all known elements
18 and factors constituting a risk or hazard. The directors' action must be
19 recorded in the minutes of the board of directors and reported to the
20 Commissioner.

21 **§160310. Income Tax Rebates.**

22 1. Trust companies licensed pursuant to the provisions of this Chapter
23 may apply on behalf of the Guam-based trusts under their management,
24 for a Special Qualifying Certificate from the Guam Economic
25 Development Authority, which would allow one hundred percent (100%)

1 tax rebate as authorized under §§58128.6(a) and (b) of Chapter 58, Title
2 12, Guam Code Annotated. Provided, however, notwithstanding any
3 other provision of this section 160310, the tax rebate shall not apply to
4 trust property which has been employed in a business in which the settlor
5 was engaged and trust property which is used to embark upon a business
6 for the settlor or the beneficiary. For the purposes of this subsection,
7 “business” has the same meaning as “engaging in or carrying on a
8 business” as in the Business License Law at 11 GCA § 70103(e) and
9 includes only businesses which are required to be licensed or are excepted
10 from obtaining a license pursuant to the policy and provisions of 11 GCA
11 §§ 70102 and 70130.

12 2. The Guam Economic Development Authority is hereby authorized
13 to promulgate rules and regulations to implement a Special QC program
14 to allow for expeditious processing of requests by trust companies or
15 trustees of Guam-based trusts, for benefits as provided under
16 §§58128.6(a) and (b) of Chapter 58, Title 12, Guam Code Annotated.

17 3. A true copy of the Special QC shall be attached to each tax return
18 of the Guam-based trust, and the amount of tax due prior to the rebate
19 shall be deposited with the government at the time of filing of each
20 income tax return. Taxes deposited on behalf of a Guam-based trust shall
21 not be placed in the General Fund or commingled with other funds, but
22 shall be deposited by the Director of Revenue and Taxation in special
23 purpose trust accounts in one or more FDIC insured banks with offices
24 within Guam and shall be withdrawn from such accounts only for the
25 purpose of:

1 (a) making rebates as provided herein; or

2 (b) making payments as provided in §160308 (*infra*).

3 4. Upon the application of the Guam-based trust at the completion of
4 the one hundred eighty (180) days from the date of filing of income tax
5 returns, the Director of Revenue and Taxation shall immediately thereafter
6 cause the refund of the income tax to the Guam-based trust.

7 **§160311. Use of funds.**

8 1. The income tax payments made under the Special QC program,
9 shall be returned to the respective trusts at the completion of the one
10 hundred eighty (180) day period without interest.

11 2. All other revenues generated from the implementation of this Act,
12 including but not limited to, the initial and annual License Fees,
13 Examination Fees, and interest earned from these funds, shall be allocated
14 as follows:

15 (a) Fifty percent (50%) to the Chamorro Land Trust
16 Commission, for the purposes of infrastructure development (roads,
17 power, water, sewer and telephone services) on Chamorro Land
18 Trust properties;

19 (b) Ten percent (10%) shall be earmarked for the Department of
20 Revenue and Taxation for maintaining the operational functions of
21 the Government of Guam; and

22 (c) The remaining forty percent (40%) of this revenue, shall be
23 remitted immediately to the Guam Economic Development
24 Authority for the development and promotion of Guam's financial
25 services industry.

1 being conducted in compliance with said sections, he may at any time make
2 or cause to be made a special examination of the assets of such corporation.

3 **§160402. Fees for Examination; Frequency of Examination.**

4 1. For each examination of a trust company's books and records
5 required or authorized under this Chapter, the Commissioner shall charge
6 and collect from the trust company a fee for conducting the examination
7 and in preparing and typing the report of the examination at a reasonable
8 rate to be established by the Commissioner.

9 2. All money collected under this section must be paid directly to the
10 General Fund of the Government of Guam and allocated pursuant to
11 §160308, (*supra*).

12 3. The Commissioner shall examine a licensee as often as he deems
13 necessary, with cause.

14 **§160403. Applicability of Other Provisions of Title.** In addition to
15 other provisions of this Title which are applicable to this Title as a whole or
16 specifically made applicable to trust companies, the Commissioner may by
17 regulation make applicable to trust companies any regulatory provision
18 contained therein, which can be reasonably applied and which are not
19 inconsistent with the provisions of this Chapter.

20 **§160404. Regulations of Commissioner.** The Commissioner may
21 adopt such regulations as may be necessary to carry out the purposes and
22 provisions of this Chapter. Attached as Exhibit "A" are Trust Company
23 Rules and Regulations of the Department of Revenue and Taxation. These
24 Rules and Regulations are hereby approved by the Legislature as the initial
25 Rules and Regulations for this Chapter.

1 **Article 5**

2 **Unlawful Acts; Penalties**

3 **§160501. Violations by Officers or Directors Sufficient Cause to**
4 **Close Company, Liquidate Business and Revoke**
5 **License; Failure to Allow Inspection Constitutes Ground**
6 **to Revoke License.**

7 **§160502. Penalty.**

8 **§160503. Violation of this Chapter Shall Constitute a**
9 **Misdemeanor Unless Otherwise Specified.**

10 **§160501. Violations by Officers or Directors Sufficient Cause to**
11 **Close Company, Liquidate Business and Revoke License; Failure to**
12 **Allow Inspection Constitutes Ground to Revoke License.**

13 1. The violation of any of the provisions of this Chapter by the
14 officers or directors of any trust company authorized to do business under
15 the provisions of this Chapter is sufficient cause for the Commissioner to
16 close the trust company, liquidate its business and revoke its license.

17 2. If any officer or director of a trust company refuses to allow the
18 Commissioner or his deputies to inspect all books, records, papers and
19 effects of its business, the Commissioner may revoke its license and
20 proceed to terminate its affairs.

21 3. Unlawful concealment of transactions.

22 4. Improper maintenance of accounts, false or deceptive entries and
23 statements.

24 **§160502. Penalty.** Every officer, employer, director or agent of a trust
25 company who knowingly or willfully neglects to perform any duty required

1 by this Chapter or other applicable law, or who knowingly or willfully fails
2 to conform to any material lawful requirement made by the Commissioner,
3 is subject to removal upon order of the Commissioner, and upon conviction
4 shall be punished by either imprisonment of not less than one (1) year, and
5 not to exceed six (6) years, or by a fine of not more than Five Thousand
6 Dollars (\$5,000.00), or by both fine and imprisonment.

7 **§160503. Violation of this Chapter Shall Constitute a**
8 **Misdemeanor Unless Otherwise Specified.** Where no other punishment is
9 otherwise provided by law, any person violating any provision of this
10 Chapter is guilty of a misdemeanor.

11 **Section 2. Severability.** If any provision of this Law or its application to any
12 person or circumstance is found to be invalid or contrary to law, such invalidity shall
13 not affect other provisions or applications of this Law which can be given effect
14 without the invalid provisions or application, and to this end the provisions of this Law
15 are severable.

EXHIBIT "A" TO BILL NO. _____

MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
1999 _____ Regular Session

TRUST COMPANIES RULES & REGULATIONS

Department of Revenue and Taxation

§1 DEFINITIONS

In these regulations, unless the context specifically states otherwise,

- a) **Act** means The Guam Trust Companies Act.
- b) **Affiliate** means any company in the same corporate system as a parent corporation or under a partnership agreement or member organization by virtue of common ownership, control, operation or management.
- c) **Commissioner** means the Banking Commissioner of the Government of Guam.
- d) **Company** or **Trust company** means a corporation organized and licensed as provided in The Guam Trust Companies Act.
- e) **Control** means (1) ownership of more than fifty percent of the voting stock of a corporation, (2) ownership of stock of a corporation constituting more than 50% of the fair market value of all of said corporation's issued and outstanding shares, (3) a contractual or other right to vote shares constituting more than 50% of the voting shares of a corporation, (4) the right under a

management agreement or other contract to make over 50% of the decisions governing the business and financial affairs of a corporation or to select all of its officers or directors, or (5) any other right or arrangement that separately or in conjunction with other rights creates the practical ability to determine over 50% of the business and financial affairs of a corporation or to select its officers or directors.

f) Local financial institution means a bank or financial service provider/establishment licensed by the Guam Department of Revenue & Taxation to provide financial services.

§2 APPLICATION FOR LICENSE; Contents; Procedures

(a) Contents of Application. Every applicant for a corporate Trust company license shall pay the statutory application fee and file the following documents with the Commissioner:

- (1) A completed application on the form prescribed by the Commissioner (APPENDIX A)
- (2) A certified copy of the articles of incorporation or association of the Company, but if the Company is not yet incorporated a copy of the proposed articles of incorporation or association of the Company.
- (3) A certified copy of the by-laws of the Company, but if the Company is not yet incorporated a copy of the proposed by-laws. of the Company.

(b) Procedures. Within thirty (30) days following the filing of the completed application for a license the commissioner shall investigate the facts of the application and the other requirements of this Act to determine that:

- (1) The persons who will serve as directors or officers are qualified by character and experience.
- (2) The financial strength of the significant incorporators (10% or more ownership) is commensurate with the undertaking.
- (3) The name of the proposed Company is not deceptively similar to that of another Trust

company or otherwise misleading.

- (4) The capital and surplus are not less than the required minimum.
- (5) The need for trust facilities or additional trust facilities in Guam.
- (6) Such other matters concerning the proposed Trust company in relation to its location as the Commissioner may deem relevant.

2.2 REVIEW OF APPLICATION AND ISSUANCE OF LICENSE

(a) Review of Commissioner. After the conclusion of the investigation, if the Commissioner finds that the applicant has met all the requirements of this Act and other applicable laws, he shall promptly notify the applicant in writing of his approval or disapproval of the application with reasons for the denial. The Commissioner shall issue a license to the applicant to conduct a Trust company business upon the applicant's compliance with the requirements under the Act.

(b) Payment of Fees. Within thirty (30) days after the Commissioner notifies the applicant of the approval of the application, the Trust company shall pay the statutory initial license fee as set forth in the Act.

2.3. CANCELLATION OF LICENSE IF TRUST COMPANY FAILS TO OPEN FOR BUSINESS

If a proposed Trust company fails to open for business within six (6) months after the date the license was issued, or within an additional six (6)-month extension granted by the Commissioner upon written application and for good cause shown, the Commissioner shall issue an order canceling the Trust company's license.

2.4. RENEWAL

The renewal application shall consist of a letter identifying the Company and stating that it is applying to renew its license, accompanied by adequate proof of compliance with the requirements

of §§160005 and 160018 of the Act and expiring not later than the end of the year for which renewal of the license is sought, together with a check for the annual license fee in the amount set forth in §160013 of the Act, and filing of clearance that taxes due are paid to obtain a license in accordance with Title 11 GCA §70132. Each application for the renewal of Trust Company license under this Act shall be filed no later than June 1st of each year. Each application for a renewal license shall be deemed to be granted unless within thirty (30) days from receipt of the application the Commissioner notifies the applicant in writing that its application has been rejected and stating the reasons therefore.

§3 ANNUAL AUDITED REPORT

3.1 REPORT FORM. The annual audit report shall consist of the following:

(a) Opinion of Independent Certified Public Accountant

1. Financial statements furnished pursuant to this section shall be prepared in accordance with generally accepted accounting principles and be examined by an Independent Auditor in accordance with generally accepted auditing procedures.
2. The opinion of the Independent Auditor shall cover all years presented.
3. The opinion shall be addressed to the Company on stationery of the Independent Auditor showing the address of issuer, shall bear original and manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls

1. This report shall include an evaluation of the internal controls of the Company relating to the methods and procedures used in the securing of assets and reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties.
2. The review shall be conducted in accordance with generally accepted auditing procedures. A copy of the report must be filed with the Commissioner

(c) Letter of Independent Auditor

The Independent Auditor shall furnish the Company, for inclusion in the filing of the audited annual report, a letter stating that:

1. He is independent with respect to the Company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.
2. The general background and experience of the staff engaged in the audit including the experience in auditing Trust companies.
3. The accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Commissioner.
4. The accountant consents to the requirements of Section 3 of these regulations and further consents and agrees to make available for review by the Commissioner, his designee or his appointed agent, the work papers as defined in Section 3.3 of the regulations.
5. The accountant is properly licensed by Guam and that he is a member in good standing in the American Institute of Certified Public Accountants.

(d) Financial Statements

Statements required shall be as follows:

- I. Balance Sheet
- II. Statement of earnings or loss from operations
- III. Statement of cash flows
- IV. Statement of changes in paid-in capital and contributed surplus and unassigned funds
- V. Notes to financial statements.

3.2 CHANGE OF INDEPENDENT AUDITOR

Each Trust company that is licensed under the Act shall notify the Commissioner in writing of any change in the Independent Auditor appointed by the Company. The change appointment of the Independent Auditor shall be deemed to be approved by the Commissioner unless notice is given to the Company within thirty (30) days after receipt of the notice by the Commissioner's office, that the auditor is not approved, in which case the Company shall appoint a substitute and notify the Commissioner of the substitute auditor which substitute shall be subject to the approval of the Commissioner under this subsection.

3.3 ACCESS TO AND MAINTENANCE OF WORKING PAPERS OF INDEPENDENT AUDITOR

Each Trust company that is licensed under the Act shall require its Independent Auditor to make available for review by the Commissioner or his appointed agent the work papers prepared in the conduct of the audit of the Company. The Trust company shall require that the Independent Auditor retain the audit work papers for a period of not less than five (5) years after the period reported upon.

The aforementioned review by the Commissioner shall be considered investigations, and all work papers obtained during the course of such investigations shall be confidential. The Trust company shall require that the Independent Auditor provide photocopies of any of the work papers, which the Commissioner considers relevant. Photo copies of such work papers may be retained by the Commissioner.

“Work Papers” as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda narratives, flow charts, copies of Company records or other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the Company.

3.4 SECURITY.

Whenever the Commissioner deems that the financial condition of the Trust company warrants additional security, he may require the Company to deposit with the Treasurer of Guam or an escrow agent approved by the Commissioner cash or securities approved by the Commissioner or, alternatively, to furnish the Commissioner a clean irrevocable letter of credit issued by a member bank of the Federal Reserve System which is licensed in Guam and approved by the Commissioner.

The Trust company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Commissioner.

If such Company discontinues business and surrenders its license, the Commissioner shall return such deposit only after being satisfied that all obligations of the Company have been discharged.

3.5 NOTICE OF ADVERSE FINANCIAL CONDITION

Each Trust company that is licensed under the Act shall require its Independent Auditor to immediately notify in writing the president or his designee and all members of the board of directors of the Trust company of any determination by the Independent Auditor that the Company has materially misstated its financial condition in any of its reports to the Commissioner. The president of the Trust company or his designee shall furnish such notification to the Commissioner within fifteen (15) days of receipt of such information from the Independent Auditor.

§4 OTHER REQUIREMENTS AND RESTRICTIONS

4.1 MINUTES OF ANNUAL MEETING OF THE BOARD OF DIRECTORS

For a Trust company that is licensed under the Act, copies of the minutes of the annual meeting of the board of directors shall be filed with the Commissioner within thirty (30) days after such meeting.

4.2 PRINCIPAL PLACE OF BUSINESS

A Trust company shall have an office in Guam in which it maintains its business and corporate records and financial books. A Trust company may establish its principal office in Guam in office space that it shares with other businesses, including other Trust companies or Affiliates provided that the office equipments, corporate records, and financial books of accounts of the Trust Company are kept separate and distinct from those of other businesses, including other Trust companies or Affiliates.

4.3 RESIDENT REGISTERED AGENT FOR SERVICE OF PROCESS

The registered agent of a Trust company shall be either a *licensed individual who resides in Guam* or a corporation or a partnership or a limited liability company formed on Guam that maintains an office in Guam that is regularly open for business during normal business hours. This registered agent may be an attorney, CPA, certified financial advisor, or other professional representative, who shall be responsible for maintaining the corporate records and financial books for the Guam-based trust. Both the registered agent for service of process and the Trust company licensed under the Act shall notify the Commissioner in writing within ten (10) days of any change in the address of its registered agent for service of process.

4.4 DEPOSITS IN LOCAL FINANCIAL INSTITUTION

All payments and deposits of the trust company licensed under the Act shall be made in a *Local financial institution* as defined in Section 1(f) above.

§5 REGULATORY FEES

5.1 AMOUNT. The Commissioner will charge and collect a fee from each Trust Company for conducting any examination, supervision, audit, or investigation which is required or authorized under this Act, based on cost per hour per examiner, plus travel, per diem and other

expenses related to the such activity.

5.2 PAYMENT. The Commissioner will bill each Trust company upon the completion of the activity for the fee established in Section 5.1 above. The fee must be paid within thirty (30) days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of ten (10) percent of the fee plus an additional one (1) percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

5.3 FAILURE TO PAY. Failure of a Trust company to pay the fee required in Section 5.2 above as provided in this section constitutes grounds for revocation of its license.

**COMMITTEE ON TOURISM,
ECONOMIC DEVELOPMENT AND PARKS**
I Mina Bente Singko Na Liheslaturan Guåhan
155 Hesler Street Hagåtña, Guam 96932

COMMITTEE REPORT

ON

Bill No. 193

**An Act to Add Chapter 160 to Title 11, Guam Code Annotated
Relative to Establishing the Guam-Base Trust Companies Act.**

COMMITTEE MEMBERS

Chairman: Senator Alberto C. Lamorena, V

Vice Chairperson: Senator Joanne M.S. Brown

Senator Anthony C. Blaz

Senator Kaleo S. Moylan

Senator Mark Forbes

Senator John C. Salas

Senator Carlotta A. Leon Guerrero

Senator Simon A. Sanchez, II

Senator Frank B. Aguon, Jr.

COMMITTEE REPORT

Bill No. 193

An Act to Add Chapter 160 to Title 11, Guam Code Annotated Relative to Establishing the Guam-Base Trust Companies Act.

INTRODUCTION

The Committee on Tourism, Economic Development and Parks conducted a Public Hearing 9:39 a.m. Monday, July 26, 1999 in the Public Hearing Room of the Guam Legislature Temporary Bldg. in Hagåtña.

Committee Members Present: Senator Alberto C. Lamorena, V, Chairman
Senator Carlotta A. Leon Guerrero

Other Senators Present: Senator Marcel G. Camacho
Senator Eddie B. Calvo

Witnesses: Don Dellinger, Private Citizen
Eloise Baza, President
Guam Chamber of Commerce
Allen Pickens, Partner
Deloitte & Touche, LLP
Joseph Duenas, Director
Department of Revenue and Taxation
Ed Untalan, Administrator
Guam Economic Development Authority

SUMMARY OF TESTIMONY

Don Dellinger, a private citizen, provided the committee with oral testimony in support of the bill. Mr. Dellinger testified that the Guam-Based Trust Companies Act is a step in the right direction. Mr. Dellinger informed the members that he had some

interest in the Guam-Based Trust and continued that there is a special interest in the Guam-Based Trust and urged the committee to expedite the passage of the bill.

Eloise Baza, President for the Guam Chamber of Commerce, was not present at the hearing, however, provided the committee with written testimony supporting the intent of the bill. Ms. Baza informed the committee that Mr. Al Pickens will be representing the Chamber as the Chairman for the Financial Services Committee, and that the Chamber supports the recommendations by Mr. Pickens.

Al Pickens, Partner, in the Accounting Firm of Deloitte & Touche, LLP, provided the committee with written testimony in support of the bill. Mr. Pickens also appeared representing of the Guam Chamber of Commerce as Chairman of the Financial Services Committee. In his testimony, Mr. Pickens stated that the bill is the necessary step in implementing P.L. 24-266. Mr. Pickens continued that such trust management companies must be regulated for the protection of the trustors and beneficiaries of the trust, and that investors in the anticipated trust companies need a set of clearly defined rules and guidelines with which to structure and manage their enterprise. Mr. Pickens suggested several amendments to the bill and urged the committee to report out the bill favorably for passage.

Joseph Duenas, Director for the Department of Revenue and Taxation, provided the committee with written testimony in support of the bill. In his testimony, Mr. Duenas testified that as the law now stands, anyone could put their business in a trust and then run the business through a Guam-Based Trust in order to avoid paying taxes on the income from the business. Mr. Duenas further stated that this could significantly erode Guam's tax base, and to avoid this, all businesses should not be eligible to receive the tax benefits through a Guam-Based Trust. Mr. Duenas provided the committee with extensive recommended changes to the bill and asked that the

committee to seriously look at recommended changes before reporting the bill. Mr. Duenas provided additional comments to his previous testimony stating that any person could put his or her business through a Guam-Based Trust, pay the income tax then get a one hundred percent (100%) Income Tax Rebate through a Special Qualifying Certificate. Mr. Duenas continued that the bill without the Rev & Tax recommended changes would greatly erode Guam's Income Tax and we may lose between 20 million to 60 million dollars in revenue.

Ed Untalan, Administrator for the Guam Economic Development Authority, provided the committee with written testimony in support of the bill. Mr. Untalan testified that this bill is the final piece of the puzzle in creating the Trust Industry. Mr. Untalan continued that GEDA has been working with the Department of Revenue and Taxation in developing this statute and the rules and regulations for GEDA and Rev & Tax, respectively. Mr. Untalan informed the committee that there a few changes that GEDA would like to see incorporated into the bill. Mr. Untalan thanked the committee for the opportunity to provide testimony on Bill No. 193, and urged for its passage.

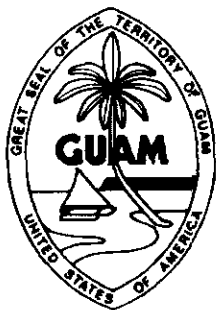
There being no other witnesses, the Chairman adjourned the hearing on Bill No. 193.

COMMITTEE FINDINGS

The Committee on Tourism, Economic Development and Parks conducted a Mark-Up Hearing on Bill No. 193. The committee, along with officials from the Department of Revenue and Taxation, the Guam Economic Development Authority, and other cognizant individuals, discussed the recommended changes to the bill. The committee further finds that although the bill is an important piece of legislation to implement P.L. 24-266, the consensus of the committee is to discuss and further review proposed amendments by the government and private sector witnesses.

COMMITTEE RECOMMENDATIONS

The Committee on Tourism, Economic Development and Cultural Affairs hereby reports out Bill No. 193 to the Twenty-Fifth Guam Legislature with the recommendation **To Pass, as Substituted by the Committee.**



GUAM

ECONOMIC DEVELOPMENT AUTHORITY

An Autonomous Agency of the Government of Guam, USA



TESTIMONY ON:

Bill No. 193 - An Act to Add Chapter 160 to Title 11, GCA Relative to Establishing Guam-Based Trust Companies Act.

**Submitted by:
Ed Untalan
Administrator**

Guam Economic Development Authority

July 26, 1999

Good morning Chairman Lamorena, esteemed members of the Committee on Tourism, Economic Development and Parks, ladies and gentlemen:

My name is Ed Untalan, and I am the Administrator for the Guam Economic Development Authority (GEDA). I am here on behalf of the Authority to provide testimony on behalf of Bill No. 193. We support the passage of this bill as it is the final piece to the puzzle in creating the Trust Industry. The legislation creating the Trust Industry was passed around the third quarter of last year. We have been working closely with the Department of Revenue and Taxation in developing this statute and the rules and regulations for GEDA and DRT, respectively. However, the rules and regulations cannot pass into law until this legislation is first passed. With that, we encourage this body to immediately act on this bill as we seen a great deal of interest in establishing Trust Companies and relocating trusts to Guam.

However, there are a few changes that we would like to have incorporated into the legislation, as they are critical from a regulatory compliance standpoint (please see attachment). Additionally,

*Destination Guam, USA
Tropical Paradise & Island of Opportunities*

we would also like to request, if it is possible, to have the rules and regulations incorporated in the approval process.

I will now answer any questions that you may have.

Put Respetu,


Ed Lintalan

ATTACHMENT to TESTIMONY on Bill 193
Submitted by Ed Untalan, Administrator GEDA
Public Hearing - July 26, 1999

- To provide adequate protection to the trust beneficiaries and the public, our suggested changes include the following:

1. **Sec. 160305 Discontinuing Business.**

The proposed bill deleted the phrase re: no objection or no proof being submitted by claimant. we suggest that Par. 2 should read: "After the trust company has furnished proof of publication and the affidavit, and no objection to discontinue business or no proof is submitted by any claimant of an outstanding receivable or claim against the Trust company, the Commissioner shall enter an order canceling the trust company's license."

2. Re-instate the Sections on **Commissioner in Possession, Requirements of Reorganization Plan, and Liquidation by Commissioner** as was included in the original draft.

- **TITLE** and **Section 1.** should refer to **GUAM TRUST COMPANIES ACT**, not the **GUAM-BASED TRUST COMPANIES ACT.**

- **P. 20. Line 2. re: Examinations**

If the bill intends to be specific in identifying the pertinent sections, perhaps Sec. 160304 (re: Other requirements) should also be included.



Dipårtamenton Korribusion yan Adu'áná

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guáhan

CARL T.C. GUTIERREZ, Governor Maga'láhi
MADEIRA BORDALLO, Lt. Governor / Tiriente Gubetnadora

JOSEPH T. DUENAS, Director / Direktor
CARL E. TORRES, Deputy Director
Sigundo Direktor

July 26, 1999

MEMORANDUM

To : Alberto C. Lamorena, V
Committee on Tourism, Economic Development and Páks

From : Joseph T. Duenas
Director Revenue and Taxation

Re : Bill193, Guam Based Trusts

This bill casts a broad net which could pull in many fish that it does not intend to catch. As the law now stands, anyone could put their business in a trust and then run the business through a "Guam based trust" in order to avoid paying taxes on the income from the business. This could significantly erode Guam's tax base. In order to avoid this result, all business should not be eligible to receive the tax benefits allowed through a "Guam based trust." To accomplish this, new language should be added to § 160301(2) which provides:

Notwithstanding any other provision of this chapter, trust property held by a trust company shall not include property employed in a business in which the settlor was engaged and shall not include trust property used to embark upon a business for the settlor or the beneficiary. For the purposes of this subsection, "business" has the same meaning as "engaging in or carrying on a business" has in the Business License Law, 11 GCA § 70103(e).

Along with this change, the definitions section of the bill needs to be changed to adopt some of the standard definitions used when dealing with trusts, including the definitions of "trust," "trust property," "beneficiary" and "settlor." Recommendations for changes in the definitions section of the bill are mentioned below.

The language of the bill is unclear regarding exactly what entities are regulated and what type of activity is regulated. Consequently, the language of the bill should be changed so that the scop of

the law is clearly defined and limited.

As to what entities are regulated, the bill regulates “trust companies” which are defined as corporations. (§106102(g), p.3) All of the regulatory provisions refer to trust companies or corporations. However, the law states that it is unlawful “for any *person* to engage in the business of a trust.” (§ 160201, p. 3) The term “person” is not defined. Under the usual definition, a “person” would refer to an individual. As the law is now written, it applies to “persons,” that is individuals, but it regulates corporations which are not individuals.¹ **In order to make § 160201 consistent with the other provisions of the bill, § 160201 should be changed as follows: “It is unlawful for any trust company to engage in the business of a trust company without complying with the provisions of this chapter and having a license issued by the commissioner.”** Under this recommended provision, since only trust companies may apply for a QC (§160307, p.17), it is only trust companies which are regulated.

As to what activities are regulated, the bill regulates “the business of a trust company” (§ 160201, p.3) or “trust company business” (§ 160102(g), p.17). The bill does not define “trust company business.” The bill does state the powers of a licensed trust company in § 160301. However, § 160301.1(i) allows a trust company to do anything authorized by Guam law. This provision goes way beyond the stated intent of the law to regulate trust company business. **Therefore, the language “and any other applicable laws of Guam” should be eliminated from § 160301.1(i). And “trust company business” should be specifically defined as “acting as a trustee and engaging in those activities stated in § 160301.1.”**

In regard to the definitions section (§ 160102) of the bill, I suggest that the following definitions be added:

Beneficiary means the person for whose benefit trust property is held.

Equitable duties include the common law duties of a trustee, the duty to exercise reasonable care, skill and caution in preserving and enhancing trust property, the duty to act with undivided loyalty to the beneficiaries of a trust and the duty to act with impartiality among all beneficiaries.

Person means an individual, a partnership, a corporation and any other entity established by law or otherwise established for a stated purpose.

Settlor means the person who creates a trust.

¹ Often a specific definition in a law will expand the term “person” to include legal entities which engage in business activities, such as sole proprietorships, corporations, partnerships, limited partnerships, limited liability companies and limited liability partnerships. Since bill 193 does not provide for the regulation of these other legal entities, an expansion of the word “person” to include all legal entities would require a rewriting of most sections of the bill.

Trust means a fiduciary relationship with respect to property (the trust property) which arises as a result of a manifestation of an intention to create it and which subjects the person by whom the property is held (the trustee) to equitable duties to deal with the property for the benefit of another person (the beneficiary).

Trust company business means acting as a trustee and engaging in those activities stated in § 160301.1.

Trustee means a person who is subject to equitable duties and who holds trust property for a beneficiary. [This would change § 160102(h).]

Trust property means property held in a trust.

The phrase “local financial institution” is defined in § 160102(h). Since the phrase is not used in the bill, this definition should be omitted.

Section 160202 prohibits the **use of the word “trust.”** “Trust” is a generic term which has different definitions and which is used in many different contexts including bankruptcy and other legal proceedings. It is impractical, and probably undesirable, to attempt to police the use of the word “trust” in names and in advertising. For example, § 160202 prohibits an advertisement which states: “XYZ company, the people you can trust.” I suggest that the limitations in § 160202 be applied to the use of the term “trust company” rather than “trust.”

As housekeeping matters, I suggest the following changes: At page 5, line 23, “trust company/bank” be changed to “trust company.” At page 12, line 1, “permitted by any law” be omitted, because we are dealing with Guam law. At page 15, lines 7-8, the sentence “The disclosure may be made by a prospectus, a report to the Trustor [not defined], or otherwise.” be changed because the word “otherwise” makes the sentence meaningless. A new sentence should read: “The disclosure shall be made in a manner prescribed by the commissioner.” At page 19, line 24 “the Banking and Finance Commissioner” be changed to “the Banking Commissioner.”

The Committee has made a number of changes to the original legislative proposal. One area of significant change involves the regulation and control of trust companies which go out of business or get into an unsound financial condition. Like the regulation of banks, savings and loan associations and insurance companies, it is important to have some protection of the interests of the people who have entrusted their assets to a Guam trust company. However, bill 193 has deleted the language which is designed to protect those members of the public who choose to place their assets with a particular trust company.

Specifically, section 160305² of the bill addresses the discontinuing of business by a trust

² Section 160019 of the original legislative proposal.

company. Under this section, a company must publish its intent to discontinue business and submit an affidavit to the Commissioner stating that all obligations have been satisfactorily discharged. The original proposal allowed the Commissioner to cancel the company's license if there was no objection to the company discontinuing business and there was no proof of any outstanding claims or receivables against the company. This was intended to allow the Commissioner to look into any evidence of outstanding claims before allowing the company to close and liquidate its assets. The current version of bill 193 has omitted the language which allows the Commissioner to look into evidence of outstanding claims. The bill now provides that the Commissioner must cancel a trust company's license, without further consideration of any claims, when the company meets the publication requirement and submits their affidavit to the Commissioner. The original language, on the other hand, allows the Commissioner to investigate any discrepancies between a company's affidavit that there are no unsatisfied obligations and any evidence to the contrary.

The original legislative proposal allowed the Commissioner to take possession of a trust company if, after a hearing, he finds that the company's capital is impaired or unsound, its business is being conducted unlawfully or in an unsound manner, it is unable to continue normal operations, or an examination of the company has been obstructed or impeded.³ This authority to protect the public against a company which is financially unsound or operating illegally has been omitted from the current version of the bill. Under the original legislative proposal, if the Commissioner did take possession of a trust company, he could liquidate the company or reorganize it.⁴ The liquidation and reorganization provisions are omitted from the current version of the bill. By omitting these provisions, the Department does not have the authority to regulate and supervise the closing of a trust company.

The original legislative proposal provided that publication and other application expenses were to be paid by the trust company applicant.⁵ This provision is omitted from section 160209 of the current version of the bill. Therefore, the costs involved in applying to become a trust company have been shifted from the applicant to the taxpayers of Guam.

In the original legislative proposal, a trust company must pledge security for uninsured funds held for more than 24 hours awaiting investment or distribution.⁶ The 24 hour deadline is omitted in section 160302.1(b) of the current version of the bill. The omission of a specific deadline creates an ambiguity in the law.

Section 160210 of the current version of the bill gives the Department an additional 15 days to determine whether an applicant should receive a license. This is a good change. The Department

³ Section 160020 of the original legislative proposal.

⁴ Sections 160021 & 160022 of the original legislative proposal.

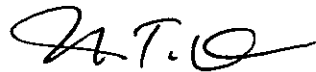
⁵ Section 160011 of the original legislative proposal.

⁶ Section 160016.1.(b) of the original legislative proposal.

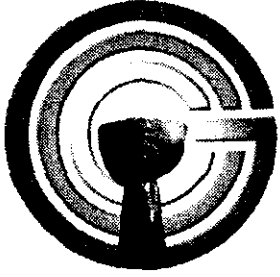
will need additional time to comply with the procedural requirements of the AAL in cases in which the Department decides to deny a license.

One other change involves the use of revenues coming to the government from the implementation of the act. This, however, is a policy matter which does not involve the act's regulatory aspects.

I appreciate this opportunity to comment on bill 193. Please let me know if you want additional information.

A handwritten signature in black ink, appearing to read "J.T.D.", with a stylized flourish at the end.

JOSEPH T. DUENAS



GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS

1 9 2 4 - 1 9 9 9

July 26, 1999

SENATOR ALBERTO C. LAMORENA, V
Chairman, Committee on Tourism, Economic
Development & Parks
Suite 314 Union Bank Bldg.
194 Hernan Cortez Avenue
Hagåtña, Guam 96910

**SUBJECT: BILL NO. 193, RELATING TO ESTABLISHING THE
GUAM-BASED TRUST COMPANIES ACT**

Dear Senator Lamorena:

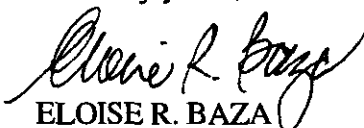
We appreciate the opportunity to submit our views on Bill No. 193 relative to the establishment of the Guam-Based Trust Companies Act.

The Guam Chamber of Commerce strongly advocates initiatives essential to the development of Guam-based trusts. We believe this legislation is the next step in helping Guam attain the ability to be competitive in attracting international trusts as anticipated in P.L. 24-266.

We therefore support the intent of Bill No. 193 and seek your favorable consideration of an amended version of the bill that incorporates specific amendments outlined in the enclosed testimony submitted by Allen A. Pickens, Chairman of our Financial Services Committee.

We thank you for the opportunity to provide you with our recommendations on Bill No. 193.

Sincerely yours,


ELOISE R. BAZA
President

Enclosure

**TESTIMONY BEFORE THE COMMITTEE ON TOURISM,
ECONOMIC DEVELOPMENT AND PARKS
JULY 26, 1999**

**PURSUANT TO BILL NO. 193: RELATIVE TO ESTABLISHING
THE GUAM-BASED TRUST COMPANIES ACT**

Chairman Lamorena, members of the Committee, my name is Allen A. Pickens. I am a partner in the accounting firm, Deloitte & Touche LLP. I come before you today to voice my support for Bill No. 193, an act to add Chapter 160 to Title 11, Guam Code Annotated relative to establishing the Guam-Based Trust Companies Act.

This proposed legislation is the necessary next step in implementing previously passed legislation allowing tax benefits to domestic and international trusts established on Guam. Through the establishment of trust companies within this jurisdiction we will be able to manage the trusts anticipated under the earlier legislation. Such trust management companies must be regulated for the protection of the trustors and beneficiaries of the trusts. The investors in the anticipated trust companies need a set of clearly defined rules and guidelines with which to structure and manage their enterprise. Bill No. 193 provides such structure.

Having stated support, I offer the following technical suggestions relative to the proposed Bill.

- (1) At Section 160208.2, page 7, we set forth two fees; one for \$1,000 is clearly a one-time application fee. The second for \$100 appears to be some type of annual fee. This Section suggests that this is a minimum fee and refers to Section 160211, page 11, where one is to determine the maximum fee. At Section 160211 there is no provision for a minimum fee; rather this section clearly sets forth the amount of annual fee to be paid as determined by the capitalization of the enterprise. I would suggest that the \$100 fee at Section 60208.2 be eliminated as it is clearly covered by the higher fee set forth at Section 160211.
- (2) At page 11, Section 160212, line three, it would appear the word "addition" should be changed to "additional."
- (3) Page 14, Section 160303.1(a) speaks of a Guam Securities Administrator. To whom does this refer? Is this the Commissioner? Perhaps this term should be clarified at Section 160102 under definitions.
- (4) Section 160304.2, line 1 at top of page 16, the term "generally accepted accounting principles" should be changed to "generally accepted auditing standards."

Thank you for providing the opportunity to testify on this important legislation.

Allen A. Pickens

RECEIVED
8/26/99

Guam Trust Administration, Inc.
P.O. Box 24408
GMF, Guam 96921
Tele: (671) 649-3249 Fax: (671) 649-3019

Senator Alberto "Tony" A.C. Lamorena V
Chairman
Committee on Economic Development
25th Guam Legislature
Agana, Guam

Dear Senator Lamorena,

These tough economic times are cause for great concern to us all! Your efforts and those of your legislative colleagues to solve our budget woes are certainly appreciated by the general public.


While I understand the overriding priority the budget dilemma presents, we must give new government revenue opportunities the legislative support they need to assist our economic recovery efforts. With that in thought in mind, I urge your best efforts to expedite the passage of Bill 193; the regulatory legislation needed for the Guam-based Trust Industry to begin functioning.

I suppose some might look at this basic industry and its tax rebate program as only a long-term revenue source to the specific agencies named in the legislation. However, one must also consider the near-term revenues this industry will provide in the form of Gross Receipt Taxes, employee income tax withholding and the corporate or individual income taxes generated by the Trust Management Companies' stockholders. Although difficult to quantify at this point in time, I believe these revenues have the potential to make a significant contribution to the government's revenue stream.

My mainland partners have been provided the latest revision by Department of Revenue and Taxation (their letter, 8/17/99) and report their continued support for both the form and intent of the revised legislation.

I solicit your support for the expedited passage of Bill 193 as soon as the 25th Legislature is called into session. Should you need our input to convince any of your fellow Senators to support this bill, please call on me at anytime.

Si Yu'os Ma'ase,


DONALD O. DELLINGER
Director

APR 1 10 1999

MINA' BENTE SINGKO NA LIHESLATURAN GUÅHAN
1999 (FIRST) Regular Session

Bill No. 193 (cop)

Introduced by:


A.C. Lamorena V

AN ACT TO ADD CHAPTER 160 TO TITLE 11, GUAM CODE
ANNOTATED RELATIVE TO ESTABLISHING THE GUAM-BASED
TRUST COMPANIES ACT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

**Section 1. Chapter 160 is hereby added to Title 11, Guam Code
Annotated, to establish the Guam-Based Trust Companies Act.**

Chapter 160

Guam-Based Trust Companies

Article 1.

General Provisions

§160101. Declaration of legislative intent. The legislature finds as
facts and determines that:

1. There exists in the island of Guam a need for the protection of the public interest, to regulate companies which are engaged in the trust company business;
2. Such trust companies should be licensed and regulated in such a manner as to promote the public advantage and convenience; and

1 3. It is the purpose of the chapter to bring under public supervision
2 those persons who are engaged in or who desire to engage in the business
3 of a trust company, not in connection with banking business, and to insure
4 that there is established in Guam an adequate, efficient and competitive
5 trust company service.

6 **§160102. Definitions.** For the purposes of this Chapter, except as
7 otherwise specifically provided, the following words and phrases, together
8 with all of the common derivatives thereof (i.e., verbs, plurals, feminine
9 gender, etc.) shall have the meaning ascribed to them as follows:

10 (a) **Commissioner** means the Commissioner of Banking of the
11 Government of Guam.

12 (b) **Court trust** means the action of a trust company acting under
13 appointment, order or decree of any court as executor, administrator,
14 guardian, conservator, assignee, receiver, depository or trustee, or
15 receiving on deposit money or property from a public administrator under
16 any provision of this chapter or from any executor, administrator,
17 guardian, conservator, assignee, receiver, depository or trustee under any
18 order or decree of any court.

19 (c) **Fiduciary** means trustee, agent, executor, administrator,
20 committee, guardian, conservator for a minor or other incompetent
21 person, receiver, trustee in bankruptcy, assignee for creditors or any
22 holder of a similar position of trust.

23 (d) **Local financial institution** means a bank or other financial service
24 establishment, licensed by the Guam Department of Revenue & Taxation
25 to provide financial services.

1 (e) *Net worth* means paid in capital plus paid in surplus plus retained
2 earnings, if any.

3 (f) *Private trust* means every other trust, agency, fiduciary relationship
4 or representative capacity other than a court trust.

5 (g) *Trust company* means a corporation organized and licensed in
6 Guam as provided in this chapter and engaged in trust company business.

7 (h) *Trustee* means an individual or a trust company which administers
8 a trust for the benefit of another.

9 **§160103. Applicability of chapter.** This Chapter does not apply to:

10 1. Banks or banking institutions regulated under the provisions of
11 Chapter 100 of Title 11, Guam Code Annotated;

12 2. Savings and loan institutions regulated under Chapter 141 of Title
13 11, Guam Code Annotated;

14 3. Title insurers but only respecting escrows;

15 4. Nonprofit, charitable trusts or trust associations; or

16 5. Any person, if:

17 (a) The fiduciary relationship is not one of his principal
18 occupations; or

19 (b) He serves as trustee for a relative by blood or marriage.

20 **Article 2.**

21 **Organization and Licensing**

22 **§160201. Unlawful to engage in business of trust company without**
23 **license.** It is unlawful for any person to engage in the business of a trust
24 company without complying with the provisions of this chapter and having
25 a license issued by the commissioner.

1 **§160202. Unlawful to use or advertise word “trust” as part of**
2 **name; exceptions.**

3 1. Except as otherwise provided in subsection 2, no person,
4 partnership, firm, association, corporation or other business organization
5 formed and doing business under the laws of Guam may:

6 (a) Use the word “trust” or any direct derivative of that word as
7 a part of its name.

8 (b) Advertise or use any sign with the word “trust” used as a
9 part of its name.

10 2. The provisions of subsection 1 do not apply to a person or business
11 organization which is supervised by the commissioner pursuant to this
12 Chapter.

13 **§160203. Minimum capitalization.** No trust company may be
14 organized or operated with a capital of less than One Hundred Thousand
15 Dollars (\$100,000.00), or in such greater amount as may be required by the
16 commissioner, and paid-up surplus of Fifty Thousand Dollars (\$50,000.00),
17 or in such greater amount as may be required by the commissioner. The full
18 amount of the capital and surplus must be paid in cash, exclusive of all
19 organization expenses, before the trust company is authorized to commence
20 business.

21 **§160204. Incorporation; required number of persons.** Any three
22 (3) or more persons (except in the case of a limited liability company which
23 may be incorporated with two (2) or more persons), may execute articles of
24 incorporation and be incorporated as a trust company in the manner
25 prescribed in this chapter.

1 **§160205. Contents of articles of incorporation.**

2 1. The articles of incorporation must contain:

3 (a) The corporate name adopted by the corporation, which must
4 be such as to distinguish it from any other trust company formed or
5 incorporated in Guam, or engaged in the trust business in Guam.

6 (b) The place where its business is to be conducted.

7 (c) The purpose for which it is formed.

8 (d) The amount of its capital stock, which must be divided into
9 shares of the par value of not less than Twenty-Five Dollars
10 (\$25.00) each, except that upon the written approval of the
11 commissioner the capital stock may be divided into shares of the
12 par value of not less than One Dollar (\$1.00) each. The amount of
13 capital stock must not be less than One Hundred Thousand Dollars
14 (\$100,000.00), and must be assessable.

15 (e) The amount of its original paid-in surplus, which must not be
16 less than fifty percent (50%) of its capital stock.

17 (f) The name and place of residence of, and the number of
18 shares subscribed by, each stockholder.

19 (g) The number of directors, which must not be less than three
20 (3), and the names of the stockholders selected to act as the first
21 board of directors, each of whom must be a bona fide subscriber
22 for at least One Thousand Dollars (\$1,000.00) of the stock of the
23 trust company/bank, fully paid and not hypothecated.

24 (h) The location of all branch offices as approved by the
25 commissioner.

1 (i) Such other matters, not inconsistent with law, as the
2 incorporators may deem proper.

3 2. The articles of incorporation may also provide for the issuance and
4 sale of preferred stock in such amount as is fixed by the articles or by
5 amendments thereto, and the amount and number of shares thereof, and
6 the terms and conditions thereof not inconsistent with the provisions of
7 this Chapter.

8 **§160206. Commissioner to issue certificate of incorporation;**
9 **commissioner must authorize business before company may transact**
10 **business.**

11 1. The Commissioner shall issue a certificate in the form provided by
12 law for other corporations, and the existence of the trust company as a
13 corporation dates from the issuance of the certificate by the
14 Commissioner, from which time it has and may exercise the powers
15 conferred by law upon corporations generally, except as limited or
16 modified by this Chapter.

17 2. The trust company shall transact no business, except the election
18 of officers, and the taking and approving of their official bonds, and the
19 receipt of payments on account of the subscriptions of the capital stock,
20 and such other business as is incidental to its organization, until it is
21 authorized by the commissioner to commence the trust company business
22 as provided in this Chapter.

23 **§160207. Subscription, acknowledgment and filing of articles of**
24 **incorporation; filing of copies.** The articles of incorporation must:

25 (a) Be subscribed to by at least three (3) of the stockholders of the

1 proposed corporate trust company.

2 (b) Be acknowledged by them before some person competent to take
3 an acknowledgment of deeds.

4 (c) Be filed in the office of the Commissioner.

5 **§160208. Application for license: Contents; fees.**

6 1. The corporate trust company shall file an application for a license
7 to transact trust company business with the commissioner on forms
8 prescribed by the commissioner, which must contain such information as
9 the commissioner requires.

10 2. A non refundable fee of One Thousand Dollars (\$1,000.00) for the
11 application and investigation must accompany the application. The
12 applicant shall also pay such additional expenses incurred in the process
13 of investigation as the commissioner deems necessary. In addition, a fee
14 of not less than One Hundred Dollars (\$100.00) nor more than the
15 maximum fee set under §160211, (*infra*), prorated on the basis of the
16 licensing year as provided by the commissioner, must be paid at the time
17 of making the application.

18 3. Any request for approval and licensing of a branch location for a
19 trust company must be filed with the commissioner on such forms as he
20 prescribes. A non refundable fee of the amount set under §160211,
21 (*infra*), for the application and investigation must accompany each
22 request. In addition, a fee of not more than One Hundred Dollars
23 (\$100.00), prorated on the basis of the licensing year as provided by the
24 commissioner, must be paid at the time of making the request.

25 4. All money received by the commissioner pursuant to this section

1 must be placed in a special purpose trust account, pursuant to §160307 of
2 this Act.

3 **§160209. Procedure for granting or denying license.**

4 1. Within forty-five (45) days following the filing of the application
5 for a license, the commissioner shall investigate the facts of the
6 application and the other requirements of this Chapter to determine:

7 (a) That the persons who will serve as directors or officers are
8 qualified by character and experience.

9 (b) That the financial strength of the significant incorporators
10 (10% or more ownership) are commensurate with the undertaking.

11 (c) That the name of the proposed company is not deceptively
12 similar to that of another trust company or otherwise misleading.

13 (d) That the capital and surplus are not less than the required
14 minimum.

15 (e) Such other matters concerning the proposed trust company
16 as the commissioner may deem relevant.

17 2. Within thirty (30) days after the application is filed, the
18 commissioner shall conduct a public hearing to consider the application.
19 The commissioner shall give two (2) written notices of the public hearing
20 in a newspaper in general circulation on Guam. Publication of such
21 notices should be no more than fifteen (15) days nor less than two (2)
22 complete days before the hearing date.

23 **§160210. Issuance or denial of license; renewal.**

24 1. If the commissioner finds that the applicant has met all the
25 requirements of this Chapter and other applicable laws, he shall, within

1 thirty (30) days after the conclusion of the investigation, issue a license
2 to the applicant to conduct a trust company business upon the applicant's
3 paying the required license fee. Otherwise, the commissioner shall deny
4 the application and notify the applicant in writing of the reasons for the
5 denial.

6 2. All licenses granted under the Act shall expire on the June 30
7 following the date of issuance. On or before June 1 of each year
8 thereafter, every company holding a license that wishes to renew the
9 license for an additional year shall apply to the Commissioner for a
10 renewal of the license.

11 **§160211. License fees; renewals.**

12 1. The initial fee to be paid for a trust company license must be in
13 proportion to the authorized capitalization of the trust company as
14 follows:

15 (a) A trust company having a capitalization of less than One
16 Hundred Thousand Dollars (\$100,000.00), shall pay a license fee
17 of Two Hundred Fifty Dollars (\$250.00);

18 (b) A trust company having a capitalization of more than One
19 Hundred Thousand Dollars (\$100,000.00), up to and including Five
20 Hundred Thousand Dollars (\$500,000.00) shall pay a license fee
21 of Five Hundred Dollars (\$500.00);

22 (c) A trust company having a capitalization of more than Five
23 Hundred Thousand Dollars (\$500,000.00), up to and including One
24 Million Dollars (\$1,000,000.00) shall pay a license fee of Seven
25 Hundred Fifty Dollars (\$750.00).

1 (d) A trust company having a capitalization of more than One
2 Million Dollars (\$1,000,000.00) shall pay license fee of One
3 Thousand Dollars (\$1,000.00).

4 2. In addition, every trust company shall pay an initial license fee of
5 One Hundred Dollars (\$100.00) for each branch office that may be
6 authorized by the commissioner.

7 3. Thereafter, every trust company shall pay annually on or before
8 June 30 of each year, a license fee which must be in proportion to its
9 initial paid-in capital and surplus or to its net worth as of December 31st
10 of the preceding year, whichever is higher, as follows:

11 (a) A trust company having a capitalization of less than One
12 Hundred Thousand Dollars (\$100,000.00) shall pay a license fee
13 of Two Hundred Fifty Dollars (\$250.00).

14 (b) A trust company having a capitalization of more than One
15 Hundred Thousand Dollars (\$100,000.00), up to and including Five
16 Hundred Thousand Dollars (\$500,000.00) shall pay a license fee
17 of Five Hundred Dollars (\$500.00).

18 (c) A trust company having a capitalization of more than Five
19 Hundred Thousand Dollars (\$500,000.00), up to and including One
20 Million Dollars (\$1,000,000.00) shall pay a license fee of Seven
21 Hundred Fifty Dollars (\$750.00).

22 (d) A trust company having a capitalization of more than One
23 Million Dollars (\$1,000,000.00) shall pay a license of fee of One
24 Thousand Dollars (\$1,000.00).

25 4. All money collected under the provisions of this section must be

1 (g) Accept and execute any trust business permitted by any law.

2 (h) Acquire the fiduciary rights, powers, duties and liabilities of
3 a bank, savings and loan association, thrift company, or trust
4 company licensed pursuant to Title 11, Guam Code Annotated, and
5 upon the effective date of such an acquisition, the fiduciary rights,
6 powers, duties and liabilities of the bank, savings and loan
7 association, thrift company, or trust company vest in and must be
8 performed by the acquiring trust company.

9 (i) Do and perform all acts necessary to exercise the powers
10 enumerated in this subsection and authorized by this Chapter and
11 any other applicable laws of Guam.

12 2. A trust company may not engage in any banking business by
13 accepting deposits or making loans.

14 **§160302. Investments; General requirements.**

15 1. Every trust company:

16 (a) Shall keep all trust funds and investments separate from the
17 assets of the company. These funds shall not be mingled with the
18 securities and investments of any other trust or of the corporation,
19 and all investments made by the company as a fiduciary must be
20 designated so that the trust or estate to which the investments
21 belong may be clearly identified.

22 (b) Holding trust funds awaiting investment or distribution, must
23 deposit or leave on deposit such funds with a local financial
24 institution. Such funds must not be deposited or left with the trust
25 company or with an affiliate corporation or association, unless that

1 affiliate corporation or association first pledges, as security for the
2 deposit, securities eligible for investment by local financial
3 institutions which have a market value equal to that of the
4 deposited funds. No security is required with respect to any
5 portion of such deposits which is insured under the provisions of
6 any law of the United States.

7 (c) Acting in any capacity under a court trust or private trust,
8 unless the instrument creating the trust provides otherwise, may
9 cause any securities held by it in its representative capacity to be
10 registered in the name of a nominee or nominees of the company.

11 (d) When acting as depositary or custodian for the personal
12 representative of a court trust or private trust, unless the instrument
13 creating the trust provides otherwise, may with the consent of the
14 personal representative of the trust, cause any securities held by it
15 to be registered in the name of a nominee or nominees of the
16 company.

17 2. Every trust company is liable for any loss occasioned by the acts
18 of its nominees with respect to securities registered under this section.

19 3. No corporation or the registrar or transfer agent of the corporation
20 is liable for registering or causing to be registered on the books of the
21 corporation any securities in the name of any nominee of a trust company
22 or for transferring or causing to be transferred on the books of the
23 corporation any securities registered by the corporation in the name of any
24 nominee of a trust company when the transfer is made on the
25 authorization of the nominee.

1 4. Except as provided in subsection 5, a trust company's investments
2 of invested capital and earnings, must:

3 (a) Be U.S. governmental obligations or federally insured
4 deposits; or

5 (b) Be investment grade securities and mature within three (3)
6 years after acquisition. The aggregate market value of all
7 investments must equal or exceed sixty percent (60%) of the
8 company's current capital, surplus and undivided profits or sixty
9 percent (60%) of the company's capital and surplus when it was
10 organized, whichever is greater.

11 5. A trust company may purchase or rent land, facilities and
12 equipment for use in the daily activities of the company.

13 **§160303. Investments; Purchase of securities of management**
14 **investment trust or management investment company authorized.**

15 1. A trust company which is acting as a fiduciary or agent may, in its
16 discretion or at the direction of another person who is authorized to direct
17 the investment of money held by the trust company as a fiduciary or
18 agent, invest in the securities of a management investment trust or
19 management investment company if:

20 (a) The investment trust or investment company is registered
21 with the Guam Securities Administrator; and

22 (b) The portfolio of the investment trust or investment company
23 consists substantially of investments which are not prohibited by
24 the instrument creating the fiduciary or agency relationship.

25 2. A trust company or an affiliate of the trust company may provide

1 services to the investment trust or investment company, including, without
2 limitation, acting as an investment adviser, custodian, transfer agent,
3 registrar, sponsor, distributor or manager and may receive reasonable
4 compensation for the services. The manner in which the compensation is
5 calculated must be disclosed to the person who is currently receiving the
6 benefits of the fiduciary or agency relationship with the trust company.
7 The disclosure may be made by a prospectus, a report to the Trustor, or
8 otherwise.

9 3. A trust company may deposit money held by the trust company as
10 a fiduciary or agent with an affiliate before investing or making other
11 disposition of the money.

12 **§160304. Other requirements.**

13 1. ***Annual Statement.*** Every trust company that is licensed under the
14 Act shall, on or before May 1 of each year, file with the Commissioner,
15 a financial statement verified under oath by two (2) executive officers of
16 the company, setting forth its financial condition, transactions and affairs
17 as of the 31st day of December immediately preceding, in accordance with
18 generally accepted accounting principles plus any additional information
19 required by the Commissioner.

20 2. ***Annual Audit.*** Every trust company that is licensed under the Act
21 shall file an annual audit report to accompany the filing of an annual
22 statement prior to May 1 of each year. The audit report shall be rendered
23 by its appointed Independent Auditor as approved by the Commissioner
24 and shall cover the financial condition, transactions and affairs as of the
25 31st day of December immediately preceding in accordance with generally

1 accepted accounting principles. The audited report shall include an
2 unqualified opinion with respect to the financial condition of the company,
3 except that the Commissioner may accept qualified opinions at the
4 discretion of the Commissioner.

5 3. **Notification.** An auditor who is aware that the trust company
6 failed to meet the necessary capital and surplus requirements of the Act
7 or who has rendered other than an unqualified opinion on the financial
8 condition of a trust company and the president of the trust company shall
9 both notify the Commissioner in writing within fifteen (15) days of the
10 discovery of failure of the trust company to meet the capital or surplus
11 requirements of the Act or within fifteen (15) days of the issuance of such
12 qualified opinion

13 **§160305. Discontinuing business.**

14 1. Whenever any trust company desires to discontinue its trust
15 business, it shall do the following:

16 (a) publish the intention of the company, once a week for three
17 (3) consecutive weeks in a newspaper of general circulation in
18 Guam; and

19 (b) submit an affidavit to the commissioner that all the
20 obligations and indebtedness arising from its trust business and
21 operations in Guam have been satisfactorily discharged.

22 2. After the trust company has furnished proof of publication and the
23 affidavit, the commissioner shall enter an order canceling the trust
24 company's license.

25 **§160306. Fidelity bonds; insurance.**

1 1. The directors of a trust company shall require good and sufficient
2 fidelity bonds in the amount of Twenty Five Thousand Dollars
3 (\$25,000.00) or more on all active officers and employees whether or not
4 they receive a salary or other compensation from the company, to
5 indemnify the company against loss because of any dishonest, fraudulent
6 or criminal act or omission by any officer or employee acting alone or in
7 combination with any other person. The bonds may be in any form and
8 may be paid for by the trust company.

9 2. The directors shall obtain suitable insurance for their company
10 against burglary, robbery, theft and other hazards to which it may be
11 exposed in the operation of its business.

12 3. The directors shall at least annually prescribe the amount of penal
13 sum of the bonds or policies and designate the sureties and underwriters
14 thereof, after giving due and careful consideration to all known elements
15 and factors constituting a risk or hazard. The directors' action must be
16 recorded in the minutes of the board of directors and reported to the
17 commissioner.

18 **§160307. Income Tax Rebates.**

19 1. Trust companies licensed pursuant to the provisions of this Chapter
20 may apply on behalf of the Guam-based trusts under their management,
21 for a Special Qualifying Certificate from the Guam Economic
22 Development Authority, which would allow one hundred percent (100%)
23 tax rebate as authorized under §§58128.6(a) and (b) of Chapter 58, Title
24 12, Guam Code Annotated.

25 2. The Guam Economic Development Authority is hereby authorized

1 to promulgate rules and regulations to implement a Special QC program
2 to allow for expeditious processing of requests by trust companies or
3 trustees of Guam-based trusts, for benefits as provided under
4 §§58128.6(a) and (b) of Chapter 58, Title 12, Guam Code Annotated.

5 3. A true copy of the Special QC shall be attached to each tax return
6 of the Guam-based trust, and the amount of tax due prior to the rebate
7 shall be deposited with the government at the time of filing of each
8 income tax return. Taxes deposited on behalf of a Guam-based trust shall
9 not be placed in the General Fund or commingled with other funds, but
10 shall be deposited by the Director of Revenue and Taxation in special
11 purpose trust accounts in one or more FDIC insured banks with offices
12 within Guam and shall be withdrawn from such accounts only for the
13 purpose of:

14 (a) making rebates as provided herein; or

15 (b) making payments as provided in §160308 (*infra*).

16 4. Upon the application of the Guam-based trust at the completion of
17 the one hundred eighty (180) days from the date of filing of income tax
18 returns, the Director of Revenue and Taxation shall immediately thereafter
19 cause the refund of the income tax to the Guam-based trust.

20 **§160308. Use of funds.**

21 1. The income tax payments made under the Special QC program,
22 shall be returned to the respective trusts at the completion of the one
23 hundred eighty (180) day period without interest.

24 2. All other revenues generated from the implementation of this Act,
25 including but not limited to, the initial and annual License Fees,

1 Examination Fees, and interest earned from these funds, shall be allocated
2 as follows:

3 (a) Fifty percent (50%) to the Chamorro Land Trust
4 Commission, for the purposes of infrastructure development (roads,
5 power, water, sewer and telephone services) on Chamorro Land
6 Trust properties;

7 (b) Twenty-five percent (25%) shall be earmarked for the
8 Department of Revenue and Taxation for maintaining the
9 operational functions of the Government of Guam; and

10 (c) The remaining twenty-five percent (25%) of this revenue,
11 shall be remitted immediately to the Guam Economic Development
12 Authority for the development and promotion of Guam's financial
13 services industry.

14 **§160309. Confidentiality treatment of trust information.** All
15 information pertaining to Guam-based Trusts shall be deemed
16 proprietary and confidential unless:

17 (a) The Commissioner deems it in the public interest to make
18 such information available for public inspection; or

19 (b) The Grantor/Trust authorizes the Commissioner to make
20 available such information for public inspection.

21 **Article 4.**

22 **Examination and Regulation**

23 **§160401. Examination; Powers and Duties of Department of**
24 **Revenue and Taxation.** The Banking and Finance Commissioner or any
25 examiner duly authorized, shall once during each year, make a full

1 examination into all the books, papers and affairs or any trust company doing
2 business under §§160301, 160302, and 160303 of this Chapter, and in so
3 doing, shall have power to administer oaths and affirmation and to examine
4 on oath or affirmation the officers, agents and clerks of such company,
5 touching the matter which they may be authorized to inquire into and
6 examine, and to summon, and by subpoena compel the attendance of any
7 person(s) in Guam to testify under oath in relation to the affairs of such
8 company. If the Commissioner has reason to believe the affairs of any
9 corporation are not being conducted in compliance with said sections, he may
10 at any time make or cause to be made a special examination of the assets of
11 such corporation.

12 **§160402. Fees for examination; frequency of examination.**

13 1. For each examination of a trust company's books and records
14 required or authorized under this Chapter, the commissioner shall charge
15 and collect from the trust company a fee for conducting the examination
16 and in preparing and typing the report of the examination at a reasonable
17 rate to be established by the Commissioner.

18 2. All money collected under this section must be paid directly to the
19 General Fund of the Government of Guam and allocated pursuant to
20 §160308, (*supra*).

21 3. The commissioner shall examine a licensee as often as he deems
22 necessary, with cause.

23 **§160403. Applicability of other provisions of Title.** In addition to
24 other provisions of this Title which are applicable to this Title as a whole or
25 specifically made applicable to trust companies, the commissioner may by

1 regulation make applicable to trust companies any regulatory provision
2 contained therein, which can be reasonably applied and which are not
3 inconsistent with the provisions of this Chapter.

4 **§160404. Regulations of commissioner.** The commissioner may
5 adopt such regulations as may be necessary to carry out the purposes and
6 provisions of this Chapter.

7 **Article 5**

8 **Unlawful Acts; Penalties**

9 **§160501. Violations by officers or directors sufficient cause to**
10 **close company, liquidate business and revoke license; failure to allow**
11 **inspection constitutes ground to revoke license.**

12 1. The violation of any of the provisions of this Chapter by the
13 officers or directors of any trust company authorized to do business under
14 the provisions of this Chapter is sufficient cause for the commissioner to
15 close the trust company, liquidate its business and revoke its license.

16 2. If any officer or director of a trust company refuses to allow the
17 commissioner or his deputies to inspect all books, records, papers and
18 effects of its business, the commissioner may revoke its license and
19 proceed to terminate its affairs.

20 3. Unlawful concealment of transactions.

21 4. Improper maintenance of accounts, false or deceptive entries and
22 statements.

23 **§160502. Willful neglect to perform duties imposed by law or**
24 **failure to conform to material lawful requirement made by**
25 **commissioner unlawful; penalty.** Every officer, employer, director or agent

1 of a trust company who knowingly or willfully neglects to perform any duty
2 required by this Chapter or other applicable law, or who knowingly or
3 willfully fails to conform to any material lawful requirement made by the
4 commissioner, is subject to removal upon order of the commissioner, and
5 upon conviction shall be punished by either imprisonment of not less than one
6 (1) year, and not to exceed six (6) years, or by a fine of not more than Five
7 Thousand Dollars (\$5,000.00), or by both fine and imprisonment.

8 **§160503. Violation of this chapter shall constitute a misdemeanor**
9 **unless otherwise specified.** Where no other punishment is otherwise
10 provided by law, any person violating any provision of this Chapter is guilty
11 of a misdemeanor.

12 **Section 2. Severability.** If any provision of this Law or its application to any
13 person or circumstance is found to be invalid or contrary to law, such invalidity shall
14 not affect other provisions or applications of this Law which can be given effect
15 without the invalid provisions or application, and to this end the provisions of this Law
16 are severable.