

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

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Bill No. 170-32(LS)

Introduced by:

V.C. Pangelinan 

AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 SECTION 1. Legislative Findings and Intent. *I Liheslaturan*
3 *Guahan* finds that legislative action is needed to improve the Government of
4 Guam's ability to meet its obligations to fund the Retirement Fund Defined
5 Benefit Plan. The statutory limitations in the Defined Benefit Plan pertaining
6 to investments should not result in unintended consequences such as
7 encouraging the Government of Guam Retirement Fund ('Fund') to take
8 undue investment risks, or permitting disproportionate risks for some asset
9 classes and some investment vehicles, which might result in an imprudent
10 investment portfolio.

1 *I Liheslaturan Guahan* finds that the investment limitations in current
2 law must be updated and revised to expand the Fund's opportunity to improve
3 the risk adjusted return of the investment portfolio for the benefit of the
4 Retirement Fund as a whole.

5 *I Liheslaturan Guahan* finds inconsistent treatment in provisions
6 allowing investments in various equity categories, while prohibiting
7 investments in non-investment grade corporate bonds, even though all bond
8 categories (including high-yield) can be safer and more protected under stress
9 scenarios than equities because of established capital structure priorities.

10 *I Liheslaturan Guahan* further finds similar inconsistent treatment in
11 provisions that allow bond investments so long as they are included in the
12 applicable bond benchmark (e.g., the U.S. Aggregate Index), while
13 prohibiting equity investments in certain non-U.S. headquartered companies
14 even though such companies do most of their businesses in the U.S. and are
15 included in applicable U.S. equity benchmarks (e.g., the Russell 1000 Index
16 and the Russell 2000 Index).

17 *I Liheslaturan Guahan* further finds that current statutes limiting non-
18 U.S. investments, which had a historical purpose of controlling risks in under-
19 developed markets, are no longer relevant today and may be significantly
20 inconsistent with global opportunity sets.

1 *I Liheslaturan Guahan* further finds that, for purposes of quantitative
2 limitations, further clarity is needed when classifying investments by asset
3 classes (e.g., stocks and bonds) and by the vehicles used to purchase such
4 stocks and bonds (e.g., in mutual funds, exchange traded funds, index funds).

5 *I Liheslaturan Guahan* further finds that capital requirements for non-
6 locally chartered bank custodians and for investment agents should be
7 updated and more clearly defined in accordance with Federal Deposit
8 Insurance Corporation Regulations, and increased in accordance with the
9 level of assets under Fund management since the statute was enacted.

10 *I Liheslaturan Guahan* further finds that the fiduciary duties of the
11 Board of Trustees of the Fund should expressly reflect that their investment
12 decisions respecting individual assets should be evaluated not in isolation, but
13 in the context of the Fund's portfolio as a whole and as part of an overall
14 investment strategy having risk and return objectives reasonably suited to the
15 Fund.

16 Accordingly, the Board of Trustees' decisions or actions in discharging
17 their fiduciary duties should be reviewed in light of the facts and
18 circumstances existing at the time of such decision or action, and not by
19 hindsight.

1 Based on these findings, *I Liheslaturan Guahan* intends to amend the
2 Defined Benefit Plan statute: (1) to allow investments in non-investment
3 grade U.S. corporate bonds, up to eight percent (8%) of the Fund at cost and
4 investments in U.S. and non-U.S. stocks, either directly or indirectly through
5 purchases in investment funds or exchange traded funds, up to seventy
6 percent (70%) of the Fund at cost; (2) to clarify that such quantitative
7 limitations on direct and indirect investments in specific asset classes are
8 separate from the quantitative limitations for the investment vehicles (e.g.,
9 investment funds or exchange traded funds); (3) to increase the capital base
10 required for non-locally chartered bank custodians and for investment agents
11 to One Billion Dollars (\$1,000,000,000); and (4) to expressly state how the
12 Board of Trustees' investment decisions should be evaluated based on risk
13 and return objectives reasonably suited to the Fund.

14 **SECTION 2. A new subsection (w) is hereby added to Section 8104,**
15 **Article 1, Chapter 8, Title 4 of the Guam Code Annotated, to read:**

16 “(w) *Tier 1 Capital* shall have the meaning set forth in regulations
17 promulgated by the Federal Deposit Insurance Corporation as codified in the
18 Code of Federal Regulations, 12 C.F.R. § 325, as amended from time to time.”

19 **SECTION 3. Section 8139.1, Article 1, Chapter 8, Title 4 of the**
20 **Guam Code Annotated, is hereby amended to read:**

21 “§ 8139.1. Fiduciary Duties.

1 (a) The members of the Board of Trustees stand in a fiduciary
2 relationship to the beneficiaries of the Retirement Fund in regard to the
3 management of the Fund.

4 (b) The members of the Board of Trustees shall discharge their duties
5 with respect to management of the Retirement Fund;

6 (1) solely in the interest of the members and beneficiaries of the
7 Fund and for the exclusive purpose of providing benefits to members and
8 beneficiaries and defraying reasonable expenses of administering the Fund.
9 ~~The members of the Board of Trustees shall discharge their duties;~~

10 (2) with the care, skill, and prudence and diligence under the
11 circumstances then prevailing that a prudent person acting in a like capacity
12 and familiar with such matters would use in the conduct of an enterprise of a
13 like character and with like aims. ~~The members of the Board of Trustees shall~~
14 ~~discharge their duties;~~

15 (3) by diversifying the investments of the Fund so as to minimize
16 the risk of large losses, unless under the circumstances it is clearly prudent not
17 to do so. ~~The members of the Board of Trustees shall discharge their duties;~~
18 and

19 (4) in accordance with the documents and instruments governing
20 the fund Fund.

21 (c) Unless otherwise provided in this Chapter, investment and
22 management decisions respecting individual assets shall be evaluated not in
23 isolation, but in the context of the Fund's portfolio as a whole and as a part of
24 an overall investment strategy having risk and return objectives reasonably
25 suited to the Fund.

1 (d) A Trustee’s decision or action in discharging his or her fiduciary
2 duties shall be reviewed in light of the facts and circumstances existing at the
3 time of such decision or action, and not by hindsight.”

4 **SECTION 4. Subsection (j) of Section 8143, Article 1, Chapter 8,**
5 **Title 4 of the Guam Code Annotated is hereby amended to read:**

6 “§8143(j). Before the Board may approve by resolution the acquisition
7 of real property consisting of physical assets under §4225.16 of the
8 Government Code, as amended, codified as §8159, of Title 4 GCA, the
9 following steps must be taken:

10 (1) the proposed acquisition must be reviewed and recommendations
11 must be submitted to the Board by an investment agent as defined under §8145
12 of this Chapter;

13 (2) completion of an in-house evaluation of the proposed acquisition
14 must be completed;

15 (3) a review of the proposed acquisition as to legal sufficiency must be
16 made by the Attorney General; and

17 (4) a review and recommendation must be submitted by three (3)
18 members of the Board of Trustees.

19 At no time shall an acquisition considered under this ~~Section~~ Subsection
20 (j) be made that would provide an immediate investment return which is less
21 than the average rate of investment return that the Fund is receiving overall on
22 its alternative investment portfolio.”

23 **SECTION 5. Section 8144, Article 1, Chapter 8, Title 4 of the Guam**
24 **Code Annotated is hereby amended to read:**

25 “§ 8144. Custodian.

26 The Board shall engage one or more ~~bank-trust departments~~ custodians
27 to assume responsibility for the physical possession of fund assets or

1 evidences of assets. The custodian shall submit such reports, accountings and
2 other information in such form and at such times as requested by the Board.
3 All costs incurred for custodial services shall be a direct charge to Investment
4 Income. The custodian shall hold all assets for the account of the Government
5 of Guam Retirement Fund and shall act only upon the instructions of the
6 Board, its ex-officio director or a member, committee or agent so authorized
7 by the Board. No custodian shall be engaged unless it:

8 (a) Has been continuously engaged in rendering ~~trust~~ custody services
9 for a period of ten (10) or more years; and

10 (b) Is organized under the laws of the United States or a state or
11 territory thereof; and

12 (c) Has Tier 1 capital and surplus in excess of ~~Ten Million~~ One Billion
13 Dollars (\$10,000,0001,000,000,000); and

14 (d) Is a member of the Federal Reserve System whose deposits are
15 insured by the Federal Deposit Insurance Corporation or any successor
16 thereto; or

17 (e) Notwithstanding any of the above, any locally chartered bank may
18 be a custodian of the Retirement Fund.”

19 **SECTION 6. Section 8145, Article 1, Chapter 8, Title 4 of the**
20 **Guam Code Annotated is hereby amended to read:**

21 “§8145. Investment Agent.

22 (a) In order to secure expert advice and counsel, the Board may engage
23 an investment agent to serve as investment counsel which shall be either an
24 investment counsel or a bank trust department as hereinafter qualified; and
25 one or more Investment Agents to serve as investment manager(s) to manage
26 asset classes identified by the Board upon the recommendation of investment

1 counsel. All costs incurred in this connection shall be a direct charge to
2 Investment Income.

3 (b) No person, firm or corporation shall be eligible for employment as
4 investment counsel which acts as principal for its own account or as broker for
5 a client other than the Fund in connection with the sale of any security to or
6 the purchase of any security from the Fund.

7 (c) No investment ~~counsel~~ agent shall be engaged unless:

8 (1) The principal business of the person, firm or corporation selected
9 by the Board consists of rendering investment supervisory services, that is, the
10 giving of continuous advice as to the investment of Funds on the basis of the
11 individual needs of each client; and

12 (2) The principal ownership or ~~and~~ control of such person, firm or
13 corporation rests with individuals who are actively engaged in such business;
14 and

15 (3) Such person, firm or corporation and its predecessors have been
16 continuously engaged in such business for a period of ten (10) or more years;
17 and

18 (4) Such person, firm or corporation is registered as an investment
19 adviser under the laws of the United States of America as from time to time in
20 effect; and

21 (5) The contract between the Board and the investment ~~counsel~~ agent
22 is of no specified duration and is voidable at any time by either party; and

23 (6) Such person, firm or corporation certifies in writing, to the Board,
24 that the assets under its direct investment supervision are in excess of ~~Two~~
25 Hundred Million One Billion Dollars (\$200,000,000,000,000,000).

26 (d) The Board shall not engage a bank trust department unless it:

1 (1) Certifies in writing, to the Board, that the assets under its direct
2 investment supervision are in excess of ~~Two Hundred Million~~ One Billion
3 Dollars (~~\$200,000,000~~ \$1,000,000,000); and

4 (2) Has been, together with its predecessors, continuously engaged in
5 supervising investments for a period of ten (10) or more years; and

6 (3) Is organized under the laws of the United States or a state or
7 territory thereof; and

8 (4) Has Tier 1 capital and surplus in excess of ~~Ten Million~~ One
9 Billion Dollars (~~\$10,000,000~~ \$1,000,000,000); and

10 (5) Is a member of the Federal Reserve System whose deposits are
11 insured by the Federal Deposit Insurance Corporation or any successor thereto.

12 (e) The Board or its designee under § 8143(a), shall establish and may
13 from time to time change operating arrangements with the Investment Agent in
14 order to facilitate efficient management and timely investment action.

15 (f) No investment shall be made unless in the opinion of the Investment
16 Agent it is an appropriate investment for the Fund and is an authorized
17 investment under §§ 8143 through § 8159, inclusive, or in the absence of such
18 opinion, unless preceded by a resolution of the Board ~~direction~~ directing the
19 investment.”

20 **SECTION 7. Section 8146, Article 1, Chapter 8, Title 4 of the**
21 **Guam Code Annotated is hereby amended to read:**

22 “§8146. General Investment Limitations.

23 No investment shall be made if, after such investment, the Fund would
24 own:

25 (a) Any combination of obligations of any one political subdivision,
26 corporation or other single issuing entity in excess of five percent (5%) of
27 Fund assets at cost. This limitation shall not apply to general obligations of the

1 United States, investments authorized under § 8150, or general obligations of
2 the territory of Guam.

3 (b) Any combination of investment instruments as covered by § 8151,
4 Subsection (b) of § 8154, Subsection (b) of § 8156, and Subsection (b) of §
5 8157 in excess of ~~Fifteen~~ Thirty-Five Percent (~~15~~35%) of Fund assets at cost.

6 (c) Obligations or other investments issued or guaranteed by the territory
7 of Guam in excess of Ten Percent (10%) of Fund assets at cost, provided
8 however, that this limitation shall not apply to such obligations or other
9 investments that are unconditionally guaranteed as to principal and interest by,
10 or supported by lease assignment from, another entity whose principle business
11 is outside of said Territory and whose obligations are authorized investments
12 under §§ 8143 through 8159, inclusive.”

13 **SECTION 8. Section 8149, Article 1, Chapter 8, Title 4 of the**
14 **Guam Code Annotated is hereby amended to read:**

15 ‘§8149. Same: Bank Deposits; Other Cash Equivalents.

16 (a) Interest-bearing time deposits, demand deposits, and cash sweep
17 deposit accounts in banks organized under the laws of the United States or any
18 state or territory thereof, provided that said bank:

19 ~~(a)(1)~~ (1) Has Tier 1 capital ~~and surplus~~ in excess of One Billion Dollars
20 (\$1,000,000,000)~~\$10,000,000~~; and

21 ~~(b)(2)~~ (2) Is a member of the Federal Reserve System; and

22 ~~(c)(3)~~ (3) Together with any predecessors, have been conducting a
23 banking business for a continuous period of ten (10) or more years; or

24 ~~(d)(4)~~ (4) Any bank or savings and loan association chartered in Guam
25 and a member of the Federal Deposit Insurance Corporation or the Federal
26 Home Loan Bank System.

1 (b) Cash equivalents purchased in investment funds authorized under
2 Section 8158 or in exchange-traded funds authorized under §8158.1; in
3 amounts and for durations approved by the Board in connection with the
4 management of uninvested cash balances; such purchases shall be excluded
5 from limitations of § 8158(e) and § 8158.1(b)."

6 **SECTION 9. Section 8150, Article 1, Chapter 8, Title 4 of the Guam**
7 **Code Annotated is hereby amended to read:**

8 "§8150. Same: Bonds of United States and Federal Instrumentalities.

9 (a) Bonds or other evidence of indebtedness of the United States of
10 America, or any of its agencies or instrumentalities, when such obligations are
11 guaranteed as to principal and interest by the United States of America or by
12 any agency or instrumentality thereof;

13 (b) Debt securities issued by the Federal National Mortgage Association
14 or the Federal Home Loan Mortgage Corporation that are backed by pools of
15 mortgage loans and guaranteed as to timely repayment of principal and interest
16 by the Federal National Mortgage Association or the Federal Home Loan
17 Mortgage Corporation; or

18 (c) Non-mortgage-related bonds or other evidence of indebtedness of the
19 Federal National Mortgage Association or the Federal Home Loan Mortgage
20 Corporation.

21 (d) Bonds authorized under this Section may be purchased and held in
22 investment funds authorized under §8158 or in exchange-traded funds
23 authorized under §8158.1; such purchases shall be excluded from the
24 limitations of §8158(e) and §8158.1(b)."

25 **SECTION 10. Section 8151, Article 1, Chapter 8, Title 4 of the**
26 **Guam Code Annotated is hereby amended to read:**

1 “§8151. Same: Bonds Issued by National Governments Other Than The
2 United States.

3 Bonds and other evidences of indebtedness which are direct obligations
4 of, or secured by, the full faith and credit of national governments other than
5 the United States, where there exists the power to levy taxes for the prompt
6 payment of the principal and interest of such bonds or evidences of
7 indebtedness, provided that:

8 (a) The issuer shall not be in default in the payment of principal or
9 interest on any bonds or other evidences of indebtedness; and

10 (b) The Investment Agent determines that such an investment would be
11 employed by a prudent ~~man~~ person acting in a like capacity and familiar with
12 such matters would use in the investment of a fund with like character and with
13 like aims; and

14 (c) No investment shall be made in any one (1) issue described in this
15 Section in an amount in excess of ten percent (10%) of such issues.

16 (d) Bonds authorized under this Section may be purchased and held in
17 investment funds authorized under §8158 or in exchange-traded funds
18 authorized under §8158.1; such purchases shall be excluded from the
19 limitations of §8158(e) and §8158.1(b)."

20 **SECTION 11. Section 8152, Article 1, Chapter 8, Title 4 of the Guam**
21 **Code Annotated is hereby amended to read:**

22 “§8152. Same: Bonds of States and Territories.

23 (a) Bonds or other evidences of indebtedness which are direct obligations
24 of or secured by the full faith and credit of, any state or territory of the United
25 States or the District of Columbia where there exists the power to levy taxes for
26 the prompt payment of the principal and interest of such bonds or evidences of

1 indebtedness; but the issuer shall not be in default in the payment of principal or
2 interest on any bonds or other evidences of indebtedness.

3 (b) Bonds authorized under this Section may be purchased and held in
4 investment funds authorized under §8158 or in exchange-traded funds
5 authorized under §8158.1; such purchases shall be excluded from the
6 limitations of §8158(e) and §8158.1(b)."

7 **SECTION 12. Section 8153, Article 1, Chapter 8, Title 4 of the Guam**
8 **Code Annotated is hereby amended to read:**

9 **"§8153. Same: Public Revenue Bonds.**

10 Bonds or other obligations which are payable from revenues or earnings
11 specifically pledged there for of a public utility, state, municipally or
12 territorially owned, either directly or through civil division, authority or public
13 instrumentality of a state or territory or municipality; provided that:

14 (a) The laws of the state or territory or municipality authorizing the
15 issuance of such bonds or other obligations require that rates for service shall
16 be fixed, maintained and collected at all times so as to produce sufficient
17 revenue or earnings to pay all operating and maintenance charges and both
18 principal and interest of such bonds or obligations; and

19 (b) No such bonds or other obligations shall be in default in the payment
20 of principal or interest.

21 Bonds authorized under this Section may be purchased and held in
22 investment funds authorized under §8158 or in exchange-traded funds
23 authorized under §8158.1; such purchases shall be excluded from the
24 limitations of §8158(e) and §8158.1(b)."

25 **SECTION 13. Section 8154, Article 1, Chapter 8, Title 4 of the**
26 **Guam Code Annotated is hereby amended to read:**

1 “§8154. Same: Bonds of Domestic and Foreign Corporations; Index-
2 Eligible Securities.

3 (a) Bonds of Domestic Corporations. Bonds, debentures, notes and other
4 evidences of indebtedness of any corporation *or* corporations created *or*
5 existing under the laws of the United States, *or* of any of the states *or* territories
6 of the United States *or* the District of Columbia which are *not* in default either
7 as to principal *or* interest, provided that:

8 (1) Such bonds *or* other evidence of indebtedness are rated within the
9 four (4) highest categories of two (2) nationally recognized and published rating
10 services which have been approved by the Board and the Investment Agent; *or*

11 (2) In case such bonds *or* other evidence of indebtedness are not so
12 rated by two (2) such services, investments in such lesser-ranked domestic
13 corporate bonds shall not exceed eight percent (8%) of the Fund at cost; unless
14 the net earnings available for fixed charges over a prior period of five (5) fiscal
15 years next preceding the date of investment have averaged per year and during
16 either of the last two (2) years have been, after depreciation and after taxes, *not*
17 *less than:*

18 (A) two (2) times its average annual fixed charges over the same
19 period, in the case of any public utility company;

20 (B) one and one-half (1-1/2) times its average annual fixed charges
21 over the same period, in the case of any finance company; *or*

22 (C) three (3) times its average annual fixed charges over the same
23 period, in the case of any other company.

24 (3) *No more than* two percent (2%) of the Fund at cost *shall be*
25 invested in the obligations of any one (1) domestic corporation or other single
26 domestic issuing entity described in this Subsection.

1 (b) Bonds of Foreign Corporations. Bonds, debentures, notes and other
2 evidences of indebtedness of any corporation or corporations created *or* existing
3 under the laws of nations other than the United States which are *not* in default
4 either as to principal *or interest*, provided that the Investment Agent in its
5 informed opinion, determines that such an investment would be employed by a
6 prudent ~~man~~ person acting in a like capacity and familiar with such matters
7 would use in the investment of a fund of like character and with like aims. *No*
8 *more than* one and one-half percent (1-1/2%) of the Fund at cost *shall* be
9 invested in the obligations of any one (1) foreign corporation *or* other single
10 issuing foreign entity described in this Subsection.

11 (c) *No* investment *shall* be made in any one (1) issue described in
12 Subsections (a) and (b) of this Section in an amount in excess of ten percent
13 (10%) of such issues.

14 (d) Other Securities in the U.S. Aggregate Bond Index. Bonds,
15 debentures, notes and other evidences of indebtedness which are denominated
16 in U.S. Dollars, investment-grade, fixed-rate and of the quality of fixed income
17 securities covered by the U.S. Aggregate Bond Index.

18 (e) Bonds authorized under this Section may be purchased and held in
19 investment funds authorized under §8158 or in exchange-traded funds
20 authorized under §8158.1; such purchases shall be excluded from the
21 limitations of §8158(e) and §8158.1(b)."

22 **SECTION 14. Section 8156, Article 1, Chapter 8, Title 4 of the Guam**
23 **Code Annotated is hereby amended to read:**

24 "§8156. Same: Domestic and Foreign Preferred Stock.

25 (a) Domestic Preferred Stock. Domestic preferred or guaranteed stock or
26 shares of any institution created or existing under the laws of the United States

1 or of any state, district or territory thereof or the District of Columbia, provided
2 that:

3 (1) All publicly held prior obligations and prior preferred stock, if
4 any, of such institution at the date of acquisition are eligible as investments
5 under §§ 8143 through 8160; and

6 (2) The net earnings of the institution available for fixed charges over
7 a period of five (5) fiscal years next preceding the date of investment have
8 averaged per year, and during either of the last two (2) years have been, after
9 depreciation and after income taxes. no less than:

10 (i) Two times its average annual fixed charges, maximum
11 contingent interest and preferred dividend requirements over the same
12 period, in the case of any public utility company; or

13 (ii) Three (3) times its average annual fixed charges, maximum
14 contingent interest and preferred dividend requirements over the same
15 period, in the case of any other company.

16 For purposes of this Subsection, the term 'preferred dividend
17 requirements' shall mean cumulative and noncumulative dividends on all
18 preferred stock of the issuer, whether paid or not.

19 (b) Foreign Preferred Stock. Foreign preferred or guaranteed stock or
20 shares of any institution created or existing under the laws of nations other than
21 the United States which are not in default either as to principal or interest,
22 provided that the Investment Agent in its informed opinion, determines that
23 such an investment would be employed by a prudent ~~man~~ person acting in a like
24 capacity and familiar with such matters would use in the investment of a fund
25 of like character and with like aims.

26 (c) Limitations:

1 (1) No investment shall be made in any one issue described in Item (1)
2 of Subsection (a) of this Section in an amount in excess of ten percent (10%) of
3 such issues.

4 (2) No more than two percent (2%) of the Fund at cost shall be
5 invested in the preferred stock of any one issuing domestic company.

6 (3) No more than two percent (2%) of the Fund at cost shall be invested
7 in the preferred stock of any one issuing foreign company.

8 (4) The aggregate of all investments authorized under this Section shall
9 not exceed fifteen percent (15%) of Fund Assets at cost.

10 (5) Preferred stock authorized under this Section may be purchased and
11 held in investment funds authorized under §8158 or in exchange-traded funds
12 authorized under §8158.1; such purchases shall be excluded from the limitations
13 of §8158(e) and § 8158.1(b)."

14 **SECTION 15. Section 8157, Article 1, Chapter 8, Title 4 of the Guam**
15 **Code Annotated is hereby amended to read:**

16 "§8157. Same; Common Stock.

17 (a) Common or capital stock of any institution or entity created or existing
18 under the laws of the United States or any state, district, or territory thereof, or
19 of the District of Columbia or of any foreign country; provided that, with respect
20 to at least fifty percent (50%) of the investments at cost purchased directly under
21 this Section:

22 (i) The issuing institution, entity or a predecessor thereto, has reported a
23 profit in at least four (4) of the five (5) fiscal years next preceding the date of
24 investment or alternatively in at least seven (7) of the ten (10) fiscal years next
25 preceding the date of investment; and

1 (ii) The institution, entity or such predecessor has paid cash dividends on
2 its common or capital stock in at least four (4) of the five (5) years next
3 preceding the date of investment, or alternatively in at least seven (7) of the ten
4 (10) fiscal years next preceding the date of investment; and

5 (iii) Total cash dividends have not exceeded total earning in the five (5)
6 years next preceding the date of investment; and

7 (iv) On the date of investment, the issuer shall not be in default in
8 payment of principal or interest on any of its publicly held bonds or other
9 evidences of indebtedness and any contingent interest, cumulative and
10 noncumulative preferred dividends and dividends on prior common or capital
11 stock shall have been paid in full.

12 No more than five percent (5%) of the Fund shall be invested directly in the
13 common or capital stock of any one issuing domestic company described in this
14 Section.

15 (b) Common or capital stock of any institution or entity created or existing
16 under the laws of nations other than the United States provided that the
17 Investment Agent determines that such an investment would be employed by a
18 prudent ~~man~~ person acting in a like capacity and familiar with such matters
19 would use in the investment of a fund with like character and with like aims. No
20 more than one and one-half percent (1-1/2%) of the Fund at cost shall be
21 invested directly in the common or capital stock of any one issuing foreign
22 company described in this Section.

23 (c) No direct investment shall be made in any one (1) issue described in this
24 Section in an amount in excess of ten percent (10%) of such issues.

25 (d) Common or capital stock of any institution or entity created or existing
26 under the laws of the United States or any state, district, or territory thereof, or
27 of the District of Columbia or of any foreign country purchased and held in

1 investment funds authorized under §8158 or in exchange-traded funds
2 authorized under §8158.1; such purchases being excluded from the limitations of
3 §8158(e) and §8158.1(b).

4 (e) The aggregate amount of all direct and indirect investments under this
5 Section at cost shall not exceed fifty seventy percent (570%) of the Fund.”

6 SECTION 16. Section 8158, Article 1, Chapter 8, Title 4 of the Guam Code
7 Annotated is hereby amended to read:

8 “§ 8158. Investment Funds.

9 (a) Common or capital shares of any investment trust or mutual fund
10 (including any index fund) registered with the Securities and Exchange
11 Commission under the Investment Company Act of 1940, as from time to time
12 amended, provided that the cost of the shares acquired is no greater than their net
13 asset value on the date of acquisition.

14 (b) Units in any common trust fund or commingled fund (including any
15 index fund) maintained by a custodian meeting the requirements of Title 4 GCA
16 § 8144 and advised or sub-advised by an investment management organization
17 meeting the requirements of Title 4 GCA § 8145.

18 (c) Preferred shares of any investment trust or mutual fund (including any
19 index fund) registered with the Securities and Exchange Commission under the
20 Investment Company Act of 1940, as from time to time amended, provided that:

21 (1) The number of issued and outstanding common or capital shares
22 multiplied by their asset value per share, plus;

23 (2) The number of issued and outstanding preferred shares multiplied
24 by their par or stated value, is at least fifty percent (50%) greater than the
25 number of issued and out-standing preferred shares multiplied by their par or
26 stated value. For purposes of this Section, the number of issued and outstanding
27 shares shall be taken as of the latest available public report of such investment

1 trust or mutual fund. Preferred shares as described in this Subsection shall not be
2 subject to the provisions of §8156.

3 (d) The term 'net asset value' as used in this Section shall mean the total
4 quoted or estimated market value of all securities or other assets owned, less that
5 total of all determinable liabilities, as reported by such common trust fund,
6 commingled fund, investment trust or mutual fund.

7 (e) Limitation:

8 (1) The investment in units, preferred, common and capital stock of
9 any one common trust fund, commingled fund, investment trust or mutual fund
10 shall not exceed five percent (5%) of the Fund at cost; and

11 (2) The aggregate of all investments under this Section, except for
12 investment fund purchases of cash equivalents authorized under §8149, bonds
13 authorized under §§8150-8154, preferred stock authorized under §8156, and
14 common or capital stock authorized under §8157, shall not exceed thirty percent
15 (30%) of the Fund at cost."

16 **SECTION 17. Section 8158.1, Article 1, Chapter 8, Title 4 of the Guam**
17 **Code Annotated is hereby amended to read:**

18 "§8158.1. Exchange Traded Funds.

19 (a) Units *or* shares of any exchange traded fund (ETF) established as an
20 open-end investment management company *or* a unit investment trust registered
21 with the Securities and Exchange Commission under the Investment Company
22 Act of 1940, as from time to time amended. Although ETFs may trade at prices
23 established throughout the trading day, like any other listed equity security
24 trading in the secondary market on an exchange, the units *or* shares described in
25 this subsection *shall not* be subject to the provisions of §8157. Although ETFs
26 are unit investment trusts, the units *or* shares described in this subsection *shall*
27 *not* be subject to the provisions of §8158.

1 (b) The investment in units *or* shares of any one exchange traded fund *shall*
2 *not exceed* twenty percent (20%) of the Fund at cost.”

3 **SECTION 18. Effective Date.** This Act shall become effective upon
4 enactment.

5 **SECTION 19. Severability.** If any provision of this Act or its application to
6 any person or circumstances is held invalid, the invalidity shall not affect any
7 other provision or applications of this Act which can be given effect without the
8 invalid provision or application, and to this end the provisions of this Act are
9 severable.