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**GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES
COUNSEL'S REVIEW OF BOARD-ADOPTED BYLAWS, POLICIES AND PROCEDURES AGAINST THE ENABLING ACT, APPLICABLE
ADMINISTRATIVE LAW, AND GENERAL CORPORATION LAW**

INTRODUCTION

GVB has since its early history been sued numerous times because of challenges to the validity of its administrative affairs. In addressing these challenges, the legislature provided in § 9100 that GVB's enabling act is intended "to clarify its legal status, duties, powers and the status of its employees" and organized GVB as a nonstock member corporation that may adopt corporate bylaws from which the agency is to be governed.

According to the GM and DGM, the agency in the recent past has been actively managed and directly governed by its board of directors, which acts with some understanding that it is imbued with plenary power and authority over the affairs of the bureau. Through committees giving directors face to face access to responsible employees, as well as actual or apparent authority residing under bylaws-created, board-level positions and corporate officer positions, the agency's directors had grown accustomed to giving direct instructions to employees to act on any matter coming to the attention of a director, despite express limitations in the enabling act on directors' power to issue directives for employees to act. Additionally, from time to time such customary board practice would lead it to take official action outside of relevant, applicable administrative procedures.¹ The board's reliance on its bylaws-generated plenary authority thus subjects the individual members personally, as well as the bureau, to legal and compliance risks stemming from the bylaws' incongruence with applicable law. All the foregoing is to say that, the legal root cause of these issues

¹ For instance, its two recent vacant member selections at the Dec. 9, 2021 and Feb. 24, 2022 board meetings are void because the agency failed to provide an agenda giving reasonable notice of what business will be conducted at the meeting. *See* OGL § 8114.1 (Any action of a public agency taken at a meeting is void and of no effect if the public agency failed to comply with the public notice of agenda matters to be discussed pursuant to § 8107(d) of this Chapter or failed to comply with the broadcasting requirement pursuant to § 8103(d) of this Chapter.). Other, un-noticed votes are likely void, as are the quorums which counted these as elected directors, as well as votes cast by them.

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stems from the board's exercise of bureau powers through its bylaws, which have provisions that are patently inconsistent with the bureau's enabling legislation, applicable administrative law, and applicable corporate law.²

This legal review provides analyses, guidance and recommendations stemming of the bylaws' incongruous provisions. The methodology first applies the enabling act, then relevant administrative law, then applicable General Corporation Law (which is specifically permitted in the enabling act) to evaluate the provisions in the bylaws. The evaluation is intended to inform the bureau of the legal issues and risks caused by the bylaws' incongruence so that it may undertake corrective action planning and that the BRCC may oversee corrective actions.

ANALYSIS

| BYLAWS | APPLICABLE LAW | COMMENT |
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| <p>§ 9105. Powers. The Bureau shall have and exercise each and all of the following powers: ... (d) Adopt, amend and repeal reasonable by-laws, and other rules, regulations and directives, pursuant to the general corporation laws of the Territory of Guam, as may be necessary for the conduct and administration of its activities and the exercise of the powers and performance of the duties conferred or imposed upon the Bureau or the Board by this Article... .</p> | <p>The Public Corporation</p> <p>§ 9102. Creation. There is hereby created a public corporation to be known as the Guam Visitors Bureau as hereinafter provided. The corporation shall be a non-stock, non-profit membership corporation to be governed in accordance with the applicable general corporation laws of the Territory of Guam, except as provided otherwise by this Article. No Articles of Incorporation shall be required; this Article shall be its charter.</p> | <p>ADOPTION AND CONSTRUCTION OF BYLAWS</p> <p>Hierarchy of laws:</p> <ol style="list-style-type: none">1. Enabling Act/Law2. Administrative law applicable to government agencies3. General Corporation Law (GCL) primarily §§ 2203, 2204, 2209. |

² For example, the bylaws purport to give authority to the board to exercise the bureau's powers. This grant of authority is not consistent with GVB's enabling act, which expresses no powers given to the board unless authorized to a committee created pursuant to § 9105 (k). Bylaws arising from the GCL may not, therefore, create a purpose, power, right, duty, responsibility, or authority that is inconsistent with the enabling law.

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| <p>Gen. Corporation Law (GCL) § 2203. Bylaws: Provisions. A corporation may, unless otherwise prescribed by this Part, in its bylaws prescribe: (1) For the time, place, and manner of calling and conducting regular or special meeting of its directors, and the time and manner of calling and conducting regular or special meetings of ... members; (2) The number of ... members necessary to constitute a quorum for the transaction of business at meetings of ... members; (3) The conditions upon which members of nonstock corporations shall be entitled to vote; (4) The mode of securing proxies of ... members and voting them; (5) The qualifications, duties, and compensation of directors, officers, and employees; (6) The time for holding the annual election of directors and the mode and manner of giving notice thereof; (7) The manner of election and the term of office of all officers other than directors and those elected by the directors or trustees; (8) The penalties for violation of bylaws, not exceeding in any case the sum of one hundred dollars (\$100.00) ... (10) Such other matters not otherwise provided for in this Part as may be necessary for the proper or convenient transaction of the business of the corporation</p> | <p>The Board</p> <p>§ 9107. Same: Duties. The Board shall: (a) Promote visitor satisfaction with Guam as a tourist destination and facilitate the orderly growth and maintenance of the visitor industry; (b) Encourage and support the employment of local residents in job opportunities in the tourism industry. (c) Assist in the development of adequate tourist facilities and attractions, including local beautification projects; (d) Work with other entities to collect, analyze and evaluate pertinent data on the visitor industry developed by itself, other governmental and private agencies and publish and disseminate comprehensive statistics and other data on a monthly, quarterly and yearly basis. Data shall, as reasonably available, include the number of visitors, expenditures by visitors, points of origin and destination, hotel occupancy, taxes collected, jobs created and lost, percentage of U.S. and permanent residents employed at all levels in the visitor industry, and any and all other relevant information related to tourism and the visitor industry. Notwithstanding any other provision of law, all government agencies shall coordinate with the Bureau in providing the data and other information</p> | <p>This Review first applies the enabling act, second other laws applicable to government agencies, third the General Corporation Law.</p> <p>Scope of Bylaws:</p> <p>The enabling law specifically recognizes that Bylaws may provide what is necessary for (1) conduct and administration of activities, (2) exercise of powers, (3) performance of duties conferred or imposed on the Bureau or the Board.</p> <p>Procedural enactment of Bylaws:</p> <p>Rules and regulations are agency-level promulgations that are made pursuant to the Administrative Adjudication Law (AAL). Directives and board approval authorities are board-level actions authorized through resolutions passed upon a vote of 8 or more directors at an Open Government Meeting. In the absence of a rule or regulation: (a) the enabling law controls; (b) the members/directors may only adopt bylaws and give directives that fall within their respective express authorities and duties.</p> <hr/> <p>Bylaws provisions authorized under the GCL:</p> |

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| <p>§ 2204. Bylaws: Amendment or Repeal. The ... majority of the members if there be no capital stock, may, at a regular or special meeting duly called for the purpose, amend or repeal any bylaw or adopt new bylaws. [T]wo-thirds (2/3) of the members if there be no capital stock, may delegate to the board of directors the power to amend or repeal any bylaw or to adopt new bylaws; provided, however, that any power delegated to the board of directors to amend or repeal any bylaw or to adopt new bylaws shall be considered as revoked whenever a majority of the stockholders or the members of the corporation shall so vote at a regular or special meeting.</p> <p>§ 2209. Directors: How Removed. Directors of a corporation may be removed from office by a vote of two-thirds (2/3) of the members entitled to vote, or, if the corporation be a stock corporation, by the vote of the stockholders holding or representing two-thirds (2/3) of the paid up capital stock entitled to vote: Provided, however, that such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after</p> | <p>required herein so as to become an agency source for the dissemination of visitor industry statistics and information; (e) Provide advice and technical assistance to tourism development organizations in planning programs to attract visitors, and develop and disseminate literature for distribution to visitors, and potential visitors to this territory; (f) Cooperate with regional agencies promoting Micronesia and the Mariana Islands as a tourist destination; (g) Encourage and support local activities, programs and development which would enhance Guam as an attractive tourist destination; (h) Support the marketing of local arts, handicrafts and other manufactured products to visitors; and (i) Encourage local cultural activities for tourist and general public enjoyment.</p> <p>§ 9110. Employment. (a) Pursuant to the provisions of 4 GCA Section 4105, the Board shall establish rules and regulations governing selection, promotion, performance evaluation, demotion, suspension, removal and other disciplinary action for the employees of the Bureau.</p> <p>§ 9111. Contracts and Purchases. [P]urchase orders or letters of authorization will be executed by the General Manager for needed products or</p> | <p>The GCL's bylaws statutory provisions which are not already in the enabling act include: (a) The time, place, and manner of calling and conducting regular or special meeting of its directors, and the time and manner of calling and conducting regular or special meetings of members; (b) The qualifications, duties, and compensation of directors and officers; (c) The time for holding the annual election of directors and the mode and manner of giving notice thereof; (d) The manner of election and the term of office of all officers other than directors and those elected by the directors; (e) The penalties for violation of bylaws, not exceeding in any case the sum of one hundred dollars (\$100.00); and (f) Such other matters not otherwise provided for in the foregoing as may be necessary for the proper or convenient transaction of the business of the corporation.</p> <p>Bylaws under the GCL may be amended/repealed with a simple majority of the member votes. It takes 2/3 of member votes to delegate the authority to the board to adopt/amend/repeal bylaws. A simple majority of member votes, however, can revoke these delegated powers.</p> <hr/> <p>Subject matter under the enabling act:</p> |

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| BYLAWS | APPLICABLE LAW | COMMENT |
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| <p>previous notice to stockholders or members of the intention to propose such removal at the meeting. A special meeting of the stockholders or members of a corporation for the purpose of removal of directors, or any of them, must be called by the secretary or clerk on order of the president or on the written demand of a majority of the members entitled to vote, or, if it be a stock corporation, on the written demand of the stockholders representing or holding at least one-half (2) of the shares entitled to be voted. Should the secretary or clerk fail or refuse to call the special meeting demanded or fail or refuse to give notice, or if there is no secretary or clerk, the call for the meeting may be addressed directly to the members or stockholders by any member or stockholder of the corporation signing the demand. Notice of the time and place of any such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice as prescribed by § 2202 hereof. In case of removal on the vote of stockholders or the members, as the</p> | <p>provisions, pursuant to the current budget. Such purchase orders or letters of authorization for expenditures in excess of Twenty-four Thousand Nine Hundred Ninety-nine Dollars (\$24,999), except salaries, shall require prior approval by the Board of Directors.</p> <p>§ 9113. Fiscal Authority. (a) For each fiscal year there is authorized to be appropriated as part of the executive budget, money in the 'Tourist Attraction Fund', such sums as may be necessary for the Bureau to carry out the provisions of this Article. Such appropriations shall be governed by the Executive Budget Act set forth in Chapter III of Title VI of the Government Code of Guam.</p> <p>(b) All funds appropriated to the Bureau by the Government of Guam shall be considered grants in aid. No disbursement of funds of the Bureau shall be made unless the same has been approved, authorized and ordered by the Board of Directors.</p> | <p>The enabling law recognizes 4 parties with respective authorities, duties, responsibilities, powers and rights: (1) the bureau (exercises "powers" and has "purposes"); (2) membership (are "entitled to vote," may acquire "multiple" votes, may cast "as many votes as acquired" for each elected director position, but do not have "cumulative voting" rights); (3) the board (can give directives, has duties and specific approval authorities); and (4) the GM (has duties and primary responsibility for maintaining, operating, developing and administering the bureau's business affairs).</p> <p>The following 14 subject matter are expressly authorized to the Board by the enabling act including relevant provisions of the GCL ("Express Board Subject Matter" or "EBSM"):</p> <ul style="list-style-type: none">(i) Take official action by resolution; may direct employees to take action only by resolution(ii) Authority upon vote of 2/3 of the membership, pursuant to GCL § 2204, to enact or amend bylaws.(iii) The duties stated in § 9107. |

DRAFT
(v. 1.2)

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| <p>case may be, the vacancy so created may be filled by election at the same meeting without further notice, or at any general meeting or at any special meeting called for the purpose, after giving notice as prescribed by said § 2202 hereof.</p> | <p>(d) [S]hould the audit reveal any discrepancies or violations of law or of the Bureau's rules and regulations or policies, then the Board shall take steps to correct the discrepancies and to recover any expenditures not made in accordance with existing laws, rules, regulations or policies. The Public Auditor shall provide a copy of any audit conducted pursuant to this Subsection to the Attorney General. Upon the enactment of this Subsection, an audit of the Bureau shall be conducted for prior fiscal years.</p> <p>§ 9117. Grant Awards Fund and Authority to Award Grants to Organizations. There is hereby created the Guam Visitors Bureau Grant Awards Fund (Grant Fund) that is funded by sources that include, but are not limited to, appropriations from I Liheslaturan Guåhan, federal grants, and private donations. The Board of Directors of the Guam Visitors Bureau shall, subject to the availability of funds, solicit for and receive grant applications and proposals from governmental and non-</p> | <ul style="list-style-type: none"> (a) Promote visitor satisfaction (b) Encourage and support local employment (c) Assist in development of tourist facilities (d) Collect, analyze, evaluate data (e) Provide technical assistance to tourism development programs (f) Cooperate with regional agencies promoting Micronesia (g) Support local activities enhancing Guam as a destination (h) Support local arts (i) Encourage local cultural activities (iv) Determine the duties and compensation of the GM, § 9108 (a). (v) Employee or retain an attorney, § 9109 (a). (vi) Exercise fiscal authority under § 9113 (b) prior to disbursement of funds by DOA. (vii) If delegated by the membership; the authority to agree to a membership match as a condition to the payments of sums appropriated by the Legislature. |

DRAFT
(v. 1.2)

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| | <p>governmental organizations and shall, subject to the availability of funds, allocate the Grant Fund balances in each fiscal year to Categories One and Two as follows:</p> <p>(a) Category One (the total funds allocated to Category One shall not exceed fifty percent (50%) of the Grant Fund balance and revenues available each fiscal year): (1) the Department of Parks and Recreation; ... (b) Category Two (the total funds allocated to Category Two shall not exceed fifty percent (50%) of the Grant Fund balance and revenues available each fiscal year): ... (c) The Guam Visitors Bureau shall adopt rules and regulations for the Guam Visitors Bureau Grant Awards Fund program prior to the implementation of the provisions of this Section in accordance with the Administrative Adjudication Law.</p> | <p>(viii) The responsibility to promulgate personnel rules and regulations, § 9110 and 4 GCA §§ 4105 (a), (e).³</p> <p>(ix) The duty to correct discrepancies and recover unlawful or incompliant expenditures, § 9113 (d).</p> <p>(x) The prior approval authority for purchase orders \$25,000 and over, § 9111.</p> <p>(xi) The authority, under § 9117 and upon promulgation of AAL rules, regulations, to provide grants to public agencies and nonprofit organizations.</p> <p>(xii) The authority to issue stamps under § 9202.</p> <p>(xiii) Authority to access 50% of the Rainy Day Fund by resolution, § 9304, and to resolve to request the legislature for a greater proportion of the RDF.</p> <p>(xiv) Authority to give indication of the Bureau's clear strategic plans and policy recommendations to either move forward or to suspend any further efforts in developing a cruise ship industry on Guam, § 9501 (b) (2) (F).</p> |

³ GVB has personnel rules and regulations which were not promulgated under the Administrative Adjudication Law.

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
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| | <p>(d) Reporting Requirements. The Guam Visitors Bureau Board of Directors shall prepare a report with full statements of all funds received and expended out of the Grant Fund and shall transmit such report to the Speaker of I Liheslaturan Guåhan no later than thirty (30) days after the end of each fiscal year.</p> <p>§ 9202. Authorization to Issue Stamps. The Board is authorized to issue tourist stamps from time to time in such denominations and in such quantities as it finds advisable.</p> <p>§ 9304. Access to Funds, established. Following the approval of a resolution by the Board of Directors of the Guam Visitors Bureau containing: (a) a statement of facts that a natural or man-made disaster has occurred on Guam, or certain external economic conditions have been experienced; (b) a recitation of the activities to be undertaken to mitigate the potential harm to Guam's tourism industry; and (c) insufficient funds are available for such activities within the current fiscal year's operating budget; up to fifty percent (50%) of the Fund's balance may be made available to the Guam</p> | <p>Provisions falling outside of the EBSM are not authorized to the board pursuant to the enabling act.</p> <p>Guidance:</p> <p>If the board amends or enacts bylaws, it is lawful where (1) there is membership delegation of the power to amend/enact to the board by 2/3 of votes cast at a membership meeting and (2) the subject matter concerns one of the following:</p> <ul style="list-style-type: none">(i) The relevant, applicable provisions for bylaws in GCL § 2203, 2204, 2209 including matters that are necessary for the proper or convenient transaction of the business of the corporation in the administration of director elections and conduct of the meetings of members and directors;(ii) EBSMs; or(iii) if the bylaws provision pertains to an express bureau "power," the bureau through the AAL has established and delegated authority, duties and powers to a committee or subcommittee of the Board. <hr/> <p>The GM's role and status:</p> |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

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| | <p>Visitors Bureau for each such occurrence. If the activities to be undertaken require funding greater than the amount available, the Guam Visitors Bureau shall immediately notify I Liheslaturan Guåhan of their need for additional funding assistance, and seek the approval of legislation to expend more than the fifty percent (50%) authorized herein.</p> <p>§ 9501 (b) (2) (F). Delivery Period/ Dissemination. GVB shall publicly disseminate the [RFI soliciting and determining public interest and the desired direction that public policymakers may take relative to the development, management and operation of a cruise ship industry on Guam] in a manner to solicit the broadest number of qualified interested respondents ... GVB shall adhere to the following schedule: ... a GVB board resolution indicating the Bureau's clear strategic plans and policy recommendations to either move forward or to suspend any further efforts in developing a cruise ship industry on Guam</p> | <p>The GM is the bureau's chief administrative officer with statutorily enacted primary responsibility for maintenance, operation, development, and administration its business affairs.</p> <p>Where a right, duty or authority is not conferred on the members or the board, the GM's may act pursuant to his primary responsibility for the bureau's business affairs and the GM's authority as administrative head of, the bureau.⁴</p> <hr/> <p>The Legislature:</p> <p>The legislature has authority to change GVB's enabling act or disapprove a proposed rule or regulation under AAL procedures.</p> <hr/> <p>Guidance:</p> <p>The following are authorized to the members/ directors for adoption or enactment of provisions of the bylaws:</p> |

⁴ The GM's responsibility and authority thus recognizes that the GM may exercise discretion (take responsibility) to violate an order of the board where he has concluded the board has no rights, powers, authorities, or duties related to a business affair of the bureau. Where the board disagrees, it has authority to determine the duties of the GM or resolve to terminate the GM on a noticed vote at a public meeting.

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

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| | <hr/> <p>The Membership</p> <p>See Art. IV below.</p> <hr/> <p>The GM</p> <p>§ 9108. General Manager. (a) [T]he General Manager shall serve as the Bureau's chief administrative officer, and his duties and compensation shall be determined and approved by the Board. The General Manager will serve at the pleasure of the Board. (b) The day-to-day operations of the Bureau shall be the province of the General Manager. The General Manager shall be primarily responsible for the maintenance, operation, development, and administration of the Bureau's business affairs. (c) The duties of the General Manager shall include the following: (1) Insuring that the Board's rules and regulations are enforced; (2) Attending all Board meetings unless excused by the Board; (3) Keeping the Board advised as to the needs of the Bureau; (4) Approving demands for the payment of obligations of the Bureau within the purposes and amounts authorized by the Board; (5) Selecting, appointing,</p> | <p>EXPRESS PROVISIONS FOUND IN THE ENABLING LAW (XBLP):</p> <ul style="list-style-type: none"> • Conduct and administration of the Bureau's activities is responsibility of the GM as CAO, including any duties assigned to the GM by the board; • Performance of duties and exercise of authorities conferred or imposed on the board (EBSM). • Provisions governing the exercise of Bureau powers, authorized by rule or regulation giving such to a committee of the board pursuant to § 9105 (k). <p>RELEVANT GOVERNANCE PROVISIONS UNDER THE GENERAL CORPORATION LAW—ALL SUBJECT TO THE ENABLING LAW AND APPLICABLE ADMINISTRATIVE LAW (GCLGP):</p> <ul style="list-style-type: none"> • The time, place, and manner of calling and conducting regular or special meetings of directors, and the time and manner of calling and conducting regular or special meetings of members. • The qualifications, duties, and compensation of directors and officers. |

DRAFT
(v. 1.2)

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|--|---|--|
| | <p>terminating, with or without cause, and supervising employees of the Bureau; (6) Publishing a financial report in a manner provided by the Board within one hundred twenty (120) days from the end of each fiscal year showing the result of operations for the preceding fiscal year and the financial status of the Bureau on the last day thereof; (7) Rendering a monthly accounting statement to the Board in such form as the Board directs; (8) Annually submitting to the Board and the Governor programs and financial plans in accordance with the provisions of the Executive Budget Act set forth in Title VI, Chapter III of the Government Code of Guam; and (9) Performing such other and additional duties as the Board may direct.</p> <hr/> <p>The Legislature</p> <p>§ 9115. Reservation of Powers. The Legislature hereby reserves the power to alter, amend or repeal any or all of the sections of this Article.</p> | <ul style="list-style-type: none">• The time for holding the annual election of directors and the mode and manner of giving notice thereof.• The manner of election and the term of office of all officers other than directors and those elected by the directors.• The penalties for violation of bylaws, not exceeding in any case the sum of one hundred dollars (\$100.00).• Such other matters not otherwise provided for in the foregoing as may be necessary for the proper or convenient transaction of the business of the corporation. |
| Art. I Purpose for the Corporation. | Enabling act § 9104 provides the purpose of GVB. | Art. I is not related to an express bylaws provision under the enabling act (XBLP) or a governance provision in the GCL (GCLGP) and should be repealed. |

DRAFT
(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
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| <p>Art. II Nonprofit, nonstock corporation The corporation shall be nonprofit and non-stock, and no dividends or pecuniary profits shall be declared or paid to the members. It shall not have the power to issue certificates of stock or declare dividends, and no part of its earnings shall inure to the benefit of any member, directors or individual. The balance, if any, of all money received by the corporation from its operations, after the payment in full of all debts and obligations of the corporation of whatever kind or nature, shall be used and distributed exclusively for the corporation's primary purpose.</p> | <p>§ 9102. Creation. There is hereby created a public corporation to be known as the Guam Visitors Bureau as hereinafter provided. The corporation shall be a non-stock, non-profit membership corporation to be governed in accordance with the applicable general corporation laws of the Territory of Guam, except as provided otherwise by this Article. No Articles of Incorporation shall be required; this Article shall be its charter.</p> | <p>Art. II is not XBLP or GLCGP and should be repealed.</p> |
| <p>Art. III. OFFICES Sec. 1. The principal office for the transaction of business of the corporation is hereby fixed and located in Tumon, Territory of Guam. The Board of Directors is hereby granted full power and authority to change said principal office from one location to another within the Territory of Guam.</p> | <p>§§ 9106 (a), (b); 9105 (f), (k).</p> | <p>Sec. 1, 2 are not XBLP or GCLGP and should be repealed.⁵</p> |

⁵ Transfer of an interest in Gov Guam land is subject to legislative approval under 21 GCA § 60112; *see also* YTK case.

DRAFT
(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
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| Sec. 2. Branch, subordinate or representative offices may, at any time, be established by the Board of Directors at any place or places. | | |
| Art. IV MEMBERS Sec. 1-3. Eligibility, Classes, Rights--Already covered under enabling act. Sec. 4 Mailing addresses—procedure for maintaining records. Section 5. TERMINATION OF MEMBERSHIP. A. <u>Automatic Termination of Membership.</u> Membership and all rights of membership shall automatically terminate on the occurrence of any of the following: (a) The General Manager's receipt of a written resignation signed by a member; or (b) The death of a natural person possessing a membership; or (c) The dissolution of an artificial person possessing a membership. B. <u>Procedure for Involuntary Termination of Membership.</u> Conduct which is found by two-thirds (2/3) vote of the Board to be injurious to the good order, peace, | § 9112. Members. (a) Any person including natural persons, partnerships, and corporations shall be entitled to be a member of the Bureau. (b) There shall be two (2) classes of membership: (1) 'Contributing Members' who shall be those members contributing the sum of One Hundred Dollars (\$100.00) or more annually; and (2) 'Honorary Members' being those members contributing less than One Hundred Dollars (\$100.00) annually. Only contributing Members shall be entitled to vote, however, membership meetings shall be open to all members. (c) Contributing members may acquire multiple voting rights on the basis of one (1) vote for each annual contribution of One Hundred Dollars (\$100.00), payable in lump sum or installments, provided, no single membership shall be entitled to more than ten (10) votes. All contributions of contributing members herein mentioned shall be cash and must be paid in full ninety (90) days prior to having any voting rights. | Sec. 1-3 is not XBLP or GCLGP and should be repealed. Sec.4 is permissible as GCLGP. Sec. 5. A is permissible as GCLGP. Sec. 5 B. is not XBLP or GCLGP and should be repealed. |

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(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|--|----------------|
| <p>reputation, or best interest of the corporation shall be grounds for termination of a member. Prior to termination, a member shall be given seven (7) calendar days prior written notice of the proposed termination and a timely opportunity to be heard on the matter of the termination. The notice of termination shall be served on the member by mail sent to the address provided pursuant to section 4 of this Article. The opportunity to be heard may, at the election of the Board, be oral or in writing. The hearing, if any, may be conducted at the principal offices of the corporation by the Board of Directors or a committee composed of two or more persons designated by the Chairperson of the Board with the approval of the Board. The committee may, at its discretion, employ procedures in its deliberation that it deems necessary including the following:</p> <p>(i) Reading the charges against the subject member;</p> <p>(ii) Requiring that the charges be verified</p> | <p>(d) A quorum of the membership shall require attendance of at least fifty percent (50%) of the total voting power of the members. Except as otherwise provided by law, any act of the members shall require a vote of a majority of the voting power of the members present at any meeting duly held. Contributing members may be present and may vote by proxy, provided written authorization of proxy is delivered to the Secretary or General Manager, or the Chairperson of the meeting at least twenty-four (24) hours prior to the commencement of the meeting which is the subject of the proxy.</p> <p>(e) Notwithstanding any other provision of law, government funds of any department, agency or instrumentality of the government may not be used to pay membership dues or acquire voting rights. Any such funds used to acquire or continue membership or acquire or continue voting rights after October 1, 1985 shall be reimbursed to the affected department, agency or instrumentality of the government.</p> <p>(f) At elections of directors by the membership, each member who has acquired the right to cast votes at such election shall cast as many votes as the member has acquired for each of four (4)</p> | |

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(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|--|----------------|
| <p>by the testimony of the person or persons making them;</p> <p>(iii) Hearing witnesses against the subject member;</p> <p>(iv) Allowing the subject member to cross examine each witness following the testimony of that witness;</p> <p>(v) Allowing the subject member to make a statement on its behalf;</p> <p>(vi) Allowing the subject member to call witnesses in its own behalf; and</p> <p>(vii) Allowing the persons comprising the committee conducting the hearing to question each witness after they have been questioned by the subject member.</p> <p>Any committee so designated shall, after due hearing, make a report to the Board with its finding and recommendations; and the Board may act upon such report with or without further hearings, as the Board deems proper</p> | <p>candidates. Notwithstanding the provisions of Section 307 of the Civil Code, cumulative voting is prohibited.</p> | |

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(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
|--|---|--|
| <p>Art. V Member Meetings.</p> <p>Sec. 1-. Place of member meetings set by board.</p> <p>Sec. 2. Annual meetings shall be held in September of each year on the date and time determined by the Board of Directors. At such meetings, reports of the affairs of the Corporation shall be considered and any other business may be transacted which is within the powers of the members.</p> <p>Sec. 3. Quarterly meetings shall be held in the months of March, June and December on dates and times determined by the Board of Directors</p> <p>Sec. 4. Election meetings. The contributing members shall meet on the first Tuesday after the first Monday in January every odd numbered year to elect directors or at such other dates and times as determined necessary by a two-thirds (2/3) vote of the Board of Directors.</p> <p>Sec. 5. Special meetings. Special meetings of the members, for any purpose or purposes whatsoever may be called at any time by the General Manager,</p> | <p>OGL § 8103 (a) (meetings of public agencies shall be open and public); § 8104 (b) (meeting occurs when a governing body convenes with a quorum in order to make a decision or to deliberate toward a decision on any matter); §§ 8107, 8107.1, (notice requirements); § 8103 (d) (requirement to live stream meetings); § 8113 (requirement for minutes); § 8113.1 (reporting requirements).</p> <p>§ 9112 (c) (10-vote membership limit), (d) (quorum of 50% total voting power, proxy rules), (f) (10-member vote limit for each of the 4 director seats, no cumulative voting).</p> <p>GCLGP:</p> <p>§ 2207. Elections; Method of Voting. At elections of directors there must be present, either in person or by representative authorized to act by written proxy ... a majority of the members entitled to vote. The elections must be by ballot ... Members of corporations which have no capital stock may cast as many votes for one director as there are directors to be elected. Any meeting of the ... members called for an election may adjourn from day to day or from time to time if for any reason no election is</p> | <p>Guidance: Because member meetings for which a quorum is required in order to conduct bureau business, including (i) discussion and deliberation towards a vote; (ii) the exercise of voting power; (iii) the adoption, repeal, amendment of bylaws; and (iv) election of directors, member meetings are subject to the OGL, including its notice, livestream, reporting, and minute-keeping provisions.</p> <p>Sec. 1, 2, 3, 4, 5, 6A, 6B, 7, 8, 9, 10 are permissible as GCLGP, in compliance with the OGL.</p> |

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|--|---------|
| <p>or by the Board of Directors, or by any two or more Directors, or by one or more contributing members holding not less than one-fourth (1/4) of the membership voting power as determined existing as of the date of the most recent annual meeting of the members.</p> <p>Sec. 6 Notice of meetings, procedure. (a) (i) Notice of annual, quarterly, special meetings or election meetings shall be given in writing to contributing members by the Secretary or the Assistant Secretary, or if there will be no such officer, or in case of such officers neglect or refusal, by the General Manager, any Director, or contributing member. Such notice may be given to contributing members on Guam by mailing the same at least ten (10) days before such meeting, postage prepaid, and addressed to each contributing member at the address appearing upon books of the corporation or by personal delivery of such notice. Said notice may be made by electronic mail.. Service of said notices may be proved by affidavit of the person serving or mailing the notice. Non-receipt of any such notice shall not invalidate any business done at any meeting at which a quorum was present. (ii) Notice for the annual meeting</p> | <p>had or if there are not present or represented by proxy at the meeting the owners of ... a majority of the members entitled to vote.</p> <p>§ 2202. Directors' Election; Notice of Election. At the meeting for the adoption of the original bylaws, or at such subsequent meeting as may be then determined, directors shall be elected to hold their offices for one (1) year and until their successors are elected and qualified. Thereafter the directors of the corporation shall be elected annually ... by the members if it be a nonstock corporation, and if no provision is made in the bylaws for the time of election the same shall be held on the first Tuesday after the first Monday in January; unless otherwise provided in the bylaws, ten (10) days' notice of the election of directors must be given to stockholders. All such notices to stockholders in Guam shall be written or printed and delivered personally to such stockholders. Service of said notices may be proved prima facie by affidavit of the person serving the notice. Written or printed notice must be addressed to each stockholder, absent from Guam, at his place of residence as shown by the books of the corporation and registered and deposited so addressed in the post office with postage prepaid. Service of said notice may be proved prima facie by</p> | |

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(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
|--|--|----------------|
| <p>wherein contributing members will elect Directors shall be posted for a period of three weeks immediately proceeding the election in at least three (3) public places, in the place where the principal office of the corporation is located. (iii) Notice of all annual, quarterly, special meetings, and election meetings shall be given to all members of publication in at least one (1) newspaper of general circulation in the Territory of Guam at least once, not later than two days prior to the date of the meeting. (iv) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not, however, be necessary to give any notice of the adjournment or of the business to be transacted in an adjourned meeting other than by announcement at the meeting at which such an adjournment is taken.</p> <p>Sec. 6 (B) Notice of any meeting of members shall specify the place, the date and the hour of the meeting, and in the case of a special meeting, the general nature of the business to be transacted and the identity of person or persons calling the special meeting.</p> | <p>the post office receipt of the registered letter. A notice of the election of directors shall be posted for a period of three (3) weeks, immediately preceding the election in at least three (3) public places, in the place where the principal office of the corporation is located.</p> | |

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-----------------------|----------------|
| <p>Sec. 7 Consent to meeting. The transaction of any meeting of members, however, called and noticed shall be valid as though conducted at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if either before or after the meeting, each of the contributing members entitled to vote, not present in person by proxy, signs a written waiver of notice or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.</p> <p>Sec. 8 Quorum. The presence, in person or by proxy, of contributing members possessing at least fifty percent (50%) of the total voting power of the membership at any meeting shall constitute a quorum for transaction of business, except as otherwise provided by law or by these By-laws.</p> <p>If, however, such percentage of votes shall not be present or represented at any meeting of the members, the members entitled to vote thereat, present in person, or by proxy shall have the power to adjourn the meeting from time to time, until the requisite amount of votes shall be present.</p> | | |

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(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-----------------------|----------------|
| <p>At such adjourned meeting, at which the requisite amount of votes shall be represented, any business may be transacted which might have been transacted at the meeting as originally notified.</p> <p>The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. However, any act of the members shall require a vote of the majority of the voting power of the members entitled to vote present at the commencement of business at any meeting duly held.</p> <p>Sec. 9 Cumulative voting not allowed. Contributing members entitled to vote may cast as many votes as the member has acquired for each of the four (4) elected directorship. However, no member shall have the right to cumulate votes except as provided by Guam law.</p> <p>Sec. 10 Proxies. Every contributing member entitled to vote or execute consents shall have the right to do so, either in person or by one or more agents authorized by written proxy executed by such person or a duly authorized agent and filed</p> | | |

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(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|--|---|
| <p>with the Secretary, General Manager or Chairperson of the meeting at least twenty-four (24) hours prior to the membership meeting at which the proxy will be exercised. Any proxy duly executed and filed with the Secretary is not revoked and continues in full force and effects until an instrument revoking it or a duly elected proxy bearing a later date is filed with the Secretary or General Manager of the Corporation or until three (3) months from the date of the proxy, whichever first occurs. All proxies must be executed in accordance with the provisions of the Civil Code of Guam.</p> | | |
| <p>Art. VI, Sec. 1. POWERS. Subject to the limitations of the By-Laws and the laws of the Territory of Guam as to action to be authorized or approved by the members, all corporate powers shall be exercised by or under authority of, and the business and affairs of this corporation shall be controlled by, a Board of Directors.</p> <p>Sec. 2 Classes. There shall be four (4) classes of Directors: Appointed Directors, Elected Directors, Legislative Directors, and a Twelfth Director.</p> | <p>§ 9108 (a), (b) (GM's primary responsibility for the business affairs of the bureau as its Chief Administrative Officer (CAO)).</p> <p>§ 9105. Powers. The Bureau shall have and exercise each and all of the following powers: ... (k) Establish and delegate its authority to any committee or subcommittee of the Board of Directors, and to determine the composition, duties and powers of any such committee.</p> <p>(grant of bureau powers to a committee of the board through a rule or regulation).</p> | <p>Sec. 1 is not XBLP and should be repealed. Sec. 1 is contrary to § 9106 (a) to the extent it purports to give the authority for, and exercise of, corporate powers to the board. Powers may only be exercised through a rule or regulation providing for the establishment of a committee of the board and delegation of a bureau power to that committee. Sec. 1 is inconsistent with § 9108 (b) because it gives control of the business and affairs of the corporation to the board (ostensibly pursuant to</p> |

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|--|--|
| <p>Sec.3 Number. The authorized number of the voting directors of the corporation shall be twelve (12) until changed by the amendment to the laws of the Territory of Guam. There shall be five (5) appointed directors, four (4) elected directors, two (2) legislative directors and one (1) twelfth director.</p> <p>Sec. 4 Election and term. A. Appointed Directors <u>The five (5) appointed directors shall be members of the corporation and shall be appointed by the Governor</u> in accordance with the law and with the advice and consent of the Legislature. Each appointed director shall serve on the Board at the pleasure of the Governor. B. Elected Directors. The four (4) elected directors shall be contributing members in good standing elected by the membership. Each elected director shall serve a term of two (2) years. C. Legislative Directors. The two (2) legislative directors shall be members of the corporation and shall be appointed by the speaker of the Guam Legislature. Each legislative director</p> | <p>§ 9106 Board. (a) The exercise of the powers of the Bureau shall be directed by the Board of Directors composed of twelve (12) members selected in accordance with this Section. Five (5) directors, referred to as ‘appointed directors’ shall be members and shall be appointed by the Governor with the advice and consent from the Legislature. One of the appointed directors shall be a commissioner or assistant commissioner selected by the Commissioner’s Council. Two (2) members shall be appointed by the Speaker of the Guam Legislature and shall be referred to as the ‘Legislative Directors’. Four (4) directors, referred as ‘elected directors’ shall be contributing members in good standing elected by the membership. The five (5) appointed, the legislative directors and four (4) elected directors shall then select the twelfth (12th) director by a vote requiring concurrence of eight (8) of the directors. The twelfth (12th) director shall be actively and directly involved in the tourism industry.</p> | <p>GCL § 2205),⁶ but under the enabling act, the primary responsibility for business affairs is the GM’s.</p> <p>Recommendation: The GM under § 9108 is primarily responsible administering the affairs of the bureau. Under its EBSM the board may consider imposing a duty of the GM to ensure that board directives or the exercise of approval authority is pursuant to lawful action taken at public meeting through a resolution duly passed. Agenda items should be solicited for publication. The item must identify the specific resolution to be voted on and provide information sufficient to put the public on notice of the subject matter to be voted on. The subject matter of the proposed resolution must be a directive relating to EBSM.</p> <p>Sec. 2, 3, 4 are not XBLP or GCLGP and should be repealed.</p> |

⁶ **GCL § 2205. Corporation Management; Directors.** Unless otherwise provided in this Part, the corporate powers of all corporations formed under this Part shall be exercised, all business of such corporations conducted, and all property of such corporations controlled and held by a board of not less than three (3) nor more than eleven (11) directors to be elected from among the holders of stock, or, where there is no stock, from the members of the corporation

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|--|---|--|
| <p>shall serve a term of two (2) years. D. Twelfth Director. The appointed directors, legislative directors, and elected directors shall select the twelfth director by vote requiring a concurrence of at least eight (8) of the directors. The person so elected shall be actively involved in the Tourism industry. The twelfth director shall serve a term of (2) two years.</p> <p>Section 5. NOMINATION OF ELECTED DIRECTORS. Prior to the election of elected directors, a nominating committee consisting of the elected directors and four (4) contributing members chosen by the elected directors in any manner they deem appropriate, shall solicit the membership and present a list of recommended</p> | <p>There shall be one (1) alternate director who shall be appointed by the Speaker of the Legislature with the consent of the Legislature. He shall have no voting power unless and until a member of the Board of Directors is absent from a meeting. The alternate shall replace the first absent director. Should a absent director, who has been replaced by an alternate arrive at a meeting, his voting power displaces that of the alternate on any matters which arise after his arrival. The alternate director shall not replace a director who is present at a meeting but chooses to leave prior to the close of the meeting.</p> <p>The Board of Directors shall elect from amongst its body a chairperson and vice chairperson.</p> | <p>Sec. 5 is permissible GCLGP, however, must conform to the Act and administrative law and regulation.</p> <p>Guidance: Sec. 5 is the only provision providing a procedure for nomination of elected director positions. When an elected director position is vacant, a nomination procedure should be followed to generate nominees prior to selection by vote of the other elected directors.</p> <p>Sec. 6 A is XBLP, however, it should be within the administrative responsibility of the GM as the CAO.</p> <p>Sec. 6 B is permissible XBLP; GCL § 2209 also affords the power to remove directors to the members.⁷</p> |

⁷ 18 GCA § 2209. Directors: How Removed. Directors of a corporation may be removed from office by a vote of two-thirds (2/3) of the members entitled to vote, or, if the corporation be a stock corporation, by the vote of the stockholders holding or representing two-thirds (2/3) of the paid up capital stock entitled to vote: Provided, however, that such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the intention to propose such removal at the meeting. A special meeting of the stockholders or members of a corporation for the purpose of removal of directors, or any of them, must be called by the secretary or clerk on order of the president or on the written demand of a majority of the members entitled to vote, or, if it be a stock corporation, on the written demand of the stockholders representing or holding at least one-half (2) of the shares entitled to be voted. Should the secretary or clerk fail or refuse to call the special meeting demanded or fail or refuse to give notice, or if there is no secretary or clerk, the call for the meeting may be addressed directly to the members or stockholders by any member or stockholder of the corporation signing the demand. Notice of the time and place of any such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice as prescribed by § 2202 hereof. In case of removal on the vote of stockholders or the members, as the case may be, the vacancy so created may be filled by election at the same meeting without further notice, or at any general meeting or at any special meeting called for the purpose, after giving notice as prescribed by said § 2202 hereof.

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|--|---|---|
| <p>nominees. Nominations other than those recommended by the nominating committee may be made by any member by filing the name with the Vice-Chairperson of the Board, the Secretary or the General Manager. Each nominee must be a contributing member in a good standing and must confirm the willingness to serve, if elected, before being put on the slate.</p> <p>Section 6. RESIGNATION AND REMOVAL OF DIRECTORS. A. Resignation. The resignation of a director shall be effective upon the Chairperson of the Board's receipt and acceptance of a written statement of resignation signed by the director.</p> <p>B. Removal of Directors. <u>The elected directors, legislative directors, and twelfth director may be removed for cause upon the vote of not less than eight (8) directors or with or without cause upon the vote of not less than two-thirds (2/3) of the total number of votes of contributing members entitled to vote at a properly called meeting of the contributing members at which a quorum is present.</u></p> | <p>The twelfth (12th) director from a previous board shall not be held over solely to act as the twelfth (12th) director of a new board. The twelfth (12th) director of a new board. (sic) The twelfth (12th) director of a previous board may be appointed as the twelfth (12th) director of any subsequent board as set forth herein.</p> <p>(b) Eight (8) directors shall constitute a quorum of the board for the transaction of all business. No director shall be entitled to vote his or her vote by proxy.</p> <p>(c) Elected and alternate directors, the legislative directors and the twelfth (12th) director shall serve for two (2) years.</p> <p>(d) (1)Appointed directors shall serve at the pleasure of the Governor. (2) Legislative Directors and the alternate director shall serve at the pleasure of the Speaker of the Guam Legislature.</p> <p>(e) Elected and alternate directors, the legislative directors and the twelfth (12th) director may be removed for cause upon the vote of not less than eight (8) directors or with or without cause upon the vote of not less than two-thirds (2/3) of the total</p> | <p>Guidance: The GM as CAO has administrative responsibility for investigating cause to remove a director. The procedure for removal is given by the enabling act to the directors and by the GCL to the members. The Bylaws should also provide for the members' procedure for removal of a director for cause.</p> <p>Sec. 7 A, 7 B, 7 C, 7 D, 7 E, 8 are not XBLP or GCLGP and should be repealed.</p> <p>Sec. 9 is permissible GCLGP but the provision that meetings are valid on written consent communicated by directors outside of a public meeting is an OGL risk because resolutions concerning the validity of a meeting should be presented as an agenda item under the OGL.</p> <p>Sec. 10, 11, 12, 13, 14, 15 are permissible GCLGPs.</p> <p>Sec. 16's provision that "[a]ny resolution of the Board shall require concurrence of the majority of the directors present at any properly held meeting of the Board" is inconsistent with § 9106 (i) which requires that resolutions be duly passed on 8 votes and should be repealed.</p> |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|--|---|--|
| <p>Appointed directors may be removed, with or without cause, only by the Governor of the Territory of Guam. A director's absence from three consecutive regular meetings without reasonable excuse shall constitute cause for removal of a legislative director, elected director or twelfth director. An appointed director's absence from the three consecutive regular meetings without reasonable excuse shall constitute a basis for the Chairperson of the Board advising the Governor of such absence and recommending removal of such appointed director.</p> <p>Sec. 7. Vacancies. A. Elected Directors. A vacancy of an elected directorship shall be filled by the vote of at least two (2) of the remaining elected directors, and each director so elected shall serve the remaining term of the vacant directorship.</p> <p>B. Appointed Directors. A vacancy of an appointed directorship shall be filled by appointment of the Governor with the advice and consent of the legislature. Such person shall serve at the pleasure of the Governor. A person filling a</p> | <p>number of votes of the contributing members at a properly called meeting of the contributing members at which a quorum is present.</p> <p>(f) (1) A vacancy on the Board, whether created by resignation or removal, of a director who was appointed by the Governor shall be filled by appointment of the Governor with the advice and consent of the Guam Legislature. Said persons shall serve at the pleasure of the Governor.</p> <p>(2) The Speaker of the Guam Legislature shall fill vacancies on the Board, whether created by resignation or removal, of the Legislative Directors and the alternate director. Said persons shall serve at the pleasure of the Speaker of the Guam Legislature.</p> <p>(g) A vacancy on the Board (whether created by resignation or removal) of an elected member shall be filled by selection by at least two of the remaining elected directors. An elected director filling a vacancy shall serve only until the end of the term of the director whom he replaced.</p> <p>(h) A vacancy on the Board (whether created by resignation or removal) of the twelfth (12th)</p> | <p>Sec. 17, 18 are permissible XBLP.</p> |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|--|--|---------|
| <p>vacancy in an appointed directorship by the Governor shall serve the remaining term of the vacant directorship.</p> <p>C. Twelfth Director. A vacancy of the Twelfth directorship shall be filled by a vote requiring the concurrence of at least eight (8) of the remaining directors. A person filling a vacancy in the twelfth directorship shall serve the remainder of the term of the replaced twelfth director.</p> <p>D. Legislative Director. A vacancy of legislative directorship shall be filled by appointment of the Speaker. A person filling a vacancy in a legislative directorship shall serve the remainder of the term of the replaced legislative director.</p> <p>E. Vacancy. A vacancy shall be deemed to exist in case of the death, resignation or removal of a director or in the event the members fail at any time to elect the full number of authorized elected directors.</p> <p>Sec. 8 Alternate Director. There shall be one (1) alternate director appointed by the Speaker with the consent of the Legislature. The alternate director shall serve a term of two (2) years and</p> | <p>director shall be filled by selection of at least eight (8) of the directors. A person filling a vacancy of the twelfth (12th) director shall serve only until the end of the term of the director whom he replaced.</p> <p>(i) The Board shall act only by resolution at a meeting duly held. Neither the chairperson nor vice-chairperson nor any individual director or group of directors shall have any authority to direct any employee of the Bureau except by resolution adopted as herein provided. Any resolution or action of the Board shall require an affirmative vote of eight (8) at a properly held meeting of the Board.</p> <p>(j) Special meetings of the Board of Directors may be called at any time by the Chairperson, or in the Chairperson's absence, the Vice-Chairperson; or, by the General Manager on the written instruction of any two (2) directors.</p> <p>(k) Neither an elected Director of the eleventh director shall serve more than two consecutive terms.</p> <p>(l) A vacancy on the Board (whether created by resignation or removal) of the legislative member shall be filled by appointment of the Speaker. The</p> | |

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(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|--|--|---------|
| <p>shall have no voting power unless and until a member of the Board of Directors is absent from a meeting. The Alternate Director shall replace the first absent director. Should an absent director, who has been replaced by the alternate director arrive at a meeting, his voting power displaces that of the alternate on any matter which may arise after his arrival. The alternate director shall not replace a director who is present at a meeting but chooses to leave prior to the close of the meeting. An alternate director may be removed in the same manner as an elected, legislative or twelfth director.</p> <p>Sec. 9. PLACE OF MEETINGS. Regular meetings of the Board of Directors shall be held at any place within the Territory of Guam which has been designated from time to time by resolution of the Board, or by written consent of all directors. In the absence of such designation, regular meetings shall be held at the principal office of the corporation. Special meetings of the Board may be held either at a place so designated or at the principal office. <u>Any meeting shall be valid, whenever held, if held by the written consent of all directors, given either before or after the meeting and filed with the</u></p> | <p>legislative director filling a vacancy shall serve only until the end of the term of the director whom he replaced.</p> <p>(m) Appointments made by I Maga'lahi [the Governor] shall conform to the requirements of 4 GCA §2105.</p> <p>(n) Appointments made by I Maga'lahi [the Governor] shall include an individual who possesses expertise in our island's folk arts, culture, language, heritage or history.</p> <p>GCL § 2209. Directors: How Removed. Directors of a corporation may be removed from office by a vote of two-thirds (2/3) of the members entitled to vote ... Provided, however, that such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to ... members of the intention to propose such removal at the meeting. A special meeting of the ... members of a corporation for the purpose of removal of directors, or any of them, must be called by the secretary or clerk on order of the president or on the written demand of a majority of the members entitled to vote ... Should the secretary or clerk fail</p> | |

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(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|---|----------------|
| <p><u>Secretary of the corporation.</u></p> <p>Sec. 10 Directors' Election Meetings. Immediately following each election meeting of the members, the Board of Directors shall hold its annual meeting for the purpose of organization, election of officers, and the transaction of other business.</p> <p>Sec. 11 Regular meetings. Regular meetings of the Board of Directors shall be held twice monthly on the second and fourth Thursday of each month unless changed by a two-thirds (2/3) vote of the Board of Directors. Notice of such regular meetings shall be mailed, including by electronic mail, or delivered personally to each director at least five (5) days prior to the meeting.</p> <p>Sec. 12 Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairperson or, in the Chairperson's absence, the Vice-Chairperson. Written notice of the time and place of special meetings shall be delivered personally to the directors or sent to each director's address as it is shown upon the records of the corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meeting of the directors is regularly</p> | <p>or refuse to call the special meeting demanded or fail or refuse to give notice, or if there is no secretary or clerk, the call for the meeting may be addressed directly to the members ... by any member ... of the corporation signing the demand. Notice of the time and place of any such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice as prescribed by § 2202 hereof. In case of removal on the vote of ... the members ... the vacancy so created may be filled by election at the same meeting without further notice, or at any general meeting or at any special meeting called for the purpose, after giving notice as prescribed by said § 2202 hereof.</p> | |

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(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-----------------------|----------------|
| <p>held. In case such notice is mailed, it shall be deposited in the United States mail at the place in which the principal office of the corporation is located at least forty-eight (48) hours prior to the time of the holding of the meeting. In case such notice is delivered as provided, it shall be so delivered at least twenty-four (24) hours prior to the time of the holding of the meeting. Alternately, notice may be provided by email at least twenty-four hours prior to the time of the holding of the meeting. Such mailing or delivery as above provided shall constitute due, legal and actual notice to such director.</p> <p>Sec. 13 Notice. Notices of meetings shall be given in accordance with Guam's open government laws.</p> <p>Sec.14 Waiver of notice. When all the directors are present at any directors' meeting, however called or noticed, and sign a written consent thereto on the records of such meeting, or, if a quorum of the directors are present, and if those not present sign in writing a waiver of notice of such meeting, whether prior to or after the holding of such meeting, which waiver shall be filed with the Secretary of the corporation, the transactions thereof are as valid as if had at a meeting regularly</p> | | |

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(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-----------------------|----------------|
| <p>called and noticed.</p> <p>Sec. 15 Notice of adjournment. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting adjournment.</p> <p>Sec. 16 Quorum. Eight (8) directors shall be necessary to constitute a quorum for the transaction of business; provided that a minority of the directors, in the absence of a quorum, may adjourn from time to time, but may not transact any business. Members may attend any regular or special Board meeting telephonically. Any resolution of the Board shall require concurrence of the majority of the directors present at any properly held meeting of the Board.</p> <p>Sec. 17 No action without meeting. The Board shall act only by resolution at a meeting duly held. Any resolution of the Board shall require an affirmative vote of eight (8) directors at a properly held meeting of the Board. Neither the Chairperson nor Vice-Chairperson nor any individual director or group of directors shall have any authority to direct any employee of the corporation except by resolution of the Board of</p> | | |

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(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|--|---|--|
| Directors. Sec. 18 Proxies. No director shall be entitled to vote by proxy. | | |
| Art. VII Sec. 1 OFFICERS. The officers of the corporation shall be a General Manager, Treasurer, Secretary, Chairperson of the Board and Vice-Chairperson of the Board. The Secretary or Treasurer shall be residents of Guam but need not be directors. The corporation may also have, at the discretion of the Board of Directors, one (1) Deputy Manager, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in the accordance with the provisions of Section 3 of this Article 7. No person may hold more than one office. Section 2. APPOINTMENT AND ELECTION OF OFFICERS. The General Manager, Chairperson of the Board, Vice-Chairperson of the Board, Vice-Chairperson of the Board, Secretary and Treasurer shall be elected by a two-thirds (2/3) majority vote of the Board of | § 9106 (a) (election of chairperson, vice chairperson); § 9108 (GM's duties and responsibilities). § 9107. [Board]: Duties. The Board shall: (a) Promote visitor satisfaction with Guam as a tourist destination and facilitate the orderly growth and maintenance of the visitor industry; (b) Encourage and support the employment of local residents in job opportunities in the tourism industry. (c) Assist in the development of adequate tourist facilities and attractions, including local beautification projects; (d) Work with other entities to collect, analyze and evaluate pertinent data on the visitor industry developed by itself, other governmental and private agencies and publish and disseminate comprehensive statistics and other data on a monthly, quarterly and yearly basis. Data shall, as reasonably available, include the number of visitors, expenditures by visitors, points of origin and | Sec. 1, 2, 5 are permissible GCLGPs and XBPLs. ⁸ Sec. 3 is valid for ceremonial titles. However, prior approval for an officer with actual authority is necessary where the duty is related to subject matter that is XBLP. Sec. 4 cannot apply to employees because the terms of their employment are governed by personnel rules and regulations. Sec. 6, 7, 8 is permissible XBLP but not to the extent it confers or imposes a power on an officer outside of the enabling law or delegation under § 9105 (k). "Power" should be avoided since it may connote an authority to act that is conferred or imposed on the Bureau but not on the board or the chairperson, vice chairperson, GM or DGM. |

⁸ Sec. 4's provision regarding removal and resignation of the GM, DGM and personal secretary to the GM (*viz* "[O]therwise directly adversely affected primarily or substantially for politically motivated cause") is likely too vague to be enforceable. 4 GCA §§ 4101, 4205 are controlling for employees who are officers.

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|---|--|--|
| <p>Directors, and each shall hold office until submission of a letter of resignation, removal or otherwise disqualified to serve, or until a successor has been elected and qualified.</p> <p>Section 3. SUBORDINATE OFFICERS, ETC. The General Manager, with the prior approval of the Board of Directors by a two-thirds (2/3) majority vote, may appoint such personnel as the business of the corporation may require, which personnel shall have such authority and perform such duties as assigned by the General Manager.</p> <p>Section 4. REMOVAL AND RESIGNATION. The Secretary, Treasurer or the General Manager may be removed, either with or without cause, by a two-thirds (2/3) majority vote of the directors at any regular or special meeting of the Board.</p> <p>Any officer may resign at any time by giving written notice to the Board of Directors or to the General Manager or to the Secretary of the corporation. Any such resignation shall take effect upon the date of the receipt or at any later</p> | <p>destination, hotel occupancy, taxes collected, jobs created and lost, percentage of U.S. and permanent residents employed at all levels in the visitor industry, and any and all other relevant information related to tourism and the visitor industry.</p> <p>Notwithstanding any other provision of law, all government agencies shall coordinate with the Bureau in providing the data and other information required herein so as to become an agency source for the dissemination of visitor industry statistics and information; (e) Provide advice and technical assistance to tourism development organizations in planning programs to attract visitors, and develop and disseminate literature for distribution to visitors, and potential visitors to this territory; (f) Cooperate with regional agencies promoting Micronesia and the Mariana Islands as a tourist destination; (g) Encourage and support local activities, programs and development which would enhance Guam as an attractive tourist destination; (h) Support the marketing of local arts, handicrafts and other manufactured products to visitors; and (i) Encourage local cultural activities for tourist and general public enjoyment.</p> <p>GCL § 2204 a majority of the membership is authorized to create bylaws or directors if</p> | <p>Sec. 9 is permissible GCLGP (duties of directors and officers; matters necessary for the proper or convenient transaction of the business of the corporation).</p> <p>Sec. 10 contains provisions that are inconsistent with the enabling act. The keeping and maintaining of accounts and financial transactions are within the GM's primary responsibility and are probably provided for in the financial controller's job description. Disbursement of funds under § 9113 of the enabling act is the responsibility of the Dept. of Administration. The Board's fiscal authority (budget approval), purchase order approval authority, duty to correct expenditure discrepancies and recover unlawful expenditure, authority to access the Rainy Day Fund are what may be provided for as EBSMs. If the treasurer be a director, no supervisory "powers" are provided to a treasurer in the enabling act; only board-level directives to employees are permissible pursuant to a duly passed resolution of the Board.</p> <p>Recommendation: the Treasurer as a corporate officer is not necessary for governance. If the Treasurer position is not repealed, it should</p> |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|---|---|---|
| <p>time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.</p> <p>With the exception of the General Manager, Deputy Manager, and the personal secretary to the General Manager, no officer or employee of the corporation shall be removed or terminated or otherwise directly adversely affected primarily or substantially for politically motivated causes.</p> <p>Section 5. VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Article VII of the By-Laws for regular appointments to such office.</p> <p>Section 6. CHAIRPERSON OF THE BOARD. The Chairperson of the Board shall preside at all meetings of the Board of Directors, and exercise and perform such other powers and duties as may be, from time to time, assigned by the Board of Directors or prescribed by the By-</p> | <p>authorized through resolution that passed with 2/3 vote of the membership. § 2203 bylaws may provide for the corporation's officers.</p> <p>Public Officers Statute ("POS") 4 GCA § 4101. Personnel Policy. (a) (1) Employment in the service of the government of Guam shall be based upon merit, and selection and promotion of employees shall be free of personal or political consideration.</p> <p>§ 4205. Miscellaneous Prohibitions. (a) Preferences, conditions and prohibitions concerning employment in the Government shall conform with the provisions of the Organic Act of Guam. No person shall be discriminated against in connection with any of the processes provided for by this Chapter or in the rules adopted thereunder because of race, color, political opinions or religious opinions or affiliations. (b) Any person who uses or attempts to use political influence or promises any advantage in connection with the selection or promotion of any employee in the classified services, solicits contributions for political purposes or solicits during office hours or at any time makes demands upon employees in the classified services for such contribution shall be guilty of a petty misdemeanor.</p> | <p>probably be filled by the financial controller, who is subject to the authority of the GM/DGM.</p> |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|--|-----------------------|----------------|
| <p>Laws.</p> <p>Section 7. GENERAL MANAGER. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairperson of the Board, the General Manager shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direct and control of the business and officers of the corporation. The General Manager shall be a citizen of the United States and a resident of the Territory of Guam and shall possess the qualifications, knowledge, and experience necessary to pursue effectively the corporation's programs. The General Manager shall preside at all meetings of the members. He shall be an ex officio member of all the standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of the President of a corporation, and the powers and duties as set forth in 12 GCA Section 9108 and such other powers as may be prescribed by the Board of Directors or the By-Laws. The General Manager shall be primarily responsible for carrying out all orders and</p> | | |

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(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|--|-----------------------|----------------|
| <p>resolutions of the Board of Directors. The General Manager shall not be a director or contributing member.</p> <p>Section 8. DEPUTY MANAGER. In the absence or disability of the General Manager, the Deputy Manager shall perform all the duties of the General Manager, and when so acting shall have all the powers of, and be subject to all the restricting upon, the General Manager. The Deputy Manager shall have such other powers and perform such other duties as from time to time may be prescribed by the General Manager with the advice and consent of the Board of Directors. In the event there is no Deputy General Manager or such person is unable to act, then the Board of Directors may appoint an Acting Deputy Manager.</p> <p>Section 9. SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board of Directors may order, of all meetings of directors and members, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at directors'</p> | | |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-----------------------|----------------|
| <p>meetings, the number of votes present or represented at members' meetings and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office a membership register showing the members and their addresses, the total annual dues of each member, and the number of votes to which each member is entitled. The Secretary shall give, or cause to be given, notice of all the meetings of the members and of the Board of Directors required by the By-Laws or by the law to be given, and shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the By-Laws.</p> <p>Sec. 10. TREASURER. The Treasurer shall cause to be kept and maintained adequate and correct accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains and losses. The Treasurer shall cause to be deposited all monies and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the [BOD]. The Treasurer shall</p> | | |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-----------------------|---|
| disburse the funds of the corporation as may be ordered by the [BOD] ... shall cause to be rendered to the BOD, whenever they request it, an account of all transactions and of the financial condition of the corporation ... and shall have such other powers and perform such other duties as may be prescribed by the [BOD] or the By-Laws. Unless otherwise directed by the BOD, the aforesaid duties of Treasurer shall be delegated to the [GM], subject to the supervisory powers of the Treasurer. | | |
| Art. VIII. Section 1. EXECUTIVE COMMITTEES. The Board of Directors may appoint executive committees and delegate to such committees any of the powers and authorities of the Board in the management of the business and affairs of the corporation which are consistent with the By-Laws and the laws of Guam, including, but not limited to, the power to approve emergency funding not to exceed approved budget amounts in any one account, subject to subsequent ratification by a total of eight (8) directors at the next regular meeting of the Board. The Board of Directors shall have the power to prescribe the manner in which each committee shall be conducted. Each executive | | Sec. 1 to the extent it purports to delegate powers is inconsistent with §§ 9105, 9106 and 9108 and should be repealed. Other problematic/inconsistent provisions: (a) Appropriation of funding is pursuant to the Executive Budget Law and is not XBLP or GCLGP; (b) approval of funding is legislative privilege, and disbursement of funds is the responsibility of DOA; (c) bureau business conducted through committee action that includes directors must comply with the OGL; (d) the board may only prescribe EBSM to a committee; (e) votes at committee are subject to § 9106 (i) while power of the bureau may be delegated pursuant to § 9105 (k). Sec. 2 should be amended to conform to these parameters. |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|--|-----------------------|---|
| <p>committee shall be composed of elected and appointed members of the Board who are the Chairperson, Vice-Chairperson and one (1) Board Director; the General Manager, Secretary, and Treasurer shall be ex officio, nonvoting members of the committee. The Chair or Vice-Chairperson of the Board shall serve as Chairperson of the executive committee.</p> <p>Section 2. <u>OTHER COMMITTEES</u>. The Board of Directors may appoint other committees, including standing committees to assist the corporation in accomplishing its purpose. The following standing committee, and others as the Board may deem appropriate, may be maintained by the Board of Directors and may be chaired and staffed by such members, officers, directors and/or employees of the corporation as may be determined by the Board:</p> <ol style="list-style-type: none">1. Japan Marketing Committee2. Korea Marketing Committee3. Greater China Marketing Committee4. Russia & New Markets Committee5. North America & Pacific Markets | | <p>Recommendation: the Bylaws should provide for how the board will discharge its § 9107 duties.</p> |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|---|--|---|
| <p>6. Destination Management Committee 7. Cultural Heritage & Community Outreach Committee 8. Sports and Events Committee 9. Membership Committee</p> <p>The Board of Directors shall have the power to prescribe the manner in which each committee shall be conducted.</p> | | |
| <p>Art. IX, Sec. 1 RECORDS. The corporation shall maintain adequate and correct accounts, books and records of its business and properties, and in particular shall keep such accounts and records as may be necessary to enable the Attorney General of Guam to determine that the applicable provisions of law regarding expenditure of public funds are being complied with. All of such books, records and accounts shall be kept at its principal place of business in the Territory of Guam, as fixed by the Board of Directors from time to time.</p> <p>Section 2. INSPECTION OF BOOKS AND RECORDS. All books and records of the corporation shall be open to inspection by the directors and members at reasonable times and</p> | <p>GCL § 4201. Records Generally. All business corporations shall keep and carefully preserve a record of all business transactions, and a minutes [sic] of all meetings of directors, members ... in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. On the demand of any director, member... the time when any director, member ... left the meeting must be noted on the minutes, and on a similar demand, the yeas and nays must be taken on any motion or proposition and a record thereof carefully made. The protest of any director, member ... on any action or proposed action must be recorded in full on his demand. The record of all business</p> | <p>Sec. 1 is permissible GCLGP to the extent permitted under GCL § 4201.</p> <p>Sec. 2 is governed by, and public records may be provided or accessed through, the Sunshine Reform Act of 1991 (SRA) and should be repealed.</p> <p>Sec. 3 is permissible GCLGP but should be amended to provide for the SRA.</p> <p>Sec. 4 is inconsistent with § 9106 (a) to the extent the board or members purport to grant signature or endorsement authority for payment instruments, § 9105 to the extent it relates to organization and management of the bureau, and § 9108 to the extent it conflicts with the GM's operational and administrative responsibilities and should be</p> |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|---|--|--|
| <p>places. Any member of the general public may inspect the corporations books and records in the manner set forth in Government Code Section 6980 et. seq. as enacted by Public Law 19-5 Section 136.</p> <p>Section 3. CERTIFICATION AND INSPECTION OF BY-LAWS. The original or a copy of these By-Laws, as amended or otherwise altered to date, certified by the Secretary, shall be open to inspection by the members of the company.</p> <p>Sec. 4. CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the corporation, shall be signed or endorsed by the [GM] and countersigned by the Treasurer or such other person or persons and in such other manner as shall be determined from time to time by resolution of the [BOD].</p> <p>Section 5. CONTRACTS, ETC. - HOW EXECUTED. The Board of Directors, except as otherwise provided by law or the By-laws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any</p> | <p>transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, member ... of the corporation at reasonable hours.</p> <p>§ 9105. Powers. The Bureau shall have and exercise each and all of the following powers: ... (b) Enter into contracts and execute all instruments necessary or appropriate in the exercise of any of its powers ... (g) Establish its internal organization and management</p> <p>§ 9113. Fiscal Authority. (c) The Legislature may condition payment of any sums appropriated pursuant to sub-section (a) of this section upon requirements that the membership match the appropriated funds, with cash or in-kind contributions, on the basis of not more than twenty cents (204) for every eighty cents (804) so appropriated.</p> | <p>amended or repealed to remove reference to the Treasurer (who is presumed to be a director). However, if an employee in the position of the financial controller is designated as the Treasurer, the provision is permissible. Because the GM has primary responsibility for the bureau's business affairs, Board resolution is insufficient to give power to other persons to discharge duties of the treasurer, so that part of Sec. 4 should be repealed.</p> <p>Sec. 5 has a number of inconsistencies. Contractual authority arises pursuant to the Procurement Law, but no procurement authority has been conferred or imposed on the board. Procurement is an administrative procedure which places primary responsibility for contracts with the GM. However, Sec. 5 conflates the board's fiscal authority under § 9113 (b) for yearly budget & plan approval and the board's purchase order approval authority for expenditures under § 9111 then wrests away the GM's administrative responsibility under § 9111 and purports to grant delegation of this administrative authority to the Board. Although all directors are subject to conflict of interests standards, elected directors are not subject to financial disclosure requirements that apply to appointed directors. This technically permissible</p> |

DRAFT
(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-----------------------|---|
| <p>instrument in the name of or on behalf of the corporation. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement, or to pledge its credit, or to render it liable for any purpose or to any amount.</p> <p>Section 6. ANNUAL MEMBERSHIP DUES. Members joining the corporation during the course of the year may have contributions prorated on a quarterly basis. However, voting rights shall not be conferred nor shall voting member status be conferred except as provided in Article IV above.</p> <p>Sec. 7. GOVERNMENT FUNDS. Government of Guam funds for the operations of the corporation shall be furnished as provided by law subject to the conditions and limitation therein. The Board of Directors shall contract with the Legislature concerning the ratio of contributed funds to the Government of Guam grants-in-aid.</p> | | <p>nondisclosure creates risk that an elected director may violate the ethical standards because of an undisclosed interest in a vendor having a contract or agreement with the bureau. Moreover, because such conflicted elected director has no legal duty to disclose his interest, there are no controls over this risk. Taxpayer lawsuits, fraud/misrepresentation/ good faith & fair dealing claims, administrative enforcement of the ethical standards by the Ethics Commission, and or debarment of the vendor by the OPA may result. Sec. 5 should be amended or repealed.</p> <p>Recommendation: the members/board should consider a provision of the bylaws that imposes financial disclosure on elected and appointed directors alike.</p> <p>Sec. 6 is permissible GCLGP.</p> <p>Sec. 7 is permissible XBLP under § 9113 (c) if 2/3 of the membership delegates this authority to the board.</p> |

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(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
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| <p>Art. X, Sec. 1. RIGHTS OF IMMUNITY. No director or officer of the corporation shall be liable to the corporation for any action or omission or for the actions, defaults, or negligence of any other director, officer or employee for any loss suffered or sustained by the corporation on account of the above, unless the same has resulted from the directors or officer's own willful misconduct or willful neglect in the performance of such duties. The private property of the members of this corporation shall not be liable for corporate debts.</p> <p>Sec. 2 RIGHTS OF INDEMNIFICATION. The corporation shall indemnify and may purchase insurance for any person who is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, and was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), against expenses (including attorney's fees), judgments, fines, and amounts</p> | <p>4 GCA § 3107. Same: Appointee or Employee. No member of any local governing body is liable for the negligent act or omission of any appointee or employee appointed or employed by him in his official capacity, whether the appointment or employment was made singly or in conjunction with other members of the local governing body, unless the member or members of the local body making the appointment either: (a) Knew or had noticed that the person appointed or employed was inefficient and incompetent to perform or render the service or services for which he was appointed or employed. (b) Retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency</p> <p>4 GCA § 3101. Definition: Local Governing Body. As used in this Chapter, local governing body means the government of Guam and any other political subdivision of this Territory which hereafter may be created.</p> <p>5 GCA § 30108. Defense of Judges, Officers and Employees. (a) Whenever any action for damages is instituted against any officer or employee of the government of Guam in his individual capacity for the performance of an authorized official act, the</p> | <p>Sec. 1, 2 is not XBLP or GCLGP and should be repealed.</p> |

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(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|--|----------------|
| <p>paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, done in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, if no reasonable cause existed to believe such conduct was unlawful; or was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor, against expenses (including attorney's fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit if done in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made under this subparagraph (ii) in respect to any claim, issue or matter as to which such person shall have been adjudicated to be liable for negligence or misconduct in the performance of any duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon</p> | <p>officer or employee may request the Attorney General to undertake the defense of such action. If the Attorney General finds that the officer or employee acted in good faith, then, subject to the approval of the Governor, he shall appear and defend the officer or employee. (b) Nothing herein shall be interpreted to preclude the participation of the Attorney General in any litigation in order to protect the interests of the government of Guam, nor to prohibit the Attorney General to decline the defense of any of the above officers or employees on the grounds that criminal prosecution or disciplinary action requiring action by the Attorney General may proceed from the acts which are also the subject of the civil action for damages herein referred</p> | |

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(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-----------------------|----------------|
| <p>application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expense which the court shall deem proper. The Board, by vote of two- thirds (2/3) of the non-involved directors, may elect to advance the costs of any amount to be indemnified as aforesaid, or any portion thereof, provided a good cause appears therefore or adequate security is given therefore. The Board shall provide any required defense and shall advance any costs to be indemnified against if any such person is sued solely in the capacity as agent or representative of the corporation for acts of the corporation and no personal liability is claimed by the party suing and no claim in good faith is advanced by the corporation against said agent or representative. The foregoing rights of indemnification shall be in addition to any rights to which any such director or officer may otherwise be entitled under any agreement, pursuant to any vote of members, at law, in equity or otherwise. Any person who serves or continues to serve as a director or officer of the corporation shall be</p> | | |

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(v. 1.2)

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GM's COMMITTEE FOR ADMINISTRATIVE CONTROL OVER THE BUREAUS' RISK, COMPLIANCE, AND CONTROL ISSUES

| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-----------------------|---|
| deemed to do so in reliance upon the provisions of this Article VIII. | | |
| Art. XI, FISCAL YEAR. The fiscal year of the corporation shall begin on October 1 of each year and shall end on September 30 of each year. | | Art. XI is not XBLP or GCLGP and should be repealed. |
| Art. XII. CORPORATE SEAL. The corporate seal shall be circular in form and shall have inscribed thereon the name of the corporation, and the word Guam | | Art. XII is not XBLP or GCLGP and should be repealed. |
| ARTICLE XIII AMENDMENT TO BY-LAWS Sec. 1. BY MEMBERS. New By-Laws may be adopted or these By-Laws may be repealed or amended at their annual meeting, or at any other meeting of the members called for that purpose, by a vote or by written assent of members entitled to exercise two-thirds (2/3) of the voting power of the corporation, provided that said amendments are in accordance with the laws of the Territory of Guam and provided that notice of the proposed amendments shall be given in the manner provided herein at least (10) days before such meeting. Sec. 2. BY DIRECTORS. The members possessing two-thirds (2/3) of the voting | GCL § 2204 | Sec. 1 is inconsistent with GCL § 2204 and should be repealed because it requires a 2/3 vote of the members but the enabling act only requires a majority vote. Sec. 2, 3 are permissible GCLGP. |

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(v. 1.2)

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-------------------------------|--|
| <p>power of the corporation may authorize the Board of Directors to amend or repeal any By-Laws or adopt new By-Laws; provided however, that any such power delegated to the Board shall be considered revoked whenever a majority of the members entitled to vote shall so vote at a regular or special meeting.</p> <p>Sec. 3 RECORD OF AMENDMENTS. Whenever an amendment or new By-Law is adopted, it shall be copied and inserted in the corporate minute book immediately preceding the original By-Laws. If any By-Law is repealed, the fact of repeal with the date of the meeting at which the repeal was enacted or written assent was filed shall be stated in said book.</p> | | |
| <p>ART. XIV RULES AND REGULATIONS. The Board of Directors may adopt rules and regulations, pursuant to the Administrative Adjudication Law not inconsistent with the By-Laws to carry out the objectives and purposes of the corporation and the laws creating the Guam Visitors Bureau.</p> | <p>See Hierarchy of Laws.</p> | <p>Art. XIV is inconsistent with the XBPLs and GCLGPs and should be repealed. The board's enactments are subject to the enabling act and the GCL and not vice-versa.</p> |
| <p>ART. XV. MISCELLANEOUS. Sec. 1. CONSTRUCTION AND DEFINITIONS. The</p> | <p>See Hierarchy of Laws.</p> | <p>Sec. 1, 2 are permissible GCLGP.</p> |

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| BYLAWS | APPLICABLE LAW | COMMENT |
|---|-----------------------|----------------|
| <p>Board of Directors may adopt rules and regulations, pursuant to the Administrative Adjudication Law not inconsistent with the By-Laws to carry out the objectives and purposes of the corporation and the laws creating the Guam Visitors Bureau.</p> <p>Unless the context otherwise requires, the general provision, rules of construction and definitions contained in the statutes of the Territory of Guam relating to corporations generally and to the Guam Visitors Bureau specifically shall govern the construction of these By-laws.</p> <p>Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular, and the term "person" includes a corporation as well as a natural person.</p> <p>Sec. 2. PARLIAMENTARY PROCEDURES. The meeting of the members and Board of Directors shall be governed by and conducted according to the latest edition of Robert's Rules and Order: <u>MANUAL OF PARLIAMENTARY</u></p> | | |

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| BYLAWS | APPLICABLE LAW | COMMENT |
|--|-----------------------|----------------|
| <u>RULES</u> , except as the board may otherwise decide. | | |