

11 GCA FINANCE & TAXATION
CH. 160 GUAM-BASED TRUST COMPANIES ACT

CHAPTER 160
GUAM-BASED TRUST COMPANIES ACT

- Article 1. General Provisions.
- Article 2. Organization and Licensing.
- Article 3. Powers and Miscellaneous Provisions.
- Article 4. Examination and Regulation.
- Article 5. Unlawful Acts; Penalties.

ARTICLE 1
GENERAL PROVISIONS

- § 160101. Declaration of Legislative Intent.
- § 160102. Definitions.
- § 160103. Applicability of Chapter.

SOURCE: Added by P.L. 25-73:1.

§ 160101. Declaration of Legislative Intent.

Liheslaturan Guåhan finds as facts and determines that:

1. there exists on the island of Guam a need for the protection of the public interest, to regulate companies which are engaged in the Trust Company business;

2. such trust companies should be licensed and regulated in such a manner as to promote the public advantage and convenience;
and

3. it is the purpose of this Chapter to bring under public supervision those persons who are engaged in, or who desire to engage in the business of a Trust Company, *not* in connection with banking business, and to insure that there is established on Guam an adequate, efficient and competitive Trust Company service.

This Act has been derived from the State of Nevada.

§ 160102. Definitions.

For the purposes of this Chapter, *except* as otherwise specifically provided, the following words and phrases, together with all of the common derivatives thereof (i.e. verbs, plurals, feminine gender, etc.) shall have the meaning ascribed to them as follows:

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(a) *Beneficiary* means the person for whose benefit trust property is held.

(b) *Commissioner* means the Commissioner of Banking of the government of Guam.

(c) *Court Trust* means the action of a Trust Company acting under appointment, order or decree of any court as executor, administrator, guardian, conservator, assignee, receiver, depository or trustee, or receiving on deposit money or property from a public administrator under any provision of this Chapter or from any executor, administrator, guardian, conservator, assignee, receiver, depository or trustee under any order or decree of any court.

(d) *Equitable Duties* include the common law duties of a trustee, the duty to exercise reasonable care, skill and caution in preserving and enhancing trust property, the duty to act with undivided loyalty to the beneficiaries of a trust and the duty to act with impartiality among all beneficiaries.

(e) *Fiduciary* means trustee, agent, executor, administrator, committee, guardian, conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust.

(f) *Investment Company* means any issuer which is, or holds itself out as, being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities.

(g) *Investment Trust* means a company which sells its own stock and invest the money in stocks, real estate and other investment.

(h) *Net Worth* means paid in capital plus paid in surplus plus retained earnings, *if any*.

(i) *Person* means an individual, a partnership, a corporation and any other entity established by law or otherwise established for a stated purpose.

(j) *Private Trust* means every other trust, agency, fiduciary relationship or representative capacity other than a court trust.

(k) *Settlor* means a person who creates a trust.

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(l) *Trust* means a fiduciary relationship with respect to property, the trust property, which arises as a result of a manifestation of an intention to create it and which subjects the person by whom the property is held, the trustee, to equitable duties to deal with the property for the benefit of another person, the beneficiary.

(m) *Trust Company* means a corporation organized and licensed in Guam as provided in this Chapter and engaged in Trust Company business.

(n) *Trust Company Business* means acting as a trustee and engaging in those activities stated in § 160301.1.

(o) *Trustee* means a person who is subject to equitable duties and who holds trust property for a beneficiary.

(p) *Trust Property* means property held in a trust.

§ 160103. Applicability of Chapter.

This Chapter does not apply to:

1. banks or banking institutions regulated under the provisions of Chapter 100 of Title 11 of the Guam Code Annotated;

2. savings and loan institutions regulated under Chapter 141 of Title 11 of the Guam Code Annotated;

3. title insurers, but only respecting escrows;

4. nonprofit, charitable trusts or trust associations;

5. any person, if:

(a) the fiduciary relationship is not one of the person's principal occupations; or

(b) that person serves as trustee for a relative by blood or marriage; or 6. to a beneficiary of the Guam Foreign Direct Investment Equity Act.

SOURCE: Amended by P.L. 25-149:2 to reflect concerns expressed by the federal government.

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ARTICLE 2
ORGANIZATION AND LICENSING

- § 160201. Unlawful to Engage in Business of Trust Company Without License.
- § 160202. Unlawful to Use or Advertise Word ‘Trust’ as Part of Name; *Exceptions*.
- § 160203. Minimum Capitalization.
- § 160204. Incorporation; Required Number of Persons.
- § 160205. Contents of Articles of Incorporation.
- § 160206. Commissioner to Issue Certificate of Incorporation; Commissioner Must Authorize Business Before Company May Transact Business.
- § 160207. Subscription, Acknowledgment and Filing of Articles of Incorporation; Filing of Copies.
- § 160208. Application for License: Contents; Fees.
- § 160209. Procedure for Granting or Denying License.
- § 160210. Issuance or Denial of License; Renewal.
- § 160211. License Fees; Renewals.
- § 160212. Cancellation of License If Trust Company Fails to Open for Business.

§ 160201. Unlawful to Engage in Business of Trust Company Without License.

It is unlawful for any Trust Company to engage in the business of a Trust Company without complying with the provisions of this Chapter and having a license issued by the Commissioner.

§ 160202. Unlawful to Use or Advertise Word ‘Trust’ as Part of Name; *Exceptions*.

1. Except as otherwise provided in Subsection 2, no person, partnership, firm, association, corporation or other business organization formed and doing business under the laws of Guam may:

(a) use the words ‘Trust Company’ or any direct derivative of these words as a part of its name.

(b) advertise or use any sign with the words ‘Trust Company’ used as a part of its name.

2. The provisions of Subsection 1 do *not* apply to a person or business organization which is supervised by the Commissioner pursuant to this Chapter.

§ 160203. Minimum Capitalization.

No Trust Company may be organized or operated with a capital of less than One Hundred Thousand Dollars (\$100,000.00), or in such greater amount as may be required by the Commissioner, and paid-up surplus of Fifty Thousand Dollars (\$50,000.00), or in such greater amount as may be required by the Commissioner. The full amount of the capital and surplus must be paid in cash, exclusive of all organization expenses, before the Trust Company is authorized to commence business.

§ 160204. Incorporation; Required Number of Persons.

Any three (3) or more persons, *except* in the case of a limited liability company which may be incorporated with two (2) or more persons, may execute articles of incorporation and be incorporated as a Trust Company in the manner prescribed in this Chapter.

§ 160205. Contents of Articles of Incorporation.

1. The articles of incorporation must contain:

(a) the corporate name adopted by the corporation, which must be such as to distinguish it from any other Trust Company formed or incorporated on Guam, or engaged in the trust business on Guam;

(b) the place where its business is to be conducted;

(c) the purpose for which it is formed;

(d) the amount of its capital stock, which must be divided into shares of the par value of *not* less than Twenty-five Dollars (\$25.00) each, *except* that upon the written approval of the Commissioner the capital stock may be divided into shares of the par value of not less than One Dollar (\$1.00) each (The amount of capital stock must not be less than One Hundred Thousand Dollars (\$100,000.00), and must be assessable.);

(e) the amount of its original paid-in surplus, which must *not* be less than fifty percent (50%) of its capital stock;

(f) the name and place of residence of, and the number of

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shares subscribed by, each stockholder;

(g) the number of directors, which must not be less than three (3), and the names of the stockholders selected to act as the first board of directors, each of whom must be a *bona fide* subscriber for at least One Thousand Dollars (\$1,000.00) of the stock of the Trust Company, fully paid and *not* hypothecated;

(h) the location of all branch offices as approved by the Commissioner; *and*

(i) such other matters, not inconsistent with law, as the incorporators may deem proper.

2. The articles of incorporation may also provide for the issuance and sale of preferred stock in such amount as is fixed by the articles or by amendments thereto, and the amount and number of shares thereof, and the terms and conditions thereof consistent with the provisions of this Chapter.

§ 160206. Commissioner to Issue Certificate of Incorporation; Commissioner Must Authorize Business Before Company May Transact Business.

1. The Commissioner shall issue a certificate in the form provided by law for other corporations, and the existence of the Trust Company as a corporation dates from the issuance of the certificate by the Commissioner, from which time it has and may exercise the powers conferred by law upon corporations generally, *except* as limited or modified by this Chapter.

2. The Trust Company shall transact no business, *except* the election of officers, and the taking and approving of their official bonds, and the receipt of payments on account of the subscriptions of the capital stock, and such other business as is incidental to its organization, until it is authorized by the Commissioner to commence the Trust Company business as provided in this Chapter.

§ 160207. Subscription, Acknowledgment and Filing of Articles of Incorporation; Filing of Copies.

The articles of incorporation must:

(a) be subscribed to by at least three (3) of the stockholders of the proposed corporate Trust Company;

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(b) be acknowledged by them before some person competent to take an acknowledgment of deeds; *and*

(c) be filed in the office of the Commissioner.

§ 160208. Application for License: Contents; Fees.

1. The corporate Trust Company shall file an application for a license to transact Trust Company business with the Commissioner on forms prescribed by the Commissioner, which must contain such information as the Commissioner requires.

2. A non refundable fee of One Thousand Dollars (\$1,000.00) for the application and investigation must accompany the application. The applicant shall also pay such additional expenses incurred in the process of investigation as the Commissioner deems necessary.

3. Notification of the location of a Trust Company branch office shall be made to the Commissioner, accompanied by a non-refundable fee in the amount of Two Hundred Fifty Dollars (\$250.00).

4. All money received by the Commissioner pursuant to this Section must be placed in a special purpose trust account, pursuant to § 160307 of this Act.

§ 160209. Procedure for Granting or Denying License.

1. Within forty-five (45) days following the filing of the application for a license, the Commissioner shall investigate the facts of the application and the other requirements of this Chapter to determine:

(a) that the persons who will serve as directors or officers are qualified by character and experience;

(b) that the financial strength of the significant incorporators, ten percent (10%) or more ownership, are commensurate with the undertaking;

(c) that the name of the proposed company is *not* deceptively similar to that of another Trust Company or otherwise misleading;

(d) that the capital and surplus are *not* less than the required minimum; *and*

(e) such other matters concerning the proposed Trust Company as the Commissioner may deem relevant.

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2. Within thirty (30) days after the application is filed, the Commissioner shall conduct a public hearing to consider the application. The Commissioner shall give two (2) written notices of the public hearing in a newspaper of general circulation on Guam. Publication of such notices should be no more than fifteen (15) days, nor less than two (2) complete days, before the hearing date. Costs of publication and other directly related expenses shall be paid by the applicant.

§ 160210. Issuance or Denial of License; Renewal.

1. *If* the Commissioner finds that the applicant has met all the requirements of this Chapter and other applicable laws, the Commissioner shall, within thirty (30) days after the conclusion of the investigation, issue a license to the applicant to conduct a Trust Company business upon the applicant's paying the required license fee. *Otherwise*, the Commissioner shall deny the application and notify the applicant in writing of the reasons for the denial.

2. All licenses granted under the Act shall expire on the June 30 following the date of issuance. On or before June 1 of each year thereafter, every company holding a license that wishes to renew the license for an additional year shall apply to the Commissioner for a renewal of the license.

§ 160211. License Fees; Renewals.

1. The initial fee to be paid for a Trust Company license must be in proportion to the authorized capitalization of the Trust Company as follows:

(a) a Trust Company having a capitalization of more than One Hundred Thousand Dollars (\$100,000.00), up to and including Five Hundred Thousand Dollars (\$500,000.00), shall pay a license fee of Five Hundred Dollars (\$500.00);

(b) a Trust Company having a capitalization of more than Five Hundred Thousand Dollars (\$500,000.00), up to and including One Million Dollars (\$1,000,000.00), shall pay a license fee of Seven Hundred Fifty Dollars (\$750.00); *and*

(c) a Trust Company having a capitalization of more than One Million Dollars (\$1,000,000.00) shall pay a license fee of One Thousand Dollars (\$1,000.00).

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2. In addition, every Trust Company shall pay an initial license fee of One Hundred Dollars (\$100.00) for each branch office that may be authorized by the Commissioner.

3. Thereafter, every Trust Company shall pay annually, on or before June 30 of each year, a license fee which must be in proportion to its initial paid-in capital and surplus, or to its net worth as of December 31st of the preceding year, whichever is higher, as follows:

(a) a Trust Company having a capitalization of less than One Hundred Thousand Dollars (\$100,000.00) shall pay a license fee of Two Hundred Fifty Dollars (\$250.00);

(b) a Trust Company having a capitalization of more than One Hundred Thousand Dollars (\$100,000.00), up to and including Five Hundred Thousand Dollars (\$500,000.00), shall pay a license fee of Five Hundred Dollars (\$500.00);

(c) a Trust Company having a capitalization of more than Five Hundred Thousand Dollars (\$500,000.00), up to and including One Million Dollars (\$1,000,000.00), shall pay a license fee of Seven Hundred Fifty Dollars (\$750.00); *and*

(d) A Trust Company having a capitalization of more than One Million Dollars (\$1,000,000.00) shall pay a license fee of One Thousand Dollars (\$1,000.00).

4. All money collected under the provisions of this Section must be paid into the special purpose trust account as directed under § 160307.

§ 160212. Cancellation of License If Trust Company Fails to Open for Business.

If a proposed Trust Company fails to open for business within six (6) months after the date the license was issued, or within an additional six (6) month extension granted by the Commissioner upon written application and for good cause shown, the Commissioner shall issue an order canceling the Trust Company's license.

ARTICLE 3
POWERS AND MISCELLANEOUS PROVISIONS

§ 160301. Powers of Licensed Trust Companies; Banking Business

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- Prohibited.
- § 160302. Investments; General Requirements.
 - § 160303. Investments; Purchase of Securities Authorized.
 - § 160304. Other Requirements.
 - § 160305. Discontinuing Business.
 - § 160306. Commissioner in Possession.
 - § 160307. Requirements of Reorganization Plan.
 - § 160308. Liquidation by Commissioner.
 - § 160309. Fidelity Bonds; Insurance.
 - § 160310. Income Tax Rebates.
 - § 160311. Use of Funds.
 - § 160312. Confidentiality Treatment of Trust Information.

§ 160301. Powers of Licensed Trust Companies; Banking Business Prohibited.

1. Each licensed Trust Company may:

(a) act as trustee under any mortgage or bond of any person or of any municipality or body politic;

(b) accept and execute any municipal or corporate or individual trust consistent with the laws of Guam;

(c) act under the order or appointment of any court as guardian, administrator, receiver or trustee;

(d) act as executor or trustee under any will or inter vivos trust;

(e) act as fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity receive and disburse money and register, transfer and countersign certificates of stock, bonds and other evidences of indebtedness;

(f) act as local or resident agent of foreign corporations;

(g) accept and execute any trust business;

(h) acquire the fiduciary rights, powers, duties and liabilities of a bank, savings and loan association, thrift company, or Trust Company licensed pursuant to Title 11 of the Guam Code Annotated, and upon the effective date of such an acquisition, the fiduciary rights, powers, duties and liabilities of the bank, savings and loan association, thrift company, or Trust Company vest in and

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must be performed by the acquiring Trust Company; *and*

(i) do and perform all acts necessary to exercise the powers enumerated in this Subsection and authorized by this Chapter.

2. A Trust Company may *not* engage in any banking business by accepting deposits or making loans.

§ 160302. Investments; General Requirements.

1. Every Trust Company:

(a) shall keep all trust funds and investments separate from the assets of the Company (These funds shall not be mingled with the securities and investments of any other trust or of the corporation, and all investments made by the Company as a fiduciary must be designated so that the trust or estate to which the investments belong may be clearly identified.);

(b) holding trust funds for more than twenty-four (24) hours, awaiting investment or distribution, must deposit or leave on deposit such funds with a local financial institution (Such funds must *not* be deposited or left with the Trust Company or with an affiliate corporation or association, *unless* that affiliate corporation or association first pledges, as security for the deposit, securities eligible for investment by local financial institutions which have a market value equal to that of the deposited funds. No security is required with respect to any portion of such deposits which is insured under the provisions of any law of the United States.);

(c) acting in any capacity under a court trust or private trust, *unless* the instrument creating the trust provides otherwise, may cause any securities held by it in its representative capacity to be registered in the name of a nominee or nominees of the Company; *and*

(d) when acting as depository or custodian for the personal representative of a court trust or private trust, *unless* the instrument creating the trust provides otherwise, may with the consent of the personal representative of the trust, cause any securities held by it to be registered in the name of a nominee or nominees of the Company.

2. Every Trust Company is liable for any loss occasioned by the acts

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of its nominees with respect to securities registered under this Section.

3. No corporation or the registrar or transfer agent of the corporation is liable for registering or causing to be registered on the books of the corporation any securities in the name of any nominee of a Trust Company, or for transferring or causing to be transferred on the books of the corporation any securities registered by the corporation in the name of any nominee of a Trust Company, when the transfer is made on the authorization of the nominee.

4. *Except* as provided in Subsection 5, a Trust Company's investments of invested capital and earnings, must:

(a) be U.S. governmental obligations or Federally insured deposits; *or*

(b) be investment grade securities and mature within three (3) years after acquisition. The aggregate market value of all investments must equal or exceed sixty percent (60%) of the Company's current capital, surplus and undivided profits, or sixty percent (60%) of the Company's capital and surplus when it was organized, whichever is greater.

5. A Trust Company may purchase or rent land, facilities and equipment for use in the daily activities of the company.

§ 160303. Investments; Purchase of Securities Authorized.

1. A Trust Company which is acting as a fiduciary or agent shall, in its discretion or at the direction of another person who is authorized to direct the investment of money held by the Trust Company as a fiduciary or agent, make investments in accordance with the Uniform Prudent Investors Act, as adopted in 1994 by the National Conference of Commissioners on Uniform State Laws, *if*:

(a) the investment trust or investment company is registered with the Commissioner; *and*

(b) the portfolio of the investment trust or investment company consists substantially of investments which are *not* prohibited by the instrument creating the fiduciary or agency relationship.

2. A Trust Company or an affiliate of the Trust Company may provide services to the investment trust or investment company, including, without limitation, acting as an investment adviser, custodian,

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transfer agent, registrar, sponsor, distributor or manager, and may receive reasonable compensation for the services. The manner in which the compensation is calculated must be disclosed to the person who is currently receiving the benefits of the fiduciary or agency relationship with the Trust Company. The disclosure shall be made in a prospectus, a report to the Trustor or manner prescribed by the Commissioner.

3. A Trust Company may deposit money held by the Trust Company as a fiduciary or agent with an affiliate before investing or making other disposition of the money.

§ 160304. Other Requirements.

1. Annual Statement. Every Trust Company that is licensed under the Act shall, on or before May 1 of each year, file with the Commissioner, a financial statement verified under oath by two (2) executive officers of the company, setting forth its financial condition, transactions and affairs as of the 31st day of December immediately preceding, in accordance with generally accepted accounting principles plus any additional information required by the Commissioner.

2. Annual Audit. Every Trust Company that is licensed under the Act shall file an annual audit report to accompany the filing of an annual statement prior to May 1 of each year. The audit report shall be rendered by its appointed, Independent Auditor as approved by the Commissioner, and shall cover the financial condition, transactions and affairs as of the 31st day of December immediately preceding in accordance with generally accepted auditing standards. The audited report shall include an unqualified opinion with respect to the financial condition of the Company, *except* that the Commissioner may accept qualified opinions at the discretion of the Commissioner.

3. Notification. An auditor who is aware that the Trust Company failed to meet the necessary capital and surplus requirements of the Act, or who has rendered other than an unqualified opinion on the financial condition of a Trust Company, and the president of the Trust Company shall both notify the Commissioner in writing within fifteen (15) days of the discovery of failure of the Trust Company to meet the capital or surplus requirements of the Act or within fifteen (15) days of the issuance of such qualified opinion.

§ 160305. Discontinuing Business.

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1. Whenever any Trust Company desires to discontinue its trust business, it shall do the following:

(a) publish the intention of the company, once a week for three (3) consecutive weeks in a newspaper of general circulation on Guam; *and*

(b) submit an affidavit to the Commissioner that all the obligations and indebtedness arising from its trust business and operations on Guam have been satisfactorily discharged.

2. After the Trust Company has furnished proof of publication and the affidavit, and no objection to discontinue business or no proof is submitted by any claimant of an outstanding receivable or claim against the Trust Company, the Commissioner shall enter an order canceling the Trust Company's license.

§ 160306. Commissioner in Possession.

(a) The Commissioner may take possession of a Trust Company *if*, after a hearing, the Commissioner shall find:

(1) its capital is impaired or it is otherwise in an unsound condition;

(2) its business is being conducted in an unlawful or unsound manner;

(3) it is unable to continue normal operations; *or*

(4) its examination has been obstructed or impeded.

(b) The Commissioner shall take possession by posting upon the premises a notice reciting that the Commissioner is assuming possession pursuant to this Act, and the time, *not* earlier than the posting of the notice, when the Commissioner's possession shall be deemed to commence. A copy of the notice shall be filed in the U.S. District Court of Guam. The Commissioner shall notify the trustor of all the trusts under the management of the Trust Company.

(c) When the Commissioner has taken possession of a Trust Company, the Commissioner shall be vested with the full and exclusive power of management and control, including the power to continue or to discontinue the business, to stop or to limit the payment of its obligations, to employ any necessary assistants, to execute any

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instrument in the name of the Trust Company, to commence, defend and conduct in its name any action or proceeding in which it may be a party, to terminate the Commissioner's possession by restoring the Trust Company to its board of directors and to reorganize or liquidate the Trust Company in accordance with this Act. As soon as practicable after taking possession, the Commissioner shall make an inventory of the assets and file a copy thereof with the U.S. District Court of Guam.

(d) When the Commissioner has taken possession there shall be a postponement until six (6) months after the commencement of such possession of the date upon which any period of limitation fixed by a statute or agreement would otherwise expire on a claim or right of action of the Trust Company, or upon which an appeal must be taken or a pleading or other document must be filed by the Trust Company in any pending action or proceeding.

(e) *If*, in the opinion of the Commissioner, an emergency exists which will result in serious losses to the trustors and creditors, the Commissioner may take possession of the Trust Company without a prior hearing. Within ten (10) days after the Commissioner has taken possession, any interested party may file an application with the U.S. District Court of Guam for an order vacating such possession. The U.S. District Court of Guam shall grant the application *if* it finds that the action of the Commissioner was unauthorized under this Act.

(f) *If* the Commissioner shall determine to liquidate the Trust Company, the Commissioner shall give such notice of the Commissioner's determination to the directors, stockholders and the trustors. Any objection to the liquidation shall be filed with the U.S. District Court of Guam within thirty (30) days after such notice. *Unless* within thirty (30) days thereafter, the U.S. District Court of Guam issues an order staying the liquidation, the Commissioner shall proceed to liquidate the Trust Company.

(g) *If* the Commissioner determines to reorganize the Trust Company, or the U.S. District Court of Guam, after staying its liquidation, orders such reorganization, the Commissioner, after according a hearing to all interested parties, shall propose a reorganization plan. A copy of the Plan shall be sent to each trustor and creditor who will *not* receive payment of the Commissioner's claim in full under the Plan, together with notice. *Unless* within thirty (30) days

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the Plan is disapproved in writing by persons holding one-third (1/3) or more of the aggregate amount of such claims, the Commissioner will proceed to effect the reorganization. A department or agency of the government of Guam holding a claim which will *not* be paid in full is authorized to participate as any other creditor.

(h) No judgment, lien or attachment shall be executed upon any asset of the Trust Company while it is in the possession of the Commissioner. Upon the election of the Commissioner in connection with a liquidation or reorganization:

(1) any lien or attachment, other than a mechanic's lien, obtained upon any asset of the Trust Company during the Commissioner's possession or within four (4) months prior to commencement thereof, shall be vacated, *except* liens created by the Commissioner while in possession; *and*

(2) Any transfer of an asset of the Trust Company made after or in contemplation of its insolvency with intent to effect a preference shall be voided.

(i) With the approval of the U.S. District Court of Guam, the Commissioner may borrow money in the name of the Trust Company and may pledge its assets as security for the loan.

(j) All necessary and reasonable expenses of the Commissioner's possession of a Trust Company and of its reorganization or liquidation shall be defrayed from the assets thereof.

§ 160307. Requirements of Reorganization Plan.

(a) A plan or reorganization shall *not* be prescribed under this Act, *unless*:

(1) the plan is feasible and fair to all classes of trustors, creditors and stockholders;

(2) the face amount of the interest accorded to any trustors, creditors or stockholders under the Plan does *not* exceed the value of the assets upon liquidation, less that full amount of the claims of all prior classes, subject, *however*, to any fair adjustment for new capital that any class will pay in under the Plan;

(3) the Plan provides for the issuance of common stock in an amount that will provide an adequate ratio to all assets held in trust

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by the Trust Company;

(4) the Plan assures the removal of any director, officer or employee responsible for any unsound or unlawful action or the existence of an unsound condition; *and*

(5) any merger or consolidation provided by the Plan conforms to the requirements of this Act.

(b) Whenever in the course or reorganization supervening conditions render the Plan unfair, or its execution impractical, the Commissioner may modify the Plan or liquidate the institution. Any such action shall be taken by order of the U.S. District Court of Guam upon appropriate notice.

§ 160308. Liquidation by Commissioner.

(a) In liquidating a Trust Company, the Commissioner may exercise any power thereof, but the Commissioner shall *not*, without the approval of the U.S. District Court of Guam:

(1) sell any asset of the Trust Company having a value in excess of One Thousand Dollars (\$1,000.00);

(2) compromise or release any claim, *if* the amount of the claim exceeds Five Hundred Dollars (\$500.00), exclusive of interest; *or*

(3) make any payment on any claim, other than a claim upon an obligation incurred by the Commissioner, before preparing and filing a schedule of the Commissioner's determinations in accordance with this Act.

(b) Within six (6) months of the commencement of liquidation, the Commissioner may by the Commissioner's election terminate any executory contract for services or advertising to which the Trust Company is a party, or any obligation of the Trust Company as a lessee. A lessor who receives sixty (60) days notice of the Commissioner's election to terminate the lease shall have no claim for rent other than rent accrued to the date of termination, nor for damages for such termination.

(c) As soon after the commencement of liquidation as is practicable, the Commissioner shall take the necessary steps to terminate all fiduciary positions held by the Trust Company, and take such action as may be necessary to surrender all property held by the Trust Company as a fiduciary and to settle its fiduciary accounts.

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(d) As soon after the commencement of liquidation as practicable, the Commissioner shall send notice of the liquidation to each known trustor and creditor. The notice shall also be published in a newspaper of general circulation on Guam once a week for three (3) successive weeks. The Commissioner shall send with the notice a statement of the amount shown on the books of the Trust Company to be the claim of the trustor or creditor. The notice shall demand that *if* the amount claimed differs from that stated on the notice to be due, be filed with the Commissioner before a specified date *not earlier than* sixty (60) days thereafter in accordance with the procedure prescribed in the notice.

(e) Within six (6) months after the last day specified in the notice for the filing of claims or such longer period as may be allowed by the U.S. District Court of Guam in which notice of possession has been filed, the Commissioner shall:

(1) reject any claim *if* the Commissioner doubts the validity thereof;

(2) determine the amount, *if* any, owing to each known Trustor or creditor;

(3) prepare a schedule of the Commissioner's determination for filing in the U.S. District Court of Guam in which notice of possession was filed; *and*

(4) notify each person whose claim has *not* been allowed in full, and publish once a week for three (3) successive weeks a notice of the time when and the place where the schedule of determinations will be available for inspection and the date, not sooner than thirty (30) days thereafter, when the Commissioner will file the Commissioner's schedule in Court.

(f) Within thirty (30) days after the filing of the Commissioner's schedule, any trustor or creditor or stockholder may file an objection to any determination made. Any objections so filed shall be heard and determined by the Court, upon such notice to the Commissioner and interested claimants as the Court may prescribe. *If* the objection is sustained, the Court shall direct an appropriate modification of the schedule. After filing the Commissioner's schedule, the Commissioner may, from time to time, make partial distribution to the holders of claims which are undisputed or have been allowed by the Court, *if* a proper

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reserve is established for the payment of disputed claims. As soon as is practicable after the determination of all objections, the Commissioner shall make final distribution.

(g) The following claims shall have priority:

(1) obligations incurred by the Commissioner;

(2) wages and salaries of officers and employees earned during the four (4) month period preceding the Commissioner's possession in an amount *not* exceeding Three Thousand Dollars (\$3,000.00) for any one (1) person; *and*

(3) fees and assessments due to the government of Guam.

(h) After the payment of all other claims which were timely filed, the Commissioner shall pay claims otherwise proper which were *not* filed within the time prescribed. *If* the sum available for any class is insufficient to provide payment in full, such sum shall be distributed to the claimants in the class *pro rata*.

(i) Any assets remaining after all claims have been paid shall be distributed to the stockholders in accordance with their respective interests.

(j) Unclaimed funds remaining after completion of the liquidation shall be retained for ten (10) years by the Commissioner, *unless* sooner claimed by the owner. At the expiration of such period, the remaining sum shall be transferred to the Treasurer of Guam as abandoned funds.

(k) When the assets have been distributed in accordance with this Act, the Commissioner shall file an account with the U.S. District Court of Guam. Upon approval thereof the Commissioner shall be relieved of liability in connection with the liquidation and the charter of the Trust Company shall be canceled.

§ 160309. Fidelity Bonds; Insurance.

1. The directors of a Trust Company shall require good and sufficient fidelity bonds in the amount of Twenty-five Thousand Dollars (\$25,000.00) or more on all active officers and employees, whether or not they receive a salary or other compensation from the Company, to indemnify the Company against loss because of any dishonest, fraudulent or criminal act or omission by any officer or employee acting alone or in combination with any other person. The bonds may be in any form and

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may be paid for by the Trust Company.

2. The directors shall obtain suitable insurance for their Company against burglary, robbery, theft and other hazards to which it may be exposed in the operation of its business.

3. The directors shall at least annually prescribe the amount of penal sum of the bonds or policies and designate the sureties and underwriters thereof, after giving due and careful consideration to all known elements and factors constituting a risk or hazard. The directors' action must be recorded in the minutes of the board of directors and reported to the Commissioner.

§ 160310. Income Tax Rebates.

1. Notwithstanding any other provisions of this Act, Trust Companies licensed pursuant to the provisions of this Chapter and any bank conducting trust business pursuant to § § 106151 *et seq.* of Title 11 of the Guam Code Annotated may apply on behalf of the Guam-based trusts under their management, for a Special Qualifying Certificate ('QC') from the Guam Economic Development Authority, which would allow a one hundred percent (100%) tax rebate as authorized under § § 58128.6(a) and (b) of Chapter 58 of Title 12 of the Guam Code Annotated. Provided, *however*, notwithstanding any other provision of this Section, the tax rebate shall *not* apply to trust property which has been employed in a business in which the settlor was engaged and trust property which is used to embark upon a business for the settlor or the beneficiary. For the purposes of this Subsection, *business* has the same meaning as *engaging in or carrying on a business* as in the Business License Law in § 70103(e) of Title 11 of the Guam Code Annotated, and includes only businesses which are required to be licensed, or are excepted from obtaining a license pursuant to the policy and provisions of § § 70102 and 70130 of Title 11 of the Guam Code Annotated.

2. The Guam Economic Development Authority is hereby authorized to promulgate rules and regulations to implement a Special QC program to allow for expeditious processing of requests by Trust Companies or trustees of Guam-based trusts, for benefits as provided under § § 58128.6(a) and (b) of Chapter 58 of Title 12 of the Guam Code Annotated.

3. A true copy of the Special QC shall be attached to each tax return

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of the Guam-based trust, and the amount of tax due *prior to* the rebate shall be deposited with the government at the time of filing of each income tax return. Taxes deposited on behalf of a Guam-based trust shall *not* be placed in the General Fund or commingled with other funds, but shall be deposited by the Director of Revenue and Taxation in special purpose trust accounts in one (1) or more FDIC insured banks with offices within Guam, and shall be withdrawn from such accounts only for the purpose of:

- (a) making rebates as provided herein; *or*
- (b) making payments as provided in § 160308.

4. Upon the application of the Guam-based trust at the completion of the one hundred eighty (180) days from the date of filing of income tax returns, the Director of Revenue and Taxation shall immediately thereafter cause the refund of the income tax to the Guam-based trust.

§ 160311. Use of Funds.

1. The income tax payments made under the Special QC program, shall be returned to the respective trusts at the completion of the one hundred eighty (180) day period without interest.

2. The first One Million Dollars (\$1,000,000) generated from the trust shall be authorized and appropriated to the Guam Memorial Hospital Authority. All other revenues generated from the implementation of this Act, including, but not limited to, the initial and annual License Fees, Examination Fees and interest earned from these funds, shall be allocated as follows:

- (a) subject to legislative appropriation, up to fifty percent (50%) to the Chamorro Land Trust Commission, for the purposes of infrastructure development (i.e. roads, power, water, sewer and telephone services) on Chamorro Land Trust properties;
- (b) subject to legislative appropriation, up to ten percent (10%) shall be earmarked for the Department of Revenue and Taxation for maintaining the operational functions of the government of Guam;
- (c) subject to legislative appropriation, up to ten percent (10%) of this revenue, shall be remitted immediately to the Guam Economic Development Authority for the development and

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promotion of Guam's financial services industry; and

(d) all remaining revenues generated from the implementation of this Act shall be remitted to the General Fund to be appropriated by I Liheslaturan Guåhan.

SOURCE: Added by P.L. 25-73. Item 2 amended by P.L. 25-150:17.

§ 160312. Confidentiality Treatment of Trust Information.

All information pertaining to Guam-based trusts shall be deemed proprietary and confidential *unless*:

(a) the Commissioner deems it in the public interest to make such information available for public inspection; *or*

(b) the Grantor/Trust authorizes the Commissioner to make available such information for public inspection.

ARTICLE 4
EXAMINATION AND REGULATION

- § 160401. Examination; Powers and Duties of Department of Revenue and Taxation.
- § 160402. Fees for Examination; Frequency of Examination.
- § 160403. Applicability of Other Provisions of Title.
- § 160404. Regulations of Commissioner.

§ 160401. Examination; Powers and Duties of Department of Revenue and Taxation.

The Banking Commissioner, or any examiner duly authorized, shall once during each year make a full examination into all the books, papers and affairs or any Trust Company doing business under §§ 160301, 160302, 160303 and 160304 of this Chapter, and in so doing, shall have power to administer oaths and affirmation and to examine on oath or affirmation the officers, agents and clerks of such company, touching the matter which they may be authorized to inquire into and examine, and to summon, and by subpoena compel the attendance of any person(s) on Guam to testify under oath in relation to the affairs of such company. *If* the Commissioner has reason to believe the affairs of any corporation are *not* being conducted in compliance with said sections, the Commissioner

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may at any time make, or cause to be made, a special examination of the assets of such corporation.

§ 160402. Fees for Examination; Frequency of Examination.

1. For each examination of a Trust Company's books and records required or authorized under this Chapter, the Commissioner shall charge and collect from the Trust Company a fee for conducting the examination and in preparing and typing the report of the examination at a reasonable rate to be established by the Commissioner.

2. All money collected under this Section must be paid directly to the General Fund of the government of Guam and allocated pursuant to § 160308.

3. The Commissioner shall examine a licensee as often as the Commissioner deems necessary, with cause.

§ 160403. Applicability of Other Provisions of Title.

In addition to other provisions of this Title which are applicable to this Title as a whole or specifically made applicable to Trust Companies, the Commissioner may by regulation make applicable to trust companies any regulatory provision contained therein, which can be reasonably applied and which are *not* inconsistent with the provisions of this Chapter.

§ 160404. Regulations of Commissioner.

The Commissioner may adopt such regulations as may be necessary to carry out the purposes and provisions of this Chapter. Attached as Exhibit A are Trust Company Rules and Regulations of the Department of Revenue and Taxation. These Rules and Regulations are hereby approved by *I Liheslaturan Guåhan* as the initial Rules and Regulations for this Chapter.

**ARTICLE 5
UNLAWFUL ACTS; PENALTIES**

§ 160501. Violations by Officers or Directors Sufficient Cause to Close Company, Liquidate Business and Revoke License; Failure to Allow Inspection Constitutes Ground to Revoke License.

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§ 160502. Penalty.

§ 160503. Violation of This Chapter Shall Constitute a Misdemeanor, *Unless* Otherwise Specified.

§ 160501. Violations by Officers or Directors Sufficient Cause to Close Company, Liquidate Business and Revoke License; Failure to Allow Inspection Constitutes Ground to Revoke License.

1. The violation of any of the provisions of this Chapter by the officers or directors of any Trust Company authorized to do business under the provisions of this Chapter is sufficient cause for the Commissioner to close the Trust Company, liquidate its business *and* revoke its license.

2. *If* any officer or director of a Trust Company refuses to allow the Commissioner or the Commissioner's deputies to inspect all books, records, papers and effects of its business, the Commissioner may revoke its license and proceed to terminate its affairs.

3. Unlawful concealment of transactions.

4. Improper maintenance of accounts, false or deceptive entries and statements.

§ 160502. Penalty.

Every officer, employer, director or agent of a Trust Company who knowingly or willfully neglects to perform any duty required by this Chapter or other applicable law, or who knowingly or willfully fails to conform to any material lawful requirement made by the Commissioner, is subject to removal upon order of the Commissioner, and upon conviction shall be punished by either imprisonment of not less than one (1) year, and *not* to exceed six (6) years, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or by both fine and imprisonment.

§ 160503. Violation of This Chapter Shall Constitute a Misdemeanor, *Unless* Otherwise Specified.

Where no other punishment is otherwise provided by law, any person violating any provision of this Chapter is guilty of a misdemeanor.

EXHIBIT A
TRUST COMPANIES RULES & REGULATIONS
DEPARTMENT OF REVENUE AND TAXATION.

§ 1. Definitions.

In these regulations, *unless* the context specifically states otherwise,

(a) *Act* means *The Guam Trust Companies Act*.

(b) *Affiliate* means any company in the same corporate system as a parent corporation, or under a partnership agreement or member organization by virtue of common ownership, control, operation or management.

(c) *Commissioner* means the Banking Commissioner of the government of Guam.

(d) *Company* or *Trust Company* means a corporation organized and licensed as provided in The Guam Trust Companies Act.

(e) *Control* means (1) ownership of more than fifty percent (50%) of the voting stock of a corporation, (2) ownership of stock of a corporation constituting more than fifty percent (50%) of the fair market value of all of said corporation's issued and outstanding shares, (3) a contractual or other right to vote shares constituting more than fifty percent (50%) of the voting shares of a corporation, (4) the right under a management agreement or other contract to make over fifty percent (50%) of the decisions governing the business and financial affairs of a corporation, or to select all of its officers or directors, *or* (5) any other right or arrangement that separately or in conjunction with other rights creates the practical ability to determine over fifty percent (50%) of the business and financial affairs of a corporation or to select its officers or directors.

(f) *Local financial institution* means a bank or financial service provider or establishment licensed by the Guam Department of Revenue and Taxation to provide financial services.

§ 2. Application for License; Contents; Procedures.

(a) Contents of Application. Every applicant for a corporate Trust Company license shall pay the statutory application fee and file the following documents with the Commissioner:

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(1) a completed application on the form prescribed by the Commissioner (Appendix A);

(2) a certified copy of the articles of incorporation or association of the Company, but *if* the Company is *not* yet incorporated, a copy of the proposed articles of incorporation or association of the Company; *and*

(3) a certified copy of the by-laws of the Company, but *if* the Company is *not* yet incorporated, a copy of the proposed by-laws of the Company.

(b) Procedures. Within thirty (30) days following the filing of the completed application for a license the Commissioner shall investigate the facts of the application and the other requirements of this Act to determine that:

(1) the persons who will serve as directors or officers are qualified by character and experience;

(2) the financial strength of the significant incorporators, ten percent (10%) or more ownership, is commensurate with the undertaking;

(3) the name of the proposed Company is *not* deceptively similar to that of another Trust Company, or otherwise misleading;

(4) the capital and surplus are *not* less than the required minimum;

(5) the need for trust facilities or additional trust facilities on Guam; *and*

(6) such other matters concerning the proposed Trust Company in relation to its location as the Commissioner may deem relevant.

§ 2.1. Review of Application and Issuance of License.

(a) Review of Commissioner. After the conclusion of the investigation, *if* the Commissioner finds that the applicant has met all the requirements of this Act and other applicable laws, the Commissioner shall promptly notify the applicant in writing of the Commissioner's approval or disapproval of the application with reasons for the denial. The Commissioner shall issue a license to the applicant to conduct a Trust Company business upon the applicant's compliance with the

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requirements under the Act.

(b) Payment of Fees. Within thirty (30) days after the Commissioner notifies the applicant of the approval of the application, the Trust Company shall pay the statutory initial license fee as set forth in the Act.

§ 2.2. Cancellation of License *If* Trust Company Fails to Open for Business.

If a proposed Trust Company fails to open for business within six (6) months after the date the license was issued, or within an additional six (6) month extension granted by the Commissioner upon written application and for good cause shown, the Commissioner shall issue an order canceling the Trust Company's license.

§ 2.3. Renewal.

The renewal application shall consist of a letter identifying the Company and stating that it is applying to renew its license, accompanied by adequate proof of compliance with the requirements of §§ 160005 and 160018 of the Act, and expiring not later than the end of the year for which renewal of the license is sought, together with a check for the annual license fee in the amount set forth in § 160013 of the Act, and filing of clearance that taxes due are paid to obtain a license in accordance with § 70132 of Title 11 of the Guam Code Annotated. Each application for the renewal of Trust Company license under this Act shall be filed no later than June 1st of each year. Each application for a renewal license shall be deemed to be granted, *unless* within thirty (30) days from receipt of the application the Commissioner notifies the applicant in writing that its application has been rejected and stating the reasons therefore.

§ 3. Annual Audited Report.

§ 3.1. Report Form.

The annual audit report shall consist of the following:

(a) Opinion of Independent Certified Public Accountant.

1. Financial statements furnished pursuant to this Section shall be prepared in accordance with generally accepted accounting principles and be examined by an Independent Auditor in accordance with generally accepted auditing procedures.

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2. The opinion of the Independent Auditor shall cover all years presented.

3. The opinion shall be addressed to the Company on stationery of the Independent Auditor showing the address of issuer, shall bear original and manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls.

1. This report shall include an evaluation of the internal controls of the Company relating to the methods and procedures used in the securing of assets and reliability of the financial records, including, but not limited to, such controls as the system of authorization and approval and the separation of duties.

2. The review shall be conducted in accordance with generally accepted auditing procedures. A copy of the report must be filed with the Commissioner.

(c) Letter of Independent Auditor. The Independent Auditor shall furnish the Company, for inclusion in the filing of the audited annual report, a letter stating that:

1. the auditor is independent with respect to the Company and conforms to the standards of that person's profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board;

2. the general background and experience of the staff engaged in the audit including the experience in auditing Trust Companies;

3. the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this regulation with the Commissioner;

4. the accountant consents to the requirements of § 3 of these regulations and further consents and agrees to make available for review by the Commissioner, the auditor's designee or the auditor's appointed agent, the work papers as

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defined in § 3.3 of the regulations; *and*

5. the accountant is properly licensed on Guam and that the accountant is a member in good standing in the American Institute of Certified Public Accountants.

(d) Financial Statements. Statements required shall be as follows:

- (1) balance sheet;
- (2) statement of earnings or loss from operations;
- (3) statement of cash flows;
- (4) statement of changes in paid-in capital and contributed surplus and unassigned funds; *and*
- (5) notes to financial statements.

§ 3.2. Change of Independent Auditor.

Each Trust Company that is licensed under the Act shall notify the Commissioner in writing of any change in the Independent Auditor appointed by the Company. The change appointment of the Independent Auditor shall be deemed to be approved by the Commissioner, *unless* notice is given to the Company within thirty (30) days after receipt of the notice by the Commissioner's Office, that the auditor is *not* approved, in which case the Company shall appoint a substitute and notify the Commissioner of the substitute auditor, which substitute shall be subject to the approval of the Commissioner under this Subsection.

§ 3.3. Access to and Maintenance of Working Papers of Independent Auditor.

Each Trust Company that is licensed under the Act shall require its Independent Auditor to make available for review by the Commissioner, or the Commissioner's appointed agent, the work papers prepared in the conduct of the audit of the Company. The Trust Company shall require that the Independent Auditor retain the audit work papers for a period of not less than five (5) years after the period reported upon.

The aforementioned review by the Commissioner shall be considered investigations, and all work papers obtained during the course of such investigations shall be confidential. The Trust Company shall require that the Independent Auditor provide photocopies of any of the work papers, which the Commissioner considers relevant. Photocopies of

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such work papers may be retained by the Commissioner.

Work Papers as referred to in this Section include, but are *not* necessarily limited to, schedules, analysis, reconciliations, abstracts, memoranda narratives, flow charts, copies of Company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their examination of the Company.

§ 3.4. Security.

Whenever the Commissioner deems that the financial condition of the Trust Company warrants additional security, the Commissioner may require the Company to deposit with the Treasurer of Guam, or an escrow agent approved by the Commissioner, cash or securities approved by the Commissioner or, *alternatively*, to furnish the Commissioner a clean irrevocable letter of credit issued by a member bank of the Federal Reserve System which is licensed on Guam, and approved by the Commissioner.

The Trust Company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Commissioner.

If such Company discontinues business and surrenders its license, the Commissioner shall return such deposit only after being satisfied that all obligations of the Company have been discharged.

§ 3.5. Notice of Adverse Financial Condition.

Each Trust Company that is licensed under the Act shall require its Independent Auditor to immediately notify in writing the president, or the president's designee, and all members of the board of directors of the Trust Company of any determination by the Independent Auditor that the Company has materially misstated its financial condition in any of its reports to the Commissioner. The president of the Trust Company, or the president's designee, shall furnish such notification to the Commissioner within fifteen (15) days of receipt of such information from the Independent Auditor.

§ 4. Other Requirements and Restrictions.

§ 4.1. Minutes of Annual Meeting of the Board of Directors.

For a Trust Company that is licensed under the Act, copies of the minutes of the annual meeting of the board of directors shall be filed

with the Commissioner within thirty (30) days after such meeting.

§ 4.2. Principal Place of Business.

A Trust Company shall have an office on Guam in which it maintains its business and corporate records and financial books. A Trust Company may establish its principal office on Guam in office space that it shares with other businesses, including other Trust Companies or affiliates; *provided*, that the office equipment, corporate records, and financial books of accounts of the Trust Company are kept separate and distinct from those of other businesses, including other Trust Companies or affiliates.

§ 4.3. Resident Registered Agent for Service of Process.

The registered agent of a Trust Company shall be either a licensed individual who resides on Guam or a corporation or a partnership or a limited liability company formed on Guam that maintains an office on Guam that is regularly open for business during normal business hours. This registered agent may be an attorney, CPA, certified financial advisor or other professional representative, who shall be responsible for maintaining the corporate records and financial books for the Guam-based trust. Both the registered agent for service of process and the Trust Company licensed under the Act shall notify the Commissioner in writing within ten (10) days of any change in the address of its registered agent for service of process.

§ 4.4. Deposits in Local Financial Institution.

All payments and deposits of the Trust Company licensed under the Act shall be made in a local financial institution as defined in § 1(f), above.

§ 5. Regulatory Fees.

§ 5.1. Amount.

The Commissioner will charge and collect a fee from each Trust Company for conducting any examination, supervision, audit or investigation which is required or authorized under this Act, based on cost per hour per examiner, plus travel, *per diem* and other expenses related to the such activity.

§ 5.2. Payment.

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The Commissioner will bill each Trust Company upon the completion of the activity for the fee established in § 5.1, above. The fee must be paid within thirty (30) days after the date the bill is received. *Except* as otherwise provided in this Subsection, any payment received after that date must include a penalty of ten percent (10%) of the fee, plus an additional one percent (1%) of the fee for each month, or portion of a month, that the fee is *not* paid. The Commissioner may waive the penalty for good cause.

§ 5.3. Failure to Pay.

Failure of a Trust Company to pay the fee required in § 5.2, above, as provided in this Section constitutes grounds for revocation of its license.
