

CHAPTER 2

Transfer of Functions

SECTIONS

- § 201. **Definitions.**
- § 202. **Transfer of functions.**
- § 203. **Delegation of functions.**
- § 204. **Scope of delegation.**
- § 205. **State functions.**
- § 206. **Transfer of administrative authority.**

Editor's note: PL 2-54, as amended by PL 3-1, created a Plebiscite Commission to assist the States in conducting a public information program and plebiscite on the signed Compact of Free Association with the United States. It also established procedures for the ratification and approval of the Compact pursuant to the terms of the Compact and Const. art. IX, § 4.

The Compact was approved by the FSM electorate in June 1983 and thereafter ratified by the FSM Congress and State legislatures.

PL 4-13, as amended by PL 4-29, provided that the President may agree to an effective date for the Compact subsequent to, or concurrent with, the termination of the Trusteeship Agreement for the Former Japanese Mandated Islands. PL 4-29 also conditioned implementation of the Compact upon the conclusion of certain transitional arrangements.

On November 3, 1986, the FSM President declared by proclamation that the Compact was in effect and the Trusteeship terminated as of that date with respect to the Federated States of Micronesia.

Finally, PL 4-73 repealed PL 4-13, as amended by PL 4-29, and recited that all of the conditions set by law for the establishment of an effective date for the Compact and its implementation were met.

§ 201. Definitions.

As used in this chapter, the term "function" embraces any executive duty, responsibility, authority, or discretion transferred to or vested in the President of the Federated States of Micronesia, and the terms "perform" and "performance" may be construed to mean "exercise".

Source: PL 1-65 § 5.

Cross-reference: For constitutional provisions on Transition, see FSM Const., art. XV. The provisions of the Constitution are found in Part I of this code.

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

§ 202. Transfer of functions.

The President of the Federated States of Micronesia is authorized and empowered to accept and perform executive functions transferred from the Government of the Trust Territory to the Federated States of Micronesia pursuant to United States Department of the Interior Order No. 3039.

Source: PL 1-65 § 1.

Cross-reference: For the text of Secretarial Order No. 3039, see Part IV, the Governmental Authority section of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

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

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

Case annotations: Under article 6 of the Trusteeship Agreement, the United States is obligated to foster the development of suitable political institutions with the goal of self-government by the inhabitants, and to promote economic, social and educational advancement. *Neimes v. Maeda Constr. Co.*, 1 FSM R. 47, 51 (Truk 1981).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the Trust Territory government against unfair or overreaching actions by the courts of the new constitutional governments. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 64 (Kos. 1982).

Trusteeship principles call for similarity between the self-government accorded the peoples of the Northern Mariana Islands by the United States, and that granted other parts of the Trust Territory. If the administering authority were to permit those peoples selecting a closer and more dependent relationship with the administering authority a higher degree of autonomy than those seeking other relationships, the dual standard could suggest an effort to discourage self-government and independence of the people within the Trust Territory. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 67 (Kos. 1982).

The Trusteeship Agreement cannot be given retroactive effect to cover events that took place before it came into force. *Alep v. United States*, 6 FSM R. 214, 216 (Chk. 1993).

Monetary damages are not legal remedies available to an individual for breach of the Trusteeship Agreement, either through the treaty or as codified. *Alep v. United States*, 6 FSM R. 214, 217-18 (Chk. 1993).

A U.S. statute requiring aliens to dispose of landholdings within ten years of acquisition never applied in the Trust Territory because the Trust Territory never had the status of a U.S. territory and the U.S. Congress never specifically extended its application to the Trust Territory. *Nahnken of Nett v. United States (III)*, 6 FSM R. 508, 524-25 (Pon. 1994).

Trusteeship Agreement does not provide individuals with a private cause of action for damages for alleged breach of any of its provisions. *Nahnken of Nett v. United States (III)*, 6 FSM R. 508, 526 (Pon. 1994).

§ 203. Delegation of functions.

The President of the Federated States of Micronesia is authorized to designate and empower the Vice President or the head of any department, office, or agency in the executive branch to perform without approval, ratification, or other action by the President any executive function which is transferred from the Government of the Trust Territory to the Federated States of Micronesia or any function which is vested in the President by law; provided, that nothing contained herein shall relieve the President of his responsibility in office for acts of any official designated by him to perform such functions. Such designation and authorization shall be in writing, shall be made available to the legislative and judicial branches of the Federated States of Micronesia and State governments, shall be subject to such terms, conditions, and limitations as the President may deem advisable, and shall be revocable at any time by the President in whole or in part.

Source: PL 1-65 § 2.

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

§ 204. Scope of delegation.

The authority conferred by this chapter shall apply to any function transferred to the President of the Federated States of Micronesia pursuant to United States Department of Interior Order No. 3039 or vested in the President by law if such law does not affirmatively prohibit delegation of the performance of such function as herein provided for, or specifically designate the officer or officers to whom it may be delegated. This chapter shall not be deemed to limit or derogate from any existing or inherent right of the President to delegate the performance of functions vested in him by law, and nothing herein shall be deemed to require express authorization in any case in which such official would be presumed in law to have acted by authority or direction of the President.

Source: PL 1-65 § 3.

Cross-reference: For the text of Secretarial Order No. 3039, see Part IV, the Governmental Authority section of this code.

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

§ 205. State functions.

Executive functions transferred from the Government of the Trust Territory to the Federated States of Micronesia which are within the powers of the States may be performed pursuant to this chapter until such functions are transferred to State governments. Such functions shall be transferred to State governments upon their request to the President.

Source: PL 1-65 § 4.

Cross-reference: FSM Const., art. XV, sect. 4.

The state constitutions of Chuuk, Kosrae, Pohnpei, and Yap are found in Part III of this code.

§ 206. Transfer of administrative authority.

Upon the effective date of the transfer of particular functions from the Government of the Trust Territory of the Pacific Islands to the Government of the Federated States of Micronesia, the authority pursuant to statute or regulation of the agencies of the Government of the Trust Territory of the Pacific Islands shall be transferred to and exercised by the Government of the Federated States of Micronesia. Unless existing law manifestly requires another interpretation, all statutory and regulatory authority as to particular functions is transferred as follows:

- (1) from the Government of the Trust Territory of the Pacific Islands to the Government of the Federated States of Micronesia;
- (2) from the High Commissioner to the President;

(3) from the Attorney General of the Trust Territory of the Pacific Islands to the Attorney General of the Federated States of Micronesia;

(4) from the administrators of departments, directors of bureaus, and chiefs of divisions of the Trust Territory Government to their counterparts in the Government of the Federated States of Micronesia, as provided by chapter 2 of title 2, Functions Agreements between Government of the Trust Territory of the Pacific Islands and the Government of the Federated States of Micronesia, and Executive orders of the President.

Source: PL 1-65 § 6; PL 1-99 § 1.

Cross-reference: For constitutional provisions on Transition, see FSM Const., art. XV. The provisions of the Constitution are found in Part I of this code.

Case annotations: An amendment or repeal of a Trust Territory statute by the Congress need not be explicit to be effective. If a TT statutory provision is inconsistent or in conflict with a statutory provision enacted by the Congress, that provision is repealed by implication. *FSM v. Albert*, 1 FSM R. 14, 16 (Pon. 1981).

Under art. XV, § 1 of Constitution a provision of the TT Code is repealed by a subsequent statutory provision enacted by the Congress only if the statutory provisions in question are inconsistent or in conflict. Even if certain provisions are repealed, other provisions of that same statute may remain intact if the statute, without the deleted provision, is self-sustaining and capable of separate enforcement. *FSM v. Boaz (II)*, 1 FSM R. 28, 29 (Pon. 1981).

The fact that Congress repealed many provisions of Title 11 of the TT Code by implication does not lead to the conclusion that all provisions of Title 11 are repealed. *FSM v. Boaz (II)*, 1 FSM R. 28, 29 (Pon. 1981).

8 F.S.M.C. 206 authorizes transfer of authority from the Trust Territory and its officials to the Gov't of the FSM and its officials. Thus the reference in the TT Weapons Control Act to the High Commissioner and the Attorney General of the Trust Territory does not prevent its effectiveness as national law of the FSM. 11 F.S.M.C. 1201, 1231. *FSM v. Nota*, 1 FSM R. 299, 303 (Truk 1983).

Since the national government does not have major crimes jurisdiction over Title 11 Trust Territory Code assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. *FSM v. Boaz (II)*, 1 FSM R. 28, 30 (Pon. 1981).

A Secretarial Order, issued by one responsible official with full authority to state his intentions and instructions precisely, typically should not require reference to other documents for explanation. It is not a product of compromises and discussions among numerous legislators, where contemporaneous discussion may be especially helpful in determining the intention of the legislature in using certain words. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 61 (Kos. 1982).

Delegation of former TT High Court judicial functions under 6 TTC 251 to courts of the FSM did not violate Executive Order No. 11021. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 63 (Kos. 1982).

Until state courts are established, the TT High Court retains that portion of its exclusive jurisdiction formerly held under 6 TTC 251 which does not fall within the constitutional jurisdiction of FSM Supreme Court. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 68 (Kos. 1982).

Seaman's Protection Act, originally enacted for entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under art. IX, § 2 of the Constitution, and has therefore become a national law of the FSM under art. XV. That being so, a claim asserting rights under the Act falls within the jurisdiction of the FSM Supreme Court under art. XI, § 6(b) of the Constitution as a case arising under national law. 19 FSMC 401-437. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 72 (Kos. 1982).

Retention of the power to play a major role in executive functions, to suspend legislation enacted by the Congress, and to entertain appeals from the court of last resort, the very essence of government, suggests that the Trust Territory government remains, not a foreign state, but an integral part of the national government here. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 72 (Kos. 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of art. XI, § 6(b) of the Constitution. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 74 (Kos. 1982).

The Constitution contemplates that decisions affecting the people of the FSM will be decided by courts appointed by the constitutional governments of the FSM. This in turn requires an expansive reading of the FSM Supreme Court's jurisdictional mandate while we await establishment of functioning state courts. *In re Nahnsen*, 1 FSM R. 97, 111 (Pon. 1982).

Title 11 of TT Code is not inconsistent with nor violative of FSM Constitution; therefore 11 TTC continued in effect after effective date of the Constitution and until the effective date of the National Criminal Code. *Truk v. Otokichy (I)*, 1 FSM R. 127, 130 (Truk 1982).

Title 11 of the Trust Territory Code, prior to the effective date of the National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is it a power of indisputably national character; therefore, it is not within the jurisdiction of the FSM Supreme Court. *Truk v. Otokichy (I)*, 1 FSM R. 127, 130 (Truk 1982).

The delegation of judicial functions to the FSM, pursuant to Secretarial Order 3039, § 2 does not by itself give the FSM Supreme Court jurisdiction over Title 11 Trust Territory Code crimes occurring before the effective date of the National Criminal Code. *Truk v. Otokichy (I)*, 1 FSM R. 127, 131 (Truk 1982).

The assumption of powers by the national and state governments from the Trust Territory government is accomplished through the transfer and transition approach rather than by operation of law. *Manahane v. FSM*, 1 FSM R. 161, 167 n.3 (Pon. 1982).

Any power the TT High Court, the District Courts and the Community Courts may have to exercise judicial powers within the FSM is to be exercised not as that of autonomous foreign states but as integral parts of the domestic governments. Those courts continue to exercise trial court functions in Ponape only on an interim basis, until the State of Ponape establishes its own courts, either under its present state charter or under any constitution which Ponape may adopt. *In re Iriarte (I)*, 1 FSM R. 239, 244 (Pon. 1983).

Exercise of governmental powers by TT High Court, District Courts and Community Courts must be carried out in a manner consistent with constitutional self-government and are subject to the safeguards erected by the Constitution for citizens of the FSM. *In re Iriarte (I)*, 1 FSM R. 239, 245 (Pon. 1983).

The FSM Constitution does not contemplate that citizens of the FSM should be required to travel to Saipan or to petition anyone outside of the FSM to realize rights guaranteed to them under the Constitution. *In re Iriarte (I)*, 1 FSM R. 239, 253 (Pon. 1983).

FSM Supreme Court should not intrude unnecessarily in the efforts of the TT High Court to vindicate itself and other judges through court proceedings within the TT system. *In re Iriarte (I)*, 1 FSM R. 239, 254 (Pon. 1983).

The Constitution does not contemplates that FSM citizens must first petition any person or body outside the FSM as a condition to consideration of their constitutional claims by courts established under this Constitution. *In re Iriarte (II)*, 1 FSM R. 255, 267 (Pon. 1983).

Transfer of a case not in active trial in TT High Court is mandatory unless the legal rights of a party are impaired by the transfer. U.S. Dep't Int. Sec. 1 Order 3039, § 5(a) (1979). *Actouka v. Etpison*, 1 FSM R. 275, 277 (Pon. 1983).

Nat'l court jurisdiction over TT Weapons Control Act is consistent with 12 F.S.M.C. 102 which states in part that criminal prosecutions shall be conducted in name of FSM for violations of TT statutes which continued in effect by virtue of transition article of Constitution and which are within jurisdiction of FSM national government. 11 F.S.M.C. 1201-1231. *FSM v. Nota*, 1 FSM R. 299, 303 (Truk 1983).

8 F.S.M.C. 206 authorizes the transfer of authority from the Trust Territory and its officials to the FSM government and its officials. Thus the reference in the TT Weapons Control Act to the High Commissioner and the Attorney General of the Trust Territory does not prevent its effectiveness as national law of the FSM. 11 F.S.M.C. 1201-1231. *FSM v. Nota*, 1 FSM R. 299, 303 (Truk 1983).

TT High Court has legitimate authority to issue writs of certiorari for cases from FSM Supreme Court; the Supreme Court cannot disregard an opinion resulting from such review. U.S. Dep't Int. Sec. 1 Order 3039, § 5(b). *Jonas v. FSM*, 1 FSM R. 322, 326-29 (App. 1983).

A writ of certiorari is improvidently granted by TT High Court unless a decision of the FSM Supreme Court affects the ability of the Secretary of the Interior to fulfill his responsibilities under Executive Order 11021. *Jonas v. FSM*, 1 FSM R. 322, 329 n.1 (App. 1983).

Title 5 of FSM Code, including § 514, is in essence the judiciary act of the TT High Court. The statute was enacted when the TT High Court had general original jurisdiction over criminal cases within the area that is now the FSM. The act was not deleted in codification process but remains part of body of national law in FSM because at the time of codification, the TT High Court still had extensive original jurisdiction in the FSM. *In re Raitoun*, 1 FSM R. 561, 564 (App. 1984).

In light of Constitution's Transition Clause, action by FSM Congress is not necessary in order to establish that violations of Weapons Control Act are prohibited within the FSM. The only question is whether those are state or national law prohibitions or both. If the definition of major crimes in the National Criminal Code bears upon the Weapons Control Act at all, it is only for that purpose of allocating between state and national law. *Joker v. FSM*, 2 FSM R. 38, 43 (App. 1985).

Transition Clause of FSM Constitution effectively adopts TT statutes, including Weapons Control Act, and serves as the original enactment of a body of law, criminal as well as civil, for the new constitutional government. Further action by the FSM Congress is not necessary to establish that violations of Weapons Control Act are prohibited within FSM. *Joker v. FSM*, 2 FSM R. 38, 43 (App. 1985).

Public Law No. 2-48, promulgating codification of FSM statutes and speaking only of "All enacted law of the Interim Congress of Micronesia . . . and all enacted law of the Congress of the Federated States of Micronesia . . . as . . . readopted and reenacted as positive law of the Federated States of Micronesia, . . ." may not be interpreted as an attempt to repeal or purge the TT law from the law of the FSM. *Joker v. FSM*, 2 FSM R. 38, 43 (App. 1985).

There is nothing absurd about a weapons control scheme that recognizes that both national and state governments have an interest in controlling possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. *Joker v. FSM*, 2 FSM R. 38, 44 (App. 1985).

In declining to "reenact" in Public Law No. 2-48 provisions originating with High Commissioners or Congress of Micronesia, Congress seems to have been motivated by transitional considerations rather than a desire to withhold official status from those laws. *FSM v. George*, 2 FSM R. 88, 92 (Kos. 1985).

The gross revenue tax as enacted by the Congress of Micronesia continued in effect in the FSM by virtue of the transition article of the FSM Constitution but, because it was subsequently amended by the FSM Congress and was included in the codification of FSM statutes, may now be considered a law enacted by Congress. *Afituk v. FSM*, 2 FSM R. 260, 264 (Truk 1986).

According to Secretarial Order No. 3039, § 5(a), all cases against the TTPI and the High Commissioner that were filed in the FSM at the time the Truk State Court was certified will continue to remain within the exclusive jurisdiction of the High Court. Those cases filed after certification are not within the jurisdiction of the High Court. *Suda v. Trust Territory*, 3 FSM R. 12, 14 (Truk S. Ct. Tr. 1985).

Under FSM Constitution, the national government, not the state governments, assumes any "right, obligation, liability, or contract of the government of the Trust Territory". *Salik v. U Corp. (I)*, 3 FSM R. 404, 407 (Pon. 1988).

The underlying principle of the Transition Clause of the Constitution, FSM Const. art. XV, § 1, is that a new constitution ought to bring with it no greater changes than are necessary to effectuate its terms. *FSM v. Oliver*, 3 FSM R. 469, 476 (Pon. 1988).

That a carryover statute covers topics that now fall into areas both state and national responsibilities is not a sufficient ground for reducing the reach of the statute or allowing it to fall short of its originally intended scope. *FSM v. Oliver*, 3 FSM R. 469, 477 (Pon. 1988).

If neither state nor national powers alone are sufficient to carry out the original purposes of a carryover statute, or if state and national powers are invoked, then the statute is enforceable as both state and national law. *FSM v. Oliver*, 3 FSM R. 469, 477 (Pon. 1988).

As a matter of constitutional law, the authority to exercise executive, legislative and judicial powers came to the FSM under the FSM Constitution, by operation of law, not through delegation of Trust Territory functions. *United Church of Christ v. Hamo*, 4 FSM R. 95, 103 (App. 1989).

The FSM Constitution has been the supreme law of the FSM since May 10, 1979 and from that time on, nonconstitutional officials could be authorized to exercise powers assigned to the national government by the Constitution only through authorization by constitutional officials or pursuant to some other power rooted in the Constitution. *United Church of Christ v. Hamo*, 4 FSM R. 95, 104 (App. 1989).

In specifically authorizing the President to act pursuant to Secretarial Order 3039 in accepting executive functions from the Trust Territory, the FSM Congress implicitly adopted those provisions of Secretarial Order 3039 concerning transfer of executive functions as law of FSM. *United Church of Christ v. Hamo*, 4 FSM R. 95, 104 (App. 1989).

Statutes and case law inherited from the Trust Territory are invalid to the extent that they are inconsistent with the state constitution which is the supreme law of Chuuk. *Nimeisa v. Department of Pub. Works*, 6 FSM R. 205, 210 (Chk. S. Ct. Tr. 1993).

The United States could not assume responsibility for, or be held liable for, the absence of separate adjudicatory body for public land disputes when the exclusive authority to establish such a body had been transferred to the Ponape district legislature. *Nahnken of Nett v. United States (III)*, 6 FSM R. 508, 528 (Pon. 1994).