

## CHAPTER 9

### FDIC Proceedings and FDBs

#### SECTIONS

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**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".

**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:

(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.