

## CHAPTER 2

### Registrar of Corporations

#### SECTIONS

- § 201. Registrar of Corporations—Office created; Duties.
- § 202. Authority to promulgate rules and regulations.
- § 203. Power to convene corporate meeting.
- § 204. Power to order production of records; Penalty for failure to comply.
- § 205. Available stock.
- § 206. Authority of the States.
- § 207. Incorporation and Regulation of Major Corporations.
- § 208. Authority of the Registrar of Corporations—Major Corporations.
- § 209. Compensation of Registration Advisor.

#### **§ 201. Registrar of Corporations—Office created; Duties.**

(1) There shall be in the Department of Economic Affairs a Registrar of Corporations appointed by the President of the Federated States of Micronesia, who shall issue, receive, and hold as custodian all certificates, papers, statements, or other records of documents required by the provisions of this chapter, or rules or regulations promulgated hereunder, to be distributed by or filed with the Government of the Federated States of Micronesia, and shall perform such other duties as may from time to time be assigned to him by the President of the Federated States of Micronesia or the Secretary of Economic Affairs.

(2) In addition to the duties set forth in subsection (1) of this section and such duties as may from time to time be assigned to him by the President of the Federated States of Micronesia or Secretary of Economic Affairs, the Registrar of Corporations shall be responsible for promoting and facilitating the formation of Major Corporations within the Federated States of Micronesia. For the purposes of this title, the term “Major Corporation” shall have the meaning ascribed to it by section 312 of title 54 of this code.

**Source:** TT Code 1966 § 1115(a); TT Code 1970, 37 TTC 51; TT Code 1980, 37 TTC 51; PL 1-135 § 6; PL 13-70 § 1.

**Cross-reference:** The statutory provisions on the President and the departments of the executive branch are found in title 2 (Executive) of this code. Title 54 of this code is on Taxation and Customs. Section 312 of chapter 3 of title 54 is on Definitions.

#### **§ 202. Authority to promulgate rules and regulations.**

The Registrar of Corporations, with the approval of the Secretary of the Department of Resources and Development and the President of the Federated States of Micronesia, shall have the power to prescribe such rules and regulations as are deemed advisable to administer and carry into effect the provisions of this chapter.

**Source:** TT Code 1966 § 1115(b); TT Code 1970, 37 TTC 52; TT Code 1980, 37 TTC 52; PL 1-135 § 7.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.

**Case annotations:** The \$1,000 original capital requirement specified in part 2.7 of the Corporations, Partnerships and Associations Regulations as a condition for engaging in business is met by bona fide, irrevocable transfers of cash or property, giving the corporation capital, as contrasted to earned surplus, with a net value of not less than \$1,000, so long as there is issued and outstanding authorized capital stock representing ownership of the corporation. *FSM v. Ponape Builders Constr. Inc.*, 2 FSM R. 48, 52 (Pon. 1985).

The Corporations, Partnership and Agency regulations were adopted pursuant to, and affect the reach of, the Trust Territory statute regulating corporations and, since those statutory provisions are part of FSM national law by virtue of the Transition Clause of the FSM Constitution, the regulations too must retain their effect until they are amended or repealed pursuant to FSM law. *Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 376, 381 (Pon. 1990).

Regulations prescribed by the registrar of corporations have “the force and effect of law.” *Kolonia Consumer Coop. Ass’n v. FSM*, 5 FSM R. 375, 377 (App. 1992).

The Corporation, Partnership and Association Regulations incorporated by 37 TTC 52 (1980) remain in effect as FSM national law by virtue of the Transition Clause, FSM Const. art. XV, § 1, until they are amended or repealed by Congress. *Mid-Pacific Constr. Co. v. Semes (II)*, 6 FSM R. 180, 187 (Pon. 1993).

### **§ 203. Power to convene corporate meeting.**

The Registrar of Corporations may, when deemed by him to be in the public interest, convene a special meeting of the members, board of directors, or officers of any corporation organized or existing under the provisions of this chapter, by giving notice, not less than ten days prior to the date of such meeting, to the members, directors, or officers, as the case might be. Such notice shall state the purpose of the meeting and the subject, or subjects to be discussed.

**Source:** TT Code 1966 § 1115(c); TT Code 1970, 37 TTC 53; TT Code 1980, 37 TTC 53, modified.

### **§ 204. Power to order production of records; Penalty for failure to comply.**

(1) In connection with the duties prescribed in this chapter the Registrar of Corporations is authorized and

empowered to order the production of books of account, papers, and documents of any corporation or company authorized to do business within the Federated States of Micronesia.

(2) Refusal without a showing of good cause, to produce books of account, papers, and documents within 30 days after an order for the production thereof shall be a misdemeanor punishable by a maximum fine of \$50 or, when the order is directed to an individual, imprisonment of such individual for a period not to exceed 90 days, or both.

**Source:** TT Code 1966 § 1115(d); TT Code 1970, 37 TTC 54; TT Code 1980, 37 TTC 54; PL 1-135 § 8; PL 7-88 § 1.

### **§ 205. Available stock.**

All persons wishing to make shares of stock in Federated States of Micronesia corporations available for purchase by the public may furnish all material information relating to the stock offering to the Registrar of Corporations. The Registrar shall distribute this information to the public in an appropriate manner. This section shall not affect the mandatory investment securities registration requirements of chapter 8 of title 33 of this code and any future amendments thereto.

**Source:** PL 4-78 § 1; PL 4-96 § 1.

**Cross-reference:** Chapter 8 of title 33 (Commercial Law) of this code is on Investment Securities.

### **Case annotations:**

#### **Business Organizations—Corporations—Stock and Stockholders**

Par value and stated value of stock are arbitrarily chosen figures which often bear no relationship to the price paid. These figures may be considerably less than the actual value of the stock and have little significance to creditors or others seeking to determine the financial strength of a corporation in the FSM. *FSM v. Ponape Builders Constr. Inc.*, 2 FSM R. 48, 51 (Pon. 1985).

In the FSM, distribution of dividends in cash or in property may be made only from earned surplus. *FSM v. Ponape Builders Constr. Inc.*, 2 FSM R. 48, 52 (Pon. 1985).

The \$1,000 original capital requirement specified in part 2.7 of the Corporations, Partnerships and Associations Regulations as a condition for engaging in business is met by bona fide, irrevocable transfers of cash or property, giving the corporation capital, as contrasted to earned surplus, with a net value of not less than \$1,000, so long as there is issued and outstanding authorized capital stock representing ownership of the corporation. *FSM v. Ponape Builders Constr. Inc.*, 2 FSM R. 48, 52 (Pon. 1985).

The fact that stock issued by a corporation and formerly owned by a judgment debtor has been sold to a third party at a judicial sale of the debtor's assets does not make the corporation a party to the litigation concerning distribution of the assets of the insolvent debtor for purposes of determining whether the shares were validly issued and outstanding shares of the corporation. *Sets v. Island Hardware*, 3

FSM R. 365, 368 (Pon. 1988).

In the absence of any law or regulation in the FSM which provides a specific limitation on actions to collect unpaid stock subscriptions, the applicable period is six years. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

Where the rights of a corporation have been assigned to its creditors in previous litigation, the creditors' rights as against the shareholders or subscribers of stock in the corporation are derived from the rights of the corporation itself, and the creditors will be able to enforce the shareholders' liability only to the extent that the corporation could have enforced it before the assignment. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

In an action to enforce an unpaid stock subscription, the statute of limitations begins to run against the creditors when it runs against the corporation. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

When a stock subscription specifies the date of payment, including payment in installments at specified times, the corporation has no cause of action until the date specified and at that time the statute of limitations begins to run. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 159 (Pon. 1989).

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call, then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. *Creditors of Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 157, 161 (Pon. 1989).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is a policy choice of the kind that legislatures are better equipped than courts to make. *Mid-Pacific Constr. Co. v. Senda*, 4 FSM R. 376, 385 (Pon. 1990).

### **§ 206. Authority of the States.**

(1) Nothing in this chapter may be construed as preventing a State from establishing its own process of incorporation.

(2) Upon application by a State, the President shall transfer the function of incorporation to the State for any corporate matter not within the exclusive authority of the National Government.

**Source:** PL 1-135 § 9; PL 4-78 § 2.

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

**Case annotations:** Corporate regulation is governed by national law unless or until the states undertake to establish corporate codes of their own. *Mid-Pacific Constr. Co. v. Semes*, 7 FSM R. 102, 105 (Pon. 1995).

### **§ 207. Incorporation and Regulation of Major Corporations.**

Every Major Corporation is required to be incorporated by the National Government of the Federated States of Micronesia, and shall be subject to regulation by the National Government.

**Source:** PL 13-70 § 2.

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

### **§ 208. Authority of the Registrar of Corporations—Major Corporations.**

Pursuant to subsection (2) of section 201 of this chapter, the Registrar of Corporations shall contract for the professional services of a person or entity to be an exclusive agent to assist the Registrar in promoting the formation of Major Corporations within the Federated States of Micronesia, hereinafter “Registration Advisor”. Any such contract shall be for a fixed period of years set forth in the contract. Compensation for the services provided by the Registration Advisor shall be a sum equal to a percentage of the revenue generated by the government as a result of the taxation of such Major Corporations, said percentage to be as provided in the contract described herein. The contract shall require the approval of the President of the Federated States of Micronesia prior to its taking effect.

**Source:** PL 13-70 § 3.

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

### **§ 209. Compensation of Registration Advisor.**

There is hereby established a special fund to be known as the “Registration Advisor Compensation Fund”. A sum equal to a percentage of the corporate income tax revenue less any corporate income tax credits paid or refunded, not to exceed 50 percent, generated pursuant to chapter 3 of title 54 of this code from Major Corporations incorporated in the Federated States of Micronesia shall be paid into the Registration Advisor Compensation Fund upon receipt of such revenue by the Department of Finance. The actual amount to be so deposited into the Registration Advisor Compensation Fund shall be determined by the contract entered into between the government of the Federated States of Micronesia through the President and Registrar of Corporations and the Registration Advisor. The Registration Advisor shall be compensated from revenue deposited into the Registration Advisor Compensation Fund in accordance with the terms of the Registration Advisor contract. The Registration Advisor shall not have any right or claim to be paid from any funds other than those deposited in the Registration Advisor Compensation Fund. Registration Advisor, a member of its control group or any of its officers, directors, shareholders or employees shall not, directly or indirectly, pay, compensate or reimburse, promise or authorize the payment, compensation or reimbursement, of any

monies it receives from the Registration Advisor Compensation Fund, to any Major Corporation, its control group or any of its officers, directors, shareholders or employees to entice such Major Corporation to incorporate in the Federated States of Micronesia.

**Source:** PL 13-70 § 4.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. Title 54 of this code is on Taxation and Customs. Chapter 3 of title 54 is on Income Tax Regime for FSM Corporations.