

HAW: re RTM memo + Corp Board  
structure = gov't functions? covered  
by Henry et al.?

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(MSA)

May 8, 1974

MEMORANDUM FOR: Michael S. Helfer

RE: Marianas Public Land Corporation

You have asked that I prepare a brief report on the status of the preparation of documents for the non-profit corporation that would be formed to receive the public lands of the Mariana Islands and that I prepare a brief explanation of the documents that have been drafted to date.

I. Status of Project

To date, draft regulations that could be promulgated by the Registrar of Corporations of the Trust Territory of the Pacific Islands ("Trust Territory") and a preliminary draft of articles of incorporation for the public land corporation (the "Corporation") have been prepared. Before our decision to suspend work on the Corporation, we had planned to prepare proposed by-laws (in the simplified form of operating rules) and proposed legislation for the District Legislature of the Mariana Islands.

Copies of the documents drafted to date have been delivered to you together with a copy of Mr. Mode's memorandum of January 23, 1974.

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## II. Draft Regulations

As you will recall, Mr. Mode has discussed the deficiencies of the Trust Territory's law governing corporations. The Government of the Trust Territory has found it necessary in the case of business corporations, credit unions and cooperative associations to issue detailed regulations which, upon approval by the Attorney General and the High Commissioner, have the force and effect of law of the Trust Territory.

I reviewed the regulations promulgated under the corporate law to date and observed that the regulations governing business corporations had been adapted from the provisions of the ABA Model Business Corporation Act. The principal changes made by the Registrar of Corporations of the Trust Territory involved procedural and administrative matters.

The February 13, 1974 draft of Non-Profit Corporation regulations was prepared with a view to being able to present to the Registrar noncontroversial regulations that could be adopted expeditiously. Accordingly, that draft of a proposed Chapter V of the Registrar's regulations under the corporate law was adapted from the provisions of the ABA Model Nonprofit Corporation Act. The provisions of the model act were not incorporated in any sections where the provisions of the ABA Model Business Corporation Act had

been rejected in the business corporation regulations. In such cases, the Trust Territory's regulations were used in preparing the draft (see, e.g., Sections 40.8 through 40.13).

It should be noted that the draft regulations would not be required if it is determined to organize the Corporation under a law enacted by the district legislature. It should also be noted that many of the provisions of the draft regulations are necessarily of general application and would not be required in connection with the organization and operations of the Corporation.

### III. Draft Articles of Incorporation

The draft articles of incorporation were prepared to reflect the recommendations made in "A Proposal For A Private Corporation To Receive And Administer The Public Lands of the Mariana Islands," November 19, 1973, and in a "Memorandum on the Organization of the Marianas Land Corporation," January 23, 1974 as modified to reflect comments of our client on the November 19, 1973 memorandum and discussions in conferences with Mr. Willens, Mr. Mode and you on the January 23, 1974 memorandum.

Following is a brief analysis of the draft articles.

Preamble--This assumes that it will be necessary that the incorporators be residents and ~~citizens~~ citizens of the Trust Territory. This may be unnecessary if the provision of the Trust Territory Code dealing with land ownership is amended in the manner suggested in Standing Committee Report No. 221.

Article I--The name selected is subject to approval by our client. OK

Article II--The draft would give the Corporation perpetual duration. Other alternatives suggest themselves. For example, the Corporation's existence could terminate automatically upon the election of a government of the Mariana Islands pursuant to a constitution ratified by the people of the Mariana Islands.

Article III--This is a procedural provision which incorporates the requirements set forth in the draft regulations.

Article IV--Section 4.01(a) through (f) has been drafted to restrict the corporate purposes of the corporation to activities that would have been authorized by the bill introduced by Senator Pangelinan. Obviously, review will be necessary when the legislation is enacted.

Murphy  
1/11/72

Section 4.02, the corporate power provision, is based on the ABA Model Nonprofit Corporation Act. The only power included in the model act that has been omitted was the power to indemnify directors and officers of the Corporation. Clause (5) has been added to the model act provisions and is subject, by virtue of Section 4.03, to express provisions of the articles. Clause (12) has been modified to require that such donations be made only out of excess revenues and only pursuant to district laws.

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Section 4.03 denies the Corporation the power to make loans to members, directors, officers or employees.

[The client should be asked whether similar restrictions should be placed upon "associates" of such persons.]

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Article V--It will be necessary to organize the incorporators (see the memorandum of January 23, 1974 which contains our recommendations).

Sections 5.02 and 5.03 designate the incorporators as an interim board of directors and require the interim directors to convene an organizational meeting of members within 60 days of the issuance of the charter.

Section 5.02 restricts the powers of the interim directors to acts connected with the organizational meeting. [The client may wish to delete this restriction and permit the interim directors to manage the affairs of the Corporation until that meeting.]

leave limited

Article VI--Article VI contains the provisions dealing with the members of the Corporation. Section 6.01 requires a decision by our client on the breadth of membership. [Specifically, the client should be asked whether there are additional elected officials who should be considered eligible for membership and whether the membership should include a certain number of individuals who do not hold public offices.] Howard Willens thought it was appropriate to provide that a certain number of individuals,

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having the requisite characteristics of members, be members of the Corporation. Section 6.01 has been drafted in an attempt to avoid amendment at the time independent political status is achieved.

Section 6.02 specifies the procedures required in connection with perfecting membership in the Corporation and the manner of determining the total number of members from time to time.

Section 6.03 specifies the term of membership and provides, generally, for two-year terms, subject to earlier termination in the case of public officials.

Section 6.04 requires that the annual meeting of members be held as soon as possible after the assumption of duties by public officials elected at general elections held each two years. I think it advisable to add language in this section and in the prior section similar to the language in Section 6.01 so that an amendment will not be required when independent status is achieved.

Section 6.05 specifies the voting rights of members. It permits action at meetings or action by written consent.

Section 6.06 requires a majority of members for a legal meeting and the approval of a majority of those present for action on any matter. [The client should be asked whether or not a greater requirement should be set for action

on matters dealing with disposition of the public lands.]

Section 6.07 is a technical provision designed to make it clear that members have voluntarily agreed to the restrictions set forth, from time to time, in the articles and by-laws of the Corporation.

Article VIII--Section 7.01 requires that candidates be Trust Territory citizens. [Our client may wish to broaden eligibility on the Board of Directors by providing that candidates only be Trust Territory residents. Our client may also wish to require that a specified number of directors should not be members of the Corporation.]

*resident self  
Nominees*

Section 7.02 sets the initial Board at eleven directors. (See the January 23, 1974, memorandum.)

Section 7.03 sets forth methods of electing directors. Subsection (a) requires that the number of nominees exceed the number of directorships in connection with the election of the first Board of Directors. Clauses (1) through (3) of Subsection (a) provides for Island representation on the Board of Directors. Clause (4) deals with the election of the remaining five directors. Subsection (b) deals with the term of members of the first Board of Directors and is necessary in order to stagger the election of directors. Subsection (c) sets a general two-year term of office for directors. Subsection (d) provides for the staggered Board of Directors and attempts to preserve at all times Island representation.

*2 Nomin  
2 Nomin  
2 Sponsors  
5 at large*

Section 7.05 governs the filling of vacancies and attempts to preserve the Island representation concept.

Section 7.06 requires a quorum of a majority of the whole Board and provides that the quorum requirement may be changed without amendment of the articles by a by-law adopted by Members.

Section 7.07 provides for the creation of committees. Subsection (a), which is based on the model act, provides for committees that can exercise the power of the Board. As you will recall, we recommend the creation of a six-member executive committee composed of directors most able to attend meetings. Subsection (b) provides for the creation of advisory committees composed of individuals who need not be members, officers or directors.

Section 7.08 deals with the procedures for meetings of the Board of Directors and, basically, requires that the by-laws set forth the definitive procedures.

Section 7.09 specifies the officers of the Corporation, permits the by-laws to authorize any person to hold two or more offices and requires the by-laws to describe their duties. Our client may wish to use different titles for the positions or to create a different structure of officers. Subsection (b) would have the effect of making the president an ex officio member of the Board.

Article VIII and IX--These numbers have been reserved for what will be the most critical provisions of the articles. Article VIII will contain the provisions dealing with the public lands and will specify the limits imposed upon the Corporation in connection with various transactions. Article VIII will also set forth the definition of excess revenues and provide for the application of such revenues. Article IX will contain provisions prohibiting conflicts of interest. Such provisions will be tied to express sections of Article VIII and, accordingly, have not been drafted. This is the area of the articles where we need [the most advice from our client about the scope of activities contemplated, the checks and balances that would be warranted in connection with actions by the Corporation and the types of sanctions that should be imposed for actions that basically would constitute a breach of trust.]

If restrictive legislation is adopted by the Congress of Micronesia dealing with dispositions and if the district legislature plans to implement such legislation by a law giving it general supervision over the Corporation, these provisions will not be so important.

Article X--Article X sets forth procedures for, and reserves the power to, amend the articles.\*

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\*/ The Trust Territory Code does not contain a provision reserving the power to alter a charter, and the regulations that I have drafted differ from the regulations promulgated under (Cont'd on Page 10)

*Article VIII*

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*Mary M  
College!*

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Section 10.02 is based on the model act but sets higher requirements than are included in that act.

Article XI--Article XI sets forth provisions dealing with mergers, sales of substantially all assets and dissolution.

Section 11.02 requires the Corporation to transfer all its assets, including the public lands, in accordance with any laws promulgated by the government after independent political status is achieved. In connection with that transfer, the Board of Directors may be required to retain certain assets to satisfy obligations of the Corporation.

Section 11.04 consolidates various provisions of the model act and provides the same procedures for sales of substantially all the assets, mergers and consolidation or voluntary dissolution. Subsection (c) requires the publication of notice to the people of the Mariana Islands, and subsections (e) and (f) require notice to and approval by the legislature of the Mariana Islands prior to consummation of any such transaction. Subsection (g) is a basket-clause provision.

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(Footnote cont'd from Page 9)  
the model act in that such reservation of power has been deleted. The absence of such reservation clauses might enable us, if the United States Constitution applies, to argue that the powers of the Corporation will not be affected by changes in Trust Territory law. It seemed advisable to provide that someone had the power to alter the articles.

Section 11.05 designates the High Court of the Trust Territory as the initial court with jurisdiction over involuntary dissolution proceedings. The proviso should also be included as a portion of the law to be enacted by the district legislature. Perhaps that law should designate the High Court, or its successor tribunal, as the only tribunal empowered to act on involuntary dissolution of the Corporation.

Article XII--Article XII contains general provisions dealing with the by-laws.

VI. Other Matters

I suggest that the by-laws of the Corporation be divided into two sections and that the first section contain by-laws which are considered to be so substantive that amendment would require action by the members of the Corporation. The second section would not resemble traditional by-laws but would cover the matters generally covered therein by setting forth a simple outline of the procedures to be followed in connection with, and the requirements for, meetings of members, meetings of directors, notice of such meetings, solicitation of proxies, publication of notices in connection with various transactions, the duties and authority of directors and officers, the limits upon the authority of particular officers, etc.

As I mentioned to you this week, I do not believe that it would be advisable to deliver a copy of the articles to our client. I would suggest that you read through the draft and improve upon my summary and that if any document is delivered it be a revised form of summary, or outline, of the articles.

There would seem to be no reason why the draft regulations could not be delivered to the client, particularly if you learn that it is possible to arrange a meeting with the Registrar of Corporations and set the administrative wheels in progress.

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