

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

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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.

(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 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.

(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.

(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.