CHAPTER 21

TRUST COMPANIES RULES AND REGULATIONS

SOURCE: Entire Chapter added by P.L. 25-073:2 (Oct. 19, 1999).

2026 NOTE: Past publications reflected errors in numbering; this error has been corrected.

2019 NOTE: Pursuant to authority granted by 1 GCA § 1606, provisions were renumbered, and subsection designations added/altered.

§ 21101. Definitions.

In these regulations, unless the context specifically states otherwise,

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

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

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

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

(e) "Control" means

(1) ownership of more than fifty percent (50%) of the voting stock of a corporation,

(2) ownership of stock of a corporation constituting more than fifty percent (50%) of the fair market value of all of said corporation's issued and outstanding shares,

(3) a contractual or other right to vote shares constituting more than fifty percent (50%) of the voting shares of a corporation,

(4) the right under a management agreement or other contract to make over fifty percent (50%) of the decisions governing the business and financial affairs of a corporation, or to select all of its officers or directors, or

(5) any other right or arrangement that separately or in conjunction with other rights creates the practical ability to determine over fifty percent (50%) of the business and financial affairs of a corporation or to select its officers or directors.

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

§ 21102. Application for License; Contents; Procedures.

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

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

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

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

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

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

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

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

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

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

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

2019 NOTE: The application form referred to as "Appendix A" in subsection (a)(1) can be found at the end of this chapter.

§ 21103. Review of Application and Issuance of License.

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

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

§ 21104. Cancellation of License if Trust Company Fails to Open for Business.

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

§ 21105. Renewal.

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

§ 21106. Annual Audited Report.

Report Form. The annual audit report shall consist of the following:

(a) Opinion of Independent Certified Public Accountant.

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

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

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

(b) Report of Evaluation of Internal Controls.

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

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

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

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

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

(3) the accountant understands that the audited annual report and the accountant's opinions thereon will

be filed in compliance with this regulation with the Commissioner;

(4) the accountant consents to the requirements of § 21206 of these regulations and further consents and agrees to make available for review by the Commissioner, the auditor's designee or the auditor's appointed agent, the work papers as defined in § 21209 of the regulations; and

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

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

(1) balance sheet;

(2) statement of earnings or loss from operations;

(3) statement of cash flows;

(4) statement of changes in paid-in capital and contributed surplus and unassigned funds; and

(5) notes to financial statements

§ 21107. Change of Independent Auditor.

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

§ 21108. Access to and Maintenance of Working Papers of Independent Auditor.

Each Trust Company that is licensed under the Act shall require its Independent Auditor to make available for review by the Commissioner, or the Commissioner's appointed agent, the work papers prepared in the conduct of the audit of the Company.

The Trust Company shall require that the Independent Auditor retain the audit work papers for a period of not less than five (5) years after the period reported upon.

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

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

§ 21109. Security.

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

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

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

§ 21110. Notice of Adverse Financial Condition.

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

§ 21111. Other Requirements and Restrictions.

(a) Minutes of Annual Meeting of the Board of Directors. For a Trust Company that is licensed under the Act, copies of the minutes of the annual meeting of the board of directors shall be filed with the Commissioner within thirty (30) days after such meeting.

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

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

(d) Deposits in Local Financial Institution. All payments and deposits of the Trust Company licensed under the Act shall be made in a local financial institution as defined in § 21101(f), above.

§ 21112. Regulatory Fees.

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

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

(c) Failure to Pay. Failure of a Trust Company to pay the fee required in subsection (b), above, as provided in this Section constitutes grounds for revocation of its license.
