

TITLE 29
COMMERCIAL BANKING

SUBTITLE I
FSM BANK ACT

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Editor's note: Chapters 1 through 9 are designated as subtitle I to retain the integrity of the Federated States of Micronesia Bank Act of 1980 and to allow for future enactment of other laws on Commercial Banking not a part of the FSM Bank Act of 1980. Section 1 of PL 1-94 designated this title as the Federated States of Micronesia Bank Act of 1980, but the original designation of this title as Commercial Banking is retained to comport with standard code format. The "Federated States of Micronesia" in subtitle I is changed to "FSM" and the "of 1980" is not included to shorten the subtitle's designation.

**SUBTITLE I
FSM BANK ACT**

**CHAPTER 1
General Provisions**

SECTIONS

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§ 101. Short title.

This subtitle shall be known as the “Federated States of Micronesia Bank Act of 1980.”

Source: PL 1-94 § 101.

§ 102. Definitions.

As used in this subtitle, unless it is otherwise provided or the context requires a different construction, application, or meaning:

(1) “Agency” means a place of business where transactions are effected with customers on behalf of a branch or main office of a bank, but the accounting records for such transactions are maintained at the branch or main office; includes a remote service facility.

(2) “Article XI” means Article XI of the Programs and Services Agreement of the Compact of Free Association, as amended, entitled “Federal Deposit Insurance Corporation Programs and Services Agreements”.

(3) “Bank” means any person or body of persons or a corporation authorized by law to engage in the banking business, and to accept from the public deposits which are withdrawable and transferable by check or other means of payment transfer. “Bank” includes a savings and loan association but does not include a credit union.

(4) “Banking business” means the business of accepting deposits of money from the public, withdrawable or payable on demand or after a fixed period or after notice, or any similar operation through the frequent sale or placement of notes or other securities, and the use of such funds either in whole or part for loans, investments or any other operation either authorized by law or considered a generally accepted banking practice, for the account and at the risk of the person doing such business.

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(5) “Banking Board” means the Board established pursuant to section 201 of this subtitle.

(6) “Banking Commissioner” means the Banking Commissioner appointed pursuant to section 206 of this subtitle.

(7) “Branch” means an office of a bank where banking business is transacted and at which accounting records are maintained.

(8) “Demand deposit” means any deposit which is repayable by its terms not more than three days after the time it is made.

(9) “Deposits” means money or other property transferred or assigned to any person pursuant to an agreement, expressed or implied, that the person shall repay such moneys upon demand (whether in person or by written order) or after a fixed or determinable period of time. Money loaned to a bank which is to be repaid not sooner than five years from the date of loan, and pursuant to a loan agreement under which the obligation to repay is subordinate to the rights of depositors, shall not be deemed to be a deposit. Money transferred to a credit union as a purchase of its shares shall not be deemed to be a deposit.

(10) “Domestic bank” means a bank organized under the provisions of chapter 3 of this subtitle.

(11) “FDB” means a Domestic bank that is insured by the Federal Deposit Insurance Corporation.

(12) “FDI Act” means the United States’ Federal Deposit Insurance Act codified at 12 U.S.C. 1811-1831.

(13) “Foreign bank” means a corporation or other financial institution organized for the purpose of engaging in the banking business under the laws of a foreign country, operating a bank in its home territory, State, or country.

(14) “IAP” or “institution-affiliated party” means:

(a) any director, officer, employee, or controlling stockholder of, or agent for, an FDB;

(b) any other person who has filed or is required to file a change-in-control notice with the appropriate U.S. Federal banking agency under section 7(j) of the FDI Act;

(c) any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the appropriate U.S. Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an FDB;

(d) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in

(i) any violation of any law or regulation;

(ii) any breach of fiduciary duty; or

(iii) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse affect on, the FDB.

(15) “Legal reserve” means the sum which every domestic bank and foreign bank shall at all times have available for the payment of their deposit liabilities pursuant to the provisions of this subtitle.

(16) “Paid-in capital, surplus, and undistributed profits” means, in the case of a foreign bank, the aggregate paid-in capital, surplus, and undistributed profits of such bank and not

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merely that allocated to, located in, or arising out of its operations in the Federated States of Micronesia.

(17) “Person” includes individuals, corporations, partnerships, and any other business entity.

(18) “Public Auditor” means the Public Auditor appointed by the President of the Federated States of Micronesia with the advice and consent of the Congress pursuant to the Constitution.

(19) “Registrar of Corporations” means the Registrar of Corporations of the National Government of the Federated States of Micronesia.

(20) “Related person” with respect to any person means his spouse, child, parents, brothers, sisters, or any partnership, corporation, or firm in which he owns more than a ten percent interest.

(21) “Secretary of Finance” means the Secretary of the Department of Finance and Administration of the Federated States of Micronesia.

Source: PL 1-94 § 102; PL 1-154 § 1; PL 2-20 § 1; PL 9-130 § 1; PL 12-57 § 1; PL 13-56 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

The statutory provisions on Corporations and Business Associations are found in title 36 of this code. The statutory provisions on the Public Auditor are found in chapter 5 of title 55 (Government Finance and Contracts) of this code.

Editor’s note: Minor changes were made in the phraseology of this section in the 1982 edition of this code.

§ 103. Application of subtitle.

This subtitle shall apply to and govern all banks operating a branch or office in the Federated States of Micronesia; and any bank now existing and operating a branch or office in the Federated States of Micronesia shall hereafter be operated in accordance with the provisions of this subtitle, and shall be required to obtain a license pursuant to chapter 5 of this subtitle on or before the 31st day of December following the effective date of this subtitle.

Source: PL 1-94 § 103.

§ 104. Requirements for banking business.

(1) No person shall engage in the business of accepting deposits in the Federated States of Micronesia or shall use the term “bank” or “savings and loan association” or any form thereof in the conduct of its business unless it has been granted a license pursuant to the provision of this subtitle and such license has not expired and has not been canceled.

(2) Any person holding such a license shall engage in no business in the Federated States of Micronesia other than the banking business and shall engage in such business only at the locations authorized by the Banking Board. Any such person shall give prior notice in writing to the Banking Board of any intention to cease operations at such authorized location. Such notice should be given not later than 180 days prior to the proposed cessation date, and shall include details of alternative arrangements proposed for customers using such location.

Source: PL 1-94 § 104; PL 12-57 § 2.

Case annotations: A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. *Actouka v. Kolonia Town*, 5 FSM R. 121, 122 (Pon. 1991).

§ 105. Application to existing charters, articles of incorporation, or bylaws.

(1) Domestic and foreign banks shall be subject to the applicable provisions of their existing charters, articles of incorporation, or bylaws only to the extent that such are compatible and do not conflict with the provisions of this subtitle.

(2) In the event of any conflict or incompatibility between this subtitle and provisions of said charter, articles of incorporation, or bylaws with respect to any domestic or foreign bank, the provisions of this subtitle shall prevail.

Source: PL 1-94 § 105.

Editor’s note: Minor changes were made in the phraseology of this section in the 1982 edition of this code.

§ 106. Banking Practices—Dormant and Inactive Accounts.

(1) In the event there has been no activity of deposits or withdrawals in a savings account and no contact has been made with the account holder of such savings account for at least ten years, the account shall be deemed a “dormant account” and the bank in which such account is kept shall act to close the dormant account in accordance with the procedures set forth below in this section.

(2) In the event there has been no activity of deposits or withdrawals in a checking account and no contact has been made with the account holder of such checking account for at least two years, the account shall be deemed a “dormant account” and the bank in which such account is kept shall act to close the dormant account in accordance with the procedures set forth below in this section.

(3) Bank actions in crediting interest payments to an account or assessing service charges against an account shall not count as activity for the purposes of determining dormancy.

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(4) Dormant accounts shall be identified annually by each bank during the month of June. Any dormant account with a balance of \$25 or less is not subject to the procedures required by this section.

(5) Upon identification of a dormant account, the bank shall send written notice to the depositor at the depositor's last known address, informing the depositor that the depositor's account will be closed and the funds therein transferred to the Secretary of Finance if the depositor does not claim the funds in the dormant account by December 31 of that calendar year. The notice shall be sent no later than October 1 of that calendar year.

(6) Between November 1 and November 15 and between December 1 and December 15 of each year, each bank shall publish a "Notice of Inactive Bank Accounts", which shall contain:

(a) the names, in alphabetical order, and last known addresses of depositors of dormant accounts; and

(b) a statement that, if not claimed, such funds shall be transferred to the Secretary of Finance during the month of January of the following year. The Notice of Inactive Bank Accounts shall be published in a newspaper of general circulation or by other means as determined by the Banking Board.

(7) During the month of January of the calendar year immediately following the notification and publication required by subsections (4) and (5) of this section, each bank shall transfer to the Secretary of Finance, for the account of the depositor, the full balance of each dormant account, provided however, that the bank may deduct costs of notice and publication in a manner to be determined by the Banking Board in regulations.

(8) Except as provided for in this section, no bank shall assess any fee against any bank account for reasons of inactivity.

(9) In the event that a bank holds, for three years or more, any funds for which the owner or payor cannot be determined by the bank or for which the owner or payor cannot be located by the bank, the bank shall transfer such funds to the Secretary of Finance for the account of the owner or payor, in the event such owner or payor is determined or located at a later date.

(10) Upon receiving sums of money pursuant to this section, the Secretary of Finance shall furnish the transferring bank with a receipt for such transferred funds and shall deposit such sums into a custodial interest bearing account separate and apart from the General Fund of the FSM National Government. Interest earned on funds deposited with the Secretary of Finance pursuant to this section shall be deemed the property of the FSM National Government and shall not be paid to the owner of the funds.

(11) The Secretary of Finance shall be responsible for maintaining accurate records of funds received pursuant to this section in accordance with any regulations adopted by the Banking Board.

(12) At any time within 20 years of the date of transfer of funds to the Secretary of Finance pursuant to this section, such funds may be claimed by their rightful owner or owners by furnishing proof of his, her or their right to such funds, which proof is deemed satisfactory to the Secretary of Finance.

(13) All funds transferred to the Secretary of Finance pursuant to this section shall escheat to the National Government of the Federated States of Micronesia 20 years following the date of such transfer.

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(14) Each bank shall hold the FSM National Government harmless for any liability incurred due to the handling of an account by the bank. The FSM National Government shall not be liable for any transaction on an account made by any bank, including the transfer of the balance of the account to the Secretary of Finance pursuant to this section. The FSM National Government shall not be liable for damages or penalties for any payment to a claimant of funds deposited pursuant to this section.

(15) The bank shall not be liable for any mishandling of an account by the Secretary of Finance.

(16) The Banking Board may adopt such rules and regulations as may be necessary to implement the provisions of this section.

Source: PL 13-56 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

CHAPTER 2
Banking Board

SECTIONS

- § 201. Creation.**
- § 202. Principal purposes.**
- § 203. Powers.**
- § 204. Meetings; Quorum; Majority.**
- § 205. Reports.**
- § 206. Banking Commissioner.**
- § 207. Services of Public Auditor and others.**
- § 208. Court review.**
- § 209. Indemnity.**

§ 201. Creation.

(1) There is hereby established a Banking Board which shall be composed of three members appointed by the President and with the advice and consent of the Congress of the Federated States of Micronesia.

(2) All appointments shall be for a term of four years, provided however, that, unless otherwise provided by the President, all rights and powers of a Banking Board member shall be maintained by each member until the appointment of such member's successor. Banking Board members shall be eligible for reappointment.

(3) The Chairman of the Banking Board shall be appointed by the President from among the members appointed pursuant to subsection (1) of this section.

Source: PL 9-130 § 2; PL 13-56 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 202. Principal purposes.

The principal purposes of the Banking Board shall be:

- (1) To undertake the licensing and supervision of banks;
- (2) To protect the interests of depositors; and
- (3) To promote the soundness, stability, and development of the banking system of the Federated States of Micronesia.

Source: PL 9-130 § 3.

§ 203. Powers.

The Banking Board shall be responsible for its policy and affairs, shall have the powers conferred upon it by this subtitle and may issue directives for the purpose of giving effect to the provisions of this Act.

Source: PL 9-130 § 4.

§ 204. Meetings; Quorum; Majority.

(1) The Banking Board shall meet as often as may be required, at such times, places and with such prior notice as the members thereof shall fix, but not less frequently than once in every three months; provided that any member thereof may request a special meeting upon giving at least 24 hours' notice to the Chairman. A majority of the members of the Banking Board shall constitute a quorum. Decisions shall be adopted by a simple majority of the votes of the members present.

(2) No act or proceeding of the Banking Board shall be invalidated merely by reason of the existence of a vacancy among the members thereof.

Source: PL 9-130 § 5.

§ 205. Reports.

(1) The Banking Board shall prepare a report each year on the condition of the banking system of the Federated States of Micronesia and on the operations of the Board during the year. Copies of the report shall be submitted to the President and the Speaker of the Congress within three months of the end of each year. The report shall also be published.

(2) The Banking Board shall also make up and publish a consolidated statement of assets and liabilities of the Federated States of Micronesia banking system not less frequently than quarterly, and send copies of the statement to the President and the Speaker of the Congress. The Banking Board may also publish from time to time a consolidated statement of assets and liabilities of the Federated States of Micronesia banking system showing figures separately by state.

Source: PL 9-130 § 6; PL 12-57 § 3.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 206. Banking Commissioner.

(1) The President shall appoint a person to be Banking Commissioner, who shall serve as the Chief Executive Officer of the Banking Board, responsible to it for the execution of its policy and the performance of duties and exercise of powers conferred by this subtitle.

(2) The Banking Commissioner shall be a person of recognized experience in banking and financial matters and shall be eligible for reappointment. The Banking Commissioner shall not hold or occupy any other office unless approved in writing by the President.

(3) The remuneration and other terms and conditions of employment of the Banking Commissioner shall be determined from time to time by the Banking Board.

(4) The Banking Commissioner shall, except as may otherwise be provided in this subtitle or the resolutions of the Banking Board, have the power to act and sign instruments and documents on behalf of the Banking Board.

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(5) The Banking Commissioner shall serve, *ex officio*, as a non-voting member of the Banking Board.

(6) During any period when there is no duly appointed person serving as Banking Commissioner, the Chairman of the Banking Board shall perform the duties and exercise the rights of the Banking Commissioner.

Source: PL 9-130 § 7.

§ 207. Services of Public Auditor and others.

The Banking Board and the Banking Commissioner shall be entitled to utilize the services of the Public Auditor and such independent accountants, lawyers, and other experts as they may select in carrying out their powers and duties under this subtitle. The President of the Federated States of Micronesia shall provide such administrative support and staff as may be needed to conduct the business of the Banking Board.

Source: PL 1-94 § 204; PL 2-20 § 3; PL 9-130 § 8.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Chapter 5 of title 55 of this code is on the Public Auditor.

§ 208. Court review.

Any person aggrieved by an order of the Banking Board may appeal to the Trial Division of the Supreme Court of the Federated States of Micronesia within 30 days after the issuance of the order. The filing of such appeal shall not stay enforcement of an order but the Court may order a stay upon such terms as it deems proper.

Source: PL 1-94 § 205; PL 6-73 § 1; renumbered by PL 9-130 § 9.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendars, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

§ 209. Indemnity.

Neither the Banking Board nor any of its members, the Banking Commissioner, employee or any person duly appointed to assist the Banking Board in carrying out its powers and duties under this subtitle shall incur any liability as a result of anything done in good faith in the exercise of any power or the performance of any duty under this subtitle.

Source: PL 12-57 § 4.

**CHAPTER 3
Domestic Banks**

SECTIONS

- § 301. Organization—Permit required; Application.**
- § 302. Application for permit—Banking Commissioner’s investigation.**
- § 303. Application for permit—Issuance by board.**
- § 304. Articles of incorporation—Requisites.**
- § 305. Certificate of incorporation; Beginning of corporate existence.**
- § 306. Issuance of certificate; Transmittal to Banking Commissioner.**
- § 307. Examination for compliance.**
- § 308. Issuance of bank license.**
- § 309. Amount and ownership of capital stock.**
- § 310. Amendment of articles of incorporation.**
- § 311. Establishment of offices abroad.**

§ 301. Organization—Permit required; Application.

- (1) Any five or more persons of sufficient legal capacity may organize a domestic bank, but for such purpose they shall first apply in writing for a permit from the Banking Board.
- (2) The application shall set forth and prove the need of the services of a banking institution in the locality wherein the bank is sought to be established, and that the services rendered by other banking institutions do not answer the needs of the locality.
- (3) The application shall also set forth the following:
 - (a) A business plan showing the intended strategy for the first three years of operation, including the administrative and organizational structure of the bank, internal controls, and projected balance sheet, profit and loss and cash flow statements for each of the three years, together with the assumptions on which they are based;
 - (b) The structure and adequacy of the proposed capital in relation to the projected volume of risk assets detailed in the business plan;
 - (c) The financial capacity, history, qualifications and experience of the applicants and the proposed management.

Source: PL 1-94 § 301(1); PL 2-20 § 4 (part); PL 12-57 § 5.

§ 302. Application for permit—Banking Commissioner’s investigation.

It shall be the duty of the Banking Commissioner, immediately after the Banking Board receives an application for a permit, to make whatever investigations and hold such hearings as he deems may be necessary as to:

- (1) the banking and commercial ability and experience of the applicants;
- (2) whether such ability and experience are sufficient to warrant the efficient functioning and operation of the bank;
- (3) whether local need justifies the application;
- (4) the character and repute, as well as the banking and commercial experience of the prospective directors or officers who are to conduct the business of said bank;
- (5) whether the bank shall be of benefit to the general public; and

- (6) the capital which the bank has available for its operations.

Source: PL 1-94 § 301(2); PL 2-20 § 4 (part); PL 9-130 § 10.

§ 303. Application for permit—Issuance by board.

The Banking Board may issue the permit applied for if, in its judgment, the results of the investigations are satisfactory. Any permit may be granted subject to such conditions as the Banking Board, in its discretion, deems necessary to protect the interests of the people of the Federated States of Micronesia.

Source: PL 1-94 § 301(3); PL 2-20 § 4 (part).

§ 304. Articles of incorporation—Requisites.

The articles of incorporation must be subscribed by each of the incorporators and duly sworn to before a notary public. They shall specifically state:

- (1) the name by which such bank is to be known;
- (2) the State where its main office is to be established, which shall be its legal domicile;
- (3) the amount of the authorized capital stock, the number of shares into which the same is divided, and, if they have a par value, the par value of each share;
- (4) the term of duration of the bank;
- (5) the transactions to which the capital of the bank is to be preferably devoted;
- (6) the time and manner of calling and holding regular meetings of stockholders, and the reasons and circumstances for, and manner of, calling and holding special meetings;
- (7) the manner of constituting a quorum at the regular and special meetings of the stockholders;
- (8) the names and places of residence of the incorporators and the number of shares subscribed by each;
- (9) the number of directors of the bank, which shall not be less than five, and not less than two-thirds of the total number of whom shall be citizens of the Federated States of Micronesia and shall have resided in the Federated States of Micronesia for at least one year prior to the date of the application; the manner of their election, their terms of office, and the number necessary to constitute a quorum; and
- (10) any other articles which the incorporators may deem it advisable to insert for the regulation of the business and the conduct of the affairs of the bank; provided, that such articles shall not be in conflict with this subtitle, or with any other laws of the Federated States of Micronesia.

Source: PL 1-94 § 301(4); PL 2-20 § 4 (part).

Cross-reference: For provisions on filing fees, see section 626 of this title.

§ 305. Certificate of incorporation; Beginning of corporate existence.

- (1) Upon subscribing and swearing to the articles of incorporation, as provided in section 304 of this chapter, and upon submitting two copies of the same to the Registrar of Corporations together with the permit granted by the Banking Board authorizing the organization

of the bank, and upon payment of the proper filing fee, and upon the issuance by the Registrar of Corporations, under his seal, of a certificate stating that the articles containing the statements required by section 304 of this chapter have been filed in his office, the existence of the bank named in the articles of incorporation shall begin.

(2) From and after the date of such filing, the bank shall constitute a body corporate under the name set forth in the articles. Before such bank may commence business it shall comply with the other requirements of this subtitle and all other applicable provisions of law.

Source: PL 1-94 § 302.

Editor's note: Minor changes were made in the phraseology of this section in the 1982 edition of this code.

§ 306. Issuance of certificate; Transmittal to Banking Commissioner.

Upon the issuance by the Registrar of Corporations of a certificate of incorporation, as provided in section 305 of this chapter, the Registrar of Corporations shall so notify the Banking Commissioner and at the same time shall transmit to the Banking Commissioner a duplicate copy of the articles of incorporation.

Source: PL 1-94 § 303(1); PL 2-20 § 5 (part); PL 9-130 § 11.

§ 307. Examination for compliance.

(1) When the duplicate copy is received by the Banking Commissioner, he shall notify the corporation, and the corporation shall then file with the Banking Commissioner a statement of all the facts necessary to enable him to determine whether the bank has in fact complied with all the requirements of law and is lawfully entitled to commence business, such statement to be sworn to by a majority of the directors and by the president or the manager of the bank.

(2) Upon receipt of such statement by the Banking Commissioner, he shall examine the condition of the corporation and ascertain specifically the amount of its capital paid in; the names and places of residence of its stockholders, directors, and officers; the amount of the capital stock which each owns in good faith; and, generally, whether such corporation has complied with all the provisions of law required to entitle it to a license to engage in the business of banking.

Source: PL 1-94 § 303(2); PL 2-20 § 5 (part); PL 9-130 § 12.

§ 308. Issuance of bank license.

(1) If, upon careful examination of the facts so reported, or of any other relevant facts which may come to his knowledge, the Banking Commissioner is satisfied that such bank has complied with all the applicable provisions of this subtitle, with any conditions in the Banking Board permit required to be satisfied prior to licensing, and with other laws required to be complied with before a bank shall be authorized to commence the business of banking, he shall issue a license to engage in the banking business pursuant to section 501 of this subtitle. The license shall contain any conditions of the Banking Board permit intended to survive past issuance of the license.

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(2) The Banking Commissioner may withhold from a bank the license authorizing it to commence business whenever he is satisfied that the shareholders have organized the bank for any other than the legitimate objectives determined by this subtitle.

(3) The expenses incurred by the Banking Commissioner in connection with such investigations shall be paid by the corporation in conformity with the regulations the Banking Board may promulgate for that purpose.

Source: PL 1-94 § 303(3); PL 2-20 § 5 (part); PL 9-130 § 13.

§ 309. Amount and ownership of capital stock.

No domestic bank shall be organized and established in the Federated States of Micronesia with a capital stock less than \$1,000,000, which shall be paid in cash before the bank shall be authorized to commence business, and at least two-thirds of which shall be owned by persons who are citizens of the Federated States of Micronesia and who shall have resided in the Federated States of Micronesia for at least one year prior to the application.

Source: PL 1-94 § 304; PL 1-154 § 3; PL 12-57 § 6.

§ 310. Amendment of articles of incorporation.

(1) Every bank organized under this subtitle may amend its articles of incorporation with the approval of the Banking Board for any lawful purposes.

(2) No amendment may contain a provision which it would not have been lawful and proper to insert in the original articles of incorporation.

(3) No change shall be made in the articles of incorporation by which the rights or security of the existing depositors or creditors of the bank shall be impaired.

Source: PL 1-94 § 305.

Editor's note: Minor changes were made in the phraseology of this section in the 1982 edition of this code.

§ 311. Establishment of offices abroad.

Except with the consent in writing of the Banking Board, no domestic bank licensed under this subtitle shall establish a branch, agency or office outside the Federated States of Micronesia.

Source: PL 9-130 § 14.

CHAPTER 4
Foreign Banks

SECTIONS

- § 401. Establishment in the FSM—Requirements.**
- § 402. Establishment—Application for permit required.**
- § 403. Application for permit—Banking Commissioner’s investigation.**
- § 404. Application for permit---Issuance by Board.**
- § 405. Issuance of permit—Transmittal to Registrar of Corporations.**
- § 406. Examination for compliance.**
- § 407. Issuance of bank license.**
- § 408. Appointment of agent for service of process.**

§ 401. Establishment in the FSM—Requirements.

(1) Upon compliance with the provisions of this chapter, any foreign bank having a paid-in capital, surplus, and undivided profits of not less than \$20,000,000 (except \$1,000,000 for any bank which is a member of the Federal Deposit Insurance Corporation of the United States or the Federal Savings and Loan Insurance Corporation of the United States) may establish offices or branches in the Federated States of Micronesia.

(2) Before beginning its operations in the Federated States of Micronesia, it shall file in the Office of the Registrar of Corporations a duly authenticated copy of its charter or articles of incorporation, together with a resolution of its board of directors approving the establishment of such office or branch in the Federated States of Micronesia, and a statement verified by oath of the president, manager, agent, cashier, or other authorized officer of said bank, showing:

- (a) the name of such foreign bank;
- (b) the location of its existing or proposed main office or places of business within and without the Federated States of Micronesia;
- (c) the objects of its business;
- (d) the amount of its authorized capital;
- (e) the amount of its capital stock actually paid in cash;
- (f) the amount of the assets of the bank, and of what they consist;
- (g) an itemized statement of the liabilities of the bank;
- (h) the amount of investment to be devoted to its business in the Federated States of Micronesia, which in no case shall be less than \$100,000; and
- (i) the names and post office addresses of the chief executive officer in the home bank and all officers in the Federated States of Micronesia, if any, and the time, if any, when the term of office of each expires.

Source: PL 1-94 § 401; PL 1-100 § 1.

Editor’s note: Minor changes were made in the phraseology of this section in the 1982 edition of this code.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. For provisions on filing fees, see section 626 of this subtitle.

§ 402. Establishment—Application for permit required.

(1) No foreign bank may open any branch or office or change the location of any branch or office in the Federated States of Micronesia without a permit to do so from the Banking Board.

(2) An application to the Banking Board for such permit shall state the benefit to the public expected to result from the granting of the permit applied for.

(3) The Banking Board, upon receipt of such application, may require the submittal of such additional information as may be necessary in order for it to make the necessary investigations.

(4) An application by a foreign bank to open a new branch in the FSM must be accompanied by written confirmation from the supervisory authority in the applicants' country of incorporation that the supervisory authority has no objection to the proposal to establish the branch in the FSM; and that the foreign bank is subject to consolidated supervision and regulation in its country of incorporation.

Source: PL 1-94 § 402(1); PL 2-20 § 6 (part); PL 12-57 § 7.

§ 403. Application for permit—Banking Commissioner's investigation.

It shall be the duty of the Banking Commissioner, immediately after the Banking Board receives an application for a permit, to make whatever investigations may be necessary as to:

- (1) the overall financial condition of the application;
- (2) whether or not granting the application would reasonably be apt to result in an over-extension of applicant's resources or facilities;
- (3) the character and repute, as well as the banking and commercial experience, of applicant and the bank's directors and executive officers;
- (4) whether the bank shall be of benefit to the general public;
- (5) the investment which the bank has made or has available for its operations in the Federated States of Micronesia; and
- (6) whether the bank will maintain insurance or other deposit protection at least equivalent to that offered by a bank which is a member of the Federal Deposit Insurance Corporation of the United States.

Source: PL 1-94 § 402(2); PL 2-20 § 6 (part); PL 9-130 § 15; PL 12-57 § 8.

§ 404. Applicant for permit—Issuance by Board.

The Banking Board may issue the permit applied for if, in its judgment, the results of the investigations are satisfactory; PROVIDED that, in no event shall the Banking Board issue a permit until the applicant provides incontrovertible evidence that the applicant has and will maintain continuing insurance or other deposit protection at least equivalent to that offered by a bank which is a member of the Federal Deposit Insurance Corporation of the United States. Any permit may be granted subject to such conditions as the Banking Board, in its discretion, deems necessary to protect the interests of the people of the Federated States of Micronesia. The decision of the Banking Board shall be final. All expenses incurred by the Banking Board in connection with such investigations shall be paid by the applicant in conformity with regulations which the Banking Board may make.

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Source: PL 1-94 § 402(3); PL 2-20 § 6 (part); PL 9-130 § 16; PL 12-57 § 9.

Erratum: The misspelled word “judgement” was corrected to “judgment”.

§ 405. Issuance of permit—Transmittal to Registrar of Corporations.

Upon the issuance of a permit to an applicant, the Banking Board shall forthwith transmit a certified copy thereof to the Registrar of Corporations who shall file it along with such other documents submitted to him.

Source: PL 1-94 § 402(4); PL 2-20 § 6 (part).

Cross-reference: The statutory provisions on Corporations and Business Associations are found in title 36 of this code.

§ 406. Examination for compliance.

(1) When the permit of the Banking Board is received by the foreign bank, as provided in section 405 of this chapter, it shall proceed to comply with all applicable provisions of law so as to place it in readiness to commence operations upon issuance to it of the license provided by section 501 of this subtitle.

(2) When such foreign bank is in such position of readiness, it shall notify the Banking Commissioner by means of a statement of all facts necessary to enable the Banking Commissioner to determine whether such foreign bank has, in fact, complied with all the requirements of law and is lawfully entitled to commence operations, such statement to be sworn to by a majority of the directors or by the president or manager of such foreign bank.

(3) Upon receipt of such statement, the Banking Commissioner shall make such investigations as may be necessary to assure himself that the foreign bank has, in fact, complied with all the provisions of law to entitle it to a license to engage in the business of banking.

Source: PL 1-94 § 403(1); PL 2-20 § 7 (part); PL 9-130 § 17.

§ 407. Issuance of bank license.

(1) If, upon a careful examination of the facts so reported or any other relevant facts which may come to his knowledge, he is satisfied that the foreign bank has complied with all of the provisions of this subtitle and the Banking Board permit required before a foreign bank shall be authorized to open or operate a branch or office in the Federated States of Micronesia, the Banking Commissioner shall issue a license to engage in the banking business pursuant to section 501 of this subtitle.

(2) The Banking Commissioner may withhold from a foreign bank the license authorizing it to commence operations whenever he is satisfied that the foreign bank seeks to operate in the Federated States of Micronesia for any other than the legitimate objectives determined by this subtitle.

(3) The expenses incurred by the Banking Commissioner in connection with such investigation shall be paid by the foreign bank in conformity with regulations which the Banking Board may make and issue for that purpose.

Source: PL 1-94 § 403(3); PL 2-20 § 7 (part); PL 9-130 § 18.

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§ 408. Appointment of agent for service of process.

Before commencing business in the Federated States of Micronesia, a foreign bank shall file with the Banking Board an appointment of the Banking Commissioner as its agent upon whom all process in any action or proceeding against it arising out of the operations or activities of its office or offices in the Federated States of Micronesia may be served, which appointment shall be by its terms perpetual and irrevocable.

Source: PL 1-94 § 403(4); PL 2-20 § 7 (part); PL 9-130 § 19.

CHAPTER 5
Licensing of Banks

SECTIONS

- § 501. Licensing of banks.**
§ 502. License fees.
§ 503. Transitional arrangement.
§ 504. Licenses—Board review. [REPEALED]

§ 501. Licensing of banks.

(1) The Banking Commissioner shall issue licenses to engage in banking business to banks pursuant to sections 308 and 407 of this subtitle. A license shall be in writing and subject to such terms and conditions, including but not limited to capital which a bank shall maintain in relation to the size and nature of its business, with which the bank shall comply, as may be specified in its license.

(2) A copy of the license issued under this section shall be displayed and kept displayed conspicuously in a public part of all places of business of the bank in the Federated States of Micronesia.

(3) The Banking Board may from time to time, by notice in writing to a bank holding a license issued, or deemed to have been issued, under this section, impose new or additional conditions of the license or vary or remove any conditions already imposed.

(4) The Banking Board shall not take any action under subsection (3) of this section without first consulting the bank concerned and affording it an opportunity to make submissions to the Banking Board.

(5) A license issued under this section shall remain valid unless canceled in accordance with the provisions of this subtitle.

Source: PL 9-130 § 20.

§ 502. License fees.

Banks holding a valid license issued pursuant to section 501 of this subtitle shall pay an annual license fee of \$2,000 for each office or branch to be operated in the Federated States of Micronesia during the succeeding calendar year. The license fee shall be paid before the 31st day of December each year, in respect of the next succeeding calendar year.

Source: PL 9-130 § 21.

Case annotations: Where licenses are to be issued to each bank branch, and each bank branch must be scrutinized as to its qualifications for a license, it is a reasonable statutory interpretation that the regulatory license fee must be paid for each bank branch. *Bank of the FSM v. FSM*, 6 FSM R. 5, 8 (Pon. 1993).

The context of Chapter 5 of Title 29 requires that the term “bank” be understood to mean bank branch when used in 29 F.S.M.C. 502 and 504. Therefore scrutiny for license qualifications and payment of license fees are to be on a per branch basis. *Bank of the FSM v. FSM*, 6 FSM R. 5, 8 (Pon. 1993).

§ 503. Transitional arrangement.

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Any bank now holding a valid license to engage in banking business issued pursuant to this subtitle shall be deemed to be licensed under the provisions of section 501 of this chapter, shall be issued with a license accordingly, and shall be subject to the provisions of this subtitle.

Source: PL 9-130 § 22.

§ 504. Licenses—Board review. [REPEALED]

Source: PL 1-94 § 501(4); PL 1-155 § 1 (part); PL 6-41 § 2; Repealed by PL 9-130 § 23.

Case annotations: Where licenses are to be issued to each bank branch, and each bank branch must be scrutinized as to its qualifications for a license, it is a reasonable statutory interpretation that the regulatory license fee must be paid for each bank branch. *Bank of the FSM v. FSM*, 6 FSM R. 5, 8 (Pon. 1993).

The context of Chapter 5 of Title 29 requires that the term “bank” be understood to mean bank branch when used in 29 F.S.M.C. 502 and 504. Therefore scrutiny for license qualifications and payment of license fees are to be on a per branch basis. *Bank of the FSM v. FSM*, 6 FSM R. 5, 8 (Pon. 1993).

CHAPTER 6
Regulation and Supervision of Banks

SECTIONS

- § 601. Regulation and supervision of banks---General policies.
- § 602. Regulations—Issuance and promulgation.
- § 603. Examination of banks—Authority; Testimony; Document Production; Fees.
- § 604. Report of banks.
- § 605. Special reports.
- § 606. Misleading or obstructive conduct an offense.
- § 607. Penalty for failure to report.
- § 608. Alternative examination and reports.
- § 609. Legal reserve—Domestic banks.
- § 610. Legal reserve—Foreign banks.
- § 611. Legal reserve—Notification.
- § 612. Limitations on loans—Maximum amount.
- § 613. Limitations on loans—Related persons.
- § 614. Limitations on loans—Use of bank’s security; Purchase of bank’s stock.
- § 615. Limitations on loans—Liability for violations.
- § 616. Prohibited loans and withdrawals—Penalties.
- § 617. Applications for credit—Denials and records.
- § 618. Prohibited investments by domestic banks.
- § 619. Acceptance of deposits—Minimum capital requirements.
- § 620. Declarations of dividends—Requisites.
- § 621. Bank stock—Ownership limitations.
- § 622. Limitations on sale of assets, merger, etc.
- § 623. Deposit and other insurance.
- § 624. Prohibited interests of Government officials in banks; Removal from office.
- § 625. Permissible interests of Government officials.
- § 626. Filing fees; Disposition of fines.
- § 627. General penalties.

§ 601. Regulation and supervision of banks—General policies.

(1) All domestic banks and, to the extent of and with respect to business done at any branches established in the Federated States of Micronesia, all foreign banks doing business in the Federated States of Micronesia shall be regulated and supervised by the Banking Board in such manner as to secure the safe and sound conduct of such business, to prevent unsound practices, and to maintain the public confidence in such business and protect the public interest and the interests of depositors.

(2) In determining if a Bank is carrying on its business in a prudent manner, the Banking Board will have regard to the following:

- (a) capital adequacy in relation to the size and nature of the business;
- (b) asset concentration and risk exposure;
- (c) separation of Banking Business from other business and from other interests of any person owning or controlling the Bank;

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- (d) adequacy of liquidity in relation to liabilities;
- (e) asset quality and adequacy of provisions for losses;
- (f) internal controls, risk management and accounting systems;
- (g) adequacy of governance arrangements (including Directors and senior management) in relation to the nature and scale of the business; and
- (h) such other matters as the Banking Board considers relevant.

(3) Every foreign bank licensed pursuant to section 501 of this subtitle shall, with the concurrence of the Banking Commissioner, designate the branch in the Federated States of Micronesia which may be used as the channel of communication between the Banking Board and the Bank with respect to the application of this subtitle to its business throughout the Federated States of Micronesia. Such branch shall be responsible for the timely provision of reports and information by other branches requested under this subtitle. The head office of a domestic bank shall be the channel of communication between the Banking Board and its branches, and shall be responsible for the timely provision of reports and information by other branches requested under this subtitle.

(4) All FDBs shall comply with all existing and future banking and banking-related laws, rules and regulations of the United States relating to supervision, regulatory, and resolution and receivership matters, except any portions of such laws, rules and regulations that conflict with sections 4 or 5 of Article XIII of the FSM Constitution.

Source: PL 1-94 § 601(1); PL 9-130 § 24; PL 12-57 § 10; PL 13-56 § 4.

Case annotations: Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. *Bank of Hawaii v. Jack*, 4 FSM R. 216, 218 (Pon. 1990).

The FSM Supreme Court will consider an unambiguous provision in a promissory note for the payment of reasonable attorney's fees in debt collection cases as valid in the FSM. *Bank of Hawaii v. Jack*, 4 FSM R. 216, 219 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. *Bank of Hawaii v. Jack*, 4 FSM R. 216, 219 (Pon. 1990).

Provisions in promissory notes for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. *Bank of Hawaii v. Jack*, 4 FSM R. 216, 219 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. *Bank of Hawaii v. Jack*, 4 FSM R. 216, 220 (Pon. 1990).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not in excess of fifteen percent of the outstanding principal and interest. *Bank of Hawaii v. Jack*, 4 FSM R. 216, 221 (Pon. 1990).

§ 602. Regulations—Issuance and promulgation.

(1) For the purpose of effectuating the policy declared in section 601 of this chapter, the Banking Board, with the approval of the President of the Federated States of Micronesia, may adopt regulations consistent with law and sound banking practice.

(2) Such regulations shall be brought to the attention of those affected thereby in the manner that the Banking Board may prescribe.

Source: PL 1-94 § 601(2).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.

§ 603. Examination of banks—Authority; Testimony; Document Production; Fees.

(1) The Banking Commissioner may examine, or cause to be examined, every domestic or foreign bank for the purpose of ascertaining whether it has complied with this subtitle and other applicable laws and for such other purposes and such other matters as the Banking Board may prescribe.

(2) The Banking Commissioner and every examiner appointed by him may administer an oath to any person whose testimony may be required on the examination of any bank and summon and compel the appearance and attendance of any person for the purpose of the examination.

(3) As part of any examination, the Banking Commissioner may also require the production of books, records or other documents in whatever form.

(4) As an examination fee, each bank so examined shall pay the total cost of such examination, and the sum so paid shall be deposited into the General Fund of the Federated States of Micronesia.

Source: PL 1-94 § 602; PL 2-20 § 8; PL 9-130 § 25; PL 13-56 § 5.

Editor's note: Subsections (1) and (2) were originally a single subsection.

§ 604. Report of banks.

(1) Every domestic or foreign bank shall make at least one report of its condition each year to the Banking Commissioner within 90 days after the close of the bank's fiscal year, and according to forms to be prescribed by him, verified by the oath of the chief executive officer or chief financial officer and attesting officer, certifying and subscribing under oath that each of them has personal knowledge of the facts stated therein and that the same are true.

(2) Such reports shall exhibit in detail and under appropriate heads the total resources and liabilities of the bank, and, in the case of a foreign bank, shall show separately the resources, liabilities, and operations in the Federated States of Micronesia.

(3) The Banking Commissioner shall have the right to require that any such reports be audited at the bank's expense by independent accountants approved by the Banking Commissioner.

(4) Every domestic and foreign bank holding a license under this subtitle shall forward to the Banking Commissioner no later than the 31st day of December each year a report

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outlining the bank's policy regarding employment of citizens of the Federated States of Micronesia in executive positions in the bank, and the steps being taken to maximize such employment.

(5) Every domestic and foreign bank shall publish in such manner as the Banking Commissioner shall direct, within four months after the close of its fiscal year, an audited report of its condition as described in subsections (1) and (2) of this section.

(6) Each Bank shall deliver to the Banking Board within such period as may be specified and in such form as the Board may from time to time approve, a periodic statement of its:

- (a) assets and liabilities;
- (b) earnings and expenses;
- (c) loans and advances; and
- (d) such other data as the Board may deem necessary to carry out the purpose of this Act.

Source: PL 1-94 § 603(1); PL 2-20 § 9(part); PL 9-130 § 26; PL 12-57 § 11.

§ 605. Special reports.

(1) The Banking Commissioner may request from the banks special reports.

(2) The Banking Commissioner may, from time to time, by notice in writing, require any domestic or foreign bank to submit such reports and returns as he may require for the purposes of the administration and enforcement of the provisions of this subtitle and any regulations made thereunder.

(3) Any bank notified in writing under subsection (2) of this section shall comply with accurate and timely submissions or be subject to a penalty imposed by the Banking Board in an amount not to exceed \$100 per day until the correct information has been provided to the satisfaction of the Banking Commissioner.

(4) During the first five years of operations in the Federated States of Micronesia by any domestic bank, the Banking Commissioner shall call for special reports of its condition not less frequently than each calendar quarter.

Source: PL 1-94 § 603(2); PL 2-20 § 9 (part); PL 9-130 § 27; PL 12-57 § 12; PL 13-56 § 6.

§ 606. Misleading or obstructive conduct an offense.

(1) Whoever, with intent to deceive:

(a) makes a false or misleading entry in any bank book or record;

(b) makes, provides or certifies any report required by section 604 or 605 of this subtitle, or provides any information required under this subtitle, which is false in any material particular;

(c) omits an entry or alters or conceals any entry in any bank book or record;

or

(d) conceals or destroys any information, book, voucher, record, report, return, minutes or document relating to the accounts, transactions, affairs or business of a bank;

shall be fined not more than \$1,000, or imprisoned for not more than one year, or both.

(2) Whoever obstructs, or endeavors to obstruct:

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- (a) the proper performance by an Auditor of a Bank of his duties related to that Bank;
- (b) an examination of a Bank conducted pursuant to section 603 of this subtitle; or
- (c) the proper performance of his duties by an advisor appointed under section 701 of this subtitle;

shall be fined not more than \$1,000, or imprisoned for not more than one year, or both.

Source: PL 1-94 § 603(3); PL 2-20 § 9 (part); PL 12-57 § 13.

§ 607. Penalty for failure to report.

Any bank which fails to make, transmit, and publish any report required under sections 604 or 605 of this chapter shall be subject to a fine of \$100 per day for each day's delay after the period specified in this section.

Source: PL 1-94 § 603(4); PL 2-20 § 9 (part).

§ 608. Alternative examination and reports.

(1) The Banking Commissioner may accept, in lieu of the examination required or authorized by section 603 of this chapter, the most current examination made by the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or a Federal Reserve Bank, or in case of a foreign bank not examined by such agencies, an examination acceptable by the appropriate government agency in the home jurisdiction of that bank.

(2) The Banking Commissioner may accept, in lieu of any report of condition which may be required by sections 604 or 605 of this chapter, a report of condition obtained by said Corporation, Board of Governors, Federal Reserve Bank, or government agency.

Source: PL 1-94 § 604; PL 2-20 § 10; PL 9-130 § 28.

§ 609. Legal reserve—Domestic banks.

(1) Subject to such additional requirements as the Banking Board may impose, every domestic bank shall maintain a legal reserve which shall not be less than 20 percent of its demand deposits and not less than five percent of its other deposits. Said reserve shall consist of United States currency or demand deposits in the name of such bank deposited in another bank approved for such purpose by the Banking Board.

(2) The Banking Board may increase or decrease the minimum legal reserve for demand deposits established in this section up to not more than 30 percent or down to not less than 15 percent of the total demand deposits of a domestic bank, when in its judgment the circumstances so require it; but the order increasing or decreasing the minimum legal reserve shall not be effective until 30 days after it is entered. This time might be extended by the Banking Board.

Source: PL 1-94 § 605(1); PL 2-20 § 11 (part).

§ 610. Legal reserve—Foreign banks.

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Every foreign bank shall maintain, with respect to its deposits in the Federated States of Micronesia, a legal reserve which shall not be less than, and which shall be subject to the same condition as, the legal reserve requirement imposed in the jurisdiction of its place of incorporation on deposits of the foreign bank in that jurisdiction.

Source: PL 1-94 § 605(2); PL 2-20 § 11 (part).

§ 611. Legal reserve—Notification.

The Banking Commissioner shall notify any domestic or foreign bank whose legal reserve is less than that required by this subtitle of its obligations to make up the full amount. If such bank fails to do so within a period of 30 days, it may be declared in liquidation by the Banking Board. In such event, the Banking Commissioner shall apply to the Trial Division of the Supreme Court of the Federated States of Micronesia for the appointment of a receiver to take charge of and wind up the affairs of such bank and thereafter the matter shall be governed by the provisions of section 802 of this subtitle.

Source: PL 1-94 § 605(3); PL 2-20 § 11(part); PL 9-130 § 29.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

612. Limitations on loans—Maximum amount.

(1) No domestic bank shall permit a person to become indebted or liable to it, either directly or indirectly, in an amount in excess of 20 percent of the aggregate paid-in and unimpaired capital, surplus, and undivided profits of the bank; PROVIDED however, that this subsection shall not apply to transactions entered into with another bank which is a member of the Federal Deposit Insurance Corporation of the United States, and for which quarterly reports of condition are monitored.

(2) In computing the total liabilities, direct or indirect, of any person to a bank, there shall be included all liabilities to the bank of any related person and any loans made for his benefit or for the benefit of any related person.

(3) In computing the total liabilities of any firm, copartnership, or unincorporated association to the bank, there shall be included all liabilities of its individual members and all loans made for the benefit of the copartnership or unincorporated association or any members thereof.

(4) In computing the total liabilities of any corporation to a bank there shall be included all liabilities of and all loans made for the benefit of the corporation and its majority owned subsidiaries.

Source: PL 1-94 § 606(1); PL 12-57 § 14.

§ 613. Limitations on loans—Related persons.

(1) Except as herein provided, no domestic bank shall make any extension of credit to any of its officers, directors, agents, or employees, or to any related person, either directly or

indirectly, except upon the written application of such person or related person stating the line of credit applied for, terms and security, if any, offered therefore to the board of directors or to the loan or executive committee of the board, and then only with the written approval of a majority of the board or majority of the loan committee of the bank (excluding the person seeking the credit) before the loan is made; and the approval of the loan as allowed by the board or the loan committee of the bank shall be made part of the minutes of the next directors' meeting of the bank.

(2) Loans may be made to any officer, director, agent, employee, or shareholder of any domestic bank or any related person, without such application and approval, in amounts not in excess of \$25,000 in aggregate principal owing by any such individual and related person at any one time.

Source: PL 1-94 § 606(2); PL 12-57 § 15; PL 13-56 § 7; PL 16-16 § 1.

§ 614. Limitations on loans—Use of bank's security; Purchase of bank's stock.

No domestic bank shall make any loan on the security of its own stock or for the purchase of its own stock.

Source: PL 1-94 § 606(3).

§ 615. Limitations on loans—Liability for violations.

Any officer, director, agent, or employee of any bank who knowingly permits the funds of the bank to be loaned in a dishonest manner or contrary to sections 612, 613, or 614 of this chapter shall be held responsible in his individual capacity for all damages which the bank, its shareholders, depositors, creditors, or any persons shall have sustained in consequence thereof.

Source: PL 1-94 § 606(4).

§ 616. Prohibited loans and withdrawals—Penalties.

Any director, officer, or employee of a bank or related person who asks for or receives any commission, money, property, or thing of value for his own personal benefit for procuring or assisting in procuring a loan from such bank or for permitting any person to overdraw any account with such bank shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

Source: PL 1-94 § 607(1).

§ 617. Applications for credit—Denials and records.

Each bank must provide an applicant with a written explanation of the basis on which a decision is made to deny a written application for a loan, a credit card, or other request for extension of credit within 30 days from the date of receipt of such application by the bank. Each bank shall keep records of all applications for credit received and denials and written explanations given in the manner determined by the Banking Commissioner.

Source: PL 6-41 § 3; PL 13-56 § 8.

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Editor's note: The word “Denials” in the section title was not capitalized in PL 13-56 § 8, but was capitalized here for format consistency.

§ 618. Prohibited investments by domestic banks.

No domestic bank shall invest in the stock of any other corporation, acquire any real estate, except with the approval of the Banking Board for use as its principal office in the Federated States of Micronesia, or pledge any of its assets as security for or guaranty any obligations of others except for the issuance of its letters of credit in connection with the shipment of goods.

Source: PL 1-94 § 607(2); renumbered by PL 6-41 § 4.

§ 619. Acceptance of deposits—Minimum capital requirements.

No domestic bank may accept deposits at any time that its paid-in capital, surplus, and undivided profits is less than \$1,000,000 in the aggregate.

Source: PL 1-94 § 607(3); renumbered by PL 6-41 § 4; PL 13-56 § 9.

§ 620. Declarations of dividends—Requisites.

No domestic bank shall declare any dividend or make any other distribution to its stockholders except:

- (1) out of earnings for the current and next preceding year; or
- (2) with the approval of the Banking Board.

Source: PL 1-94 § 607(4); renumbered by PL 6-41 § 4.

§ 621. Bank stock—Ownership limitations.

No person or group of related persons (including entities that are affiliated as parent or subsidiary companies or are otherwise under common control) may acquire ten percent or more of the stock of a domestic bank without the prior approval of the Banking Board.

Source: PL 1-94 § 607(5); renumbered by PL 6-41 § 4; PL 13-56 § 10.

§ 622. Limitations on sale of assets, merger, etc.

No domestic bank may merge or consolidate with, or sell a substantial portion of its assets to, another bank without the approval of the Banking Board. No foreign bank may make any arrangement or enter into any agreement for the sale or disposal of its business, or part thereof, in the Federated States of Micronesia to any other person without the prior approval in writing of the Banking Board.

Source: PL 1-94 § 607(6); renumbered by PL 6-41 § 4; PL 12-57 § 16.

§ 623. Deposit and other insurance.

(1) If and while it is available under the laws of the United States, all domestic banks and foreign banks, as a condition to operating an office or branch in the Federated States of Micronesia, shall secure their depositors by deposit insurance of the Federal Deposit Insurance

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Corporation or the Federal Savings and Loan Insurance Corporation of the United States, or their successor entities.

(2) All domestic and foreign banks operating an office or branch in the Federated States of Micronesia shall provide themselves with protection and indemnity against burglary, embezzlement, and other similar insurable loss. If a domestic or foreign bank refuses to comply with this requirement, the Banking Commissioner shall have the right to make arrangements to furnish such protection and indemnity, charging the cost thereof to said bank.

Source: PL 1-94 § 608; PL 2-20 § 12; renumbered by PL 6-41 § 4; PL 9-130 § 30.

§ 624. Prohibited interests of Government officials in banks; Removal from office.

(1) No member of the Banking Board nor the Public Auditor nor any representative of the Banking Board or the Public Auditor nor any bank examiner shall, during the discharge of his office:

(a) be an officer, director, or employee in any bank or company affiliated therewith;

(b) own or deal directly or indirectly in the shares or obligations of such bank or affiliated company;

(c) be interested in or receive directly or indirectly from such bank or affiliated company, or from any of its officers, directors, or employees, any salary, gratuity, compensation, or other thing of value by way of gift, credit, compensation for services, or for any other reason; or

(d) be interested in or under obligation to negotiate any loan, obligation, or settlement for another person with such bank or affiliated company.

(2) Any violation of this section by any official or employee referred to herein shall be sufficient cause for his removal from office by the President.

Source: PL 1-94 § 609(1); renumbered by PL 6-41 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Public Auditor are found in chapter 5 of title 55 (Government Finance and Contracts) of this code.

§ 625. Permissible interests of Government officials.

Notwithstanding the provisions of section 624 of this chapter, any official or employee referred to in such section may own or keep one or more bank accounts, either commercial or savings, and may rent safe-deposit boxes in any bank referred to in such section and doing business in the Federated States of Micronesia, and may obtain a loan from any such bank, foreign bank, or affiliated company; provided, that such official or employee makes full disclosure thereof to the Banking Board and, in the case of each of the members of the Banking Board, he shall make the disclosure to the President of the Federated States of Micronesia.

Source: PL 1-94 § 609(2); renumbered by PL 6-41 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 626. Filing fees; Disposition of fines.

(1) Every domestic bank or foreign bank in the Federated States of Micronesia shall, upon filing its articles of incorporation in the Office of the Registrar of Corporations, pay a filing fee of \$50.

(2) Every domestic or foreign bank desiring to file in the Office of the Registrar of Corporations articles amendatory or supplementary or a certificate of increase or decrease of capital stock shall pay a fee of \$25.

(3) The fee for furnishing a certified copy of any of the documents referred to in the preceding subsections of this section shall be fifty cents per folio, but not less than five dollars.

(4) All fees required under the provisions of this subtitle shall be paid to the Office of the Registrar of Corporations and shall be accounted for and deposited into the General Fund of the Federated States of Micronesia.

(5) All fines under this subtitle shall be paid to the Banking Commissioner and shall be accounted for and deposited into the General Fund of the Federated States of Micronesia.

Source: PL 1-94 § 610; PL 2-20 § 13; renumbered by PL 6-41 § 4; PL 9-130 § 31.

Cross-reference: The statutory provisions on Corporations and Business Associations are found in title 36 of this code.

§ 627. General penalties.

(1) For any violation of this subtitle, license conditions imposed by the Banking Board pursuant to section 501 of this subtitle, directives issued by the Banking Board pursuant to section 701 of this subtitle, or the regulations prescribed pursuant to section 602 of this chapter, the delinquent domestic or foreign bank shall be subject to a fine of not more than \$5,000 and if the violation is a continuing one, to a further fine not exceeding \$1,000 for every day during which the violation continues; and, in the case of a material violation, to the cancellation of its license.

(2) The Banking Board must give notice to the Bank concerned of the intention to impose a penalty pursuant to subsection (1) of this section, and allow it a hearing in respect to the alleged violation. The Banking Board must take into account the outcome of the hearing in its final decision.

(3) The Banking Commissioner shall immediately notify the Bank concerned in writing of any penalty imposed pursuant to subsections (1) and (2) of this section. If the penalty involves cancellation of license, the Bank must immediately cease to carry on banking business, the Banking Commissioner must notify the Registrar of Corporations of the cancellation, and the provisions of section 801 of this subtitle shall apply.

Source: PL 1-94 Ch. 7; PL 2-20 § 14; renumbered by PL 6-41 § 4; PL 9-130 § 32; PL 12-57 § 17.

Cross-reference: The statutory provisions on Corporations and Business Associations are found in title 36 of this code.

CHAPTER 7
Control over Banks

SECTIONS

- § 701. Unsafe or unsound practices.**
§ 702. Enforcement of directives.
§ 703. Prevention against money laundering.
§ 704. Prohibition on disclosure.
§ 705. Retention of records.

Editor's note: Section 18 of PL 12-57 enacted a new chapter 7 entitled Control over Banks.

§ 701. Unsafe or unsound practices.

(1) This section shall apply when the Banking Board has determined that a Bank licensed under this subtitle:

(a) is following unsafe or unsound practices in the conduct of its business that if continued may jeopardize its obligations to its depositors, or adversely affect the operation or stability of the banking system of the FSM; or

(b) has contravened or failed to comply with the terms and conditions of its license or the provisions of this subtitle.

(2) When a Bank is engaged in practices described in subsection (1) of this section, the Banking Board:

(a) shall issue a directive to such Bank to cease and desist from such practice, contravention or non-compliance or to take such other action as the Banking Board determines is necessary;

(b) shall issue a directive to such Bank to take such action (including action to replace or strengthen officers or directors) as may be specified in such directive in order to correct the conditions resulting from such practice, contravention or non-compliance; and

(c) may appoint a qualified person to advise the bank on the proper conduct of its business and measures to be taken to rectify its situation; the remuneration to be paid to such advisor shall be fixed by the Banking Board and paid by the Bank.

Source: PL 12-57 § 19; PL 13-56 § 11.

§ 702. Enforcement of directives.

(1) The Banking Commissioner shall promptly and fully enforce all FDIC directives and orders against or involving any FDB or any IAP, except to the extent that such directives or orders conflict with the Constitution of the FSM.

(2) If a Bank to which section 701 of this chapter has been applied fails to comply promptly with any directive or order of the FDIC or Banking Commissioner, such failure shall constitute grounds for an application under section 801 of this subtitle.

Source: PL 12-57 § 20; PL 13-56 § 12.

§ 703. Prevention against money laundering.

(1) Any director, manager or other officer of a Bank in the Federated States of Micronesia who makes or authorizes, or permits to be made or authorized by any officer of the Bank any transaction:

(a) without taking or causing to be taken all reasonable steps to establish the true identity of the persons concerned in the transaction; or

(b) when he or the officer concerned doubts or has reason to doubt the authenticity of documents and the truth of written or oral statements material to the transaction; or

(c) when he or the officer concerned knows or has reason to suspect that any of the funds involved in the transaction have been obtained by any party as the direct or indirect result of activity that is illegal inside or outside the Federated States of Micronesia;

is guilty of an offense and upon conviction, shall be fined not more than \$10,000 or imprisonment for not more than one year or both.

(2) No director, manager or other officer concerned in the management of a financial institution who discloses in good faith to the Banking Commissioner information regarding any customer or transaction which he believes to be connected to illegal activity, shall incur any liability as a result of such disclosure.

Source: PL 12-57 § 21.

§ 704. Prohibition on disclosure.

(1) No person who, in his past or current capacity as a director, manager, officer, employee or agent of any licensed bank, has acquired information concerning a customer of a licensed bank shall disclose such information except:

(a) with the written authorization of the customer or his legal personal representative;

(b) for the purpose of performing his duties under this subtitle;

(c) when required to do so by a court in the Federated States of Micronesia;

(d) in order to comply with the provisions of this subtitle or any other written law; or

(e) to provide to a person, upon a legitimate business request, a general credit rating, a copy of which shall be provided to the subject of the credit rating upon his request.

(2) No member of the Banking Board, Banking Commissioner, employee or agent of the Banking Board shall disclose to any person any information, returns or data whatsoever relating to any licensed Bank or to its customers that he has acquired in the performance of his duties under this subtitle except:

(a) for the purpose of the performance of his duties or the exercise of his functions;

(b) when lawfully required to do so by any court, or in proceedings for an offense against this subtitle;

(c) with the consent of the person to whom the information relates;

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(d) to the extent that the information is available under any other law or in a public document;

(e) in aggregated or summary form, in such a manner as to prevent any information disclosed from being identified by any person as being related to a particular person; or

(f) in confidence to a supervisory authority in any other country for the purposes of the exercise of functions corresponding to or similar to those conferred on the Banking Board under this subtitle, so long as the Banking Board is reasonably satisfied the recipient of the information will maintain confidentiality.

Source: PL 12-57 § 22.

§ 705. Retention of records.

(1) A licensed bank must retain, for a period of at least five years, checks and other negotiable instruments drawn on it and paid by it, and other items comprising records of transactions processed by it.

(2) It shall be sufficient compliance with the duty imposed by subsection (1) of this section if a copy of the item has been made by the licensed Bank on microfilm, microfiche, tape, disk, or electronic or photographic storage media, and is retained by the licensed Bank for the same period as the item is required to be retained pursuant to subsection (1) of this section.

(3) Notwithstanding the provisions of any other law, a copy of an item made pursuant to this section shall be admissible as evidence in any legal proceeding to the same extent as the item of which it is a copy would have been admissible.

Source: PL 12-57 § 23.

CHAPTER 8
Receivership and Liquidation

SECTIONS

§ 801. Receivership—Application by Banking Commissioner.

§ 802. Receivership—Appointment and duties of receiver.

§ 803. Voluntary liquidation.

§ 801. Receivership—Application by Banking Commissioner.

If, in consequence of an examination or report made by an examiner, or otherwise, the Banking Board should have reason to believe that a domestic bank or foreign bank is in an unsafe or unsound condition or is engaging in unsafe or unsound practices; or that its affairs are being conducted in such a manner that the public or the persons or entities having securities or funds under its custody are in danger of being defrauded; or if any such bank shall violate its charter or any law relative thereto, or this subtitle in any material respect; or if it becomes insolvent, then, subject to chapter 9 of this subtitle, the Banking Commissioner may apply to the Trial Division of the Supreme Court of the Federated States of Micronesia for the appointment of a receiver to take charge of and wind up the affairs of such bank.

Source: PL 1-94 § 801(1); PL 2-20 § 15 (part); PL 6-73 § 2; PL 9-130 § 33; PL 13-56 § 13.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

§ 802. Receivership—Appointment and duties of receiver.

(1) If the Court, after hearing all parties concerned, determines that the facts alleged by the Banking Commissioner are supported by the evidence, except in the event that the FDIC has appointed itself receiver pursuant to chapter 9 of this subtitle, the Court shall appoint a receiver.

(2) Upon his appointment the receiver shall, under the direction of the Banking Commissioner, take possession of the assets and liabilities, books, records, papers, and files of every description belonging to the bank; and collect all loans, fees, and claims of the bank; and see to the payment of its obligations and debts, and to the necessary expenses of receivership.

(3) The receiver shall proceed to liquidate the affairs of the bank as soon as possible, and to this end may sell the personal and real property and other assets of the bank, but subject to the approval of the Banking Commissioner. The receiver shall continue to perform his duties in the manner prescribed herein until the bank or foreign bank is fully liquidated.

Source: PL 1-94 § 801(2); PL 2-20 § 15(part); PL 9-130 § 34; PL 13-56 § 14.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 803. Voluntary liquidation.

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Any bank may terminate its business in the Federated States of Micronesia with the approval and under the supervision of the Banking Board in such event. The business and assets of the bank in the Federated States of Micronesia shall be liquidated in an orderly manner so as to fully protect all of the creditors, depositors, and stockholders of the bank in the Federated States of Micronesia.

Source: PL 1-94 § 802.

CHAPTER 9
FDIC Proceedings and FDBs

SECTIONS

- § 901. Authority, Scope.**
- § 902. Administrative Enforcement Actions.**
- § 903. Receivership.**
- § 904. Prohibited participation.**

Editor’s note: Section 15 of PL 13-56 enacted a new chapter 9 entitled FDIC Proceedings and FDBs. PL 13-56 was signed into law by President Joseph J. Urusemal on December 8, 2004.

§ 901. Authority, Scope.

This chapter is enacted in accordance with Article XI in order to set forth the rights and obligations between FDBs, the FDIC and the government and courts of the FSM.

Source: PL 13-56 § 16.

Editor’s note: Pursuant to section 102 of chapter 1 of the definitions section of this subtitle, the reference to “Article XI” in this section is to the following:

- (2) “Article XI” means Article XI of the Programs and Services Agreement of the Compact of Free Association, as amended, entitled “Federal Deposit Insurance Corporation Programs and Services Agreements”.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 902. Administrative Enforcement Actions.

Any proceeding involving administrative enforcement actions against the FDB or any IAP of the FDB shall be in accordance with the FDI Act and FDIC Regulations. Any proceeding against the FDB or an IAP shall be held in the State of Pohnpei, unless the parties agree to hold a hearing in another location, or unless an Administrative Law Judge finds good cause to hold a hearing in a different location.

- (1) The FDB or an affected IAP may appeal administrative orders pursuant to Article XI.
- (2) The FDIC may sue to enforce administrative orders or directives pursuant to Article XI.
- (3) The government and courts of the FSM shall recognize orders and directives of the FDIC and other orders pursuant to Article XI.

Source: PL 13-56 § 17.

Editor’s note: Pursuant to section 102 of chapter 1 of the definitions section of this subtitle, the reference to “Article XI” in this section is to the following:

- (2) “Article XI” means Article XI of the Programs and Services Agreement of the Compact of Free Association, as amended, entitled “Federal Deposit Insurance Corporation Programs and Services Agreements”.

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Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 903. Receivership.

If the FDB becomes “critically undercapitalized” as that term is used in Article XI, the Banking Commissioner shall act to close the FDB.

(1) The FDIC has the authority to appoint itself receiver of the FDB under the circumstances provided in Article XI and to exercise all powers conferred by the FDIC Act.

(2) Upon closure of a FDB for any reason, the FDIC shall become the receiver of the FDB on the date of the closing unless the FDIC notifies the Banking Commissioner in writing that it will not serve as receiver.

(3) A closed FDB shall pay the receiver’s administrative expenses prior to the payment of any other claims of unsecured creditors. The subrogated claim of the FDIC as insurer of deposits shall have priority over the payment of any claims of general unsecured creditors of the FDB, other than the receiver’s administrative expenses.

(4) No person alleging a claim against a FDB in receivership shall be permitted to bring an action in a court of law or other body (including any action that existed against the FDB prior to its failure) until such person has permitted the receiver a reasonable period to review such claim.

(5) No claim against a receiver arising prior to the failure of the FDB shall be valid unless it appears in the FDB’s records.

(6) No claim against the receiver for its actions in liquidating the FDB shall prevail unless the plaintiff proves by clear and convincing evidence that the receiver acted in willful disregard of the law.

(7) No court or administrative agency shall enjoin the operations of the receivership.

(8) Officers, directors and other professionals shall be liable to the receiver for any damages caused to the failed FDB.

(9) The receiver shall not be required to perform any executory contract that had been entered into by the FDB prior to its failure.

(10) Litigation between the receiver and the creditors or debtors of the FDB shall not be commenced until after the receiver has conducted a complete administrative review of the claim.

(11) All suits of a civil nature to which the FDIC as receiver is a party must be brought pursuant to the provisions of Article XI.

Source: PL 13-56 § 18.

Editor’s note: Pursuant to section 102 of chapter 1 of the definitions section of this subtitle, the reference to “Article XI” in this section is to the following:

(2) “Article XI” means Article XI of the Programs and Services Agreement of the Compact of Free Association, as amended, entitled “Federal Deposit Insurance Corporation Programs and Services Agreements”.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 904. Prohibited participation.

Participation in the conduct of the affairs of a FDB is prohibited by any IAP, person or party who:

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(1) is subject to a final or temporary order of suspension, removal, or prohibition issued by the FDIC, other United States banking or regulatory agency, or United States court; and/or

(2) has been convicted of, or has agreed to enter a pre-trial diversion or similar program, in connection with the prosecution for an offense of the type covered by section 19 of the FDI Act, including any conviction and/or diversion that takes place in the FSM or in any other nation or jurisdiction.

Source: PL 13-56 § 19.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.