



EXECUTIVE SUMMARY
Chamorro Land Trust Commission Municipal Golf Course Lease Agreements
OPA Report No. 16-09, December 2016

Our compliance audit of the Guam Municipal Golf Course commercial lease agreements found that the initial 25-year lease agreement was executed in 1989 pursuant to public law, however, the second agreement in 2014, was not. When the 1989 Lease expired in 2014, the Chamorro Land Trust Commission (CLTC) leased the 829,124 square meters of golf course property to Company B despite Company B's noncompliance with the lease agreement and

- Without Legislative authorization (Public Law (P.L.) 12-061 codified in 21 Guam Code Annotated (GCA) § 60112).
- Without the Governor's, Lieutenant Governor's, and Attorney General's signatures (21 GCA § 60114).
- Without the required two land appraisals (21 GCA § 75107(e)) and there may have been lost opportunities to raise rental revenue for the 2014 Lease's term.

Lease provisions were not complied with because CLTC did not diligently monitor and enforce the lease provisions and public law to protect CLTC's interests in the property. We found:

- Company A assigned its lease interests to Companies B and C through a series of name changes without the Governor's and Legislature's approvals.
- Company B was grossly delinquent in rental and property tax payments corroborated by Company B's unaudited fiscal year (FY) 2013 through FY 2015 financial data indicating severe financial distress.
- Company B did not submit required annual reports and financial statements.

Despite the noncompliance, a second lease with Company B was executed in 2014 signed only by CLTC's Acting Chairman, CLTC's Acting Director, and Company B's General Manager.

During an October 16, 2015 legislative oversight hearing, the CLTC Administrative Director commented that the 2014 Lease was a continuation of the 1989 Lease, which was already authorized for 50 years by P.L. 19-34. CLTC was obligated to renew the 1989 Lease with the same terms and conditions because the lease was created by public law and there were no rules for CLTC commercial leases.

No Legislative Authorization for 2014 Lease

In 1988, P.L. 19-34 authorized the 1989 Lease specifically between the Department of Land Management (DLM) and Company A for a period not to exceed 50 years to construct and manage a municipal golf course with affordable rates and access to Guam residents. The golf course property, owned by the Government of Guam, transferred to CLTC in 1994.

Not only did the 1989 Lease obtain legislative authorization, but it was signed by the DLM Acting Director, the Company A President, the Governor of Guam, the Lieutenant Governor of Guam, and the Attorney General. On the other hand, the 2014 Lease was only signed by the CLTC Acting Chairman, CLTC Acting Director, and Company B's General Manager although 21 GCA § 60112 does not allow government-owned property to be leased without prior legislative approval.

No Approval from Legislature and Governor for Assignment to Companies B and C

Through several name and ownership changes, the 1989 Lease became assigned to Companies B and C. We did not find any evidence of the Legislature's and Governor's approvals of the assignments as required in Section 7 of the 1989 Lease and P.L. 19-34.

Missed Opportunities to Raise Rental Rates

Property appraisals were not obtained for the 2014 Lease and rental amounts resumed from the 1989 Lease based on 10% of the prior appraised value with 10% increases every five years. As a result, CLTC may have lost opportunities to raise rental revenue over the term of the 2014 Lease. As an example, the Department of Revenue and Taxation's (DRT) 2014 Real Property Tax Assessment Roll assessed the property at \$6.5M, an appreciation of \$5.1M from the initial lease's appraisal of \$1.4M. However, DRT's appraisal was not available until after the 2014 Lease's execution.

Poor Financial Performance

Company B's unaudited financial data for FY 2013 to FY 2015 indicated declining financial performance with increasing net losses. The data showed declining revenues while expenses remained relatively stable. Salaries and the lease were major expense items. Further, we found 36 instances of late rental payments averaging 88 days overdue and ranging from 2 to 258 days late.

Another alarming observation was Company B's cash balances as of September 30, 2015, could not satisfy its significant amounts in current obligations with liabilities exceeding \$10M. Receivables were over \$900 thousand (K) and included \$303K from bingo operators of which one operator was connected to a federal court case involving illegal gambling investigations. With Company B's poor financial performance, the risk of late rental payments is extremely high and Company B's financial viability is questionable.

Conclusion and Recommendations

The current 2014 Lease was executed despite Company B's noncompliance and without proper authorizations, signatures, and appraisals for the government-owned golf course property. Had a more current appraisal been used, there may have been an opportunity to increase rental rates and revenues. The 1989 Lease was improperly assigned to Companies B and C. We have referred the matter to the Attorney General for an opinion on the validity of the renewal. A response has not yet been received.

In their response to the draft report, CLTC agreed to our recommendation to require and obtain independently audited financial statements to ascertain the viability of Company B. However, CLTC disagreed with our findings and is of the opinion that the 2014 Lease was merely a renewal authorized for another 25 years under the same terms and conditions of the initial 1989 Lease.

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Public Auditor