

**CHAPTER 3****Licensing****SECTIONS**

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**Editor's note:** Section 24 of PL 14-66 enacted new chapter 3 of this title entitled Licensing.

### **§ 301. License required.**

- (1) No insurance business shall be carried on, in or from within the Federated States of Micronesia except pursuant to the provisions of this subtitle.
- (2) Any person who transacts insurance business shall be licensed as either
  - (a) an insurer,
  - (b) an agent,
  - (c) a solicitor, or
  - (d) a broker.
- (3) Only a company may be licensed as an insurer.
- (4) Only agents transacting insurance business on behalf of licensed or registered insurers shall be eligible for a license.
- (5) A foreign insurer who receives two million dollars or more in premiums collected in the Federated States of Micronesia in each fiscal year shall be required to become licensed as an insurer.
- (6) A foreign insurer who does not make the premium collections described in subsection (5) of this section shall be permitted to do business through a person licensed as an agent if the foreign insurer is registered, unless such foreign insurer chooses to be licensed as an insurer instead.
- (7) A person licensed as an agent may conduct business on behalf of more than one insurer; however, the agent must apply for a separate license as an insurance agent for each insurer.

**Source:** PL 14-66 § 25; PL 14-87 § 10.

### **§ 302. Application for license.**

- (1) An applicant for a license shall submit the following information to the Insurance Board:
  - (a) The name and address of the applicant;
  - (b) In the case of a business entity, the corporate charter and bylaws and the names and address of the officers;
  - (c) The address of the applicant's office in the Federated States of Micronesia and an appointment of a representative resident in the Federated States of Micronesia for service of process and to whom notices and orders under this subtitle shall be sent;
  - (d) Evidence of the good character, financial responsibility, business experience and ability of the applicant, or in the case of a business entity, its officers;

(e) In the case of applicants for an agent, solicitor or broker's license, information on prior insurance experience of the applicant and the names and addresses of prior insurers or agents represented by the applicant;

(f) The type of license requested;

(g) The classes of insurance proposed to be transacted and a demonstration of capacity to transact such classes of insurance;

(h) In the case of applicants for an agent's license, the request of a registered insurer that the applicant be licensed to represent the insurer as an agent;

(i) In the case of applicants for a solicitor's license, the request of a licensed insurer or licensed agent that the applicant be licensed to represent the insurer or agent;

(j) An audited financial statement for the most recent fiscal year, a statement of prospective income and a business plan for the forthcoming three years;

(k) In the case of applicants for an insurer's license, the insurer must be able to meet the minimum capital requirement of \$100,000 and demonstrate capacity to meet the ongoing minimum capital requirements as specified by the Insurance Board;

(l) In the case of applicants for an insurer's license, disclosure of all contracts of reinsurance;

(m) In the case of applicants for an insurer's license, if the applicant is a foreign insurer, a certificate issued by the insurance supervisory authority in the place in which the insurer is incorporated or constituted to the effect that it is complying with all the applicable insurance supervisory requirements of that authority;

(n) Other information and fees as required by regulations.

(2) The Insurance Board may require that an examination be made into the business and affairs of the applicant, including, in the case of a foreign insurer, an examination by the insurance authority of the jurisdiction in which such insurer is organized. Such examination shall be at the cost of the applicant.

(3) The applicant has an ongoing duty to provide the Insurance Board with new or amended information relevant to the application while the application is pending and if a license is issued, after the issuance of a license.

**Source:** PL 14-66 § 26; PL 14-87 § 11.

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

### **§ 303. Decision on application.**

The Insurance Board shall review a completed application and conduct any further investigations as deemed necessary, including public hearings, and approve or reject the application at the discretion of the Insurance Board including consideration of the following factors:

(1) whether the applicant has provided complete information and whether the applicant has made any material misstatements or omissions in the application;

(2) the overall financial condition of the applicant and whether or not granting the application is likely to

result in an over-extension of the applicant's resources or facilities;

(3) the expertise and character of the applicant or the officers of the applicant, including whether the applicant or any officer has been convicted of a felony having as one of its necessary elements a fraudulent act or an act of dishonesty in the solicitation of, acceptance, custody, or payment of money or property;

(4) whether the applicant has refused or failed to comply with, or is in violation of, any of the provisions of this subtitle or regulations or any order of the Insurance Board or Commissioner;

(5) in the case of a foreign insurer, the insurer's record of compliance with laws and overall performance in other jurisdictions;

(6) in the case of an applicant operating in the Federated States of Micronesia prior to application for a license, the applicant's record of compliance with the law and regulations of and past performance in the Federated States of Micronesia; and

(7) whether the applicant is delinquent in the payment of any fees, licenses, taxes, fines or penalties owed to the national government or the government of any State, or is otherwise in default for failure to comply with any laws of the Federated States of Micronesia.

**Source:** PL 14-66 § 27/22.

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

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

### **§ 304. Notification of decision on application.**

(1) If the application is approved, the Commissioner shall provide the applicant with a license which shall remain valid unless suspended or cancelled in accordance with the provisions of this subtitle. The license shall be displayed conspicuously in a public part of all places of business of the license holder in the Federated States of Micronesia.

(2) The Insurance Board may approve an application subject to conditions deemed necessary to protect policy-owners. Any such conditions shall be noted on the license and may be varied or revoked during the term of the license.

(3) If the application is denied, an order denying a license shall be issued.

**Source:** PL 14-66 § 28/23.

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

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### **§ 305. Cancellation of license.**

The Insurance Board may cancel a license by issuing an order of cancellation based on any of the following grounds:

- (1) the license holder or a trustee or receiver appointed by the court has requested cancellation;
- (2) the license holder has ceased to carry on an insurance business in the Federated States of Micronesia;
- (3) the license holder has not commenced business in the Federated States of Micronesia within one year of being issued a license;
- (4) in the case of an agent, that the insurer whom they represent no longer wishes to be represented by the agent or the insurer is no longer licensed or registered by the Insurance Board; in the case of a solicitor, that the agent or insurer whom they represent no longer wishes to be represented by the solicitor or the agent or insurer is no longer licensed or approved by the Insurance Board;
- (5) false, misleading or inaccurate information was given in an application under this subtitle or pursuant to reporting requirements or a demand for information under this subtitle;
- (6) any cause for which issuance of the license could have been refused if it had then existed and been known to the Commissioner at the time of issuance;
- (7) in the case of an insurer, the insurer has failed to pay a final judgment for the payment of a claim owed under a policy;
- (8) in the case of an insurer, the insurer has engaged in unfair trade practices;
- (9) the license holder has misrepresented the terms of any actual or proposed insurance contract or application for insurance;
- (10) in the case of an insurer, the unencumbered assets, or capital solvency requirements as defined by the Commissioner, of the insurer are insufficient for the proper conduct of his insurance business;
- (11) the license holder is not conducting business in accordance with sound insurance principles;
- (12) the license holder has contravened any of the provisions of this subtitle, regulations or conditions of license.

**Source:** PL 14-66 § 29/24; PL 14-87 § 12.

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section number in PL 14-66.

### **§ 306. Restriction of license.**

The Insurance Board may restrict a license by issuing an order of restriction. Restrictions on a license may include limitations on business activities, prohibitions against writing of new business or commencement of new activities or acquisitions, directions to stop practices that are unsafe or unsound, requirements to put assets of the insurer in trust or restrict disposal of assets, and prohibitions against particular individuals from the business of insurance.

**Source:** PL 14-66 § 30/25; PL 14-87 § 13.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

### **§ 307. Registered Foreign Insurers.**

(1) A foreign insurer may be registered by providing the following:

(a) information from the insurer's home supervisory authority that the insurer is solvent and meets all the regulatory requirements in the home jurisdiction and is otherwise in good standing; and a statement from the home supervisory authority that the foreign insurer is approved for transaction of insurance business through an agent in the Federated States of Micronesia; and

(b) posting of a bond, or deposit to an escrow account, in the sum of \$100,000, to be withdrawn by the Commissioner upon the occurrence of certain events as stated in the bond or escrow agreement; and

(c) compliance with any requirement, if set forth in regulations under this subtitle, that a certain amount of premiums collected on behalf of the insurer are maintained in the Federated States of Micronesia; and

(d) designation of an agent for service of process.

(2) A foreign insurer providing a marine, aviation and transportation policy may be registered without posting the bond required in subsection (1)(b) of this section.

(3) The Commissioner may grant or deny or cancel registration of a foreign insurer based on these requirements and a review of the foreign insurer in the same manner as a review of an application for a license under this subtitle.

(4) Any person registered as an insurer under this subtitle shall be deemed and held to be doing business in the Federated States of Micronesia and may be sued upon any cause of action arising under any policy of insurance issued by it and any cause of action under the laws of the Federated States of Micronesia in the courts of the Federated States of Micronesia.

**Source:** PL 14-66 § 31/26; PL 14-87 § 14.

**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.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

### **§ 308. Policies issued before refusal of application or cancellation of license.**

An insurer, agent, broker or solicitor whose application for a license has been denied or cancelled shall continue to carry on business relating to policies issued by the insurer, or the insurer represented by the agent, broker or solicitor, prior to the date on which it was notified of such denial or cancellation until the Insurance Board is satisfied that the insurer, agent, broker or solicitor has made suitable arrangements for the obligations under the policies to be met.

**Source:** PL 14-66 § 32/27.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

### **§ 309. Reporting requirements.**

- (1) Licensed insurers and registered insurers shall provide the following information to the Insurance Board:
  - (a) Within three months of the end of each fiscal year:
    - (i) a certified copy of the audited balance sheet and accounts showing the financial position of all the insurance business of the license holder at the close of that year;
    - (ii) a certificate of an auditor stating that the auditor has satisfied himself that the accounts of the insurer have been properly prepared in accordance with the books and records of the insurer and in accordance with Generally Accepted Accounting Principles and any such other particulars as may be prescribed by regulation; and
    - (iii) such other documents and information as the Commissioner may require or as may be prescribed by regulation.
    - (iv) all insurers who operate as separate entities which can be wound up under domestic or foreign law shall render separate accounts but where they are associated together in a group the holding company shall also furnish to the Commissioner consolidated accounts of the insurance business for the group as a whole.

(b) A copy of any report on the affairs of the insurer submitted to the policy-owners or shareholders of the insurer in respect of the financial year to which the balance sheet relates.

(c) In the case of licensed insurers only, a copy of all contracts of reinsurance at the time they were entered into and upon any amendment.

(2) Licensed agents, brokers and solicitors shall provide the following information to the Insurance Board on a quarterly basis and in a form determined by the Insurance Board:

(a) an accounting of all premiums collected, including the dates of receipt from the policy-owner, the dates of remittance to the insurer, and any commissions received.

(b) such other information as determined by the Insurance Board.

**Source:** PL 14-66 § 33/28; PL 14-87 § 15.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

### **§ 310. Periodic investigations to be made into financial position of insurers.**

(1) A licensed insurer shall, not less than once in every three years, cause an investigation into its financial position, including a valuation of its liabilities to be made by an actuary; provided that the Commissioner may require an insurer to cause such an investigation to be made at any time he deems it to be in the policy owner's interest to do so.

(2) A licensed insurer shall, whenever its financial position is investigated with a view to a distribution of surplus or in compliance with subsection (1) of this section, furnish to the Commissioner a full report of the actuary by whom the investigation was made or an abstract thereof at the Commissioner's option, and a statement of its life insurance business at that date, as soon as such a report is furnished to the insurer by the actuary. The actuary shall also provide a statement of the assumptions and the methods used in making the valuation.

**Source:** PL 14-66 § 34/29; PL 14-87 § 16.

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### **§ 311. Separate accounts for business other than insurance business.**

A licensed insurer or insurance agent who transacts, besides insurance, any other business shall conduct the insurance business in a separate company and shall thereby segregate the assets and liabilities of its insurance business from those of its other business.



**Source:** PL 14-66 § 35/30.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

### **§ 312. Life insurance carrying on other business.**

(1) A licensed insurer who carries on both life insurance business and other insurance business shall conduct the life insurance business in a separate company, and shall thereby segregate the assets and liabilities of its life insurance business from those of its other insurance business.

(2) All receipts of a life insurer in respect of its life insurance business shall be carried to and form part of its life insurance fund.

(3) Payments from the life insurance fund of a licensed insurer shall not be made directly or indirectly for any purpose other than those of its life insurance business, except insofar as such payments can be made out of any surplus disclosed on an actuarial valuation and certified by the actuary to be distributable otherwise than to policy-owners.

**Source:** PL 14-66 § 36/31.

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### **§ 313. Mergers and transfers of insurance business.**

No domestic insurer shall:

(1) Merge or reorganize, whether by agreement, order or takeover, with any one or more insurers; or

(2) Transfer its insurance business or a part thereof to, or take transfer of the insurance business or a part thereof from, another insurer, unless the merger, reorganization or transfer is approved by the Commissioner.

(3) No merger or transfer shall be approved that lessens the policy benefits of policy owners.

**Source:** PL 14-66 § 37/32.

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### **§ 314. Limitation on Borrowing.**

At no time may the amount of moneys to be borrowed or secured by a domestic insurer exceed ten percent of the assets of the domestic insurer without the written consent of the Commissioner.

**Source:** PL 14-66 § 38/33; PL 14-87 § 17.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

### **§ 315. Prohibition of loans to directors.**

A domestic insurer shall not, directly or indirectly, without the approval of the Commissioner, lend any of its funds to any of its officers or related persons; or enter into any guarantee or provide any security in connection with a loan to an officer or related person by any other individual; provided that loans may be so made within the surrender value of a life policy issued by the insurer to such individual.

**Source:** PL 14-66 § 39/34.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

### **§ 316. Prohibited investments.**

The Insurance Board may require that a domestic insurer not make investments of a specified class and may in that case require such insurer to liquidate investments of that class within a specified period.

**Source:** PL 14-66 § 40/35; PL 14-87 § 18.

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**§ 317. Ownership limitations.**

No person or group of related persons or affiliated entities may acquire ten percent or more of the stock of a domestic insurer without the prior approval of the Insurance Board.

**Source:** PL 14-66 § 41/36.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

**§ 318. Keeping of records.**

(1) A license holder shall keep within the Federated States of Micronesia and shall make available to the Commissioner on request a record of all domestic policies in force or upon which liabilities are outstanding which have been issued by the insurer or by the agent, broker or solicitor on behalf of an insurer, showing the insurer's rights and obligations thereunder and recording the premiums received and, in the case of an agent, broker or solicitor, the premiums collected and paid to the insurer and the commissions received.

(2) A license holder shall keep, for a period of at least five years, the original or an accurate copy of policies, premium payments, claims made and paid, and other items comprising records of transactions processed by it.

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

**Source:** PL 14-66 § 42/37.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

**§ 319. Winding up of insurance business.**

(1) Any license holder may terminate its business in the Federated States of Micronesia with the approval and under the supervision of the Insurance Commissioner and pursuant to title 31 of this code as amended by Public Law 13-73.

(2) The Commissioner may present a petition for the winding-up of an insurer in accordance with the provisions of title 31 of this code as amended by Public Law 13-73.

(3) Notwithstanding any other law, the business and assets of the insurer shall be liquidated in an orderly manner so as to fully protect all of the policy-owners of the insurer in the Federated States of Micronesia. Policy-owners shall take first priority with respect to payment of the obligations of the insurer.

**Source:** PL 14-66 § 43/38; PL 14-87 § 19.

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**Erratum:** The word "Notwithstanding" in subsection (3) has been corrected to "Notwithstanding".

**Cross-reference:** Title 31 of this code is on Bankruptcy and Insolvency.

### **§ 320. Lists of representatives to be maintained.**

Every license holder shall maintain and post in its office an accurate list of all persons associated with it as an insurer, agent, solicitor or broker in the Federated States of Micronesia, and shall provide the list to the Insurance Board along with the full details of the association with such agent, solicitor or broker including a copy of any employment contract, every time it is amended or on demand of the Commissioner.

**Source:** PL 14-66 § 44/39.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

### **§ 321. Premiums.**

(1) Any licensed agent, broker or solicitor shall, for the purpose of receiving any premium for a policy, be deemed to be the agent of the insurer and notwithstanding any conditions or stipulations to the contrary the insurer whom they represent shall be deemed to have received any premium received by such agent, broker or solicitor.

(2) A licensed agent, broker or solicitor who acts in negotiating or renewing a policy of an insurer and receives payment of the premium for the policy from the policy owner, shall be guilty of an offense if he fails to forward the premium to the insurer within 30 days of the receipt of the premium, less his commission and any other deductions to which by written consent of the insurer he is entitled, provided that if any person charged with an offense under this section shall satisfy the court that he was prevented by illness or other cause beyond his control from due compliance with such provisions and has subsequently paid the premium to the insurer, the same shall be a good defense to the charge.

**Source:** PL 14-66 § 45/40; PL 14-87 § 20.

**Editor's note:** PL 14-66 contained overlapping section numbers by repeating section numbers 22-26. The first section number in the source of this section represents what the correct section number should have been and the second section number represents the actual section number in PL 14-66.

**§ 322. Disclosure of information by auditors.**

(1) If an auditor or actuary, in the course of reviewing the business of a person licensed under this subtitle, is satisfied that:

- (a) there has been a violation of a provision of this subtitle, or regulations or Orders under this subtitle; or
- (b) a criminal offence involving fraud or dishonesty has been committed; or
- (c) the business is insolvent or is likely to become insolvent; or
- (d) there are irregularities which materially prejudice the interests of policy owners; or
- (e) the business is unable, or is likely to become unable, to meet its liabilities;

the auditor or actuary must immediately report the matter to the directors of the business and to the Insurance Board.

(2) Failure to report shall constitute a violation of this subtitle.

(3) A person reporting under this provision shall not be liable for any damage which may be a consequence of the report.

**Source:** PL 14-87 § 21.

**§ 323. Limitations on loans—Maximum amount.**

No domestic insurer shall permit a person to become indebted or liable to it, either directly or indirectly, in an amount in excess of 20 percent of the aggregate paid-in and unimpaired capital, surplus, and undivided profits of the insurer.

**Source:** PL 14-87 § 22.