ANALYSIS

OF THE

CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

December 6, 1976

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December 6, 1976

CONSTITUTIONAL CONVENTION
of the
NORTHERN MARIANA ISLANDS

Resolution No. 16

A RESOLUTION

Adopting the "Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands."

WHEREAS, the legal consultants to the Convention have prepared an "Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands"; and

WHEREAS, the Convention has considered the Analysis; and

WHEREAS, the Analysis describes the provisions of the Constitution and discusses the intention of the Convention in adopting those provisions, but does not itself have the force of law;

NOW, THEREFORE, BE IT RESOLVED, That the Convention adopt the "Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands" and direct that it be available to the Northern Marianas people along with the Constitution for their consideration in determining whether to approve the Constitution of the Commonwealth of the Northern Mariana Islands; and

BE IT FURTHER RESOLVED, That a copy of this Resolution be attached to and printed with the "Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands."

Adopted: December 6, 1976

Lorenzo I. Guerrero
Convention President

ATTEST:

Pedro M. Atalig
Convention Secretary

ANALYSIS OF THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

The purpose of this memorandum is to explain each section of the Constitution of the Commonwealth of the Northern Mariana Islands and to summarize the intent of the Northern Marianas Constitutional Convention in approving each section. This statement was approved by the Convention on December 6, 1976 with the direction that it be available to the people along with the Constitution for their consideration before the referendum on the Constitution.

PREAMBLE

The preamble distills and emphasizes the two essential objectives underlying the framing of the Constitution of the Northern Mariana Islands.

As the fundamental document of the Commonwealth government, the Constitution first reflects the traditions of the Northern Marianas people. These traditions encompass a vast scope and embrace the diverse cultures, political experiences, social mores, and philosophical attitudes that have contributed to the development and history of the land and people of the Commonwealth.

The second objective of the Constitution is to create the governmental institutions that will serve the Northern Mariana Islands in the future. The preamble recognizes the bond between the Commonwealth and the United States created by the Covenant To Establish a Commonwealth

in Political Union with the United States. Implicit in that bond is the respect of the Northern Marianas people for the United States Constitution and their reliance on the principles reflected in that document in drafting the Commonwealth Constitution.

ARTICLE I: PERSONAL RIGHTS

Section 1: Laws Prohibited. This section prohibits four kinds of Commonwealth laws: bills of attainder, ex post facto laws, laws impairing the obligation of contract, and laws prohibiting the traditional art of healing. This section is drawn largely from article I, section 10, of the United States Constitution which is made applicable in the Northern Mariana Islands by section 501 of the Covenant. No substantive change from the relevant provisions of article I, section 10, or the interpretations of those provisions by the United States Supreme Court is intended.

A bill of attainder is a law that declares a person guilty of a crime and imposes punishment without a judicial trial.

An ex post facto law is one that defines a crime or punishment and makes that definition applicable retroactively so that acts committed prior to the enactment of the law can be punished under that law. This section prevents the legislature from imposing a fine or term of imprisonment for a crime greater than that in effect

when the crime was committed. This section does not prohibit laws that make the punishment less severe than it was when the crime was committed or that change the procedures under which a person is tried for a crime so long as no important rights are lost.

A law impairing the obligation of contract is one that defines certain contracts as illegal or unenforceable and makes that definition applicable retroactively so that contracts concluded and signed prior to the enactment of the law are undone and transfers of property or rights that took place prior to the enactment of the law are affected. This section does not prevent the Commonwealth from acting in the case of natural disaster or economic crisis to safeguard the economic or social structure of the Commonwealth. For example, the legislature could enact a statute deferring a mortgagee's right to foreclose on mortgages or extending the rights of mortgagors to redeem foreclosed property beyond the time stipulated in the mortgage contract if that action was made necessary by a natural disaster or economic crisis. This section does not prevent the enactment of laws that affect contracts entered after the law becomes effective.

A law prohibiting the traditional art of healing is one that requires formal education or training as a prerequisite to giving advice with respect to healing. This section does not prohibit the legislature from regulating

the substances or practices that can be used in the traditional art of healing. This section is intended to permit the preservation of traditional Chamorro and Carolinian practices with respect to health.

The prohibition in this section applies to enactment of legislation as provided in article II or by the people through initiative as provided in article IX.

Section 2: Freedom of Religion, Speech, Press and Assembly. This section is drawn from the First Amendment to the United States Constitution which is made applicable to the states by the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. No substantive change from the First Amendment or the interpretations of that Amendment by the United States Supreme Court is intended.

The provision with respect to freedom of religion contains two guarantees. The Commonwealth government may make no law respecting an establishment of religion and it may make no law that prohibits the free exercise of religion.

The prohibition on an establishment of religion means that no law may be passed that establishes an official church or that favors one church over another. The Commonwealth government may not require prayer in the public schools and may give only limited kinds of aid to church-run schools. The Commonwealth may not provide aid to church-run

schools for teachers' salaries, textbooks, or maintenance and repair of facilities because that would constitute government support of the religious organization affected. The Commonwealth may not reimburse parents of children who attend church-run schools for tuition payments or permit income tax credits for that purpose. The Commonwealth may release students from public schools to attend religious instruction classes, provide free bus transportation to church-run schools (if similar transportation is provided to public schools), or grant tax exemptions for church property used exclusively for church purposes.

The guarantee of free exercise of religion means that persons in the Commonwealth may worship as they please so long as the right to worship does not conflict with otherwise valid laws. Bigamy, immoral or criminal conduct cannot be justified on the grounds of religious freedom.

The provision with respect to freedom of speech prohibits any law that abridges freedom of speech. Under this section speech means oral speech and various forms of symbolic speech such as joining organizations, wearing buttons, carrying signs, displaying political slogans or flying flags. The protection of this section does not extend to all forms of speech. The Commonwealth may protect the public health and safety by prohibiting publication of obscene materials or activities constituting

symbolic speech that disrupt the operation of the government or are injurious to the rights of other persons. This provision does not affect the availability of a cause of action for slander where the speech is false, injurious to reputation and meets the other legal requirements.

The provision with respect to freedom of the press prohibits any law that abridges the freedom of the press. This is a guarantee of the right of expression by writing or publishing written works. The guarantee also covers radio, television and motion pictures. This guarantee forbids censorship but does not prohibit legislation with respect to protection against publication of government secrets or obscene materials. It does not affect legal actions for libel where statements are made that are false, injurious to reputation, and meet the other legal requirements. The freedom of the press clause does not entitle newsmen to refuse to reveal the identity of confidential sources when properly subpoenaed or otherwise required to testify.

The provision with respect to freedom of assembly prohibits any law that abridges the right of the people peaceably to assemble. The term assemble means meetings of groups of persons of any size for political activity, religious services or for any other purpose. The Commonwealth cannot impose unreasonable restrictions on such assemblies, but limitations reasonably designed to prevent hazards to personal safety, health or traffic can be imposed.

Demonstrations may legitimately be restricted to certain areas and the obstruction or occupation of public buildings can be prohibited.

The provision with respect to petitioning the government prohibits any law that abridges the right of the people to petition the government for a redress of grievances. This guarantee is intended to keep open to citizens all normal means of communication with the government.

Section 3: Search and Seizure. This section prohibits unreasonable searches and seizures. This section is drawn largely from the Fourth Amendment to the United States Constitution which is made applicable to the states through the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. The section expands upon the Fourth Amendment by dealing expressly with wiretapping and comparable techniques and by providing remedies to persons who are the victims of illegal searches or seizures.

A search under this provision is an intrusion into a constitutionally protected area for the purpose of finding a suspected criminal or evidence of a crime. A seizure is an arrest or other interference with the activities of a person or the confiscation or other interference with the status or possession of personal property without consent.

The constitutionally protected areas with respect

to searches and seizures are persons, houses, papers, and other belongings. This section applies to all persons within the Commonwealth including citizens, aliens, temporary residents, visitors and persons in any other category except those in jail, under arrest or otherwise in custody. The term house is used generally and is not limited to residences. It includes all structures that house things or people such as stores, office buildings, storage buildings, hotel rooms, and apartments. The term papers and other belongings includes automobiles and other vehicles. It does not include objects that are left in plain view or that are abandoned property.

The term unreasonable means without probable cause to believe either that the place to be searched contains evidence of a crime or that the individual to be searched or seized (arrested) has committed a crime or that he has in his possession evidence related to a crime.

Probable cause exists when a reasonable person would consider, on the available evidence, that there was a good basis or good reason for believing that the place contained the evidence of a crime or that the person had committed a crime or had in his possession evidence of a crime.

Section 3(a). This section requires that a search warrant or a seizure (arrest) warrant be issued only on probable cause and that the probable cause be stated in an affidavit made under oath or affirmation.

Not every search, arrest or other seizure requires a warrant. When probable cause exists and there is no adequate opportunity to obtain a warrant, police officers may make searches, arrests or seizures without violating this section.

The issuance of a search warrant requires substantial evidence to support two conclusions: (1) the items sought are connected with criminal activity; and (2) the items will be found in the place to be searched. The issuance of an arrest (or seizure) warrant requires substantial evidence to support two different conclusions: (1) an offense has been committed; and (2) the person to be arrested committed it. This section does not limit the Commonwealth government as to which officials may be authorized to issue warrants. The legislature may provide that only judges may issue warrants or may authorize some executive branch officials, such as the attorney general, to issue warrants.

This section requires that a warrant be issued only when the claim of probable cause is supported by oath or affirmation. This means that prior to issuing the warrant the authorized official must evaluate sworn oral testimony or a sworn affidavit stating the grounds for probable cause. If the facts are knowingly falsified, the witness may be prosecuted for perjury or sued under section 3(c) by the injured person.

This section also requires that the warrant must

describe with particularity the place to be searched or the persons or things to be seized. This means that the description must be precise enough so that the officer who executes the warrant will not be left with any doubt or discretion with respect to where to search or what to seize.

Section 3(b). This section provides that no wiretapping, electronic eavesdropping or comparable means of surveillance may be used without a warrant or without consent.

Wiretapping is the use of private mechanical or electronic means to intercept or record a private telephone conversation, telegraph transmission or radio transmission. Electronic eavesdropping, sometimes called "bugging", is the use of electronic devices that receive or record private conversations. Other comparable means of surveillance are any means that use devices other than the unaided human ear to intercept private conversations or statements.

This section does not cover interception or recording of conversations or statements that are public or intended to be public. This section does not cover any interception or recording with consent at the time of the interception or recording even if consent is subsequently withdrawn.

A warrant permitting wiretapping or electronic eavesdropping can be issued only if the same criteria as are required under section 3(a) are met. It must be issued only upon probable cause. This means that there must be substantial evidence that the person whose conversations

are to be intercepted is committing, has committed or is about to commit a crime and that communications concerning that crime will be obtained through the wiretapping or electronic eavesdropping to be authorized by the warrant. The affidavit or oral testimony supporting the warrant must describe particularly the person whose conversations will be intercepted, the place where the interception will take place, the equipment to be used, and the length of time that the interception will cover.

Section 3(c). This section provides a remedy for persons who are the victims of illegal searches or seizures. Such persons have a cause of action against the government to recover the amount of their damages within limits provided by law. This section leaves to the legislature the definition of the proper limits for such actions. These limits could include an exclusion of recovery for mental suffering and a maximum limit on amounts recoverable for physical damage.

If the limits placed on recovery are reasonable, this section is an effective way to compel respect for the constitutional guarantee against unreasonable searches and seizures. Under those circumstances, the Commonwealth courts may conclude that an exclusionary rule that prohibits the use of evidence obtained from illegal searches and seizures is not necessary or desirable. Where unconstitutional police activities produce inherently unreliable

evidence, such as evidence obtained under circumstances indicating it may be fabricated, that evidence would be excluded under normal evidentiary rules. Where unconstitutional police activities produce relevant and trustworthy evidence such as contraband, instrumentalities of crime, or stolen property, that evidence would not be excluded except under the normal evidentiary rules requiring proper foundation, authentication and presentation of evidence.

This section does not affect any cause of action against officers or employees of the government in their individual capacities.

Section 4: Criminal Prosecutions. This section provides that certain fundamental rights shall obtain in all criminal prosecutions. This section includes the rights of the accused, witnesses, and the convicted.

Section 4(a). This section provides that a defendant in a criminal case has the right to be represented by a lawyer in all cases and in all appeals. This section is based on the Sixth Amendment to the United States Constitution which is made applicable to the states through the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. The Convention intends, however, that the protection afforded by this section is in some respects broader than that currently afforded by the Sixth Amendment as interpreted by the United States Supreme Court.

Under this section a person is entitled to be represented by a lawyer in all criminal cases, not just those in which there is a possible prison sentence. The extent of this right is dependent on the kinds of violations of law that the legislature defines as criminal. The legislature may define certain types of conduct, such as infractions of traffic laws, as violations rather than as crimes even though a violation carries a fine or possibility of a minimal sentence. This section would not apply to cases involving such violations or to civil cases.

The right to counsel under this section arises before the actual trial of the accused. The right attaches when the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect. It includes all preliminary hearings, police interrogations, and pre-trial motions as well as the trial itself.

Under this section a person is entitled to be represented in all appeals. Normally there would be only one appeal from a conviction. Under article IV, criminal cases in which the maximum fine is $5,000 or less and the maximum term of imprisonment is five years or less, are tried in the Commonwealth trial court. The first appeal from that court is to the United States District Court for the Northern Mariana Islands. If the maximum fine is over $5,000 or the maximum term of imprisonment is more

than five years then the trial is held in the District Court before a single judge and the first appeal from that court is also to the District Court, with three judges sitting as an appellate court. It is possible, however, that some appeals from the District Court sitting as an appellate court in Commonwealth matters which raise federal questions may be addressed to the appropriate United States Court of Appeals or eventually to the United States Superme Court and it is intended that the right to counsel covers such appeals. This section includes the right to a lawyer for successive appeals if, for example, new grounds for appeal become available after prior appeals have been exhausted. However, it does not guarantee the right to a lawyer for frivolous appeals.

The right guaranteed under this section means that the government must provide a lawyer if a defendant cannot pay for his own lawyer. This section does not contain any standard with respect to the definition of ability to pay. That matter is left to the legislature or to the courts to determine on a case-by-case basis.

This section does not guarantee the right to any particular lawyer or, if the defendant is unable to pay, to a lawyer of the defendant's choosing. It does guarantee the right to the effective assistance of counsel. The lawyer hired by the defendant or provided by the government

must be able to present the defendant's case in a manner that is acceptable under the standards of professional practice prevailing in the Commonwealth.

Under this section a defendant can waive the right to counsel. Such a waiver must be made knowingly and voluntarily after a defendant has been informed of and understands the right to counsel. If counsel is waived, a defendant may appear as his own counsel. This section does not guarantee the right of a defendant to appear as his own counsel. He may do so only with the permission of the court, as is the case with any person appearing as counsel without having first become a member of the bar of that court.

Section 4(b). This section deals with access by the accused to evidence through testimony. This section is taken directly from the Sixth Amendment to the United States Constitution which is made applicable to the states by the Fourteenth Amendment, which in turn is made applicable to the Northern Mariana Islands by section 501 of the Covenant. No substantive change from the relevant provisions of the Sixth Amendment or the interpretation of those provisions by the United States Supreme Court is intended.

It provides that the accused has the right to be confronted with the witnesses against him. This guarantee ensures that the accused has an adequate right to cross-examine. Hearsay evidence must be excluded if it adversely

affects the full and adequate opportunity for cross-examination. Evidentiary rules or laws permitting witnesses to withhold information that is necessary to adequate cross-examination must be suspended in criminal cases or the resulting conviction will be unconstitutional under this section. This provision applies at time of trial. It does not guarantee the accused the right to know the identity of the government's witnesses or the character of its documentary or other evidence prior to trial. The legislature has the discretion to extend this right to include that guarantee.

This section also provides the accused with the right of compulsory process to obtain witnesses in his favor. This provision also applies at time of trial. This provision does not give the accused any pre-trial discovery rights. Such rights may be provided by legislation.

Section 4(c). This section provides that no person shall be compelled to be a witness against himself. This section is taken directly from the Fifth Amendment to the United States Constitution which is made applicable to the states by the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. No substantive change from the relevant provision of the Fifth Amendment or the interpretation of that provision by the United States Supreme Court is intended.

Under this section no one can be required to answer questions if the answers might help convict him of a crime.

This prohibition applies at every stage of a police or other investigation, pre-trial hearings, and trials.

No statement made by a person during an interrogation can subsequently be used against him unless he has been warned of his right to remain silent, that what he says may be used against him in court, and that he has a right to counsel which will be furnished without charge if necessary. The exclusionary rule applies with respect to all statements obtained in violation of this section. No such statement may be admitted in evidence regardless of the indicia of reliability that it may have.

An accused may waive his rights under this section if he does so voluntarily and understands that any statements made after the waiver may be used against him. If a defendant fails to invoke the right granted by this section before answering a question or making a statement, he may not later object to the admissibility of that testimony on the basis that it was self-incriminating.

This section applies only to oral and written statements and similar testimonial actions. It does not apply to handwriting samples, blood tests, appearance in a lineup, voice tests or similar non-testimonial actions.

Section 4(d). This section provides that there shall be a speedy and public trial in all criminal actions. This is taken directly from the Sixth Amendment to the

United States Constitution which is made applicable to the states by the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. No substantive change from the relevant provision of the Sixth Amendment or the interpretation of that provision by the United States Supreme Court is intended.

The right guaranteed by this section requires that the accused be brought to trial without unnecessary delay. This protects the defendant only against undue delay between the institution of prosecution and the trial. It is not applicable to delay between the completion of investigation and the institution of charges. This section does not require any particular time limitation between institution of charges and commencement of trial. The determination of whether a trial has been begun in a speedy fashion will be made on a case-by-case basis by the court based on the length of the delay, the government's justification for the delay, whether and how the defendant asserted his right to a speedy trial, and the prejudice to the defendant caused by the delay.

This section also requires that criminal trials be open to the public. This means that all documents filed in court relating to the case and all court proceedings in the matter must be available to the public. This right

is intended to protect the rights of the defendant and the rights of the public to be able to scrutinize the quality of justice in the Commonwealth.

Section 4(e). This section provides that no person may be put twice in jeopardy for the same offense regardless of the governmental entity that first institutes prosecution. This section is taken from the Fifth Amendment to the United States Constitution which is made applicable to the states by the Fourteenth Amendment, which is in turn made applicable in the Northern Mariana Islands by section 501 of the Covenant. It prohibits the Commonwealth government from prosecuting a defendant twice for the same crime and also prohibits the Commonwealth government from prosecuting a defendant who has already been prosecuted by the federal government for the same crime.

It is possible for a defendant to be prosecuted twice under this section because this section does not apply to the actions of the federal government and the Fifth Amendment does not prohibit the federal government from prosecuting a defendant who has already been prosecuted by a state. Therefore, if the federal government prosecutes a defendant in the Commonwealth, the Commonwealth government will thereafter be prohibited by this section from prosecuting that defendant again for the same crime. However, if the Commonwealth government prosecutes first, the federal

government cannot be prevented from prosecuting the same defendant again if the defendant's actions also constituted a federal crime.

This section does not prevent the Commonwealth from prosecuting a defendant more than once for the same conduct if that conduct constitutes more than one crime as defined by Commonwealth law. The legislature and the courts are free to create additional prohibitions regarding successive prosecutions of a defendant as a matter of the administration of criminal justice in the Commonwealth.

This section does not exempt any defendant in a criminal action from being sued for damages in a civil action by anyone who is harmed by his acts.

Section 4(f). This section provides that excessive bail shall not be required. This section is taken from the Eighth Amendment to the United States Constitution which is made applicable to the states by the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. No substantive change from the relevant provision of the Eighth Amendment or the interpretation of that provision by the United States Supreme Court is intended.

Bail means the payment of an amount of money specified by the court as security to insure the presence of the accused at trial. An accused who is released after paying the amount of bail and subsequently fails to appear for trial

forfeits the amount of the bail to the court. If the accused appears for trial, the amount of the bail is returned to him.

This section does not require that bail be available in all cases. It requires only that, if bail is made available for certain types of cases, it not be excessive. The determination of what is excessive is made by assessing the severity of the offense, the nature of the evidence against the accused, the punishment that may be applicable and calculating the amount of money, given these factors, that will be required to assure the presence of the accused at trial. Any amount over the amount necessary to assure the presence of the accused at trial under the circumstances of the case is excessive.

Section 4(g). This section provides that excessive fines shall not be imposed. This section was taken from the Eighth Amendment to the United States Constitution which is made applicable to the states by the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. No substantive change from the relevant provision of the Eighth Amendment or the interpretation of that provision by the United States Supreme Court is intended.

This section does not require that fines be imposed for any criminal offense. It requires only that fines authorized by the legislature and imposed by the courts not be excessive in relation to the crime.

Section 4(h). This section prohibits cruel and unusual punishments. This section was taken directly from the Eighth Amendment to the United States Constitution which is made applicable to the states by the Fourteenth Amendment, which in turn is made applicable in the Northern Mariana Islands by section 501 of the Covenant. No substantive change from the relevant provision of the Eighth Amendment or the interpretation of that provision by the United States Supreme Court is intended.

This means that neither the legislature nor prison officials may impose punishments such as starvation, torture, nonvoluntary medical experimentation, or any other unusual punishment. Usual punishments are fines, prison terms, probation and other forms of partial release.

Section 4(i). This section prohibits capital punishment. It means that the legislature cannot enact a law that requires that any person be put to death for any act committed within or outside the Commonwealth.

Section 4(j). This section requires that persons who are under 18 years of age be protected in criminal proceedings and in conditions of imprisonment. The term criminal proceedings means the hearings and trials in which juveniles appear on criminal or delinquency charges and the publicity given or records kept with respect to these matters. Conditions of imprisonment mean the housing of juveniles during

detention prior to trial and after sentencing to a term of imprisonment.

The requirement that persons under 18 be protected is a flexible standard that looks to the prevention of harm to juveniles beyond the requirement of participation in the hearing or trial or the imposition of sentence. It is intended that the records of criminal proceedings not be used in a way that will have an adverse impact on juveniles after they are found innocent or complete a sentence, unless no less injurious method will serve important law enforcement purposes. It is intended that conditions of imprisonment encourage rehabilitation and minimize contact with adult offenders.

The legislature may elect to spell out the procedures whereby this constitutional provision can be implemented, such as a comprehensive juvenile delinquency law. This section does not prevent the legislature from directing that certain offenders who are under the age of 18 may be tried as adults in specified circumstances. In addition to any legislation, it is intended that the courts may interpret this provision on a case by case basis and give it meaningful content over time.

Section 5: Due Process. This section provides that no person shall be deprived of life, liberty or property without due process of law. This section is taken directly from section 1 of the Fourteenth Amendment to the United States Constitution which is made applicable in the Northern

Mariana Islands by section 501 of the Covenant. No substantive change from section 1 of the Fourteenth Amendment or the interpretation of that section by the United States Supreme Court is intended.

The persons protected by this section are all individuals within the jurisdiction of the Commonwealth and include citizens, nationals, aliens, visitors, and others.

The protection extends to government actions that affect life, liberty and property. This phrase is intended to cover all government activities.

Due process of law means rational and fair procedures in judicial and administrative proceedings. This includes timely notice of a hearing or trial that gives adequate information to permit a defense of the personal or property interests at stake. It includes the right to present evidence in one's own behalf before an impartial judge or jury and to have any decision supported by adequate evidence. In criminal matters it includes the presumption of innocence until proven guilty. Due process also means that only rational and necessary limitations can be placed on individual rights. The Commonwealth government may not act in an arbitrary or unreasonable manner in adopting legislation or other measures affecting the freedom to enter into contracts, to marry, to travel, to engage in a lawful occupation, or other individual liberties.

Section 6: Equal Protection. This section provides comprehensive guarantees to all persons in the Commonwealth and is limited only to the extent that other provisions in the Constitution require.

The first sentence of this section provides that no person shall be denied equal protection of the laws. This sentence was taken from section 1 of the Fourteenth Amendment to the United States Constitution which is made applicable in the Northern Mariana Islands by section 501 of the Covenant. No substantive change from section 1 of the Fourteenth Amendment or the interpretation of that section by the United States Supreme Court is intended. This clause requires the government to treat all persons similarly situated in the same manner. It forbids classifications by the government that are irrational, unreasonable or arbitrary. The Commonwealth remains free, under this provision, to make reasonable classifications. This provision does not preclude irrational or arbitrary classifications by private persons unless those classifications are used or enforced by the government or by an entity that receives government funds or other government assistance.

The second sentence provides additional protection against classifications based on race, color, religion, ancestry or sex. Mere rationality will not suffice to justify classifications that use these criteria; rather, such classifications are invalid, unless compelling reasons, sufficient to withstand

the strictest scrutiny, are adduced to sustain them. This section applies to private action as well as to government action. The interest for which the classification is used must be legitimate and very important and there must be no less restrictive classification that could accomplish that objective. This section forbids discrimination only with respect to the exercise of civil rights, but may be extended by legislation to cover other forms of discrimination.

Section 7: Quartering Soldiers. This section prohibits the government from housing soldiers in civilian homes during peacetime, and permits such action during wartime only under terms and conditions specified by the legislature. This section is taken from the Third Amendment to the United States Constitution. No substantive change from the Third Amendment or the interpretation of that Amendment by the United States Supreme Court is intended.

Section 8: Right to Trial by Jury. This section authorizes the legislature to specify the particular kinds of criminal and civil cases in which the parties involved will have the right to a jury trial. This section does not guarantee the right to trial by jury in all cases or in any category of cases. This section does not require a jury of any particular size, and does not mandate any qualifications for service as a juror other than those required by the due process and equal protection guarantees of section 5 and section 6 of this article. The legislature

may provide that the choice as to jury trial is left to the defendant alone, that any party may elect a jury trial or that a jury trial is available only if both parties so elect. The legislature may provide that jury verdicts need not be unanimous.

If the legislature does not act, there is no right to trial by jury in the Commonwealth trial court. The absence of this right does not prevent the Commonwealth trial court from using a jury in any case where the parties agree that a jury be used. This section does not affect the procedures used by the United States District Court when it is considering cases involving federal questions within its jurisdiction. If the legislature does act, the right to a jury trial will apply to cases tried by the Commonwealth trial court and cases involving Commonwealth law that are tried by the United States District Court pursuant to article IV.

Section 9: Clean and Healthful Environment. This section provides that each person has the right to a clean and healthful public environment. The term environment means the air, land and water in places open to the public. The terms clean and healthful mean that substances or objects may not be added to or cast upon the air or water by government or private activities within the Commonwealth that are of a kind or in quantities that adversely affect the cleanliness of the air, land or water. This section permits a public or private

cause of action to enjoin activities that adversely affect the environment in ways prohibited by this section and to recover damages for injuries sustained.

It is not intended that this section alter usual legal principles of sovereign immunity.

Section 10: Privacy. This section establishes the fundamental constitutional right to individual privacy. The section balances this right against governmental or public interests that might conflict with it.

The right guaranteed by this section applies only to individual persons. It applies to all persons within the jurisdiction of the Commonwealth including aliens, non-residents and persons who are not domiciled in the Commonwealth. It does not apply to corporations, associations or other legal entities even though they are deemed to be persons for other purposes.

The right to individual privacy incorporates the concept that each individual person has a zone of privacy that should be free from government or private intrusion. Each person has a right to be let alone. This right permits a person to refuse to give personal information or to prohibit the collection of that information without consent. It protects a person's thoughts, ideas, and beliefs from regulation or attempted coercion by the government or other persons. It allows a person to associate with whomever the individual chooses. It protects a person from unconsented physical

intrusions into his or her body. It guarantees privacy in a person's home to behave in any manner as long as the behavior does not harm others. It protects an individual's papers and belongings from outsiders. It protects an individual's right to physical solitude free from intrusions such as another's eavesdropping on telephone calls, on conversations, harrassing telephone calls, constant and manifest surveillance, and any other intrusions that a reasonable person would find offensive and objectionable. It prevents public disclosure of private facts relating to an individual. It protects an individual from having an opinion or statement falsely and publicly attributed to him by other persons, or from having his name, picture or identity appropriated by other persons for their own use.

The right of individual privacy guaranteed by this section is not absolute. The public has an interest in protecting the health, safety and welfare of the community composed of individuals. Each individual makes a compromise when that individual chooses to live with others and to enjoy the benefits of society. This constitutional provision recognizes the necessary balance between the individual's right to privacy and the public's right to protect and promote the health and safety of the community. It sets that balance in favor of the individual, by making the individual's right to privacy a constitutionally protected fundamental right. Any time an individual believes his or her privacy has been intruded upon,

that individual has a right to seek judicial action stopping the intrusion, preventing future intrusions of the same kind, and granting compensation for the harm caused by the intrusion.

When an action is brought claiming an invasion of the right to individual privacy established by this section, and the individual bringing the action offers sufficient evidence to establish the intrusion, the defendant being sued must justify the intrusion by demonstrating a compelling government interest in the intrusion. This places a heavy burden on the defendant whether the defendant is the government or a private individual. First, the defendant must show a public purpose for the intrusion. A public purpose is a purpose that advances the health, safety or welfare of the community. The term public purpose includes the need to enforce the laws, to protect the health of the people, and to permit the dissemination of public information. Second, the defendant must demonstrate that the public purpose advanced by the intrusion was compelling. This requires proof that the intrusion was necessary and could not have been accomplished in any other less intrusive way. If the public purpose could have been accomplished by any other less intrusive means, then the intrusion cannot be justified under this section.

ARTICLE II: LEGISLATIVE BRANCH

Section 1: Legislative Power. This section establishes a legislative branch of government in the Commonwealth in accordance with the separation of powers requirement of section 203(a) of the Covenant. The legislative branch of government is the Northern Marianas Commonwealth Legislature composed of two houses, the senate and the house of representatives.

Legislative power is the power to make laws and other powers necessary to the lawmaking process. Examples of these ancillary powers are the subpoena power, the power to investigate and report to the public, and the power to audit performance or expenditures. The separation of powers doctrine envisions separate institutions of government sharing powers. Legislative, executive and judicial functions will overlap to some extent and therefore the powers to carry out these functions may be similar in some respects. The term legislative power as used in this section includes actions by the legislature that, although traditionally conceived of as executive or judicial functions, are incidental to the lawmaking process and therefore appropriate for the legislature.

The phrase "all rightful subjects of legislation" gives the legislature a general grant of power to pass

laws on any subject. The same phrase was used in the Covenant and its repetition here reflects the intention of the delegates to give the legislature the broadest possible grant of legislative authority. It includes the authority to pass general laws that apply throughout the Commonwealth, special laws that apply to particular individuals or entities, and local laws that apply to particular localities. The power to pass laws is limited only by the Covenant, the provisions of the United States Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, and by the other articles of this Constitution.

This section does not limit the exercise of legislative power to the legislature. The initiative and referendum provisions of article IX vest certain legislative powers in the voters of the Commonwealth. The provisions of section 6 of this article permit the members of the legislature from each senatorial district and the provisions of article VI, section 3(e), permit the mayor to make regulations for the senatorial district.

Section 2: Composition of the Senate.

Section 2(a). This section provides for the number of senators, districts for representation and distribution of senators among districts. The senate consists of nine members. Three senators are elected at large from Rota

and represent that island, three senators are elected at large from Saipan and the islands north of Saipan and represent these islands, and three senators are elected at large from Tinian and Aguiguan and represent these islands. The legislature may define the term "elected at large from" to mean that voters must be qualified to vote by residence or domicile or some other tie to the district. If the legislature does not act, it is intended that voters be qualified by residence within the senatorial district at the time of registration.

This section provides for an automatic increase in the size of the senate to twelve members when the population of the islands north of Saipan within the Commonwealth exceeds one thousand persons. This section does not limit the manner by which it will be determined that the population exceeds 1,000 persons. This would normally be done in the course of the regular census, but the executive or legislative branch may commission a special study or survey. The three new senators provided for by this section would represent the Northern Islands. These senators would continue to serve and the size of the senate would remain at twelve members even if the population of these islands subsequently falls to one thousand or less.

The first senators from the Northern Islands will be elected at the first regular general election

that occurs after the population of the islands exceeds one thousand persons. Senators from the other districts will also be elected at such elections. Regular general elections are defined by article VIII, section 1, and are held on the first Sunday in November of every year. Eligibility to vote in those elections is covered by article VII. The terms of senators begin on the second Monday in January of the year following the year in which the election is held in accordance with the terms of article VIII, section 4.

Election at large means that all of the voters from each of the senatorial districts defined by this section vote for the office of senator and no subdivision of a district is permitted. This section requires that a single vote system be used. Each qualified voter has one vote for each office to be filled. Three senators are elected from each district so each voter in that district may cast three votes, but may not cast more than one vote for a single candidate. A voter may decline to use all three votes and may vote for only one or only two candidates. The three candidates with the highest number of votes are elected. There is no requirement that any candidate receive a majority of the votes cast. In the event of a tie between two candidates for the last seat to be filled, a run-off election would be held between those two candidates.

The composition of the senate fails to meet the

strict standard of one man-one vote imposed by Reynolds v. Sims, 377 U.S. 533 (1964). Nonetheless, this form of representation does not violate the Equal Protection Clause of the Fourteenth Amendment.

The requirement of a bicameral legislative branch reflected in the Covenant was worked out in negotiations between the Marianas Political Status Commission and the United States government. The Marianas Political Status Commission represented the people who would comprise the new Commonwealth. It included representatives from the islands of Rota, Saipan and Tinian. The acquiescence of the representatives and the people of Rota and Tinian was necessary to achieving agreement as to the Covenant. Article II, section 203(c) of the Covenant reflected a compromise satisfactory to all representatives that the populous island of Saipan not dominate the legislature.

Sound reasons of public policy support the constitutionality of the legislative arrangement established by the Covenant and implemented by the Constitution. First, unlike the underrepresented voters in Reynolds v. Sims, supra, the people of Saipan in the plebescite on the Covenant freely and overwhelmingly approved the provision that gave Rota and Tinian a majority of the members in one house of the legislature. The people of Saipan relinquished

the degree of control that its population alone would permit in order to achieve a form of government acceptable to all the people of the Commonwealth. This relinquishing of power was done by the people themselves and not by representatives. The form of government created in this compromise gives the people of Saipan control of the lower house on the basis of population and an equal voice in the upper house. In adopting the Covenant the Congress recognized the necessity for, and the value of, an equal apportionment of senators among the three municipalities.

Second, the islands of Rota and Tinian differ from the rural counties whose control of the Alabama legislature was held unconstitutional by the Court in Reynolds. Rota, Saipan and Tinian are island communities separated by ocean and characterized by different customs and history. The people of each of these islands have a substantial need to protect their traditions. The Commonwealth shares the compelling interest to safeguard each of its indigenous island-societies. An equal voice in the senate for Rota, Saipan and Tinian is the means most narrowly tailored to the realization of this objective.

This section complies with the requirement of section 203(c) of the Covenant that there be equal representation in the upper house for each of the chartered municipalities in existence at the time of the approval of the Covenant. The senatorial districts created by this article are the same as these chartered municipalities, which are abolished by article VI, section 6(a). The provision for a senatorial district for the Northern Islands in the future also complies with the Covenant's intention that some accommodation be made for these islands. No more than four senatorial districts are authorized by this section, regardless of the agencies of local government established under article VI of the Constitution.

Section 2(b). Senators serve four-year terms. Their terms are staggered so that all nine senators are not elected in one year. The senator receiving the third highest number of votes in the first Commonwealth election

in each of the three senatorial districts will serve a two-year term. The other two senators would serve four-year terms. This allows staggering of elections so that after the initial election either three or six senators will be elected every two years. The terms of the senators from the Northern Islands would be staggered in the same fashion as are the terms of the senators from the other islands.

Section 2(c). This section sets out the qualifications for a senator. A candidate who does not meet these qualifications may seek election but may not take office if the qualifications are not met by the date set in article VIII, section 4, for taking office. In the event that a person who is elected fails to qualify to take office on the date specified in article VIII, section 4, there is automatically a vacancy in that office and a special election is held pursuant to section 9 of article II to fill the vacancy.

A senator must be qualified to vote in the Commonwealth in accordance with the provisions of article VII on eligibility to vote and with any statutes requiring registration to vote or other procedural qualifications. In addition, a senator must be at least twenty-five years of age at the time of taking office and must have been a resident and domiciliary of the Commonwealth for at least five years preceding the election in which he or she is a candidate.

The legislature may increase the Commonwealth residency and domicile requirement beyond five years but may not reduce it. These qualifications are intended to be exclusive.

The legislature may define Commonwealth residency in a manner that permits persons who are domiciled in the Commonwealth but who are out of the Commonwealth temporarily for business, education, government representation or other purposes to be considered as residents. If no definition of residence is provided by law, then residence will be determined in accordance with the criteria developed through case law by the courts. A senator must be domiciled in the Commonwealth as defined by law under article VII, section 3. If no definition of domicile is provided by law, then domicile will be determined in accordance with the criteria developed through case law by the courts. Domicile in a particular senatorial district cannot be required. A senator must be either a citizen or national of the United States. If, however, the legislature makes nationals ineligible to vote in Commonwealth elections, pursuant to article VII, section 1, then nationals may not become senators.

Section 3: Composition of the House of Representatives.

Section 3(a). This section provides for the number of representatives, distribution of representatives among

the islands, and term of office of the house of representatives. The house of representatives has a total of fourteen members. The initial distribution of these representatives conforms with the requirement that each member must represent approximately the same number of Commonwealth residents to the extent permitted by the separate islands of the Commonwealth and the distribution of population among the islands. Saipan and the islands north of Saipan together elect twelve of the fourteen representatives, Rota elects one representative, and Tinian and Aguiguan (presently unpopulated) together elect one representative. To the fullest extent possible, the Convention concluded that districts for the lower house should not encompass more than one island because of the difficulties in communication and transportation between islands and the different interests of separate islands. The legislature may increase the total number of members of the house of representatives to not more than twenty.

The legislature may define the term "elected from" to mean that voters must be qualified to vote by residence or domicile or some other tie or combination of ties to the district. If the legislature does not act, it is intended that voters be qualified by residence within the district at the time of registration.

Representatives are elected at regular general elections provided for in article VIII, section 1. They serve two-year terms commencing on the second Monday

in January as prescribed by article VIII, section 4.

Section 3(b). This section provides the general location of the eight electoral districts to be represented in the house of representatives. Representatives will be elected at large within each district. Rota constitutes one electoral district. Tinian and Aguiguan constitute one electoral district. The island of Aguiguan is presently uninhabited but, if it becomes inhabited, persons resident there would be entitled to vote for the representative from a single district including both Tinian and Aguiguan. Saipan and the islands north of Saipan constitute six electoral districts. The boundaries of these districts on Saipan and the Northern Islands are established in the Schedule on Transitional Matters attached to the Constitution. These boundaries may be changed by the legislature only if necessary for purposes of securing equal representation under section 4.

When the population of the Northern Islands collectively equals or exceeds the number of persons represented by any member of the house of representatives, then the Northern Islands is constituted as a separate electoral district electing one representative. This may require the legislature to reapportion or redistrict on the island of Saipan.

Some or all of the representative districts created by this section may be multi-member districts. In

any district the representatives are elected at large within the district. This section requires a single vote system under which each voter has one vote for each representative to be elected. If there are three members to be elected from a district, each voter has three votes but may not cast more than one vote for a single candidate. A voter may decline to use all three votes and may vote for only two or fewer candidates. The three candidates with the highest number of votes are elected. There is no requirement that any candidate receive a majority of the votes cast. In the event of a tie between two candidates for the last seat to be filled, a run-off election would be held limited to those two candidates.

Section 3(c). This section states the qualifications for taking office as representative. A candidate for representative who does not meet these qualifications may run for election but may not take office. In the event that a person who is elected fails to qualify to take office on the date specified in article VIII, section 4, there is automatically a vacancy in that office and a special election is held pursuant to section 9 of this article to fill the vacancy.

Representatives must meet the qualifications to vote set out in article VII, section 1, and any additional procedural qualifications such as registration imposed by the legislature. In addition, a representative must be at

least twenty-one years of age on the date of taking office and must have been a Commonwealth resident and domiciliary for at least three years preceding the date on which the representative takes office. The legislature may increase the Commonwealth residency requirement to more than three years but may not decrease it. These qualifications are intended to be exclusive.

The legislature may define Commonwealth residency in a manner that permits persons who are domiciled in the Commonwealth but who are temporarily out of the Commonwealth for business, education, government representation or other purposes to be considered as residents. If no definition of residence is provided by law, then residence is determined in accordance with the criteria developed through case law by the courts. A representative must be domiciled in the Commonwealth as defined by law under article VII, section 3. If no definition of domicile is provided by law, then domicile will be determined in accordance with the criteria developed through case law by the courts. Domicile or residence in a particular electoral district cannot be required. A representative must be either a citizen or national of the United States. If, however, the legislature makes United States nationals ineligible to vote in Commonwealth elections pursuant to article VII, section 1, then nationals may not take office as representatives.

Section 4: Reapportionment and Redistricting. This section deals with reapportionment and redistricting. Reapportionment means keeping the same districts and reallocating the number of representatives among these districts. Redistricting means keeping the same number of representatives and redefining the district boundaries. These are equally acceptable ways of meeting the one man-one vote requirement and this section provides that both may be used, either singly or in combination.

Section 4(a). This section requires a regular revision of the system of representation in order to maintain compliance with the one man-one vote rule. The one man-one vote rule requires that the representatives in the house of representatives represent approximately equal numbers of residents of the Commonwealth. For this purpose, "residents" may mean persons who are counted in a census or other enumeration made by the government. This section does not demand that each representative represent approximately equal numbers of voters. There may be fluctuations in the population so that a relatively higher percentage of persons in one district are qualified to vote than in another district. Those fluctuations would not affect the requirements of this section so long as the representatives continue to represent approximately equal numbers of residents.

This section requires a revision of the system of representation at least once every ten years.

This section also requires that a revision of the system of representation take place within 120 days following the publication of the results of a decennial census. The decennial census may be performed by the United States Bureau of the Census or by the Commonwealth government. A decennial census is taken as of the years that have zero as the last digit, for example, 1970, 1980, 1990, 2000, 2010, etc. This section does not prevent changes from being made more often than once every ten years.

If there are changes in the distribution of the population of the Commonwealth, there must be a revision of the system of representation to meet the requirements of the one man-one vote rule. A revision for this purpose may be made either by redistricting or reapportionment.

Even if no revision is required because of population changes, a revision may be made if the United States Constitution is interpreted so as to require such a change or if the legislature enacts a law that so requires for other purposes. Such other purposes might include changing the boundaries of representative districts to increase administrative convenience or public participation or to enable the representative district lines to be used for other purposes (such as provision of utility services, for pollution control or other governmental functions that require administrative districts). A revision for this purpose can only be made by redistricting. Any revision made for purposes other than to comply with the one man-one

vote requirement must be made in a manner that does not adversely affect compliance with that requirement.

If redistricting is used, the new districts must be both compact and continguous. This means that districts on a single island may not be composed of parts that are separated geographically or that are shaped in an unreasonably elongated or extended manner. This provision does not prohibit districts composed of more than one island in cases in which that is permitted by section 3(b).

If redistricting or reapportionment is used, the result must be a representation system in which each member of the house of representatives represents approximately the same number of residents to the extent permitted by the separate islands of the Commonwealth and the distribution of population among islands. This requirement prohibits the legislature from enacting a system of representation based on the number of voters represented by each member of the house of representatives. Compliance with the one man-one vote requirement must be through representation of approximately the same number of residents, regardless of whether those residents are qualified voters. This clause does not require the legislature to increase the total number of members of the legislature in order to achieve more nearly complete compliance with the one man-one vote rule although section 3(a) permits the legislature to use this method. The clause "to the extent permitted by the separate islands and the distribution of population in the Commonwealth" is

intended to recognize that there are inherent limitations in redistricting when some of the districts are required constitutionally to be comprised of no more than one island. There are similar inherent limitations in reapportionment when a very small total number of seats is available for redistribution among districts. Within those constraints, any system of representation must be designed to achieve the lowest deviation from representation by each member of the same number of residents that is consistent with the requirement for compact and contiguous districts.

Section 4(b). This section provides a method for revising the system of representation if the legislature fails to act as required by section 4(a). If the legislature has not acted at least once within any ten-year period or if the legislature has not acted at the expiration of 120 days after the publication of a decennial census, then the govenor is required to act. The phrase "if the legislature fails to act pursuant to subsection (a)" means that an appropriate bill has not been passed by the legislature, signed by the presiding officer of the house in which the bill originates, and transmitted to the governor by the officer, as required by section 7(a) of this article within 120 days after the publication of the census or within 3,652 days after the day on which the bill providing for the last previous revision of the system of representation pursuant to section 4(a) became effective.

Any action by the governor to revise the system of representation pursuant to this section must meet the same requirements set out in section 4(a) as are applicable to actions by the legislature to revise the system of representation.

This section provides that the governor must act within 120 days of the last day on which the legislature could have acted under section 4(a). This means that the governor must have prepared a plan, put the plan into a form that is appropriate for legislation, signed it and published it all before the end of the 120th day. The requirement that the plan be published means that it has to be made a part of the same official record that is used for bills passed by the legislature. The manner of publication of bills passed by the legislature is not specified in the Constitution. It is within the general grant of legislative power contained in section 1 of this article and thus may be provided by the legislature either by law or by rules of procedure. If the legislature makes no provision for publication of bills passed, then the governor's plan becomes effective upon promulgation. That is completed when the governor signs the document.

Section 4(b) also provides for the revision of the system of representation if both the legislature and the governor fail to act. In that event the appellate court that considers Commonwealth matters has jurisdiction to put a plan into effect by judicial order.

The court may act on the petition of any qualified voter. The appellate court is the United States District Court for the Northern Marianas sitting as an appellate court, pursuant to article IV, unless the legislature creates a Commonwealth appeals court pursuant to article IV, section 3. If the Commonwealth appeals court is created, matters of reapportionment and redistricting are decided by that court.

If the legislature, the governor or the court produces a plan, the constitutionality of that plan may be challenged by any person qualified to vote in the Commonwealth. A petition is filed with the appellate court and that court will have original and exclusive jurisdiction to review the plan and decide the challenge. Original jurisdiction means that the petition to review the plan may be filed first with the appellate court even though the jurisdiction of the appellate court is normally limited to a review of the decisions of lower courts. Exclusive jurisdiction means that the petition may not be filed in any court other than the appellate court.

Section 5: Enactment of Legislation. This section sets out the requirements for enactment of legislation.

Section 5(a). This provision provides that any bill that raises revenues or appropriates funds must originate in

the house of representatives. A revenue bill includes any bill that imposes taxes, license fees, contract payments or tolls, or requires any payment of money to the Commonwealth in any other manner. An appropriation bill is any bill that authorizes, appropriates, designates, earmarks or otherwise permits Commonwealth funds to be spent for any purpose. This section requires that such a bill must be introduced and passed by the house of representatives before it can be considered by the senate. A revenue bill that has been considered and rejected by the house cannot be considered by the senate.

Bills dealing with other subjects may be introduced either in the senate or the house of representatives.

Section 5(b). This section confines all bills to one subject except for bills dealing with appropriations or with the codification, revision or rearrangement of existing laws. The single subject rule means that all parts of a bill must relate to the same matter. For example, a bill for schools may include a provision for textbooks for those schools but cannot include a provision for roads. Appropriation bills are limited to the subject of appropriations for programs that have already been authorized. These bills may not create programs or legislate in other matters.

The legislature has the responsibility for ensuring compliance with these rules in any way it chooses. This section expressly forbids judicial review of these matters.

This means that if a bill enacted by the legislature deals with more than the subject it cannot be declared unconstitutional by a court.

Section 5(c). This section requires that all laws be enacted by bill. A bill is a complete draft of a proposed law. The legislature cannot enact laws by a resolution, which merely expresses the agreement of the legislators without the force of law. A majority of those voting in each house of the legislature (a majority of the senators voting and a majority of the representatives voting) must approve a bill for it to become law. This is a minimum requirement. Either house may require a greater margin for passage of a bill in its procedural rules. This section requires only a majority of the votes cast. It does not require a majority of the total number of members of either house or a majority of a quorum. A quorum requirement may be added by the legislature by law or by procedural rule. If no quorum is defined or if the quorum is not questioned under the applicable procedural rule, a bill may be enacted by a majority of those present and voting even though the number of members present and voting is less than a majority of the total number of members. Abstentions are not votes cast and therefore are not counted either in determining the number of members present and voting or in determining whether there is a majority of those present and voting.

Section 6: Local Laws. A local law is a law that relates exclusively to local matters within one senatorial district. There are five possible methods provided in the Constitution for enacting local laws. The legislature may pass laws on local matters under section 5 of this article. Under section 6, a majority of the members of the legislative delegation may make local laws for the senatorial district they represent. Under article VI, section 3(e), local regulations may be enacted by the mayor of an island or islands. Under article IX, section 1(a), local laws may be enacted by an initiative petition. After five years the legislature may establish agencies of local government under article VI, section 6(b), and, if established, these agencies may have the power to adopt local ordinances.

This section gives the legislature the authority to define local matters. The Convention concluded that any effort to provide a specific definition in the Constitution might restrict the ability of the Commonwealth to deal flexibly with local matters and might engender uncertainty or needless litigation. It is intended that matters such as curfews and hunting seasons would be considered local matters, as well as many of the subjects or areas over which the municipal councils exercised authority under the chartered municipality form of local government. It is recognized, however, that some activities which take place on a single island have an

impact throughout the Commonwealth and therefore cannot be considered "local matters", such as legalized gambling. The location of an activity, therefore, does not control whether it is to be considered a local matter; other considerations, such as the impact on the people, finances, laws, development or policies of the entire Commonwealth must also be evaluated.

The definition of local matters by the legislature applies to the power of the mayors and any future local governmental agencies to enact local regulations or ordinances. It also applies to the laws which can be enacted by members of the legislature from individual senatorial districts and laws enacted through initiative by the voters of a senatorial district. The attorney general has the authority under article IX, section 1(c), to determine whether an initiative petition deals exclusively with a local matter. The attorney general may not certify a local initiative petition proposing a law that affects more than one locality unless it meets the signature requirement for a Commonwealth-wide initiative.

The requirement that a local law deal exclusively with local matters operates independently of the definition of local matters. For example, curfews may be a local matter but a single law that imposed a curfew on both Rota and Tinian would not relate <u>exclusively</u> to the local matters of one senatorial district and therefore would <u>not</u> be a local law under this section.

If laws passed by different levels of government should conflict, it is intended that laws passed by initiative take precedence over laws passed by the legislature, which take precedence over laws passed by delegations within the legislature, which take precedence over regulations enacted by mayors or ordinances enacted by other agencies of local governments under article VI.

Section 7: Action on Legislation by the Governor. This section sets out the ways in which bills enacted by the legislature under section 5 or by the members of the legislature from a senatorial district under section 6 may become law. It does not apply to local regulations made by mayors under article VI, section 3(c), or to local ordinances adopted by agencies of local government under article VI, section 6(b).

Section 7(a). This section requires the presiding officer of a house of the legislature to sign each bill originating in that house and passed by the legislature or the members of the legislature from one senatorial district. The presiding officer of the house that originated the bill must transmit the bill to the governor.

The governor who receives the bill may sign it, veto it, or take no action. If the governor signs the bill, it becomes law. If the governor vetoes the bill, it is returned to the legislature and does not become law unless the veto is overridden by a subsequent vote. If the governor takes no action, neither signing nor vetoing the bill, it becomes law.

If the governor vetoes the bill, he must so indicate on the face of the bill and return it to the presiding officer of each house of the legislature. The governor must transmit with the bill a statement of reasons for the veto. There is no limitation on or requirement with respect to the reason or reasons that will be sufficient. This matter is left entirely to the discretion of the governor. The Constitution does not specify any time limit within which the governor must return a vetoed bill to the legislature together with the statement of reasons. It is intended that this be a reasonable period of time.

When the governor receives an appropriation bill, there is a fourth alternative available. The governor may veto any item or group of items in the bill and sign the remainder. By so doing, the signed portions become law and the vetoed portions do not become law. If the governor vetoes any item in an appropriation bill, the portion of the bill containing the vetoed item must be returned to the presiding officer of each house of the legislature with a statement of reasons. The legislature may override the vetoed portions of an appropriation bill in the same manner as it may override the veto of an entire bill. The term "item" as it is used in this section means a single amount appropriated for any purpose. There is no limit on the number of items that the governor may veto in a single appropriation bill.

Section 7(b). This section sets out the applicable time period within which the governor must act on bills passed by the legislature or by the members of the legislature from one senatorial district and transmitted by a presiding officer. The governor has forty days from the date on which the bill is transmitted to the governor by the presiding officer of the house of the legislature in which the bill originated in which to sign or veto the bill, unless it is an appropriation bill in which case the governor has twenty days in which to sign or veto the bill. If the governor signs the bill within the forty-day period, it becomes law as of the date it is signed. If the governor neither signs nor vetoes the bill within the forty-day period, it becomes law on the day after the fortieth day from the date of transmission. If the governor vetoes the bill, it is of no effect unless and until the veto is overridden by the legislature.

Section 7(c). This section permits the legislature to override the governor's veto of a bill or of individual items in an appropriation bill. The legislature does not have to be in session at the time the governor returns the vetoed bill; the legislature may consider the matter at its next regularly scheduled session or at a special session called by its presiding officers under article II, section 13. This override provision applies to bills enacted by the legislature and to bills enacted by the members of the

legislature from one senatorial district. If two-thirds of the total number of members of each house of the legislature vote in favor of the vetoed bill or item, it becomes law when signed by the presiding officer of the house in which the bill originated. The bill must be unchanged in order to become law in this fashion. If any word, phrase or number in the bill is changed, then the bill becomes a new bill that must be enacted and transmitted to the governor in accordance with section 7(a). The governor then has the power to veto the new bill.

Section 8: Impeachment. This section gives the legislature the power to impeach certain executive and judicial branch officers and provides the mechanics of the impeachment process. Only those officers designated by the Constitution are subject to impeachment. The legislature may not expand this category by legislation. Impeachment means the trial of an official by the legislature, with conviction resulting in removal of the official from office. Under article III, section 19, the impeachment power applies to the governor and lieutenant governor. The legislature is authorized by article IV, section 6, to impeach judges of the Commonwealth trial court and the Commonwealth appeals court if that court is established by the legislature. The representative to the United States is also made subject to impeachment by article V, section 7.

The legislature's impeachment power does not extend to the judges of the United States District Court for the Northern Mariana Islands. Those judges may be removed only as provided by Congress. Mayors provided for by article VI, section 2, may not be impeached because they are elected officials of a local government and the impeachment sanction might be used inappropriately by the Commonwealth legislature to interfere with the mayor's exercise of his local government responsibilities. Members of the legislature may not be impeached because they are not executive or judicial officers of the Commonwealth. No appointed official in the executive branch may be impeached because article III, section 19, is limited to the governor and lieutenant governor. Since the governor has unlimited authority to remove the appointed officials, the Convention concluded that it was not necessary to extend the impeachment sanction to these officials.

These officers of the executive and judicial branches may be impeached only on grounds provided by the Constitution. The grounds set forth are the same for all of these officers: treason, commission of a felony, corruption or neglect of duty.

This section divides the impeachment process into two stages. The house of representatives may bring impeachment charges by a two-thirds vote of its entire membership. The senate acts as the court trying the official on the impeachment charges. The senate convicts by a two-thirds

vote of its entire membership. Conviction constitutes removal from office and the office becomes vacant on the day that the senate convicts. Conviction occurs on completion of voting if two-thirds of the total number of members vote to convict. The only sanction available against a government official who is impeached is removal from office. All of the rights to benefits, such as salary, expense allowances, services and the use of government facilities that would accrue in the future because of holding office are terminated on conviction. Rights that have already vested as of the date of conviction, such as salary or benefits already earned, may not be affected. An impeached official is liable to criminal prosecution or civil suit regardless whether that official is convicted by the senate and removed from office.

Section 9: Vacancy. This section provides for filling vacancies that may occur through death, recall, resignation or expulsion of a member of the legislature. Seats that become vacant with one-half or more of the term remaining are filled by a special election under article VIII, section 2. The amount of the term remaining is calculated from the date prescribed for taking office in article VIII, section 4, regardless of the date on which the person who held the office actually took office. The Constitution does not specify the time period within which the special election be called and it is intended that this

be done within a reasonable time after the creation of the vacancy.

The governor fills seats that become vacant with less than one-half of the term remaining. The governor must appoint the unsuccessful candidate for the seat in the last election who received the highest number of votes and who is able and willing to serve. This means that the governor must first offer the seat to the candidate who had the second highest number of votes in the election regardless of party affiliation. If that candidate is unavailable or unwilling to serve, the governor must then offer the seat to the candidate who had the third highest number of votes in the election. This section does not require the governor to offer the seat to any candidate who withdrew from the race even though votes were cast for that person. Such a person was not a "candidate" at the time of the election and therefore is not within the meaning of this section.

If there are no unsuccessful candidates who are able and willing to serve, the governor must appoint a qualified person from the senatorial district, if the seat is in the senate, or representative district, if the seat is in the house of representatives, to be represented by the holder of the office. The legislature may define the phrase "from the district represented" to mean residence in the district, domicile in the district, or any other

appropriate tie or combination of ties to the district. If the legislature does not act, it is intended that the phrase "from the district" means resident in the district.

The Constitution does not specify the time period during which the appointment must be made. It is intended that the appointment will be made within a reasonable time of the creation of the vacancy.

Section 10: Compensation. This provision sets the yearly salary of members of the legislature at $8,000. This salary may be paid at any interval from daily to annually as provided by the legislature. This section also permits legislators to receive reasonable allowances for expenses The items to be treated as expenses may be defined by the legislature and the interval of payment may be from daily to annually as provided by the legislature. It is intended that the presiding officers receive larger allowances than other members if necessary for them to fulfill their responsibilities properly.

This section permits the legislature to adjust the amount of salary only upon the recommendation of an advisory commission established by law to study and make recommendations concerning the compensation of Commonwealth executive, legislative and judicial officers. The Constitution does not include any limitation on or requirement with respect to the number, term of office or compensation of the members of the commission. The Constitution does prevent

the legislature from enacting a salary adjustment that is more than the maximum amount recommended by the commission. If no commission is established or if a commission is established and does not report, no salary adjustment may be enacted by the legislature. The legislature is further limited to enacting salary adjustments that fall within the percentage change in an accepted composite price index for the period since the last salary adjustment. An accepted composite price index may be one published by the United States government for the United States or any territory presently or formerly under United States jurisdiction. This language would also permit the use of an index developed specially for the Northern Mariana Islands so long as it was prepared in accordance with professionally accepted standards.

Legislative salary adjustments may not be made more often than once every four years. The section further provides that the legislature that enacts a salary increase may not benefit from the increase.

A legislature may grant itself an increased allowance for expenses at any time. A change in expense allowances may be applied to all members of the legislature that enacted it.

Section 11: Other Government Employment.

This section prohibits members of the legislature from serving in any other Commonwealth government position, including independent boards, agencies, authorities or commissions established by the Constitution or by law. These include the department of education, the civil service commission and any other executive or administrative department established under article III, sections 13, 15 and 16. These also include the Marianas Public Land Corporation provided for in article XI, section 4, and the Marianas Public Land Trust provided for in article XI, section 6. All government positions, whether compensated or not, fall within the scope of this section. A legislator may not serve on any independent boards, agencies, authorities or commissions. A legislator may serve on a dependent board, agency, authority or commission established by the legislature, reporting directly to the legislature and performing a task incidental to the law-making process.

This provision does not cover employment by the United States government or any other government. A member of the Commonwealth legislature could be appointed to represent the Commonwealth or the United States before the United Nations or other international body, to serve on a presidential study commission or other such group, or to sit on an advisory board to any United States government agency.

This section does not forbid concurrent private

employment. A legislator who accepts or continues private employment while in office, however, must disclose any possible conflict under section 15 of this article.

Section 12: Immunity. This provision makes members of the legislature immune from civil suits or criminal prosecutions for any oral or written statement made on the floor of the legislature or in any legislative activity such as a legislative committee or a legislative report. This section does not mean that persons may not ask legislators questions about their work or any other matter and does not restrict the houses of the legislature in placing limits on debate through procedural rules.

This section also shields legislators from arrest while going to or coming from a meeting of the legislature or a meeting of one of its committees except if charged with treason, or felony or a breach of the peace. In order for this protection to be in effect, the legislature must be in session pursuant to section 13 and the legislator must be in transit to or from the session. This section covers legislators while travelling on legislative business such as investigations, fact-finding missions or hearings in various places. Legislators may be arrested at any other time and if tried and convicted by a court may be imprisoned like any other citizen.

Section 13: Sessions. This section provides that the legislature meets on the second Monday of January

in the year following the regular general election at which new members were elected. Article VIII, section 4, provides that all members of the legislature elected at the previous general election take office on this day. The business of the first meeting of each of the houses of the new legislature is restricted to organizational matters. This includes judging the elections and qualifications of members, adopting procedural rules, selecting presiding officers and establishing committees as authorized by section 14 of this article.

Between the first organizational meeting and the next similar organizational meeting two years later, the legislature is in continuous session. Meeting in continuous session means that the legislature cannot adjourn sine die during its two-year term, although it may adjourn for lesser periods of time when a specific time for reconvening is set. There will be regular meetings of each house as provided by the procedural rules of the house adopted under section 14(b) of this article. These meetings may be for a specified number of days each year or at the call of the presiding officer.

The presiding officer of each house may call that house into special session. A special session called by a presiding officer may discuss any matter. The governor may call either or both houses into special session. In a special session called by the governor, the legislature or

the house called into session may discuss only those matters specified in the governor's call. This section does not require the governor to specify the subjects to be considered during the special session; if the governor's call does not contain any such specification, the legislature may consider any subject.

Section 14: Organization and Procedures. This section deals with the basic organization and procedures of the houses of the legislature. Those matters not covered by this section are left to the discretion of the houses.

Section 14(a). This provision gives each house of the legislature the authority to judge the election and qualifications of its members. This provision does not require determinations relating to contested seats to be made in any particular way. A house could, for example, resolve such disputes by special committee, majority vote of its members or extraordinary majority vote. The legislature as a whole may take this authority from its houses by passing a law vesting the responsibility for trial and determination of election contests in the courts.

Each house of the legislature may compel the attendance of its absent members. This means the house may by a majority vote (or extraordinary majority vote if required by procedural rules) send the sergeant-at-arms to find and bring a member to the legislative meeting.

A house may discipline its members. This means it may set up a procedure whereby legislators may be fined, censored or suspended for a period of time. The grounds for disciplinary action are left to the house.

A house may expel a member by a vote of three-fourths of its members. The grounds for expulsion are limited to commission of treason, a felony, breach of the peace or violation of the rules of the house. The legislature may act even if the member in question has not been convicted of a crime by a court. The legislature may not add to the grounds for expulsion. However, where the grounds are commission of a crime or breach of the peace, the findings necessary to support expulsion must include each of the elements of the crime and must be proved using a standard of beyond reasonable doubt.

Legislators are also subject to recall by the voters under article IX, section 3.

Section 14(b). This provision requires each house of the legislature to choose its presiding officer from among its members, to establish the committees necessary for the conduct of its business, and to promulgate rules of procedure. The presiding officer has the functions and duties specified in the rules of procedure.

This section gives each legislative house the power to compel by subpoena the attendance and testimony of witnesses

and the production of books and papers before the house or one of its committees. The subpoena may be issued by any officer of the legislative or judicial branch to whom that power is delegated. The legislature may provide appropriate sanctions for failure to comply with a legislative subpoena.

The legislature also must keep and publish a daily journal. The journal may include a summary or a verbatim transcript of each day's business. The provision with respect to a journal does not include or imply any requirement on language. The legislature may provide for publication in a single language or more than one language.

Section 14(c). This provision requires the houses of the legislature and legislative committees to admit members of the public to all meetings except for executive sessions. An executive session is a meeting attended only by legislators and necessary legislative employees, from which the public or the press are excluded. The legislature may not hold joint sessions in executive session. A house of the legislature may meet in executive session only if authorized to do so by the affirmative vote of two-thirds of the total number of members of the house. A committee may hold an executive session only if authorized to do so by a two-thirds vote of the house or houses that established the committee. This section prohibits a house or a committee from taking any final action in an executive session. Final

action is a vote to report a bill out of committee, a vote on the floor to approve a bill, resolution or rule, and a vote to impeach or convict.

Section 15: Conduct of Members. This section requires legislators to disclose any financial or personal interest in any bill proposed or pending before the legislature and to refrain from voting on the bill. A financial interest means a possibility that the legislator or any member of his family may have a monetary gain or loss as a result, direct or indirect, of the enactment or enforcement of a bill. This includes a financial gain or loss from business interests in partnerships, corporations and other associations. A personal interest is the gain or loss by a legislator or any member of his family of elected or appointed office, rights, privileges or other non-monetary benefits not common to all legislators or citizens as a result, direct or indirect, of the enactment or enforcement of a bill.

This section also requires the legislature to enact a code of conduct binding on its members and covering conflicts of interest and propriety in debate.

ARTICLE III: EXECUTIVE BRANCH

Section 1: Executive Power. Section 1 vests all the executive power of the Commonwealth government in the governor. Executive power is the general authority to implement and enforce the laws passed by the legislature.

This includes the power to promulgate executive orders, rules and regulations, to inspect, monitor and investigate so as to ensure compliance, to spend moneys for goods and services pursuant to legislative authorization, to collect revenue, and to prosecute or bring other legal action against those who violate laws or other regulations.

This section also provides that the governor shall be responsible for faithful execution of the laws. Parallel language is found in article II, section 3, of the United States Constitution. This means that the governor must carry out the directions of the legislature as expressed in laws that are enacted and that the governor is responsible for the actions of his subordinates in carrying out the laws. Once a law is passed, the executive branch must enforce it until it is repealed, amended or declared unconstitutional by a court. This does not limit the attorney general's power to decline to prosecute cases where a judgment is made that the evidence or resources available are inadequate. The attorney general may decline to prosecute appeals if a statute is declared unconstitutional by the trial court.

Section 2: Qualifications of the Governor. This section establishes four qualifications that must be met at the time of taking office. The first qualification limits eligibility for governorship to those persons qualified to vote. Each of the requirements under article VII and any additional procedural qualifications imposed by the legislature, such as registration, must be met at the time of taking office. This means that the governor must be a citizen or national of the United States unless the legislature by law enacted under article VII, section 1, requires that voters must be citizens. If the governor is a United States national, it

is intended that the governor be authorized to delegate all those official duties, such as certain disbursing responsibilities, which under United States law can be discharged only by citizens of the United States.

The second requirement is that the governor be at least thirty years old at the time of taking office. This is the same age requirement mandated for judges of the Commonwealth courts under article IV, section 4.

The third and fourth qualifications require the governor to be a resident and domiciliary of the Commonwealth for at least seven years immediately preceding taking office. Residency means that place currently inhabited by the person, regardless of intention to remain in the future. The legislature may define Commonwealth residency in a manner that permits persons who are domiciled in the Commonwealth but who are temporarily out of the Commonwealth for business, education, government representation or other purposes to be considered as residents. Domicile is either the place where the person intends to remain indefinitely or the place to which he plans to return. The time period for each requirement is measured from the second Monday of January of the year following the year in which the candidate is elected, as is provided in article VII, section 4.

This section permits the legislature to change the residence and domicile requirement by increasing or decreasing both requirements. In contrast with section 2(c) and section 3(c) of article II, this section authorizes the legislature to reduce the required period of residence

and domicile. This was done because of the longer period provided for the office of governor, the Convention's awareness of some existing uncertainty regarding the state of the law on the subject, and the desirability of providing maximum flexibility for the future. It is intended, however, that the legislature keep the same durational requirement for both residence and domicile. The section permits the legislature to abolish any durational residence or domicile requirements, although it may not abolish the residence or domicile requirement altogether. If the durational aspect of the requirement were eliminated, domicile and residence would be determined as of the date of taking office with no requirement that either have been established prior to that time.

Any person convicted of a felony in the Commonwealth or in any area under the jurisdiction of the United States is ineligible to take office as governor unless a full pardon has been granted. The term "any area under the jurisdiction of the United States" is intended to mean any area presently or in the past under the jurisdiction of the United States. It is intended that this portion of the disqualification be limited to felonies committed in an area while that area was under the jurisdiction of the United States. A full pardon means a pardon without limitations or conditions.

Section 3: Lieutenant Governor. Section 3 establishes the office of lieutenant governor. The lieutenant governor is required to possess the same qualifications as the governor. At the time of taking office, the lieutenant governor must be a person who is qualified to vote, thirty years of age and a resident and domiciliary of the Commonwealth for at least seven years immediately preceding taking office. As with the governor, the

legislature may change the residency and domicile requirements by modifying or eliminating the time period.

This section directs that the lieutenant governor perform the duties specified in article III. This refers to the duties defined in sections 7 and 8, which set forth the conditions under which the lieutenant governor becomes governor or serves as acting governor.

The lieutenant governor also performs duties assigned by the governor. This means that the governor may assign to the lieutenant governor any duties that are delegable under this Constitution. Any duty that the Constitution specifically requires the governor to perform cannot be delegated. This includes the submission of the budget to the legislature, consideration and disposition of budgetary submissions as required by section 9(a); the annual report to the legislature required by section 9(b); the appointment of the attorney general required by section 11; the appointment of the public auditor required by section 12; the appointment of the members of the board of education required by section 13; the appointment of the heads of executive departments required by section 14; the delegation of responsibility for public services and the certification permitted under section 17(a); and the appointment of the executive assistant mandated under section 18.

Other duties that arise out of the powers given to the governor may be delegated to the lieutenant governor. The lieutenant governor may be assigned to participate in the administration of any executive branch program, to make any study, investigation or report

required in connection with any executive branch program and to represent the governor on official occasions. The limitation imposed by section 6 prohibits the lieutenant governor from being assigned to any other government position while he is still lieutenant governor.

The governor may delegate only duties. Powers may not be delegated. Powers must remain vested in the governor as required by section 1.

The legislature may also assign duties to the lieutenant governor. These can include legislative duties, such as publishing and distributing legislative enactments. These can also include executive branch duties, such as issuing licenses and certificates of incorporation, keeping the seal of the Commonwealth, keeping the official records of the Commonwealth, recording registered trademarks, compiling statistics and regulating the issuance of corporate securities.

This section provides that in the event of vacancy in the office of the lieutenant governor, the governor must appoint a successor with the advice and consent of the senate. Vacancy means permanent and not temporary absence. A vacancy can occur through impeachment, recall, death or resignation. For example, there is no vacancy if the lieutenant governor is convicted of a crime and imprisoned unless the lieutenant governor has also been impeached on the ground of that conviction, or has been recalled under article IX, section 3, or has resigned. This provision does not cover temporary vacancy by reason of travel outside the Commonwealth or physical or mental disability.

When the governor nominates a new lieutenant governor, the appointee must have the qualifications required of the lieutenant governor at the time of taking office. The term "advice and consent of the senate" means

that the senate must approve the nomination by at least a majority vote of the members present and voting before the nominee may take office.

Section 4: Joint Election of Governor and Lieutenant Governor.

This section provides that the governor and lieutenant governor are elected at large at a regular general election specified in article VIII, section 1. The at-large requirement allows each qualified voter in the Commonwealth to vote for the candidates running for governor and lieutenant governor, regardless of where in the Commonwealth the voter resides or is registered to vote.

Section 4 also requires that candidates for governor and lieutenant governor seek office on the same ticket pursuant to the election procedures enacted by the legislature under the authority of section 3 of article VIII. This means that every candidate for governor must have a candidate for lieutenant governor as a running mate, and, similarly, every candidate for lieutenant governor must have a candidate for governor as a running mate. No person may run for the office of governor or lieutenant governor without a running mate. However, this does not mean that all of the candidates running for governor or lieutenant governor on different tickets must be different persons. One person could run for either office on more than one ticket. This provision does not limit the number of candidates for either office. There may be any number of teams running in the general election unless the legislature provides for primary elections, nominating procedures or other means of narrowing the field.

This section provides that only a single vote may be cast by each voter for the governor - lieutenant governor ticket. The ticket obtaining the highest number of votes is elected. There is no requirement that a ticket

receive a majority of the votes cast to be elected. In case of a tie between tickets, a runoff election would be held limited to those two tickets.

The requirement that the governor and lieutenant governor be elected at large within the Commonwealth does not limit the use of absentee ballots by qualified voters who are outside the Commonwealth on election day, if such absentee voting has been authorized by the legislature under article VIII.

This section provides that the term of office for the governor and lieutenant governor is four years and that no person may be elected governor more than three times. This limitation applies regardless whether the terms for which the candidate is elected are consecutive. If the lieutenant governor becomes governor under section 7 to serve the remainder of a term, he is eligible to be elected governor three times. If the lieutenant governor becomes acting governor under section 8, any term of office served does not affect his eligibility for three terms as elected governor. If the president of the senate becomes acting governor under section 7 or section 8, any term of office served does not affect his eligibility for three terms as elected governor. Any person who is elected governor in a special election under section 7 to serve the remainder of a term after a vacancy occurs is eligible for only two additional terms as elected governor.

Section 5: Compensation of the Governor and Lieutenant Governor. This section provides that the governor receives an annual salary of twenty thousand dollars and that the lieutenant governor

receives an annual salary of eighteen thousand dollars. This section does not specify the intervals at which these salaries may be paid. That may be determined by the governor unless the appropriation bill passed by the legislature provides otherwise. The section also requires the legislature to provide by law a reasonable allowance for expenses to the governor and to the lieutenant governor. This means that both officers are allowed expenses that are reasonably necessary to the performance of their duties; secretarial services, supplies, staff, and transportation (when related to the ordinary duties of the office) are within the purview of reasonable expenses, although the legislature is specifically authorized to prescribe further guidelines.

Under article II, section 10, the legislature may establish an advisory commission on executive, legislative, and judicial compensation. If such a commission is established and makes a recommendation, the legislature may increase or decrease the governor's and lieutenant governor's salaries in any amount but only within the range recommended by the commission. For example, if the commission recommends that the governor's salary be increased from $25,000 to $35,000, the legislature cannot decrease the governor's salary, but can increase it by any amount from $25,000 to $35,000. If no commission is created, no salary increases or decreases may be enacted. Similarly, if the Commission is created but does not make a recommendation, no salary increases or decreases may be enacted.

This section provides that legislative changes in salary will not become effective until the end of the incumbent's term. This section does not include any requirement with respect to the increase or decrease of the allowance for reasonable expenses. This allowance may be increased or decreased at any time without any action by the commission, and the increase

or decrease may be applied to the incumbent during his term of office.

Section 6: Other Government Employment. Section 6 prohibits the governor or lieutenant governor from holding another position in the Commonwealth government.

This means that the governor may not serve as the head of any executive branch department, office, or agency and may not appoint the lieutenant governor to any such position. This also means that neither the governor nor the lieutenant governor may serve as a member of any temporary or permanent board or commission that is formally established. It is intended, however, that these two officials could serve as ex officio non-voting members of such boards or commissions. All entities established by legislation, executive order, rule or regulation are included under the prohibition. Ad hoc committees that are not established by any formal act are not included. This section prohibits the lieutenant governor from being designated as the presiding officer of either house of the legislature or as the presiding officer of a joint session of the legislature. This prohibition applies whether a position is compensated or uncompensated.

This section does not preclude the governor or lieutenant governor from accepting a position of a temporary or honorary nature with the United States government, another government, or the United Nations or a similar international body. It is intended that no such position would be accepted if it interfered in any way with the performance of official duties by the governor or lieutenant governor. The governor or lieutenant governor could serve on the United States delegation to the United Nations or to any other international organization, could

participate in any formally established study commission sponsored by the United States government, or engage in other similar endeavors regardless of whether those activities are compensated.

Section 6 also prohibits the governor and lieutenant governor from accepting any renumeration from a governmental body other than that provided by section 5. This means that these officers are prohibited from accepting salaries or allowances for expenses other than those specified in section 5, whether paid by the Commonwealth or any other government. If the governor is appointed to a study commission by the United States, for example, he must meet his own expenses, use his allowance for expenses if that is permitted by law, or request of the legislature a special allowance for these expenses.

This section does not forbid the governor and lieutenant governor to seek public office during their terms. This means, for example, that the governor may run for a vacancy in the senate during the middle of his four-year term as governor. If the governor is elected to another position and takes office, the office of governor becomes vacant on the day the other office is taken and under section 7 the lieutenant governor becomes governor.

This section does not prohibit the governor or lieutenant governor from engaging in private business activities during a term of office. The governor or lieutenant governor may be an officer, director or shareholder of any corporation and may own an interest in any partnership or other association. These interests must be disclosed under the code of conduct also required by this section.

This section does, however, require the legislature to enact a code of conduct for the governor, lieutenant governor and heads of

executive departments to require disclosure of financial or other personal interests sufficient to prevent conflicts of interest in the performance of official duties. Financial interests include, but are not necessarily limited to, freehold, leasehold and option interests in real property; ownership interests in business corporations, partnerships and other activities; ownership of debt instruments; and similar means of obtaining financial gain or incurring financial loss. The disclosure of personal interests means identification of family members and near relatives, identification of business and other offices, directorships, trusteeships and other positions held and the identification of similar personal matters that might cause or affect conflicts of interest. The code of conduct must require disclosure, but further means of preventing conflicts of interest, such as a requirement that officials disqualify themselves from acting in matters affecting their financial or personal interests, are left to the legislature.

The code of conduct may contain rules on other matters in addition to these two subjects. The legislature may require that the governor not engage in business activities and that he place his assets in a "blind" trust in order to sever himself from knowledge of or responsibility for the management of these assets. The legislature possesses broad power to define and to prescribe sanctions with respect to conflicts of interest.

Section 7: Succession to the Governorship. This section provides that the lieutenant governor assumes the duties of governor in the event of the governor's removal, death or resignation. The term "removal" as used in this section means impeachment, recall or taking office in another government position. The lieutenant governor becomes governor without any administrative

act on the day that the removal, death or resignation occurs. Under section 2, the acting governor may fill the vacancy in the position of lieutenant governor by appointment.

In the event of vacancies in both the offices of governor and lieutenant governor, the presiding officer of the senate takes office as acting governor. When the presiding officer of the senate becomes acting governor, the position of presiding officer of the senate becomes vacant automatically and the senate chooses a successor under article II, section 14(b). The new presiding officer of the senate is then available as a successor to the acting governor should the office become vacant before the position of lieutenant governor is filled or at a time when the lieutenant governor is unavailable.

It is intended that the restrictions of section 6 of this article and section 11 of article II would not apply to the presiding officer of the senate while serving as acting governor under either section 7 or section 8 of this article. The presiding officer of the senate would remain in office as the senator representing his senatorial district and could act in that capacity concurrently with service as acting governor. This does not violate the requirement of separation of powers imposed by section 203(a) of the Covenant because it does not integrate institutions. It merely permits an official in one branch of government to perform temporarily the duties of a position in another branch. This section also provides that if the presiding officer of the senate takes office as acting governor when a year or more remains in the governor's term, the acting governor will serve only until a governor is selected by special election as provided by law under authority of article VIII, section 2. This provision applies only to succession by the presiding officer of the senate and not to that by the lieutenant governor. If the

lieutenant governor succeeds to the office of governor, he serves the remainder of the term no matter how long that is.

The lieutenant governor automatically becomes eligible for the governor's salary when he becomes a governor. When the presiding officer of the senate becomes acting governor he retains his salary as senator and does not become entitled to any additional salary as acting governor. If a replacement is elected under the provisions of this section, he becomes entitled to the salary for the office of governor.

Section 8: Absence or Disability of the Governor.

Section 8(a). This provision deals with a temporary vacancy in the office of governor that occurs when the governor is outside the Commonwealth. This provision specifies that the lieutenant governor serves as acting governor when the governor is physically absent from the Commonwealth. The governor is absent from the Commonwealth if he is in any place other than one of the islands. The governor is not absent from the Commonwealth if he is being transported by air or water between places in the Commonwealth, even if he is in international airspace or waters. This section applies whether the governor is absent from the Commonwealth on Commonwealth business or for personal reasons.

If the lieutenant governor also is absent or is otherwise unavailable, the presiding officer of the senate becomes acting governor. The term "otherwise available" as it is used in this section means that the lieutenant governor is under some physical or mental disability preventing that official from serving or that the lieutenant governor expressly declares an unwillingness to serve. Such a declaration would not automatically disqualify the lieutenant governor from continuing to hold the office of

lieutenant governor although it might provide grounds for impeachment under section 19. The legislature might conclude that this refusal constitutes neglect of duty, since one of the principal responsibilities of the lieutenant governor is to be available to act for the governor in the event of absence or disability.

Section 8(b). This provision deals with a temporary or permanent vacancy in the office of governor due to physical or mental disability. This section permits the governor to declare that a disability exists, thereby making the lieutenant governor acting governor. The governor may, but need not, disclose the specific nature of the disability. If the governor makes a declaration, it may be for a limited time period and at the end of time period specified in the declaration, the governor automatically resumes his office and the lieutenant governor ceases to be acting governor.

If the governor is disabled and unwilling or unable to make the necessary declaration, the lieutenant governor may petition the court to declare that a temporary vacancy exists. Such a petition could be filed at the expiration of the time period specified in a declaration by the governor if the lieutenant governor has reason to believe the disability remains and the governor is unwilling or unable to make a further declaration.

The petition must be filed with the Commonwealth appeals court if that court is in existence, or with the United States District Court for the Northern Marianas if the Commonwealth appeals court is not in existence. The petition must state the grounds on which the petitioner asks the court to declare the existence of a disability sufficient that the governor is unable to discharge the duties of the office.

If such a petition is filed, the court has original and exclusive

jurisdiction to decide the questions raised by the petition. Original jurisdiction means that the petition originates or is brought first in the appeals courts even though the jurisdiction of that court is normally restricted to hearing appeals from lower courts. Exclusive jurisdiction means that no other court may hold a hearing on the merits of the petition or take evidence with respect to the allegations contained in the petition.

In exercising this jurisdiction, the appellate court can conduct an evidentiary hearing at which the lieutenant governor and the governor may offer evidence as the petitioner and respondent, respectively. Evidence may be taken in any form that is permissible under the relevant rules of evidence. The burden of proof is met by a preponderance of the evidence. If the governor does not appear or is unable to assist in his defense, the court may appoint any other person to appear and represent the interests of the governor.

This section permits the court to determine whether a disability exists, whether that disability is such that the governor is unable to discharge the duties of his office, for what period of time the successor should serve, and on what terms and conditions the court will rehear the matter further to determine if the disability has been removed sufficiently so that the governor can resume his duties. The provisions of section 8(a) do not apply to a vacancy declared by the court. If a disability lasts for more than a year, the acting governor continues as acting governor under the court order without the necessity of a special election.

This section is not contrary to the requirement of separation of powers set out in section 203(a) of the Covenant. This section does not vest any power of appointment in the court. It requires only that the court

determine whether the constitutional conditions for a transfer of powers and duties from one officer to another have been met. If the court determines that a vacancy exists, the succession provisions of section 8(b) determine who takes office. The lieutenant governor becomes acting governor. If the lieutenant governor is unavailable to serve as acting governor, then the president of the senate serves.

If the governor voluntarily declares a disability, and the lieutenant governor is unavailable to serve, then the senate's presiding officer *automatically becomes acting governor. If the governor refuses to declare voluntarily that a disability exists and if the lieutenant governor is* unavailable to serve, then the presiding officer of the senate has the responsibility to petition the court to declare a vacancy.

If the lieutenant governor or the presiding officer of the senate serves as acting governor under this section, both continue to be entitled to their salaries as before becoming acting governor; neither becomes entitled to any additional salary for serving as acting governor.

Section 9: Executive Functions. *This section defines three major responsibilities of the governor.*

Section 9(a). *This provision addresses the budget-making authority of the governor. The subsection requires the governor to submit to the legislature a proposed annual budget for the next fiscal year. In preparing the proposed budget, the governor is required to consult with the council organized pursuant to article VI, section 5. The council is composed of the mayors of Saipan, Rota, Tinian and the Northern Islands and of the executive assistant for Carolinian affairs. The governor, however, has ultimate control over the budget submitted to the legislature.*

The executive budget must describe all anticipated revenues and proposed expenditures of the Commonwealth. It is intended that the budget be a unified budget dealing with all revenues available to the Commonwealth, including the direct grant assistance from the United States under article VII of the Covenant. The legislature may approve, modify or reject the governor's budget. The budget document is a plan for collection of revenue and expenditure of funds. It does not constitute legislation with respect to raising revenue, to authorization or to appropriation of Commonwealth funds. Revenue bills, authorization bills and appropriation bills may derive, but are passed separately, from the budget.

The governor's submission to the legislature with respect to the budget must include the proposed budget, a statement indicating the disposition of each recommendation made by a mayor or the executive assistant (either as to the inclusion of an item in the budget or an amendment to the budget), and a recommendation with respect to legislation on taxation if necessary. The recommendation on taxation may include a proposed tax bill ready for legislative action or a general description of the objectives of a tax bill.

If the legislature approves a budget, either as proposed by the governor or as modified by amendment in the legislature, the governor has no authority to reallocate appropriated funds from one line item in the budget to another line item unless the legislature so authorizes.

If the legislature does not approve a budget by the end of the fiscal year, the appropriations of the previous fiscal year continue at the same levels. This means that programs are funded and money may be expended

by the executive branch in the same manner as if the legislature had passed an omnibus appropriation bill containing the same figures as those of all the appropriation bills that passed in the previous year. This is only an interim measure. If the legislature approves a budget after the beginning of the fiscal year it is then free to pass new appropriation bills that change the level of funding for any program. No appropriation bill may be enacted during any fiscal year until the budget for that year has been approved. However, once the budget is passed, the legislature is free to deviate from the appropriation levels specified in the budget for the fiscal year. The budget is a guide. It is not a limitation.

Section 9(b). This subsection requires the governor to report at least annually to the legislature with respect to Commonwealth affairs. The governor's report may contain recommendations for new measures considered necessary or desirable. The governor may report more often than once a year.

Section 9(c). This subsection vests the governor with clemency power. The clemency power extends to reprieves, commutations and pardons after conviction for all offenses except impeachments. A reprieve postpones the execution of a sentence. A commutation substitutes a lighter penalty for that imposed by the court. A pardon ends all penalties or legal disabilities imposed after conviction. The subsection requires the governor to consult with a board of parole to be created by law, although he is not bound by the board's recommendations. If no board of parole is created by the legislature, the governor cannot exercise the clemency power. This provision does not include any substantive requirements with respect to a board of parole. The board may be advisory only and have no actual power to grant parole. Nor does this section mean that the only offenses for

which reprieves, commutations or pardons are available are those offenses for which parole is available either through the parole board or any other source.

Section 10: Emergency Powers of the Governor. This section authorizes the governor to declare a state of emergency in the event of attack on the Commonwealth, civil disturbance, natural disaster or other calamity, such as a serious crisis caused by the unavailability of public utilities, transportation or communications. It is intended that the governor have all the discretionary authority customarily possessed by the chief executive of a state or city in the United States. For example, the governor may reassign government employees from their normal tasks during an emergency if that is necessary to keep order or protect the public welfare. The governor may deputize citizens on a temporary basis for law enforcement purposes or use the militia if one has been established. The governor may use contingency funds for disaster aid and divert from regular programs during the state of emergency with legislative approval. The governor may institute a curfew or other temporary emergency regulations, which regulations expire when the state of emergency ends.

Section 11: Attorney General. This section requires the governor to appoint, with the advice and consent of the senate, an attorney general of the Commonwealth. The section confers three duties on the attorney general.

First, the attorney general advises the governor and heads of executive departments on legal matters. This does not limit the power of the attorney general to engage outside counsel to advise or represent the Commonwealth on any matter for which he deems such counsel appropriate. Executive departments and the governor may also seek advice from outside

counsel on any matter. This section does prevent executive departments from engaging outside counsel to represent the department in any legal matter without a grant of authority from the attorney general.

Second, the attorney general represents the Commonwealth in suits by and against the Commonwealth. This means that an executive department may prosecute a criminal or civil action only with the consent and through the representation of the attorney general. The attorney general may refuse to bring any action. He may not, however, refuse to defend the Commonwealth against any action. The authority to agree to a settlement of a lawsuit brought against the Commonwealth rests with the attorney general after consultation with the executive department involved.

Third, the attorney general prosecutes violations of Commonwealth law. All decisions with respect to the handling of a case, such as whether to prosecute or to accept a plea to a lesser offense, are made by or, if delegated, reviewed by the attorney general. The attorney general's discretion not to prosecute is complete.

The attorney general's responsibility to prosecute violations of Commonwealth law does not include supervision of the police department or the power to make decisions with respect to investigation of criminal matters. Members of the attorney general's staff may assist in or offer advice with respect to such investigations. It is up to the Commonwealth legislature to define the organizational relationship between the attorney general's office and the police department.

The legislature or the governor may give the attorney general additional responsibilities, such as the supervision of immigration.

Section 12: Public Auditor. This section requires the governor to appoint a public auditor subject to confirmation by each house of the legislature.

No term of office is specified by this section. The legislature may act to provide a term of office. If the legislature acts before the first public auditor is appointed, that appointee serves for the term specified by law and may be removed during the term only by the affirmative vote of two-thirds of the members of each house of the legislature and only for cause. If the legislature does not act before the first public auditor is appointed, that appointee serves an indefinite term. The legislature may thereafter enact a term of office for the public auditor but it may not be applied to the auditor then holding office. If the auditor does not resign voluntarily, he may be removed only by the affirmative vote of two-thirds of the members of each house of the legislature and only for cause.

The term "for cause" means that there must be good and substantial reason for removing the public auditor from his position. Grounds such as commission of a felony, corruption or neglect of duty would obviously constitute "cause" within the meaning of the section. This requirement was included to support the independence of the public auditor and to prevent removal because of honest and aggressive performance of official duties.

The public auditor audits the public accounts of the Commonwealth. For this purpose, all books and records must be made available to the auditor. Failure to make records available to the auditor could result in impeachment for neglect of duty. In addition, the public auditor performs such services as may be prescribed by law. The public auditor's jurisdiction extends to every branch and agency of the government. This includes the Marianas Public Land Corporation and Marianas Public Land Trust established by article XI and all local government offices and entities established under article VI.

The public auditor is required to report at least annually to both the governor and the legislature. The report must be released promptly to the public.

In the event of a vacancy in the office of public auditor, the presiding officer of the senate designates a temporary public auditor to serve until the governor appoints a successor with the advice and consent of both houses of the legislature.

Section 13: Department of Education. This section directs the legislature to establish two instrumentalities for the Commonwealth educational system: a department of education headed by a superintendent of education and a board of education.

The members of the board of education are appointed by the governor with the advice and consent of the senate. The board must be representative. This requires that the membership of the board fairly reflect the geographic areas and ethnic composition

of the Commonwealth. Board members serve four-year terms. The legislature may provide that the terms of all members expire at the same time or that terms are staggered. If the latter course is chosen, not all of the terms of the initial members of the board need be long as four years, although no term may be longer than that period. The number of board members and their qualifications are determined by the legislature.

The board formulates policy for the department of education. This includes approval of the proposed budget for the department of education. The board also appoints and removes the superintendent.

The superintendent implements the policies adopted by the board. This includes the appointment, promotion and removal of teachers and administrative personnel, preparation of the departmental budget, supervision of the acquisition and maintenance of plant and equipment, and the development of regulations consistent with board policies.

Section 14: Heads of Executive Departments. This section recognizes that there are two general types of executive branch entities--principal departments that carry out the major responsibilities of the executive branch such as health, education, public works and collection of revenue, and specialized agencies or boards that have limited regulatory functions. Both types of executive branch entities are under the supervision of the governor.

Unless the legislature otherwise provides, each principal department has one chief executive. This is intended to prohibit the creation of organizational structures using co-directors, committees or boards to head principal departments. It is intended that there be a single person directing the actions of the department whom the governor in turn can hold responsible for execution of the department's responsibilities in accordance with the law and the governor's program.

The governor has the power to appoint the head of each executive department with the advice and consent of the senate. The governor has the power to remove each department head that he has the power to appoint. The governor is not required to have or to state a reason for removal or to consult with the senate.

This section leaves to the legislature the classification of all other government employees consistent with its responsibilities under section 16 of this article. The legislature may provide that deputy department heads or assistant department heads or persons at any other level of government employment may be appointed by the governor with or without the advice and consent of the senate. The legislature may also authorize the governor to remove such employees. If the legislature does not so provide, all employees of the government other than the heads of departments are under the civil service provisions of section 16.

This section provides that the governor may require information to be provided by the head of any department. It is intended that this information be limited to that relevant to the governor's fulfillment of his responsibilities under this Constitution and the laws of the Commonwealth.

Section 15: Executive Branch Departments. This section simplifies the administrative structure of the Commonwealth government by providing that no more than fifteen executive branch departments may exist at any one time. This figure is a maximum and it is anticipated that the actual number of principal departments at the outset of the Commonwealth will be less than fifteen. This number does not include regulatory, quasi-judicial and temporary agencies. A regulatory agency is an entity that does not administer any government program delivering services to the public. Such an agency investigates the subject area assigned to it, develops regulations to control private activity in that area, and uses administrative and judicial action to secure compliance with those regulations. A quasi-judicial agency is a body designed to decide claims against the government or between private parties. A temporary agency is one that does not have an indefinite charter because the enabling legislation by which it is created includes a time limitation at the end of which the agency will cease to function.

It is the legislature's responsibility to establish departments, to define their functions, powers and duties, and

to make changes as appropriate. The legislature may reorganize the executive branch at any time to change the allocation of responsibilities among departments or to create or abolish departments by the enactment of appropriate laws. This section also provides that the governor may take the initiative in administrative reorganization. If any changes in the law are required, this section authorizes the governor to effect such changes by executive orders and then to submit the executive orders to each house of the legislature. Such an executive order becomes effective sixty days after submission unless modified or disapproved by a majority of the members of each house of the legislature.

Section 16: Civil Service. This section requires the legislature to create an independent civil service commission that is selected on a non-partisan basis. The legislature is free to decide whether the governor should appoint the commission or whether another means should be selected to ensure its independence and non-partisan status.

The commission establishes and administers the personnel policies applicable to all executive branch positions except those filled by election or by appointment by the governor. The legislature has the power to determine which positions are included in the civil service through its power to give the governor the power to fill any position by appointment. The commission's authority also extends to

the administrative staffs of the legislative and judicial branches. Personal assistants, such as law clerks and secretaries, to judges and legislators are not included in the "administrative staffs" of the legislative and judicial branches. It is the Convention's intention that the commission define the "administrative staffs" in the legislative and judical branches of government and that the legislature defer to the commission's judgment on this matter.

This section provides that appointments and promotions within the civil service must be based on merit and fitness. As used in this section, fitness means possession of the minimum qualities, knowledge or skills necessary to perform a job competently. Merit means the relative fitness of a candidate compared to that of another candidate. It is intended that if there is more than one person who has demonstrated fitness, the most qualified person from the group will be selected. Merit and fitness must be demonstrated by examination or by other indices of competence. It is intended that any examination or other evidence used be a valid and reliable measure of competence.

Section 17: Public Services. This section deals with the delivery of public services within each senatorial district.

Section 17(a). This provision permits the governor to delegate to the mayor the responsibility for the execution of

Commonwealth laws and the administration of public services within the senatorial district from which the mayor was elected. The governor may delegate all or any portion of this responsibility with respect to all or any subject or combination of subjects. The governor may make different delegations to different mayors depending on local problems or circumstances. With respect to any responsibilities delegated under this section, the mayor reports to the governor and acts for the governor in response to the governor's directions and policies. The governor may revoke a delegation made under this section at any time without cause.

This provision also requires the governor to maintain any decentralization of the delivery of services on Rota and Tinian in existence as of the effective date of this Constitution. Decentralization, as used in this section, means the supervision of the delivery of services on the island where the services are being provided rather than from the island where the department's main offices are located. This provision requires the governor to maintain at least that level of supervision on these two islands where the services are provided as was in existence at the effective date of the Constitution. This means that if there was one line supervisor resident on the island at the effective date, there must be at least one line supervisor with at least the same amount of supervisory responsibility resident on the island thereafter.

This provision does not restrict the governor from changing the system for delivery of services to increase the amount of supervision or level of supervisory responsibility on the individual islands.

If the governor wants to reorganize so as to decrease the amount of supervision or level of supervisory responsibility provided by a person or persons resident on the island where the services are delivered, the governor must take three steps: (1) conduct a public hearing on the island involved; (2) make a finding that the existing system is inconsistent with the efficient and economical delivery of services; and (3) personally certify that finding.

Section 17(b). This provision requires that public services on Rota and Tinian be supervised by a person resident on the island where the services are delivered. This person has the title of resident department head. Each resident department head is appointed by the head of the executive branch department responsible for the provision of the public services involved. Such appointments must be made with the advice and consent of a majority of the representatives and senators elected from the senatorial district where the services will be provided.

This section does not require the provision of any particular public services. It requires that when public services are provided on a regular basis and are of a kind which requires supervision, the government activities involved be supervised by a person resident on the island where the services are provided.

This section does not require that each executive branch department have a different resident department head. One person may be appointed as resident department head by several executive branch department heads and may supervise the delivery of services by each of those departments. The mayor of an island or group of islands may serve as resident department head for one or more executive branch departments. The designation of a mayor as a resident department head is the functional equivalent of the delegation by the governor to the mayor permitted by section 17(a). There is no prohibition on other government employment applicable to the mayor under article VI comparable to the prohibitions with respect to legislators under article II, section 11; executive branch officials under article III, section 6; and judges under article IV, section 7;

Residency for the purpose of meeting the requirement with respect to the position of resident department head is defined in the same way as residency is defined for any other purpose under this Constitution.

Section 17(c). This provision requires that public services be provided on an equitable basis to all citizens of the Commonwealth. For purposes of this section, the term "citizens of the Commonwealth" means citizens or nationals of the United States who are domiciled in the Commonwealth. The term "equitable basis" as used in this section means the guarantee of equal protection of the laws contained in article I, section 6.

This section permits the legislature to require that

services be provided on a decentralized basis, since this is one means of providing services more equitably to persons living on islands separated by many miles of ocean. The governor must include the necessary recommendations in any legislative program to accomplish the objective that services be provided on an equitable basis but it remains for the legislature to decide how best to accomplish this and other objectives with respect to the delivery of public services in the Commonwealth.

Section 18: Executive Assistant for Carolinian Affairs.

This section provides for an executive branch official whose function is to serve as liaison between the Carolinian community in the Commonwealth and the executive branch of the government.

Section 18(a). This subsection requires the governor to appoint an executive assistant for Carolinian affairs who is acceptable to the Carolinian community within the Commonwealth. The Carolinian community within the Commonwealth is the group of persons of Carolinian descent who are citizens or nationals of the United States and who are domiciled anywhere within the Commonwealth.

The term "persons of Carolinian descent" as used in this section means a person who is himself or herself or is descended from a person who is recognized within the community as a Carolinian. This term is not related to the term "person of Northern Marianas descent" as that is used in the Constitution except that a person of Carolinian descent may in some instances

also be a person of Northern Marianas descent. The term "matters affecting persons of Carolinian descent" as used in this section means matters affecting the financial or personal interests of persons of Carolinian descent. A financial interest is a possibility that a person or any member of his family may have a monetary gain or loss as a result, direct or indirect, of a government action. A personal interest is the gain or loss of elected or appointed office or other non-monetary rights, privileges or benefits. It is not required that a matter affect more than one person or required that a matter affect only persons of Carolinian descent in order to qualify as a matter affecting persons of Carolinian descent.

It is the intent of this provision that the executive assistant for Carolinian affairs be somone who can speak to and for the Carolinian community, someone to whom the members of the Carolinian community can turn with their problems, and someone in whom the Carolinians have confidence.

It is the governor's responsiblity to determine that the person appointed as executive assistant for Carolinian affairs is acceptable to the Carolinian community. That determination may be made either before or after appointment by any means that is sufficient to carry out the intent of this provision.

Because the executive assistant is appointed, the position is not covered by the civil service requirements of section 16. The executive assistant may be removed by the governor at any time without cause. The salary for the executive

assistant is as provided by law. This may be a full-time or part-time position as determined by the governor or the legislature. Any designation of this position as part-time must include sufficient time available to carry out the duties specified by this article.

Section 18(b). This provision requires that the executive assistant for Carolinian affairs be a member of the governor's council created pursuant to article VI. The executive assistant has the responsibility to advise the governor on matters affecting persons of Carolinian descent within the Commonwealth.

Section 18(c). This provision requires the executive assistant to review the application of government policies to persons of Carolinian descent. This includes a review with respect to the provisions of Section 17(c) that public services be provided on an equitable basis to all the citizens of the Commonwealth. This provision also requires the executive assistant to review the availability and quality of government services to persons of Carolinian descent. The executive assistant may submit findings or recommendations on these matters to the governor.

Section 18(d). This provision permits the executive assistant to investigate complaints and to hold public hearings regarding matters affecting persons of Carolinian descent. This function is intended to parallel that of the mayor as provided by article VI, section 3(c).

Section 18(e). This provision permits the executive assistant to make recommendations with respect to the proposed budget submitted by the governor to the legislature. This function is intended to parallel that of a mayor as provided by article VI, section 3(d).

Section 18(f). This provision permits the executive assistant to require information in writing or otherwise with respect to matters affecting persons of Carolinian descent from the officers of any administrative department, office or agency of the Commonwealth. This function is intended to parallel that of the governor pursuant to section 14. No time period is set within which an officer must respond to a request for information from the executive assistant. It is intended that a response occur within a reasonable time. It is intended that this section be enforced judicially if any official refuses to comply.

Section 19. Impeachment. This section provides that only the governor and lieutenant governor, among the officers of the executive branch, are subject to removal upon impeachment as provided in article II, section 8. No appointed official may be impeached. The grounds for impeachment are limited to treason, commission of a felony, corruption and neglect of duty.

ARTICLE IV: JUDICIAL BRANCH

Section 1: Judicial Power. This section authorizes the legislature to create those trial and appellate courts as it finds necessary, subject only to the limitations imposed by this

article. Those tribunals might include municipal courts, juvenile courts, and specialized courts to hear particular categories of matters such as those involving immigration, naturalization, citizenship or questions of Northern Marianas descent. The authority of the legislature to vest in these courts the judicial power of the Commonwealth is limited only by this article and by other provisions in the Constitution, such as section 8 of article III, which grant jurisdiction to the Commonwealth courts over specific questions.

Section 2: Commonwealth Trial Court. This section requires the legislature to establish a Commonwealth trial court. The trial court's jurisdiction will extend to all actions involving land regardless of the amount at issue. An action involving land is one in which any right, title or interest in land is disputed. Such an action includes all other claims or requests for relief properly joined under the rules of the court even though not involving land. The court may provide for separate trial of the land and non-land issues presented by a single cause of action and may order that non-land issues that otherwise would not be within the jurisdiction of the Commonwealth trial court be removed to the United States District Court for the Northern Mariana Islands.

The trial court's jurisdiction also includes civil actions not involving land except those in which the amount in controversy exceeds $5,000 in value. The determination of whether the matter controversy exceeds $5,000 in value is made from the face of the pleadings. Even if the judgment ultimately is for more than $5,000, the court is not divested of jurisdiction.

In addition, the trial court's jurisdiction includes all criminal cases except those in which the defendent, if convicted, could be fined more than $5,000 or imprisoned for a period exceeding five years. In cases in which one

offense is involved, the maximum fine or sentence is determined from the statute defining the offense. In cases where more than one offense is involved, the maximum fine or sentence is determined by the statute defining the offense that carries the largest fine or the longest term. The possibility of consecutive sentences is not included in this determination.

At any time after the Constitution has been in effect for five years, the legislature may expand the jurisdiction of the trial court to include all civil actions or only those falling within a jurisdictional amount limitation that is larger than $5,000. Similarly, the jurisdiction over criminal actions may be redefined to include more or all criminal actions arising under Commonwealth law. This initial limitation of jurisdiction assumes that a United States District Court for the Northern Mariana Islands will be established and funded under article IV of the Covenant to exercise jurisdiction over causes that the Commonwealth trial court is not empowered to decide. If a federal district court is not available in the Northern Mariana Islands, the legislature may at any time expand the Commonwealth trial court's jurisdiction to include all local cases. The expansion of the jurisdiction of the trial court to include all Commonwealth civil and criminal actions would restrict the jurisdiction of the United States District Court to that defined by article IV, section 402(a), and appeals from the Commonwealth trial court.

If the United States District Court of the Northern Mariana Islands is established pursuant to article IV of the Covenant, it will have jurisdiction over all civil and criminal cases that arise in the Commonwealth that the Commonwealth courts do not have the power to decide. Thus, for at least five years following the effective date of the Constitution, the federal district court will have jurisdiction to try all civil cases where the matter in

controversy exceed $5,000 (except matters involving land) and all criminal cases where the defendent may be fined an amount exceeding $5,000 or imprisoned for a term exceeding five years. After the expiration of the five-year period, the federal court's jurisdiction will depend on whether the legislature expands the jurisdiction of the Commonwealth trial court under section 2 of this article.

This section permits the legislature to staff the court with some part-time judges. There must be at least two full-time judges, one of whom is assigned to Rota and another of whom is assigned to Tinian. The rules promulgated pursuant to section 8 of this article could require the temporary transfer of the judges sitting in Rota or Tinian or on the land division to other judicial duties as warranted by their workloads. This would permit the legislature to provide for only two full-time judges at the outset and to handle the case load in Saipan with those full-time judges, to the extent they were not occupied in Rota or Tinian, and with supplementary part-time judges. The requirement that a full-time judge sit in Rota and Tinian does not mean that the judge has to spend full time in Rota and Tinian. This provision permits the court to establish regular sessions, such as one week per month or one week every two months, in which a full-time judge will sit in Rota and Tinian. These judges could then spend the remainder of their available time hearing cases in Saipan.

This section requires the creation of a specialized division of the trial court to handle land matters for at least five years after the establishment of the court. The special divison has its own calendar so that land matters do not compete with other civil matters for priority in being heard. Any judge of the Commonwealth trial court may sit in the land division, although it is intended that the judge who sits in this division should have some special qualifications to enable land cases to be resolved expertly and expeditiously.

The legislature may abolish the land division five years after the establishment of the court.

This section permits the creation of other divisions of the Commonwealth trial court, such as those for small claims, divorce and child support matters, misdemeanors or traffic violations. These divisions need not be courts of record.

Section 3: Commonwealth Appeals Court. This section confers on the legislature the power to establish an appellate court at any time five years after the effective date of the Constitution. In the event that no federal district court is available under article IV, section 402(c), of the Covenant to hear appeals of Commonwealth cases, the legislature may establish a Commonwealth appeals court at any time.

It is intended that the district court have jurisdiction over all appeals in Commonwealth cases for at least five years, regardless whether those cases were tried by the Commonwealth trial court or by the federal district court. After the conclusion of the five-year period, the legislature may create a Commonwealth appeals court and the federal district court would have appellate jurisdiction over only those Commonwealth matters, if any, that the Commonwealth appeals court is not empowered to hear.

When sitting as an appellate court, the district court will consist of three judges, at least one of whom must regularly serve as either a part-time or full-time judge of a division of the Commonwealth trial court that functions as a court of record. It is intended that only judges who are currently assigned to divisions of the trial court that are courts of record be permitted to sit as members of an appellate panel.

It is not intended to limit the Commonwealth trial court from assigning judges to the various divisions, both those of record and those

not of record, on a rotating basis. It is intended that a judge who conducts the trial of a case, whether in the Commonwealth trial court or federal district court, be disqualified from participating in the decision of any appeal of the case. It is intended that whenever a judge from the Commonwealth trial court is needed to sit as a member of an appellate panel of the district court, the district court will notify the Commonwealth trial court and the Commonwealth trial court will apoint a judge for the purpose. This function may be delegated to the chief judge of the Commonwealth trial court.

Section 4: Appointment and Qualifications. This section prescribes the method of selection, term of office, and qualifications required of Commonwealth judges. Commonwealth judges are appointed by the governor subject to the advice and consent of the senate. Under this provision, the initial term of every judge will be six years. Judges may be reappointed by the governor to one or more terms.

The legislature may increase the length of terms of judges who have served at least one term to not more than twelve years. If the legislature exercises this authority, every judge would serve one six-year term. If a judge is reappointed by the governor, it would be for a twelve-year rather than a six-year term. It is intended that a judge be qualified for a twelve-year term if at any time he has served a six-year term. For example, if a judge serves a six-year term, subsequently returns to private practice for ten years, and then is once again appointed to the bench, he would be eligible for a twelve-year term. If the judge does not serve a full six-year term, he would not be eligible for a twelve-year term regardless of when he was reappointed. For example, if a judge is appointed to serve a six-year term and serves only four years before he is appointed to another position, he would be ineligible to be appointed to a twelve-year term immediately thereafter. He would have to be appointed to another six-year term and complete that term before being eligible for a twelve-year term. A judge

who has completed a full six-year term on one court, such as the Commonwealth trial court, would be eligible for a twelve-year term on another court, such as the Commonwealth appeals court.

To be eligible for appointment to the Commonwealth bench, an individual must be at least thirty years of age and a citizen or national of the United States at the date of taking office. The legislature may impose other standards that prospective judges must meet. Although the language of this section does not explicitly require that Commonwealth judges be attorneys, it is intended that all judges have legal training. This section affords the legislature the flexibility to define precisely what legal training will be required.

Section 5: Compensation. Under this section, the legislature must fix the compensation received by judges. Compensation may be limited to salary or it may also include a reasonable allowance for expenses. Once set, a judge's salary may not be reduced during the judge's term of office.

Article II, section 10, provides that the legislature may establish a commission to study, and make recommendations concerning, the compensation of Commonwealth judicial officers. Article II, section 10, provides that legislative salaries may be changed only upon the recommendation of the commission. Article III, section 5, provides that the salaries of the governor and lieutenant governor may be changed only upon the commission's recommendation. Because article IV, section 5, does not refer to the commission, the legislature may act on judicial salaries without having established a commission. Similarly, it may act if the commission has made no recommendation on judicial salaries and it may act contrary to any recommendation of the commission.

The only restriction imposed by this section is that the legislature may not decrease the salary of a judge during his term of office. This does not mean that the legislature may never decrease the salaries of judges. If a decrease in salary is enacted, it applies only to judges who are appointed for the first time subsequent to the date of enactment or who are reappointed after the expiration of a term on a date subsequent to the date of enactment. If a salary decrease is enacted, all judges currently serving terms at the date of enactment will continue to receive their previous salary until the end of their terms.

If the legislature provides an allowance for expenses, it may change the allowance at any time and apply the change to a judge during his term of office.

Section 6: Sanctions. This section prescribes the sanctions that may be applied to judges. Judges will be subject to impeachment for treason, commission of a felony, corruption or neglect of duty. The procedures for impeaching a judge will be identical to those applicable against other civil officers under article II, section 8.

This section also directs the legislature to establish an advisory commission on the judiciary. Composed of lawyers and representatives of the public, the advisory commission will have the power to recommend that the governor remove, suspend or otherwise sanction a judge who has engaged in illegal or improper conduct. This section requires only that the commission include more than one lawyer and more than one representative of the public.

It is intended that the representatives of the public be non-lawyers and that they be representative of the geographic areas and ethnic minorities within the Commonwealth. The section does not prevent one or more judges from serving on the commission.

Until the legislature establishes a commission, the governor may not remove, suspend or sanction any judge for any reason. After the advisory commission is established, the governor may remove, suspend or sanction a judge only if that action is consistent with a recommendation of the commission. If the commission makes no recommendation, the governor cannot remove, suspend or sanction a judge. The grounds on which the advisory commission may recommend that a judge be removed, sanctioned or suspended are limited to illegal or improper conduct. These grounds comprehend those specified as a basis for impeachment but include other offenses as well. For example, illegal conduct is not limited to the commission of a crime, but includes the violation of any civil statute or regulation. Improper conduct is not limited to neglect of duty; it might also include violations of the canons of judicial ethics. It is intended that the independence of the judiciary be fully protected and that the commission act only to the extent necessary to ensure the integrity and proper functioning of the Commonwealth courts.

Section 7: Limitations on Activities of Judges. This section limits the permissible activities of judges. Under this provision, no full-time judge may occupy any other compensated government office. This means that a full-time judge may accept any government position so long as the position carries no salary and he is not paid for his service, and so long as his service does not violate the requirement of separation of powers imposed by article II, section 203, of the Covenant. If a government position has previously been filled by a person who was paid a salary for his work in that position, that position is compensated and a judge is disqualified from occupying it, even if the judge is not paid for his work in that capacity.

A full-time judge may not practice law. The practice of law means any activity that constitutes the giving of legal advice or the representation of another person or entity with respect to any legal matter. This proscription is not intended to include activities arising from non-compensated government positions that a judge is qualified to hold under this section.

These limitations do not apply to part-time judges. A definition of "full-time" and "part-time" may be supplied by the legislature. If the legislature does not provide a definition, a part-time judge is any judge who is not obligated to devote all regular working days to the business of the court.

Some limitations are binding on all judges. Judges are prohibited from making any direct or indirect financial contribution to any political organization or candidate. Judges are also barred from holding any executive office in a political organization. No judge may participate in a political campaign of any kind. It is not intended to limit in any way the exercise of a judge's rights to express his views regarding political candidates or to vote for the candidates of his choice. A judge may seek an elective public office only if he resigns at least six months before his nomination or before he becomes a candidate through means other than nomination.

Section 8: Rule-making Power. This section authorizes the Commonwealth courts to propose rules governing civil and criminal procedure, judicial ethics, admission to the bar of the Northern Mariana Islands, the discipline of attorneys after their admission, the affairs of the bar of the Commonwealth, and other matters concerning the administration of the court system. In performing this function, the judiciary may either act as a body or delegate the task to a judge or a committee of judges.

A rule proposed by the judiciary must be submitted promptly to the legislature. The rule will take effect sixty days after its submission unless either house of the legislature rejects it. Until rules of criminal and civil procedure are adopted in this manner, the rules of the Trust Territory High Court will regulate the proceedings of the Commonwealth courts. If a rule is proposed and rejected, the comparable rule, if any, of the High Court will continue in effect.

This section does not limit the legislature's authority to enact laws on these subjects. It is intended to permit the expertise of the judges to be used in the most efficient manner to develop rules on numerous and highly technical matters.

ARTICLE V: REPRESENTATION IN THE UNITED STATES

Section 1: Representative to the United States. This section creates the office of representative to the United States. The representative is elected at large within the Commonwealth. The representative represents the Commonwealth in the United States and performs related duties provided by law. This means that the representative is responsible for all matters that require representation within the United States, including relations with the United States government, the governments of states within the United States, and the governments of territories associated with the United States such as Puerto Rico, Guam and the Virgin Islands. The representative is not responsible for relations with any foreign state, although the representative may assist or advise the United States Department of State in such matters. The legislature may give the representative any

additional duties of a special or general nature that are consistent with the Covenant.

Article IX, section 901, of the Covenant provides that the representative is entitled to official recognition from the United States government only upon presentation through the United States Department of State of a certificate of selection from the governor of the Commonwealth. This section requires the governor to supply to the Department and the representative that certificate promptly after the election of the representative.

Section 2: Term of Office. This section provides that the term of office of the representative is two years. This term may be increased to three years or four years by popular initiative. It may not be increased by the legislature.

The popular intiative procedure under article IX, section 1, requires that a petition proposing a change in the term of office of the representative be signed by at least twenty percent of the persons qualified to vote in the Commonwealth. The petition becomes law if approved by at least two-thirds of the votes cast in the Commonwealth.

If an initiative petition is approved and takes effect during the term of a representative, the representative will serve out the remainder of the term. The provision with respect to the new term will then become effective.

Section 3: Qualifications. The representative is required under article IX, section 901, of the Covenant to be a United States citizen after termination of the Trusteeship Agreement. Therefore any person who chooses

United States national status cannot qualify to take office as representative. On the date of taking office, the representative also must be a person qualified to vote in the Commonwealth, at least twenty-five years of age and a resident and domiciliary of the Commonwealth for at least seven years immediately prior to taking office.

The residence and domicile requirement means that a person must both reside and be domiciled in the Commonwealth continously for the seven-year period immediately preceding the second Monday of January in the year in which the representative takes office. A person who just resides in the Commonwealth for the required seven year period is disqualified. Similarly, a person who has been domiciled in the Commonwealth for twenty years, but who resided outside the Commonwealth at any time during the seven-year period immediately preceding the date of taking office is not qualified. The legislature may define Commonwealth residency in a manner that permits persons who are domiciled in the Commonwealth but who are temporarily out of the Commonwealth for business, education, government representation or other purposes to be considered as residents.

The section authorizes the legislature to provide a different period of residence and domicile. This language is identical to that used with respect to the qualifications of the governor in article III, section 2, and should be interpreted in the same manner.

It is intended that for all purposes in this Constitution or any statute the representative to the United States shall be considered a resident and domiciliary of the Commonwealth during any period that the representative is in the United States on official business. This permits the representative to vote, run for office and be eligible for other rights,

privileges or benefits that are available only to persons who meet a durational residency or domicile requirement.

This section provides that no person may take office as representative who has been convicted of a felony in the Commonwealth or in any area under United States jurisdiction, unless a full pardon has been granted. The term "under the jurisdiction of the United States" in this section includes areas formerly under United States jurisdiction if the conviction occured at a time when the place was under United States jurisdiction, even if the area subsequently became independent or affiliated with another nation. All felony convictions in the Trust Territory of the Pacific Islands from 1947 through the termination of the Trusteeship are covered by this provision and constitute a disqualification unless pardoned.

The term "full pardon" means that the disqualification continues unless a pardon is granted with respect to all aspects of the conviction. A conditional or partial pardon is not sufficient to remove the disqualification.

Section 4: Annual Report. This section requires the representative to submit a written report to the governor and the legislature each year no later than the second Monday in January. The report must describe the representative's official activities during the preceding year and must include a description of any matters requiring the attention of the government or the people of the Commonwealth. This report may include a legislative program with respect to the interests of the Commonwealth in the United States; it may include recommendations with respect to the budget, to authorization or appropriation measures, or to revenue measures that have to do with

activities or enterprises related to the United States.

Section 5: Compensation. This section provides that the legislature has complete discretion in setting the salary and allowance for expenses of the representative. The salary of the representative may not be changed during the representative's term of office. This does not mean a bill enacting an increase or decrease may not be passed while a representative is in office. It means that the change required by the bill may not become effective until the end of the representative's term.

Under section 2, the representative's term of office is two years. A representative reelected to a second or third term will receive the salary (reflecting either an increase or a decrease) that the legislature has provided for the next term. This section does not limit the legislature in increasing or decreasing the allowance for reasonable expenses during the representative's term of office.

There is no constitutional limitation on the representative with respect to other employment or compensation. The code of conduct of executive branch officials that must be enacted by the legislature under article III, section 6, does not apply to the representative because he is not the head of an executive department. The personnel policies of the civil service commission that may be created under article III, section 16, do not apply to the representative because he is an elected official. The representative may be employed in any other position, either government or private, and may receive another salary unless the legislature provides to the contrary.

Section 6: Vacancy. A vacancy in the office of representative exists if the representative dies, resigns, or is removed by recall. There is no limitation on holding another office, so the representative is not removed or required to resign as representative if elected or appointed to

another Commonwealth position. If a vacancy in the office of representative arises, the governor is required to appoint a successor with the advice and consent of the legislature. For purposes of confirming an appointment to this position the two houses of the legislature will consider the matter jointly as a single body. The successor would complete the balance of the former representative's term and could then seek election for a full term in the office.

Section 7: Impeachment. This section subjects the representative to impeachment on the same grounds as those specified in other articles for judicial or executive branch officials. It is intended that this section be interpreted in accord with the discussion of article III, section 19.

ARTICLE VI: LOCAL GOVERNMENT

Section 1: Local Government. This section establishes agencies of local government within the Commonwealth. The only powers that can be vested in local government agencies are those specified by this article. Local governments have the structure and responsibilities set out in this article. This article is not exclusive, however, in granting authority to make and execute laws for geographical subdivisions of the Commonwealth. Article II, section 6, grants the legislature and the members of the legislature representing particular senatorial districts the authority to pass local laws. Article III, section 17, deals with the provision of public services to island or islands within the Commonwealth. Article IX, section 1, permits the proposal and adoption of local laws by initiative.

Section 2: Election of Mayor. This section creates the office of mayor. It provides for four mayors: one for Rota, one for Saipan, one for Tinian and Aguiguan, and one for the islands north of Saipan. Each mayor is elected by those persons who qualify to vote under article VII, section 1, who are properly registered to vote as provided by law, and who are from the island or group of islands that the mayor will represent. The grouping of islands corresponds to the senatorial districts established by article II, section 2(a). The legislature may define the term "from" an island or group of islands to mean residence, domicile, or some other tie or any combination of ties to the island or islands. If the legislature does not act, it is intended that voters be qualified by residence within the island or islands. A mayor will perform the responsibilities given in sections 3 and 5 of this article and section 17(a) of article III.

Section 2(a). This section sets out the qualifications a person must meet on the date provided by article VIII, section 4, for taking office as mayor. A mayor must qualify to vote in the Commonwealth in accordance with the provisions of article VII, section 1. If the legislature enacts a law requiring proper registration or any other procedural qualification for voting, the mayor also must satisfy that requirement. If the legislature decides that United States nationals may not vote in Commonwealth elections under the authority given it by article VII, section 1, then a mayor could not be a United States national. In addition, a mayor must be at least twenty-five years of age and a resident and domiciliary of the Commonwealth for at least three years immediately preceding the date on which the mayor takes office. The legislature may provide additional qualification

requirements, for example, a period of residency or domicile in the island or islands the elected mayor will serve.

No person convicted of a felony by a Commonwealth court, a court of the Trust Territory of the Pacific Islands, or any other court in an area within the jurisdiction of the United States may become mayor unless granted a full pardon. It does not matter that the person may have served the full sentence for the felony.

Section 2(b). This section provides for the election of mayors at regular general elections covered by article VIII, section 1. A mayor serves a four-year term without restriction on reeligibility for office. The term of office of the mayor will commence on the date set by article VIII, section 4.

A vacancy in the office of any mayor occuring during a mayor's term is filled by a special election in accordance with article VIII, section 2, if one-half or more than one-half of the elected mayor's term remains. The legislature provides for filling vacancies if less than one-half of the term remains. The legislature could provide for filling such vacancies by special elections, appointment by the governor, appointment by the members of the legislature from the same island or islands as the vacant office, or by any other means. If the legislature makes no provision for filling vacancies where less than one-half of the term remains, then such vacancies may not be filled until the next regular general election.

A vacancy is created if the mayor dies, resigns, or is recalled. Mayors, as elected public officials, are subject to the recall provisions of article IX, section 3. The legislature may not impeach mayors under article II, section 8.

Section 3: Responsibilities of Mayors. This section details the duties and powers of a mayor.

Section 3(a). This section provides that the mayor serves on the governor's council established under section 5 of this article.

Section 3(b). This section requires the mayor to review the government services and appropriations provided for the island or islands served by the mayor and permits the mayor to submit any findings or recommendations on these subjects to the governor. Government services are all actions taken by the executive branch, through executive branch departments created under article III, section 15, designed to promote the health, safety and welfare of the people in the Commonwealth. Appropriations are the acts of the legislature making available to the executive branch Commonwealth funds for government programs. The mayor reviews the needs of the island or islands in order to determine whether the funds allocated to them are adequate to pay for required services. The mayor also must study the services provided to ensure that they are being administered according to law and are meeting the needs in the island or islands.

The mayor may submit written reports to the governor at any time that contain data and other information relating to government services or appropriations for services in the mayor's area. The mayor also may submit written recommendations to the governor requesting increased or decreased funds in general or for specific programs, or suggesting new programs, ways of improving on existing programs, or the termination of obsolete programs. The form and manner of submission of reports and recommendations may be provided by law.

Section 3(c). This section grants the mayor broad investigatory powers to identify problems of local concern and to make recommendations with respect to these problems to the governor. The definition of the term local matter as used in this section is the same as the definition of local matter by the legislature under article II, section 6. A complaint is any written or oral statement that expresses dissatisfaction. The subsection requires no formal method for the presentation of complaints, nor does it restrict the categories of persons who may make complaints. Reasonable regulations concerning the manner of presenting complaints to the mayor may be provided by general or local law under article II, sections 5 or 6, or by the mayor under the authority granted by subsection (e) of this section to promulgate regulations on local matters, or by local government agencies established under section 6(b) of this article.

The authority to investigate complaints means the mayor may use, within the limits of the law, any resource available to the mayor's office to collect information with respect to the matter complained about. The mayor is specifically permitted to call and conduct public hearings as a means of gathering information. These also may be controlled by law or regulation. The authority to investigate complaints does not include the power to subpoena witnesses or to compel the production of books, papers or other materials.

The mayor may submit to the governor in writing the results of any investigation or any recommendations concerning a local matter resulting from an investigation. The governor may forward such a submission to the executive agency or agencies created under article III, section 15, best situated to deal with the matter. The form and manner of submission of reports and recommendations may be provided by law. The governor or the executive agencies may use any reports or recommendations as they consider appropriate.

Section 3(d). This section gives the mayor a significant role in the preparation of the Commonwealth budget provided for by article III, section 9(a). It is prepared annually by the governor with the aid and advice of executive branch officials and describes all anticipated revenues of the Commonwealth and recommends levels of expenditure for government programs. The governor presents a recommended budget to the legislature which has the responsibility of enacting the budget into law. The legislature also must enact tax laws to provide for the collection of revenues and appropriation bills to provide for the spending of revenues according to the requirements of the budget.

This subsection requires the mayor to make recommendations on the budget at two different stages. First, the mayor must propose to the governor items for inclusion in the budget that relate to the island or islands served by the mayor. This requires a written report suggesting sources of revenues

and detailing specific amounts of money proposed to be spent on specific projects that will benefit the area the mayor serves. Although most proposals will be for taxes or expenditures in the district the mayor serves, the mayor also may make recommendations for taxes or expenditures elsewhere in the Commonwealth that will affect the mayor's area.

Second, the mayor must review the budget proposed by the governor before its submission to the legislature. This requires the governor to notify the mayor of the completion of the proposed budget and to allow the mayor a reasonable period of time to review the document. This section also authorizes the mayor to recommend amendments in the proposed budget to the governor prior to its submission to the legislature. The manner of recommending amendments may be provided by law. Like the initial proposals submitted by the mayor to the governor, a proposed amendment must relate to the island or islands.

This subsection includes no sanctions should the mayor fail to perform the duties prescribed. Failure of the mayor to perform the duties prescribed by this subsection cannot be used by any person as a reason to delay the preparation, submission or enactment of the budget.

The last sentence of subsection (d) adds to the requirement of article III, section 9(a), that directs the

governor to consider all proposals relating to the budget made by the mayors. This subsection makes clear that the governor must consider all recommended amendments as well as initial proposals of items. The budget the governor submits to the legislature has to state the governor's disposition of the initial budget requests of each mayor and the governor's disposition of recommended amendments to the governor's proposed budget.

This section also provides that the governor may reject recommended proposals and amendments only for good cause. Good cause is a general term that means any reason rationally related to the governor's duty to present a workable budget to the legislature.

If the governor submits the budget without a statement of the disposition of the budgetary requests of the mayors as required by article III, section 9(a), or if the governor rejects any budgetary recommendation of a mayor made under section 3(d) of this article without good cause, the legislature may refuse to consider the budget as improperly submitted or a mayor may take legal action to require the governor to comply with the requirements of the Constitution.

Section 3(e). This section permits the legislature to grant to the mayor the authority to promulgate regulations on local matters. Regulations are legally enforceable written commands made under authority granted by law. Article II, section 6, requires the legislature to define the local

matters with respect to which a mayor may promulgate regulations. The intention of that section that a local matter be a matter that relates exclusively to one senatorial district applies here also. The legislature has authority under this section to regulate the form and method for promulgating regulations. It is intended that promulgation include a written statement containing the complete regulation that is signed by the mayor and published in a manner that ensures public knowledge of the regulation and meets the notice requirement of the due process guarantee under article I, section 5. The legislature may add other requirements.

If the legislature fails to grant the authority to make regulations or fails to define the local matters with respect to which the mayor may make regulations, the mayor may not act. Any regulations promulgated by the mayor would be null and void.

To the extent that a properly promulgated local regulation conflicts with a law enacted by the legislature or by a majority of the members of the legislature from a senatorial district, the regulation is preempted and therefore null and void.

Section 3(f). This section authorizes the mayor to spend certain tax revenues in the island or islands the mayor serves. A local tax is one that comes within the definition of local matter as enacted by the legislature under the authority of article II, section 6. Local taxes may be

collected by the Commonwealth and then rebated to the local government. The mayor may not make any expenditure without the authorization of the legislature or of a majority of the members of the legislature representing the island or islands served by the mayor. This means that each expenditure the mayor makes must be approved separately. The mayor can collect a number of proposals for expenditure and submit them for approval but the approval must be granted for each item. Authorization by the legislature means enactment of an appropriation bill in the same manner as other laws are enacted. Authorization by a majority of the members of the legislature representing the islands or islands served by the mayor means enactment of a local appropriation bill under the authority of and in the manner provided by article II, section 6. A decision by the legislature to approve or reject a proposed expenditure preempts a decision on the same expenditure by the members of the legislature from one senatorial district.

A local public purpose is a purpose that benefits primarily the public within the island or islands where the tax was collected. The legislature has the power to determine what qualifies as a public purpose under this subsection.

If the mayor expends tax revenues in violation of this subsection, that expenditure is void. If the money cannot be recaptured, the mayor may be held accountable for the amount illegally spent.

Section 3(g). This section empowers the mayor to appoint, supervise and remove any employees provided by law to assist the mayor. Before the mayor may appoint any employees, the legislature must provide for them. The legislature can do this by a general law that applies to the whole Commonwealth under article II, section 5, or by a local law that relates exclusively to one senatorial district under article II, section 6. The legislature also may permit a majority of the members of the legislature from a senatorial district to provide for mayor's assistants under article II, section 6, by defining those assistants as a local matter that can be the subject of local legislation.

Once the legislature provides for an employee to assist the mayor, the mayor has complete discretion to select and appoint the employee. The mayor also has the power to remove the employee for any reason. Local government employees are not covered by the provision in article III, section 16, with respect to a civil service system because they are not employees of the Commonwealth government.

An employee may assist the mayor in the performance of the responsibilities provided by this section and by article III, section 17(a). The mayor, however, may not delegate completely any constitutional duties. The mayor must perform those duties and remains finally responsible for them.

Section 3(h). This section permits the legislature to assign other duties to the mayor as new needs arise. This

could be done by Commonwealth-wide law under article II, section 5, or, for a specific mayor, by local law passed by the legislature or by a majority of the members of the legislature from the island or islands served by the mayor under article II, section 6.

Section 4: Compensation. This section provides that the mayor receives an annual salary plus a reasonable allowance for expenses as provided by law. Because the salary and expense allowance are drawn from Commonwealth revenues, this compensation must be provided for by general law under article II, section 5. The legislature may give different salaries or expense allowances to mayors according to the island or islands they serve and the predicted needs of the island or islands. The annual salary means that the mayor shall receive a fixed amount of money each year. The pay year for the mayor commences on the date fixed for taking office under article VIII, section 4, regardless of the date on which the mayor actually takes office.

The legislature may not decrease the salary of a mayor during that mayor's term of office. The legislature may decrease the salary for subsequent mayors or for the same mayor should the mayor be reelected. The legislature may increase the salary of a mayor at any time. It may increase or decrease the expense allowance of a mayor at any time.

Salaries and expenses for any assistants to the mayor employed under the authority of section 3(g) of this article shall be as provided by law. As with the mayor's compensation and expenses, these must be authorized by general law.

Section 5: Governor's Council. This section provides that the mayors and the executive assistant established by article III, section 18, are members of a governor's council. The council meets at least four times each calendar year in a place that can be designated by the governor. It is the governor's responsibility to convene these meetings and to preside at these meetings. The council may adopt its own procedural rules describing places and times of meetings, quorum rules, rules controlling the form and preparation of the council's agenda, and other matters.

The purpose of the meetings of the council is to provide a forum through which the mayors and the executive assistant can advise the governor on local matters and can discuss with the governor and each other any matter with respect to the relationship between the Commonwealth and its islands. This is a broader range than the limited scope of local matters subject to local legislation under article II, section 6, or placed under the authority of the mayors under section 3 of this article. It is intended to encourage discussion of any problem whose resolution would improve the relationship among the various islands and

groups in the Commonwealth and thereby contribute to the success of the Commonwealth.

Section 6: Other Agencies of Local Government. This section deals with agencies of local government other than the mayors and the governor's council created by the preceding sections of this article.

Section 6(a). This section abolishes the current chartered municipalities on Rota, Saipan and Tinian on the effective date of this Constitution. This dissolves existing municipal councils and mayors' offices but does not terminate the employment of the staff and employees of local governments. Under section 3 of the Schedule on Transitional Matters, these employees automatically become employees of the Commonwealth until the executive or legislative branch provides otherwise. Local taxes as provided by current legislation or regulations that support the existing local governments and finance services provided by them continue unless the Commonwealth legislature or the members of the legislature from the senatorial district involved (if authorized by the legislature under article II, section 6) provide otherwise by repealing the local taxes. All expenditures of these continued local taxes require authorization by the legislature under article II, section 5, or authorization by a majority of the members of the legislature from the senatorial district involved.

Ordinances and other regulations enacted by the municipal councils on Rota, Saipan and Tinian remain in effect unless superseded by Commonwealth law. The ordinances and regulations may be specifically repealed or preempted.

Preemption means that any local ordinance or rule that predates the effective date of the Constitution is null and void to the extent it conflicts with a Commonwealth law enacted after that date. Commonwealth law in this case includes any general law, local law, local regulation or local ordinance enacted or promulgated under article II, section 5 or 6, or article VI, section 3(e) or 6(b). By defining the local matters that may be the subject of local laws, regulations or ordinances, the legislature sets the basis for preemption but the definition does not itself preempt preexisting ordinances and rules; the enactment or promulgation of the new conflicting local law, regulation or ordinance causes the preemption. This ensures the continuity of laws while allowing new laws to replace old ones.

Section 6(b). This section prohibits the creation of any other agencies of local government other than those created by this article for five years following the effective date of this Constitution. After five years have elapsed the legislature may enact enabling legislation by general law under article II, section 5, that provides for the form, method of incorporation, powers, elected officials and financing of new agencies of local government. No new agency of local government or election to approve a proposed new agency may be provided for by local law or regulation.

New agencies of local government may be created to supplement or replace the agencies created by this article. No agency of local government may be established for a geographical area smaller than an individual island. The legislature may decide to create agencies of local government which exercise authority over more than one island; it is intended that this be done for the islands north of Saipan until such time as one or more of these islands have sufficient population to justify their own mayor or council. It is intended that an act of the legislature that creates more than one agency of local government in an island will be null and void.

Any legislative act establishing a new agency of local government must be approved by two-thirds of the qualified voters from the island or islands the agency of local government will serve. Persons qualified to vote are those who satisfy the requirements of article VII, section 1, and who are properly registered to vote if a voter registration law exists. The term "from the island or islands" may be defined by the legislature to mean residence, domicile or some other tie or combination of ties to the island or islands. If the legislature does not act, it is intended that voters be qualified by residence within the island or islands at the time of legislation.

The legislature may provide for a referendum election on the proposal in the enabling act providing for the establishment of a new agency of local government or in a separate act. If the legislature fails to authorize a referendum election, the agency of local government cannot be created. If the legislature provides for a referendum election, it may provide for a special election under article VIII, section 2, or may put the referendum question on the ballot at a regular general election under article VIII, section 1.

ARTICLE VII: ELIGIBILITY TO VOTE

Section 1: Qualifications of Voters. This section sets out the qualifications that a person must meet to vote in any Commonwealth election. It applies to all regular general elections required by article VIII, section 1, and to all other elections called under article VIII, section 2. It applies to the election of the members of the legislature established by article II, to the election for the offices of governor and lieutenant governor established by article III, to the election of the representative to the United States established by article V, to the election of mayors established by article VI, to proposed legislation submitted to the voters under the initiative provisions of article IX, section 1(c), to legislation subject to possible rejection by the voters under the referendum provision of article IX, section 2(c), and to the recall elections provided for in article IX, section 3(c).

A person must meet each of the requirements of this section as of the date of an election in order to vote in that election. This section does not limit the power of the legislature to impose voter registration requirements so that a determination can be made in advance of the election with respect to

voter qualifications. A person may be registered to vote even if that person does not qualify on the date of registration if the registration official makes a determination that the person will qualify on the date of the election. This section does not prevent the legislature from defining any of the terms used in this section but it does limit the legislature from imposing any additional substantive requirements with respect to eligibility to vote.

A person must be at least 18 years of age on the date of the election to qualify to vote.

Domicile in the Northern Mariana Islands is required. Section 3 of this article directs the legislature to specify the criteria for determining domicile. When these criteria are specified by the legislature they will apply to all provisions of the Constitution containing a domicile requirement.

Residence in the Commonwealth on the date of the election is required. This requirement operates independently of the domicile requirement. A person may reside in the Commonwealth but not be domiciled in the Commonwealth, and a person may be domiciled in the Commonwealth but be temporarily residing elsewhere. Section 3 requires the legislature to specify the criteria used for determining residence for voting purposes. When these criteria are specified by the legislature, they will apply to all provisions of the Constitution containing a residence requirement.

A durational residency requirement can be imposed by the legislature requiring residence in the Commonwealth for a period immediately preceding the date of the election or for a specific period in the past whether or not immediately preceding the date of the election. For example, the legislature could require that a person have resided in the Commonwealth for sixty days immediately preceding the date of the election, or the legislature could require

that a person have resided in the Commonwealth for sixty days during the year immediately preceding the date of the election. The legislature may define residence in the Commonwealth in a manner that permits persons who are domiciled in the Commonwealth but who are temporarily out of the Commonwealth for business, education, government representation or other purposes to be considered as residents. No durational residency requirement is mandated by this section. If the legislature does not act, no durational residency requirement will be in effect. The requirement of residency as of the date of the election will be imposed regardless of whether the legislature acts.

Persons are disqualified from voting who, at the time of the election, are serving a sentence after conviction of a felony by any court in the Trust Territory of the Pacific Islands, any court in the Commonwealth or any other court within the jurisdiction of the United States. The provision includes persons on parole or probation or under a suspended sentence. The disqualification, however, ends when the person has served the sentence or the suspension, probation or parole has expired. The disqualification also ends with the grant of a pardon.

This provision disqualifies from voting those persons found to be of unsound mind by a court. This includes determinations of insanity by criminal courts, determinations of unsound mind in civil commitment proceedings and determinations of unsound mind in any other kind of court proceeding. The provision applies to determinations by any court in the Trust Territory of the Pacific Islands, in the Commonwealth, or any other place within the jurisdiction of the United States.

This provision permits both citizens and nationals of the United States to vote in Commonwealth elections. It prohibits aliens from voting.

The provision also permits the legislature to disqualify nationals at some time in the future.

Section 2: Prohibition of Literacy Requirement. This provision prohibits the use of any literacy test as a qualification to vote. This prohibition applies to any requirement that a person demonstrate an ability to speak, read or write any language, including English, Chamorro and Carolinian. The provision prohibits any kind of educational requirement for voter eligibility.

Section 3: Domicile and Residence. This provision requires the legislature to define domicile and residence for voting purposes. Those definitions may include any criteria relevant to the determination to be made. If the legislature does not act, the definitions of residence and domicile under the laws currently in effect and relevant precedents from the United States will apply.

ARTICLE VIII: ELECTIONS

Section 1: Regular General Election. This section provides that the regular general election of the Commonwealth is held on the first Sunday in November. All offices of the Commonwealth government created by the Constitution are filled by election at the regular general election. This includes the members of the legislature elected under article II, the governor and lieutenant governor elected under article III, the representative to the United States elected under article V, and the mayors elected under article VI. The legislature may provide for additional elected offices and may provide that those offices be filled by election at the regular general election. These

elections do not occur every year but only where required by the expiration of terms.

Other matters permitted by this Constitution to be put before the voters must also be decided at the regular general election. These include initiative, referendum and recall petitions permitted under article IX, popular initiatives under article XVIII proposing a constitutional convention or proposing constitutional amendments, and proposed constitutional amendments to be ratified under article XVIII.

Section 2: Other Elections. This section permits the legislature to schedule elections other than the regular general election. These elections are called special elections.

The Constitution provides for officers to be elected at special elections in the following instances: to fill a vacancy in the legislature under article II, section 9, if one-half or more of the term remains; to fill a vacancy in the office of governor under article III, section 7, if more than one year of the term remains; and to fill a vacancy in the office of mayor under article VI, section 2(b), if one-half or more of the term remains. The vacancies that are governed by constitutional provisions cannot be filled through election at a regular general election. There must be a special election even if it falls near the time of the regular general election or, indeed, at the same time. The constitutional requirement of a special election is intended to emphasize the importance of filling these particular vacancies as promptly as possible. If the legislature acts reasonably to achieve this objective, then it can exercise some discretion as to the scheduling of a special election. If the legislature creates additional elected offices, it can provide that these offices be filled at special elections.

The Constitution provides that recall petitions can be decided at special elections if the legislature so provides under article IX, section 3(c). The legislature may provide that other issues are to be submitted to the voters by referendum and, if it so provides, may also provide that the referendum will be held at a special election.

Section 3: Election Procedures. This section provides that the legislature may enact laws governing the procedures for holding regular and special elections. These procedures may include, but are not limited to, registration of voters, nomination of candidates, absentee voting, secrecy in voting, administration of elections, and resolution of election contests. The only matters with respect to elections that the legislature may not regulate are the substantive qualifications to vote (except as permitted by section 1) and the date of the regular general election.

Section 4: Taking Office After Election. This section provides that all officers elected at the regular general election take office on the second Monday of January of the year following the year in which the election was held. These officers include the members of the legislature elected under article II, the governor and lieutenant governor elected under article III, the representative to the United States elected under article V, the mayors elected under article VI, and any other officers elected at the regular general election to fill positions created by the legislature. Taking office means that the oath of office is administered and thereafter all of the duties, responsibilities and powers of the office are vested in the person who has been elected to that office. This section does not disqualify any officer who is unavailable to take office on the second Monday of January by reason of illness, absence from the Commonwealth, or for other similar reasons. Such

an officer can take the oath subsequently and thereby take office. Although the officer does not become vested with the duties, responsibilities and powers of the office until the oath is taken, for purposes of calculating the length of the term of office or the amount of the term of office remaining should a vacancy occur, the date of the second Monday in January controls.

This section does not require that an officer be in the Commonwealth to take office. The oath of office can be administered anywhere and as soon as the oath is administered, as long as it is administered on or after the second Monday in January, the officer takes office.

ARTICLE IX: INITIATIVE, REFERENDUM AND RECALL

Section 1: Initiative. This section permits the people of the Commonwealth to enact laws directly without action by the legislature.

Section 1(a). This provision divides initiative petitions into two types: those that propose local laws and those that propose general laws. A local law is one defined by article II, section 6, as a law that relates exclusively to local matters within one senatorial district. The definition of local matter by the legislature under article II, section 6, is controlling for purposes of initiative petitions. A general law for the Commonwealth is one that applies to all persons and legal entities similarly situated without regard for place of residence. Under this two-category system, all special laws, laws that apply to some persons or legal entities but not to others that are similarly situated, would be classed as local or general according to whether their application was primarily geographical and limited to one senatorial district. The initiative power is limited to

local and general laws. It does not cover impeachment, confirmation of appointment, or rules of procedure for the legislature. Those functions are vested exclusively in the legislature.

An initiative petition must set out the full text of the proposed law. A petition that proposes a general law must be signed by at least twenty percent of the persons who are qualified to vote in the Commonwealth. Persons qualify to vote who meet the criteria set out in article VII, section 1,and who are registered to vote as provided by law.

An initiative petition that proposes a local law that affects only one senatorial district must be signed by at least twenty percent of the persons from the senatorial district who are qualified to vote in the Commonwealth. The person does not necessarily have to qualify to vote in the senatorial district. The legislature, however, may define the term "from the senatorial district" to mean residence, domicile or some other tie or combination of ties to the district. If the legislature does not act, it is intended that voters be qualified by residence within the district when they register to vote.

Section 1(b). Initiative petitions proposing general laws are filed with the attorney general for certification that the requirements of section 1(a) are met. The requirements include: (1) that the full text of the law is stated; (2) that the law is a general law; (3) that the signatures are genuine; (4) that the signatures are by persons qualified to vote in the Commonwealth; and (5) that the total number of valid signatures is a number equal to at least twenty percent of the total number of persons qualified to vote in the Commonwealth.

Initiative petitions proposing local laws also are submitted to

the attorney general for certification that the requirements of section 1(a) are met. These requirements are: (1) that the full text of the law is stated; (2) that the law is a local law; (3) that the signatures are genuine; (4) that the signatures are by persons from the senatorial district who are qualified to vote; and (5) that the total number of valid signatures is a number equal to at least twenty percent of the persons from the senatorial district who are qualified to vote. The attorney general may use any appropriate means to determine that the signatures are genuine and that the persons who signed are from the appropriate senatorial district and qualified to vote. The requirements of being from a senatorial district and being qualified to vote are determined as of the date the petition was filed with the attorney general.

The attorney general must certify or decline to certify a submitted petition within a reasonable time. If the attorney general declines to certify the petition because of invalid signatures, the sponsors of the petition may seek additional signatures to meet the required number and submit the petition again. There is no limitation on the use of the valid signatures on a rejected initiative petition in subsequent efforts to meet the signature requirement. If an initiative petition is resubmitted with additional signatures, the attorney general must once again examine all the signatures to determine if the petition meets the requirements of section 1(a) as of the date of its resubmission.

A law set out in a petition represented as a general law that the attorney general finds is a local law may or may not qualify with the signatures gathered for it. A petition proposing a local law must be signed by at least twenty percent of the persons qualified to vote in the

Commonwealth. If the signatures gathered from persons qualified to vote in the Commonwealth include signatures of at least twenty percent of the qualified voters from the senatorial district affected, then the attorney general may not decline to certify a petition that purports to propose a general law but in fact proposes a local law.

Section 1(c). If the attorney general certifies the petition, it must be placed on the ballot at the next regular general election that is held at least ninety days from the date the attorney general certified the petition. If the attorney general certified the petition within ninety days of a regular general election, then the initiative proposal must be placed on the ballot at the regular general election after the next regular general election. The manner of submission is the same whether the petition proposes a general law or a local law. The full text of the proposed law must be placed on the ballot in the same form as it appears on the initiative petition. Under article VIII, section 3, the legislature has the authority to determine the procedures with respect to elections. This includes designating the official responsible for the preparation of the ballot. The constitutional provision with respect to placing initiative petitions on the ballot applies regardless of the official who has the responsibility for preparation of the ballot.

Section 1(d). An initiative petition that proposes a general law becomes law if approved by two-thirds of the votes cast by persons qualified to vote in the Commonwealth. An initiative petition that proposes a local law becomes law if approved by the affirmative vote of two-thirds of the persons from the senatorial district affected by the law who are qualified to vote.

All laws enacted by initiative become effective thirty days after the date of the election unless the petition specifies otherwise. The petition may specify that the law shall take effect on the date of the election or at any date in the future.

Section 2: Referendum: This section provides that the people may reject any law by referendum. This section covers legislation enacted by both houses of the legislature under article II, section 5, or local legislation enacted by the members of the legislature from a senatorial district under article II, section 6. Since enactments of the legislature do not become law until the governor has signed or failed to veto within the period provided by article II, section 7, it is intended that referendum petitions be applied only to bills which have become laws. This section does not include confirmation of appointments by either or both houses of the legislature, impeachment, establishment of rules of procedure, or proposal of constitutional amendments. A law is not suspended because of a pending referendum petition unless the law itself, although enacted and signed by the governor, provides that it may not become effective unless approved by a referendum petition.

Section 2(a). This provision divides referendum petitions into two types: those that propose the rejection of general laws and those that propose the rejection of local laws. A referendum petition of either type must contain the full text of the law sought to be rejected. A petition proposing rejection of a general law must be signed by at least twenty percent of the persons qualified to vote in the Commonwealth. A petition proposing rejection of a local law must be signed by at least twenty percent of the persons from the senatorial district affected by the local law who are qualified to vote. The terms used in this section are defined in the same manner as the identical terms used in section 1 of this article.

Section 2(b). This provision requires that referendum petitions be filed with the attorney general for certification that the requirements of section 2(a) are met. For a petition proposing rejection of a general law, these requirements are: (1) that the full text of the law is stated in the petition; (2) that the referendum power applies to the law identified by the petition; (3) that the signatures are genuine; (4) that the signatures are by persons qualified to vote in the Commonwealth; and (5) that the total number of valid signatures is equal to at least twenty percent of the total number of persons qualified to vote in the Commonwealth.

For a petition proposing rejection of a local law, the requirements are: (1) that the full text of the law is stated in the petition; (2) that the law identified by the petition is a local law to which the referendum power applies; (3) that the signatures are genuine; (4) that the signatures are by persons from the appropriate senatorial district who are qualified to vote; and (5) that the total number of valid signatures is a number equal to at least twenty percent of the persons from the senatorial district who are qualified to vote.

The attorney general must certify or decline to certify the petition within a reasonable time. If the attorney general declines to certify on the ground of insufficient valid signatures, the sponsors of the petition may obtain additional signatures and resubmit the petition. The validity of the signatures on a resubmitted petition is determined as of the date that the petition is resubmitted.

Section 2(c). This provision requires that a referendum petition certified by the attorney general be submitted to the voters at the next regular general election held at least thirty days from the date the

attorney general certifies the petition. If the attorney general certifies the petition within thirty days of a regular general election, then the referendum is submitted to the voters at the regular general election after the next regular general election.

Section 2(d). This section provides that a referendum petition concerning a general law for the Commonwealth takes effect if approved by a majority of the votes cast by persons qualified to vote in the Commonwealth. The term "majority of the votes cast" means a majority of the votes cast on the referendum issue. A referendum petition concerning a local law that affects only one senatorial district takes effect if approved by a majority of the votes cast by persons from the senatorial district who are qualified to vote. The law that is the subject of an approved referendum petition becomes null and void and is repealed on the thirtieth day after the date of the election unless the petition specifies otherwise. This provision permits a petition to specify that a law shall become void on the date of the election or any date in the future. Until the date on which the law becomes void, the law remains in effect.

Section 3: Recall. This section provides that all elected public officials are subject to recall. This includes the members of the legislature elected under article II, the governor and lieutenant governor elected under article III, the representative to the United States elected under article V, and the mayors elected under article VI. The legislature may provide for additional elective offices. If it does, those offices would automatically become subject to the recall provision. Persons appointed to fill out terms when a vacancy has occurred are not subject to recall. Public officials elected by the voters from a political subdivision may be recalled only by the voters from

that subdivision. The governor, lieutenant governor and representative to the United States are subject to recall by the voters of the Commonwealth. Senators and representatives are subject to recall by the voters from the district they represent. Mayors are subject to recall by the voters from the island or islands they serve.

Section 3(a). This provision requires that a recall petition identify the public official sought to be recalled by name and office. This requirement means that at least the first and last name of the official and the office held by the official must be stated.

A recall petition must state the grounds for recall. This requirement does not impose any limitation on the grounds that can be stated. Grounds can include any reason at all, whether rational, plausible or sufficient.

A recall petition must be signed by at least forty percent of the total number of persons qualified to vote for the public office occupied by the official. If the office is governor, lieutenant governor, representative to the United States or any other office elected Commonwealth-wide, the petition must be signed by forty percent of the total number of persons qualified to vote in the Commonwealth. If the office is senator or any other office elected by the voters from a senatorial district, the petition must be signed by at least forty percent of the total number of qualified voters from the senatorial district. If the office is representative or any other office elected by the voters from a representative electoral district on Saipan, the petition must be signed by at least forty percent of the qualified voters from that district. If the office is mayor, the petition must be signed by at least forty percent of the qualified voters from the island or islands served by the mayor.

Section 3(b). This provision requires that a recall petition be filed with the attorney general for certification that the requirements of section 3(a) have been met. The certification must include findings that: (1) the petition properly identifies the official to be recalled; (2) the official identified is an elected public official subject to recall; (3) the signatures are genuine; (4) the signatures are by persons qualified to vote; and (5) the total number of valid signatures is at least equal to forty percent of the total number of persons qualified to vote for the public office occupied by the identified public official.

Section 3(c). Recall petitions that have been certified are submitted to the voters at the next regular general election unless the legislature has previously provided that recall petitions are to be submitted to the voters at special elections. There is no time limit on the number of days preceding the regular general election that a recall petition must be certified. This section does not prevent the official responsible for the preparation of the ballot from imposing a reasonable limitation to permit timely printing and distribution of the ballot.

If the legislature provides that recall petitions are to be submitted at special elections it may require that all recall petitions be decided at special elections or that only certain categories--such as recall of officials elected Commonwealth-wide -- be decided at special elections. The legislature may not provide that the recall petition against a particular official be decided at a special election. To affect a particular recall petition, the legislation with respect to special elections must be in effect prior to the time the recall petition is filed with the attorney general.

Section 3(d). This provision specifies that a recall petition takes

effect if approved by the affirmative vote of at least two-thirds of the persons qualified to vote for the office involved. A recall petition automatically takes effect thirty days after its approval by the voters. No further action is required to remove the official and create a vacancy in the office. The vacancy will be filled by special election or appointment by the governor depending on the length of term of office that remains under article II, section 9, for a recalled senator or representative. A recalled governor is replaced by the lieutenant governor or president of the senate under article III, section 7. The governor appoints a successor for a recalled lieutenant governor under article III, section 3. Vacancy in the office of representative to the United States due to recall is filled under article V, section 6. A vacancy caused by a recalled mayor is filled by special election or otherwise as provided by law under article VI, section 2(b). A vacancy caused by recall of any other elected official authorized by the legislature is filled as provided by law.

Section 3(e). This provision limits the use of the recall. A recall petition cannot be filed against any official who has been in office six months or less. For purposes of this section, the phrase "during the first six months of a term in office" means one hundred eighty days from the date specified for taking office in article VII, section 4, regardless of the date on which the official actually took office. Persons elected at special elections to serve out terms of office after a vacancy has occurred are subject to recall after the expiration of the one hundred eightieth day from the date on which the special election was held.

A recall petition cannot be filed against a single public official more than once in any year. This does not limit the number of times recall petitions can be used against different public officials during a single year.

ARTICLE X: TAXATION AND PUBLIC FINANCE

Section 1: Public Purpose. *This section provides that every tax must be levied for a public purpose and every appropriation must be made for a public purpose. A public purpose is one that directly and substantially benefits the public welfare. The direct and substantial benefits to the public welfare necessary for a finding of public purpose must be reasonably foreseeable and reasonably likely to occur. This section does not prohibit government participation with private investors in enterprises that will benefit the public welfare. A public purpose does not include an objective that brings benefits only to a few persons or corporations, that results in profits most of which are exported from the Commonwealth to the benefit of persons in other countries, that redresses private wrongs, or that improves private property.*

Section 2: Report on Tax Exemptions. *This section requires that at least once in every five-year period the governor must report to the legislature on current tax exemptions. The report must include an assessment of the social, fiscal and economic impact of tax exemptions currently available under Commonwealth law. The governor's report on the benefits and costs of each tax exemption should permit the legislature to review the impact of all tax exemptions taken together. The report also may include any recommendations the governor has with respect to the exemption policy or laws that might decrease the cost to the public of the exemptions or that might extend favorable exemptions. The governor may report on tax exemptions more than once every five years and may include in any report information not called for by this section but considered important by the governor.*

Section 3: Public Debt Authorization. This section provides that public debt can be authorized or incurred only after an affirmative vote of two-thirds of the total number of members of each house. Public debt means obligations of the Commonwealth government that are fixed, such as bonds, notes, debentures, or other forms of debt. It does not include obligations that involve a substantial contingency, such as loan guarantees where there is a reasonable expectation that the loan will be repaid by the borrower and the guarantee by the Commonwealth will not require the expenditure of public funds.

Section 4: Public Debt Limitation. This section imposes two additional limitations on the authorization or incurring of public debt.

Public debt may not be authorized in excess of ten percent of the aggregate assessed valuation of the real property within the Commonwealth. This means that if the Commonwealth incurs any debt, there must be an assessment of the value of some of the real property in the Commonwealth and the public debt incurred must be ten percent or less of the aggregate valuation of the real property assessed. For example, the value of the land on Tinian that may be leased to the United States under the Covenant can be assessed from the terms of the lease required by the Covenant. No inspection of the land, surveying or any other administrative process is necessary. Once the assessment is made, the Commonwealth can incur debt up to ten percent of that assessment without making any further assessment of any other real property within the Commonwealth. If the Commonwealth needs to incur debt beyond the limit of ten percent of the assessed value of the land subject to lease on Tinian, the government can assess the value of the most highly developed land on Saipan. That assessment will support debt

up to ten percent of that assessment. There is no need for a complete assessment of the value of all the real property in the Commonwealth for public debt to be incurred.

An exception to this limitation on public debt is revenue bonds or other obligations of the government payable solely from the revenues derived from a public improvement or undertaking. If the obligation of the Commonwealth does not extend to the general revenues of the Commonwealth, then the limitation with respect to assessed valuation does not apply. For example, the legislature may create special authorities to run certain utilities or enterprises. These authorities may be empowered by the legislature to obtain financing through debt instruments. Under the restrictions contained in section 3, this general authorization must be made by the affirmative vote of two-thirds of the members of each house of the legislature. Once the legislature gives to an agency or authority the power to incur debt, that power may be exercised administratively without the approval by two-thirds vote of the legislature. If the obligation to repay debt incurred by the utility or enterprise is limited to the revenues derived from the utility or enterprise, then there is no need to measure the amount of the obligation against the assessed valuation of any real property.

Public debt may not be authorized for operating expenses of the government or any of its political subdivisions even if the amount of the debt is less than ten percent of the aggregate assessed valuation of real property in the Commonwealth. Operating expenses are the normal costs of obtaining and delivering government services. This section does not permit deficit financing of any government operating expenses. All such financing must be from current revenues. This means that the proceeds of all public debt must be earmarked and cannot be made a part of general revenues.

ARTICLE XI: PUBLIC LANDS

Section 1: Public Lands. This section defines the lands included in the term public lands. The definition includes four categories: (1) the lands transferred under Secretarial Order 2969; (2) the lands transferred under Secretarial Order 2989; (3) the lands transferred under the Covenant; and (4) all submerged lands off any coast of the Commonwealth.

Secretarial Order 2969 provides for the transfer of public lands in the Trust Territory of the Pacific Islands to legal entities designated by the legislatures of the districts of the Trust Territory. The Marianas District Legislature passed a statute, Mariana Islands District Code title 15, chapter 15.12, Act 100-75, establishing the Marianas Public Land Corporation and designating it as the legal entity under Order 2969. The formation of the Corporation was not complete, however, by the time Order 2989 established a separate administration for the Marianas District and vested title to the public lands in the Resident Commissioner. The Covenant requires the United States to transfer the public lands in the Commonwealth to the government of the Northern Mariana Islands no later than the termination of the Trusteeship.

Under the Covenant, the United States may transfer the public lands to the Commonwealth before termination of the Trusteeship. Sections 802 and 803 of article VIII of the Covenant require the Commonwealth to lease certain lands to the United States under terms defined by the Technical Agreement that accompanies the Covenant. Part IV of the Technical Agreement provides that the Technical Agreement becomes effective on the date that sections 802 and 803 of the Covenant come into effect. Under part I, paragraph 2, of the Technical Agreement, the government of the Northern Mariana Islands must

execute the lease to the United States immediately upon request and the United States must make its request within five years of the effective date of sections 802 and 803. Both parties' obligations are tied solely to the effective date of sections 802 and 803. Section 1003(b) of the Covenant provides that these sections become effective no later than one hundred eighty days after the Constitution is approved. Section 202 of the Covenant provides that the Constitution will be considered approved six months after its submission to the President of the United States, unless sooner approved or disapproved. Under this arrangement, the obligation of the Government of the Northern Mariana Islands to execute a lease immediately and the running of the five-year period during which the United States may exercise its option both will commence no later than one year after the Constitution is submitted for approval. At the time of the approval of the Covenant it was contemplated that the date on which the Constitution was approved might be substantially in advance of the termination of the Trusteeship. Therefore, it was also intended that the United States could transfer the public lands to the Commonwealth prior to the termination of the Trusteeship. No other interpretation is consistent with the provisions of the Covenant with respect to the lease.

This interpretation is supported by the comment of the Drafting Committee to section 803 of the Covenant, which states: "It is understood that the government of the Northern Mariana Islands may exercise its obligations and rights under this Article through a legal entity established to receive and hold public lands in trust for the people of the Northern Mariana Islands." That comment does not require the creation of such an entity in order for a transfer to occur, and permits the government itself to receive the public lands. Section 1 of this article of the Constitution

is intended to cover all the lands that are transferred regardless of the mechanism or authority used for that transfer and regardless of when the transfer is made.

Section 1 includes all of the land leased to the United States under the Covenant. At the expiration of the lease, this land will become available for use as public land by the people of the Commonwealth.

Section 1 includes all submerged lands to which the Commonwealth now or at any time in the future may have any right, title or interest. The United States is the owner of submerged lands off the coasts of the states under territorial waters. The states have no rights in these lands beyond that transferred by the United States. The federal power over these lands is based on the provisions of the United States Constitution with respect to defense and foreign affairs. Under article 1, section 104, of the Covenant, the United States has defense and foreign affairs powers with respect to the Commonwealth and thus has a claim to the submerged lands off the coast of the Commonwealth as well. Section 1 recognizes this claim and also recognizes that the Commonwealth is entitled to the same interest in the submerged lands off its coasts as the United States grants to the states with respect to the submerged lands off their coasts. Under this section, any interest in the submerged lands granted to the states or to the Commonwealth in the future also will become part of the public lands of the Commonwealth.

Section 1 does not cover lands that the Commonwealth government may acquire from sources other than a transfer from the Trust Territory, Resident Commissioner or the United States. It does not cover lands that the government purchases or leases from private owners or acquires by eminent domain after the establishment of the Commonwealth. It does cover all of the lands on which government buildings and installations are now located because those are lands that will be transferred under Secretarial Order or the Covenant.

Section 1 provides that the public lands belong collectively to the people of the Commonwealth who are of Northern Marianas descent as defined by article XII, section 4. This section does not confer any ownership right in any individual who is of Northern Marianas descent. Instead, a collective ownership right has been transferred to the Marianas Public Land Corporation for it to exercise under the provisions of this article of the Constitution.

Section 2: Submerged Lands. This section provides that the management and disposition of submerged lands off any coast of the Commonwealth shall be as provided by law. This gives to the legislature complete discretion with respect to the use made of the submerged lands by both public and private persons or corporations. The legislature may permit leases for the purpose of extracting minerals or may transfer ownership interests in these lands on any terms that it believes promote the public interest. The legislature's power with respect to submerged lands is affected by its responsibilities to protect marine resources under article XIV, section 1. The legislature may not grant a lease or permit a use of the submerged lands that would adversely affect the protection and preservation of the marine resources for the benefit of the people of the Commonwealth.

Section 3: Surface Lands. This section provides that the management and disposition of all public lands defined by section 1 except the submerged lands provided for under section 2 are the responsibility of the Marianas Public Land Corporation. The term management includes the preservation, improvement and use of the public lands. The term disposition means sale, lease, and granting of easements or other interests in the public lands. Under the power granted by this section, the corporation may select, employ, promote and terminate employees, employ contractors and consultants, employ legal counsel, sue and be sued in its own name, provide liability insurance

as it considers necessary, make contracts, borrow money within the limitations contained in article X, and take any other action necessary for the management or disposition of the public lands.

This section does not confer on the corporation any power to adjudicate land matters or to decide lands claims. Those responsibilities are vested in a land division of the Commonwealth trial court under article IV.

Section 4: Marianas Public Land Corporation. This section establishes the Marianas Public Land Corporation. It is intended that the public land corporation be the legal entity designated under Secretarial Order 2969 to receive the public lands in the Northern Mariana Islands. No further action is needed on the part of the corporation or any branch of government to constitute the corporation as a legal entity. No articles of incorporation or bylaws need be filed as a precondition to corporate status. The provisions of sections 4 and 5 of this article constitute the basic rules of organization and governance that would ordinarily be found in the charter, articles of incorporation or bylaws of a corporation. Organizational and policy matters not specified by the Constitution are left to the discretion of the corporation. The Marianas Public Land Corporation created by this section supersedes and terminates the existence of the Marianas Public Land Corporation created by chapter 15.12 of the Mariana Islands District Code, Act 100-1975.

Section 4(a). This provision requires that the corporation have nine directors who are appointed by the governor with the advice and consent of the senate. These directors are responsible for directing the affairs of the corporation for the benefit of the people of the Commonwealth who are not of Northern Marianas descent so long as that action also benefits the people who are of Northern Marianas descent.

Compensation matters are left to the discretion of the corporation.

Under this provision any of the directors may serve on the full-time staff of the corporation and be compensated accordingly. If any director fails to serve a full term for any reason, the governor appoints a successor.

The Constitution does not provide for removal by the governor or for recall of the directors. Implicit in the governor's appointment power is the power to remove a director for any reason. The legislature may provide a term of office for the directors. If it does, the legislature may provide that the term it specifies replaces the governor's removal power, does not affect the governor's removal power, or limits the governor's removal power to removal for certain causes. Under section 4(b) any person who has been convicted of a crime is disqualified from holding the position of director. Under this provision any director who is convicted is removed automatically and the governor appoints a successor.

Section 4(b). This provision requires that the directors represent the geographic and ethnic communities within the Commonwealth. Two directors are residents of Saipan, two are residents of Rota, two are residents of Tinian, one is a resident of the islands north of Saipan, and one is a Carolinian or person of Carolinian descent. The residence requirement is a continuing qualification. A director who was a resident of Saipan at the time of appointment but who subsequently established a residence in another part of the Commonwealth or elsewhere is disqualified from continuing as a director unless there are other vacancies or appointments so that the change of residence does not affect the ability of the nine directors to meet the requirements that two of the nine be residents of Saipan, two be residents of Rota, two be residents of Tinian and one be a resident of the islands north of Saipan. There is a five-year durational residency requirement within the Commonwealth for appointment as a director but there is no durational residency requirement within the individual island or islands

represented by the director and none may be imposed by the legislature.

The phrase "person of Carolinian descent" means a person who is recognized by the community as a person of Carolinian descent. This term in itself does not impose any requirement with respect to the ammount of Carolinian blood a person must have in order to qualify but the directors must also qualify as persons of Northern Marianas descent under article XII, section 4. The director who is a resident of Saipan or the islands north of Saipan could also be a Carolinian thus meeting two of the requirements and leaving the governor free to appoint two persons who do not meet these particular residency or descent requirements. It is intended that the governor be permitted to appoint up to two persons without any island residency or ethnic restrictions in order to promote coordination with the executive branch and to permit the appointment process to take into consideration special qualifications such as legal or banking experience.

The representation requirements of this section always apply, so that if there is a vacancy for any reason it must be filled in a manner that meets these representation requirements. For example, if two directors from Rota were appointed and one died or left office, that vacancy would have to be filled by another director from Rota.

This provision contains three additional qualifications that apply to all directors regardless of the place within the Commonwealth where they reside. Each director must be a citizen or national of the United States. This requirement may be filled by a person who gained United States citizenship by virtue of birth in the United States or by the citizenship of his or her parents so long as the director is also a person of Northern Marianas descent as defined by article XII, section 4.

Each director must be a person who has not been convicted of a crime carrying a maximum sentence of a term of imprisonment of more than six months. This is a continuing requirement. Any director convicted of such a crime while in office becomes disqualified and a vacancy occurs as of the date of the conviction.

Each director must be able to speak Chamorro or Carolinian. No degree of fluency is specified. This requirement means that the director speak Chamorro or Carolinian with sufficient fluency to communicate about the affairs of the corporation.

Section 4(c). This provision sets a six-year term of office with staggered terms so that three vacancies occur every two years. In order to effectuate the staggered terms, of the first nine directors appointed three are appointed for two-year terms, three are appointed for four-year terms and three are appointed for full six-year terms. The governor determines which initial appointees serve short terms and which serve full terms.

It is intended that the position of director not be full-time. Directors meet on a regular basis to consider policy matters and it is appropriate that they be compensated only for their time in attending those meetings. It is intended that the day-to-day business of the corporation be managed by a small professional staff of full-time employees.

This provision includes a limitation that prevents a director from serving more than one term in office. This means that a director appointed to a two-year term or a four-year term in the first series of appointments may not be reappointed for another term. A director appointed to fill a vacancy in an unexpired term may not be reappointed for another term.

Section 4(d). This provision specifies that the directors may take action by a majority vote of the total number of directors. Action by

any smaller number does not bind the corporation.

This provision specifies that the corporation shall have all of the powers available to a corporation under Commonwealth law. This means that the corporation can exercise any power or privilege given to corporations that is not inconsistent with the limitations imposed on the corporation by the Constitution.

Section 3 gives a broad grant of powers to the corporation to manage and dispose of the public lands. This provision in section 4(d) that gives the public land corporation all of the power available to a corporation under Commonwealth law is intended only to add to or clarify the powers of the public land corporation. It does not permit the legislature to enact any limitations on the powers of corporations and then require that such a limitation be applied to the public land corporation at the expense of the powers granted by the Constitution.

Section 4(e). This provision requires the directors to publish an annual report to the people. The report must include at least three sections: (1) a description of the management of the public lands held by the corporation for the people; (2) a description of the nature and effect of any transfers of interests in public lands during the year covered by the annual report; and (3) a disclosure by each of the directors of any interest held in any land in the Commonwealth. This requires the corporation to provide sufficient information to the public on all of the activities of the corporation. The requirement that each director disclose any interest in land in the Commonwealth requires each director to describe the type of interest in land held -- title, lease, easement or other interest -- and the location of the land in which the interest is held. This section applies to all interests held at any time during the year even if not still held at the time the report

is made. This section does not apply to any interest in land held outside the Commonwealth.

Section 4(f). This section provides that the legislature may decide to disband the corporation at any time ten years after the effective date of the Constitution. It must take this action by the affirmative vote of two-thirds of the members of each house. If the corporation is disbanded, the title to the public lands that it holds at the effective date of the legislation will be transferred to the government or to another entity as provided by law. The title to public land transferred by the corporation prior to the time of its dissolution will be unaffected by the dissolution. Leases made by the corporation will remain in effect.

The law that dissolves the corporation must be passed by the legislature on a date at least ten years after the effective date of the Constitution. A law enacted prior to that date, even if its terms declare it effective only after that date, would be void.

A law intended to dissolve the corporation may be vetoed by the governor.

Section 5: Fundamental Policies. This section sets out the fundamental policies that must be followed by the corporation in carrying out its responsibilities. All matters not specifically mandated by the Constitution or delegated to the legislature are left to the discretion of the corporation. The corporation is not subject to any of the limitations imposed by article X.

Section 5(a). This provision requires that the corporation make land available for a homestead program. If a homestead program is continued by the legislature, this section puts three limitations on the program. First, a person may have only one village and one agricultural homestead. The definitions of village homestead and agricultural homestead are left to the

legislature. A person who is granted a homestead and then sells it may not qualify for another of the same type. Second, a person granted a homestead must hold it for at least three years before receiving a freehold interest in the homestead land. Third, a person who is granted a freehold interest in a homestead must hold it for ten years after receiving the interest before the homestead may be transferred. Transfer in this provision means sale. It does not include transfer by inheritance or mortgage. A sale in violation of this provision is void. A person who has received title to a homestead may mortgage the homestead land but must use all funds derived from the mortgage to improve the land. A person who violates this provision is subject to penalty as provided by law.

This provision includes an exception to the second and third of these three limitations for persons who have used public lands continuously for fifteen years or more at the effective date of the Constitution. It allows these persons to apply for homestead ownership of those lands and, if they meet the other homestead requirements, to receive title and be able to sell these lands immediately. Persons as the word is used in this provision includes individual persons who have used the same land continuously for fifteen years and members of one family who have used the same land continuously for fifteen years although no one family member has been on the land continuously for fifteen years. A continuous use of public land means residing on the same land for fifteen years, using the land for agricultural or commercial purposes for fifteen years, or a combination of residence and agricultural or commercial use as long as the land has been used continuously, without a break, for fifteen years. A person who resided on or used another piece of public land for part of the fifteen years instead of the land the person claims under this provision would not qualify under the waiver although the person might qualify under the regular homestead regulations. The

amount of land any person may receive under this waiver provision is limited to the size of village or agricultural homesteads as determined by the legislature. This is a one-time exception designed primarily for the benefit of the people on Rota and the islands north of Saipan who live on public land designated for homestead use but who never received any official recognition of this fact or failed in some minor respect to qualify under the homestead program.

All other matters with respect to eligibility for homesteads, the nature of the interest to be transferred to the homesteader and any other requirements relating to the homestead program are left to the legislature. The corporation can make policy on matters other than eligibility and the nature of the interest to be transferred if they arise in the course of administering the homestead program and the legislature has not established any such policy.

The term "freehold interest" as used in this section means the freehold estates of inheritance (fee simple absolute, fee simple determinable, fee simple subject to condition subsequent, fee simple subject to an executory limitation, fee simple conditional and fee tail) and the freehold estates not of inheritance (estate for one's own life, estate for the life of another, and estate for one's own life and also for the life of another).

Section 5(b). This section provides that the corporation shall not transfer a freehold interest in any public lands for a period of ten years after the effective date of the Constitution. Homesteads are specifically excluded from this section because they are provided for in section 5(a).

This limitation means that the corporation may not make any transfer of a freehold interest during the ten-year period and may not make any agreement during the ten-year period to transfer a freehold interest after the expiration

of the ten-year period. Transfer means sale in this provision. During this period the corporation can negotiate leases of public lands. At the end of the ten-year period the corporation could continue the no-sale requirement under its general policy-making authority if it found the social and economic advantages outweighed the disadvantages. It could also abandon the no-sale policy and transfer freehold interests in the public lands.

The legislature may not require the corporation to continue the no-sale policy. If the corporation does not continue the policy voluntarily, the only way to require that the corporation not dispose of the public land by transfer of a freehold interest is by constitutional amendment. If the legislature dissolves the corporation, it can create a prohibition on sales by statute applicable to the government agency or legal entity given the responsibility to dispose of public lands.

Section 5(c). This section limits to twenty-five years including all rights of renewal the leasehold interest that the corporation may transfer to any person or legal entity. A person or legal entity that believes that twenty-five years is not sufficiently long may request an extension of not more than fifteen years on a lease. The person or legal entity may make this request before signing a lease or at any time during the term of an already granted lease. Any request for an extension must be approved by the affirmative vote of three-fourths of the members of the legislature sitting in joint session. All lands leased for twenty-five years, or longer with the special permission of the legislature, return to the corporation after the expiration of the lease for a new managerial decision as to how best to use the land in the interest of the Northern Marianas people. This section does not prohibit the corporation from negotiating a second lease with the lessee who

previously used the land. This section does prohibit the corporation from promising or in any way agreeing in advance that a second lease will be given. Such an agreement is void.

Section 5(d). This section provides that the corporation may not transfer any interest (freehold or leasehold) in large parcels for private commercial use without approval by the affirmative vote of a majority of the members of the legislature sitting in joint session. Large parcels are those larger than five hectares. Commercial use is any use other than for homestead or residence. It does not include use of land by a housing development authority to build houses or by a government agency for some other lawful public purpose. During the first ten-year period, this section is limited to leaseholds because of the prohibition on sales in section 5(b). After the ten-year period, if sales are permitted, they would also be covered by this section.

Section 5(e). This section prohibits the transfers of an interest in any public lands that are within one hundred fifty feet of the high water mark of any sandy beach within the Commonwealth. It is intended that the corporation maintain the sandy beaches for use by the people of the Commonwealth. This includes maintaining sufficient public access to these beaches and maintaining them in a way suitable for recreational uses. The corporation is free to arrange for the assistance in this regards of the appropriate Commonwealth agency if that appears useful to achieve the objective of this section.

This section applies only to transfers of public land by the corporation. Because the public land corporation controls the management and

disposition of public lands under this article, no other government agency or the legislature may transfer the sandy beaches protected by this subsection. It does not prohibit transfers of beach land that is privately owned at the effective date of the Constitution.

Section 5(f). This section requires the corporation to prepare a comprehensive land use plan with respect to the public lands including priority of uses. This plan permits the public and the legislature to be informed of the corporation's overall goals for the public lands and guides the directors in approving transfers or making decisions with respect to the management of public lands. It is intended that only transfers or uses of the public land consistent with the plan be approved by the directors.

The legislature has the power to zone and otherwise regulate the use of private land under the general grant of legislative power given by article II, section 1. The legislature may not zone or regulate the use of public land as long as the corporation is in existence. If the legislature enacts a zoning law for private land, the corporation does not have to change its land use plan to be consistent with that zoning. Because the corporation must manage and dispose of the public lands for the benefit of the people of the Commonwealth of Northern Marianas descent, however, the corporation should consider any zoning law enacted by the legislature and plan for the use of public lands in a manner consistent with the zoning law if

that benefits the people. This provision permits the corporation to amend its land use plan as circumstances require.

Section 5(g). This section provides for the disposition of funds derived from the public lands. These funds include the payments made by the United States for property leased under article VIII of the Covenant. The funds from the public lands are placed in a trust fund that is an entity separate from the corporation. This separates the functions of land management and money management. This provision requires that the corporation turn over the proceeds from the public lands to the trust fund but does not include any time requirement with respect to those transfers except a general requirement that the moneys be turned over promptly.

The corporation is permitted to retain a portion of the funds for administration purposes with two restrictions: the funds must be necessary for administration and the expenses of administration must be reasonable. Administration includes administration of the management of the public lands and administration of the disposition of public lands. The determinations with respect to what is necessary and reasonable are made by the corporation.

It is intended that the Marianas Public Land Corporation be financially independent of the legislature and that it meet its expenses with the retained funds. There is no limitation on the percentage of the total revenues received that the corporation may retain except the limitation of reasonableness and necessity set

out in the last clause. The corporation also has the power to borrow to meet expenses.

This provision does not prohibit the legislature from appropriating funds for expenditures by the public land corporation for managment or disposition of the public lands or other responsibilities assigned to the corporation by the legislature.

All revenues from public lands received before the effective date of the Constitution are a part of the general revenues of the government of the Northern Mariana Islands and the Commonwealth succeeds to those funds under the Schedule on Transitional Matters. There is no limitation on the legislature with respect to these funds. All revenues from the public lands received on and after the effective date of the Constitution go to the public land corporation. This includes payments for the transfer of freehold, leasehold and other interests made before the effective date of the Constitution by the government of the Northern Mariana Islands or any predecessor entity and transfers made by the corporation. Any payment made to any agency or entity other than the corporation is of no effect and the corporation may hold the payee in default.

Section 6: Marianas Public Land Trust. This section establishes the Marianas Public Land Trust to hold and invest the proceeds from leases and other transfers of public land. The trust will hold the proceeds from the lease of lands under the Covenant and any other private or commercial leases made by

the corporation or its successors after the effective date of the Constitution. No further action by any government agency or the trustees is necessary to establish the trust. The trust may not be dissolved except by constitutional amendment.

Section 6(a). This section provides that the trust shall be administered by three trustees. It is intended that these positions be part-time and compensated on a per diem basis. It is intended that the trustees not have any full-time staff and hire financial and legal counsel as required. This section also provides that the trustees are appointed by the governor with the advice and consent of the senate. The governor may seek nominations from any source, may require appropriate information or disclosures from nominees and may hold hearings on the question of any appointment. Advice and consent of the senate requires approval by the affirmative vote of a majority of the members of the senate. Implicit in the governor's power to appoint the trustees is the power to remove a trustee for any reason. The legislature, however, may specify a length of term for the trustees. If it does, the legislature may provide that the term it specifies replaces the governor's removal power, does not affect the governor's removal power, or limits the governor's removal power to cases where a trustee violates a standard of fiduciary case.

Section 6(b). The main function of the trustees is to invest the funds derived from the public lands. For ten years after the effective date of the Constitution, the trustees are

limited to investing in United States government obligations and to providing funds for an economic development bank under Section 6(c). This permits the trustees to select among the various types of United States bonds or other debt instruments that may become available in the future. The provision sets a standard of reasonable, careful and prudent investment for the period after the initial ten years.

Section 6(c). This provision specifies that the trust will contribute capital to a development bank only if all of the United States economic assistance earmarked for economic loans by section 702(c) of the Covenant is made capital of the bank by the legislature. If this is done, the bank will receive $1.75 million per year for seven years or a total of $12.25 million at the end of seven years. This provision permits the trust to deposit up to fifty-five percent of its receipts in any year in the bank to provide the bank with a total capitalization of ten million dollars. As the bank accumulates its own funds from United States economic assistance or other sources, it must repay the trust. The limitation of fifty-five percent of the receipts of the trust in a year is intended to mean receipt during the annual period used for the report required by section 6(e).

The trust may contribute capital to the bank at any time during the year and may use a series of payments or one single payment at the end or after the close of the fiscal year. There is no time period within which the payments must be made. The payment is to be within a reasonable time of the close of the fiscal year in which the funds from which the payments are made

were received by the trust. A reasonable time includes time necessary to close the books of the trust for the year and to complete an audit or whatever other procedures are necessary to determine the exact amount of the contribution.

It is intended that the Commonwealth legislature will study carefully the creation of such a development bank and that this use of the United States financial assistance earmarked for economic loans will be fully consistent with the Covenant. Although described as capital, the annual grants of $1.75 million will be available for loans in accordance with sound banking procedures as well as the interest earned by the bank on the grants. The incentive for the creation of the bank detailed in this section is intended to maximize the contribution to economic development (and ultimate self-sufficiency) of the Commonwealth of the funds earmarked in the Covenant for economic development loans.

Section 6(d). This section requires the trustees to transfer any interest earned on the trust funds to the general revenues of the Commonwealth available for appropriation by the legislature. These funds are not earmarked for any particular purpose. The legislature may allocate funds from its general revenues among the competing needs of the people of the Commonwealth as it sees fit.

There are two limitations on this general direction. First, the trustees may retain sufficient funds for the administration of the trust. This provision makes the trust independent

of either the executive or legislative branches of the government but does not prohibit the trustees from using funds appropriated by the legislature for proper purposes.

Second, the trustees must withhold the interest from the funds received under section 803(e) of the Covenant. That section requires the use of the income from the two million dollars received from the lease of the land at Tanapag Harbor for the development and maintenance of a memorial park. Although the trustees do not have to establish or maintain the park, they must make these funds available to the executive branch department that has this responsibility. Income from the amount received from the lease of the land at Tanapag Harbor may be used for other purposes only with the concurrence of the United States government. If the Marianas Public Land Trust is dissolved by constitutional amendment, the two million dollars from this lease must be placed in a new trust fund and may not be used for any other purpose except the memorial park.

Section 6(e). This section requires the trustees to prepare and publish an annual report to the people of the Commonwealth. This report must contain the following information: (a) an accounting of all revenues received by the trust; (b) an accounting of all expenses of administration incurred by the trust; and (c) a description of all investments and other transactions authorized by the trustees.

Section 6(f). This section provides that the trustees shall be held to strict standards of fiduciary care. It is intended that these standards of fiduciary care be those found in the common law of the United States.

ARTICLE XII: RESTRICTIONS ON ALIENATION OF LAND

Section 1: Alienation of Land. This section incorporates into the Constitution the basic requirements with respect to land alienation set out in article VIII, section 805(a), of the Covenant. It requires that the acquisition of permanent and long-term interests in real property in the Commonwealth be restricted to persons of Northern Marianas descent. By including this provision in the Constitution, the drafters intend that the restrictions included in this article will continue in effect during the twenty-five years after termination of the Trusteeship Agreement required by the Covenant and thereafter unless changed by a constitutional amendment. This reflects the importance of this subject to the people of the Commonwealth and the judgement that only the people directly should be able to alter this provision.

The Convention followed three basic principles in implementing the restrictions on land alienation mandated by the Covenant. First, the Convention used only those restrictions necessary to the accomplishment of the purpose that underlies the Covenant. Second, the Convention avoided the use of any racial or ethnic classification to accomplish its purpose. Its classifications are based on neutral principles of place of birth, domicile, incorporation and other essential attributes. Third, the Convention spent a great deal of time and effort to find the least restrictive means of accomplishing its purpose.

The Convention's purpose in implementing the restrictions on land alienation is to protect the culture and traditions of the people of the Northern Mariana Islands, to promote the political growth needed in the first critical years of the Commonwealth, to accomplish the political union with

the United States with a minimum of cultural and economic dislocation, and to provide the stability needed to survive in the family of nations.

The Convention believes that restrictions on the alienation of land are necessary to this purpose because the social and economic benefits to be derived from land ownership are unique and cannot be duplicated in any other way.

The Commonwealth created by this Constitution is small. It has only a few hundred square miles of land and about 15,000 people. Although the population may grow in the future, the available land cannot increase. Land is one of the principal sources of social stability. It gives root to the pride, confidence and identity as a people that will permit the cooperative action necessary to a successful Commonwealth. If the land passes out of the hands of the people of the Northern Mariana Islands, these unique social and economic benefits will be lost.

Land is the only significant asset that the people of the Commonwealth have. There are no substantial mineral resources; there is no large manufacturing enterprise capable of sustaining large numbers of people; there is no valuable location on important trade routes. Virtually all of the land on the islands now belongs to the people of the Northern Mariana Islands, either individually or collectively. Land is the basis of family organization in the islands. It traditionally passes from generation to generation creating family identity and contributing to the economic well-being of family members. Inevitably, substantial economic and cultural dislocation would follow should this land be lost by transactions with outsiders in the near future.

Land is not held primarily for its economic value, and economic values have not in the past competed with the social and family values represented by the land. From the end of World War II to the effective date

of the Constitution, the law enforced in the Northern Mariana Islands has forbidden alienation of land to persons not citizens of the Trust Territory of the Pacific Islands. The people of the Northern Mariana Islands have had little opportunity to gain experience in land transactions of the kind that would be necessary to compete effectively against investors from other countries with well-developed economies.

Restrictions on land alienation are necessary to preserve the character and strength of the communities that make up the Commonwealth. The people of the Commonwealth are willing to sacrifice the short-term economic gain that might be achieved by putting their land on the market in order to achieve the longer-term economic and social gain that will come from preserving their family and social order, thus protecting the basis for enduring economic growth. The people are willing to take the time to learn how best to use their land, and to develop complete land use plans and comprehensive zoning regulations. These tools will be necessary to regulate the use of land in the Commonwealth and restrictions on land alienation will provide the necessary time to develop and enact these protections.

The Commonwealth is new. The people have had little experience in self-government. It is a more prudent course to proceed carefully, accepting change only as it proves of long-term benefit to the Commonwealth as a whole. It is necessary to construct certain safeguards at the outset of the Commonwealth government to ensure that the change in the political order is supported by stability in the social order.

The requirements with respect to land alienation in this article are the least restrictive way to achieve the Convention's purpose. First, section 1 restricts only the acquisition of permanent and long-term interests in real property in the Commonwealth to persons of Northern Marianas descent.

It does not prevent outsiders from using land in the Commonwealth. It permits the acquisition by persons from the United States, persons from other parts of the Trust Territory, and aliens of short-term and non-permanent interests in land. It permits a wide range of uses of land by such persons for commercial and personal purposes.

Second, the Convention sought to design restrictions that would include in the group eligible to own land all those persons who are a part of the community that has made the creation of the Commonwealth possible, and to exclude as nearly as possible only those persons who are not a part of that community. In so doing, the Convention recognized that no classification system based on neutral principles can be completely effective or error-free, including only those who should be included or excluding only those who should excluded. The Convention has erred on the side of including a few of those persons who should be excluded rather than excluding any of those persons who should be included.

Section 2: Acquisition. The Covenant uses the phrase "acquisition of such (permanent and long-term) interests" in real property in the Commonwealth, but does not include any definition of the term "acquisition." The Convention included a definition of this term in the Constitution because of its central importance to the implementation of the restrictions. The definition of "acquisition" includes all transfers by sale, lease, gift, inheritance or any other means.

This section makes two exceptions to this definition. The first exception is for transfers to spouses by inheritance. This type of transfer is not considered an acquisition because property acquired or maintained by a married couple is usually supported by the labors of both spouses. When one spouse dies, the other spouse should be able to take over as owner of the family property. This exception means that spouses who are not persons of

Northern Marianas descent will be able to own permanent or long-term interests in land if they are acquired by inheritance. This exception applies to the spouses of persons who now own real property in the Commonwealth but who are not of Northern Marianas descent. This exception does not apply to children because within the one or two generations likely to be affected by the restrictions in this article nearly all children of Northern Marianas descent landowners will qualify as persons of Northern Marianas descent who are eligible to inherit land.

The second exception applies to banks or others that acquire permanent and long-term interests in real property through mortgage foreclosure. Those who give mortgages normally do not do so for the purpose of acquiring property. They are interested in receiving repayment of the principal amount loaned plus the interest on the principal. Those who give mortgages insist on a right to acquire interests in real property only to protect their investment in case of a default. Their intention, therefore, is not to retain the property acquired through foreclosure, but to sell it in order to recover their investment. For this reason, foreclosure of a mortgage is not treated as an acquisition if, within five years of the foreclosure, the bank or other mortgagee disposes of the interest gained through the foreclosure. This exception permits normal banking operations to continue, and the five-year limitation prevents circumvention of the restrictions on alienation through the use of sham mortgages that would be foreclosed with consent.

Section 3: Permanent and Long-Term Interests in Real Property. This section defines the term "permanent and long-term interests in real property" used both in the Covenant and in section 1. Two types of interests are included: freehold interests and leasehold interests of longer than forty years including renewal rights.

The term freehold interests includes freehold estates of inheritance which are fee simple absolute, fee simple determinable, fee simple subject to a condition subsequent, fee simple subject to an executory limitation, fee simple conditional and fee tail. It also includes freehold estates not of inheritance which are estates for one's own life, estates for the life of another, and estates for one's own life and the life of another. It includes all types of ownership or title granted by all types of deeds, wills, or by intestate succession. It also includes all types of sharing arrangements for ownership -- ownership jointly vested in two or more persons, ownership vested in two or more persons as tenants in common, and ownership in two or more persons vested in succession.

Leasehold interests are those granted by contract for the possession and use of real property usually for a specified number of years. Under a lease agreement, the owner retains title but gives up his right to possession and exclusive use during the term of the lease. This section applies only to leases of more than forty years. The Convention believes that this definition of "long-term" is appropriate in light of past experience with leases in the Trust Territory, under circumstances similar to those in the Northern Mariana Islands, and because of past experience in the Northern Mariana Islands. The Convention also believes that forty years is the least restrictive definition of "long-term" that will serve the practical needs of the Commonwealth.

The forty-year limitation imposed by this section applies to any extension in a lease term as well as to the original term. Renewal rights are an integral part of a lease and should not be permitted to constitute an extension of the time limitation.

Under this section, aliens and other persons who are not of Northern Marianas descent will be permitted to use property under leases of forty years or less. They will be able to build substantial structures and improvements because they will have forty years to amortize these investments. A wide variety of commercial and private uses will be feasible under this limitation.

Section 4: Persons of Northern Marianas Descent. This section defines the term "persons of Northern Marianas descent" which is used in both the Covenant and in section 1 of this article.

The Northern Mariana Islands have been ruled by the Spanish, the Germans, the Japanese and the Americans. Over the years there has been some migration to and from these islands by people from each of these ruling nations and from the other islands in the Pacific. People occasionally have come to the Northern Mariana Islands from other places. Most of these people came as administrators or entrepreneurs. They maintained their citizenships elsewhere and clung to their national identities. They did not adopt the culture or integrate with the people of the Northern Mariana Islands. Throughout the history of the Northern Mariana Islands, those who considered themselves as the people of the Northern Mariana Islands have been the Chamorros and the Carolinians who settled on the various islands, formed a cohesive social group, worked for the political and economic betterment of the Northern Mariana Islands, and considered these islands as their home.

For this reason, this section defines the term "person of Northern Marianas descent" as a person who meets two criteria: (1) a citizen or national of the United States; and (2) a person of at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood.

A baseline was provided in order to define what is meant by a person of at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood. The Convention did not use a racial or ethnic classification for this purpose. All persons who were born in the Northern Mariana Islands by 1950 and who were citizens of the Trust Territory are defined as full-blooded Northern Marianas Chamorros or Northern Marianas Carolinians. The term "by 1950" means up to and including December 31, 1950.

From this baseline, it will be possible to calculate the percentage of Northern Marianas descent necessary to qualify under the first part of the section. For example, if a husband and wife both were domiciled in the Northern Mariana Islands by 1950 and both were citizens of the Trust Territory, both are considered as 100% Northern Marianas descent and their children will be 100% Northern Marianas descent. If a husband was domiciled in the Northern Mariana Islands by 1950 and was a citizen of the Trust Territory and his wife was born in the Philippines and was a Philippine citizen, then the husband is 100% Northern Marianas descent and the wife is 0% Northern Marianas descent. Their children are 50% Northern Marianas descent and they qualify to own property under this section since only 25% Northern Marianas descent is required. If a person who is 50% Northern Marianas descent marries a person who is 0% Northern Marianas descent, their children will be 25% Northern Marianas descent and will still qualify to own property.

The words "or a combination thereof" inserted after the requirement of one-quarter Northern Marianas Chamorro or one-quarter Northern Marianas Carolinian blood mean that if a Chamorro marries a Carolinian the percentage of Northern Marianas descent of any children of that marriage is not decreased.

The Convention included the requirement of citizenship in the Trust Territory because it believes that persons who were domiciled in the Northern

Mariana Islands by 1950 but who did not ever become Trust Territory citizens are not within the group that should be eligible to own land. By maintaining citizenship somewhere outside the Trust Territory, these persons indicated that their basic allegiance was elsewhere. Similarly, the Convention believes that the children of Americans or Filipinos who were stationed here temporarily prior to 1951 and who may have been born in the Northern Mariana Islands for that reason should not be included in the group eligible to own land in the Northern Mariana Islands. These children would have the citizenship of their parents. They would not have been Trust Territory citizens and therefore would not qualify.

Trust Territory citizenship was conferred pursuant to Article II of the Trusteeship Agreement which states:

> "1. The administering authority shall take the necessary steps to provide the status of citizenship of the Trust Territory for the inhabitants of the Trust Territory."

Following the approval of the Trusteeship Agreement on July 18, 1947, the United States Department of State began considering the citizenship issue. At the same time, plans were made for an Organic Act to be enacted by Congress for the Trust Territory. The Department of State decided to await the passage of an Organic Act by the United States Congress before conferring citizenship status on the Trust Territory inhabitants in order to avoid an "interim citizenship" and the problems that might create. After several years of deliberation, however, plans for an Organic Act were abandoned.

The citizenship requirement of the Trusteeship Agreement was not implemented formally until 1966 when title 53, section 1, of the Trust Territory Code was enacted that provides as follows:

1. Nationality. (1) All persons born in the Trust Territory shall be deemed to be citizens of the Trust Territory, except persons, born in the Trust Territory, who at birth or otherwise have acquired another nationality.

(2) A child born outside the Trust Territory of parents who are citizens of the Trust Territory shall be considered a citizen of the Trust Territory while under the age of twenty-one years, and thereafter if he becomes a permanent resident of the Trust Territory while under the age of twenty-one years.

During the interim from 1947 to 1966 the term "citizen of the Trust Territory" was used by the Department of the Navy and Department of State to describe persons including: "(T)hose born in the Trust Territory except those born of non-indigenous persons or who have acquired another nationality at birth or later and those born outside the Trust Territory of a parent who is an indigene and who has resided therein prior to such birth."

The term "citizen of the Trust Territory of the Pacific Islands" as used in this article is intended to mean those persons who were citizens of the Trust Territory under the Trust Territory Code and those persons who were treated as citizens of the Trust Territory by the administering agencies of the United States government acting under the Trusteeship Agreement.

The requirement with respect to Trust Territory citizenship is met if a person acquired Trust Territory citizenship at any time and for

any period of time between 1947 and the termination of the Trusteeship Agreement with respect to the Commonwealth. This requirement therefore is met by persons who acquired Trust Territory citizenship during this period and subsequently became United States citizens. Under Secretarial Order No. 2989 promulgated by the United States Secretary of the Interior on March 24, 1976 and any subsequent order relating to the separate administration of the Northern Mariana Islands, it is intended that the Government of the Northern Mariana Islands alone have the authority to confer the rights of Trust Territory citizenship upon persons born or domiciled in the Northern Mariana Islands by 1950.

The Convention included the requirement of United States citizenship or national status because it believes that only those who intend to place their allegiance with the Commonwealth and with the United States should be included in the group eligible to own land. Citizens of other countries and citizens of the remainder of Micronesia after the Trusteeship is ended (assuming no permanent affiliation with the United States) would be excluded under this requirement because their basic allegiance is elsewhere. This requirement would exclude contract workers who came to the Northern Marianas from foreign countries or from other districts within the Trust Territory. Many of these people came to the Northern Mariana Islands because for many years the government for the entire Trust Territory was located in Saipan. If the seat of government had been elsewhere, these people would not have resided in the Northern Mariana Islands at all. The Convention believes that these persons should not be included in the group eligible to own land.

The Convention also made provision for the adopted children of persons of Northern Marianas descent. They will automatically become persons of of Northern Marianas descent if they are adopted while under the age of eighteen. This age limitation permits legitimate adoptions and prevents adoptions for

the purpose of circumventing the restrictions on land alienation. This section does not specify the percentage of Northern Marianas descent that an adopted child would acquire from his adopting parents. It is intended that the adopted child shall have the same position with respect to Northern Marianas descent as would a natural child. That is, if a person who is 50% Northern Marianas descent is married to a person of 0% Northern Marianas descent, their natural children, if they had any, would be 25% Northern Marianas descent. In that case, an adopted child should also be 25% Northern Marianas descent. However, it is recognized that there are many possible variations. For example, a child adopted by a person who is unmarried, or by a person who marries more than once, would require a special rule. These matters are left to a court for decision under the specific facts of each special case.

Section 5: Corporations. This section permits a corporation to be considered as a "person of Northern Marianas descent" if it meets four qualifications.

First, a corporation must be incorporated in the Commonwealth. This requirement will make ineligible corporations that are incorporated anywhere else in the United States, in the Trust Territory or in any foreign country. The purpose of this restriction is to give control over the corporations that own land in the Commonwealth to the government of the Commonwealth, which will be able to enact statutes regulating incorporation.

Second, a corporation must have its principal place of business in the Commonwealth. Under this requirement, a corporation may have offices in Guam, Japan or any other place, but the principal office must be in the Commonwealth. The purpose of this restriction is to limit land ownership to corporations that are operating primarily in the Commonwealth. Whether

the Commonwealth is the "principal" place of business will depend on all the relevant factors including the volume of business done elsewhere, the number of corporate offices, the number of corporate personnel assigned to the Commonwealth location, and the volume of the corporation's business. It is intended that this determination be made in accordance with the pertinent legal precedents in other areas within the jurisdiction of the United States.

Third, a corporation must have directors that govern its affairs, and at least 51% of the directors must be persons of Northern Marianas descent. The purpose of this restriction is to ensure that any corporation that owns land in the Commonwealth is governed by persons of Northern Marianas descent. In this way, the decisions of the corporation will be made by persons who would qualify to own land themselves and who have a stake in the future of the Commonwealth.

Fourth, the corporation must have voting shares and at least 51% of the voting shares must be owned by persons of Northern Marianas descent. The purpose of this requirement is to maintain control of the corporation in the hands of persons who are of Northern Marianas descent. Under this section, the owners of 51% of the voting shares must be natural persons who qualify as persons of Northern Marianas descent. Ownership of stock by corporations (both those qualified as persons of Northern Marianas descent under this section and those not qualified) is permitted by this section, but only ownership by natural persons is counted in determining whether the 51% requirement is met. This provision does not require that non-voting shares be owned, in any percentage, by persons of Northern Marianas descent. This provision does not apply to debt instruments of a corporation.

The organization and shareholding of corporations changes from time to time as new directors are elected and as shares of stock are sold. This provision covers all such changes by providing that a corporation is eligible to own land only so long as it meets all the requirements. If the percentage of shareholders falls below 51% Northern Marianas descent, the corporation is automatically ineligible to own land and the enforcement rule in section 6 takes effect.

Section 6: Enforcement. This section provides that any transaction made in violation of section 1 is void from the beginning and has no force or effect. This means that if a person sells land to a person who is not of Northern Marianas descent, that transaction never takes effect and never has any consequence with respect to the title of the land. The title remains in the person who tried to sell it. This section affects only the title in land. It does not affect the cause of action that the buyer may have if the seller takes his money and then does not part with title because the buyer is not a person of Northern Marianas descent. Those causes of action would be governed by the general law of contracts. This section does not affect any right in land acquired by any person prior to the effective date of the Constitution. A person who owned or leased land prior to the effective date of the Constitution retains his right in that land. If he chooses to sell or otherwise transfer a long-term interest in the land, then the provisions of this article apply.

This section also provides that if a corporation becomes ineligible under section 5, any land that it owns that it acquired after the effective date of the Constitution will be forfeited to the government. This is a simple provision easily understood by those who are responsible for the

affairs of corporations. It does not provide that land owned by noncomplying corporations reverts to the original owner because that could result in unjust enrichment of the original owner and also might open the door to fraudulent transactions. If the legislature finds that forfeiture to the government is too harsh or that it should not apply to small family corporations, it could provide that the lands be transferred back to the corporation if the requirements of section 5 are once again met. This matter is left to the discretion of the legislature. This section does not affect any right in land acquired by any corporation before the effective date of the Constitution. If a corporation that owns land before this effective date fails to qualify as a person of Northern Marianas descent, or qualifies and thereafter becomes disqualified because of a change in organization, management or ownership, the corporation may retain any land that it owned before the effective date. If the corporation sells this land or transfers a long-term interest in it, that transaction is covered by this article and is void if not in conformity with this article.

ARTICLE XIII: EMINENT DOMAIN

Section 1: Eminent Domain Power. This section provides that the Commonwealth may exercise the eminent domain power as provided by law. This means that any exercise of the eminent domain power by the executive branch of government must be specifically authorized by the legislature.

This section further provides that the eminent domain power may be exercised to acquire private property necessary for the accomplishment of a public purpose. The term private property includes both real and personal property. The term public purpose means a purpose that directly and substantially benefits the public welfare. These benefits to the public welfare must be reasonably foreseeable and reasonably likely to occur. This section does not prohibit the use of the eminent domain power for enterprises in which the government participates with private investors. A public purpose does not include an objective that brings benefits to only a few persons or private corporations, that results in profits most of which are exported from the Commonwealth for the benefit of persons in other countries, that redresses private wrongs, or that improves private property.

Section 2: Limitations. This section contains two other limitations on the use of the eminent domain power. Private property may not be taken without just compensation. If the private property to be taken is land, rather than personal property, the Commonwealth must make a showing that there is no suitable public land available for the intended public purpose before it can use the eminent domain power to take private land.

ARTICLE XIV: NATURAL RESOURCES

Section 1: Marine Resources. This section provides that the marine resources found in waters off the coast of the Commonwealth over which the Commonwealth has jurisdiction shall be managed, controlled, protected and preserved by the legislature for the benefit of the people of the Commonwealth. Marine resources are those resources found in the water such as fish, dissolved minerals, plant life suspended in the water and other resources. Marine resources do not include resources found on or under the submerged lands. Those resources are public lands and are provided for by article XI, section 2.

The jurisdiction of the Commonwealth over the waters off the coast is the same as that of the states. Currently the states have the power to regulate fisheries within territorial waters as part of the police power. The power of the states extends only to what the United States claims as territorial waters. Depending on the claims asserted by the United States and United States law with respect to these waters, the jurisdiction of the Commonwealth might be extended. This section provides that the legislature has the power to control marine resources for whatever distance into the ocean is available under United States law.

The requirement that marine resources be managed, controlled, protected and preserved means that the legislature cannot sanction any activity that would permanently deplete or exhaust the marine resources.

Section 2: Uninhabited Islands. This section requires that the islands of Managaha, Sariguan and Maug be maintained as uninhabited places. This means that no permanent structures can be built and no persons can live on the islands except as necessary for the purposes for which the islands are preserved. The island of Managaha is preserved for cultural and recreational purposes. The islands of Sariguan and Maug are preserved as habitats for birds, fish, wildlife and plants. The legislature may not change the status of Managaha or Maug.

The permanent status given the preserve on Managaha is based on its location close to Saipan and current and past use by the people of Saipan.

The permanent status given the preserve on Maug is based on a report to the Resident Commissioner by Sir Peter Scott and Dr. Lyall Watson dated August 13, 1976. The report includes a survey of the botany, ornithology, terrestrial biology, marine biology and ichthyology of the three islands that are collectively known as Maug. The report concludes;

"More than any other island we have seen in the Marianas, it (Maug) merits the designation of Protected

Research Area as suggested at the meeting of the International Biological Program held in Koror, Palau in November, 1968. We heartily recommend that such protection continue indefinitely and we urge those in authority to do everthing possible to ensure that Maug retains its character and accessibility to scientists."

The legislature may substitute another island for Sariguan if that other island is as well suited for preserving birds, fish, wildlife and plants. The legislature may also designate additional islands as wildlife or other preserves.

Section 3: Places and Things of Cultural and Historical Significance. This section provides that places of importance to the culture and traditions of the people of the Northern Mariana Islands and places where significant historical events occurred within the Northern Mariana Islands must be protected and preserved and public access must be maintained. This section does not deprive any owner of private property although the legislature may use the eminent domain power to acquire such places if that is necessary to protect them or to maintain public access.

This section also provides that artifacts and other things of cultural or historical significance must be protected and preserved as provided by the legislature. This section does not deprive any owner of any artifact or thing of cultural or historical significance although the power of

eminent domain may be used to acquire such things if that is necessary to preserve them. This section does not give the right of public access to these artifacts and things. A private owner may bar the public.

The legislature is given the responsibility of defining or identifying the places and things to which this section applies.

ARTICLE XV: EDUCATION

Section 1: Education. This section provides for education in the Commonwealth.

Subsection (a). This section provides that each person has the right to a free, public education within age and educational levels as provided by law. This means that every person within the Commonwealth has this right. Access to public education cannot be limited to exclude aliens or citizens or nationals of the United States who are not domiciled in the Commonwealth. Any person who resides in the Commonwealth may have access to public education. The legislature may make reasonable durational residency requirements related to the need to register children for school.

The terms "elementary education" and " secondary education" are left to the legislature to define. If the legislature does not act, these terms have the meaning that they had as of the effective date of the Constitution.

The term "compulsory" as used in this section means

that the legislature can require attendance at school even for children whose parents do not want their children to be educated. This section also means that the legislature must require attendance within some age and grade limits although the exact limits are left to legislative discretion. This section does not mean that attendance at a particular school or at a public school can be made compulsory. If a child attends private school and receives the equivalent of the compulsory education required by law, the child cannot be compelled to attend public school.

The terms "free" and "public" as used in this section mean that schools supported by the government will be available to the extent needed and that students will not have to pay a fee to attend school. This section requires public schools only to the extent necessary. If most children attend private schools, the government must supply schools sufficient to provide an education only for the number of children who are not enrolled in private schools. This section does not prohibit children who attend public schools from being charged fees for particular optional activities within the school curriculum. No fee can be required for any part of the required curriculum.

Subsection (b). This section authorizes the legislature to provide for higher and adult education should the needs of the people of the Commonwealth make such education appropriate and should the resources of the government be capable of supporting it. Higher education refers to educational levels beyond those

included in the definition of secondary education. Generally, the term means junior colleges or colleges. Adult education contemplates schools or special classes for persons older than the normal age for attending public schools. This section expresses the desirability of making higher and adult education available without requiring the legislature to provide for them unless it determines that the necessary funds are available.

ARTICLE XVI: CORPORATIONS

Section 1. Corporations. This section provides that a private business corporation may be organized only pursuant to general laws. An existing corporate charter may be extended or amended only pursuant to general laws. A private business corporation is a corporation organized for the purpose of making a profit that does not include government participation or have government sponsorship. The phrase "business corporation" includes, but is not limited to, joint stock companies, mutual companies and private associations. Charitable, educational, scientific and other types of non-profit corporations are not covered by this section. Public corporations such as the Marianas Public Land Corporation established under section XI are not covered by this section. The legislature may regulate non-profit corporations and public corporations by general or special law. The legislature may define the term "private business corporation" in any way that is consistent with the intent of this section. An existing corporate charter is the charter of a corporation established under laws in force in the Northern Mariana Islands prior to the effective date of the Constitution whose continued existence is provided by section 6

of the Schedule on Transitional Matters. A general law is one that applies to all business corporations similarly situated.

ARTICLE XVII: OATH OF OFFICE

Section 1: Oath of Office. This section prescribes the oath of office to be taken by all elected and appointed officers and all employees of the Commonwealth and its political subdivisions. The oath requires these persons to swear or affirm their willingness to support and defend the laws and the Constitution of the Commonwealth, the Covenant, and the applicable provisions of the Constitution, treaties and laws of the United States. The oath also includes a promise that the oath-takers will discharge their duties to the best of their abilities. The term "officers and employees of the Commonwealth" includes salaried positions, non-salaried positions, permanent positions and temporary positions. It does not include contractors, regardless of the length of the contract term. The promise to "defend" is figurative and does not mean a promise to bear arms.

The Covenant requires all officers and employees of the Commonwealth government to take the oath. There are only two variations between the oath required by this section and the relevant provisions of the Covenant. First, this oath includes an undertaking to faithfully discharge the duties of office. Second, this oath is required of officers and employees of political subdivisions in addition to the officers and employees of the Commonwealth.

Taking the oath prescribed by this section is a requirement for taking office. A person who refuses to take this oath cannot take office. No substitute oath can be used or required.

ARTICLE XVIII: CONSTITUTIONAL AMENDMENT

Section 1: Proposal of Amendments. This section provides that constitutional amendments may be proposed in three ways: constitutional convention, legislative initiative and popular initiative. Section 2 deals with the constitutional convention method of proposing constitutional amendments, section 3 with the legislative initiative method of proposing constitutional amendments, and section 4 with the popular initiative method of proposing constitutional amendments. The procedure for ratifying all constitutional amendments, regardless of the method of proposal, is set out in section 5.

Section 2. Constitutional Convention. A constitutional convention may be convened to propose constitutional amendments. Under this section, a convention may be convened by two methods: legislative initiative and popular initiative. Both methods require that the question of convening a constitutional convention be approved by the voters.

Section 2(a). This provision permits a majority of the members of each house of the legislature to place on the ballot the question whether to hold a constitutional convention. The legislature must put that question to the voters at least once within seven years after the effective date of the Constitution. If the legislature fails to act, the governor has the responsibility to ensure that the question is placed on the ballot at the last regular general election within the seven-year period. The question must be placed on the ballot at a regular general election. The governor may not veto any act of the legislature taken under this subsection.

Section 2(b). This section permits the use of the initiative to place before the voters the question whether to convene a constitutional convention. An initiative petition under this subsection must be signed by at least twenty-five percent of the persons qualified to vote in the Commonwealth or by at least seventy-five percent of the persons qualified to vote from one senatorial district. The term "in a senatorial district" may be defined by the legislature to require residence, domicile, or another tie or combination of ties to the senatorial district. Persons qualified to vote are those who meet the qualifications of article VII, section 1, and who are properly registered to vote as provided by law. The petition is filed with the attorney general, who determines if the petition complies with the requirements of this subsection. If the attorney general certifies the petition, the question is included on the ballot in the next general election that is held at least thirty days after the date of certification.

Section 2(c). The question must be answered in the affirmative by at least two-thirds of the votes cast on the question at the regular general election in order for the convening of a convention to be approved. If the voters approve the convening of a convention, the legislature must act promptly to do so. The legislature may provide for the date of convening, length of session, rules of procedure, compensation for the delegates and any other matter except those matters covered by subsection (d).

Section 2(d). The convention must have the same number of delegates as there are members of the legislature. Those delegates must be elected on a non-partisan basis. This means that a candidate for delegate may not identify himself as a member of a party, seek the office on the ticket of a

political party or seek the endorsement of a political party or organization. For the purposes of this section, a political party or organization means any group devoting some or all of its efforts to the election of persons to public offices other than that of delegate to a constitutional convention. A group need not identify itself as a political party or organization to constitute such an entity. Any candidate for delegate failing to seek office on a non-partisan basis is ineligible to take a seat in the convention.

Section 3: Legislative Initiative. This section empowers the legislature to propose amendments to the Constitution directly without using a constitutional convention. The affirmative votes of three-fourths of the members of each house present and voting are necessary for the legislature to propose a constitutional amendment. An abstaining legislator is not regarded as present and voting for the purpose of determining the number of votes that constitutes the required three-fourths majority.

This section also requires that an amendment proposed by the legislature may propose a change in only one article of the Constitution. This prohibition does not prevent the legislature from proposing any number of amendments on a wide variety of subjects. Rather, the legislature is merely required to vote separately on proposals involving different articles of the Constitution. This subsection does not preclude the legislature from proposing modifications to several sections of one article or the addition of several new sections to an article in one amendment. An act of the legislature under this section may not be vetoed by the governor.

Section 4: Popular Initiative. Constitutional amendments may be proposed directly by popular initiative without convening a constitutional convention.

Section 4(a). *This section authorizes the people to propose constitutional amendments by means of initiative. An initiative petition must include the entire text of the proposed amendment. The proposed amendment may propose changes in any number of articles of the Constitution. A petition may consist of any number of pieces of paper with voters' signatures, provided that each paper contains the full proposed amendment. To accomodate the text and signature, a paper may be of any length. The petition must be signed by at least fifty percent of the persons qualified to vote in the Commonwealth and at least twenty-five percent of the persons qualified to vote in each senatorial district. The term "in each senatorial district" may be defined by the legislature to require residence, domicile or another tie or combination of ties to one senatorial district. Under this subsection, the petition must be filed with the attorney general for certification that the signature and other requirements are met.*

Section 4(b). *After an initiative petition is certified, the attorney general must submit it promptly to the legislature. If a majority of the members in each house of the legislature vote to approve the proposed amendment, it is submitted to the voters and is approved by the voters if it receives the affirmative vote of a majority of the total number of votes cast on the question. If the legislature does not approve the proposed amendment, it is submitted to the voters and is approved by the voters if it receives the affirmative vote of a majority of the total number of votes cast on the question and the affirmative vote of at least two-thirds of the votes cast in each of two senatorial districts.*

Section 5: Ratification of Amendments. *All proposed constitutional*

amendments, whether proposed by constitutional convention or by legislative or popular initiative, must be ratified by the voters.

Section 5(a). This section requires that a proposed amendment to the Constitution be submitted to the voters at the next regular general election held at least sixty days following timely filing of the popular initiative petition with the attorney general, passage of the legislative initiative proposal, or presentation of a proposed amendment by a concluded constitutional convention. If the next regular general election occurs less than sixty days after filing of a popular initiative petition with the attorney general, or less than sixty days after passage of a legislative initiative proposal, or less than sixty days after the conclusion of a constitutional convention that proposed one or several constitutional amendments, then the proposed amendment is submitted to the voters at the regular general election after the next regular general election. When a popular initiative petition is submitted by the attorney general to the legislature for its approval, the legislature must act promptly if it wishes to approve the popular initiative proposal within the sixty-day deadline established by this subsection. The attorney general or other appropriate official is responsible for placing a proposed amendment on the ballot at the proper regular general election.

Section 5(b). This section provides that an amendment proposed by legislative initiative, including a proposed amendment popularly initiated and subsequently approved by the legislature, is approved if it receives an affirmative majority of the votes actually cast. An amendment proposed by constitutional convention or popular initiative requires an affirmative majority of all the votes actually cast and approval by at least two-thirds

of the votes actually cast in each of two senatorial districts. If a fourth senatorial district is created under the provisions of article II, section 2, it can provide one of the two extraordinary majorities required by this subsection. Only votes properly cast in the affirmative or the negative, not abstentions or invalid ballots, are counted.

A proposed amendment approved by the voters takes effect immediately after that approval unless the text of the amendment provides otherwise.

SCHEDULE ON TRANSITIONAL MATTERS

Section 1: Effective Date of Constitution. This section provides that the Constitution shall take effect on a date proclaimed by the President of the United States after its approval by the United States government and otherwise as provided by the Covenant.

The effective date will be determined and proclaimed by the President of the United States after the United States government approves the Constitution. Section 202 of the Covenant requires this approval although it does not specify how the approval of the United States is to be given. Instead it provides that the Constitution shall be submitted to the President and shall be considered approved six months after its submission unless approved or disapproved before then.

Section 1003(b) of the Covenant provides that many of the important provisions of the Covenant take effect on a date

determined and proclaimed by the President. That date must occur less than one hundred eighty days after the approval of the Constitution by both the people of the Northern Mariana Islands and the United States government. Section 1004(b) of the Covenant provides that the Constitution of the Northern Mariana Islands takes effect on the same date as the provisions of the Covenant named in section 1003(b). This section of the Schedule reiterates the Covenant provision.

The phrase "and otherwise provided by the Covenant" incorporates an important exception to the effective date provided by section 1004(b) of the Covenant. That section permits the President to delay the effectiveness of a provision of the Northern Mariana Islands Constitution if the President finds that implementation of the provision would be inconsistent with the Trusteeship Agreement. Any provision the effective date for which is delayed by the President would take effect when the Trusteeship Agreement terminates.

Section 2: Continuity of Laws. This section provides that laws in force in the Northern Mariana Islands on the day preceding the effective date of the Constitution that are consistent with the Constitution and the Covenant continue in force until they expire or are amended or repealed. This section does not purport to cover laws beyond the reach of Commonwealth authority, such as the Trusteeship Agreement, United States laws or secretarial orders.

The laws that continue in effect under this section include the Trust Territory Code, the Mariana Islands District

Code, and any ordinances and other rules enacted by municipal councils on Rota, Saipan and Tinian. This section includes only laws in force on the day preceding the day the Constitution takes effect. Any law repealed before that date will not have any force under the Constitution. The laws that continue in effect must be consistent with the Constitution and the Covenant. Any law that is inconsistent with either the Constitution or the Covenant is void as of the effective date of the Constitution.

Laws that continue in effect do so until they expire, or are amended or repealed. Expiration depends on the terms of the law itself, while amendment or repeal depends on action by the new legislature or local government agency under article II or article VI of the Constitution.

Section 3: Continuity of Government Employment and Operations. The first sentence of this section provides that employees of the Government of the Northern Mariana Islands and its political subdivisions become employees of the Commonwealth government on the date the Constitution takes effect. Terms and conditions of employment formerly enforceable in a court of law against the Government of the Northern Mariana Islands or its political subdivisions continue to be enforceable on and after the effective date of the Constitution until otherwise provided by law, ordinance or regulation. The functions, responsibilities and duties of employees are the same under the new government as they were under the Government of the Northern Mariana Islands until otherwise provided by law, ordinance or regulation.

The employees included in this section are those employed by the Government of the Northern Mariana Islands under the separate administration established by Secretarial Order No. 2989, promulgated by the United States Secretary of the Interior on March 24, 1976, except for the Resident Commissioner. Included are executive branch, legislative branch and judicial branch employees as well as employees of the chartered municipalities. This section creates a transfer of the rights of the Government of the Northern Mariana Islands under existing employment contracts to the Commonwealth government. Government employees continue to have the same contract rights, if any, although these may be changed by law, ordinance or regulation. The legislature has the authority to fire or renegotiate employment rights with any Commonwealth government employee by enacting a law. The governor has the authority to fire or renegotiate employment rights with any Commonwealth government employee pursuant to law. It is intended that the legislature and the governor will reassign functions and responsibilities of employees within the Commonwealth government so as to avoid duplication of effort and waste of funds and so as to run the affairs of the Commonwealth efficiently. Based on studies and other actions taken during the transitional period before the effective date of the Constitution, it is expected that the legislature and the governor will utilize their power under Article III, section 15, to reallocate offices, agencies and instrumentalities among the principal departments of the executive branch and to change their functions, powers and duties as considered necessary for the efficient administration.

Section 4: Continuity of Judicial Matters. This section designates the Marianas District Court of the existing Government of the Northern Mariana Islands as the Commonwealth trial court established by article IV of the Constitution on the date the Constitution takes effect. Under article IV of the Constitution, judges of the Commonwealth trial court cannot take office until appointed by the governor and confirmed by the senate. Until the first appointment is made, the existing judges of the Marianas District Court are automatically made judges of the Commonwealth trail court. These judges continue to serve, thereby ensuring the availability of judicial services until the governor is sworn in and makes the necessary appointments. These judges will serve at the pleasure of the governor - that is, they may be replaced by the governor at any time and for any reason when the governor exercises his appointment power. The section does not require the governor to appoint regular judges within any particular time.

The second and third sentences of this section provide for the disposition of matters pending on the date the Constitution takes effect. Matters before the existing courts on the effective date of the Constitution will remain before the courts in which they are pending. Matters before the Marianas District Court remain before that court after it becomes the Commonwealth trial court. Matters before the High Court of the Trust Territory of the Pacific Islands, even if within the jurisdiction created by article IV, remain before the court until finally decided. For

purposes of this section, civil matters are considered pending if a complaint has been filed in the action. Criminal matters are considered to be before a court if an information has been filed. For purposes of classifying matters pending before the High Court, matters which are before the trial division of that court are to be considered as finally decided when a final judgment is had. Jurisdiction of appeals from such cases will be in the United States District Court for the Northern Mariana Islands sitting as an appellate court or before the Commonwealth appeals court if the federal district court is unavailable to decide appeals of Commonwealth cases. Matters before the High Court on appeal may not be further appealed under Commonwealth law.

Section 5: Continuity of Legislative Matters. This section provides that the terms of office of members of the Northern Mariana Islands Legislature expire on the date the Constitution takes effect. Under section 12 of this Schedule, the term of office of the new legislature elected under article II of the Constitution will commence on the same date.

Bills enacted but not approved by the Resident Commissioner as of that date are void. If the legislation is considered desirable, if must be reintroduced in the Commonwealth legislature.

Section 6: Continuity of Corporations and Licenses. This section ensures that corporations incorporated or qualified to do business in the Northern Mariana Islands on the date the Constitution takes effect may continue their operations under the Commonwealth government until the commonwealth legislature enacts

a general law under article XVI of the Constitution that ends or alters that right to continue operations. A corporation is a legal entity established according to the laws at its place of incorporation. Title 37 of the Trust Territory Code covers incorporation and qualification to do business in the Northern Mariana Islands.

This section also provides that licenses in effect on the effective date of the Constitution continue in effect until otherwise provided by the legislature. A license is a legal document that grants the right to perform an activity. These include revenue-raising business licenses, licenses regulating members of certain professions, marriage licenses, licenses regulating and any other kind of license required by the Trust Territory Code or the Mariana Islands District Code.

An exception is provided, however, to the general power of the legislature to enact laws with respect to current licenses. The legislature may not revoke or alter the license of a land surveyor, ship officer, health professional or a practicing trial assistant except for incompetence or unethical conduct. These are professions presently licensed under Trust Territory laws. Incompetence is the failure to meet prevailing community standards in performing professional duties. Unethical conduct is dishonesty, false representation of ability, demanding excessive fees, violation of a law, or any other conduct that does not meet the community's or the professional's standards for appropriate conduct.

Section 7: Statutes of Limitations. This section provides that the legislature may repeal any statute of limitations currently in force in the Commonwealth. It may do so only after completing a study required by this provision. The legislature may repeal a statute of limitations only for the limited purpose of providing compensation to persons involved in transactions as to which the statute has barred claims. That compensation may not be monetary but may be only in the form of a priority with respect to the distribution of public lands. Since the legislature has power with respect to public lands only over the homestead program, the only form of compensation available is priority with respect to eligibility in the homestead program.

The due process clause of the Fourteenth Amendment to the United States Constitution, and article I, section 5, of the Commonwealth Constitution prohibit the taking of property without due process of law. Possession of real or personal property for a period of time, under the common law and under statutes of limitations, is a means of acquiring rights in property. Within the period of a statute of limitations, persons claiming rights in property may assert those rights in a proper court against the persons in actual possession of the property or otherwise claiming ownership of the land or right in it. The running of the statute of limitations bars these claims to the property and in so doing vests in the possessor additional rights to the property. Repealing a statute of limitations after such rights have vested reopens such questions and may deprive the owner of rights that had become good against all claims.

This constitutes a taking of property without due process of law that violates the Fourteenth Amendment to the United States Constitution which is made applicable to the Northern Mariana Islands by section 501 of the Covenant. This due process clause is incorporated in article I. section 5, of the Commonwealth Constitution.

The United States Supreme Court, in its decision in Campbell v. Holt, 6 S. Ct. 209, 210-11 (1885), states this principle clearly,

> By the long and undisturbed possession of tangible property real or personal, one may acquire a title to it, or ownership, superior in law to that of another, who may be able to prove an antecedent and at one time paramount title. This superior or antecedent title has been lost by the laches of the person holding it, in failing within a reasonable time to assert it effectively; as, by resuming the possession to which he was entitled, or asserting his right by suit in the proper court. What the primary owner has lost by his laches, the other party has gained by continued possession, without question of his right . . . .
>
> (T)he weight of authority is in favor of the proposition that where one has had the peaceable, undisturbed, open possession of real or personal property, with an assertion of his ownership, for the period which, under the law, would ban an action.

> for its recovery by the real owner, the former has acquired a good title, -- a title superior to that of the latter, whose neglect to avail himself of his legal rights has lost him his title . . . . It may, therefore, very well be held that in an action to recover real or personal property, where the question is as to the revival of the bar of the statute of limitations by a legislative act passed after the bar has become perfect, that such act deprives the party of his property without due process of law. The reason is that, by the law in existence before the repealing act, the property had become the defendant's. Both the legal title and the real ownership had become vested in him, and to give the act the effect of transferring this title to plaintiff would be to deprive him of his property, without due process of law. (Emphasis added.)

For these reasons, a repeal of a statute of limitations cannot permit a reopening of claims against any property owners in order to divest them of property rights they now have or to require them to pay any amount of damages or compensation. Section 7 reflects this view of the applicable law.

The legislature may permit claims against the Commonwealth government by persons who were compensated inadequately for transfers of interests in property in the past, even though the applicable statutes of limitations have expired. If the legislature repeals these statutes of limitations for the purpose of permitting claims against the Commonwealth government, a court or administrative agency could consider previously expired claims and determine the damages

of aggrieved parties. Damages may be measured only in terms of priority to public land. It is required by this section that no such action be taken by the legislature until the matter has been carefully and comprehensively studied.

Section 8: Interim Definition of Citizenship. This section provides that, until the termination of the Trusteeship Agreement, the term United States citizen or United States national as used in the Constitution shall include those persons who, on the date of the approval of the Constitution by the people of the Northern Mariana Islands, do not owe allegiance to any foreign state and who qualify under one of three tests described below.

Under section 1003(c) of the Covenant, the people of the Northern Mariana Islands will not acquire either United States citizenship or United States nationality until the end of the Trusteeship. The Constitution, however, will come into force prior to the end of the Trusteeship. Therefore, an interim definition of United States citizen or United States national is necessary.

This section implements those provisions of the Constitution that condition access to certain rights on United States citizenship or nationality in the period before the end of the Trusteeship.

The classes of persons described in this section include all the persons in the Northern Mariana Islands who will meet the criteria established by the Covenant for United States citizenship on the date of approval of the Constitution by the people. The intention is to include as many as possible of the individuals who will automatically become United States citizens or nationals when the Trusteeship ends. For this reason, the terms used in this

section that are adopted from section 301 of the Covenant should be interpreted consistently with section 301.

The date of the approval of the Constitution by the people is the date of the election in which the Constitution is approved. A person owes allegiance to a foreign state under this section if the persons is not a citizen of the Trust Territory of the Pacific Islands or a citizen or national of the United States and is a citizen, national or subject of some jurisdiction other than the Trust Territory or the United States. A person is considered to owe allegiance to a foreign state if the person is a citizen, national or subject of that state and has neither renounced that status in a manner considered effective either under the law of the United States or the foreign state, nor been deprived of that status by an effective law of that state. Mere disagreement with the policies of the current government of a foreign state does not eliminate allegiance to that state under this section.

Persons meeting the three tests described below are included in the category of "United States citizens or nationals". Persons who <u>are</u> United States citizens or nationals as of the effective date of the Constitution are also included in the category, even if they do not meet any of the three tests.

<u>Section 8(a).</u> This section sets out the first of the three alternative tests that qualify individuals under this section. This section include all persons who were born in the Northern Mariana Islands, who are citizens of the Trust Territory of the Pacific Islands on the date of the approval of the Constitution by the people of the Northern Mariana Islands, and who on that date

are domiciled in the Northern Mariana Islands or in the United States or any territory or possession thereof.

Anyone born in the Northern Mariana Islands who meets the requirements of section 1 of title 53 of the Trust Territory Code as of the date of the approval election and is domiciled in any area under the jurisdiction of or administered by the United States government or its intrumentalities meets the tests of this section.

"Domicile" has the meaning it is given in the Covenant. Section 1005(c) of the Covenant defines 'domicile' as "that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period." Although the Covenant does not define "residence", that term means a place of physical abode for more than a temporary sojourn. As the definition of domicile makes clear, a place may be a person's residence even if the person leaves it for an extended period as long as it is one of the places the person uses as a house.

Domicile involves intent as well as residence. While intent is difficult to prove directly, certain criteria can be established that create a presumption that the proper intent does or does not exist. The following list of criteria was used to determine whether a person was domiciled in the Northern Marianas for purposes of the plebiscite election:

(1) whether he maintains permanent residence or permanent place of abode in a place outside of the Mariana Islands District; or

(2) whether his presence in the Mariana Islands District

is solely the result of his own public or private employment or that of a person on whom he is economically dependent; or

(3) whether he or the person on whom he is economically dependent receives housing or pay differentials for housing or living allowances as a consequence of his employment in the Mariana Islands District; or

(4) whether he maintains contacts with another district of the Trust Territory of the Pacific Islands or with the jurisdiction of the United States or another country such as: supporting a spouse and/or family who reside in such place; maintenance of a boat or driver's license issued by such place; holding a postal address at such place; continuing affiliations with the professional, religious or fraternal life in such place; or the payment of taxes in such place imposed because of residence or physical presence in such place; or

(5) whether he has expressed his intention not to establish domicile in the Mariana Islands District; or

(6) whether he is registered or qualified to vote in any other district or jurisdiction of the Trust Territory or the United States or any other country during the past year.

The determination of domicile was necessary because section 1001 of the Covenant limited eligibility to vote in the plebiscite to persons "domiciled exclusively in the Northern Mariana Islands." Domicile has the same meaning in section 301 of the Covenant as it does in section 1001. Since section 8 of this Schedule,

in turn, is to be interpreted in the dame way as section 301, domicile as used in section 8 should have the same meaning as omicile in section 1001. Section 1001 has already been interpreted through the creation of the foregoing criteria for the plebiscite election. The same criteria are used in interpreting section 8.

Section 8(b). This subsection brings within the "citizens or nationals" category all persons who are citizens of the Trust Territory on the date of the approval election, who have been domiciled continuously in the Northern Mariana Islands for at least five years prior to that date, and who, unless under age, registered to vote in elections for the Mariana Islands District Legislature or for any municipal elections in the Northern Mariana Islands prior to Janauary 1, 1975.

The terms used in this subsection have the same meaning as they had in the preceding subsection. A person will meet the requirement of continuous domicile only if, during the entire five year period, the person was domiciled in the Northern Mariana Islands. A person may meet the requirement of voting registration by producing a certificate from the registrar or other keeper of voting rolls, stating that the person's name appears on one of the voting rolls specified.

Section 8(c). This subsection brings within the relevant language persons domiciled in the Northern Mariana Islands on the date of the approval of the Constitution by the people of the Northern Mariana Islands who, although not citizens of the Trust Territory of the Pacific Islands, on that date have been continuously domiciled in the Northern Mariana Islands beginning prior to January 1, 1974. The terms that are used in both this subsection

and the preceding subsections have the same meanings as they had in the preceding subsections.

Only persons who are stateless prior to the approval date can meet the requirements of this section. Any other person will either be a citizen or national of the United States or a foreign state.

A person eighteen years of age or older who wishes to be stateless before the approval date of the Constitution to qualify for United States citizenship or national status under this section may take the following oath of renunciation of allegiance before a person authorized to witness the oath:

OATH OF RENUNCIATION OF ALLEGIANCE TO A FOREIGN STATE

I, __name__, am a person eighteen years of age or older of sound mind and not subject to any duress or coercion and am fully informed and aware of section 301(c) of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States that declares persons and their children under the age of eighteen to be citizens of the United States on the date the Trusteeship Agreement terminates (unless they elect to be nationals of the United States) who are not already citizens or nationals of the United States or citizens of the Trust Territory of the Pacific Islands and who do not owe allegiance to any foreign state and who are domiciled in the Northern Mariana Islands on the day preceding the termination of the Trusteeship Agreement and who on that date have been domiciled continuously in the Northern Mariana Islands since December 31, 1973.

I am fully informed and aware that section 8(c) of the Schedule attached to the Constitution provides for the treatment

of persons who meet the requirements of section 301(c) of the Covenant as United States citizens or United States nationals as that term is used in the Constitution between the date the Constitution takes effect and the date of termination of the Trusteeship Agreement, and am fully certain that I comply with the requirements of section 301(c) of the Covenant and section 8(c) of the Schedule.

I hereby expressly and voluntarily renounce any citizenship, nationality, or allegiance I might have to any country or state other than the United States for the purpose of availing myself of the opportunity to become a United States citizens or United States national, being fully informed and aware of the consequences of that act and of the duties and responsibilities of a United States citizen or United States national.

_____
Signature

Witnessed before me on this the ____ day of _____, 19___.

_____
Signature of Witness

The witness who gives this oath may be a judge or clerk of any court in the Northern Mariana Islands or any notary public authorized by law to witness oaths or affirmations.

Section 9: Commonwealth. Because the Northern Mariana Islands cannot become a Commonwealth until the termination of the Trusteeship Agreement, the term Commonwealth used in the Constitution requires an interim definition for the period before termination of the Trusteeship Agreement. This section provides that for the period from the approval of the Constitution by the people of the

Northern Mariana Islands to the termination of the Trusteeship Agreement, the term Commonwealth used in the Constitution means the Northern Mariana Islands as defined by section 1005(b) of the Covenant. That includes the geographical area that lies within the area north of 14 degrees north latitude, south of 21 degrees north latitude, west of 150 degrees east longitude and east of 144 degrees east longitude.

This section also provides that when the term Commonwealth is used to describe a government rather than a geographical area, it means the government established under the Constitution.

Because this section applies from the date of approval of the Constitution by the people of the Northern Mariana Islands, election officials may begin registration of voters for the initial election of public officials required by section 10 directly after that approval.

Section 10: Elections. The section deals with the first election for public officials to fill the elective offices established in the Constitution. These elective offices include the senators provided for by article II, section 2; the representatives provided for by article II, section 3; the governor and lieutenant governor whose joint election on the same ballot is provided for by article III, section 4; the representative to the United States provided for by article V, section 1; and the mayors provided for by article VI, section 2.

The Northern Mariana Islands Legislature in office before the date the Constitution takes effect shall set the date for the election. The Legislature must enact a bill that provides for the

election to be held within one hundred twenty days after the approval of the Constitution by the United States under section 202 of the Covenant.

This section also requires the Northern Mariana Islands Legislature to establish procedures for registration of voters eligible to vote in the election, to establish other procedures needed to carry out the election, and to appropriate and make available funds sufficient to carry out the election. The other procedures established by the Legislature might deal with the nomination of candidates, absentee voting, secrecy in voting, the administration of the election, the resolution of election contests, or any other matter. The Legislature may begin the registration of voters at any time after approval of the Constitution by the people of the Northern Mariana Islands. If the Legislature does not act to set the election date and establish registration and election procedures within thirty days after the approval of the Constitution by the United States, the Resident Commissioner of the Northern Mariana Islands shall have the power to set the election and establish registration and election procedures.

Persons may vote in the election who meet the qualifications of article VII, section 1, of the Constitution and the laws in force in the Northern Mariana Islands consistent with the Constitution. A person may vote who, at the date of the election, is eighteen years of age or older, is domiciled in the Commonwealth, is a resident of the Commonwealth and has resided in the Commonwealth as provided by law, is not serving a sentence for a felony, has not been found by a court to be of unsound mind, and is either a United

States citizen or United States national. The definition of United States citizen or United States national for the purpose of this election is covered by section 8 of this Schedule. Laws in force in the Northern Mariana Islands consistent with the Constitution include those defining residency and domicile for voting purpose and establishing a length of residence requirement.

Section 11: Saipan Election Districts. This section divides Saipan into six districts for purposes of the elections for the house of representatives required by section 10 of this Schedule and by article II, section 3, of the Constitution. The districts are as follows:

District	Area	Population	Representatives	Deviation
First	Municipal districts six and ten	2,145	2	- 59(2.8%)
Second	Municipal district four plus census enumeration district thirty-eight (1/2 of municipal district three)	1,094	1	- 51(4.9%)
Third	Municipal districts two and five plus census enumeration district thirty-one (1/3 of municipal district one)	2,186	2	-100(4.8%)
Fourth	Census enumeration districts twenty-nine, thirty and thirty-seven (2/3 of municipal district one and 1/2 of municipal district three)	1,010	1	+ 33(3.2%)
Fifth	Municipal districts seven and eleven plus the islands north of Saipan minus census enumeration district eleven	4,075	4	+ 97(2.3%)

Sixth	Municipal districts eight and nine plus census enumeration district eleven	2,004	2	+ 82(3.9%)
TOTAL		12,515	12	8.8%

Three principles guided the division of Saipan into these six districts. First and most important is the need to conform to the one man-one vote rule required by the United States Constitution. Second, the districts are contiguous and compact. Third, existing municipal districts are divided only where necessary to adhere to the first two principles.

The one man-one vote principle applies to legislative districts on Saipan with the same force as it does to apportionment of seats between Saipan and the other islands within the Commonwealth. This districting plan uses the most precise census information available to comply with the one man-one vote principle. The requirement of contiguity and compactness contributes to districts whose residents face common problems and whose representatives can communicate readily with their constituents. The plan contained in this section retains existing muncipal districts wherever possible because the inhabitants of the municipal districts share many concerns. In addition, voters on Saipan are accustomed to voting on a municipal district basis and retaining those districts will minimize voter confusion.

The census conducted by the Trust Territory government in 1973 and used for this districting plan is the most reliable and complete information available for this purpose. Although the population of Saipan may have increased over the past three years, more recent data of comparable relability are not avialable. The districts established by this section are based on figures for total population (instead of a subclass of the total) to ensure the inclusion of all eligible voters.

The 1973 census divides the municipal districts of Saipan into areas called "census enumeration districts." These census enumeration districts are the building blocks of this districting plan. When a municipal district could not be maintained intact because of the one man-one vote principle, census enumeration districts were detached or added from neighboring municipal districts to accommodate the legal requirement.

Section 12: Commencement of Terms. This section provides for the commencement and expiration of the terms of office of public officials elected under section 9 of the Schedule to fill the offices established by the Constitution. The provision requires the public officials to take office on the date the Constitution takes effect as provided by section 1 of this Schedule. A judge of the Commonwealth trial court designated by that court administers the oath of office. If the election held under section 10 occurs after June 30 of the year, the officials shall be considered to have taken office on the second Monday in Janaury of the year after the year in which the election occurs. If the election occurs before July 1 of

the year, the officials shall be considered to have taken office on the second Monday in January of the same year as the year in which the election is held. Terms of office shall comply with the applicable provisions of the Constitution and shall run from the date on which the official is considered to have taken office under this section.

Section 13: Succession. This section provides for the continuity of government rights and obligations when the Government of the Northern Mariana Islands as provided under Secretarial Order 2989, promulgated by the United States Secretary of the Interior on March 24, 1976, ends and the government established by the Constitution takes effect as provided by section 1 of this Schedule. Government rights and obligations include all rights and obligations created by treaty, contract or other legally binding agreement.

Section 14: Approval of Constitution by the United States. This section is designed to implement article II, section 202, of the Covenant. Section 14 provides that following the approval of the Constitution by the Marianas people it must be submitted, through the Resident Commissioner, to the United States government for it approval. If the United States government disapproves provisions of the Constitution, the Northern Marianas Islands Legislature may, by three-fourths vote of its members, amend the document to cure the defects to which the United States government objects. The Legislature may not amend the Constitution any later than sixty days after the Speaker of the Legislature receives the disapproval message of the United States government. The

Legislature may only amend the specific provisions rejected by the United States government. If the Legislature amends the Constitution, the entire document must be placed before the Northern Marianas people at a regular general or at a special election held during the sixty-day period. Approval by the people requires an affirmative vote of a majority or extraordinary majority as provided by law. Abstentions and invalid ballots are not counted in determinating the number of persons voting.