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TITLE 18

GUAM CODE ANNOTATED

BUSINESS STRUCTURE

AND

FUNCTION

Updated through Dec. 3, 1992

P.L. 21-141

TITLE 18

BUSINESS STRUCTURE

AND

FUNCTIONS

DIVISION 1

BUSINESS STRUCTURE

PART 1

THE CORPORATE LAW

Compiler's Note

This entire Title comes from the Civil Code of Guam. The purpose Title 18 is to include within it all laws pertaining to business; its organization and the general laws governing business relations not repealed from the Civil Code and placed elsewhere in the Guam Code Annotated. For instance, many parts of the Civil Code have been replaced by the Uniform Commercial Code and are found in Title 13 of the GCA. Likewise, the Uniform Consumer Credit Code, formerly commencing with §1801.101 of the Civil Code, has been reenacted as Title 14 of the GCA. The Compiler has placed the First Division of the Civil Code into Titles 19 and 21 of the GCA, dealing with personal rights and relations and real property, respectively. What remains of business relations is in this Code. The general law on Relief will be found in Title 20 of the GCA.

This Part 1 of Title 18 comes from §§287 - 460 of the Civil Code. This part was originally codified under the Naval Government of Guam and recodified by the Legislature in 1953 to remove various provisions not consistent with civilian government on Guam. This Part contains the General Corporation Law as amended up to the date of codification. The only changes made by the Compiler are those changes, authorized by 1 GCA Chapter 16, which are required to conform the law to its placement within the Guam Code Annotated.

All SOURCE references in this Title will be to the original 1953 Civil Code of Guam unless otherwise stated.

CHAPTER 1

Preliminary Provisions

§1101. Short Title.

§1102. Definitions and Construction.

§1103. General Application.

§1104. Savings Clause.

§1101. Short Title. This Part of Title 18 of the Guam Code Annotated and all amendments hereof and any section or supplement added hereto shall be known and may be cited as *The General Corporation Law*, and is hereinafter referred to as *this Part*.

SOURCE: CC (Civil Code) §277. References to *Title* and *Civil Code* have been replaced with *Part* and *this Title*, respectively, to conform to the position of this law within the Guam Code Annotated.

§1102. Definitions and Construction. The following are definitions of certain terms as used in this Part:

Articles includes the articles of incorporation, amendments thereto, amended articles, and agreements of consolidation or merger.

Unless the context otherwise requires, *shareholder* or *stockholder* or *holder of shares*, means holder or record of shares or shareholder or record and includes a subscriber to shares in cases in which no certificates are outstanding, and a member of a nonstock corporation.

Member includes each person signing the articles of a nonstock corporation and each person admitted to membership therein.

Incorporator includes each person signing the articles of incorporation.

Corporation unless otherwise expressly provided, refers only to a domestic corporation.

Domestic Corporation means a corporation formed under the laws of this territory; and **foreign corporation** means any other corporation.

Stock corporation means a corporation authorized to issue shares of stock.

Nonstock corporation includes every corporation other than a stock corporation.

To **represent shares** means to vote, to give written consent to corporation action, to dissent therefrom, and to execute waivers of notice of meetings.

Majority vote and **two-thirds vote** mean votes of the holders of shares or members entitled to exercise, respectively, a majority and two-thirds (2/3) of the voting power at a shareholders' or members' meeting.

Directors includes persons designated in the articles as such and persons designated, elected or appointed by any other name or title to act as directors and their successors.

Directors, when used in relation to any power or duty requiring collective action shall be construed to mean **board of directors**.

Mortgage includes any instrument to secure a debt, or any pledge or form of security.

Shares or **shares of stock** shall be construed to include membership in nonstock corporation where the context so requires.

Investment Company refers to any domestic corporation whose purpose includes or which does engage in the following activity:

Investing, reinvesting or trading in or the acquisition or ownership of securities or other property from which any gross fixed or determinable annual or periodic gains, profits and income shall be treated as income from sources without Guam in accordance with the provisions of §862 or §863 of the Guam Territorial Income Tax Law as its primary activity or engaging in the conduct of business as an investment company and defined in any law of the United States or of Guam (unless provision is made in its articles of incorporation that majority ownership must be held at all times beneficially and of record by individual residents of Guam).

International Finance Company refers to any domestic corporation whose purpose includes or which does engage in the following activity:

Deriving at least fifty percent (50%) of its annual gross income as interest or similar fees or revenue from any of its stockholders or any affiliate of its stockholders or any person responsible for the existence of such stockholder relationship and which either:

(a) has outstanding obligations with an original maturity date of longer than one (1) year in a principal amount greater than its capital;

(b) which holds, as assets, obligations of any one debtor (including, for this purpose, obligations of all other entities which are under common control with a debtor) equal to an amount greater than such company's capital; or

(c) which has at least fifty percent (50%) of its obligations guaranteed as to principal or interest by any one or more of its debtors or convertible into the securities of any one or more of its debtors.

FSC refers to any domestic corporation which is also a FSC as defined in §922(a) of the Internal Revenue Code as the same may be amended from time to time.

SOURCE: CC §278; *Investment Company* and *International Finance Company* references added by P.L. 16-115:1 (10/21/82); *FSC* reference added by 17-63:3 and amended by P.L. 17-75:11 (10/26/84).

§1103. General Application. The provisions of this Part are applicable to every private corporation, profit or nonprofit, stock or nonstock, now existing or hereafter formed, and the outstanding or future securities thereof, unless such corporation be expressly excepted from the operation thereof, or there be a special provision, in relation to any class thereof inconsistent with some provision of this Part, in which case the special provision prevails.

Existing corporations -- The existence of corporations heretofore formed or existing shall not be affected by the enactment of this Part, nor by any change in the requirements for the formation of corporations, nor by amendment or repeal of the laws under which they were formed or created.

SOURCE: CC §279. Enacted 1953.

§1104. Savings Clause. Neither this Part nor the amendment or repeal thereof, nor any law affecting corporations, shall take away or impair any liability or cause of action existing or incurred against any corporation, its shareholders, directors, or officers.

SOURCE: CC §280.

PART 2

SPECIAL CORPORATE FORMS

CHAPTER 10

Religious & Nonprofit Corporations

§10101. Nonprofit Corporations.

§10102. Religious corporations. Corporation Sole.

§10103. Articles of Incorporation.

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§10105. Property to be held in trust.

§10106. Successors, commissions, or certificates of election.

§10107. Purchase, sale, etc., of property.

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§10110. Right to administer passes to the corporation.

§10111. Purchase of real estate.

§10112. Religious corporations to hold land.

§10113. Nonincorporated associations.

§10101. Nonprofit Corporations. Any number of persons, associated together for any lawful purpose other than pecuniary profit, may incorporate their said association, as provided in this Chapter.

SOURCE: CC §500. All Source references in this Chapter are to the appropriate sections of the Civil Code as found in the Civil Code, 1970 Edition, unless otherwise noted.

§10102. Religious corporations. Corporation sole. For the administration of the temporalities of any religious denomination, society, or church, and the management of the estates and properties thereof, it shall be lawful for the bishop, chief priest, or presiding elder of any such religious denomination, society, or church to become a corporation sole unless inconsistent with the rules, regulations, or discipline of his religious denomination, society, or church or forbidden by competent authority thereof.

SOURCE: CC §501.

§10103. Articles of Incorporation. In order to become a corporation sole, the bishop, chief priest, or presiding elder of any religious denomination, society, or church must file with the

Director of Revenue & Taxation articles of incorporation setting forth the following facts:

- (a) That he is the bishop, chief priest, or presiding elder of his religious denomination, society, or church and that he desires to become a corporation sole.
- (b) That the rules, regulations and discipline of his religious denomination, society, or church are not inconsistent with his becoming a corporation sole;
- (c) That as such bishop, chief priest, or presiding elder he is charged with the administration of the temporalities and the management of the estates and properties of his religious denomination, society, or church within his territorial jurisdiction, describing it;
- (d) The manner in which any vacancy occurring in the office of bishop, chief priest, or presiding elder is required to be filled according to the rules, regulations, or discipline of the religious denomination, society, or church to which he belongs;
- (e) The place where the principal office of the corporation sole is to be established and located, which place must be within Guam.

SOURCE: CC §502.

§10104. Verification of Articles. The articles of incorporation must be verified before filing by the bishop, chief priest, or presiding elder, as the case may be, and accompanied by a copy of the commission, certificate of election, or letters of appointment of such bishop, chief priest, or presiding elder, duly certified to be correct by any notary public or clerk of a court of record.

SOURCE: CC §503.

§10105. Property to be held in trust. From and after the filing with the Director of Revenue & Taxation of the said articles of incorporation, verified by affidavit or affirmation as aforesaid and accompanied by the copy of the commission, certificate of election, of letters of appointment of the bishop, chief priest, or presiding elder, duly certified as prescribed in §10104, such bishop, chief priest, or presiding elder, as the case may be, shall become a corporation sole, and all temporalities, estates and properties of the religious denomination, society, or church theretofore administered or managed by him as such bishop, chief priest, or presiding elder shall be held in trust by him as a corporation sole for the use, purpose, behoof, and sole benefit of his religious denomination, society, or church, including hospitals, schools, colleges, orphan asylums, parsonages, and cemeteries thereof. For the filing of such articles of incorporation the Director of Revenue & Taxation shall collect Twelve Dollars and Fifty cents (\$12.50).

SOURCE: CC §504.

§10106. Successors, commissions, or certificates of election. The successors in office of any bishop, chief priest, or presiding elder incorporated as a corporation sole shall become the corporation sole on accession to office, and shall be permitted to transact business as such on filing with the Director of Revenue & Taxation a copy of their commissions, certificates of election, or letters of appointment duly certified to be correct by any notary public or clerk of a court of record.

For filing of every such copy of a commission, certificate, or letters the said Director of Revenue & Taxation shall collect the sum of Five Dollars (\$5.00).

During a vacancy in the office of bishop, chief priest, or presiding elder of any church incorporated as a corporation sole, the person or persons authorized and empowered by the

rules, regulations, or discipline of the religious denomination, society, or church represented by the corporation sole to administer the temporalities and manage the estates and property of the corporation sole during the vacancy shall exercise all the power and authority of the corporation sole during such vacancy.

SOURCE: CC §505.

§10107. Purchase, sale, etc., of property. Any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent, or educational purposes, and may receive bequests or gifts for such purposes. Such corporation may mortgage or sell real property held by it upon obtaining an order for that purpose from the Superior Court; but before making the order proof must be made to the satisfaction of the court that notice of the application for leave to mortgage or sell has been given by publication or otherwise in such manner and for such time as said court or the judge thereof may have directed, and that it is to the interest of the corporation that leave to mortgage or sell should be granted.

The application for leave to mortgage or sell must be made by petition, duly verified by the bishop, chief priest, or presiding elder, acting as corporation sole, and may be opposed by any member of the religious denomination, society, or church represented by the corporation sole; Provided, however, that in cases where the rules, regulations, and discipline of the religious denomination, society, or church concerned, represented by such corporation sole, regulate the methods of acquiring, holding, selling, and mortgaging real estate and personal property, such rules, regulations, and discipline shall control and the intervention of the courts shall not be necessary.

SOURCE: CC §506.

§10108. Incorporation of societies, orders, etc. Any religious society or religious order, or any diocese, synod, or district organization of any church, unless forbidden by the constitution, rules, regulations, or discipline of the religious order, society, or church of which it is a part, or by competent authority, may upon the written consent of two-thirds (2/3) of the membership, or by an affirmative vote of two-thirds (2/3) of the membership had at a regular meeting, incorporate for the administration of its temporalities or for the management of its properties or estates by filing with the Director of Revenue & Taxation articles of incorporation verified by the affidavit or affirmation of the presiding officer, secretary, or clerk or other member of such religious society, religious order, or diocese, synod, or district organization of the church setting forth the following facts:

- (a) That the religious society, religious order, or district organization is a religious society or religious order or diocese, synod, or district organization of some church;
- (b) That two-thirds (2/3) of its membership have given their written consent or have voted to incorporate at a regular meeting of the body;
- (c) That the incorporation of the religious society, religious order, diocese, synod or district organization of the church desiring to incorporate is not forbidden by competent authority or by the constitution, rules, regulations, or discipline of the society, church, or order of which it is a part;
- (d) That the religious society or religious order or diocese, synod, or district organization of the church desires to incorporate for the administration of its temporalities or the management of its properties or estates;
- (e) The place where the principal office of the corporation is to be established and located, which place must be within Guam;

(f) The names and residences of the directors or trustees elected by the religious society or order, or the diocese, synod, or district organization of the church to serve for the first year or such other times as may be prescribed by the laws of the society or order, or of the diocese, synod, or district organization of the church, the board of directors or trustees to be not less than five nor more than fifteen. For the filing of such articles of incorporation the Director of Revenue & Taxation shall collect Twelve Dollars and Fifty cents (\$12.50).

SOURCE: CC §507.

§10109. Bylaws. Bylaws for the government of the corporation not inconsistent with law or with the constitution, bylaws, rules, regulations, or discipline of the religious society, religious order, or church of which the corporation forms a part may be adopted or amended at any regular meeting called for the purpose by the incorporated religious society or religious order or by any convention, synod, or other legal representative of the church in and for the district.

SOURCE: CC §508.

§10110. Right to administer passes to the corporation. The right to administer all temporalities and all property held or owned by a religious order or society, or by the diocese, synod, or district organization of any religious denomination or church shall, on its incorporation, be held in trust for the use, purpose, behoof, and benefit of the religious society or order so incorporated or the church of which the diocese, synod, or district organization is an organized and constituent part.

SOURCE: CC §509.

§10111. Purchase of real estate. Such corporations shall have the right to purchase, hold, mortgage, or sell real estate for its church, charitable, benevolent, or educational purposes by and with the consent of a majority of its membership.

SOURCE: CC §510.

§10112. Religious corporations to hold land. It shall be lawful for all religious associations, of whatever sect or denomination, whether incorporated in Guam or in some other country, or not incorporated at all, to hold land in Guam upon which to build churches, parsonages, or educational or charitable institutions.

SOURCE: CC §511.

§10113. Nonincorporated associations. Such religious institutions, if not incorporated, shall hold the land in the name of three trustees for the use of such associations; the trustees shall be selected by the directing body in Guam for such associations, and vacancies occurring among the trustees by death, resignation, or other cause shall be filled in the same manner as the original selection.

CHAPTER 11**Colleges and Institutions of Learning**

§11101. Articles of Incorporation.

§11102. Right to Incorporate.

§11103. Bylaws.

§11104. Diplomas.

§11105. Trustees.

§11106. Real Estate; conveyance of property.

§11101. Articles of Incorporation. Any number of persons not less than five who have established or who may desire to establish a college, school, or other institution of learning may incorporate themselves by filing with the Director of Revenue & Taxation articles of incorporation setting forth the following facts:

- (a) The name of the corporation;
- (b) The purpose for which it is organized;
- (c) The place where the college, school, or institution of learning is to be conducted;
- (d) The qualifications of trustees and the number of trustees, which shall not be less than five nor more than fifteen (15): Provided, however, that the number of trustees shall be some multiple of five;
- (e) The term for which the trustees shall serve and the names and residences of the trustees elected for the first term;
- (f) The amount of money and description of the property to be devoted to the maintenance and support of the college, school, or other institution of learning.

SOURCE: CC §600. All Source references in this Chapter are to the enactment as found in the Codes of Guam, 1970, ed. unless otherwise stated.

§11102. Right to Incorporate. Societies or organizations which have established colleges, schools, or other institutions of learning may, unless forbidden by their constitutions or by competent authority exercised over them, incorporate with the written consent of two-thirds (2/3) of the membership, or by an affirmative vote of two-thirds (2/3) of the membership had at a regular or a special meeting called for the purpose, by filing with the Director of Revenue & Taxation articles of incorporation setting forth the facts prescribed for articles of incorporation in §11101.

SOURCE: CC §601.

§11103. Bylaws. Societies or organizations so incorporated shall have the power to adopt bylaws not inconsistent with law and may provide in such bylaws for the election of trustees and their terms of office.

SOURCE: CC §602.

§11104. Diplomas. Whenever so empowered in writing by the Director of Education and under such terms and conditions as said Director of Education may prescribe, colleges, duly incorporated in accordance with this Chapter, may grant diplomas.

SOURCE: CC §603.

§11105. Trustees. Unless otherwise provided in the bylaws, the board of trustees of incorporated schools, colleges, or other institutions of learning shall, as soon as organized, so classify themselves so that the term of office of one-fifth (1/5) of their number shall expire every year. Trustees elected thereafter to fill vacancies caused by expiration of term shall hold office for five years. A majority of trustees shall constitute a quorum for the transaction of business. The office of the corporation shall be at college, school, or other institution of learning. The powers and authority of trustees shall be defined in the bylaws.

SOURCE: CC §604.

§11106. Real Estate; conveyance of property. Any educational society or organization, by two-thirds (2/3) vote of its membership held at a regular or at a special meeting called for the purpose, or by written consent of two-thirds (2/3) of its members without a meeting, and any existing educational corporation or body claiming to be such may, by a unanimous vote of its trustees present at a regular or special meeting called for the purpose or by the written consent of such trustees without meeting, convey all or any part of its property, rights, and franchises to a corporation organized for educational purposes in conformity with this Chapter. Any corporation organized for educational purposes in accordance with this Chapter shall have the right by and with the consent of a majority of its membership to purchase, hold, mortgage, or sell real estate for educational purposes.

SOURCE: CC §605.

CHAPTER 14

Publication of Financial Information by Nonprofit Organizations

§14101. Purpose of Chapter.

§14102. Filing of Annual Reports.

§14103. Administration by Dept. of Rev. & Taxation.

§14101. Purpose of Chapter. The Legislature finding that the people of Guam are generous contributors to charitable or other nonprofit organizations but are usually unaware of the disposition made of their contributions, the purpose of this Chapter is to require all such organizations, except strictly religious ones, to file and publish annual financial statements so that the people of Guam can be made aware of the actual fiscal needs of these organizations and can thus govern themselves in their donations to such organizations accordingly.

SOURCE: CC §651.1. This Chapter added by P.L. 9-160 (3/7/68).

CROSS-REFERENCES: See Title 3, Guam Code Annotated for the governance and specific filing requirements of political parties and organizations.

§14102. Filing of Annual Reports. Except for an organization that is entirely religious in character, or a fraternal organization operating under the lodge system that does not solicit, directly or indirectly, from the general public donations and contributions, and does not participate in local fund-raising activities such as raffles and bingo games, every nonprofit organization, including but not limited to a fraternal benefit society, order or association operating under the lodge system, a corporation, association, or society organized and operated for eleemosynary, scientific or educational purposes, business league, Chamber of Commerce, civil league, a political party, any organization of more than two individuals whose purpose is to provide funds or other assistance of value to a political candidate, any organization with the avowed purpose of advocating the improvement of the Government of Guam or the political process, and an organization operating for the benefit of the community and for the promotion of social welfare, shall caused to be published annually within forty-five (45) days of the close of its fiscal year in a newspaper of general circulation in the Territory of Guam a financial report which report shall include a statement of its income and expenditures for the preceding year and a balance sheet showing its assets and liabilities. For the limited purpose of this section, the fiscal year of a political party, an organization of more than two individuals, whose purpose is to provide funds or other assistance of value to a political candidate and any organization with the avowed purpose of advocating the improvement of the Government of Guam or the political process shall end on September 15. Such newspaper report need be no larger than four inches by five inches. Such financial statement shall contain a certificate as to its accuracy by an officer of the organization which financial statement shall be filed with the Director of Revenue & Taxation.

SOURCE: CC §651.2 added by P.L. 9-160; amended by P.L. 10-37, P.L. 10-82, and 12-154.

§14103. Administration by Department of Revenue & Taxation. The Director of Revenue & Taxation shall administer the provisions of this Chapter and upon a finding of noncompliance thereof by any organization required to file and publish such statement, he shall revoke any license or charter issued to such organization by the Government of Guam and shall revoke the tax exempt status of such organization; provided, however, that such action or actions may be taken by the Director only after a public hearing pursuant to the provisions of the Administrative Adjudication Law [5 GCA Chapter 6]. In addition, any officer of an organization required to publish its financial statement under the provisions of this Chapter who either intentionally fails to publish such or intentionally falsifies the information therein shall be guilty of a misdemeanor.

SOURCE: CC §651.3 added by P.L. 9-160; amended by P.L. 13-187:6.
