

**Guam Visitors Bureau
Business Risk Compliance and Control Committee**

General Manager's Investigation Summary
Sponsorship funding and expenditures on Guam Sports Events, Inc. events

The Guam Legislature mandated in the Guam Visitors Bureau Act (GVBA) that the General Manager is charged with the duty to ensure that the Board's rules and regulations are enforced. GVB's enabling act further mandates that the Board take steps to recover expenditures not made in accordance with existing laws, rules, regulations or policies. The GM's duty thus puts him in the unenviable position of enforcing Board rules and regulations where Directors violate the law.

Transparency and accountability at all levels

The GM is also the Board's chief administrative officer. Responsible for all GVB's affairs, the GM formed the Business Risk Compliance and Control Committee (BRCC) to assess, oversee, and ensure corrective action for material business issues. The BRCC is modeled on federal regulation that places emphasis on transparency and accountability in public corporations, with the goal of increasing the efficacy and integrity of financial reporting and formalizing systems for internal controls.

Owing to board actions with little or no public discussion and an admission by GVB chairman Milton Morinaga that he was uncomfortable because of a private meeting with GVB directors Sam Shinohara and Ben Ferguson that involved Steve Ruder, owner of R!MS, which was a GVB vendor participating in an active procurement, the GM believed it necessary to investigate further. Soon these observations led to scrutiny of GVB's financial support for Guam Sports Events, Inc. (GSEI), a locally organized IRS section 501(c)(3) nonprofit organization that is the principal sponsor and organizer for the United Airlines Guam Marathon and Guam International Marathon (GIM), events that received significant funding and material/logistics support from GVB that included payments to or on behalf of R!MS.

Corporate records at the Department of Revenue and Taxation showed that GVB chairman Morinaga incorporated GSEI, GVB director Shinohara is the corporate secretary and a director of GSEI, GVB director Ben Ferguson is the President and Managing Director of GSEI, and Mr. Ruder was a director of GSEI. Also, Chairman Morinaga, Director Ferguson and at least one other GSEI director were employed by PHR Ken Corp., and GVB director Shinohara is with United Airlines. Together, these two companies hold 290 votes that represent 57% of GVB's current membership. The GM thus tasked GVB legal counsel to investigate GVB's dealings with GSEI and provide a report to the BRCC.

Private corporation governance ideals must yield to fiduciary responsibility and compliance with administrative law

At the heart of industry stewardship of a government corporation is the clear and unequivocal avoidance of conflicts of interests. In matters involving GVB's nonstock members and its directors, real and apparent conflicts must contend with the directors' fiduciary duties to the corporation. In the public eye, private interests are expected to yield to directors' unquestioned loyalty to GVB, diligence and care for taxpayer monies.

GVB's corporate structure includes a 12-member Board consisting of senior-most corporate executives and leaders in Guam's visitor industry. Within the current GVB Board, three directors, Milton Morinaga, Sonny Ada, and Jeff Jones are witnesses to important facts because they voted on funding and other matters involving GSEI and may have other relevant information. Yet, except for Director Paco and Mr. Tani, none of the previous GVB board members offered to voluntarily cooperate with the investigation. Additionally, current GVB director Paula Monk is employed by United Airlines, Inc. a publicly traded

GVB BRCC GSEI Investigation Summary

company that benefited from GVB's sponsorship of GSEI—the United Airlines Guam Marathon was prominently branded as the United Airlines Guam Marathon. If these four directors are excluded from participating in a board-level review of GVB's support for GSEI, the Board may be challenged to achieve a quorum on GSEI related business since there are currently two appointed members who are yet to be confirmed by the legislature.

It may also be noted that current director Mary Rhodes is head of the Guam Hotel and Restaurant Association (GHRA), a nonprofit organization whose constituents include PHR Ken Corp. hotels and United Airlines. Any issue involving proper use of GVB resources on GSEI events calls on her to balance her loyalties to four disparate interests. Also, it may be that Bank of Guam (BOG) has banking relationships with those companies. Current GVB Vice Chairman Joaquin Cook is President and CEO of BOG. He, too, may be faced with questions about his ultimate loyalty to GVB. The public will expect Director Rhodes and Vice Chairman Cook to objectively and critically evaluate GVB's relationship with GSEI. However, all the board's conflicted and intertwined interests may cause the public to call into question the Board's action (or lack of it) on any necessary corrective measures.

At bottom, the Board may find itself unable to take on its responsibility to correct discrepancies and recover unlawful expenditures. This potential deficiency places additional emphasis on the GM, who, in addition to being the managerial and administrative head, is also the corporate CEO and President under GVB's bylaws. The GM's roles as the managerial, administrative and executive head of GVB combine to make it incumbent on him to investigate and report board-level wrongdoing to ensure compliance with law, despite his serving at the pleasure of the very Board whose members may have real, apparent and potential conflicts.

Report synopsis

In 2011, the Legislature sanctioned the Ko'Ko Road Race (KRR) and made it a part of the Guam-Micronesia Island Fair. GVB's business model at the time was to create seasonality for visitor events, and the Legislature made it responsible for organizing, sponsoring and funding the KRR. In 2021, management observed that the United Airlines Guam Marathon had come to replace the KRR. In March 2022, Chairman Morinaga informed the GM and Dep. GM of a private meeting that he had with directors Shinohara and Ferguson and Steve Ruder, whose company R!MS was a longtime GVB vendor for GVB events, including the KRR, United Airlines Guam Marathon and GIM. Management realized that the meeting took place during the time of an active procurement involving R!MS, and the Chairman's admission gave rise to suspicions that certain board members were meeting in secret. Management then made public accusations that certain board members were meeting in secret and were voting on GVB business, although there were conflicts.

Director Shinohara and Chairman Morinaga challenged management on its suspicions. Nevertheless, in May 2022, the Board stopped holding public meetings after management's accusations. In June 2022, the GM authorized an investigation into the GVB's dealings with GSEI because of undisclosed involvement of board members and vendors in GSEI. A summary of the investigation findings follows below:

- The ethics standards for government officials and employees prohibit directors of boards from consideration of, influencing votes for or against, or taking official action on business that affects their financial interests. Financial interests include director and officer positions in outside entities, and Directors are required to disclose information about their financial interests. Directors, therefore, must disclose their financial interests and are prohibited from voting, discussing, or influencing votes or decisions on business involving their financial interests.

GVB BRCC GSEI Investigation Summary

- From 2014-20, GVB expended approximately \$1.5 mil. on GSEI sponsored events and events it managed for GVB.
- Former GVB Director Sam Shinohara is also a director and officer for GSEI and had an actual conflict from at least 2015 to 2020. Despite having a conflict, Dir. Shinohara failed to disclose his financial interests in GSEI, failed to recuse from GVB business involving GSEI, and played a role over several years securing GVB funding for GSEI events.
- Former GVB Chairman/current appointed director Morinaga incorporated GSEI in 2014 while he was a GVB director, but his involvement with GSEI appears to have stopped shortly after its incorporation. Chairman Morinaga's involvement with GSEI was never publicly disclosed, however. When confronted about his simultaneous involvement with GVB and GSEI, Chairman Morinaga stated that he was "conned", although it is unclear exactly what he meant because he refused to cooperate with the investigation.
- Former GVB Director Ben Ferguson is the Managing Director for GSEI. While Dir. Ferguson was not a GVB director when it sponsored GSEI, he did provide a sworn statement attesting that a GSEI director was Sam "Shinohara". When asked for the same information the following year, Dir. Ferguson's sworn statement neglected to provide any information about GSEI's directors.
- Karl Pangelinan was an incorporator of GSEI and served as its director and an officer in 2014, which was during the time he was GVB's GM. While he did not vote on business involving GSEI, he never disclosed his interests in the nonprofit, and it is not known if he made financial disclosures under the Public Official Disclosure Act about his interests. Additionally, although Shinohara was not a GVB director at the time, there is evidence suggesting that he gave United Airlines 1K status to a woman associated with Pangelinan and also gave United Airlines Global Service status to Pangelinan soon after GSEI received its first sponsorship award in Oct. 2014 (Shinohara got on GVB's board in January 2015).
- Longtime GVB vendor Steve Ruder and owner of R!MS is also a director for GSEI. GVB employees dealing with GSEI and R!MS reported that they did not know that Ruder was a director on GSEI's board. Analysis showed that, over a 13-year span R!MS received \$9.7 mil. dollars from procurement contracts with GVB, including for work associated with GSEI's events. Prior to GSEI's incorporation, GVB's yearly expenditures on R!MS averaged \$374,000 per year. After GSEI's incorporation, payments averaged \$1.18 mil. per year.
- From 2015-17, after a successful procurement, GSEI was awarded a contract for events management services, but there was no procurement for those services from 2018 to 2020. Instead, in 2019 and 2020, GVB and GSEI signed agreements for event sponsorships and event management services without any competitive selection. Still, those agreements do not appear to cover certain expenditures on events in 2018, 2019 and 2020.
- From 2018 to 2020 expenditures on GSEI sponsored events totaled \$512,492.24. However, this expenditure was not made based on any procurement. As awards for events are expenditures of public funds, it would have been reasonable, legally compliant and defensible under Guam law if the administrative process involved some form of competitive selection.

GVB BRCC GSEI Investigation Summary

- In 2011, the Legislature officially recognized and sanctioned the KRR, and legislation made GVB its organizer and sponsor. However, 2017 was the last year that GVB held the KRR. In 2018, GVB instead sponsored the United Airlines Guam Marathon, expending \$82,274 on it. There does not appear to be any agreement associated with that year's United Airlines Guam Marathon, however.
- A 2019 agreement between GVB and GSEI states that GVB recognized the United Airlines Guam Marathon as an annual "signature Guam event", and \$219,517.92 was expended on the event for that year. This designation appears to compete with the Legislature's intent that GVB organize and sponsor the Ko'ko Road Race Event.
- A second agreement with GSEI covering the United Airlines Guam Marathon sponsorship was executed in Jan. 2020. This agreement included a force majeure term, which allowed GVB to opt out of it due to events beyond its control. The force majeure term was likely included because of the looming pandemic. Despite the term, in July 2020 the GVB Board, including Dir. Shinohara, approved \$130,420.67 in marketing expenses associated with the United Airlines Guam Marathon, which was held virtually because of the pandemic. Before that payment, management and employees tried to enforce the force majeure provision, but internal communications and Board meeting minutes show that Dir. Shinohara interacted with Bureau employees and communicated with then GVB Chairman Sonny Ada via email (and not in a public meeting), as GVB prepared to have the Nonprofit's expenses formally approved by the Board. In total, GVB expended \$210,040.32 on the 2020 virtual United Airlines Guam Marathon.

The investigation report was provided to the Public Auditor and the Attorney General for their review and disposition.

Other material issues under review by the BRCC

The BRCC is undergoing review of other material business issues. These issues include the following:

- Compliance with tax law applicable to nonprofits. There are special rules applying to payments to nonprofit organizations having IRS section 510(c)(3) status. These include whether payments to nonprofits are reportable to DRT because they constitute taxable income. Other nonprofits besides GSEI receive GVB funding.
- Compliance with tax law applicable to for-profit entities. GVB provides funding to for-profit entities for promotional activity intended to benefit the island's tourism economy. These payments are under review for compliance for tax reporting.
- GVB's nonprofit status. GVB was organized as a public nonprofit nonstock membership corporation. Similar entities must comply with tax rules concerning nonprofits. Whether GVB must file nonprofit tax returns or be audited by the Public Auditor for the same information in nonprofit tax returns is under review.
- Administrative regulation. GVB is required by the GVBA to promulgate administrative regulations related to the Bureau's personnel rules and regulations, nonprofit and government agency funding, and certain authorities and powers historically assumed to be the province of the Board.

GVB BRCC GSEI Investigation Summary

- Bylaws. Provisions in the currently applicable bylaws appear to conflict with the GVBA. A third amended bylaws has been drafted for review by the membership. The third amended bylaws provide a useful baseline of lawful activity under the GVBA even without approval by the membership.