

**11 GCA FINANCE & TAXATION
CH. 106 BANKS**

**CHAPTER 106
BANKS**

- Article 1. Banking Practices.
- Article 2. Organization and Corporate Functions of Banks.
- Article 3. Merger, Consolidation and Conversion of National and Trust Companies.
- Article 4. Liquidation, Dissolution and Reorganization.
- Article 5. Prohibited Practices, Sanctions.
- Article 6. Branch Banks, and International Banking Corporations.
- Article 7. Foreign Banking Corporation.

**ARTICLE 1
BANKING PRACTICES**

- Part A. Accounts.
- Part B. Safe Deposit and Safekeeping.
- Part C. Trust Business.
- Part D. Reserves, Loans, Investments and Miscellaneous.
- Part E. Authorized Banking Practices.

**PART A
ACCOUNTS**

- § 106101. Interest on Accounts.
- § 106102. Payments of Items.
- § 106103. Interest Rate by Banks on Home Mortgage Escrow.
- § 106104. Transactions Outside Regular Banking Hours.
- § 106105. Deposit of Minor, School or Institutional Deposit.
- § 106106. Deposit in Two Names.
- § 106107. Deposit in Trust.
- § 106108. Payment of State Check. [Repealed]
- § 106109. Time Limit on Stop Payment Orders. [Repealed]
- § 106110. Nonpayment of Check Through Error. [Repealed]
- § 106111. Rights on Improper Payment of Item. [Repealed]
- § 106112. Final Adjustments of Statements of Account.
- § 106113. Payment of Forged or Raised Check. [Repealed]
- § 106114. Adverse Claim to Bank Deposit.
- § 106115. Death or Incompetency of Depositor. [Repealed]
- § 106116. Powers of Attorney.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

- § 106117. Payment from Account When no Executor or Administrator has Qualified.
- § 106118. Transmitting Money: Foreign Exchange.
- § 106119. Dormant and Inactive Accounts and Unclaimed Funds.

§ 106101. Interest on Accounts.

A bank may maintain deposit accounts and pay interest on balances therein at rates which need not be uniform. The Board may by general regulations fix maximum rates of interest and prohibit the payment of interest on demand accounts.

SOURCE: GC § 30030.

§ 106102. Payment of Items.

So long as the balance in any account subject to withdrawal by or upon the order of a depositor shall equal or exceed the amount of any item presented for payment, a bank may select from items which in the aggregate exceed the balance, the items to be paid in any order convenient to the bank.

SOURCE: GC § 30031.

§ 106103. Interest Rate by Banks on Home Mortgage Escrow.

A bank shall pay interest at a rate not less than that paid on regular passbook savings accounts as calculated by the individual banks on Guam on home mortgage escrow accounts.

SOURCE: GC § 30030.1. Added by P.L. 15-93:1.

§ 106104. Transactions Outside the Regular Banking Hours or on Holidays.

Nothing in any law of Guam shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank because done or performed on any holiday or half-holiday or during any time other than regular banking hours; provided that nothing herein shall be construed to compel any bank which by law or custom is entitled to close at twelve o'clock noon on any Saturday, or for the whole or any part of any legal holiday, to keep open for the transaction of any business, or to perform any of the acts or transactions aforesaid, on any Saturday after such hour, or on any legal holiday, except at its own option.

SOURCE: GC § 30032.

§ 106105. Deposit of Minor; School or Institutional Deposits.

(a) A bank may operate a deposit account in the name of a minor or in the names of two or more persons, one or more of whom are minors, with the same effect upon its liability as if such minors were of full age.

(b) Subject to such regulations as the Board may prescribe for the protection of depositors, a bank may contract with the proper authorities of any elementary or secondary school, or of any institution caring for minors, for the participation by the bank in any school or institutional thrift or savings plan, and it may accept deposits at such a school or institution, either by its own collector or by any representative of the school or institution who becomes the agent of the bank for such purpose.

SOURCE: GC § 30033.

§ 106106. Deposits in Two Names.

(a) When a deposit has been made or shall hereafter be made, in any bank in the names of two persons, payable to either, or payable to either or survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons, whether the other be living or not; and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made.

(b) No bank so paying any such survivor shall thereby be liable for any estate, inheritance or succession taxes due this territory.

SOURCE: GC § 30034.

§ 106107. Deposits in Trust.

(a) Whenever any deposit shall be made in any bank by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank; in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom said deposit was made.

(b) No bank so paying any such survivor shall thereby be liable for any estate, inheritance or succession taxes due this territory.

SOURCE: GC § 30035.

§ 106108. Payment of State Check.

[Repealed.]

SOURCE: GC § 30036. Repealed by P.L. 13-150:17.

§ 106109. Time Limit on Stop Payment Orders.

[Repealed.]

SOURCE: GC § 30037. Repealed by P.L. 13-150:17.

§ 106110. Nonpayment of Check Through Error.

[Repealed.]

SOURCE: GC § 30038. Repealed by P.L. 13-150:17.

§ 106111. Rights on Improper Payment of Item.

[Repealed.]

SOURCE: GC § 30039. Repealed by P.L. 13-150:17.

§ 106112. Final Adjustment of Statements of Account.

(a) When a statement of account has been rendered by a bank to a depositor accompanied by vouchers, if any, which are the basis for debit entries in such account, or the depositor's passbook has been written up by the bank showing the condition of the depositor's account and delivered to such depositor with like accompaniment of vouchers, if any, such account shall after the period of one year from the date of its rendition, in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed and such depositor shall thereafter be barred from questioning the correctness of such account for any cause.

(b) Nothing herein shall be construed to relieve the depositor from the duty now imposed by law of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank and of immediate notification to the bank upon discovery of any error therein, nor from the legal consequences of neglect of such duty; nor to prevent the application of §§ 3406 and 4406 of Title 13, Guam Code Annotated (UCC.) to cases governed thereby.

(c) A statement of account may be rendered to a depositor by mailing such statement with supporting vouchers, if any, to his address as shown on the books of the bank.

SOURCE: GC § 30040. Subsection (b) amended by P.L. 13-150:18.

§ 106113. Payment of Forged or Raised Check.

[Repealed.]

SOURCE: GC § 30041. Repealed by P.L. 13-150:19.

§ 106114. Adverse Claim to Bank Deposit.

Notice to any bank of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons or shall execute to said bank in form and with sureties acceptable to it, a bond, indemnifying said bank from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank; provided, that this law shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship are also the facts showing reasonable cause for relief on the part of the said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant.

SOURCE: GC § 30042.

§ 106115. Death or Incompetency of Depositor.

[Repealed.]

SOURCE: GC § 30043. Repealed by P.L. 13-150:20.

§ 106116. Powers of Attorney.

(a) A bank may continue to recognize the authority of an attorney authorized in writing to operate, in whole or in part, the account of a depositor, until it receives written notice of the revocation of his authority.

(b) Written notice of the death or adjudication of incompetency of such depositor shall constitute written notice of revocation of the authority of his attorney.

(c) Notwithstanding that a bank has received written notice of revocation of the authority of such attorney, it may, until 30 days after

receipt of such notice, pay any item made, drawn, accepted or indorsed by such attorney prior to such revocation, provided that such item is otherwise properly payable.

(d) No bank shall be liable for damages, penalty or tax by reason of any payment made pursuant to this section.

SOURCE: GC § 30044.

§ 106117. Payment from Account When No Executor or Administrator has Qualified.

(a) Where no executor or administrator of a deceased depositor has qualified and given notice of his qualifications to the bank, it may in its discretion and at any time after 30 days from the death of the depositor pay out of all accounts maintained with it by him in his individual capacity all sums which do not exceed \$2,000 in the aggregate

(1) to the executor named in any will known to the bank or

(2) in the absence of knowledge of a purported will naming a surviving executor to

(A) the surviving spouse,

(B) the next of kin, or

(C) a creditor for expenses of the last illness or funeral, in the above order or priority in the case of conflicting claims.

(b) A bank may in its discretion and at any time after 60 days from the death of a depositor, whose residence address according to the books of the bank is outside Guam, pay the balance of his accounts, not exceeding \$5,000 in the aggregate, to an executor or administrator who has qualified in another territory or state unless the bank has received written notice of the appointment of an executor or administrator in Guam.

(c) No bank shall be liable for damages, penalty or tax by reason of any payment made pursuant to this section.

SOURCE: GC § 30045.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (a) were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106118. Transmitting Money: Foreign Exchange.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(a) Any bank may accept money for transmissions and may transmit money.

(b) Any bank may buy and sell foreign exchange to the extent necessary to meet the needs of customers.

SOURCE: GC § 30046.

§ 106119. Dormant and Inactive Accounts and Unclaimed Funds.

(a) Savings Account. In the event there has been no activity of deposits or withdrawals, and no contact has been made by the account holder of a savings account with the bank for ten (10) years, a bank shall transfer the balance of such account to the Treasurer of Guam for the account of the depositor.

(b) In the event a savings account is inactive for 5 years, and the passbook has not been presented for the posting of earned interest during said period, a bank may cease paying interest on such account until advised by the depositor or his representative that the account is active.

(c) In the event a check account is inactive for 2 years and the depositor cannot be located, a bank shall transfer the balance of such account to the Treasurer of Guam for the account of the depositor.

(d)(1) Prior to transferring the balance of any accounts to the Treasurer of Guam as provided in Subsections (a) and (c) of this Section, a Bank shall send written notice to the depositor at the depositor's last known address informing the depositor that the depositor's account is subject to this Section if:

(A) a bank has in its records an address for the depositor which the bank's records do not disclose to be inaccurate; and

(B) the account contains Twenty-five Dollars (\$25) or more.

(2) The notification required in item (d)(1) of this Section shall be performed before October 1 of each year for accounts that are inactive as of June 30 next preceding.

(3) On November 1 and on December 1, a bank shall publish a notice of inactive accounts in a newspaper of general circulation. The published notice shall be entitled "Notice of Inactive Bank Accounts", and shall contain:

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(A) the names, in alphabetical order, and last known address, if any, of depositors of inactive accounts; and

(B) a statement that such funds shall be transferred to the Treasurer of Guam during the month of January of the following year.

(4) During the month of January of the year immediately following the publication required by item (d)(2) of this Section, a bank shall transfer to the Treasurer of Guam all balances of accounts as provided in Subsections (a) and (c) of this Section.

(e) In the event a bank holds unidentified deposits or other funds for 3 years, the owner of which cannot be determined by the bank, a bank shall transfer the balance of such account to the Treasurer of Guam for the account of the depositor, in the event such depositor is determined at a later date.

(f) In the event a bank holds unidentified loan payments for 3 years, a bank shall transfer the balances of such account to the Treasurer of Guam for the account of the payor, in the event such payor is later determined.

(g) Prior to transferring funds to the Treasurer of Guam pursuant to the provisions of this section, the transferring bank may deduct all sums or costs due the bank, including cost of publication or other notice required by this section. Receipt by the Treasurer of Guam for such deposits shall be a full discharge to the transferring bank of all liabilities to the depositor or owner of such funds.

(h) The Treasurer of Guam upon receiving sums of money pursuant to this section shall furnish the transferring bank with a receipt for such sums transferred, and shall deposit such sums in the General Fund of the government of Guam.

(i) The Treasurer of Guam shall maintain accurate records of such sums in accordance with regulations adopted by the Board. Such sums may be claimed at any time by the rightful owner or owners of such sums upon furnishing proof satisfactory to the Treasurer of Guam of their right to such funds. Funds deposited with the Treasurer of Guam pursuant to this section shall not accrue interest. The Treasurer of Guam shall not be liable for damages or penalties for any payment to a claimant of funds deposited pursuant to this section.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(j) The Board may adopt such rules and regulations as may be necessary to implement the provisions of this section.

(k) All funds transferred to the Treasurer of Guam pursuant to the provisions of this Section shall escheat to the government of Guam one (1) year subsequent to the date such transfers occurred. The Treasurer of Guam shall deposit such funds in the Housing Trust Fund established in Article 10 of Chapter 4, Title 12, Guam Code Annotated. Such funds shall be used in accordance with the provisions of the First-time Homeowner Assistance Program.

(l) All funds transferred to the Treasurer of Guam pursuant to the provisions of this Section shall be transferred during the month of January for those accounts deemed inactive and dormant as of June 30 of the preceding year.

(m) The Treasurer of Guam shall directly deposit all balances of accounts transferred pursuant to this Subsection to a custodial interest bearing account separate and apart from the General Fund. No interest shall be paid by the government of Guam to the depositor from the date of transfer of the balance of account to the Treasurer of Guam.

(n) When a bank transfers the balance of any account to the Treasurer of Guam pursuant to this Section, the bank shall hold the government of Guam harmless for any liability incurred by the bank because of any handling of an account on the part of the bank. The government of Guam shall not be liable for any transaction on an account made by any bank, including transfer of the balance of the account to the Treasurer of Guam pursuant to this Section.

(o) There shall be no statute of limitations as to claiming dormant bank accounts. All claims against the government of Guam for balances of accounts which have been transferred as inactive or dormant accounts to the government of Guam by any bank must be initiated by a claim against the government of Guam under the Claims Act, within one (1) year of the date of transfer.

SOURCE: GC § 30047. Subsection (a) was repealed and reenacted by P.L. 18-37:2; subsection (d) amended by P.L. 18-37:3; subsection (e) amended by P.L. 18-37:4; subsection (f) repealed by P.L. 18-32:5; subsections (g) - (k) renumbered by P.L. 18-37:6; subsections (k) - (o) added by P.L. 18-37:12. Subsection (k) amended by P.L. 32-036:2 (June 5, 2013), and amended by P.L. 33-168:1 (June 30, 2016). Subsection (o) amended by P.L. 32-036:2 (June 5, 2013).

11 GCA FINANCE & TAXATION
CH. 106 BANKS

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (d)(1) and (3) were altered to adhere to the Compiler's alpha-numeric scheme.

PART B
SAFE DEPOSIT AND SAFEKEEPING

- § 106131. Definitions.
- § 106132. Authority to Engage in Leasing Safe Deposit Facilities.
- § 106133. Access by Fiduciaries.
- § 106134. Effect of Lessee's Death or Incompetence.
- § 106135. Lease to Minor.
- § 106136. Search Procedure on Death.
- § 106137. Adverse Claims to Contents.
- § 106138. Special Remedies for Nonpayment of Rent.

§ 106131. Definitions.

As used in this Part:

(a) Lessee means a person contracting with a lessor for the use of a safe deposit box.

(b) Lessor means a bank, trust company, or subsidiary renting safe deposit facilities, and includes a safe deposit company organized and operating under the jurisdiction of the Division solely for the purpose of leasing safe deposit facilities.

(c) Safe Deposit Box means a safe deposit box, vault, or other safe deposit receptacle maintained by a lessor and the rules relating thereto apply to property or documents kept in safekeeping in the bank's vault.

SOURCE: GC § 30100.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, subsection designations were added to adhere to the Compiler's alpha-numeric scheme.

§ 106132. Authority to Engage in Leasing Safe Deposit Facilities: Subsidiary Company.

(a) Subject to such regulations as the Board may prescribe, a bank, trust company or safe deposit company may maintain and lease safe

deposit boxes and may accept property or documents for safekeeping if, except in the case of night depositories, it issues a receipt therefor.

(b) A territorial bank or trust company may own stock in safe deposit companies not exceeding in aggregate cost 15% of its capital and surplus, but at least 90% of the stock in each such safe deposit company must be owned by banks or trust companies.

SOURCE: GC § 30101.

§ 106133. Access by Fiduciaries.

Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(a) By any one or more of the persons acting as executors or administrators.

(b) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing signed by all other persons so acting.

(c) By any agent authorized in writing signed by all of the persons acting as fiduciaries.

SOURCE: GC § 30102.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106134. Effect of Lessee's Death or Incompetence.

Where a lessor without knowledge of the death or of an adjudication of legal incompetence of the lessee, deals with his agent pursuant to a written power of attorney signed by such lessee, the transaction binds the lessee's estate and the lessee.

SOURCE: GC § 30103.

§ 106135. Lease to Minor.

A bank may lease a safe deposit box to, and in connection therewith deal with, a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

SOURCE: GC § 30104.

§ 106136. Search Procedure on Death.

A lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant or a person named as an executor in a copy of a purported will produced by him, to open and examine the contents of a safe deposit box leased by a decedent or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor, if so requested by such person, must deliver

(a) Any writing purporting to be a will of the decedent to the court having jurisdiction of the decedent's estate according to his residence declared in such writing; and

(b) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person making the request for a search; and

(c) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein.

But no other contents shall be removed, pursuant to this section until executor or administrator qualifies and makes claim to the contents.

SOURCE: GC § 30105.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106137. Adverse Claims to Contents of Safe Deposit Box.

(a) An adverse claim to the contents of a safe deposit box, or to property held in safekeeping, is not sufficient to require the lessor to deny access to its lessee unless:

(1) The lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name which identifies him with the name in which the safe deposit box is leased or the property held; or

(2) The safe deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property is held in a fiduciary capacity, and the adverse claim is supported by a written statement of facts disclosing that it is made by or on behalf of a beneficiary and that there is reason to know that the fiduciary will misappropriate the trust property.

(b) A claim is also an adverse claim where one of several lessees claims, contrary to the terms of the lease, an exclusive right of access or

where one or more persons claim a right of access as agents or officer of a lessee to the exclusion of others as agents or officers, or where it is claimed that a lessee is the same person as one using another name.

SOURCE: GC § 30106.

§ 106138. Special Remedies for Nonpayment of Rent.

(a) If the rental due on a safe deposit box has not been paid for one year, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(b) If the contents of the safe deposit box have not been claimed within 2 years of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be sold at public auction at a specified time and place, or, in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once in a newspaper of general circulation in the community. If the articles are not claimed, they may then be sold in accordance with the notice.

The balance of the proceeds, after deducting accumulated charges, including the expense of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by him, or if none, shall be deemed a deposit account with the bank or trust company operating the safe deposit facility, or in the case of a subsidiary safe deposit company, a bank or trust company owning stock therein, and

shall be identified on the books of the bank as arising from the sale of contents of a safe deposit box. When any such deposit is surrendered as unclaimed deposits, the lessor shall also send to the Commissioner a copy of the certificate and an itemized statement of the amount received and the deductions. Any items remaining unsold may be destroyed.

(c) Any documents or writings of a private nature, having little or no apparent value need not be offered for sale, but shall be retained, unless claimed by the owner, for the period specified for unclaimed deposits, after which they may be destroyed.

SOURCE: GC § 30107.

PART C
TRUST BUSINESS

- § 106151. Qualification and Fiduciary Powers.
- § 106152. Fiduciary Bond or Oath Excused.
- § 106153. Identification and Segregation of Assets.
- § 106154. Investments of Funds Held as Fiduciary.
- § 106155. Common Trust Funds.

§ 106151. Qualification and Fiduciary Powers: Deposits of Securities.

(a) It shall be a criminal offense against this Title for a bank to act as fiduciary unless it is authorized by its charter to exercise trust powers and has qualified by depositing with the Commissioner evidences of indebtedness acceptable to him which:

- (1) Are payable to bearer or recorded in the Commissioner's name;
- (2) Constitute readily marketable legal investments for funds held by a bank as a fiduciary; and
- (3) Have a value equal to ten percent (10%) of the minimum capital and surplus requirements set forth in § 106204 of this Act.

(b) A bank shall have the right to receive the income on evidences of the indebtedness deposited with the Commissioner as long as the bank continues to conduct its business in the ordinary course.

(c) A bank which fails to maintain its deposit in conformity with this section shall, upon order of the Commissioner, resign its fiduciary positions.

(d) Upon liquidation, abandonment of trust powers, or resignation from all fiduciary positions, the deposit shall be made available for the ratable satisfaction of claims involving fiduciary accounts. Any surplus remaining after the satisfaction of all such claims shall be returned to the bank.

SOURCE: GC § 30200.

§ 106152. Fiduciary Bond or Oath Excused.

No oath or bond shall be required of a bank to qualify upon appointment as a fiduciary, unless the instrument creating a fiduciary position expressly otherwise provides.

SOURCE: GC § 30201.

§ 106153. Identification and Segregation of Fiduciary Assets: Investment and Deposit of Cash: Nominee for Securities.

(a) A bank holding any asset as a fiduciary shall:

(1) Segregate all such assets from any other assets of the bank and from the assets of other trusts, except as may be expressly provided otherwise by law or by the writing creating the trust.

(2) Record such assets in a separate set of books maintained for fiduciary activities.

(b) Cash held by a bank as fiduciary may be deposited to the credit of the bank as such fiduciary, either with a bank with deposit insurance or with itself, but if such funds are deposited with itself the bank shall pledge as security United States bonds or other securities approved by the Commissioner for the purpose in the amount of the deposit in excess of the amount covered by deposit insurance. Deposits may represent the assets of more than one fiduciary estate if a record is maintained of the proper allocation.

(c) Any bank, when acting in Guam as a fiduciary or a co-fiduciary with others, or as an agent for other fiduciaries, may with the consent of its co-fiduciary or co-fiduciaries, if any (who are hereby authorized to give such consent), or the fiduciaries, for whom it is acting, cause any investment held in any such capacity, to be registered and held in the

name of a nominee or nominees of such bank. Such bank shall be liable for the acts of any such nominee with respect to any investment so registered. The records of such bank shall at all times show the trust for which any such investment is held and the securities shall be in the possession and control of such bank and be kept separate and apart from the assets of such bank.

SOURCE: GC § 30202.

§ 106154. Investment of Funds Held as Fiduciary.

A bank acting as fiduciary shall have the same investment powers as an individual fiduciary under like circumstances.

SOURCE: GC § 30203.

§ 106155. Common Trust Funds.

A bank or trust company may create one or more common trust funds in which individuals may participate and invest.

SOURCE: GC § 30204.

PART D

RESERVES, LOANS, INVESTMENTS AND MISCELLANEOUS

- § 106171. Reserves Against Deposits.
- § 106172. Loans.
- § 106173. Investments.
- § 106174. Acceptances.
- § 106175. Diversification of Loans and Investments.
- § 106176. Acquisition of Property to Satisfy or Protect Previous.
- § 106177. Acquisition of Banking Premises and Equipment.
- § 106178. Sale of Assets in Ordinary Course.
- § 106179. Borrowing.
- § 106180. Pledge of Assets.
- § 106181. Indorsement and Signature Guaranty.
- § 106182. Definition: Capital.

§ 106171. Reserves Against Deposits.

(a) A bank whether or not a member of the Federal Reserve System, shall maintain such reserves against deposits as may be established by

the Federal Reserve Act or by the Board of Governors of the Federal Reserve System.

(b) The reserve fund shall consist of legal tender on hand on the premises of the bank and money due on demand from a Federal Reserve Bank or other bank approved as a reserve depository by the Commissioner.

(c) It shall be a criminal offense against this Title for a territorial bank to continue an average deficiency in its reserve covering any two successive banking days for more than one additional banking day without notifying the Commissioner.

SOURCE: GC § 30300.

§ 106172. Loans.

(a) A commercial bank may lend at a lawful rate of interest on the security of the personal obligation of the borrower.

(b) A commercial bank may lend on the security of personal property but shall not make any loan on the security of its own stock or of its obligations subordinate to deposits. A loan made on the security of the stock or obligations subordinate to deposits of another banking institution must be for a stipulated period not longer than 3 years and require full amortization by approximately equal or diminishing payments, including both principal and interest, at regular intervals of not more than 3 months.

(c) A bank may lend at a lawful rate of interest on the security of a first mortgage on improved real estate, when:

(1) The loan is fully guaranteed or insured by the United States or an agency thereof whether the insurance is payable in cash or in obligations of the United States; or

(2) The real estate is located within Guam and the loan (excluding any portion thereof guaranteed by the Administrator of Veterans Affairs pursuant to any law of the United States or guaranteed by any other agency of the United States), together with all prior liens upon the property, is not more than 100% of the appraised value of the property; or

(3) The security of real estate is not more than 100% of the appraised market value of the real estate over and above all taxes due and bonded indebtedness for public improvements due. No

11 GCA FINANCE & TAXATION
CH. 106 BANKS

commercial bank shall loan in the aggregate more than the sum of 75% of its savings deposits, if it also transacts the business of a savings bank, and 25% of the total of its capital, surplus, and commercial deposits on obligations secured by real estate. These provisions, however, shall not prevent any bank from taking another and immediately subsequent mortgage or deed of trust thereon when it already holds a first mortgage or deed of trust on the real estate, nor from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when the subsequent liens are necessary further to secure the payment of any debt and to save then bank from loss. There shall be on file at the bank in support of such real estate obligation such appraisal, evidence of merchantable title, and insurance as may be required by the Commissioner.

(d) A bank may lend at a lawful rate of interest upon a mortgage or pledge of a leasehold interest in unencumbered real estate when the loan is not more than 100% of the total rent reserved in the lease or the appraised value of the property, whichever is less, and provides for complete amortization within 90% of the term of the lease by equal or diminishing payments.

(e) A bank may make the following loans which shall not be deemed loans on the security of real estate or leasehold interests therein within the meaning of this Title:

(1) A loan to provide working capital to an industrial or commercial enterprise.

(2) A loan under Title I of the National Housing Act.

(3) A loan on a lease hold mortgage, payment of which is guaranteed under the National Housing Act or any Act of Congress.

(4) A loan for a period not longer than 18 months to finance the construction of residential or farm building; and a loan otherwise proper is not made a loan upon real estate or a leasehold therein by the taking of a security interest therein as additional security.

SOURCE: GC § 30301. Amended by P.L. 21-120:1 and 2.

§ 106173. Investments.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(a) In addition to other investments expressly authorized by this Title a territorial bank may purchase (or discount):

(1) Obligations which satisfy the requirements of this Title for loans and are acquired in full.

(2) Obligations of the United States, or states of the United States.

(3) Obligations of the International Bank for Reconstruction and Redevelopment.

(4) Obligations of a subdivision or instrumentality of a state or territory of the United States, an authority organized under state or territorial law, an interstate compact or by substantially identical legislation adopted by two or more states.

(5) Obligations of a corporation chartered by the United States or a state or territory thereof, doing business in the United States, which are approved by the Board for investment.

(b) A territorial bank may invest an amount not exceeding 10% of its capital in the stock of a corporation owned entirely by banks and exclusively engaged in a trust company business and maintaining its offices on the premises used by the bank or another bank also owning part of its capital stock, or adjacent to the premises of any bank owning part of its stock, and an amount not exceeding 25% of its capital in the stock and obligations of a corporation owning the premises occupied by the bank for the transaction of its business.

(c) A territorial bank's investment in the stock of a safe deposit company is governed by Section 106132.

(d) A bank may purchase or sell without recourse any security upon the order of a customer and for his account.

(e) A bank or trust company may purchase and sell participation in:

(1) One or more evidences of indebtedness and agreements for the payment of money; and

(2) Pools of evidences of indebtedness and agreement for the payment of money subject to regulations by the Banking and Insurance Board.

(f) A bank, subject to regulation as provided by the Banking and Insurance Board, may acquire and lease personal property pursuant to a

binding arrangement for the leasing of such property to a customer upon terms requiring payment to the bank, during the minimum period of the lease, of rental which in the aggregate will exceed the total expenditures by the bank for or in connection with the ownership, acquisition, maintenance and protection of the property.

(g) No bank shall own capital stock in any territorial bank.

SOURCE: GC § 30302.

2011 NOTE: Reference to the “Banking Board” in subsections (e)(2) and (f) changed to the “Banking and Insurance Board” pursuant to P.L. 27-088:10 (May 6, 2004).

§ 106174. Acceptances.

(a) A commercial bank may accept:

(1) A draft which has not more than 6 months sight to run, exclusive of days of grace, and is drawn to finance the purchase of goods with maturity in accordance with the original terms of purchase, or is secured by shipping documents transferring or securing title to goods or by receipt of a licensed or bonded warehouse or elevator transferring or securing title to readily marketable, nonperishable staples.

(2) A draft which has not more than 3 months sight to run, exclusive of days of grace, and is drawn by a bank outside the continental limits of the United States for the purpose of furnishing dollar exchange for trade.

(b) A commercial bank may issue a letter of credit, but unless the authority conferred to draw upon the bank or its correspondents is limited to such drafts as a bank is authorized by this section to accept, the amount of the credit outstanding at any one time shall be deemed to be a loan to the person for whose account the credit was issued.

SOURCE: GC § 30303.

§ 106175. Diversification of Loans and Investments.

(a) A territorial bank shall not extend credit directly by means of discount of notes, issuance of letters of credit, acceptance of drafts or otherwise, or purchase any bond, note, bill of exchange or similar evidence of indebtedness, when by reason of such extension of credit or purchase the totals of such obligations so acquired which are held by such bank will exceed the limitations prescribed in the following table:

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(1) Loans for a period not longer than 18 months to finance the construction of residential or farm buildings (50% of capital and surplus)

(2) Obligations maturing more than 10 years thereafter, except government obligations, corporate bonds, or obligations secured by real property (100% of capital and surplus)

(3) Obligations secured by real estate together with the current market value of any real estate owned by the bank and not used in its banking business (100% of capital and surplus or 75% of time deposits whichever is greater)

(4) Unsecured obligations of the same obligor (20% of capital and surplus)

(b) The limitation of Paragraph (4) hereof shall not apply to loans and investments otherwise authorized by this Title when the obligations are:

(1) Obligations of the United States, of a state or territory or of a Federal Reserve Bank.

(2) Obligations to the extent that they are secured as to principal and interest by the guarantee, insurance or other like commitment of the United States, an agency of the United States or a Federal Reserve Bank, whether the commitment provides for payment in cash or in obligations of the United States.

(3) Obligations secured by obligations of the United States or of a state or territory having a value of 100% of the amount thereof.

(4) Obligations secured by assignment of a life insurance policy to the extent of the cash surrender value thereof less the amount of one annual premium, but the limitation on such obligations shall be 25% of capital and surplus.

(5) Obligations to the extent that they are secured by pledge of a deposit in a savings bank, but the limitation on such obligations shall be 25% of capital and surplus.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(6) Obligations arising from acceptance of drafts to the extent of 85% of the security, if such security is derived from the transaction financed by the acceptance, but the limitation on such obligations shall be 25% of capital and surplus.

(7) Obligations upon a banker's acceptances to the extent that the obligations of the acceptor to the bank do not exceed in amount 30% of the capital and surplus.

(8) Obligations upon notes or drafts having a maturity of not more than 6 months exclusive of days of grace, drawn in good faith against actually existing values and secured by an instrument transferring or securing title to goods in process of shipment or to livestock or creating a lien on livestock to the amount of 85% of the value of the security, but the limitation on such obligations shall be 25% of capital and surplus.

(9) Obligations upon notes or drafts secured by trust receipts, shipping documents or receipts of a licensed or bonded warehouse or elevator transferring or securing title to readily marketable, non-perishable staples to the amount of 80% of the value of the security, but the limitation on these obligations shall be 25% of capital and surplus and this exemption shall not apply (a) unless such staples are insured, if it is customary to insure them; or (b) for more than 10 months to obligations of the same obligor arising from the same transaction or secured by the same staples.

(10) Obligations upon loans approved by the Board to a bank located within Guam or to a receiver or conservator thereof or to the Commissioner when he has taken possession thereof, but the limitation on these obligations shall be 25% of capital and surplus.

(11) Obligations secured by the assignment of accounts receivable to the extent of 80% of the amount of such accounts not overdue, but the limitation on these obligations shall be 25% of capital and surplus.

(12) Obligations secured by readily marketable stocks or bonds to the extent of 85% of the current value of the security, but the limitation on the obligations shall be 25% of capital and surplus.

(13) Obligations arising out of the daily transaction of the business of any clearing house association.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(c) In calculating for the purposes of this section the obligations of a single obligor or the obligations of a specified class there shall be included:

(1) The direct liability of the maker or acceptor of paper discounted or purchased and the liability of the endorser, drawer or guarantor who obtains a loan or discounts or sells paper under his guaranty. This Section excludes contingent liability created by purchase of commercial paper covering sale of goods.

(2) In the case of obligations of a partnership or association, the obligations of each general partner and of each member of the association.

(3) In the case of obligations of a general partner or a member of an association, the obligations of the partnership or association.

(4) In the case of obligations of a corporation, the obligations of any subsidiaries in which it owns, directly or indirectly, a majority of the outstanding voting stock.

(5) In the case of obligations of a corporation, the amount of a loan made to any other person to the extent that the proceeds of such loan directly or indirectly are to be (a) loaned to the corporation; (b) used for the acquisition from the corporation of any securities issued by the corporation, other than securities acquired by an underwriter for public offering; or (c) transferred to the corporation without fair and adequate consideration. The discharge of an equivalent amount of debt previously incurred in good faith for value shall be deemed fair and adequate consideration.

(d) No provision in this section shall be construed to prohibit refinancing of any loan when the security appearing at the time of refinancing is sufficient to meet the provisions of this section.

SOURCE: GC § 30304. Amended by P.L. 15-077:21.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106176. Acquisition of Property to Satisfy or Protect Previous Loan.

A bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business.

Property acquired in satisfaction of a loan shall be held subject to the following limitations:

(a) Stock shall be sold within 6 months or such additional period not exceeding one year as the Commissioner may allow.

(b) Real estate may be used in the banking business, subject to the conditions prescribed by this Title for property purchased for such use, or may be rented. Real estate may be improved to facilitate its sale. Unless used in the banking business, it shall be sold within 5 years or such longer period as the Commissioner may allow.

(c) Other property the acquisition of which is not otherwise authorized by this Title shall be sold within 6 months or such longer period as the Commissioner may allow.

(d) The property shall be entered on the books at cost or fair market value, whichever is less, and property which the bank is not otherwise authorized to acquire shall be charged off at a rate of not less than 10% per annum for real estate and 20% per annum for other property or at such lower rate not less than 5 and 10% respectively, as the Commissioner may allow.

SOURCE: GC § 30305.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106177. Acquisition of Banking Premises and Equipment.

(a) A bank may acquire real estate and equipment and improve real estate to be used in the transaction of its business on Guam and may rent any space so acquired in a building in excess of its present actual need; provided that unless a larger investment is authorized by the Commissioner, no banks shall invest more than the following:

- | | |
|--|--------------------------------------|
| (1) Investment | |
| (2) Land, building and equipment
(other than safe deposit equipment); | 50% of capital |
| (3) Equipment alone (other than safe
deposit equipment) | 15% of capital |
| Safe deposit equipment | 10% of capital in
addition to the |

above

(b) The rate of depreciation of property so acquired may be prescribed by the Commissioner.

SOURCE: GC § 30306.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (a) were added to adhere to the Compiler's alpha-numeric scheme.

§ 106178. Sale of Assets in Ordinary Course.

A bank may sell any asset in the ordinary course of business, or, with the approval of the Board, in any other circumstance, but the sale of all or substantially all of the assets of a bank or of a department thereof is governed by § 106179.

SOURCE: GC § 30307.

§ 106179. Borrowing.

A bank may borrow money and issue evidence of indebtedness for a loan for temporary purposes in an amount not exceeding its capital and surplus or in such larger amount or for such other purposes as the Commissioner approves. Debentures issued by a territorial bank may not be retired without the approval of the Commissioner and they shall so provide in express terms.

SOURCE: GC § 30308.

§ 106180. Pledge of Assets.

A bank may pledge its assets to:

(a) Enable it to act as agent for the sale of obligations of the United States.

(b) Secure borrowed funds.

(c) Secure deposits when the depositor is required to obtain such security by the laws of the United States, the terms of any interstate compact or by the laws of any state or territory.

SOURCE: GC § 30309.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106181. Indorsement and Signature Guaranty.

(a) A bank may assume secondary liability as an indorser of a negotiable or non-negotiable instrument which it owns or has received for collection or that of the guarantor of the genuineness of a signature.

(b) A guaranty of the signature means only that

- (1) the signature is not forged;
- (2) the signer is the holder or has the authority to sign in the name of the holder; and
- (3) the signer has legal capacity to sign.

(c) A guaranty of the signature does not otherwise guaranty his rightfulness of the particular transfer.

(d) A bank may disclaim all or any part of the foregoing obligation in its guaranty.

SOURCE: GC § 30310.

2013 NOTE: Subsection designation (c) and (d) were added to adhere to the Compiler's alpha-numeric scheme in accordance to the authority granted by 1 GCA § 1606.

§ 106182. Definition: Capital.

As used in Part D herein, the noun capital is defined as capital plus surplus plus undivided profit plus current earnings plus reserve for loan losses.

SOURCE: GC § 30311. Added by P.L. 18-049:10.

PART E
AUTHORIZED BANKING PRACTICES

§ 106191. Bank Activities Permitted.

(a) A Territorial Bank insured by the Federal Deposit Insurance Corporation (FDIC) is authorized to engage directly or through a subsidiary in any banking activity, any activity closely related to banking and any nonbank activity to do any act and to own, possess and carry as assets, property of the character, including stock, which national banks chartered by the United States government and any bank chartered by a state of the United States or any subsidiary of a bank holding company regulated by the Federal Reserve Board under the Bank Holding

11 GCA FINANCE & TAXATION
CH. 106 BANKS

Company Act of 1978 may now or hereafter be authorized or permitted by state or federal law, regulation or federal banking agency regulatory ruling or letter opinion to engage, on the same terms and conditions that would be imposed on a national bank, a state chartered insured bank, or a subsidiary of a bank holding company engaged in such activity; provided however, that a territorial bank will not by this statute be made subject to regulation by, be required to report to or be subject to audit by any federal agency by which it is not otherwise regulated.

(b) To the extent authorized or allowed under case law or federal banking statutes, regulations or regulatory decisions for any other bank, an insured Guam Bank may directly or indirectly engage in or invest in a subsidiary which engages in broker and dealer activities in securities, insurance activities, underwriting, community development, real estate, management consulting, data processing, investment advisory services, check collection and guaranteeing, courier services, foreign exchange services, credit research and reporting, futures commissions merchant, consumer financial services counseling, real estate appraisals and financing, tax planning and preparation, providing bank services to other banks; purchasing, constructing and leasing public or municipal buildings; investing in and operating a safe-deposit corporation or small business investment company; investing in state or territorial housing corporations; acting as a finder for a buyer and seller; arranging real estate financing with third parties; investing in and operating an advisory and discount brokerage; acting as an agent in the sale or placement of federal, state or territorial government securities; acting as an agent in the sale of fixed rate and variable annuities; arbitrage activities; armored car messenger services; operating automated teller machine networks; automobile, equipment and personal property leasing; making charitable contributions; operating closed or open ended collective investment funds or mutual funds; collateralizing public deposits received from local or the territorial government; issuing underwriting, dealing in, purchasing and selling collateralized mortgage obligations; dealing in commodities futures or operating as a commodity pool operator; selling or leasing computer hardware or software in conjunction with data processing services or to other financial institutions; operating a credit card bank; securitizing credit card receivables; underwriting and selling credit life and disability insurance for loan customers; collecting debts for third parties participating in debt/equity swaps; offering financial advice and counseling to mutual funds; acting as a general contractor for its own real estate; acting as a custodian for individual retirement account funds;

11 GCA FINANCE & TAXATION
CH. 106 BANKS

acting as a finder for insurance companies; leasing bank premises or bank owned real estate; issuing clean letters of credit; establishing and operating loan production offices; messenger services; mortgage servicing; operating a postal substation on its premises; privately placing asset backed securities, mortgage related products, debt and equity securities, limited partnership interests in real estate and investment securities; offering security and guard services and security monitoring services; purchasing, selling, underwriting, dealing in and holding Small Business Administration guaranteed pool certificates and general obligations of any state, territory or political subdivision thereof; purchasing, holding and using a seat on any recognized United States stock exchange; purchasing, selling, dealing in and underwriting obligations of the United States Government, its agencies and political subdivisions; operating a title insurance company in conjunction with a real estate mortgage loan business; acting as an agent in selling or underwriting title insurance in connection with mortgage loans; acting as a transfer agent for corporate debt and equity issues; acting as a travel agent in conjunction with a bank operated travel club or incidental to banking; engaging in trust powers; and offering vault, lock and ATM services to other financial institutions as correspondent services, subject to the least restrictive rules, regulations and letter ruling terms and conditions permitting national or FDIC insured banks, bank subsidiaries or bank holding company subsidiaries to engage in the foregoing activities. The foregoing list is not intended to be comprehensive.

SOURCE: Added by P.L. 23-127:3 (Oct. 11, 1996) as § 30400 of Part E, Art. III, Ch. I, Title XXXI of the Government Code. Codified by the Compiler to this section.

2013 NOTE: Subsection designations were added to adhere to the Compiler's alpha-numeric scheme in accordance to the authority granted by 1 GCA § 1606.

ARTICLE 2
ORGANIZATION AND CORPORATE FUNCTIONS OF BANKS

- § 106201. General Corporate Powers.
- § 106202. Out of State Banks.
- § 106203. Locally Chartered or Territorial Bank: Additional Powers.
- § 106204. Capital Structure.
- § 106205. Incorporators.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

- § 106206. Notice of Intention.
- § 106207. Organization Expenses.
- § 106208. Application for Charter.
- § 106209. Determination on Application for Charter.
- § 106210. Subscription Calls.
- § 106211. First Meetings of Stockholders and Directors; Bylaws.
- § 106212. Reimbursement of Officer, Director or Employee for Expenses in Defending Suits.
- § 106213. Certificate of Authority.
- § 106214. Amendment of Charter; Change of Location.
- § 106215. Meeting of Stockholders; Voting; Proxies; Voting Trust; Preemptive Right; Transfer of Stock; Report of Holdings.
- § 106216. Directors and Officers.
- § 106217. Directors; Meeting and Duties.
- § 106218. Fidelity Bonds and Other Insurance.
- § 106219. Authority to Declare Dividends.
- § 106220. Capital, Surplus and Undivided Profits; Accounting Requirements.
- § 106221. Deposit Insurance; Membership in Federal Reserve System.
- § 106222. Waiver's Corporate Action by Unanimously Signed Writing.

§ 106201. General Corporate Powers.

(a) A territorial bank may be organized to exercise the powers provided in this Title and such general corporate powers as are appropriate to its purpose.

(b) A territorial bank shall, without specific mention thereof in its charter, have all the powers conferred by this Title and the following additional general corporate powers:

(1) To continue perpetually as a corporation, subject to the power of the Legislature under the Organic Act of Guam.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed, or in any manner reproduced.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(4) To make, alter, amend, and repeal by-laws, not inconsistent with its charter or with law, for the administration and regulation of the affairs of the corporation.

(5) To elect or appoint and remove officers and agents of the bank and to define their duties and fix their compensation.

(6) To adopt and operate reasonable bonus and pension plans for officers and employees.

(7) To make contributions to or for the use or benefit of:

(A) the United States, any state, territory, or political subdivision thereof, or the District of Columbia or any possession of the United States for exclusively public purposes, or

(B) a corporation, trust or community chest fund, or foundation created or organized in the United States or of any state or territory or of the District of Columbia, or of any possession of the United States and organized and operated exclusively for religious, charitable, scientific, veteran rehabilitation service, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; to the extent authorized, approved or ratified by action of the board of directors of the corporation, except as otherwise specifically provided or limited by its articles of incorporation, or its by-laws or by resolution duly adopted by its stockholders.

(c) In addition to its other powers, a territorial bank which is authorized by its charter to exercise trust powers shall, upon proper qualification under this Title have the power to act as a fiduciary in any capacity, including but without limitation as registrar or transfer agent, as fiscal agent or attorney in fact and the power to receive, manage and apply sinking funds.

SOURCE: GC § 30500.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered in subsection (b)(7) to adhere to the Compiler's alpha-numeric scheme.

§ 106202. Out of State Banks.

No out-of-state bank shall transact business in Guam. This Section shall not be deemed to prohibit:

(a) Any out-of-state bank from making loans secured by liens on real property located in Guam;

(b) Any out-of-state bank from being a resulting bank in an interstate merger transaction conducted pursuant to Article 3.5 of this Chapter;

(c) Any out-of-state bank from operating a branch within the territory to the extent permitted pursuant to Article 3.5 of this Chapter and by § 106601; or

(d) Any out-of-state bank doing business within the territory of Guam on the effective date of this Act from operating its branches within Guam in existence of the effective date of this Act.

SOURCE: GC § 30500.1. Repealed and reenacted by P.L. 18-049:9. R/R by P.L. 24-035:3 (May 29, 1997).

§ 106203. Locally Chartered or Territorial Bank: Additional Powers.

A locally chartered bank or territorial bank operating under this Title shall, in addition to all specific powers conferred by this Title, have the following power:

To exercise, notwithstanding the provisions of § 106151 of Part C, Title 11, Guam Code Annotated Code and § 2106 Title 18, Guam Code Annotated, all powers necessary to qualify as a trustee or custodian under the Federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, and the Employee Retirement Income Security Act of 1974; provided that any funds held in such capacity shall be invested only in a savings account or time deposit of the institution.

SOURCE: GC § 30500.2. Added by P.L. 13-138:2.

§ 106204. Capital Structure.

(a) A bank shall have such capital structure as the Board shall deem adequate but not less than the following:

(1) Capital consisting of common stock as follows: Paid-up-in-cash of not less than \$500,000.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(2) Paid-in surplus amounting to not less than 40% of its capital stock.

(b) The issuance of preferred stock shall be authorized by the Board only when it appears that necessary capital cannot be obtained by the issuance of common stock. Preferred stock shall have such preferences, powers and rights as the Board may approve. It shall not be retired without the approval of the Board and the requirement of such approval shall be stated in the stock certificates, but the Board may give advance approval to sinking funds payable exclusively out of earnings available for dividends.

(c) [Repealed.]

SOURCE: GC § 30501 added by P.L. 11-129:1 (Apr. 10, 1972). Subsection (c) repealed by P.L. 11-146:3 (June 28, 1972).

§ 106205. Incorporators.

A territorial bank may be organized by five (5) or more individual incorporators. All incorporators shall be United States citizens and residents of Guam. Each incorporator shall subscribe and pay in full in cash for stock having a par value of not less than one-half of one percent ($\frac{1}{2}$ of 1%) of the minimum capital and paid in surplus requirements.

SOURCE: GC § 30502. Amended by P.L. 13-176:3 (Aug. 2, 1976). Repealed and reenacted by P.L. 24-035:4 (May 29, 1997). Amended by P.L. 25-095 (Dec. 29, 1999).

§ 106206. Notice of Intention.

(a) The incorporators shall file with the Commissioner a notice of their intention to organize a territorial bank, signed by each of them. The notice shall state:

(1) The name, residence and occupation of each incorporator, and the amount of stock subscribed and paid for by each.

(2) The name and address of an individual within Guam to whom notice to all the incorporators may be sent.

(3) The total capital, the number of shares of each class and the par value of the shares of each class of the proposed territorial bank.

(4) Whether it is intended that the proposed territorial bank shall have trust powers.

(5) The municipality in which the proposed territorial bank is to be located.

(b) The Commissioner may order the incorporators not to accept any stock subscriptions or to cease accepting subscriptions if he shall determine that the notice does not comply with the provisions of this section, or that the incorporators are proceeding unlawfully or are not acting in good faith. If the notice of intention or any accompanying documents do not comply with the requirements of this section, the Commissioner shall within 20 days after the receipt thereof return them to the incorporators, calling attention to the defect or defects therein.

(c) It shall be a criminal offense against this Title to accept any stock subscription until 30 days after filing a notice of intention or in violation of an order of the Commissioner; and any such subscription shall be enforceable only by the Commissioner and only to the extent he determines it to be necessary to protect depositors or the public.

SOURCE: GC § 30503.

§ 106207. Organization Expenses.

(a) Each subscriber at the time he subscribes to the stock of a proposed territorial bank shall pay in cash a sum at least equal to 5% of the par value of such stock into a fund to be used to defray the expenses of organization. No organization expense shall be paid out of any other funds of the bank. Upon the grant of a charter any unexpended balance shall be transferred to surplus. If no application for a charter has been made within 6 months of the filing of a notice of intention, or any additional period allowed by the Commissioner, or if the application has been finally denied, any unexpended balance shall be distributed among the contributors in proportion to their respective payments. The Commissioner may require an account of disbursements from the fund and may order the incorporators to restore any sum which has been expended for other than proper organization expenses.

(b) No payment shall be made from the organization expense fund for securing subscriptions to stock.

SOURCE: GC § 30504.

§ 106208. Application for Charter.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(a) After the capital stock has been fully subscribed, the incorporators may apply to the Commissioner for the charter. The incorporators shall submit:

(1) A proposed charter in triplicate in such form as the Commissioner shall prescribe containing the following information:

(A) the name of a territorial bank;

(B) if the territorial bank is to exercise trust powers, a statement to that effect;

(C) the municipality in which it is to be located;

(D) the amount of capital, the number of shares of each class, the relative preferences, powers and rights of each class, the par value of the shares of each class and the amount of the paid-in surplus;

(E) a statement whether voting for directors shall or shall not be cumulative and the extent of the preemptive rights of stockholders;

(F) such other proper provisions to govern the business and affairs of the territorial bank as may be desired by the incorporators.

(2) An application in such form and containing such information as the Board requires, including the following:

(A) the name, residence and occupation of each subscriber and the number of shares for which he has subscribed;

(B) the past and present connection with any bank other than as a customer on terms generally available to the public, of each director and each subscriber to more than 5% of the capital stock;

(C) the address at which it is proposed that the territorial bank do business, or, if such address is not known, the area within the municipality in which it is proposed that the business be located.

(b) If the application, the proposed charter or any other accompanying documents do not comply with the requirements of this Title, the Commissioner shall within 20 days after the receipt thereof return them to the incorporators, calling attention to the defect or defects therein. If

11 GCA FINANCE & TAXATION
CH. 106 BANKS

such application, proposed charter and accompanying documents, if any, are not so returned by the Commissioner within 20 days of the receipt thereof they shall be deemed to have been filed with the Commissioner.

(c) The incorporators shall mail such notice of the application as the Commissioner may prescribe to each bank doing business in the municipality in which the proposed bank is to be located, and also to such persons and organizations as he may designate. The Commissioner may also require publication of the notice.

SOURCE: GC § 30505.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered in subsection (a)(1) and (2) to adhere to the Compiler's alpha-numeric scheme.

§ 106209. Determination on Application for Charter.

(a) When an application for a charter has been filed with the Commissioner he shall make or cause to be made a careful investigation and examination relative to the following:

(1) The character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed territorial bank.

(2) The character, financial responsibility, banking or trust experience, and business qualifications of those proposed as officers of the bank.

(3) The character, financial responsibility, business experiences and standing in the community of the prospective stockholders and of those proposed as directors of the bank.

(4) The need in the municipality where the bank would be located for banking or banking and trust facilities, or additional banking or banking and trust facilities, as the case may be, giving particular consideration to the adequacy of existing banking and trust facilities therein.

(5) The ability of the territory to support the proposed bank, giving consideration to

(A) the competition offered by existing banks and other financial institutions;

(B) the banking history of the territory;

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(C) the opportunities for profitable employment of bank funds as indicated by the average demand for credit, the number of potential depositors, the volume of bank transactions, and the business and industries of the territory, with particular regard to their stability, diversification and size; and

(D) if the bank is to exercise trust powers, the opportunities for profitable employment of fiduciary services.

(6) Such other facts and circumstances bearing on the proposed bank and its relation to the territory as in the opinion of the Commissioner or the Board may be relevant.

(b) The Commissioner shall submit a report of the results of his investigation to the Board, together with all papers, correspondence and information in his possession relating to the application for a charter, and shall include therewith his recommendation in the matter.

(c) Within 90 days after the filing of the application, the Board shall consider the Commissioner's findings and recommendations and all other relevant information available to them, and the Board shall in its discretion approve or disapprove the application, but it shall not approve the application until it has ascertained to its satisfaction:

(1) That the public need and advantage will be promoted by the establishment of the proposed bank.

(2) That conditions in Guam and in the municipality in which the bank would transact business afford reasonable promise of successful operation.

(3) That the bank is being formed for no other purpose than the legitimate objects contemplated by this Title.

(4) That the proposed capital and surplus are not less than the required minimum and are adequate in the light of current and prospective banking conditions.

(5) That those proposed as officers and directors have sufficient experience, ability and standing to afford reasonable promise of successful operation.

(6) That the name of the proposed bank does not resemble, so closely as to be likely to cause confusion, the name of any other

11 GCA FINANCE & TAXATION
CH. 106 BANKS

bank transacting business in Guam or which previously had transacted business in Guam during the last 20 years; and

(7) That the applicants have complied with all applicable provisions of this Title.

(d) If the Board shall approve the application the Commissioner shall grant a charter by indorsing his approval on all copies thereof, retaining one copy in the department's files, and returning one copy to the incorporators within 20 days of the action of the Board approving the application.

(e) If the Board shall disapprove the application the Commissioner shall mail notice of such disapproval to the incorporators within 20 days after the action of the Board disapproving the application.

SOURCE: GC § 30506.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered in subsection (a)(5) to adhere to the Compiler's alpha-numeric scheme.

§ 106210. Subscription Calls.

After a charter has been granted, the directors may call for the payment of the subscriptions in full within 30 days from the date of the notice. No share shall be issued until the par value and the pro rata portion of the paid-in surplus specified in the charter have been paid in full in cash.

SOURCE: GC § 30507.

§ 106211. First Meetings of Stockholders and Directors; Adoption of By-Laws.

(a) After the capital and surplus have been fully paid, a meeting of the stockholders shall be called by the incorporators on 10 day's notice to elect directors and adopt by-laws, and direct the call, on 5 day's notice, of the first meeting of directors for the election of officers.

(b) By-laws shall be adopted and may be amended by a vote of the holders of a majority of the outstanding voting shares voted at a meeting of the stockholders, but the by-laws may provide for amendment by the board of directors of any provisions other than those relating to the duties, term of office, remuneration, reimbursement or indemnification of a director.

SOURCE: GC § 30508.

§ 106212. Reimbursement of Officer, Director or Employee for Expenses in Defending Suits.

The by-laws of a territorial bank may provide that it shall indemnify every officer, director or employee, his heirs, executors and administrators, against judgments resulting from and the expenses reasonably incurred by him in connection with any action based upon any alleged act or omission on his part as an officer, director or employee of the territorial bank, including any action based upon any alleged act or omission on his part as an officer, director or employee of the territorial bank, except in relation to matters as to which he shall be finally adjudged in such action to be liable for his negligence or his misconduct, and except that, in the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the territorial bank is advised by counsel that in the opinion of counsel the person to be indemnified was not liable for such negligence or misconduct. The foregoing right of indemnification shall not be exclusive of other rights to which such officers, directors or employees may be entitled.

SOURCE: GC § 30509.

§ 106213. Certificate of Authority.

(a) It shall be a criminal offense against this Title for a territorial bank to perform any act other than to perfect its organization, obtain and equip a place of business and otherwise prepare to do business before receiving a certificate of authority to operate.

(b) Application for a certificate of authority shall be made to the Commissioner and shall contain:

- (1) A statement that the capital and surplus have been paid in.
- (2) The name, address and business and professional affiliations of each Director and executive officer.
- (3) The name and address of each stockholder and the number of shares held by him.
- (4) The address at which the bank will operate.
- (5) A statement that all of the by-laws adopted have been attached as an exhibit to the application.

**11 GCA FINANCE & TAXATION
CH. 106 BANKS**

(6) Such other information as the Commissioner may require to enable him to determine whether a certificate of authority should be issued.

(c) If the application for a certificate of authority or any accompanying documents do not comply with the requirements of this Title the Commissioner shall within twenty (20) days after the receipt thereof return them to the incorporators, calling attention to the defect or defects therein. If the application and accompanying documents are not so returned within such twenty (20) day period they shall be deemed to have been filed with the Commissioner.

(d) The Commissioner shall approve or deny the application for a certificate of authority within ninety (90) days after such application has been filed. He shall approve the application if:

- (1) The capital and surplus have been fully paid in cash.
- (2) Appropriate by-laws have been adopted.
- (3) Any conditions imposed by the Board in granting the charter have been fulfilled.
- (4) The requirements of this Title have been satisfied.

(e) If the Commissioner shall approve such application he shall within twenty (20) days of such action issue a certificate of authority and mail the same to the incorporators. If the Commissioner shall deny the application he shall within twenty (20) days of such action mail a notice of denial to the incorporators, stating therein the reason or reasons for denying the application.

(f) If no application for a certificate of authority is filed within six (6) months following the grant of a charter or any additional period allowed by the Commissioner or if a certificate of authority has been finally denied, or if the bank shall fail to commence business within six (6) months after the issuance of a certificate of authority or any additional period allowed by the Commissioner, the charter shall be forfeited, and the bank shall be liquidated in accordance with the orders of the Commissioner. If an improper expenditure has been made, the Commissioner may order the persons who were incorporators or directors at the time to restore the sum by equal contributions.

SOURCE: GC § 30510.

§ 106214. Amendment of Charter; Change of Location.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(a) A territorial bank may apply to the Commissioner to amend its charter or to change its location.

(b) An application for an amendment to the charter changing the authorized capital or to acquire or abandon trust powers or to change its location must be authorized by the vote of two-thirds (2/3) of the outstanding voting stock voted at a meeting of the stockholders. Any other application, excepting the par value (Stock Split) of the shares, which is within the discretion of the Board of Directors, may be authorized by the vote of the majority of the outstanding voting stock voted at a meeting of the Stockholders.

(c) Notice of the application shall be sent to such persons and organization as the Commissioner may require.

(d) The Commissioner shall approve an application:

(1) To change the name of the corporation if the proposed name is not deceptive or misleading.

(2) To change the authorized capital unless such change will inequitably affect the interest of any stockholder and the bank does not have sufficient surplus and undivided profits to pay dissenting shareholders the fair value of their shares determined in accordance with § 106305 and have remaining the required minimum paid-in surplus.

(e) An amendment increasing the total capital shall not become effective until the Commissioner finds that the new capital has been fully paid in cash. In other cases, the Commissioner shall present the application to the Board.

(f) In making its determination the Board shall consider whether the public convenience and advantage would be served by granting the application and shall be guided by the standards prescribed for the approval of an application for a charter, insofar as they are reasonably applicable.

SOURCE: GC § 30511.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were to adhere to the Compiler's alpha-numeric scheme.

§ 106215. Meetings of Stockholders; Voting; Proxies; Voting Trust; Preemptive Right; Transfer of Stock; Report of Holdings.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(a) Regular meetings of stockholders shall be held annually and at such additional times as the by-laws direct at such place as may be designated by the by-laws. A special meeting may be called at any time by the Commissioner, one-third of the directors, or the holder or holders of 5% of the outstanding voting shares. Notice shall be mailed at least ten (10) days before a meeting to every person who was a stockholder of record twenty (20) days before the date of the meeting or at such longer period as may be provided in the by-laws. No business shall be transacted at a special meeting which is not specified in the notice thereof or necessary or proper in connection with or incidental to the business specified. The holders of a majority of the outstanding voting shares or their authorized representative shall constitute a quorum. In the absence of a quorum a meeting may be adjourned from time to time without notice to the stockholders.

(b) Except on the election of directors each share of common stock shall have one vote which may be cast by the owner of record on the record date, or by his authorized representative, whether or not the owner of record has the beneficial interest therein. The bank may not vote shares which it holds in any capacity other than as fiduciary.

(c) A stockholder authorized to vote may by his proxy executed in writing appoint a representative to cast his vote. The Board may promulgate rules governing proxies and the solicitation thereof.

(d) No shares deposited under a voting trust agreement shall be voted by the trustee unless the agreement has been approved by the Board. Approval shall be withheld, or if previously granted, revoked whenever it appears that the existence of the trust would tend to reduce competition among lending institutions or to affect adversely the character or competence of the management or the bank's policies or operating procedures.

(e) Unless otherwise provided in the charter whenever additional stock of a class is offered for sale, stockholders of record of the same class on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding stock. This right shall be transferable but shall terminate if not exercised within thirty (30) days of the offer. If the right is not exercised, the stock shall not be offered for sale to others at a lower price without the stockholders again being accorded a preemptive right to subscribe.

(f) Shares of stock shall be transferable in accordance with the by-laws but no transfer shall be effective with respect to the bank until it has been entered upon the transfer books. The stock book shall be available for examination by a stockholder by the corporation at the principal place of business during business hours.

SOURCE: GC § 30512.

§ 106216. Directors and Officers.

(a) The affairs of a territorial bank shall be managed by a board of directors which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not less than five (5) nor more than twenty-five (25), shall be fixed by the by-laws and the number so fixed shall be the board, regardless of vacancies. Unless a bank holding company controls the territorial bank, at least three-fourths (3/4) of the directors of the territorial bank shall be citizens of the United States, two-thirds (2/3) shall be residents of Guam and a majority shall reside within one hundred (100) miles of the place of business of the bank. If a bank holding company controls a territorial bank, at least three-fourths (3/4) of the directors of the territorial bank shall be citizens of the United States and at least two-fifths (2/5) shall be residents of Guam. Each director shall have full record and beneficial ownership free of lien, encumbrance or repurchase agreement of common stock of the bank or of a bank holding company which controls such bank of an aggregate par value or aggregate market value of at least One Thousand Dollars (\$1,000.00). Any director who becomes disqualified shall forthwith resign his office but upon removal of such disqualification he shall be eligible for election. A director who is disqualified may be removed by the board of directors or by the Board. No action taken by a director prior to resignation or removal shall be subject to attack on the ground of disqualification.

(b) Directors shall receive such reasonable compensation as the by-laws may prescribe and shall serve until their successors are elected and qualified.

(c) Directors shall be elected by the stockholders at the first meeting and thereafter at the annual meeting or at a special meeting called for the purpose. If the charter provides for cumulative voting the votes of each share may be cast for one person or divided among two (2) or more, as the stockholder may choose. The person or persons having the largest number of votes shall be elected.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(d) The term of office of directors shall be one (1) year or, if the by-laws so provide, three (3) years, in which case one-third of the directors, or as nearly one-third as possible shall be elected for each year following the first election of directors. Vacancies at any one time to the number of one-third of the board may be filled by vote of the board of directors until the next meeting of the stockholders. The Commissioner may designate a director to fill a vacancy which has continued for longer than three (3) months and a director so designated shall serve until a successor is elected and has qualified.

(e) A director may be removed by the stockholders at a meeting. Where cumulative voting for directors is provided in the charter no director shall be removed unless the votes cast against a motion for his removal are less than the total number of shares outstanding divided by the number of authorized directors, but all of the directors shall be removed if a majority of the outstanding shares approves a motion for the removal of all.

(f) The officers designated by the by-laws shall be elected by the Board of Directors. A member of the Board of Directors shall be elected President. An officer may be removed by the Board of Directors at any time but removal shall not prejudice any rights that he may have to damage for breach of contract of employment.

(g) A bank shall report promptly to the Commissioner any changes among executive officers and directors, including in its report a statement of the business and professional affiliations of new executive officers and directors.

SOURCE: GC § 30513. Amended by P.L. 14-066:2. Subsection (a) R/R by P.L. 24-035:5 (May 29, 1997).

§ 106217. Directors; Meetings and Duties.

(a) The board of directors shall meet at least once every month. The Commissioner, a director or an executive officer may call a special meeting. A majority of the board of directors shall constitute a quorum. The board shall keep minutes of each meeting, including a record of attendance and of all votes cast by each director.

(b) The board of directors or an executive committee of not less than one-third of the board shall review at least monthly the following transactions occurring since the last review:

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(1) Each loan, advance, discount, overdraft and purchase or sale of a security which exceeds in amount one-tenth of 1% of the capital and surplus of the corporation, or Twenty-Five Thousand Dollars (\$25,000), whichever is larger.

(2) Every increase in loans, advances, discounts and overdrafts which exceed this amount or with the increase will exceed it and every purchase or sale of a security which, together with other such transactions in the security during the preceding two (2) months, involves such amount.

(c) The board of directors shall examine at least once in each calendar year at intervals of not more than fifteen (15) months, all the affairs of the territorial bank including the character and value of investments and loans, the efficiency of operating procedures and such other matters as the Commissioner prescribes. A report of the examination shall be submitted promptly to the Commissioner and shall embody such information as the Commissioner requires. The board of directors may provide that the examination shall be conducted by a committee of not less than three (3) directors of whom none is an officer of the territorial bank and may employ the services of persons not regularly employed by the bank.

(d) A territorial bank authorized to exercise trust powers shall not accept or voluntarily relinquish a fiduciary account without the approval or ratification of the board of directors or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptance or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than three (3) qualified officers or directors to supervise the investment of fiduciary funds. No such investment shall be made, retained or disposed of without the approval of a committee. At least once in every calendar year at intervals of not more than fifteen (15) months the committee shall review all the assets of each fiduciary account and shall determine their current value, safety and suitability and whether the investments should be modified or retained. The committee shall keep minutes of its meetings and shall report at each

monthly meeting of the board of directors its conclusions on all questions considered and all action taken since the previous meeting of the board.

SOURCE: GC § 30514.

§ 106218. Fidelity Bonds and Other Insurance.

(a) The directors of a territorial bank shall direct and require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be in individual, schedule or blanket form, and the premiums therefore may be paid by the bank.

(b) The said directors shall also direct and require suitable insurance protection to the bank against burglary, robbery, theft and other similar insurable hazards to which the bank may be exposed in the operations of its business on the premises or elsewhere.

(c) The directors shall be responsible for prescribing at least once in each year the amount of penal sum of such bonds or policies and the sureties or underwriters thereon, after giving due and careful consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors and thereafter be reported to the Commissioner and be subject to his approval.

SOURCE: GC § 30515.

§ 106219. Authority to Declare Dividends.

The board of directors of a territorial bank may declare dividends not more than once in each calendar quarter from undivided profits if:

(a) The undivided profits account has been maintained in accordance with the provisions of this Title.

(b) The reserve against deposits required by this Title is not and will not thereby be impaired.

SOURCE: GC § 30516.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106220. Capital, Surplus and Undivided Profits; Accounting Requirements.

(a) No credit shall be entered in the undivided profits account of a territorial bank founded upon an unrealized appreciation in the value of any type of asset. Before any net profits are credited to the undivided profits account, proper deduction shall be made for all expenditures, accrued expenses, accrued taxes, losses, bad debts and any write-offs or other deductions (including interest accrued and uncollected) required by the Commissioner.

(b) At the end of any accounting period a debit balance in the undivided profits account shall be charged to the surplus account, but no charge reducing the surplus account to less than 40% of the capital stock account shall be made without the prior written consent of the Commissioner; for the purpose of this sentence, the surplus account shall be considered the surplus remaining after the book value of the bank premises, and of the furniture and fixtures, and of any stock in a corporation owning the bank's premises, vaults, safe deposit boxes, and furniture and fixtures shall have been deducted from the capital stock account and any excess over such account shall have been deducted from the surplus account. No transfer shall be made from the surplus account to the undivided profits account or to any but the capital stock account if the surplus after the transfer would be less than the capital stock. Prior to determining that undivided profits are available for the declaration of dividends the following transfers shall be made:

(1) A net loss shall be deducted from the undivided profits account.

(2) There shall be transferred from the undivided profits account to the surplus account

(A) the amount required to raise the surplus to 40% of the capital stock; and

(B) an amount, not less than 10% of net profits, until, the surplus equals the capital stock.

SOURCE: GC § 30517.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (b)(2) were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106221. Deposit Insurance: Membership in Federal Reserve System.

A bank shall obtain insurance of its deposits by the United States or any agency thereof and may acquire and hold membership in the Federal Reserve System. The insurance provision of this Section shall not apply to deposits held by foreign banking corporations pursuant to § 106728 of this Code.

SOURCE: GC § 30518. Amended by P.L. 13-111:3.

§ 106222. Waivers: Corporate Action by Unanimously Signed Writing.

When a notice is required to be given to stockholders or directors under this Title, or the charter or by-laws of any territorial bank, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Whenever the vote of stockholders or directors at a meeting thereof is required or permitted to be taken in connection with any corporate action, by any section of this Title, the meeting and vote of stockholders or directors may be dispensed with, if all the stockholders or directors who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such corporate action being taken. In the event that the action which is consented to is such as would have required the filing of a certificate under any of the other sections of this Title, if such action had been voted upon by the stockholders or directors at a meeting thereof, the certificate filed under such other section shall state that written consent has been given hereunder, in lieu of stating that the stockholders have voted upon the corporate action in question, if such last mentioned statement is required thereby.

SOURCE: GC § 30519.

ARTICLE 3

**MERGER, CONSOLIDATION AND CONVERSION OF NATIONAL
AND TERRITORIAL BANKS AND TRUST COMPANIES**

- § 106301. Additional Definitions.
- § 106302. Resulting National Bank
- § 106303. Resulting Territorial Bank.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

- § 106304. Merger Procedure, Resulting Territorial Bank.
- § 106305. Merger; Approval by Stockholders of Territorial Banks.
- § 106306. Effective Date of Merger; Filing of Approved Agreement Certificate.
- § 106307. Conversion of National into Territorial Bank.
- § 106308. Continuation of Corporate Entity; Use of Old Name.
- § 106309. Dissenting Stockholders.
- § 106310. Trust Powers.
- § 106311. Nonconforming Assets or Business.
- § 106312. Book Value of Assets.

§ 106301. Additional Definitions.

As used in this Article, unless the context requires otherwise:

(a) Bank means a territorial or national bank. The singular bank includes the plural banks as the context warrants.

(b) Continuing bank means a merging bank the charter of which becomes the charter of the resulting bank.

(c) Converting bank means a bank converting from a territorial to a national bank, or the reverse.

(d) Merger includes consolidation.

(e) Merging bank means a party to a merger.

(f) National bank means a bank with a charter granted under the National Bank Act by the Office of the Comptroller of the Currency with its main office in Guam.

(g) Resulting bank means the bank resulting from a merger or conversion.

(h) Territorial bank means a bank or trust company chartered by this territory.

(i) Bank holding company has the meaning set forth in §100102 of this Title.

(j) Guam bank holding company means a bank holding company whose home state, as defined in § 106351, is Guam.

(k) Out-of-state bank holding company means a bank holding company whose state, as defined in Section 2(o)(4) of the Bank Holding Company Act of 1956, as amended, is not Guam.

(l) Guam bank has the meaning set forth in § 106351 of this Chapter.

SOURCE: GC § 30600. P.L. 24-035:6 (May 29, 1997) amended the introductory paragraph and subsection (6), and added subsections (9 - 12).

NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106302. Resulting National Bank. Conversion of Territorial Bank to National Bank.

Nothing in the laws of Guam shall restrict the rights of a territorial bank to convert into a resulting national bank. The action to be taken by such converting territorial bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the laws of the United States and not by the law of Guam, except that an affirmative vote of the holders of a simple majority of each class of voting stock of a territorial bank shall be required for such conversion, that upon conversion by a territorial bank into a national bank, the rights of dissenting shareholders shall be those specified in § 106309.

SOURCE: GC § 30601. R/R by P.L. 24-035:7 (May 29, 1997).

§ 106303. Resulting Territorial Bank.

Upon approval by the Commissioner, territorial banks may be merged to result in a territorial bank, a national bank with its main office in Guam may be merged with a territorial bank to result in a territorial bank, or a national bank having its main office in Guam may convert into a territorial bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the laws of the United States which shall also govern the rights of its dissenting stockholders.

SOURCE: GC § 30602. Amended by P.L. 24-035:8 (May 29, 1997).

§ 106304. Merger Procedure; Resulting Territorial Bank.

(a) The board of directors of each merging territorial bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

- (1) The name of each merging bank and location of each office.
- (2) With respect to the resulting bank:

11 GCA FINANCE & TAXATION
CH. 106 BANKS

- (A) its name and the location of the principal and of each additional office which shall not be at places other than pre-existing offices of any merging bank;
 - (B) the name and residence of each director to serve until the next annual meeting of the stockholders;
 - (C) the name and residence of each officer;
 - (D) the amount of capital, the number of shares and the par value of each share;
 - (E) whether preferred stock is to be issued and the amount, terms, and preferences;
 - (F) the designation of the continuing bank, the charter of which is to be the charter of the resulting bank, together with the amendments to the continuing charter and to the continuing by-laws.
- (3) Provisions governing the manner of converting the shares of the merging banks into shares of the resulting territorial bank.
- (4) A statement that the agreement is subject to approval by the Commissioner and by the stockholders of each merging bank.
- (5) Provisions governing the manner of disposing of the shares of the resulting territorial bank not taken by dissenting stockholders of merging banks.
- (6) Such other provisions as the Commissioner requires to enable it to discharge its duties with respect to the merger,
- (b) After approval by the board of directors of each merging territorial bank, the merger agreement shall be submitted to the Commissioner for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank.
 - (c) Within thirty days after receipt by the Commissioner of the papers specified in Subsection (a), the Commissioner shall approve or disapprove the merger agreement, and if no action is taken the agreement shall be deemed approved. The Commissioner shall approve the agreement if it appears that:

(1) The resulting territorial bank meets the requirements of Guam law as to the formation of a new territorial bank.

(2) The agreement provides an adequate capital structure, including surplus, in relation to the deposit liabilities of the resulting territorial bank and its other activities which are to continue or are to be undertaken.

(3) The agreement is fair.

(4) The merger is not contrary to the public interest.

(d) If the Commissioner disapproves an agreement, he shall state his objections and give an opportunity to the merging banks to amend the merger agreement to obviate such objections.

SOURCE: GC § 30603.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (a)(2) were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106305. Merger; Approval by Stockholders of Territorial Banks.

(a) To be effective, a merger which is to result in a territorial bank must be approved by the stockholders of each merging territorial bank by a vote of a simple majority of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and by-laws of the continuing territorial bank, including the amendments in the merger agreement, as the charter and by-laws of the resulting bank.

(b) Notice of the meeting of the stockholders shall be given by publication in a newspaper of general circulation in Guam, at least once a week for four successive weeks, and by mail, at least fifteen (15) days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank, who has not waived such notice in writing; no notice by publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of voting stock. The notice shall state that dissenting stockholders (other than those of the continuing bank) will be entitled to payment of the value of only those shares which are voted against approval of the plan.

SOURCE: GC § 30604. Subsection (a) amended by P.L. 24-035:9 (May 29, 1997).

§ 106306. Effective Date of Merger; Filing of Approved Government

Certificate of Merger as Evidence.

(a) A merger which is to result in a territorial bank shall, unless a later date is specified in the agreement, become effective upon the filing with the Commissioner of the executed agreement together with copies of the resolutions of the stockholders of each merging territorial bank approving it. The charters of the merging banks, other than the continuing bank, shall thereupon automatically terminate.

(b) The Commissioner shall thereupon issue to the resulting bank a certificate of merger, which shall constitute a continuing charter, specifying the name of each merging bank and the name of the resulting territorial bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging banks is held.

SOURCE: GC § 30605. Subsection (a) amended by P.L. 24-035:10 (May 29, 1997).

§ 106307. Conversion of National into Territorial Bank.

(a) Except as provided in § 106310, a national bank located in Guam which follows the procedure prescribed by the laws of the United States to convert into a territorial bank, may be granted a charter by the Commissioner if the Commissioner finds that each office of the national bank is legally in operation, that the resulting territorial bank will have an adequate capital structure, including surplus, in relation to its deposit liabilities and its other activities, not less than the capital structure required for a new territorial bank and that the officers and directors of the resulting bank are persons of sound judgment and discretion.

(b) The national bank may apply for such charter by filing with the Commissioner

(1) a certificate signed by its president and cashier, and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of a national to a territorial bank, and

(2) the plan of conversion and the proposed articles of incorporation approved by the stockholders, for the operation of the bank as a territorial bank.

SOURCE: GC § 30606.

§ 106308. Continuation of Corporate Entity; Use of Old Name.

(a) A resulting territorial or national bank shall be considered the same business and corporate entity as each merging territorial bank or as the converting territorial bank with all the property, rights, powers, duties and obligations of each merging bank or the converting bank, except as affected by Guam law in the case of a resulting territorial bank or the Federal law in the case of a resulting national bank, and by the charter and by-laws of the resulting bank.

(b) A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it deems it more convenient to do so.

(c) Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of such writing.

SOURCE: GC § 30607. Subsection (a) amended by P.L. 24-035:11 (May 29, 1997).

§ 106309. Dissenting Stockholders.

(a) The owner of shares of a territorial bank, (other than the continuing bank) which were voted against a merger to result in a territorial bank, or against the conversion of a territorial bank into a national bank, shall be entitled to receive their value in cash, if and when the merger or conversion becomes effective, upon written demand, made to the resulting territorial or national bank at any time within thirty (30) days after the effective date of the merger or conversion accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the stockholder's meeting approving the merger or conversion, by three appraisers, one to be selected by the owners of two-thirds of the shares involved, one by the board of directors of the resulting territorial or national bank, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not complete within ninety (90) days after the merger or conversion becomes effective the Board shall cause an appraisal to be made.

(b) The expenses of appraisal shall be paid by the resulting bank.

(c) The resulting territorial or national bank may fix an amount which it considers to be not more than the fair market value of the shares of a merging or the converting bank at the time of the stock-holder's meeting approving the merger or conversion which it will pay dissenting shareholders of that bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting territorial or national bank.

SOURCE: GC § 30608.

§ 106310. Trust Powers.

Where a resulting territorial bank is not to exercise trust powers, the Commissioner shall not approve a merger or conversion until satisfied that adequate provision has been made for successors to fiduciary positions held by the merging banks or the converting bank.

SOURCE: GC § 30609.

§ 106311. Nonconforming Assets or Business.

If a merging or converting bank has assets which do not conform to the requirements of Guam law for the resulting territorial bank or carries on business activities which are not permitted for the resulting territorial bank, the Commissioner may permit a reasonable time to conform with Guam law.

SOURCE: GC § 30610.

§ 106312. Book Value of Assets.

Without approval by the Commissioner, no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of a merging or converting territorial bank at the time of its last examination by a territorial or national bank examiner before the effective date of the merger or conversion.

SOURCE: GC § 30611. Amended by P.L. 24-035:12 (May 29, 1997).

§ 106313. Bank Holding Company Formation and Acquisition.

(a) In order to facilitate the acquisition of a territorial bank, a bank holding company or a company, which upon the acquisition of such territorial bank would become a bank holding company, may establish a wholly owned, non-banking subsidiary corporation especially for such purpose and merge such subsidiary with and into the territorial bank with the effect that the territorial bank shall become a subsidiary of the bank

11 GCA FINANCE & TAXATION
CH. 106 BANKS

holding company and the territorial bank shall be deemed to be a continuing bank for purposes of this Article. Any merger provided for in this Section may only be consummated after such merger has been approved by the affirmative vote of the holders of a simple majority of each class of voting stock of the territorial bank as provided in § 106305 of this Article as if such merger was the merger of two (2) territorial banks. The rights of dissenting shareholders of the territorial bank in any such merger shall be those specified in § 106309 of this Article. Sections 106306 and 106308 of this Article shall also apply to any merger provided for in this Section as if any such merger was the merger of two (2) territorial banks. The acquisition of a territorial bank by a bank holding company, including an out-of-state bank holding company, or by a company which after such acquisition will be a bank holding company, shall not affect the property, rights and powers of such territorial bank under the laws of Guam.

(b)(1) An acquisition by an out-of-state bank holding company of a Guam bank shall not be permitted under this Article unless the Guam bank shall have been in continuous operation as a Guam bank, on the date of such acquisition, for a period of at least five (5) years.

(2) The Commissioner may waive the restriction in Paragraph (1) in the case of a Guam bank that

(A) has been determined by a Federal bank supervisory agency to be in default or in danger of default, or

(B) is to be acquired by an out-of-state bank holding company with assistance under Section 13(c) of the Federal Deposit Insurance Act.

(c) There shall be no limit under Guam law on the percentage of the total amount of deposits in insured depository institutions in Guam that may be held or controlled by an out-of-state bank holding company, including all insured depository institutions that are its affiliates, as a result of the acquisition by such company of a Guam bank or a Guam bank holding company.

SOURCE: Added by P.L. 24-035:13 (May 29, 1997).

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (a)(2) were altered to adhere to the Compiler's alpha-numeric scheme.

ARTICLE 3.5
INTERSTATE BRANCHING AND BANK MERGERS

- § 106350. Elections.
- § 106351. Definitions.
- § 106352. Prohibition on Interstate Merger Transactions.
- § 106353. Provisions Governing Interstate Merger Transactions Once Authorized.
- § 106354. Authority of Territorial Banks to Establish a De Novo Branch or Acquire a Branch Outside Guam.
- § 106355. Prohibition of Out-of-State Banks to Establish De Novo Interstate Branch.
- § 106356. Powers; Principal Guam Office.
- § 106357. Examinations; Periodic Reports; Cooperative Agreements; Assessment of Fees.
- § 106358. Enforcement.
- § 106359. Notice of Subsequent Merger, Etc.

SOURCE: This entire Article 3.5 was added by P.L. 24-035:14 (May 29, 1997).

§ 106350. Elections.

This Article constitutes:

(a) An election to prohibit interstate merger transactions pursuant to Section 44(a)(2) of the Federal Deposit Insurance Act until June 1, 2001;

(b) An election to prohibit interstate branching through the acquisition of a branch of a territorial bank in Guam pursuant to Section 44(a)(4) of the Federal Deposit Insurance Act; and

(c) An election to prohibit interstate branching through de novo establishment of a branch in Guam pursuant to Section 5155 of the Revised Statutes or Section 18(d) of the Federal Deposit Insurance Act.

§ 106351. Definitions.

As used in this Article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(a) Acquisition of a branch means the acquisition of a branch located in a host state, without engaging in an “interstate merger transaction” as defined in this Article.

(b) Bank means an “insured bank” as defined in 12 U.S.C. Section 1813(h); provided that the term “bank” shall not include any “foreign bank” as defined in 12 U.S.C. section 3101(7), except that the term “bank” shall include any foreign bank organized under the laws of a territory of the United States, including Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(c) Bank holding company has the meaning set forth in §100102 of this Title.

(d) Bank supervisory agency means:

(1) Any agency of a state with primary responsibility for chartering and supervising banks; and

(2) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System and any successor to these agencies.

(e) Branch has the meaning set forth in § 106601 of this Chapter.

(f) Control has the meaning set forth in §100102 of this Title.

(g) De novo branch means a branch of a bank located in a host state which:

(1) Is originally established by the bank as a branch; and

(2) Does not become a branch as a result of

(A) the acquisition of another bank or branch of another bank, or

(B) the merger, consolidation or conversion involving any bank or branch.

(h) Guam bank means a bank whose home state is Guam.

(i) Home state means:

11 GCA FINANCE & TAXATION
CH. 106 BANKS

- (1) With respect to a state bank, the state by which the bank is chartered; and
- (2) With respect to a national bank, the state in which the main office of the bank is located.
- (j) Home state regulator means, with respect to an out-of-state bank, the bank supervisory agency of the state in which the bank is chartered.
- (k) Host state means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.
- (l) Interstate merger transaction means:
- (1) The merger or consolidation of banks with different home states, including the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or
- (2) The purchase of all or substantially all of the assets (including all or substantially all of the branches) of a bank whose home state is different from the home state of the acquiring bank.
- (m) Out-of-state bank means a bank whose home state is a state other than Guam.
- (n) Out-of-state state bank means a bank chartered under the laws of any state other than Guam.
- (o) Resulting bank means a bank that has resulted from an interstate merger transaction under this Article.
- (p) State, whenever this word is used in its uncapitalized form, means any state of the United States, the District of Columbia, and any territory of the United States, including Puerto Rico, American Samoa, Guam and the U.S. Virgin Islands.
- (q) Substantially all means, with respect to the total assets or the total number of branches of a bank, at least ninety percent (90%).
- (r) Territorial bank has the meaning set forth in §100102 of this Title.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, subsection designations were added/alterd to adhere to the Compiler's alpha-numeric scheme.

§ 106352. Prohibition on Interstate Merger Transactions.

Pursuant to Section 44(a)(2) of the Federal Deposit Insurance Act, no Guam bank may engage in a merger transaction involving an out-of-state bank. This provision shall become inapplicable and merger transactions involving Guam banks and out-of-state banks shall be permitted on and after June 1, 2001.

§ 106353. Provisions Governing Interstate Merger Transactions Once Authorized.

(a) Immediately upon the authorization of interstate merger transactions in Guam, one (1) or more Guam banks may enter into an interstate merger transaction with one (1) or more out-of-state banks under this Article, and an out-of-state bank resulting from the transaction may maintain and operate the branches in Guam of a Guam bank that participated in the transaction, if the conditions and filing requirements of subsections (b) and (c) of this Section are met.

(b) The following conditions shall apply to any merger between a Guam bank and an out-of-state bank:

(1) An interstate merger transaction resulting in the acquisition by an out-of-state bank of a Guam bank, or of all or substantially all of the branches of a Guam bank, shall not be permitted under this Article unless the Guam bank shall have been in continuous operation as a Guam bank, on the date of such acquisition, for a period of at least five (5) years.

(2) For the purposes of Paragraph (1), a Guam bank chartered solely for the purpose of acquiring another Guam bank is considered to have been in existence for the same period as the Guam bank to be acquired, so long as it does not open for business at any time before acquisition.

(3) The Commissioner may waive the restriction in Paragraph (1) in the case of a Guam bank that

(A) has been determined by a federal bank supervisory agency to be default or in danger of default, or

(B) is to be acquired in an interstate merger transaction involving assistance under Section 13(c) of the Federal Deposit Insurance Act.

(4) There shall be no limit under Guam law on the percentage of the total amount of deposits in insured depository institutions in Guam that may be held or controlled by an out-of-state bank, including all insured depository institutions that are its affiliates, as a result of an interstate merger transaction by such out-of-state bank with a Guam bank.

(c) Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Guam bank shall notify the Commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal supervisory agency, and shall submit a copy of that application to the Commissioner and pay such filing fees as the Commissioner may establish by rule. The filing fees shall be non-refundable. Any territorial bank which is a party to an interstate merger transaction shall comply with Article 3 of this Chapter to the extent applicable, including § 106309 thereof, and with other applicable laws. If the resulting bank in the interstate merger transaction is an out-of-state bank, the Commissioner shall not accept for filing the agreement of merger pursuant to § 106306 of this Chapter until the out-of-state bank has filed a confirmation in writing of compliance with this Section. If the resulting bank in the interstate merger transaction is an out-of-state bank which is a national bank, the resulting bank shall file with the Commissioner a confirmation in writing of compliance with this Section.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (b)(3) were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106354. Authority of Territorial Banks to Establish a De Novo Branch or Acquire a Branch Outside Guam.

(a) With the prior approval of the Commissioner, any territorial bank may establish and operate a de novo branch or acquire and operate a branch outside Guam, including in another state.

(b) A territorial bank desiring to establish and operate a de novo branch or acquire and operate a branch under this Section shall comply with, and the application shall be processed in accordance with § 106601 of this Chapter. In acting on the application, the Commissioner shall

consider the views of the appropriate bank supervisory agencies. The applicant territorial bank may establish and operate the branch when it has received the written approval of the Commissioner.

§ 106355. Prohibition of Out-of-State Banks to Establish De Novo Interstate Branch.

(a) An out-of-state bank that does not operate a branch in Guam acquired through an interstate merger transaction under this Title may not establish and operate a de novo branch in Guam.

(b) An out-of-state bank that does not operate a branch in Guam acquired through an interstate merger transaction under this Title may not establish and operate a branch in Guam through the acquisition of a branch.

(c) Notwithstanding Subsection (b), the Commissioner may approve the acquisition of a branch by an out-of-state bank in the case of a Guam bank that has been determined by a Federal bank supervisory agency to be in default or in danger of default.

§ 106356. Powers; Principal Guam Office.

(a) An out-of-state bank which establishes or operates a branch in Guam under this Title may conduct any activities at the branch in Guam that are authorized under the laws of Guam for territorial banks.

(b) An out-of-state bank that has acquired a branch in Guam in an interstate merger transaction pursuant to this Article may establish or acquire additional branches or other places of business in Guam as authorized pursuant to Article 6 of this Division to the same extent that any territorial bank may establish or acquire a branch or other places of business in Guam under applicable Federal and state law.

(c) If an out-of-state bank operates two (2) or more branches in Guam, the out-of-state bank shall designate one (1) of its branches as its principal office in Guam.

§ 106357. Examinations; Periodic Reports; Cooperative Agreements; Assessment of Fees.

(a) To the extent consistent with Subsection (c), the Commissioner may examine any branch established and maintained in Guam by an out-of-state bank as the Commissioner deems necessary to determine whether the branch is being operated in compliance with the laws of Guam and in accordance with safe and sound banking practices. Sections

11 GCA FINANCE & TAXATION
CH. 106 BANKS

103105 and 103106 shall apply to the examinations of the out-of-state banks in the same manner as to the examinations of territorial banks.

(b) The Commissioner may require periodic reports regarding any out-of-state bank that operates a branch in Guam. The required reports shall be provided by the bank or bank supervisory agency having primary responsibility for the bank. Any reporting requirements prescribed by the Commissioner under this Subsection shall be (1) consistent with the reporting requirements applicable to territorial banks and (2) appropriate for the purpose of enabling the Commissioner to carry out the Commissioner's responsibilities under this Title.

(c) The Commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Guam of an out-of-state bank, or any branch of a territorial bank in any host state, and the Commissioner may accept the parties' reports of examination and reports of investigation in lieu of conducting the Commissioner's own examinations or investigations.

(d) The Commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a territorial bank or an out-of-state state bank operating a branch in Guam to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of compensation.

(e) The Commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Guam of an out-of-state bank or any branch of a territorial bank in any host state; provided that the Commissioner at any time may take action independently if the Commissioner deems the action to be necessary or appropriate to carry out the Commissioner's responsibilities under this Title or to ensure compliance with the laws of Guam; provided further that, in the case of an out-of-state bank, the Commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state bank that maintains one (1) or more branches in Guam may be assessed and, if assessed, shall pay supervisory, examination, and other fees in accordance with the laws of Guam and rules of the Commissioner. The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between the parties and the Commissioner.

§ 106358. Enforcement.

If the Commissioner determines that a branch maintained by an out-of-state state bank in Guam is being operated in violation of any provision of the laws of Guam, or that the branch is being operated in an unsafe and unsound manner, the Commissioner may take all enforcement actions as the Commissioner could take if the branch were a territorial bank; provided that the Commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

§ 106359. Notice of Subsequent Merger, Etc.

Each out-of-state bank that operates a branch in Guam, or the home state regulator of the bank, shall give at least thirty (30) day's prior written notice (or, in the case of an emergency transaction, shorter notice as is consistent with applicable state or Federal law) to the Commissioner of any merger, consolidation, or other transaction that would cause a change of control with respect to the out-of-state bank or any bank holding company that controls the bank, with the result that an application would be required to be filed pursuant to the Bank Merger Act, as amended, the Change in Bank Control Act of 1978, as amended, or the Bank holding Company Act of 1956, as amended, or any successor statutes thereto.

ARTICLE 4
LIQUIDATION, DISSOLUTION AND REORGANIZATION

SOURCE: Article 4 added by P.L. 11-129 (Apr. 10, 1972).

§ 106401. Voluntary Liquidation and Dissolution.

- § 106402. Commissioner in Possession.
- § 106403. Requirements of Reorganization Plan.
- § 106404. Liquidation by Commissioner.

§ 106401. Voluntary Liquidation and Dissolution.

(a) With the approval of the Commissioner, a territorial bank may liquidate and dissolve. The Commissioner shall grant such approval if it appears that:

(1) The proposal to liquidate and dissolve has been approved by a vote of two-thirds of the outstanding voting stock at a meeting called for the purpose of considering such action.

(2) The territorial bank is solvent and has sufficient liquid assets to pay off depositors and creditors immediately.

(b) Upon approval by the Commissioner, the bank shall forthwith cease to do business, shall have only the powers necessary to effect an orderly liquidation and shall proceed to pay its depositors and creditors and to wind up its affairs.

(c) Within thirty (30) days of the approval, a notice of liquidation shall be sent by mail to each depositor, creditor, person interested in funds held as a fiduciary, lessee of a safe deposit box or bailor of property. The notice shall be posted conspicuously on the premises of the bank and shall be given such publication as the Commissioner may require. The bank shall send with the notice a statement of the amount on the books to be the claim of the depositor or creditor. The notice shall demand that property held by the bank as bailee or in a safe deposit box be withdrawn by the person entitled thereto and that claims of depositors and creditors, if the amount claimed differs from that stated in the notice to be due, be filed with the bank before a specified date not earlier than sixty (60) days thereafter in accordance with the procedure prescribed in the notice.

(d) As soon after approval as may be practicable the territorial bank shall resign all fiduciary positions and take such action as may be necessary to settle its fiduciary positions and take such action as may be necessary to settle its fiduciary accounts.

(e) Safe deposit boxes the contents of which have not been removed within sixty (60) days after demand shall be opened and the contents dealt with in the manner provided for boxes upon which the payment of

rental is in default and the sealed packages containing the contents and the certificates together with any other unclaimed property held by the bank as bailee and certified inventories thereof shall be transferred to the Commissioner who shall retain it for two (2) years unless sooner claimed by the person entitled to it. After two (2) years the Commissioner shall sell or otherwise appropriately dispose of the property. The proceeds of any sale shall be transferred to the Treasurer of Guam as abandoned funds.

(f) The approval of an application for liquidation shall not impair any right of a depositor or creditor to payment in full and all lawful claims of creditors and depositors shall promptly be paid. The unearned portion of the rental of a safe deposit box shall be returned to the lessee.

(g) Any assets remaining after the discharge of all obligations shall be distributed to the stockholders in accordance with their respective interests. No such distribution shall be made before

(1) all claims of depositors and creditors have been paid or, in the case of any disputed claim, the bank has transmitted to the Commissioner a sum adequate to meet any liability that may be judicially determined and

(2) any funds payable to a depositor or creditor and unclaimed have been transmitted to the Commissioner.

(h) Any unclaimed distribution to a stockholder or depositor shall be held until ninety (90) days after the final distribution and then transmitted to the Commissioner. Such unclaimed funds shall be held by the Commissioner for five (5) years and, unless sooner claimed by the person entitled thereto, shall be transferred to the Treasurer of Guam as abandoned funds.

(i) If the Commissioner finds that the assets will be insufficient for the full discharge of all obligations or that completion of the liquidation has been unduly delayed, he may take possession and complete the liquidation in the manner provided in this Title for involuntary liquidations.

(j) The Commissioner may require reports of the progress of liquidation and whenever he is satisfied that the liquidation has been properly completed he shall cancel the charter and enter an order of dissolution.

SOURCE: GC § 30700.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

2013 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters were altered in subsection (g)(2) to adhere to the Compiler's general codification scheme.

§ 106402. Commissioner in Possession.

(a) The Commissioner may take possession of a territorial bank if, after a hearing, he 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.

(4) Its examination has been obstructed or impeded.

(b) The Commissioner shall take possession by posting upon the premises a notice reciting that he is assuming possession pursuant to this Title and the time, not earlier than the posting of the notice, when his possession shall be deemed to commence. A copy of the notice shall be filed in the District Court of Guam. The Commissioner shall notify the Federal Reserve Bank of the district of taking possession of any territorial bank which is a member of the Federal Reserve System.

(c) When the Commissioner has taken possession of a territorial bank he 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 instrument in the name of the bank, to commence, defend and conduct in its name any action or proceeding in which it may be a party, to terminate his possession by restoring the bank to its board of directors and to reorganize or liquidate the bank in accordance with this Title. As soon as practicable after taking possession the Commissioner shall make an inventory of the assets and file a copy thereof with the 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 bank, or upon which an appeal must be taken or a pleading or other document must be filed by the bank in any pending action or proceeding.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(e) If, in the opinion of the Commissioner, an emergency exists which will result in serious losses to the depositors, he may take possession of a territorial bank without a prior hearing. Within ten (10) days after the Commissioner has taken possession any interested party may file an application with the Board for an order vacating such possession. The Board shall grant the application if it finds that the action of the Commissioner was unauthorized under this Title.

(f) If the Commissioner shall determine to liquidate the territorial bank, he shall give such notice of his determination to the directors, stockholders, depositors and creditors as the Board may prescribe. Any objection to the liquidation shall be filed with the Board within thirty (30) days after such notice. Unless within thirty (30) days thereafter the Board issues an order staying the liquidation, the Commissioner shall proceed to liquidate the institution.

(g) If the Commissioner determines to reorganize the territorial bank, or the Board after staying its liquidation, orders such reorganization, the Commissioner, after according a hearing to all interested parties, shall enter an order proposing a reorganization plan. A copy of the plan shall be sent to each depositor and creditor who will not receive payment of his claim in full under the plan together with notice that unless within thirty (30) days the plan is disapproved in writing by persons holding one-third 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 territorial bank 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 an attorney's or mechanic's lien, obtained upon any asset of the territorial bank 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.

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

(i) With the approval of the Board, the Commissioner may borrow money in the name of the territorial bank and may pledge its assets as security for the loan.

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

SOURCE: GC § 30701.

§ 106403. Requirements of Reorganization Plan.

(a) A plan of reorganization shall not be prescribed under this Title unless:

(1) The plan is feasible and fair to all classes of depositors, creditors and stockholders.

(2) The face amount of the interest accorded to any class of depositors, creditors or stockholders under the plan does not exceed the value of the assets upon liquidation less the 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 deposits.

(4) Any exchange of new common stock for obligations or stock of the bank will be effected in inverse order to the priorities in liquidation of the classes that will retain an interest in the bank and upon terms that fairly adjust any change in the relative interests of the respective classes that will be produced by the exchange.

(5) 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.

(6) Any merger or consolidation provided by the plan conforms to the requirements of this Title.

(b) Whenever in the course of 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 upon appropriate notice.

SOURCE: GC § 30702.

§ 106404. Liquidation by Commissioner.

(a) In liquidating a territorial bank the Commissioner may exercise any power thereof but he shall not, without the approval of the District Court of Guam:

(1) Sell any asset of the organization having a value in excess of One Thousand Dollars (\$1,000).

(2) Compromise or release any claim if the amount of the claim exceeds Five Hundred Dollars (\$500), exclusive of interest.

(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 his determinations in accordance with this Title.

(b) Within six (6) months of the commencement of liquidation, the Commissioner may by his election terminate any executory contract for services or advertising to which the territorial bank is a party or any obligation of the bank 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 territorial bank and take such action as may be necessary to surrender all property held by the bank as a fiduciary and to settle its fiduciary accounts.

(d) The right of any agency of the United States insuring deposits to be subrogated to the rights of depositors upon payment of their claim shall not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payment.

(e) As soon after the commencement of liquidation as practicable the Commissioner shall send notice of the liquidation to each known depositor, creditor and lessee of a safe deposit box or bailor of property held by the bank at the address shown on the books of the institution. The notice shall also be published in a newspaper of general circulation in 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 institution to be the claim of the depositor or creditor. The notice shall demand that property held by the bank as bailee or in a safe deposit

box be withdrawn by the person entitled thereto and that claims of depositors and creditors, if the amount claimed differs from that stated in 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.

(f) Safe deposit boxes the contents of which have not been removed before the date specified shall be opened by the Commissioner in the manner provided for boxes upon which the payment of rental is in default and the sealed packages containing the contents and the certificates together with any unclaimed property held by the bank as bailee and certified inventories thereof shall be held by the Commissioner for two (2) years unless sooner claimed by the person entitled thereto. After two (2) years the Commissioner may sell or otherwise appropriately dispose of the property. The proceeds of a sale shall be transferred to the Treasurer of Guam as abandoned funds.

(g) 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 court in which notice of possession has been filed, the Commissioner shall:

- (1) Reject any claim if he doubts the validity thereof.
- (2) Determine the amount, if any, owing to each known creditor or depositor and the priority class of his claim under this Title.
- (3) Prepare a schedule of his determinations for filing in the court in which notice of possession was filed.
- (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 (39) days thereafter, when the Commissioner will file his schedule in court.

(h) Within thirty (30) days after the filing of the Commissioner's schedule, any creditor, depositor 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

11 GCA FINANCE & TAXATION
CH. 106 BANKS

schedule. After filing his 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 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.

(i) The following claims shall have priority.

(1) obligations incurred by the Commissioner;

(2) wages and salaries of officers and employees earned during the four month period preceding the Commissioner's possession in an amount not exceeding Three Thousand Dollars (\$3,000) for any one person;

(3) fees and assessments due to the division;

(4) deposits to the extent of Ten Dollars (\$10) for each depositor.

(j) After the payment of all other claims with Interest at the maximum rate permitted by the Board on time deposits, 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.

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

(1) Unclaimed funds remaining after completion of the liquidation shall be retained for five (5) 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.

(m) When the assets have been distributed in accordance with this Title, the Commissioner shall file an account with the court. Upon approval thereof, the Commissioner shall be relieved of liability in connection with the liquidation and the charter shall be canceled.

SOURCE: GC § 30703.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters in subsection (i) were altered to adhere to the Compiler's alpha-numeric scheme.

ARTICLE 5
PROHIBITED PRACTICES, SANCTIONS

- § 106501. Unauthorized Conduct of Banking Business.
- § 106502. Unauthorized Assumption of Liability.
- § 106503. Receipt of Deposit While Solvent.
- § 106504. Unauthorized Dealing in Securities.
- § 106505. Unlawful Service as Officer, or Director.
- § 106506. Unlawful Gratuity or Compensation.
- § 106507. Unlawful Concealment of Transactions.
- § 106508. Improper Maintenance of Accounts.
- § 106509. Unlawful Payment of Penalties and Judgments.
- § 106510. Unlawful Use of Words Safe Deposit.
- § 106511. Unlawful Operation of Off-Shore Lending Facility.
- § 106512. Unlawful Solicitation or Negotiation for Off-Shore Lending Facility Loans.
- § 106513. Criminal sanctions, Violations of Rules and Orders.
- § 106514. Injunctions.

§ 106501. Unauthorized Conduct of Banking Business.

It shall be unlawful for any unauthorized person to engage in the business of receiving deposits, discounting evidences of indebtedness or receiving money for transmission, to represent that he is or is acting for a bank or to use an artificial or corporate name which purports to be or suggests that it is the name of a bank.

SOURCE: GC § 30800.

§ 106502. Unauthorized Assumption of Liability.

Except as expressly permitted in this Title, a territorial bank shall not assume liability as an insurer or as a guarantor or indorser of any security instrument or obligation in which or with respect to which it has no property interest.

SOURCE: GC § 30801.

§ 106503. Receipt of Deposits While Insolvent.

It shall be unlawful for a bank to receive any deposit while insolvent or for an officer, director or employee who knows or, in the proper performance of his duty, should know of such insolvency to receive or authorize the receipt of such deposit.

SOURCE: GC § 30802.

§ 106504. Unlawful Service as Officer, or Director.

It shall be unlawful for any person to serve as an officer or director of a bank who:

(a) Is an officer, director or employee of a directly competitive bank.

(b) Has been convicted of an offense constituting in the jurisdiction in which the judgment was rendered a violation of the banking laws, a felony having as one of its necessary elements a fraudulent act or an act of dishonesty in the solicitation of, acceptance, custody, or payment of money or property or a breach of trust.

(c) Is indebted to the bank for more than thirty (30) days upon a judgment that has become final.

(d) Has an interest adverse to the bank unless such interest is promptly and fully disclosed in writing to its board of directors or trustees.

SOURCE: GC § 30804. Subsection (2) amended by P.L. 13-187:196. P.L. 23-127:2 renumbered this section from § 106505 to § 106504. Original § 106504 (GC § 30803) was repealed by P.L. 23-127:2 and subsequent sections were renumbered accordingly.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106505. Unlawful Gratuity or Compensation; Transactions of Persons Connected with Territorial Bank.

(a) It shall be unlawful for an affiliate of a bank or for an officer, director or employee of a bank or affiliate of a bank:

(1) To solicit, accept or agree to accept, directly or indirectly, from any person other than the institution any gratuity, compensation or other personal benefit for any action taken by the institution or for endeavoring to procure any such action.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(2) To have any interest, directly or indirectly, in the proceeds of a loan or of a purchase or sale made by the bank, unless such loan, purchase or sale is expressly authorized by this Title or by rule of the Board and is approved in advance by vote of two-thirds of all the directors of the bank, any interested director or trustee taking no part in such vote.

(3) To have any interest, direct or indirect, in the purchase at less than its face value of any evidence of indebtedness issued by the institution.

(4) To discount or make any loan, directly or indirectly, upon any note or other evidence of indebtedness known to have been offered to the institution for discount or as security for a loan and to have been refused by it.

(b) In this section and § 106504 the term affiliate shall include:

(1) Any person who holds a majority of the stock of a bank or has been determined by the Board to hold a controlling interest therein, any other corporation in which such person owns a majority of the stock and any partnership in which he has an interest.

(2) Any corporation in which the institution or an officer, director or employee thereof holds a majority of the stock and any partnership in which such person has an interest.

(3) Any corporation of which a majority of the directors are officers, directors or employees of the institution or of which officers, directors, trustees or employees constitute a majority of the directors of the institution.

SOURCE: GC § 30805. P.L. 23-127:2 renumbered this section from § 106506 to § 106505.

§ 106506. Unlawful Concealment of Transactions.

It shall be unlawful for an officer, director, employee, attorney or agent of a bank to conceal or endeavor to conceal any transaction of the bank from any officer, director or employee of the bank or any official or employee of the Division to whom it should properly be disclosed.

SOURCE: GC § 30806. P.L. 23-127:2 renumbered this section from § 106507 to § 106506.

§ 106507. Improper Maintenance of Accounts; False or Deceptive Entries and Statements.

It shall be unlawful for an officer, director, employee or agent of a bank:

(a) To maintain or authorize the maintenance of any account of the bank in a manner which, to his knowledge, does not conform to the requirements prescribed by this Title or by the Commissioner or the Board.

(b) With intent to deceive, to make any false or misleading statement or entry or omit any statement or entry that should be made in any book, account, report or statement of the institution.

(c) To obstruct or endeavor to obstruct a lawful examination of the institution by an officer or employee of the Division.

SOURCE: GC § 30807. P.L. 23-127:2 renumbered this section from § 106508 to § 106507.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106508. Unlawful Payment of Penalties and Judgments Against Others, Including Directors and Officers.

It shall be unlawful for a territorial bank to pay a fine or penalty imposed by law upon any other person or any judgment against such person or to reimburse directly or indirectly any person by whom such fine, penalty or judgment has been paid, except in settlement of its own liability or in connection with the acquisition of property against which such judgment is a lien, or as provided in § 106212.

SOURCE: GC § 30808. P.L. 23-127:2 renumbered this section from § 106509 to § 106508.

§ 106509. Unlawful Use of Words Safe Deposit.

It is a criminal offense against this Title for any person to use the words safe deposit, safety deposit or other words deceptively similar thereto, in connection with the rental of storage space, or in the title or name under which business was done, except

- (a) a person subject to the jurisdiction of the Division; or
- (b) a manufacturer or dealer in safe deposit facilities equipment; or

(c) an association, the membership of which is composed of officers or institutions subject to jurisdiction of the Division or of the banking department of other territories or states.

SOURCE: GC § 30809. P.L. 23-127:2 renumbered this section from § 106510 to § 106509.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

§ 106510. Unlawful Operation of Off-Shore Lending Facility.

It shall be unlawful for any person to operate on Guam on Off-Shore Lending Facility, as defined in § 106604(a) of this Title, without the express written authorization of the Banking and Insurance Board issued pursuant to § 106604(b) of this Title.

SOURCE: GC § 30809.1. Added by P.L. 15-011:1. P.L. 23-127:2 renumbered this section from § 106511 to § 106510.

NOTE: References to the "Banking Board" changed to "Banking and Insurance Board" pursuant to P.L. 27-088:10 (May 6, 2004).

§ 106511. Unlawful Solicitation or Negotiation for Off-Shore Lending Facility Loans.

It shall be unlawful for any person who is an officer, employee or agent in Guam of any bank operating in Guam an Off-Shore Lending Facility, as defined in § 106604(a) of this Title, to actively solicit or negotiate with any person for a loan with that Off-Shore Lending Facility.

SOURCE: GC § 30809.2. Added by P.L. 15-011:2. P.L. 23-127:2 renumbered this section from § 106512 to § 106511.

§ 106512. Criminal Sanctions, Violations of Rules and Orders.

(a) Any corporate entity responsible for an act or omission expressly declared to be a criminal offense by this Act shall be guilty:

(1) Of a misdemeanor punishable by a fine not exceeding Fifty Thousand Dollars (\$50,000).

(2) If the act or omission was intended to defraud, of a felony punishable by fine not exceeding One Hundred Thousand Dollar (\$100,000).

(b) Violation of this Act by an individual shall be a misdemeanor if the amount involved is less than One Thousand Dollars (\$1,000.00).

11 GCA FINANCE & TAXATION
CH. 106 BANKS

Violation where the sum involved exceeds One Thousand Dollars (\$1,000.00) shall be a felony.

(c) An officer, director, employee, agent or attorney of a bank shall be responsible for an act or omission of the institution declared to be a criminal offense against this Title whenever, knowing that such act or omission is unlawful, he participates in authorizing, executing, ratifying or concealing such act, or in authorizing or ratifying such omission or, having a duty to take the required action, omits to do so.

A director shall be deemed to participate in any action of which he has knowledge taken or omitted to be taken by the board of which he is a member unless he dissents therefrom in writing and promptly notifies the Commissioner of his dissent.

(d) It shall be a criminal offense against this Title to violate any lawful order of the Board or of the Commissioner, served upon it, or knowingly violate any lawful rule, regulation or order of the Board.

(e) Unless otherwise provided in this Title, it shall be no defense to a criminal prosecution hereunder that the defendant did not know the facts establishing the criminal character of the act or omission charged if he could and should have known such facts in the proper performance of his duty.

SOURCE: GC § 30810. Subsection (b) amended by P.L. 13-187:197. P.L. 22-127:2 renumbered this section from § 106513 to § 106512.

§ 106513. Injunction.

Whenever a violation of this Title by a bank or an officer, director or employee thereof is threatened or impending and will cause substantial injury to the institution or to the depositors, creditors, or stockholders thereof, the District Court of Guam shall, upon suit instituted by the Commissioner, issue an injunction restraining such violation.

SOURCE: GC § 30811. P.L. 23-127:2 renumbered this section from § 106504 to § 106513.

ARTICLE 6
BRANCH BANKS, & INTERNATIONAL BANKING CORPORATIONS

NOTE: Retitled by P.L. 13-111:4 (Dec. 11, 1975).

11 GCA FINANCE & TAXATION
CH. 106 BANKS

- § 106601. Branch Bank.
- § 106602. International Banking Corporations Incorporated in the United States.
- § 106603. Foreign Banks. [Repealed]
- § 106604. Off-Shore Lending Facility.
- § 106605. Off-Shore Financing Corporation.

§ 106601. Branch Banks.

(a) As used in this Article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

(1) ‘Branch’ means a place of business of a bank, other than the bank’s main office, at which deposits are received, loan payments are received, cash is dispensed or money is lent. A customer-bank communication terminal, also commonly known as an ‘automated teller machine,’ or ‘ATM,’ is not a branch.

(2) ‘Out-of-state bank’ has the meaning set forth in §106351 of this Chapter.

(3) ‘Interstate merger transaction’ has the meaning set forth in §106351 of this Chapter.”

(b) A bank engaging in the banking business in Guam pursuant to the provisions of this Title may operate one (1) or more branches within Guam, and, subject to the approval of the Banking and Insurance Board, may establish or acquire additional branches upon showing that

(1) there is sufficient need for such branch,

(2) the proposed branch has reasonable opportunity to be economically self-sustaining, and

(3) the applicant demonstrates by clear and convincing evidence that the establishment and operation of such branch will promote community reinvestment and fair lending.

(c) The application to establish any branch bank shall be considered by the Board after a public hearing at which all interested parties may present their comment.

(d) No out-of-state bank having a branch office in Guam as of the effective date of this Act may establish any additional branches except

and until it engages in an interstate merger transaction with a territorial bank.

(e) Installing additional customer-bank communication terminals at a bank's main office or existing branches shall not be considered as the establishment of an additional branch.

(f) Every application for an additional branch, relocation of a branch or closing of a branch is subject to a licensing fee of Five Hundred Dollars (\$500.00) and such license shall be subject to an annual renewal.

SOURCE: GC § 30900. Subsection (c) added by P.L. 23-048:1 (Nov. 20, 1995). Repealed/reenacted by P.L. 24-035:15 (May 29, 1997). Subsection (a) amended by P.L. 27-088:3(c) (May 3, 2004). Subsection (e) added by P.L. 29-002:V:1:30 (May 18, 2007).

NOTE: References to the "Banking Board" changed to "Banking and Insurance Board" pursuant to P.L. 27-088:10 (May 6, 2004).

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters e altered and/or added to adhere to the Compiler's alpha-numeric scheme.

§ 106602. International Banking Corporations Incorporated in United States.

Any international banking corporation incorporated within any state, territory or possession of the United States may maintain a branch office within Guam, subject to the regulations of the banking and insurance board; provided however that such international banking corporation may not conduct a domestic banking business on Guam.

SOURCE: GC § 30901.

NOTE: Reference to the "Banking Board" changed to "Banking and Insurance Board" pursuant to P.L. 27-088:10 (May 6, 2004).

§ 106603. Foreign Banks.

[Repealed.]

SOURCE: GC § 30902. Repealed by P.L. 13-111:4 (Dec. 11, 1975).

§ 106604. Off-Shore Lending Facility.

(a) An Off-Shore Lending Facility is a bank office established on Guam solely for the purpose of recording for accounting purposes

(1) loans made to borrowers outside of Guam by other offices of the same bank located outside of Guam, or

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(2) loans made to borrowers outside of Guam by banks located outside of Guam who are correspondent banks of a bank in Guam which is authorized to operate an Off-Shore Lending Facility and

(3) deposits made by persons outside of Guam with other offices of the same bank located outside of Guam, or

(4) deposits made by persons outside of Guam with correspondent banks of a bank in Guam which is authorized to operate an Off-Shore Lending Facility.

(b) Before any bank may operate an Off-Shore Lending Facility in Guam, a written license authorized by the Banking and Insurance Board and issued by the Commissioner shall first be obtained.

(1) Any bank authorized to conduct banking business in Guam under the provisions of this Title shall be issued a license upon the filing by it of a verified statement with the Banking and Insurance Board that it intends to establish and operate an Off-Shore Lending Facility and that such Off-Shore Lending Facility shall be operated in accordance with the provisions of this Title.

(2) Any bank not authorized to conduct banking business in Guam under the provisions of this Title may, subject to the regulations of the Banking and Insurance Board, be issued a license after it has met the following requirements:

(A) It is authorized by its charter to transact the character of business described in § 106604 and has complied with the laws of the jurisdiction under which it is incorporated.

(B) It has filed with the Banking and Insurance Board a certified copy of its charter or articles of incorporation and of its by-laws and a copy of an application for a commercial license pursuant to §§ 72104 and 72105 of this Code.

(C) It has furnished to the Banking and Insurance Board such proof of the nature and character of its business and its financial condition, stock ownership and management as it may require.

(D) It has designated the Commissioner and his successor in office by a duly executed instrument in writing, its agent, upon whom process directed to be corporation may be served. The Commissioner shall forward by mail, postage prepaid, a

11 GCA FINANCE & TAXATION
CH. 106 BANKS

copy of every process served upon him under the provisions of this subdivision, addressed to the manager or agent of such corporation at its principal place of business in this territory. For each copy of process, the Commissioner shall collect the sum of Twenty-Five Dollars (\$25) which shall be paid by the plaintiff or moving party at the time of service, to be recovered by him as a part of his cost.

(E) It has complied with all applicable requirements of the Title 18 Guam Code Annotated relating to foreign corporations except matters specifically otherwise provided for in this Title.

(F) Its manager or agent residing in this Territory has taken an oath that he will, as far as the duty devolves upon him, diligently and honestly administer the affairs of the corporation and will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to the corporation and the oath, subscribed by the manager or agent taking it, has been transmitted to the Commissioner and filed in his office.

(G) It has received from the License Board of the department a commercial license in accordance with § 72102 this Code.

(3) The license issued pursuant to this Subsection shall be for a term of five (5) years renewable for terms of five (5) years. The license fee for each five (5) year license period shall be Five Hundred Dollars (\$500) payable at the time an application for licensure is filed with the Commissioner. If the license is not issued, the Five Hundred Dollars (\$500) fee shall be refunded to the applicant.

(c) No bank authorized to operate an Off-Shore Lending Facility in Guam shall permit any officer, employee or agent of the bank within Guam to actively solicit or negotiate any loan for an Off-Shore Lending Facility.

(d) Interest earned by a bank through the operation of an Off-Shore Lending Facility in Guam shall not be treated as Guam source income for tax purposes;

(1) provided the bank has been authorized to operate an Off-Shore Lending Facility; and

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(2) provided there has been no violation of Subsection (c) of this Section.

(e) Interest paid by a bank to a depositor having funds on deposit with it through an Off-Shore Lending Facility shall not be treated as Guam source income or tax purposes

(1) provided the bank has been authorized to operate an Off-Shore Lending Facility,

(2) provided there has been no violation of Subsection (c) of this Section,

(3) provided the depositor is not engaged in a trade or business within Guam, and

(4) provided the depositor is not a citizen or resident of Guam.

(f) Each Off-Shore Lending Facility shall submit to the Banking and Insurance Board twice in each calendar year a report of its condition as of such dates as it may fix. Such reports shall contain such information as the Banking and Insurance Board may reasonably require to ascertain whether or not the Off-Shore Lending Facility is being operated in accordance with the provisions of this § 106604, but such reports shall not extend to any of the activities of the bank other than those of the Off-Shore Lending Facility. This Subsection shall in no way impede or limit other powers of examination which exist pursuant to this Title or other provisions of law.

(g) In the event a court of competent jurisdiction shall, in any respect or with regard to any class of banks, hold invalid any provision contained in this Section, the invalidity shall not effect any other provision of this Section or the rights of other classes of banks. Upon a holding of invalidity, this Section shall be construed as if the invalid provision had never been contained herein or had never been made applicable to the other classes of banks.

SOURCE: GC § 30903.

2011 NOTE: References to the “Banking Board” changed to “Banking and Insurance Board” pursuant to P.L. 27-088:10 (May 6, 2004).

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters in subsections (a) and (b)(2) were altered to adhere to the Compiler’s alpha-numeric scheme.

§ 106605. Off-shore Financing Corporation.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(a) An Off-shore Financing Corporation is an entity incorporated in Guam other than an International Finance Company whose principal purpose is:

(1) negotiating, making and extending loans to borrowers who are not residents or citizens of Guam; and

(2) borrowing from lenders who are not residents or citizens of Guam. An Off-shore Financing Corporation shall record in Guam, for accounting purposes, all its loans, borrowing and business transactions. An Off-shore Financing Corporation shall not transact business as a bank within the territory of Guam.

(b) Before any person or entity may operate an Off-shore Financing Corporation in Guam, a written license authorized by the Banking and Insurance Board and issued by the Commissioner shall be obtained.

(c) An Off-shore Financing Corporation license shall be issued after the applicant has met the following requirements:

(1) It is duly incorporated under the laws of the territory of Guam and is authorized by its articles of incorporation to transact the type of business described in Subsection (a) of this Section.

(2) It has filed with, the Banking and Insurance Board a certified copy of its articles of incorporation and of its bylaws and a copy of an application for a commercial license as a lending institution pursuant to §§ 72104 and 72105 of this Code.

(3) It has furnished to the Banking and Insurance Board such proof of its paid-in capital, stock ownership and management as the Banking and Insurance Board may reasonably require.

(4) It has complied with all applicable requirements of the title 18 Guam Code Annotated relating to domestic corporations, except matters specifically otherwise provided for in this Section.

(5) Its manager or agent residing in this Territory has taken an oath that he will, as far as the duty devolves upon him, diligently and honestly administer the affairs of the corporation and will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to the corporation and the oath, subscribed by the manager or agent taking it, has been transmitted to the Commissioner and filed in his office.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(6) It has received from the License Board of the department a commercial license in accordance with § 72103 of this Code.

(d) The license issued pursuant to this Subsection shall be for a term of five (5) years renewable for term of five (5) years. The license fee for each five (5) year license period shall be One Thousand Dollars (\$1,000) payable at the time an application for licensure is filed with the Commissioner. If the license is not issued, the one Thousand dollars (\$1,000) fee shall be refunded to the applicant.

(e) Interest earned by an Off-shore Financing Corporation duly licensed under this Section through its operations shall not be treated for the purposes of § 26201 of Title 11, Guam Code Annotated as income from business activities in Guam.

(f) Each Off-shore Financing Corporation shall submit to the Banking and Insurance Board twice in each calendar year a report of its condition as of such dates as the Board may fix. Such reports shall contain such information as the Banking and Insurance Board may reasonably require to ascertain whether or not the Off-shore Financing Corporation is being operated in accordance with this Section. The record of an Off-shore Financing Corporation concerning transaction between an Off-shore Financing Corporation and its individual customers shall be confidential and an Off-shore Financing Corporation is prohibited from furnishing to third parties record of any individual transaction between the Off-shore Financing Corporation and any of its borrowers, lenders or other customers except upon court order, subpoena, other judicial process or the express consent, of the parties involved. No process shall require disclosure sooner than fifteen (15) days from the date of service of such process upon the Off-shore Financing Corporation.

(g) In the event a court of competent jurisdiction shall in any respect hold invalid any provision contained in this Section. such invalidity shall not affect or impair any other provisions of this Section. Upon a holding of invalidity, this Section shall be construed as if the invalid provision had never been contained herein.

(h) As used in this Section, International Finance Company shall mean any company;

(1) which is not an investment company;

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(2) which derives 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

(3) 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 ownership 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.

SOURCE: GC § 30904. Added by P.L. 16-065:1.

2011 NOTE: References to the "Banking Board" changed to "Banking and Insurance Board" pursuant to P.L. 27-088:10 (May 6, 2004).

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters in subsections (a) and (h)(3) were altered to adhere to the Compiler's alpha-numeric scheme.

ARTICLE 7
FOREIGN BANKING CORPORATION

- Part A. Definitions.
- Part B. Transaction of Business.
- Part C. Representation Without Transaction of Business.

PART A
DEFINITIONS

§ 106701. Definitions.

As used In this Chapter:

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(a) Foreign banking corporation means a banking corporation organized under the laws of a foreign state; and

(b) Foreign state means any foreign government or any department, district, province, county, possession or other similar governmental organization or subdivision of a foreign government, and any agency or instrumentality of any such foreign government or any such organization or subdivision.

SOURCE: GC § 30910. Added by P.L. 13-111:5.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme.

PART B
TRANSACTION OF BUSINESS

- § 106721. Right of Foreign Banking Corporation to Engage in Business.
- § 106722. Requirements to do Business in Territory.
- § 106723. Approval of Money or Securities Deposited with the Director of Administration.
- § 106724. Assets, Books of Account and Records in Territory for Business to be Separate: Priority of Creditors of Business in the Territory.
- § 106725. Approval of Application; Issuance of License; Transfer; Display.
- § 106726. Suspension or Revocation of License.
- § 106727. Business Which may be Transacted in Territory.
- § 106728. Accepting Deposits from Foreign State or Person, etc.
- § 106729. Accepting Domestic Deposits.
- § 106730. Loans Secured by Mortgages on Real Property and Acceptance of Assignments of Mortgages Covering Real Property in Territory.
- § 106731. Loans: Purchase or Sale of Bonds.
- § 106732. Report to Commissioner: Verification; Content; Formal Verification; Financial Information.
- § 106733. Same: Failure to Make Report or Furnish Information: Penalty; False Statements.
- § 106734. Failure to Comply with Chapter: Penalty.

§ 106735. Transaction of Business in Territory on Behalf of Foreign Banking Corporation not Authorized: Penalty.

§ 106721. Right of Foreign Banking Corporation to Engage in Business.

A foreign banking corporation shall not engage in the banking or trust business on Guam, unless it is licensed to do so pursuant to the provisions of § 106725, and unless it first complies with all the provisions of this Chapter and Chapter 7 of Title 18 of the Guam Code Annotated, and then only to the extent expressly permitted in this Chapter, or by regulations of the Board. In transacting such business a foreign banking corporation shall comply with all applicable provisions of this Title and of the laws of Guam.

SOURCE: GC § 30920. Added by P.L. 13-111:5. Amended by P.L. 27-057:10.

§ 106722. Requirements to Do Business in Territory.

A foreign banking corporation shall not commence to do business in this Territory until it has met the following requirements:

(a) It is authorized by its charter to transact the character of business described in § 106727 and has complied with the laws of the country under which it is incorporated.

(b) It has filed with the Commissioner a certified copy of its charter or articles of incorporation and of its by-laws and a copy of an application for a commercial license pursuant to §§ 72104 and 72105 of this Code.

(c) It has furnished to the Commissioner such proof of the nature and character of its business and its financial condition, stock ownership and management as he may require.

(d) It has designated the Commissioner and his successor in office by a duly executed instrument in writing, its agent, upon whom process directed to the corporation may be served. The Commissioner shall forward by mail, postage prepaid, a copy of every process served upon him under the provisions of this Subdivision, addressed to the manager or agent of such corporation at its principal place of business in this Territory. For each copy of process the Commissioner shall collect the sum of Twenty-Five Dollars (\$25.00) which shall be paid by the plaintiff or moving

11 GCA FINANCE & TAXATION
CH. 106 BANKS

party at the time of service, to be recovered by him as a part of his costs.

(e) It has complied with all applicable requirements of the Title 18 Guam Code Annotated relating to foreign corporations except matters specifically otherwise provided for in this Title.

(f) Its manager or agent residing in this Territory has taken an oath that he will, as far as the duty devolves upon him, diligently and honestly administer the affairs of the corporation and will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to the corporation and the oath, subscribed by the manager or agent taking it, has been transmitted to the Commissioner and filed in his office.

(g) It has allocated and assigned to its Guam business a portion of its capital and surplus equal in amount to the amount of capital and surplus required by § 106204 for a bank commencing to do business on Guam.

(h) It has deposited with the Director of Administration evidences of indebtedness acceptable to him which:

(1) Are payable to bearer or recorded with the Commissioner's name:

(2) Constitute readily marketable legal investments for funds held by a bank as a fiduciary; and

(3) Have a value equal to seventy-five percent (75%) of the minimum capital and surplus requirements set forth in § 106204.

(i) It has received from the License Board of the Department a commercial license pursuant to § 72102.

SOURCE: GC § 30921. Added by P.L. 13-111:5.

§ 106723. Approval of Money or Securities Deposited With the Director of Administration; Deposit with Director of Administration; Responsibility of Territory; Deposit of Money; Exchange and Withdrawal of Securities; Deposit of Additional Money or Securities; Investigation of Securities: Sale and Transfer of Securities.

11 GCA FINANCE & TAXATION
CH. 106 BANKS

(a) Money or securities deposited with the Director of Administration by a foreign banking corporation pursuant to § 106722 shall first be approved by the Commissioner and upon his order shall be deposited with the Director of Administration.

(b) Upon receiving any such deposit the Director of Administration shall give his receipt there for and shall hold such deposit for the sole benefit of the creditors of such corporation's Guam business. The Territory is responsible for the custody and safe return of any such deposits excepting only money or securities applied for the benefit of such creditors pursuant to any order of court. The Director of Administration shall deposit any such moneys in a separate fund, herein created, to be called the Foreign Banking Fund.

(c) Securities deposited pursuant to this Section may be exchanged from time to time, with the approval of the Commissioner, for other like securities of equal market value. Upon written request to the Commissioner, any such corporation shall be entitled to withdraw from the Director of Administration, from time to time, any amount of its securities so deposited in excess of the amount it is required to maintain on deposit in order to conform with requirements of this Chapter. Upon receiving a written request for such withdrawal or exchange, and satisfactory proof of the facts warranting the same, the Commissioner shall forthwith deliver to the Director of Administration a written order directing the withdrawal or exchange of such securities so as to conform with the provisions of this Chapter. The Director of Administration shall comply with such written order. So long as the corporation so depositing such securities shall continue solvent and shall discharge its Guam obligations promptly, it shall have the right and shall be permitted by the Director of Administration to receive the interest and dividends on any securities deposited by it.

(d) Should any security so depreciate in value as to reduce the deposit below the amount required, additional money or securities shall be deposited at the time such security is presented for deposit or at any time thereafter. The Commissioner may make such charge as may be reasonable and proper for such investigation.

(e) The Director of Administration may sell and transfer any securities deposited pursuant to this Chapter and may dispose of the proceeds only on the order of a court of competent jurisdiction and for the benefit of the creditors of such corporation's business in Guam.

SOURCE: GC § 30922. Added by P.L. 13-111:5.

2013 NOTE: Pursuant the authority granted by 1 GCA § 1606, subsection designations were added to adhere to the Compiler's alpha-numeric scheme.

§ 106724. Assets, Books of Account and Records in Territory for Business to be Separate: Priority of Creditors of Business in the Territory.

Every foreign banking corporation doing business in this Territory shall keep the assets of its Guam business entirely separate and apart from the assets of its business outside Guam as though the Guam business was conducted by a separate and distinct corporation. Every such corporation shall keep separate books of account and separate records for its Guam business in words and figures of the English language and shall observe with respect to such business the applicable requirements of this Title and the rules and regulations of the Board. The creditors of such corporation's Guam business shall be entitled to priority with respect to the assets of the Guam business before such assets may be used or applied for the benefit of its other creditors or transferred to its general business.

SOURCE: GC § 30923. Added by P.L. 13-111:5.

§ 106725. Approval of Application; Issuance of License; Transfer; Display.

The Commissioner shall convey to the Board his recommendation as to whether the application of a foreign banking corporation should be approved. The Board may, in its discretion, direct License Division of the Department to issue such license to such corporation when it is satisfied that the corporation has met all the requirements of this Chapter. The license shall authorize the corporation to transact the business permitted by § 106727 at the location specified therein. No such license shall be transferrable or assignable. Each such license shall be conspicuously displayed at all times in the, place of business specified therein.

SOURCE: GC § 30924. Added by P.L. 13-111:5.

§ 106726. Suspension or Revocation of License.

If the Commissioner finds that any foreign banking corporation to which he has issued a license pursuant to § 106727 has violated any law or has conducted its affairs in an unauthorized manner, or is in an unsound or unsafe condition, or cannot with safety and expediency continue business, the Commissioner, may recommend that the Board

suspend or revoke the license of such foreign banking corporation. The Board may then suspend or revoke such license, and shall notify the corporation of such suspension or revocation.

SOURCE: GC § 30925. Added by P.L. 13-111:5.

§ 106727. Business Which May be Transacted in Territory.

A foreign banking corporation which is authorized by license under § 106725 may transact in this Territory the business of buying, selling, paying or collecting bills of exchange, of issuing letters of credit, of receiving money for transmission by draft, check, cable or otherwise, and of making loans. It may transact in this Territory the business of accepting deposits only as provided in § 106728.

SOURCE: GC § 30926. Added by P.L. 13-111:5.

§ 106728. Accepting Deposits From Foreign State or Person, Etc.

(a) In this section, Person means any person, firm, partnership, association, corporation, company, syndicate, estate, trust, business trust or organization of any kind, or any branch or division thereof which is located outside the territory of Guam.

(b) A foreign banking corporation may transact in this Territory the business of accepting deposits from any foreign state or from any person which resides, is domiciled, and maintains its principal place of business outside the territory of Guam, if:

(1) Such foreign banking corporation has complied with all of the requirements of § 106722; and

(2) Such foreign banking corporation has received from the Commissioner his written approval to transact such business in this Territory.

(c) A foreign banking corporation which transacts such business in this Territory shall, with respect to business transacted by it in this Territory, comply with and be subject to the provision of this Title.

SOURCE: GC § 30927. Added P.L. 13-111:5

§ 106729. Accepting Domestic Deposits.

(a) In this Section person means any person, firm, partnership, association, corporation, company, syndicate, estate, trust, business trust or organization of any kind or any branch or division thereof which is located within the territory of Guam.

(b) A foreign banking corporation may transact in this Territory the business of accepting deposits from any person who is domiciled and maintains its principal place of business within the Territory if:

(1) Such foreign banking corporation has complied with all of the requirements of § 106722; and

(2) Such deposits may only be accepted from persons who are or were borrowers from a bank accepting the deposit, provided that the balance of any deposit account shall not exceed the larger of the total current indebtedness of the depositor running to the bank or the largest amount of such indebtedness outstanding on any day during the previous calendar month.

(c) A foreign banking corporation may accept and hold the deposits of other bank within the Territory when a correspondent relationship exists with such other banks.

SOURCE: GC § 30927.1. Added by P.L. 14-74:6.

§ 106730. Loans Secured by Mortgages on Real Property and Acceptance of Assignments of Mortgages Covering Real Property in Territory.

Nothing in this Chapter shall be deemed to prohibit a foreign banking corporation which does not maintain an office in this Territory for the transaction of business from making loans in this Territory secured by mortgages on real property or from accepting assignments of mortgages covering real property situated in this Territory.

SOURCE: GC § 30928. Added by P.L. 13-111:5.

COURT DECISIONS: The banking laws addressing the conduct and activities of foreign banks do not require foreign banks, without offices on Guam, to obtain licenses, necessary for broader financial activities, in order to enter loans secured by Guam real property. This transaction is specifically exempted from such licensing requirements under 11 GCA § 106730. *EIE Guam Corp., et al. V. The Long Term Credit Bank of Japan, Ltd., et al.*, 1998 Guam 6 ¶14.

§ 106731. Loans: Purchase or Sale of Bonds.

Nothing in this Chapter shall prohibit a foreign corporation, subject to compliance with any applicable laws of this Territory pertaining to foreign corporations and any other applicable law, and which is not engaged in the banking business from lending money or buying or selling bonds in this Territory and for that purpose maintaining offices in

this Territory and suing and being sued in this Territory under its corporate name.

SOURCE: GC § 30929. Added by P.L. 13-111:5.

§ 106732. Report to Commissioner: Verification; Content; Formal Verification; Financial Information.

Every foreign banking corporation licensed by the Commissioner to transact business in this Territory, whenever required by the Commissioner, shall make a written report to him, in such form as he shall prescribe, in words and figures of the English language, verified by one of its officers, managers or agents residing in this Territory. Such report shall show the actual financial condition of the corporation's business in this Territory at the close of any past day designated by the Commissioner, and shall set forth such other information as the Commissioner may require. The verification of such report shall state that the person making it has a personal knowledge of the matters therein contained and that he believes that every allegation, statement and matter contained therein is true. If required by the Commissioner such corporation shall furnish complete financial information, in such form and detail as the Commissioner may prescribe, in words and figures of the English language verified by the proper officers, covering all the corporation's business not only in this Territory but elsewhere. The Commissioner or his designee shall also be empowered to enter the premises of any foreign banking corporation and to examine the books of record of its Guam business kept pursuant to § 106724.

SOURCE: GC § 30930. Added by P.L. 13-111:5.

§ 106733. Same: Failure to Make Report or Furnish Information; Penalty; False Statements.

If any foreign banking corporation fails to make any report required by the Commissioner or refuses to furnish the required information in the form prescribed, or otherwise refuses to comply with § 106732, it shall be liable to the people of this Territory in the sum of One Hundred Dollars (\$100.00) per day for each day that such omission continues.

SOURCE: GC § 30931. Added by P.L. 13-111:5.

NOTE: Last sentence of § 30931 was repealed by P.L. 13-187:197.1.

§ 106734. Failure to Comply With Chapter: Penalty.

Any foreign banking corporation which is required to comply with the provisions of this Chapter and fails to do so is guilty of a misdemeanor and in addition thereto shall be liable to the people of this Territory in the sum of One Hundred Dollars (\$100.00) per day for each day that such offense continues.

SOURCE: GC § 30932. Added by P.L. 13-111:5.

§ 106735. Transaction of Business in Territory on Behalf of Foreign Banking Corporation Not Authorized: Penalty.

Any person who transacts business in this Territory on behalf of a foreign banking corporation which is subject to the provisions of this Chapter but which is not authorized to transact business in this Territory is guilty of a misdemeanor and in addition thereto shall be liable to the people of this Territory in the sum of One Hundred Dollars (\$100.00) per day for each day that such offense continues.

SOURCE: GC § 30933. Added by P.L. 13-111:5.

PART C

REPRESENTATION WITHOUT TRANSACTION OF BUSINESS

§ 106741. Establishment and Maintenance of Office by Representative of Foreign Banking Corporation.

§ 106742. Maintenance of Place of Business of Representative.

§ 106741. Establishment and Maintenance of Office by Representative of Foreign Banking Corporation.

An individual may establish and maintain an office or offices in this Territory as a representative of one or more foreign banking corporations, but only upon first obtaining a license from the Commissioner. The application for such license shall be in such form and shall set forth such information as the Commissioner may require, and shall be accompanied by a fee of Two Hundred Fifty Dollars (\$250.00). The Commissioner may grant or refuse the application in his discretion and at any time, in his discretion, revoke any such license. Such representative shall pay an annual license fee of One Hundred Dollars (\$100.00) for each such office. If more than one individual representative of the same foreign banking corporation uses the same office the annual

11 GCA FINANCE & TAXATION
CH. 106 BANKS

license fee shall be One Hundred Dollars (\$100.00) plus Twenty-Five Dollars (\$25.00) for each individual representative over one using the same office.

SOURCE: GC § 30940. Added by P.L. 13-111:5.

§ 106742. Maintenance of Place of Business of Representative.

Any licensed representative may maintain one or more places of business as his office as such representative, but not as a place of business of the foreign banking corporation. Notwithstanding anything in this Title to the contrary, he may use an office sign at his place of business indicating that such place is the office of a representative of the particular foreign banking corporation which he represents, and he may use in his business, as such representative, the letterheads, circulars and other printed matter of such foreign banking corporation.

SOURCE: GC § 30941. Added by P.L. 13-111:5.
