



Office of the Governor of Guam

P.O. Box 2950 Hagåtña, Guam 96932
TEL: (671) 472-8931 • FAX: (671) 477-4826 • EMAIL: governor@mail.gov.gu

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

01 FEB 2007

The Honorable Mark Forbes
Speaker
Mina' Bente Nuebe Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 396(EC), "AN ACT TO REPEAL AND REENACT §15108 OF CHAPTER 15, PART 2; TO ADD A NEW §15138 TO CHAPTER 15, PART 2; TO REPEAL AND REENACT CHAPTER 9, PART 1, DIVISION 1; TO ADD A NEW §4111 AND §4112 TO ARTICLE 1, CHAPTER 4, PART 1; AND TO ADD NEW ARTICLES 3 THROUGH 5 TO CHAPTER 3 PART 1, ALL OF TITLE 18 OF THE GUAM CODE ANNOTATED, RELATIVE TO UPDATING THE GENERAL CORPORATIONS LAW" which I signed into law on January 29, 2007, as Public Law 28-180.

Sinseru yan Magåhet,

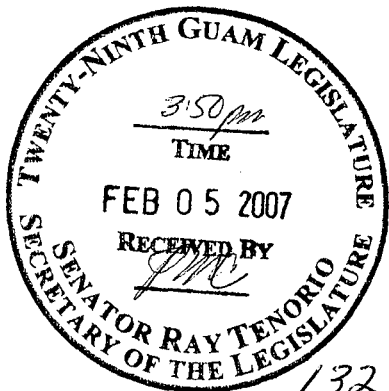
[Handwritten signature of Felix P. Camacho]

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy attached of signed bill

cc: The Honorable Ray Tenorio
Senator and Secretary of the Legislature

Office of the Speaker
MARK FORBES
Date: 2/2/07
Time: 11
Rec'd by: [Signature]
Print Name: R. Forbes
29-07-0132

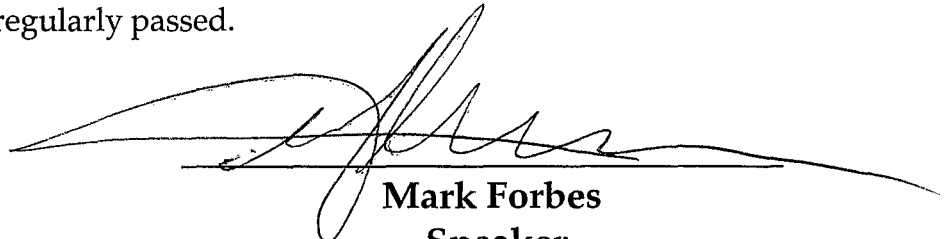


[Handwritten notes and signatures at the bottom of the page]

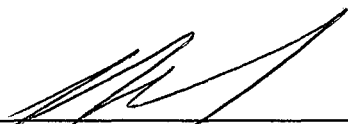
I MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (SECOND) Regular Session

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

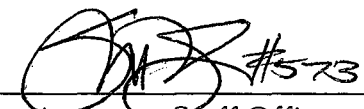
This is to certify that **Substitute Bill No. 396(EC), "AN ACT TO REPEAL AND REENACT §15108 OF CHAPTER 15, PART 2; TO ADD A NEW §15138 TO CHAPTER 15, PART 2; TO REPEAL AND REENACT CHAPTER 9, PART 1, DIVISION 1; TO ADD A NEW §4111 AND §4112 TO ARTICLE 1, CHAPTER 4, PART 1; AND TO ADD NEW ARTICLES 3 THROUGH 5 TO CHAPTER 3, PART 1, ALL OF TITLE 18 OF THE GUAM CODE ANNOTATED, RELATIVE TO UPDATING THE GENERAL CORPORATIONS LAW,"** was on the 27th day of December, 2006, duly and regularly passed.


Mark Forbes
Speaker

Attested:


Edward J.B. Calvo
Senator and Secretary of the Legislature

This Act was received by *I Maga'lahaen Guåhan* this 30 day of Dec, 2006, at
1:30 o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office.

APPROVED:

FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: 29 JAN 2007

Public Law No. 28-180

MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (Second) Regular Session

Bill No. 396 (EC)

As substituted by the Committee on
Finance, Taxation and Commerce
and amended.

Introduced by:

Edward J.B. Calvo
F. B. Aguon, Jr.
J. M.S. Brown
B. J.F. Cruz
Mike Cruz
Mark Forbes
L. F. Kasperbauer
R. Klitzkie
J. A. Lujan
A. B. Palacios, Sr.
R. J. Respicio
Ray Tenorio
A. R. Unpingco
J. T. Won Pat

**AN ACT TO REPEAL AND REENACT §15108 OF
CHAPTER 15, PART 2; TO ADD A NEW §15138 TO
CHAPTER 15, PART 2; TO REPEAL AND REENACT
CHAPTER 9, PART 1, DIVISION 1; TO ADD A NEW
§4111 AND §4112 TO ARTICLE 1, CHAPTER 4, PART 1;
AND TO ADD NEW ARTICLES 3 THROUGH 5 TO
CHAPTER 3, PART 1, ALL OF TITLE 18 OF THE
GUAM CODE ANNOTATED, RELATIVE TO
UPDATING THE GENERAL CORPORATIONS LAW.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 intends to facilitate continuous economic growth on Guam. However, *I*

1 *Liheslaturan Guåhan* finds that various inconsistencies, outdated provisions, gaps
2 and uncertainties in Guam's General Corporations Law may hinder Guam's
3 economic growth. Laws governing corporations transacting business on Guam,
4 have been enacted singly and without regard for the overall coherence of the body
5 of law on which Guam's corporate climate is based.

6 *I Liheslaturan Guåhan* finds that for Guam to attract off-island investment,
7 Guam's corporate and business-related laws should be consistent with those of
8 other U.S. jurisdictions. This will enable Guam to accommodate the anticipated
9 expansion of Guam's business community and to attract off-island investors.

10 *I Liheslaturan Guåhan* finds that Guam's Law requires that domestic and
11 foreign corporations file annual reports with the Director of Revenue and Taxation
12 to disclose changes in a corporation's principal office, ownership structure,
13 character of business, officers and directors, and to make current corporate
14 information readily available to the public. The filing fees for these corporate
15 annual reports generate much needed revenue for the government of Guam.
16 However, unlike other U.S. jurisdictions, Guam law imposes *no* similar annual
17 reporting requirement on domestic or foreign limited liability companies, both of
18 which are becoming more common on the island. To encourage disclosure of
19 current limited liability company information to the public, and to generate
20 additional revenue, *I Liheslaturan Guåhan* finds that an annual reporting
21 requirement should be imposed on these entities.

22 *I Liheslaturan Guåhan* also finds that Guam's General Corporations Law
23 does *not* contain statutory provisions pertaining specifically to mergers of
24 independently-owned corporations or sales of corporate assets. Unlike
25 corporations in all fifty (50) states of the United States and the Commonwealth of
26 the Northern Marianas Islands, corporations transacting business on Guam are *not*
27 provided with a statutory roadmap to facilitate these very common corporate

1 transactions. In addition, enacting general merger statutes will attract off-island
2 investments and facilitate investments in local businesses. *I Liheslaturan Guåhan*
3 intends to update Guam's General Corporations Law and to create uniformity with
4 other U.S. jurisdictions.

5 **Section 2.** §15108 of Chapter 15, Part 2, Title 18 of the Guam Code
6 Annotated is hereby *repealed and reenacted* to read as follows:

7 **“§15108. Filing of Articles of Organization.**

8 The Articles of Organization shall be delivered to the
9 Department of Revenue and Taxation. If the Director of Revenue and
10 Taxation finds that the articles of organization conform to law, he
11 shall, when a fee of One Thousand Dollars (\$1,000.00) has been paid,
12 file the articles of organization in accordance with this Chapter. The
13 Director of Revenue and Taxation shall then issue a Certificate of
14 Organization.”

15 **Section 3.** §15138 is hereby *added* to Chapter 15, Part 2, Title 18 of the
16 Guam Code Annotated, to read as follows:

17 **“§15138. Annual Report of Domestic and Foreign Limited**
18 **Liability Companies.**

19 (a) Each domestic limited liability company and each foreign
20 limited liability company, authorized to transact business on Guam,
21 shall file with the Director of Revenue and Taxation a sworn annual
22 report that sets forth:

23 (1) The name of the limited liability company and, if a
24 foreign limited liability company, the state or country under
25 whose laws it is organized;

26 (2) The date of organization or, if a foreign limited
27 liability company, the date on which it was authorized to

1 transact business on Guam;

2 (3) The address of the principal office of the limited
3 liability company;

4 (4) *If* the management of the limited liability company
5 is vested in its members, the name and address of each member;

6 (5) *If* the management of the limited liability company
7 is vested in one (1) or more managers, the name and address of
8 each manager; and

9 (6) A brief statement of the nature of the business
10 which the limited liability company actually conducts on Guam.

11 (b) The information contained in the annual report shall be
12 current as of the date the annual report is filed.

13 (c) The first annual report must be delivered to the Director
14 between July 1 and September 1, or such other date as the Director
15 may specify by rule or regulation, of the year following the calendar
16 year in which a domestic limited liability company was organized, or
17 a foreign limited liability company was authorized to transact business
18 on Guam. Subsequent annual reports must be delivered to the Director
19 between July 1 and September 1, or such other date as the Director
20 may specify by rule or regulation, of every successive calendar year.

21 (d) If an annual report does *not* contain the information
22 required by this Section, the Director shall so notify the reporting
23 limited liability company in writing and return the annual report to it
24 for correction. If the annual report is corrected to contain the
25 information required by this Section, and delivered to the Director
26 within thirty (30) days after the date of the notice, it shall be deemed
27 to be timely filed.

1 (e) A limited liability company may file an amendment to
2 the annual report if a change in the information set forth in said report
3 occurs after it is filed at the Department and before the next
4 anniversary. This Subsection applies *only* to a change that is *not*
5 required to be made by an amendment to the Articles of Incorporation.
6 The amendment to the annual report must set forth:

7 (1) the name of the limited liability company, as
8 shown on the records of the Department of Revenue and
9 Taxation; and

10 (2) the information required by Subsection (a) hereof
11 as changed.

12 (f) Any limited liability company failing to file an annual
13 report that complies herewith within sixty (60) days after it is due
14 shall pay, in addition to the regular annual report fee, the sum of Fifty
15 Dollars (\$50.00), *provided* that the annual report is filed prior to
16 revocation as provided in this Title, and shall be subject to dissolution
17 or cancellation of its Certificate of Authority to transact business as
18 provided in this Chapter.

19 (g) The filing fee for an annual report shall be One Hundred
20 Dollars (\$100.00).

21 (h) Any limited liability company which is required to file or
22 provide an annual report with another government agency or
23 regulating body may satisfy the requirements of this Section by filing
24 the same report with the Director, provided that the Director has
25 determined in writing that the report contains the same or substantially
26 similar information as that required by this Section.”

27 **Section 4.** Chapter 9 of Part 1, Division 1, Title 18 of the Guam Code

1 Annotated is hereby *repealed* and *reenacted* to read as follows:

2 **“CHAPTER 9.**

3 **MERGER AND SHARE EXCHANGE**

4 **§9101. Merger.**

5 **§9102. Share Exchange.**

6 **§9103. Action on Plan.**

7 **§9104. Merger of Subsidiary.**

8 **§9105. Articles of Merger or Share Exchange.**

9 **§9106. Effect of Merger or Share Exchange.**

10 **§9107. Merger or Share Exchange with Foreign Corporation.**

11 **§9101. Merger.**

12 (a) One (1) or more corporations may merge into another corporation *if*
13 the board of directors of each corporation adopts and its stockholders, if so
14 required by §9103 of this Chapter, approve a plan of merger.

15 (b) The Plan of Merger must set forth:

16 (1) The name of each corporation planning to merge and the
17 name of the surviving corporation into which each other corporation
18 plans to merge;

19 (2) The terms and conditions of the merger; and

20 (3) The manner and basis of converting the shares of each
21 corporation into shares, obligations, or other securities of the
22 surviving corporation or any other corporation or into cash or other
23 property in whole or in part.

24 (c) The Plan of Merger may set forth:

25 (1) Restatements of or amendments to the Articles of
26 Incorporation of the surviving corporation; and

27 (2) Other provisions relating to the merger.

1 **§9102. Share Exchange.**

2 (a) A corporation may acquire all of the outstanding shares of one (1) or
3 more classes or series of another corporation *if* the board of directors of each
4 corporation adopts and its stockholders, if required by §9103 of this Chapter,
5 approve the plan of share exchange.

6 (b) The plan of exchange must set forth:

7 (1) The name of the corporation whose shares will be acquired and
8 the name of the acquiring corporation;

9 (2) The terms and conditions of the exchange; and

10 (3) The manner and basis of exchanging the shares to be acquired
11 for shares, obligations, or other securities of the acquiring corporation, or
12 any other corporation, or for cash or other property in whole or part.

13 (c) The plan of exchange may set forth other provisions relating to the
14 exchange and, *if not* otherwise set forth in the Articles of Incorporation of the
15 acquiring company as theretofore in effect, shall include an amendment to such
16 Articles of Incorporation setting forth any rights, privileges, limitations and
17 preferences of the class or series of securities to be issued in the exchange.

18 (d) This Section does *not* limit the power of a corporation to acquire all or
19 part of the shares of one (1) or more classes or series of another corporation
20 through a voluntary exchange or otherwise.

21 **§9103. Action on Plan.**

22 (a) After adopting a Plan of Merger or Share Exchange, the board of
23 directors of a corporation whose shares will be acquired in a share exchange shall
24 submit the Plan of the Merger (except as provided in Subsection (g) of this
25 Section) or Share Exchange for approval by its stockholders.

26 (b) For a Plan of Merger or Share Exchange to be approved:

27 (1) The board of directors must recommend the Plan of Merger or

1 Share Exchange to the stockholders, unless the board of directors determines
2 that because of a conflict of interest or other special circumstance it should
3 make *no* recommendation and communicates the basis for said
4 determination to the stockholders with the plan; and

5 (2) The stockholders entitled to vote must approve the plan.

6 (c) The board of directors may condition its submission of the proposed
7 merger or share exchange on any basis.

8 (d) The corporation shall notify each stockholder, whether or not entitled
9 to vote, of the proposed stockholders' meeting in accordance with 18 GCA §3105.
10 The notice must also state that the purpose, or one (1) of the purposes of the
11 meeting is to consider the plan of merger or share exchange and contain or be
12 accompanied by a copy or summary of the plan.

13 (e) Unless this Section, the Articles of Incorporation, or the board of
14 directors acting pursuant to Subsection (c) of this Section, requires a greater vote
15 or a vote by voting groups, the plan of merger or share exchange to be authorized
16 requires the approval of the shareholders by a majority of all the votes entitled to
17 be cast on the plan.

18 (f) Action by the stockholders of the surviving corporation on a plan of
19 merger is *not* required *if*:

20 (1) The Articles of Incorporation of the surviving corporation will
21 *not* differ except for amendments enumerated in 18 GCA §9104(e) from its
22 articles before the merger;

23 (2) Each stockholder of the surviving corporation whose shares
24 were outstanding immediately before the effective date of the merger will
25 hold the same number of shares, with identical designations, preferences,
26 limitations, and relative rights immediately after;

27 (3) The number of voting shares outstanding immediately after the

1 merger, plus the number of voting shares issuable as a result of the merger
2 either by the conversion of securities issued pursuant to the merger or the
3 exercise of rights and warrants issued pursuant to the merger, will *not*
4 exceed by more than twenty percent (20%) the total number of voting shares
5 of the surviving corporation outstanding immediately before the merger; and

6 (4) The number of participating shares outstanding immediately
7 after the merger, plus the number of participating shares issuable as a result
8 of the merger either by the conversion of securities issued pursuant to the
9 merger or the exercise of rights and warrants issued pursuant to the merger,
10 will *not* exceed by more than twenty percent (20%) the total number of
11 participating shares outstanding immediately before the merger.

12 (g) As used in Subsection (f) of this Section:

13 (1) "Participating shares" means shares that entitle their holders to
14 participate without limitation in distributions.

15 (2) "Voting shares" means shares that entitle their holders to vote
16 unconditionally in elections of directors.

17 (A) After a merger or share exchange is authorized, and at
18 any time before articles of merger or share exchange are filed, the
19 planned merger or share exchange may be abandoned, subject to any
20 contractual rights, without further stockholder action, in accordance
21 with the procedure set forth in the plan of merger or share exchange
22 or, if none is set forth, in the manner determined by the board of
23 directors.

24 **§9104. Merger of Subsidiary.**

25 (a) A parent corporation owning at least ninety percent (90%) of the
26 outstanding shares of each class of a subsidiary corporation may merge the
27 subsidiary into itself, or itself into the subsidiary, without approval of the

1 stockholders of either constituent corporation *if* the constituent corporation adopts
2 a plan of merger that sets forth:

3 (1) The names of the parent and subsidiary; and

4 (2) The manner and basis of converting the shares of the
5 disappearing corporation into shares, obligations, or other securities of
6 the surviving corporation or any other corporation or into cash or
7 other property in whole or in part.

8 (c) The surviving corporation shall mail a copy or summary of the plan of
9 merger to each stockholder of the disappearing corporation who *does not* waive the
10 mailing requirement in writing.

11 (d) The surviving corporation may *not* deliver Articles of Merger to the
12 Director of Revenue and Taxation for filing until at least thirty (30) days after the
13 date it mailed a copy of the plan of merger to each stockholder of the disappearing
14 corporation who did *not* waive the mailing requirement.

15 (e) Articles of merger under this Section may *not* contain amendments to
16 the Articles of Incorporation of the surviving corporation, *except* for the following:

17 (1) To extend the duration of the corporation *if* it was incorporated
18 at a time when limited duration was required by law;

19 (2) To delete the names and addresses of the initial directors;

20 (3) To delete the name and address of the initial registered agent or
21 registered office, *if* a statement of change is on file with the Director;

22 (4) To change each issued and unissued authorized share of an
23 outstanding class into a greater number of whole shares *if* the corporation
24 has only shares of that class outstanding;

25 (5) To change the corporate name by substituting the word
26 "corporation," "incorporated," "company," "limited," or the abbreviation
27 "corp.," "inc.," "co.," or "ltd." for a similar word or abbreviation in the

1 name, or by adding, deleting, or changing a geographical attribution for the
2 name; or

3 (6) To change the name of the surviving corporation, provided the
4 name does *not* otherwise violate general corporation law, regardless of
5 whether the name so adopted is the same as or similar to that of the parent
6 corporation.

7 **§9105. Articles of Merger or Share Exchange.**

8 (a) After a plan of merger or share exchange is approved by the
9 stockholders, or adopted by the board of directors *if* stockholder approval is
10 *not* required, the surviving or acquiring corporation shall deliver to the
11 Director for filing Articles of Merger or Share Exchange setting forth:

12 (1) The plan of merger or share exchange;

13 (2) If stockholder approval was *not* required, a statement to that
14 effect;

15 (3) If approval of the stockholders of one (1) or more corporations
16 party to the merger or share exchange was required:

17 (A) The designation, number of outstanding shares, and
18 number of votes entitled to be cast by each voting group entitled to
19 vote separately on the plan as to each corporation; and

20 (B) Either the total number of votes cast for and against the
21 plan by each voting group entitled to vote separately on the plan or the
22 total number of undisputed votes cast for the plan separately by each
23 voting group and a statement that the number cast for the plan by each
24 voting group was sufficient for approval by that voting group.

25 (b) A merger or share exchange takes effect upon the later to occur of the
26 date the plan of merger or share exchange is accepted for filing by the Director *or*
27 the effective date specified in such plan of merger or share exchange.

1 **§9106. Effect of Merger or Share Exchange.**

2 (a) When a merger takes effect:

3 (1) Every other corporation that is a party to the merger merges
4 into the surviving corporation and the separate existence of every
5 corporation *except* the surviving corporation ceases;

6 (2) The title to all real estate and other property owned by each
7 corporate party to the merger is vested in the surviving corporation without
8 reversion or impairment;

9 (3) The surviving corporation assumes all liabilities of each
10 corporation party to the merger;

11 (4) A legal proceeding pending against any corporation party to the
12 merger may be continued as if the merger *did not* occur or the surviving
13 corporation may be substituted in the proceeding for the corporation whose
14 existence ceased;

15 (5) The Articles of Incorporation of the surviving corporation are
16 amended to the extent provided in the plan of merger; and

17 (6) The shares of each corporate party to the merger that are to be
18 converted into shares, obligations, or other securities of the surviving or any
19 other corporation into cash or other property are converted, and the former
20 holders of the shares are entitled only to the rights provided in the articles of
21 merger or to their rights under 18 GCA §§3301 through 3502.

22 (b) When a share exchange takes effect, the shares of each acquired
23 corporation are exchanged as provided in the plan, and the former holders of the
24 shares are entitled *only* to the exchange rights provided in the articles of share
25 exchange or to their rights under 18 GCA §§3301 through 3502.

26 **§9107. Merger or Share Exchange with Foreign Corporation.**

27 (a) One (1) or more foreign corporations may merge or enter into a share

1 exchange with one (1) or more domestic corporations *if*:

2 (1) In a merger, the merger is permitted by the law of the state or
3 country under whose law each foreign corporation is incorporated and each
4 foreign corporation complies with that law in effecting the merger;

5 (2) In a share exchange, the corporation whose shares will be
6 acquired is a domestic corporation, whether or not a share exchange is
7 permitted by the law of the state or country under whose law the acquiring
8 corporation is incorporated;

9 (3) The foreign corporation complies with §9105 of this Chapter *if*
10 it is the surviving corporation of the merger or acquiring corporation of the
11 share exchange; and

12 (4) Each domestic corporation complies with the applicable
13 provisions of §§9101 through 9104 of this Chapter and, *if* it is the surviving
14 corporation of the merger or acquiring corporation of the share exchange,
15 with §9105.

16 (b) Upon the effectiveness of a merger or share exchange in which the
17 surviving corporation of a merger or the acquiring corporation in a share exchange
18 is a foreign corporation, the surviving corporation or the acquiring corporation, as
19 the case may be, is deemed:

20 (1) To appoint the Director as its agent for service of process in a
21 proceeding to enforce any obligation or the rights of dissenting
22 stockholders of each domestic corporation party to the merger or share
23 exchange; and

24 (2) To agree that it will promptly pay to the dissenting stockholder
25 of each domestic corporate party to the merger or share exchange the
26 amount, if any, to which he is entitled under 18 GCA §§3301 through
27 3502.

1 (c) This Section does *not* limit the power of a foreign corporation to
2 acquire all or part of the shares of one (1) or more classes or series of a domestic
3 corporation through a voluntary exchange or otherwise.”

4 **Section 5.** §4111 is hereby *added* to Article 1, Chapter 4, Part 1, Title 18
5 of the Guam Code Annotated, to read as follows:

6 **“§4111. Sale of Assets in Regular Course of Business and**
7 **Mortgage of Assets.**

8 (a) A corporation may, on the terms and conditions and for
9 the consideration fixed by the board of directors:

10 (1) Sell, lease, exchange, or otherwise dispose of all,
11 or substantially all, of its property in the usual and regular
12 course of business;

13 (2) Mortgage, pledge, dedicate to the repayment of
14 indebtedness (whether with or without recourse), or otherwise
15 encumber any or all of its property, whether or not, in the usual
16 and regular course of business; or

17 (3) Transfer any or all of its property to a corporation
18 all the shares of which are owned by the corporation.

19 (b) Unless the Articles of Incorporation require it, approval
20 by the stockholders of a transaction described in Subsection (a) of this
21 Section is *not* required.”

22 **Section 6.** §4112 is hereby *added* to Article 1, Chapter 4, Part 1, Title 18
23 of the Guam Code Annotated, to read as follows:

24 **“§4112. Sale of Assets Other Than in Regular Course of Business.**

25 (a) A corporation may sell, lease, exchange, or otherwise
26 dispose of all, or substantially all, of its property with or without the
27 good will, otherwise than in the usual and regular course of business,

1 on the terms and conditions and for the consideration determined by
2 the corporation's board of directors, *if* the board of directors proposes
3 and its stockholders approve the proposed transaction.

4 (b) For a transaction pursuant Subsection (a) to be
5 authorized:

6 (1) The board of directors must recommend the
7 proposed transaction to the stockholders *unless* the board of
8 directors determines that because of conflict of interest or other
9 special circumstances it should make *no* recommendation and
10 communicates the basis for its determination to the
11 stockholders with the submission of the proposed transaction;
12 and

13 (2) The stockholders entitled to vote must approve the
14 transaction.

15 (c) The board of directors may condition its submission of
16 the proposed transaction on any basis.

17 (d) The corporation shall notify each stockholder, whether or
18 not entitled to vote, of the proposed stockholders' meeting in
19 accordance with 18 GCA §3105. The notice must also state that the
20 purpose, or one of the purposes, of the meeting is to consider the sale,
21 lease, exchange, or other disposition of all, or substantially all, the
22 property of the corporation and be accompanied by a description of
23 the transaction.

24 (e) Unless the Articles of Incorporation or the board of
25 directors, acting pursuant to Subsection (c) of this Section, require a
26 greater vote or a vote by voting groups, the transaction must be
27 approved by a majority of all the votes entitled to be cast on the

1 transaction.

2 (f) After a sale, lease, exchange, or other disposition of
3 property is authorized, the transaction may be abandoned, subject to
4 any contractual rights, without further stockholder action.

5 (g) A transaction that constitutes a distribution is governed
6 by a corporation's Articles of Incorporation and *not* by this Section."

7 **Section 7.** A new Article 3 is hereby *added* to Chapter 3, Part 1, Title 18
8 of the Guam Code Annotated, to read as follows:

9 **"Article 3. Right to Dissent and Obtain Payment for Shares.**

10 **§3301. Definitions.**

11 **§3302. Right to Dissent.**

12 **§3303. Dissent by Nominees and Beneficial Owners.**

13 **§3301. Definitions.**

14 In this Chapter:

15 (a) "Beneficial stockholder" means the person who is a
16 beneficial owner of shares held in a voting trust or by a nominee as
17 the record stockholder.

18 (b) "Corporation" means the issuer of the shares held by a
19 dissenter before the corporate action, or the surviving or acquiring
20 corporation by merger or share exchange of that issuer.

21 (c) "Dissenter" means a stockholder who is entitled to
22 dissent from corporate action under §3302 and who exercises that
23 right when and in the manner required by §§3401 through 3409 of this
24 Chapter.

25 (d) "Fair value," with respect to a dissenter's shares, means
26 the value of the shares immediately before effectuation of the
27 corporate action to which the dissenter objects, excluding any

1 appreciation or depreciation in anticipation of the corporate action.

2 (e) "Interest" means interest from the effective date of the
3 corporate action until the date of payment, at the average rate
4 currently paid by the corporation on its principal bank loans or, if
5 there are no loans, at a rate that is fair and equitable under all the
6 circumstances.

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

11 (g) "Stockholder" means the record stockholder or the
12 beneficial stockholder.

13 **§3302. Right to Dissent.**

14 (a) A stockholder is entitled to dissent from, and obtain
15 payment of the fair value of his shares in the event of, any of the
16 following corporate actions:

17 (1) Consummation of a plan of merger to which the
18 corporation is a party:

19 (A) If stockholder approval is required for the
20 merger by 18 GCA §9103 or the Articles of
21 Incorporation and the stockholder is entitled to vote on
22 the merger; or

23 (B) If the corporation is a subsidiary that is
24 merged with its parent under 18 GCA §9104;

25 (2) Consummation of a plan of share exchange to
26 which the corporation is a party as the corporation whose shares
27 will be acquired, if the stockholder is entitled to vote on the

1 plan;

2 (3) Consummation of a sale or exchange of all, or
3 substantially all, of the property of the corporation other than in
4 the usual and regular course of business *if* the stockholder is
5 entitled to vote in the sale or exchange, including a sale in
6 dissolution, but *not* including a sale pursuant to court order or a
7 sale for cash pursuant to a plan by which all or substantially all
8 of the net proceeds of the sale will be distributed to the
9 stockholders within one (1) year after the date of sale;

10 (4) An amendment of the Articles of Incorporation
11 that materially and adversely affects rights in respect of a
12 dissenter's shares because it:

13 (A) Alters or abolishes a preferential right of the
14 shares;

15 (B) Creates, alters or abolishes a right in respect
16 of redemption, including a provision respecting a sinking
17 fund for the redemption or repurchase, of the shares;

18 (C) Alters or abolishes a preemptive right of the
19 holder of the shares to acquire shares or other securities;

20 (D) Excludes or limits the right of the shares to
21 vote on any matter, or to cumulate votes, other than a
22 limitation by dilution through issuance of shares or other
23 securities with similar voting rights; or

24 (E) Reduces the number of shares owned by the
25 stockholder to a fraction of a share if the fractional share
26 so created is to be acquired for cash under §3106 of this
27 Chapter; or

1 (5) Any corporate action taken pursuant to a
2 stockholder vote to the extent the Articles of Incorporation,
3 Bylaws, or a Resolution of the board of directors provides that
4 voting or nonvoting stockholders are entitled to dissent and
5 obtain payment for their shares.

6 (b) A stockholder entitled to dissent and obtain payment for
7 his shares under this Chapter may *not* challenge the corporate action
8 creating his entitlement *unless* said action is unlawful or fraudulent
9 with respect to the stockholder or the corporation.

10 **§3303. Dissent by Nominees and Beneficial Owners.**

11 (a) A record stockholder may assert the dissenter's right as
12 to fewer than all the shares registered in his name *only* if he dissents
13 with respect to all shares beneficially owned by any one (1) person
14 and notifies the corporation in writing of the name and address of each
15 person on whose behalf he asserts dissenters' rights. The rights of a
16 partial dissenter under this Subsection are determined as if the shares
17 as to which he dissents and his other shares were registered in the
18 names of different stockholders.

19 (b) A beneficial stockholder may assert dissenters' rights as
20 to shares held on his behalf *only if*:

21 (1) He submits to the corporation the record
22 stockholder's written consent to the dissent *not later than* the
23 time the beneficial stockholder asserts dissenters' rights; and

24 (2) He does so with respect to all shares of which he is
25 the beneficial stockholder or over which he has power to direct
26 the vote."

27 **Section 8.** A new Article 4 is hereby *added* to Chapter 3, Part 1, Title 18

1 of the Guam Code Annotated, to read as follows:

2 **“Article 4. Procedure for Exercise of Dissenters’**

3 **Rights.**

4 **§3401. Notice of Dissenters’ Rights.**

5 **§3402. Notice of Intent to Demand Payment.**

6 **§3403. Dissenters’ Notice.**

7 **§3404. Duty to Demand Payment.**

8 **§3405. Share Restrictions.**

9 **§3406. Payment.**

10 **§3407. Failure to Take Action.**

11 **§3408. After-Acquired Shares.**

12 **§3409. Procedure if Stockholder Dissatisfied with Payment of**
13 **Offer.**

14 **§3401. Notice of Dissenters’ Rights.**

15 (a) If proposed corporate action creating dissenters’ rights
16 under §3302 is submitted to a vote at a stockholders’ meeting, the
17 meeting notice must state that stockholders are or may be entitled to
18 assert dissenters’ rights under Articles 3 and 4 of this Chapter and be
19 accompanied by a copy of §§3301 through 3502 of this Chapter.

20 (b) If corporate action creating dissenters’ rights under
21 §3302 is taken without a vote of the stockholders, the corporation
22 shall notify in writing all stockholders entitled to assert dissenters’
23 rights that the action was taken and send them the dissenters’ rights
24 notice described in §3403 of this Article.

25 **§3402. Notice of Intent to Demand Payment.**

26 (a) If proposed corporate action creating dissenters’ rights
27 under §3302 of this Chapter is submitted to a vote at a stockholders’

1 meeting, a stockholder who wishes to assert dissenters' rights:

2 (1) Must deliver to the corporation before the vote is
3 taken written notice of his intent to demand payment for his
4 shares if the proposed action is effectuated; and

5 (2) Must *not* vote his shares in favor of the proposed
6 action.

7 (b) A stockholder who does *not* satisfy the requirements of
8 Subsection (a) of this Section is *not* entitled to payment for his shares
9 under Articles 3 and 4 of this Chapter.

10 **§3403. Dissenters' Notice.**

11 (a) If proposed corporate action creating dissenters' rights
12 under §3302 of this Chapter is authorized at a stockholders' meeting,
13 the corporation shall deliver a written dissenters' notice to all
14 stockholders who satisfied the requirements of §3402 of this Article.

15 (b) The dissenters' notice must be sent *no later than* ten (10)
16 days after the corporate action was taken, and must:

17 (1) State where the payment demand must be sent and
18 where and when certificates for certificated shares must be
19 deposited;

20 (2) Inform holders of uncertificated shares to what
21 extent transfer of the shares will be restricted after the payment
22 demand is received;

23 (3) Supply a form for demanding payment that
24 includes the date of the first announcement to news media or to
25 stockholders of the terms of the proposed corporate action and
26 requires that the person asserting dissenters' rights certify
27 whether or not he acquired beneficial ownership of the shares

1 before that date;

2 (4) Set a date by which the corporation must receive
3 the payment demand, which date may *not* be fewer than thirty
4 (30) *nor more than* sixty (60) days after the date the Subsection
5 (a) notice is delivered; and

6 (5) Be accompanied by a copy of §§3301 through
7 3502 of this Chapter.

8 **§3404. Duty to Demand Payment.**

9 (a) A stockholder sent a dissenters' notice described in
10 §3403 of this Article must demand payment, certify whether he
11 acquired beneficial ownership of the shares before the date required to
12 be set forth in the dissenters' notice pursuant to §3403(b)(3), and
13 deposit his certificates in accordance with the terms of the notice.

14 (b) The stockholder who demands payment and deposits his
15 shares under Subsection (a) of this Section retains all other rights of a
16 stockholder *until* their rights are canceled or modified by the taking of
17 the proposed corporate action.

18 (c) A stockholder who does *not* demand payment or deposit
19 his share certificates where required, each by the date set in the
20 dissenters' notice, is *not* entitled to payment for his shares under
21 Articles 3 and 4 of this Chapter.

22 **§3405. Share Restrictions.**

23 (a) The corporation may restrict the transfer of uncertificated
24 shares from the date the demand for their payment is received until the
25 proposed corporate action is taken or the restrictions released under
26 §3407 of this Article.

27 (b) The person for whom dissenters' rights are asserted as to

1 uncertificated shares retains all other rights of a stockholder until
2 these rights are canceled or modified by the taking of the proposed
3 corporate action.

4 **§3406. Payment.**

5 (a) Except as provided in §3408 of this Article, as soon as
6 the proposed corporate action is taken, or upon receipt of a payment
7 demand, the corporation shall pay each dissenter who complied with
8 §3404 the amount the corporation estimates to be the fair value of his
9 shares, plus interest, in cash.

10 (b) The payment must be accompanied by:

11 (1) The corporation's balance sheet as of the end of a
12 fiscal year ending *not more than* sixteen (16) months before the
13 date of payment, an income statement for that year, a statement
14 of changes in stockholders' equity for that year and the latest
15 available interim financial statements, if any;

16 (2) A statement of the corporation's estimate of the
17 fair value of the shares;

18 (3) An explanation of how the interest was calculated;

19 (4) A statement of the dissenter's right to demand
20 payment under §3409; and

21 (5) A copy of §§3301 through 3502 of this Chapter.

22 **§3407. Failure to Take Action.**

23 (a) If the corporation does *not* take the proposed action
24 within sixty (60) days after the date set for demanding payment and
25 depositing share certificates, the corporation shall return the deposited
26 certificates and release the transfer restrictions imposed on
27 uncertificated shares.

1 (b) If, after returning deposited certificates and releasing
2 transfer restrictions, the corporation takes the proposed action, it must
3 send a new dissenters' notice under §3403 of this Article and repeat
4 the payment demand procedure.

5 **§3408. After-Acquired Shares.**

6 A dissenter who was *not* the beneficial owner of the shares
7 before the date set forth in the dissenters' notice as the date of the first
8 announcement to news media or to stockholders of the terms of the
9 proposed corporate action waives his right to demand payment with
10 respect to such shares under §3301 through §3502 of this Chapter,
11 unless the plan of merger or share exchange expressly provides for
12 such payment.

13 **§3409. Procedure if Stockholder Dissatisfied with Payment of**
14 **Offer.**

15 (a) A dissenter may notify the corporation in writing of his
16 own estimate of the fair value of his shares and amount of interest
17 due, and demand payment of his estimate less any payment under
18 §3406 of this Article, or reject the corporation's offer under §3408
19 and demand payment of the fair value of his shares and interest due,
20 if:

21 (1) The dissenter believes that the amount paid under
22 §3406 or offered under §3408 is *less than* the fair value of his
23 shares or that the interest due is incorrectly calculated;

24 (2) The corporation fails to make payment under
25 §3406 within sixty (60) days after the date set for demanding
26 payment; or

27 (3) The corporation, having failed to take the proposed

1 action, does *not* return the deposited certificates or release the
2 transfer restrictions imposed on uncertificated shares within
3 sixty (60) days after the date set for demanding payment.

4 (b) A dissenter waives his right to demand payment under
5 this Section unless he notifies the corporation of his demand in
6 writing under Subsection (a) of this Section within thirty (30) days
7 after the corporation made or offered payment for his shares.”

8 **Section 9.** A new Article 5 is hereby *added* to Chapter 3, Part 1, Title 18
9 of the Guam Code Annotated, to read as follows:

10 **“Article 5. Judicial Appraisal of Shares.**

11 **§3501. Court Action.**

12 **§3502. Court Costs and Counsel Fees.**

13 **§3501. Court Action.**

14 (a) If a demand for payment under §3409 of this Chapter
15 remains unsettled, the corporation shall petition the Superior Court
16 within sixty (60) days after receiving the payment demand to
17 determine the fair value of the shares and accrued interest. If the
18 corporation does *not* commence said proceeding within the sixty (60)
19 day period, it shall pay each dissenter whose demand remains
20 unsettled the amount demanded.

21 (b) The corporation shall make all dissenters, whether or not
22 residents of Guam, whose demands remain unsettled parties to the
23 proceeding as in an action against their shares and all parties must be
24 served with a copy of the petition. Nonresidents may be served by
25 registered or certified mail or by publication as provided by law.

26 (c) The jurisdiction of the Superior Court is plenary and
27 exclusive. The court may appoint one (1) or more persons as

1 appraisers to receive evidence and recommend decision on the
2 question of fair value. The appraisers have the powers described in
3 the order appointing them or in any amendment thereto. The
4 dissenters are entitled to the same discovery rights as parties in other
5 civil proceedings.

6 (d) Each dissenter made a party to the proceeding is entitled
7 to judgment:

8 (1) For the amount, if any, by which the court finds
9 the fair value of his shares, plus interest, exceeds the amount
10 paid by the corporation; or

11 (2) For the fair value, elected to withhold payment
12 under §3408 of this Chapter.

13 **§3502. Court Costs and Counsel Fees.**

14 (a) The court in an appraisal proceeding commenced under
15 §3501 shall determine all costs of the proceeding, including the
16 reasonable compensation and expenses of appraisers appointed by the
17 court. The Court shall assess the costs against the corporation, except
18 that the Court may assess costs against all or some of the dissenters, in
19 amounts the Court finds equitable, to the extent the Court finds the
20 dissenters acted arbitrarily, vexatiously, or in bad faith in demanding
21 payment under §3409 of this Chapter.

22 (b) The Court may also assess the fees and expenses of
23 counsel and experts for the respective parties, in amounts the Court
24 finds equitable:

25 (1) Against the corporation and in favor of any or all
26 dissenters *if* the Court finds the corporation did *not* substantially
27 comply with the requirements of §3401 through §3409 of this

1 Chapter; and

2 (2) Against either the corporation or a dissenter in
3 favor of any other party, *if* the Court finds that the party against
4 whom the fees and expenses are assessed acted arbitrarily,
5 vexatiously, or in bad faith with respect to the rights provided
6 by this Chapter.

7 (c) If the Court finds that the services of counsel for any
8 dissenter were of substantial benefit to other dissenters similarly
9 situated, and that the fees for those services should *not* be assessed
10 against the corporation, the Court may award to said counsel
11 reasonable fees to be paid out of the amount awarded the dissenters
12 who were benefited.”