

## FSMC, Title 36. CORPORATIONS & BUSINESS ASSOCIATIONS

### Chapter 1: General Provisions

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#### **§ 101. Authority of President to grant corporate charters and establish public corporations.**

The President of the Federated States of Micronesia or his designee may grant charters of incorporation for the establishment and functioning of business organizations, associations of persons for any lawful purpose other than pecuniary profit, cooperatives, and credit unions. The President of the Federated States of Micronesia may create and establish public corporations subject to approval and consent of the Congress of the Federated States of Micronesia.

**Source:** TT Code 1966 § 1116, COM PL 3-31 § 1; TT Code 1970, 37 TTC 1; TT Code 1980, 37 TTC 1; PL 1-135 § 1.

**Cross-reference:** The statutory provisions on Business Regulation are found in title 32 of this code.

**Case annotations:** Power to regulate the incorporation and operation of corporations falls within the constitutional power of the national government to regulate foreign and interstate commerce. *Mid-Pac Constr. Co. v. Senda*, 4 FSM Intrm. 376, 380 (Pon. 1990).

FSM Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the “contractor” was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. *Heston v. FSM*, 2 FSM Intrm. 61, 64 (Pon, 1985).

Noncitizen corporations are those which are not wholly owned by FSM citizens. *Federated Shipping Co. v. Ponape Transfer & Storage (III)*, 3 FSM Intrm. 256, 259 (Pon. 1987).

For purposes of diversity jurisdiction under art. XI, § 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of FSM. *Federated Shipping Co. v. Ponape Transfer & Storage (III)*, 3 FSM Intrm. 256, 260 (Pon. 1987).

The Trust Territory of the Pacific Islands, which still exists and has governmental powers in the Republic of Palau, is now “foreign” to the FSM and a corporation organized under the laws of the TT may itself be regarded as foreign for purposes of diversity of citizenship jurisdiction. *U Corp. v. Salik*, 3 FSM Intrm. 389, 392 (Pon. 1988).

Determination of whether stockholders and directors should be protected at expense of the general public and employees of the corporation is a policy choice of the kind that legislatures are better

equipped than courts to make. [Mid-Pac Constr. Co. v. Senda](#), 4 FSM Intrm. 376, 385 (Pon. 1990).

The *de facto* doctrine, which is employed by courts to treat a business as a corporation even though it has not met all legal requirements for incorporation, is of no relevance to the regulatory prohibition against the corporation engaging in business until the corporation meets minimum capital requirements. [Mid-Pac Constr. Co. v. Senda](#), 4 FSM Intrm. 376, 385 (Pon. 1990).

A corporation is a person who may recover damages for violation of its civil rights when it is deprived of its property interests, such as contract rights, without due process of law. [Ponape Constr. Co. v. Pohnpei](#), 6 FSM Intrm. 114, 127-28 (Pon. 1993).

The Constitution specifically bars noncitizens from acquiring title to land or waters in Micronesia and includes within the prohibition any corporation not wholly owned by citizens. [Federated Shipping Co. v. Ponape Transfer & Storage \(III\)](#), 3 FSM Intrm. 256, 259 (Pon. 1987).

### — Joint Enterprise

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. [Luda v. Maeda Road Constr. Co.](#), 2 FSM Intrm. 107, 110 (Pon. 1985).

A project that has a number of acts or objectives for a limited period of time and is entered into by associates under such circumstances that all have an equal voice in directing the conduct of the enterprise, is a joint enterprise. [Koike v. Ponape Rock Products, Inc.](#), 3 FSM Intrm. 57, 65 (Pon. S. Ct. Tr. 1986).

Pohnpei Supreme Court will apply an English principle to situation of a joint enterprise such that when parties to a joint enterprise, or their agents, perform work on another man's property and cause damage to the other man or his property through failure to exercise due care, then they are liable. [Koike v. Ponape Rock Products, Inc.](#), 3 FSM Intrm. 57, 67 (Pon. S. Ct. Tr. 1986).

A joint venture, without the powers to sue or be sued in the name of the association and without limited liability of the individual members of the association, is not a citizen of Truk State for diversity purposes even though its principal place of business is in Truk State. [International Trading Corp. v. Hitec Corp.](#), 4 FSM Intrm. 1, 2 (Truk 1989).

### — Liability

Although many family-incorporated enterprises commingle family and business affairs, the Pohnpei Supreme Court will not make a family's personal assets available to satisfy a judicially mandated monetary award because there is still limited knowledge of business laws in Pohnpei. [Koike v. Ponape Rock Products, Inc.](#), 3 FSM Intrm. 57, 70 (Pon. S. Ct. Tr. 1986).

C.P.A. regulations mandate that corporate directors and incorporators will be held liable for the corporation's debts if the corporation engages in business without meeting the minimum capital requirements. [Mid-Pac Constr. Co. v. Senda](#), 4 FSM Intrm. 376, 385 (Pon. 1990).

The estoppel doctrine, which is applied when justice demands intervention on behalf of a person misled by the conduct of the person estopped, is not available as a defense to a board member of a corporation where the board member knowingly misled regulatory officials and creditors of the corporation. [Mid-Pac Constr. Co. v. Senda](#), 4 FSM Intrm. 376, 385 (Pon. 1990).

## **§ 102. Scope and application of chapter; Exceptions.**

(1) The provisions of this chapter are applicable to every private corporation, profit or nonprofit, stock or nonstock, now existing or hereafter formed, and to the outstanding and

future securities thereof, unless such corporation be expressly excepted from the operation thereof, or there be a special provision in relation to any class thereof inconsistent with some provision of this chapter, in which case the special provision prevails.

(2) The existence of corporations heretofore formed or existing shall not be affected by the enactment of this chapter nor by any change in the requirements for the formation of corporations nor by amendment or repeal of the laws under which they were formed or created.

**Source:** TT Code 1966 §§ 1133, 1134; TT Code 1970, 37 TTC 2; TT Code 1980, 37 TTC 2.

### **§ 103. Application for charter — Articles of incorporation.**

An association of persons seeking a charter as a corporation shall submit for the approval of the President of the Federated States of Micronesia or his designee articles of incorporation which shall provide at least the following information:

- (1) proposed name of the corporation;
- (2) principal office or place of business;
- (3) proposed duration;
- (4) purposes;
- (5) powers;
- (6) capitalization;
- (7) names of incorporators;
- (8) number of directors, which shall be not less than three, and proposed officers;
- (9) names of directors and officers to serve until first election;
- (10) provisions for management, if any;
- (11) provision for voting by members;
- (12) provisions for shareholding, if any;
- (13) disposition of financial surplus;
- (14) provisions for liquidation; and
- (15) provisions for amendment of articles of incorporation.

**Source:** TT Code 1966 § 1118(a); TT Code 1970, 37 TTC 3(1); TT Code 1980, 37 TTC 3(1); PL 1-135 § 2(1).

### **§ 104. Application for charter — Bylaws.**

In addition to articles of incorporation, persons seeking a charter as a corporation shall submit for the approval of the President of the Federated States of Micronesia or his designee proposed bylaws governing the operation of the corporation.

**Source:** TT Code 1966 § 1118(b); TT Code 1970, 37 TTC 3(2); TT Code 1980, 37 TTC 3(2); PL 1-135 § 2(2).

### **§ 105. Voting at meetings.**

(1) At any meeting of any corporation, it shall be unlawful for the members or shareholders to prohibit any member or shareholder who is otherwise qualified to vote, to vote either in person or by proxy.

(2) A personal representative, guardian or trustee may vote, in person or by proxy, the stock of any corporation held by him in such capacity at all meetings of the corporation whether or not the stock has been transferred into his name on the books of the corporation; but, in case the stock has not been so transferred into his name, he shall, as a prerequisite to so voting, if the corporation so requires, file with the corporation a certified copy of his letters or proxy statement as such personal representative or guardian or his appointment or authority as trustee.

**Source:** PL 10-104 § 1.

### **§ 106. Audits and inspections authorized; Application to nonprofit corporations.**

(1) The President of the Federated States of Micronesia or his designee may appoint officers to audit and report on the accounts of corporations authorized to do business within the Federated States of Micronesia and such officers shall have the right at any and all times to inspect, examine, and audit the books and accounts of such corporations.

(2) Any members of a nonprofit corporation shall have the right to inspect and examine the books and accounts of the corporation of which he is a member; provided, that such inspection and examination shall be held at the place where such books and accounts are normally kept, and shall take place on weekdays during normal business hours in such a manner as not to interfere with usual conduct of business or corporate affairs.

**Source:** TT Code 1966 § 1119; TT Code 1970, 37 TTC 4; TT Code 1980, 37 TTC 4; PL 1-135 § 3; renumbered by PL 10-104 § 2.

### **§ 107. Use of the terms “cooperative” and “credit union” restricted.**

No person, firm, corporation, or association hereafter organized or doing business in the Federated States of Micronesia shall be entitled to use the terms “cooperative” or “credit union” as part of its corporate name or other business name or title, or otherwise represent itself to the public to be a nonprofit cooperative association or credit union or cooperative savings and loan association unless it has complied with the provisions of this chapter, except as provided in section 102 above.

**Source:** TT Code 1966 § 1117; TT Code 1970, 37 TTC 5; TT Code 1980, 37 TTC 5; PL 1-135 § 4; renumbered by PL 10-104 § 2.

### **§ 108. Enjoinder of violations.**

Violations of the provisions of this chapter or regulations promulgated hereunder are

hereby declared to be enjoined, and the Attorney General of the Federated States of Micronesia, or a State attorney in the name of said Attorney General, shall have the power to seek appropriate relief from such violations or from other corporate practices in violation of the law of the Federated States of Micronesia or contrary to the public interest.

**Source:** TT Code 1966 § 1135; TT Code 1970, 37 TTC 6; TT Code 1980, 37 TTC 6; PL 1-135 § 5; renumbered by PL 10-104 § 2.