BANKS AND BANKING

The FSM Development Bank is an instrumentality of the national government and part of the national government for the purposes of FSM Constitution article XI, section 6(a), giving the trial division of the Supreme Court exclusive jurisdiction over cases in which the national government is a party. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 221 (Pon. 1986).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

The FSM Supreme Court will consider an unambiguous provision in a promissory note for the payment of reasonable attorney's fees in debt collection cases as valid in the Federated States of Micronesia. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Provisions in promissory notes for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not in excess of fifteen percent of the outstanding principal and interest. Bank of Hawaii v. Jack, 4 FSM R. 216, 221 (Pon. 1990).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

The statutory scheme emphasizes the location of the business activity which generates the revenue in question. Therefore revenue derived from banking investment transactions in Honolulu and Chicago are not taxable since they are not derived from sources or transactions within the Federated States of Micronesia. Bank of the FSM v. FSM, 5 FSM R. 346, 349 (Pon. 1992).

Where licenses are to be issued to each bank branch, and each bank branch must be scrutinized as to its qualifications for a license, it is a reasonable statutory interpretation that the regulatory license fee must be paid for each bank branch. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

The context of Chapter 5 of Title 29 requires that the term "bank" be understood to mean bank branch when used in 29 F.S.M.C. 502 and 504. Therefore scrutiny for license qualifications and payment of license fees are to be on a per branch basis. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

A financial institution, such as a credit union, that holds money from depositors does have an on-going fiduciary duty to its depositors. Wakuk v. Kosrae Island Credit Union, 7 FSM R. 195, 197 (Kos. S. Ct. Tr. 1995).

An instrument that is not a promissory note because it fails to contain words of negotiability may still be enforceable as a contract between the parties. Nanpei v. Kihara, 7 FSM R. 319, 323 (App. 1995).

When a bank requires, as a condition of the loan, that a borrower have his employer make the loan repayments out of the borrower's paycheck the borrower's employer is acting as the agent of the borrower. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

The FSM Development Bank is authorized to engage in all banking functions that will assist the economic advancement of the Federated States of Micronesia. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 71 (Pon. 2001).

30 F.S.M.C. 104 does not require the FSM Development Bank to provide technical assistance to persons the bank loans money to, but simply permits it to provide such assistance. The bank has no duty to provide technical assistance. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76 (Pon. 2001).

The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76-77 (Pon. 2001).

Generally, money deposited in a bank account is a debt that the bank owes to the depositor – the bank is obligated to repay the money to the depositor, either on demand or at a fixed time. Money deposited in a bank account is thus not property mortgaged to the bank. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

Banks generally have a common law right to a setoff against depositors. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

When a bank has a contractual right to setoff because the promissory note contains a provision granting the bank a right to setoff and in that provision, the borrowers authorize the bank=s use of setoff, and the borrowers are on notice that if payments are not made that the bank may exercise a setoff against the borrower's bank deposits. And when the note provides

that the bank may forgo or delay enforcing any of its rights or remedies without losing them, the bank was within its rights to setoff sums in the borrowers' bank accounts against the monthly payments as each became due and remained unpaid instead of declaring the loan in default and accelerating payment of the entire amount. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

30 F.S.M.C. 104(b) does not create a duty for the FSM Development Bank to provide technical assistance, but rather authorizes the FSM Development Bank to provide such assistance as a part of its functions. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

An irrevocable standby letter of credit provides the same security as a commercial letter of credit, as it provides a guarantee of payment in the event that a party does not perform according to a contract's terms. A time certificate of deposit for the amount of performance of a contract, with possession of the certificate surrendered to the state, would also provide the state with full security and evidence of funds available. Nagata v. Pohnpei, 11 FSM R. 265, 272 (Pon. 2002).

When the lender bank was in charge of the disbursement of the loan proceeds and when the contract language provided that no loan proceeds would be disbursed until the bank had received evidence that all labor and materials have been paid for, the bank assumed the duty under the agreement not to disburse loan proceeds until it had received verification that the suppliers had been paid. When, if the bank had met its commitment in this regard, it would have been impossible for the project to be completed without the suppliers being fully paid, the suppliers were as a matter of law intended third-party beneficiaries of the loan agreement. In such a case, the third-party may enforce the contract against the promisor. The bank's promise not to disburse loan proceeds until it had received confirmation that the suppliers had been paid, is enforceable against the bank. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 239-40 (Pon. 2003).

The stated purpose of the FSM Development Bank under 30 F.S.M.C. 104(1) is to assist in the Federated States of Micronesia's economic advancement. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

Under 30 F.S.M.C. 104(2), the Development Bank does not have a duty to provide technical support for the project for which the money was loaned because 30 F.S.M.C. 104 does not confer a private cause of action, and the Bank does not have a duty under this statute to provide technical assistance to debtors to whom it has already made a loan. FSM Dev. Bank v. Jonah, 13 FSM R. 522, 523 (Kos. 2005).

The Constitution does not contain a right of privacy or financial or business privilege in bank records emanating from Article IV, Section 5 of the FSM Constitution. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

Congress has the express power to regulate banking, but it has not legislated in the area of bank customer confidentiality. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The general rule appears to be that there exists no common law privilege with respect to bank customer information, but a court should indulge in a careful balancing of the right of civil litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other. FSM Dev. Bank v. Adams, 14

FSM R. 234, 247 (App. 2006).

The Foreign Investment Act of 1997 establishes a system of Categories of economic sectors for the purposes of implementing the FSM policy to welcome foreign investment in all sectors of the FSM economy. Three of these categories are made up of economic sectors that are of special national significance and therefore fall within the national government's jurisdiction in respect of foreign investment regulation. The first is the National Red List. No foreign investment is permitted in the activities specified on this list, which includes the minting of money and arms manufacture. The second is the National Amber List. Banking (other than as defined in Title 29 of the FSM Code) and insurance are included on this list. Certain criteria specified in the FSM Foreign Investment Regulations must be met before investment is permitted in these areas. A third category of activities that fall within the jurisdiction of the national government appear on the National Green List. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 333-34 (Pon. 2007).

The Investment Development Fund was created with money appropriated by the United States. The Federated Development Authority administers the IDF. The FSM Development Bank, pursuant to the FDA's direction, is responsible for administering all IDF loans and IDF money is restricted to financing development projects. Although each state has an earmarked subaccount within the IDF (there is also a private-sector reserve subaccount) and any state may propose a project to be financed from its earmarked subaccount, loans from these subaccounts must be approved by the FDA, and by the Development Bank. Thus, IDF funds are not a state's property, to do with as it chooses. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

The FSM Development Bank, in administering an IDF loan, is statutorily an agent of the Federated Development Authority and of the Investment Development Fund, not of the State of Pohnpei, even though the loan funds came from Pohnpei's earmarked subaccount. The mere fact that Pohnpei's approval was also needed if the loan funds came from the subaccount earmarked for Pohnpei, is not enough to make the Bank Pohnpei's agent because, by statute, the IDF, not the State of Pohnpei, profits from the repayment of an IDF loan since all repayments of principal and interest and penalties on loans made from the Fund, all cash assets recovered on loans made from the Fund, and all fees, charges, and penalties collected in relation to administration of the Fund must be deposited into the Fund and the money deposited into the Fund is then available for lending to other entrepreneurs or developers, who are the ultimate beneficiaries of any loan repayment. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634-35 (Pon. 2008).

Whenever a bank lends money, it always assumes a risk that the borrower will not repay it. The bank tries to manage or lessen its risk by requiring certain information about the borrower and the money's intended use and by evaluating that information before any money is lent. Even if satisfied that the borrower is creditworthy, a bank may also lessen its risk by attaching certain conditions to the loan and by acquiring a security interest in the borrower's collateral. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

When the statute of limitations has expired on all loan instalment payments that became due before July 20, 2001 and when only two instalment payments were due after that date, the lender is, as a matter of law, entitled to judgment for only those two payments. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

It is a corporation's usual practice to deposit checks payable to it in a bank account Given this consideration, when a person is asked to cash a check bearing a corporate endorsement he is put on his guard and should verify that the endorsement is authentic, and should take the necessary steps to make certain that the person attempting to cash the check is authorized to do so by the payee corporation. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 440 (Pon. 2009).

Funds in the Investment Development Fund are owned and administered exclusively by the FSM government and are thus not "U.S. funds" but are FSM funds. Arthur v. Pohnpei, 16 FSM R. 581, 589-90 (Pon. 2009).

The Investment Development Fund was created by an enactment of the FSM Congress, and thus was an instrumentality of the FSM national government. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

Since the Federated Development Authority was an instrumentality of the national government created by an FSM Congress enactment, the presence of (uncompensated) persons, who are not national government employees on the FDA Policy Board does not make the FDA something other than a national government instrumentality. Arthur v. Pohnpei, 16 FSM R. 581, 590 (Pon. 2009).

The Investment Development Fund consists wholly of funds granted by the United States to Federated States of Micronesia for certain development projects lending, and the FSM Development Bank is charged with the administration and documentation of IDF loans. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657 (App. 2009).

The FSM Development Bank and the State of Pohnpei are not one and the same. The bank is a creature of national statute, with its duties and functions delineated. In contrast, the State of Pohnpei is a constitutionally organized state of the FSM. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

The FSM Development Bank was not Pohnpei's agent in making the loan, in receiving the loan repayments, or in suing the guarantors when the borrower defaulted because until FSM Public Law No. 12-75 was enacted over the President's veto, Pohnpei could not even consider that any IDF funds might be its own money. If it had been Pohnpei's money, then Congress would not have had to enact a law to give it to Pohnpei. That Congress later decided to wind up IDF subaccount activity and allow the transfer of those funds to the states does not magically and retroactively relieve the guarantors of their judicially-determined liability to the bank and it does not create a new cause of action or cause a new claim to accrue upon which the plaintiffs can now sue for the first time. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

As a matter of law, no individual can ever have the apparent authority to cash a check that has a corporation as the payee, and, as a matter of law, any business that cashes such a check with a corporate payee is not engaged in a commercially reasonable business practice. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359-60 (App. 2012).

Under a plain reading of the statute, the FSM Development Bank is not required to obtain permission on a case-by-case basis before starting collection actions for Federated Development Authority loans, and the court will not broaden the statute beyond the meaning of the law as written. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos.

2012).

A plain reading of the statutes, in context, includes a case-by-case requirement for refinancing FDA loans and by its specific inclusion excludes that requirement from collection efforts. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

Even as restructured, the FSM Development Bank is still imbued solely with a public purpose because it exists and is operated solely for the public's benefit and is authorized to engage in all banking functions that will assist in the FSM's economic advancement. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 616 (Pon. 2013).

While the restructured FSM Development Bank differs from its earlier incarnation, it does not differ enough for it to be considered no longer an FSM national government instrumentality for Section 6(a) purposes because it is still imbued with a public purpose; it is still governed by a special act at title 30 of the FSM Code, rather than by the general banking statutes at title 29; there is still no private ownership of the Bank; 98.7%, of its shares are owned by the national government, making the FSM national government the shareholder that chooses the board of directors, with the exception of the Bank's president who is an ex officio member of the board and who is chosen by the other board members; the Bank is thus still under the control of the FSM national government that created it and still submits annual reports to the national government although now this is in the national government's capacity as a shareholder; and because in every fiscal year but one, Congress has appropriated funds for the restructured Bank=s use. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The restructured FSM Development Bank is fiscally independent of the national government as are a number of other national government instrumentalities and agencies – FSM Social Security Administration; National Fisheries Corporation; FSM Telecommunications Corporation; MiCare Health Insurance; and FSM Petroleum Corporation. This fiscal autonomy removes these FSM national government instrumentalities from the national government's every day political influence and control, but these instrumentalities were created by the national government and are still under its control, first as a shareholder or the shareholder, and second since Congress can, at any time, amend the statutes that created the restructured Bank, or any of these other instrumentalities, to exert or enforce some new national policy preference. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The FSM Development Bank exists solely for the public's benefit. It does not operate for a private purpose and it is not a profit-seeking venture. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

That the national government is not legally responsible for the FSM Development Bank's debts, does not prevent the bank from being a national government instrumentality since other national government instrumentalities have similar status. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

As befits a national government agency or instrumentality, the FSM Development Bank is exempt from any taxes (except import taxes) or assessments on its property or operations, and similar statutory provisions exist for other national government instrumentalities and agencies. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The restructured FSM Development Bank remains, regardless of the name given it and the other details of form, subject to the article XI, ' 6(a) constitutional provision and, as with similar national government instrumentalities, it should be treated as part of the national government for jurisdiction purposes because it is an organization created by the national government for a public purpose and over which the national government can exercise control when it chooses. It is not an organization that the national government merely licensed or authorized to operate for private purposes. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Even if the FSM Development Bank were not an FSM national government agency, the FSM Supreme Court would still have subject-matter jurisdiction over the case as one between a plaintiff corporation with Chuuk and Kosrae citizenship and Pohnpei citizen defendants. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

The FSM Development Bank is not defunct because if the public law that restructured it were unconstitutional, then the previous FSM Development Bank statute would apply. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

The Constitution expressly delegates to Congress the power to regulate banking and foreign and interstate commerce. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The Constitution's broadly-stated express grants of power to regulate banking and foreign and interstate commerce contain within them innumerable incidental or implied powers as well as certain inherent powers. These incidental and implied powers include the power to form public corporations, such as the FSM Development Bank or the FSM Telecommunications Corporation, even in the absence of the express power to do so. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

The creation of the restructured FSM Development Bank was a valid exercise of Congress's power to regulate banking and to regulate interstate and foreign commerce. Development banking is also a power of national character beyond the power of a state to control or provide and so is a national power. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Since the making payments at the Pohnpei branch bank office was not a material part of loan agreement and since the bank provided a means so that loan payments and other services might still be made locally, the bank did not deprive the borrower of any benefit under the promissory note and, since the borrower provided no evidence showing that he did not know where or how to continue to make the required loan payments, he did not show that the bank's conduct rendered his performance under the contract difficult or impossible. Bank of Hawaii v. Susaia, 19 FSM R. 66, 71-72 (Pon. 2013).

A bank did not breach a material provision of the contract when the bank notified the borrower of the bank branch's closure and the borrower knew of alternative agents and locations of making payments due on the loan. Bank of Hawaii v. Susaia, 19 FSM R. 66, 72 (Pon. 2013).

When a promissory note, by its express terms, did not require the obligor to pay at the Pohnpei branch office but stated that payments were to be made "to our branch address above, or at any of our other branches" and the "branch address above" was "PO BOX 280, KOLONIA, POHNPEI FM 96941," under the note's terms, payment at any branch office will do. When it is

undisputed that the bank still had an office on Pohnpei, the bank cannot have breached its contract by moving its office to another location on Pohnpei. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 144 (App. 2013).

Where the obligor on a promissory note is to make his payments does not relate to a matter of vital importance or go to the contract's essence since the note provides a number of options for place of payment, and since the obligor was not deprived of the benefits he expected to receive under the contract – his use of the bank's money (the loan) for a specified period of time. He knew he had an obligation to pay the bank and he knew (or should have known) where to pay and if he did not know it was his duty to find out where. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 145 (App. 2013).

A bank does not have to contact each borrower personally and negotiate separately with each borrower to get each borrower to agree to amend the note to require or to allow payment somewhere other than at the closed Pohnpei retail branch office. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

A borrower's duty is to repay his loan and to seek a bank office in order to make those payments. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

A bank does not breach its agreement with a borrower by closing its retail branch office on Pohnpei, and if it did it was not a material breach excusing performance. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 146 (App. 2013).

The FSM Development Bank is an instrumentality of the national government, and should be treated as if the national government itself is the actor. It, therefore, has an independent basis for jurisdiction under the Constitution article XI, ' 6(a) and the national forum is available to it. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

The FSM Development Bank may fully adjudicate many matters in the national court until land is at issue. At that time, unless, a separate and additional source of jurisdiction can be found, the case must be dismissed and returned to the state court, or alternately, held in abeyance until the land issue is certified. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

Since the nation's statutes are presumed to be constitutional, a bank is not required to challenge, on a depositor's behalf, the tax lien statute's constitutionality. The bank may rely on the statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

It is not a bank's duty to challenge the tax authorities' assessment of the amount of tax due from a taxpayer depositor. It is the taxpayer's responsibility to dispute any tax assessed that it disagrees with and for the taxpayer to resolve the issue with the FSM tax authorities. It also is not the bank's responsibility to challenge the constitutionality of 54 F.S.M.C. 153 or the FSM's interpretation of that statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

As long as the notice of levy and execution from the Division of Customs and Tax Administration is regular on its face, a bank is obligated to honor it. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

A bank depositor's complaint against a bank fails to state a claim on which it can obtain relief and will be dismissed when the bank honored, in conformance with 54 F.S.M.C. 153, a Division of Customs and Tax Administration Notice of Levy and Execution that was regular on its face since that is not an unauthorized withdrawal from the depositor's account or the result of the bank's negligence of any kind and since it cannot be a breach of any contract between the depositor and the bank because the bank cannot contract to violate FSM law or statutes. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

At the start of a typical loan repayment, the installment payments are usually not much larger than the amount of interest accrued and due. The bulk of the installment payment is then applied to interest and the remaining amount goes to reducing the principal so that at the next installment payment, if made on time, a little less is needed to pay the accrued interest and a little more can go to the reduction of principal. This does not constitute usury unless the interest rate itself is higher than permitted by statute. Salomon v. Mendiola, 20 FSM R. 138, 140-41 (Pon. 2015).

If the loan payments are late, more interest will accumulate and more of the payment will go to cover the interest and less will go to reducing the principal. Enough late payments or a missed payment and the next payment may end being applied all to accrued interest with nothing left over to apply to the principal. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

Title 30, which governs the FSM Development Bank, does not give rise to a private cause of action. Thus, even if the bank violated Title 30, a private party's claims based on Title 30 violations do not state a claim on which relief may be granted. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

Since the FSM Development Bank was formed by the national government to undertake a public purpose and is subject to its creator's control, the reconfigured FSM Development Bank constitutes a national government instrumentality within Article XI, ' 6(a), and is accorded the status equivalent to that of the national government. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 515 (App. 2016).

A loan application is an invitation by the applicant for the bank to make an offer to lend the applicant money. The bank may then decline to make an offer (deny the application) or it may make an offer (propose to lend money on certain terms), which the loan applicant may then accept (forming a contract) or reject. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 169 (Pon. 2017).

"Predatory lending" is a term generally used to characterize a range of abusive and aggressive lending practices, including deception or fraud, charging excessive fees or interest rates, making loans without regard to a borrower's ability to repay, or refinancing loans repeatedly over a short period of time to incur additional fees without any economic gain to the borrower. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 (Pon. 2017).

The predatory lending tort is usually either created by statute or relies on an existing statute as a basis for the cause of action. Neither Pohnpei nor the FSM national government has enacted a statute that could make predatory lending a cause of action. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 (Pon. 2017).

The regulation of banking and of commercial paper are powers expressly delegated to the national government. "Commercial paper" is any instrument, other than cash, for the payment of money and is generally viewed as synonymous with negotiable paper or bills. Promissory notes are commercial paper. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 n.4 (Pon. 2017).

A bank does not have a duty to dispute a depositor's tax assessment, nor to challenge the constitutionality of 54 F.S.M.C. 153, as these are the account holder's responsibilities, and the bank is obliged to comply with the statutory levy, or face penalties under the law. Fuji Enterprises v. Jacob, 21 FSM R. 355, 362 (App. 2017).

Congress created the FSM Development Bank and gave it the power to lend money either with or without security, and if with security upon such terms as may from time to time seem expedient. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

A claim that the FSM Development Bank should not be trying to make a profit is neither a ground for relief from judgment nor a meritorious defense. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

Title 30, which governs the FSM Development Bank, does not give rise to a private cause of action for borrowers or others. Setik v. Mendiola, 21 FSM R. 537, 556 (App. 2018).

The borrowers' claim that the bank's chairman of the board and members breached their fiduciary duties owed to the bank's shareholders, even if proven, cannot state a claim on which the borrowers could be granted relief. This is because a party cannot raise third persons' claims. A party may raise only its own claims and must assert its own legal rights and interests; it cannot rest its claim to relief on third parties' legal rights or interests. Setik v. Mendiola, 21 FSM R. 537, 557 (App. 2018).

FSM Development Bank loans that are determined to be no longer collectable are subject to write-off, but when the mortgaged parcel securing the loan is still generating income, in the form of monthly rent, the loan is still deemed to be capable of being paid off. FSM Dev. Bank v. Carl, 21 FSM R. 640, 643-44 (Pon. 2018).

A borrower's death does not automatically make an FSM Development Bank loan subject to a write-off. Rather, the death is only one criteria to be considered. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 (Pon. 2018).

An Act of Congress created the FSM Development Bank as a corporate entity. That statute, now FSM Code Title 30, operates as the bank's articles of incorporation, charter, and corporate registration. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 184-85 (Pon. 2019).

The power to regulate banking is expressly delegated to Congress. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329, 330 (Pon. 2019).

In creating the FSM Development Bank, the FSM government intended to establish an independent financial institution operating under its own Board of Directors but conducting its activities within the framework of the national government's general economic plans, policies, and priorities. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Since it is the government's intent that the FSM Development Bank have and retain the legal capacity to acquire, own title to, dispose of, and otherwise deal in FSM land and waters, no stock in the Bank may be owned by any person or entity whose partial ownership of the Bank would cause the Bank to lose such capacity under applicable law, and any transfer of Bank stock to such a person or entity will be null, void, and of no effect. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

The enactment of FSM Code, Title 30 falls squarely within the Congress's express powers as delegated by the FSM Constitution. That 30 F.S.M.C. 137 deals with the FSM Development Bank's ability to acquire title to land places this activity squarely in the category of indisputedly national government powers. To function, the Bank must be able to deal with mortgages, as well as deeds and land titles, as land is the primary collateral possessed by most Micronesians. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Powers that are indisputedly national include the national government's power to buy land, and, as an instrumentality of the national government, the FSM Development Bank has the authority to act in that capacity according to laws enacted by the Congress under its express and implied powers under the Constitution. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Since the FSM Congress specified in 30 F.S.M.C. 137 that the FSM Development Bank must have and retain the legal capacity to acquire, own title to, dispose of, and otherwise deal in land and waters in the FSM, restrictions imposed by Pohnpei must fail as applied to the Bank's ability to acquire title to Pohnpei land. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

If the FSM Development Bank's right to acquire, own title to, dispose of, and otherwise deal in FSM land and waters could be impaired in different ways by each of the four states, based on the states' Constitutions or statutes, it would eviscerate the national government's power to regulate the Bank under the express powers granted to it under the FSM Constitution. If each state could deny the Bank the right to acquire land, its essential functions would be impaired, and it would be unable to achieve the stated purpose of operating as an independent financial institution within the framework of the national government's general economic plans, policies, and priorities. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330-31 (Pon. 2019).

The FSM Development Bank's ability to hold title to land enables it to be flexible when negotiating with borrowers who are behind or in default on collateralized loans. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331 (Pon. 2019).

That the FSM Development Bank has an alternative means to collect debts without holding title to land in Pohnpei is not relevant when the Bank seeks to acquire fee simple title to land, which it is entitled to do under 30 F.S.M.C. 137. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 332 (Pon. 2019).

A 9% interest rate is not usurious. The court thus has no power to disregard it, or to otherwise vary it, lower it, or raise it because the parties agreed to the 9% rate – the bank offered to lend the loan applicants money at 9%, and those applicants, who borrowed money, agreed to borrow it at 9%. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 474 n.1 (Pon. 2020).

The FSM Development Bank has the statutory authority to lend money either with or without security, and if with security upon such terms as may from time to time seem expedient. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 477 (Pon. 2020).

Under Pohnpei law, when a bank is entitled to a foreclosure of the mortgaged land as a matter of law, and the full judgment amount is not paid into court within three months of the judgment date, the court may, order the foreclosed property sold for the mortgagee's (the bank's) benefit. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

When the borrowers' assignment of income and of exclusive possession was used to secure their indebtedness to the bank and the assignments allowed the borrowers to retain their income and possession of the business premises so long as the loan it secured did not go into default, the bank is entitled to a judgment on its claim to enforce the assignments once the borrowers have defaulted. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

Section 128, Title 30 grants the FSM Development Bank tax exemption and prohibits it from paying dividends because the bank exists and operates "solely for the benefit of the public." It does not create a private cause of action against the FSM Development Bank, and thus a borrower cannot raise it as an affirmative defense. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

Congress created the FSM Development Bank, and gave it the power to lend money either with or without security, and if with security upon such terms as may from time to time seem expedient. The bank's ability to set terms is, of course, limited by the usury statutes. Those statutes prohibit (make usurious) credit transactions that directly or indirectly exceed an annual interest rate of 24%. FSM Dev. Bank v. Talley, 22 FSM R. 587, 594 (Kos. 2020).

A bank expects to be paid the amount the bank would be owed (and paid) if all installment payments were made precisely on time and in full. The bank, of course, expects to be paid more (and the note provides for it) if any of the installment payments were late or short. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 600, 606 (Pon. 2020).