

TITLE 20: DEPARTMENT OF COMMERCE

SUBCHAPTER 20-50.2 NON PROFIT CORPORATION REGULATIONS

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Subchapter Authority: 37 TTC § 1; 37 TTC § 52; 4 CMC § 4705.

Subchapter History: Territorial Register, volume 1, number 1, pages 7; 26-27; and 29-31 (July 15, 1974).

Commission Comment: The Trust Territory of the Pacific Islands government originally published Non-profit Corporation Regulations applicable in the CNMI as a part of the Trust Territory Corporations, Partnerships and Associations Regulations. See Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

4 CMC § 4201 created a Registrar of Corporations within the Office of the Attorney General. Former 4 CMC § 4202 authorized the Registrar, with the approval of the Governor and Attorney General, to prescribe rules and regulations governing corporations, partnerships and associations.

The regulations promulgated by the Trust Territory of the Pacific Islands, as amended by the Registrar of Corporations, governed all corporations in the Commonwealth until July 1990. In July 1990, pursuant to the authority of former 4 CMC § 4202, the Registrar issued the 1990 Business Corporation Regulations and subsequent amendments. See NMIAC, title 20, chapter 50.1; see also 4 CMC § 4202 (1990).

NMIAC § 20 50.1 1620 (Business Corporation Regulations § 17.05), codified at 4 CMC § 4705, repealed the parts of the Trust Territory Regulations regulating for profit corporations, effective July 25, 1990. However, the Trust Territory provisions regulating non-profit corporations were not repealed and remained in effect.

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PL 10 7 (effective May 10, 1996), the “Commonwealth Business Corporation Regulation Act,” codified at 4 CMC §§ 4251 4705 enacted the 1990 Business Corporation Regulations (as amended in 1994) as statutory law. See PL 10 7 §§ 1 and 3; see also NMIAC, title 20, chapter 50.1.

Pursuant to 4 CMC § 4705, the provisions of the Trust Territory regulations governing non-profit corporations continued in effect in the CNMI. Specifically, 4 CMC § 4705 does not repeal Trust Territory Regulations, title 37, chapter 1, sections 2.9 and 2.10, chapter 2, part 3 (“Nonprofit Corporations”) and chapter 4 (“Corporations Sole for Ecclesiastical Purposes”). See Territorial Register, volume 1, number 1, pages 7; 26-27; and 29-31 (July 15, 1974).

In 1997, the Governor transferred the Registrar of Corporations and the remaining legal functions of that office in regards to corporations of the Commonwealth from the Office of the Attorney General to the Department of Commerce. See Executive Order 97-03 (November 13, 1997).

Attorney General Opinion No. 05-12 (August 12, 2005), 27 Com. Reg. 24812 (Aug. 22, 2005), addresses the status of the Trust Territory regulations for partnerships and non-profit corporations. The Attorney General concluded that because the Trust Territory’s 1974 regulations for partnerships and non-profit corporations have never been repealed or superceded, they remain in full force and effect pursuant to the transitional provisions of the CNMI Constitution and other laws. Attorney General Opinion No. 05-12 is reprinted in full below.

Attorney General Opinion No. 05 12

Date: August 12, 2005

Re: Trust Territory business regulations
Continuation in effect into new administrative code

Issue and Short Answer

Questions

Do the regulations for nonprofit corporations and partnerships survive from the Trust Territory Government’s legal framework? If so, should they be incorporated into the new CNMI Administrative Code?

Short Answer

Yes to both questions. The Transitional Provisions of the Constitution require the continuation of all laws which have not been repealed or superceded.

Summary

The Commonwealth Constitution’s transitional provision provides that TT laws will continue in effect unless repealed or superceded. The Trust Territory’s 1974 regulations for partnerships and nonprofit corporations were never repealed or superceded. While the new Commonwealth Legislature did supercede the TT’s for profit corporation regulations with comprehensive new ones, it never addressed the partnership or nonprofit corporation regulations.

Under well settled principles of statutory construction, the two sets of old regulations survive, and are still in full force and effect. The LRC should include the partnership and nonprofit regulations in its upcoming codification, the Commonwealth’s Administrative Code.

Discussion

In order to determine whether the partnership and nonprofit regulations from TT days are still in effect, it was necessary to review the TT’s authority and power to promulgate them. This required a review of the source documents for TT law.

Then, in order to determine how the TT regulations were adopted for use in the CNMI it was necessary to examine the relevant transitional documents. While the nonprofit regulations’ history is relatively straightforward, the history of the partnership regulations is more complex.

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1. Background and relevant facts

During the Trust Territory's management of the NMI's legal affairs a number of sets of regulations were adopted. Among these were the regulations for partnerships and nonprofit corporations. It appears that, since the adoption of the CNMI Constitution other sets of such business regulations have either been adopted to supercede TT regulations or TT regulations have been repealed.

a. Corporations

The CNMI Registrar looks to TT regulations for the oversight of nonprofit corporations. The explicit and immediate authority for the Trust Territory's nonprofit corporation regulations lay in TT Code Title 37, § 52 (Registrar's authority to promulgate regulations) and the TT's Business Code. The Code gave the High Commissioner the authority to grant for and nonprofit corporation charters. 37 TTC § 1. The chapter, consisting of §§ 1-6, applied to every private profit and nonprofit corporation.

This corporation language was adopted into the CNMI Code, giving the power to grant charters to the CNMI Governor. 4 CMC § 4101-02; PL 3-11. Then, by Executive Order 94-3, the Governor's role was replaced by that of the Attorney General. By subsequent Executive Order the power to grant charters was moved with the Registrar to the CNMI Department of Commerce. Executive Order 97-03 (Nov. 13, 1997).¹

¹The Department of Commerce and the Attorney General recognized that the functions of the Commonwealth Register were to remain with the Attorney General's Office. MOU of May 29, 2003.

i. Source of TT power and authority for corporations

The source of the power of the TT Government to promulgate nonprofit corporation regulations is the UN Charter, the trust documents based thereon, and the President and the Congress' related enactments:

Members of the United Nations which have or assume responsibilities for the administration of territories...accept as a sacred trust the obligation to promote to the utmost...the well being of the inhabitants of these territories, and, to this end:

- a. to ensure...their political, economic...advancement....
- b. to promote constructive measures of development

Charter of the United Nations, Ch. XI, Art. 73. The basic objectives of the trusteeship system included promoting the economic advancement of the inhabitants. Id. Art. 76. The United States was designated as the administering authority of the Trust Territory that included the Northern Mariana Islands. Trusteeship Agreement for the Former Japanese Mandated Islands (Approved by the Security Council, Apr. 2, 1947; Ratified by US, Jul 18, 1947 [61 stat. 397]), art. 2.

The US had full powers of legislation and could apply such of the laws of the US as it deemed appropriate. Id., art. 3. The US was to promote the economic advancement of the inhabitants. Id., art. 6 § 2. Congress provided that all executive, judicial and legislative authority was to vest in the persons designated by the President. 48 USC § 1681 (68 stat. 330) (Jun. 30, 1954). The President provided for TT administration by executive order. Executive Orders Nos. 9875 (Jul. 18, 1947), 10265 (Jun. 29, 1951), 10408 (Nov. 10, 1952) and 10470 (Jul. 17, 1953).

The President moved civil administration of the TT to the Secretary of the Interior. Executive Order No. 11021 (May 8, 1962), amended by 11944 (Oct. 25, 1976). This included all executive,

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legislative and judicial authority. Id., § 1. The Secretary could, in turn, delegate this authority. Id., § 2.

TT laws were to remain in force and effect until they expired by their own limitation or until or unless repealed by the NMI Legislature. Secretarial Order No. 2989 (Mar. 24, 1976), Part iv. § 1. Therein lies the basis for the continuation of the corporation regulations in effect through the birth of the CNMI.

ii. The TT nonprofit corporation regulations

The TT nonprofit corporation regulations provide generally: that the Registrar may grant a charter for a nonprofit corporation to persons who have filed petitions which state the corporation's name, address, purpose, period and initial officers and directors, the provisions for internal governance and dissolution, and that the corporation is neither organized for profit nor will deliver profits to its members. TT Regulations, Title 37, "Corporations, Partnerships and Associations", Ch. 1, "Corporations Generally", Part 2, "Organization; Powers", §§ 2.9 and 2.10. Territorial Register, Vol. 1, No. 1 (Jul. 15, 1974), p. 7.

The merger or consolidation of nonprofit corporations is addressed in Title 37, Ch. 2, "Consolidation and Merger of Corporations", Part 3, "Nonprofit Corporations", §§ 3.1 - 3.9. Territorial Register, Vol. 1, No. 1 (Jul. 15, 1974), pp 26 27.

A special chapter is provided for ecclesiastical corporations. Title 37, Chapter 4 "Corporations Sole [sic] for Ecclesiastical Purposes", Part 1, §§ 1.1 - 1.9. Territorial Register, Vol. 1, No. 1 (Jul. 15, 1974), pp 29 31.

iii. CNMI use of TT nonprofit corporation materials

The CNMI Registrar maintains forms on which petitioners may file for a nonprofit charter, and the instructions therefore. (Instructions for preparing and filing petition for a charter for articles of incorporation for a non profit, tax exempt corporation, the form Petition, the form Charter [rev'd 5/21/99], form Bylaws; and, for a foreign nonprofit corporation, requirement for filing a foreign non profit corporation, form application for certificate of authority).²

² Fax fr Remy C. Mafnas, Registrar, to A Barak (2/7/05).

b. Partnerships

There is no TT organic act that explicitly supports the promulgation of partnership regulations. There has been no statute in the Marianas which specifically addresses partnership law.

Almost all states have such a statute. All but three states have adopted the Uniform Partnership Act. Uniform Partnership Act (1997), Refs and Annos, Table of Jurisdictions Wherein Act Has Been Adopted (Westlaw). The first state to adopt it was Pennsylvania, in 1914. In re Safady Bros., 228 F. 538, 539 (D.C.Wis. 1915). A more recent version of the UPA was published for adoption in 1997. (Uniform Partnership Act (1997)).³ Our Legislature has before it a proposal to adopt the UPA, but it has not acted on the proposal. See HB 14 73.

³ The original UPA "was drawn by William Draper Lewis for the Conference, based on the incomplete work of the late James Barr Ames, Dean of the Harvard Law School, and on the English Partnership Act, drawn by Sir Frederick Pollock. It is an attempt to codify the existing common law on the subject, rather than to change that system; but where the rules are conflicting it chooses the one supposed to be the better." In re Safady Bros., 228 F. 538, 539 40 (D.C.Wis. 1915).

i. Source of authority for the partnership regulations

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But there is ample substantive law on partnerships, because the business organization form of partnerships evolved through the common law. See, e.g., *Seafirst Center Ltd. Partnership v. Erickson*, 127 Wash.2d 355, 361 fn. 4, 898 P.2d 299, 301 fn. 4 (Wash.1995), for a reference to the “ancient common law.”⁴ This means that the substance of the TT Registrar’s regulations for partnerships sprang from the common law rather than from a specific statute.⁵

There was also ample authority for the TT Government to promulgate partnership regulations. Since the source documents created a TT government with full executive and legislative power, as discussed supra, the TT Registrar had full executive and legislative power to promulgate regulations relating to partnerships. The power and authority of the TT Government to issue these regulations originated with Congress’ above cited provision that all executive, judicial and legislative authority was to vest in the persons designated by the President. 48 USC § 1681 (68 stat. 330) (Jun. 30, 1954).

⁴ One treatise traces the rule that discharge of one partner discharges all partners “to the 14th century.” Glanville L. Williams, *Joint Obligations* 106 (1949). With respect to partnerships specifically, Story cites ancient case law for the proposition that “[a] release to one partner is a release to all, whether the claim released arise ex contractu or ex delicto.” Joseph Story, *Partnership* 287 n. 3 (7th ed. 1881). *Seafirst Center Ltd. Partnership v. Erickson*, 127 Wash.2d 355, 361 fn. 4, 898 P.2d 299, 301 fn. 4 (Wash.1995.)

⁵ When CNMI jurisprudence has not articulated a principle of common law, the courts look to the Restatements of the Law. In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary. 7 CMC § 3401. *Ada v. Sablan*, 1 NMI 415, 427 (1990). A review of the Restatements reveals no Restatement on “partnerships”. Rather, pronouncements regarding the obligations of partners appear in the Restatement of Contracts and the Restatement of Torts.

ii. The TT partnership regulations

The TT Registrar’s partnership regulations provide for both general and limited partnerships. TT Regulations, Title 37, “Corporations, Partnerships and Associations”, Ch. 5, “Partnerships”, Part 1, “Partnerships in General”, §§ 1.1 - 1.14, and Part 2, “Limited Partnership”, §§ 2.1 - 2.28, Territorial Register, Vol. 1 No. 1 (Jul. 15, 1974), pp. 31-36.

iii. The CNMI’s use of the partnership regulations

The CNMI Registrar uses the five pages of partnership regulations, and provides a form on which petitioners may register a partnership (Partnership registration form).⁶

⁶ Fax fr Remy C. Mafnas, Registrar, to A Barak (2/7/05).

c. Continuation of both sets of regulations

A review of the Commonwealth Register shows that no regulations have been adopted during the CNMI for partnerships and nonprofit corporations. The Registrar of Corporations and practitioners have been using the TT partnership regulations as though they were still in effect.⁷ By contrast, in serving for profit corporations, the Registrar has been using the comprehensive Corporation Regulations, adopted in 1990. (12 Com. Reg. 5 (May 15, 1990), p. 6907 (proposed), 12 Com. Reg. 7, (Jul. 15, 1990), p. 7201 (adopted); enacted into law by PL 10 7 (effective May 10, 1996), codified at 4 CMC 4251-4705.⁸

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This regulatory scheme presents a practical issue for the Law Revision's Commission's codification of the administrative code B are the old TT regulations for partnerships and nonprofit corporations "in" or "out"?

⁷ Phone interview with B Mailman by A Barak (1/31/05). Phone interview with Remy C. Mafnas, Registrar, by A Barak (2/7/05).

⁸ According to PL 10 7, § 1 most of the regulations were codified in the new statute:

Section 1. Regulations Enacted as Statute.

(a) Except as provided by subsection (b), the rules and regulations governing business corporations in the Commonwealth, the Business Corporation Regulations, adopted July 15, 1990 in the Commonwealth Register, Volume 12, No. 7, pages 7201 6997 [sic], as amended on May 15, 1994 in the Commonwealth Register, Volume 16, Number 5, page 11888, are hereby incorporated by reference and enacted as statute law. The Commonwealth Law Revision Commission shall codify these former rules and regulations in the appropriate Commonwealth Code statutory format.

(b) Sections 1.02 and 8.03(a) of the Business Corporation Regulations are not incorporated by reference, are not enacted as statute law, and are hereby rescinded.

PL 10 7 § 1, quoted at 4 CMC § 4251, Comment.

2. Applicable law

The supreme laws of the CNMI are the CNMI Constitution, the US Constitution, and the Covenant between the CNMI and the USA. The CNMI Constitution is a "paramount" source of Commonwealth law. *Ada v. Sablan*, 1 NMI 415, 427 (1990). Its transitional sections govern the survival of the partnership and nonprofit corporation regulations.

The CNMI Constitution's schedule on transitional matters provides that certain laws and corporations in existence should remain in effect until the terms of the relevant transitional provision have been executed. CNMI Const. Schedule on Transitional Matters, §§ 2, 6:

Section 2: Continuity of Laws. **Laws in force** in the Northern Mariana Islands on the day preceding the effective date of the Constitution that are consistent with the Constitution and the Covenant **shall continue in force until they expire or are amended or repealed.**

CNMI Const. Schedule on Transitional Matters, § 2. (Emphasis added)

Section 6: Continuity of Corporations and Licenses. **Corporations incorporated or qualified to do business** in the Northern Marian Islands [sic] on the effective date of the Constitution **shall continue to be incorporated or qualified until provided otherwise by law.** Licenses in effect in the Northern Marian Islands on the effective date of the Constitution shall continue in effect until provided otherwise by law except that no license possessed by a land surveyor, ship officer, health professional or a practicing trial assistant may be amended or revoked except for incompetence or unethical conduct.

CNMI Const. Schedule on Transitional Matters, § 6. (Emphasis added) Neither section has been certified as executed. The Trust Territory Code was incorporated into the CNMI Code in 1991 by PL 3 90 § 2.

The TT regulations in question were "laws". A regulation has the full force and effect of the law, if it has been properly promulgated. E.g., *Garnes v. Barnhart*, F.Supp.2d , 2004 WL 3118992, (N.D.Cal. 2004), citing *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S.

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837, 842, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984); *State of Hawai'i v. Kotis*, 91 Hawai'i 319, 330; 984 P.2d 78, 90 (Hawai'i 1999). Also, *United States of America v. Alameda Gateway, Ltd.*, 213 F.3d 1161, 1168 (9th Cir 2000).

We must look to the Commonwealth Register to see whether the CNMI has superceded or repealed the partnership and nonprofit regulations. The Commonwealth Register is the successor to the Territorial Register and shall contain the text of all laws, official rules and regulations. Executive Order 1 (Jan. 12, 1978) (Camacho, C. Governor).⁹

The Commonwealth Registrar of Corporations, by permanent regulation, repealed TT corporate regulations governing for profit corporations, but not for nonprofit corporations or partnerships. Corporation Regulations, 17.05 (Repeal).¹⁰ The Legislature replaced the for profit statute with a new for profit corporation law, and new regulations, but did not provide a similar nonprofit statute or nonprofit regulations. *Taitano v. Northern Marianas Softball Ass'n.*, No. 93 0356 (Superior Ct. 1994) (Castro, J).¹¹

⁹ The first executive order of the Governor specified the role of the Commonwealth Register:

Commonwealth of the Northern Mariana Islands
Executive Order of the Governor

Executive Order Number One
January 12, 1978

Northern Marianas Register

1. There is established the Commonwealth of the Northern Marianas Register, which is the successor to the Territorial Register. It shall be published daily, Sundays and Holidays excepted.
2. The Commonwealth Register shall contain the text of all laws, executive orders, proclamations, official rules and regulations, official notices, and related matters.
3. The Attorney General shall be responsible for publication of the Commonwealth Register. Copies shall be distributed to all elected officials, the senior officers of each branch, department head, and independent agencies.
4. Copies shall be available in one or more public places for public scrutiny and copies shall be available for public distribution.

Carlos S. Camacho, Governor.

Executive Order 1 (Jan. 12, 1978) (Camacho, C. Governor). (Emphasis added)

¹⁰ The 1990 Corporation Regulations repealed some of the TT Corporation Regulations B Title 37, Ch. 1, § 1.1 2.8, 2.11 7.2, Ch. 2, Parts 1 and 2, and Chapter 3. Corporation Regulations 17.05, 12 Com Reg. No. 5 (May 15, 1990), p. 6997 (adopted 12 Com. Reg. 7 (Jul. 15, 1990), p. 7201).

¹¹ The Taitano Court held that, given there were no regulations to govern the particular dispute, it would resort to common law to determine what bylaws were proper for the challenged nonprofit corporation:

In order to address the plaintiff's allegations concerning NMIASA bylaw violations, the court first turns to Title 4, Division 4 of the Commonwealth Code entitled Corporations, Partnerships and Associations. Title 4 empowers the Governor to grant charters of incorporation for the establishment of private nonprofit corporations but offers no guidance with respect to alleged by law violations occurring in nonprofit corporations. 4 CMC § 4101 et seq. On August 13, 1990, the legislature enacted the Commonwealth Business Corporation Regulations (CBRC). Although Section 10.20 and 10.22 of the CBRC offer some guidance for amendment to bylaws, the drafters of CBRC effectively limited the scope of the corporate regulations to profit making corporations by defining "corporation" as "domestic corporations. . .for profit." 12 Com. Reg. at 6918 (1990)

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(emphasis added). Thus, the CBRC does not offer the court any guidance with respect to the actions of the nonprofit corporation, NMIASA. In the absence of CNMI written or [pg. 8] customary law to the contrary, the court resorts to the common law. 7 CMC § 3401.

Taitano v. Northern Marianas Softball Ass'n., No. 93 0356 (N.M.I. Super. Ct. 1994) (Castro, J). The TT regulations were silent on amendments to nonprofit corporate bylaws.

3. Analysis

Absent any repealer, the CNMI Constitution's Transitional Section requires that Trust Territory laws continue in effect. A properly promulgated regulation has the full force and effect of the law.

As a principle of judicial construction, when a legislature acts on a matter in part only, the balance of the matter is said to be excluded - *inclusio unius est exclusio alterius*. E.g., *US v. Terrence*, 132 F.3d 1291, 1294 (9th Cir. 1997) (In construing US Palau Compact of Free Association, and applying the doctrine of "*inclusio unius est exclusio alterius*," ("the inclusion of one is the exclusion of the other") a statute's limiting a thing to be done in a particular mode, in this case providing three immigration exemptions, includes a negative of any other mode, in this case preserving the obligation to register with the Attorney General). See *Aldan Pierce v. Mafnas*, 2 N.M.I. 122, 161 (1991), *rev'd on other grounds*, 31 F.3d 756 (9th Cir. 1994), *cert. denied*, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995) ("For purposes of constitutional interpretation, the express mention of one thing implies the exclusion of another which might logically have been considered at the same time.")

Another applicable principle of judicial construction is that an enactment should be read, if at all possible, according to its plain meaning. See, *Northern Marianas Housing Corp. v. Northern Marianas Land Trust*, 5 N.M.I. 150, 1998 MP 1, 1998 WL 34073630 (CNMI 1998) (The basic principle of statutory construction is that language must be given its plain meaning); *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (CNMI 1990) (Plain meaning rule of statutory construction applies to constitutions, to give plain meaning to provisions).

The Constitution is unambiguous, providing that TT law should continue in place unless CNMI law comes to provide otherwise. The Commonwealth Register is the only proper place to look to determine whether TT regulations have been repealed or replaced.

With respect to the instant issue the Registrar repealed only the for profit business regulations. The Register offers no changes or repealers for the other regulations in question. The Registrar deliberately left in place the unrepealed provisions and, indeed, relies on them daily. The distinction between the repealed and preserved regulations was clear and simple. This distinction has operated to preserve, as law, the partnership and nonprofit business corporation regulations.

This conclusion, that the partnership and nonprofit regulations continue in force, is consistent with the second quoted transitional section. The framers sought to continue smoothly the operations of business during the political transition from Trust to Commonwealth status. Interpreting the Registrar's actions as a preservation of the partnership and nonprofit regulations enhances the transition.

Thus, the provisions left in place are the nonprofit corporation regulations and the partnership regulations, identified *supra*. These provisions are valid and in full force and effect.

Conclusion

The old TT partnership and nonprofit regulations are in force and effect, and should be compiled into the LRC's new Administrative Code.

/s/ Alan J. Barak, Asst. AG, Civil Division

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/s/ Pam Brown, Attorney General

Attorney General Opinion 05-12 (August 12, 2005), 27 Com. Reg. 24812 (Aug. 22, 2005).

Part 001 - General Provisions

[Reserved.]

Part 100 - Charter of Nonprofit Corporation

§ 20-50.2-101 Nonprofit Corporations; Charter Grant of

The Registrar may grant to all applicants who file petitions in conformity with § 20-50.2-105, charters of incorporation for the establishment and conduct of any lawful purpose, except the carrying on of a business, trade, avocation, or profession for profit. Any charter granted or corporation created under authority of this part shall be subject to all general laws enacted in regard to corporations, and shall file with the Registrar from time to time, whenever changes occur, the name and addresses of the officers of the corporation.

Modified, 1 CMC § 3806(c), (g).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The commission corrected the spelling of “from.”

§ 20-50.2-105 Nonprofit Corporations Petition for Charter

Any number of persons not less than three, a majority of whom are residents of the Territory, desiring to obtain a charter of incorporation for the purposes set forth in § 20-50.2-101 shall sign, verify, and file a petition with the Registrar. The petition shall be accompanied by the proposed form of charter of incorporation which shall contain the following particulars:

- (a) The name of the corporation;
- (b) The location of the proposed corporation and the specific address of its initial office;
- (c) The purpose or purposes for which the corporation is organized;
- (d) The period of duration, which may be perpetual;
- (e) The number, names, citizenship, and residence addresses of the initial officers and directors, or similar officers;
- (f) Any provision, not inconsistent with law, which the petitioners elect to set forth in the charter of incorporation for the regulation of the internal affairs of the corporation including any provisions for the distribution of assets on dissolution or final liquidation;

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(g) That the corporation is not organized for profit and that it will not issue any stock, and no part of its assets, income, or earnings shall be distributed to its members, directors, or officers, except for services actually rendered to the corporation, and except upon liquidation of its property in case of corporate dissolution.

Modified, 1 CMC § 3806(c).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Part 200 - Merger and Consolidation

§ 20-50.2-201 Nonprofit Corporation Defined

“Nonprofit corporation” as used in this part means a corporation created under § 20-50.2-101 and § 20-50.2-105.

Modified, 1 CMC § 3806(c).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

§ 20-50.2-205 Merger and Consolidation

(a) Any two or more domestic nonprofit corporations may be:

- (1) Merged into one of such domestic nonprofit corporations, which is designated in this part as “the surviving nonprofit corporation” or,
- (2) Consolidated into a new domestic nonprofit corporation to be formed by means of such merger or consolidation as is specified in the agreement hereinafter provided which is designated in this part as “the consolidated nonprofit corporation.”

(b) The board of directors, trustees, or other governing body of such nonprofit corporations as desire to merge or consolidate may enter into an agreement prescribing the terms and conditions of the merger or consolidation, the mode of carrying the same into effect, the names and addresses of the first officers and directors of the surviving or consolidated nonprofit corporation and their respective terms of office, and setting forth such other provisions as may be deemed necessary.

Modified, 1 CMC § 3806(g).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

In subsection (a), the commission inserted the colon. In subsection (b), the commission moved the period after “corporation” inside the closing quotation mark.

§ 20-50.2-210 Merger; Necessary Statement

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If the agreement is for a merger, it shall state any matters in respect of which the charter of incorporation of the surviving nonprofit corporation is proposed to be amended, and shall set forth or incorporate as part thereof the proposed charter of incorporation as amended, and the charter of incorporation shall be deemed to be the amended charter of incorporation of the surviving nonprofit corporation upon the allowance of the merger agreement by the Registrar with the consent of the High Commissioner. The amended charter of incorporation of the surviving nonprofit corporation may provide for the extension of the term of its corporate existence, and may contain all the powers and privileges that could lawfully be conferred or obtained in an original charter of incorporation.

Modified, 1 CMC § 3806(g).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The commission changed “charter of the incorporation” to “charter of incorporation” to correct a manifest error.

§ 20-50.2-215 Consolidation; Necessary Statement

If the agreement is for a consolidation, it shall state therein or incorporate as part thereof a complete charter of incorporation as is required by chapter 1* in the formation of a new nonprofit corporation. The charter of incorporation shall be deemed to be the charter of incorporation of the consolidated nonprofit corporation upon the allowance of the consolidation agreement by the Registrar with the consent of the High Commissioner. The charter of incorporation of the consolidated nonprofit corporation may contain all the powers and privileges that could be lawfully conferred or obtained in an original charter of incorporation of a nonprofit corporation.

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The starred citation in this section references portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

§ 20-50.2-220 Agreement; Approval, Execution

(a) The agreement shall be approved by the board of directors of trustees of each constituent nonprofit corporation and shall also be approved separately by each constituent nonprofit corporation, at a meeting duly called and held for the purpose, at which a quorum is present, by not less than two-thirds of the members of each constituent nonprofit corporation present at the meeting.

(b) The agreement shall be executed as provided in subpart 1.5 of chapter 2.*

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

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The starred citation in subsection (b) references portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

Trust Territory Corporations Regulations, chapter 2, subpart 1.5 provided:

1.5. Execution of Agreement by Officers. After approval by the directors, and approval or authorization by the stockholders, the agreement shall be executed by the president or vice-president and the secretary or assistant secretary of each constituent corporation, and acknowledged by the officers executing the same on behalf of their respective corporations.

Territorial Register, volume 1, number 1, page 22 (July 15, 1974).

§ 20-50.2-225 Certificate of Approval

There shall be executed and signed by the presiding officer and secretary of each of the membership meetings, or by any other officers present at the meeting, a certificate which shall be verified by their oath and shall set forth:

- (a) The time and place of the meeting of the board of directors or trustees, and a copy of the resolution adopted thereat;
- (b) The vote in favor of the resolution;
- (c) The time and place of the meeting of the membership, and a copy of the resolution adopted thereat;
- (d) The vote in favor of the resolution;
- (e) Facts as to the notification of the members of the time, place, and purpose of the meeting of the members.

Modified, 1 CMC § 3806(g).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: In subsection (c), the commission replaced the final period with a semi-colon.

§ 20-50.2-230 Agreement When Executed to be Filed with Registrar

The agreement so approved, executed, and acknowledged, and the certificates of its approval by each constituent nonprofit corporation in accordance with this part, shall be filed in the office of the Registrar, and the merger or consolidation shall become effective upon the allowance of the merger or consolidation by the Registrar. A copy of the agreement, certified to by the Registrar shall have the same force in evidence as the original and, except as against the Territory, shall be conclusive evidence of the performance of all things precedent to the merger or consolidation, and the creation or existence of the surviving or consolidated nonprofit corporation.

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

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§ 20-50.2-235 Certificate of Registrar

Upon the allowance of the agreement, the Registrar shall make and seal with the seal of his office, his certificate of merger or consolidation, which shall set forth the following:

- (a) The name of each constituent nonprofit corporation;
- (b) The name of the surviving or consolidated nonprofit corporation;
- (c) The date and time of allowance of the merger or consolidation agreement;
- (d) The names of the officers and directors or trustees of the surviving or consolidated nonprofit corporation at the time of allowance of the agreement.

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

§ 20-50.2-240 Subpart 1.13 of Chapter 2 Applies

Subpart 1.13 of chapter 2* shall apply to the merger or consolidation of nonprofit corporations.

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The starred citation in this section references portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

Trust Territory Corporations Regulations, chapter 2, subpart 1.13 provided:

1.13. Property and Corporate Existence. Upon merger or consolidation as provided herein, the separate existence of the constituent corporations shall cease, except that of the surviving corporation in case of merger. All and singular the rights, privileges, franchises, and property of each of the constituent corporations, and all debts and liabilities due or to become due to any constituent corporation, including subscriptions for shares and things in action and every interest or asset of conceivable value or benefit, shall be deemed fully and finally and without any right of revision transferred to and vested in the surviving or consolidated corporation without further act or deed, and the surviving or consolidated corporation shall have and hold the same in its own right as fully as the same was possessed and held by the constituent corporation from which it was, by operation of the provisions of this part, transferred.

All debts, liabilities, and obligations due or to become due of and all claims or demands for any cause existing against each constituent corporation shall, upon merger or consolidation, be and become the debts, liabilities, or obligation of, and the claims and demands against the surviving or consolidated corporation in the same manner as if the surviving or consolidated corporation had itself incurred or otherwise become liable for them.

All rights of creditors and all liens upon the property of each of the constituent corporations shall be preserved unimpaired, limited in lien to the property affected by the liens immediately prior to the time of the merger or consolidation.

Any action or proceedings pending by or against any of the constituent corporations shall not be deemed to have abated or been discontinued, but may be prosecuted to judgment with the right to

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appeal or review as in other cases as if the merger or consolidation had not taken place or the surviving or consolidated corporation may be substituted for the constituent corporation.

Territorial Register, volume 1, number 1, pages 22-23 (July 15, 1974).

Part 300 - Corporations Sole for Ecclesiastical Purposes

§ 20-50.2-301 Formation of Corporation Sole for Ecclesiastical Purposes

A nonprofit corporation sole may be formed hereunder by the bishop, chief priest, presiding elder, or other presiding officer of any church, for the purposes of administering and managing the affairs, property, and temporalities of the church, in the district within which the bishop, chief priest, presiding elder, or other presiding officer has ecclesiastical jurisdiction.

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

§ 20-50.2-305 Application for Charter; Petition; Contents

(a) Application to the Registrar for a charter of incorporation under this part shall be made by a written petition, verified by the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole. The petition shall set forth:

- (1) The name of the corporation;
- (2) The name citizenship and address of the officer forming the corporation, the office which he holds in the church, and that his duly authorized by the rules, regulations, or discipline of the church to take the action;
- (3) The boundaries of the district subject to the ecclesiastical jurisdiction of the officer forming the corporation sole, in accordance with the rules, regulations or discipline of the church;
- (4) The place of the principal office of the corporation sole, which shall be in the Territory;
- (5) The term for which the corporation sole is organized, which may be perpetual;
- (6) The manner in which any vacancy occurring in the office of the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole is required to be filled by the rules, regulations or constitution of the church;
- (7) Additional powers to be set forth in its charter, in accordance with subpart 2.14, chapter 1 of this title;*
- (8) Any lawful provision for the regulations of the affairs of the corporation sole, including restrictions upon the power to amend all or any part of the charter;
- (9) That the corporation is not organized for profit.

(b) If any petition for a charter of incorporation presented to the Registrar under this part is not in conformity with the requirements of this part the Registrar shall, within fifteen days, return the same to the petitioner specifying wherein the same fails to conform with this part and the petitioner may amend the petition and present it so amended. A proposed form of the charter of incorporation shall accompany the petition. The Registrar may require additional proofs from the petitioner. If the petition or amended petition and the proposed charter are in conformity with law, the Registrar shall present the petition or amended petition, proposed charter, and accompanying proofs to the High Commissioner for approval.

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Modified, 1 CMC § 3806(d), (f).

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b). The Commission corrected the spelling of “petition” in subsection (b) pursuant to 1 CMC § 3806(g).

The starred citation in subsection (a)(7) references portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

Trust Territory Corporations Regulations, chapter 1, subpart 2.14 provided:

2.14 Implied Powers. Every corporation created under this chapter may possess and exerci[se] any and all powers, not inconsistent with any existing law, set forth in its articles of incorporation or charter or reasonably incidental to the fulfillment [sic] of its purpose or purposes as set forth in its articles of incorporation or charter or reasonably incidental to the exercise of its powers as set forth therein.

Territorial Register, volume 1, number 1, page 8 (July 15, 1974).

§ 20-50.2-310 Powers of Corporation Sole

(a) Every corporation sole formed under this chapter shall have the powers set forth in subpart 2.14, chapter 1* and be subject to part 2.17, chapter 1* of this title.

(b) Every such corporation shall have continuity of existence, notwithstanding vacancies in the incumbency thereof, and during the period of any vacancy, shall have the same capacity and right to receive and take any gift, bequest, devise, or conveyance of property, either as grantee for its own use, or as a trustee (where the trusteeship is within its corporate purposes and subject to removal from such trusteeship as provided by law), and to be or be made the beneficiary of a trust, as though there were no vacancies.

(c) No agency created y a corporation sole by a written instrument which, in express terms, provides that the agency thereby created shall not be terminated by a vacancy in the incumbency of the corporation, shall be terminated or affected by the death of the incumbent of the corporation or by a vacancy in the incumbency thereof, however caused.

Modified, 1 CMC § 3806(f), (g).

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) through (c).

In subsection (b), the commission corrected the spelling of “incumbency.”

The starred citations in subsection (a) reference portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

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Trust Territory Corporations Regulations, chapter 1, subparts 2.14 and 2.17 provided:

2.14 Implied Powers. Every corporation created under this chapter may possess and exerci[se] any and all powers, not inconsistent with any existing law, set forth in its articles of incorporation or charter or reasonably incidental to the fulfillment [sic] of its purpose or purposes as set forth in its articles of incorporation or charter or reasonably incidental to the exercise of its powers as set forth therein.

2.17 Except as otherwise provided, no corporation shall be deemed to possess the power of discounting bills, notes, or other evidence of debt, or receiving deposits, or buying gold, silver, bullion, or foreign coin, buying and selling exchange, or issuing notes or other evidence of debt, except so far as the exigencies of the particular business for which it was incorporated require. Nor shall any corporation, unless authorized by express enactment of law, issue bills or other evidence of debt for circulation as money.

Territorial Register, volume 1, number 1, page 8 (July 15, 1974).

§ 20-50.2-315 Amendment of Charter

(a) Subject to the provisos set forth in this section, and subject to any lawful restrictions upon the power to amend the charter of a corporation sole, set forth in its petition filed under § 20-50.2-305, the incumbent of the corporation may at any time amend the charter of the corporation by changing its name, the term of its existence, the boundaries of the district subject to its jurisdiction, the place of its principal office, the manner of filing any vacancy in the incumbency thereof, its powers, or any provision of the charter for the regulation of the affairs of the corporation (except restrictions upon the power to amend the charter), and may, by amendment of the charter, make provision for any act or thing for which provisions is authorized in original charters of corporations sole formed under this part.

(b) The incumbent of the corporation sole shall subscribe and verify a certificate which shall set forth the amendment either by stating that the charter has been amended to read as set forth in the certificate in full or by stating that any provision or provisions of the charter, which shall be identified by the numerical or other designation or designations thereof in the charter or by stating the wording thereof, has or have been amended to read as set forth in the certificate. The certificate shall further state that the amendment has been duly authorized by the rules, regulations, or discipline of the church of which the incumbent is an officer; provided, the no amendment shall confer any other or greater powers or privileges than could lawfully be conferred or obtained in an original charter; provided, further, that no amendment shall become effective unless the same is allowed by the Registrar by and with the consent of the High Commissioner.

Modified, 1 CMC § 3806(c), (d), (g).

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

In subsection (b), the commission changed “be” to “by” to correct a manifest error.

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§ 20-50.2-320 Name of Incumbent; Change in Incumbency

There shall be filed, with petition for a charter, a certificate duly signed and acknowledged, which shall state the name, citizenship, and address of the person who is to be its incumbent, to which shall be appended a duly attested copy of the certificate of appointment or other document through which he became entitled to be the incumbent of the corporation sole. Whenever a change in the incumbency of the corporation occurs, the new incumbent, within thirty days after he has become an incumbent, shall file with the Registrar a like certificate with like proof of his title to the office.

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

§ 20-50.2-325 Distribution of Assets; Inspection of Books

(a) Except upon liquidation of the property of the corporation in case of dissolution, no part of the assets, income, or earnings of the corporation shall be withdrawn from or sent out of the Territory, unless the remaining assets of the corporation shall then equal in value twice the amount of the indebtedness of the corporation.

(b) The Registrar shall at all times have access to the books of the corporation.

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

§ 20-50.2-330 Extensions and Renewals

The duration of the corporation, if not perpetual, may be extended by amendment of its charter, and at any time not more than two years after the expiration of a charter it may be renewed upon application to the Registrar for that purpose; provided that no renewal shall become effective until it is allowed by the Registrar by and with the consent of the High Commissioner.

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

§ 20-50.2-335 Dissolution

A corporation formed under this part may be dissolved, voluntarily or involuntarily, in the manner provided in part 6 of chapter 1* denominated "dissolution," save that:

(a) In lieu of the certificate and vote therein required for a voluntary dissolution, the incumbent of the corporation sole shall execute, subscribe and verify a declaration of dissolution which shall set forth the name of the corporation, the reason for its dissolution or winding up, and that the dissolution has been duly authorized by the church, to administer the affairs, property, and temporalities of which the corporation was organized, and the registrar shall be satisfied that the dissolution has been duly authorized.

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(b) In lieu of the certificate of an officer, director or manager of the corporation, therein, required for the involuntary dissolution of a corporation which has ceased to have any assets and has failed to function, the certificate may be made by any authorized officer of the church, to administer the affairs, property, and temporalities of which the corporation was organized.

(c) In lieu of the directors or managers of the corporation the incumbent shall be a trustee to wind up the corporation, unless some other person or persons are appointed as therein provided.

(d) The church, to administer the affairs, property and temporalities of which the corporation was organized, shall stand in the place and stead of the stockholders, and may be represented in court by any authorized officer thereof or trustee acting in its behalf; the remaining assets shall be distributed to such church or to a trustee or trustees in its behalf, or in such other manner as may be decreed by the High Court judge at chambers; and the trustee or trustees in dissolution, the Registrar, the Attorney General, or any person connected with the church, may file a petition for the determination of the manner of distribution of the remaining assets, or for the appointment of a trustee or trustees to act in behalf of the church.

(e) In lieu of the officers of the corporation the incumbent shall represent the corporation with respect to the required tax clearance.

Modified, 1 CMC § 3806(d), (g).

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: In the opening paragraph, the commission moved the comma after “dissolution” inside of the closing quotation mark to correct a manifest error.

The starred citation in the opening paragraph references portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974). Trust Territory Corporations Regulations, chapter 1, part 6 provided for the dissolution of corporations in the Commonwealth. See Territorial Register, volume 1, number 1, pages 17-20 (July 15, 1974).

§ 20-50.2-340 Corporations Sole Heretofore Formed; General Laws

(a) Any corporation sole heretofore formed and existing under the laws of this Territory for ecclesiastical purposes may elect to continue its existence under this part by filing an application for amendment of its charter in the manner and form provided for an application for an original charter,* together with the required certificates as to the incumbency of the corporation. If such amendment is allowed by the Registrar by and with the consent of the High Commissioner, this part thereupon shall apply to such corporations sole the same as to corporations under this part.

(b) Any charter or amended charter granted or corporation created or existing under the authority of this part shall be subject to all general laws enacted in regard to corporations.

Modified, 1 CMC § 3806(d).

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

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Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).