COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA, & NORTHERN ISLANDS

COMMONWEALTH REGISTER
VOLUME 27
NUMBER 11

DECEMBER 30, 2005

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NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENT TO PERMANENTLY ADOPT AMENDEMENT TO PROCUREMENT REGULATIONS, SECTION 3-108

Emergency: The Secretary of Finance for the Commonwealth of the Northern Mariana Islands find that pursuant to Title 1 CMC, Division 9, Chapter 1 and specifically under 1 CMC § 9104(b), the public interest requires the adoption on an emergency basis, of amendments to the Procurement Regulations, Section 3-108. These Procurement Regulations were enacted as published in the Commonwealth Register Vol. 12, No. 10 on October 15, 1990, amended as published in Commonwealth Register Vol. 22, No.08 on August 18, 2000 and as published in the Commonwealth Register Vol. 23, No. 05, on May 24, 2001 and amended as published in the Commonwealth Register, Vol. 26. No.2 on February 23, 2004.

The Secretary of Finance further finds that the public interest mandated the adoption of these amendments to the procurement regulations upon fewer than thirty (30) days notice, and that these amendments shall become effective immediately after filing with the Registrar of Corporations, subject to the approval of the Acting Attorney General and the concurrence of the Governor and shall remain effective for a period of 120 days, unless sooner adopted as permanent regulations.

Reasons for the Emergency: The Commonwealth of the Northern Mariana Islands has an urgent need for safe, potable drinking water. The availability of 24-hour water service is an essential requirement for the safety and well being of the community. The Secretary of Finance finds that the existing Procurement Regulations do not provide the framework necessary for the Commonwealth of the Northern Mariana Islands to procure the equipment and services necessary to implement a 24-hour safe water supply in an expeditious fashion. The adoption of these amendments will provide a modified competitive procurement process in certain circumstances. The adoption of these amendments to the Procurement Regulations will allow the CNMI Water Task force to expeditiously acquire good and secure services in furtherance of the stated goal of bringing a safe 24-hour water supply to the CNMI.

Intent to Adopt: It is the intention of the Department of Finance to permanently adopt these regulations, pursuant to 1 CMC § 9104(1) &(2). Accordingly interested persons may submit written comments on these regulations to: Director, Procurement and Supply Division, Department of Finance at (670) 664-1500.

Date: November 29, 2005

Submitted ~~Jeremy~~
Fermin Atalig, Secretary of Finance

DEC 0 5 2005

Date: ~~November ____, 2005~~

Approved by: ~~Mark Rabauta~~
Juan N. Babuata,

Governor

Date: 12/05/05

Filed and Recorded by:
Bernadita B. Dela Cruz

Pursuant to 1 CMC s 2153, as amended by PL-10-50, the following rules and regulations have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated: 12/05/05

By
Pamela S. Brown
Acting Attorney General

Public Notice
Department of Finance

EMERGENCY REPEAL AND RE-ACTMENT OF PROCUREMENT REGULATIONS, SECTION 3-108

Citation of Statutory Authority:	Pursuant to Article X, Section 8 of the Commonwealth Constitution ad 1 CMC § 2553(j) and 1 CMC § 2557.
Short Statement of Goals and Objectives:	To provide expedited procurement through the CNMI Water Task Force for goods and services necessary to facilitate the implementation of a 24-hour water supply in the Commonwealth.
Brief Summary of The Rule:	Expedited procurement regulations are amended to provide for modified competitive procurement.
For Further Information Contact:	Director, Procurement and Supply Division, Department of Finance at (670) 664-1550.
Citation of Related and/or Affected Statutes, Regulations And Orders:	CNMI Procurement Regulations, Section 3-108.

Submitted by:

Fermin Atalig
Secretary of Finance

11/29/05
Date

NOTISIA POT ENSIGIDAS NA REGULASION YAN NOTISIAN INTENSION PARA U MA'ADOPTA PETMANENTE I AMENDASION I REGULASION PROCUREMENT SEKSIONA 3-108

Ensigidas: I Sekritårion I Finance para I Commonwealth I Sankattan Siha Na Islas Marianas a sodda na sigun I Titilu 1 CMC, Dibision 9, Kapitulu 1 yan spesifikåtmente papa I 1 CMC Seksiona 9104 (b), I interes pupbliku a nisisita I inadoptasion gi ensigidas na maneha, I amendasion siha para I Regulasion Procurement, Seksiona 3-108. Este na Regulasion Procurement man ma'otdena anai mapupblika gi Rehistran I Commonwealth Baluma 12, Numiru 10 gi Oktubre 15, 1990, ma'amenda anai mapupblika gi Rehistran I Commonwealth Baluma 23, Numiru 08 gi Agostu 18, 2000 ya anai mapupblika gi Rehistran I Commonwealth Baluma 23, Numiru 05, gi Måyu 24, 2001 ya anai mapupblika gi Rehistran I Commonwealth Baluma 26, Numiru 2 gi Febreru 23, 2004.

I Sekritårion I Finance a sodda mås na I interes pupbliku a månda I inadoptasion este na amendasion para I regulasion Procurement menos di trenta (30) diha siha na notisia, ya debi di u efektibu este na amendasion ensigidas despues di mapolu' gi Rehistran I Koporasion, suhetu gi I inaprueban I Acting para I Abugådu Heneråt yan I kininfotmen I Gubietno ya debi di u efektitibu esta I siento-bente diha siha na tiempo, solu la'tåftåf ma'adopta na petmanente na regulasion siha.

Rason para I Ensigidas: I Commonwealth I Sankattan Siha Na Islas Marianas gumuaha mås prisisu na nisisidåt para I sinåfu yan gåsgas na hånom magimen. I guinahan I setbisiun hånom bente-kuåttro (24) ora siha I mås prisisu na nisisidåt para I sinåfu yan I hinemlo taotao komunidåt-ta. I Sekritårion I Finance a sodda mås na I eksiste na Regulasion Procurement ti a probeniyi I nisisario na fondamento para I Commonwealth I Sankattan Na Islas Marianas para u na guaha I måkina yan nisisårio na setbisiu para u tutuhon I suplikan hånom bente-kuåttro ora siha gi I mås chaddek na maneha. I inadoptasion este na amendasion siempre a probeniyi I mamodifika na maneha pot para u kompitensia gi maolek na manera. I inadoptasion este na amendasion I Regulasion Procurement siempre a sedi I CNMI Water Task Force para u na la'chaddek muna guaha maolek yan asigura na setbisiu pot para u maolek I suplikan hånom bente-kuåttro ora siha para I CNMI.

Intension Para u Ma'adopta: I intension I Dipåttamenton I Finance para u adopta petmanente este na regulasion siha, sigun I lai 1 CMC Seksiona 9104 (1)&(2). Kininsiste ni man interesao na petsona siña ma'entrega hålom I tinige' opinion siha pot este siha regulasion para I: Direktot, I Dibision Procurement and Supply, Dipåttamenton I Finance gi (670) 664-1500.

Fecha: Nubembre 29, 2005

Ninahalom as:
Fermin Atalig
Sekritårion I Finance

Fecha: Disiembre 05, 2005

Inaprueba as: _____
Juan N. Babauta
Gubietno

Fecha: Disiembre 05, 2005

Pinelo' yan
Rinikot as: _____
Bernadita B. Dela Cruz
Rehistradoran I Commonwealth

Sigun I lai 1 CMC Seksiona 2153, ni inamenda ni Lai Pupbliku 10-50, I sigente siha na areklamento yan regulasion siha esta man ma'ina yan ma'aprueba pot para u fotma yan ligåt sufisiente ni I Ofisinan I Abugådu Heneråt I CNMI.

Fecha: Disiembre 05, 2005

Ginen as: _____
Pamela Brown.
Abugådu Heneråt

Notisian Pupbliku
Dipåttamenton I Finance

ENSIGIDAS NA MA'OTDENA YAN DIROGA I REGULSION PROCUREMENT SEKSIONA 3-108

Annok I Aturidåt I Lai:	Sigun I Atikulu X, Seksiona 8 gi Commonwealth Constitution 1 CMC Seksiona 2553(j) yan 1 CMC Seksiona 2557.
Kada'da' Na Mensåhe Pot Finiho yan Diniseha:	Para u probeniyi lamaolek na kosas yan nisisårio na setbisiu ginen I Water Task Force para u alibia yan tutuhon I suplikan hånom bente-kuåttro ora siha gi Commonwealth.
Kada'da' Na Mensåhe Pot I Areklamento:	Lachaddek na regulasion procurement man ma'amenda para u probeniyi I mamodifika I kompitensia na procurement.
Para Mås Infotmasion Ågang:	I Direktot,I Dibision I Procurement and Supply, gi Dipåttamenton I Finance gi (670) 664-1550.
Annok I Man Achule' Yan/pat Inafekta Na Lai, Regulasion, yan Otden siha:	Regulasion Procurement I CNMI, Seksiona 3-108.

Ninahålom as:

Fermin Atalig
Sekritårion I Finance

December 20, 2005
Fecha

ARONGORONG REEL GHITIPWOTCHOL ALLÉGH KKAAL ME AMMATAF REEL MÁNGEMÁNG IGHA EBWE SCHÉÉSCHÉÉL FILLÓÓY ALLÉGHÚL PROCUREMENT, TÁLIL 3-108

GHITIPWOTCHUL: Samwoolul Finance mellól Commonwealth Téél Faluwasch Marianas e. schungi bwe sangi talil 1 CMC, Peigh 9, Talil 1 me schééschéél faal 1 CMC talil 9104 (b), tipeer toulap bwe rebwe yáayá ngali ghitipwotchol filló yeel, bwelle lliwel kkaal ngáli alléghúl Procurement, talil 3-108. Alleghúl Procurement kkaal nge a allégheló mellól Commonwealth Register Vol. 12 No. 10 ótol Sarobwel 15, 1990, lliwelóól Mellól Commonwealth Register, Vol. 22, No. 08 ótol Elúwel 18, 2000 me aa akkatééló llól Commonwealth Register Vol. 23, No. 05, ótol Ghúúw 24, 2001 me lliwelóól llól Commonwealth Register, Vol. 26 No. 2 ótol Mááschigh 23, 2004.

Samwoolul Finance e sóbwósóbwóló yaal schungi bwe tipeer toulap bwe rebwe schééschéél fillóóy lliwel kkaal ngáli alléghúl Procurement igha essóbw luuló eliigh (30) ráálil yaal ammatafawow, me lliwel kkaal ebwe schééschéél alléghéló Mwiril schagh yaal atotoolong llól Register of Corporations, kkapasal igha ebwe alúghúlúghúló mereel Sów alillisil Sów Bwungul Allégh Lapalap me alúghúlúghúl Sów Lemelem me ebwe kkamalló llól ebwúghúw ruweigh(120), ngáre schagh re kkeyil fillóóy bwe ebwe schééschéél alléghéló.

BWÛLÚL GHITIPWOTCHOL: Commonwealth Téél falúwasch Marianas nge mwuschel ebwe aghatchú, potable drinking water. Ayoora ruweigh me faawu (24) reel ammwelil schaal iye ebwe yáayá ngáli alléghúl me ebwe ghatch mellól kominidóód. Samwoolul Finance e schungi alléghúl Procurement iye ighila bwe ese ayoora framework ye e welepakk ngáli Commonwealth Téél falúwasch Marianas igha ebwe akkamwasch equipment me alillis kka e welepakk reel ebwe ayoora 24-hours ammwelil schaal. Fillóól lliwel kkaal ebwe siweli kkapasal procurement llól meeta mwóghútúl. Fillóól lliwel kkaal ngáli Alléghúl Procurement nge ebwe alisi CNMI Task Force reel atotoolongol 24-hours reel ammwel schaal llól CNMI.

MÁNGEMÁNGIL FILLÓÓL: Mángemángil Depattamentool Finance nge ebwe schééschéél fillóóy allégh kkaal, sangi allégh ye I CMC Tálil 9104 (1) me (2), sangi schóókka eyoor mángemángiir nge emmwel rebwe isisilong máfiyeer bwelle allégh kkaal reel Samwoolul, Procurement and Supply Division, Depattementool Finance reel (670) 664-1500.

Ráálil ye Aremwoy ____, 2005

Isáliyallong:_____
Fermin Atalig,
Samwoolul Finance

Ráálil ye Aremwoy ____, 2005

Alúghúlúgh Sángi:_____
Juan N. Babauta
Sów Lemelem

Ráálil:_____ Ammwel Sángi:_____
Bernadita B. Dela Cruz

Sángi allégh ye I CMC 2153 iye aa lliwel mereel Alléghúl Toulap ye 10-50, allégh kkaal nge raa takkal amweri me alúghúlúgh sángi Sów Bwungul Allégh Lapalap. Mellól CNMI

Ráálil:_____ Sángi:_____
Pamela S. Brown
Acting ngáli Sów Bwungul
Allégh Lapalap

Arongorong Toulap

GHITIPWOTCHOL FFÉÉR SEFÁL ME ALLÉGH SEFÁL, TÁLIL KKAAL 3-108

Akkatéél Bwángil: Sángi Article X, Tálil fisuuw (8) llól Commonwealth Allégh Lapalap I CMC tálil 2553 (j) me I CMC tálil 2557.

Aweweel Pomwol Lliwel: Rebwe ghitipwotchuw Procurement mellól CNMI Task Force bwe ebwe ghatch me alillis kka ebwe mwóghut ágheli féérúl 24-hour reel mwóghutul schaal mellól Commonwealth.

Aweweel Pomwol Allégh: Ghitipwotchul alléghúl Procurement ikka raa lliweli bwelle ebwe ayoora ssiwelil competitive procurement.

Reel Ammataf: Samwoolul, Procurement and Supply Division, Depattementool Finance reel (670) 664-1550.

Akkatéél akkááw bwángil allégh: Alléghúl CNMI Procurement, Tálil 3-108.

Isaliyallong:

Fermin Atalig
Samwoolul Finance

Rál

Emergency Re-peal and Re-actment of Sections 3-106 and 3-108 and to amend Section 5-101 of the CNMI Procurement Regulations

Section 3-108 is hereby amended as follows:

"**Section 3-108** Expedited Purchasing in Special Circumstances

1. When special circumstances require the expedited procurement of goods or services, the official with expenditure authority may request that the Director approve expedited procurement without the solicitation of bids or proposals.

2. The factors to be considered by the Director in approving or disapproving this request shall be:

   a. The urgency of the government's need for the good or services especially if procuring vehicles and equipment specifically designed for chemical, biological, nuclear exposure and bomb detection and critically needed emergency medical supplies as described by the Office of Domestic Preparedness;

   b. The urgency of the government's need for good or services to facilitate implementation of a safe 24-hour water supply;

   c The urgency of the government's need for professional services to facilitate obtaining critical infrastructure funding in order to harden and enhance critical infrastructures of the Commonwealth or for the implementation of a safe 24-hour water supply.

   d. The comparative costs of procuring the goods or service from a sole source or through the competitive process;

   e. The availability of the goods or service in the Commonwealth and the timeliness in acquiring it; and

   f. Any other factors establishing the expedited procurement is in the best interest of the Commonwealth Government.

3. Upon the Director's written determination that the factors in (2) above justify an expedited purchase, he shall process the necessary document(s) and assist

the official with the expenditure authority in procuring the required goods or services in the most efficient manner.

4. If the Director determines that the request for the expedited procurement did not meet the criteria in (2) above, he shall promptly notify the official with the expenditure authority of his disapproval in writing.

5. The expedited procurement shall be as competitive as possible under the circumstances. Whenever possible, the official with expenditure authority shall solicit a minimum of three (3) quotations from qualified vendors.

6. The total amount of goods or service that may be approved under this section shall not exceed $25,000 except when:
    a. such goods or services are procured for the purpose of facilitating the process of implementation of a 24 hour water supply for the Commonwealth.

NOTICE OF ADOPTION OF EMERGENCY TRAVEL EXPENSE REGULATIONS

EMERGENCY: The Secretary of the Department of Finance ("Secretary") finds that under 1 CMC § 9104(b)1 CMC § 2552; 2 CMC § 2557; 4 CMC § 1104; 4 CMC § 1402(d); 4 CMC § 1425; P.L. 14-35 § 1820; and 1 CMC § 9101, et seq. the public interest and welfare requires the adoption of emergency amendments to establish rules and regulations to aid in the administration and implementation of the duties and responsibilities granted to the Secretary and Department of Finance ("DOF"), specifically the establishment of rules and regulations regarding business travel expenses, and further finds that the public interest and welfare mandates adoption of these emergency amendments upon fewer than thirty (30) days notice. These regulations shall become effective immediately upon filing with the Registrar of Corporations, subject to the approval of the Attorney General and the concurrence of the Governor, and shall remain in effect for 120 days.

REASON FOR EMERGENCY: 1 CMC § 9104(b)1 CMC § 2552; 2 CMC § 2557; 4 CMC § 1104; 4 CMC § 1402(d); 4 CMC § 1425 and P.L. § 14-35 § 1820, grant the Secretary broad responsibilities which require the adoption of procedures to aid in fulfillment of these responsibilities. Employees of the Commonwealth frequently incur travel related expenses as part of their employment duties. In order to fulfill DOF duties to ensure that all public funds are spent appropriately requires the adoption of specific regulations controlling these expenditures. Travel related expenses occur on almost a daily basis and emergency adoption of these regulations will allow immediate application of these rules. Without the adoption of rules that have force of law, the DOF is hindered in fulfillment of its legal duties.

INTENT TO ADOPT: It is the intent of the Secretary of Finance to adopt the emergency travel expense regulations as permanent pursuant to 1 CMC § 9104(a) and (2). Accordingly, interested parties may submit written comments on these emergency regulations to Fermin M. Atalig, Secretary of Finance, Department of Finance Caller Box 10007, C.K. Saipan, MP 96950 0r by fax to (670) 664-1115.

Submitted by: _____ 12/13/05
Fermin M. Atalig — Date
Secretary of Finance

Concurred by: _____ 12/14/05
Juan N. Babauta — Date
Governor

Received by: _____ 12/20/05
Thomas Tebuteb — Date
Special Assistant for Administration

Filed and Recorded by: _____ 12/20/05
Bernadita Dela Cruz — Date
Commonwealth Registrar

Pursuant to 1 CMC § 2153 as amended by Public Law 10-50. regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General.

_____ 12/30/05
PAMELA BROWN — Date
Attorney General

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF FINANCE

Proposed Regulations Establishing Travel Expense Regulations

Citation of Statutory Authority:	CMC § 9104(b)1; CMC § 2552; 2 CMC § 2557; 4 CMC § 1104; 4 CMC § 1402(d); 4 CMC § 1425; 1 CMC § 9101, et seq.; and P.L. 14-35 § 1820
Statement of Goals and Objectives:	The purpose of these regulations is to establish uniform procedures for regulations of travel expenses.
Brief Summary of the Regulation:	The regulation establishes the process and format to be used in the expenditure of public funds for travel related activity.
For Further Information:	James R. Stump, Assistant Attorney General (670) 664-2329
Citation of Related and/or affected Statutes, Regulations, and Orders:	CMC § 9104(b)1; CMC § 2552; 2 CMC § 2557; 4 CMC § 1104; 4 CMC § 1402(d); 4 CMC § 1425; P.L. 14-35 § 1820; 1 CMC § 9101, et seq.

Dated this 13th day of December 2005

Submitted by:

Fermin M. Atalig
Secretary of Finance

DEPARTMENT OF FINANCE REGULATIONS

Date: 12-13-05

Regulation Title: Travel Expense Regulations

Regulation Number: 05-03

Date of Adoption:

Date of Amendment(s):

Regulation Purpose:

Travel associated with work is a regular and necessary element of government operations. The Commonwealth of the Northern Mariana Islands has a duty to ensure that all business related travel is for necessary purposes and that expenses are reasonable.

The DOF has been given the duty under article X, § 8 of the Commonwealth Constitution and 1 CMC § 2557 to adopt necessary regulations to control and regulate public funds to ensure that they are expended for public purposes. The purpose of these regulations is twofold:

1. to aid the Department of Finance ("DOF") in the coordination and fulfillment of the duties assigned by article X, § 8 of the Commonwealth Constitution and 1 CMC § 2557, P.L. 6-5 § 306, and Executive Directive No. 154 (January 19, 1995);
2. to establish work rules that provide direction to all Commonwealth employees concerning requirements that must be met for travel expenditures to be approved and obtain any cost reimbursement.

Regulation:

1. **Application**
   The following regulations apply to all requests for reimbursement of travel expenses by all employees of the Commonwealth of the Northern Mariana Islands and its agencies and instrumentalities.

2. **Travel Expense Defined**
   Travel expenses are defined as expenses incurred by employees when they are required to travel off-island from their usual place of work assignment and this assignment has received prior written approval.

3. **Required Compliance**
Any employee of the Commonwealth of the Northern Mariana Island, or its agencies and instrumentalities who is required to travel on Commonwealth business must comply with DOF requirements in order to receive funding and/or reimbursement of travel expenses

4. **Coach Fare Required**
All airfare expenses are to be for coach fare tickets. Costs for upgrade to fares other than coach will be at the personal expense of the employee and not considered in reimbursement of evaluation of total travel expenses.

5. **Alcoholic Beverages or Other Unauthorized Expense**
Costs of alcoholic beverages or any expense not specifically identified within the definition of travel expenses and indicated on the travel authorization form ("TAF") are not subject to reimbursement.

6. **Unused Tickets**
If a trip is cancelled after issuance of either travel advance or tickets the Department of Finance is to be informed of the cancellation within 2 working days of notice of cancellation. Any travel advances and tickets received should be returned with notification to the Department of Finance.

7. **Lost/Stolen Tickets**
Issued tickets are the personal responsibility of the employee. Any fees incurred as a result of the replacement of a lost/stolen ticket or delay in travel due to requirements of re-issuance will be the responsibility of the employee.

8. **Roles/Responsibilities**
In the approval of travel expenses, advances, and reimbursements, there are three - four parties who must participate in this process (the number of participants depends on whether travel is within or without the CNMI): 1) employee; 2) department head; 3) Department of Finance; 4) Governor or his delegate. Each of these parties has its own responsibilities in the authorization of travel expenses. The parties and the roles and responsibilities of each in travel expense authorization are identified below.

A. Employee Incurring Travel Expenses
Primary responsibility for compliance with all travel regulation requirements lies with the employee. The employee incurring travel expenses ("Employee") is required to sign three documents in the travel regulations procedures: 1) the travel authorization form; 2) the travel advance Form; and, 3) the Travel Voucher Form. The responsibility of the employee varies in each of these steps, which is explained below.

i) When the Employee signs the Travel Authorization Form, he is attesting that the travel and all identified costs are work related and accurate. Additionally, the employee is attesting that he/she has read the Travel Expense Regulations and has or will complied with the requirements of these regulations in the submission of the TAF and any further documents required.

ii) When the Employee signs the Travel Advance Form, he is attesting that he/she realizes that he/she is assuming personal liability for the proper expenditure of these funds in compliance with Travel Expense Regulations and will not expend these funds for any activity other than those authorized in the approved Travel Voucher. Furthermore, by signing the TAF the Employee is agreeing to allow the DOF to garnish his/her wages should he/she fail to comply with requirements of the Travel Regulations. Finally, by signing the TAF the Employee is agreeing to the use of all legal process in order to collect on any noncompliant travel advances.

iii) When the Employee signs the Travel Voucher Form he/she is attesting under penalty of perjury that all information submitted on the form and the associated attached receipts are true and accurate. Submittal of false information on this form by the employee may result in the institution of criminal and or civil charges against the employee in addition to any disciplinary procedures.

B. Secretary of Department Authorizing Employee Travel
The Secretary of the Department signing a travel authorization ("Secretary") is required to sign two documents in the Travel regulation process; 1) Travel Authorization Form; and, 2) Travel Voucher Form. The responsibilities of the Secretary varies in each of these steps.

i) When the Secretary signs the TAF he/she is attesting that the travel is work related and appropriate to the duties of the individual and responsibilities of employment and this expenditure is within budget limits. Additionally, the Secretary is attesting that he/she has reviewed the completed form and it is in compliance with the Travel Regulations.

ii) When the Secretary signs the Travel Voucher Form he/she is attesting that to the best of his/her knowledge the employee undertook the travel and incurred the identified expenses as indicated, that he/she has reviewed the completed form and it complies with all necessary requirements.

C. Department of Finance

The Department of Finance approval is required on three documents in the travel authorization process:

1) Travel Authorization Form;
2) Application for Advance of Funds; and,
3) Travel Voucher.

The responsibilities of Department of Finance and the authorizing agent varies with each form and is discussed below:

i) The signatory of the Department of Finance on the Travel Authorization form indicates that the submitted expenses is budgeted, within expenses limits and has submitted proper documentation and signatures.

ii) The signatory of the Department of Finance on the Travel Advance Form indicates that the funds provided are authorized under the Travel Authorization Form, comply with appropriate limits on provision of travel advance funds, and that the requesting employee has completed the necessary forms.

iii) The signatory of the Department of Finance on the Travel Voucher Form indicates that the required receipts have been submitted and the submitted documents have complied with Travel Expense Regulations.

D. Governor or his Delegate

The Governor or his delegate must approve any travel outside the Commonwealth. This approval is not required for travel within the Commonwealth.

9. Travel Expense Forms

There are three forms that must be completed for travel enforcement which are as follows:

i) Travel Authorization Form ("TAF");
ii) Application for Advance of Travel Funds ("ATF"); and,
iii) Travel Voucher Form ("TVF")

The requirements for proper submission of each form is provided in the respective sections below. Information required to be submitted in these forms is at the discretion of DOF. Employees requesting travel expenses are required to use the most current DOF travel expense forms

A. Travel Authorization Form ("TAF")

i) Prior to undertaking any travel, an employee must submit a completed Travel Authorization form ("TAF").

ii) The purpose of the TAF is to identify estimated costs, dates of travel, determine availability of funds and receive required approvals.

iii) Application for travel must be on an approved form ("TAF"), and include all required information.

iv) Information required on the TAF is determined by the Department of Finance (DOF) and may be changed as information and compliance needs are evaluated.

v) TAF is to be submitted no less than 10 working days prior to proposed travel.

vi) DOF will not approve any submitted TAF if it is found to be incomplete, non-compliant with these regulations, or if the submitting agency has insufficient funds to pay for proposed travel expenses.

B. Advance of Travel Funds Form ("ATF")

i) Upon approval of a TAF, employees may apply for and advance of travel funds

ii) An advance of travel funds provides the employee with 80% of food, lodging, and ground transportation cost as presented in the TAF budget information.

iii) Applications for an advance of travel funds are to be made on an approved application for Advance of Travel Funds ("ATF").

iv) Application for advance of travel funds are developed by the DOF, based on a determination of the type of information required for the advance of public funds.

v) Employees who receive advances of travel funds are personally liable for these funds until they present the required documentary evidence of approved expenditures. Any unpaid liability may result in direct reduction of future pay until liability is satisfied.

vi) Required documentation is to be presented in the Travel Voucher form ("TVF").

C. **Travel Voucher Form (TVF")**

i) Upon completion of travel that was approved by submission of a TAF, the employee must file a completed travel voucher form ("TVF").

ii) The purpose of the TVF is to document the approved travel and expenditures.

iii) TVF is to be submitted within 15 working days of last day of approved travel.

iv) The required documentation of approved expenditures is shown in the table below:

Travel Expense	Required Expenditure Documentation
Airfare	Boarding passes for all airline flight segments *
Lodging	Receipt for lodging expenses showing dates of lodging and associated charges is required unless employee is using per diem allowance. No receipts are required for use of per diem allowance.
Telephone services Copying charges and other communication expenses	Billing records indicating charges and points of communication and documentation of business purpose
Meals	Receipts are required unless employee is using per diem allowance. No receipts required if employee is using per diem allowance
Car Rental	Rental contract
Gasoline purchase	Receipt
Ground transportation (taxi, train, subway)	Receipt
Parking	Receipt

* employees who are missing a boarding pass of a leg of an airline ticket may present alternative evidence of completion of travel and affidavit attesting to use of ticket.

10. Amendment to Travel Authorization Form

Submission of travel expenses in excess of the travel budget presented in the Travel Authorization Form requires the submission of an amended Travel Authorization Form. The Amended Travel Authorization Form must be submitted at time of presentation of Travel Voucher Form and be consistent with the expenses presented in the Travel Voucher Form.

11. Falsification of Information Presented in Travel Expense Program

Falsification of any information presented on the travel expense forms is a violation of these regulations and may result in denial of reimbursement for travel expenses and/or disciplinary action up to and including discharge and referral to the Office of Attorney General for possible criminal prosecution.

12. Travel Expense Limits

Limits are established for the incursion of costs associated meals and lodging on Commonwealth business. In the table below specified costs limits are established. Travel costs that exceed this amount are the responsibility of the employee. In order to be eligible for the submission of any of these costs, they must be identified in the Travel Application Form and approved prior to incursion. Employees must provide required receipts justifying expenses upon submission of travel voucher. Employees who fail to provide receipts justifying any funds advanced under travel advance program will be required to re-pay DOF for the difference between amount of advance and receipts presented.

Expense Activity	Maximum Daily Limits	
Car rental and all associated costs (gasoline, insurance)	$70/day	
Meals	Breakfast $7.00 Lunch $8.00 Dinner $10.00	
Parking	$20/day	
Taxis	$50/day	
Per diem allowance (amounts shown includes all lodging and meal expenses). These maximum amounts apply only to days where lodging is required.	1. Within the CNMI 2. Guam 3. U.S. Mainland (excluding Hawaii, California, New York, and Washington, D.C.) 4. Hawaii, California, New York, and Washington, D.C. 5. Far East and Southeast Asia 6. Japan 7. F.S.M.	$85/day $175/day $200/day $250/day $200/day $275/day $150/day

13. Meals

Payment of meals is allowed when employee is required to be off-island from their usual place of work. Meal allowance represents maximum authorized expense limit for this activity. Meal allowance is to be determined by time employee departs on transportation for off-island travel and when he/she returns to island, or ceases business related travel and begins personal leave. Generally, meals will be calculated based on off-island work assignments during the following periods: breakfast - 7 a.m.; lunch - noon; dinner - 5 p.m.

When employee is being paid per diem allowance for a specific day, meal expenses are included in per diem allowance and employee may not receive both per diem and meal allowance. During periods of Commonwealth business travel, employees may receive meal allowance for days when per diem allowance has ceased and employee is in transit.

14. Transportation

When scheduling required transportation, employees are required to select most direct flight to required destination and return. Only cost of coach class ticket is reimbursable. Any costs for flight layovers or stops that result in increases to the cost of ticket or associated expenses will not be considered authorized expenses.

15. Per Diem

Per diem allowances are maximum daily limits for a combination of lodging and meal expenses. If an employee selects per diem reimbursement, no receipts are required. Per diem allowance is only provided for an uninterrupted period beginning one day prior to start of Commonwealth business function and ceases one day prior to end of Commonwealth business activity. Employee must submit acceptable documentation indicating date of first and last business meeting.

16. Failure to Comply with Requirements

Failure of any employee to comply with duties and/or requirements concerning travel expenses is a violation of work rules and an abuse of public funds and may result in both disciplinary action up to and including discharge and imposition of personal liability for any costs/expenses.

Personal liability includes both denial of reimbursement of expenses incurred and/or requirement to repay any travel advances that have been provided. DOF may use all means available at law or equity to enforce these claims including direct reduction of employee pay.

Upon a finding by DOF that an employee has failed to comply with travel expense procedures the following steps shall be taken:

A. Provision of final demand letter requiring compliance with regulations and/or repayment of funds to employee. This communication is to be sent via certified mail.

B. Provision of thirty - days to review records of DOF concerning travel advance, meet with DOF representatives and present evidence of compliance.

C. Upon completion of thirty-day period, DOF must issue final determination of liability of Employee and amount due and owing and delivered via first class mail

D. Upon issuance of final determination, the employee may either: 1) pay amount due; 2) enter into promissory note for payment including payroll deductions; 3) request a hearing.

E. Any installment agreement with the employee to repay travel advances must be on installment plan form approved by the DOF. All voluntary payment plans must provide for full payment of outstanding balance within a maximum of 24 months.

F. The method to be followed for requesting a hearing is dependant upon whether the employee is a member of the Commonwealth Civil Service.

i) If the employee is a member of the Commonwealth Civil Service system, and disagrees with final determination, he/she must follow the formal grievance procedure requirements established in the Commonwealth Personnel System Rules and Regulations ("CPSRR"), IIIG10B which require appeal to the Civil Service Commission within 15 days of receipt of final decision. CPSRR IIIG10.B. The formal grievance procedure identified in the Commonwealth Personnel Rules and Regulations shall be the sole method to appeal final determinations regarding travel advances.

ii) Employees who are not part of the Commonwealth Civil Service System must make a formal written request for a hearing within ten (10) days of receipt of final determination. Written request for hearing must include the following:

a. identity of aggrieved employee, position, organization
b. details of the grievance
c. the corrective action desired
d. presentation of any evidence supporting employee position
e. copy of the final determination

G. Failure to take one of the three options (payment, installment agreement, request hearing will result in involuntary payroll deductions for the amount of outstanding liability and prohibition of employee from any future travel expenses until outstanding issue is fully paid. Involuntary payroll deductions are to be the lesser of 25 percent of net income or $150. For purposes of this section net income is defined as gross income minus; Social Security payment, wage and salary withholding; and court ordered child support payments; Commonwealth retirement system mandatory contribution.

H. Employees who are under repayment plan for travel advances and fail to comply with repayment agreement or any other travel advance regulations are ineligible for any future travel advances.

I. Employees who terminate employment prior to payment of full amount of liability will have outstanding balance deducted from last paycheck unless alternative payment arrangements are made prior to termination. Failure to make arrangements for payment of any outstanding balance at termination will result in institution of civil collection proceedings and/or referral to collection agency.

J. The hearing provided to non-civil service employees must be conducted by a hearing Officer appointed by DOF.

K. If, the determination of the hearing officer indicates that the employee has failed to comply with travel expense procedures, the hearing officer must make impose personal liability and repayment schedule in compliance with these regulations.

L. Employees who are found by the hearing officer and/or Civil Service Commission to have financial liability to the Commonwealth for travel expenses will be given 10 working days from date of final determination to make payment for all outstanding amounts or to make arrangements with DOF for promissory note and/or payroll deductions

M. Failure to make payment or arrangements with DOF after determination of hearing officer and/or Civil Service Commission requirements for delinquent amounts will result in disciplinary action up to and including discharge and initiation of civil collection proceedings.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

APPLICATION FOR TRAVEL ADVANCE

Date: _____

Employee making application: _____

Employee Number: _____

Social Security Number: _____

Home Address: _____

_____

Work Phone: _____

Home Phone: _____

Department: _____

Account to be Charged: _____

Approved Travel Authorization: _____

Total Amount of Approved
Travel Authorization: _____

Amount of Travel Advance: _____

Travel Advance Agreement/Contract

1. Employee acknowledges that he/she is aware of the DOF Travel Regulations and the availability of these regulations should he/she so desire a copy of these regulations and that the signature of this form is a binding contract between the employee and the Commonwealth based on the requirements of the DOF Travel Advance Regulations. The applicant for a travel advance acknowledges that by making a request for a travel advance the employee assumes personal liability for all funds received. Expenditure of funds received is not authorized until the employee has complied with all requirements of the Department of Finance travel regulations. Non-compliance with travel advance regulations may result in disciplinary action up to and including discharge.

2. Among requirements for compliance are restrictions of use of funds to those expenditures specifically authorized in the Travel Authorization Form ("TAF") associated with this activity in the amounts specified in this form. Any deviation from the expenditure activity identified in the TAF will require the submission and approval of an amended TAF.

3. Travel Voucher form and required receipts supporting all expenditures must be submitted within ten (10) days of return from travel.

4. By signature below, employee authorizes the Department of Finance to deduct any unauthorized expenditures from paycheck according to DOF Travel Advance Regulations requirements.

5. Should the employee terminate employment with the Commonwealth, the employee agrees to deduct any remaining balance from final compensation due employee and sign a new promissory note for any remaining balance.

By signature below, employee acknowledges that he/she has read this agreement, and is aware of requirements for compliance with travel advance regulations, agrees to personal liability for funds provided as a travel advance, and agrees to allow deductions from paycheck should the employee fail to comply with travel advance regulations:

_____	_____
Employee	Date
_____	_____
Amount Received as Travel Advance	Date Received
_____	_____
Approved by Department of Finance	Date

(INSERT DATE)

DELIVERED VIA CERTIFIED MAIL

(INSERT EMPLOYEE NAME)
(INSERT EMPLOYEE'S ADDRESS)

Dear (INSERT EMPLOYEE NAME):

Records of the Commonwealth of the Northern Mariana Islands, Department of Finance indicate that you have an outstanding balance for travel advance funds for which you have failed to provide required documentation supporting a finding that expenses were authorized. The specifics as to the amount and date of liability is shown below:

Amount of liability $_____
Date liability occurred _____

You are hereby advised that you have thirty (30) calendar days from the date of this communication to: schedule an opportunity to review the records of the Department of Finance; present evidence that these expenses complied with travel advance regulations; or, enter into payment agreement with the Department of Finance. The contact number to request an opportunity to review/copy DOF records concerning this matter is 664-1100.

Should you be dissatisfied with DOF determinations concerning compliance with travel advance regulations, you may request a hearing on this issue. Requests for hearings must be made within ten working days of final agency determination of compliance with travel advance requirements.

Please be advised that a final determination of liability for travel advance funds will result in the imposition of personal liability for these funds. This liability may be addressed either through full payment or payment installment agreement. Failure to address outstanding liability will result in legal proceedings to collect this outstanding balance as well as disciplinary proceedings up to and including discharge.

Respectfully,

DEPARTMENT OF FINANCE

Public Notice
Department of Community and Cultural Affairs

EMERGENCY AMENDMENTS TO THE
NUTRITIONAL ASSISTANCE PROGRAM
MANUEL OF OPERATIONS

Citation of Statutory Authority:	Pursuant to Article X, Section 8 of the Commonwealth Constitution and 1 CMC § 2553(j) and 1 CMC § 2557.
Short Statement of Goals and Objectives:	To insure the use of only legitimate Food Stamp coupons by NAP authorized recipients.
Brief Summary of The Amendments:	Nutritional Assistance Program Manuel of Operations is amended to provide that NAP Food Stamp Recipients when redeeming coupons must do the following; 1) present a valid photo I.D. 2) present a valid Food Stamp Identification card. 3) Print the Photo I.D number and Food Stamp I.D. card number along with printing and signing their name on the back of each coupon. All this must be done in the presence of the vendor cashier.
For further Information Contact:	The Nutritional Assistance Program at 235-9889.
Citation of Related and/or Affected Statutes, Regulations and Orders:	NAP Manuel of Operations Chapter VIII (K)(4),

EMERGENCY AMENDMENTS TO THE
NUTRITIONAL ASSISTANCE PROGRAM
MANUEL OF OPERATIONS

Nutritional Assistance Program Manuel of Operations Chapter VIII Section (K)(4) is hereby amended to read as follows:

4. Use of Identifications Cards. The **Adult Head of Household** or its Authorized Representative shall present his Nutrition Assistance Program Identification Card and a Photo Identification, and on the back of each coupon, print the NAP I.D. card number & Photo I.D. number and their name and then sign each coupon in the presence of the cashier for the Authorized Retailers when exchanging **Nutrition Assistance Program Coupons** for eligible food and other eligible items enumerated on item K.2 and 3 above. The Adult Head of Household or its Authorized Representative shall also present his Nutrition Assistance Program Identification Card and a Photo Identification when performing Recertifications at Certification Unit, and picking up benefits at the designated Issuance Agent Location.

NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENTION TO ADOPT AMENDMENTS TO EXISTING MANUEL OF OPERATIONS GOVERNING THE NUTRITION ASSISTANCE PROGRAM

EMERGENCY: The Secretary of the Department of Community and Cultural Affairs finds that, pursuant to 1 CMC § 9104(b), the public interest requires the adoption of Emergency Regulations, upon concurrence by the Governor, to implement changes to the existing MANUEL OF OPERATIONS governing the Nutrition Assistance Program (NAP). The proposed Amendments would create a greater degree of security against counterfeiting or other misuse of Nutritional Assistance Food Stamp Coupons. The Secretary further finds that the public interest requires adoption of these amendments within fewer than thirty (30) days notice for the reasons stated below. These amendments in the MANUEL OF OPERATIONS shall become effective upon publication, subject to the approval of the Attorney General and the concurrence of the Governor, and shall remain effective for 120 days.

REASON FOR EMERGENCY: The counterfeiting and other fraudulent misuse of Nutritional Assistance Food Stamp Coupons has become more frequent and sophisticated in nature. In order to protect unsuspecting vendors and the banks who redeem these coupons, it is necessary to change the physical look of the coupons and to institute additional requirements to insure that only coupons issued to eligible participants of the Nutritional Assistance Program are used at the stores of authorized retailers.

CONTENT: Attached to this Notice of Emergency are the amendments to the Manuel Of Operations.

INTENT TO ADOPT: The Secretary intends to adopt these amendments to the existing regulations, requirements, policies and procedures contained in the Nutritional Assistance Program Manuel Of Operations as permanent regulations, requirements, policies and procedures pursuant to 1 CMC § 9104(a)(1) and (2), and therefore publishes in the Commonwealth Register this notice of opportunity to submit comments. If necessary, a Hearing will be provided. Comments on the amendments to the Nutritional Assistance Program Manuel Of Operations may be sent to: Secretary, Department of Community and Cultural Affairs, Caller Box 10007, Capitol Hill, Saipan, MP 96950.

AUTHORITY: The Secretary is authorized to promulgate these regulations pursuant to 2 CMC § 5522(a).

Issued by: _____ 12/23/05
CARMEN C. CABRERA
Acting Secretary, DC&CA
Date

Concurred by: _____ 12/28/05
JUAN N. BABAUTA
Governor
Date

Received by: _____ 12/27/05
THOMAS A. TEBUTEB
Date

Filed and
Recorded by: _____ 12/27/05
BERNADITA B. DELA CRUZ
Commonwealth Register
Date

Pursuant to 1 CMC § 2153, as amended by Public Law 10-50, the emergency rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 28th day of ~~August~~ December, 2005.

_____
PAMELA BROWN
Attorney General

NOTISIAN PUPBLIKU

DIPÅTTAMENTON I ASUNTON KOMUNIDÅT YAN KUTTURA (DCCA)

ENSIGIDAS NA AMENDASION SIHA PARA I PROGRÅMAN ASISTIMENTON SALÅPE' PARA NENGKANO' (FOOD STAMP- NAP) GI MANEHAN OPERASION

Annok I Aturidåt I Lai:	Sigun I Atikulu X, Seksiona 8 gi Commonwealth Constitution yan I lai 1 CMC Seksiona 2553 (j) yan 1 CMC Seksiona 2557.
Kada'da' Na Mensåhen Finiho yan Diniseha:	Para u asigura I ma'usåña I Food Stamp na ligåt ni I ma'aturisa petsona siha ni asistimento.
Kada'da' Na Mensåhe Pot I Amendasion:	I Progråman Food Stamp Gi Manehan Operasion siha ma'amenda para u probeniyi na yanggen para u ma'usa I salåpe' nui murisisibe' debi di u: 1) prisenta un aidentifikasion ni gai litråtu; 2) prisenta I aidentifikasion I Food Stamp. 3) tugi I numirun I aidentifikasion ni gai litråtu, I numirun aidentifikasion I Food Stamp, ya debi di u matugi yan fitma I na'ån-niha. Debi di u machugue este gi menan I tendera.
Para Mås Infotmasion Ågang:	I Ofisinan I Food Stamp gi Numirun 235-9889.
Annok I Man Achule' Yan/pat Inafekta Na Lai, Regulasion yan Otden siha:	NAP Manual of Operations Chapter VIII (K)(4),

ENSIGIDAS NA AMENDASION SIHA PARA I PROGRÅMAN ASISTIMENTON SALÅPE' PARA NENGKANO' (FOOD STAMP- NAP) GI MANEHAN OPERASION

I Nutrition Assistance Program Manual of Operations Chapter VIII Section (K)(4) ma'amenda pot para u taitai I sigente:

4. Ma'usa I Aidentifikasion. I mumaneneha I gima (Adult of Household) osino I ma'aoturisa na delegådu debi di u maprisenta I aidentifikasion I Food Stamp, aidentifikasion ni gai litråtu, ya gi san tatten kada Food Stamp, debi di u tugi yan fitma I nå'an-ña gi menan I tendera para u aprueba I tinilaikan I salåpe Food Stamp para I man kuålifikao na nengkano yan palu kosas ni malista gi K.2 yan 3 gi sanhilo'. I mumaneneha I gima (Adult of Household) osino I ma'aoturisa na delegådu debi di u maprisenta I aidentifikasion I Food Stamp yan aidentifikasion ni gai litråtu para u talun masetifika I asistimento gi Sågan Setifikasion (Certification Unit), yan an para u machule' I benifisiu gi madesigna na lugåt.

NOTISIA POT ENSIGIDAS NA REGULASION SIHA YAN NOTISIAN INTENSION PARA U MA'ADOPTA I AMENDASION SIHA GI EKSISTE NA OPERASION I GINIBEBIETNA I PROGRÅMAN ASISTIMENTON SALÅPE' PARA NENGKANO' (FOOD STAMP- NAP)

ENSIGIDAS: I Sekritårion I Dipåttamenton I Asunton Komunidåt yan Kuttura a sodda na, sigun I lai 1 CMC Seksiona9104 (b), I enteres pupbliku a rekomenda I inadoptasion I Ensigidas na Regulasion siha, gi kininfotmen I Gubietno, para u ma'establesi I tinilaika siha gi eksiste na OPERASION SIHA ni ginibebietna I Progråman Asistimenton Salåpe' Para Nengkano' (NAP). I mapropone na amendasion siha siempre a establesi la'maolek na asiguridåt kontra I counterfeiting osino palu siha na abusu ni Salåpe' I Food Stamp. I Sekritåriu a sodda más na I enteres pupbliku a rekomenda I inadoptasion este na amendasion gi menos di trenta (30) diha siha na notisia para I rason ni mamensiona gi sanpapa. Este na amendasion siha gi Operasion debi di u efektibu an mapupblika, yanggen ma'aprueba ni Abugådu Henerål yan I inaprueban I Gubietno, ya debi di u efektitibu para siento bente (120) diha siha.

RASON I ENSIGIDAS: I counterfeiting yan palu na abusu ni Food Stamp kulan mumeggai yan su'abi gi naturåt. Yanggen para u maprotehi I masuspecha na bentura yan bånko ni ma'aksesepta I Food Stamp, nisisårio para ta tulaika I kakoña I Food Stamp yan ta na guaha más nisisidåt siha para u asigura na I kuålifikao na patisipånten I Asistimenton I Salåpe' para Nengkano' munasesetbi I Food Stamp gi I man ma'aturisa na tenda yan bentura siha.

SINAGUAN: I amendasion para I Manehan Operasion man che'che'ton gi este na Notisian Ensigidas.

INTENSION PARA I INADOPTASION: I Sekritårio a intensiona para u adopta este I amendasion para I man eksiste na regulasion, nisisidåt, areklamento yan maneha siha ni man gaige gi Progråman Asistimenton Salåpe' para I Nengkano' petmanente na regulasion sigun I lai 1 CMC Seksiona 9104 (a)(1) yan (2), ya despues u mapupblika gi Rehistradoran I Commonwealth este na notisia ni gai opottunidåt para opinion pupbliku. Yanggen nisisårio, u ma na guaha inetnun pupbliku. I opinion pupbliku pot I Manehan Operasion I Progråman

Asistimenton Salåpe' para I Nengkano' siña ma'entrega guatto as: Sekritårio, Dipåttamenton I Asunton Komunidåt yan Kuttura, gi Caller Box 10007, gi Capitol Hill, giya Saipan, MP 96950.

ATURIDÅT: I Sekritårio ma'aturisa para u establesi este na regulasion sigun I lai 2 CMC Seksiona 5522 (a).

Ninahaloma as:

JUAN L. BABAUTA
Sekritårio, DC&CA

Fecha

Kinifotme as:

JUAN N. BABAUTA
Gubietno

12/20/05
Fecha

Marisibe' as:

THOMAS A. TEBUTEB
Espisiåt Na Ayudånte Para I Atministrasion

Fecha

Pinelo' yan Rinikot as:

BERNADITA B. DELA CRUZ
Rehistradoran I Commonwealth

12/20/05
Fecha

Sigun I lai 1 CMC Seksiona 2153, ni inamenda ni Lai Pupbliku 10-50, I ensigidas na areklamento yan regulasion ni man che'che'ton esta man ma'ina yan ma'aprueba pot para u fotma yan ligåt sufisiente ni Ofisinan I Abugådu Heneråt I CNMI.

Mafecha este gi mina _____ na ha'åne gi Agostu, 2005.

PAMELA BROWN
Abugådu Heneråt

ARONGORONGOL TOULAP
DEPATTEMENTOOL LEMELEMIL SÓÓBW ME KKO

GHITIPWOTCHOL LLIWEL KKAAL NGÁLI
PROGRÓMAAL AMMWELIL ALILLISIL MWUNGO

Akkatéél Bwángil:	Sángi Article X, Tálil 8 llól Commonwealth Allégh lapalap me 1 CMC tálil 2553 (j) me I CMC tálil 2557.
Aweweel Pomwol Allégh:	Rebwe alúghúlúghúw yáayál Food Stamp Coupons kka e allégh reer schóóy bweibwogh NAP coupons.
Aweweel Pomwol Lliwel:	Progrómaal Mwóghutughutul Nutritional Assistance nge e lliwel bwelle schóóy NAP Food Stamp rebwe yáayá ngali bwelle rebwe féérú tálil kkaal; 1) Abwáári yóómw I.D. ye eyoor litirótool. 2) Abwáári yóómw Food Stamp Identification card. 3) Ischiitiw yóómw Photo I.D. number me Food Stamp I.D. card number fengal me makkeyómw (printing) me alughulughul (signing) iit me mwiril coupon. Alongal milikkaal nge ebwe fféér welimmwer Vendor cashier.
Reel Ammataf Faingi:	Progrómaal Nutritional Assistance reel 664-2800.
Akkatéél Akkááw Bwángil Allégh:	NAP Manual Operations Chapter VIII (K)(4).

GHITIPWOTCHOL LLIWEL KKAAL NGÁLI
PROGRÓMAAL AMMWELIL ALILLISIL MWUNGO

Progrómaal Ammwelil Nutritional Assistance Ghilighilil VIII Tálil (K)(4) ebwe Lliweli Tálil kka rebwe árághi:

4. Yáayál Identifications Cards. Schóóy Lemelem mellól iimw me ngare iyo ye eyoor bwángil nge ebwe bwáári Nutritional Assistance Program Identification card me Photo Identification, me mwiril coupon, ischiitiw numurool NAP I.D. me numerool Photo I.D. me iteer me ubwe makkey (sign) coupon igha cashier elo bwelle Authorized Retailers rebwe bwughi ngali mwungo kka emmwel me akkááw items kka e páápalong llól item K.2 me 3 ikka elo weilang sángi Nutritional Assistance Program Coupons. Aramas ye eyoor bwángil mellól iimw me ngare aramas ye elo bwe schóóy Alillis nge e pwal bwáári Nutrition Assistance Program Identification Card me Photo Identification ótol Recertification mellól Certification Unit, me uló bwughil yóómw Food stamp mereel leliyel isisiwowul Food Stamp (issuance Agent Location).

ARONG REEL GHTIPWOTCHOL ALLÉGH KKAAL ME ARONG REEL MÁNGEMÁNG IGHA EBWE FILLÓÓY LLIWEL KKAAL NGÁLI AMMWEL KKA IGHILA IYE E LEMELEM REEL NUTRITION ASSISTANCE PROGRAM

GHITIPWOTCHOL: Sekretóriyool Depattamentool Lemelemil Sóóbw me Kko e schungi bwe, sángi allégh ye I CMC tálil 9104 (b), bwe llól tipeer toulap bwe rebwe yáayá ngali fillóól Ghitipwotchul Allégh, sángi alúghúlúghúl Sów Lemelem, reel ebwe lliweli ngali MANUAL OF OPERATIONS ye ighila iye e Lemelem Nutrition Assistance Program (NAP). Pomwol lliwel kkaal nge rebwe ghi ammwula fischiy bwe ete yoor counterfeiting me akkáaw féfféér angów reel Nutritional Assistance Food Stamp Coupons. Sekretóriyo e bwal schungi bwe llól tipeer toulap bwe, rebwe mweiti ngali fillóól lliwel kkaal igha essóbw luuló eliigh (30) ráálil Ammataf yeel bwelle aweewe kka ekke apasa me faal. Lliwel kkaal mellól MANUAL OF OPERATIONS nge ebwe alléghéló sángi akkatééwowul, kkepasal igha ebwe alúghúlúghúló mereel Sów Bwungul Allégh Lapalap me Sów Lemelem, me ebwe lo bwe ebwe allégh llól ebwughúw ruweigh (120) ráálil.

BWULUL GHTIPWOTCHOL: Counterfeiting me akkáaw féfféér nngow reel Nutritional Assistance Food Stamp Coupons aa ghi kke lapeló me eghi mmwel rebwe liweli reel ubwe áfáliir vendors me banks kka re bweibwogh coupons, e ghi welepakk (pirisisu) bwe ebwe lliwel uluulul coupons kka e toowow reer schóóy Nutritional Assistance Program bwe rebwe yáayá llól tenda me ngare authorized retailers.

AUTOL: Appaschal ngali Arongol Ghitipwotchul nge lliwelil MANUAL OF OPERATIONS.

MÁNGEMÁNGIL EBWE FILLÓÓY: Mangemangil Sekretóriyo nge ebwe fillóóy lliwel kkaal ngali allégh kka ighila, tittingórol, Alléghúl me ammwelil iye eyoor llól Progromaal Ammwelil Nutritional Assistance Manual of Operations bwe ebwe schééschéél alléghélló, tittingór kkaal, alléghúl me ammwelil sángi allégh ye I CMC tálil 9104 (a)(1) me (2), me ebwe akkatéélo llól Commonwealth Register arong yeel sángi atotoolongol mangemang. Ngare e welepakk, Ammataf mwu rebwe ayoora. Mangemang reel ssiwelil Progromaal Ammwelil Nutritional Assistance Program nge emmwel rebwe afanga ngali: Sekretóriyool, Depattementool Lemelemil Sóóbw me Kko, Caller Box 10007, Capitol Hill, Seipél, MP 96950.

BWÁNGIL: Sekretóriyo nge eyoor bwángil ebwe akkaté allégh kkaal bwelle allégh ye 2 CMC tálil 5522 (a).

Iisaliyallwow: _____ _____
JUAN L. BABAUTA RÁL
Sekretóriyool, DC&CA

Alúghúlúgh Sángi: _____ 12/28/05
JUAN N. BABAUTA RÁL
Sów Lemelem

Mwir Sángi: _____ _____
THOMAS A. TEBUTEB RÁL

Ammwel Sángi: _____ 12/20/05
BERNADITA B. DELA CRUZ RÁL
Commonwealth Register

Sángi allégh ye I CMC tálil 2153, iye aa lliwel mereel Alléghúl Toulap 10-50, ghitipwotchul allégh kkaal nge raa takkal amweri fischiy me aleghelegheló mereel CNMI Sów Bwungul Allégh Lapalap.

Rállil ye _____ llól Eluwel, 2005.

_____

PAMELA BROWN
Sów Bwungul Allégh Lapalap

PUBLIC NOTICE
PROPOSED AMENDMENTS TO IMMIGRATION REGULATIONS TITLE VII

The Commonwealth of the Northern Mariana Islands, Office of the Attorney General, notifies the general public of proposed amendments to Immigration Regulations Title VII. It is the intent of the Attorney General to adopt such amendments as permanent. This publication of the proposed amendments in the Commonwealth Register provides notice and opportunity for comment. If necessary, a public hearing will be provided. All interested persons may submit written comments on the proposed amendments to Pamela Brown, Attorney General, Office of the Attorney General, Second Floor, Juan A. Sablan Memorial Building, Capitol Hill, Saipan, MP 96950 or by fax at (670) 664-2349 during the thirty (30) day period immediately following the publication of these proposed amendments.

Submitted by: _____ 12/21/05
PAMELA BROWN Date
Attorney General

Received by: _____
THOMAS A. TEBUTEB Date
Special Assistant for Administration

Filed and Recorded by: _____ 12/20/05
BERNADITA B. DE LA CRUZ Date
Corporate Register

Pursuant to 1CMC §2153, as amended by Public Law 10-50, amendments attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 21st day of December 2005.

_____
PAMELA BROWN
Attorney General

PUBLIC NOTICE
PROPOSED AMENDMENTS TO IMMIGRATION REGULATIONS TITLE VII

Citation of Statutory Authority: The Office of Attorney General is authorized to promulgate regulations for entry, exclusion, and deportation of aliens in the Commonwealth of the Northern Marianas pursuant to Executive Order 03-01 and 3 CMC § 4312(d).

Short Statement of Goals and Objectives: The Attorney General finds that it is in the public interest to amend Immigration Regulations to establish: (1) a procedure and substantive basis for revocation of an entry permit; (2) basic applicability and eligibility requirements for persons serving as local sponsors for aliens; (3) a procedure and substantive basis for issuing an "Exit Waiver"; and (4) a procedure and substantive basis for issuing a "Deferred Action Letter".

For Further Information Contact: Ian M. Catlett, Assistant Attorney General, Office of the Attorney General, telephone (670) 664-2366 or facsimile (670) 234-7016.

Citation of Related and/or Affected Statutes, Rules and Regulations, and Orders: The proposed amendments affect or are related to Immigration Regulations Title VII.

Dated this 20th day of December 2005.

Submitted by:

PAMELA BROWN
Attorney General

NOTISIAN PUPBLIKU

MAN MAPROPONE NA AMENDASION SIHA PARA I REGULASION IMIGRASION TITILU VII

I Commonwealth I Sankattan Siha Na Islas Mariana , gi Ofisinan I Abugådu Heneråt, a notififika I pupbliku heneråt pot I man mapropone na amendasion siha para I Regulasion Imigrasion Titilu VII. I intension I Abugådu Heneråt para u adopta I amendasion siha petmanente. Este na pupblikasion I man mapropone na amendasion gi Rehistradoran I Commonwealth a probeniyi notisia yan opottunidåt para I opnion siha. Yanggen nisisårio, u maprobeniyi inekungok pupbliku. Todu I man enteresao na petsona siña munahalom tinige' opinion pot I man mapropone na amendasion siha guatto as Pamela Brown, I Abugådu Heneråt, GI Ofisinan I Abugådu Heneråt, gi mina dos na bibienda, gi as Juan A. Sablan Memorial Building, gi Capitol Hill, giya Saipan, MP 96950 osino fax guatto gi (670) 664-2349 durånten I trnta (30) diha siha na tiempo insigidas tinatitiyi I pupblikasion este I man mapropone na amendasion siha.

Ninahålom as: _____ _____
PAMELA BROWN — Fecha
Abugådu Heneråt

Marisibe' as: _____ 12/27/05
THOMAS A. TEBUTEB — Fecha
Espisiåt Na Ayudånte Para I Atministrasion

Pinelo' yan
Rinikot as: _____ 12/27/05
BERNADITA B. DELA CRUZ — Fecha
Rehistradoran I Commonwealth

Sigun I lai 1 CMC Seksiona 2153, ni inamenda ni Lai Pupbliku 10-50, I amendasion siha ni man che'che'ton esta man ma'ina yan ma'aprueba pot para u fotma yan ligåt sufisiente ni Ofisinan I Abugådu Heneråt I CNMI.

Mafecha este gi mina _____ na ha'åne gi Disembre, 2005.

_____
PAMELA BROWN
Abugådu Heneråt

NOTISIAN PUPBLIKU

MAN MAPROPONE NA AMENDASION SIHA PARA I REGULASION IMIGRASION TITILU VII

Annok I Aturidåt I Lai: I Ofisinan I Abugådu Heneråt ma'aturisa para u establesi I regulasion siha para I entråda, man sahnge, yan I dipottasion I man estrangheru siha gi hålom I Commonwealth I Sankattan Siha Na Islas Marianas sigun I Otden Eksekatibu 03-01 yan 3 CMC Seksiona4312 (d).

Kada'da' Na Mensåhen Finiho yan Diniseha: I Abugådu Heneråt a sodda na gi enteres pupbliku na para u ma'amenda I Regulasion Imigrasion para u establesi: (1) I maneha yan manera para I ma'amot I petmisun entråda; (2) Nisisidåt kualifikasion para I petsona siha ni man patron I estrangheru siha; (3) I maneha yan manera para I man nå'in "Exit waiver" yan (4) I maneha yan manera para man nå'in "Deferred Action Letter".

Para Mås Infotmasion Ågang: Si Ian M. Catlet, Ayudånten I Abugådu Heneråt, gi Ofisinan I Abugådu Heneråt, numirun tilifon (670) 664-2366 osino fax gi (670) 234-7016.

Annok I Man Achule' Yan/pat Inafekta Na Lai, Regulasion yan Otden siha: I Man Mapropone Na Amendasion a afekta osino man Achule' yan I Regulasion Imigrasion Titilu VII.

Mafecha este gi mina _____ na ha'åne gi Disembre, 2005.

Ninahålom as:

PAMELA BROWN
Abugådu Heneråt

ARONGORONGOL TOULAP
POMWOL LLIWEL KKAAL NGALI ALLÉGHÚL IMMIGRATION TÁLIL VII

Commonwealth Téél Faluwasch Marianas, Bwulasiyool Sów Bwungul Allégh Lapalap, ekke arongaar toulap reel pomwol lliwel kkaal ngali alléghúl Immigration kkaal Title VII. Elo bwe aghiyeghil Immigration Sów Bwungul Allégh Lapalap reel ebwe fillóóy lliwel kkaal bwe ebwe schééschéél. Akkatéél pomwol lliwel kkaal mellól Commonwealth Register nge ebwe ayoora ammataf me bwángil mángemáng. Ngáre e welepakk, arongol toulap nge rebwe ayoora. Schóókka eyoor mángemángiir reel pomwol lliwel kkaal nge emmwel rebwe ischilong reel Pamela Brown Sów Bwungul Allégh Lapalap, Bwulasiyool Sów Bwungul Allégh, aruwowal pwo, Juan A. Sablan Memorial Building, Capitol Hill, Seipél, MP 96950 me ngare fax reel (670) 664-2349 ótol eliigh (30) ráálil mwiril schagh yaal akkatééwow pomwol lliwel kkaal.

Isaliyallong: _____ _____
PAMELA BROWN — RÁL
Sów Bwungul Allégh Lapalap

Mwir Sángi: _____ 12/27/05
THOMAS A. TEBUTEB — RÁL
Sów Alillisil Sów Lemelem

Ammwel Sángi: _____ 12/27/05
Bernadita B. Dela Cruz — RÁL
Commonwealth Registrar

Sángi allégh ye I CMC 2153, iye aa lliwel mereel Alléghúl Toulap 10-50, allégh kka e appasch nge raa takkal amweri me alléghéló mereel CNMI Bwulasiyool Sów Bwungul Allégh Lapalap.

Ráálil ye _____ llól Tumwur 2005.

_____
PAMELA BROWN
Sów Bwungul Allégh Lapalap

ARONGOL TOULAP
POMWOL LLIWEL KKAAL NGALI ALLÉGHÚL IMMIGRATION TITLE VII

Akkatéél Bwángil: Bwulasiyool Sów Bwungul Allégh Lapalap nge eyoor bwángil ebwe akkaté allégh kkaal reel atotoolong, ese toolong, me assefalil aramasal lúghúl mellól Commonwealth Téél Faluwasch Marianas, sángi akkuleeyal Sów Lemelem ye 03-01 me 3 CMC tálil 4312 (d).

Aweweel Pomwol Allégh: Sów Bwungul Allégh Lapalap e schungi bwe tipeer toulap bwe rebwe fillóóy alléghúl Immigration kkaal bwelle ebwe yoor: (1) mwóghutul me akkayulóól lisensial atotoolong; (2) mweiti ngali milikka e fil bwe schóóy lemelemil aramasal lúghúl; (3) mwóghutul me schééschéél isisiwowul "exit waiver"; me (4) mwóghutul me schééschéél isisiwowul "Deferred Action Letter".

Reel Ammataf Faingi: Ian M. Catlett, Sów Alillisil Sów Bwungul Allégh Lapalap, Bwulasiyool Sów Allégh, tilifoon (670) 664-2366 me ngare facsimile reel (670) 234-7016.

Akkatéél Akkáaw Bwángil Allégh: Pomwol lliwel kkaal ebwe alléghéló milikka e ghil ngali Alléghúl Immigration Title VII.

Ráálil ye _____ llól Tumwur 2005.

Isaliyallong:

_____
PAMELA BROWN
Sów Bwungul Allégh Lapalap

PROPOSED AMENDMENTS TO IMMIGRATION REGULATIONS TITLE VII

Immigration Regulation §713. Sponsors

A. Applicability.

Except as otherwise provided for by law or regulation, any alien applying for an entry permit under Immigration Regulation §§ 703, 704, or 706 shall have a local sponsor who shall have signed an Affidavit of Sponsorship and Support on behalf of the alien.

B. General Eligibility Requirements.

In order to serve as sponsor, a person must not have previously sponsored an alien who then violated United States or Commonwealth immigration laws or regulations. A violation may include sponsoring an alien who at any time is present in the Commonwealth without legal status; such determination need not be rendered by a court of law, but must, in any case, be supported by substantial evidence.

C. Specific Eligibility Requirements.

1. If the person is serving as sponsor for purposes of obtaining a Visitor Entry Permit, the sponsor must satisfy the requirements of Immigration Regulation §703.

2. If the person is serving as sponsor for purposes of obtaining a Short-Term Business Entry Permit under Immigration Regulation §704, the sponsor must establish that he or she is, or is acting on behalf of, a duly-established and lawfully operating business in the CNMI.

3. If the person is serving as sponsor for purposes of obtaining or renewing an Immediate Relative of a Non-Alien Permit under Immigration Regulation §706(D), the sponsor must demonstrate that the couple intends to establish a life together by providing evidence that at least three of the following four conditions have been satisfied:

   a. An affidavit sworn under penalty of perjury, signed by both sponsor and alien, attesting that the couple will share the same primary place of residence in the CNMI.

   b. The U.S. Citizen sponsor owns, either wholly or in part, or continuously maintains a leasehold interest in, a residential property, apartment, or condominium, located in the CNMI, and if an initial application, that said interest was established at least six months prior to the date on which the application for the Immediate Relative of a Non-Alien Permit was filed.

   c. Prior to issuance of the initial permit, and again thereafter at any time prior to the annual renewal of said permit, the couple appears together, in person and under oath, for an interview with the Director of

Immigration or his designee. The purpose of said interview is solely for the purpose of determining whether the couple intends to establish a life together; the interviewer shall take all necessary steps to protect the couple's right to privacy. The interviews shall be mandatory for the first three years of the marriage, but thereafter shall take place at the discretion of the Director, upon proper notice to the parties.

d. The sponsor provides such other evidence that, when viewed cumulatively, would lead a reasonable person to believe that the couple intends to establish a life together. Such evidence may include but is not limited to evidence that the couple: (i) maintains a joint bank account; (ii) jointly owns or leases real or movable property of substantial value; (iii) regularly participates in social activities as man and wife; (iv) files joint tax returns; or (iv) has children for which both parents are providing care and supervision.

4. If the person is serving as sponsor for purposes of obtaining an Immediate Relative of an Alien Permit under Immigration Regulation §706(E), in addition to satisfying those requirements set forth by and 3 CMC §§4321(d), 4437(i), the sponsor must reside legally and continuously in the Commonwealth.

5. If the person is serving as sponsor for the purpose of obtaining any other entry permit, the person must satisfy all enumerated conditions under the section governing that permit.

Immigration Regulation §714. Revocation of Permits

A. Applicability.

The Division of Immigration may deny any application for a new or renewed permit, or may revoke any permit issued under Title VII of these regulations upon a finding by the Director or his designee that:

1. The alien to whom the permit was issued no longer satisfies the criteria for the permit category;

2. The permit was obtained by fraud, deceit, material misrepresentation, or in violation of CNMI law; or

3. The sponsor of the alien has become ineligible under or has failed to satisfy the requirements of Immigration Regulation §713.

B. Procedure.

The Division of Immigration shall serve the alien with a written notice of revocation. The notice shall include a summary of the Director's finding. The alien shall have all rights of appeal provided by 1 CMC §9101 et seq.

Immigration Regulation §715. Exit Waivers

A. Applicability.

Under exceptional circumstances, such as a dire emergency or extreme hardship, and when in the best interest of the Commonwealth, the Attorney General or her designee may waive any exit requirements established pursuant to these regulations or where otherwise authorized by law. An expense that would preclude an alien from returning to the Commonwealth does not, standing alone, constitute an extreme hardship or dire emergency.

B. Limitations.

This regulation in no way authorizes the Attorney General or a designee to waive any specific requirements mandated by Commonwealth immigration or labor laws, such as those requirements under 3 CMC §4434(b)(1).

C. Procedure.

A request for an Exit Waiver shall be submitted in writing to the Director of Immigration who shall forward the request to the Attorney General with a recommendation. The Attorney General or her designee shall provide notice to the Director that describes the dire emergency or extreme hardship and authorizes the issuance of an Exit Waiver. Upon receipt of the notice, the Director shall issue the Exit Waiver and take necessary steps to inform relevant government agencies.

Immigration Regulation §716. Deferred Action Letters

A. Applicability.

The Attorney General or her designee may stay an alien's repatriation or deportation through the issuance of a Deferred Action Letter. The alien shall keep the Deferred Action Letter, or a certified copy thereof, on his or her person at all times and it shall serve as evidence of their lawful right to be in the CNMI. The letter enables the holder to lawfully remain in the Commonwealth while the letter is in effect, but shall confer no other status or benefits. Each letter shall include at a minimum:

1. The alien's name, date of birth, and passport and/or LIIDS number (if available).

2. The expiration date, or terms of expiration, of the Deferred Action Letter.

3. The reason for granting the Deferred Action Letter.

4. Any additional terms or conditions.

5. Explanation that the Deferred Action Letter does not entitle the alien to any other benefits, to work or to seek work, and that any violation of the terms and conditions will result in revocation and may subject the holder to immediate deportation.

B. Procedure.

A request for a Deferred Action Letter shall be submitted in writing to the Director of Immigration who shall forward the request to the Attorney General with a recommendation. The request must demonstrate that the alien has the necessary means of support for the duration of the deferment. The Attorney General or her designee shall issue the Deferred Action Letter and shall provide notice that such letter was issued, including the expiration date, to the Director.

Commonwealth of the Northern Mariana Islands
Office of the Governor
Department of Lands and Natural Resources

Lower Base
P.O. Box 10007
Saipan, Mariana Islands 96950

Cable Address:
Gov. NMI Saipan
Telephone: 322-9830/9834/9854
Fax: 322-2633

PUBLIC NOTICE

PROPOSED RULES AND REGULATIONS OF THE DEPARTMENT OF LANDS AND NATURAL RESOURCES

The Secretary of the Department of Lands and Natural Resources for the Commonwealth of the Northern Mariana Islands hereby notifies the general public of the intention to adopt regulations to control the introduction and prevent the further dissemination of injurious pests and diseased animals into the Commonwealth. The proposed regulations are promulgated pursuant to the authority granted by the Commonwealth Plant and Animal Quarantine Act and the Animal Health Protection and Disease Control Act, 2 CMC § 5301, *et seq.*, and 2 CMC § 5320, *et seq.* Specifically, this adoption is to prevent the establishment and limit the entry of non-native reptiles and amphibians in the Commonwealth of the Northern Mariana Islands, with particular emphasis on the prevention of the establishment of the brown treesnake Boiga irregularis.

All interested persons may examine the proposed regulations and submit written comments to the Secretary of the Department of Lands and Natural Resources, Caller Box 10007, Capital Hill, Saipan MP, 96950 or by facsimile at 322-2633 within 30 calendar days following the publication of this notice in the Commonwealth Register.

Dated this 27 day of Dec., 2005, at Saipan, Northern Mariana Islands.

By: _____
Richard B. Seman
Secretary, DLNR

Pursuant to ____CMC Section ____, as amended by P.L. ____, the proposed regulation for the Secretary of the Department of Lands and Natural Resources, a copy of which is attached hereto, have been received and approved as to form and legal sufficiency by the Attorney General's Office.

By: _____ 12/23/05
Pamela Brown
Attorney General
Date

Filed by: _____ 12/27/05
Bernadita Dela Cruz
Commonwealth Registar
Date

Received by: _____ 12/27/05
Thomas Tebuteb
Special Assistant for
Administration
Date

NOTISIAN PUPBLIKU

MAN MAPROPONE I AREKLAMENTO YAN REGULASION POT I DIPÅTTAMENTON I LANDS AND NATURAL RESOURCES (DLNR)

I Sekritårion I Dipåttamenton I Lands and Natural Resources para I Commonwealth I Sankattan Siha Na Islas Marianas a notififika I pupbliku heneråt pot I intension para u adopta I regulasion siha para u adahi ma'establesi yan mapribenin I fåmtan I man chetnudan yan man gai chetnut na gå'ga' siha gi hålom I Commonwealth. I man mapropone na regulasion siha man ma'establesi sigun I aturidåt ni ma'entrega ginen I Commonwealth Plant and Animal Quarantine Act yan I Animal Health Protection and Disease Control Act, lai 2 CMC Seksiona5301, et. seq.
Espisifikåtmente, este na inadoptasion para u probeni I ma'establesi ya u adahi I entrådan I ti man natibu na gå'ga' siha gi hålom I Commonwealth I Sankattan Siha Na Islas Marianas, patikulåtmente I prisisun I atåhan I ma'establesin I Brown Tree Snake Boiga irregularis.

Todu I man enteresao na petsona siña ma'ina I man mapropone na regulasion siha ya u ma'entrega hålom tinige' opinion guatto I Sekritårion I Dipåttamenton I Lands and Natural Resources, gi Caller Box 10007, gi Capitol Hill, giya Saipan MP 96950 osino facsimile guatto gi 322-2633 gi hålom trenta (30) diha siha tinatitiyi I pupblikasion este na notisia gi Rehistradoran I Commonwealth.

Ma fecha est gi mina 27 na ha'åne gi Dec., 2005, giya Saipan I Sankattan Siha Na Islas Marianas.

Ginen as: _____
Richard B. Seman
Sekritårio, DLNR

Sigun I lai _____ CMC Seksiona _____, ni inamenda ni Lai Pupbliku _____, I man mapropone na regulasion para I Sekritårion I DipÅttamenton I Lands and Natural Resources, I kopia ni man che'che'ton, esta man ma'ina yan ma'aprueba pot para u fotma yan ligåt sufisiente ni Ofisinan I Abugådu Heneråt.

Ginen as: _____ _____
Pamela Brown Fecha
Abugådu Heneråt

Pinelo' as: _____ 12/27/05
Bernadita B. Dela Cruz Fecha
Rehistradoran I Commonwealth

Marisibe' as: _____ 12/27/05
Thomas A. Tebuteb Fecha
Espisiåt Na Ayudånte Para I Atministrasion

ARONGORONGOL TOULAP

POMWOL ALLÉGH KKAAL MELLÓL DEPATTAMENTOOL
FALÚW ME NGÙLÚWAL WELEÓR

Samwoolul Depattamentool falúw me Ngúlúwal Weleór mellól Commonwealth Téél Faluwasch Marianas ekke arongaar aramas toulap igha e mángi ebwe fillóóy allégh kkaal reel rebwe ammwula atotoolongol me áfálli atotoolongol maal kka re ghilas me maal kka re semwaay llól Commonwealth. Pomwol allégh kkaal nge e akkatééwow bwelle bwáng ye re ngalleey mereel Commonwealth Plant me Animal Quarantine Act me Animal Health Protection me Disease Control Act, 2 CMC tálil 5301, et seq., me 2 CMC tálil 5320, et seq.
Schééschéél, fillóól yeel nge rebwe ammwula bwuley (establishment) me fischeli atotoolongol malúl lúghúl (non-native reptiles) me amphibians mellól Commonwealth Téél Faluwasch Marianas, e bwal toolong pilipilil brown tree snake Boiga irregularis.

Alongeer schóókka eyoor mángemángiir nge emmwel rebwe ischilong reel Depattamentool Falúw me Ngúlúwal Weleór Kkaal, Caller Box 10007, Capitol Hill, Seipél, MP 96950 me ngáre facsimile reel 322-2633 llól eliigh (30) ráálil mwiril schagh yaal akkaté arong yeel mellól Commonwealth Register.

Ráálil ye 27 llól Dec., 2005, mewóól Seipél, Faluwasch Marianas.

Sángi: _____
Richard B. Seman
Samwoolul, DLNR

Sángi _____ CMC Tálil _____ iye aa lliwel mereel Alléghúl Toulap, Pomwol allégh kkaal ngali Samwoolul Depattementool Falúw me Ngúlúwal Weleór, tilighial ikka e appasch, nge raa takkal amweri fischiy, me alúghúlúghúló mereel Bwulasiyool Sów Bwungul Allégh Lapalap.

Sángi: _____ _____
PAMELA BROWN — RÁL
Sów Bwungul Allégh Lapalap

Ammwel Sángi: _____ 12/27/05
BERNADITA B. DELA CRUZ — RÁL
Commonwealth Register

Mwir Sángi: _____ 12/27/05
THOMAS A. TEBUTEB — RÁL
Sów Alillisil Sów Lemelem

PART 1
GENERAL PROVISIONS

SECTION 1.1. Authority

Under the authority granted by the Commonwealth Plant and Animal Quarantine Act and the Animal Health Protection and Disease Control Act, 2 CMC § 5301, *et seq.*, and 2 CMC § 5320, *et seq.*, respectively, the Secretary of the Department of Lands and Natural Resources hereby promulgates Regulations to control the introduction and prevent the further dissemination of injurious pests and diseased animals into the Commonwealth.

SECTION 1.2. Purpose

To prevent the establishment and limit the entry of non-native reptiles and amphibians in the Commonwealth of the Northern Mariana Islands, with particular emphasis on the prevention of the establishment of the brown treesnake Boiga irregularis.

SECTION 1.3. Definitions

For the purpose of these regulations, the following terms are defined in alphabetical order:

a) "Consolidated" means goods or containers that are off-loaded and opened on Guam before shipment to CNMI.

b) "Secretary" means the Secretary of the Department Lands of Natural Resources.

c) "High-risk cargo" means: i) any shipment leaving Guam by sea or by air, including cargo (e.g. construction materials, pipes, machinery, lumber) or goods originating, transshipped, or consolidated in Guam, which has not received a Guam Snake Inspection Certificate; or, ii) any shipment so identified by Division of Agriculture-Quarantine or Division of Fish and Wildlife-Brown Treesnake staff.

d) "Non-Native" means any species whose natural origin is from a place other that the Commonwealth of the Northern Mariana Islands.

e) "Shipment" means goods that are transported by air or sea.

f) "Snake-exclusion area" means any area from which the entry of snakes is prevented by methods determined effective by the Division of Fish and Wildlife-Brown Treesnake staff and approved by the Secretary in consultation with the Directors of the Divisions of Fish and Wildlife and Agriculture.

g) "Snake Inspection Certification" means the written certification issued by Division of Agriculture-Quarantine staff or Division of Fish and Wildlife-Brown Treesnake staff, which establishes that the shipment has been inspected by a means listed in Section 2.2.

h) "Transshipped" means goods or containers that are off-loaded and reloaded in Guam.

PART 2
SNAKE INSPECTION CERTIFICATION

SECTION 2.1 Prohibition

a) Shipments and cargo are prohibited from entering the Commonwealth of the Northern Mariana Islands without inspection and issuance of a Snake Inspection Certification by Division of Agriculture-Quarantine staff or Division of Fish and Wildlife-Brown Treesnake staff.

b) All statements, whether written or oral, made to Division of Agriculture-Quarantine staff or Division of Fish and Wildlife-Brown Treesnake staff in regards to a shipment's contents, shipping history, or inspection history shall be true and accurate.

c) No person may interfere, in any way or manner, with the inspection procedures or with the inspection personnel.

SECTION 2.2 Making the snake inspection determination

Division of Agriculture-Quarantine or Division of Fish and Wildlife-Brown Treesnake staff are responsible for determining which method, or combination of methods, of inspection are appropriate for the type of goods or cargo entering the Commonwealth. All fees associated with the inspection (e.g., lift fees, overtime) are to be the responsibility of the shipping agent. A Snake Inspection Certification will not be issued until all associated fees are paid by the shipping agent.

Inspection methods include:

a) Containment in snake exclusion area: All high-risk cargo shall be required to undergo a 72 hour quarantine period in a snake exclusion area, unless an Emergency Waiver is authorized by the Secretary.. All other shipments may be inspected by containment in a snake-exclusion area.

(i) Emergency Waiver – The Secretary, in consultation with the Directors of the Divisions of Fish and Wildlife and Agriculture, may authorize a waiver of the 72 hour quarantine period in order to protect public health or safety. A request for an Emergency Waiver shall: be made in writing; state the public health or safety justification; and state the requested alternative inspection method(s) for the cargo or goods.

b) Canine detection: Shipments may be inspected by a canine trained in detecting snakes.

c) Visual inspection: Shipments may be inspected visually when all interior and

exterior surfaces and spaces of the goods or cargo can be thoroughly viewed by the inspector. This type of inspection may require that all cargo to be 100% broken or unloaded in order to provide a complete visual inspection. For example, visual inspections may be suitable for straight pipe if the interior of each pipe is checked and the load is broken open to check all open spaces. Visual inspection is not a suitable means of certification for curved pipes or for materials with complex hiding places such as vehicles. Inspection of these items may be supplemented with the injection of a known volatile irritant and containment.

d) Other Methods: The Secretary may approve any snake detection method that has been determined effective by the Directors of the Divisions of Fish and Wildlife and Agriculture.

SECTION 2.3 Issuance of the snake inspected certificate

Upon completed inspection by a method, or combination of methods, identified in Section 2.2 , the Division of Agriculture-Quarantine or the Division of Fish and Wildlife-Browntree Snake inspector shall issue a certificate stating that the cargo or goods have been inspected. The snake inspection certificate shall state, clearly and legibly, the following information:

a) The name and title of the inspector and office issuing the certificate;

b) The locations of transshipment or consolidation, if any;

c) The consignor for the shipment;

d) The consignee for the shipment;

e) The contents in the shipment, including a copy of the bill of landing;

f) The methods described in Section 2.2 by which the cargo or goods were inspected; and

g) The signature of the person making the snake inspected determination.

PART 3
PENALTIES

Pursuant to the Commonwealth Plant and Animal Quarantine Act and the Animal Health Protection and Disease Control Act, criminal or civil penalties shall be imposed on any person (e.g., shipping agents, transportation companies) for violations of these regulations (e.g., falsifying documents, falsely reporting history of cargo, or failure to secure snake free certification). 2 CMC § 5310 and 2 CMC § 5329, respectively. _

a) Criminal Penalties: Violators of these regulations shall, upon conviction, be imprisoned for not more than six (6) months or fined not more that two thousand dollars ($2,000.00)

or both for each infraction. 2 CMC § 5310 and 2 CMC § 5329(a).

b) Civil Penalties: Pursuant to 2 CMC § 5329(b), violators of these regulations may be assessed with no more than the following fines:

i.) First Offense: $ 100.00

ii.) Second Offense: $ 500.00

iii.) Third Offense: $ 1,000.00

iv.) Subsequent Offenses: Subject to trial in court of law

c) Other Civil Remedies: The Secretary may:

i. Take all necessary measures, when emergency quarantine actions are required. 2 CMC § 5304.

ii. Refuse entry, confiscate, destroy, or order the return to its place of origin any shipment found in violation of these regulations. 2 CMC § 5308

iii. Seek restitution for all costs expended in the development and implementation of any program to capture, control, or eradicate a snake entering the Commonwealth by way of a violation of these regulations.

PART 4
SEVERABILITY AND EFFECTIVE DATE

SECTION 4.1 Severability

Should any provision of these regulations or its application to any person or circumstance be declared unconstitutional or invalid by a court of competent jurisdiction, the remaining portion of the regulations and/ or the application of the affected provision to other persons or circumstance shall not be affected thereby.

SECTION 4.2 Effective Date

These regulations will take effect ten calendar days after notice of adoption is published in the Commonwealth Register.

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Division of Environmental Quality
P.O. Box 501304 C.K., Saipan, MP 96950-1304
Tels.: (670) 664-8500 /01
Fax: (670) 664-8540

PUBLIC NOTICE

**PROPOSED AMENDMENT
OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLAND
UNDERGROUND STORAGE TANK REGULATIONS**

The Director of the Division of Environmental Quality (DEQ), Office of the Governor, Commonwealth of the Northern Mariana Islands (CNMI), hereby notifies the public that DEQ proposes to adopt amendments to the CNMI Underground Storage Tank Regulations. The amendments are proposed pursuant to the authority of the CNMI Environmental Protection Act. P.L. 2-32, 2 CMC §§ 310 *et seq.* (as amended by P.L. 11-103).

The proposed amendments pertain to underground storage tank location requirements. The amendments include restrictions on where underground storage tank may be placed based in designated Groundwater Management Zones on the island of Saipan; and restrictions on where USTs may be placed based in Groundwater Recharge Zone Categories for the islands of Tinian and Rota. For all islands, USTs have setback requirements from drinking water wells and certain waters of the CNMI.

In accordance with 1 CMC § 9104(a), the public has the opportunity to comment on the proposed amendments. Copies of the proposed amendments are available at the office of the Division of Environmental Quality, located at the Gualo Rai Center, Middle Road, Gualo Rai, Saipan. Written comments should be submitted to: Director, Division of Environmental Quality, P.O. Box 1304, Saipan, MP, 96950. Comments must be received within thirty (30) days of the date of this notice is published in the Commonwealth Register.

Issued by:

Date: DEC 09 2005

John I. Castro Jr., Director
Division of Environmental Quality

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 9th day of December, 2005.

PAMELA S. BROWN,
Attorney General

Filed by:

Date: 12/20/05

Bernadita B. Dela Cruz
Commonwealth Registrar

Received at the Governor's Office by:

Date: 12/20/05

Thomas I. Tebuteb
Special Assistant to the Governor for Administration

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Division of Environmental Quality
P.O. Box 501304 C.K., Saipan, MP 96950-1304
Tels.: (670) 664-8500 /01
Fax: (670) 664-8540

DIVISION OF ENVIRONMENTAL QUALITY PROPOSED AMENDMENT OF CNMI UNDERGROUND STORAGE TANKS

Citation of Statutory Authority:	The Director of the Division of Environmental Quality (DEQ) proposes to adopt Amendments to the CNMI Underground Storage Tank regulations pursuant to the CNMI Environmental Protection Act, P.L. 2-32, 2 CMC §§ 3101 *et seq.* (as amended by P.L. 11-103).
Short Statement of Goals and Objectives:	The proposed amendments are intended to control the placement of Underground Storage Tanks (USTs) which store regulated substances to protect important drinking water resources from potential UST releases.
Brief Summary of the Proposed Regulations:	The revisions include restrictions on where USTs may be placed based on designated Groundwater Management Zones on the island of Saipan; and restrictions on where USTs may be placed based on Groundwater Recharge Zone Categories for the islands of Tinian and Rota. For all islands, USTs have setback requirements from drinking water wells and certain waters of the CNMI.
For Further Information Contact:	John I. Castro, Jr., Director, Division of Environmental Quality P.O. Box 501304, Saipan, MP 96950 Phone: (670) 664-8500/8501, fax (670) 664-8540
Citation of Related and/or Affected Statutes, Regulations, and Orders:	Authorizing statutes are listed above.

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Division of Environmental Quality
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Fax: (670) 664-8540

NOTISIAN PUBLIKU

MAN MAPROPONE NA AMENDASION GI COMMONWEALTH I SANKATTAN SIHA NA ISLAS MARIANAS POT REGULASION POT REGULASION TÅNKEN DIPOSITU GI PÅPA OTDA

I Direktot I Dibision I Environmental Quality (DEQ), gi Ofisinan I Gubietnu, gi Commonwealth I Sankattan Siha Na Islas Marianas (CNMI), este na momento ha infofotma I publiku na I DEQ ha propopone para u adopta I Regulasion I Tånken Dipositu Gi Påpa Otda. I Regulasion siha man mapropone sigun I aturidåt I CNMI Environmental Protection Act, Lai Publiku 2-32, 2 CMC Seksiona 3101 et. seq.(ni inamenda nu I Lai Publiku 11-103).

I man mapropone na amendasion siha a aplilika I nisisidåt lugåt siha para I Tånken Dipositu Gi Påpa Otda. I amendasion a enklulusu I suhetan amanu para u mapega I tånken dipositu sigun I madesikna ni Groundwater Management Zones gi islan Saipan; yan I suheta anai amanu u fan mapega I Tånken Dipositu Gi Påpa Otda sigun I Grounwater Recharge Zone Categories para I islan Tinian yan Luta. Para todu I isla siha, I Tånken Dipositu Gi Påpa Otda guaha nisisidåt-ña ni maditeni I tånken hånom magimen yan palu hånom i CNMI.

I publiku guaha opotunidåt-niha u fan gai opinion pot I mapropone na amendasion, sigun I Lai 1 CMC Seksiona 9104 (a). Guaha kopian I mapropone na tinilaika siha gi Ofisinan I D.E.Q., ni gaige gi Gualo Rai Center Office Building, gi Gualo Rai, giya Saipan. Debi di u ma'entrega I tinige' opinion guatto: I Direktot, gi Dibision I Environmental Quality, gi P.O. Box 1304, giya Saipan, MP 96950. I opinion siha debi di u fan marisibe' gi hålom trenta (30) diha siha ginen I ha'åne anai mafecha este na notisia para u mapublika gi Rehistran I Commonwealth.

Malaknos as:

Fecha: DEC 09 2005

John I. Castro Jr., Direktot
Dibision I Environmental
Quality

Sigun i lai 1 CMC Seksiona 2153(e)(ma aprueba nu I Abugao Henerat ni regulasion siha ni para u ma establesi pot para u fotma) yan 1 CMC Seksiona 9104 (a)(3)(hu inaprueba nu i Abugao Henerat) i ma propone na regulasion siha ni man che'che'ton guine esta man ma adu yan aprueba pot para u fotma yan sufisiente ligat ginen I Abugao Hererat i CNMI ya debi di u ma publika (1 CMC Seksiona 2153 (f) (publikasion i areklamento yan regulasion siha))

Ma fecha este ____ na dia gi Deciembre, 2005.

PAMELA S. BROWN,
Abugao Henerat

Pine'lo as:

Fecha: 12/20/05

Bernadita B. Dela Cruz
Rehistran i Commonwealth

Ma risibe' gi Ofisinan i Gubietno as:

Fecha: 12/20/05

Thomas P. Tebuteb
Espesiat Na Ayudante Para i Atministrasion

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Division of Environmental Quality
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Fax: (670) 664-8540

ARONGORONGOL TOULAP

POMWOL LLIWEL NGÁLI TANKKIIL SCHAAL KKA ELO FAAL FALÚW MELLÓL COMMONWEALTH TÉÉL FALÚWASCH MARIANAS

Samwoolul Bwulasiyool Limifischil weleór (DEQ) Bwulasiyool Lemelem, Commonwealth Falúwasch Marianas (CNMI), ekke arongaar toulap bwe DEQ ekke pomwoli bwe ebwe fillóóy lliwel yeel ngáli CNMI Alléghúl Tankkiil schaal kka elo Faal Falúw. Lliwel kkaal nge rekke pomwoli bwelle reel bwángil CNMI Environmental Protection Act. P.L. 2-32, 2 CMC Tálil 310 et seq. (iye aa lliwel mereel P.L. 11-103).

Pomwol lliwel yeel iye e ghil ngáli ammwelil tankkiil schaal. Lliwel kkaal ebwal ayoora aighúghúl igha rebwe isali tankkiil schaal sángi Ground Management Zone wóól Seipél; me aighúghúl UST's igha rebwal isáli iye bwelle Ground water Recharge Zone Categories reel falúw ye Tchúlúyól me Luuta. Reel alongal falúw, UST's aa fféér yáayá kkaal mereel schalúl falúw me akkááw schalúl CNMI.

Sángi allégh ye 1 CMC Tálil 9104 (a), eyoor bwángiir toulap bwe rebwe ayeghelong reel pomwol lliwel kkaal. Tiliighial pomwol kkaal nge eyoor mereel Bwulasiyool Environmental Quality, elo Amai raw, Middle road, Amai raw, Seipél. Ischil mángemáng nge ebwe isisilong reel: Samwoolul, Division of Environmental Quality, P.O. Box 1304, Siepél, MP, 96950. Mángemáng nge rebwe bwughil llól eliigh (30) ráálil sángi schagh yaar atééw mellól Commonwealth Register.

Isaliyallewow:

Ral: DEC 09 2005

John I. Castro Jr., Samwoolul
Limifischil Weleór

Sángi allégh ye 1 CMC talil 2153(e) (AG allégh kka Sów Bwungúl Allégh aa atééw) me 1 CMC tálil 9104(a)(3) (bweibwogh alúghúlúghúl AG) pomwol allégh kkaal ikka e appasch nge raa takkal amweri me alléghelló mereel CNMI Sów Bwungúl Allégh Lapalap me ebwe akkatééwow (1 CMC Tálil 2153(f) (akkatéél allégh kkaal)).

Rállil ye _____llól Sarobwel, 2005.

PAMELA S. BROWN,
Sow Bwungúl Allégh Lapalap

Ammwel sángi:

Rál: 12/20/05

Bernadita B. Dela Cruz
Commonwealth Register

Mwir sángi Bwulasiyool Sów Lemelem:

Rál 12/20/05

Thomas I. Tebuteb
Sow Alillisil Sow Lemelem

8.11 **Underground storage tank location requirements**

8.11.1 Island of Saipan - Groundwater Management Zones (From Section 25 of the *CNMI Well Drilling and Well Operations Regulations as Amended*)

(a) Island of Saipan Class I and Class II Groundwater Management Zone UST System Restrictions: No new USTs shall be permitted for installation or operation in Saipan's Class I or Class II Groundwater Management Zones.

(b) Island of Saipan Class III Groundwater Management Zone Restrictions.

Minimum downgradient and upgradient UST system setback requirements from existing public and private drinking water wells for new USTs:

		Wellhead Setback Requirement	
		Upgradient	Downgradient
(1)	Boundary of UST facility	500 feet	500 feet

(2) Downgradient and upgradient UST system facility setback requirements for seawater wells and wells undergoing reverse osmosis treatment may be reduced as allowed under Section 14.1 and Section 15.1 of the CNMI *Amendments to Well Drilling and Well Operations Regulations.*

~~8.11~~ (c) There shall be no tanks installed after the effective date of these regulation in the following locations:

~~(a)~~ (1) Within a wetland or within five hundred (500) feet of a wetland boundary; or

~~(b) Within five hundred (500) feet of a private or municipal well; or~~

~~(c)~~ (2) Within five hundred (500) feet of surface waters bodies, such as a reservoir**, spring,** or cave, from which public drinking water supply is collected; or

~~(d)~~ (3) Within five hundred (500) feet of inland waters;

~~(e)~~ (4) Within five hundred (500) feet of the shoreline **(as measured from the mean high water mark)** or navigable waters; or

~~(f)~~ (5) Within tidal or storm ~~wave~~ **water** inundation areas; or

~~(g)~~ (6) Any area determined as unsuitable by the ~~Chief~~ Director of DEQ.

(d) The Director of DEQ may, on a site specific basis, waive the requirements of Part 8.11.1 (a)-(c) for the replacement of an existing permitted UST if it can be demonstrated to the Director's satisfaction that such a waiver will not adversely impact human health or the environment. An application for such a waiver must be supported in writing by the owner or operator with the following information:

(1) The particular conditions which make compliance with Parts 8.11.1 (a)-(c) unfeasible for a facility with an existing permitted UST (e.g., why an aboveground storage tank would not be an acceptable substitute for a UST).

(2) With the exception of Part 8.11, the project design shall fully meet all the requirements of these regulations, and provide additional measures for leak prevention and leak detection to ensure adequate protection of those locations listed in Parts 8.11.1 (a)-(c). Such measures may include but are not limited to: UST system design (e.g., double-walled, non-corrodible tanks and piping) or additional compliance monitoring (e.g., weekly or daily versus monthly leak detection check).

(3) When granting a waiver to the requirements in Parts 8.11.1 (a)-(c), the Director of DEQ may impose additional conditions necessary to assure adequate protection of human health and the environment.

8.11.2 Islands of Tinian and Rota - CNMI Groundwater Recharge Zones

(a) Until such time as the DEQ promulgates Groundwater Management Zones for the islands of Tinian and Rota, the existing Groundwater Recharge Zone Categories (Primary, Secondary, and Brackish) as defined in CNMI Water Quality Standards 2004 shall be used to determine acceptable locations for placement of new USTs.

To determine the Groundwater Recharge Zone in the location of the proposed UST placement, the applicant must provide a determination of the underlying geology, aquifer characteristics, groundwater quality, location and proximity of all nearby wells, and current and potential future use of the underlying groundwater for public water supply based on a review of available information including United States Geological Survey (USGS) maps and reports, Commonwealth Utility Corporation (CUC) well field maps, and nearby well drilling records. DEQ may assist the applicant in making such determination where sufficient information exists. The applicant may provide a determination on the basis of a professional hydrogeologist.

(1) Primary Groundwater Recharge Zone. No new USTs shall be permitted for installation or operation in areas determined to meet one or more of the following Primary Groundwater Recharge Zone criteria:

(i) Areas contributing surface infiltration to a geologic formation that is saturated with fresh groundwater that is not in contact with seawater (i.e. "Perched" groundwater) and is capable of transmitting quantities of fresh water in sufficient quantity to sustain a public water supply well;

(ii) Areas that can reasonably be considered, on the basis of maps provided by USGS or CUC, to be within active or future public water supply well fields;

(iii) Areas contributing surface infiltration to a geologic formation that discharges to a known spring or stream that currently is or is capable of transmitting quantities of fresh water in sufficient quantity to be used as a public water supply.

(2) Secondary Groundwater Recharge Zone. No new USTs shall be permitted for installation or operation in areas determined to meet the Secondary Groundwater Recharge Zone criteria:

Secondary groundwater recharge zones are defined as areas designated as contributing surface infiltration to a geologic formation that is saturated with ground water less than 500 parts per million total dissolved solids, and currently or are capable of transmitting quantities of water in sufficient quantities to sustain a public water supply well; or areas with groundwater surface elevation equal to or greater than 1 foot as mapped by the USGS.

(3) Brackish Groundwater Recharge Zone. New USTs may be installed and operated in areas which are determined to meet the Brackish Groundwater Recharge Zone criteria provided they are in compliance with 8.11.2.(b) and 8.11.2(c) below.

Brackish groundwater recharge zones are defined as areas contributing surface water infiltration to a geologic formation that is saturated with greater than 500 parts per million total dissolved solids; or areas with groundwater surface elevation less than 1 foot as mapped by USGS.

(b) New USTs must meet the following wellhead setbacks:

(1) Minimum downgradient and upgradient UST system setback requirements from existing public and private drinking water wells:

(2) Boundary of UST facility	Wellhead Setback Requirement	
	Upgradient	Downgradient
	500 feet	500 feet

(3) Downgradient and upgradient UST system facility setback requirements for seawater wells and wells undergoing reverse osmosis treatment may be reduced as allowed under Section 14.1 and Section 15.1 of the CNMI *Amendments to Well Drilling and Well Operations Regulations.*

(c) No UST systems shall be installed after the effective date of these regulation in the following locations:

(1) Within a wetland or within five hundred (500) feet of a wetland boundary; or

(2) Within five hundred (500) feet of surface waters bodies, such as a reservoir or cave, from which public drinking water supply is collected; or

(3) Within five hundred (500) feet of inland waters; or

(4) Within five hundred (500) feet of the shoreline (as measured from the mean high water mark); or

(5) Within tidal or storm water inundation areas; or

(6) Any area as determined unsuitable by the Director of DEQ.

(d) The Director of DEQ may, on a site specific basis, waive the requirements of Part 8.12.1 (a)-(c) for the replacement of existing permitted USTs if it can be demonstrated to the Director's satisfaction that such a waiver will not adversely impact human health or the environment. An application for such a waiver must be supported in writing by the owner or operator with the following information:

(1) The particular conditions which make compliance with Parts 8.12.1 (a-c) unfeasible for a facility with an existing permitted UST (e.g., why an aboveground storage tank would not be an acceptable substitute for a UST).

(2) With the exception of Part 8.12, the project design shall fully meet all the requirements of these regulations, and provide additional measures for leak prevention and leak detection to ensure adequate protection of those locations listed in Parts 8.12.1 (a)-(c). Such measures may include but are not limited to: UST system design (e.g., double-walled, non-corrodible tanks and piping) or additional compliance monitoring (e.g., weekly or daily versus monthly leak detection check).

(3) When granting a waiver to the requirements in Parts 8.12.1 (a)-(c), the Director of DEQ may impose additional conditions necessary to assure adequate protection of human health and the environment.

PUBLIC NOTICE
AMENDED PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS GOVERNING THE NORTHERN MARIANA ISLANDS RETIREMENT FUND

The Board of Trustees of the Northern Mariana Islands Retirement Fund ("NMI Retirement Fund") hereby gives notice to its members and the general public that it has adopted the proposed amendments to the NMI Retirement Fund's Administrative Rules and Regulations, pursuant to its authority under 1 CMC § 8315(f) and the Administrative Procedure Act at 1 CMC § 9101, et. seq. The attached proposed amendments would modify the regulations as last published in the Commonwealth Register, Volume 27, Number 09, dated October 24, 2005.

The purpose of these amendments is to effectuate the provisions of Public Law 13-60, entitled Retirement Fund Integrity Act ("RIAA"), to clarify ambiguities in Public Law 6-17, and to incorporate some of the comments received during the first publication of these amendments on October 24, 2005. The Board is soliciting comments and recommendations regarding these proposed amendments, which must be received by the NMI Retirement Fund within thirty (30) days of publication of this notice in the Commonwealth Register.

Written comments on these amendments should be sent to Karl T. Reyes, Administrator, NMI Retirement Fund, Retirement Fund Building, Isa Drive, Capitol Hill, P.O. Box 501247, Saipan, MP 96950, or by facsimile to (670) 664-8080. Copies of these proposed amendments may be obtained at the NMI Retirement Fund offices on Saipan, Tinian and Rota.

Dated this 23rd day of December 2005.

Joseph C. Reyes
Chairman, Board of Trustees, NMIRF

Karl T. Reyes
Administrator, NMIRF

Reviewed for legal sufficiency by:

Maya B. Kara
Maya B. Kara,
Special Fund Counsel
Date: 12-23-05

RECEIVED BY:

Thomas A. Tebuteb
Special Assistant to the Governor
Date:

Bernie B. Dela Cruz
Corporate Register
Date: 12/30/05

Certification by the Office of the Attorney General

Pursuant to 1 CMC § 2153, as amended by P.L. 10-50, the proposed amendments to the rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the Office of the Attorney General.

Dated this 27th day of December 2005.

Pamela Brown
Attorney General

NOTISIAN PUBLIKU

POT I MAN MAPROPONE NA AMENDASION PARA I AREKLAMENTO YAN REGULASION SIHA NI GUMUBEBIETNA I PROGRÅMAN I FUNDON RITIRAO GI SANKATTAN SIHA NA ISLAS MARIANAS

I Kuetpon Trustees I Fundon Ritirao gi Sankattan Siha Na Islas Marianas, ("NMI Retirement Fund") sigun gi aturidåt i lai gi 1 CMC Seksiona 8315 (f), yan i Administrative Procedures Act gi papa 1 CMC Seksiona 9101, et. seq. ha nånå'i' i membru siha yan i publiku heneråt notisia pot i mapropopone siha na amendasion gi Areklamento yan Regulasion ni gumubebietna i Progråman i Fundon Ritirao gi Sankattan Siha Na Islas Marianas. I man che'che'ton siha ni man mapropone na amendasion para u modifika i areklamento yan regulasion anai uttimo mapublika gi Rehistran i Commonwealth, Baluma 27, Numiru 09, ni mafecha gi Oktubre 24, 2005.

I rason este na na amendasion pot para u na efektibu i probension siha gi Lai Publiku 13-60, ni matitilu Retirement Fund Integrity Act ("RIAA"), para u na klåru más i Lai Publiku 6-17, yan para u mana'fanhalom i man ma risibi siha na rekomendasion yan opinion gi duranten i finenina na mapublikan i man mapropone na amendasion gi Oktubre 24, 2005. I Kuetpo ha so'sohyo opinion yan rekomendasion siha pot i amendasion este siha gi Areklamento yan Regulasion, ya debi di u fan marisibe' gi Ofisinan i NMI Retirement Fund gi hålom trenta (30) diha siha despues di i ma publikasion este na notisia.

Todu i rekomendasion yan opinion siha u ma'entrega si Karl T. Reyes, i Atministradot i NMI Retirement Fund, gi Retirement Fund Building, gi Isa Drive, gi Capitol Hill, gi P.O. Box 501247, giya Saipan, MP 96950, osino fax gi numiru (670) 664-8080. I kopian i man mapropone na amendasion siha siña man machule' gi Ofisinan i NMI Retirement Fund giya Saipan, Tinian yan Luta.

Mafecha este gi mina benti tres (23) na ha'åne gi Decembre, 2005.

Joseph C. Reyes
Kabiseyo, Kuetpon I Trustees, NMIRF

Karl T. Reyes
Atministradot, NMIRF

Marisibe' as:

Thomas A. Tebuteb
Espisiåt Na Ayudånte Para I Gubietno
Fecha: _____

Marikot as:

Bernadita B. Dela Cruz
Rehistran I Koporasion
Fecha: 12/30/05

Settifikasion i Ligat Ufisina ATbogadu Hinerat CNMI

Konsiste yan I 1 CMC § 2153, koma inamenda nu I Lai Pupbliku 10-50, I priniponen amendasion siha gi areklamento yan regulasion ni chechetton guine esta manmaribisa yan apreba komu put I fotma yan sinufisienten ligat nu I Ufisina Atbogadu Hinerat CNMI.

Mafecha gi este I mina' _____ na dia gi _____, 2005.

_____
PAMELA BROWN
Atbogadu Hinerat

ARONGOL TOULAP

POMWOL LLIWEL REEL ALLÉGHÚL LEMELEMIL RETIREMENT FUND MELLÓL COMMONWEALTH

Mwiischil Trustees, Retirement Fund mellól Téél Falúw Kka Efáng, Marianas ("NMI Retirement Fund") ekke arongowow reer membro me aramas toulap bwe raa fillóóy lliwel kka reel Alléghúl me Ammwelil Administrative mellól NMI Retirement Fund, sángi bwángil allégh ye I CMC § 8315 me Alléghúl Administrative ye I CMC § 9109 et. seq. Pomwol liwelil allégh kkaal e siweliló allégh kka aa akkatééwow llól Commonwealth Register Volume 27 Numuro 09, llól rállil ye Sarobwél 24, 2005.

Atoowul lliwel kkaal bwelle ebwe fillóóy Alléghúl Toulap ye 13-60 iye Retirement Fund Integrity Act ("RIAA") me ebwe afattaaló aweweel Alléghúl Toulap ye 6-17 me isisilong akkááw mángemáng kka re bwughil ótol Sarobwél 24, 2005. Mwiischil yeel nge ekke tingór mángemáng me tiip reel pomwol lliwel kkaal, iye NMI Retirement Fund ebwe bwughil ótol eliigh (30) ráálil yaal akkatéélló arong yeel mellól Commonwealth Register.

Schéél yáámi agheyágh ebwe akkafang ngáli Karl T. Reyes, Samwoolul NMI Retirement Fund Building, Isa Drive, Capitol Hill, P.O. Box 501247, Seipél MP 96950, me ngáre Facsimile ngáli (670) 664-8080. Tilighil lliwel kkaal nge ebwe lo llól Bwulasiyool NMI Retirement Fund me Seipél, Tchúlúyol me Luuta.

Llól rál ye 23rd Tumwur, 2005.

Joseph C. Reyes
Samwoolul Mwiischil Trustees NMIRF

Karl T. Reyes
Samwoolul, NMIRF

Mwir Sángi:

Thomas A. Tebuteb
Sów Alillisil Sów Lemelem

Bernadita B. Dela Cruz
Corporate Register

Rál: _____ **Rál:** _____

Affat sángi Bwulasiyool Sów Allégh.

Sángi allégh ye I CMC tálil 2153, iye aa lliwel mereel Alléghúl Toulap 10-50 pomwol lliwel kkaal ngáli allégh kkaal nge raa takkal amweri fischiy me aléghélégháló mereel Bwulasiyool Sów Allégh Lapalap.

Ráálil ye _____ Tumwur 2005.

_____
Pamela Brown
Sów Bwungul Allégh
Lapalap

AMENDED PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS GOVERNING THE NORTHERN MARIANA ISLANDS RETIREMENT FUND

***Citation of Statutory Authority*:** The Board of Trustees of the Northern Mariana Islands Retirement Fund ("Retirement Fund") has statutory power to promulgate and effect Rules and Regulations pursuant to 1 CMC § 8315(f). Furthermore, Public Law No. 13-60, entitled the Retirement Integrity Assurance Act ("RIAA"), directs the Retirement Fund to promulgate Rules and Regulations to implement the objectives of that Public Law.

***Statement of Goals and Objectives*:** The Rules and Regulations provide guidelines for the Board to manage the government retirement program, as well as provide government employees and retirees information on how the program functions. The primary goals and objectives of the proposed amendments are to effectuate the changes outlined by RIAA, Public Law No. 13-60, and to clarify the Fund's implementation of the re-employment and double dipping restrictions found in Article III, Section 20(b) of the N.M.I. Constitution and 1 CMC § 8392.

***Summary of Amendments*:** These proposed amendments to the Rules and Regulations includes provisions of Public Law No. 13-60, entitled the Retirement Integrity Assurance Act ("RIAA"), that would maintain the financial integrity of the government retirement system by relieving the government from the burden of having to allocate a substantial portion of its revenues to the Retirement Fund, and permit the government to divert the necessary resources to pay for essential services for the benefit of the general public. RIAA repeals: (a) the additional 3% retirement bonus for certain elected officials, (b) benefits for board and commission members, (c) vesting credits for education service, military service, compensatory time, and unused sick leave, and (d) prior service vesting credit. Early Retirement Bonus is eliminated.

In addition to the above changes, RIAA creates disincentive to the withdrawal of employee contributions by imposing an early withdrawal penalty, by restricting re-employment for a period of six months unless the refunded contributions are returned to the Fund, and by redefining the term salary to mean base salary. Finally, RIAA includes a provision to encourage Class I members to retire before reaching 62 years of age which would reduce government payroll costs and thereby free up additional funds for remittance as employer contributions to the Retirement Fund.

Furthermore, these amendments include some of the comments received during the first publication of these proposed amendments on October 24, 2005.

For Further Information: Contact Karl T. Reyes, Administrator, NMI Retirement Fund, by telephone (670) 664-3863 or facsimile (670) 664-8080.

Citation of Related and/or Affected Statutes, Regulations and Orders: The Rules and Regulations governing the NMI Retirement Fund, as adopted in the Commonwealth Register, Volume 19, Number 02, dated February 15, 1997, and the proposed amendments as first published in the Commonwealth Register, Volume 27, Number 09, dated October 24, 2005.

Dated this 23rd day of December 2005.

Joseph C. Reyes
Chairman, Board of Trustees, NMIRF

Karl T. Reyes
Administrator, NMIRF

~~RECEIVED~~ BY:

THOMAS A. TEBUTEB
Special Assistant for ~~Administration~~
Date: 12/30/05

FILED AND RECORDED BY:

BERNADITA B. DELA CRUZ
Corporate Register
Date: 12/30/05

NORTHERN MARIANA ISLANDS RETIREMENT FUND

Administrative Rules and Regulations
(Proposed)

As of DECEMBER 23, 2005

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
NORTHERN MARIANA ISLANDS RETIREMENT FUND
ADMINISTRATIVE RULES AND REGULATIONS
_____ 2005

PART 1. GENERAL PROVISIONS

1.01. Authority. Under and by virtue of the authority vested in the Board pursuant to 1 CMC 8315(f), and Section 10 of Public Law 13-60, the Board hereby promulgates these rules and regulations.

1.02. Purpose. The Board promulgates these rules and regulations to effectively administer and maintain the Fund pursuant to Public Laws 6-17, 6-41, 7-39, 7-40, 8-24, 8-30, 8-31, 8-39, 9-45, 10-88, 11-2, 11-9, 11-95, 11-114 and 13-60, to update existing regulations, and for other purposes.

PART 2. DEFINITIONS

2.01 Applicability. The words and terms as used in these rules and regulations shall have the meanings indicated and shall include the plural unless the context clearly indicates otherwise. The definitions herein provided shall supplement the Public Laws referenced in Section 1.02.

A. **"Accredited Institution of Higher Learning"** means an institution of higher learning in the United States of America, its commonwealths, possessions, or territories, that in the Fund's judgment, has official authority to provide accreditations and has met established standards of quality.

B. **"Administrator"** means the administrator of the Fund or the acting administrator in the event the administrator is unavailable for duty.

C. **"Annual"** means yearly, and refers to the calendar year.

D. **"Annual Salary"** The term "annual salary" means:

1. For members who were employed before December 5, 2003 (the effective date of Public Law 13-60) and who did not receive a refund of contributions, annual salary shall include base salary, lump sum payment of annual leave, 30% bonus, overtime compensation, hazardous pay, differential pay, and hardship post pay, but not housing allowance or any other type of extra pay where retirement contributions are not deducted and remitted to the Fund. Furthermore, the exceptions in Public Law 6-41 (former 1 CMC § 8313(o)(1)-(2)), shall apply to the definition of salary for members under this subsection.

2. For members who became employed on or after December 5, 2003 (the effective date of Public Law 13-60), including persons who were refunded contributions and subsequently became re-employed with the CNMI Government on or after the effective date of Public Law 13-60, the definition of "annual salary" in Public Law 13-60, shall apply.

3. Provided however, that "bonus salary," as referenced in Section 5 of P.L 13-60, shall include severance pay and any settlement of any claim involving employment or termination of employment. Such payments shall be excluded from the calculation of base salary.

E. **"Calendar Year"** means the year from January 1 to December 31.

F. **"Child"** As used in 1 CMC § 8313(g), the term "child" includes a child adopted pursuant to local custom, provided that the customary adoption is recognized in an order by a court of competent jurisdiction.

G. **"Complete Separation From Service" or "Completely Separated From Service"** means separation from Government service by any employee of the Government, whose employment has terminated, effective as of the last day of employment, and who has been refunded his or her contributions. A person who completely separates from service and refunds his or her contributions shall be deemed a new member of the Fund upon subsequent employment with the CNMI Government.

H. **"Credited Service"** means prior service and membership service, plus accumulated sick leave.

I. **"Date of Retirement"** means the date on which the application for retirement is approved by the Fund. The member's entitlement to annuity payments shall commence on this date.

J. **"Early Withdrawal Penalty".** The penalty applied to employees hired on or after December 5, 2003 (the effective date of Public Law 13-60), who separate from service and receive a refund of contributions. This amounts to 10% of total contributions, excluding interest earned, which shall be withheld and retained upon issuance of the refund by the Fund.

K. **"Education Service"** means that period of time when a member attended an accredited institution of higher learning as prescribed by rules and regulations to be promulgated by the Board; provided, that the member must have obtained a degree and that a maximum of two years of service will be earned for a completed associates degree and a maximum of four years of service will be earned for a completed bachelors degree or higher.

L. **"Fiscal Year"** means a twelve (12) month period from October 1 to September 30.

M. **"Government"** The term "government" as used in Public Law 6-17 means the Government of the Commonwealth of the Northern Mariana Islands, which came into existence on or after January 8, 1978 including branches, departments, agencies, instrumentalities, public corporations, municipalities, political subdivisions and the Office of the Washington Representative.

N. **"Interest"** The term "regular interest" in 1 CMC § 8313(n) shall mean the following:

1. For purposes of refunding contributions, the Fund shall pay 3.5%, compounded annually, and credited for each complete year.

2. For purposes of repayment of refunded contributions, the interest rate the Member shall pay is the higher of the average investment rate of return of the past five most current fiscal years from the date of the application, *or* the actuarial rate in existence at the time of election.

For purposes of retroactive contributions for Early Retirement pursuant to Section 4.02 herein, the interest shall be 5 %.

O. **"Judge of the Commonwealth Government"** means a judge appointed by the Governor after January 8, 1978, to serve as a judge of the Commonwealth Trial Court, the Superior Court of the Commonwealth, or as a justice of the Supreme Court of the Commonwealth of the Northern Mariana Islands.

P. **"Medical Professional"** For purposes of Public Law 11-2, this term means an employee of the Department of Public Health who has received a specialized degree or formal training in, and whose occupational title has the primary duty of, the treatment or care of patients' medical or psychological conditions and who is so certified by the CNMI Medical Professional Licensing Board.

Q. **"Member of the Legislature"** means a person elected to serve in the Northern Marianas Commonwealth Legislature on or after January 8, 1978.

R. **"Membership Service"** means service rendered on or after becoming a member of the Fund.

S. **"Military Service"** means that period of time when a member served in the Armed Forces of the United States, including but not limited to the Army, Navy, Air Force, Marine Corps, and Coast Guard.

T. **"Overtime"** or **"Compensatory Time"** For purposes of Public Law 8-24, these terms mean the number of hours worked at the same job in excess of 2,080 regular hours per year during any year of membership service, and for which

payment was received or compensatory time used, and which have been timely certified by the Director of Finance or the head of the autonomous agency, as the case may be.

U. **"Place of Residence"** For purposes of determining where a disability examination shall take place pursuant to 1 CMC § 8347, this term means the island on which the member resides, if in the Commonwealth. If the member lives outside the Commonwealth, this term means within 50 miles of where the member resides, provided there exist in that area suitable medical facilities at which disability examinations can be conducted. If no medical facilities exist within 50 miles of where the member resides, then the Administrator shall designate the nearest medical facility at which disability examinations can be conducted. In any case, where the member resides shall be the last address of record on file with the Fund pursuant to Rule 8.01.

V. **"Prior Service"** means service rendered prior to becoming a Fund member.

W. **"Re-employment"** Re-employment of a retiree as an employee or a consultant by the CNMI Government is limited by both Article III, section 20 (c) of the NMI Constitution as well as by 1 CMC § 8392. For purposes of the limitations contained in these provisions, the following definitions will apply:

1. ***"Consultant" or "consultant contract":***

   (a) A consultant is an expert who is called upon for professional or technical advice or opinions. The expertise of a consultant may be based on education, training, experience, or a combination thereof.

   (b) A consulting contract is an agreement for the services of a consultant for compensation. The work product of a consulting contract is primarily intellectual in character and may include consultation, analysis or recommendation; it does not include the provisions of supplies or materials; and will result in the production of a report or completion of a task.

   (c) A contract for professional services, such as provided by engineers, accountants, physicians, lawyers and other similar professionals, is not a consulting contract for purposes of 1 CMC section 8392. Such a contract must, however, meet the test for an independent contract set forth in Subsection 3, below.

2. ***"Employee" or "Employment Contract"***, means any retiree in the service of any entity, office or official of the CNMI Government under any appointment or contract of hire without regard to the label of the contract, for wages or its equivalent, where the employer has the power or right to control and direct the employee in the material details of how the work is

to be performed. Whether a person is an employee requires a factual inquiry that will be determined on a case by case basis. The form or title of the contract or personnel action under which the retiree is hired is not, by itself, determinative of whether the retiree is an employee.

3. ***"Independent Contractor" or "Independent Contract,"*** means any contract, without regard to the label of the contract, between a retiree and any entity, office or official of the CNMI Government to provide professional services, products or deliverables or a retiree who enters into such a contract. In determining whether a person is an independent contractor, a consultant or an employee, the following factors shall be considered:

   (a) The extent or control which, by the agreement, the employer may exercise over the details of the work;
   (b) Whether or not the one employed is engaged in a distinct occupation or business;
   (c) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
   (d) The skill required in the particular occupation;
   (e) Whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work;
   (f) The length of time the person is employed;
   (g) The method of payment whether by the time or by the job;
   (h) Whether or not the work is part of the regular business of the employer;
   (i) Whether or not the parties believe they are creating an employer-employee relationship; and
   (j) Whether or not, the same or comparable work has previously been performed by the retiree during any period of employment with the CNMI government.

These factors are all examined and no one factor is determinative. *(Source: Castro v. Hotel Nikko Saipan, Inc., 4 N.M.I. 268 (1995)).*

X. **"Regular Hours"** For purposes of the credit granted for overtime and compensatory time pursuant to Public Law 8-24, this term means 2,080 hours per calendar year consisting of the actual hours worked, annual leave taken and paid, sick leave taken and paid or administrative leave taken and paid, and paid legal holidays. This term does not include annual leave paid in lump sum during the years of membership service or on the date of retirement, or any type of leave converted into service credit.

Y. **"Teacher"** For purposes of Public Law 8-30, this term means an employee who is a certified or non-certified classroom teacher, instructor, or an employee holding

such occupational title whose primary duty is to teach students. This term does not include administrative or support personnel, teacher aides, or other professionals whose primary duty is not to teach students.

Z. **"Terminated Vested Member"** means either:

1. a person who became a member after October 1, 1980, but before April 16, 1998 (the effective date of Public Law 11-9) and whose Government employment has terminated with at least 3 years but less than 20 years of membership service and who did not obtain a refund of contributions; or

2. a person who became a member on or after April 16, 1998 (the effective date of Public Law 11-9), and whose Government employment has terminated with at least 10 years but less than 20 years of membership service and who did not obtain a refund of contributions.

AA. **"Vesting Credit"** means the sum of credited service, education service and military service, and overtime or compensatory time performed in excess of 2,080 hours, which service shall be deemed creditable for the purpose of determining a member's eligibility for the additional five years of credited service pursuant to N.M.I. Constitution, Article III, § 20. Vesting service shall only be used to determine whether a member is eligible for benefits and shall not be used to determine the amount of benefits to be paid to a member.

BB. **"Wages"** for purposes of determining whether a retiree is receiving compensation from the CNMI Government, means the money rate at which the service rendered is recompensed under the contract of hiring, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer, and gratuities received in the course of employment from other than the employer. This definition of wages does not supplant the definition of "annual salary" for the purposes of calculating benefits under the Retirement Fund Act.

CC. **"Years of Service"** means the calendar year(s) or fraction thereof for which service is creditable and used for computation of benefits and eligibility for benefits.

PART 3. MEMBERSHIP IN RETIREMENT FUND

3.01. Election of Membership Class. A Class II member may elect at any time to change to Class I membership. Upon election, the member will receive a refund of 2.5% of salary member contribution made to the Fund for a maximum period of twelve (12) months plus regular interest thereon. The election to change membership class is irrevocable. A Class I member cannot elect to join Class II membership.

3.02. Eligibility for Fund Membership.

A. A person whose employment is for a specific project , which will cease upon completion of the project or purpose, shall not be eligible to become a member of the Fund based on that employment. Examples of such a specific project include the census, a constitutional convention, disaster related projects and the like. (1 CMC §8322)

B. Part time, seasonal, intermittent or temporary employees who are members whose services are not for a specific project or otherwise not compensated on a fee basis will ~~be~~ receive one-twelfth (1/12) of a year of membership service for every 160 hours for which they are paid in a calendar year, but in no case more than 12 months credit for any calendar year. In the event a person is employed concurrently in another Government position, Section 4.18 of these rules and regulations shall govern.

C. Independent contractors and persons whose services are compensated on a fee basis are not eligible for membership.

3.03. Services to the Saipan Credit Union. Services to the Saipan Credit Union prior to January 1, 1990, may be creditable provided the person became an employee of the CNMI Government between January 1, 1990, and **February 13, 1995 (**the effective date of Public Law 9-27). The required contributions shall first be paid by the employee and by the CNMI Government at the prevailing employee's and employer's rate at the time and class of membership at enrollment date. The employee must elect to be credited for such prior service within 30 days of the effective date of first employment with the CNMI Government between January 1, 1990, and December 4, 2003. Failure to so elect will be deemed an irrevocable rejection of the credit.

3.04. Elected Members of a Local Municipal Council. Prior service credit may be allowed for members who have rendered service to a municipal council prior to January 9, 1978, as follows:

A. The person became an employee of the CNMI Government before December 5, 2003 (the effective date of Public Law 13-60) and did not refund contributions.

B. If the member was a full-time government employee at the same time of service to a local municipal council, no credit for council service will be granted.

C. If the member was not a Government employee at the time of service to a local municipal council, the member may receive service credit for every full year served with the council. No credit shall be granted for partial year of service. For example, a member who served three (3) years and 364 days for a local municipal council and was not at the same time a full-time Government employee may receive credit for 3 years, but not the 364 days, regardless of how close to one year the partial year is.

D. Members who qualify for prior service credit for service to any local municipal council must elect to receive the credit by November 4, 1989 (within 180 days of the effective date of Public Law 6-17) or 30 days from the first date of hire, whichever is later. Failure to timely apply for the prior service credit shall be deemed an irrevocable rejection of the credits.

*3.05. **Education Service Credit.*** Vesting service credit shall be granted upon election by the member on a form prescribed by the Board of Trustees under the following terms and conditions:

A. The person became a Government employee and Fund member before December 5, 2003 (the effective date of Public Law 13-60). The education service credit is not available for any person who becomes a member on or after December 5, 2003, including those persons who have been refunded contributions and subsequently become a new Government employee on or after December 5, 2003. For example, a person who became a member on August 1, 1997, terminated employment on December 31, 1999, was refunded contributions, and re-employed with the CNMI Government on August 1, 2005, is not eligible for the education service credit.

B. The member must submit an original diploma or degree from an Accredited Institution of Higher Learning. The original will be returned to the member after the Fund has made a copy. A member is not entitled to more vesting service credit by virtue of having two or more associate or higher degrees. The total maximum vesting service credits available under this section is four (4) years. The member is entitled to a maximum of two (2) years of education vesting service credit for having one or more associate degrees, or a maximum of four (4) years of education vesting service credit for having one or more bachelor's or higher degrees.

1. For an associate degree, vesting service credit shall be granted for a maximum of two (2) years. A member with credited service of five (5) years or more and who has contributed not less than three (3) years as a member may receive one (1) year of education vesting service credit. A member who has credited and contributing service of at least five (5) years may receive two (2) years of education vesting service. For example, a member with credited service of five (5) years, but only two (2) years of contributing service, is not entitled to any education vesting service credit. If that same member remains employed and contributes to the Fund for at least three (3) more years, the member may be eligible for two (2) years of education vesting service for an associate degree.

2. For a bachelor's, master's or higher degree, the member shall be granted a maximum of four (4) years of education vesting service credit. A member with credited service of five (5) years or more and who has contributed not less than three (3) years may receive two (2) years of education service

credit. A member with at least five (5) years of credited and contributing service may receive three (3) years of education vesting service credit. A member with more than ten (10) years of credited service, regardless of the member's number of years of contributing service, may receive four (4) years of education vesting credit.

C. The member must arrange for the accredited educational institution to send directly to the Fund an official, sealed transcript indicating completion of studies for a degree or degrees.

D. To be eligible for education vesting service credits, the member must elect in writing on a prescribed form at any time prior to retirement.

3.06. Military Service Credit. Vesting service credit for active military service shall be granted upon election by the member under the following terms and conditions:

A. The person became a Government employee and Fund member before December 5, 2003, the effective date of Public Law 13-60. The military service credit is not available for any person who became a member on or after the effective date of Public Law 13-60, including those persons who completely separated from Government service and have been refunded contributions.

Example 1: A person became an employee on January 1, 1996, and completely separated from Government service on January 1, 1997, without having applied for the military service credit. The person was refunded contributions and subsequently returned to Government service on August 1, 2005. Although that person first became a member on January 1, 1996, before the effective date of Public Law 13-60, the person ceased becoming a member upon completely separating from Government service on January 1, 1997, and refunding contributions. The person became a new member on August 1, 2005, after the effective date of Public Law 13-60 (December 5, 2003), and is not eligible for the military service credit.

Example 2: Same facts as Example 1, except that the person did not refund contributions upon leaving Government service. The person remained a member from January 1, 1997, through the reemployment date of August 1, 2005. Accordingly, the person is eligible for the military service credit.

Example 3: The person first became a member on August 1, 2005. This person is not eligible for the military service credit.

B. A maximum of two (2) years vesting service credit shall be granted for active service in the Armed Forces of the United States.

1. If the member has at least three (3) years but less than five (5) years of credited service, one (1) year of military vesting service shall be granted.

Example 1: A member with three (3) years of credited service and six (6) months of military service with an honorable discharge may receive six (6) months of military service credit.

Example 2: A member with three (3) years of credited service and two and one-half (2½) years of military service with an honorable discharge may receive one (1) year of military service credit.

Example 3: Same facts as Example 1 (three (3) years of credited service and six (6) months of military service with honorable discharge), but after ten (10) years on reserve status, the member is called to active service for another two (2) years. The member has a total of two and one-half (2½) years of active service, one (1) year of which may be creditable. The ten (10) years on reserve status is not creditable.

Example 4: Same facts as Example 1, but the person became a new member on August 1, 2005, after the effective date of Public Law 13-60 (December 5, 2003). The member is not eligible for the military service credit.

2. If a member has more than five (5) years of credited service, two (2) years of military vesting service may be granted.

Example 1: A member with seven (7) years of credited service and six (6) months of military service with an honorable discharge may receive six (6) months of military service credit.

Example 2: A member with seven (7) years of credited service and two and one-half (2½) years of military service with an honorable discharge may receive two (2) years of military service credit.

Example 3: Same facts as Example 1, but after ten (10) years on reserve status, the member is called to active service for another two (2) years. The member has a total of two and one-half (2½) years of active service, two (2) years of which may be creditable. The ten (10) years on reserve status are not creditable.

Example 4: Same facts as Example 1, but the person became a new member on August 1, 2005, after the effective date of Public Law 13-60 (December 5, 2003). The member is not eligible for the military service credit.

C. To be eligible for military vesting service credit, the member must elect in writing on a form prescribed by the Board of Trustees and submit such election to the Fund together with authenticated documentation, such as Form DD14, from the Armed Forces showing the beginning date of service and the date of an honorable discharge.

D. To be eligible for military vesting service credit, the member must make the election before retiring.

E. A member who was honorably discharged for medical reasons from the Armed Forces of the United States may be eligible to receive vesting service credit for up to two (2) years provided the other requirements in this rule are satisfied.

3.07. Applicability of the Five (5) Year Credit Pursuant to Constitutional Amendment No. 19 and Limitation on Re-employment and Double Dipping.

A. In accordance with Constitutional Amendment 19, a member is eligible to retire and to receive an additional five (5) years membership credit under the following circumstances:

1. the member has been on active Government service on or after January 7, 1986; and

2. the member has acquired not less than 20 years of membership service credits under the NMI Retirement Fund system; and

3. the member has made an election to retire under this provision in writing, on a form prescribed by the Board of Trustees, at the time of application for retirement. Such an election is irrevocable once made.

4. a member who elects to retire under this provision may not be re-employed by the Commonwealth government or any of its instrumentalities or agencies, for more than 60 days in any fiscal year without losing his or her retirement benefits for the remainder of that fiscal year. (Constitutional Amendment No. 19).

5. Provided, however, that retirees are allowed to return to government employment as classroom teachers, doctors, nurses and other medical professionals for a period not to exceed two years without losing their retirement benefits. (1 CMC § 8392 (d)).

B. An employee who has retired under age retirement or an employee who has retired upon acquiring 20 years or more of membership service under the NMI Retirement Fund system before January 7, 1986, is not eligible to receive an additional five (5) years of credit if the employee is subsequently employed by the CNMI Government on or after January 7, 1986.

3.08. Membership Status Upon Subsequent Employment. A person who has completely separated from service and received a refund of contributions shall, upon subsequent employment with the CNMI Government, be deemed a new member of the Fund.

3.09. Re-Employment and Double Dipping.

A. Retirees may not return to Government service and continue to receive retirement annuities during their return to service except under the following conditions:

1. **Employment Contract**. A retiree under an employment contract must fall within one of the exemptions for re-employment enumerated under 1 CMC § 8392 (a) (1)-(3), or (5). Doctors, nurses, other medical professionals, and classroom teachers may receive retirement annuities for a maximum of two (2) years, after which the annuities must be ceased. Retirees employed with the CNMI Government under the Older Americans Act may receive retirement annuities indefinitely during such employment. All other retirees may not be re-employed with the CNMI Government unless they fall within an exemption enumerated under 1 CMC § 8392(a)(1)-(3), or (5), but during the time of employment retirement annuities will be limited to sixty (60) days per fiscal year, provided that the retiree elected to take advantage of the five (5) extra years service credit granted by Amendment 19. After the sixty days, such retiree may continue to receive compensation under the employment contract, but must relinquish and shall not be eligible to receive his retirement annuity for the balance of the fiscal year.

2. **Consulting Contract**. A retiree under a consulting contract must fall within one of the exemptions for re-employment enumerated under 1 CMC § 8392(a)(1)-(3), or (5). Such a retiree is limited to receive both compensation under the contract and retirement annuities for sixty (60) days per fiscal year, provided that the retiree elected to take advantage of the five (5) extra years service credit granted by Amendment 19. After the sixty days, such retiree may continue to receive compensation under the consulting contract, but must relinquish and shall not be eligible to receive his retirement annuity for the balance of the fiscal year.

3. **Independent Contract**. If the contract calls for professional services, products or deliverables and comports with Section 2.01(P)(3), the retiree may continue to receive retirement annuities as well as compensation under the contract during the term of the contract.

B. **Duty to Disclose Re-employment**. Within 30 days of either the execution of any form of employment contract with the CNMI government by the retiree, or the effective date of a Request for Personnel Action by the CNMI Government, the retiree has the duty to disclose the re-employment to the Fund. Such disclosure shall be in writing on a form prescribed by the Board of Trustees and shall include

a copy of the document that is the basis for the re-hiring. Failure to comply with this subsection shall constitute grounds for terminating retirement benefits.

C. Retirees who do not meet any of the conditions in (A) may not return to Government service.

PART 4. BENEFITS

4.01. Normal Retirement Benefits for Class I Members.

A. Employees of the CNMI Government who were hired prior to April 16, 1998 (the effective date of Public Law 11-9) may retire on a service retirement annuity, provided they are at least 62 years of age, have three years of contributing membership service from May 7, 1989 and have not withdrawn their contributions. (PL 6-17)

B. Employees of the CNMI Government who were hired after October 1, 1980, but prior to May 7, 1989 and who were 60 years of age or older on date of hire may retire, provided they have three years of credited prior service and have not withdrawn their contributions. (PL 6-17)

C. Employees of the CNMI Government who were hired on or after April 16, 1998 (the effective date of Public Law 11-9) may retire on a service retirement annuity, provided they are at least 62 years of age with 10 years of contributing membership service from May 7, 1989, and have not withdrawn their contributions. (PL 11-9)

4.02. Early Retirement Benefits for Class I Members. A Class I member may elect to take early retirement under the following terms and conditions:

A. A person who became a Class I member before April 16, 1998 (the effective date of Public Law 11-9) must be at least 52 years of age with 10 years of vesting service or be under 62 years of age with at least 25 years of vesting service, provided that the member has at least three (3) years of credited service earned after May 7, 1989.

B. A person who became a Class I member on or after April 16, 1998, must be at least 52 years of age with 10 years of membership service or be under 62 years of age with at least 25 years of membership service, provided that the member has at least 10 years of membership service earned after May 7, 1989.

C. A person eligible to take early retirement under subsection A or B, and who so elects, may pay to the Fund, prior to retirement, a lump sum amount equivalent to the difference between Class I and Class II contributions, including regular interest, for all periods in which the member was required to make contributions

until the date of retirement. Such payment does not constitute conversion from Class I to Class II; rather, it entitles the member to receive an annuity equivalent to the full amount the member would have been entitled to receive at age 62. No payment of such lump sum amount shall be allowed by installment or by deduction from the member's annuity. Provided, however, a person who became a member prior to 12/5/2003, may elect to have his/her benefits reduced by 3% for every year or fraction thereof that the member is under age 62.

D. At any time prior to early retirement, a person who is actively employed with the CNMI Government, may elect to pay to the Fund the difference between Class I and Class II contributions, including regular interest, for all periods in which the member was required to make contributions until the date of election. Such payment shall be made in full, prior to retirement, either in a lump sum or in installments to be set by the Fund. Such payment does not constitute conversion from Class I to Class II; rather, it entitles the member, upon early retirement, to receive an annuity equivalent to the full amount the member would have been entitled to receive at age 62. After such election, the member shall be deducted the nine percent (9%) contribution rate of a Class II member until the date of retirement. An election under this paragraph is irrevocable.

E. A terminated vested member is not eligible to receive early retirement benefits under 1 CMC § 8342. Accordingly, a person seeking to receive early retirement benefits must file the required documents and application with the Fund before officially separating from Government service. No applications for early retirement will be considered if the person already has terminated employment with the CNMI Government without first having filed the required application and documents.

*4.03. **Normal Retirement Benefits for Class II Members.*** Normal Retirement Benefits for Class II Members shall be in accordance with standards and procedures set forth in 1 CMC §§8343 and 8344.

*4.04. **Early Retirement Benefits for Class II Members.*** Early Retirement Benefits for Class II Members shall be in accordance with standards and procedures set forth in 1 CMC §§8321, 8342 and 8354.

*4.05. **Disability Benefits**.*

A. Any member who becomes disabled from an occupational cause and qualifies for disability benefits will have his or her benefits computed at 50 percent of the salary earned at the time the disability was incurred, except that a person who became a member before December 5, 2003 (the effective date of Public Law 13-60) and did not refund contributions will have benefits computed at-sixty-six and two thirds percent (66 2/3%) of the salary earned at the time the disability was incurred. Provided however, that any disabled Class I member, who is otherwise eligible to retire on a normal or service retirement, shall not receive a retirement

annuity but rather shall receive disability benefits in an amount no greater than the retirement annuity to which they would have been otherwise entitled.

B. If the disability continues until the member reaches 62 years of age or if the disability commences after the member reaches age 62 years of age, the benefits shall be based on the normal retirement for Class I members or the greater of the normal retirement or disability benefits for Class II members. (1 CMC §8345(b)

C. A member applying for non-occupational disability benefits must meet the following additional requirements:

1. A person who became a member before December 5, 2003 (the effective date of Public Law 13-60), and did not refund contributions must have at least eighteen (18) months of membership service.

2. A person who became a member on or after December 5, 2003 (the effective date of Public Law 13-60), including those persons who were refunded contributions and who subsequently became re-employed with the CNMI Government on or after the effective date of Public Law 13-60 must have at least five (5) years of membership service.

D. Investigation, Records, and Other Information

1. In accordance with 1 CMC §8347, the Administrator shall have the right to investigate the member's disability and submit any information gathered from an investigation to a licensed physician or a vocational rehabilitation counselor to determine a member's initial or continuing entitlement to a disability annuity.

2. The member shall be required to undergo reasonable examination by physicians, vocational rehabilitation experts, or other experts selected by the Administrator.

3. The member shall be required to provide medical records, other medical information, employment information, financial information and any other information reasonably requested by the Administrator.

4. The member, any current employer, and any former employer is required to provide the job description, job duties, essential functions, job site conditions, possible accommodation, payroll records, attendance records, return-to-work information, and any other employment related information reasonably requested by the Administrator.

E. If any examination indicates that the disability annuitant is no longer physically or mentally incapacitated for service, or that the disability annuitant is engaged in or

is able to engage in a gainful occupation, payment of the disability annuity by the Fund shall be discontinued.

F. If the Administrator determines that the disability annuitant received any amount from the United States Social Security system, any worker's compensation insurance program, or any insurance or other program covering the annuitant's disability, the Administrator shall reduce the amount of the disability annuity by an amount equal to any sum the annuitant is entitled to from any other disability program.

1. In order to substantiate that the disability annuitant did not receive any amount from other disability programs, the member must submit, within thirty (30) days of the annual Commonwealth or federal deadline (or applicable extended deadline) for filing tax returns, a certified copy of his or her latest income tax returns, including W-2 forms, schedules and other supporting documents.

G. Failure to undergo a reasonable examination or re-examination, failure to cooperate with the examiner or the Administrator, or failure to provide any requested information under this section 4.05 may cause the application to be cancelled and any payment, if started, to cease.

4.06. Service Credit and Other Benefitsfor Certain Government Officials.

A. A person served the CNMI Government as Governor, Lieutenant Governor, Judge of the Commonwealth Government, Mayor, Member of the Legislature, or Resident Representative to the United States, shall receive **an additional three percent times average annual salary times years of service in such capacity. The 3% bonus is available under the following terms and conditions:**

1. The person became a member before December 5, 2003 (the effective date of Public Law 13-60), and

2. The person did not refund his or her contributions.

3. The recomputation will be performed at the time of retirement and will increase the benefit by 3% per year for every year served in such capacity. The additional benefit shall be effective on May 7, 1989 (the effective date of Public Law 6-17), but shall not be retroactive to the date of retirement, if earlier than May 7, 1989.

4. Such additional credit may not increase the annuity payable to more than 100 percent of the highest annual salary received.

B. The same benefits shall accrue to former members of the Marianas District Legislature whose service was rendered prior to January 8, 1978; provided, however that these benefits shall not be retroactive but be computed forward from January 19, 1990; and

1. A person who served as a member of the Marianas District Legislature before April 1, 1975 may be credited 60 calendar day per year of service.

2. A person who served as a member of the Marianas District Legislature on or after April 1, 1975 may receive credit for full-time employment.

B.

C. Only those persons who served as a member of a board or commission for at least ten years before December 5, 2003 (the effective date of Public Law 13-60) and did not refund contributions are eligible to receive an annuity pursuant to former 1 CMC §8341 (f).

4.07. Option for Unmarried Employees – Class II Members.

A. Should any member be unmarried on the date of retirement, and designate an individual as a beneficiary pursuant to 1 CMC § 8352(d), and subsequently marry, the prior designation will be deemed null and void.

B. Any individual designated by a member pursuant to 1 CMC § 8352(d) shall be entitled to an annuity equal to that of a surviving spouse for Class II members, except as provided in (a).

4.08. Refund of Contribution.

A. Upon complete separation from government service, a member eligible for refund of contributions shall receive both contributions and interest thereon after submission of an application for refund. A member who become employed on or after December 5, 2003 (the effective date of Public Law 13-60), shall be subject to a 10% early withdrawal penalty on total contributions, excluding interest. Computation of interest and any deduction, if applicable, shall be calculated according to the fiscal year, as of the close of each fiscal year (October 1 to September 30), using 365 days per year. Examples in computing interest and deductions, where applicable, are provided below.

Example 1: Member started working for the CNMI Government on June 1, 1995, and started contributing to the Fund beginning pay-period June 29, 1995. As of the closing of the fiscal year, September 30, 1995, Member had contributed $1,000. Member stopped working on January 31, 1996. From October 1, 1995, to January 31, 1996, Member contributed $500. Member submitted a refund

application on February 2, 1996. The total amount to be refunded is computed in the following way:

1995 Contribution	$1,000.00
For Fiscal Year 1995 Interest ($1000 x 3.5%)	35.00
Total Accumulated Contribution/Interest as of 9/30/95	**$1,035.00**
1996 Contribution	500.00
TOTAL AMOUNT TO BE REFUNDED	**$1,535.00**

No interest is given for 1996 because Member applied for a refund before the close of the fiscal year.

Example 2: The same facts as Example 1, except that Member did not request a refund until December 31, 1996. Member's total refund amount is computed as follows:

1995 Contribution	$1,000.00
For Fiscal Year 1995 Interest ($1000 x 3.5%)	35.00
Total Accumulated Contribution/Interest as of 9/30/95	**$1,035.00**
1996 Contribution	500.00
For Fiscal Year 1996 Interest ($1535 x 3.5%)	53.73
Total Accumulated Contribution/Interest as of 9/30/96	**$1,588.73**
TOTAL AMOUNT TO BE REFUNDED	$1,588.73

Example 3: The same facts as Example 2, except that the person returns to Government employment after refunding contributions and after the effective date of Public Law 13-60. Member started working for the CNMI Government on June 1, 2005, and started contributing to the Fund beginning pay-period June 29, 2005. AS of the close of the fiscal year, September 30, 2005, Member had contributed $1,000. Member stopped working on January 31, 2006. From October 1, 2005, to January 31, 2006, Member contributed $500. Member submitted a refund application on February 2, 2006. Note that the results will be the same if the member did not have the prior Government employment and became a member on or after the effective date of Public Law 13-60. The total amount to be refunded is computed in the following way:

2005 Contribution	$1,000.00
For Fiscal Year 2005 Interest ($1,000 x 3.5%)	35.00
Deduction of 10% ($1,000 x 10%)	(100.00)
Total Accumulated Contribution/Interest As Of 9/30/05	**$935.00**
2006 Contribution	500.00
For Fiscal Year 2006 Interest ($1435 x 3.5%)	50.23
Deduction of 10% ($500 x 10%)	(50.00)
Total Accumulated Contribution/Interest as of 9/30/06	**$1,435.23**
TOTAL AMOUNT TO BE REFUNDED	$1,435.23

Example 4: Member started working for the CNMI Government on June 1, 2003, and started contributing to the Fund beginning pay-period June 29, 2003. As of the close of the fiscal year, September 30, 2003, Member had contributed $1,000. Member stopped working on January 31, 2004. From October 1, 2003, to January 31, 2004, Member contributed $500. The result is similar to Example 1 because the member became an employee before the effective date of Public Law 13-60 and did not previously refund contributions.

2003 Contribution	$1,000.00
For Fiscal Year 2003 Interest ($1,000 x 3.5%)	35.00
Total Accumulated Contribution/Interest as of 9/30/03	**$1,035.00**
2004 Contribution	500.00
TOTAL AMOUNT TO BE REFUNDED	$1,535.00

B. A member who receives a refund of contributions gives up all rights and benefits accorded to that member under the Retirement Fund Act. Accordingly, upon re-employment with the CNMI Government on or after the effective date of Public Law 13-60, the member shall be deemed a Class I member and subject to Public Law 13-60, regardless of the member's status before refunding contributions. A member who receives a refund of contributions and returns to Government employment before the effective date of Public Law 13-60 is subject to the applicable laws and rules and regulations in force at the time of the member's re-employment.

C. Regardless of class membership, a member shall be restricted from government re-employment for a period of six months after receiving a refund of his or her contributions, unless the member repays to the Fund the full amount of the refund plus regular interest, prior to returning to government service.

D. Upon timely and full repayment of the refund and regular interest, the Fund shall recognize the membership service represented by the refunded amount.

E. In accordance with 1 CMC § 8356 (b) (3), the Board may, in its discretion, regardless of cause, withhold payment of a refund for a period not to exceed three months after receipt of an application from a member. Refund of contributions may be made in installments within the three-month limit.

4.09. Interest Computation for Active Members. At the end of each fiscal year, regular interest of 3.5% shall be computed and added to the contributions of the member.

4.10. Prior Service Credit per Public Law 8-39. Only those persons who became members before December 5, 2003 (the effective date of Public Law 13-60) and did not refund contributions are eligible to apply for the prior service credit for service described in former 1 CMC § 8323, provided all other requirements are met.

4.11. Survivors' Benefits for Children.

A. Benefits for children of a deceased member shall be paid to the surviving spouse for the benefit of the children, or if there is no surviving spouse, to a guardian appointed by a court of competent jurisdiction for the benefit of the children.

B. Death of a member with children by different spouses:

1. If a deceased member has children eligible for survivor's benefits, such children shall be entitled to a pro rata share of children's benefits payable, regardless of whether they continue to reside with the member's surviving spouse.

2. The fact that such children may not be children of the surviving spouse is irrelevant in determining the children's benefits.

3. All benefits payable to children who are not residing with the surviving spouse shall be payable to the legal guardian appointed for such children. If a child is over 18 years of age, is not under legal guardianship and is eligible for a benefit, the benefit shall be payable to the child.

4.12. Death After Separation - Non-Vested Members: Refund to Survivors; No Annuities.

A. *Pre-P.L. 11-9: Non-Vested Members – Less Than Three Years Membership Service:*
Upon the death of a person who became a member after October 1, 1980, but before April 16, 1998 (effective date of P.L. 11-9), and whose government service terminated with less than three (3) years of membership service, and who did not obtain a refund of contributions, the estate or beneficiary of the deceased is entitled to receive a full refund in the case of a Class II member and a 1/3 refund in the case of a Class I member of the total amount of contributions made by the member, including regular interest. Payment of such a refund shall be made in accordance with 1 CMC § 8348.

B. *Post P.L. 11-9: Non-Vested Members – Less Than Ten Years Membership Service:*
Upon the death of a person who became a member after April 16, 1998 (effective date of P.L. 11-9), and whose government service terminated with less than ten (10) years of membership service, and who did not obtain a refund of contributions, the estate or beneficiary of the deceased is entitled to receive a full refund in the case of a Class II member and a 1/3 refund in the case of a Class I member of the total amount of contributions made by the member, including regular interest. Payment of such refunds shall be made in accordance with 1 CMC § 8348.

C.

4.13 Death After Separation - Vested Members: Survivors' Annuities.

A. *Pre-P.L. 11-9: Vested Members –Three (3) Years or More Membership Service*: Upon the death of a person who became a member after October 1, 1980 but before April 16, 1998 (effective date of P.L. 11-9), and whose government service terminated with three (3) years or more of membership service, and who did not obtain a refund of contributions, the survivors shall be entitled to annuities in accordance with 1 CMC § 8351 for survivors of Class I members and in accordance with 1 CMC § 8353 for survivors of Class II members.

B. *Post-P.L. 11-9: Vested Members –Ten (10) Years or More Membership Service*: Upon the death of a person who became a member after April 16, 1998 (effective date of P.L. 11-9), and whose government service terminated with ten (10) years or more of membership service, and who did not obtain an refund of contributions, the survivors shall be entitled to annuities in accordance with 1 CMC § 8351 for survivors of Class I members and in accordance with 1 CMC § 8353 for survivors of Class II members.

C. *Death After Separation Vested Members, No Persons Eligible For Survivors' Annuities:*
Upon the death of a vested member occurring before his or her retirement on a retirement annuity, leaving no persons eligible for survivors' benefits, and who did not obtain a refund of contributions, a full refund in the case of a Class II member and a 1/3 refund in the case of a Class I member of the total amount of contributions made by the member, including regular interest, shall be paid to the beneficiaries or estate of the member, in accordance with 1 CMC § 8348 (b).

4.14 Designation of Payee on Behalf of Recipient of Benefits.

A. Payment of retirement benefits or other benefits issued under the Fund plan is personal to the recipient as provided under 1 CMC § 8383. For this reason, the benefit shall not be assigned or paid to any person other than the recipient, unless the person lacks the legal capacity to directly receive the benefit as follows:

1. the recipient is under the age of 18 years;

2. the recipient has been declared by a court of competent jurisdiction to be mentally incapable of managing his/her own affairs, financial or otherwise;

B. Payment of benefits to recipients who are under the age of 18 years shall be made to the recipient's legal guardian(s).

C. If a court of competent jurisdiction appoints a legal guardian for the recipient, the legal guardian shall serve as the payee.

D. For purposes of payments on behalf of a recipient, a power of attorney in any manner, shape or form, executed after the date of declaration of incompetence of

the recipient, shall not be honored or recognized by the Board nor can it be used to determine a payee.

E. Application for a change of payee shall be filed by the person eligible under this Section to receive the benefits, on a form prescribed by the Board. The Board shall have the final determination on all applications submitted.

4.15 Reporting Required for Payment on Behalf of Recipients Who are Incapable of Self-Management.

A. Persons authorized to receive payment of benefits on behalf of the recipient pursuant to Section 4.14 shall file with the Fund a monthly report on the use of the funds received during the previous month. The report must be signed and contain the following language or its legal equivalent: "I declare under penalty of perjury under the laws of the Commonwealth of the Northern Mariana Islands that the contents of this declaration are true to the best of my knowledge and belief. Dated this ____ day of _____, 20___, at [village or city where signed]."

B. The report required under this Section 4.15 shall be in writing, contain a statement of how and on what the funds were used to benefit the recipient, filed no later than the last day of the month following the month on which a payment was received.

4.16 Penalty for Failure to File a Report.

A. If the payee fails to submit a report as required under Section 4.15, the payee shall, after notice and an opportunity to respond, return the exact amount of benefits received for the month in which a report was due but not filed.

B. If the payee fails to return the funds pursuant to Section 4.16(a), and the Board so directs, the legal counsel for the Board shall initiate a civil action to collect the amount due as determined by the Board, after exhaustion of administrative remedies.

C. Failure by the person designated as payee to file a required report shall be ground for termination of such designation and the Board may require that another qualified person be appointed or designated to become the payee as described in Section 4.14.

4.17 Vesting Service Credit for Overtime, Compensatory Time and Accumulated Sick Leave.

A. Active employees who were paid or granted overtime, compensatory time, or earned accumulated sick leave after January 1, 1985 may be eligible for vesting service credit for overtime, compensatory time, and accumulated sick leave provided the other requirements of this Section are met:

1. The person must have been a member prior to December 4, 2003 (the effective date of Public Law 13-60) and has not been refunded his or her contributions;

2. Overtime or compensatory time hours must exceed 2,080 hours of regular hours worked within the calendar year. For example, if an employee works 2,000 regular hours and 200 hours of overtime or compensatory time for the year, the employee is entitled to 120 hours of additional membership service credit (2,200 hours minus 2,080 hours equals 120 hours);

3. Overtime and compensatory time must have been ~~be~~ paid to, or used by, the employee; ~~and~~ unpaid and unused compensatory time shall not be converted to service credit.

4. Overtime and compensatory time must be certified by the Director of Finance or the head of the autonomous Agency where overtime or compensatory time was accrued.

5. A person who becomes a member after December 5, 2003 is not eligible for vesting service credits for overtime, compensatory and accumulated sick leave.

B. Overtime and compensatory time and accumulated sick leave hours will be converted to vesting service credit by using the following conversion table:

MEMBERSHIP SERVICE CONVERSION TABLE
For Sick Leave, Overtime or Compensatory Time

No. Day	1 Dy & Up	1 Mo & Up	2 Mo & Up	3 Mo & Up	4 Mo & Up	5 Mo & Up	6 Mo & Up	7 Mo & Up	8 Mo & Up	9 Mo & Up	10 Mo & Up	11 Mo & Up
0	---	173	347	520	693	867	1040	1213	1387	1560	1733	1907
1	6	179	352	527	699	872	1046	1219	1392	1566	1739	1912
2	12	185	358	532	705	878	1052	1225	1398	1572	1745	1918
3	17	191	364	537	711	884	1057	1231	1404	1577	1751	1924
4	23	196	370	543	716	890	1063	1236	1410	1583	1756	1930
5	29	202	376	549	722	896	1069	1242	1416	1589	1762	1936
6	35	208	381	555	728	901	1075	1248	1421	1595	1768	1941
7	40	214	387	560	734	907	1080	1254	1427	1600	1774	1947
8	46	220	393	566	740	913	1086	1260	1433	1606	1780	1953
9	52	225	399	572	745	919	1092	1265	1439	1612	1785	1959
10	58	231	404	578	751	924	1098	1271	1444	1618	1791	1964
11	64	237	410	584	757	930	1104	1277	1450	1624	1797	1970
12	69	243	416	589	763	936	1109	1283	1456	1629	1803	1976
13	75	248	422	595	768	942	1115	1288	1462	1635	1808	1982
14	81	254	428	601	774	948	1121	1294	1468	1641	1814	1988
15	87	260	433	607	780	953	1127	1300	1473	1647	1820	1993
16	92	266	439	612	786	959	1132	1306	1479	1652	1826	1999

17	98	272	445	618	792	965	1138	1312	1485	1658	1832	2005
18	104	277	451	624	797	971	1144	1317	1491	1664	1837	2011
19	110	283	456	630	803	976	1150	1323	1496	1670	1843	2016
20	116	289	462	636	809	982	1156	1329	1502	1676	1849	2022
21	121	295	468	641	815	988	1161	1335	1508	1681	1855	2028
22	127	300	474	647	820	994	1167	1340	1514	1687	1860	2034
23	133	306	480	653	826	1000	1173	1346	1520	1693	1866	2040
24	139	312	485	659	832	1005	1179	1352	1525	1699	1872	2045
25	144	318	491	664	838	1011	1184	1358	1531	1704	1878	2051
26	150	324	497	670	844	1017	1190	1364	1537	1710	1884	2057
27	156	329	503	676	849	1023	1196	1369	1543	1716	1889	2063
28	162	335	508	682	855	1028	1202	1375	1548	1722	1895	2068
29	168	341	514	688	861	1034	1208	1381	1554	1728	1901	2074

4.18 Members With Two or More Concurrent Government Jobs.

A. A person who became a member before December 5, 2003 (the effective date of Public Law 13-60) and held two or more concurrent CNMI Government jobs qualifying for membership may be eligible for membership service credit for any hours worked in excess of 2,080 hours in a calendar year. Any such membership credit will be calculated consistent with Section 4.17.

B. A person who became a member on or after December 5, 2003 (the effective date of Public Law 13-60) and held two or more concurrent CNMI Government jobs qualifying for membership is not eligible for membership service credit for any hours worked in excess of 2,080 hours in a calendar year.

C, However, the salary from each of the concurrent CNMI Government jobs shall be used in the computation of any retirement benefits.

4.19 Early Retirement Bonus.

A. A person who was a member of the Fund before December 15, 1999 (the effective date of Public Law 11-114), may be eligible for a bonus equal to 30% of the annual salary of the member pursuant to Public Law 8-30. A person who became a member of the Fund on or after December 15, 1999 (the effective date of Public Law 11-114) is not eligible for the bonus. . Election to receive the bonus shall be in writing and on a form prescribed by the Board of Trustees. The requirements for eligibility to elect and receive the bonus are as follows:

1. Employees, except those specifically exempted by law, who had twenty (20) or more years of vesting service credit with the Fund on October 1, 1993, may elect to receive the bonus and retire within 90 days of October 1, 1993 , but not later than December 31, 2005.

2. Employees, except those specifically exempted by law, who had less than twenty (20) years of vesting service credit with the Fund on October 1, 1993, may elect to receive the bonus and retire within 90 days of attaining 20 years of vesting service with the Fund, , but not later than December 31, 2005.

3. Any member of the Fund who is occupying an exempted position may be eligible for the bonus only upon attaining at least 20 years of vesting service with the Fund and who elects to retire, but not later than December 31, 2005.

4. Any employee who does not make an election during the 90-day election period, and who converts to a position or status exempted from the civil service, shall not be eligible for the bonus.

5. Any employee, unless exempted by law from the 90-day election requirement, who fails to elect and retire within the 90 days of becoming eligible for the early retirement bonus, shall not be eligible for the bonus.

6. Any employee whose position is classified by the Civil Service Commission and has attained or upon attainment of 20 years of vesting service, may elect to receive the bonus and retire within 90 days of attaining 20 years of vesting service, but not later than December 31, 2005.

7. Excepted service employees or employees who are under an employment contract and who have attained 20 years of vesting service, may elect to receive the bonus and retire within 90 days of the expiration of the employment contract, or if renewed within 90 days of the expiration of any renewed contract, but not later than December 31, 2005.

8. Any elected official, or any department head appointed by the governor, or any special assistant to the governor, who has attained at least 20 years of vesting service, may elect to receive the bonus and retire within 90 days of the expiration of his or her term of office, but not later than December 31, 2005.

9. Employees appointed by elected officials who have attained 20 years of vesting service, may elect to receive the bonus and retire within 90 days of the expiration of the term of the appointing elected official, but not later than December 31, 2005.

10. Teachers, nurses, doctors or attorneys for the CNMI Government who have attained 20 years of vesting service, may elect to receive the bonus and retire at any time, but not later than December 31, 2005.

B. For purposes of eligibility for the 30% bonus, 20 years of vesting service shall consist of the following:

1. Actual membership service.

2. Credited prior service. Prior service that has not been credited or has not been fully paid will not be counted until it is fully paid and credited, except when the member elects to retire prior to full settlement of the amounts due with appropriate deductions from the annuity amount.

C. Vesting service of education and military service shall not be included in the determination of bonus eligibility until the employee elects to retire. Credited overtime or compensatory time and sick leave balance also will be considered only at the time the employee elects to retire.

D. Pursuant to Section 11 of Public Law 13-60, no early retirement bonus shall be paid to a government employee electing to retire after December 31, 2005.

4.20 Basis for the Payment of Bonus; Withholdings.

A. The 30% early retirement bonus shall be based on the lower of the annual salary received during the last 12 months consisting of 26 pay periods immediately preceding the date of retirement; or, the annual salary stated in the most recent personnel action preceding the date of early retirement.

B. The early retirement bonus is subject to withholding for retirement fund contribution and all applicable taxes.

C. The cost of the early retirement bonus shall be borne by the employee's hiring authority or as provided by law. (PL 11-114)

PART 5. RIGHTS AND OBLIGATIONS

5.01. Time for Payments and Recalculation of Benefits.

A. All payments for benefits (retirement, disability, surviving spouse and surviving child) shall be made on the fifteenth and last day of every month.. Payments prior to the scheduled disbursement date may be released only by the Administrator and only upon a showing of an extraordinary circumstance. For purposes of this subsection, "extraordinary circumstance" shall be limited to the death or off-island medical referral of the beneficiary or the beneficiary's immediate family. "Immediate family" shall mean mother, father, brother, sister, spouse, child (natural and culturally or legally adopted), grandfather, grandmother, grandchild, mother-in-law or father-in-law.

B. In the case where a benefit was paid based on estimated figures or service dates, the Fund shall, after receipt of updated information, re-compute the benefit. If the Fund determines that the benefit is underpaid, the annuitant shall receive a

retroactive adjustment of his/her benefit. If the Fund determines that the benefit was overpaid, the Fund shall recover such overpayment by reducing the annuitant's benefit by 50% or another amount as authorized by the Administrator until the full amount is recovered.

C. Upon death of an annuitant before a scheduled annuity disbursement date, the pro rata share of the deceased annuitant shall be payable to the surviving spouse or beneficiary, as the case may be. If the deceased annuitant has no surviving spouse or beneficiary, the pro rata share shall be held in abeyance pending the court appointment of an administrator of the estate.

5.02. ***Anti-Fraud Provision.*** The Fund may, from time to time, request for updated pertinent information, including but not limited to tax information, current identification, driver's license and the like. It is the duty of the recipient to timely respond to requests for updated information. Substantial or repeated failure to provide complete information or providing false or misleading information shall constitute grounds for terminating benefits.

PART 6. OTHER BENEFITS

6.01. Cost of Living Allowance (COLA).

A. All Class I and Class II retirees and surviving spouses in receipt of an annuity from the Fund shall have their annuity adjusted for COLA as determined by the Board.

B The determination of the Board whether or not to approve a COLA for a particular year shall be based on factors consistent with the fiduciary obligations of the Board and shall include, but not be limited to, the availability of funds specifically appropriated for the purpose.

C. In the event that a COLA adjustment is determined by the Board, a retiree or surviving spouse is entitled to such adjustment commencing on January 1 subsequent to the anniversary of the member's retirement date upon attaining the following ages:

1. Class I retirees: 55 years
2. Class I surviving spouses with children: 62 years
3. Class 1 surviving spouses without children: 55 years
4. Class II retirees: 55 years
5. Class II surviving spouses: 55 years
6. Disability annuitants: 62 years

D. The COLA rate shall be the rate used by the United States of America Social Security System for its beneficiaries. Once the Board of Trustees adopts the COLA rate, it will be the same rate applied throughout the calendar year.

6.02. Government Life Insurance Contributions and Level of Coverage.

A. Members in receipt of a service or age retirement annuity shall have the option to elect, on a form prescribed by the Board of Trustees, to receive the same level of life insurance coverage in force at the time of their retirement. Premiums for the excess coverage (an amount in excess of what is presently being made available by the government insurance carrier for retirees) are subject to the prevailing rate for active government employees or as established by the Board based on the prevailing rate for retirees.

B. The retiree and the Fund shall share the premium cost for coverage beginning October 1, 1993. However, if coverage is made retroactive to the date of retirement (prior to October 1, 1993) the one-time cost of premium will be paid solely by the Fund.

C. The retroactive effective date does not apply to deceased annuitant's estate or cause added benefits to be paid to survivors of deceased annuitants.

D. In the event the existing government life insurance carrier does not consent to provide the additional life insurance coverage, the Board will establish a Life Insurance Trust Fund to meet the requirements of the law.

E. A retiree who did not carry life insurance coverage immediately prior to retirement shall not be eligible for the option described in subsection (a) of this Section.

6.03. Health Insurance Contributions.

A. Recipients of service retirement and surviving spouse annuities are eligible to elect for health insurance coverage. Terms and conditions of eligibility and the Fund's share of the cost of health insurance premiums shall be determined by the Board through rules and regulations promulgated by the Group Life and Health Insurance Trust Fund.

B. The contributions of the Fund to other health insurance plans shall be equal to the amount it pays under the Government Health Insurance Plan.

PART 7. APPEALS

7.01. Appeal from Decision of Administrator. Any person aggrieved by a decision of the Administrator of the Retirement Fund shall appeal the decision to the Board by filing a written notice of appeal with the Board within 30 days of the date of the Administrator's decision. A failure to file a timely appeal will result in its dismissal.

7.02. Contents of the Notice Appeal. The notice of appeal shall contain:

A. the name of the party appealing;

B. a brief statement of any disputed factual matters in the decision of the Administrator; and

C a brief statement of any disputed legal issues in the decision of the Administrator.

7.03. Hearing on Appeal.

A. After reviewing the notice of appeal, the Board may then, at its discretion, in accordance with 1 CMC Section 9109, either: (1) preside at the taking of evidence; or (2) appoint a hearing officer to preside at the taking of the evidence. No hearing officer will be appointed where the aggrieved party in its notice of appeal does not dispute any factual findings of the Administrator, or raise any new factual issues.

B. In accordance with 1 CMC Section 9110, if a hearing officer is appointed, the hearing officer shall initially decide the case in accordance with the procedures outlined in 1 CMC Section 9109. The initial decision of the Hearing Officer shall be promptly served on the Board of Trustees.

C. In accordance with 1 CMC Section 9110, if the Board presides at the initial hearing, the Board shall decide the case in accordance with the procedures outlined in 1 CMC Section 9109. Any further appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC Section 9112(b).

D. For purposes of all administrative proceedings and appeals under this Part, service shall be accomplished by any reasonable means including personal service, registered mail and publication.

7.04. Appeal to the Board from a Decision of the Hearing Officer.

A. Any person aggrieved by a decision of the hearing officer may appeal the decision to the Board by filing a written notice of appeal within fifteen (15) days of the date of service upon the party of the hearing officer's decision. A failure to file a timely appeal will result in its dismissal.

B. Any appeal to the Board from a party aggrieved by a decision of the hearing officer shall state the following in writing:

1. the name of the party appealing;

2. a brief statement of any disputed factual matters in the decision of the hearing officer; and

3. a brief statement of any disputed legal issues in the decision of the hearing officer.

C. Subject to the Board's discretion, the Board may:

1. affirm the judgment of the hearing officer without further hearing; or

2. reverse the judgment of the hearing officer without further hearing; or

3. hold a further hearing limited to specified legal and factual issues.

D. Any further appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC Section 9112(b).

*7.05. **Legal Representation in Fund Proceedings.*** A person may represent himself or herself in connection with any administrative hearing or other proceeding of the Fund. A person may also be represented in such matters by any attorney licensed to practice in the Commonwealth. A person shall not be represented in such matters by any other person; provided, however, that a person may bring such witnesses, translator(s), and observers to a proceeding as he or she deems necessary.

PART 8. NOTICE

*8.01 **Address of Record.*** A member shall provide the Fund with an address of record at which to receive notices, benefits or correspondence from the Fund. Should the member move or choose to designate another address of record, the member shall notify the Fund, in writing, of any change in address within 30 days of the change. In the event the member does not comply with this requirement, the member's last address on file shall be deemed the member's address of record until such time the member provides the Fund with a notice of change in address. Should the member leave the Commonwealth for longer than a 30-day period, whether temporarily, indefinitely or permanently, the member shall likewise provide the Fund with an address at which to receive notices, benefits and correspondence. In the absence of such notice, the member's last address on file shall be deemed the member's address of record until such time the member provides the Fund with a notice of change in address. Any notice, benefits or correspondence may be mailed by the Fund to the address of record. The Administrator shall maintain a log of any returned or undeliverable mail.

*8.02. **Notice to the Fund.*** Except where otherwise provided by law, a notice of appeal or other official notice, such as but not limited to an address change or application for benefits, must be filed at either the Fund's main office on Saipan, or at either of the Fund's satellite offices on Tinian or Rota: A filing also may be made by confirmed facsimile transmission to the Fund's main office facsimile number, (670) 664-8080, or whatever main office facsimile number is currently designated and posted in any of the Fund offices on Saipan, Tinian or Rota, provided that the signed original must be received at the main office within fourteen (14) calendar days of the facsimile transmission. Any

notices, applications or other documents provided to the Fund's satellite offices on Tinian or Rota will be deemed filed when received at the Fund's satellite office.

PART 9. SPOUSAL AND CHILD SUPPORT OBLIGATIONS ARISING OUT OF JUDICIAL PROCEEDINGS

*9.01 **Spousal and Child Support Obligations Arising out of Judicial Proceedings Defined.*** For purposes of this part and section 6(h) of Public Law 13-60, the following definitions and requirements shall apply, regardless of when the employee became a member of the Fund. (Source: 8 CMC §§ 1311, 1828; *Rice v. Rice*, 757 P.2d 60, 61 (Alas. 1988).)

A. **In General.** The term "spousal and child support obligations arising out of judicial proceedings" means any judgment, decree, or order (hereinafter collectively referred to as a "domestic relations order," including approval of a property settlement agreement) which –

1. relates to the provisions of child support or alimony payments, including arrearages, or marital property rights to a spouse, former spouse, child or other dependent of a member;

2. is made pursuant to a state's, commonwealth's, territory's, or country's domestic relations law (including a community property law);

3. creates or recognizes the existence of an alternative payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant of a plan; and

4. with respect to which the requirement of subsections (B) and (C) of this section are met.

B. **Order Must Clearly Specify Certain Facts.** A domestic relations order meets the requirements of this Part only if such order clearly specifies –

1. the name and last known mailing address (if any) of the member and the name and mailing address of each alternate payee covered by the order;

2. the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined;

3. the number of payments or period to which such order applies; and

4. each plan to which such order applies.

C. **Order May Not Alter Amount, Form, etc., of Benefits.** A domestic relations order meets the requirements of this Part only if such order –

1. does not require the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan;

2. does not require the plan to provide increased benefits (determined on the basis of actuarial value); and

3. does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order determined to be a domestic relations order.

PART 10. PROCUREMENT

10.01. ***The Commonwealth Procurement Regulations*** and any subsequent amendments are adopted, as modified herein, to be the procurement regulations of the Fund. All references in the Commonwealth Procurement Regulations to the Director of Procurement and Supply, Secretary of Finance, and other executive branch officials shall be deemed to refer to the Administrator of the Fund. All references to the Governor shall be deemed to refer to the Board of Trustees of the Fund. All contracts shall be subject to legal review by the Attorney General as provided in the Commonwealth Procurement Regulations. Procurement appeals may be made to the Office of the Public Auditor, as provided in the Commonwealth Procurement Regulations.

PART 11. EFFECTIVE DATE

These regulations shall become effective pursuant to the Administrative Procedure Act, 1 CMC §§ 9101-9115.

Commonwealth of the Northern Mariana Islands

Department of Public Health

Office of the Secretary

NOTICE AND CERTIFICATION OF
FINAL ADOPTION
OF SCHEDULE OF FEES

—

I, Dr. James U. Hofschneider, M.D., Secretary of the Department of Pubic Health of the Commonwealth of the Northern Mariana Islands, which has promulgated AMENDMENTS TO THE SCHEDULE OF FEES originally published in the Commonwealth Register, volume 27, number 10, pages 25239-47, November 25, 2005, by signing below hereby certify that as published such Rules and Regulations are a true, complete, and correct copy of the Rules and Regulations previously proposed which, after the expiration of appropriate time for public comment, have been finally adopted without modification. During the notice period, the Department received no public comments on the proposed regulation. I now request and direct this Notice and Certification to be published in the CNMI Commonwealth Register. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the ___ day of December 2005 at Saipan, in the Commonwealth of the Northern Mariana Islands.

DR. JAMES U. HOFSCHNEIDER, M.D.
Acting Secretary of Public Health
Department of Public Health

Filed by: _____ Date 12/19/05
BERNADITA B. DELA CRUZ
Commonwealth Registrar

Received by: _____ Date 12/20/05
THOMAS TEBUTEB
Special Assistant for Administration
Executive Offices of the Governor

DEPARTMENT OF PUBLIC HEALTH
AMENDMENT TO THE SCHEDULE OF MEDICAL AND OTHER RELATED FEES

DESCRIPTION	CPT CODE	FEE SCHEDULE
Office or Other Outpatient Services-New Patient		
Office or other outpatient visit-new	99201	$ 27
Office or other outpatient visit-new	99202	$ 53
Office or other outpatient visit-new	99203	$ 81
Office or other outpatient visit-new	99204	$ 100
Office or other outpatient visit-new	99205	$ 125
Office or Other Outpatient Services-Established Patient		
Office/outpatient visit-established	99211	$ 25
Office/outpatient visit-established	99212	$ 33
Office/outpatient visit-established	99213	$ 61
Office/outpatient visit-established	99214	$ 80
Office/outpatient visit-established	99215	$ 110
Hospital Observation Services		
Observation care discharge	99217	$ 75
Initial observation care, per day	99218	$ 75
Initial observation care, per day	99219	$ 130
Initial observation care, per day	99220	$ 150
Hospital Inpatient Services		
Initial hospital care, per day	99221	$ 76
Initial hospital care, per day	99222	$ 126
Initial hospital care, per day	99223	$ 176
Subsequent hospital care, per day	99231	$ 38
Subsequent hospital care, per day	99232	$ 63
Subsequent hospital care, per day	99233	$ 89
Observation or Inpatient Care Services		
Observation or inpatient hospital care	99234	$ 151
Observation or inpatient hospital care	99235	$ 200
Observation or inpatient hospital care	99236	$ 250
Hospital Discharge Services		
Hospital discharge day, 30 minutes or less	99238	$ 80
Hospital discharge day, more than 30 minutes	99239	$ 109
Office or Other Outpatient Consultations		
Office consultations, new or established patients	99241	$ 38
Office consultations, new or established patients	99242	$ 78
Office consultations, new or established patients	99243	$ 105
Office consultations, new or established patients	99244	$ 155
Office consultations, new or established patients	99245	$ 205
Initial Inpatient Consultations		
Initial inpatient consultations, new or established	99251	$ 40
Initial inpatient consultations, new or established	99252	$ 81
Initial inpatient consultations, new or established	99253	$ 111
Initial inpatient consultations, new or established	99254	$ 160
Initial inpatient consultations, new or established	99255	$ 220
Follow-up Inpatient Consultations		
Follow-up inpatient consultations, established	99261	$ 26

DEPARTMENT OF PUBLIC HEALTH		
AMENDMENT TO THE SCHEDULE OF MEDICAL AND		
OTHER RELATED FEES		
DESCRIPTION	CPT CODE	FEE SCHEDULE
Follow-up inpatient consultations, established	99262	$ 51
Follow-up inpatient consultations, established	99263	$ 75
Confirmatory Consultation		
Confirmatory Consultation, new or established	99271	$ 27
Confirmatory Consultation, new or established	99272	$ 52
Confirmatory Consultation, new or established	99273	$ 73
Confirmatory Consultation, new or established	99274	$ 105
Confirmatory Consultation, new or established	99275	$ 138
Emergency Department Services		
Emergency department visit	99281	$ 35
Emergency department visit	99282	$ 45
Emergency department visit	99283	$ 110
Emergency department visit	99284	$ 125
Emergency department visit	99285	$ 145
Pediatric Critical Care Patient Transport		
Critical care services by physician, inter facility trans	99289	$ 291
Critical care services by physician, inter facility trans	99290	$ 146
Critical Care Services		
Critical care, first 30-74 minutes	99291	$ 231
Critical care, each additional 30 minutes	99292	$ 116
Pediatric Critical Care		
Initial pediatric critical care	99293	$ 926
Subsequent pediatrica critical care	99294	$ 459
Neonatal Critical Care		
Initial neonatal critical care	99295	$ 1,045
Subsequent neonatal critical care	99296	$ 461
Intensive(non-critical) Low Birth Weight Services		
Subsequent intensive care, per day	99298	$ 162
Subsequent intensive care, per day	99299	$ 153
Domiciliary, Rest Home, or Custodial Care Services		
Domciliary or rest home visits, new patient	99321	$ 51
Domciliary or rest home visits, new patient	99322	$ 76
Domciliary or rest home visits, new patient	99323	$ 97
Domiciliary or rest home visits, established	99331	$ 47
Domiciliary or rest home visits, established	99332	$ 61
Domiciliary or rest home visits, established	99333	$ 76
Home Services		
Home visit, new patient	99341	$ 69
Home visit, new patient	99342	$ 104
Home visit, new patient	99343	$ 149
Home visit, new patient	99344	$ 201
Home visit, new patient	99345	$ 245
Home visit, established patient	99347	$ 55
Home visit, established patient	99348	$ 87
Home visit, established patient	99349	$ 135

DEPARTMENT OF PUBLIC HEALTH		
AMENDMENT TO THE SCHEDULE OF MEDICAL AND		
OTHER RELATED FEES		
DESCRIPTION	CPT CODE	FEE SCHEDULE
Home visit, established patient	99350	$ 196
Prolonged Services-Direct Face to Face		
Prolonged services, office, first hour	99354	$ 104
Prolonged services, office, each addition 30 minutes	99355	$ 103
Prolonged services, inpatient, first hour	99356	$ 101
Prolonged services, inpatient, each additional 30 min	99357	$ 101
Prolonged Services-W/out Direct Face to Face		
Prolonged services, w/out contact, first hour	99358	$ 183
Prlonged services, w/out contact, each add 30 min	99359	$ 91
Physician Standby Services		
Phsyician standby services	99360	$ 125
Case Management Services		
Team Conference, approximately 30 minutes	99361	$ 104
Team Conference, approximately 60 minutes	99362	$ 183
Telephone Calls, simple or brief	99371	$ 17
Telephone Calls, intermediate	99372	$ 42
Telephone Calls, complex or lengthy	99373	$ 83
Care Plan Oversight Services		
Home health care supervision, 15-29 minutes	99374	$ 67
Home health care supervision, 30 minutes or more	99375	$ 147
Hospice care supervision, 15-29 minutes	99377	$ 67
Hospice care supervision, 30 minutes or more	99378	$ 166
Nursing fac care supervision, 15-29 minutes	99379	$ 67
Nursing fac care supervision, 30 minutes or more	99380	$ 105
Preventive Medicine Services		
Preventive visit, new, infant	99381	$ 72
Preventive visit, new, age 1-4	99382	$ 82
Preventive visit, new, age 5-11	99383	$ 82
Preventive visit, new, age 12-17	99384	$ 93
Preventive visit, new, age 18-39	99385	$ 93
Preventive visit, new, age 40-64	99386	$ 114
Preventive visit, new, age 65 & over	99387	$ 125
Preventive visit, est, infant	99391	$ 62
Preventive visit, est, age 1-4	99392	$ 72
Preventive visit, est, age 5-11	99393	$ 72
Preventive visit, est, age 12-17	99394	$ 82
Preventive visit, est, age 18-39	99395	$ 82
Preventive visit, est, age 40-64	99396	$ 93
Preventive visit, est, age 65 & over	99397	$ 104
Counseling and/or Risk Factor Reduction Intervention		
Preventive counseling, individual, approx 15 minutes	99401	$ 29
Preventive counseling, individual, approx 30 minutes	99402	$ 59
Preventive counseling, individual, approx 45 minutes	99403	$ 88
Preventive counseling, individual, approx 60 minutes	99404	$ 118
Preventive counseling, group, approx 30 minutes	99411	$ 9

DEPARTMENT OF PUBLIC HEALTH		
AMENDMENT TO THE SCHEDULE OF MEDICAL AND		
OTHER RELATED FEES		
DESCRIPTION	CPT CODE	FEE SCHEDULE
Preventive counseling, group, approx 60 minutes	99412	$ 15
New Born Care		
Initial care, normal newborn , hospital	99431	$ 68
Newborn care, not in hospital	99432	$ 73
Subsequent care, normal newborn, hospital	99433	$ 36
Newborn care, assessed & discharged same day	99435	$ 88
Attendance, birth	99436	$ 86
Newborn resuscitation	99440	$ 169
Medical Nutrition Therapy		
Medical nutrition therapy, initial, each 15 minutes	97802	$ 22
Medical nutrition therapy, re-assess, each 15 minutes	97803	$ 22
Medical nutrition therapy, group, each 30 minutes	97804	$ 9
Medical nutrition therapy, re-assess, each 15 minutes	G0270	$ 22
Medical nutrition therapy, group, each 30 minutes	G0271	$ 9
OTHER RELATED FEES		
Forensic Services, per hour		$ 250

PUBLIC NOTICE

NOTICE AND CERTIFICATION OF ADOPTION OF PROPOSED AMENDMENTS TO BOARD OF EDUCATION REGULATIONS REGARDING PRAXIS REQUIREMENT FOR HEAD START TEACHERS AND COURSE AND CREDIT REQUIREMENTS FOR STUDENT PROMOTION AND GRADUATION

I, Roman C. Benavente, the Chairman of the Ninth Board of Education for the Commonwealth of the Northern Mariana Islands ("Board") pursuant to the authority provided by Article XV of the CNMI Constitution and Public Law 6-10 hereby adopt as permanent the proposed amendments to Regulations 8114, 2525 and 6210, as published in Volume 27, Number 09 of the Commonwealth Register dated October 24, 2005 (pages 025027-025042). I hereby certify that these amendments have been adopted after the appropriate time for public comment without modification or amendment.

Accordingly, I request that this Notice and Certification of Adoption be published in the Commonwealth Register. Pursuant to 1 CMC sec. 9105(b), these amended regulations are effective 10 days after publication.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 28th day of November 2005, on Saipan, CNMI.

By: _____
ROMAN C. BENAVENTE
BOARD OF EDUCATION CHAIRMAN

Approved By: _____ **Date:** 12/15/05
PAMELA BROWN
ATTORNEY GENERAL, CNMI

Filed By: _____ **Date:** 12/15/05
BERNADITA B. DELA CRUZ
COMMONWEALTH REGISTER

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF PERMANENT REGULATIONS TO THE ALIEN LABOR RULES AND REGULATIONS SECTION II and THE BUSINESS LICENSE REGULATIONS

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS "Emergency Regulations and Notice of Intent to Adopt Amendments to the Alien Labor Rules and Regulations Section II and the Business License Regulations"
Volume 27, Number 09, p 025011 - 025026 (October 24, 2005)

Please take notice that we, Pamela Brown, Attorney General, Dr. Joaquin A. Tenorio, Secretary of Labor, and Fermin M. Atalig, Secretary of Finance, hereby adopt as permanent, the referenced "Emergency Regulations and Notice of Intent to Adopt Amendments to the Alien Labor Rules and Regulations Section II and the Business License Regulations". We also certify by signatures below that, as published, such regulations are a true, complete and correct copy of the above-referenced Regulations with a minor amendment.

A minor, clarifying amendment has been made to Section IV.A. of the Business License Regulations which appeared on page 025024. That clarification adds Section IV.A.3, as follows:

3. Limitation. PL 14-82 has added to 4 CMC §5611(c)(4). This section requires compliance with 4 CMC §5701(b)(2)-(3). The 21-day temporary license referred to in the instant regulation, part IV.A.1, *supra,* shall be issued only for the purpose of posting a cash bond, irrevocable letter of credit or other form of financial assurance required by 4 CMC §5611(c)(4)(B). The 21-day temporary license shall not be issued for other purposes. An example of purposes for which the temporary license may not be issued are those listed in 4 CMC §5701(b)(2)-(3).

A copy of the permanent regulations is attached to this Notice.

We further request and direct that this Notice be published in the Commonwealth Register.

Pursuant to 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

The prior publication was as stated above. No written comments were received.

Attorney General approval. The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant

to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 23rd day of December, 2005, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Pam Brown — 12/23/05
Attorney General — Date

Sign Here

Dr. Joaquin A. Tenorio — 12/27/05
Secretary of Labor — Date

Fermin M. Atalig — 12/27/05
Secretary of Finance — Date

Filed and
Recorded by:

Bernadita B. Dela Cruz — 12/27/05
Commonwealth Register — Date

REGULATIONS IMPLEMENTING P.L. 14-82

I. Applicability and related regulations:

These regulations apply only to businesses receiving a transfer business license for purposes of garment manufacturing pursuant to 4 CMC § 5611 (c) as amended by P.L. 14-82. For purposes of reallocation of workers under 4 CMC § 5708, the procedures outlined in the Alien Labor Rules and Regulations § II.K regarding positions going into the Garment Pool due to a previous employer's reduction in force shall apply. When making the initial request for an allocation of alien workers, a new employer to whom a business license for garment manufacturing has been granted is excused from the requirement of filing the statement of user fees paid in the previous year as required by ALRR § II.K.1.f.2. This waiver shall apply until the new employer has filed user fees, at which time the regular requirements will resume.

II. Definitions.

A. *Applicant*: A garment manufacturer who has applied for a transferred business license for the purpose of garment manufacturing under P.L. 14-82.

B. *Transfer licensee*: A garment manufacturer who has been granted a transferred business license for the purpose of garment manufacturing by the Department of Finance ("DOF").

C. *Financial assurance*: The financial assurances required under P.L. 14-82 can be met by the following financial arrangements:

1. Establishment of a cash bond with the Department of Finance ("DOF");

2. Establishment of an irrevocable standby letter of credit with an FDIC insured bank equal to 100% of the aggregate cost of repatriation of the nonresident workers employed by the transferee license holder;

3. Establishment of an irrevocable letter of credit with an FDIC insured bank or a cash bond with the DOF equal to 50% of the aggregate cost of repatriation of the nonresident workers employed by the transferee license holder and provision of personal guarantees from all corporate owners for the remainder of repatriation costs; or

4. Provision of a performance bond with an insurance provider authorized by the United States Treasury equal to 100% of the

aggregate cost of repatriation of the nonresident workers employed by the transferee license holder.

All financial assurances are to be in a written format approved by the Office of the Attorney General.

D. *Repatriation costs*: Repatriation costs shall be calculated based on the price quoted by a licensed travel agent within the Commonwealth of the Northern Mariana Islands ("Commonwealth") equal to the current cost of one-way transportation between each worker's original point of hire as specified in the employment contract and the location of the applicant's business within the Commonwealth. It shall be the applicant's responsibility to submit a letter on the letterhead of such a travel agent containing the quoted price to the Director of Labor ("DOL") along with the financial assurance.

E. *Cash Bond*: Deposit with the Commonwealth "DOF" funds equal to full cost of repatriation (or 50% if supplemented by personal guarantees). Funds can be drawn upon for use by DOF should transfer licensee fail to compensate the Commonwealth for repatriation costs after demand for payment.

F. *Performance Bond*: Terms of the Bond shall provide guarantee of performance by license holder for costs of repatriation of covered employees during one-year period from date of issuance should licensee fail to pay for repatriation upon demand for payment. Bond must be renewed annually on date of establishment.

G. *Irrevocable Standby Letter of Credit*: Document issued by an FDIC insured bank stating that in the event the transfer licensee fails to comply with a court or administrative order demanding payment of repatriation costs, or a demand for payment of repatriation costs incurred by the Commonwealth, the bank will pay the claims of the Commonwealth within ten days of presentation of a demand for payment to bank.

III. Administration.

A. Within fourteen (14) days of receiving a written finding from the DOF that the applicant has satisfied the conditions set forth in 4 CMC § 5701(b)(2)-(3), the applicant employer shall provide the DOL with proof that it has posted a financial assurance equal to the aggregate cost of repatriation of the nonresident workers employed by the applicant.

B. In the event that a transfer licensee replaces one or more of its nonresident workers at the end of the contract period, or as a result of a consensual transfer, with a nonresident worker from a different point of hire, the transfer licensee shall deliver to DOL at the time it applies for a new employment permit proof that its financial assurance is sufficient to cover the difference in

repatriation costs between the former and new worker. If the newly hired worker is from the same point of hire as the worker being replaced, no additional financial assurance needs to be provided to DOL.

C. If, at any time, a transfer licensee increases the number of nonresident workers it employs pursuant to lawful procedures set forth in Alien Labor Rules and Regulations Section II. K, the transfer licensee shall provide proof that it has increased the value of the financial assurance to cover the repatriation costs of these additional employees at the time it submits the required applications to the Department of Labor Processing Section. If a transfer licensee lawfully decreases the number of nonresident workers it employs, the Department of Labor shall allow the transfer licensee to reduce the value of the financial assurance in an amount equal to the repatriation costs calculated for the terminated nonresident worker(s) upon written proof that said nonresident worker(s) have left the Commonwealth or entered into a one-year contract with another employer, and have not been replaced by the transfer licensee.

D. The financial assurance shall excuse the transfer licensee from its obligations under Alien Labor Rules and Regulations Section II. B. 5, only insofar as that provision requires the employer's bond to cover repatriation costs. Transfer licensees shall otherwise be bound by the employer bonding obligations set forth in Section II.

E. The repatriation costs of all nonresident workers employed by a transfer licensee – whether they are transferred to the company of the transfer licensee from an existing company, or are new hires from on-island or off-island -- shall be secured by a financial assurance described above in Section II.C .

F. A transfer licensee that has posted a cash bond as a financial assurance that lacks funds necessary to repatriate one or more of its nonresident workers may recover that portion of the financial assurance intended to cover the cost of repatriating the departing worker(s) by providing DOL and DOF written documentation demonstrating:

(i) the identity and original point of hire of the departing nonresident worker(s);
(ii) that the applicant has fulfilled all of its contractual and other obligations to said departing worker(s); and
(iii) the amount previously provided to DOF to cover said worker(s) repatriation costs.

Within ten (10) days of receipt of satisfactory documentation, DOF shall return that portion of the assurance the applicant had provided on behalf of the specified worker(s).

G. Demand for Payment:

1. Within a reasonable time of determining that the Department of Labor has administrative jurisdiction over a complaint which may result in repatriation, the DOL or his designee may transmit a "Notice of Potential Claim" to the bonding company, bank holding the letter of credit and/or personal guarantors that shall indicate the approximate number of potential claims for repatriation involved in the complaint. Upon receipt of a Notice of Potential Claim the period for filing a claim shall be tolled.
2. If a transfer licensee is ordered to pay repatriation costs by a court or Administrative Hearing Officer, and fails to comply with the order, the DOL may transmit a "Notice of Claim" to the bonding company, bank holding the letter of credit, and/or personal guarantors.
3. Within ten (10) days of receipt of a Notice of Claim, the bonding company, bank holding the letter of credit and/or personal guarantors shall make payment sufficient to satisfy the Notice of Claim.
4. In matters in which the transfer licensee's obligations to repatriate are at issue, but the Department of Labor is not a party, such as an action arising under federal law, the employee may provide notice to the bonding company, bank holding the letter of credit, and/or personal guarantors using the procedures described above in Section II(G)(1)-(3). The bonding company, bank holding the letter of credit and/or personal guarantors are under the same obligation to cover valid claims brought by the employee as they are to cover claims brought by the Department of Labor.
5. Should the Department of Labor incur any repatriation costs associated with nonresident workers of a transfer licensee in the absence of a court or administrative order, the DOL or his designee shall provide notification to the transfer licensee of the costs incurred and a demand for payment. The notice shall identify the specific employee and costs incurred and provide an opportunity to the transfer licensee to examine or contest the charges and/or liability. Determination as to the validity of the charges will be made by DOL after consideration of any information presented by transfer licensee. Uncontested charges shall be considered as valid claims against the licensee and shall be paid in full within thirty days (30) of presentation to the licensee or within ten (10) days after determination by DOL of contested claims. Failure to pay within time periods identified provides the DOL grounds to make claims against any and all financial assurances provided by the transfer licensee.

IV. Coordination with Business Licensing Regulations

A. Issuance of Temporary License

1. 21-Day Temporary License. If the applicant cannot provide the requisite cash bond, irrevocable letter of credit or other form of financial assurance prior to the issuance of a transfer license because the company cannot hire employees without a business license, the Department of Finance may issue a temporary license valid for a period of 21 days upon payment of the payment of the temporary license fee. An applicant for a temporary license shall be granted such license no more than one time per applicant.
2. Expiration. The 21-day temporary license shall expire 21 calendar days after issuance and the licensee shall have no further right to conduct business under the temporary license. An applicant shall apply for the transfer license pursuant to P.L. 14-82, and submit proof of financial assurance within the 21-day temporary license period. If the applicant fails to timely apply for the transfer license within the 21-day period and submit all required supporting documentation, the license shall be denied, and such denial shall constitute final agency action.
3. Limitation. PL 14-82 has added to 4 CMC §5611(c)(4). This section requires compliance with 4 CMC §5701(b)(2)-(3). The 21-day temporary license referred to in the instant regulation, part IV.A.1, *supra,* shall be issued only for the purpose of posting a cash bond, irrevocable letter of credit or other form of financial assurance required by 4 CMC §5611(c)(4)(B). The 21-day temporary license shall not be issued for other purposes. An example of purposes for which the temporary license may not be issued are those listed in 4 CMC §5701(b)(2)-(3).

B. Fees. An applicant for the transfer of a business license for the purpose of garment manufacturing, that otherwise meets all other requirements of PL 14-82, shall be subject to the following fees:

1. 21-Day Temporary License. If the applicant is applying for a 21-day temporary license, the applicant shall pay a $15 processing fee for the temporary license. Prior to expiration of the 21-day temporary license, and proof of meeting all financial assurance requirements, the applicant will be entitled to apply for the license specified in 4 CMC §5611(c) as amended by PL 14-82 based upon the fee schedule contained in (2) or (3) of this section, as applicable.

2. Transferred Business License Revoked Or Ceased Operations. If the license of the prior licensee was revoked or the garment manufacturer has ceased operations and the term of the prior licensee's license has not expired, the applicant for the initial transfer license shall pay an

amendment fee in accordance with §1201 of the Business License Regulations, Commonwealth Register, Vol. 21, No. 10, October 15, 1999.

3. Transferred Business License Not Renewed Or Lapsed. If the license of the prior licensee was not renewed or otherwise was permitted to lapse, the applicant for the transfer of the initial transfer license shall be subject to the fees as provided in 4 CMC §5611(d).

4. Yearly Renewal. Once the applicant has received a transferred business license, yearly renewals shall be subject to the fees as provided in 4 CMC §5611(d).

C. Application Requirement The applicant for the transfer of a business license for the purpose of garment manufacturing shall submit an application that meets the requirements of §401 of the Business License Regulations. Furthermore, the applicant must meet all other conditions of the Business Licensing Regulations, as applicable.

D. Term of Transferred License

1. If the license for garment manufacturing was revoked or the garment manufacturer has ceased operations and the term of that license being transferred has not expired, the license issued to the applicant shall be valid through the term of the license that is being transferred. Renewal of the license shall be in accordance with Section 601 of the Business License Regulations.

2. If a license for garment manufacturing lapsed or was not renewed, the license shall be issued for a period of one year.

Example:

i. Corporation "A" was the holder of a business license for garment manufacturing valid for the period January 2, 2005 through January 1, 2006. It ceased operations on May 10, 2005. Corporation "B" is applying for the transfer of Corporations "A's" business license. Provided that Corporation "B" meets all requirements of PL 14-82 and is able to obtain the transferred license, the license as transferred shall expire on January 1, 2006.

ii. Corporation "C" was the holder of a business license for garment manufacturing that was valid for the period January 3, 2005 through January 2, 2006. Corporation "C" had its business license revoked on July 7, 2005. On August 20, 2005, Corporation "D" applies for the transfer of that license. Corporation "D" meets all requirements of PL 14-82 and is able to obtain the transferred license. The license is issued on August 25, 2005 and will expire after one year, or on August 24, 2006.

E. License Prohibited Under no circumstances shall the DOF allow the transfer of a license that had, prior to January 1, 2005, been revoked; not renewed; or otherwise permitted to lapse; or where the garment manufacturer ceased operations.

F. Section 701 of the Business License Regulations is amended to read as follows:

"A business license once issued is not transferable, however a business license for garment manufacturing may be transferred provided that the requirements imposed under 4 CMC §5611(c), as amended by PL 14-82 are met."

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ATTORNEY GENERAL OPINION No. 05 -17

To: **Don Smith, Program Manager, Water Task Force**
From: **Alan J. Barak, Asst. AG, Civil Division**
Through: **Pam Brown, Attorney General**
Date: **12/15/05**

Re: **Water Task Force ("WTF") and MPLA transfer of public land for water tanks**

MPLA's demand for refund of past CUC power/water bills in return for public land is unlawful

Issue and Short Answer

Question:

Can the Marianas Public Lands Authority ("MPLA") demand that the Commonwealth Utilities Corporation ("CUC") refund MPLA's past power and water bill payments as a precondition to transferring parcels of public land that CUC's partner, the Water Task Force ("WTF") needs in order to site water tanks, which are necessary to the safe operation of the public water system?

Short answer:

No.

The precondition for payment violates (1) MPLA's strict fiduciary duty to people of Northern Marianas descent and (2) the MPLA's enabling act.

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Discussion

The question presented is whether MPLA can demand a refund from the CUC of its past power and water bills as a precondition to transferring five relatively small parcels of public land for CUC to use in order to site water tanks necessary to the safe operation of the public water system.

The first section of this Discussion provides a description of the events and agencies related to this matter. The second section applies the tools of legal analysis, including review of relevant case law and principles of statutory construction.

1. Background

a. MPLA's statutory obligations to manage public lands for the benefit of people of Northern Marianas descent

The Covenant provided for transfer of Trust Territory public land to the CNMI Government:

> All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to real property in the Northern Mariana Islands on the date of the signing of this Covenant or thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be transferred to the Government of the Northern Mariana Islands.[1]

It permitted the government to place restrictions on the alienation of all Northern Mariana Islands land to protect the "culture and traditions of the people of the Northern Mariana Islands, and in order to protect them against exploitation and to promote their economic advancement and self-sufficiency."[2]

The Commonwealth Constitution embodies that protection: "The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent."[3] Permanent and long-term interests in real property are defined to include freehold interests and leasehold interests of more than 55 years.[4]

With respect to public lands and in keeping with the Covenant's objectives, the Constitution directs that public lands be managed for the benefit of persons of Northern Marianas descent by the Marianas Public Land Corporation ("MPLC"), an entity to serve as a trustee and manage the Commonwealth's public lands for the benefit its indigenous people. [5]

b. MPLA's job to manage public lands as a trustee

i. Description of the MPLA Board and its duties

MPLA traces the nature of its function to this Constitutional agency, the Marianas Public Land Corporation. But MPLA is not the MPLC; it is the product of the Governor's reorganization and three legislative enactments.[6] Most recently, the Legislature renamed the agency "a public corporation to be known as the Marianas Public Lands Authority", headed by a "Commissioner" with a "Board of Directors." PL 12-71 (codified at 1 CMC, Division 2, Chapter 14, §§ 2801-08).[7] The new agency, the MPLA, is **not** the same agency created in the Constitution.

Pursuant to the Constitution the Governor, by Executive Order "dissolved" MPLA, then the Legislature re-established the agency through a series of related enactments. *See* Law Revision Commission Comments to 1 CMC §§ 2001, 2801, as discussed in endnote 6. The Legislature sought to give MPLA broad powers. It stated its purpose in the most recent amendment to the agency's enabling act:

> The Legislature finds that questions have arisen to the extent of the powers and duties of the Board of Public Lands. It is the intent of the Legislature that the Board of Public Lands be given broad powers over its operations, and the leasing of public lands.

PL 12-33, § 1. Findings. As the Public Law shows, in re-enacting the agency, the Legislature repeated the language of the Constitution.

The Framers had created two agencies to manage the Commonwealth's public lands and the funds relating to those lands. Article XI of the NMI Constitution, and the Legislature's reenactment, gave the MPLA broad powers within its mission, and held the MPLC directors to "strict standards of fiduciary care".[8] The entirety of article XI is set out in the endnote.[9] The Framers had created a companion agency to manage the funds related to the MPLC/MPLA's activities, the Marianas Public Land Trust, but the duty of care was stated in milder language, "shall make reasonable, careful and prudent investments".[10]

The statute enacting the MPLA differed in some respects from article XI, but it required the same strict standard of fiduciary care:

> There is established within the Executive Branch an independent public corporation of the Commonwealth. . . to be known as the Marianas Public Lands Authority.

1 CMC § 2801.

> § 2802. Board Powers and Duties.

(a) The Board of Public Lands shall have the following powers and duties:

. . . .

(2) To be responsible for the management, use, and disposition of surface lands of the Commonwealth.

. . . .

(c) The Board of Directors may select, employ, promote and terminate employees, employ contractors and consultants, employ legal counsels, sue and be sued in its own name, provide liability insurance as it considers necessary, make contracts, borrow money within the limitations contained in Article X of the Constitution [on public debt] . . ., and take any other action necessary for the management or disposition of surface and submerged public lands.

1 CMC § 2802. (Emphasis added)

§ 2803. Board Members.

(a) The Board of Public Lands shall be composed of five directors, appointed by the Governor with the advice and consent of the Senate, who shall set policy with respect to public lands for the benefit of the people of the Commonwealth who are of Northern Marianas descent. . . . .No interest in public land shall be transferred except upon approval by the board of the particular interest to be transferred . . . provided, that any provisions imposed as a condition of legislative approval pursuant to Section 2804 shall not require further approval by the board.

. . . .

(d) . . . .**The directors shall be held to strict standards of fiduciary care.** The governor may remove a director only for cause.

(e) The Board shall act only by the affirmative vote of the majority of the five directors.

. . . .

1 CMC § 2803. (Emphasis added)

§ 2804. Public Lands: Fundamental Policies.

. . . .

(c) **The Board may not transfer a freehold interest in public lands** for 20 years after the effective date of the Constitution, **except for . . .use for a public purpose by another agency of government**, or for land exchanges to accomplish a public purpose as authorized by law.[11]

. . . .

(f) The Board may not transfer an interest, and may prohibit the erection of any permanent structure, in public lands located within 150 feet of the high water mark of a sandy beach, except that the Board may authorize construction of facilities for public purposes.

. . . .

(h) The Board of Directors **shall receive all moneys from public lands except those from lands in which freehold interest has been transferred to another agency of government pursuant to section 2804 (c)**, and shall transfer these moneys after the end of the fiscal year to the Marianas Public Land Trust except that the Board of Directors shall retain the amount necessary to meet reasonable expenses of administration and management, land surveying, homestead development, and nay [sic] other expenses reasonably necessary for the accomplishment of its functions. It shall prepare and submit a budget as a government corporation pursuant to 1 CMC § 7206.

1 CMC § 2804. (Emphasis added).[12]

Thus, the MPLA is to be held to a strict standard of fiduciary care, its transfer of public land for the public's use is given special weight, and the MPLA Board is prohibited from receiving money for the transfer of public land to a government agency.

ii. CUC's power to hold land for the water supply business and the efforts of the Water Task Force to deliver 24-7 safe drinking water.

CUC is a public water and power utility, owned by the CNMI Government. It is similar to municipal utilities and public power agencies found throughout the United States. *See* description in AG Opinion 05-11 (8/9/2005).

The CUC is a public corporation of the Executive Branch of the CNMI government. 1 CMC § 8111, *et seq*. In particular, it is a "public corporation". AG Op 01-03-30, p 4. It has "corporation powers", is allowed to prepare and adopt its own budget, is granted specific exemptions from the CNMI Civil Service System for the hiring, retaining and compensation of its employees, and is permitted to conduct its own procurement, hire within certain limits, secure its own legal counsel, and is exempted from the payment of certain corporate duties and taxes. *Id.*, *citing* 4 CMC §§ 8121(a), 8123, 8133, 8151. *See, generally*, AG Opinion 05-11.

CUC has a water division. 4 CMC § 8121(2). CUC supervises the construction, maintenance operations, and regulation of water utility services. 4 CMC § 8122(a). Duties include finding, purifying, storing and providing water to the people of the CNMI.[13] Among CUC's powers is the power to acquire, hold and dispose of land. 4 CMC § 8123(d).

As part of its water supply duties, CUC is required to drill water wells and pipe water from the wells to storage tanks; the storage tanks thereupon supply water to the people and businesses of the islands.[14]

CUC is prohibited by statute from subsidizing the charges to its customers for power and water. It must have in place rates, and meter, bill, and collect fees, in a fair and rational manner from all consumers of the utility services it has not privatized, so that the corporation will be financially independent. 4 CMC §§ 8122(b), 8123(m).

For example, the electric rates must reflect the cost of providing electricity, charge the marginal cost to large customers, and charge no less than the costs of production, maintenance and operation. 4 CMC § 8143(a) and (c). This was part of a deal with federal authorities to spin CUC off from the CNMI's Department of Public Works related to the "Grant Pledge Agreement".[15]

iii. The critical role of CUC's water storage tanks in the supply of safe, affordable drinking water

The WTF has eloquently described the importance of its efforts to bring safe, potable and affordable water to Saipan.[16] That memo is attached to this Opinion and is incorporated by reference herein for its statements of fact and the opinions of the WTF.

In particular, the five parcels at issue are required to site public water tanks, which, in turn, are required to pressurize the CUC water system so that waste water and other water from homes and businesses does not "backflow" into the CUC pipes with bacteria and viruses. The danger of such backflow is that it can bring into the drinking water bacteria and viruses that can sicken anyone and kill the most susceptible – infants, the very old and the weak or sick.

The local population who are of limited income will become increasingly reliant on CUC system drinking water as the price of reverse-osmosis-purified ("RO") water rises substantially with the increase in the price of the oil required to generate the electricity that runs the RO process.

As a corollary to these matters of public health, the WTF's efforts are part of a federal partnership that has brought $20 million to the CNMI and is planned to bring another roughly $80 million, all to enhance the water system and provide for 24/7 safe drinking water. The funds are limited to specifically budgeted work, and are predicated on the CNMI's contributing to the partnership, with, among other things the public land needed to site facilities.

2. Legal Analysis

The Opinion examines the demanded precondition to the transfer of public lands, refund of four years' paid bills for power and water, the use of the land versus the funds to be received, and the duties and powers of the MPLA Directors, and of CUC.

This Attorney General's legal analysis is binding on CNMI agencies and instrumentalities unless and until overturned by the courts. AG Opinion No. 86-16 (Castro). *See, e.g., People v. Penn,* 302 N.W.2d 298 (Mich. App. 1981). The Constitution and the Commonwealth Code provide that the Attorney General is the attorney for the Commonwealth government:

> ....The Attorney General shall be responsible for providing legal advice to the governor and executive departments, representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law.

N.M.I. Const., art III, § 11. The CNMI Code provides that the Attorney General is counsel to government agencies.[17] The Attorney General must review, and approve as to form and legal capacity, all contracts of the CNMI and its instrumentalities.[18] The Attorney General has a statutory and ethical responsibility to advise government clients to refrain from violating the law. The Attorney General can also bring statutory proceedings and common-law-writ-based proceedings to foreclose the pursuit of illegal activities.

The Courts are not bound by Attorney General Opinions, but tend to regard them as "highly persuasive". *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 (2003), *citing Cedar Shake and Shingle Bureau v. City of Los Angeles*, 997 F.2d 620, 625 (9th Cir. 1993). An opinion of the Attorney General should be treated as persuasive authority for the judiciary insofar as it is properly and thoroughly researched. *Borja (Mayor of Tinian)* 2003 MP at ¶¶ 20-21.[19] *See, generally,* State Attorneys General: Powers and Responsibilities, Lynne M. Ross, editor (NAAG 1998).

Both statutory language and court decisions govern this analysis. The CNMI Supreme Court enunciates the governing common law. The Legislature has required the adoption of the common law as presented in the Restatements of the Law.[20]

This interpretation adheres to the rules of Constitutional/statutory construction. Ordinarily, Constitutional language must be given its plain meaning. *In re Tenth Legislature Bills*, 5 N.M.I. 155 (1998). *Also, Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (CNMI 1990). *See also, 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).

In particular, 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. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), *rev'd on other grounds*, 31 F.3d 756 (9th Cir. 1994), *cert. den*, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995). *See Marianas Visitors Bureau v. Commonwealth of the Northern Mariana Islands*, Civil Action No. 94-0516 (Super. Ct. 1994) ("MVB").[21]

a. The water tank land is to directly benefit MPLA's beneficiaries.

The requested use of the five parcels is precisely the type of use which benefits the intended beneficiaries of MPLA land stewardship – people of Northern Marianas descent.

It has been recognized that maintaining critical public services to CNMI residents provides a substantial benefit to people of Northern Marianas descent. *See* AG Opinion No. 05-13 (use of MPLA savings account funds to pay for oil which generates electricity during CUC cash-flow emergency).

In the instant case the MPLA stewardship land is to be used to provide drinking water, and, in particular, water that is safe to drink because it is properly pressurized. As indicated in the attached WTF memo to the Attorney General, the parcels are to be used for water tanks that will pressurize the public water system in order to protect the health of local people, people who cannot afford to move to the Mainland to secure safe drinking water, and who may soon be unable to afford the RO-purified water of Saipan's private sector. Without these tanks, local people could sicken, and some of the youngest, oldest, and most frail could die, from water-borne diseases.

b. MPLA's attempt to secure payment of past CUC power and water bills violates MPLA's fiduciary duty to the people of Northern Marianas descent.

MPLA's precondition violates its fiduciary duty. The requested payment offers no benefit to the people of Northern Marianas descent; it only benefits the agency.

i. A fiduciary duty is the duty to act for another's benefit.

"Fiduciary duty" is defined in Blacks Law Dictionary as a duty to act for someone else's benefit, while subordinating one's personal interest to that of the other person. It is the highest standard of duty implied by law. *Black's Law Dictionary*, Sixth Edition 625 (1990). *Govendo v. Marianas Public Land Corp.*, 2 N.M.I. 482, 491 n.5, 1992 WL 62888, p. 3 n.5 (CNMI Supreme Ct. 1992).

Beneficiaries of a fiduciary relationship require the "undivided loyalty" of a trustee, and, as such, the trustee must act "honestly [and] faithfully." *Govendo*, 2 NMI at 491, 1992 WL 62888 at 3, citing *Romisher v. MPLC*, 1 CR 843 (1983).

Generally, the provisions of the Restatement of Trusts 2d would govern the nature of the MPLA Board's trusteeship of public lands. "In the Commonwealth, the rules of the common law as expressed in the Restatements of the Law as approved by the American Law Institute serve as the applicable rules of decision, in the absence of written or local customary law to the contrary." 7 CMC § 3401. *Ito v Macro Energy, Inc.*, 4 N.M.I. 46 (1993). In determining the terms of the trust by which MPLA's Board is bound, "[a]mong the circumstances which may be of importance in determining the terms of the trust are the following: . . . (2) the value and character of the trust property; (3) the purposes for which the trust is created; . . . (5) the circumstances under which the trust is to be administered; (6) the formality of informality . . . with which any instrument containing the manifestation is drawn. Restatement of Trust 2d, § 164, comment "c".

Thus, as a fiduciary, the MPLA is responsible for public lands and the proceeds therefrom (until proceeds are turned over to the MPLT). As the statute (and Constitution) state, the beneficiaries are people of Northern Marianas descent. The circumstances of the administration are those of a public agency, of the Commonwealth government. The particular property involved is five relatively small parcels, of about 200 feet square.

The documents establishing the fiduciary relationship are formal – the laws of the CNMI. The CNMI courts have addressed government fiduciary duty within the context of the US Government toward the people of the Northern Marianas:

> In general, a fiduciary relation is described as one 'in which the law demands of one party an unusually high standard of ethical or moral conduct with reference to another.' G.G. Bogert and G.T. Bogert, The Law of Trusts and Trustees, p. 3 (2nd Ed. 1965).

Pangilinan v. Castro, 1985 WL 3792 (D.N.Mar.I. 1985).[22] In the instant case there is an issue of ethical or moral conduct – the conflict between the MPLA Board's duty to the health, safety and welfare of the beneficiaries and its duty to maintain the financial viability of the agency.

The higher duty here is to the beneficiaries. The typical controversy of a corporate board's fiduciary responsibilities involves the board members' conduct toward the corporation. There is a rule of "strict fiduciary responsibility" to a corporation. A breach of fiduciary duty occurs when an injury or loss to the corporation results from a director's: (1) negligence; (2) fraudulent misappropriation of corporate property to benefit the director or a third party; (3) acquisition of any undue personal advantage, benefit, or profit; or (4) other similar conduct sustaining injury or loss to the corporation. *South Seas Corp. v. Sablan*, 525 F.Supp. 1033 (D.N. Mariana Islands 1981). The "injury or loss" here is the delay or elimination of the delivery of a necessity of life, safe drinking water, versus the director's enhancing the agency's bank account with a modest refund of power and water bills.

As a general rule, a corporate director should acquire at least a rudimentary understanding of the business of a corporation. The "business judgment rule" will ordinarily protect a director's decision, unless s/he is grossly negligent and completely abdicates responsibility, and fails to exercise judgment as

director. *F.D.I.C. v. Benson*, 867 F.Supp. 512 (S.D.Tex. 1994).[23] There is no question that the Board members understand the MPLA's management of the public lands or of the proceeds therefrom. It is unclear, however, that they understand the nexus between the transfer of the public lands to another public agency, CUC, for an important public purpose, or the direct impact the siting of the tanks thereon will have to the health, safety and welfare of the beneficiaries. The nature of the impediment – the refund of utility bills – is wholly inconsistent with the importance of the benefit to which the land would be put.

A board's decision on an artificial crisis, taken without proper information, will be reversed. *Smith v. Van Gorkom*, 488 A.2d 858 (Del.Supr. 1985) (Board of directors did not reach "informed business judgment" in voting to sell company for low price, but rather, were grossly negligent in approving sale of company upon two hours' consideration.) There is no crisis here – yet. But the WTF memo addresses the potential for the federal government's ending the funding of this safe water development because the MPLA has refused to provide the requested CNMI public lands to a sister CNMI agency – the loss of as much as $80 million more in federal funding. Further, and most importantly, the failure of the water system's pressurization could result in the unsafe, and potentially deadly, backflow of water. (Saipan citizens experienced "boil water" orders from the DEQ and the CUC within the preceding 12 months because of just such contamination. Such a boil water situation may be termed a crisis.)

It has been held that specific statutory or constitutional provisions control over the general. *McDonald v. Schnipke*, 155 N.W.2d 169, 172 (Mich. 1968). Thus, where a State constitution's general provision empowered the governor to remove executive branch officials for, *inter alia*, gross neglect, but a more specific constitutional provision on the militia had not yet been executed by statute, the governor's removal of the commandant of the state's national guard under the more general constitutional provision was void. *Id.* In the instant case specific statutory provisions prohibit the MPLA from charging sister government agencies for land to be used for public purposes. This controls over the general duties of the MPLA Board to fund the agency.

It appears, therefore, that the decision of the MPLA Board to block the transfer of public land to the CUC for the express purpose of enabling the health-related pressurization of the water system violates MPLA's strict fiduciary responsibilities to the people of Northern Marianas descent who live in (and visit) the island of Saipan and drink the water.

ii. The precondition benefits the Board, not the beneficiaries.

The requested payment does not benefit the beneficiaries, the people of Northern Marianas descent. It only benefits the agency. This is because the amounts in question would have been paid from the Board's operating funds. These are the funds that the Board can specifically withhold from transfer to the MPLT, the funds that are designated for payment of Board operating expenses.

An appropriate act of the Board's stewardship is to transfer land to a sister public agency in order to provide a direct benefit to the beneficiaries – as with transfers for roads and schools. The instant case presents a transfer of five small parcels of land to insure the health of the beneficiaries through safe, affordable, 24/7 drinking water.

The Board's interposing the precondition of a refund of prior bills, by contrast, violates the Board's fiduciary responsibility. MPLA has already paid the expenses at issue, presumably from its reserved operating funds. (MPLA's accounting is described in AG Opinion 05-13.) In short, MPLA raises funds from commercial activities on public lands, like rentals of space for billboards, from other temporary uses or from license fees. The funds are largely to be kept until the end of the fiscal year, then transferred to the MPLT. MPLA keeps a small portion of funds for its operating expenses. (The recent exception was MPLA's retention in a savings account of $1 million in CIP funds. See AG Opinion 05-13.)

MPLA pays its utility bills out of the operating funds. Thus, pursuant to its standard operating procedures, the payments demanded of CUC would go back to the Board's operating account, not to an account directly benefitting the beneficiaries, one which provides for transfer to the MPLT. Reimbursing MPLA for its past utility bill payments would, effectively, provide MPLA with a profit. But the MPLA Board is not a business dedicated to making a profit. It is a steward of the beneficiaries' interests in the public land. There is no benefit to the intended beneficiaries of this "condition" for a refund of utility payments.

This demand for more operating funds is particularly troublesome in light of the very tough fiduciary standard in effect. The statute binds each of the Board members to a "strict" fiduciary responsibility, not merely "ordinary" fiduciary responsibility. Each Board member supporting the precondition would thus be subject to a charge of violating this standard.

The precondition therefore violates the Board's fiduciary responsibility, and *a fortiori* (even more strongly) its "strict" duty. If the Board persists in its demand, it is liable for all the consequences of a breach of the strict standard required of it, because it is benefitting its own narrow administrative interests, not those of the people of Northern Marianas descent.

iii. The precondition harms the beneficiaries, because it stops or delays the delivery of safe, affordable drinking water.

Apart from the MPLA's self-serving use of the funds it demands, the MPLA precondition actually harms the beneficiaries. It is in the beneficiaries' interest to have reliable delivery of water, 24/7. It is also in their interest that the water be safe to drink, and not harm infants, the elderly or the sick. Finally, it is in their interest that such water be affordable, at a time when the private sector may have to substantially increase its rates for safe drinking water due to higher energy costs.

The water tanks are critical to delivering this safe water 24/7. But the MPLA's demand has stopped the WTF from finishing its design of the tanks or putting the tanks in place. At best, the precondition will delay the siting of the tanks. More likely, the precondition will stop any further effort to site the tanks — CUC could not ever pay the required refund because CUC is prohibited from subsidizing MPLA's use of power and water. (*See* discussion, just *infra*.)

Thus, MPLA's activities actively harm the interests of the very people the agency is to protect. This violates the applicable standard of fiduciary care and leaves each Board member open to liability.

c. MPLA's attempt to secure payment is unlawful because *ultra vires.*

Further, the precondition is beyond the Board's powers – *ultra vires.* There is nothing in the MPLA's enabling act that permits it to demand payment for its transfer of land to another agency. To the contrary, a reading of the act suggests that such payment is prohibited. Further, the demanded precondition is, in effect, a demand for an unlawful subsidy from CUC.

MPLA's statute makes a special, protected case of the transfer of MPLA-managed public lands to other public agencies. The statute prohibits the payment of government moneys for "those [MPLA-managed] lands in which freehold interest has been transferred to another agency of government". 1 CMC § 2804(h). MPLA's demand for a refund is just such a payment of government moneys, and is, therefore, prohibited.

In particular, the MPLA demand requires a refund of an ordinary expense of agency operations for no reason other than the Board apparently sees an opportunity to extract value from the public's use of public lands when the public badly needs the land. This is a function far beyond the scope of the MPLA's authorized activities. Indeed, it is distressingly similar to the publicly condemned behavior of some businesses which, at times of disaster, charge excessive prices for food and water.

As a corollary, the CUC itself is probably prohibited by law from satisfying the demand. CUC's enabling act is clear that it must provide service to its customers fairly, according to approved rates, and it may not subsidize a customer. MPLA's demand seeks special consideration for no reason connected with its use of the billed electricity and water. CUC may not subsidize this use with a 100% refund payment.

Thus, MPLA has reached beyond its statutory authority, and, indeed, violates its own statute, when it demands that a sister agency pay it for land transferred to provide a public service. The MPLA precondition is unlawful.

Conclusion: MPLA's attempt to secure the CUC payment violates its fiduciary duty and is unlawful.

MPLA's demand violates the Board's strict fiduciary duty to people of Northern Marianas descent because it stops their receipt of a necessity, the safe, affordable 24/7 drinking water that the WTF is trying to provide them by siting the planned storage tanks on public land, and because it would simply increase the agency's operating funds. The MPLA Board members would be liable for this breach of their duty.

Further, MPLA not only lacks the power to charge another public agency for public land to be used for public purposes, it would violate its statute by doing so.

MPLA must make the requested transfer to CUC of these five small parcels for the stated public purposes, without charge.

0 AG Op on MPLA designations and CUC unrelated bills 0517.wpd

Endnotes

1. N.M.I. Cov. Art VIII, § 801 (1976).

2. *Id.* § 805.

3.N.M.I Const. art. XII, § 1 (ratified 1977, effective 1978); amended by Senate Legislative Initiative 7-3 (1993).

4.N.M.I. Const. art. XII, § 3.

5. N.M.I Const. art. XI, §§ 3-4; *see* also Romisher v. MPLC, 1 CR 841 (Tr. Ct. 1983) (holding that MPLC is a trust established for the benefit of individuals of Northern Marianas descent strictly governed by the Constitution); Torres v. Tenorio, Civ Action No. 95-0390 (1995) (holding that the Constitution is a de facto trust agreement with MPLC directors as initial trustees, *reversed* in part on other grounds by Torres v. Tenorio, Appeal No 96-015 (1996)).

6.The Comment to 1 CMC § 2001, addresses the Governor's reorganization of his office, in Executive Order 94-3:

> Many Commonwealth Code sections have effectively been revised by Executive Order 94-3, the "Second Reorganization Plan of 1994" (effective August 23, 1994), which reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. The Governor's reorganization authority derives from N.M.I. Const. art. III, § 15. . . .

1 CMC § 2001, Comment. The Comment set out E.O. 94-3 in its entirety, including the section dissolving the MPLC and moving it to the Department of Land and Natural Resources:

> Section 306. Department of Lands and Natural Resources. [Section 306 VACATED by PL 10-57, § 4]
>
> (a) Marianas Public Land Corporation. Pursuant to [N.M.I. Const. art. XI, § 4(f)], the Marianas Public Land Corporation is dissolved and its functions transferred to a Division of Public Lands in the Department of Lands and Natural Resources, which shall have at its head a Director of Public Lands.

Executive Order 94-3. The Legislature repealed the change. PL 10-57. The Legislature then repealed PL 10-57 and substituted a new Board of Public Lands, Office of Public Lands, and Administrator of Public Lands, as an independent agency. PL 12-33 (effective Dec. 5, 2000) (ordered codified as 1 CMC, Division 2, Chapter 14). The Legislature again amended the statutory scheme with PL 12-71.

7.According to the Law Revision Commission Comment to § 2801 there were technical deficiencies in the repeal and re-enactments of PL 12-33 and PL 12-71, some of which the Commission corrected:

> The Commission assigned a different number sequence to the reenacted sections than that provided in PL 12-33.
>
> PL 12-71 became effective November 13, 2001 and contained some technical deficiencies. The first deficiency is the amendment of subsection (a) above without conforming amendments to subsection (b) and the remainder of the act; a global amendment provision was not included in PL 12-71. Additionally, the reference in subsection (a) above to the term of the Board of Directors is unclear and also in conflict with 1 CMC § 2803(d). Furthermore, it appears that in the last sentence of subsection (a) above, the reference to "effected" should have been "affected." Finally, the reference in PL 12-67 to "H.B. 12-257" should instead be to "PL 12-33."

1 CMC § 2801, Comment.

8.The following sections are excerpted from article XI:

> Section 1: Public Lands. The lands . . . are **public lands belonging collectively to the people of the Commonwealth who are of Northern Marianas descent.**
>
> Section 2: Submerged Lands. . . .
>
> Section 3: Surface Lands. **The management and disposition of public lands** except those provided for by N.M.I. Const. art. XI, § 2 **shall be the responsibility of the Marianas Public Land Corporation.**
>
> Section 4: Marianas Public Land Corporation. There is hereby established the Marianas Public Land Corporation.
>
> a) The corporation shall have five directors, appointed by the governor with the advice and consent of the senate, who **shall direct the affairs of the corporation for the benefit of the people of the Commonwealth who are of Northern Marianas descent.**
>
> . . . .
> c) . . . . **The directors shall be held to strict standards of fiduciary care.**
>
> d) The corporation shall have the powers available to a corporation under Commonwealth law and shall act only by the affirmative vote of a majority of the five directors.
>
> . . . .
>
> f) After this Constitution has been in effect for at least twelve years, the Corporation shall be dissolved and its functions shall be transferred to the executive branch of government.
>
> Section 5: Fundamental Policies. **The Marianas Public Land Corporation shall follow certain fundamental policies** in the performance of its responsibilities.
>
> . . . .
>
> b) **The corporation may not transfer a freehold interest** in public lands for twenty years after the effective date of this Constitution, **except** for homesteads as provided under section 5(a), or **for use for a public purpose by another agency of government**, or for land exchanges to accomplish a public purpose as authorized by law.
>
> . . . .
>
> e) **The corporation may not transfer an interest**, and may prohibit the erection of any permanent structure, **in public lands located within one hundred fifty feet of the high water mark of a sandy beach, except that the corporation may authorize construction of facilities for public purposes.**
>
> . . . .
>
> g) The corporation shall receive all moneys from the public lands except those from lands in which freehold interest has been transferred to another agency of government pursuant to section 5(b), and **shall transfer these moneys** after the end of the fiscal year **to the Marianas Public Land Trust except that the corporation shall retain the amount necessary to** meet reasonable expenses of administration and management, land surveying, homestead development, and **any other expenses reasonably necessary for the accomplishment of its functions**. The annual budget of the corporation shall be submitted to the legislature for information purposes only.

NMI Const. art. XI, §§ 1-5. (Emphasis added).

9.Article XI of the NMI Constitution gave the MPLA and MPLT broad powers within their missions:

> Section 1: Public Lands. The lands to which right, title or interest have been or hereafter are transferred from the Trust Territory of the Pacific Islands to any legal entity in the Commonwealth under Secretarial Order 2969 promulgated by the United States Secretary of the Interior on December 26, 1974, the lands as to which right, title or interest have been vested in the Resident Commissioner under Secretarial Order 2989 promulgated by the United States Secretary of the Interior on March 24, 1976, the lands as to which right title or interest have been or hereafter are transferred to or by the government of the Northern Mariana Islands under Covenant Article VIII, and the submerged lands off the coast of the Commonwealth to which the Commonwealth now or hereafter may have a claim of ownership are **public lands belonging collectively to the people of the Commonwealth who are of Northern Marianas descent**.
>
> Section 2: Submerged Lands. The management and disposition of submerged lands off the coast of the Commonwealth shall be as provided by law.
>
> Section 3: Surface Lands. **The management and disposition of public lands** except those provided for by N.M.I. Const. art. XI, § 2 **shall be the responsibility of the Marianas Public Land Corporation**.
>
> Section 4: Marianas Public Land Corporation. There is hereby established the Marianas Public Land Corporation.
>
> a) The corporation shall have five directors, appointed by the governor with the advice and consent of the senate, who **shall direct the affairs of the corporation for the benefit of the people of the Commonwealth who are of Northern Marianas descent**.
>
> b) One director shall be a resident of the first senatorial district, one shall be a resident of the second senatorial district, and three shall be residents of the third senatorial district; provided that of the five directors, at least one shall be a woman and at least one shall be a person of Carolinian descent. Each director shall be a citizen or national of the United States, a resident of the Commonwealth for at least five years immediately preceding the date on which the director takes office, a person with at least two years management experience, a person who has not been convicted of a crime carrying a maximum sentence of imprisonment of more than six months, a person who is able to speak Chamorro or Carolinian and a person of Northern Marianas descent.
>
> c) The directors shall serve a term of four years except that two of the first five directors appointed shall serve a term of two years and three shall serve a term of four years. A director may not hold a paid position in the corporation. **The directors shall be held to strict standards of fiduciary care.**
>
> d) The corporation shall have the powers available to a corporation under Commonwealth law and shall act only by the affirmative vote of a majority of the five directors.
>
> e) The directors shall make an annual written report to the people of the Commonwealth describing the management of public lands and the nature and effect of transfers of interests in public land made during the preceding year and disclosing the interests of the directors in Commonwealth land.
>
> f) After this Constitution has been in effect for at least twelve years, the Corporation shall be dissolved and its functions shall be transferred to the executive branch of government.

Section 5: Fundamental Policies. **The Marianas Public Land Corporation shall follow certain fundamental policies** in the performance of its responsibilities.

a) The corporation shall make available some portion of the public lands for a homestead program. A person is not eligible for more than one agricultural and one village homestead. A person may not receive a freehold interest in a homestead for three years after the grant of a homestead and may not transfer a freehold interest in a homestead for ten years after receipt except that these requirements are waived for persons who have established a continuous use of public lands for at least fifteen years as of the effective date of this Constitution. At any time after receiving the freehold interest, the grantee may mortgage the land provided that all funds received from the mortgagee be devoted to the improvement of the land. Other requirements relating to the homestead program shall be provided by law.

b) **The corporation may not transfer a freehold interest** in public lands for twenty years after the effective date of this Constitution, **except** for homesteads as provided under section 5(a), or **for use for a public purpose by another agency of government**, or for land exchanges to accomplish a public purpose as authorized by law.

c) The corporation may not transfer a leasehold interest in public lands that exceeds twenty-five years including renewal rights. An extension of not more than fifteen years may be given upon approval by three-fourths of the members of the legislature.

d) The corporation may not transfer an interest in more than five hectares of public land for use for commercial purposes without the approval of the legislature in a joint session.

e) **The corporation may not transfer an interest**, and may prohibit the erection of any permanent structure, **in public lands located within one hundred fifty feet of the high water mark of a sandy beach, except that the corporation may authorize construction of facilities for public purposes.**

f) The corporation shall adopt a comprehensive land use plan with respect to public lands including priority of uses and may amend the plan as appropriate.

g) The corporation shall receive all moneys from the public lands except those from lands in which freehold interest has been transferred to another agency of government pursuant to section 5(b), and **shall transfer these moneys** after the end of the fiscal year **to the Marianas Public Land Trust except that the corporation shall retain the amount necessary to** meet reasonable expenses of administration and management, land surveying, homestead development, and **any other expenses reasonably necessary for the accomplishment of its functions**. The annual budget of the corporation shall be submitted to the legislature for information purposes only.

NMI Const. art. XI, §§ 1-5. (Emphasis added)

Section 6: Marianas Public Land Trust. There is hereby established the Marianas Public Land Trust.

a) The trust shall have three trustees appointed by the governor with the advice and consent of the senate. After this Constitution has been in effect for ten years, the number of trustees appointed by the governor with the advice and consent of the senate shall be increased to five. Three shall be from Saipan, one from Rota, and one from Tinian. At least one trustee shall be a woman and at least one trustee shall be of Carolinian descent. The trustees shall serve for a term of six years except that the term of office shall be staggered, accomplished as follows: three trustees shall serve for four years and two trustees shall serve for six years as determined by drawing of lots.

b) The trustees shall make reasonable, careful and prudent investments. For ten

> years after the effective date of this Constitution investments may not be made except in obligations of the United States government and as provided by section 6(c).
>
> c) If the legislature authorizes a Marianas development bank and provides that all United States economic assistance for economic development loans provided under Covenant § 702(c), shall be deposited as capital in that bank, the trust shall use up to fifty-five percent of its receipts in a year to increase the total capital available to the bank to the sum of ten million dollars. After the bank has more than ten million dollars in total capital, the bank shall pay the excess above ten million dollars to the trust until the trust has been fully repaid for its contribution to the bank.

NMI Const. art. XI, § 6. (Emphasis added)

10.The Constitutional provisions creating the MPLT were milder as to the standard of care to be observed:

> Section 6: Marianas Public Land Trust. There is hereby established the Marianas Public Land Trust.
>
> . . . .
>
> b) **The trustees shall make reasonable, careful and prudent investments.** For ten years after the effective date of this Constitution investments may not be made except in obligations of the United States government and as provided by section 6(c).
>
> . . . .

NMI Const. art. XI, § 6. (Emphasis added)

11.This exception to the prohibition, allowing transfers to a public agency for a public purposes, is found in the Constitution's provisions on the MPLC. N.M.I Const. art. XII, § 5.b).

12.There are some limits to the MPLA's duties and powers. For instance, the CNMI Executive Branch, but not the MPLA, has the power, through its normal processes, to acquire and dispose of private land for the public good. Romisher v. MPLC, 1 CR 841, 860 (Tr. Ct. 1983) (preliminary injunction), 1 CR 873, 883 at n 3 (1983) (permanent injunction).

The Court in Romisher held that the MPLC lacked the Constitutional authority to receive funds for, and negotiate a deal regarding, **private** interests in the US military's acquisition of Tinian real estate. *Romisher,* 1 CR 873, 883 n 3 (1983) (permanent injunction). MPLC's power went to the disposition of public lands, held the Court. The Executive was to negotiate the value of the private interests, disburse the funds and acquire title in the sale.

13.Memo of Dec. 12, 2005, fr Don Smith, WTF Program Manager to Pam Brown, Attorney General.

14.Memo of Dec. 12, 2005, fr Don Smith, WTF Program Manager to Pam Brown, Attorney General.

15.See, generally, AG Opinion 05-11.

16.Memo of Dec. 12, 2005, fr Don Smith, WTF Program Manager to Pam Brown, Attorney General.

17.1 CMC § 2153(h): Attorney General Duties

> The Attorney General shall have the powers and duties as provided in the Commonwealth Constitution. In addition, the Attorney General shall have the following powers and duties:
>
> . . . .
>
> (h) To act, upon request, as counsel to all departments, agencies and instrumentalities of the Commonwealth, including public corporations, except the Marianas Public Land Trust.

> Subject to availability of funds by budgetary appropriation, separate legal counsel may be retained for particular matters.

1 CMC § 2153(h).

18.1 CMC § 2153(g).

19.Faced with two conflicting opinions of the CNMI Attorney General, the Supreme Court, responding to a certified question from the U.S. District Court, rejected the earlier, four-sentence-long opinion containing "ninety words with no reference to case law or legislative history " as "unpersuasive" in favor of the Attorney General's thoroughly research brief. Borja (Mayor of Tinian), 2003 MP ¶ 21.

20.Castro v. Hotel Nikko Saipan, Inc., 4 N.M.I. 268, 275 (1995), citing 7 CMC § 3401.

21.The Mafnas' court's decision was "The absence of any language excluding such interests from the restriction in Article XII leads us to conclude that they are within the restriction." Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991, at n 24.

The principle of "expressio unius est exclusio alterius" was addressed in the legislative context as the existence of express exceptions to a rule gives rise to a presumption that no other exceptions were intended. *Marianas Visitors Bureau* v. Commonwealth of the Northern Mariana Islands, Civil Action No. 94-0516 (Super. Ct. 1994) ("MVB"). The case cited Andrus v. Glover Constr. Co., 100 S. Ct. 1905, 1910 (1980); Norman J. Singer, 2A Sutherland Statutory Construction § 47.11 (5th ed. 1993). MVB, p 28. *See also E-Tours Inc. v. Marianas Vistors Authority*, Civ. No. 00-0078D, p 7 (Super. Ct. 2000).

22.The full text of the District Court's statement is as follows:

> It is now settled that the United States stands in relation to the peoples of Micronesia as a trustee. See, e.g., Palacios v. Commonwealth of the Northern Mariana Islands, Civ.App. No. 81-9017 (D.N.M.I. (App. Div.) 1983); Gale v. Andrus, 643 F.2d 826, 830 (D.C.Cir. 1980) ('the entire authority of the United States in the Trust Territory is derived from a trust'); Ralpho v. Bell, 569 F.2d 607, 619 (D.C.Cir. 1977) ('the United States does not hold the Trust Territory in fee simple, as it were, but rather as a trustee'). In general, a fiduciary relation is described as one 'in which the law demands of one party an unusually high standard of ethical or moral conduct with reference to another.' G.G. Bogert and G.T. Bogert, The Law of Trusts and Trustees, p. 3 (2nd Ed. 1965). The nature of the fiduciary obligations which the United States shoulders in its capacity as a trustee to a race or nation of peoples is well summarized in Smith v. United States, 515 F.Supp. 56, 60 (N.D.Cal. 1978), a decision based on the United States-Indian trust relationship. In Smith, Judge Sweigert describes those fiduciary duties as duties that must be exercised with 'great care,' United States v. Mason, 412 U.S. 391, 398, 93 S.Ct. 2202, 2207, 37 L.Ed.2d 22 (1973), in accordance with 'moral obligations of the highest responsibility and trust,' that must be measured 'by the most exacting fiduciary standards.' Seminole Nation v. United States, 316 U.S. 286, 297, 62 S.Ct. 1049, 1054, 86 L.Ed. 1480 (1942). This Court previously has held that the 'very purposes which engendered the judicially created Indian fiduciary doctrine apply a fortiori to the Micronesian-U.S. relationship.' Palacios, supra, slip op. at 10.

Pangilinan v. Castro, 1985 WL 3792 (D.N.Mar.I. 1985).

23.With respect to the business judgment rule, see also Francis v. United Jersey Bank, 432 A.2d 814 (N.J.1981) (A director should become familiar with fundamentals of business in which corporation is engaged and because directors are bound to exercise ordinary care, they cannot set up as a defense lack of knowledge needed to exercise the requisite degree of care; and if one feels that he has not had sufficient business experience to qualify him to perform the duties of a director, he should either acquire the knowledge by inquiry, or refuse to act).

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Office of the Attorney General Civil Division

MEMORANDUM

ATTORNEY GENERAL OPINION NO. 05-18

To: Karl T. Reyes, Administrator
Northern Marianas Retirement Fund

From: Pam Brown, Attorney General;

Date: December 21, 2005

Re: PUBLIC LAW 13-60

This Opinion is in response to your request for a legal opinion regarding the applicability of Public Law 13-60. The specific question the Fund would like addressed is the following:

> **Is the curtailment of retirement benefits mandated by Public Law 13-60 applicable to employees who were members of the Fund prior to the effective date of Public Law 13-60?**

Public Law 13-60, which amended the Northern Mariana Islands Retirement Act of 1988, took effect on December 5, 2003.

The stated purpose of Public Law 13-60 was, in part, to "maintain the financial integrity of the government retirement system" and to "protect the financial viability of the fund." The further purpose of Public Law 13-60 was to "relieve the government from the burden of having to allocate a substantial portion of its revenues to the retirement fund, and permit the government to divert the necessary resources to pay for essential services for the benefit of the general public." Public Law 13-60 § 2.

The following "unfunded mandates" were repealed:

a. 3% bonus for certain elected officials;
b. benefits for boards and commissions members;
c. vesting credits for education service, military service, compensatory time, and unused sick leave; and
d. prior service vesting credit.

Public Law 13-60 § 2.

Additional reform measures include:

a. disincentives to the withdrawal of employee contributions by imposing an early withdrawal penalty and by restricting reemployment for a period of six months unless the contributions are returned to the fund; and

b. redefining the term "salary" to mean base salary.

Public Law 13-60 § 2.

Section 9 of Public Law 13-60 provides:

> **Section 9. Conformance with N.M.I. Const. Art. III § 20(a).** All of the provisions of this Act are subject to the mandate set forth by N.M.I. Const. art. III, § 20(a) and no provision of this Act, including amendments and repealers, shall be construed to be in violation of the constitutional mandate.

Article III, § 20(a) of the Commonwealth Constitution states:

> Membership in an employee retirement system of the Commonwealth shall constitute a contractual relationship. Accrued benefits of this system shall be neither diminished nor impaired.

Public Law 13-60 also has a savings clause which provides:

> This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. . . .

Furthermore, 1 C.M.C. § 8382 which has been in effect since May 7, 1989, provides as follows:

> Each member shall, by virtue of the payment of contributions to the system, receive a vested interest as provided in other sections of this part, and in consideration of this vested interest shall be conclusively deemed to undertake and agree to pay those contributions and to have the amount deducted from his compensation as herein provided.

1 C.M.C. § 8382.

Based on the foregoing, it is my opinion that Public Law 13-60 applies prospectively and applies only to persons hired on or after December 5, 2003, and that the curtailment of retirement benefits mandated by Public Law 13-60 is not applicable to employees who were members of the Retirement Fund prior to December 5, 2003.. *See also, In the Matter of the Appeal of Linn Asper, et al* (Decision of Northern Mariana Islands Retirement Board, October 21, 1999).

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ATTORNEY GENERAL OPINION No. 05-19

To: **Hon. Juan N. Babauta, Governor**

From: **Alan J. Barak, Asst. AG, Civil Division**
Through: **Pam Brown, Attorney General**
Date: **12/22/05**

Re: **La Fiesta - Government Lease of office and retail complex**
Not a Constitutional public debt or public indebtedness

ISSUE AND SHORT ANSWER

Question

Is the Office of the Governor's 20-year lease of the La Fiesta office and retail store mall a "public debt" or "public indebtedness" within the meaning and substance of, and subject to the restrictions of, the CNMI Constitution, article X, §§ 3 and 4?

Short Answer

No.

The CNMI Constitution, art. X §§ 3 and 4, restricts the Government from incurring "public debt" without express legislative approval, restricts "public indebtedness" past a level of 10% of total assessed CNMI valuation, and prohibits the use of "public indebtedness" for Government operating expenses. As used, these are terms of art. This Opinion is **not** therefore, an inquiry into the common sense proposition that any purchase that lags payment past receipt of goods or services gives rise to a debt.

The Office of the Governor ("OG") has leased for 20 years from a private owner a three-building combined office and retail plaza for a rental of $200,000 per year. There are no guarantees of payment beyond the lease, and OG may end the contract at any time, turning the complex back to the lessor. In order to cover

the annual lease and maintenance costs OG has already, or intends to, sublet the three-building complex to government agencies, private businesses and nonprofit organizations.

The lease is neither a "public debt" nor "public indebtedness" because it provides for annual payments in return for annual occupancy during the lease term, does not purport to engage the full faith and credit of the CNMI, and looks to repayment solely from the likely rents. Substantial U.S. case law supports these conclusions.

As a matter of policy, this long-term lease is an acceptable government tool, similar to those used across the US by State and local governments seeking alternatives to constructing and owning their own office buildings.

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d. The two "public indebtedness" provisions of Article X § 4 do not restrict the La Fiesta lease. . . . . Page 20 of 42
i. The *Analysis* to the Constitution indicates that a lease is not a "public indebtedness" because it is neither a general obligation nor a tool to finance deficit spending. . . . . Page 20 of 42
ii. A lease is not "public indebtedness", because it is not "public debt". . . . . Page 20 of 42
iii. Section 4, in both sentences, restricts the Legislature's "authorization" of indebtedness, not the Executive's "incurring" indebtedness. . . . . Page 21 of 42
iv. Article X, § 4, first sentence: The La Fiesta lease is designed to be funded through project revenues, and therefore is not to be considered within the 10% limitation. . . . . Page 23 of 42
v. Article X, § 4, second sentence: the "public indebtedness" does not fund the operating expenses of the "Commonwealth government" or its "political subdivisions". . . . . Page 24 of 42

3. Policy issue - Defining Government leasing of office space as "public debt" would eliminate a prudent, business-like practice. . . . . Page 24 of 42

Conclusion . . . . . Page 26 of 42

Summary

This Opinion examines whether the Government's long-term lease of office space is governed by the CNMI Constitution's restrictions on incurring "public debt" and "public indebtedness". The overwhelming majority of US cases supports the conclusion that the lease is not Constitutional "public debt" or "public indebtedness". Further, the plain meaning of the language of the CNMI Constitution suggests that the Framers did not intend to prohibit the use of leases on the ground that lease expenses are "public indebtedness".

The Executive, through the Office of the Governor ("OG"), has secured additional office space by purchasing a leasehold in a California-style office and retail plaza developed by the Nikko Hotel. The contract, as assigned from the Northern Marianas College, provides for OG's annual payment of $200,000. The deal also provides for Nikko's basic maintenance and management of an on-site 9 megawatt (MW) diesel power plant. Nikko has also committed to run two restaurants on site.

There are no guarantees of payment beyond the lease, and OG may end the contract at any time, turning the complex back to the lessor. In order to cover the annual lease and maintenance costs OG intends to sublet the three-building complex to government agencies, private businesses and nonprofit organizations. The present tenants are the government-owned Commonwealth Utilities Corporation, the Department of Public Works' Technical Services Division, two restaurants owned by the nearby Nikko Hotel and a convenience store.

The CNMI Constitution, art. X, §§ 3 and 4, restricts the Government from incurring "public debt" without express legislative approval. It restricts "public indebtedness" past a level of 10% of total assessed CNMI valuation, and prohibits the use of "public indebtedness" for Government operating expenses.

AG Opinion No. 05-19
La Fiesta Lease not public debt

The lease does not give rise to "public debt" or restricted "public indebtedness" under the CNMI Constitution. The lease contract: (1) provides for annual payments in return for annual occupancy during the lease term; (2) looks to repayment solely from the likely rents rather than through a broad guaranty of credit; and (3) does not repay a bond or other long-term obligation. Substantial U.S. case law supports the conclusion that no "public debt" or "public indebtedness" is incurred.

Further, the restrictions of art. X, § 4 apply only to the Legislature's "authorizing" indebtedness, not the Executive's "incurring" ordinary expenses, as with annual lease payments.

As a matter of policy, this multi-year lease is an acceptable government tool, similar to those long used across the US by State and local governments seeking cost-effective alternatives to constructing and owning their own office buildings. Similar public contracts have been upheld as payments for current services, and not constitutional debt. Requiring 2/3 legislative pre-approval of leases as "public debt" would significantly impede such efforts, potentially paralyzing government.

This Opinion presents the background, history and authority, for the conclusion that the Government lease is not Constitutional "public debt" or "public indebtedness". The first section provides the background to the deal, including a description of the property and the nature of public debt. The legal analysis appears in the second section.

Discussion

The first section of this memo, "Background", provides a description of La Fiesta acquisition, including its legal environment, and an overview of the nature and use of public debt. The second section applies the tools of legal analysis, including review of relevant case law and principles of statutory construction.

1. Background

a. Description of La Fiesta, the transfer and present use

Through a series of paper-intensive transactions, OG has become the operator of the La Fiesta Mall, and primary lessee to the Mall's developer, Nikko Hotel, Saipan. Nikko still holds the ground leases, which it bought from CNMI property owners. The documents are listed in endnote 17, and are on file with the Attorney General's Civil Division.

In the late 1980's-early 1990's Japan Airlines, through its hotel subsidiary, built on leased land on the north end of Saipan, at the edge of the undeveloped Marpi area, in the San Roque Village, next to Pau Pau Beach, the Nikko Hotel; and, across the West Road, old Route 3, it built the La Fiesta shopping mall and office plaza. The three La Fiesta buildings and two large parking lots, approximately 38,000 sq meters, including 8,700 sq. meters of interior rental space, sit on the east side of what is now called Chalan Pale Arnold, numbered as Route 30.[1]

La Fiesta consists of one two-story building and two three-story buildings, with internal open-air plazas, connected by walkways. There are fountains and whimsical sculptures.[2] La Fiesta I, II, and III are concrete structures, covered with a cement/stucco, and painted in pastels. They look like a Southern California mall. Each building is divided into spaces, suitable for offices – 71 retail or office units, in all. The Office of the Governor, as lessee, is paying the Nikko about $4.00/sq. ft/year for the space, compared to $12.00 - $15.00 sq. ft/year for new space of lesser quality.[3]

Nikko initially procured ground leases for the site and developed it. In May 2002 it divided its ownership into two entities, itself and Cocos Lagoon Development Corporation, a Guam corporation. The latter became the primary lessee and operator. The Assignment and attached Agreement show that:

- Cocos bought the buildings for $3 million, but only received a license to use the land, in return for payment of an annual license fee of $200,000 through 2024.
- The Nikko remained the "owner" of the ground leases and received electricity services from Cocos. The Nikko also provided the Mall's management services.[4]
- Various businesses, including two Nikko-owned restaurants[5], remained the subtenants.
- The terms of the ground leases provide that the leaseholder has rights to the land until 2024.[6]

Thus, the fee interest in the land remains in the lessors and reverts to them upon termination of the leases.[7]

All communications and power for the complex are provided through a central point. La Fiesta can generate its own power, with an on-site generator which uses No. 2 diesel oil, and makes its own potable water.[8] It produces power for the facility and sells any surplus power to the CUC system. The CUC's present agreement with Mobil Oil Co. allows CUC to buy oil as part of the government utility's bulk

purchasing, eliminating the CNMI fuel tax and securing a better per-gallon price than the complex would secure as an individual buyer.

Northern Marianas College ("NMC") assumed Cocos' interest in La Fiesta, including a "springing" assignment of Nikko's leases, ownership of La Fiesta's buildings, and the license to the land, in 2003, agreeing to pay the Nikko to manage the facility.[9] NMC paid $3.5 million and agreed to make an additional $4.0 million in annual payments of $200,000 over 20 years.[10] (The $3.5 million for the buildings was sourced to a federal grant to the CNMI for tax relief.) Failure to make any annual payment or properly insure the property[11], would, upon 90 days' written notice, cause all property, including any payments, to revert to the Nikko.[12]

NMC secured from an architectural firm the plans required to convert a portion of the facility to academic use. NMC, however, soon determined that its finances could not support this second campus and the College's desires to develop an international education program there.

In January 2005 the Office of Governor, in a transaction with NMC, and approved by Nikko and Cocos, took NMC's rights and obligations in the facility. OG became responsible for payment of an annual fee of $200,000. Failure to make timely payment or insure, followed by 90 days' notice, would produce automatic rescission of the Agreement.[13] Thus, OG could, at any time, exit the arrangement, although it would thereby forfeit the $3.5 million purchase price for the buildings.

The documents embodying the transfer appear voluminous, but that is because they were amended three times.[14] The key aspects are simple:

- The Nikko bought 5 leaseholds from local owners to create La Fiesta. (This memo refers to them in the singular, as "the lease" or "leasehold".)
- Nikko transferred the buildings, roads and other improvements to its affiliate Cocos in the Year 2002.
- Nikko also sold Cocos a license to use the ground in 2002.
- Nikko retained management rights in the 2002 deal.
- NMC's 2003 deal provided that it would take the leasehold and management rights upon full payment of $7.5 million over the life of the contract, with $3.5 million down – very much like a land contract.[15] An escrow agent was empowered to make the transfer upon completion of the conditions precedent. (Escrow Instructions of 12/23/03)[16]
- The Office of the Governor ("OG"), on behalf of the CNMI Government, on January 7, 2005, took an assignment of NMC's rights and obligations under the Nikko-Cocos-NMC contract so that:
    - OG received a license to use the ground under La Fiesta during the contract/payment period.
    - OG took full assignment from NMC of the purchase of the buildings.
    - OG took full assignment of NMC's rights to the ground leases, and license to use the real property, as amended.
    - OG agreed to pay $4 million over a 20-year period, at $200,000/year.
    - OG would receive the ground leases and the rights in the facility upon full payment, through an escrow agreement.
    - OG would lose all it had paid, and its rights in the buildings and the land leases if it failed to make a payment, or insure the property, after 90 days' notice.

The 2004 "Escrow Instructions" appear to constitute a complete, up-to-date compilation of the four versions of transactional documents.[17] A one-page list of instructions summarizes the deal: The Office of the Governor is to pay $200,000 per year by the last business day of October of each year, starting

October, 2004, for a total of $4 million; the escrow agent is to divide the amount among the realtor, Hotel Nikko and Cocos; upon payment in full, the escrow agent is to record the assignments of the leases, including Lot 006 B12 (for which title was in probate); upon failure to pay-or-insure-plus- 90-days, the escrow agent is to record a pre-signed rescission. (Second Amended Exhibit "5") (2 pp)

b. Sub-leases to Government offices and a school

An early plan for La Fiesta was to convert part of it to a needed high school.[18] Apparently this could have covered the cost of the annual lease payments with known and predictable school construction-related funds and rents. However, OG has since provided Commonwealth Utilities Corporation with home office space in La Fiesta III. (CUC presently pays no rent, due to a financial crisis in which its rates have failed to keep up with a doubling in the cost of oil. CUC paid $50,000 per year rent at its previous, Joeten Dandan location.) CUC is a government corporation, wholly owned by the CNMI.

In July 2005 OG on an emergency basis provided La Fiesta II office space to the 70-person DPW Technical Services Division ("TSD"). TSD had just been forced out of its Lower Base office space by a sewage overflow.[19] Its Government-owned (CUC-owned) building has since been condemned. OG discussed with TSD the permanent relocation of DPW at La Fiesta I, but nothing was finalized.[20]

The balance of La Fiesta is largely empty. There are the two Nikko-owned restaurants and a convenience store. All three pay a modest rent.

The Office of the Governor is, thus, the lessee of the facility, with the right to succeed to the position of lessee of the ground leases upon payment of the full purchase price, in 20 installments. The Governor intends to cover La Fiesta's costs through rents, but will probably not do so in the foreseeable future. La Fiesta's tenants are a mix of government and private sector offices and shops.

c. Lease of other office space by the Government

The CNMI Government has long leased office space. It presently leases office space for many of its agencies, including public corporations. There are 81 leases, with an aggregate annual commitment of about $2.5 million.[21]

Many, if not all, states rent office space. *See., e.g.*, North Carolina's leasing policy and procedures (http://www.enr.state.nc.us/purchase/); North Dakota's procedures (www.state.nd.us/fac/forms/leaseproceedure.htm); 28 Okl. Op. Atty. Gen. 126, Opinion No. 98-30 (1998) (application of GSA space allotments to state's leased offices). Many, if not all, states let the real estate which they own or lease. E.g., *Columbia Land Development, LLC v. Secretary of State*, 868 So.2d 1006 (Miss.2004) (Sec of State's constitutional and statutory power to lease tidelands); 1998 WL 253720, Opinion No. 98-008 (Md. AG 1998) (statute authorizing leasing of Dept. Of Corrections real estate); Indiana's leasing of its State Office Building. *Book v. State Office Building Commission*, 149 N.E.2d 273 (Ind. 1958).[22]

d. Office of the Governor

The Office of the Governor is an Executive Branch instrumentality of the CNMI government. N.M.I. Const. art. III, §§ 1, 14, 15;[23] 1 CMC §§ 2051-53;[24] 1 CMC § 2001.[25] The CNMI has no "Department of General

Services" or other agency that serves as the Government's property manager. The Office of the Governor is the landlord for La Fiesta.

The CNMI Executive Branch has the power, through its normal processes, to acquire and dispose of land for the public good. *Romisher v. MPLC*, 1 CR 841, 860 (Tr. Ct. 1983) (preliminary injunction), 1 CR 873, 883 at n 3 (1983) (permanent injunction).[26] The acquisition of the private interests "must be done by the executive branch of the Government". *Id.*[27]

The Executive has the power to acquire property by purchase and by condemnation. The acquisition of real property in general is governed by 2 CMC §§ 4711-16. The statute applies to the acquisition of "real property under the laws of the Commonwealth for use in any project or program of the Commonwealth government." 2 CMC § 4711. Acquisition includes not only the underlying land, but "all building structures or other improvements" on the property as well. 2 CMC § 4713. It is the Governor who is authorized to issue land acquisition regulations. 2 CMC § 4716. Condemnation is specifically addressed in 1 CMC § 9211, *et. seq.*

The Executive has the responsibility to acquire private property for the public good. *See Romisher v. MPLC*, 1 CR 873, 883 at n 3 (1983) (permanent injunction).

e. CNMI procurement regulations

The CNMI's procurement regulations govern La Fiesta's activities insofar as they address nongovernmental[28] parties. "Procurement" includes buying, renting, and leasing or acquiring construction, goods and services.[29] The CNMI's procurement regulations, promulgated by the Department of Finance's Division of Procurement and Supply[30], are to be used, *inter alia*, to provide for increased public confidence in procurement procedures, to treat would-be providers fairly and equitably, to maximize the purchasing value of public funds, and to provide safeguards for quality and integrity.[31] No contract is effective against the Commonwealth until all required CNMI signatures are in place.[32]

f. Background on public debt

A "debt" is defined in ordinary parlance as "a sum of money due by express agreement". Black's Law Dictionary (4th Ed.). "Debt" is money, goods or services owed by one person to another, Webster's Third New World International Dictionary (1961), p 583, and "an obligation to pay or return something," Webster's Twentieth Century Dictionary Unabridged (2d Ed.).

The courts give special attention to the meaning of "debt". For purposes of analyzing constitutional provisions limiting the ability of public bodies to incur "debt," the word should be "given a meaning much less broad and comprehensive than it bears in general usage." *Swanson v. City of Ottumwa*, 118 Iowa 161, 91 N.W. 1048, 1051 (Iowa 1902). An oft-cited opinion of one court has held that the words "debt' and 'indebtedness' as used in its Constitution "are not used in any technical way, but in their broad, general meaning, of all contractual obligations to pay in the future for considerations received in the present', finding that real estate leases that result in the government's ultimate ownership of the property do not provide for more than the annual services of a rented workplace. *Kelley v. Earle*, 190 A. 140, 145 (Pa. 1937).

A Georgia Supreme Court justice, concurring in upholding the City of Atlanta's ability to participate in the redevelopment of the "Atlanta Underground" by leasing the economic development area to a development authority, which would in turn lease to private subtenants, addressed the issue of Constitutional debt by distinguishing between repayment of a loan and a contract for services:

> The following statement from the Encyclopedia of Georgia Law, 3 E.G.L., Authority Financing, § 25, p. 50 (1975), is well established: "... [O]ur courts, in deciding authority questions, draw a sharp distinction between, on the one hand, a 'debt,' that is to say, a provision requiring the state or its subdivisions to subsidize an authority with cash, as is prohibited under the State Ports Authority case [supra], and, on the other hand, a right to contract with the authority for its services, which may be done, even though the state is thereby obligated to undertake the future expenditure of funds. Under these holdings, the state [or a city] may become indebted to the authority for goods and services, but it cannot become indebted to the bondholders of the authority or to the general public for any default of the authority." (Matter in brackets added.)

Nations v. Downtown Dev. Authority, 338 SE2d 240, 248 (Ga. 1985) ("*Nations I*"), Hill, CJ, concurring, *later app.* 345 SE2d 581 (Ga. 1986) ("*Nations II*"), discussed further *infra*[33], page 12.

Governments incur two kinds of long term debt – full faith and credit, or guaranteed obligations ("GO"), and nonguaranteed, or revenue, debt ("RD") . Variations in State and Local Government Debt: Trends and Causes, by Rassel and Hao (2004), p 2. (http://www.cviog.uga.edu/projects/abfm /Rassel.Hao.state.local.debt.pdf). "Full faith and credit" means an unconditional commitment to pay interest and principal on debt, usually issued or guaranteed by the U.S. Treasury or another government entity. (Www.investorwords.com). For "full faith and credit", *Black's* refers the reader to the definition for general obligation bond, which it says is an interest-bearing debt instrument issued by a corporation or governmental entity. *Black's Law Dictionary* (8th ed. 2004).[34]

Traditional debt burdens focused on the full faith and credit of general purpose governments. (Rassel and Hao, p 3) Tax exempt debt, typically revenue debt, rather than general obligation debt, for private purposes became a principal vehicle of state and local development policy in the 1980's. (Id. p 4) Typically these were revenue bonds. (*Id.*)

Thirty-nine (39) states have some form of constitutional debt limit, sometimes applying to local governments as well, and two others have a statutory debt limit. (Rassel and Hao, p 4-5) A debt limitation provision very similar to that in New Jersey's modern Constitution (Article IV, s VI, paragraph 4 of the N.J. Constitution of 1844) has been said to have provided a pattern for debt limitation clauses in other states. *Holster v. Board of Trustees of Passaic County College*, 279 A.2d 798, 801 (N.J. 1971), *citing* Heins, Constitutional Restrictions Against State Debt, at 8 (1963). *See also* 28 Rutgers L.Rev. 485 n 12 (1974), Case Notes: Constitutional Law-Debt Limitation-Lease Purchase Agreement Does Not Violate New Jersey Debt Limitation Provision. (Debt limitations appeared in State constitutions after many states, seeing the success of public financing in 1817 of the Erie Canal, undertook large project debt, then repudiated the debt in crash of 1837.)

In the 1980's many states avoided these limits through public authorities, which borrowed through revenue bonds. (Rassel and Hao, p 4-5) RD became 69% of government debt outstanding by 1990.

Nonguaranteed public debt can be divided into two categories. The first is issued by governments and government agencies to support purely public purposes. The second is to support principally private enterprise and is called private purpose debt. This latter category includes industrial revenue or development bonds, hospital bonds, pollution control bonds, and mortgage revenue bonds for housing programs. (Rassel and Hao p 5)

Alaska, for instance, reported $7.1 billion in public debt in 2002, in nine categories: state debt; state supported debt; state guaranteed debt; state moral obligation debt; state and university revenue debt; state agency debt; state agency collateralized or insured debt; municipal debt; industrial revenue bonds .

(http://www.revenue.state.ak.us/treasury/debtbook/2002_public_debt_revised.pdf, p 1 of 66.) Its state guaranteed debt includes "double barreled" mortgage bonds – revenue bonds which carry an independent, but currently unnecessary, state guarantee of payment. (Id p 3 of 66)[35]

Lease purchase financing involves the issuance of debt which is secured by the lease payments and the leased facilities. Lease purchase obligations may provide for the purchase of the leased facilities by the debtor at the end of the lease. Alternatively, one of the following factors may cause the debtor to be considered the owner of the leased property for federal tax, accounting or credit purposes from the outset of the lease: term; payments; purchase price option. There are federal tax consequences to this alternative. A lease purchase may take the form of revenue bonds or certificates of participation. Where the State is the lessee, if the lease payments are subject to annual appropriations, and therefore payable out of the general fund, the lease obligation will not be considered a State obligation for the purposes of rating agencies' measuring the State's debt burden. (Source for paragraph: Alaska Treasury Datebook 2002, p 13 of 66)

2. Legal Analysis

The CNMI Constitution, article X, § 3, requires that, if the La Fiesta lease is a "public debt", the lease must be approved by 2/3 of the Legislature. Analysis of the Constitution's language and the case law on similar provisions in other jurisdictions demonstrates, however, that such a contract is NOT a public debt.

The Constitution, article X, §4, also limits the total amount of "public indebtedness" and prohibits the use thereof for government operations. However, the La Fiesta lease does not violate the limitation, of 10%-of-value-of-real-property, because it is specially excepted from the restriction. Further, lease payments have not been considered to be the restricted "public indebtedness". Finally, it appears that the Framers intentionally omitted the Executive's incurring ordinary obligations from the Constitutional debt restrictions.

This legal analysis by the Attorney General is binding on CNMI agencies and instrumentalities unless and until overturned by the courts. AG Opinion No. 86-16 (Castro). *See, e.g., People v. Penn,* 302 N.W.2d 298 (Mich. App. 1981). The Constitution and the Commonwealth Code provide that the Attorney General is the attorney for the Commonwealth government:

> ....The Attorney General shall be responsible for providing legal advice to the governor and executive departments, representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law.

N.M.I. const., art III, § 11. The CNMI Code provides that the Attorney General is counsel to government agencies.[36] The Attorney General must review, and approve as to form and legal capacity, all contracts of the CNMI and its instrumentalities.[37] The Attorney General has a statutory and ethical responsibility to advise government clients to refrain from violating the law. The Attorney General can also bring statutory proceedings and common-law-writ-based proceedings to foreclose the pursuit of illegal activities.

The Courts are not bound by Attorney General Opinions, but tend to regard them as "highly persuasive". *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 (2003), *citing Cedar Shake and Shingle Bureau v. City of Los Angeles*, 997 F.2d 620, 625 (9th Cir. 1993). An opinion of the Attorney General should be treated as persuasive authority for the judiciary so far as it is properly and thoroughly researched. *Borja (Mayor of Tinian)* 2003 MP at ¶¶ 20-21.[38] *See, generally,* State Attorneys General: Powers and Responsibilities, Lynne M. Ross, editor (NAAG 1998).

Both statutory language and court decisions govern this analysis. The CNMI Supreme Court enunciates the governing common law. The Legislature has required the adoption of the common law as presented in the Restatements of the Law.[39]

a. The CNMI's lease of La Fiesta for public and private tenants is a permitted public use.

The Government may own or lease real estate. It may acquire real estate by condemnation, gift or purchase. It may occupy the premises, or it may lease them out for public or private, economic development, purposes.

i. The Government may acquire and develop real estate through condemnation, gift or purchase.

In general, government may undertake economic development of distressed real estate as a "public purpose". *Kelo v. City of New London*, 125 S.Ct. 2655, 162 L.Ed.2d 439 (June 23, 2005). Of course, the government cannot condemn private land for the purpose of conferring a private benefit on a particular private party. *See Kelo*, 125 S.Ct. at 2661, quoting *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 245; 104 S.Ct. 2321, 2331 (1984) ("A purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void").

The Government's power of eminent domain comes from the CNMI Constitution, article XIII. The Legislature has articulated the procedures for it in 1 CMC § 9211, *et. seq.* While this power does not apply to the arm's-length acquisition of La Fiesta, if the Executive can condemn to acquire property for economic development, as per *Kelo*, then, *a fortiori,* it can buy a leasehold, which is a voluntary transfer. *See also*, 4 CMC § 4711, *et seq.*

When the government condemns property for a public use, as for redevelopment, it is not necessary that the government itself occupy or use the real estate condemned. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229; 104 S.Ct. 2321 (1984). *Also Kelo v. City of New London*, 125 S.Ct. 2655, 162 L.Ed.2d 439 (June 23, 2005).[40] Thus, the Office of the Governor's acquisition of real estate to provide offices to both private entities and government instrumentalities like CUC and DPW's TSD, is permissible. Presumably, OG could have acquired La Fiesta simply to avoid the blight of an abandoned facility in an economy dominated by tourism. But OG's stated principal purpose, and its principal action, is to provide office space to Government instrumentalities.

Government can receive real estate by gift. To the extent that the Government has funded the La Fiesta acquisition with federal grant funds, which are a gift, for the initial $3.5 million purchase of the buildings, the matter comes within the cases supporting a (less powerful municipal) government's acquisition of real estate by gift. If a city, with its limited powers, can acquire real estate by gift, then certainly the State/Commonwealth, with its plenary powers, can do so.

Government may acquire various types of property in various ways. A city may own streets by dedication or by condemnation. *Philadelphia Elec. Co. v. Philadelphia*, 303 Pa 422, 154 A 492 (1931). A city may acquire an alley by gift and dedication. *Bonne v. Stephenville*, 37 SW2d 842 (Tex Civ App 1931). A town may acquire land by adverse possession due to its citizens repeatedly crossing the land and its letting the land out for pasturage. *New Shoreham v. Ball*, 14 RI 566, 1884 WL 3120 (R.I. 1884). A city or county may acquire the approaches to a drawbridge by adverse possession. *Talbot v. Norfolk*, 148 SE 865 (Va. 1929). Similarly, the La Fiesta acquisition consists of buildings and fixtures, and ground leases on alleys, roads, parking areas and the land under buildings.

The government may lease, and may lease out, its property. A comprehensive ALR annotation addresses the well-accepted power of municipalities and other political subdivisions to lease out real estate which they already own. *Anno., Power of Municipal Corporation to Lease or Sublet Property Owned or Leased*, by It, F.S. Tinio, 47 ALR 3d 19 (2005). The annotation uses the phrase "lease of property," to collect cases relating only to grants of possession of land, or buildings or portions of buildings thereon, for either a definite or indefinite term, in return for a rental or a fee. *Anno.*, 47 ALR3d at 28. The author found "only a few" cases addressing the power of municipalities to sublease property leased by them, and made no attempt to treat these cases separately. *Id.* n 5.

Thus, OG is well within the Executive's power to lease out the real estate to which it has acquired rights.

ii. The courts defer to the Government's acquisition and development of real estate.

The courts will not substitute their judgment for what is a public use "unless the use be palpably without reasonable foundation." *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 241; 104 S.Ct. 2321, 2329 (1984), quoting *United States v. Gettysburg Electric Ry. Co.*, 160 U.S. 668, 680, 16 S.Ct. 427, 429, 40 L.Ed. 576 (1896). In *Midkiff* a unanimous US Supreme Court upheld Hawaii's use of its Land Reform Act to condemn large landed estates on the ground that a legitimate public purpose was to remedy the perceived evil of historical, concentrated real estate ownership by taking large estates and reselling small holdings to the tenants. In the instant case the Office of the Governor has paid for, rather than condemned, a large private holding that, as an empty facility, would have become a blight, and turned it to productive use for government entity tenants, the CUC and TSD/DPW, and for private, small businesses.[41]

While many of the cases which are reported on the subject of the power of the government to acquire real estate, address "municipal law" – the law of city government rather than the law of the more powerful state or commonwealth – the cases are still useful to the instant inquiry. The CNMI Court has looked to municipal law in making a decision on the power of an Executive Branch agency to engage in a land transaction. *Romisher v. MPLC*, 1 CR 841, 848 (Tr. Ct. 1983) (preliminary injunction). Thus the cases examined in this Opinion may offer persuasive authority even if they address the acts of cities and counties.

iii. The Government may serve as a landlord of an economic development project.

Leasing an urban development parcel, then subleasing it to private business, is not "public debt". The City of Atlanta may assemble an urban redevelopment property through condemnation and purchase, convey it to a redevelopment authority, then lease it back for the purposes of subleasing to private businesses. *Nations v. Downtown Dev. Authority*, 338 SE2d 240 (Ga. 1985) ("*Nations I*"), later app. 345 SE2d 581 (Ga. 1986) ("*Nations II*"). On "public debt" objections to the procedure, the Georgia Supreme Court held that the City of Atlanta was authorized by the Georgia State Constitution to acquire urban property through eminent domain, then to lease property to a public development authority which, in turn, could lease land to private developers; but NOT to (2) guaranty payment of the related bonds through its general fund and (2) extend the lease past the statutorily-authorized 50-year term.

After *Nations I* the City restructured the development deal, becoming a lessee of the Development Authority and promising that it would pay rent to the Authority, by raising taxes if necessitated by a failure of sub-lease income from Underground tenants. The Georgia Supreme Court upheld the revised deal as a promise to pay rent, not a promise to pay back a loan. *Nations v Downtown Dev. Authority*, 345 SE2d 581 (Ga. 1986) (*Nations II*). The concurring opinion put the matter succinctly:

"Landlords collect rent; they do not normally guarantee their tenants' ability to pay rent."

Nations v Downtown Dev. Authority, 338 SE2d 240, 248 fn 3. (Ga. 1985), Hill CJ, concurring, *later app* 345 SE2d 581 (Ga. 1986). Similarly, OG has acquired a leasehold from another and intends to sublease space in order to pay the annual $200,000 rental. Its obligation rests within the four corners of the lease. It merely promises to pay rent.

The use of real estate may vary from the initial purpose. For instance, a portion of land purchased with bond proceeds in fee simple for a public market may be used for a city garage for police automobiles as long as the initial purpose is preserved. *Neil v. Kansas City*, 188 SW 919 (Mo. App. 1916). Thus, OG could have acquired La Fiesta for one purpose and changed that purpose subsequently. One might argue, for instance, that the emergency move of the DPW's TSD, presented a change – once the sewage flood evicted TSD there was no time for typical procurement procedures and negotiation over terms. While perhaps the initial reason to acquire La Fiesta was for economic development, *Neil* would hold the change irrelevant.

iv. The CNMI's leasing of office space for its instrumentalities is permissible.

As discussed, *supra*, the issue of the Government's power to lease, and lease out, office and retail space is well settled. The CNMI government has long leased real estate, and has long had the power to do so. The common law authority for a "state" government to acquire and use real estate is clear. Virtually every state leases office space; and many state office buildings sublet space to retail businesses.

The focus of this Opinion's inquiry is, therefore, whether this new, 20-year La Fiesta lease and its annual payments constitutes Constitutionally prohibited "public debt" or "public indebtedness".[42]

b. CNMI's Constitution restricts the "Government" and "political subdivisions" from incurring "public debt" and "public indebtedness" without legislative approval and prohibits authorizing "public indebtedness" for operating expenses.

The CNMI Constitution requires "public debt" to be authorized by both legislative houses before it is either authorized or incurred, and prohibits the authorization of "public indebtedness" for the operating expenses of the CNMI or its "political subdivisions":

> Section 3: Public Debt Authorization. **Public debt may not be authorized or incurred without the affirmative vote of two-thirds of the members in each house of the legislature.**
>
> Section 4: Public Debt Limitation. **Public indebtedness other than** bonds or **other obligations of the government payable solely from the revenues derived from a public improvement or undertaking may not be authorized in excess of ten percent** of the aggregate assessed valuation of the real property within the Commonwealth. **Public indebtedness may not be authorized for operating expenses of the Commonwealth government or its political subdivisions.**

CNMI Const. art. X, §§ 3, 4. (Emphasis added) Thus, the La Fiesta transaction must be reviewed to determine if it falls within one of three categories, and, if so, whether it is in violation of a restriction for each. One category is "public debt". The other two categories involve "public indebtedness".

The question arises with respect to a lease because a technical analysis of a lease shows that it contains two obligations. First, the lessor, or landlord, promises to make the premises available to the lessee, the tenant, during the lease term. Second, the lessee promises to pay the rent. The promise to pay rent money is technically a "debt". *See* part 1.f, page 8, *supra*.

While some cases have determined that the word "debt," when appearing in a constitution, is to be taken in its ordinary, natural, common-sense, popular meaning, unless the context requires that it be treated as used in a technical sense, others have held that the meaning of the term "debt" or "indebtedness" in a statute or constitution generally must be determined by construction, looking to the whole context of the particular document. *See* 56 Am. Jur. 2d Municipal Corporations, Etc. § 551, and cases collected therein.

Unless absolutely required, the words "debt" or "liability" in constitutional debt limitation provisions should not be so interpreted as to paralyze the legal functioning of municipal corporations which have reached or exceeded their existing debt limits. *E.g. Moores v. Springfield*, 64 A.2d 569, 577 (Me. 1949). The analysis of the instant Opinion addresses the terms "public debt" and "indebtedness" in the context of the CNMI Constitution and within the four corners of the La Fiesta agreement.

Constitutional debt limitations are not supposed to impede the Government's ordinary functioning, as with salaries and supplies; because, if applied, the limitations could be "disastrous":

> A different construction might be disastrous to the interests of the city, since it is obviously debarred from purchasing or establishing a plant of its own exceeding in value the limited amount, and is forced to contract with some company which is willing to incur the large expense necessary in erecting water works upon the faith of the city paying its annual rentals.

City of Walla Walla v. Walla Walla Water Co., 172 U.S. 1, 19-20; 19 Sup. Ct. 77 (1898).[43]

c. The La Fiesta lease is not a "public debt" under article X § 3 because a lease, payable and terminable annually, is not a "public debt".

Virtually all jurisdictions with public debt restrictions except from Constitutional debt limitations leases and other agreements that provide for annual payments. They hold that such arrangements are not "public debt".

i. The *Analysis* to the Constitution indicates that a lease is not "public debt" because not a fixed obligation in return for money.

In the CNMI, the Framers addressed the definition of a public debt in their comments to the Constitution, explaining that the "public debt" which they have restricted is a fixed promise to repay money that has been loaned to the Government:

> According to the *Analysis* [*of the Constitution of the Commonwealth of the Northern Mariana Islands* (Dec. 6, 1976)]:
>
> > [Section 3: Public Debt Authorization . . . .] **Public debt means obligations of the Commonwealth government that are fixed, such as bonds, notes, debentures, or other forms of debt. It does not include obligations that involve a substantial contingency**, such as loan guarantees where there is a

> reasonable expectation that the loan will be repaid by the borrower and guarantee by the Commonwealth will not require the expenditure of public funds.
>
> . . . .
>
> [Section 4: Public Debt Limitation] . . . [**An exception to this limitation on public debt is revenue bonds or other obligations of the government payable solely from the revenues derived from a public improvement or undertaking.** If the obligation of the Commonwealth does not extend to the general revenues of the Commonwealth, then the limitation with respect to assessed valuation does not apply. For example,] the legislature may create special authorities to run certain utilities or enterprises. These authorities may be empowered by the legislature to obtain financing through debt instruments. Under the restrictions contained in [article X,] section 3, this general authorization must be made by the affirmative vote of two-thirds of the members of each house of the legislature. **Once the legislature gives to an agency or authority the power to incur debt, that power may be exercised administratively without the approval by two-thirds vote of the legislature.** [If the obligation to repay debt incurred by the utility or enterprise is limited to the revenues derived from the utility or enterprise, then there is no need to measure the amount of the obligation against the assessed valuation of any real property.]

Id. at 139-41.

Commonwealth Law Revision Commission, Constitution of the Commonwealth of the Northern Mariana Islands, annotated, 1st ed. (June 1995), p 88. (Emphasis added), quoting *Analysis* [*of the Constitution of the Commonwealth of the Northern Mariana Islands* (Dec. 6, 1976) (by the Framers)].[1,44] (bracketed text added back from the original *Analysis*).

The Framers' view of "public debt" excepts the La Fiesta lease. As discussed *supra*, the Legislature has given the Office of the Governor the power to acquire private interests in property. While a lease of property creates a "debt" in the ordinary sense of the word, the *Analysis*' definition of "public debt" covers a fixed obligation to pay back a prior loan. The *Analysis* thus excludes the lease from the 2/3 vote requirement of article X, § 3.

But the "Analysis" ' definition of "public debt" is not the clearest. It is self-referential – defining "public debt" by using the word "debt", specifically "other forms of debt" which are "fixed". Nonetheless, its meaning is apparent.

Further, the *Analysis* even defines out of "public debt" certain fixed obligations, notably revenue bonds. It provides this exception because these rely on the financed project or undertaking to generate the revenues to retire the related debt, not on the Government's general promise. Similarly, the La Fiesta lease rests on the rents of the tenants and not on the full faith and credit of the CNMI..

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[1]The Analysis must be cited with care. It is clarification, approved by the Constitutional Convention, not authority. *See* endnote 44 for the LRC's discussion.

ii. The overwhelming majority of cases show that a lease is not "public debt".

The cases from respected, relatively conservative, courts, with fact patterns similar to the La Fiesta deal, reinforce the view that the long term lease agreement, with annual payments for the continuing availability of the leasehold, is not Constitutional "public debt":

- The Georgia Supreme Court held that the City of Atlanta had not incurred Constitutional "public debt" in becoming a lessee of the "Atlanta Underground" project's Development Authority, and promising to pay rent to the Authority, by raising taxes if its subtenants, the Underground's businesses, failed to pay enough rent. The deal was merely a promise to pay rent, held the Court. *Nations v. Downtown Dev. Authority*, 345 SE2d 581 (Ga. 1986) ("*Nations II*"). *See earlier case.*, 338 SE2d 240, 248 (Ga. 1985) ("*Nations I*"), discussed *supra*, page 12. The La Fiesta lease is more conservative, providing no additional promises to pay the rent. If anything, the totality of the deal looks to the subtenants to support the annual rental payment.

- "No part" of the lease payments for the State of Indiana's State Office Building was public debt. *Book v. State Office Building Commission*, 149 N.E.2d 273 (Ind. 1958). More recently, rent-lease payments did not constitute a "debt" within the meaning of Indiana's Constitutional debt limitation where a contract for lease of new public high school facilities covered an extensive period of time, lease payments were made annually in advance, the lease contained an abatement of rental clause if the premises were destroyed in whole or in part, and there was no showing that the school corporation would lack funds sufficient to make payments as they arose. *Teperich v. N. Judson-San Pierre High Sch. Bldg. Corp.*, 257 Ind. 516, 521, 275 N.E.2d 814, 817 (1971), *cert. den.*, 407 U.S. 921 (1972). Citing cases back to 1884, the Indiana Court held that:

  > It is clearly the rule in this State that municipal corporations may contract for services over a period of years and agree to pay for such services in periodic installments as the service is furnished. Where such service is paid for only upon the furnishing of that service no debt is incurred when the payments are made from current revenues.

  Teperich, 275 N.E.2d at 817-18. The Court quoted with approval a 1900 case holding that the City of South Bend's lease, with option to buy, of a city hall building was not a "public debt":

  > It is evident that rent for suitable offices for the officers of a city is as much an ordinary and necessary expense as the expense for water and light . . . and that, when the city agrees to pay the rent for said offices annually or monthly, the contract does not create an indebtedness for the amount of all the annual or monthly payments. [*City of South Bend v. Reynolds*,] 57 N.E. 706 [(Ind. 1900)]. . . .

  Teperich, 275 N.E.2d at 817-18. Similarly, OG has secured ordinary and necessary rented facilities for government offices, pays rent annually, and maintains the option to walk away from the facility at any time.

- New Jersey's 25-year lease-purchase of a records storage center and printing facility on state-owned property was held not to violate the State's Constitutional limitation against public debt. *Bulman v. McCrane*, 312 A.2d 857 (1973). The Court emphasized that the sole obligation was for future lease payments to be paid out of the current revenues appropriated for the purpose; and the fact that the builder would recapture his investment during the life of the building did not violate basic lease principles. *Id.* at 863-64. New Jersey's Constitutional debt provision served as the

model for those of many other states. *See* page 9, *supra*. The La Fiesta arrangement is even more lease-like, as the Government does not own the ground under the building, and is paying a very competitive lease rate, due annually, for the facility.

- Pennsylvania's State government's leases of the State Authority-owned facilities, payable through the fees of individual patients and rents from county agencies, are not public debt. The words "debt' and 'indebtedness' [as used in the Pa. Constitution] . . . are not used in any technical way, but in their broad, general meaning, of all contractual obligations to pay in the future for considerations received in the present.' *Kelley v. Earle*, 190 A. 140, 145 (Pa. 1937), *rehearing Kelley v. Earle*, 182 A. 501 (1936).[45] *See also*, *Opinion to the Governor*, 308 A.2d 802 (R.I. 1973) (Building Authority's bonds and leases to state government do not violate Constitutional debt restrictions and are not "debt"). Similarly, it appears that La Fiesta will pay its annual lease fee by aggregating the annual rent from its subtenants, both public and private.

- South Dakota's Building Authority Act, vesting the Authority with the power to lease buildings to state agencies under leases providing that rent shall be payable solely from appropriations to be made by the legislature and that, in event of nonpayment of rents by the State, the property shall be leased to others, did not violate Constitutional debt limitation provisions. *McFarland v. Barron*, 164 N.W.2d 607 (S.D.1969).[46] The court cited *Berger v. Howlett*, 182 N.E.2d 673 (1962), which upheld the Illinois Authority Act, after which the South Dakota statute was patterned, and two ALR annotations, 71 ALR 1318, and 145 ALR 1362. *McFarland*, 164 N.W.2d at 610. The La Fiesta lease is more conservative than the South Dakota leases, with no mention of legislative appropriations.

- Michigan's Supreme Court, reviewing Michigan and other jurisdictions' cases, held that neither the rents nor the advance professional services incurred prior to the construction of the Detroit-Wayne City-County Building was a public debt. *Walinske v. Detroit-Wayne Joint Bldg. Authority*, 39 N.W.2d 73 (Mich. 1949). The Court recited the background of the case – the Authority, a non-profit corporation, would receive land condemned by the City, issue revenue bonds, build a building, enter into a long-term lease with the two governments, and, upon completion of the lease term, convey the remainder to them. This arrangement was to substitute for their pre-Authority aggregate annual private sector rents of $1.5 million (in 1949 dollars). The La Fiesta arrangement similarly provides office space for the Government, at attractive rents, with an option to own the remainder leasehold at the end of the term.

  Twenty years later, in striking down a stadium bond issue for a new Detroit Tigers playing field, the Michigan Court thoroughly analyzed *Walinske* and related "public debt" cases, holding, *inter alia*, that "lease" payments which exceeded market rental rates constituted a repayment for the new stadium, of a Constitutionally prohibited purchase money "public debt". *Alan v. Wayne Co.*, 200 N.W.2d 628 (Mich. 1972), reh. den. 202 N.W.2d 277 (Mich. 1972). La Fiesta, with an amortized rental cost of $4/sq.ft. appears to be well below the double-digit local market rates for high end retail/office space.[47] And, of course, there are no bonds or other borrowings outstanding.

- The US Supreme Court long ago drew the distinction between a Constitutionally-permitted expenditure based on a private entity's continuing to furnish goods or services, and the prohibited "public debt" repayment of a one-time loan:

  > But we think the weight of authority, as well as of reason, favors the more liberal construction, that a municipal corporation may contract for a supply of water or gas, or a like necessary, and may stipulate for the payment of an annual rental for

> the gas or water furnished each year, notwithstanding the aggregate of its rentals during the life of the contract may exceed the amount of the indebtedness limited by the charter. There is a distinction between a debt and a contract for a future indebtedness to be incurred, provided the contracting party perform the agreement out of which the debt may arise. There is also a distinction between the latter case and one where an absolute debt is created at once, as by the issue of railway bonds, or for the erection of a public improvement, though such debt be payable in the future by installments. **In the one case the indebtedness is not created until the consideration has been furnished; in the other, the debt is created at once, the time of payment being only postponed.** . . .

City of Walla Walla v. Walla Walla Water Co., 172 U.S. 1, 19-20; 19 Sup. Ct. 77 (1898). (Emphasis added) La Fiesta is a lease for OG's use of the Mall as long as the land for the Mall is "furnished" to allow for the lessee's use, terminable by the lessee simply by stopping payment and walking away from the deal. No further payments would then be required.

- In a "leading case"[48], the California Supreme Court held that the publicly-owned Los Angeles municipal utility's long term lease and services contract with a private business to build and operate a waste-burning incinerator was not a public debt. *City of Los Angeles v. Offner*, 122 P.2d 14(1942).[49] The City's rubbish incinerator was inadequate and failing. The City was to lease land on which a successful bidder would build a rubbish incinerator, which the bidder would lease back to the City for an annual fee. The City had an option to buy the facility before the land lease terminated. The California Supreme Court held that the obligation rested on consideration provided annually, and that each year's payment was for the consideration actually furnished that year. In fact, held the Court, the deal was a lease and not a disguised purchase.[50] The instant La Fiesta arrangement is a 20-year lease with a 90-day, no penalty, opt-out provision. As in the Los Angeles contract, the Office of the Governor has the option to take what is left at the end of the lease term – the fully-depreciated buildings and their fixtures – the underlying ground leases to Nikko having terminated in 2024.

- Virginia has held that the provisions of a lease-and-services contract between a county and a private corporation engaged in the waste disposal business, authorizing the corporation to impose future charges against the county if the county were to adopt ordinances increasing the corporation's costs of operation, and imposing cost on the county if an owner of certain kinds of hazardous wastes delivered for disposal could not be identified, did not constitute "debt" within the meaning of a State constitutional provision generally barring counties from contracting debt, as the county's obligation to pay additional costs did not arise, if ever, until services had been rendered by the corporation. *Concerned Residents of Gloucester County v. Concerned Residents of Gloucester County v. Board of Sup'rs of Gloucester County*, 449 S.E.2d 787 (Va.1994).[51] Neither of the following contract provisions constituted "debt": the County would pay the remaining value of the facility upon the County's unilateral termination; prices would increase if services expanded. *See also, Fairfax County v. County Executive,* 210 Va. 680, 683, 173 S.E.2d 869, 871 (1970) (Massey II) (Well-recognized service contract doctrine provides that transit system agreement with private firm is not a debt because it is based on service being rendered.) Similarly, the La Fiesta lease pays the Nikko for the continued availability of the site.

- A lease purchase agreement for computers did not constitute creation of public debt within the State's constitutional prohibition. *Business Computer Rentals v. State Treasurer*, 953 P.2d 13 (Nevada 1998).[52] The Court found it important that the contract contained both a legislative "nonappropriation" clause and a reversion-for-nonpayment clause. *See also, Kane v. Goldschmidt*, 308 Or. 573, 783 P.2d 988 (1989) (Computer purchase and financing contract does

not violate state constitutional restriction on public debt). The instant case is similar, as the lease is silent on the basis for payment (but is quite explicit on the subleases which would presumably bring in revenue). In any event, there is no mention of appropriations. Further, the property reverts to the Nikko upon nonpayment.

- The "rule of reconciliation" holds that an obligation for ongoing services, paid out of current revenues is not restricted "public debt." *Moores v. Springfield*, 64 A.2d 569, 577 (Me. 1949). Similarly, the La Fiesta contract requires ongoing availability of the facility – the good title in the ground lease – as a precondition to payment for services.

These cases demonstrate that courts apply one of three theories to except an arrangement from the restricted public debt classification – current expense, continuing contract, contingent liability. According to one commentator, under any of the three theories, which collectively constitute the majority view, the question whether a lease is subject to debt limitations may turn on whether termination of the lease prior to the expiration of its stated term would result in a forfeiture for the municipality in excess of the unpaid balance on the lease.[53] The La Fiesta lease addresses the lessee's breach – failure to make timely payments or failure to insure. If not cured within a 90-day notice period, the breach results in an automatic recordation by the escrow agent of the pre-executed rescission of the deal. Thus, the Government may decide annually whether to continue to incur its obligation, and, importantly, the resultant liability does not exceed the value of the lease.

Attorney General Opinions have addressed the "public debt" question in the CNMI and in the States. *See* AG Opinion 04-08 (Apr. 12, 2004) (USDA Loan Application from the Board of Regents of the Northern Marianas College) (Potential USDA loan for La Fiesta not a public debt because does not require full faith and credit commitment of CNMI Government and College is public corporation with statutory power to borrow); AG Opinion 05-11 (July 27, 2005) (CUC's 20-year contract to buy output of independent power producer's new generating plant is not a "public debt"). *See, also*, AG Alpha No. LE SE AGASK, File No. ORL 9102269.ASK, Proposed Tax Incentive Legislation Concerning Construction of a New United Airlines Aircraft Maintenance Facility, 1991 WL 537606 (Colo. A.G. 1991) (Key to the exceptions to Colorado Constitution's prohibition that "[t]he state shall not contract any debt by loan in any form" is the absence of any legally enforceable obligation by the State which would commit future revenues that are otherwise available for general purposes), and cases collected therein; CNMI AG Op. 86-07 (Jun. 9, 1986) (CNMI Government's overdrafts are not *per se* restricted "public debt".)[54]

There are some cases that appear to support the contrary position – that municipal leases are "public debt". But they are not on point. An older ALR Annotation addresses the early applicability of constitutional prohibitions upon a municipal corporations' lending its credit to a lease of its property, and the extent to which the lease is justified as serving a public purpose. 161 ALR 518. *See also* 11 ALR2d 168 (Granting or taking of lease of property by municipality as within authorization of purchase or acquisition thereof). While these old cases are interesting, their applicability to the instant facts is limited, as no issue here is presented as to the CNMI's "lending of credit". The La Fiesta lease looks only to its lessee, the OG, for payment of annual rent. There is no mention or suggestion of a Government guaranty of rent.

In sum, the lease for La Fiesta is not Constitutionally-restricted "public debt" under article X, §3, because it provides for current lease services in return for current lease payments, and is open to termination without further obligation. This conclusion follows the overwhelming weight of authority.

d. The two "public indebtedness" provisions of Article X § 4 do not restrict the La Fiesta lease.

Section 4 of article X addresses "public indebtedness", restricting its amount and prohibiting its use for government operations. The restrictions do not apply to the La Fiesta lease, for several reasons.

i. The *Analysis* to the Constitution indicates that a lease is not a "public indebtedness" because it is neither a general obligation nor a tool to finance deficit spending.

The Framers addressed art. X § 4's restrictions on "public indebtedness". The Analysis section freely interchanged "public debt" with the term "public indebtedness", emphasizing the Framers' effort to limit general obligations of the government and to prohibit deficit financing:

> Section 4: Public Debt Limitation. **This section imposed two additional limitations on the authorization or incurring of public debt.**
>
> Public debt may not be authorized in excess of ten percent of the aggregate assessed valuation of the real property within the Commonwealth. This means that if the Commonwealth incurs any debt, there must be an assessment of the value of some of the real property. . . .
>
> An exception to this limitation on public debt is revenue bonds or other obligations of the government payable solely from the revenues derived from a public improvement or undertaking. **If the obligation of the Commonwealth does not extend to the general revenues of the Commonwealth, then the limitation with respect to assessed valuation does not apply.** . . .
>
> Public debt may not be authorized for operating expenses of the government or any of its political subdivisions even if the amount of the debt is less than ten percent of the aggregate assessed valuation of real property in the Commonwealth. Operating expenses are the normal costs of obtaining and delivering government services. **This section does not permit deficit financing of any government operating expenses.** All such financing must be from current revenues. This means that the proceeds of all public debt must be earmarked and cannot be made a part of general revenues.

Analysis [*of the Constitution of the Commonwealth of the Northern Mariana Islands* (Dec. 6, 1976) (by the Framers)], pp. 139-41.

This language provides two reasons that the La Fiesta lease is not "public indebtedness". First, and aside from the *Analysis*' interchanging "debt" and "indebtedness", the Framers' explanation shows that a lease which recites no general obligation of the Government and, in fact, rests for payment on subleases, is excepted from the 10% limitation. Second, because the lease is not the section's targeted deficit financing, the last sentence of § 4, prohibiting the funding of operating expenses, is irrelevant to it.

ii. A lease is not "public indebtedness", because it is not "public debt".

The La Fiesta lease is not "public indebtedness" because the term comes within the case law on "public debt". As noted just *supra*, the Framers interchanged "public debt" with "public indebtedness" in the *Analysis*. The U.S. Supreme Court also interchanged the use of these terms in a landmark case. As the Supreme Court succinctly stated over a century ago, the lease obligation fails to meet the interchangeable

definitions of a "public" "indebtedness" or "debt". *City of Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1, 19-20; 19 Sup. Ct. 77 (1898). The California Supreme Court also interchanged the terms. *California Toll Bridge Authority v. Wentworth*, 298 P. 485, 487 (Cal.. 1931), *infra*, page 23.

There is no reason to interpret the lease as a "public indebtedness" when the lease is not a "public debt". This suggests that the exclusion of a lease from "public debt", discussed in the instant Opinion, *supra*, part 2.c.ii, applies to § 4's "public indebtedness".

But, assuming for the sake of argument ("assuming *arguendo*"), that the lease is public indebtedness, there is still no violation of the Constitution.

iii. Section 4, in both sentences, restricts the Legislature's "authorization" of indebtedness, not the Executive's "incurring" indebtedness.

The difference in the targeted activity of §§ 3 and 4 suggests another reason why a lease is not Constitutionally restricted – section 4 does not address the Executive's activities with respect to debt or indebtedness. The difference lies in the use of the term "authorized and incurred" in § 3 (**"Public debt may not be authorized or incurred"**), versus the use twice of just the verb "authorized" in § 4 (**"Public indebtedness . . . may not be authorized"**). The Framers omitted "incur" in § 4. "Incur" is the Executive's function, while "authorize" is essentially a function of the Legislature.

In construing the Constitution, it must be presumed that the Framers intended meaning in their choice of language. The primary objective in interpreting a constitutional provision is to determine the text's original meaning to the ratifiers, the people, at the time of ratification. *Studier v. Michigan Public School Employees' Retirement Bd.*, 698 N.W.2d 350, 357 (Mich.2005), *quoting* 1 Cooley, Constitutional Limitations (6th ed., 1998), p 81.[55]

Article X makes a distinction which appears to be that the Legislature "authorizes", while the Executive "incurs". The target of § 4's prohibition is solely the Legislature's **authorizing** debt by statute for, e.g., operating expenses. The target is **not** the Executive's **incurring** debt from time to time in the ordinary course of affairs, as when goods and services are provided before their invoice is paid or leases are entered into. "Incurring" is the object of § 3. "Incurring" is **not** the object of § 4.

There appears to be a difference in the Constitution's use of the terms, with "incur" restricted to the Executive functions, but "authorize" applying to both the Legislative functions, including the Executive's carrying out some "authorizing" function. The terms are very different:

> incur, vb. To suffer or bring on oneself (a liability or expense). . . .
>
> authorize, vb. 1. To give legal authority; to empower <he authorized the employee to act for him>. 2. To formally approve; to sanction <the city authorized the construction project>. -- authorization, n.

Black's Law Dictionary (8th ed. 2004). Thus, the Executive "suffers" debt; the Legislature "authorizes" debt or indebtedness.

Forms of the word "incur" appear in only two other places in the CNMI Constitution. Both sections address the Executive functions of incurring a deficit or expenses. In the first case the "Government" is addressed; in the second case the Marianas Land Trust is addressed.[56]

By contrast, three forms of the word "authorize" appear in other Constitutional sections, for a total of eight instances – in which the term applies to legislative functions. The authorizing body in the eight instances is the Constitution (1 instance), the Legislature (2 instances), the MPLT or MPLC (2 instances), "by law" (2 instances), and potentially the Legislature or the Governor or "the law" (in 1 instance).[57]

It is well recognized that executive agencies can carry out legislative functions. This is most common in rulemaking[58] or rate-setting[59]. As the endnote's quoted sections show, the functions which the Constitution addresses are legislative, empowering people to do something[60], with only the one, unclear, application – the authorization by an unstated entity of the Special Assistant for Women's Affairs to hire staff, etc. When the two land agencies, MPLT and MPLC, "authorize", their function is a legislative one. Thus, the use of the terms "incur" and "authorize" in these other sections of the Constitution tends to follow an interpretation of article X, that § 3's restriction applies to the Executive; while § 4's does not.

This interpretation adheres to the rules of Constitutional/statutory construction. Ordinarily, Constitutional language must be given its plain meaning. *In re Tenth Legislature Bills*, 5 N.M.I. 155 (1998). *Also, Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (CNMI 1990). *See also, 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). It must be assumed that the Framers intended that which they plainly did – to omit the reference to "incurred" indebtedness in § 4.

In particular, 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. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122 (1991), *rev'd on other grounds*, 31 F.3d 756 (9th Cir. 1994), *cert. den*, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995). *See Marianas Visitors Bureau* v. Commonwealth of the Northern Mariana Islands, Civil Action No. 94-0516 (Super. Ct. 1994) ("MVB").[61] In art. X the Framers must be held to have excluded the Executive's incurring public indebtedness because they expressly mentioned "incur" in restricting "public debt" but omitted it from the restrictions on indebtedness.

The *Analysis* lends some strength to this interpretation of the Framers' view of different functions, describing (a) the Executive's power to spend money for goods and services pursuant to (b) legislative authorization:

> . . . .**Executive power** is the general authority to implement and enforce the laws passed by the legislature. This **includes** the power to promulgate executive orders, rules and regulations, to inspect, monitor and investigate so as to ensure compliance, **to spend moneys for goods and services pursuant to legislative authorization**, to collect revenue and to prosecute or bring other legal action against those who violate laws or other regulations.

Analysis [*of the Constitution of the Commonwealth of the Northern Mariana Islands* (Dec. 6, 1976) (by the Framers)], p 58. (Emphasis added)

Thus, § 4 should be interpreted as the Framers' restricting only the Legislature. The Framers intended to prohibit the **Legislature**'s exceeding the 10% limit on debt and the **Legislature**'s authorizing public indebtedness for operating expenses. They did not intend to prohibit the Executive's incurring the short term indebtedness that is part of ordinary commerce, the day-to-day business of government.

The distinction is important, because it shows that the Framers were aware of the 100 years of "public debt" case law distinguishing legislative enactments from ordinary executive functions. Almost all of the cases cited *supra*, part 2.c.ii, for the related proposition regarding "public debt" were available to the

Framers when they drafted these sections on "public debt" and "public indebtedness". *E.g.*, *City of Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1, 19-20; 19 Sup. Ct. 77 (1898); *Kelley v. Earle*, 190 A. 140 (Pa. 1937); *Moores v. Springfield*, 64 A.2d 569, 577 (Me. 1949). It is reasonable to conclude that the Framers intended to avoid creating the restrictions criticized in the cases, restrictions that would interfere with the ordinary commercial transactions of the Government – like leases.

This Constitutional analysis is not the only reason that the La Fiesta transaction is free from the "public indebtedness" restrictions.

iv. Article X, § 4, first sentence: The La Fiesta lease is designed to be funded through project revenues, and therefore is not to be considered within the 10% limitation.

The limitation of article X § 4 – the 10% of the aggregate assessed value of real property – does not apply to the La Fiesta lease contract because there is an express exception to the limitation. The exception is "other than bonds or other obligations of the government payable solely from the revenues derived from a public improvement or undertaking". In fact, the La Fiesta lease is to be supported by the revenues derived from "a public undertaking", the leasing of the building. So, even if the La Fiesta annual lease payments were to be considered public indebtedness, the lease is excepted because it is to be supported from its subleases.

The cases provide this exception to the "public debt" restriction when there is a special fund from which to pay the annual obligation. *See, e.g.*, the extensively researched opinion, addressing "the overwhelming majority of decisions in sister states", *Application of Oklahoma Capitol Imp. Authority*, 958 P.2d 759 (Okla.1998) (Highway improvement bonds, to be issued by Capitol Improvement Authority pursuant to statute, were not "debts" within meaning of budget balancing amendments and debt limitations of Oklahoma Constitution because the statute did not bind future legislatures to make annual appropriations, dedicated pre-paid user fees and direct taxes were earmarked to retire bonds on an annual basis, the full faith and credit of the State was not pledged, and the bonds were self-liquidating, though the bonds would be constitutional even if they were not self-liquidating). *See also* AG Opinion Alpha No. LE SE AGASK, File No. ORL 9102269.ASK, Proposed Tax Incentive Legislation Concerning Construction of a New United Airlines Aircraft Maintenance Facility, 1991 WL 537606 (Colo. A.G. 1991), and cases cited therein.

Even in 1931, with the construction of the San Francisco Bay Bridge by the Toll Bridge Authority:

> **The overwhelming weight of judicial opinion in this country is to the effect that bonds, or other forms of obligation issued** by states, cities, counties, political subdivisions, or public agencies by legislative sanction and authority, if such particular bonds or obligations are **secured by and payable only from the revenues** to be realized from a particular utility or property, acquired with the proceeds of the bonds or obligations, **do not constitute debts** of the particular state, political subdivision, or public agency issuing them, **within the definition of 'debts' as used in the constitutional provisions of the states having limitations as to the incurring of indebtedness.**

California Toll Bridge Authority v. Wentworth, 298 P. 485, 487 (Cal.. 1931). (Emphasis added) The Court discussed decisions upholding revenue bond issues against "public debt" claims in Alabama, Arkansas, Indiana, Kentucky, New York, North Carolina, Virginia and Wisconsin.

La Fiesta's case is stronger than those upheld in the reviewed cases, because there are no bonds constituting an initial indebtedness to cover the project. Rather, the obligation (to pay annual rent) is ongoing, and La Fiesta is to generate the required $200,000 per year in subleases.

Whether La Fiesta will, **in fact,** generate this amount in any particular year is not an obstacle to treating the lease as excepted from § 4's first sentence.[62] It has been held that the resort to appropriated funds does not create a Constitutional "public debt". *Holster v. Board of Trustees of Passaic County College*, 279 A.2d 798 (N.J. 1971) (Projected or anticipated future legislative appropriation for community college-related bonds, though apparently required by challenged statute, is not a present "debt or liability" within the debt limitation clause of the Constitution since one legislature cannot charge succeeding legislatures with the duty of making appropriations).[63] *See cases collected in* AG Opinion No. 04-08 (Apr. 12, 2004) (USDA loan application for Northern Marianas College for new college campus at La Fiesta Mall is not public debt).

The La Fiesta lease is a public undertaking for public purposes. OG rationally intends to generate revenue by charging rents to subtenants in as many as 71 units of the complex. This intent is sufficient to classify the lease arrangement as a self-funding public undertaking.

v. Article X, § 4, second sentence: the "public indebtedness" does not fund the operating expenses of the "Commonwealth government" or its "political subdivisions".

The last Constitutional restriction prohibits authorizing debt for operating expenses of the Government or its political subdivisions. The Office of the Governor is not, of course, a "political subdivision", but it **is** a unit of the Government.

Office leases do not come within this prohibition because they are not debts or indebtedness, per the cases discussed *supra*. Thus, the "operating expenses" prohibition of article X § 4 does not apply.

Assuming, *arguendo*, that the question were open, the courts reject application of the "operating expense" label to currently payable expenditures because to do otherwise would be to "paralyze" government. *Moores v. Springfield*, 64 A.2d 569, 577 (Me. 1949). Labeling as Constitutionally prohibited expenses the daily purchase of goods and services, in which agreements are made to provide payment at a date after receipt of the good or service, would shut down the CNMI Government. The Government's procurement scheme generally requires receipt of goods and services only after a contract is finalized, and, therefore, before payment may be made. Virtually everything that the Government buys is first received, then payable within 30 days – paper clips, telephone service, consulting services, automobile repair, the work of its employees, and, indeed, leases for office space.

The analysis of this Opinion, does not, however, rely on the "assuming arguendo" case. Instead, the overwhelming weight of authority supports the common-sense proposition that a lease is not a "public indebtedness". It is certainly not the type of borrowing contemplated in article X, §4.

3. Policy issue - Defining Government leasing of office space as "public debt" would eliminate a prudent, business-like practice.

As a matter of policy, and from the taxpayers' perspective, the Government should run as an efficient business, securing cost-effective, well-maintained office space, as needed. Classifying office space rental as "public debt" would be bad public policy because it would paralyze this effort. *See, Moores v.*

Springfield, 64 A.2d 569, 577 (Me. 1949) (Holding that an obligation for ongoing services, paid out of current revenues, violates the prohibition against further public debt would lead to an absurd result and "paralyze" government), *cited in* AG Opinion 86-07.[64] The cost per square foot of La Fiesta is a fraction of that for inferior commercial office space in Saipan.

It is better for the Government to secure a rental that it can own at the end of the lease than to end up with "a stack of rent receipts":

> If the Legislature has discovered a lawful method of avoiding the debt limitation of the Constitution of Indiana whereby it can obtain for the State, after a period of years, a State Office Building, instead of a stack of rent receipts, [fn omitted] that is a matter of policy for its determination. This court will not question the wisdom of a statute or the motive which led to its enactment.

Book v. State Office Building Commission, 149 N.E.2d 273, 288-89 (Ind. 1958). The La Fiesta lease offers long-term stability and control over a key public site. The CNMI's alternative would, apparently, be (a) rent space from year to year or (b) build all of the Government's office space with cash in order to own it. But the former strategy would preclude the stability of a long-term lease. And, all other things being equal, the latter strategy would require tax increases to create, in effect, a large savings account for a building program. Such cash payments would require the Government to amass millions of dollars in order to have the required cash on hand in advance of the replacement of old buildings.

Further, requiring a 2/3 vote from each house of the Legislature would eliminate the Government's flexibility to lease office space. It would make negotiation of the leases a lengthy process. For instance the referenced immediate move of DPW's Technical Services Division to La Fiesta, as sewage flooded 70 staff out of their Lower Base offices, would have been unlikely, if not impossible, if 2/3 of the Legislature had to participate in the decision.

Leasing office space can advance multiple government objectives. The State of Pennsylvania has elevated the out-sourcing of office space to an international award-winning level, securing cost-effective, energy-efficient and environmentally advanced facilities through its procurement process. Even though the large State can afford to build its own facilities, Pennsylvania specifies high-efficiency buildings, and puts their construction out to bid in return for the State's long-term leases. http://www.gggc.state.pa.us /gggc/cwp/view.asp?a=3&q=151756

The re-use of La Fiesta, instead of its abandonment, furthers public purposes other than financial efficiency. Re-use is economically desirable because it eliminates a potential eye-sore, adding the activity of office workers and supporting retail traffic to a strategically-located tourist venue; and is cheaper than buying land and building a new facility. Second, it enhances the environment because it reuses developed space, and the utilities and roads infrastructure already developed for it, instead of "paving over" a greenfield site for a new office complex. *See, e.g.*, http://www.smartgrowth.org/ (US geenfield/brownfield development strategies); www.nsl.ethz.ch/index.php/de/ content/download/305/1879/file/ (Paper on European brownfield redevelopment).

Conclusion

Over 100 years of case law have distinguished government leases from Constitutionally-restricted "public debt" and "public indebtedness". The La Fiesta lease comes well within the purview of those cases, and is not subject to the restrictions of the CNMI Constitution, article X, §§ 3 and 4.

ENDNOTES

1.A summary table of the ground leases appears in Agreement on Purchase of the Building with the License to Use the Land, Seller: Hotel Nikko Saipan, Inc., Buyer: Cocos Lagoon Development Corporation (Exhibit B) (English ver.), "Lists of Descriptions Delivered to the Buyer from the Seller", last two pages, table. The years acquired are found in Agreement for Assignment of Leases and Assignment of Agreement on Purchase of the Building and License to the Real Property, "Recitals", pp 1-3.

There are five leases listed. Each lease, according to the Assignment Agreement was procured in the late 1980's:

Lot No.	Dimension (sq m)	Facility	Date lease to Nikko recorded
006B10	8,350	LF III	Jan. 4, 1985
016A01	7,000	LF I, II	Jan. 5, 1989
006B12	4,216	Road	Sep. 28, 1989
025A02	5,988	Parking	Mar. 1, 1988
006B11	12,280	Parking	Jul. 12, 1989.

See also, Letter of Oct. 31, 2005, fr Public Auditor M Sablan to Gov. J.N. Babauta, J.G Adriano, Sen. Pres., and B.R. Fitial, House Spkr, "Transfers and Assignments of La Fiesta Properties Leases", addressing the leases in detail.

2.La Fiesta I welcomes the public with portions of three dolphins, apparently breaching the surface of the concrete walk between the building and the highway.

3.For a comparison of La Fiesta's lease cost, per square foot, or square meter, with the market cost, see endnote 47. Also, Agreement on Purchase of the Building with the License to Use the Land, Seller: Hotel Nikko Saipan, Inc., Buyer: Cocos Lagoon Development Corporation (Exhibit B) (English ver.), "Lists of Descriptions Delivered to the Buyer from the Seller", last two pages, table.

4.Agreement on Purchase of the Building with the License to Use the Land, Seller: Hotel Nikko Saipan, Inc., Buyer: Cocos Lagoon Development Corporation (Exhibit B) (English ver.), Article 4 (4th page), para. 1.

5.OG took assignment from NMC of subtenant leases for the two restaurants: Shopping Center Lease between Northern Marianas College and Hotel Nikko Saipan, Inc., dba Salt & Pepper [¶ 1.21 Restaurant] (Exhibit A); Shopping Center Lease ...Toh-Lee [¶ 1.21 Chinese Restaurant]. On file (Item 12, blue notebook).

6.The termination date/s of the land leases is not apparent in the roughly six inches of documents for the sale to NMC and transfer/assignment to OG. However, the documents for the purchase of the buildings with a license to use the land indicate that the land leases terminate in 2024: Agreement on Purchase of the Building with the License to Use the Land, Seller: Hotel Nikko Saipan, Inc., Buyer: Cocos Lagoon Development Corporation (Exhibit B) (English ver.), Article 2 (3rd page), para. 1: "Term of the License shall be until November 28, 2024, which is the earliest termination date among the lease-hold interests owned by the Seller with respect to the Land (the "Original Lease").. . ."

7.The ownership terms are found in Agreement for Assignment of Leases and Assignment of Agreement on Purchase of the Building and License to the Real Property [between and among, Nikko, Cocos and Northern Mariana [sic] College; Agreement on Purchase of the Building with the License to Use the Land, Seller: Hotel Nikko Saipan, Inc., Buyer: Cocos Lagoon Development Corporation (Exhibit B) (English ver.).

8.See Agreement on Purchase of the Building with the License to Use the Land, Seller: Hotel Nikko Saipan, Inc., Buyer: Cocos Lagoon Development Corporation (Exhibit B) (English ver.), "Lists of Descriptions Delivered to the Buyer from the Seller", last two pages.

9.The transactional documents are on file in the Office of Attorney General. In a detailed internal memorandum James Stump explicated the La Fiesta transactions to date. (Memorandum fr James Stump, AAG, to Pamela Brown, AG and Clyde Lemons Jr., Deputy AG, of 10-18-04)(4 pp). The "springing" interest referred to is the interest in the land leases held by Nikko – the interest would transfer only upon payment of the full amount of the annual installments.

10.Agreement for Assignment of Leases and Assignment of Agreement on Purchase of the Building and License to the Real Property [between and among, Nikko, Cocos [assignors] and Northern Mariana [sic] College [assignee], para. 2, pp 6-7. Each annual payment was due on the last business day of October, starting with October 2004. Id.

11.The insurance required is:

> 7.3. Insurance. During all times in which Assignee has the right to use and occupy the Premises and the buildings, annexes, fixtures, and improvements established on the Premises, and during the pendency of this Agreement, Assignee agrees to obtain and maintain at its own expense a policy of casualty insurance in an amount not less than the amount that Assignee owes to Assignor pursuant to this Agreement and a policy of liability insurance in an amount as agreed to by the parties with Assignor as an additional named insured on said policies. Assignee shall provide Assignor a copy of said insurance policies at their request.

Agreement for Assignment of Leases and Assignment of Agreement on Purchase of the Building and License to the Real Property [between and among, Nikko, Cocos [assignors] and Northern Mariana [sic] College [assignee], para. 7.3, p 11. The Assignor is Nikko and Cocos. Id. Preamble, p 1. The Assignee is NMC. Id. The Premises are the underlying real property described in the land leases. Id., Recitals, p 3.

12.Agreement for Assignment of Leases and Assignment of Agreement on Purchase of the Building and License to the Real Property [between and among, Nikko, Cocos [assignors] and Northern Mariana [sic] College [assignee], para. 10, p 13. The cancellation of the agreement upon NMC's breach was to be effected by a pre-executed "Rescission" placed in the care of an escrow agent. Upon breach and the expiration of 90 days, the escrow agent was to record the rescission. Second Amendment of Agreement for Assignment of Leases and Assignment of Agreement on Purchase of the Building and License to the Real Property Leases Between HNS, CLDC and NMC, attached as Amended Exhibit "4-A" to the First

Amended Escrow Instructions (Dec. 23, 2003).

13.Assignment of Leases (Dec. 2004) between Nikko and OG; Assignment of Contract Rights (Dec. 2004), between OG and NMC; Second Amendment to Escrow Instructions (Dec 2004) between Nikko and OG. The papers incorporated, with changes, Agreement on Purchase of the Building and License to the Real Property [between and among, Nikko, Cocos [assignors] and Northern Mariana [sic] College [assignee].

As with the NMC agreement the cancellation of the agreement upon OG's breach was to be effected by a pre-executed "Rescission" (Second Amended Exhibit "4") placed in the care of an escrow agent. Upon breach and the expiration of 90 days, the escrow agent was to record the rescission. Escrow Instructions, Second Amended Exhibit "5".

14.See endnote 17

15.There were two sets of amendments to the Nikko-Coco-NMC deal, the "First" and the "Second".

The First amendments reflected the inability of the Nikko to provide good title by the August 18, 2003 occupancy date to Lot 006 B12. (First Amendment to Agreement for Assignment of Leases and Assignment of Agreement on Purchase of the Building and License to the Real Property" of 12/23/03) The lot needed to be probated. (Id., p 2 second whereas clause)

NMC and Nikko cured it with NMC's "Notice of Acceptance of Title of Lot 006 B12" on 12/23/03. (Id., Attached Ex. E-2)

The Second Amendment addressed Nikko's inability to provide clear title to Lot 006 B12 by Jan. 1, 2005, due to the failure of probate to complete. (Second Amendment to Agreement for Assignment of Leases and Assignment of Agreement on Purchase of the Building and License to the Real Property") It recited the elimination of the parcel from the deal, and a reduction of the purchase price by $445.600, with related reductions in the balance-of-payments and annual payments figures. (Id., p 3, ¶¶ 2-5.)

A review of the exhibits indicates that Lot 006 B 12 is a road through the facility. Exhibits A and B: Agreement on Purchase of the Building with the License to Use the Land (May 14, 2002) (Japanese 18 pp) (English 10 pp), 8th page, Item1, "Description of the Land, Details of Each Lot, table item 3 col's 3 and 4, "4,216 [sq. m]" and "road", and note "... provided that ...006B12...used as Route No. 3 Highway".

A separate lease simply conveyed Hotel Nikko's rights in Lot 006 B12, such as they were, directly to the Office of the Governor upon payment of $445,600. (Assignment of Lease of Lot 006 B 12).

16.The initial core contract was Agreement of Assignment of Leases and Assignment of Agreement on Purchase of the Building and License to the Real Property, of 8/18/03.

17.The escrow agent is Pacific American Title Insurance & Escrow (CNMI), Inc. ("PATIE"). The documents in the AGO files for PATIE are:

1. Second Amendment to Escrow Instructions (1/7/2005)(7 pp), signed by Juan N. Babauta, Governor, Office of the Governor, Shinji Nakamura, President, Hotel Nikko Saipan, Inc., and Yukihiro Uchimura, VP, Cocos Lagoon Development Corp.;
2. Assignment of Contract Rights (1/7/2005), signed by Kimberly K. Hinds, Chair, Board of Regents, NMC and Juna N. Babauta, Governor, Office of the Governor (3 pp)
3. Agreement for Assignment of Leases and Assignment of Agreement on Purchase of the building

and License to the Real Property (8/17/2003), signed by Vincent J. Seman, Chairman, Board of Regents, NMC, Shinji Nakamura, President, Hotel Nikko, and Yukihiro Uchimura, VP Cocs Lagoon Development Corp.(19 pp);

a. Exhibits A and B: Agreement on Purchase of the Building with the License to Use the Land (May 14, 2002) (Japanese 18 pp) (English 10 pp);
b. Exhibit C: Assignment of Leases (8/18/2003) (8 pp);
c. Exhibit D: Assignment of Agreement on Purchase of the Building and License to the Real Property Leases (8/18/2003) (7 pp), with Ex's A and B attached again;
d. Exhibit E: Notice of Acceptance of Title (for NMC and Cocos) (2 pp)
e. Notice of Acceptance of Premises (for Hotel Nikko, Cocos and NMC) (2 pp)
f. First Amendment to Agreement for Assignment of Leases and Assignment of Agreement on Purchase of the Building and License to the Real Property (12/23/2003)(8 pp)
g. Assignment of Leases, Amended Exhibit C-1 (Dec. 23, 2003) (6 pp);
h. Assignment of Lease of Lot 006 B 12, Amended Exhibit C-2 (Dec. 23, 2003) (5 pp);
i. Notice of Acceptance of Title, Amended Exhibit E-1 (Dec. 23, 2003) (2 pp);
j. Notice of Acceptance of Title, Amended Exhibit E-2 (Dec. 23, 2003) (2 pp)
k. Assignment of Leases, Second Amended Exhibit C-1 (Dec., 2004) (7 pp);
l. Assignment of Lease of Lot 006 B 12, Second Amended Exhibit C-2 (Dec., 2004) (5 pp);
m. Assignment of Agreement on Purchase of the Building and License to the Real Property Leases (Dec., 2004), Amended Exhibit D (6 pp);
n. Consent to Assignment, by Shinji Nakamura, President, Hotel Nikko Saipan, Inc., and Yukihiro Uchimura, VP, Cocos Lagoon Development Corporation (1/7/2005) (2 pp).

18.E.g., "PSS Accepts Governor's La Fiesta Offer", Saipan Tribune 5/13/05.

19.Saipan Tribune, Local, "Flooding prompts TSD's evacuation", by Marconi Calindas (Tuesday, July 26, 2005) (www.saipantribune.com).

20.Facts verified with DPW Acting Director Richard Cody on 12/22/05.

21.The figures should be taken to be approximate. The source for the lease information is a rough Excel-based report of the leases that has been reviewed during the last two years pursuant to the Attorney General's statutory responsibilities. The report was kept for reasons other than supporting the stated proposition as to number of leases and aggregate annual cost, so that the numbers must be viewed as rough. The report is on file as "d emery lease file adjusted by ajb.xls".

While the Department of Finance's Division of Procurement & Supply has developed a form CNMI lease for office space (on file), there is no formal procedure, guideline or manual for leasing office space apart from the procurement regulations. (Phone call fr Alan Barak to Robert Florian, Div. of Procurement & Supply, 8/8/05.)

22.In the research for this memorandum, the writer found ample authority for the proposition that municipalities could acquire real estate, with or without specific statutory authority. However there is very little authority regarding the power of states to do so.

Nonetheless, the undersigned is aware from personal experience that the states of Michigan, Illinois, Ohio, Massachusetts, Pennsylvania, California, New York and Washington lease office space. The leased facilities of these states also include subtenants which are private entities, often, but not always, private, service businesses.

The likely explanation for so little case law is that the proposition is an obvious one. The nature of the States – initially sovereign entities – renders the issue non-controversial. As sovereigns there is no question that they can own, lease or license real estate. The alternative explanation – that the "public debt" constitutional restrictions clearly prohibit such arrangements – is not credible in the face of so many leasing arrangements.

23.Sections 1 and 14 of Article III of the Constitution make the Governor the head of the Executive Branch, and Section 15 empowers him to reorganize the Executive:

> Section 1: Executive Power. The executive power of the Commonwealth shall be vested in a governor who shall be responsible for the faithful execution of the laws.
>
> . . . .
>
> Section 14: Heads of Executive Departments. Each principal department shall be under the supervision of the governor and, unless otherwise provided by law, shall be headed by a single executive. The governor shall appoint the heads of executive departments with the advice and consent of the senate. The governor may remove the heads of executive departments. The governor may at any time require information in writing or otherwise from the head of any administrative department, office or agency of the Commonwealth.
>
> Section 15: Executive Branch Departments. Executive branch offices, agencies and instrumentalities of the Commonwealth government and their respective functions and duties shall be allocated by law among and within not more than fifteen principal departments so as to group them so far as practicable according to major purposes. . Regulatory, quasi-judicial and temporary agencies need not be a part of a principal department. The functions and duties of the principal departments and of other agencies of the Commonwealth shall be provided by law. The legislature may reallocate offices, agencies and instrumentalities among the principal departments and may change their functions and duties. **The governor may make changes in the allocation of offices, agencies and instrumentalities and in their functions and duties that are necessary for efficient administration. If these changes affect existing law, they shall be set forth in executive orders** which shall be submitted to the legislature and shall become effective sixty days after submission, unless specifically modified or disapproved by a majority of the members of each house of the legislature.

N.M.I. Const. art. III, §§ 1, 14, 15. (Emphasis added)

24.The Office of the Governor was created by PL 1-8:

> § 2051. Office of the Governor.
>
> There is in the Commonwealth government the office of the Governor, composed of the Governor, the Governor's Council and persons appointed by the Governor to the following positions:
>
> (a) A Special Assistant for Administration;
> (b) A Special Assistant for Planning and Budgeting;
> (c) A Special Assistant for Programs and Legislative Review;
> (d) An Executive Assistant for Carolinian Affairs;
> (e) A Public Information and Protocol Officer; and

(f) A private secretary.

§ 2052. Office of the Governor: Staff.

The Governor may employ other staff as required to assist the office of the Governor in performing its functions, subject to budgetary appropriation. The staff shall be within the civil service.

§ 2053. Office of the Governor: Duties.

The Governor has the powers and duties as provided in the Commonwealth Constitution or as provided by law. In addition, the Governor shall receive official visitors and conduct official ceremonies of the Commonwealth. These duties and responsibilities may be delegated to the Lieutenant Governor or to elected or appointed officials of the Commonwealth.

1 CMC §§ 2051-53. E.O. 94-3 and PL 11-47 added staff to the Office and converted staff to the Excepted Service. See next endnote.

25.The Comment to 1 CMC § 2001, addresses the Governor's reorganization of his office, in Executive Order 94-3:

> Many Commonwealth Code sections have effectively been revised by Executive Order 94-3, the "Second Reorganization Plan of 1994" (effective August 23, 1994), which reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. The Governor's reorganization authority derives from N.M.I. Const. art. III, § 15. . . .

1 CMC § 2001, Comment. The "Office of the Governor" is, for the most part assumed, rather than designated in the reorganization. However, it is mentioned as an agency in which all employees are subject to the Excepted Service. E.O. 94-3 § 509(b)(1). See also PL 11-47 (return of certain positions to Office of the Governor).

26.The Court in Romisher held that the MPLC lacked the Constitutional authority to receive funds for, and negotiate a deal regarding, **private** interests in the US military's acquisition of Tinian real estate. *Romisher v. MPLC*, 1 CR at 860 (Tr. Ct. 1983) (preliminary injunction), upheld in 1 CR 873, 883 n 3 (1983) (permanent injunction). MPLC's power went to the disposition of public lands, held the Court. The Executive was to negotiate the value of the private interests, disburse the funds and acquire title in the sale.

27.The instant Opinion does not address the wisdom of acquiring the La Fiesta property. The courts may be required to give great deference to the Executive's real estate acquisitions, however. The threshold standard for review of the Government's land transactions may have been addressed in a challenge to the leasing of CNMI lands to a hotel development, the last 5-hectare site fronting the Lagoon in the SW region of the island. The leasing of a large piece of public land "without more" in the way of allegations of misconduct was not sufficient to give rise to an action against the MPLC for breach of its duties. Govendo v. MPLC, 2 N.M.I 482, 493 at n 7 (1991).

28.CNMI PR 1-105 (Application of Regulations) Nor do the Regulations apply to employment contracts or contracts for personal services under the excepted service. Id.

29.CNMI PR 1-201 para. 15 (Definitions)

30.2001 Com. Reg. Vol. 23 No. 05 and 2000 Com. Reg. Vol. 22, No. 08.

31.CNMI PR 1-101 (Purposes).

32.CNMI PR 2-104 (Contract Review, Processing and Oversight)

33.The term "*infra*" is a Latin term meaning look within, or later, in the document you are reading. Another such term, "*supra*", means "above" and is used to indicate that the reader should look before, or above, in the instant document.

"Instant" is also a legalism intended to distinguish between the item presently being discussed, like "the instant Opinion". The intent is to avoid confusion with an item that may have been referred to in a previous sentence or paragraph, like "this Opinion" meaning, for example, the June 1986 Opinion under discussion rather than the one published today.

These terms are used to avoid ambiguity, because courts and agencies often discuss the decision-maker "below" them, whom they are reviewing, or the decision-maker "above", typically a court reviewing their decision.

The term "[sic]" means that we copied the text as we found it, and that any apparent errors are in the original.

34.Black's says that a general obligation bond is "A long-term, interest-bearing debt instrument issued by a corporation or governmental entity, usu. to provide for a particular financial need; esp., such an instrument in which the debt is secured by a lien on the issuer's property. Cf. DEBENTURE." It further quotes a practice aid:

> "Typically debt securities are notes, debentures, and bonds. Technically a 'debenture' is an unsecured corporate obligation while a 'bond' is secured by a lien or mortgage on corporate property. However, the word 'bond' is often used indiscriminately to cover both bonds and debentures .... A 'bond' is a long term debt security while a 'note' is usually a shorter term obligation. Bonds are historically bearer instruments, negotiable by delivery, issued in multiples of $1,000 with interest payments represented by coupons that are periodically clipped and submitted for payment." Robert W. Hamilton, The Law of Corporations in a Nutshell 128 (3d ed. 1991).

Black's Law Dictionary (8th ed. 2004).

35.The Alaska State Energy Authority has issued state moral obligation funds, secured in the first instance by the proceeds of the funded projects, and in the second by a capital reserve fund; all authorized by enabling legislation which states that replenishment of the capital reserve fund is explicitly NOT a general obligation or responsibility of the State. (Id, p 3 of 66) The Energy Authority obtained a voluntary legislative refinancing of the $210 million "state agency debt", short term notes, when the lack of a power purchase agreement for the Four Dam Pool made revenue bonds unsaleable and there was no state responsibility to cover them. (Id. p 4 of 66)

36.1 CMC § 2153(h): Attorney General Duties

> The Attorney General shall have the powers and duties as provided in the Commonwealth

> Constitution. In addition, the Attorney General shall have the following powers and duties:
>
> . . . .
>
> (h) To act, upon request, as counsel to all departments, agencies and instrumentalities of the Commonwealth, including public corporations, except the Marianas Public Land Trust. Subject to availability of funds by budgetary appropriation, separate legal counsel may be retained for particular matters.

1 CMC § 2153(h).

37.1 CMC § 2153(g).

38.Faced with two conflicting opinions of the CNMI Attorney General, the Supreme Court, responding to a certified question from the U.S. District Court, rejected the earlier, four-sentence-long opinion containing "ninety words with no reference to case law or legislative history" as "unpersuasive" in favor of the Attorney General's thoroughly research brief. Borja (Mayor of Tinian), 2003 MP ¶ 21.

39.Castro v. Hotel Nikko Saipan, Inc., 4 N.M.I. 268, 275 (1995), citing 7 CMC § 3401.

40.In his concurring opinion, Justice Kennedy points out that the conclusion of public use for the controverted property is strengthened by New London's acquisition of the redevelopment parcels **before** any developer or particular tenant was determined. *Kelo*, 125 S.Ct. at 2669-70. Similarly, the Executive acquired La Fiesta **before** identifying an anchor tenant. Further, La Fiesta's anchor tenant has proven to be a public corporation, CUC.

41.The Court held that as long as the means were rational, the wisdom of the particular scheme chosen to accomplish the public purpose, in this case the efficacy of the land redistribution program, was not the province of the federal courts. Midkiff, 467 U.S. at 242-43; 104 S.Ct. 2330.

42.The public debt issue regarding the related La Fiesta down payment of $ 4 million has been settled. AG Opinion 04-08, determining that the USDA Loan Application from the Board of Regents of the Northern Marianas College would not be a public debt because it did not require the full faith and credit commitment of CNMI Government and because the College is a public corporation with explicit statutory power to borrow. The Opinion addressed both a prospective $10 million USDA loan and $3.92 million of local funds to purchase, design, construct and equip a new college campus at the Mall. Id, p 5. Apparently the "local funds" were from the $4 million federal tax relief grant.

43.The US Supreme Court observed that such debt limitations could not apply to the operating contracts of a municipality:

> The obvious purpose of limitations of this kind in municipal charters is to prevent the improvident contracting of debts for other than the ordinary current expenses of the municipality. It certainly has no reference to debts incurred for the salaries of municipal officers, members of the fire and police departments, school teachers, or other salaried employees, to whom the city necessarily becomes indebted in the ordinary conduct of municipal affairs, and for the discharge of which money is annually raised by taxation. For all purposes necessary to the exercise of their corporate powers they are at liberty to make contracts, regardless of the statutory limitation, provided, at least, that the amount to be raised each year does not exceed the indebtedness allowed by the charter. Among these purposes is the prevention of fires, the purchase of fire engines, the pay of firemen,

and the supply of water by the payment of annual rentals therefor.

City of Walla Walla v. Walla Walla Water Co., 172 U.S. 1, 20-21; 19 Sup. Ct. 77 (1898).

44.The LRC"s "Constitution Annotated" discusses the *Analysis*, its stated purpose of explaining each section of the Constitution, and its limited use as authority:

Courts have cited the *Analysis* in several decisions. According to the *Analysis*' brief preface:

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

Id. at 1. The 1976 Analysis was approved by the Convention, and published in a small, blue paperback booklet, 215 pages in length. The *Analysis* is mentioned in article III, § 23(b) (directing the resident executive for indigenous affairs to "coordinate the translation and distribution of such official documents as the Constitution of the Northern Mariana Islands and the Covenant and analysis thereof").

Comments to many sections in this publication include quotations from the *Analysis*. It is important to note that while courts have often cited the Analysis in support of rulings, they are not obligated to follow its interpretation of Constitutional provisions. In short, "the Analysis does not have the force law." *Camacho v. Civil Service Commission*, 666 F.2d 1257, 1264 (9th Cir. 1982) (rejecting *Analysis* interpretation of article III, § 16). According to a Commonwealth Trial Court decision:

> The Analysis is not the law. It was not voted on by the electorate. At most, it is an attempt to clarify what the law is as stated in the Constitution. To use the Analysis as authority to overcome the clear language of the Constitution is not permissible.

Camacho v. Camacho, 1 CR 620, 628-29 (Trial Ct. 1983)(rejecting *Analysis*' interpretation of schedule on Transitional Matters. § 4).

Comm.. Law Rev. Com'n, Constitution of the Commonwealth of the Northern Mariana Islands, annotated, 1st ed. (June 1995), p xiii-xiv. (Fn's omitted)

45.The Pennsylvania Supreme Court reaffirmed the principal of Kelley v. Earle, holding that the revenue bonds of the Pennsylvania Finance Agency were not Constitutional debt of the state, Johnson v. Pennsylvania Housing Finance Agency, 309 A.2d 528 (Pa. 1973). The Philadelphia Court of Common Pleas turned away a challenge to the City's new stadium, holding that the City's long term lease with a stadium authority was not Constitutional debt because (1) the obligation was specifically limited to the government's available current revenues, and (2) the Authority and its bondholders could not circumvent this limitation by subjecting the city's assets to sale or execution on default. Consumers Educ. & Protective Ass'n v. City of Philadelphia, 2001 WL 1855057 (Pa. Com.Pl. 2001). Reprising Pennsylvania law, which is cited within the overwhelming majority of cases, the Court said:

Philadelphia sports fans are likely familiar with a large green animal that appears at

> Veterans Stadium during baseball games. He tries to instill hope and a sense of well-being in loyal fans jaded by millionaire players, millionaire owners who field substandard teams in one of the nation's biggest media markets, and governments that subsidize private sports enterprises. That animal has feathers, a tail and an oversized proboscis. He waddles. Nonetheless, fans would agree that --whatever he is-- he is not a duck. And so it is with Philadelphia's stadium deal. It is not a debt.

Id. at fn 5.

46.The South Dakota court cited other States' similar decisions:

> . . . .The proposed leases to be entered into between the Building Authority and the participating agencies of the State will provide for the payment of annual rentals from available appropriations and will be automatically renewed if an appropriation for such purpose is made. They would not have the effect of creating an immediate debt or liability in the aggregate amounts of the future rents. The general rule is that there is no obligation to pay until rent is due under the terms of a lease. 1 Tiffany, Landlord & Tenant, s 166; Gardiner v. William Butler & Co., 245 U.S. 603, 38 S.Ct. 214, 62 L.Ed. 505; Ambrozich v. City of Eveleth, 200 Minn. 473, 274 N.W. 635, 112 A.L.R. 269. This common law concept has been followed in cases dealing with debt limitation provisions. City of Walla Walla v. Walla Walla Water Co., 172 U.S. 1, 19 S.Ct. 77, 43 L.Ed. 341; State ex rel. LaFollette v. Reuter, 33 Wis.2d 384, 147 N.W.2d 304; Protsman v. Jefferson-Craig Consol. School Corp., 231 Ind. 527, 109 N.E.2d 889; Clayton v. Kervick, 52 N.J. 138, 244 A.2d 281; McArthur v. Smallwood, 225 Ark. 328, 281 S.W.2d 428; Walinske v. Detroit-Wayne Joint Bldg. Authority, 325 Mich. 562, 39 N.W.2d 73.
>
> The statute under consideration meticulously provides that leases may be made subject to available appropriations and any revenues derived from the operation of leased property. . . .

McFarland v. Barron, 164 N.W.2d 607, 609.

47.There are two rough-cut ways to evaluate the cost of the 20-year lease, recognizing that retail leases are typically expressed as a dollar/sq ft cost/year. In either calculation, the cost of the space is substantially below market rates.

The La Fiesta buildings were provided to OG in return for a $3.5 million down payment, or an amortization of $175,000/year (non-discounted). With the annual lease payment of $200,000 the annual "rent" may thus be viewed as $375,000.

In order to calculate the rent per square foot, it is necessary to determine leasable square footage. There are 10 -11 sq ft./sq m. These calculations use 10 sq. ft. per sq. m. There are 38,000 sq meters of real estate to the complex, or, roughly, 380,000 sq, ft. Of that amount, there are 8,700 sq. m. of rentable space in 71 units, or 87,000 sq. ft. of rentable space. See endnote 1. This writer called the realtor named in the lease documents for his figures. (Phone call of 8/8/05.) The realtor said that the gross building area measured 165,679 square feet; and that total leasable space, exclusive of common areas was determined to be 93,655 sq. ft.

Evaluation 1: The total site rents for $375,000/380,000 sq ft/year, or roughly $1.00/sq ft/year.
Evaluation 2: The 71 leasable units: $375,000/ 87,000 sq ft/year, or roughly $4.20/sq ft/year
Evaluation 3: The realtor's figure: $375,000/94,000 sq ft/year, or roughly $4/sq ft/year.

Market rates in Saipan range from $12.00 - $15.00/sq ft/year for fair-to-good office space – depending on location, quality of construction, infrastructure and management. (Source: phone call with realtor) This writer did not verify the figures with an appraiser; but they seem reasonable given this writer's experience in small real estate markets in the Eastern US.

Thus, in any one of the three cases, the rent calculates to be substantially lower than double digit market rates for lesser quality real estate.

48.Practising Law Institute, Equipment Leasing - Leveraged Leasing, Stephen A. Edwards, PLIREF-EQUIP s 26:4.3 (2002), p 26-21 n 98.

49.Edwards describes this important case in the context of three judicial theories removing government contracts from the scope of "public debt":

> The predominant theoretical basis for excluding the obligation to make payments under a lease containing a non-appropriation or an annual appropriation clause from the definition of "debt" is the "current expense" theory. [FN93] Under that theory, a municipal lease obligation subject to such a clause is not deemed to be debt because the funds used to make the annual rental payments are derived only from the current fiscal year's budget (as would be the case with funds used to pay for any other current expense item, such as salaries or maintenance expenses). [FN94]
>
> Other theories are sometimes used to justify this form of financing. The "continuing contract" theory maintains that the obligation to make the periodic rental payments does not mature until the use of the property has been enjoyed and therefore creates no obligation at the outset of the lease for the aggregate payments. [FN95] Under the related "contingent liability" theory, debt does not include contingent municipal liabilities until the liability is fixed; a lease obligation, which by its terms is contingent upon annual appropriation, is therefore considered "debt" only as to the amount of the current year's appropriation. [FN96] These theories differ from the current expense theory by recognizing that a small amount of debt is created during each of the years making up the term of the lease-purchase agreement. [FN97]
>
> **One of the leading cases to use the "current liability" theory was City of Los Angeles v. Offner [122 P.2d 14(1942)].** [FN98] In that case, the California Supreme Court analyzed a lease-sublease arrangement between the City of Los Angeles and a private contractor under which the City agreed to sublease property from the contractor with options to purchase the property at various intervals during the term of the sublease at prevailing fair market prices. The court ruled that the arrangement gave rise to indebtedness only to the extent of the payment due in the current year. The court focused on the fact that the rental payments were at fair market value, which is in contrast to the rental payments in the standard lease-purchase agreement discussed in this chapter. The court stated that, if the designation of the agreement as a "'lease' is a subterfuge and it is actually a conditional sales contract in which the 'rentals' are installment payments on the purchase price for the aggregate of which an immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void." [FN99]
>
> . . . .

Practising Law Institute, Equipment Leasing - Leveraged Leasing, Stephen A. Edwards, PLIREF-EQUIP s

26:4.3 (2002), p 26-20-21 n 98. (Emphasis added)

50.Edwards explains that the California courts have subsequently relaxed the Offner criteria, so that a lease with an automatic reverter to the "lessee" will still be held NOT to constitute public debt. The La Fiesta contract transfers the buildings and fixtures to the Office of the Governor at the end of the contract. Here is Edwards' view:

> The concept of abatement leases evolved from subsequent cases in California, which undercut the most restrictive aspects of the Offner decision. For example, in Dean v. Kuchel, [FN100] another case decided by the Supreme Court of California, the leased property automatically reverted to the municipal lessee at the end of the lease term. The court decided that the lease payments were for the month-to-month use of the property and that the lease was therefore not subject to debt limitations. In so holding, the court failed to distinguish between the true lease in Offner (where the lessee had an option to purchase at fair market value at the end of the lease) and the financing lease in the transaction it was analyzing (where the lessee automatically obtained title at the end of the lease). [FN101] Abatement leases generally have the following characteristics: (1) the leased property automatically vests in the municipal lessee at the end of the lease term; and (2) if the leased property is not available for use by the municipal lessee, the rent due from the municipal lessee, will be abated in proportion to the percentage of the property that is unfit for such use. [FN102]

Id. Practising Law Institute, Equipment Leasing - Leveraged Leasing, Stephen A. Edwards, PLIREF-EQUIP s 26:4.3 (2002), p 26-22 n 100-02. The La Fiesta contract also provides, however, that the breach by the Office of the Governor of its payment obligation will, upon 90 days' notice, produce the escrow agent's recording a rescission of the deal.

51.Gloucester County's landfill was no longer serviceable and the County could not afford to build a new one. So it put out an RFP for the bidder to lease County land, build a facility, pay rent, charge for waste disposal services annually, and manage closure of the facility. The Virginia legislature had provided counties with broad power to contract for waste management services, but specifically prohibited using their full faith and credit to support the contracts.

In the instant situation, the Government was arguably short of quality office space. In particular, its wholly-owned municipal utility is in a financial crisis and requires substantial office space. Further, CUC required office space at a time of financial crisis. And most recently, the DPW's entire technical staff was evicted from its Lower Base offices by a sewage backup.

Per the standards articulated, supra, it is rational for the Executive to acquire a fully functional, available office complex for these purposes. Whether the decision is the "best" decision which a reviewing court itself would make is not relevant, as the courts defer to a decision which is rational.

52.The Nevada Court provides a short history of constitutional debt limitations:

> As explained in Constitutionality of Chapter 280, Oregon Laws 1975, 276 Or. 135, 554 P.2d 126, 128-29 (1976), constitutional debt limitations were enacted primarily as a response to heavy borrowing by many states prior to 1840. These states financed internal and banking improvements and, after the depression of 1837, many defaulted on their obligations. States entering the union after 1840 (including Nevada) invariably included debt limitations in their constitutions. Such control over debt creation precluded carelessly imposed tax liabilities. See Robert Bowmar, The Anachronism Called Debt

Limitation, 52 Iowa L.Rev. 863, 873 (1967).

Business Computer Rentals, 953 P.2d at 14, fn 1.

53.Practising Law Institute, Equipment Leasing - Leveraged Leasing, Stephen A. Edwards, PLIREF-EQUIP s 26:4.3 (2002), p 26-23, Summary.

54.See endnote 64 for an extended quote from the Moores case.

55.The Michigan Court quoted the noted Constitutional scholar:

> This rule of "common understanding" has been described by Justice COOLEY in this way: "A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.' " [Traverse City School Dist. v. Attorney General, 384 Mich. 390, 405, 185 N.W.2d 9 (1971) (emphasis in original), quoting 1 Cooley, Constitutional Limitations (6th ed.), p. 81.]

Studier v. Michigan Public School Employees' Retirement Bd., 698 N.W.2d 350, 357 (Mich.2005) quoting 1 Cooley, Constitutional Limitations (6th ed., 1998), p 81.

56."Incur" appears in these other Constitutional articles and sections:

- art. X § 6, "Liquidation of deficits": "If an operating deficit **is incurred** in future fiscal years, **the governmen**t shall retire the deficit during the second consecutive fiscal year following the year."
- art. XI § 6.e, "Marianas public land trust": "e) The trustees shall make an annual written report to the people of the Commonwealth accounting for the revenues received and expenses **incurred by the trust** and describing the investments and other transactions authorized by the trustees."

57.The forms of "authorize" appear in these other articles and sections of the Constitution:

- authorize:
  - art. XI, § 5.e: "Fundamental policies" of Marianas Public Land Corporation: "The Marianas Public Land Corporation shall follow certain fundamental policies in the performance of its responsibilities. . . .The corporation may not transfer an interest, and may prohibit the erection of any permanent structure, in public lands located within one hundred fifty feet of the high water mark of a sandy beach, except that **the corporation** may **authorize** construction of facilities for public purposes."
- authorized:
  - art. II Legislative Branch, §14.c, "Organization and Procedure": "c) The meetings of the legislature and its committees shall be public except that each house of the legislature or

a legislative committee may meet in executive session if **authorized by** the affirmative vote of two-thirds of the members of **the house**.

- art. II!. Executive Branch, § 22.c, "Special Assistant for Women's Affairs": "c) The special assistant may **be authorized [by...unclear]** to hire staff and shall promulgate rules and regulations in carrying out the responsibilities and duties of the office."
- art. II!. Executive Branch, § 23 Resident executive for indigenous affairs: "d) The resident executive **is authorized [by this Constitution]** to hire staff and promulgate rules and regulations in carrying out the duties and responsibilities of the office."
- art. XI, § 5.b: "Fundamental policies" of Marianas Public Land Corporation: "b)The corporation may not transfer a freehold interest in public lands for twenty years after the effective date of this Constitution, except for homesteads as provided under section 5(a), or for use for a public purpose by another agency of government, or for land exchanges to accomplish a public purpose **as authorized by law**."
- art. XI, § 6.e: "Marianas Public Land Trust": "e) The trustees shall make an annual written report to the people of the Commonwealth accounting for the revenues received and expenses incurred by the trust and describing the investments and other transactions **authorized by the trustees**."
- art XX, § 1: "Civil Service Commission; Civil Service": "Exemption from the civil service shall be as provided by law, and the commission shall be the sole authority **authorized by law** to exempt positions from civil service classifications."

- authorizes:

  - art. XI, § 6.c: "Marianas Public Land Trust": "c) If the **legislature authorizes** a Marianas development bank and provides that all United States economic assistance for economic development loans provided under Covenant § 702(c), shall be deposited as capital in that bank, the trust shall use. . . ."

58.Rulemaking is a delegated, quasi-legislative function carried out by the Executive. Federal Maritime Com'n v. South Carolina State Ports Authority, 535 U.S. 743, 774-75; 122 S.Ct. 1864, 1882-83 (2002).

59.Rate-setting has long been held to be a legislative function, delegated to the Executive. St. Joseph Stockyards Co. v. United States, 298 U.S. 38, 50; 56 S.Ct. 720, 725; 80 L.Ed. 1033 (1936).

60."While the legislature may authorize the courts to review legislative elections and determine their outcomes, nothing requires it to grant courts such jurisdiction." Nabors v. Manglona, 829 F.2d 902 (9th Cir. 1987).

61.The Mafnas court's decision was "The absence of any language excluding such interests from the restriction in Article XII leads us to conclude that they are within the restriction." Aldan-Pierce v. Mafnas, 2 N.M.I. 122 (1991, at n 24.

The principle of "expressio unius est exclusio alterius" was addressed in the legislative context as the existence of express exceptions to a rule gives rise to a presumption that no other exceptions were intended. *Marianas Visitors Bureau* v. Commonwealth of the Northern Mariana Islands, Civil Action No. 94-0516 (Super. Ct. 1994) ("MVB"). The case cited Andrus v. Glover Constr. Co., 100 S. Ct. 1905, 1910 (1980); Norman J. Singer, 2A Sutherland Statutory Construction § 47.11 (5th ed. 1993). MVB, p 28. *See also E-Tours Inc. v. Marianas Vistors Authority*, Civ. No. 00-0078D, p 7 (Super. Ct. 2000).

62.For instance, the first years may present revenue challenges, as La Fiesta III's principal tenant is a public corporation, CUC, that is in such financial difficulty that it arguably cannot make lease payments to anyone. The other public La Fiesta tenant, DPW's TSD, may not have budgeted for "rent", because it began the fiscal year in a CNMI-owned building that is now condemned. It may be that lease payments may have to come in part from appropriated funds.

But this lack of revenues is not fatal to a project. The cases cited show that the government is not required to predict with certainty its ability to fund lease, or other, payments solely from revenues.

63.The New Jersey Court resolved the apparent contradiction in the enabling act by limiting the State's obligation to its voluntary supplemental appropriations:

> As will be seen, the statute contains an apparent internal inconsistency which must be resolved. It purports on the one hand to provide for the payment of county bonds by means of State appropriations, while on the other hand it disavows any obligation on the part of the State that can be characterized as a debt or liability. . . . Although there is doubtless a strong likelihood that payment of the bonds will in fact be met by legislative appropriations, we find nothing in the statute compelling the State to make such payments as a matter of law. Hence, both issuing counties and purchasing bondholders are on notice that the faith and credit of the State will not be pledged in respect of bonds issued pursuant to this enactment, but that payment on the part of the State will be dependent upon appropriations provided from time to time. Lacking such appropriations, recourse can be had only against the county which will have no recourse over against the State.

Holster, 279 A.2d 798, at 801. The Court added that "here, any future appropriations made by the State in payment of bonds issued pursuant to the County College Bond Act would be 'inherently voluntary subsidiary measure(s)' to meet a foreseeable fiscal need ". Id. at 804.

Holster in effect overruled a 1953 New Jersey split decision holding that bonds for the State's office authority were "public debt". The unanimous Holster Court summarized the earlier case without expressly contradicting it:

> In McCutcheon v. State Building Authority, 13 N.J. 46, 97 A.2d 663 (1953), the court was called upon to pass upon the validity of statutes creating the State Building Authority and authorizing it to acquire and operate various facilities designed to house state officers and other personnel. The Authority was given the right to issue bonds, the proceeds of which were to be used to construct the required buildings, which were then to be leased to the State at rentals sufficient to pay off the bonds over a designated span of years. The legislation contained a specific provision that the bonds were not to be deemed a debt or liability of the State nor a pledge of its faith and credit. A majority of the court found the arrangement to be in violation of the debt limitation clause of the Constitution. It was said that the Authority was an instrumentality of the State designed to construct and make available facilities which the State could not itself have erected and paid for with the proceeds of its own bonds, except upon compliance with the debt limitation clause, and that this therefore constituted an impermissible contrivance to avoid the constitutional limitation upon state debt. It was pointed out that the rents paid were intended to be sufficient in amount to meet all operating expenses incident to maintaining the structures and to redeem the bonds upon maturity, while meeting debt service requirements during the interim. Thus the arrangement was held to be in reality a series of purchases rather than leases, since the State could acquire title to the buildings, upon the bonds being paid, by simply dissolving the Authority. In essence the court concluded that the leases

> between the State and the Authority, while purporting to call for annual rental payments, in fact obligated the making of annual appropriations to be applied upon the purchase price, the entire sum of which became a 'liability' at the time of entering into the lease. As so viewed, the scheme, in the eyes of the majority, ran afoul of the debt limitation clause.
>
> Justice Jacobs, speaking in dissent for himself and Justice Brennan, took sharp issue with the views of the majority. He disputed the conclusion that rentals falling due in future years should be regarded as present debts or liabilities and argued that only upon entering into a lease was any liability upon the part of the State undertaken and that it must then be ascertained from the lease itself and not from the statutes creating the Authority. In the view of the dissenting justices, there was no constitutional insufficiency in the statutory arrangements since no present debt or liability came into being as a result of the act under scrutiny. . . .
>
> . . . .
>
> Most recently, in Clayton v. Kervick, 52 N.J. 138, 244 A.2d 281 (1968), this Court was called upon to consider whether the debt limitation clause was in any way offended by the statute creating . . . .an Authority empowered to construct projects (college or other educational buildings) for participating public and private educational institutions, the cost to be repaid in the form of rents or, in some cases, the repayment of loans. . . .The arrangement was very similar to that in McCutcheon, but here the court went the other way (one justice dissenting in part) and upheld the validity of the enactment. The court substantially restated, with approval, the dissenting opinion in McCutcheon. Although the majority opinion in McCutcheon was not expressly overruled, it obviously retains little vitality today.

Holster, 279 A.2d 798, at 802-03, 805. The instant issue is similar to that which Holster resolved. While La Fiesta's lessor may wish that the Office of the Governor backstops the annual lease payment with appropriated funds, it is on notice that the full faith and credit are NOT pledged, and recourse for nonpayment of rent may be had only within the terms of the lease. There is, thus, no "public debt" or "public indebtedness".

64.The Maine Supreme Court recognized the "absurdity" of a strict reading of the term "debt":

> If the words, debt and liability, be interpreted according to their most inclusive signification, one is forced to admit that a liability incurred by a town for its 'ordinary current expenses to be paid for out of its available current revenue' is a debt or liability of the town. This would be true no matter how brief the lapse of time between the incurring of the liability and its discharge, and whether or not there were cash on hand for its discharge. To avoid creation of such debts or liabilities the transactions of towns, indebted beyond their allowable limit, would have to be conducted on an absolutely cash basis. Goods purchased would have to be paid for either in advance or contemporaneously with their delivery; services, including labor, would have to be paid for in advance. Such payments would have to be made in cash. Checks and orders could not be used for they in turn would constitute liabilities. Town officers could not draw them, for they can only draw legal orders. Disbursing officers could not pay them, for they can only honor legal orders. Such a narrow interpretation of the words debt or liability in statutes or constitutions imposing a debt limit upon municipal corporations would paralyze the legal functioning of such of them as might have reached or exceeded their existing debt limits. Such a result would be absurd, and unless absolutely required, the words

> debt or liability in debt limit statutes or constitutions should not be so interpreted as to bring about such a result.

Moores v. Springfield, 64 A.2d 569, 577 (Me. 1949). In rejecting a town's attempt to defend against a debt by claiming that its agreement therefor had violated the prohibition against additional public debt, the Court applied a "rule of reconciliation" to hold that paying an obligation for services out of an expected revenue stream did not violate the restrictions on public debt:

> To maintain the burden of proof which is upon it, the defendant has to go further and prove by a fair preponderance of the evidence that the particular obligation for a current expense was not incurred to be paid out of revenues currently available therefor. To do this, the town must establish that there were no current revenues available for the payment of the current expense at the time it was incurred and this, whether such unavailability of current revenues be due to lack of appropriation therefor, prior exhaustion of current revenues or otherwise.

Moores, 64 A.2d at 578.

Commonwealth of the Northern Mariana Islands

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ATTORNEY GENERAL OPINION No. 05-20

To: **Governor Juan N. Babauta**

From: **Alan J. Barak, Asst. AG, Civil Division**
Through: **Pam Brown, Attorney General**
Date: **12/28/05**

Re: **AG proposed regulations on safe haven for child victims of international sex trafficking**

ISSUE AND SHORT ANSWER

Question

You have asked me to address the meaning of the term "foreign relations" in the Covenant, section 104, within the context of proposed CNMI immigration regulations on the CNMI providing a safe haven for international victims of human trafficking and forced prostitution, particularly children who are ethnic Vietnamese living in the Kingdom of Cambodia. The proposed regulation, §706(S), "Safe Haven Entry Permit", would permit an alien to legally enter and remain, in a non-working capacity, in the CNMI for limited, but renewable, periods under specified terms and conditions.

The claim has been made that the foreign relations provisions of the Covenant prohibit the CNMI from adopting immigration procedures to give a safe haven to these children. Is this correct?

Short Answer

No. There is no prohibition against the CNMI's immigration regulations for this matter in the Covenant, or therefore, in the CNMI's relationship with the United States.

To the contrary, the Commonwealth controls its own immigration; the US cannot interfere with the CNMI's giving these refugees a safe haven. The inquiry is, thus, about the immigration power given by the Covenant, and not about the relations between sovereign nations, which we call "foreign relations".

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Discussion

This Opinion first addresses the background to the regulations, including the Covenant and the issue of trafficking in children for the sex trade. Then it applies the tools of statutory and constitutional construction to the terms of the Covenant regarding immigration and foreign affairs.

1. Precedential value of this Opinion

This legal analysis by the Attorney General is binding on CNMI agencies and instrumentalities unless and until overturned by the courts. AG Opinion No. 86-16 (Castro). *See, e.g., People v. Penn,* 302 N.W.2d 298 (Mich. App. 1981). The Constitution and the Commonwealth Code provide that the Attorney General is the attorney for the Commonwealth government:

> ....The Attorney General shall be responsible for providing legal advice to the governor and executive departments, representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law.

N.M.I. const., art III, § 11. The CNMI Code provides that the Attorney General is counsel to government agencies.[1] The Attorney General must review, and approve as to form and legal capacity, all contracts of the CNMI and its instrumentalities.[2] The Attorney General has a statutory and ethical responsibility to advise government clients to refrain from violating the law. The Attorney General can also bring statutory proceedings and common-law-writ-based proceedings to foreclose the pursuit of illegal activities.

The Courts are not bound by Attorney General Opinions, but tend to regard them as "highly persuasive". *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 (2003), *citing Cedar Shake and Shingle Bureau v. City of Los Angeles*, 997 F.2d 620, 625 (9th Cir. 1993). An opinion of the Attorney General should be treated as persuasive authority for the judiciary so far as it is properly and thoroughly researched. *Borja (Mayor of Tinian)* 2003 MP at ¶¶ 20-21.[3] *See, generally,* State Attorneys General: Powers and Responsibilities, Lynne M. Ross, editor (NAAG 1998).

2. Tools of the legal analysis

Both statutory language and court decisions govern this analysis. The interpretation of the Covenant should adhere to the rules of Constitutional/statutory construction. *Borja v. Goodman*, 1 N.M.I. 63, n 33 1990 WL 291894 (1990) (Hillblom, concuring). Ordinarily, Constitutional language must be given its plain meaning. *In re Tenth Legislature Bills*, 5 N.M.I. 155 (1998). *Also*, *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (CNMI 1990). *See also, 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). If the meaning of the statute is clear, the court will not construe it contrary to its plaining meaning. *Office of Attorney General v. Deala*, 3 N.M.I. 110, 117 (1992).

Further, if a legislative purpose is expressed in plain and unambiguous language, the duty of the courts is to give it effect according to its terms. *Ahmed v. Goldberg*, 2001 WL 1843382 (D.N.Mar.I. 2001) (not reported in F.Supp.2d), citing *United States ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1187 (9th Cir.2001) (Exceptions to clearly delineated statutes will be implied only where essential to prevent absurd results or consequences obviously at variance with the policy of the enactment as a whole). The later expression of the legislature controls over earlier law. *Limon v. Camacho*, 5 N.M.I. 21 (1996), *citing* 2B

Norman J. Singer, Statutes and Statutory Construction, § 51.02 at 121 (5th ed.1992). The more specific statute controls over more general one. *Id.*, *citing* Singer, § 51.05 at 174. *See also, Olopai v. Guerrero*, 1993 WL 384960 at n. 5 (D. N.M.I. 1993) (not reported in F.Supp. 2d).

In construing legislation, the court may consult legislative history and the interpretation of an administering agency. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362, 369 n. 5 (CNMI 1990). Courts should avoid overly restrictive statutory interpretations which prevent the realization of remedial legislative goals. *Limon v. Camacho*, 5 NMI 21 n. 12 (1996).[4]

Considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and [to] the principle of deference to administrative interpretations. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844, 104 S.Ct. 2778, 2782 (1984); *Triple J. Saipan, Inc. V. Rasiang*, 5 N.M.I. 232, 1999 MP 7, 1999 WL 33595877 (1999).

An act of Congress should never be construed to violate a treaty or the law of nations if any other possible construction remains. *Ahmed v. Goldberg*, 2001 WL 1843382 (D.N.Mar.I. 2001) (not reported in F.Supp.2d), *citing Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 178 n. 35, 113 S.Ct. 2549, 2562 n. 35 (1993).

The CNMI Supreme Court enunciates the governing common law. The Legislature has required the adoption of the common law as presented in the Restatements of the Law.[5] There is a Restatement of Foreign Relations Law, but, for the reasons stated *infra*, this Opinion does not require examination of the Restatement.

Background

1. The Covenant

"Negotiations between the United States and the Northern Marianas culminated on February 15, 1975, with the signing of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("Covenant"). The Covenant was unanimously endorsed by the NMI legislature, approved by 78.8% of NMI plebiscite voters, and enacted into law by Congress. Joint Resolution of March 24, 1976, Pub.L. No. 94-241, 90 Stat. 263, reprinted in 48 U.S.C. § 1681 note." *U.S. ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749 (9th Cir. 1993).[6] Congress adopted the Covenant as law in 48 USCA § 1801.[7]

In general, the Covenant is a bilateral agreement, that cannot be changed by just one party to it. *Sablan v. Inos*, 2 N.M.I. 388, 1991 WL 328470 (1991); *Sablan v. Inos*, 3 N.M.I. 418, 428 (1993). *But see, U.S. ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749, 754 (9th Cir 1993) (Some provisions allow for US unilateral lawmaking). The Covenant governs the relationship between the United States and the Commonwealth. *Id.*[8] The Covenant's mutual consent provision states that Congress may not override or alter the fundamental provisions of the Covenant, among them the right of self-government guaranteed by Section 103, but does allow Congress to pass any legislation "affecting" the internal affairs of the CNMI, like the Department of the Interior's subpoena power to review CNMI federal income tax records. *Id.*

2. Immigration and foreign relations

"Immigration" and "foreign relations" are two different concepts. The Covenant addresses "immigration". Blacks defines immigration:

> immigration, n. The act of entering a country with the intention of settling there permanently. Cf. EMIGRATION. [Cases: Aliens Key Number graphic39-59. C.J.S. Aliens §§ 53-180, 182-275.] -- immigrate, vb. -- immigrant, n.

Black's Law Dictionary 8th ed. (2004).

Neither Black's nor the Oxford English Pocket Dictionary bundled with Wordperfect 12 define "Foreign relations". However, a common meaning can be determined from Google's "Definitions of Foreign Relations on the Web" with the command "define foreign relations":

- Related to the affairs and dealings between states or nations.
  lib.ucr.edu/depts/acquisitions/YBP%20NSP%20GLOSSARY%20EXTERNAL%20revised6-02.php
- Under the constitution the Reichspräsident was entitled to represent the nation in its foreign affairs, to accredit and receive ambassadors and to conclude treaties in the name of the state. However approval of the Reichstag was required to declare war, conclude peace or to conclude any treaty that related to German laws.
  www.nationmaster.com/encyclopedia/Reichspr%E4sident
- The term is used to describe the interaction taking place among governments, when striving to establish mutual contacts, another word for diplomacy.
  en.wikipedia.org/wiki/Foreign_Relations

The Restatement of the Law – Foreign Relations Law of the United States describes "foreign relations" as matters having international consequences:

> The foreign relations law of the United States, as dealt with in this Restatement, consists of
>
> (a) international law as it applies to the United States; and
> (b) domestic law that has substantial significance for the foreign relations of the United States or has other substantial international consequences.

Restatement (3rd) of Foreign Relations Law of the United Sates (2005).

3. Trafficking in children

The issue of human trafficking has become increasingly important. One bibliographer has collected many of these articles. Mattar, Mohamed Y., 96 LLIBJ 669, Law Library Journal, Trafficking in Persons: an Annotated Legal Bibliography, Fall, 2004.[9]

Further, "it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands, including, where appropriate, humanitarian assistance for their care and maintenance in asylum areas, efforts to promote opportunities for their resettlement or voluntary repatriation, aid for necessary transportation and processing, admissions to this country of refugees of special humanitarian concern to the United States, and transitional assistance to refugees in the United

States". 8 U.S.C.A. § 1521 (1999) (The 1980 Refugee Act), note, quoted in *Ahmed v. Goldberg*, 2001 WL 1843382 (D.N.Mar.I. 2001) (not reported in F.Supp.2d), Slip Op. pp 6-7.

Judge Munson, in *Ahmed*, found that asylum and withholding of deportation procedures were available persons outside of the geographic United States, and inside the CNMI, but emphasized that under section 207 of the Immigration and Naturalization Act, the statute does provide a mechanism for aliens not within the United States or at its borders to apply for refugee status through United States consular offices.[10]

US policy opposes trafficking in humans. The *Ahmed* Court addressed the international Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, signed by the United States on April 18, 1988, cited *id*, fn. 6.

The legislation implementing the Convention is the Immigration and Naturalization Act ("INA"). *See INS v. Cardoza-Fonseca,* 480 U.S. 421, 424, 107 S.Ct. 1207, 1209 (1987) (the 1980 Refugee Act amended the INA to fully implement the United States' obligations under this protocol). However, the CNMI is not considered to be part of the United States geographically, so the INA does not apply here. *Ahmed v. Goldberg*, 2001 WL 1843382 (D.N.Mar.I. 2001) (not reported in F.Supp.2d), Slip Op. p 6. Thus, the CNMI is part of a union with the US, opposing human trafficking. The proposed regulations appear to advance the US policy.

4. CNMI immigration and the proposed regulations

The Legislature has given the Attorney General very broad powers over the CNMI's immigration.[11] Among these, she is authorized to promulgate regulations for the entry and deportation of aliens pursuant to Executive Order 03-01 and 3 CMC § 4312(d) – and, therefore, the instant regulations providing for safe haven for victims of human trafficking fall well within her statutory authority.

The Office of Attorney General, in November 2005, proposed regulations to address the process whereby child victims of human trafficking might be granted safe haven status pursuant to CNMI immigration law. Proposed "Immigration Regulation sec. 706(S), Safe Haven Entry Permit, and XIV. International Humanitarian Protection, Immigration Regulation sec.1401, Protection from Refoulement[1] (Unchanged.), and Immigration Regulation sec.1402, International Safe Haven Organizations", 27 Com. Reg. 10, pp 025215-18 (Nov. 25, 2005)

The thrust of the regulations is that a qualified domestic nonprofit charitable organization as a sponsor of the children may enter into a memorandum of agreement with the CNMI government for providing sanctuary for the child victims of human trafficking. Upon approval, the child victims may lawfully enter the CNMI on a temporary basis. The regulations are simple, only three pages long, and set forth only the initial framework for negotiations that will result in a final agreement with a qualifying safe have nonprofit organization.

Analysis

The language of the Covenant and the conclusions of those who have analyzed it are that the CNMI controls its own immigration, subject to the possibility that the Federal government may at some time in

[1]"Refouler" means expel or return. Ahmed v US, supra, Slip Op. p. 5.

the future act to exert exclusive jurisdiction over immigration. Foreign relations – the relations between nation-states – are left to the federal government and are not affected by the proposed safe haven regulations.

1. CNMI unilateral power on immigration to the CNMI

The above definitions indicate that the instant inquiry does not address the United States' (or the CNMI's) "foreign relations" authority. This inquiry addresses the immigration power of the CNMI vis a vis that of the federal government.

The Covenant is explicit that the CNMI retains immigration power:

> Section 503. **The following laws of the United States**, presently inapplicable to the Trust Territory of the Pacific Islands, **will not apply to the Northern Mariana Islands except** in the manner and to the extent made applicable to them **by the Congress** by law after termination of the Trusteeship Agreement:
>
> (a) except as otherwise provided in Covenant § 506, **the immigration and naturalization laws of the United States**;
>
> (b) except as otherwise provided in Subsection (b) of Covenant § 502, the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and
>
> (c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

Covenant § 503. (Emphasis added)

The referenced sec. 506 is not relevant to the question presented. It simply insured that US citizens and their families, whether recently naturalized or not, would be admitted to the CNMI, and CNMI permanent resident immediate relatives would be admissible to the US.[12]

Federal statutory law thus recognizes the CNMI's control over immigration. 48 USCA § 1801, Covenant sec. 503(a). (Stating that federal immigration laws presently inapplicable to the TTPI "will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement").

The Covenant is unambiguous that the CNMI retains control over its immigration. *See Ahmed v. Goldberg*, 2001 WL 1843382 (D.N.Mar.I. 2001) (not reported in F.Supp.2d), Slip Op. p 7. This has been recognized by a well-known labor treatise. 1 International Labor and Employment Laws § 23-206 (2003).

This could change, of course, if the Congress changed the immigration law. Indeed, one commentator has recognized this regime and urged that the US change the legal relationship, thereby taking control of CNMI's immigration, in order to control the CNMI's labor situation. Smith, Karen M. "Solving Worker Abuse Problems in the Northern Mariana Islands." Boston College International and Comparative Law Review 24 (2001): 381-407. *Also*, Herald, Marybeth, 71 ORLR 127, Oregon Law Review, the Northern Mariana Islands: A Change In the Northern Mariana Islands: A Change in Course Under Its Under its

Covenant with the United States (Spring, 1992).[13] This latter scholar had no doubt that the CNMI continues to control immigration:

> The Covenant attempted to preserve the existing social structure in the NMI by giving the NMI control over immigration. [FN70] The point of delegating this power to the NMI was to allay fears that a number of aliens would flood the islands because of the NMI's United States affiliation.
>
> . . . .
>
> The United States Congress may revoke the NMI's right to control immigration by enacting legislation that applies the federal immigration laws to the NMI. [FN76] Thus far, the United States has not exercised its authority.

Id., pp 141-42 (fn's omitted). A 45-page student law review note comprehensively argues against Congressional efforts to assert control of the CNMI's immigration following the garment industry labor "troubles" roughly five years ago. Davis, Jennifer, 13 TRNATLAW 135, Transnational Lawyer, Beneath the American Flag: United States Law and International Principles Governing the Covenant Between the United States and Commonwealth of the Northern Mariana Islands (Spring, 2000).

Of course, the Covenant provides that Congress may take on the CNMI"s immigration management at any time. For a discussion of Congressional efforts to eliminate the CNMI's control over its immigration, *see* Rios-Martinez, Marie, 24.3 SCHOLAR 41, Scholar: St. Mary's Law Review on Minority Issues Fall 2000, Comment "Congressional Colonialism in the Pacific: the Case of the Northern Mariana Islands and Its Covenant with the United States". The Congressional proposals which these two articles discussed, to defease the CNMI of its immigration power, of course, failed.[14] *See Ahmed v. Goldberg*, 2001 WL 1843382 (D.N.Mar.I. 2001) (not reported in F.Supp.2d), Slip Op. p 9, fn. 19.

As to a third statute, which may, or may not, execute the US' responsibilities under the Convention Against Torture, the Foreign Affairs Reform and Restructuring Act ("FARR Act"), the US District Court for the Northern Mariana Islands dismissed a claim that the CNMI-based plaintiffs had a right to demand asylum from the US with respect to their treatment in another country. *Ahmed v. Goldberg*, 2001 WL 1843382 (D.N.Mar.I. 2001) (not reported in F.Supp.2d), Slip Op. pp 12-13. While the Court found that the FARR Act implemented the international Convention Against Torture with respect to CNMI-based aliens, it found that the plaintiffs' case failed to support a claim for a hearing of their asylum claims when the appropriate federal agencies had failed to provide for such hearings for the CNMI. In any event, the case supports the propositions that the instant safe haven regulations are consistent with US policy, and that the CNMI controls its own immigration.

The proposition is, therefore, simple – the law provides that the CNMI controls its own immigration. Even attorneys giving practical advice to colleagues in the ABA Journal have recognized the CNMI's unique control over immigration. Vozzola Carroll, Mary, 13-FEB Bus. L. Today 17, Business Law Today, (January/February, 2004), Feature: International Business Law, "Working with the Locals; Some Hints for Setting up a Deal Halfway around the World".[15]

The analysis can, therefore, end here. There is no ambiguity – the plain meaning of the Covenant is that the CNMI controls its own immigration. This conclusion is consistent with the above-described principles of statutory construction, in that:

- The specifics of the Covenant's wording for special legal responsibility for immigration control over any general concept of the federal government's immigration management power.

- Two acts of Congress, the adoption of the Covenant and the INA, should not be construed so that they violate a treaty, like the Covenant, with respect to the CNMI's immigration. *See Ahmed, supra.*
- Deference shall be given to the agency charged with administering the CNMI's immigration programs, in this case the Office of the Attorney General. See, *Chevron, supra.*

However, the other terms of the Covenant, and an **in**applicable provision of the US Constitution bear a short mention.

2. The Covenant's provisions on foreign relations

The proposed regulations do not present a matter of "foreign relations", because only one "nation" is involved. Foreign relations address matters between two or more nation-states. No other nation-state is addressed in giving safe haven to the victimized children. Since the CNMI is part of the US, this is not a "foreign relations" matter between the CNMI and the US.

The Covenant section which is **not** at issue is Section 104, which provides that the US will "have complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Marian Islands." Covenant § 104.

The USA retains the international powers it had during the Trusteeship period. "Reference to the federal powers mentioned in this Section is not intended to derogate from the sovereignty vested in the United States by Section 101 or the legislative powers vested in the United States by Section 105." Report of the Drafting Committee, Section 104 (2/15/75), p 1.

The Covenant's drafters provided a further commentary to the document. It addressed section 104 and the related section 904:

> Section 104. This Section provides that the United States will have complete responsibility for and authority with respect to the foreign affairs and defense of the Northern Marianas. This Section has been included in order to make very clear that the United States will have this authority. The concept of sovereignty is closely tied to foreign affairs and defense matters. Even if Section 104 were not included in the Covenant the fact that the United States will have sovereignty with respect to the Commonwealth would undoubtedly have been taken to mean that it had the authority to conduct foreign affairs and defense activities. Throughout the American political family, foreign affairs and defense are a federal responsibility, as is made explicit in the U.S. Constitution. Under Section 904, the Government of the United States will give sympathetic consideration to the views of the Northern Marianas government on international matters and will permit the Northern Marianas to participate in international organizations concerned with social, economic and similar matters to the extent that participation is permitted by the Commonwealth of Puerto Rico or any territory of the United States.

Section by Section Analysis of the Covenant to Establish a Commonwealth of the Northern Mariana Islands (2/15/75), p 12.[16] The Senate Committee report on the Covenant repeated some of this language, indicating that Congress was very deliberately agreeing with the reservation of CNMI immigration power and authority:

> The Immigration and Naturalization Laws (subsection (a)). The reason this provision is included is to cope with the problems which unrestricted immigration may impose upon

> small island communities. Congress is aware of these problems. See, e.g., Alien Labor Program in Guam, Hearing Before the Special Study Subcomm. of the House Judiciary Comm., 93rd Cong., 1st Sess. 19-25 (1975).

Senate Comm. On Interior and Insular Affairs, Section-by-section Analysis of the Covenant, S. Rep. No. 433, 94th Cong., 1st Sess. 65-94 (1975) ("Senate Committee Report"), p 78.

The commentary also addressed section 904. Section 904 of the Covenant provides for consultation with the CNMI on foreign affairs:

> Section 904. (a) The Government of the United States will give sympathetic consideration to the views of the Government of the Northern Mariana Islands on international matters directly affecting the Northern Mariana Islands and will provide opportunities for the effective presentation of such views. . . .
>
> (c) On its request the Northern Mariana Islands may participate in regional and other international organizations concerned with social, economic, educational, scientific, technical and cultural matters when similar participation is authorized for any other territory or possession of the United States under comparable circumstances.

Covenant § 904. The commentary expanded on this:

> Section 904. Section 904 deals with three aspects of international relations which are of particular concern to the Northern Marianas.
>
> .... The Subsection [(a)] also assures the Government of the Northern Marianas that it will be provided with opportunity for the effective presentation of its views to no less an extent than such opportunities are provided to any other territory or possession . . . under comparable circumstances. This means that the local government will have an opportunity to express its views with respect to international matters to the proper agencies of the United States Government, and also that the local government will have an opportunity to have its representatives participate in the delegations the United States sends to international functions, to the extent stated in this Subsection. . . . Subsection (c) provides that the Northern Marianas may, upon its request, participate in regional or other international organizations concerned with social, economic, educational, scientific, technical and cultural matters when similar participation is authorized [for] other United States territories or possessions . . . under comparable circumstances. For example, the Commonwealth of Puerto Rico was recently authorized by Congress to join the Caribbean Development Bank. Similar participation by the Northern Marianas in similar regional organizations would also be appropriate, if the local government desires.

Section by Section Analysis of the Covenant (2/15/75), pp 125-26.

> Section 1003. .... The delay in the effective date of Section 104 and Section 904 until the termination of the Trusteeship Agreement is based on the view that the United States has the authority over international and defense affairs under the Trusteeship Agreement. . . .

Section by Section Analysis of the Covenant, pp 130, 134.

But these Covenant sections address foreign affairs. While, of course, the AG regulations address children of another nationality, the matter is domestic – the children are to be represented by a US

nonprofit, charitable corporation for the purpose of finding temporary shelter in the CNMI. The regulations address their stay in the CNMI. No dealings with other national governments are contemplated. The foreign relations provisions of the Covenant thus have nothing to do with regulating the immigration into the CNMI, or not, of children who have been the objects of human trafficking and sexual abuse.

3. The "Territorial Clause" of the US Constitution

Perhaps the argument against the CNMI's unilateral immigration power looks to a discredited theory, that the U.S. Constitution's broad language in the "Territorial Clause" would supplant the Covenant's force and effect. The Ninth Circuit put this argument to rest over a decade ago:

> The territorial clause states: "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., art. IV, § 3, cl. 2. While it is unclear exactly what prompted the Task Force's initial apprehension, the report asserts that the United States "intends to govern the Northern Mariana Islands through the Territorial Clause," but nowhere states where or when that intention was expressed. Later in the report, the Task Force takes a somewhat different position by proposing to ask the United States if it intends to govern CNMI though the territorial clause. **It should be noted that section 501 of the Covenant explicitly enumerates the parts of the U.S. Constitution which apply to the CNMI, and despite the concerns of the Task Force, the territorial clause is not included in the list.**

Hillblom v. U.S., 896 F.2d 426 (9th Cir 1990), fn. 1. (Emphasis added) The specific terms of the Covenant control over the general language of the Territorial Clause. The CNMI controls its own immigration.

Conclusion

Thus, the CNMI, and its designated official, the Attorney General, may properly regulate the immigration of victims of sex abuse/trafficking who seek a safe haven in the CNMI.

ENDNOTES

1.1 CMC § 2153(h): Attorney General Duties

> The Attorney General shall have the powers and duties as provided in the Commonwealth Constitution. In addition, the Attorney General shall have the following powers and duties:
>
> . . . .
>
> (h) To act, upon request, as counsel to all departments, agencies and instrumentalities of the Commonwealth, including public corporations, except the Marianas Public Land Trust. Subject to availability of funds by budgetary appropriation, separate legal counsel may be retained for particular matters.

1 CMC § 2153(h).

2.1 CMC § 2153(g).

3.Faced with two conflicting opinions of the CNMI Attorney General, the Supreme Court, responding to a certified question from the U.S. District Court, rejected the earlier, four-sentence-long opinion containing "ninety words with no reference to case law or legislative history " as "unpersuasive" in favor of the Attorney General's thoroughly researched brief. Borja (Mayor of Tinian), 2003 MP ¶ 21.

4.The CNMI Supreme Court addressed the value of legislative history for remedial statutes:

> When dealing with statutes which grant to administrative agencies remedial powers deemed important to public welfare, courts should avoid overly restrictive statutory interpretations which prevent the realization of the goals the legislature had in view. See 3 Singer, STATUTES AND STATUTORY CONSTRUCTION, supra, § 65.03 at 329-30; NLRB v. John S. Barnes Corp., 178 F.2d 156, 159(7th Cir.1949) (looking beyond particular subsection of a federal statute to consider statute as a whole, its provisions, purpose and legislative history to determine NLRB regional directors' subpoena powers). We likewise cannot construe § 4447(d) conclusively without a careful review of all factors which might aid in the proper interpretation of the statute, keeping in mind that our primary aim is "to ascertain and give effect to the intent of the legislature." Commonwealth Ports Auth. v. Hakubotan Saipan Ent., Inc., 2 N.M.I. 212, 221(1991) (internal quotation marks omitted). Such considerations are especially pertinent in this case, because the adjudication and redress of complaints by nonresident workers is a matter of serious public concern. Thus, in our review we must consider the legislative history and underlying policies of the NWA [Nonresident Workers' Act].

Limon v. Camacho, 5 NMI 21, n. 12 (1996).

5.Castro v. Hotel Nikko Saipan, Inc., 4 N.M.I. 268, 275 (1995), citing 7 CMC § 3401.

6.The cite in the quoted paragraph should be updated to reflect the USCA's recodification, to 48 USCA sec. 1801. See Historical and Statutory Notes; Codifications, to sec. 1801. The 9th Circuit has recognized the core nature of the Covenant:

> At the outset, we emphasize that "the authority of the United States towards the CNMI arises solely under the Covenant." Hillblom v. United States, 896 F.2d 426, 429 (9th Cir.1990). The Covenant has created a "unique" relationship between the United States and the CNMI, and its provisions alone define the boundaries of those relations. Commonwealth of the Northern Mariana Islands v. Atalig, 723 F.2d 682, 687 (9th Cir.1984).

U.S. ex rel. Richards v. De Leon Guerrero, 4 F.3d 749, 754 (9th Cir.1993).

7.48 USCA sec. 1801. Approval of text of Covenant to Establish a Commonwealth of the Northern Mariana Islands:

> The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

8.For a complete discussion of the background of the negotiations between the Northern Mariana Islands and the United States, see Arnold H. Leibowitz, The Marianas Covenant Negotiations, 4 Fordham Int'l L.J. 19 (1981).

9.According to the introduction of Professor Mattar's bibliography: " Since the 1990s, trafficking in persons as an international human rights issue has garnered significant attention on both international and national levels. As a result, there has been an increase in the number of scholarly articles that have analyzed the problem, its root causes, and its forms, and discussed the international and national efforts to combat it. Professor Mattar's bibliography is an effort to identify, organize, and describe this growing body of literature." Mattar, Mohamed Y., Adjunct Prof. Of Law, Johns Hopkins, U. School of Advanced International Studies, 96 LLIBJ 669, Law Library Journal, Trafficking in Persons: an Annotated Legal Bibliography, Fall, 2004. (Approx. 53 pages)

10.The US District Court for the Northern Mariana Islands described US policy on asylum and how the CNMI and US could work together to advance that policy within the framework of the Covenant:

> Moreover, interpretation of Covenant § 503(a) so as not to preclude application of INA § 207, avoids the consequence of placing the United States in violation of its international obligations with respect to plaintiffs. Congress is aware that the effect of CNMI-controlled immigration has placed the United States in violation of its international obligations, FN19 and legislation is pending before the United States Senate to extend the INA in full to the CNMI. Even without full implementation of INA procedures within the CNMI, the United States has the responsibility and authority to fulfill those international obligations, and can do so without undermining the Covenant through the INA § 207 mechanism invoked by plaintiffs.
>
> FN19. The U.S. Senate acknowledged the situation in its attempt to extend the INA in full to the CNMI in 1999 through Senate Bill 1052. See S. Rep. 106-204 (1999). The Senate Report accompanying the bill cited the U.S. Commission on Immigration Reform findings that "[t]he CNMI has no asylum policy or procedure placing the United States in violation of international obligations" and that asylum policy is a "Federal obligation." The Senate Report also contained the statement of Bo Cooper, INS General Counsel, noting that asylum and refugee problems were not envisioned when the Covenant was negotiated and that while the CNMI negotiators expressed fear that the island would be overwhelmed by large-scale immigration from nearby Asian nations if the INA was extended to the CNMI, the CNMI has instead "used the lack of such law for exactly the opposite purpose ... [r]ather than limit immigration, the CNMI has engaged in the massive importation of low-paid temporary alien workers." Although Senate Bill 1052 was not enacted into law, a similar bill, S.B. 507, was introduced in the Senate on March 9, 2001.

Ahmed v. Goldberg, 2001 WL 1843382 (D.N.Mar.I. 2001) (not reported in F.Supp.2d), Slip Op. p 9.

11.The statute provides for full AG authority in the immigration area:

> sec. 4312. Powers and Duties of the Attorney General.
>
> (a) Pursuant to 1 CMC § 2171, the Attorney General has overall supervision of the Office of Immigration and the immigration officer.
>
> (b) The Attorney General shall enforce this chapter and may prosecute all violations of this chapter. In carrying out this duty, the Attorney General has all authority expressly conferred upon him or reasonably implied by this chapter.
>
> (c) The Attorney General shall advise, give counsel to, and represent in all matters the

> Office of Immigration . . . .
> . . . .

3 CMC sec. 4312.

12.The text of sec. 506 is as follows:

> Section 506.
>
> > (a) Notwithstanding the provisions of Covenant § 503(a), upon the effective date of this Section the Northern Mariana Islands will be deemed to be a part of the United States under the Immigration and Nationality Act, as amended for the following purposes only, and the said Act will apply to the Northern Mariana Islands to the extent indicated in each of the following Subsections of this Section.
> >
> > (b) With respect to children born abroad to United States citizen or non-citizen national parents permanently residing in the Northern Mariana Islands the provisions of Subsections 301 and 308 of the said Act will apply.
> >
> > (c) With respect to aliens who are "immediate relatives" (as defined in Subsection 201(b) of the said Act) of United States citizens who are permanently residing in the Northern Mariana Islands all the provisions of the said Act will apply, commencing when a claim is made to entitlement to "immediate relative" status. A person who is certified by the Government of the Northern Mariana Islands both to have been a lawful permanent resident of the Northern Mariana Islands and to have had the "immediate relative" relationship denoted herein on the effective date of this Section will be presumed to have been admitted to the United States for lawful permanent residence as of that date without the requirement of any of the usual procedures set forth in the said Act. For the purpose of the requirements of judicial naturalization, the Northern Mariana

Covenant § 506.

13.Professor Herald has recognized the importance of the CNMI's immigration powers:

> Several patterns have emerged in the wake of the first sixteen years. First, economic development has been the decisive victor among all competing goals in the Covenant. Second, in pursuit of economic development goals, the NMI's most powerful weapon has been its power over immigration. Finally, as a result of open door immigration policies, there are social, political, and environmental problems in the NMI. These patterns are surprising because the NMI was given the power to control immigration in order to protect its social, cultural, and political organization.
>
> ....
>
> This Article explains these issues and offers suggestions for reforms under the Covenant. Although the United States and the NMI assumed when they adopted the Covenant that the NMI would restrict immigration, both have accepted the new course.

> Neither party has made any meaningful attempt to restrict the flow of immigrants into the islands. Both parties have supported a series of incentives built into the Covenant, United States and NMI law, and the NMI economy that encourage the exploitation of the NMI's open door immigration and labor policies.

71 ORLR 127, pp 128-29.

14.*See also*, Florke, Robert S., 13 Temp. Int'l & Comp. L.J. 381, Temple International and Comparative Law Journal (Fall 1999), Notes & Comments, "Castaways on Gilligan's Island: the Plight of the Alien Worker in the Northern Mariana Islands."

15.Vozzola Carroll writes, in part: "Don't assume you don't need local counsel in U.S. territories. As a practical matter, do not assume that a U.S. territory will be governed by the same federal laws as a state. For example, in the Northern Mariana Islands, the U.S. Constitution and federal laws apply in most cases, but the territory retains control over immigration and employment of nonresident aliens. Local counsel can help you steer clear of possible similar variations in other jurisdictions." 13-FEB BUSLT 17, p 21.

The CIA briefly describes the CNMI's immigration as non-US: "legal system: based on US system, except for customs, wages, immigration laws, and taxation". CIA, The World Factbook (2005), available at http://www.odci.gov/cia/publications/factbook/geos/cq.html. (12/23/05).

16.The legislative history of the Covenant is reprinted in Hearing to Approve "The Covenant to Establish a Commonwealth of the Northern Mariana Islands" Before the Subcomm. On Territorial and Insular Affairs of the House Comm. On Interior and Insular Affairs, on H.R.J. Res. 549, 94th Cong., 1st Sess. 626-65 (1975), and in Senate Hearings, Northern Mariana Islands, Hearing before the Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 356-496 (1975).

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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MEMORANDUM

ATTORNEY GENERAL OPINION NO. 05-21

To: Juan Babauta, Governor

From: Pam Brown, Attorney General

Date: December 30, 2005

Re: LIMITED TERM EMPLOYMENT

This is in response to the request of Governor Juan Babauta for an Attorney General Opinion on the following issue:

> Given financial austerity measures and Directive No. 215, dated January 31, 2002, when, if at all, does an employee hired on a Limited Term Appointment become a Permanent Appointment?

On January 31, 2002, the Governor issued Directive No. 215 which directed that "[a]ll Civil Service employees who are hired at this time will be placed on Limited Term Appointments, due to the uncertainly of continued funding." Directive No. 215 further directed that "[n]o employee on a Limited Term Appointment may be converted to Civil Service Permanent Status" and "[n]o New Hire may be converted to Civil Service Probationary Status."

Directive No. 215 remained in effect and continues in effect, except as modified on November 25, 2005, by Directive No. 245. Directive No. 245 generally directed the the conversion of limited term appointments in accordance with Part III.B3.C of the Personnel Service System Rules and Regulations.

Part III.B3.C of the Personnel Service System Rules and Regulations provides the following:

> Limited Term Appointment. A Limited-Term appointment is one in which the appointee is appointed for a period of not more than one (1) year. An employee serving a limited-term may serve in either a full-time or part-time position. Any person given a limited-term appointment must meet the minimum qualifications for the class of position to which appointed. Appointing authorities shall justify, in writing, to the Director of Personnel Management, requests for new Limited-Term Appointments following

> expiration of one (1) year appointments. Limited-Term Appointments may be converted to Permanent Appointments at the end of one year, if the position has been found to be permanent, provided that the employee has demonstrated the capacity for 52 consecutive weeks of satisfactory performance.

"Limited Term Appointment" is defined in the Personnel Service System Rules and Regulations as:

> The appointee is appointed for a period of not more than one (1) year and may serve in any of the following types of positions: full-time, part-time, intermittent or, under very special circumstances, a permanent position. The appointee shall be entitled only to Workmen's Compensation, Social Security, Annual Leave (if the period exceeds ninety days), Sick Leave, Overtime, and Holiday Pay unless the last day of the appointment falls on a holiday.

All employees of the Commonwealth government are included in the civil service system unless they fall within a statutory exception from the civil service. 1 CMC § 8131(a).

"Under Article XX of the Commonwealth Constitution, only the legislature may create exceptions from the civil service." *Dyack v. CNMI*, 317 F.3d 1030, 1033 (9th Cir. 2003); *see also*, *Manglona v. Civil Service Commission*, 3 N.Mar.I. 243, 249 (1992).

The Commonwealth Supreme Court has held that the Governor "may not create a system whereby employment positions would be created and appointed at his pleasure." *Sonoda v. Cabrera*, Certified Question No. 96-001 (1997). The *Sonoda* case involved the unconstitutional exercise of executive power to exempt several government positions from the civil service system. The United States Court of Appeals for the Ninth Circuit concluded that "under CNMI law at that time, and regardless of the employment contract he signed, Sonoda was a civil service employee" and "[a]s a civil service employee, Sonoda had a constitutionally protected property interest in his continued employment." *Sonoda v. Cabrera*, 255 F.3d 1035, 1042 (9th Cir. 2001)

The statutory exceptions from the civil service are listed in 1 CMC § 8131, and those "[e]mployees who fall within one of these exceptions are referred to as 'excepted service' employees." *Dyack v. CNMI*, 317 F.3d 1030, 1033 (9th Cir. 2003).

Although a Limited Term Appointment is not within the exceptions to the civil service and is within the civil service, a Limited Term Appointment is comparable to an Excepted Service employee because a Limited Term Appointment is appointed for a period of not more than one year and is deprived of basic civil service benefits, including but not limited to job security and seniority rights based on years of service in the position, even though they may be re-appointed as a Limited Term Appointment to the same position.

The justification in Directive No. 215 for hiring all civil service employees as Limited Term Appointments was "due to the uncertainty of continued funding." However, the Personnel Service System Rules and Regulations establish regulations for reduction-in-force because of lack of funds. *See*, PSSRR, Part III, Sub-Part E. Therefore, it is my opinion that the "uncertainty of continued funding" alone does not constitute the "very special circumstances" required to support a Limited Term Appointment to a permanent position.

It is further my opinion that those employees who were hired as Limited Term Appointments based solely on Directive 215 for permanent civil service positions are Probationary or Permanent Appointments and the personnel records of those employees should be corrected to reflect their proper class of appointment.

If Directive 215 were a valid exercise of the Executive's authority and the "uncertainly of continued funding" were sufficient justification for a Limited Term Appointment, it is my opinion that those persons who were hired as Limited Term Appointments are entitled to Permanent Appointment status at the end of one year if the position has been found to be permanent and will continue beyond the one year period and the employee has demonstrated the capacity for 52 consecutive weeks of satisfactory performance.

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ATTORNEY GENERAL'S OFFICE PROPOSED REGULATIONS 1402 AND 706(s) (SAFEHAVEN REGULATIONS)

Please take notice that pursuant to 1 CMC Section 9104 and applicable case law, the Attorney General's Office hereby withdraws, until further notice, proposed Immigration Regulations 1402 Section 706(S), commonly known as the 'Safehaven Entry Permit'.

It should be further noted that under 1CMC Section 9104(a)(2) that the agency seeking to promulgate regulations shall consider fully all written and oral submissions respecting the proposed regulation. Given the volume of the written submissions and the length of the public hearing had on December 29, 2005 (said hearing being recorded), the Attorney General's Office needs time to comply with said provisions of the law.

Dated this 30th day of December, 2005 on Saipan, Commonwealth of the Northern Mariana Islands.

Deputy Attorney General

Clyde Lemons, Jr.