FINANCIAL INSTITUTIONS COMMISSION

ADMINISTRATIVE REGULATION
FIC-AR-04

VOLUNTARY LIQUIDATION & CESSATION OF BANKING OPERATIONS, CANCELLATION OF BANKING LICENSE, RESUMPTION OF BUSINESS PROHIBITED

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PART I: PRELIMINARY

1. **Short Title** - Voluntary Liquidation

2. **Authorization** - This Regulatory Guideline is issued by the Executive Commissioner of the Financial Institutions Commission pursuant to the authority set forth under Section 10.132, Regulatory and supervisory powers of the Commission and Section 1048(a)(5), Modification, suspension or revocation of a license, of the Financial Institutions Act of 2001 and any amendments thereof.

3. **Application** - This Regulatory Guideline shall be applicable to all banks, including branches and subsidiaries of foreign banks, licensed by the Financial Institutions Commission to operate in the Republic of Palau.

PART II: STATEMENT OF POLICY

1. **Purpose** - This Regulatory Guideline provides for the voluntary closure and liquidation of a bank licensed by the Financial Institutions Commission to operate in the Republic of Palau, and defines the necessary procedures, documentation and other information required to be submitted to the Executive Commissioner of the Financial Institutions Commission (the Executive Commissioner) by a bank intending to voluntarily liquidate and close.

2. **Scope** – This Regulatory Guideline applies to actions taken by any licensed financial institutions that wishes to voluntarily close its operations and relinquish its allowable banking and financial activities set forth in the Financial Institutions Act.

3. **Responsibility** – It is the responsibility of every bank in the Republic of Palau to follow this Regulatory Guideline in the voluntary closing and winding up of its operations; this guideline sets forth management and board responsibilities set out in detail herein.

PART III: IMPLEMENTATION AND SPECIFIC REQUIREMENTS

1. **Approvals Required for Voluntary Liquidation and Cessation of Banking Operations**

   (a) A bank may initiate voluntary liquidation and surrender its banking license as provided by through this Regulatory Guideline:
      (1) with the prior written approval of the Executive Commissioner;
      (2) for a Palau bank, after obtaining the approval of at least two thirds of the owners of the bank's capital; or
      (3) for a foreign bank branch or subsidiary, after obtaining the approval of at least a majority of the board of directors of the parent bank, or such other approval as may be required by the laws of the foreign bank's home country regarding board and shareholder approval for voluntary dissolution; and

(4) by filing the documents as provided in paragraph 4 of this Regulation.

(b) The board of directors of a bank initiating voluntary liquidation and closure shall by resolution appoint one or more persons, acceptable to the Executive Commissioner, to act as liquidating agent or committee who shall conduct the liquidation as provided by law and under the supervision of the board of directors and the Executive Commissioner. The board of directors, in consultation with the Executive Commissioner, shall require the liquidating agent or committee to give a suitable bond.

2. Notice of Voluntary Dissolution

After appropriate resolutions have been adopted by the shareholders and board of directors to voluntarily liquidate and close a bank, a majority of the directors shall verify and file with the Executive Commissioner duplicate certified copies of the written resolutions that:

(a) were adopted at a meeting for which proper notice was given or by unanimous written consent;
(b) approved the liquidation and closure of the bank; and
(c) specifies the date when the bank is to be closed.

3. Investigation and Consent of Executive Commissioner

The Executive Commissioner shall review the documentation required to be submitted under paragraph 4 and conduct any necessary investigation or examination, provided such investigation or examination shall be concluded within 30 (thirty) calendar days following receipt of the documents required under paragraph 4 of this Guideline. If the proceedings appear to have been properly conducted and the bond to be given by the liquidating agent or committee is adequate for its purposes, the Executive Commissioner shall consent in writing by letter to the voluntary liquidation and closure and direct the bank to publish notice of its pending liquidation and closure.

4. Notice of Pending Liquidation and Closure

(a) Within five (5) calendar days following the date of the letter by the Executive Commissioner consenting to the voluntary liquidation and closure of the bank, the person(s) approved as liquidating agent or committee shall, at the expense of the bank, cause a Notice of Voluntary Liquidation and Cessation of Banking Operations to be:
(1) posted in the office(s) of the bank at a place(s) readily accessible to the general public and displayed at all teller stations or other places in the bank where funds are normally received or paid out by the bank;
(2) broadcast over the radio broadcasting station at Koror, at least once each day, in both Palauan and English, for thirty (30) consecutive days;
(3) published electronically on the bank's website (if there is already an existing site) continuously for 30 consecutive days; and

(4) published in a newspaper in general circulation in Palau, in Palauan and English, at least once each week for eight (8) consecutive weeks, or such other longer time as may be required by the Executive Commissioner.

(b) The Notice of Voluntary Liquidation and Cessation of Banking Operations must:
(1) state that the bank is voluntarily liquidating and closing;
(2) state the date the bank intends to close its office(s) in Palau; and
(3) advise depositors and creditors to present their claims for payment to the bank on or before the specified closure date.

(c) The date the bank intends to close its office(s) in Palau must:
(1) be approved by the Executive Commissioner, provided such closure date shall not be less than eight (8) weeks from the date of the first broadcast and publication of the Notice of Voluntary Liquidation and Cessation of Banking Operations as required in sub-paragraph (a) above; and
(2) allow the affairs of the bank to be wound up in an orderly manner, provided the Executive Commissioner, may for good cause shown, adjust the closure date of the bank, with or without requiring the bank to republish or rebroadcast the Notice of Voluntary Liquidation and Closure.

(d) Within ten (10) calendar days following the date of the letter by the Executive Commissioner consenting to the voluntary liquidation and cessation of operations of the bank, the person(s) approved as liquidating agent or committee shall cause, at the expense of the bank, to be mailed or personally delivered to each depositor, creditor and owner of any property held for safekeeping by the bank, at the mailing address shown on the records of the bank, a notice containing:
(1) the time period which the depositor, creditor or property owner has to present their claim for payment to the bank or to recover their funds or property from the bank; and
(2) specific information about the account balance or description of the property held in safekeeping by the bank.

5. Office(s) to Remain Open

Unless the Executive Commissioner directs or consents otherwise, a bank initiating voluntary liquidation and cessation of operations shall remain open for paying depositors and creditors and returning property held in safekeeping to its owners during normal business hours until the last date specified in the Notice of Voluntary Liquidation and Cessation of Banking Operations.

6. Right of Set-Off

(a) Mutual credits or amounts owing by a bank to a depositor or creditor, and mutual debts or amounts owing by a depositor or creditor to a bank may be set off by the bank and only the remaining credit balance, if any shall be required to be paid by the bank to the depositor or creditor provided (i) the debt or amount owing by the

depositor or creditor to the bank is due and uncollected for thirty (30) days or more beyond the scheduled payment, maturity or billing date, or (ii) the loan contract clearly states that repayment or maturity of the loan may be accelerated and payable upon demand at the discretion of the bank without prior notice to the borrower or creditor;

(b) Within seven (7) calendar days following the receipt of a request, a bank shall, at its own expense, provide a depositor or creditor with an accounting statement detailing each debt or amount owing to the bank against which the bank is claiming the right of set-off.

7. Final Liquidation

(a) Within seven (7) calendar days after the closure date of the bank as provided in the Notice of Voluntary Liquidation and Cessation of Banking Operatoins, the bank shall, under oath by a majority of its board of directors, make a list from its books of the names of each depositor, creditor and owner of any property held for safekeeping by the bank who has not claimed or has not received a deposit or other amount owing or property due to such person, and the corresponding amount owing or description of property held by the bank for each depositor, creditor and property owner. The list must be sworn to and signed by the Chairman of the Board of Directors of the bank.

(b) The list, as required in paragraph 9(a), accompanied by any necessary identifying information, shall be filed with the Executive Commissioner and the National Treasury of Palau. The bank shall pay any unclaimed funds and deliver any unclaimed property to the National Treasury of Palau and shall certify to the Executive Commissioner that the unclaimed funds and property have been paid or delivered.

(c) After the Executive Commissioner has reviewed the list required in paragraph 9(a) and satisfactorily reconciled the unclaimed cash and property with the amounts of money and property reported and transferred to the National Treasury, the Executive Commissioner shall allow the bank to distribute the bank's remaining assets, if any, among its shareholders as their ownership interests appear or parent bank as appropriate.

(d) After distribution of all remaining assets, the bank shall:
   (1) file with the Executive Commissioner, under oath by a majority of its board of directors, another affidavit accompanied by schedules showing the distribution to each shareholder; and
   (2) tender to the Executive Commissioner:
      (i) all copies of reports of examination of the bank in its possession; and
      (ii) its original license.

(e) After verifying the submitted information and documents, the Executive

Commissioner shall issue a certificate canceling the license of the bank.

8. Administrative Authority, Election of Remedies

(a) A bank in the process of voluntary liquidation remains subject to the Financial Institutions Act of 2001 and regulations issued by the Financial Institutions Commission, including provisions for examination by the Financial Institutions Commission, and the bank shall furnish reports required by the Executive Commissioner.

(b) The Executive Commissioner may authorize a deviation from the procedures for voluntary liquidation and closure required by this Regulation if, in the discretion of the Executive Commissioner, it is determined that the interests of depositors, creditors and/or the owners of property held for safekeeping by the bank would not be jeopardized by the deviation. Any decision by the Executive Commissioner to deny a request to deviate from the procedures required by this Regulation for voluntary liquidation and closure shall be nonappealable.

(c) If the Executive Commissioner determines that the voluntary liquidation of a bank is being conducted in an improper or illegal manner or is not in the best interests of the bank's depositors, creditors or the owners of property held for safekeeping by the bank, or that the bank is insolvent or imminently insolvent as defined by Section 10.111(b)(1) of the Financial Institutions Act of 2001, the Executive Commissioner may revoke the license of the bank and appoint a receiver to take possession and control of the bank as provided in Section 10.111(a) of the Financial Institutions Act of 2001.

(d) After a bank's license has been voluntarily surrendered and cancelled, the bank may not resume business or reopen except on application for and approval of a new license by the Financial Institutions Commission.

9. Notice of Closure and Cessation of Banking Operations

(a) Within seven (7) days following the actual closure of the bank in Palau, the person(s) approved as liquidating agent or committee shall, at the expense of the bank, cause a Notice of Closure and Cessation of Banking Operations to be:
   (1) posted at the former office(s) of the bank;
   (2) broadcast over the radio broadcasting station at Koror, at least once each day, both in Palauan and English, for thirty (30) consecutive days, or such other longer time as may be required by the Executive Commissioner; and
   (3) published in a newspaper in general circulation in Palau, in Palauan and English, at least once each week for four (4) consecutive weeks, or such other longer time as may be required by the Executive Commissioner.

(b) The Notice of Closure and Cessation of Banking Operations must:

(1) be approved by the Executive Commissioner;
(2) state the actual date of closure of the bank;
(3) advise depositors, creditors and property owners that unclaimed funds and property have been transferred to the National Treasury of Palau and that claims for payment of such funds or the return of such property should be filed with the Executive Commissioner, who shall verify such claims and upon approval direct the National Treasury of Palau to pay such funds or return such property to the depositor, creditor or property owner;
(4) specify the time period, being not less than six (6) months from the date of the first publication of the Notice of Closure, that such depositors, creditors and property owners have to present their claim for payment by the Executive Commissioner;
(5) specify that all claims for payment or the return of property must be presented in writing to the Executive Commissioner, and in such format as may be required by the Executive Commissioner, at the offices of the Financial Institutions Commission, or such other location as may be specified by the Executive Commissioner;

10. Unclaimed Money and Property

Any money or property that has not been claimed by depositors, creditors or property owners after the date for presentation and payment of claims specified in the Notice of Closure shall become the property of the National Treasury of Palau.

11. Authority to Purchase Assets of Another Bank

(a) A bank (the purchasing bank) licensed by the Financial Institutions Commission, with the prior written approval of the Executive Commissioner, may purchase all or substantially all of the assets of another bank (the selling bank) licensed by the Financial Institutions Commissions as part of the selling bank's voluntary liquidation and cessation of banking operations.

(b) The purchase of all or part of the assets of the selling bank shall not make the purchasing bank responsible for any liability or obligation of the selling bank that the purchasing bank does not expressly and specifically agree to assume in writing.

(c) The purchasing bank may hold the purchase price and any additional money delivered to it by the selling bank as a deposit to the credit of the selling bank and may act as agent of the selling bank in disbursing the money on deposit by paying the depositors and creditors of the selling bank.

(d) If the purchasing bank acts under a written contract approved by the Executive Commissioner that specifically names each depositor and creditor and the amount to be paid to each, and if the contract is limited purely to requiring the purchasing bank to pay those depositors and creditors the amount due to them as determined

by the selling bank and reflected in the contract and does not involve discretionary duties or authority other than the identification of the depositors and creditors named, the purchasing bank:

(1) may rely on the contract and the instructions included in it; and

(2) shall not be responsible or otherwise liable for any error made by the selling bank in determining its liabilities, the depositors and creditors to whom the liabilities are due, or the amount due to the depositors and creditors.

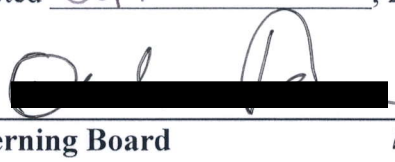
(e) The purchasing bank may pay a depositor or creditor of the selling bank the amount to be paid under the terms of the contract by opening a deposit account in its books in the name of the depositor or creditor and crediting the deposit account with the amount to be paid the depositor or creditor under the terms of the contract, and mailing or personally delivering a duplicate deposit ticket evidencing the credit to the depositor or creditor at the person's address shown in the records of the selling bank. The relationship between the purchasing bank and the depositor or creditor is that of debtor to creditor only to the extent of the credit reflected by the deposit ticket.

PART IV EFFECTIVE DATE

1: **Effective date** – The effective date of this regulation shall be the date upon which all required signatures are affixed, as indicated below.

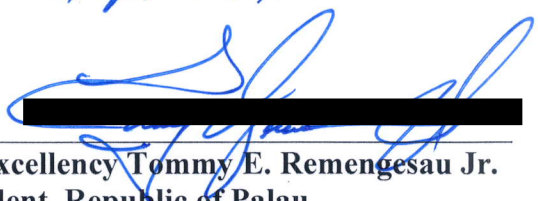
Questions relating to this regulation may be addressed to the Financial Institutions Commission of the Republic of Palau.

Adopted September 10, 2014



Governing Board
Financial Institutions Commission
Republic of Palau

Approved Sept. 16, 2014



His Excellency Tommy E. Remengesau Jr.
President, Republic of Palau