

**18 GCA BUSINESS STRUCTURES & FUNCTION**  
**CH. 4 CORPORATE POWERS**

**CHAPTER 4**  
**CORPORATE POWERS**

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**ARTICLE 1**  
**GENERAL POWERS**

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**§ 4101. Corporate Powers Enumerated.**

Every corporation has the power:

(a) Of succession of its corporate name for the period of time limited in the articles of incorporation and not exceeding the time prescribed by law;

(b) To sue and be sued in any court;

(c) To transact the business for which it was lawfully organized, and to exercise such powers and to perform such acts as may be reasonably necessary to accomplish the purpose for which the corporation was formed;

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(d) To make and use a common seal and to alter the same at pleasure;

(e) To purchase, hold, convey, sell, lease, let, mortgage, encumber, and otherwise deal with such real and personal property as the purpose for which the corporation was formed may permit, and the transaction of lawful business of the corporation may reasonably and necessarily require, unless otherwise prescribed in this Part: Provided, that no corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation authorized to engage in agriculture shall be restricted to the ownership and control of not to exceed one hundred twenty-four (124) hectares of land; and it shall be unlawful for any member of a corporation engaged in agriculture and for any corporation organized for any purpose except irrigation to be in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five (5) years after receiving the title;

(f) To appoint and dismiss such subordinate officers or agents as the business or welfare of the corporation may demand, and to allow such subordinate officers and agents suitable compensation;

(g) To make bylaws, not inconsistent with any existing law, for the fixing or changing of the number of its officers and directors within the limits prescribed by law, and for transferring of its stock, the administration of its corporate affairs, the management of its business, and the care, control, and disposition of its property;

(h) To admit members of the corporation; if it be a stock corporation, to issue stock to stockholders and to sell stock or shares of stockholders for the payment of any indebtedness of the stockholders to the corporation;

(i) To enter into any obligation or contract essential to the proper administration of its corporate affairs or necessary for the proper

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transaction of the business or accomplishment of the purpose for which the corporation was organized.

**SOURCE:** CC § 354.

**§ 4102. Limitation Upon Powers of Corporations.**

No corporation created under this Part shall possess or exercise any corporate powers except those conferred by this Part and except such as are necessary to the exercise of the powers so conferred.

**SOURCE:** CC § 354a.

**§ 4103. Involuntary Servitude.**

No corporation doing business in Guam or receiving any grant, franchise, or concession from the government of Guam shall use, employ or contract for the labor of persons claimed or alleged to be held in involuntary servitude, and any corporation violating the provisions of this section shall forfeit all charters, grants, franchises and concessions for doing business in Guam, and in addition shall be deemed guilty of an offense and shall be punished by a fine of One Thousand Dollars (\$1,000.00).

**SOURCE:** CC § 354b.

**CROSS-REFERENCES:** See 9 GCA Chapter 80 for various provisions permitting "work release" by prisoners.

**§ 4104. Effect of Special Powers.**

The enumeration in the articles of the objects, purposes, powers and authorized business of the corporation shall have no effect other than as between the corporation and its directors or officers, as an authorization to the directors and as a limitation upon the actual authority of the representatives of the corporation.

No limitation upon the business, purposes or powers of the corporation contained in or implied by the articles shall be asserted as between the corporation or any shareholder and third person. Such limitations may be asserted in an action by a shareholder or at the suit of the government, to enjoin the continuation of unauthorized business, or to dissolve the corporation, or in an action by the corporation or by the shareholders suing in a representative suit, against the officers or directors of the corporation for violation of their authority.

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Any contract or conveyance made in the name of a corporation, which is authorized or ratified by the directors, or is done within the scope of the authority, actual or apparent, given by the directors, shall bind the corporation, and the corporation shall acquire rights thereunder, whether the contract be executed or wholly or in part executory.

**SOURCE:** CC § 355.

**COURT DECISIONS:** See *American Pacific v. Siciliano*, 235 F.2d 74 (1956).

**§ 4105. Issuing Money Prohibited.**

No corporation organized under this Part shall create or issue bills, notes, or other evidence of debt for circulation as money, and no corporation shall issue stock or bonds except in exchange for actual cash paid to the corporation or for property actually received by it at a fair valuation equal to the par value of the stock or bonds so issued. No corporation shall make or declare any stock or bond dividend or any dividend whatever except from the surplus profits arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution.

**SOURCE:** CC § 356.

**§ 4106. Immaterial Misnomer.**

The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

**SOURCE:** CC § 357.

**§ 4107. Corporation: Organization and Commencement of Business; Time Limit.**

If a corporation does not formally organize and commence the transaction of its business or the construction of its works within two years from the date of its incorporation, its corporate powers cease. The due incorporation of any corporation claiming in good faith to be a corporation under this Part and its right to exercise corporate powers shall not be inquired into collaterally in any private suit to which the corporation may be a party, but such inquiry may be had at the suit of the government of Guam on information of the Attorney General.

**SOURCE:** CC § 358.

**§ 4108. Increase or Diminution of Capital Stock.**

Bonded indebtedness. No corporation shall increase or diminish its capital stock, or incur, create, or increase any bonded indebtedness unless, at a stockholders' meeting regularly called for the purpose, two-thirds (2/3) of the entire corporate capital stock subscribed shall favor the increase or diminution of the capital stock, or a majority of the subscribed capital stock shall favor the incurring, creating, or increasing of any bonded indebtedness. Notice of such meeting shall be served as provided in §3105 of this Title.

**SOURCE:** CC § 359.

**§ 4109. Amendment of Articles.**

Any corporation may amend its articles of incorporation by a majority vote of its board of directors or trustees and the vote or written assent of two-thirds (2/3) of its members, if it be a nonstock corporation, or, if it be a stock corporation, by the vote or written assent of the stockholders representing at least two-thirds (2/3) of the subscribed capital stock of the corporation. A copy of the articles of incorporation as amended, duly certified to be correct by the president and the secretary of the corporation and a majority of the board of directors or trustees, shall be filed in the Department of Revenue and Taxation and attached to the original articles of incorporation, and, from the time of filing such copy of the amended articles of incorporation, the corporation shall have the same powers and the members or stockholders thereof shall thereafter be subject to the same liabilities as if such amendment had been embraced in the original articles of incorporation; Provided, however, that the life of said corporation shall not be extended by said amendment beyond the time fixed in the original articles; And Provided, that the original articles and amended articles together shall contain all provisions required by law to be set out in the articles of incorporation; And Provided, further, that nothing in this section shall be construed to authorize any corporation to increase or diminish its capital stock or so as to affect any rights or actions which accrued to others between the time of filing the original articles of incorporation and the filing of the amended articles.

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**SOURCE:** CC § 360. *Department of Finance* changed to *Department of Revenue and Taxation* pursuant to P.L. 9-228 (8/7/68).

**§ 4110. Investment Companies and International Finance Companies.**

Whenever any person shall be organized or formed or exist under the laws of this Territory other than as a corporation incorporated pursuant to this Part which if it were such a corporation would be an Investment Company or International Finance Company and is an association taxable as a corporation pursuant to the provisions of the Guam Territorial Income Tax Law, it shall be deemed an Investment Company or an International Finance Company, as the case may be, and may exercise the powers and be subject to the restrictions applicable pursuant to this Part to an Investment Company or International Finance Company as the case may be, except for provisions of this Part for corporate procedures which would be manifestly inapplicable to such person, but subject to such rules as may be issued by the administrator under the Uniform Securities Act.

**SOURCE:** CC § 361 added by P.L. 16-115:7 (10/21/82).

**NOTE:** The *Administrator* is the Director of Revenue and Taxation and the Uniform Securities Act is found in Title 20 of this Code.

No §§362-376 existed in the Civil Code, as amended.

**§ 4111. Sale of Assets in Regular Course of Business and Mortgage of Assets.**

(a) A corporation may, on the terms and conditions and for the consideration fixed by the board of directors:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;

(2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property, whether or not, in the usual and regular course of business; or

(3) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(b) Unless the Articles of Incorporation require it, approval by the stockholders of a transaction described in Subsection (a) of this Section is

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*not* required.

**SOURCE:** Added by P.L. 28-180:5 (Jan. 29, 2007).

**§ 4112. Sale of Assets Other Than in Regular Course of Business.**

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, *if* the board of directors proposes and its stockholders approve the proposed transaction.

(b) For a transaction pursuant Subsection (a) to be authorized:

(1) The board of directors must recommend the proposed transaction to the stockholders *unless* the board of directors determines that because of conflict of interest or other special circumstances it should make *no* recommendation and communicates the basis for its determination to the stockholders with the submission of the proposed transaction; and

(2) The stockholders entitled to vote must approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each stockholder, whether or not entitled to vote, of the proposed stockholders' meeting in accordance with 18 GCA § 3105. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and be accompanied by a description of the transaction.

(e) Unless the Articles of Incorporation or the board of directors, acting pursuant to Subsection (c) of this Section, require a greater vote or a vote by voting groups, the transaction must be approved by a majority of all the votes entitled to be cast on the transaction.

(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further stockholder action.

(g) A transaction that constitutes a distribution is governed by a corporation's Articles of Incorporation and *not* by this Section.

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**SOURCE:** Added by P.L. 28-180:5 (Jan. 29, 2007).

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**ARTICLE 2**  
**RECORDS**

- § 4201. Records Generally
- § 4202. Additional Records Kept

**§ 4201. Records Generally.**

All business corporations shall keep and carefully preserve a record of all business transactions, and a minutes [sic] of all meetings of directors, members, or stockholders, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. On the demand of any director, member, or stockholder, the time when any director, member, or stockholder left the meeting must be noted on the minutes, and on a similar demand, the yeas and nays must be taken on any motion or proposition and a record thereof carefully made. The protest of any director, member, or stockholder on any action or proposed action must be recorded in full on his demand.

The record of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, member, or stockholder of the corporation at reasonable hours.

**SOURCE:** CC § 377.

**§ 4202. Additional Records Kept.**

Business corporations must also keep a book to be known as the stock and transfer book, in which must be kept a record of all stock, the names of the stockholders or members alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of any alienation, sale, or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the bylaws may prescribe. The stock and transfer

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books shall be open to the inspection of any director, stockholder, or member of the corporation at reasonable hours.

**SOURCE:** CC § 378.

**NOTE:** No §§379-381 existed in the Civil Code.

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**ARTICLE 3**  
**EXAMINATION OF CORPORATIONS**

- § 4301. Examinations Generally.
- § 4302. Report to the Governor of Guam.
- § 4303. Records of the Examination to be Confidential.
- § 4304. Annual Report of Domestic and Foreign Corporations.

**§ 4301. Examinations Generally.**

The Governor of Guam may at any time order the Attorney General, the Director of Revenue & Taxation, or any other officer of the government to make an examination into the business affairs, administration, and condition of any corporation transacting business in Guam and thereupon it shall be the duty of the Attorney General, the Director of Revenue & Taxation, or any other officer designated, to make such examination. For the purposes thereof, the Attorney General, the Director of Revenue & Taxation, or other official designated shall have the authority to administer oaths to the directors, officers, stockholders, or members of any corporation or other persons, and to examine under oath or otherwise such directors, officers, stockholders, members, or other persons in relation to the business transacted by said corporation, the administration of its affairs, and the condition thereof.

For the purpose of such examination the books, papers, letter, and documents belonging to such corporation, or pertaining to its business administration or conditions shall be open to the inspection of the Attorney General, the Director of Revenue & Taxation, or other officer designated, and upon the application of any of them to the Superior Court, a subpoena

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may be issued directing any person in Guam to appear as a witness and to produce for the Attorney General, the Director of Revenue & Taxation or other officer designated any books, papers, documents, letters, or other records in his possession. Any witness failing to obey such subpoena shall be liable to punishment by the Superior Court, in the same manner and to the same extent, as if he had disobeyed the subpoena issued out of the Superior Court in a matter pending before said court.

**SOURCE:** CC § 382; amended by P.L. 9-256 (1/8/69). References to *Director of Finance* changed to *Director of Revenue & Taxation* by P.L. 9-228 (8/7/68). Reference to *Island Attorney* deleted because all references to that office were repealed by P.L. 13-117 (1976).

**§ 4302. Report to the Governor of Guam.**

The Attorney General, the Director of Revenue & Taxation, or other officer designated, as the case may be, shall make a full and complete report to the Governor of Guam of the examination made by him, together with his recommendations and the Governor, if he deems proper, shall direct the Attorney General to take such proceedings as the report may seem to justify and the state of the case require.

**SOURCE:** CC § 383.

**CROSS-REFERENCES:** See 5 GCA §30103 as amended by P.L. 13-117 relative to expanded powers of the Attorney General.

**§ 4303. Records of the Examination to be Confidential.**

The Attorney General, the Director of Revenue & Taxation, or other officer designated by the Governor of Guam to make the examination, shall not disclose to anyone other than the Governor or his aides, the details or results of the examination or investigation.

If the officer designated to make the examination discloses to any person other than the Governor of Guam or his aides the details or results of the examination or investigation he shall be guilty of a misdemeanor.

**SOURCE:** CC § 384; amended by P.L. 13-187:4 (eff. 1/1/78).

**NOTE:** No §§385-387 existed in the Civil Code.

**§ 4304. Annual Report of Domestic and Foreign Corporations.**

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(a) Each domestic corporation and each foreign corporation authorized to transact business on Guam shall deliver to the Director of the Department of Revenue and Taxation for filing a sworn annual report that sets forth:

(1) the name of the corporation and the state or country under whose law it is incorporated;

(2) the date of incorporation or, if a foreign corporation, the date on which it was authorized to transact business on Guam;

(3) I where the corporation is required by law to have a registered office and registered agent on Guam, the street address of its registered office of the corporation on Guam, and the name of its registered agent on Guam at that address;

(4) the address of its principal office;

(5) the names and business addresses of the corporation directors and principal officers;

(6) a brief statement of the character of the business in which the corporation is actually transacted on Guam;

(7) the aggregate number of shares which the corporation has authority to issue, itemized by class, par value of shares, shares without par value, and series, if any, within each class;

(8) the aggregate number of issued and outstanding shares, itemized by class, par value of shares, shares without par value, and series, if any, within each class;

(9) if the domestic or foreign corporation has less than fifteen (15) shareholders, for each shareholder state the name, citizenship, and the number and class or series of shares held.

(b) The information contained in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.

(c) The first annual report must be delivered to the Director of the Department of Revenue and Taxation between July 1 and September 1, or such other date as the Director of the Department of Revenue and Taxation may specify by rules or regulations, of the year following the calendar year in which a domestic corporation was incorporated, or a foreign corporation was authorized to transact business on Guam. Subsequent annual reports

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must be delivered to the Director of the Department of Revenue and Taxation between July 1 and September 1, or such other date as the Director of the Department of Revenue and Taxation may specify by rules or regulations, of the following calendar years.

(d) If an annual report does not contain the information required by this Section, the Director of the Department of Revenue and Taxation shall notify the reporting corporation in writing, and return the report to it for correction. If the report is corrected to contain the information required by this Section and delivered to the Director within thirty (30) days after the effective date of notice, it shall be deemed to be timely filed.

(e) A corporation may deliver to the office for filing an amendment to the annual report if a change in the information set forth in the annual report occurs after the report is delivered to the office for filing and before the next anniversary. This Subsection applies only to a change that is not required to be made by an amendment to the Articles of Incorporation. The amendment to the annual report must set forth:

(1) the name of the corporation, as shown on the records of the Department of Revenue and Taxation; and

(2) the information as changed.

(f) Any corporation failing to file an annual report that complies with the requirements of this Section, within sixty (60) days after it is due, shall pay, in addition to the regular annual report fee, the sum of Fifty Dollars (\$50.00), providing the report is received by the Director of the Department of Revenue and Taxation prior to revocation as provided in this Title, and shall be subject to dissolution or cancellation of its certificate of authority to transact business as provided in this Chapter.

(g) The filing fee for an annual report shall be One Hundred Dollars (\$100.00), with the exception of nonprofit corporations. The filing fee for an annual report for nonprofit corporations shall be Ten Dollars (\$10.00).

(h) Any corporation which is required to file or provide an annual report with another government agency or regulating body may satisfy the annual report required by this Section by filing the same report with the Director of the Department of Revenue and Taxation; provided, the Director of the Department of Revenue and Taxation has determined in writing that

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the report contains the same or substantially similar information pursuant to this Section.

**SOURCE:** Added by P.L. 27-57:14. Subsection (g) amended by P.L. 27-106:VI:37.

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**ARTICLE 4**  
**JUDGMENT AGAINST AND SALE OF CORPORATE PROPERTY**

- § 4401. Sale of Franchise.
- § 4402. Purchaser's Right.
- § 4403. Penalties Recovered.
- § 4404. Corporation: Reserved Power.
- § 4405. Redemption.

**§ 4401. Sale of Franchise.**

For the satisfaction of any judgment against any person, company, or corporation having any franchise other than the franchise of being a corporation, such franchise, and all the rights and privileges thereof, may be levied upon and sold under execution, in the same manner and with the same effect as any other property.

**SOURCE:** CC § 388.

**§ 4402. Purchaser's Right.**

The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same as hereinafter provided.

**SOURCE:** CC § 389.

**§ 4403. Penalties Recovered.**

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The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

**SOURCE:** CC § 390.

**§ 4404. Corporation: Reserved Power.**

The person, company, or corporation whose franchise is sold, as in this Article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

**SOURCE:** CC § 391.

**§ 4405. Redemption.**

Redemption from any such sale may be had as provided in Title 7 of this Code in the case of redemption from sale of real estate on execution.

**SOURCE:** CC § 392.

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