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A BILL FOR AN ACT

To enact title 31 of the Code of the Federated States of Micronesia, to establish a National bankruptcy receivership law for the Federated States of Micronesia, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Section 101 of title 31 of the Code of the Federated States
2 of Micronesia is hereby established to read as follows:

3 "Section 101. Authority; title. This statute is enacted pursuant to
4 the power of Congress to regulate bankruptcy and insolvency
5 under article IX, section 2(g) of the Constitution. The legislation
6 may be cited as the Bankruptcy Receivership Act of 1998."

7 Section 2. Section 102 of title 31 of the Code of the Federated States
8 of Micronesia is hereby established to read as follows:

9 "Section 102. Definitions.

10 (1) 'Affiliate' means:

11 (a) an entity that directly or indirectly owns,
12 controls, or has the power to vote, twenty percent or more of
13 the outstanding voting securities of the debtor;

14 (b) a corporation twenty percent or more of whose
15 outstanding voting securities are directly or indirectly controlled,
16 or held with power to vote, by the debtor, or by an entity that
17 directly or indirectly owns, controls, or holds with power to vote,
18 twenty percent or more of the outstanding voting securities of
19 the debtor;

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

24 (d) an entity that operates the business of, or all or
25 substantially all of the property of the debtor under a lease or

1 operating agreement.

2 (2) 'Claim' means:

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

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

12 (3) 'Creditor' means a person or entity that has a claim
13 against the debtor that arose at the time of or before the order
14 for relief concerning the debtor.

15 (4) 'Debt' means liability on a claim.

16 (5) 'Debtor' means a person, corporation or municipality
17 with regard to which a case under this title has been commenced.

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

21 (7) 'Insider' means:

22 (a) if the debtor is an individual:

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

25 (ii) a partnership in which the debtor is a

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- 1 general partner;
- 2 (iii) a general partner of the debtor; or
- 3 (iv) a corporation of which the debtor is a
- 4 director, officer, or person in control.
- 5 (b) if the debtor is a corporation:
- 6 (i) a director, officer or person in control of
- 7 the debtor;
- 8 (ii) a partnership in which the debtor is a
- 9 general partner, or a general partner of the debtor;
- 10 (iii) a relative of a general partner, director,
- 11 officer or person in control of the debtor.
- 12 (c) if the debtor is a partnership:
- 13 (i) a general partner in the debtor;
- 14 (ii) a relative of a general partner, a general
- 15 partner of, or a person in control of the debtor;
- 16 (iii) a partnership in which the debtor is a
- 17 general partner;
- 18 (iv) a general partner of the debtor; or
- 19 (v) a person in control of the debtor.
- 20 (d) if the debtor is a municipality:
- 21 (i) an elected official or relative of an elected
- 22 official of the debtor.
- 23 (8) 'Municipality' means a political subdivision of a State.
- 24 (9) 'Person' as used in this chapter means an individual,
- 25 partnership or corporation, but does not include governmental

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1 entities.

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

7 (11) 'State' means a State of the Federated
8 States of Micronesia."

9 Section 3. Section 103 of title 31 of the Code of the Federated States
10 of Micronesia is hereby established to read as follows:

11 "Section 103. Application for appointment of receiver.

12 (1) An application for the appointment of a receiver may
13 be made:

14 (a) by any debtor; or

15 (b) by three or more creditors whose combined
16 claims are in excess of \$7,500, provided each creditor's claim is
17 at least \$1,000.

18 (2) The application shall allege that the debtor resides or
19 has a domicile, a place of business, or property in the Federated
20 States of Micronesia.

21 (3) When the receivership is sought by creditors, the
22 application shall also allege:

23 (a) that the claims held by such creditors amount in
24 the aggregate to at least \$7,500; and

25 (b) that the debtor is generally not paying its debts

1 as they become due."

2 Section 4. Section 104 of title 31 of the Code of the Federated States
3 of Micronesia is hereby established to read as follows:

4 "Section 104. Approval of application; Suspension or dismissal of
5 pending receivership.

6 (1) The Court shall appoint a receiver within such time as
7 the Court shall prescribe if:

8 (a) there is no objection by an interested party or

9 (b) if the Court finds that the allegations in the
10 application are true.

11 (2) Notwithstanding section 104(1), the Court may deny
12 the application, dismiss a pending receivership, or suspend a
13 pending receivership if it finds that such denial, dismissal, or
14 suspension is in the best interest of the debtor and its creditors.

15 (3) The Court shall have the authority to fix the
16 compensation of the receiver, however it shall be specifically
17 prohibited from fixing compensation based solely on time
18 referenced billing. When fixing compensation of the receiver the
19 court shall take into consideration:

20 (a) the complexity of the case;

21 (b) the skill and reputation of the receiver;

22 (c) the benefit to the receivership estate of all work
23 provided by the receiver;

24 (d) any other relevant criteria which the Court in its
25 discretion may chose to employ.

1 Section 5. Section 105 of title 31 of the Code of the Federated States
2 of Micronesia is hereby established to read as follows:

3 "Section 105. Filing of application.

4 (1) An application for appointment of a receiver under this
5 act shall be filed with the Trial Division of the FSM Supreme Court
6 located in a State of the Federated States of Micronesia where
7 the debtor resides or has domicile, a place of business, or
8 property.

9 (2) The court approving the application for appointment
10 shall supervise the receivership unless the court, in its discretion,
11 determines that the receivership may be more efficiently
12 supervised by the FSM Supreme Court Trial Division located in
13 another State of the Federated States of Micronesia.

14 (3) The application must be in the form specified by the
15 court, accompanied by such filing fee as the Court may set, and
16 must contain a statement of financial condition of the debtor, as
17 well as schedules of debts, assets, and exemptions of the debtor.
18 All applications must be sworn under penalty of perjury by the
19 debtor, or members of the applying creditors group."

20 Section 6. Section 106 of title 31 of the Code of the Federated States of
21 Micronesia is hereby established to read as follows:

22 "Section 106. Stay of proceedings.

23 (1) Except as provided in section 106(2), an application
24 for a receiver operates throughout the Federated States of
25 Micronesia and every State thereof, as a stay, applicable to all

1 entities, of the commencement or continuation of all legal
2 proceedings against the debtor, against the property of the
3 debtor, and against property held by the receiver.

4 (2) An application for a receiver does not operate as a
5 stay of:

6 (a) criminal proceedings against the debtor, or

7 (b) the commencement or continuation of legal
8 proceedings by a governmental unit to enforce a police or
9 regulatory power.

10 (3) The stay authorized by section 106(1) shall continue
11 until the receivership is terminated, suspended or dismissed, or the
12 party affected obtains relief from the stay pursuant to section
13 106(4).

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

16 (a) grant relief from stay; or

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

20 Section 7. Section 107 of title 31 of the Code of the Federated States of
21 Micronesia is hereby established to read as follows:

22 "Section 107. Eligibility and qualification of a receiver.

23 (1) A person may serve as a receiver only if such person
24 is:

25 (a) competent to perform the duties of a receiver;

1 (b) resides or has an office in the Federated States
2 of Micronesia;

3 (c) admitted to practice before the Supreme Court
4 of the Federated States of Micronesia; or holds other relevant
5 professional qualifications as determined by the FSM Supreme
6 Court; and

7 (d) has never been convicted of a crime of moral
8 turpitude, fraud, theft, deceit, or other act which involves
9 dishonesty.

10 (2) nothing in this act will preclude the FSM Supreme Court
11 from removing a receiver in any case for good cause shown.

12 (3) no relative, associate, affiliate, or other such insider of
13 the debtor shall be appointed to serve as a receiver."

14 Section 8. Section 108 of title 31 of the Code of the Federated States of
15 Micronesia is hereby established to read as follows:

16 "Section 108. Powers of the receiver.

17 (1) The powers of the receiver include, but are not limited
18 to:

19 (a) the power to use, sell, and lease property of the
20 receivership estate;

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

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

25 (d) the power to abandon or disregard property of

1 inconsequential value of the receivership estate; and
 2 (e) the power to avoid preferences and
 3 fraudulent conveyances as provided in sections 111, 112 and 113.
 4 (2) Court approval is required for actions taken pursuant
 5 to clauses (a) and (b) of section 108(1) unless the activity occurs
 6 in the ordinary course of business. Court approval is also
 7 required for actions taken pursuant to clauses (c) and (d) of
 8 section 108(1)."

9 Section 9. Section 109 of title 31 of the Code of the Federated States of
 10 Micronesia is hereby established to read as follows:

11 "Section 109. Property to be administered by the receiver.

12 (1) The application for a receiver pursuant to these rules
 13 creates a receivership estate. The estate shall consist of the
 14 following:

15 (a) subject to the exemptions contained in section
 16 116 of this act, all property owned by the debtor on the date of
 17 the application;

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

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

23 (2) The receivership estate shall be
 24 administered in accordance with these rules."

25 Section 10. Section 110 of title 31 of the Code of the Federated States of

1 Micronesia is hereby established to read as follows:

2 "Section 110. Claims of creditors.

3 (1) Any creditor may file a sworn claim with the receiver
4 within such time limits as the Court shall prescribe.

5 (2) Each claim shall be allowed except to the extent that:

6 (a) such claim is unenforceable for any reason other
7 than because such claim is contingent or unmatured;

8 (b) such claim is for unmatured interest;

9 (c) such claim is for punitive damages and is not
10 compensation for actual pecuniary loss; or

11 (d) such claim has not been filed within the time limit
12 prescribed by the Court.

13 (3) An allowed claim of a creditor is a secured claim to the
14 extent of the value of the collateral, provided all criteria under
15 applicable law for perfecting security interests have been complied
16 with, an allowed claim is an unsecured claim to the extent that
17 the value of the collateral offered by the debtor as security
18 against that claim is less than the amount of the claim.

19 (4) The holder of an allowed secured claim is
20 entitled to the approved value in the collateral or its equivalent.

21 (5) Assets shall be distributed to the holder of an allowed
22 unsecured claim in accordance with the provisions of this act."

23 Section 11. Section 111 of title 31 of the Code of the Federated States of
24 Micronesia is hereby established to read as follows:

25 "Section 111. Distribution of the receivership estate.

1 (1) Assets of the receivership estate shall, following the
2 satisfaction of secured claims pursuant to section 110(4), be
3 distributed in the following order:

4 (a) all necessary administrative expenses of the
5 receivership, including compensating the receiver and applicable
6 attorneys fees:

7 (b) all allowed claims of the National Government or
8 any State or local government of the Federated States of
9 Micronesia, or any entity or public corporation of any such
10 government:

11 (c) all allowed claims:

12 (d) to the debtor."

13 Section 12. Section 112 of title 31 of the Code of the Federated States of
14 Micronesia is hereby established to read as follows:

15 "Section 112. Preference.

16 (1) Except as provided in section 112(2), the receiver may
17 avoid any transfer of an interest of the debtor in property:

18 (a) to or for the benefit of a creditor;

19 (b) for or on account of an antecedent debt;

20 (c) made while the debtor was insolvent;

21 (d) made on or within 90 days, or within 1 year if
22 the creditor was an insider, affiliate or relative of the debtor,

23 before the date of the application for the receivership; and

24 (e) that enables such creditor to receive more than
25 such creditor would have if:

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- 1 (i) the transfer had not been made;
2 (ii) such creditor had received payment in
3 accordance with the provisions of this act.

4 (2) The receiver may not avoid under section 112(1) a
5 transfer:

6 (a) to the extent that such transfer was intended
7 to be, and in fact was, a contemporaneous exchange for new
8 value:

9 (b) to the extent that such transfer was a payment
10 of debt in the ordinary course of business of both the debtor and
11 the transferee; or

12 (c) to the extent that, after such transfer, such
13 creditor advanced new value to or for the benefit of the debtor.

14 (3) The receiver has the burden of proving the avoidability
15 of a transfer under section 112(2). The receiver is entitled to the
16 benefit of a rebuttable presumption that the debtor was insolvent
17 during the 90-day period specified in section 112(1)(d)."

18 Section 13. Section 113 of title 31 of the Code of the Federated States of
19 Micronesia is hereby established to read as follows:

20 "Section 113. Fraudulent transfers.

21 (1) The receiver may avoid any transfer of
22 an interest of the debtor in property if:

23 (a) such transfer is made within 1 year before the
24 application for the receivership; and

25 (i) the debtor actually intended to hinder,

1 delay or defraud a creditor or creditors; or
2 (ii) the debtor was insolvent.
3 (2) Except to the extent that transfer is also voidable
4 pursuant to section 11, a good faith transferee for value is
5 entitled to a lien on the transferred property to the extent of such
6 value."

7 Section 14. Section 114 of title 31 of the Code of the Federated States of
8 Micronesia is hereby established to read as follows:

9 "Section 114. Transferee liability.

10 (1) To the extent that a transfer is avoided under either
11 section 112 or 113, the receiver is entitled to recover the
12 property transferred or, in appropriate cases, its value from:

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

15 (b) subsequent transferees of the initial transferees.

16 (2) The receiver may not recover under section 113(1)(a)
17 from a good faith transferee for value or a subsequent transferee
18 of such a good faith transferee.

19 (3) The receiver is entitled to only a single satisfaction
20 under section 113(1)."

21 Section 15. Section 115 of title 31 of the Code of the Federated States of
22 Micronesia is hereby established to read as follows:

23 "Section 115. Discharge.

24 (1) A debtor who is the subject of receivership
25 proceedings is entitled to a discharge from the claims of all

1 creditors, unless:

2 (a) the debtor is not an individual; or

3 (b) the debtor has:

4 (i) transferred property in violation of section
5 113(1); or

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

9 (c) the debtor has been granted a discharge
10 pursuant to this rule in a receivership commenced within 7 years
11 before the commencement of the pending receivership.

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

14 (a) for money, property and the like obtained by
15 actual fraud;

16 (b) to a spouse, former spouse, child, or other
17 person, for support or maintenance; or

18 (c) to the extent that such debt is subject to
19 disallowance pursuant to section 110(2)(c).

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

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

25 Section 16. Section 116 of title 31 of the Code of the Federated States of

1 Micronesia is hereby established to read as follows:

2 "Section 116. Exempt property. The following property is exempt
3 from inclusion in the receivership estate:

4 (1) Personal and household goods. All necessary
5 household furniture, cooking and eating utensils, and all necessary
6 wearing apparel, bedding, and provisions for household use
7 sufficient for six months.

8 (2) Necessities for trade or occupation. All tools,
9 implements, utensils, two work animals, and equipment necessary
10 to enable the person against whom the receivership estate is
11 commenced to carry on his usual occupation. This section does
12 not apply to corporate filings, or individual filings where the debt is
13 primarily of a business nature.

14 (3) Land and interests in land. All interests in land,
15 including crops on such land, however any interest owned solely by
16 a judgment debtor, in his own right, may be ordered sold
17 transferred, or subdivided by the receiver if the court making the
18 order deems that justice so requires and finds as a fact that
19 after the sale or transfer, the debtor will have sufficient land and
20 crops remaining to support himself and those persons directly
21 dependent on him according to recognized local custom.

22 (4) A motor vehicle, not to exceed \$1,500 in value.

23 (5) A boat and motor with a combined value not in
24 excess of \$2,500.

25 (6) Cash on hand in any checking or savings account not

