

CHAPTER 2
COMMISSIONER OF BANKING

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§2101. Establishment: Officers and Employees. (a) There is hereby established within the Division of Insurance, Securities and Banking of the Department of Revenue and Taxation an Office of Commissioner of Banking which shall be charged with supervision of bank activities in Guam as provided in this Title and in other legislation conferring jurisdiction upon the office.

(b) The Director of Revenue and Taxation shall be the Commissioner of Banking.

(c) All officers and employees of the Division of Insurance, Securities and Banking, other than the Commissioner, shall be in the classified service.

(d) The Commissioner may delegate to any officer or employee of the Division any of his powers and may designate any officer or employee of the Division to perform any of his duties.

(e) Such officers and employees handling money or securities in the course of their duties, as the Board may determine shall be bonded in such amount as the Board may fix.

§2102. Banking Board. (a) There is hereby established in the Division a Banking Board which shall consist of seven (7) members including the Commissioner who shall be Chairman.

(b) There shall be at least three (3) members who are executive officers of banks, one of which shall be a bank exercising trust powers, and at least three (3) members who are not directors, trustees, officers, employee or stock holders of any bank, only one of which may be an employee of the government of Guam.

(c) Members shall be appointed by the Governor with the consent of the Legislature. The first appointments shall be for the following terms as designated by the Governor: two (2) members for a term of two (2) years; two (2) members for a term of four (4) years; two (2) members for a term of six (6) years. Thereafter the term of office of each member shall be six (6) years. The Governor may after notice and hearing remove a member for cause.

(d) Each member shall receive fifty dollars (\$50.00) a day as an honorarium for services, and in lieu of reimbursement for expenses incident to his duties, for each day or portion thereof spent in attending meetings of the Board. Such compensation shall be not exceed one hundred dollars (\$100.00) per month. [Amended by P.L. 15-148, effective January 8, 1981.]

(e) The Board shall meet at least once in each calendar quarter. The Commissioner may call additional meetings of the Board upon at least twenty-four hours' notice, and shall do so upon the request of

two (2) members. A majority of the Board shall constitute a quorum, and action taken by a majority of those present at any meeting at which a quorum is present, shall be the action of the Board. No member shall participate in a proceeding before the Board to which any corporation, partnership or unincorporated association of which he is or was at any time in the preceding twelve (12) months a director, officer, partner, employee, member, or stockholder is a party. A member may disqualify himself from participating in a proceeding for any other cause deemed by him to be sufficient.

(f) At any meeting at which a quorum is not present, whether by reason of the inability of a member to participate or his voluntary disqualification, or otherwise, the Governor may designate the Chief of the Division of Insurance, Securities and Banking, the Attorney General, or the head of any other department of the government of Guam, in that order, as acting members of the Board for the purpose of constituting a quorum, but he shall not designate more acting members than shall be necessary to constitute a quorum.

(g) Such clerical, technical and legal assistance as the Board may require shall be provided by the Division.

§2103. Powers of Board and Commissioner. (a) In addition to other powers conferred by this Title, the Board shall have power to:

- (1) Regulate its own procedure and practice.
- (2) Implement by regulation any provision of this Title, and to define any term not defined in this Title.
- (3) Restrict the withdrawal of deposits from all or one or more territorial banks where the Board finds that extraordinary circumstances make such restrictions necessary for the proper protection of depositors in the affected institution.
- (4) Authorize a territorial bank until the close of the next regular session of the Legislature (a) to participate in a public agency hereafter created under the laws of Guam or of the United States, the purpose of which is to afford advantages or safeguards to banks or to depositors and to comply with all requirements and conditions imposed upon such participants; and (b) to engage in any banking activity in which banks subject to the jurisdiction of the Federal government may hereafter be authorized by Federal legislation to engage.
- (5) Order the holder of shares in a territorial bank to refrain from voting said shares on any matter if it finds that such order is necessary to protect the institution against reckless, incompetent or careless management, safeguard the funds of depositors, or prevent the willful violation of this Title or of any lawful rule or order issued thereunder. In such a case the sharers of such holder shall not be counted in determining the existence of a quorum or a percentage of the outstanding shares necessary to take any corporate action.
- (6) Order any person to cease violating a provision of this Title or a lawful regulation issued thereunder or to cease engaging in any unsound banking practice.
- (7) Affirm, modify, reverse or stay the enforcement of any order or ruling of the Commissioner.
- (8) Establish such rules and regulations as maybe necessary for the operation and management of savings banks.

(b) The Board may remove a director, trustee, officer, or employee of a territorial bank who becomes ineligible to hold his position or, who after receipt of an order to cease under the preceding subsection, violates this Title or a lawful regulation or order issued thereunder, or who is dishonest or who is reckless or grossly incompetent in the conduct of banking business. It shall be a criminal offense against this Title for any such person, after receipt of a removal order, to perform any duty or exercise any power of any territorial bank for a period of three (3) years. A removal order shall specify the grounds thereof and a copy of the order shall be sent to the bank concerned. The Board may recommend removal of a director, trustee, officer or employee of a national or state bank.

(c) Notice and hearing shall be provided in advance of any action taken by the Board except the formulation of regulations of general application. In cases involving extraordinary circumstances requiring immediate action the Board may take such but shall promptly afford a subsequent hearing upon application to rescind the action taken.

(d) Members of the Board shall have access to any record of the Division, with reference to banking matters.

(e) In addition to other powers conferred by this Title, the Commission shall have the power to require a bank to:

(1) Maintain its accounts in accordance with such regulations as he may prescribe having regard to the size of the organization.

(2) Observe methods and standards which he may prescribe for determining the value of various types of assets.

(3) Charge off the whole or part of an asset which at the time of the Commissioner's action could not lawfully be acquired.

(4) Write down an asset to its market value.

(5) Record liens and other interests in property.

(6) Obtain a financial statement from a prospective borrower to the extent that the bank can do so.

(7) Obtain insurance against damage to real estate taken as security.

(8) Search, or obtain insurance for, the title to real estate taken as security.

(9) Maintain adequate insurance against such other risks as the Commissioner may determine to be necessary and appropriate for the protection of depositors and the public.

(f) The Commissioner and the Board shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer an oath and examine any person under oath in connection with any subject relating to a duty imposed upon or a power vested in the Commissioner or the Board. These powers shall be enforced by the District Court of Guam. An individual who claims privilege against self incrimination may nevertheless be compelled to testify, but he shall not be prosecuted or subjected to a penalty or forfeiture on account of anything concerning which he has testified under such compulsion, except for perjury committed in his testimony. Removal from an office or employment with a territorial bank is not the imposition of a penalty or forfeiture.

(g) The Board may, on petition of any interested person and after hearing, issue a declaratory order with respect to the applicability to any person, property or state of facts of this Title or a rule issued by the Board. The order shall bind the Board and all parties to proceeding on the state of facts alleged unless it is modified or reversed by a court having jurisdiction. A declaratory order may be reviewed and enforced in the same manner as other orders of the Board, but the refusal to issue a declaratory order shall not be reviewable.

(h) No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the Board notwithstanding a subsequent decision by a court invalidating the order, regulation or definition.

§2104. Court Review. (a) Any person aggrieved and directly affected by an order of the Board may appeal to the District Court of Guam, within thirty (30) days after issuance of the order. The validity of an order may be tested only by such an appeal and may not be placed in issue in an action to enforce it or in a prosecution for its violation. The filing of a petition for review shall not stay enforcement of an order, but the Court may order a stay upon such terms as it deems proper.

(b) The Court may affirm the order of the Board, may direct the Board to take action unlawfully withheld, or may reverse or modify the order of the Board if it (a) was issued pursuant to an unconstitutional statutory provision; (b) was in excess of statutory authority; (c) was issued upon unlawful procedure; or (d) is not supported by substantial evidence in the record. Due weight shall be accorded the experience, technical competence and specialized knowledge of the Board as well as the discretionary authority conferred upon it.

§2105. Examination and Reports. (a) The Commissioner shall examine the condition of each territorial bank at least once in each calendar year and shall require each such organization to submit a report of its condition as of such dates as he may fix at least twice in each calendar year. Only summary examinations and reports shall be required in respect of fiduciary activities which are subject to court accounting. A report of examination shall be sent to the organization examined.

(b) Whenever the Commissioner deems it necessary, he may examine any corporation the majority of the stock of which is owned by a territorial bank or which is found by the Board to be controlled by a territorial bank.

(c) The Commissioner shall examine the condition of each state chartered bank authorized to do business on Guam in conjunction with the examination performed by the Federal Deposit Insurance Corporation and State Regulatory Authority and shall require each such organization to submit a report of its condition as of such dates as he may fix at least twice in each calendar year. Only summary examinations and reports may be required in respect of fiduciary activities which are subject to court accounting. A report of examination shall be sent to the organization examined.

(d) Whenever the Commissioner deems it necessary, he may examine each state and nationally chartered bank and may require

each such organization to submit a report of its condition as of such dates as he may fix. Only summary examinations and reports may be required in respect of fiduciary activities which are subject to court accounting. A report of examination shall be sent to the organization examined.

(e) The Commissioner may accept the reports of State, National, Federal Reserve or FDIC Examiners in lieu of a separate examination.

§2106. Fees to Defray Expenses of Division. (a) The Commissioner shall charge an examination fee based on cost per hour per examiner, plus travel, per diem and other related expenses for all financial institutions examined by her or his staff.

(b) Such fees shall be paid directly to the General Fund of the government of Guam.

§2107. Commissioner's Annual Report. (a) The Commissioner shall report to the Governor annually, within sixty (60) days after the end of each fiscal year. His report shall include:

(1) The text of all rules of the Division of general application adopted or altered since his last previous report.

(2) Recommendations for legislation.

(3) A statement of the status and remaining assets and liabilities of all banking organizations in the possession of the Commissioner.

(4) A summary of all changes occurring since his last previous report by reason of opening new territorial banks, mergers and conversions, increases and decreases in capital and the like.

(5) A statement of condition of each territorial bank as of the date of the most recent report of condition rendered to the Commissioner.

(b) Copies of the annual report shall be concurrently submitted to the Legislature.

§2108. Records of the Division. (a) Information from the records of the Division shall not be revealed, to any person other than members of the Board, except with the consent of the Commissioner and shall not be subject to subpoena, unless otherwise permitted by territorial, state or federal law, rule or regulations.

(b) Reports of examinations made by the Division shall be retained for five (5) years.

(c) A copy of any document on file with the Division which is certified by the Commissioner as being a true copy may be introduced in evidence as if it were the original. The Commissioner shall be establish a schedule of fees for copies of documents.

§2109. Banking Interest of Officers and Employees. No officer or employee of the Division shall be an officer, director, trustee, attorney, owner, shareholder or partner in any bank, or, except as hereinafter provided, receive, directly or indirectly, any payment or gratuity from any such organization, or be indebted or any bank, or engaged in the negotiation of loans for others with any such bank. This provision shall not prohibit being a depositor on the same terms as are available to the public generally, or being indebted to a bank upon (1) a mortgage loan upon the mortgagor's own home, (2) upon installment debt transferred to a bank in regular course of business by a seller of household goods or automobiles purchased by the

employee, or other installment debt of a personal nature not to exceed five thousand dollars (\$5,000.00).

§2110. Limitation of Personal Liability. No member of the Board or officer or employee of the Division shall be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his office.

§2111. Preservation of Bank Records. (a) Every territorial bank shall retain its business records for such periods as are or may be prescribed by or in accordance with the terms of this section.

(b) Each territorial bank shall retain permanently the minute books of meetings of its stock holders and directors, its capital stock ledger and capital stock certificate ledger or stubs, its general ledger, its investment ledger, its copies of bank examination reports, and all records which the Board shall in accordance with the terms of this section require to be retained permanently. The Commissioner in his discretion may require that certain records be reproduced and stored in a safe deposit either within or without the territory of Guam.

(c) All other bank records shall be retained for such periods as the Board shall from time to time issue regulations classifying all records kept by territorial banks and prescribing the period for which records of each class shall be retained. Such periods may be permanent or for a lesser term of years. Such regulations may from time to time be amended or repealed. Prior to issuing any such regulations the Board shall consider:

(1) Actions at law and administrative proceedings in which the production of bank records might be necessary or desirable.

(2) Territorial, State and Federal statutes of limitation applicable to such actions or proceedings.

(3) The availability of information contained in bank records from other source.

(4) Such other matters as the Board shall deem pertinent in order that its regulations will require banks to retain their records for as short a period as is commensurate with the interests of bank customers and shareholders and of the people of Guam in having bank records available.

(d) [Reserved.]

(e) Any territorial bank may dispose of any record which has been retained for the period prescribed by or in accordance with the terms of this section for retention of records of its class, and shall thereafter be under no duty to produce such record in any action or proceeding.

(f) Any territorial bank may cause any or all records at any time in its custody to be reproduced by the microphotographic process and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(g) To the extent that they are not in contravention of any law of the United States, the provisions of this section shall apply to all banks doing business in Guam.

§2112. Standards in Regulations. The Board and the Commissioner in the exercise of the power to make rules and issue regulations pursuant to this Title shall act in the interests of promoting and maintaining a sound banking system, the security of deposits and depositors and other customers, the preservation of the

liquid position of banks and in the interest of preventing injurious credit expansions and contractions.