

TITLE 30
DEVELOPMENT BANKING

CHAPTERS

- 1 FSM Development Bank (§§ 101-138)**
- 2 Investment Development Fund (§§ 201-202)**
- 3 Investment Development Act (§§ 301-320)**
- 4 FSM Venture Funds (§§ 401-425)**

CHAPTER 1
FSM Development Bank

SECTIONS

- § 101. **Establishment of the FSM Development Bank.**
- § 102. **Purpose.**
- § 103. **Principal place of business and branch offices.**
- § 104. **Functions of the Bank.**
- § 105. **Powers of the Bank.**
- § 106. **Capitalization.**
- § 107. **Corporate bylaws.**
- § 108. **Annual shareholders meeting.**
- § 109. **Special shareholders meeting.**
- § 110. **Proxies.**
- § 111. **Quorum.**
- § 112. **Voting rights; Cumulative voting.**
- § 113. **Record date.**
- § 114. **Board of Directors.**
- § 115. **Professional qualifications of directors and officers of the Bank.**
- § 116. **Organizational meeting.**
- § 117. **Regular meetings.**
- § 118. **Special meetings.**
- § 119. **Quorum.**
- § 120. **Removal of Directors.**
- § 121. **Officers of the Board.**
- § 122. **Officers of the Bank.**
- § 123. **Action by unanimous consent.**
- § 124. **Committees.**
- § 125. **Acts affecting personal financial interest.**
- § 126. **Expenses and honoraria.**
- § 127. **Administration of funds.**
- § 128. **Tax exemption; No dividends.**
- § 129. **Debt of the Bank.**
- § 130. **Audit.**
- § 131. **Records and inspections.**
- § 132. **Checks, drafts, etc.**
- § 133. **Contracts; How executed.**
- § 134. **Annual report.**
- § 135. **Certificates and transfers of shares.**
- § 136. **FSM National Government shares and FSM State government shares.**
- § 137. **Foreign ownership.**
- § 138. **Limit on commitments to single person or project.**

Editor's note: PL 8-47 § 1 repealed all sections of chapter 1 of title 30, except for section 122. Section 122 was relocated from chapter 1 to a new chapter 2, entitled "Investment Development Fund" and renumbered section 201.

TITLE 30 – DEVELOPMENT BANKING

PL 8-47 also enacted new sections of chapter 1 of this title for the purpose of reorganizing the FSM Development Bank.

PL 4-106 § 3 provided that:

The interest on the remaining principal for any loan from the Federated States of Micronesia Development Bank which is outstanding on October 1, 1987 shall be adjusted to the rate established by section 121 of this chapter. This section shall not apply to any interest or penalties resulting from a loan being delinquent on or before the effective date of PL 4-106, i.e., June 2, 1987. The interest on loans established prior to the effective date of PL 4-106 shall not be reduced by any means to the level set forth in section 121 of this chapter before October 1, 1987.

§ 101. Establishment of the FSM Development Bank.

There is hereby established a body corporate to be known as the Federated States of Micronesia Development Bank, hereinafter referred to as the “Bank.” The Bank shall not be deemed to be a legal successor of either the Micronesia Development Bank or the Bank of Micronesia.

Source: PL 8-47 § 4.

Cross-reference: The statutory provisions on Commercial Banking are found in title 29 of this code.

Case annotations: The FSM Development Bank is an instrumentality of the National Government and part of the National Government for the purposes of FSM Const. art. XI, § 6(a), giving the trial division of the Supreme Court exclusive jurisdiction over cases in which the National Government is a party. *FSM Dev. Bank v. Estate of Nanpei*, 2 FSM R. 217, 221 (Pon. 1986).

§ 102. Purpose.

It is the intent of the Government of the Federated States of Micronesia to establish an independent financial institution operating under its own Board of Directors but conducting its activities within the framework of the National Government’s general economic plans, policies and priorities.

Source: PL 8-47 § 5.

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/>.

§ 103. Principal place of business and branch offices.

TITLE 30 – DEVELOPMENT BANKING

The principal place of business of the Bank shall be located within the Federated States of Micronesia at a place to be designated by the Board of Directors of said Bank. The Board may designate other branch offices in the States of the Federated States of Micronesia, or abroad, based on the needs of the Bank.

Source: PL 8-47 § 6.

§ 104. Functions of the Bank.

(1) Subject to any existing limitation or limitations hereafter created, the Bank is authorized to engage in all banking functions that will assist in the economic advancement of the Federated States of Micronesia.

(2) Such functions shall include but not be limited to the following:

(a) To mobilize, from both within and outside the Federated States of Micronesia, additional financial resources for development;

(b) To provide short, medium and long-term loans for high priority projects, with special emphasis on and attention to the needs of the Federated States of Micronesia;

(c) To provide technical assistance and services for project identification, project formulation, and to perform investment studies;

(d) To administer trust funds and special funds available to the Federated States of Micronesia on a grant or loan basis;

(e) To foster economic activities and cooperate with other lending institutions within and outside the Federated States of Micronesia in supporting activities for its development.

Source: PL 8-47 § 7.

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

Case annotation: The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. *FSM Dev. Bank v. Mudong*, 10 FSM R. 67, 76-77 (Pon. 2001).

The stated purpose of the FSM Development Bank under 30 F.S.M.C. 104(1) is to assist in the Federated States of Micronesia's economic advancement. *Adams v. Island Homes Constr., Inc.*, 12 FSM R. 348, 353 (Pon. 2004).

Under 30 F.S.M.C. 104(2), the Development Bank does not have a duty to provide technical support for the project for which the money was loaned because 30 F.S.M.C. 104 does not confer a private cause of action, and the Bank does not have a duty under this statute to provide technical assistance to debtors to whom it has already made a loan. *FSM Dev. Bank v. Jonah*, 13 FSM R. 522, 523 (Kos. 2005).

§ 105. Powers of the Bank.

In performing the functions authorized pursuant to section 104 of this chapter, the Bank shall have and exercise all powers normally exercised by a banking corporation, including but not limited to the following:

(1) to adopt, alter, and use a corporate seal;

TITLE 30 – DEVELOPMENT BANKING

- (2) to adopt and amend bylaws governing the conduct of its business and the exercise of its powers;
- (3) to sue and be sued in its corporate name;
- (4) to acquire in any lawful manner, real, personal, or mixed property, either tangible or intangible; to hold, maintain, use, and operate such property; and to sell, lease, or otherwise to dispose of such property;
- (5) to acquire in any mode and take over the whole or any part of the business, property, good will, and liabilities of any other bank or banks;
- (6) to act as agent of and as correspondent for other banks;
- (7) to make, issue, and circulate notes upon such terms and subject to such provisions and conditions as may be prescribed by the Board;
- (8) to guarantee or become liable for the payment of money or for the performance of any obligations, and generally to carry on guarantee and indemnity business of all kinds and to effect counter guarantees;
- (9) to take and otherwise acquire and hold shares, stocks, mortgages, bonds, obligations, securities, and investments of all kinds;
- (10) to lend money either with or without security, and if with security upon such terms as may from time to time seem expedient;
- (11) to borrow or raise any sum or sums of money on such security and, upon such terms as to interest or otherwise, as may from time to time seem expedient;
- (12) to buy, sell, and deal in bullion, specie, precious metals, currencies, and exchange of and with all countries;
- (13) to lend and advance money to or negotiate loans or discount promissory notes or other negotiable instruments for, or on behalf of, or otherwise financially assist, persons, firms, or companies concerned in any way whatever in the sale or purchase of any property, real or personal, for cash or on credit or on hire purchase, hire agreement, time payment, installment system, or otherwise, and generally to transact or engage in any class of business commonly undertaken by financiers;
- (14) to establish agencies or connections in relation to the business of the Bank in any part of the world;
- (15) to give letters of credit on agents and banking connections in any part of the world;
- (16) to buy, sell, discount, rediscount, hedge bills of exchange, promissory notes, and treasury securities;
- (17) to buy and sell securities issued by any government agency, international organization, company, institution, or otherwise;
- (18) to form or assist in forming any company for the purpose of carrying on any business which the Bank is authorized to carry on, or any other business which may seem conducive to any of the interests of the Bank, or to acquire by purchase or otherwise the whole or any part of the business, property, and liabilities, or the whole or any part of the shares or stock of any company carrying on or proposing to carry on any such business as aforesaid; to hold shares, stock, debentures, debenture stock, or any interest in any such company and to dispose of such shares, stock, debenture, debenture stock, or interest and to make or carry out arrangements for giving the Bank the entire or partial control and management or benefit of the business of any

TITLE 30 – DEVELOPMENT BANKING

such company and to guarantee dividends and interest on shares, stock, debentures, debenture stock, mortgages, bonds, or securities of any such company;

(19) to issue corporate bonds for various periods of time, upon such terms and with such conditions and provisions as are deemed necessary and desirable by the Board for the sale to the general public or to other financial institutions and government agencies;

(20) to permit the Bank to be registered or recognized in any country, state, or place outside of the Federated States of Micronesia, and to comply with any conditions necessary or expedient in order to enable the Bank to carry on business in any such country, state, or place and to establish or guarantee local companies or branch offices constituted or regulated under or by local laws for carrying on any business which the Bank is authorized to carry on;

(21) to sell or otherwise dispose of, with or without recourse, loans or other assets of any kind, or interests therein; and

(22) to do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

Source: PL 8-47 § 8.

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

§ 106. Capitalization.

(1) The authorized capital stock of the Bank shall be \$60,000,000 divided into 12,000,000 shares of common stock of par value of five dollars per share, but said authorized capital stock may be increased or decreased from time to time upon approval of the Board. If issued capital stock is to be increased by the sale of additional shares, each existing shareholder shall be entitled to subscribe for such additional shares in proportion to the number of shares of said issued capital stock owned by said shareholder at the time the increase is authorized by the Board, or at such other time thereafter but before the increase is effectuated as the Board may specify. The Board shall prescribe a reasonable period of time within which the preemptive rights to subscribe to the new shares of stock must be exercised. The Board, at any time and from time to time, may authorize and issue debt obligations, whether or not substantiated, without the approval of the shareholders.

(2) Shares of stock may only be purchased with cash except as described in section 136 of this chapter.

Source: PL 8-47 § 9.

§ 107. Corporate bylaws.

The Board shall, by majority vote of its entire membership, adopt, amend, or repeal bylaws of the Bank providing for the management of the business of the Bank, the organization, meetings, and procedures of the Board, designating the officers of the Bank and the duties thereof, the form of the seal of the Bank, and the preparation and submission of required reports. Bylaws may not be adopted, amended, or repealed except after one week's written notice to each director.

Source: PL 8-47 § 10.

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

§ 108. Annual shareholders meeting.

(1) There shall be an annual shareholders meeting to be held on the second Tuesday in April of each year or such other date as the Board may prescribe. The purpose of the meeting shall be to elect directors and to transact whatever other business may be brought before the meeting. The meeting shall be held at the main office of the Bank, or at such other place as the Board may designate. Notice of the meeting shall be mailed, postage prepaid, at least 30 days prior to the date of the meeting, addressed to each shareholder at his or her address appearing on the books of the Bank. Alternatively, such notice may be sent by fax, receipt confirmed by telephone at least ten days prior to the date of the meeting, to a shareholder at his or her fax number, if any, appearing on the books.

(2) Nominations for election to the Board may be made by the Board or by any stockholder of any issued share of the Bank entitled to vote for election of directors. Nominations by a shareholder shall be made in writing and delivered, faxed, or mailed to the President of the Bank not less than 14 days (30 days in the case of mailing) nor more than 50 days prior to any annual stockholders meeting. Such notification shall contain the following information to the extent known to the nominating shareholder:

- (a) the name and address of each nominee;
- (b) the principal occupation of each nominee;
- (c) the name and address of the nominating shareholder; and
- (d) the number of shares of capital stock of the Bank owned by the nominating shareholder.

Source: PL 8-47 § 11.

§ 109. Special shareholders meeting.

Special meetings of the shareholders may be called for any purpose at any time by the Board or by any shareholders owning, in the aggregate, not less than 25 percent of the issued stock of the Bank. Every such special meeting, unless otherwise provided by law to the contrary, shall be called by mailing a notice, postage prepaid, stating the purpose of the meeting, not less than 30 days prior to the date fixed for such meeting, to each shareholder at his or her address appearing on the books of the Bank. Alternatively, such notice may be sent by fax, receipt confirmed by telephone at least ten days prior to the date of the meeting, to a shareholder at his or her fax number, if any, appearing on the books of the Bank.

Source: PL 8-47 § 12; PL 10-8 § 1.

§ 110. Proxies.

Shareholders may vote at any meeting of the shareholders personally or by proxies duly authorized in writing, but no officer or employee of the Bank shall act as proxy. Proxies shall be valid only for one meeting, to be specified therein, and any adjournments of such meeting. Proxies shall be dated and shall be filed with the record of the meeting.

Source: PL 8-47 § 13.

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

§ 111. Quorum.

A majority of the issued stock of the Bank represented in person or by proxy shall constitute a quorum at any meeting of shareholders, unless otherwise provided by law; but less than a quorum may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice. A majority of the votes cast shall decide every question or matter submitted to the shareholders at any meeting, unless otherwise provided by law to the contrary.

Source: PL 8-47 § 14.

§ 112. Voting rights; Cumulative voting.

(1) Only shareholders in whose names shares entitled to vote stand on the stock record of the Bank on the day of any meeting of shareholders, unless some other record date be fixed by the Board for the determination of shareholders of record and then on such other day, shall be entitled to vote at such meeting.

(2) Any shareholder entitled to vote at any election for directors may vote cumulatively and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shares are entitled, or distribute that shareholder's vote on the same principal among as many candidates as that shareholder thinks fit. The candidates receiving the highest number of votes up to the number of directors to be elected are elected.

Source: PL 8-47 § 15.

§ 113. Record date.

The Board may fix a time in the future not exceeding 40 days preceding the date of any meeting of shareholders or the date fixed for the allotment of rights, or when any change or conversion or exchange of shares shall go into effect, as a record date for the determination of shareholders entitled to receive notice of and to vote at such meeting, or to receive any allotment of rights, or to exercise the rights with respect to any such change, conversion or exchange of shares. In such case only shareholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any share on the books of the Bank after any record date fixed as aforesaid. The Board may close the books of the Bank against transfer of shares during the whole or any part of such period.

Source: PL 8-47 § 16.

§ 114. Board of Directors.

(1) There shall be a Board of Directors of the Bank consisting of seven members (one of whom shall be the President of the Bank *ex officio*) elected at the annual shareholders meeting

by the shareholders by the plurality of votes thereof. A director shall serve until his term is expired or his successor is elected and qualified, whichever is later, and shall be eligible for reelection. Membership on the Board shall not be restricted to shareholders or to citizens of the Federated States of Micronesia. Any vacancy in the Board may be filled by action of the Board.

(2) Directors shall serve staggered terms of three years. At the first organizational meeting of the Board, the six elected directors shall, by lot, determine among themselves which two directors shall have the initial terms of one year, which two directors shall have initial terms of two years, and which two directors shall have initial terms of three years. Thereafter all terms shall be three years.

(3) Until a new Board shall have been elected and qualified as provided in this chapter the Board in existence immediately prior to the time that the Act establishing this chapter becomes law shall continue to serve as the Board of Directors of the Bank, subject to the same quorum standard as was in existence immediately prior to said time.

Source: PL 8-47 § 17.

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

§ 115. Professional qualifications of directors and officers of the Bank.

(1) Board members of the Bank shall be persons experienced in the conduct of business, commerce, finance, banking, accounting, or development economics.

(2) The President and senior Vice President of the Bank shall each have had not less than five years experience in the banking profession, or the equivalent experience in a related profession.

Source: PL 8-47 § 18.

§ 116. Organizational meeting.

Upon receipt of the result of the election at the shareholders meeting, the President of the Bank shall forthwith notify the directors-elect of their election and of the time at which they are required to meet at the office of the Bank for the purpose of organizing the new Board. Such meeting shall be held on the date of the election or as soon thereafter as practicable, and, in any event, within 30 days thereof.

Source: PL 8-47 § 19.

§ 117. Regular meetings.

Regular meetings of the Board shall be held without notice, on the second Monday of January, April, July and October of each year at the principal office of the Bank or at such place as the Board may designate. When any regular meeting of the Board falls on a legal holiday, or when there is an emergency or other event that would result in a quorum not being present, the meeting shall be held on the next banking business day unless the Board designates a different day or on such day as the Board may designate.

Source: PL 8-47 § 20; PL 9-114 § 1.

§ 118. Special meetings.

Special meetings of the Board may be called by the Chairman of the Board and shall be called at the request of two or more directors. The President shall give 10 days' written notice of any special meeting. Each member of the Board shall be given notice stating the time and place, by telegram, facsimile, letter, or personal delivery, of each such special meeting. Only matters set forth in the notice of special meeting shall be considered at such meeting.

Source: PL 8-47 § 21.

§ 119. Quorum.

Four directors shall constitute a quorum at any meeting of the Board.

Source: PL 8-47 § 22.

§ 120. Removal of Directors.

Any director may be removed by the affirmative vote of the majority vote of the shareholders present in person or by proxy at any meeting duly called for such purpose.

Source: PL 8-47 § 23.

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

§ 121. Officers of the Board.

The officers of the Board shall consist of a Chairman and a Vice Chairman, each of whom must be a member of the Board. Officers of the Board shall be elected by the directors and shall serve for one year or until their successors are elected and qualified, and they shall be eligible for reelection. The duties and responsibilities of the officers of the Board include but are not limited to the following:

(1) *Chairman.* The Chairman of the Board shall, if present, preside at all meetings of the Board, and exercise and perform such other powers and duties as may from time to time be assigned by the Board.

(2) *Vice Chairman.* In the absence of the Chairman, the Vice Chairman shall perform all the duties of the Chairman, and when so acting shall have all the powers of, and be subject to all the restrictions imposed upon, the Chairman. The Vice Chairman shall have such other powers and perform such other duties as from time to time may be prescribed by the Board.

Source: PL 8-47 § 24.

§ 122. Officers of the Bank.

The officers of the Bank shall consist of a President, a senior Vice President, a Secretary/Treasurer (or a Secretary and a Treasurer), and such other officers, including one or more junior Vice Presidents, as may be specified in the bylaws of the Bank. The President and senior Vice President shall be appointed by and serve at the pleasure of the Board. All other officers shall be appointed and serve for such terms as may be specified in the bylaws. The

duties and responsibilities of the President and Vice President(s) include but are not limited to the following:

(1) *President.* Subject to the control of the Board, and to the extent delegated by the Board, the Chairman, the President shall be the chief executive officer of the Bank and shall have the general supervision, direction and control of the business and officers of the Bank. The President shall be delegated the duties and responsibilities of the day-to-day management and operation of the Bank. The President shall be an *ex officio* member of the Board, with full voting and other rights, except that the President may not hold the office of Chairman or Vice Chairman. The President shall have the general powers and duties of management usually vested in the office of the President of a corporation engaged in the banking business.

(2) *Vice President(s).* In the absence of the President, the senior Vice President, or any other Vice President in the order specified in the bylaws, shall perform all the duties of the President except that of *ex officio* director, and when so acting shall have all the powers of, and be subject to all the restrictions imposed upon, the President.

Source: PL 8-47 § 25.

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

§ 123. Action by unanimous consent.

Any action required or permitted to be taken by the shareholders or the Board may be taken without a meeting thereof if all the shareholders or directors, as appropriate, shall individually and collectively consent in signed writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the shareholders or the Board, as appropriate, and such action by written consent shall have the same force and effect as unanimous vote of such shareholders or directors.

Source: PL 8-47 § 26.

§ 124. Committees.

The Board may designate one or more committees, each consisting of two or more directors and with such powers as the Board may designate to perform the functions for which said committee is established. Nondirectors may also serve on such a committee. Such a committee shall continue to exist at the pleasure of the Board.

Source: PL 8-47 § 27.

§ 125. Acts affecting personal financial interest.

No director or officer of the Bank shall participate personally and substantially in the making of any decision relating to any application for a loan or other commitment from or through the Bank in which, to his knowledge, he, his spouse, child, close relatives, partner, organization in which he or she is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment has a financial interest. No director or officer of the Bank shall be eligible to borrow money from or through the Bank, or to assume responsibility in whole or in

part under a guarantee or indemnity or by the deposit of a security to the Bank in respect of a debt or obligation of a third party.

Source: PL 8-47 § 28.

§ 126. Expenses and honoraria.

Directors shall be entitled to necessary travel expenses while on the business of the Bank. Directors may receive an honorarium of such amount as may be determined by the Board. Government employees shall not be entitled to an honorarium for attending Board meetings during normal hours of employment.

Source: PL 8-47 § 29.

§ 127. Administration of funds.

The Bank is hereby authorized to administer such fund or funds as may from time to time come into its possession and under its management control. Except as may be more particularly specified by law with respect to any particular fund, the Bank shall charge a reasonable fee to administer such funds and may, in the case of grant funds, waive any such fee.

Source: PL 8-47 § 30.

§ 128. Tax exemption; No dividends.

(1) The Bank shall exist and operate solely for the benefit of the public and shall be exempt from any taxes or assessments except import taxes or assessments on any of its property, operations, or activities. It is anticipated, although not required, that continuation of this tax exemption will be periodically reviewed by the Congress of the Federated States of Micronesia on its own motion or as requested by the Bank.

(2) For so long as any part of the tax exemption established in this section shall continue, the Bank shall be prohibited from paying any dividend or making any other distribution to its stockholders.

Source: PL 8-47 § 31; PL 11-26 § 4.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on Taxation and Customs are found in title 54 of this code.

§ 129. Debt of the Bank.

Any debt or obligation incurred by the Bank shall not be a debt or obligation of the Government of the Federated States of Micronesia, nor shall the Government of the Federated States of Micronesia be responsible for any debt or obligation of the Bank unless specifically authorized by statute.

Source: PL 8-47 § 32.

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.

TITLE 30 – DEVELOPMENT BANKING

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/>.

§ 130. Audit.

At such times as the Board may provide, the books and records of the Bank shall be thoroughly examined and audited by a qualified auditor appointed by the Board, which may be the Public Auditor. Such auditor shall also determine the book value of the issued stock of the Bank, which information shall be made available to the public.

Source: PL 8-47 § 33.

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

§ 131. Records and inspections.

(1) *Records.* The Bank shall maintain accurate and correct accounts, books and records of its business and properties. All such books, records and accounts shall be kept at the principal place of business of the Bank, or at such other place or places of business as may be designated from time to time by the Board.

(2) *Inspection of books and records.* The books and records of the Bank shall be open to the directors for inspection from time to time upon 24 hours' notice to the Bank of such intent to inspect.

Source: PL 8-47 § 34.

§ 132. Checks, drafts, etc.

All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Bank shall be signed or endorsed by such person or persons and in such manner as shall be determined from time to time by resolution of the Board.

Source: PL 8-47 § 35.

§ 133. Contracts; How executed.

The Board may authorize any officer, agent, or employee to enter into any contract or execute any instrument in the name of and on behalf of the Bank. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Bank by any contract or engagement, or to pledge its credit, or to render it liable for any purpose or for any amount.

Source: PL 8-47 § 36.

§ 134. Annual report.

The Bank shall as soon as possible, but not exceeding 120 days after the conclusion of each fiscal year, submit to its stockholders an annual report containing:

(1) An account of its transactions throughout the year;

(2) A statement of the accounts of the Bank duly audited in accordance with the provisions of section 130 of this chapter; and

(3) A list and brief description of all outstanding loans or other commitments made to any director or officer of the Bank, or to any other person or organization described in section 125 of this chapter, including a statement of whether the payment status is current or delinquent.

Source: PL 8-47 § 37.

§ 135. Certificates and transfers of shares.

(1) *Certificates for shares.* Certificates for shares shall be of such form and device as the Board may designate and shall state the name of the record holder of the shares represented thereby; its numbers; date of issuance; the number of shares for which it is issued; the par value, if any; a statement as to redemption or conversion, if any; a statement of liens or restrictions upon transfer or voting, if any; if the shares be assessable, or, if assessments are collectible by personal acting, a plain statement of such facts. Every certificate for shares must be signed by the President and a Vice President or by either the President or a Vice President and a member of the Board of Directors.

(2) *Transfer on the books.* Upon the surrender to the Secretary of the Bank of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Bank to issue a new certificate and record the transaction upon its books.

(3) *Lost or destroyed certificates.* Any person claiming a certificate of stock to be lost or destroyed shall make an affidavit or affirmation of that fact and advertise the same in such manner as the Board may require, and shall if the Board so requires give the Bank a bond of indemnity, in form and with one or more sureties satisfactory to the Board, in an amount of up to double the value of the stock represented by said certificate, whereupon a new certificate may be issued of the same tenor and for the same number of shares as the one alleged to be lost or destroyed.

Source: PL 8-47 § 38.

§ 136. FSM National Government shares and FSM State government shares.

(1) It is hereby authorized that the Trust Territory Economic Development Loan Fund and all of the funds (except the Investment Development Fund) appropriated by the Congress of the Federated States of Micronesia which are currently administered by the Federated States of Micronesia Development Bank shall be, and the same hereby are, dedicated to purchase shares of stock in the Bank for the National Government of the Federated States of Micronesia. All cash and the entire portfolio of loans in said funds are hereby transferred to the Bank as capital in return for the issuance of certificates of shares of stock in the Bank in favor of the National Government of the Federated States of Micronesia. All shares of stock shall be issued to and in the name of the Secretary of the Department of Finance as title trustee for the National Government. The cash value of the loan portfolio transferred by the National Government shall be appraised by an independent appraiser prior to the purchase of the stock in the Bank. The Secretary shall, through the management and voting of shares held in the name of the National Government, make every effort to ensure that at least one citizen from each State serves on the Board of Directors.

TITLE 30 – DEVELOPMENT BANKING

(2) Any fund currently administered by the Bank for or on behalf of a State government shall, at the option of that State, be similarly appraised and transferred to the Bank in exchange for stock in the Bank. Such shares shall be issued to and in the name of the chief financial officer of said State, or such other State official as the State may designate, as title trustee.

Source: PL 8-47 § 39.

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

§ 137. Foreign ownership.

It is intended that the Bank shall have and retain the legal capacity to acquire, own title to, dispose of, and otherwise deal in land and waters in the Federated States of Micronesia. Therefore no stock in the Bank may be owned by any person or entity whose partial ownership of the Bank would cause the Bank to lose such capacity under applicable law. Any transfer of stock in the Bank to such a person or entity shall be null, void, and of no effect.

Source: PL 8-47 § 40.

§ 138. Limit on commitments to single person or project.

(1) The total commitment of the Bank to any single person or project shall not exceed 15 percent of the unimpaired shareholders' equity in the Bank.

(2) For purposes of this section, the term "person" includes individuals, corporations, partnerships, joint ventures, trusts, governmental organizations, and all other legal entities. A commitment to any individual includes any commitment to that individual's parents, siblings, children, or grandchildren and any commitment to the co-partners or other close business associates of that individual. A commitment to any other entity includes any commitment to other persons controlling, controlled by, or under common control with that entity; to directors or officers of the entity if it is a corporation; to the constituent partners of that entity if it is a partnership; and to the co-partners or other close business associates of that entity.

(3) For purposes of this section, a "commitment" to a person or a project includes the current outstanding balance of any loan by the Bank to that person or for that project, the full remaining amount of exposure under any guarantee or letter of credit issued by the Bank at the request of that person or for the benefit of that project, the original face amount of any equity investment made by the Bank in that person or project, and the amount of any undisbursed loan commitment issued to or for that person or project.

Source: PL 8-47 § 41.

CHAPTER 2
Investment Development Fund

SECTIONS

§ 201. Investment Development Fund.

§ 202. Distribution of funds in State earmarked subaccounts to the States.

§ 201. Investment Development Fund.

(1) There is hereby created the Investment Development Fund (hereinafter, the “Fund”) separate from the General Fund and other funds.

(2) The sum of \$12,000,000 received from the United States as grant funds pursuant to section 111 of United States Public Law 99-239, or so much thereof as may be necessary, together with any and all investment earnings accrued thereon since the date of receipt by the National Government and the date such sum is transferred to the Fund, is hereby appropriated from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1989, for the purpose of capitalizing the Investment Development Fund. The sum of \$8,000,000 received from the United States as grant funds pursuant to section 111 of United States Public Law 99-239, or so much thereof as may be necessary, together with any and all investment earnings accrued thereon since the date of receipt by the National Government and the date such sum is transferred to the Fund, is hereby appropriated from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1991, for the purpose of further capitalizing the Investment Development Fund. In addition, all earnings accrued on investment of the Fund, all repayments of principal and interest and penalties on loans made from the Fund, all cash assets recovered on loans made from the Fund, and all fees, charges, and penalties collected in relation to administration of the Fund shall be deposited into the Fund.

(3) The Fund created by this section shall be allotted, disbursed, managed, administered, and accounted for in accordance with this section, with the “Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding the Investment Development Fund of the Federated States of Micronesia Concluded Pursuant to Section 111(c) of United States Public Law 99-239,” with the Investment Development Act of 1988 and other applicable laws, and with such guidelines, policies, and procedures as may be established by the Federated Development Authority. The allottee shall be responsible for ensuring that these funds, or so much thereof as may be necessary, are used solely for the purpose specified in this Act, and that no obligations are incurred in excess of the sums appropriated. The authority of the allottee to obligate funds appropriated by this Act shall not lapse.

(4) Any unexpended money in the Fund shall not revert to the General Fund or lapse at the end of a fiscal year.

Source: PL 5-122 § 2; PL 6-109 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The Investment Development Act of 1988 is codified in chapter 3 of this title. The statutory provisions on the FSM Congress are found in title 3 of this code.

TITLE 30 – DEVELOPMENT BANKING

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. Distribution of funds in State earmarked subaccounts to the States.

(1) Notwithstanding any provision of Public Law No. 5-122, as amended, if requested by the Governor of a State, the Federated Development Authority shall direct the FSM Development Bank to distribute to that State any funds not yet obligated remaining in its State-earmarked subaccount.

(2) The FDA and the FSM Development Bank shall cease to administer any portions of the Investment Development Fund distributed in accordance with subsection (1) of this section. The FDA and the FSM Development Bank shall administer all funds not distributed in accordance with subsection (1) of this section, and any future deposit into a State-earmarked subaccount, in accordance with Public Law No. 5-122.

Source: PL 12-75 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The Investment Development Act of 1988 is codified in chapter 3 of this title. 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/>.

CHAPTER 3
Investment Development Act

SECTIONS

- § 301. **Title.**
- § 302. **Definitions.**
- § 303. **Administration of the Investment Development Fund.**
- § 304. **Purposes and guidelines.**
- § 305. **Submission of project.**
- § 306. **Determination of completeness.**
- § 307. **Review and comment.**
- § 308. **State approval.**
- § 309. **Federated Development Authority approval.**
- § 310. **Development Bank approval.**
- § 311. **Required permits.**
- § 312. **Determinations.**
- § 313. **Board of Advisors for the Investment Development Fund.**
- § 314. **Expenses.**
- § 315. **Limitations on terms of loans.**
- § 316. **Allocations to the States; Private-sector reserve.**
- § 317. **Investment and drawdowns.**
- § 318. **Participation in projects by officials of the Federated Development Authority, FSM Development Bank, and the State Governments; Conflicts.**
- § 319. **Study and reports on additional adverse impacts; Annual and quarterly reports.**
- § 320. **Financial Management.**

§ 301. Title.

This chapter shall be known and referred to as the “Investment Development Act of 1988.”

Source: PL 5-122 § 1.

§ 302. Definitions.

For purposes of this chapter:

- (1) “Board of Advisors” means the Board of Advisors for the Investment Development Fund established by section 313 of this chapter.
- (2) “Development Bank” means the Federated States of Micronesia Development Bank established by section 101 of this title.
- (3) “Federated Development Authority” means the Federated Development Authority created by section 321 of title 55 of this code.
- (4) “Financing” means loans, loan guarantees, lease and sale-leaseback arrangements, and such other similar non-grant methods of financing as may be approved by the Federated Development Authority.

TITLE 30 – DEVELOPMENT BANKING

(5) “Fiscal Procedures Agreement” means the “Agreement Concerning Procedures for the Implementation of United States Economic Assistance, Programs and Services Provided in the Compact of Free Association Between the Government of the United States and the Government of the Federated States of Micronesia,” and any amendments to such Agreement.

(6) “Investment Development Fund” or “Fund” means the Investment Development Fund created by section 201 of this title.

(7) “Investment Development Fund Agreement” means the “Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding the Investment Development Fund of the Federated States of Micronesia Concluded Pursuant to Section 111(c) of United States Public Law 99-239,” and any amendments to such Agreement.

Source: PL 5-122 § 3, modified.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The Investment Development Act of 1988 is codified in chapter 3 of this title. Title 55 of this code is on Government Finance and Contracts.

§ 303. Administration of the Investment Development Fund.

(1) The Federated Development Authority shall be responsible for administering the Investment Development Fund subject to the advice and guidance of the Board of Advisors, in accordance with the provisions of this chapter and other applicable laws, the Investment Development Fund Agreement, and section 201 of this title.

(2) The Federated Development Authority shall have the power and authority to do all such things as may be necessary to administer the Investment Development Fund, including, but not limited to, establishing guidelines, policies, and procedures for administration of the Investment Development Fund; establishing general terms and conditions for financing of projects from the Fund, including qualifications for prospective borrowers and maximum and minimum loan amounts; establishing guidelines for applications; establishing application, loan guarantee, and other fees and charges; and determining interest rates, repayment schedules, security requirements, and other specific terms and conditions for financings within the limits established by section 315 of this chapter; PROVIDED that, prior to establishing such guidelines, policies and procedures, and general terms and conditions, the Federated Development Authority shall afford the Board of Advisors and the Development Bank an adequate opportunity to comment on such matters; PROVIDED FURTHER, however, that no change in guidelines, policies, and procedures, and general terms and conditions, shall apply to any application for financing pending on the date the change is adopted, if the effect of applying it shall adversely affect, in a material way, the approval of the financing sought.

(3) The Federated Development Authority shall be responsible for:

(a) Approving financing for the projects submitted for funding pursuant to section 309 of this chapter;

(b) Approving the actions by the Development Bank taken pursuant to subsection (5) of this section as the Federated Development Authority deems appropriate.

(4) In exercising its authority under subsection (2) of this section, the Federated Development Authority shall request technical assistance from the Development Bank.

TITLE 30 – DEVELOPMENT BANKING

(5) The Development Bank, pursuant to the direction of the Federated Development Authority, shall be responsible for administering all loans, loan guarantees, lease and sale-leaseback arrangements, and other similar financings, including the maintenance of all files on such financings, the monitoring of the progress of projects funded from such financings, collecting any repayments of such financings (including resort to property hypothecated to secure payments due under a financing, or legal action to enforce payment obligations), and, only with specific approval from the Federated Development Authority on a case-by-case basis, renegotiating the terms of such financing. Except as otherwise provided in this chapter, the authority and responsibilities of the Development Bank, with respect to the administration of the Fund, shall be executed by the President of the Development Bank pursuant to the guidelines, policies, and procedures, and general terms and conditions, prescribed by the Federated Development Authority and this chapter, and the Board of Directors of the Development Bank shall have no authority or responsibility with respect to the administration of the Fund.

Source: PL 5-122 § 4.

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

§ 304. Purposes and guidelines.

- (1) Investment Development Fund moneys shall be used only:
 - (a) To finance projects which will:
 - (i) Have their operations located primarily within the Federated States of Micronesia;
 - (ii) Improve the balance of payments position of the Federated States of Micronesia;
 - (iii) Increase the value of visible and invisible exports or result in import substitution;
 - (iv) Demonstrably result in positive economic return; and
 - (v) Contribute to the furtherance of close economic and commercial relations between the United States of America and the Federated States of Micronesia, encourage the productive presence of citizens and commercial enterprises of the United States in the Federated States of Micronesia or otherwise compensate the Federated States of Micronesia for the loss of the tax and trade incentives affected by Title IV of United States Public Law 99-239 as provided for in the Investment Development Fund Agreement and as further defined by the Federated Development Authority;
 - (b) To finance projects which will provide direct services to projects identified in paragraph (a) of this subsection and are in compliance with the conditions in subparagraphs (iv) and (v) of such paragraph; or
 - (c) For the expenses specified in section 314 of this chapter.
- (2) The qualified recipients of financings from the Investment Development Fund are as follows:
 - (a) Private citizens of the Federated States of Micronesia and corporations with a minimum of 20 percent citizen ownership interest; and

TITLE 30 – DEVELOPMENT BANKING

(b) The National and State Governments of the Federated States of Micronesia and public corporations thereof; PROVIDED that, any project which involves direct participation by the National or State Governments of the Federated States of Micronesia, including public corporations thereof, shall include an evaluation by such government of the desirability of future divestiture of the project to the private sector and, if appropriate, identification of possible strategies and estimated timetables for accomplishing such divestiture.

Source: PL 5-122 § 5.

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/>.

§ 305. Submission of project.

All projects submitted for financings from the State earmarked subaccounts in the Investment Development Fund shall be submitted by a State government or the National Government for review and approval. All projects shall be initially submitted to the Development Bank for review pursuant to section 306 of this chapter.

Source: PL 5-122 § 6.

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

§ 306. Determination of completeness.

The Development Bank shall have up to 30 days to verify that the application is in conformance with the guidelines for applications established pursuant to section 303 of this chapter and shall, after 30 days or upon verifying that the application is complete, submit the proposal to the Board of Advisors and the Department of Resources and Development of the Federated States of Micronesia for review and comment pursuant to section 307 of this chapter.

Source: PL 5-122 § 7.

§ 307. Review and comment.

(1) The Board of Advisors and the Department of Resources and Development of the Federated States of Micronesia shall have up to 45 days from the time the application is

TITLE 30 – DEVELOPMENT BANKING

transmitted from the Development Bank upon completion of the review required by section 306 of this chapter to review and comment upon such application. Any comments shall be submitted to the sponsoring State or National Government, the applicant, and whichever of the Development Bank or the Federated Development Authority has authority under this chapter to approve the financing sought by the applicant.

(2) For all projects to be funded from the private-sector reserve of the Fund created pursuant to section 316 of this chapter, the Development Bank shall have up to 60 days, calculated from the day the application is, or the last day the application should have been, submitted to the Board of Advisors and the Department of Resources and Development of the Federated States of Micronesia for review and comment, in which to approve or disapprove the application pursuant to section 310 of this chapter.

Source: PL 5-122 § 8.

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

§ 308. State approval.

Upon the expiration of 45 days from the time an application for financing from funds in the State-earmarked subaccounts created pursuant to section 316 of this chapter is transmitted from the Development Bank to the Board of Advisors and the Department of Resources and Development of the Federated States of Micronesia or upon the receipt of all comments from the Board of Advisors, the Development Bank, and the Department of Resources and Development of the Federated States of Micronesia, whichever is first, the sponsoring State or National Government may submit the project to the Federated Development Authority for approval.

Source: PL 5-122 § 9.

§ 309. Federated Development Authority approval.

No financing shall be funded from the State-earmarked subaccounts created pursuant to section 316 of this chapter without written approval from the Federated Development Authority. In reviewing each application for financing, the Federated Development Authority shall consider the contents of the application and the comments, if any, of the sponsoring State, the Development Bank, the Board of Advisors and the Department of Resources and Development of the Federated States of Micronesia. If the Federated Development Authority denies the financing sought in an application, it may at the same time approve a lesser or alternative financing, or approve a financing upon condition that the project proposal be amended in some respect. The financing approval shall specify the type of financing approved, the rate of interest, if any, and the length of payment grace periods, if any, and the property to be hypothecated to secure repayment of the financing. In each case, the approval is conditioned upon the recipient's execution of definitive legal documentation of the financing, in form and substance acceptable to the Development Bank.

Source: PL 5-122 § 10.

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

§ 310. Development Bank approval.

No financing shall be funded from the private-sector reserve created pursuant to section 316 of this chapter without the written approval of the President of the Development Bank or his designee. In reviewing each application for financing, the Development Bank shall consider the comments, if any, of the sponsoring State or National Government, the Board of Advisors and the Department of Resources and Development of the Federated States of Micronesia. If the Development Bank denies the financing sought in an application, it may at the same time approve a lesser or alternative financing, or approve a financing upon condition that the project proposal be amended in some respect. The financing approval shall specify the type of financing approved, the rate of interest, if any, and the length of payment grace periods, if any, and the property to be hypothecated to secure repayment of the financing. In each case, the approval is conditioned upon the recipient's execution of definitive legal documentation of the financing, in form and substance acceptable to the Development Bank.

Source: PL 5-122 § 11.

§ 311. Required permits.

Prior to approving any application for financing a project, in whole or in part, from the Investment Development Fund which will involve a financial interest or other participation by a person who is not a citizen of the Federated States of Micronesia or by a partnership, corporation, or other business entity in which any interest is owned by a person who is not a citizen of the Federated States of Micronesia, the Federated Development Authority or Development Bank, whichever has authority to approve the application, shall ascertain that such person or entity possesses all necessary business licenses and foreign investment permits; PROVIDED that, in appropriate circumstances, the Federated Development Authority or Development Bank, as the case may be, may approve the application with release of financing conditioned on issuance of the necessary licenses and permits; PROVIDED FURTHER, that any project financed through the Investment Development Fund must comply with the terms and conditions of all required licenses and permits.

Source: PL 5-122 § 12; PL 6-109 § 2.

§ 312. Determinations.

(1) In reviewing applications for projects to be financed, in whole or in part, from the State-earmarked subaccounts created pursuant to section 316 of this chapter of the Investment Development Fund, the Development Bank shall evaluate and comment upon the commercial feasibility of the project, the public infrastructure needs of the project and whether existing infrastructure is adequate or whether new or improved infrastructure has been committed to by the government, the qualifications and experience of the applicants with respect to managerial, technical, and marketing skills, the financial ability and past records of the applicants, and such other matters as it deems appropriate.

(2) In reviewing applications for projects to be financed, in whole or in part, through the Investment Development Fund, the Department of Resources and Development of the

Federated States of Micronesia shall comment upon the criteria established in section 304 of this chapter, the consistency of the proposed project with overall development goals, policies, and strategies of the Federated States of Micronesia, on matters relating to the coordination of State development programs, commercial viability of the project, and on other matters of National significance.

(3) In reviewing applications for projects to be financed, in whole or in part, through the Investment Development Fund, the Board of Advisors may comment on any or all aspects of the proposal.

Source: PL 5-122 § 13.

§ 313. Board of Advisors for the Investment Development Fund.

(1) There is hereby established a Board of Advisors for the Investment Development Fund. The members of the Board of Advisors shall be appointed and serve in accordance with article III, paragraphs 2, 3, and 4 of the Investment Development Fund Agreement and section 207 of title 2 of this code, and amendments thereto. The Board shall have the powers, duties and responsibilities specified in article III, paragraphs 5, 6, 7, 8, 9, and 10 of the Investment Development Fund Agreement.

(2) Members of the Board of Advisors who are not officials or employees of the Government of the United States or of the National or State Governments of the Federated States of Micronesia shall be authorized a reasonable honorarium at the discretion of the Board of Advisors, not to exceed the rate of \$35 per day while on the business of the Board.

(3) The Department of Resources and Development of the Government of the Federated States of Micronesia, or any successor department or office as determined by the President, shall provide staff support and assistance to the Board of Advisors, to the extent feasible.

Source: PL 5-122 § 14, modified.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Section 207 of title 2 (Executive) of this code is on Appointment Authority.

§ 314. Expenses.

(1) Subject to the procedures specified in this section, Investment Development Fund moneys may be used to pay expenses of the Development Bank relating to administration of the Fund, the Board of Advisors, the study and reports required by section 319 of this chapter, and investment of the Fund, and may also be used to reimburse expenses incurred pursuant to subsection (6) of section 6 of Public Law No. 4-51, as amended by Public Law No. 4-88. Except as otherwise provided in subsection (2) of section 317 of this chapter, such expenses shall be assessed against the private-sector reserve created by section 316 of this chapter.

(2) No later than April 1 of the year preceding a given fiscal year, the Development Bank shall submit to the Federated Development Authority for approval a budget request for the Federated Development Authority may determine. The budget request shall be reviewed and approved by the Board of Directors of the Development Bank prior to its submission to the Federated Development Authority. In no event shall this budget request exceed \$130,000.

TITLE 30 – DEVELOPMENT BANKING

(3) No later than April 1 of the year preceding a given fiscal year, the Board of Advisors shall submit to the Federated Development Authority for approval a budget request for the upcoming fiscal year and budget projections for each of the two subsequent fiscal years. The budget request shall include estimates as to the costs of operations of the Board of Advisors, with such information and detail as the Federated Development Authority may determine.

(4) No later than April 1 of the year preceding a given fiscal year, the President of the Federated States of Micronesia shall submit to the Federated Development Authority for approval a budget request for the upcoming fiscal year and budget projections for each of the two subsequent fiscal years. The budget request shall include estimates as to the costs of the study and annual reports required by subsection (1) of section 319 of this chapter, with such information and detail as the Federated Development Authority may determine.

(5) Subject to such overall policies and limitations as may be established by the Federated Development Authority, expenses associated with the investment of Investment Development Fund moneys may be paid out of the Fund by the Development Bank without prior approval.

(6) The Federated Development Authority shall establish such reprogramming and other budgetary policies with respect to the funds referred to in subsections (2), (3), (4), and (5) of this section as it deems appropriate.

(7) Summary information on the budget requests or approved budgets provided for in subsections (2), (3), and (4) of this section shall be included in the annual budget submission required by section 103 of title 55 of this code.

Source: PL 5-122 § 15; PL 7-106 § 1, modified.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Section 103 of title 55 (Government Finance and Contracts) is on the Annual Budget.

§ 315. Limitations on terms of loans.

All loans made from the Investment Development Fund shall be at an interest rate of less than or equal to five percent, except that fundings funded from State-earmarked subaccounts created pursuant to section 316 of this chapter, may, at the election of the sponsoring State or National Government, be interest-free as long as the financing recipient is a government or public corporation, or a business association in which a government or public corporation has a financial interest, and may have a grace period during which no interest or principal payments are required of not more than three years.

Source: PL 5-122 § 16.

§ 316. Allocations to the States; Private-sector reserve.

(1) With respect to the amounts to be provided pursuant to section 111(b)(1)(i) of United States Public Law 99-239 and article II, paragraphs 2(a) and (b) of the Investment Development Fund Agreement, \$3,000,000 shall be placed in subaccounts within the Fund for each of the States of Pohnpei and Truk, and \$2,000,000 shall be placed in subaccounts within the Fund for each of the States of Kosrae and Yap. The funds in the State-earmarked subaccounts shall be available only to qualified recipients whose application for financing is sponsored by the State from whose earmarked subaccount the financing shall be funded. An additional

\$10,000,000 shall be placed in a private-sector reserve, which shall be available for financing to qualified recipients. State or National Governments are not qualified recipients of these funds with the exception that a joint venture in which a State or the National Government has an equity ownership shall be a qualified recipient of these funds. Public corporations shall be considered qualified recipients for these funds. These funds shall be available for projects whose total financing from the Fund shall equal or exceed \$300,000, or when the balance of the private-sector reserve should fall below \$300,000, a lesser amount. Any additional amounts provided by the United States shall be retained in the Fund and invested in accordance with section 317 of this chapter, but shall not be disbursed except when authorized by subsequent legislation.

(2) All repayments of principal and interest and penalties on loans made from a State's earmarked subaccount of the Fund and all cash assets recovered on such loans shall be credited to that State's earmarked subaccount. All other repayment of principal and interest and penalties, cash assets recovered, and other fees, charges, and penalties shall be credited to the private-sector reserve.

Source: PL 5-122 § 21; PL 6-109 § 3.

§ 317. Investment and drawdowns.

(1) Funds in the Investment Development Fund shall be invested at the discretion of the Development Bank; PROVIDED, however, that in no event shall funds in the Investment Development Fund be invested in securities of any kind other than short-term readily-marketable investment-grade nonconvertible bonds, guaranteed investment contracts issued by an insurance company with over \$1 billion in assets, or shares in a money-market open-ended mutual fund. For the purposes of this section, the purchase of one or more certificates of deposit issued by a bank, savings bank, or savings and loan association not insured by either the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC), or the purchase of one or more certificates of deposit issued by a federally-insured bank, savings bank, or savings and loan association such that after the purchase the total Fund deposits in that financial institution exceeds \$100,000, shall be deemed an investment in a security.

(2) The accounts and accounting records of the Investment Development Fund shall be established and maintained in such a manner that each State's earmarked subaccount and the private-sector reserve and the unallocated remainder under section 316 of this chapter will be credited with investment income earned on such allocation or reserve and will be assessed investment expenses related to such investment income earned. The Development Bank shall report on the status of such accounts on a monthly basis to the Federated Development Authority.

Source: PL 5-122 § 18.

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

§ 318. Participation in projects by officials of the Federated Development Authority, FSM Development Bank, and the State Governments; Conflicts.

(1) The President of the Development Bank, the members of the Federated Development Authority, and any officer, employee, or agent of a State government who has

TITLE 30 – DEVELOPMENT BANKING

official authority to approve or disapprove an application for that State’s sponsorship of project financing from the Fund, shall not, during their term of such office or employment, or one year thereafter, have a personal equity or other financial interest in any project to be financed, in whole or in part, through the Fund. An equity or other financial interest of a spouse or minor child of a person, or of a corporation, partnership, trust, or other business association of which a person is a shareholder, partner, trustee, beneficiary, or principal, or of anyone with whom a person is negotiating for or has an arrangement for future employment, partnership, or other participation shall be deemed for the purposes of this subsection to be an equity or other financial interest of that person. The prohibition of this subsection applies irrespective of whether the person exercises authority with regard to any specific project. Any person who knowingly violates this subsection shall be answerable at law for any damages to the Fund occasioned thereby, and shall, upon conviction therefor, be fined not more than \$10,000 or be imprisoned for not more than two years, or both.

(2) Nothing contained in this section shall be construed as limiting the applicability of conflict of interest and other laws to members, alternates, officers, employees, agents or contractors of the Federated Development Authority or members, directors, officers, employees, agents or contractors of the Development Bank, and to this end such persons as well as members of the Board of Advisors shall be considered “public servants” within the meaning of subsection (11) of section 104 of title 11 of this code and “public officials” within the meaning of subsection (2) of section 1301 of title 11 of this code. In the event that any such person knows or has a reason to believe that he or she has a conflict of interest with respect to an application pending before the Federated Development Authority, the Development Bank, or the Board of Advisors, such person shall have an affirmative obligation to disclose such conflict of interest, whether or not such person personally and substantially participates in the consideration of such application.

(3) Section 112 of this title shall not apply to members of the Board of Directors of the Development Bank with respect to the Investment Development Fund moneys.

Source: PL 5-122 § 19.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Title 11 of this code is on Crimes.

§ 319. Study and reports on additional adverse impacts; Annual and quarterly reports.

(1) The Department of Resources and Development of the Government of the Federated States of Micronesia, or any successor department or office as determined by the President of the Federated States of Micronesia, shall, in cooperation with the Development Bank and other appropriate National and State Government agencies and in consultation with the Board of Advisors, conduct a continuous study and prepare an annual report on the overall financial and economic impacts on the Federated States of Micronesia resulting from the amendments to the Compact of Free Association contained in title IV of United States Public Law 99-239. Such annual report shall be transmitted to the Federated Development Authority no later than January 15 of each year and shall cover the period between November 3, 1986 and September 30 of the fiscal year most recently completed. The President of the Federated States of Micronesia shall promptly transmit such annual reports to the Congress of the Federated

TITLE 30 – DEVELOPMENT BANKING

States of Micronesia. The costs of conducting such study and preparing such annual reports shall be paid out of the Investment Development Fund created by section 201 of this title in accordance with section 314 of this chapter.

(2) The Development Bank shall prepare after each fiscal quarter a report on the status of the Investment Development Fund. Such reports shall include information on the financial status of each State's earmarked subaccount and the private-sector reserve under section 316 of this chapter. Such quarterly reports shall be transmitted to the Federated Development Authority no later than ten days after each fiscal quarter.

(3) The Development Bank shall, in cooperation with the appropriate officials and agencies of the Government of the Federated States of Micronesia and in consultation with the Board of Advisors, prepare an annual report on administration of the Investment Development Fund in the fiscal year most recently completed. Such annual reports shall include the information required by article IV, paragraph 1 of the Investment Development Fund Agreement and such other information as the Federated Development Authority deems appropriate, and shall be separate from the reports required by sections 114 and 119 of this title. Such annual report shall be transmitted to the Federated Development Authority and the Congress of the Federated States of Micronesia no later than January 15 of each year.

(4) The President of the Federated States of Micronesia, in preparing the annual reports required by section 211(c) of the Compact of Free Association and article III, paragraph 3 of the Fiscal Procedures Agreement, shall utilize, to the extent appropriate, information contained in the reports prepared pursuant to subsections (1) and (3) of this section, and shall consider the comments, if any, of the Federated Development Authority on such reports.

Source: PL 5-122 § 20.

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/>.

§ 320. Financial Management.

The provisions of the Financial Management Act of 1979, as amended, 55 F.S.M.C. chapter 2, shall not apply to the funds appropriated by this Act, PROVIDED that this exemption shall apply only upon the Federated Development Authority's adoption of procedures for the accounting of such funds.

Source: PL 5-122 § 21; PL 6-21 § 1.

Cross-reference: Title 55 of this code is on Government Finance and Contracts.

Editor's note: PL No. 6-109 amends PL No. 5-122, section 1 (30 F.S.M.C. 122 — q.v.), to appropriate \$8 million from FY 91 to further capitalize the IDF; section 12 (corrects typographical error only) and section 17 (q.v.) to place the \$8 million in the private-sector reserve, to authorize public corporations to apply for private-sector reserve funds, to allow joint ventures in which the State or National Governments have equity interests to qualify for those funds, and reduce the minimum amount which may be loaned for each project.

**CHAPTER 4
FSM Venture Funds**

SECTIONS

- § 401. Short title.**
- § 402. Purpose.**
- § 403. Creation.**
- § 404. Letter of intent.**
- § 405. Public notice.**
- § 406. Deadline for depositing funds.**
- § 407. Duration of funds.**
- § 408. Investment in Venture Funds by FSM citizens and corporations.**
- § 409. Guarantee of repayment of original capital amounts.**
- § 420. Guarantee of payment of interest.**
- § 421. Required investment in corporations registered in the FSM.**
- § 422. Reports to investors.**
- § 423. Appraiser’s annual report.**
- § 424. Advisory board.**
- § 425. Expiration date.**

Editor’s note: Section 1 of PL 15-29 enacted a new chapter 4 of title 30 entitled Federated States of Micronesia Venture Funds. The “Federated States of Micronesia” in the title of the chapter was shortened to its abbreviation “FSM”.

§ 401. Short title.

This chapter may be cited as the “Federated States of Micronesia Venture Funds Act of 2007”.

Source: PL 15-29 § 2.

Editor’s note: PL 15-29 was signed into law by President Manny Mori on March 20, 2008.

§ 402. Purpose.

The purpose of this Act is to encourage the establishment of Venture Funds in the Federated States of Micronesia, hereinafter referred to as “FSM”, and to provide an incentive for large foreign companies to register Major Corporations in the FSM. The Congress finds it desirable and necessary to promote the continued expansion of the tax base of the nation. The Congress believes that agreeing to invest a portion of large corporate income tax payments by Major Corporations in Venture Funds, to be managed by parents or affiliates of such Major Corporations, would attract large foreign-owned enterprises to more seriously consider registering Major Corporations in the FSM and directing larger amounts of profitable business through such Major Corporations. By requiring that a portion of such Venture Funds be invested in new companies and industries registered in the FSM, the Congress is encouraging the development of “knowledge industries” that tap into humankind’s creative genius in developing new forms of communications, materials, energy, and healthcare. Such new FSM corporations with intellectual property could continue to generate income over the coming years and decades.

TITLE 30 – DEVELOPMENT BANKING

The government will be able to then tax these incomes, thus expanding the tax base that is needed by the government to provide the services that the citizens and residents of the FSM demand. It is recognized that the nation currently does not have the resources to make investments in these new industries and that a private-public partnership is needed to finance and grow these industries. Therefore, it is in the best interests of the FSM and its people that incentives are provided for Major Corporations to establish professionally managed funds that will consider new business opportunities and make wise investments.

Source: PL 15-29 § 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 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/>.

§ 403. Creation.

(1) Any Major Corporation that pays corporate income tax to the FSM exceeding \$50,000,000 in any one calendar year may require that an amount equivalent to up to 30% of the amount of income taxes it paid will be invested by the FSM into a FSM Venture Fund, and the Major Corporation may also select the Fund Manager for this Fund.

(2) Any Major Corporation that pays corporate income tax to the FSM exceeding \$80,000,000 in any one calendar year may require that an amount equivalent to up to 48% of the amount of income taxes it paid will be invested by the FSM into a FSM Venture Fund, and that the Major Corporation may also select the Fund Manager for this Fund.

(3) Any Major Corporation that pays corporate income tax to the FSM exceeding \$100,000,000 in any one calendar year may require that an amount equivalent to up to 57% of the amount of income taxes it paid will be invested by the FSM into a FSM Venture Fund, and that the Major Corporation may also select the Fund Manager for this Fund.

(4) These FSM Venture Funds, hereinafter each referred to as a “Fund”, will invest in new industries that may include software development, development of new drugs, medicines, and medical devices and procedures, entertainment, internet content and distribution, telecommunication devices and access, high growth technology businesses benefiting from the rapid adoption and deployment of broadband and mobile technologies, development of new and improved materials, new forms of energy and other types of investments that that Fund Manager may deem worthy.

Source: PL 15-29 § 4.

§ 404. Letter of intent.

Each Major Corporation that intends to establish a Fund must deliver a letter to the President of the Federated States of Micronesia Development Bank, between 60 days and 90 days after the delivery of its payment of corporate income tax to the FSM, signed by a director of the Major Corporation, stating that it intends to establish a Fund and specifying the amount of the Fund, specifying the amount it requires the FSM Government to invest in that Fund, and selecting the Fund Manager of the Fund. The letter will also describe the guarantor of the Fund and give evidence that the guarantor meets the requirements listed in section 409 of this chapter. Attached to this letter must be an Investment Statement that describes the qualifications, capabilities, and experience of the Fund Manager, the general strategy of the Fund along with the projected allocation of the investments by industry, stage of development, and country.

Source: PL 15-29 § 5.

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

§ 405. Public notice.

Within 30 days of the date of the letter described in section 404 of this chapter, the President of the Federated States of Micronesia Development Bank will publish in a newspaper of general circulation within the FSM, a notice regarding the establishment of a Fund. The notice will describe how to obtain an Investment Statement.

Source: PL 15-29 § 6.

§ 406. Deadline for depositing funds.

Each fund will be established by the Secretary of Finance and Administration no later than 60 days after the date of publication of the notice described in section 405 of this chapter, and all investors must have deposited their monies into the Fund no later than the end of the 60th day after publication. The President of the Federated States of Micronesia Development Bank will ensure that the government and all other investors have their funds deposited into the Fund by this date. The Secretary of Finance and Administration is authorized and required to deposit into the Fund such tax revenue as may be required pursuant to sections 403 and 404 of this chapter.

Source: PL 15-29 § 7.

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

§ 407. Duration of funds.

Each Fund will have a life of ten years, at which time the original capital amount of the funds will be returned to the investors, along with three percent of the value of the Fund which is then in excess of the original capital amount, after all interest payments are made to investors.

Furthermore, interest at the rate of three percent per annum will also be paid to the investors within 30 days of the end of each fiscal year.

Source: PL 15-29 § 8.

§ 408. Investment in Venture Funds by FSM citizens and corporations.

Citizens and corporations of the Federated States of Micronesia may invest in a Fund. The minimum investment shall be \$100,000.

Source: PL 15-29 § 9.

§ 409. Guarantee of repayment of original capital amounts.

The fund manager, or its parent organization, or an unrelated party (the “Guarantor”), must at the outset guarantee the repayment of the original capital amounts invested in a Fund, at the end of the life of the Fund. The Guarantor must be rated at least investment grade rated by Moody’s or Standard and Poors or Fitch or a national rating organization acceptable to the President of the Federated States of Micronesia Development Bank, or it must have a net worth of least ten times the original capital of the Fund. The President of the Federated States of Micronesia Development Bank will ensure that the Guarantor meets the criteria set out in this section.

Source: PL 15-29 § 10.

§ 420. Guarantee of payment of interest.

The Guarantor must also guarantee the payment of interest to investors at the end of each fiscal year during the life of the Fund, at the rate of three percent per annum.

Source: PL 15-29 § 11.

§ 421. Required investment in corporations registered in the FSM.

By the end of the fifth year and at the end of the tenth year of the Fund, at least 15% of the Fund must be invested in corporations registered in the FSM.

Source: PL 15-29 § 12.

Editor’s note: The “Federated States of Micronesia” in the title of this section has been shortened to “FSM”.

§ 422. Reports to investors.

At the end of each year, the Fund Manager will issue a report to each investor stating new investments, sales or other dispositions of investments, the rationale for new investments and dispositions of investments, and the rationale for each current holding, and its estimate of the value of each investment and the resulting gain or loss during the current year and since the inception of the Fund.

Source: PL 15-29 § 13.

§ 423. Appraiser’s annual report.

Ninety days before the end of the tenth year of the Fund, an independent appraiser qualified in the valuation of companies will value each of the holdings in the Fund, and the overall Fund. The appraiser will issue a report detailing the current value of each investment, and the methodology for determining each investment’s valuation. The report will be signed by the appraiser and sent directly to each investor 30 days before the end of the tenth year of the Fund. The cost of the appraiser will be an appropriate expense of the Fund. Six months before the end of the tenth year of the Fund, the Fund Manager will recommend an appraiser to the President of the Federated States of Micronesia Development Bank. If the Board of Directors of the Federated States of Micronesia Development Bank approves the recommendation, the appraiser will be hired. If it does not, the matter will be decided by the arbitration panel described in the contract between the Investors and the Fund Manager.

Source: PL 15-29 § 14.

§ 424. Advisory board.

Each Fund shall have an Advisory Board that shall give advice to the Fund Manager. The Board shall consist of at least five people that are selected by the President of the Federated States of Micronesia, with the advice and consent of the Congress. The Board shall meet at least once a year and shall give advice to the Fund Manager. The costs of the Advisory Board shall be an appropriate expense of the Fund.

Source: PL 15-29 § 15.

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.

§ 425. Expiration date.

The provisions in this Act, specifically section 401 of this chapter, will expire on April 1, 2014, unless extended by law.

Source: PL 15-29 § 16.

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.