

DRAFT REGULATIONS FOR NON-PROFIT CORPORATIONS  
Marked To Indicate Deletions From  
and Additions to the Provisions of the Model Act

The symbol <sup>^</sup> indicates that material has been deleted.  
Material that has been added is underscored.

June 27, 1974

CHAPTER V

Non-Profit Corporations

Part 40. GENERAL PROVISIONS

40.1 Authority. The regulations in this chapter have been promulgated and issued by the Registrar of Corporations and approved by the Attorney General and the High Commissioner of the Trust Territory of the Pacific Islands in accordance with Section 52, Title 37, of the Code of the Trust Territory, 1970 revision, as amended, and shall have the force and effect of law.

40.2 Basis and Purpose. The regulations in this chapter are designed to facilitate the administration of and carry into effect the laws of the Trust Territory of the Pacific Islands governing corporations formed for a purpose other than pecuniary profit.

40.3 Definitions. As used in this chapter, unless context otherwise requires, the term:

(a) "Corporation" means a non-profit corporation organized under the laws of the Trust Territory. A non-profit corporation means a corporation organized for any lawful purpose other than pecuniary profit. A corporation will be deemed to be organized for a purpose other than pecuniary profit if no part of its property, net income or profit is distributable to its members, directors and officers.

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(b) "Charter" means (i) an order of the High Commissioner granting a non-profit corporation the right to conduct any lawful activities in the Trust Territory, (ii) the articles of incorporation of the non-profit corporation and (iii) any provisions of the by-laws of the non-profit corporation adopted to meet the requirements of this chapter or other law of the Trust Territory. The term "charter" includes all amendments thereto but excludes documents prior in time to any such amendment which restates the charter.

(c) "Articles of Incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger and, in the case of a corporation created by order of the High Commissioner or by an act of the Congress of Micronesia or of a chartered district legislature, includes the special charter and any amendments thereto.

(d) "By-laws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(e) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or by-laws.

(f) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(g) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

40.4 Applicability. The provisions of this chapter relating to domestic corporations shall apply to:

(a) All corporations organized hereunder; and

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(b) All non-profit corporations heretofore organized under the laws of the Trust Territory^ for a purpose or purposes for which a corporation might be organized under this chapter which shall elect, as provided in Part 46.6 of this chapter, to be governed by this chapter.

40.5 Purposes. Corporations may be organized under this chapter, unless organization thereof is governed by other chapters of this Title 4 or by other laws or regulations of the Trust Territory, for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; professional, commercial,

industrial or trade association; or acting as the entity designated by any chartered district legislature to implement the United States Policy Statement on Transfer of Title of Public Lands from the Trust Territory of the Pacific Islands to the Districts, dated November 2, 1973.

40.6. General Powers. Except as otherwise provided in its articles of incorporation, each corporation shall have power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

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

(c) 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 other manner reproduced.

(d) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated; provided, however, that such power shall not extend to real property unless all the members of the corporation, or, if the corporation has no members, all the directors of the corporation, are citizens of the Trust Territory or unless the corporation itself is by law a citizen of the Trust Territory.

(e) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(f) To lend money to its employees other than its officers and directors and otherwise assist its employees, officers and directors.

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of any government, or of any governmental instrumentality.

(h) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure

any of its obligations by mortgage or pledge of all or any of its property, franchises and income, and guarantee obligations of others.

(i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property, to the extent permitted by law, as security for the payment of funds so loaned or invested. ^

(j) To conduct its affairs, carry on its operations and have offices and exercise the powers granted by this chapter throughout the Trust Territory of the Pacific Islands.

(k) To elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation.

(l) To make and alter by-laws, not inconsistent with its charter or with the laws of the Trust Territory, for the administration and regulation of the affairs of the corporation.

(m) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes.

(n) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; and to make any other indemnification that shall be authorized by the articles of incorporation or by-laws, or resolution adopted after notice by the members entitled to vote.

(o) To pay pensions and establish pension plans or pension trusts for any or all of its directors, officers and employees.

(p) To cease its corporate activities and surrender its corporate franchise.

(q) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

40.7 Defense of Ultra Vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the officers or directors of the corporation for exceeding their authority.

40.8 Limited Liability. The directors, officers, employees and members of the corporation shall not, as such, be liable on its obligations.

40.9 Corporate Name. The corporate name :

(a) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(b) Shall not be the same as, or deceptively similar to the name of any corporation, whether for profit or not for profit, existing under the laws of the Trust Territory

or authorized to transact business or conduct affairs in the Trust Territory, or a corporate name reserved or registered as permitted by the laws of the Trust Territory.

40.10 Reserved Name. The exclusive right to the use of a corporate name may:

(a) Be reserved by any corporation by filing with the Registrar an application to reserve a specified corporate name, executed by the applicant. If the Registrar finds that the name is available for corporate use, he shall reserve it for the exclusive use of the applicant for a period of four months.

(b) Be transferred to any other person or corporation by filing in the office of the Registrar a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

(c) Be revoked by the Registrar after hearing if he is of the opinion that the application therefor or any transfer thereof was not made in good faith.

40.11 Registered Office and Registered Agent. Each corporation shall have and continuously maintain in the Trust Territory:

(a) A registered office which may be, but need not be, the same as its principal office.

(b) A registered agent, which agent must be an individual resident in the Trust Territory whose business office is identical with such registered office, and who is a member, officer or director of the corporation.

40.12 Change of Registered Office or Appointment or Change of Registered Agent. A corporation may change its registered office or appoint or change its registered agent, or both, upon filing with the Registrar a statement showing:

(a) The name of the corporation

(b) The address of its then registered office.

(c) If the address of its registered office be changed, the post office address (including the street and number if any) to which the registered office is to be changed.

(d) The name of its then registered agent.

(e) If its registered agent be changed, the name of its successor registered agent and that he is a resident of the Trust Territory and that he is a member, officer or director of the corporation.

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(g) That such change was authorized by resolution duly adopted by its board of directors.

The statement shall have attached thereto a certified copy of the minutes of the board of directors of the corporation authorizing the designation. The statements shall be verified by the oath of the president or a vice president of the corporation, and shall become effective when filed with the Registrar.

40.13 Service of Process on Corporation. (a) The registered agent of a corporation shall be an agent of such corporation upon whom any process, notice, order or demand required or permitted by law to be served upon the corporation may be served.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in the Trust Territory, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Registrar shall be an agent of such corporation upon whom may be served any process, notice, order or demand, except one issued by the Registrar. Service may be made on the Registrar at his office. He shall without delay communicate the same, by certified mail, to the corporation at its last known address and keep a record thereof. Any process, notice, order or demand issued by the Registrar shall be served by being mailed by certified mail addressed to the corporation at the address of its last registered office.

(c) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.



(d) The address of the registered office and the name and address of the registered agent of every corporation as last filed with the Registrar pursuant to the provisions of this chapter shall be conclusive for the purpose of service of process.

40.14 Books and Records. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in the Trust Territory a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, in accordance with the provisions of Section 4(2) of Title 37, Trust Territory Code, 1970 revision.

40.15 Shares of Stock and Dividends Prohibited. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors or officers. Unless the articles of incorporation otherwise provide, a corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit.

#### Part 41. MEMBERS

41.1 Members. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the by-laws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the by-laws. A corporation may issue certificates evidencing membership therein. Any such certificate will not be deemed to be a "security" subject to the regulations set forth in Chapter II of this Title 4.

41.2 Meetings of Members. (a) Meetings of members may be held at such place, either within or without the Trust Territory, as may be provided in the articles or by-laws. In the

absence of any such provision, all meetings shall be held at the registered office of the corporation in the Trust Territory.

(b) An annual meeting of the members shall be held at such time as may be provided in the articles or by-laws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president or by the board of directors and shall be called by the president whenever required by the articles of incorporation or the by-laws. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-tenth of the votes entitled to be cast as such meeting.

41.3 Notice of Members' Meetings. Unless otherwise provided in the articles of incorporation or the by-laws, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than twenty-four nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. A waiver of the notice of the meeting in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be the equivalent to the giving of such notice.

41.4 Voting. (a) The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(b) A member entitled to vote may vote in person or, unless the articles of incorporation or the by-laws otherwise

provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the articles of incorporation or by-laws may provide that such elections may be conducted by mail.

(c) The articles of incorporation or the by-laws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

(d) If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

41.5 Quorum. The articles or by-laws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum. A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by this chapter or by the charter.

## Part 42. DIRECTORS AND OFFICERS

42.1 Board of Directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of the Trust Territory or members of the corporation unless the articles of incorporation or the by-laws so require. The articles of incorporation or the by-laws may prescribe qualifications for directors.

42.2 Number and Election of Directors. (a) The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the articles of incorporation or, if the articles of incorporation permit, by the by-laws. The number of directors may be increased or decreased from time to time, by amendment of the articles of incorporation or of the by-laws, as the case may be. ^

(b) The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first election of directors or for such other period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

(c) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or the by-laws.

42.3 Vacancies. (a) Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the by-laws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

(b) A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

(c) Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the members.

42.4 Quorum of Directors. A majority of the number of directors fixed by the articles of incorporation, or the by-laws if the articles so permit, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the by-laws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the articles of incorporation or the by-laws.

42.5 Committees. (a) If the articles of incorporation or the by-laws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the by-laws of the corporation, shall have and exercise all the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to (i) amending, altering or repealing the by-laws; (ii) electing, appointing or removing any member of any such committee or any director or officer of the corporation; (iii) amending the articles of incorporation, restating articles of incorporation, adopting a plan of merger or adopting a plan of consolidation with another corporation; (iv) authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the corporation; (v) authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; (vi) adopting a plan for the distribution of the assets of the corporation; or (vii) amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed on such person.

(b) If the articles of incorporation or the by-laws so provide, the Board of Directors or any committee of the Board constituted pursuant to paragraph (a) hereof may designate and appoint advisory committees, the members of which need not be members, officers or directors of the corporation.

42.6 Place and Notice of Director's Meetings.

Meetings of the board of directors, regular or special, may be held either within or without the Trust Territory, and upon such notice as the by-laws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless the articles of incorporation or the by-laws so require.

42.7 Officers. (a) The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the by-laws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(b) The articles of incorporation or the by-laws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

(c) The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the by-laws.

42.8 Removal of Officers. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

42.9 Loans to Directors, Officers and Members Prohibited. No loans shall be made, directly or indirectly, by a corporation to its directors, officers or members. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

#### Part 43. FORMATION OF CORPORATION AND AMENDMENTS

43.1 Incorporators. Two or more persons may file an application for a charter as a corporation with the Registrar.

43.2 Effect of Issuance of Charter of Incorporation. Upon the issuance of the charter of incorporation, the corporate existence shall begin. <sup>^</sup> The charter of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporator have been complied with and that the corporation has been incorporated under the law.

43.3 Organization Meetings. After the issuance of the charter of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held <sup>^</sup> at the call of a majority of the incorporators, for the purpose of adopting the by-laws theretofore approved by the High Commissioner. A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least twenty-four days' notice, for such purpose as shall be stated in the notice. <sup>^</sup>

43.4 Right to Amend Articles of Incorporation. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, provided that the amendment may contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

43.5 Procedure to Amend Articles of Incorporation. Amendments to the articles of incorporation shall be made in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendment or amendments and directing that it be submitted to a vote of members entitled to vote thereon. Written notice setting forth the proposed amendment or amendments and a summary of the changes to be effected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast or upon receiving the written consents of members entitled to cast two-thirds of the votes.

(b) If there are no members, or no members entitled to vote thereon, an amendment or amendments shall be adopted at a meeting of the board of directors upon receiving the vote of at least a majority of the directors in office.

43.6 Articles of Amendment. The articles of amendment shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and shall be verified by the oath of one of the officers executing such articles, and shall set forth:

(a) The name of the corporation.

(b) The amendment or amendments so adopted.

(c) If there are members entitled to vote thereon, the date of the meeting of the board of directors at which the amendment or amendments was directed to be submitted to a vote of members; the date when notice was given to each member entitled to vote; the fact that such notice was given in the manner provided in this chapter and was accompanied by a copy of the proposed amendment or amendments; the date of adoption of the amendment or amendments by the members; whether the vote was taken at a meeting or by consent; the number of members entitled to vote thereon; and the number of members voting for such amendment or amendments.



(d) If there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment or amendments was adopted, and a statement of the fact that such amendment or amendments received the vote of at least a majority of the directors in office.

43.7 Approval of Amendment. The articles of amendment shall be delivered to the High Commissioner. If the High Commissioner finds that the articles comply with the requirements of law he shall approve the amendment in writing.

43.8 Effectiveness of Amendment. Upon approval of the amendment by the High Commissioner, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly; provided, however, that no amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, provided, further, that, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

#### Part 44. MERGER, CONSOLIDATION AND SALE OF ASSETS

44.1 Procedure for Merger. Unless otherwise provided by the articles of incorporation, any two or more corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter. Each corporation shall adopt a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) A statement of any changes in the charter of the surviving corporation to be effected by such merger.

(d) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

44.2 Procedure for Consolidation. Unless otherwise provided by the articles of incorporation, any two or more corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter. Each corporation shall adopt a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) With respect to the new corporation, all of the statements required to be set forth in application for charter of incorporation for corporations organized under Title 37, Trust Territory Code, 1970 revision, as amended.

(d) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

44.3 Approval of Merger or Consolidation. A plan of merger or consolidation shall be adopted in the following manner:

(a) If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote of members entitled to vote thereon. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast or upon receiving the written consents of members entitled to cast two-thirds of the votes.

(b) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of at least a majority of the directors in office.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

44.4 Articles of Merger or Consolidation. Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice president and by its secretary or an assistant secretary, verified by the oaths of one of the officers on behalf of each corporation signing such articles, and shall set forth:

(a) The plan of merger or the plan of consolidation.

(b) If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation (1) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or (2) a statement that such amendment was adopted by written consents of members entitled to cast two-thirds of the votes with respect thereto.

(c) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of at least a majority of the directors in office.

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44.5 Approval of Articles of Merger or Consolidation. The articles of merger or articles of consolidation shall be delivered to the High Commissioner. If the High Commissioner finds that such articles comply with the requirements of law, he shall approve such articles, in writing.

44.6 Effect of Merger or Consolidation. Upon approval of the articles of merger or the articles of consolidation by the High Commissioner, the merger or consolidation shall be effected. When such merger or consolidation has been effected:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter and under Title 37, Trust Territory Code, 1970 revision, as amended, shall be deemed to be the articles of incorporation of the new corporation.

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44.7 Sale, Lease, Exchange, or Mortgage of Assets. Unless the articles of incorporation otherwise provide, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of such vote is to authorize the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote thereon, within the time and in the manner provided by this chapter for the giving of notice of meetings of members. The members entitled to vote thereon may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast thereon or the written consents of members entitled to cast two-thirds of the votes thereon. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge or other disposition or assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(b) If there are no members, or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of at least a majority of the directors in office.

Part 45. DISSOLUTION

45.1 Voluntary Dissolution. A corporation may dissolve and wind up its affairs in the following manner:

(a) A corporation may be voluntarily dissolved by the written consents of at least members entitled to cast two-thirds of the votes of all members. Upon the execution of such written consents, a statement of intent to dissolve shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) The names and addresses of its officers.

(3) The names and addresses of its directors.

(4) A statement that such written consent has been signed by members of the corporation entitled to cast two-thirds of the votes of all members.

(b) A corporation may be voluntarily dissolved by the act of the corporation, when authorized as follows:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members. Notice shall be given to members entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of stockholders, and shall state that the purpose, or one of the purposes of such meeting is to consider the advisability of dissolving the corporation. At such meeting a vote of members entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of at least two-thirds of the members of the corporation.

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(2) If there are no members, or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of at least a majority of the directors in office.

(3) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by the oath of one of the officers signing such statement, which statement shall set forth:

(i) The name of the corporation.

(ii) The names and addresses of its officers.

(iii) The names and addresses of its directors.

(iv) A copy of the resolution adopted by the members, or if there are no members, or no members entitled to vote thereon, by the directors, authorizing the dissolution of the corporation.

(v) If there are members, entitled to vote thereon, the number of members and the number of members who voted for the resolution.

(vi) If there are no members, or no members entitled to vote thereon, the number of directors and the number of directors who voted for the resolution.

(c) The statement of intent to dissolve, whether by consent of stockholders or by act of the corporation, shall be delivered to the Registrar. If the Registrar finds such statement complies with the requirements of law, he shall file the statement in his office. Upon the filing by the Registrar of a statement of intent to dissolve, whether by consent of stockholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but such filing shall not of itself operate as a dissolution and its corporate existence shall continue until a certificate of dissolution has been issued by the High Commissioner.

45.2 Plan of Distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter and the articles of incorporation, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any

transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members entitled to vote thereon. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote thereon, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast or upon receiving the written consents of members entitled to cast two-thirds of the votes thereon.

(b) If there are no members, or no members entitled to vote thereon, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of at least a majority of the directors in office.

45.3 Revocation of Voluntary Dissolution. A corporation may, at any time prior to the issuance of a certificate of dissolution by the High Commissioner, revoke voluntary dissolution proceedings theretofore taken in the same manner it used to start the proceedings and so notify the Registrar by delivering to him a statement of revocation of voluntary dissolution. The High Commissioner shall issue a certificate of reinstatement and the dissolution proceedings shall be revoked and the corporation may again carry on its business.

45.4 Articles of Dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation<sup>^</sup> have been paid and discharged, or adequate provision has been made therefor, and all the remaining property and assets of the corporation<sup>^</sup> have been distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or any assistant secretary, and verified by the oath of one of the officers signing such statement. The statement shall set forth:

- (a) The name of the corporation.
- (b) That the Registrar has theretofore filed



a statement of intent to dissolve the corporation, and the date on which the statement was filed.

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(c) That all debts, taxes, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

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(d) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of incorporation and the plan of distribution, if any.

(e) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

Upon the High Commissioner's determination that all the requirements of law have been complied with, the High Commissioner shall issue a certificate of dissolution and the corporation shall cease to exist.

45.5 Involuntary Dissolution. A corporation may be dissolved involuntarily by order of the High Court for the Trust Territory in an action filed by the Attorney General when it is established that:

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(a) The corporation procured its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(c) The corporation has failed for ninety days after notice by the Registrar to appoint and maintain a registered office or a registered agent in the Trust Territory.

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45.6 Administrative Dissolution. If any corporation shall fail on two successive annual dates to file the annual report required by these regulations, the Registrar may mail notice to it of impending dissolution. Whether or not such notice be mailed, if the corporation fails within ninety days after the second such annual date to file the annual report such corporation

may be thereupon automatically dissolved by order of the Attorney General and if such order is issued the properties and affairs of the corporation shall pass automatically to its directors as trustees in dissolution and shall be distributed in accordance with the provisions of this chapter and of the articles of incorporation.

45.7 Distribution of Assets. The assets of a corporation in the process of dissolution, voluntary, involuntary or administrative, shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(c) Assets received and held by the corporation in trust shall be transferred or conveyed in accordance with the terms of the trust or, if such terms are not express, in accordance with the articles of incorporation;

(d) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter;

(e) Other assets, if any, shall be distributed in accordance with the provisions, if any, of the articles of incorporation or the by-laws; and

(f) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or non-profit, as may be specified in a plan of distribution adopted as provided in this chapter.

45.8 Notification to Attorney General. The Registrar, on or before the last day of December of each year, shall certify to the Attorney General the names of all corporations which have failed to file their annual reports in accordance with the provisions of this chapter. He shall also certify, from time to time, the names of all corporations which have given other cause for dissolution as provided in this chapter, together with the facts pertinent thereto. Whenever the Registrar shall certify the name of a corporation to the Attorney General as having given any cause for dissolution, the Registrar shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the Attorney General shall file an action in the name of the Trust Territory against such corporation for its dissolution. Every such certificate from the Registrar to the Attorney General pertaining to the failure of a corporation to file an annual report shall be taken and received in the High Court as prima facie evidence of the facts therein stated. If, before an action is filed, the corporation shall file its annual report, or shall appoint or maintain a registered agent as provided in this chapter, or shall file with the Trust Territory the required statement of change of registered agent, such fact shall be forthwith certified by the Trust Territory to the Attorney General and he shall not file an action against such corporation for such cause. If, after action is filed, the corporation shall file its annual report, or shall appoint or maintain a registered agent as provided in this chapter, or shall file with the Trust Territory the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate.

45.9 Venue and Process. In every action for the involuntary dissolution of a corporation, <sup>^</sup>summons shall issue and be served as in other civil actions. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the district where the registered office of the corporation is situated, containing a notice of the pendency of such action in the High Court, the title of the action, and the date on or after which default may be entered. The Attorney General may include in one notice the names of any number of corporations against which actions are then pending in the Court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be

prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than ninety days after the first publication of such notice.

45.10 Jurisdiction of Court to Liquidate Assets and Affairs of Corporation. The High Court shall have full power to liquidate the assets and affairs of a corporation:

(a) In an action by a member or director when it is made to appear:

(1) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for a least two years to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(4) That the corporate assets are being misapplied or wasted; or

(5) That the corporation is unable to carry out its purposes.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by the corporation to have its dissolution continued under the supervision of the court.

(d) When an action has been filed by the Attorney General to dissolve the corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Proceedings under this section shall be brought only in the High Court.

45.11 Procedure in Liquidation of Corporation by Court.

(a) In proceedings to liquidate the assets and affairs of a corporation the High Court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

(b) After a hearing had upon such notice as the High Court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the Court, the Court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Subject to the laws of the Trust Territory, such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed first to the payment of all costs and expenses of the court proceedings and thereafter as specified in Part 45.7 of this chapter.

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(d) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in the courts of the Trust Territory in his own name as receiver of such corporation. The High Court shall have exclusive jurisdiction of the corporation and its property, wherever situated. A receiver shall in all cases be a citizen of the Trust Territory. ^

(e) The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the High Court shall dismiss the proceedings and direct the receiver to re-deliver to the corporation all its remaining property and assets.

(f) In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the High Court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

(g) In case the High Court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such Court to cause a certified copy of the decree to be filed with the Registrar.

45.12 Survival of Remedy After Dissolution. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the High Commissioner, or (2) by a decree of the High Court when the High Court has not liquidated the assets and affairs of the corporation as provided in this chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take

such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

Part 46. ANNUAL REPORTS AND MISCELLANEOUS

46.1 Annual Report of Corporations. (a) Each corporation shall file, within the time prescribed by this chapter, an annual report setting forth:

- (1) The name of the corporation.
- (2) The address of the registered office of the corporation in the Trust Territory (including the post office address with street and number, if any) and the name of its registered agent in the Trust Territory at such address.
- (3) A brief statement of the character of the affairs which the corporation is actually conducting.
- (4) The names and respective addresses of the directors and officers of the corporation.
- (5) The names of any non-citizen members of the corporation.

(b) Such annual report shall be made on forms prescribed and furnished by the Registrar, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by, and verified by the oath of, its president, a vice president, secretary, an assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver or trustee, on behalf of the corporation by such receiver or trustee.

(c) The annual report of a corporation shall be delivered to the Registrar between the first day of January and the first day of March of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the first day of March of the year next succeeding the calendar year in which its charter was issued by the High Commissioner. Proof to the satisfaction of the Registrar that prior to the first day of March such report was deposited in the mail in a sealed envelope, properly

addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Registrar finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties herein prescribed for failure to file such report within the time herein provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the Registrar, within ninety days from the date on which it was mailed to the corporation by the Registrar.

46.2 Greater Voting Requirements. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation or by-laws require the vote or concurrence of a greater proportion of the directors or members or any class of members than required by this chapter, the provisions of the articles of incorporation or by-laws shall control.

46.3 Waiver of Notice. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

46.4 Action by Members or Directors Without a Meeting. Any action required by this chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if consents in writing, setting forth the action so taken, shall be signed by members entitled to cast two-thirds of the votes with respect to the subject matter thereof, or all the directors, as the case may be. Such consent may be stated as such in any articles or document filed with the Registrar under this chapter.

46.5 Election to Accept Chapter. (a) Any non-profit corporation heretofore organized under the laws of the Trust Territory for a purpose or purposes for which a corporation might be organized under this chapter, may elect to accept this chapter after approval by its members, or, if there are no members entitled to vote thereon, by its board of directors in



accordance with the requirements of the law under which such corporation was organized, its articles of incorporation and by-laws.

^ (b) A statement of election to accept the chapter shall be executed by the corporation by its president or a vice president and by its secretary and an assistant secretary, shall be verified by the oath of one officer signing such statement and shall set forth ^ the information that would be required in an application for a charter by Title 37 of the Trust Territory Code together with a statement of election to be governed by this chapter, the designation of the corporation's registered agent and registered office, the names and addresses of its officers and directors and a statement that the charter of the corporation on file with the Registrar is true, correct and complete.

(c) If the High Commissioner determines that the corporation is eligible to be covered by this chapter, he shall issue a certificate of acceptance whereupon the corporation shall be governed by this chapter.

46.6 Effect of Invalidity of Part of This Chapter. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this chapter, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this chapter so adjudged to be invalid or unconstitutional.

46.7 Inconsistent Articles of Incorporation or By-Laws. Any articles of incorporation or by-laws that are inconsistent with these regulations are hereby superseded.

46.8 Effective Date. These regulations shall become effective thirty (30) days after filing with the Clerk of Courts.

<u>Section of Regulations</u>	<u>Source of Section</u>	<u>Comments or Explanation</u>
40.1	4 CPR Ch. I § 1.1	--
40.2	4 CPR Ch. I § 1.2	--
40.3(a)	Model Act § 2(a) and (c)	The definition of corporation has been derived from the definition of "domestic corporation" and "non-profit corporation" and in the Model Act
40.3(b)	4 CPR Ch. I § 1.3(b)	--
40.3(c)	Model Act § 2(d)	Language has been added to extend the coverage of this definition to the basic corporate documents of corporations created by order of the High Commissioner, by act of Congress or by act of any chartered district legislature.
40.3(d)-(g)	Model Act § 2(e)-(h)	The definition of foreign corporation in the Model Act has not been included. While provisions dealing with the qualifications of foreign corporations are important for business corporations, principally because of taxation, they seem less important for non-profit corporations. Any foreign non-profit corporation could engage in activities in Micronesia by organizing a Micronesian non-profit corporation which would be fully subject to regulations by the Trust Territory.
40.4	Model Act, Appendix, Alternate § 3	The alternate provision set forth in the Appendix of the Model Act differs from § 3 of the Model Act in that it requires an affirmative election by an existing non-profit corporation to be bound by the

<u>Section of Regulations</u>	<u>Source of Section</u>	<u>Comments or Explanation</u>
		Regulations. The Model Act alternative provision has been modified to delete § 3(b) which automatically extends the application of the Regulations to non-profit corporations without shares organized under any Act hereby repealed." This revision is suggested because it seems unlikely that the Registrar of Corporations will be repealing any Acts of the Congress in promulgating the Regulations.
40.5	Model Act § 4	Two additions to the Model Act provisions have been made. (1) Language has been added requiring the organization of a corporation under another chapter of Title 4 if such corporation can be organized under such chapter. (2) Specific reference has been added to make it clear that corporations organized to implement the land return may be organized under the non-profit corporation chapter.
40.6	Model Act § 5	(1) "Except as otherwise provided in its articles of incorporation" has been added to permit non-profit corporations to deny any of the powers specified in the Regulations. (2) The underscored language in sections (d) and (i) has been added because of 67 Trust Territory Code § 11101.
40.7	Model Act § 6	--
40.8	Model Act § 11 ¶2	The Model Act puts this provision in a section captioned "Members" although it refers to directors, officers and employees as well. The caption has been added.
40.9	4 CPR Ch. I § 1.4; Model Act § 7	--

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<u>Section of Regulations</u>	<u>Source of Section</u>	<u>Comments or Explanation</u>
40.10	4 CPR Ch. I § 1.5	--
40.11	4 CPR Ch. I § 1.6	--
40.12	4 CPR Ch. I § 1.7	--
40.13	4 CPR Ch. I § 1.8	--
40.14	4 CPR Ch. I § 1.13 and Model Act § 25	The last sentence has been added because of the requirements of 37 Trust Territory Code.
40.15	Model Act § 26	The underscored language has been added to permit the articles of any non-profit corporation to deny it the power to compensate members, directors or officers.
41.1	Model Act § 11	The last sentence has been added to make it clear that membership certificates are not investment securities subject to the securities regulations of the Trust Territory.
41.2	Model Act § 13	(1) Language has been added in the first and second paragraphs to permit the articles as well as the by-laws to contain provisions as to the place and time of meetings. (2) The underscored language has been added to require the president to call special meetings in certain circumstances.
41.3	Model Act § 14	(1) The minimum notice period of twenty-four days in the business corporation regulations has been used rather than the Model Act's ten-day period. (2) A provision has been added providing for written waivers of notice.

<u>Section of Regulations</u>	<u>Source of Section</u>	<u>Comments or Explanation</u>
41.4	Model Act § 15	--
41.5	Model Act § 16	--
42.1	Model Act § 17	--
42.2	Model Act § 18	--
42.3	Model Act § 19	--
42.4	Model Act § 20	--
42.5	Model Act § 21	Subsection (b) has been added to make it clear that a non-profit corporation may use advisory comments which need not be composed of directors or members.
42.6	Model Act § 22	The underscored language in the last sentence has been added to permit a corporation to require that notices of directors' meetings specify the agenda.
42.7	Model Act § 23	The deleted language in subsection (a) set a maximum term not to exceed three years.
42.8	Model Act § 24	--
42.9	Model Act § 27	The Model Act provision does not prohibit loans to members. It would seem that the same policy considerations that the ABA draftsmen weighed in adopting the prohibition would apply in the case of loans to members.
43.1	Model Act § 28	The Model Act provides that one or more persons may act as incorporators. The revisions in this section have been made because of the requirements of 37 Trust Territory Code § 3. That section also sets

Section of Regulations

Source of Section

Comments or Explanation

forth the required contents of the "application for charter" and, accordingly, the text of Model Act § 29 has been deleted.

43.2	4 CPR Ch. I § 2.1	The section is similar to Model Act § 31.
43.3	4 CPR Ch. I § 2.3; Model Act § 32	--
43.4	Model Act § 33; 4 CPR Ch. I § 2.4	The underscored language has been derived from 4 CPR Ch. I § 2.4.
43.5	Model Act § 34	The last clause of subsection (a) has been added because the Model Act does not specify the vote required for approval of an amendment if the action is taken by unanimous consent. Whenever a corporation decides to approve a basic matter (such as amendment of its charter, merger or sale of assets) by consent rather than by a vote at a meeting, members will have no opportunity for discussion and it seems appropriate, therefore, to set a relatively high requirement for approval of all such basic action by consent.
43.6	Model Act § 35; 4 CPR Ch. I § 2.6	The provisions of the Model Act have been modified whenever necessary to conform to the requirements for Micronesian business corporations.
43.7	4 CPR Ch. I § 2.7	--
43.8	4 CPR Ch. I § 2.8; Model Act § 36	The final proviso is derived from the Model Act.

<u>Section of Regulations</u>	<u>Source of Section</u>	<u>Comments or Explanation</u>
Part 44	Model Act §§ 38-44	The regulations governing business corporations adopted by the Registrar of Corporations do not contain provisions dealing with merger, consolidation and sale of assets. Title 37 of the Trust Territory Code does not contain any provision dealing with such reorganizations. The Registrar may have reasoned that it was unnecessary to adopt such regulations in the case of mergers and consolidations because amended articles of incorporation would have to be filed and approved by the High Commissioner. Part 44 is not essential to the operations of the Marianas Public Land Corporation because the matters dealt with in Part 44 would all be covered by the articles of incorporation.
44.5	4 CPR Ch. I § 2.7	--
45.1	4 CPR Ch. I §§ 3.2 and 3.3; Model Act § 45	The business corporation regulations were the primary source for the voluntary dissolution provisions set forth in subsection 45.1.
45.2	Model Act § 47	--
45.3	Model Act § 48; 4 CPR Ch. I § 3.4	--
45.4	Model Act § 49; 4 CPR Ch. I § 3.5	--
45.5	Model Act § 51; 4 CPR Ch. I § 3.6	Subsection (c) has been modified to require the Registrar to give notice of the defect before bringing a proceeding in the High Court. The business corporation regulations adopted by the Registrar, like those in the Model Act, do not require such notice.

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<u>Section of Regulations</u>	<u>Source of Section</u>	<u>Comments or Explanation</u>
45.6	4 CPR Ch. I §§ 3.7 and 3.8	The business corporation regulations provide that such failure to file annual reports leads to automatic dissolution and further provide for a five-year period in which a corporation so dissolved may apply for reinstatement. This section of the Regulations has been drafted to permit the Registrar to dissolve a corporation for failure to file such reports after notice rather than to provide for automatic dissolution.
45.7	Model Act § 46	Subsection (c) has been added to insure that the trust assets of non-profit corporations, such as the district's public lands, will be distributed in accordance with the terms of the trust. The scope of the section has been broadened to cover involuntary and administrative dissolution as well as voluntary dissolution.
45.8	Model Act § 52	--
45.9	Model Act § 53	--
45.10	Model Act § 54	Jurisdiction has been limited to the High Court of the Trust Territory. The Model Act provision grants jurisdiction to any equity court.
45.11	Model Act § 55	The Model Act provision sets forth a long series of distribution procedures. The Regulations provided that the same distribution order provided in § 45.7 will govern.
45.11(e)	Model Act § 58	--
45.11(f)	Model Act § 59	--



<u>Section of Regulations</u>	<u>Source of Section</u>	<u>Comments or Explanation</u>
45.11(g)	Model Act § 60	--
45.12	Model Act § 62	--
46.1	Model Act §§ 81-82; 4 CPR Ch. I § 4.1	--
46.2	Model Act § 93	--
46.3	Model Act § 94	--
46.4	Model Act § 95	--
46.5	Model Act, Appendix, §§ 37A - 37D	--
46.6	Model Act § 99	--
46.7	4 CPR Ch. I § 4.4	--
46.8	4 CPR Ch. I § 4.6	--