

**TITLE 31
BANKRUPTCY AND INSOLVENCY**

**SUBTITLE I
BANKRUPTCY ACT OF 2004**

CHAPTERS

- 1 General Provisions (§§ 101-112)**
- 2 Receivership Proceedings (§§ 201-209)**
- 3 Reorganization Proceedings (§§ 301-311)**

Editor's note: PL 13-73 enacted this national bankruptcy and insolvency statute which became law on January 31, 2005 without the signature of then President Joseph J. Urusemal. It is codified here as a separate subtitle to retain the integrity of the Bankruptcy Act of 2004 and to allow for passage of future laws on the subject matter of Bankruptcy and Insolvency not intended to amend or otherwise be a part of this subtitle.

PL 13-73 § 1 states the following purpose for this subtitle:

The purpose of this bill is to establish a bankruptcy system for the Federated States of Micronesia that fairly balances the interests of creditors and debtors in circumstances where the debtor is unable to meet his financial obligations when due. A uniform set of laws and procedures is established for all bankruptcy proceedings, providing increased certainty for creditors, debtors and the courts. The bill is designed to protect the interests of creditors by creating a single proceeding in which multiple creditor claims can be addressed efficiently and equitably, freeing all parties from the uncertainties and costs of numerous, uncoordinated debt enforcement activities, all competing for access to the debtor's assets. It is also intended that creditor interests be served by the appointment of a receiver, in appropriate circumstances, to marshal all of the debtor's non-exempt assets and to manage those assets, during the pendency of the proceeding, in the best interests of the estate. The bill creates for the debtor who meets the requirements of the law an opportunity to get a fresh start where he might otherwise face a protracted struggle with debt beyond his ability to pay. The bill gives to the courts substantial latitude in managing the bankruptcy proceeding to protect the interests of both creditors and debtors, to deal with abuses of the bankruptcy system and to establish a case schedule that takes into consideration the interests of all parties. It is not the purpose of the bill to interfere with or modify state or traditional law with respect to the transfer of interest in land. Instead, the bill directs the bankruptcy court to apply state law in determining whether and to what extent interests in land are subject to distribution to creditors.

Case annotation: The Bankruptcy Act's stated purpose is to fairly balance the interests of creditors and debtors and to give the court substantial latitude to deal with abuses of the bankruptcy system. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

**SUBTITLE I
BANKRUPTCY ACT OF 2004**

**CHAPTER 1
General Provisions**

SECTIONS

- § 101. Authority; title.
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- § 106. Stay of proceedings.
- § 107. Claims of creditors.
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- § 109. Setoff.
- § 110. Rulemaking power of the court.
- § 111. Retention of professionals.
- § 112. Qualifications of receivers and trustees.

Editor’s note: This chapter on General Provisions was created by PL 13-73 § 2.

§ 101. Authority; title.

This statute is enacted pursuant to the power of Congress to regulate bankruptcy and insolvency under article IX, section 2(g) of the Constitution of the Federated States of Micronesia. This Act may be cited as the “Bankruptcy Act of 2004”.

Source: PL 13-73 § 3.

Cross-reference: FSM Const., art. IX, § 2(g) reads as follows:

Section 2. The following powers are expressly delegated to Congress:

...
(g) to regulate banking, foreign and interstate commerce, insurance, the issuance and use of commercial paper and securities, bankruptcy and insolvency, and patents and copyrights;
...

The statutory provisions on the Congress of the Federated States of Micronesia 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/>.

§ 102. Definitions.

(1) “Affiliate” means:

(a) a person that directly or indirectly owns, controls, or has the power to vote, 20 percent or more of the outstanding voting securities of the debtor;

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(b) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly controlled, or held with power to vote, by the debtor, or by a person that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor;

(c) a person whose business is operated under a lease or operating agreement by the debtor, or a person substantially all of whose property is operated under an operating agreement with the debtor;

(d) a person that operates the business of, or all or substantially all of the property of the debtor under a lease or operating agreement.

(2) “Claim” means:

(a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(3) “Creditor” means a person or government entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor.

(4) “Debt” means liability on a claim.

(5) “Debtor” means a person with regard to which a case under this subtitle has been commenced but shall not include a governmental entity or, to the extent that this subtitle conflicts with Article IX of the programs and Services Agreement of the Compact of Free Association, as amended, entitled “Federal Deposit Insurance Corporation Programs and Services Agreements”, the Bank of the Federated States of Micronesia.

(6) “Governmental entity” means the Federated States of Micronesia, a State, a foreign state, a municipality, or an agency, instrumentality or department of any of the foregoing.

(7) “Insider” means:

(a) if the debtor is an individual:

(i) a relative of the debtor, or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner of the debtor; or

(iv) a corporation of which the debtor is a director, officer, or person in control.

(b) if the debtor is a corporation:

(i) an affiliate, director, officer or person in control of the debtor;

(ii) a partnership in which the debtor is a general partner, or a general partner of the debtor;

(iii) a relative of a general partner, affiliate, director, officer or person in control of the debtor.

(c) if the debtor is a partnership:

(i) a general partner in the debtor;

(ii) a relative of a general partner, a general partner of, or a person in control of the debtor;

(iii) a partnership in which the debtor is a general partner;

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- (iv) a general partner of the debtor; or
- (v) an affiliate or person in control of the debtor.

(8) “Interested party” means the debtor, any creditor of the debtor, any equity holder in a corporation that is a debtor, and any other party that the court supervising an application under this subtitle may determine to have a right to be heard on issues pertaining to that application.

(9) “Person” as used in this chapter means an individual, partnership or corporation, but does not include governmental entities.

(10) “Relative” means an individual related by blood, marriage within the third degree as determined by common law, persons who are considered close relatives under applicable Micronesian custom, or a step or adoptive relationship within such third degree.

(11) “State” means a State of the Federated States of Micronesia.

Source: PL 13-73 § 4.

§ 103. Application for relief.

(1) An application for the appointment of a receiver under chapter 2 of this subtitle may be made:

- (a) by any debtor; or
- (b) by three or more creditors whose combined claims are in excess of \$7,500, provided that each creditor’s claim is at least \$1,000, and further provided that such claims are not contingent and are not subject to a *bona fide* dispute; or
- (c) in the case of a partnership, by any person or persons whose interest in the partnership is, in the aggregate, greater than or equal to 50 percent;

(2) An application under chapter 3 of this subtitle for the reorganization of a debtor that is a corporation may be made by the debtor.

(3) Any application under this subtitle shall allege that the debtor resides or has a domicile, a place of business, or property in the Federated States of Micronesia.

(4) When the application is brought by creditors, the application shall also allege:

- (a) that the claims held by such creditors amount in the aggregate to at least \$7,500, are not contingent and are not subject to a *bona fide* dispute; and
- (b) that the debtor is generally not, at the time of the application, paying its debts as they become due, and has generally not been paying its debts as they became due for at least 60 days prior to the date of the application.

Source: PL 13-73 § 5.

§ 104. Filing of application.

(1) An application for relief under this subtitle shall be filed with the Trial Division of the FSM Supreme Court located in a State of the Federated States of Micronesia where the debtor resides or has domicile, a place of business, or property.

(2) The court in which the application is filed shall supervise the proceeding unless the court, in its discretion, determines that the proceeding may be more efficiently supervised by the FSM Supreme Court Trial Division located in another State of the Federated States of Micronesia.

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(3) The application must be in the form specified by the court, accompanied by such filing fee as the court may set, and must contain, to the best of the knowledge of the applicant, a statement of financial condition of the debtor, as well as schedules of debts, assets and exemptions of the debtor. All applications must be sworn under penalty of perjury by the debtor, or members of the applying creditors group;

(4) In the case of an application made pursuant to subsection 103(1)(b) of this chapter, the debtor may, within the time prescribed by the court, file an answer to the application. An answer may allege one or more of the following:

- (a) that the debtor is generally able to pay its debts as they come due; or
- (b) that the claims of the creditors do not satisfy the requirements of subsection 103(1)(b) of this chapter; or
- (c) in the case of a corporation, that it is in the best interests of the debtor and creditors that the proceeding be converted to a proceeding under chapter 3 of this subtitle; or
- (d) that the allegations in the application are insufficient as a matter of law.

Source: PL 13-73 § 6.

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

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

Case annotations: Exhibit A and Form 4 are official forms that are only to be filed by corporate debtors in chapter 3 reorganization cases, not by an individual applying for bankruptcy relief under chapter 2. *Amayo v. MJ Co.*, 14 FSM R. 535, 537 (Pon. 2007).

A bankruptcy application must be accompanied by the debtor's statement of financial condition, as well as schedules of debts, assets and exemptions of the debtor. *Amayo v. MJ Co.*, 14 FSM R. 535, 538 (Pon. 2007).

Under the Bankruptcy Rules, the debtor's schedules and statements must, in a voluntary case, be filed with the application or if the application is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided. *Amayo v. MJ Co.*, 14 FSM R. 535, 538 (Pon. 2007).

§ 105. Notice.

Notice to Interested Parties of the filing of an application under this subtitle and of motions, hearings and other events relating to proceedings under this subtitle shall be given at such time and in such manner as the court may determine for the purposes of

- (1) giving as many interested parties as reasonably practicable an opportunity to be heard concerning matters affecting their interests in the proceedings, and
- (2) maximizing the number of claims against the debtor that can be discharged, compromised, paid or otherwise resolved through the proceedings.

Source: PL 13-73 § 7.

§ 106. Stay of proceedings.

(1) Except as provided in subsection (2) of this section, an application under this subtitle operates throughout the Federated States of Micronesia and every State thereof as a stay, applicable to all persons and governmental entities, of the commencement or continuation of all legal proceedings against the debtor, against the property of the debtor, and against property held by the receiver.

(2) An application under this subtitle does not operate as a stay of:

(a) criminal proceedings against the debtor; or

(b) the commencement or continuation of legal proceedings by a governmental entity to enforce a police or regulatory power.

(3) The stay authorized by subsection (1) of this section shall continue until the proceedings related to the application are terminated, suspended or dismissed, or the party affected obtains relief from the stay pursuant to subsection (4) of this section.

(4) Upon the application of a party affected by the stay, the court, for cause shown, shall either:

(a) grant relief from stay; or

(b) grant such other relief as will provide adequate protection for the party requesting relief from stay.

Source: PL 13-73 § 8.

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

Case annotations: By operation of law, the moment a person files an application for relief under the Bankruptcy Act of 2004 (Title 31 of the FSM Code), all legal proceedings against that applicant-debtor are automatically stayed with the exception of criminal proceedings and proceedings by a governmental entity to enforce a police or regulatory power. No court order or notice is needed or issued for the stay to take effect. *Amayo v. MJ Co.*, 14 FSM R. 535, 537 (Pon. 2007).

Persons with a claim to a disputed, unsecured, unliquidated debt owed by the debtor which arose before the debtor applied for bankruptcy relief are "interested parties" who may appear in the bankruptcy proceeding and who may (and must) pursue any sanctions of the debtor and relief from the automatic stay within the bankruptcy case. *Amayo v. MJ Co.*, 14 FSM R. 535, 538 (Pon. 2007).

The Bankruptcy Act sets forth the proper procedure to be followed by anyone who desires relief from the automatic stay. Relief from the automatic stay may be sought by applying to the bankruptcy court, and if that court grants the relief from the stay and determines that the disputed claim against the debtor should be referred to and determined by the court in which the case was already filed, that court will proceed with trial of the claim against the debtor. *Amayo v. MJ Co.*, 14 FSM R. 535, 538 (Pon. 2007).

Unless and until the bankruptcy court grants relief from the automatic stay and refers the matter to the court in which the claim was filed to determine the amount of the claim allowable, the court can take no further action on the claim against the debtor. A plaintiffs' request to the court in that case cannot be considered a request for relief from the automatic stay since it bypasses the bankruptcy court, the only proper forum in which to seek such relief. Only the bankruptcy court can lift the automatic stay. *Amayo v. MJ Co.*, 14 FSM R. 535, 538 (Pon. 2007).

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The trial court has no power to enter a default on the issue of the debtor's liability or to try damages (damages would still need to be proven in an evidentiary proceeding) while the Bankruptcy Act's automatic stay is in effect. *Amayo v. MJ Co.*, 14 FSM R. 535, 538 (Pon. 2007).

When an automatic stay has taken effect because one defendant applied for bankruptcy relief, trial could still proceed as scheduled on the plaintiffs' claims against the other two defendants, but when the court considers that to be a needless waste of scarce judicial resources and an unnecessary financial burden on the plaintiffs to have to try the case first against those defendants, and then against the debtor, the court may continue the trial. *Amayo v. MJ Co.*, 14 FSM R. 535, 539 (Pon. 2007).

An affected party may seek relief from the automatic stay by applying to the bankruptcy court and that court, for cause shown, shall either grant relief from stay or grant such other relief as will provide adequate protection for the party requesting relief from stay. *In re Panuelo*, 15 FSM R. 23, 26 (Pon. 2007).

The bankruptcy court will grant relief from the automatic stay and permit "another court" to try creditors' disputed claims against the debtor and determine the amount of the debtor's liability (if any) to the creditors when it is in the interests of judicial economy and the expeditious and economical resolution of litigation and the parties were ready for trial before the bankruptcy application; when the impact of the stay on, and the harm to, the creditors is great, while the only harm to the debtor is that his attorney will have to try the case, something he was already prepared to do; when relief would result in complete resolution of the issues between the creditors and the debtor (except, of course, payment of any judgment); and when the litigation involves third parties and would not appear to prejudice the debtor's other creditors since any judgment against the debtor in that case must be pursued only in this bankruptcy case since the stay will not be lifted so as to permit the enforcement of any judgment obtained against the debtor in any forum other than this bankruptcy case. *In re Panuelo*, 15 FSM R. 23, 29 (Pon. 2007).

§ 107. Claims of creditors.

- (1) Any creditor may file a sworn claim in such manner and within such time limits as the court shall prescribe.
- (2) Each claim shall be allowed except to the extent that:
 - (a) such claim is unenforceable for any reason other than because such claim is contingent or unmatured;
 - (b) such claim is for unmatured interest;
 - (c) such claim is for punitive damages and is not compensation for actual pecuniary loss; or
 - (d) such claim has not been filed within the time limit prescribed by the court.
- (3) In the event of a dispute as to whether or in what amount a claim is allowable under this section, the court may
 - (a) summarily determine the matter upon motion,
 - (b) conduct a trial on the claim, or
 - (c) refer the matter to another court for determination.
- (4) An allowed claim of a creditor is a secured claim to the extent of the value, as determined by the court, of the collateral, provided all criteria under applicable law for perfecting security interests have been complied with, and further provided that no security interest in land shall be treated as a secured claim except to the extent, if any, to which such security interest is enforceable under the laws of the state in which the land is located. An allowed claim is an unsecured claim to the extent that the value of the collateral pledged by the debtor as security for that claim is less than the amount of the claim.
- (5) The holder of an allowed secured claim is entitled to the approved value of the collateral or its equivalent, unless such creditor agrees to accept a lesser amount.

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(6) Assets shall be distributed to the holder of an allowed unsecured claim in accordance with the provisions of this subtitle.

Source: PL 13-73 § 9.

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

Case annotations: A "creditor" is someone who has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor and a "claim" is any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. *Amayo v. MJ Co.*, 14 FSM R. 535, 538 (Pon. 2007).

Persons with a claim to a disputed, unsecured, unliquidated debt owed by the debtor which arose before the debtor applied for bankruptcy relief are "interested parties" who may appear in the bankruptcy proceeding and who may (and must) pursue any sanctions of the debtor and relief from the automatic stay within the bankruptcy case. *Amayo v. MJ Co.*, 14 FSM R. 535, 538 (Pon. 2007).

The bankruptcy court may choose to try the plaintiffs' previously-filed claim itself although the claim was previously filed in another case. *Amayo v. MJ Co.*, 14 FSM R. 535, 539 (Pon. 2007).

In a bankruptcy case, a "creditor" is someone who has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor, and a "claim" is any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. An unliquidated claim is one whose amount has not been determined or calculated. *In re Panuelo*, 15 FSM R. 23, 26 (Pon. 2007).

An "interested party" who may appear in a bankruptcy proceeding includes any creditor of the debtor. *In re Panuelo*, 15 FSM R. 23, 26 (Pon. 2007).

Words and phrases used in the FSM Code (of which the Bankruptcy Act is a part) must be read with their context and must be construed according to their common and approved English language usage. *In re Panuelo*, 15 FSM R. 23, 27 n.1 (Pon. 2007).

When a debtor has failed to file supplemental schedules with corrected information about his property as required, the receiver should be permitted to do it based on the information she has uncovered and any further information she may develop. *In re Panuelo*, 16 FSM R. 339, 345 (Pon. 2009).

§ 108. Priorities.

(1) The following claims and expenses shall have priority in the following order:

(a) all necessary administrative expenses incurred in connection with the proceeding as may be determined by the court, including compensation of any receiver or trustee, applicable attorneys fees, and wages, salaries and other expenses incurred, after the date of the application, in connection with continuing to operate any business of the debtor, to the extent that such continued operations are permitted by this subtitle or by order of the court;

(b) all liens of the FSM Social Security Administration subject to section 607 of title 53 of this code;

(c) all allowed unsecured claims of the National Government or any State or local government of the Federated States of Micronesia, or any entity or public corporation of any such government;

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(d) all claims by employees of the debtor for wages and salaries for services prior to the date of the application, except for such claims by persons who hold an ownership interest in a debtor that is a business, persons who hold a management position in the business of the debtor and relatives of the debtor;

(e) other allowed unsecured claims, including any unsecured portions of claims held by secured creditors, but not including claims within subsections (e) and (f) of this section;

(f) if the debtor is a corporation or a partnership, all allowed claims arising from the ownership, purchase or sale of any equity or partnership interest in the debtor;

(g) all rights, claims and interests of the debtor.

(2) Payment of professional fees and other administrative costs of the debtor, as described in subsection (1)(a) of this section, may be made during the course of a proceeding, subject to approval by the court. Such payments may include advance payments if determined by the court to be necessary and appropriate to accomplish the purposes of this subtitle;

(3) Creditors having claims or expenses of the same order of priority shall be treated equally except to the extent that a creditor agrees to be treated less beneficially.

Source: PL 13-73 § 10.

Cross-reference: Title 53 of this code is on Social Security and Prior Service Benefits.

§ 109. Setoff.

The law of setoff shall apply in the event that the debtor has any right to recover, arising prior to the filing of an application hereunder, against a creditor filing a claim under this subtitle, provided that the creditor's claim is allowable under section 107 of this chapter, and further provided that no claim against the debtor by a bank or other financial institution shall be setoff against funds or other assets held by the bank or financial institution on account for the debtor.

Source: PL 13-73 § 11.

§ 110. Rulemaking power of the court.

The Supreme Court of the Federated States of Micronesia may adopt such rules, not inconsistent with the provisions of the subtitle, as it may deem necessary or appropriate to the supervision of proceedings under this subtitle or otherwise to effect the purposes of this subtitle.

Source: PL 13-73 § 12.

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

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

§ 111. Retention of professionals.

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The debtor may retain, for the purposes of proceedings under this subtitle, one or more attorneys, accountants or other professionals, provided that the retention and terms of retention of each such professional shall be subject to approval by the court. The court may retain one or more appraisers, accountants or other professionals to appraise property of the debtor, to examine the financial condition of the debtor or otherwise to assist the court in connection with a proceeding under this subtitle. Unless otherwise ordered by the court, the fees and costs of any professionals retained by the court and the debtor shall be treated as administrative costs under section 108 of this chapter.

Source: PL 13-73 § 13.

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

§ 112. Qualifications of receivers and trustees.

(1) A person may serve as a receiver or trustee under this subtitle only if such person is:

- (a) competent to perform the duties of a receiver or trustee;
- (b) resides or has an office in the Federated States of Micronesia;
- (c) holds relevant professional qualifications as determined by the FSM Supreme Court; and
- (d) has never been convicted of a crime of moral turpitude, fraud, theft, deceit or other act which involves dishonesty.

(2) Nothing in this subtitle will preclude the FSM Supreme Court from removing a receiver or trustee in any case for good cause shown.

(3) No relative, affiliate or other such insider of the debtor shall be appointed to serve as a receiver or trustee under this subtitle.

(4) The court shall have the authority to fix the compensation of the receiver or trustee, however it shall be specifically prohibited from fixing compensation based solely on time referenced billing. When fixing compensation of the receiver or trustee the court shall take into consideration:

- (a) the complexity of the case;
- (b) the skill and reputation of the receiver or trustee;
- (c) the benefit of all work provided by the receiver or trustee; and
- (d) any other relevant criteria which the court in its discretion may choose to employ.

Source: PL 13-73 § 14.

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

Case annotations: A receiver's proposed compensation of \$125 an hour with a cap on the amount paid based on a percentage of the amount disbursed to creditors, even though the proposal places an upper limit on the compensation, this proposed compensation is still based solely on time-referenced billing, which the court is statutorily barred from approving. *In re Panuelo*, 15 FSM R. 640, 641 (Pon. 2008).

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When a \$125 per hour compensation rate is barred because the statute prohibits compensation based solely on time-referenced billing; when \$125 an hour seems to be proposed merely because it is the prevailing rate for private attorneys on Pohnpei and the receiver is a lawyer; and when much of the work needed in administering a debtor's estate in bankruptcy may not be lawyer work and non-lawyer work is not compensated at lawyer rates even when done by a lawyer, the receiver will be asked to submit a new compensation proposal. *In re Panuelo*, 15 FSM R. 640, 641-42 (Pon. 2008).

CHAPTER 2
Receivership Proceedings

SECTIONS

- § 201. Approval of application; suspension or dismissal of pending receivership.**
§ 202. Powers of the receiver.
§ 203. Property to be administered by the receiver.
§ 204. Distribution of the receivership estate.
§ 205. Preferences.
§ 206. Fraudulent transfers.
§ 207. Transferee liability.
§ 208. Discharge.
§ 209. Exempt property.

Editor's note: This chapter on Receivership Proceedings was created by PL 13-73 § 15.

§201. Approval of application; Suspension or dismissal of pending receivership.

(1) Any application for the appointment of a receiver shall be filed as provided in sections 103 and 104 of this subtitle. Upon such application, the court shall appoint a receiver within such time as the court shall prescribe if:

- (a) there is no objection by any Interested Party; or
- (b) the court finds that the party or parties objecting to the application have failed to establish that
 - (i) the allegations of the application are insufficient as a matter of law, or
 - (ii) it is in the best interests of the debtor and the creditors that the application be dismissed.

(2) Notwithstanding subsection (1) of this section, the court may deny the application, dismiss a pending receivership, or suspend a pending receivership if it finds that such denial, dismissal or suspension is in the best interests of the debtor and its creditors. If the court finds that an application under this subtitle has been filed in bad faith, it may award to interested parties injured thereby their reasonable costs and attorneys fees to be paid by the filing parties.

Source: PL 13-73 § 16.

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

Case annotations: The court may dismiss a bankruptcy application if it is in "the best interests of the debtor and the creditors" or if the debtor's application was in bad faith. *In re Panuelo*, 15 FSM R. 23, 28 (Pon. 2007).

It may be that the Bankruptcy Code's only remedy for unauthorized transfers of property in the debtor's estate after the start of a bankruptcy case is to dismiss the case without a discharge of the debtor's debts. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

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A debtor in bankruptcy is required to cooperate with the receiver, and his failure to cooperate with the receiver may subject his bankruptcy application to a dismissal for substantial abuse without any of his debts being discharged. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

A debtor's transfers of his property to others after the commencement of a bankruptcy can result in the dismissal of his application for bankruptcy protection without the discharge of his debts. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

§ 202. Powers of the receiver.

(1) Subject to such limitations as may be ordered by the court, the powers of the receiver include, but are not limited to:

(a) the power to use, sell and lease property of the receivership estate, provided that the receiver shall not make any transfer of an interest in land that would be inconsistent with the law of the state in which the land is located;

(b) the power to obtain credit on behalf of the receivership estate;

(c) the power to assume and reject executory contracts and leases of the debtor;

(d) the power to abandon or disregard property of inconsequential value of the receivership estate;

(e) the power to transfer title to property of the estate pursuant to distribution orders from the court under section 204 of this subtitle; and

(f) the power to avoid preferences and fraudulent conveyances as provided in sections 205, 206 and 207 of this subtitle.

(2) Court approval is required for actions taken pursuant to subsection (1)(a) and (1)(b) of this section unless the activity occurs in the ordinary course of business. Court approval is also required for actions taken pursuant to subsection (1)(c), (1)(d), (1)(e) and 1(f) of this section.

Source: PL 13-73 § 17.

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

Case annotations: Bankruptcy Rule 2008 refers only to blanket bonds in Rule 2010 which may be authorized when a trustee or receiver is qualified in a number of cases. A bond will not be required when the receiver has been qualified in only one case, and when the bond requirement is discretionary, especially in this early stage of development of bankruptcy law and the small number of persons who might be able to qualify as a bankruptcy receiver or trustee and the lack of insurance companies that could issue a bond. *In re Panuelo*, 15 FSM R. 640, 642 (Pon. 2008).

A receiver can move to compel the attendance of persons at a creditors' meeting because interested parties can make such motions, and the receiver stands in the debtor's shoes and the debtor is included in the definition of an "interested party." *In re Panuelo*, 16 FSM R. 339, 343 (Pon. 2009).

When a debtor has failed to file supplemental schedules with corrected information about his property as required, the receiver should be permitted to do it based on the information she has uncovered and any further information she may develop. *In re Panuelo*, 16 FSM R. 339, 345 (Pon. 2009).

§ 203. Property to be administered by the receiver.

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(1) The appointment of a receiver pursuant to this chapter creates a receivership estate. The estate shall consist of the following:

(a) subject to the exemptions contained in section 209 of this subtitle, all property owned by the debtor on the date of the application;

(b) all property acquired by the debtor through bequest, devise, or inheritance, or as beneficiary of a life-insurance policy in the 180 days after such application; and

(c) all property acquired by the receivership estate after the date of application.

(2) The receivership estate shall be administered in accordance with this subtitle and as may be ordered by the court.

Source: PL 13-73 § 18.

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

Case annotations: Since the FSM Code provisions are construed according to the fair construction of their terms with a view to effect its object and to promote justice, to construe the phrase "all property," to include the debtor's property outside the FSM would construe the Bankruptcy Act and 31 F.S.M.C. 203(1)(a) according to the fair construction of their terms or with a view to effect the Bankruptcy Act's object and to promote justice. *In re Panuelo*, 15 FSM R. 23, 28 (Pon. 2007).

A debtor's receivership estate consists of all property owned by the debtor on the date of the application, all property acquired by the debtor through bequest, devise, or inheritance, or as beneficiary of a life-insurance policy in the 180 days after the bankruptcy application, and all property acquired by the receivership estate after the date of application. *In re Panuelo*, 16 FSM R. 339, 343 (Pon. 2009).

Income earned by a debtor after his bankruptcy application is not part of the receivership estate, but property that was owned by the debtor when he applied for bankruptcy protection is part of the receivership as must be the return (or unearned income) generated by that property. *In re Panuelo*, 16 FSM R. 339, 343 (Pon. 2009).

Proceeds of property of the receivership estate generated (or acquired) by receivership estate property after the debtor's application, goes to and is part of the receivership estate. *In re Panuelo*, 16 FSM R. 339, 343 (Pon. 2009).

It would make little sense if the receiver could avoid a fraudulent transfer made one day before the debtor applied for bankruptcy protection but could not avoid a fraudulent transfer made one day after. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

A transfer of property out of the debtor's estate, especially to insiders, without the return to the estate of reasonably equivalent or fair market value, is a fraudulent transfer or a transfer with intent to defraud. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

§ 204. Distribution of the receivership estate.

Assets of the receivership estate, following the satisfaction of secured claims pursuant to section 107 of this subtitle, shall be distributed according to the priorities set forth in section 108 of this subtitle. Such distribution shall occur by order of the court, upon application by the receiver. The order shall identify the assets to be distributed and include a schedule of the distributions to be made.

Source: PL 13-73 § 19.

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

§ 205. Preferences.

(1) Except as provided in subsection (2) of this section, the receiver may avoid any transfer of an interest of the debtor in property:

- (a) to or for the benefit of a creditor;
- (b) for or on account of an antecedent debt;
- (c) made while the debtor was insolvent;
- (d) made on or within 90 days, or within one year if the creditor was an insider, affiliate or relative of the debtor, before the date of the application for the receivership; and
- (e) that enables such creditor to receive:
 - (i) more than such creditor would have received if the transfer had not been made;
 - (ii) more than such creditor would have received if his claim, right or entitlement had been treated as a claim in a proceeding under chapter 2 of this subtitle.

(2) The receiver may not avoid under subsection (1) of this section a transfer to the extent that:

- (a) such transfer was intended to be, and in fact was, a contemporaneous exchange for new value;
- (b) such transfer was a payment of debt in the ordinary course of business of both the debtor and the transferee; or
- (c) after such transfer, such creditor advanced new value to or for the benefit of the debtor.

(3) The receiver has the burden of proving the avoidability of a transfer under subsection (2) of this section. The receiver is entitled to the benefit of a rebuttable presumption that the debtor was insolvent during the 90 day period specified in subsection (1)(d) of this section.

Source: PL 13-73 § 20.

Case annotation: The receiver is statutorily empowered to avoid preferences paid to creditors made on or within 90 days, or within one year if the creditor was an insider, before the bankruptcy application, and to avoid fraudulent transfers made within one year before the application for receivership, and to recover the transferred property for the estate's benefit. *In re Panuelo*, 16 FSM R. 339, 343 (Pon. 2009).

§ 206. Fraudulent transfers.

(1) The receiver may avoid any obligation incurred by the debtor or transfer of an interest of the debtor in property if such transfer is made or obligation incurred within one year before the application for the receivership; and

- (a) the debtor actually intended to hinder, delay or defraud a creditor or creditors, or

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(b) the debtor has entered into a transaction or incurred an obligation, without receiving a reasonably equivalent value for the obligation or transfer and,

(i) at the time of entering into the transaction to transfer the property or to incur the obligation, the debtor was not generally paying his debts when they became due or should reasonably have believed that, following the consummation of the transaction, he would not be able to pay his debts when they became due; or

(ii) the debtor was engaged in a business for which, following the transaction, the remaining assets of the business were unreasonably small in relation to the business.

(2) Except to the extent that the transfer is also voidable pursuant to section 205 of this chapter, a good faith transferee for value is entitled to a lien on the transferred property to the extent of such value.

Source: PL 13-73 § 21.

Case annotation: It would make little sense if the receiver could avoid a fraudulent transfer made one day before the debtor applied for bankruptcy protection but could not avoid a fraudulent transfer made one day after. *In re Panuelo*, 16 FSM R. 339, 344 (Pon. 2009).

§ 207. Transferee liability.

(1) To the extent that a transfer is avoided under either section 205 or 206 of this subtitle, the receiver is entitled to recover the property transferred or, in appropriate cases, its value from:

(a) the initial transferee or the entity for whose benefit such transfer was made; or

(b) subsequent transferees of the initial transferees.

(2) The receiver may not recover under subsection (1) of this section from a good faith transferee for value or a subsequent transferee of such a good faith transferee.

(3) The receiver is entitled to only a single satisfaction under section 206(1) of this subtitle.

Source: PL 13-73 § 22.

§ 208. Discharge.

(1) A debtor who is the subject of receivership proceedings is entitled to a discharge from the claims of all creditors, unless:

(a) the debtor is not an individual; or

(b) the debtor has:

(i) transferred property in violation of section 206 of this subtitle; or

(ii) with intent to defraud has concealed, transferred or damaged property of the receivership estate after the date of the application; or

(c) the debtor has been granted a discharge pursuant to this chapter in a receivership commenced within seven years before the commencement of the pending receivership.

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(2) A discharge granted pursuant to this chapter does not discharge the debtor from any debt:

- (a) for money, property and the like obtained by actual fraud;
- (b) to a spouse, former spouse, child or other person for support or maintenance;
- (c) to the extent that such debt is subject to disallowance pursuant to section 107(2) of this subtitle; or
- (d) to the extent such debt arises from a student or educational loan that, at any time since the debt was first incurred, has been funded, administered or guaranteed by any government or government agency.

(3) A discharge may be revoked for cause at any time prior to the termination of the receivership proceeding.

(4) A discharge operates as an injunction against the commencement or continuation of any act or action to collect a debt as a personal liability of the debtor.

Source: PL 13-73 § 23.

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

§ 209. Exempt property.

An individual debtor may exempt from the receivership estate, except for property subject to allowed secured claims, the property described in either subsection (1) or subsection (2) of this section:

(1) The debtor may exempt from the receivership estate any property that is exempt under the law, in effect at the time of the filing of the application, of the State in which the debtor was domiciled for the 180 days immediately preceding the filing of the application, or for the largest portion of said 180-day period.

(2) Alternatively, the debtor may exempt from the receivership estate, the following property, except to the extent that such exemption is expressly not permitted under the law of the State applicable to debtor under subsection (1) of this section:

(a) *Personal and household goods.* All necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding and provisions for household use sufficient for six months.

(b) *Necessities for trade or occupation.* All tools, implements, utensils, two work animals and equipment necessary to enable debtor to carry on his usual occupation. This section does not apply to corporate filings, or individual filings where the debt is primarily of a business nature.

(c) *Land and interests in land.* All interests in land, including crops on such land, however, any interest owned solely by a debtor, in his own right, may be ordered sold, transferred or subdivided by the receiver if the court making the order finds that

- (i) justice so requires,
- (ii) the transfer, sale or subdivision of the interest would not be inconsistent with the law relating to exemptions of the State in which the land is located, and

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(iii) after the sale or transfer, the debtor will have sufficient land and crops remaining to support himself and those persons directly dependent on him according to recognized local custom.

In order to accomplish the purposes of this subtitle, the court, after notice to all interested parties in such manner as may be ordered by the court, may enter rulings as to the nature and extent of the debtor's interests in land, which rulings shall be binding upon and enforceable against any person, who claims or may later claim an interest in that land.

(d) *Vehicles.* A motor vehicle, not to exceed \$1,500 in value.

(e) *Boats.* A boat and motor with a combined value not in excess of \$2,500.

(f) *Cash.* Cash on hand in any checking or savings account not to exceed \$400.

(g) *Retirement.* Debtors interest in a retirement plan, except to the extent that the retirement plan has been funded by contributions from the debtor and the debtor has the ability to exercise control or benefit from the plan before retirement.

(h) *Others.* Other personal or household goods, not previously exempted, not to exceed \$1,200 in the aggregate or \$200 per item.

Source: PL 13-73 § 24.

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

Case annotations: The debtor's estate that is subject to a bankruptcy receivership consists of, subject to the exemptions contained in section 209 of the Bankruptcy Act, all property owned by the debtor on the date of the application. *In re Panuelo*, 15 FSM R. 23, 27 (Pon. 2007).

Whether property is exempt from bankruptcy creditors is an issue that should be brought up after the appointment of a Receiver. A claim that the property is exempt is not an excuse for failing to list it in the official forms since a debtor must list property claimed as exempt under on the schedule of assets required to be filed by Bankruptcy Rule 1007. This allows creditors to object to the debtor's claim of exemption. *In re Panuelo*, 15 FSM R. 23, 27 (Pon. 2007).

When the Bankruptcy Act states the debtor's estate consists of "all property owned by the debtor on the date of the application," the Act should not be interpreted to mean something other than what it says. "All" means "all." Since statutes are to be interpreted according to their plain meaning, and when a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. The meaning of "all" is plain and unambiguous." *In re Panuelo*, 15 FSM R. 23, 27 (Pon. 2007).

Since the Bankruptcy Act's purpose is to fairly balance the interests of creditors and debtors in circumstances where the debtor is unable to meet his financial obligations when due, it would be inherently unfair to the creditors' interests if only a debtor's property that happened to be in the FSM when the bankruptcy application was filed were included in the debtor's estate (and the debtor's property elsewhere not included). *In re Panuelo*, 15 FSM R. 23, 27 (Pon. 2007).

CHAPTER 3
Reorganization Proceedings

SECTIONS

- § 301. Approval of application; Suspension, dismissal or conversion of pending reorganization.**
- § 302. Operation of the debtor’s business and appointment of trustee.**
- § 303. Powers of debtor or trustee.**
- § 304. Filing of a plan.**
- § 305. Classification of claims.**
- § 306. Contents of the plan.**
- § 307. Impairment.**
- § 308. Voting on the plan.**
- § 309. Plan rejection.**
- § 310. Confirmation.**
- § 311. Retention of jurisdiction.**

Editor’s note: This chapter on Reorganization Proceedings was created by PL 13-73 § 25.

§ 301. Approval of application; Suspension, dismissal or conversion of pending reorganization.

(1) An application for the reorganization of a debtor that is a corporation may be filed by the debtor pursuant to the requirements of sections 103 and 104 of this subtitle, provided that, in addition to the requirements of those sections, an application for reorganization shall also allege that

(a) there is a reasonable likelihood that the debtor can be successfully reorganized so as to be able generally to pay debts incurred in continuing to do business and

(b) such reorganization is in the best interests of the creditors.

(2) The court shall permit the application and permit debtor to continue to operate its business during the pendency of reorganization proceedings if:

(a) there is no objection by an Interested Party; or

(b) the court finds that the party or parties objecting to the application have failed to establish that it is in the best interests of the creditors and the estate that the application be dismissed.

(3) Notwithstanding subsections (1) and (2) of this section, the court may, at any time prior to the confirmation of a plan of reorganization, and after notice and a hearing, dismiss a pending reorganization proceeding, suspend such a proceeding or convert a reorganization proceeding to a receivership proceeding under chapter 2 of this subtitle, whichever is in the best interests of the creditors and the estate, if it finds

(a) that there is continuing reduction of the debtor's assets and absence of a reasonable likelihood of a successful reorganization of debtor;

(b) that there is an inability to effectuate a plan;

(c) that there has been unreasonable delay by the debtor that is prejudicial to creditors; or

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(d) that there has been a failure by the debtor to submit a plan of reorganization in the time permitted by this chapter or by order of the court.

Source: PL 13-73 § 26.

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 and the Judiciary are found in title 4 of this code.

Case annotations: A debtor is not entitled to a discharge from creditors' claims if the debtor has transferred property with intent to defraud after date of application and the debtor may also be denied a discharge for a fraudulent transfer of a debtor's interest in property incurred within one year before the application for receivership. *In re Panuelo*, 16 FSM R. 339, 344 & n.1 (Pon. 2009).

The Bankruptcy Act's purpose is to fairly balance the interests of creditors and debtors in circumstances where the debtor is unable to meet his financial obligations when due, and to do this a receiver is required to marshal all of the debtor's non-exempt assets and to manage those assets, during the pendency of the proceeding, in the estate's best interest, and at the end of the proceeding, give the debtor who has not abused the bankruptcy system an opportunity to get a fresh start. But a debtor who has abused the bankruptcy system is not entitled to a discharge of his debts and a fresh start. *In re Panuelo*, 16 FSM R. 339, 344-45 (Pon. 2009).

The Bankruptcy Act gives the bankruptcy court three choices in the case of disputed claims: the court may summarily determine the matter upon motion, conduct a trial on the claim, or refer the matter to another court for determination. *In re Panuelo*, 15 FSM R. 23, 28 (Pon. 2007).

A bankruptcy court's summary determination of disputed claims is properly reserved for those cases where there are no debtor's assets left to make any payments to the unsecured creditors so the amount of the debtor's liability matters little since there will never be any money to pay it. *In re Panuelo*, 15 FSM R. 23, 28 (Pon. 2007).

A creditor's disputed claim could be tried as part of a bankruptcy case, but when that would entail a full-blown trial with witnesses and evidence and another trial would still have to be conducted because the debtor is not the only defendant to the lawsuit, that would be a wasteful use of scarce judicial resources and leave the danger of inconsistent judgments. *In re Panuelo*, 15 FSM R. 23, 29 (Pon. 2007).

§ 302. Operation of the debtor's business and appointment of trustee.

The business of the debtor, during the pendency of the reorganization proceeding, shall be operated by the management that existed on the application date, except that the court may at any time, after notice and a hearing, appoint a trustee to replace that management if it finds that such replacement is in the best interests of the debtor and the creditors.

Source: PL 13-73 § 27.

§ 303. Powers of debtor or trustee.

During the pendency of the reorganization proceeding, the debtor, or the trustee if one has been appointed, shall have the following powers, subject to any limitations ordered by the court:

- (1) the power to use, sell and lease property of the debtor;
- (2) the power to obtain credit on behalf of the debtor;
- (3) the power to assume and reject executory contracts and leases of the debtor;

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(4) the power to abandon or disregard property of inconsequential value of the debtor;
and

(5) the power to avoid preferences and fraudulent conveyances upon the same terms and in the same circumstances as a receiver as provided in sections 205, 206 and 207 of this subtitle.

Court approval is required for actions taken pursuant to subsection (1) and (2) of this section unless the activity occurs in the ordinary course of business. Court approval is also required for actions taken pursuant to subsection (3), (4) and (5) of this section.

Source: PL 13-73 § 28.

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

Editor's note: PL 13-73 § 28 designates the subsections of § 303 as (a) through (e) rather than (1) through (5). This has been changed to comport with standard code format.

§ 304. Filing of a plan.

(1) The debtor may file a plan of reorganization at the time of filing its application under this chapter, or at any other time during the course of a proceeding under this chapter, provided that the court may, by order, set a time within which the debtor must file a plan.

(2) Any other interested party may file a plan of reorganization only if:

(a) a trustee has been appointed by the court;

(b) the debtor has failed to file a plan within 90 days of the commencement of a proceeding under this chapter, or such longer or shorter period as may be ordered by the court;

(c) the debtor has failed to file a plan that has been approved by a vote of creditors as described in subsection 308 of this chapter, within 120 days of the commencement of a proceeding under this chapter, or such shorter or longer period as may be ordered by the court; or

(d) the court so orders after notice and a hearing.

Source: PL 13-73 § 29.

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

§ 305. Classification of claims.

(1) A plan may separate claims into multiple classes provided that a claim may be placed in a particular class only if it is substantially similar to other claims in that class, except as provided in subsection (2) of this section.

(2) A plan may include a class of convenience claims all of which are:

(a) less than an amount approved by the court as necessary for administrative convenience, or

(b) have been reduced to that amount by agreement of the creditors holding those claims.

Source: PL 13-73 § 30.

§ 306. Contents of the plan.

- (1) The plan shall—
- (a) designate, subject to the requirements of section 305 of this chapter, classes of claims;
 - (b) identify any class of claims that is not impaired under the plan;
 - (c) specify the treatment of each class of claims that is impaired under the plan;
 - (d) treat all claims within a class upon equal terms unless the holder of a claim has agreed to less advantageous treatment;
 - (e) provide adequate means for the plan's implementation, such as
 - (i) retention by the debtor of any assets of the debtor so as to enable the debtor to continue its business;
 - (ii) transfer of all or any part of the assets of the debtor to another person;
 - (iii) merger or consolidation with another person;
 - (iv) sale of any part of the debtor's assets to another person or distribution of such assets to a creditor that holds an interest in the assets; or
 - (v) cancellation of stock or other ownership interests in the debtor; and
 - (f) include such other information as the court, after notice and a hearing, may determine to be necessary to adequately inform creditors for the purposes of voting on the plan.
- (2) The plan may propose the resolution of claims against the debtor through the distribution to creditors of value in the form of
- (a) cash,
 - (b) other assets of the debtor,
 - (c) equity in the reorganized debtor,
 - (d) secured or unsecured debt of the reorganized debtor, or
 - (e) any combination thereof.

Subject to the provisions of section 308(7) of this chapter, the plan may propose that there be no distribution of value to one or more classes of creditors.

Source: PL 13-73 § 31.

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

§ 307. Impairment.

A class of claims is impaired under the plan unless the plan leaves unaltered or restores to the holders of the claims in the class all of the legal, equitable and contractual rights to which they would have been entitled in the absence of the commencement of the proceeding under this subtitle, except that no claim shall be considered impaired solely by reason of the plan's failure to give effect to any provision allowing a creditor:

- (1) to accelerate payment of a debt or

(2) to foreclose or otherwise enforce a lien against property of the debtor based upon a default or other action occurring prior to or during the proceeding under this subtitle.

Source: PL 13-73 § 32.

Editor's note: Subsections (a) and (b) of this section redesignated as subsections (1) and (2) to comport with standard code formatting.

§ 308. Voting on the plan.

- (1) If, after notice and a hearing, the court finds that
 - (a) the proposed plan satisfies the requirements of section 306 of this chapter,
 - (b) is fair and equitable to the creditors, and
 - (c) has a reasonable likelihood of being successfully implemented, the plan shall be submitted to a vote of the creditors according to the terms of this section.
- (2) Voting by the creditors on the plan shall be at such time and in such manner as may be determined by the court.
- (3) Prior to voting on the plan, each creditor shall be given, in such manner as may be determined by the court,
 - (a) notice of the time and manner of voting
 - (b) a description of the rules of voting, and
 - (c) an opportunity to review the plan.
- (4) A class of claims shall be deemed to have accepted the plan if creditors holding a majority of claims in number and two-thirds of claims in value in the class vote in favor of the plan.
- (5) Persons holding claims that are not impaired by the plan shall be deemed to have voted to accept the plan, and need not be included in the voting.
- (6) Persons holding claims that, under the plan, will receive no distribution or other value shall be deemed to have voted against the plan and need not be included in the voting.
- (7) The plan will be deemed to have been accepted by the creditors if:
 - (a) At least one class of claims has voted in favor of the plan, or is deemed to have voted in favor of the plan as provided in subsection (5) of this section, and
 - (b) No class of claims that has voted to reject the plan will receive or retain, under the plan, less value than the holders of claims in that class would receive if debtor were liquidated under chapter 2 of this subtitle.

Source: PL 13-73 § 33.

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

§ 309. Plan rejection.

If, on a vote of the creditors under section 308 of this chapter, the plan has not been accepted, the court, after notice and a hearing, may take such action as it finds to be in the best interest of the creditors and the debtor, such as permitting modification of the plan, permitting other interested parties to submit a plan, converting the reorganization proceeding to a receivership proceeding under chapter 2 of this subtitle, or dismissing the reorganization proceeding.

Source: PL 13-73 § 34.

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

§ 310. Confirmation.

If, on a vote of the creditors under section 308 of this chapter, the plan has been accepted, the court shall enter an order confirming the plan. The confirmation order shall contain such terms and conditions as the court may find to be necessary and appropriate to the implementation of the plan. The confirmed plan and the confirmation order shall be binding on the debtor and upon all creditors. Except as specifically stated in the plan or the confirmation order, the entry of the confirmation order—

- (1) discharges the debtor from all debts that arose before the date of such confirmation order regardless of
 - (a) whether the debt was submitted as a claim in the proceeding under this subtitle and
 - (b) whether the creditor holding such debt voted in favor of the plan;
- (2) vests in the debtor all property of the debtor not otherwise dealt with in the plan;
and
- (3) releases all property dealt with in the plan from all claims and liens except as identified in the plan.

Source: PL 13-73 § 35.

§ 311. Retention of jurisdiction.

(1) Following the entry of the order of confirmation, the court shall retain jurisdiction, for such time as it determines to be reasonable, for the purpose of resolving issues arising from the implementation of the plan.

(2) If, upon application by any interested party, and after notice and a hearing, the court finds that the debtor has failed or is unable to implement any portion of the plan or to comply with any provision of the confirmation order, the court may modify or revoke the confirmation order, or take such other action as it determines to be necessary and appropriate to accomplish the purposes of this chapter.

Source: PL 13-73 § 36.

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