

CHAPTER 35  
AMERICAN INVESTORS ACT

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**§ 35101. Short Title.**

This law may be cited as the *American Investors Act*.

**SOURCE:** GC § 43600 added by P.L. 12-122 (6/21/1974). This entire Chapter was added by P.L. 12-122. Source references will be to this Public Law unless later amended or modified.

**§ 35102. Definitions.**

As used in this Chapter:

(a) *State* means any of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands.

(b) *American lender* means (1) a member of the Federal Reserve System, an *insured bank* as defined in the Federal Savings and Loan Insurance Corporation Act, a federally chartered savings and loan association, a *real estate investment trust* as defined in the Internal Revenue Code, or an insurance company, the principal office of which is in a state, whether incorporated or unincorporated and whether investing in its individual capacity or in a fiduciary capacity; (2) the trustee or trustees from time to time in office of any employee benefit plan; (3) any corporation all of the capital stock of which (except directors' qualifying shares) is owned by one or more American lenders of the classes specified in clauses (1) and (2) of this paragraph; but the term *American lender* does not include any small loan or industrial loan company or similar business.

(c) *Employee benefit plan* means any plan, fund, or program which was heretofore or is hereafter established in and under the laws of a state by an employer or by an employee organization, or

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both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or annuity contracts or otherwise, medical, surgical or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment, or retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement. As used in the preceding sentence, the term *employee organization* means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan or other matters incidental to employment relationships or any employees' beneficiary association organized for the purpose, in whole or in part, or establishing such a plan.

(d) *Loans* means obligations secured by liens upon real property, or any interest in real property, situated in Guam, which liens may also cover such personal property as is or may from time to time be affixed or attached to or located on or in or about the real property or any improvements thereon or thereto, and include obligations secured by liens upon real property interests therein situated both within and without Guam.

**SOURCE:** GC § 43600.1.

**§ 35103. Exemptions & Immunities.**

An American lender which (a) does not maintain a place of business in Guam, (b) conducts its principal activities outside Guam, and (c) complies with this Chapter, does not by engaging in Guam in any or all of the activities specified in the following section violate the laws of Guam relating to doing business or doing a banking, trust, or insurance business, or become subject to the Banking Code (11 GCA Chapter 106), Savings & Loan Association Act (11 GCA Chapter 127 & 130), Insurance Law (22 GCA Chapter 15) and the Uniform Securities Act (22 GCA Chapter 46) and Part 1 of Title 18 GCA, *The Corporate Law*, and 18 GCA Chapter 12, *The Industrial Development Corporation Law*, or become subject to any taxation which would otherwise be imposed for doing business in or doing a banking, trust, or insurance business in, or having gross income or receipts from sources in, property in, or the conduct of any activity in Guam, or become subject to any taxation under Title 11, Guam Code Annotated, *Taxes*, and no income or receipts of any

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American lender arising out of any of the activities specified in the following section shall constitute income from sources in, property in, or activities conducted in this Territory for the purpose of any tax imposed by Guam; *provided* that nothing in this Chapter shall be construed to exempt the real property of an American lender from taxation to the same extent, according to its value, as other real property is taxed, or to preclude the inclusion of dividends or other income from American lenders in the income of individuals taxable under §31 of the Organic Act of Guam, as amended, (48 U.S.C.A. §1421i), to the same extent as is included dividends and other income from Guam lenders; and *provided, further*, that if any American lender shall acquire any property in Guam in the enforcement of the rights of the American lender in the event of a default by any borrower, as permitted by the laws of Guam, then commencing one year after title to such property has vested in the American lender, the rents or other receipts received by the American lender, and the proceeds of sale by the American lender of, such property, shall be subject to taxation under the laws of Guam in the same manner and to the same extent as if the rents, other receipts, or proceeds were received by a resident of Guam.

**SOURCE:** GC § 43600.2.

**§ 35104. Permitted Activities.**

The activities referred to in the preceding section are:

- (a) Making loans;
- (b) Receiving security for loans;
- (c) Acquiring by assignment or otherwise partial or entire interests in loans or in security for loans;
- (d) Servicing (but servicing only by or through individuals who are residents of, or corporations doing business in, Guam), collecting, enforcing, or otherwise realizing upon loans or upon security for loans or upon interests therein; and taking, holding, and disposing of any property acquired (whether by purchase at any sale pursuant to foreclosure, by entry, or by conveyance in lieu of foreclosure) in enforcement of the rights of the American lender in the event of default by any borrower; and
- (e) Empowering agents and servants in connection therewith, and entering into and performing contracts, and doing other acts and

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things necessary or appropriate for or preliminary or incident to, any of the foregoing activities, but not maintaining any office in Guam for the conduct of such activities.

**SOURCE:** GC § 43600.3.

**§ 35105. Filing & Effect of Statement.**

Before engaging in Guam in any of the activities specified in § 35104, an American lender shall execute and file with the Director of Revenue & Taxation a statement. The statement shall list its name, state of incorporation or organization, and principal place of business, shall certify that its principal activities are conducted outside Guam, and shall appoint irrevocably the Director and his successors its agents upon whom may be served process against it on any proceeding or cause of action arising out of its engaging in this Territory in any of the activities referred to in § 35104. Until that statement is filed the immunities provided in this Chapter do not become operative. Upon the filing of the statement and after a determination by the Director that the American lender qualifies for exemption under this Chapter, the immunities provided by this Chapter shall continue operative until the statement is withdrawn by the American lender or cancelled by the Director pursuant to § 35106, but no such withdrawal or cancellation shall retroactively affect or impair any of the immunities provided by this Chapter.

**SOURCE:** GC § 43600.4.

**§ 35106. Cancellation of Statement.**

(a) If after notice and hearing as hereinafter provided, the Director of Revenue & Taxation shall determine that any American lender having on file a statement as provided in § 35105, (1) maintains an office in Guam, (2) conducts its principal activities in Guam, or (3) is or was formed or availed of by or for the account or benefits, directly or indirectly, of one or more residents of, corporations organized under the laws of, or employee benefit plans organized or having their principal offices in Guam with a view to avoiding the imposition of any taxes imposed by Guam, the Director shall by order cancel the American lender's statement.

(b) In giving notice of and conducting hearings, and in making and entering orders, pursuant to subsection n(a), the Director shall have all of powers conferred on him as the insurance commissioner by, and shall observe and comply with, and the hearings shall be conducted at the time

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or times in the manner specified in, and subject in all respects to *The Insurance Code* of Guam (22 GCA Chapter 15). Appeals from orders made and entered pursuant to subsection (a) of this section may be taken at the time and in the manner provided for to the Superior Court of Guam.

**SOURCE:** GC § 43600.5.

**NOTE:** The final sentence in the original referred to “the Island Court or its successor”. While the Court Reorganization Act of 1974 (P.L. 12-85) had been passed at the time this Chapter became law, the Superior Court had not been organized, thus the reference. Accordingly, the Compiler has changed to reference to the *Superior Court of Guam*, which is the successor to the Island Court.

**§ 35107. Construction.**

Nothing in this Chapter shall require any corporation to qualify to do business in Guam, or subject any person, firm, corporation, or trust to taxation under any law of Guam if, but for the enactment of this Chapter, the person, firm, corporation, or trust would not have been required so to qualify or be subject to such taxation.

**SOURCE:** GC § 43600.6.

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