

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN  
2013 (FIRST) REGULAR SESSION

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Bill No. 59-32(dor)

Introduced by:

V.C. Pangelinan

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

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 SECTION 1. Chapter 162 is hereby *added* to Title 11 of the Guam Code  
2 Annotated to read as follows:

3 "CHAPTER 162

4 Collective Investment Funds Act

5 § 162101. Definitions.

6 § 162102. Establishment of Collective Investment Funds.

7 § 162103. Plans for Operation of Funds.

8 § 162104. Management of the Fund.

9 § 162105. Internal Controls.

10 § 162106. Rights and Interests of Participating Accounts and Contributors to  
11 the Participating Accounts.

12 § 162107. Interests of a Financial Institution,

13 § 162108. Annual Financial Reports.

14 § 162109. Management Fees.

15 § 162110. Mistakes in administration of funds.

1           **§ 162101. Definitions.** As used in this chapter, unless the context otherwise  
2 requires:

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

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

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

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

16           (e) "*Fund*" means a collective investment fund.

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

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

20           **§ 162102. Establishment of Collective Investment Funds.** A financial  
21 institution may establish and maintain collective investment funds for the investment  
22 of assets of retirement, pension, profit sharing, stock bonus or other trusts that are  
23 exempt from federal income tax and may invest assets of retirement, pension, profit  
24 sharing, stock bonus, or other employee benefit trusts exempt from federal income  
25 tax and that the financial institution holds in any capacity (including agent) in such  
26 collective investment funds.

1           **§ 162103. Written Plan.**

2           (a) A financial institution shall establish and maintain a fund in accordance  
3 with a written plan approved by resolution by the board of directors of the financial  
4 institution or by a committee authorized by the board. The plan's provisions shall be  
5 consistent with the provisions of this chapter, as well as the rules and regulations of  
6 the Office of the Comptroller of the Currency, 12 C.F.R. § 9.18 (or any successor  
7 provision), and such rules and regulations as may from time to time be promulgated  
8 by the Commissioner, to the extent that such respective rules and regulations are not  
9 inconsistent with the provisions of this chapter.

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

- 13           (1) Investment powers and policies with respect to the fund;
- 14           (2) Allocation of income, profits, and losses;
- 15           (3) Fees and expenses that will be charged to the fund and to  
16 participating accounts and the individuals contributing to the participating  
17 accounts;
- 18           (4) Terms and conditions governing the admission and withdrawal of  
19 participating accounts;
- 20           (5) Audits of participating accounts;
- 21           (6) Basis and method of valuing assets in the fund;
- 22           (7) Expected frequency of income distribution from the fund to  
23 participating accounts;
- 24           (8) Minimum frequency of valuation of fund assets;
- 25           (9) Amount of time following a valuation date in which a valuation of  
26 fund assets must be made;

1 (10) Bases upon which the financial institution may terminate the funds;

2 (11) Any other matters necessary to define clearly the rights of  
3 participating accounts and contributors to the participating accounts.

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

7 (d) The financial institution shall submit a copy of the written plan, and any  
8 amendments made to the written plan, to the Commissioner upon adoption of such  
9 amendments.

10 **§ 162104. Management of the Fund.** The financial institution shall have the  
11 exclusive management and control of each fund administered by it, and the sole right  
12 at any time to sell, convert, exchange, transfer, or otherwise change or dispose of the  
13 assets comprising within the fund, except as a prudent person might delegate  
14 responsibilities to others. The ownership of the fund's assets shall be solely in the  
15 financial institution as fiduciary and shall be considered as assets held by it as  
16 fiduciary.

17 **§162105. Internal Controls.** A financial institution shall implement and  
18 maintain effective operational controls to ensure:

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

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

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

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

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

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

7 (g) A formal process is in place for the board of director of the bank, or a  
8 committee appointed by the board, to approve and oversee major fund decisions and  
9 the operation of the fund.

10 **§162106. Rights and Interests of Participating Accounts and Contributors**  
11 **to the Participating Accounts.**

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

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

22 **§162107. Interests of a Financial Institution.** A financial institution  
23 administering a fund shall not have an interest in that fund other than in its fiduciary  
24 capacity. If, because of a creditor relationship or otherwise, the bank acquires an  
25 interest in a participating account, the participating account must be withdrawn on the  
26 next withdrawal date. However, a financial institution may invest assets that it holds

1 as fiduciary for its own employees in a fund.

2 **§ 162108. Annual Financial Reports.**

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

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

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

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

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

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

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

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

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

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

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

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

1       **§ 162109. Management Fees.** The financial institution administering a collective  
2 investment fund may charge a reasonable fund management fee only if the amount of  
3 the fee does not exceed an amount commensurate with the value of legitimate services  
4 of tangible benefit to the participating fiduciary accounts that would not have been  
5 provided to the accounts were they not invested in the fund.

6       **§ 162110. Mistakes in Administration of Funds.** A mistake made in good faith  
7 and in the exercise of due care in connection with the administration of a fund is not a  
8 violation of this chapter or any rules or regulations issued under this chapter, if  
9 promptly after discovery of the mistake the financial institution takes whatever action  
10 is reasonable under the circumstances to remedy the mistake and reports the mistake  
11 to the Commissioner and appropriate federal regulatory agencies as required by this  
12 Act.”

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