
A BILL FOR AN ACT

To further amend title 29 of the Code of the Federated States of Micronesia, as amended, by amending sections 102, 201, 601, 603, 605, 613, 617, 619, 621, 701, 702, 801, and 802 thereof and by enacting a new section 106 and a new Chapter 9 to incorporate the requirements imposed on FDIC-insured banks by the amendments to the Compact of Free Association, to enact laws governing treatment of dormant bank accounts, to make certain other necessary changes, and for other purposes.

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

1 Section 1. Section 102 of title 29 of the Code of the
2 Federated States of Micronesia, as amended by Public Laws Nos. 9-
3 130 and 12-57, is hereby further amended to read as follows:

4 "Section 102.Definitions. As used in this title, unless
5 it is otherwise provided or the context requires a
6 different construction, application, or meaning:

7 (1) 'Agency' means a place of business where
8 transactions are effected with customers on behalf of a
9 branch or main office of a bank, but the accounting
10 records for such transactions are maintained at the
11 branch or main office; includes a remote service
12 facility.

13 (2) 'Article XI' means ~~[Federal Deposit Insurance~~
14 ~~Corporation Services and Related Programs,]~~ Article XI
15 of the Programs and Services [Agreements] Agreement of
16 the Compact of Free Association, as amended, [between
17 ~~the Government of the United States of America and the~~

1 ~~Government of the Federated States of Micronesia~~
2 entitled 'Federal Deposit Insurance Corporation Programs
3 and Services Agreements'.

4 ~~(2)~~ (3) 'Bank' means any person or body of persons or
5 a corporation authorized by law to engage in the banking
6 business, and to accept from the public deposits which
7 are withdrawable and transferable by check or other
8 means of payment transfer. 'Bank' includes a savings and
9 loan association but does not include a credit union.

10 ~~(3)~~ (4) 'Banking business' means the business of
11 accepting deposits of money from the public,
12 withdrawable or payable on demand or after a fixed
13 period or after notice, or any similar operation through
14 the frequent sale or placement of notes or other
15 securities, and the use of such funds either in whole or
16 part for loans, investments or any other operation
17 either authorized by law or considered a generally
18 accepted banking practice, for the account and at the
19 risk of the person doing such business.

20 ~~(4)~~ (5) 'Banking Board' means the Board established
21 pursuant to section 201 of this title.

22 ~~(5)~~ (6) 'Banking Commissioner' means the Banking
23 Commissioner appointed pursuant to section 206 of
24 this title.

25 ~~(6)~~ (7) 'Branch' means an office of a bank where
26 banking business is transacted and at which

1 accounting records are maintained.

2 [~~(7)~~](8) 'Demand deposit' means any deposit which
3 is repayable by its terms not more than three days
4 after the time it is made.

5 [~~(8)~~](9) 'Deposits' means money or other property
6 transferred or assigned to any person pursuant to
7 an agreement, expressed or implied, that the person
8 shall repay such moneys upon demand (whether in
9 person or by written order) or after a fixed or
10 determinable period of time. Money loaned to a bank
11 which is to be repaid not sooner than five years
12 from the date of loan, and pursuant to a loan
13 agreement under which the obligation to repay is
14 subordinate to the rights of depositors, shall not
15 be deemed to be a deposit. Money transferred to a
16 credit union as a purchase of its shares shall not
17 be deemed to be a deposit.

18 [~~(9)~~](10) 'Domestic bank' means a bank organized under
19 the provisions of chapter 3 of this title.

20 (11) 'FDB' means a Domestic bank that is insured by the
21 Federal Deposit Insurance Corporation.

22 (12) 'FDI Act' means the United States' Federal Deposit
23 Insurance Act codified at 12 U.S.C. 1811-1831.

24 [~~(10)~~](13) 'Foreign bank' means a corporation or other
25 financial institution organized for the purpose of
26 engaging in the banking business under the laws of a

1 foreign country, operating a bank in its home territory,
2 State, or country.

3 (14) 'IAP' or 'institution-affiliated party' means:

4 (a) any director, officer, employee, or
5 controlling stockholder of, or agent for, an FDB;

6 (b) any other person who has filed or is required
7 to file a change-in-control notice with the appropriate
8 U.S. Federal banking agency under section 7(j) of the
9 FDI Act;

10 (c) any shareholder (other than a bank holding
11 company), consultant, joint venture partner, and any
12 other person as determined by the appropriate U.S.
13 Federal banking agency (by regulation or case-by-case)
14 who participates in the conduct of the affairs of an
15 FDB;

16 (d) any independent contractor (including any
17 attorney, appraiser, or accountant) who knowingly or
18 recklessly participates in - (i) any violation of any
19 law or regulation; (ii) any breach of fiduciary duty; or
20 (iii) any unsafe or unsound practice, which caused or
21 is likely to cause more than a minimal financial loss
22 to, or a significant adverse affect on, the FDB.

23 [~~11~~](15) 'Legal reserve' means the sum which every
24 domestic bank and foreign bank shall at all times have
25 available for the payment of their deposit liabilities
26 pursuant to the provisions of this title.

1 ~~[(12)]~~ (16) 'Paid-in capital, surplus, and undistributed
2 profits' means, in the case of a foreign bank, the
3 aggregate paid-in capital, surplus, and undistributed
4 profits of such bank and not merely that allocated to,
5 located in, or arising out of its operations in the
6 Federated States of Micronesia.

7 ~~[(13)]~~ (17) 'Person' includes individuals, corporations,
8 partnerships, and any other business entity.

9 ~~[(14)]~~ (18) 'Public Auditor' means the Public Auditor
10 appointed by the President of the Federated States of
11 Micronesia with the advice and consent of the Congress
12 pursuant to the Constitution.

13 ~~[(15)]~~ (19) 'Registrar of Corporations' means the
14 Registrar of Corporations of the National Government of
15 the Federated States of Micronesia.

16 ~~[(16)]~~ (20) 'Related person' with respect to any person
17 means his spouse, child, parents, brothers, sisters, or
18 any partnership, corporation, or firm in which he owns
19 more than a ten percent interest.

20 (21) 'Secretary of Finance' means the Secretary of the
21 Department of Finance and Administration of the
22 Federated States of Micronesia."

23 Section 2. Title 29 of the Code of the Federated States of
24 Micronesia is hereby further amended by enacting a new section 106
25 to read as follows:

26 "Section 106. Banking Practices - Dormant and Inactive

1 Accounts.

2 (1) In the event there has been no activity of
3 deposits or withdrawals in a savings account and no
4 contact has been made with the account holder of such
5 savings account for at least ten (10) years, the account
6 shall be deemed a 'dormant account' and the bank in
7 which such account is kept shall act to close the
8 dormant account in accordance with the procedures set
9 forth below in this section.

10 (2) In the event there has been no activity of
11 deposits or withdrawals in a checking account and no
12 contact has been made with the account holder of such
13 checking account for at least two (2) years, the account
14 shall be deemed a 'dormant account' and the bank in
15 which such account is kept shall act to close the
16 dormant account in accordance with the procedures set
17 forth below in this section.

18 (3) Bank actions in crediting interest payments to an
19 account or assessing service charges against an account
20 shall not count as activity for the purposes of
21 determining dormancy.

22 (4) Dormant accounts shall be identified annually by
23 each bank during the month of June. Any dormant account
24 with a balance of \$25.00 or less is not subject to the
25 procedures required by this section.

26 (5) Upon identification of a dormant account, the bank

1 shall send written notice to the depositor at the
2 depositor's last known address, informing the depositor
3 that the depositor's account will be closed and the
4 funds therein transferred to the Secretary of Finance if
5 the depositor does not claim the funds in the dormant
6 account by December 31 of that calendar year. The
7 notice shall be sent no later than October 1 of that
8 calendar year.

9 (6) Between November 1 and November 15 and between
10 December 1 and December 15 of each year, each bank shall
11 publish a "Notice of Inactive Bank Accounts", which
12 shall contain:

13 (a) the names, in alphabetical order, and last
14 known addresses of depositors of dormant accounts; and

15 (b) a statement that, if not claimed, such funds
16 shall be transferred to the Secretary of Finance during
17 the month of January of the following year. The Notice
18 of Inactive Bank Accounts shall be published in a
19 newspaper of general circulation or by other means as
20 determined by the Banking Board.

21 (7) During the month of January of the calendar year
22 immediately following the notification and publication
23 required by subsections (4) and (5) above, each bank
24 shall transfer to the Secretary of Finance, for the
25 account of the depositor, the full balance of each
26 dormant account, provided however, that the bank may

1 deduct costs of notice and publication in a manner to be
2 determined by the Banking Board in regulations.

3 (8) Except as provided for in this section, no bank
4 shall assess any fee against any bank account for
5 reasons of inactivity.

6 (9) In the event that a bank holds, for three (3)
7 years or more, any funds for which the owner or payor
8 cannot be determined by the bank or for which the owner
9 or payor cannot be located by the bank, the bank shall
10 transfer such funds to the Secretary of Finance for the
11 account of the owner or payor, in the event such owner
12 or payor is determined or located at a later date.

13 (10) Upon receiving sums of money pursuant to this
14 section, the Secretary of Finance shall furnish the
15 transferring bank with a receipt for such transferred
16 funds and shall deposit such sums into a custodial
17 interest bearing account separate and apart from the
18 General Fund of the FSM National Government. Interest
19 earned on funds deposited with the Secretary of Finance
20 pursuant to this section shall be deemed the property of
21 the FSM National Government and shall not be paid to the
22 owner of the funds.

23 (11) The Secretary of Finance shall be responsible for
24 maintaining accurate records of funds received pursuant
25 to this section in accordance with any regulations
26 adopted by the Banking Board.

1 (12) At any time within twenty (20) years of the date
2 of transfer of funds to the Secretary of Finance
3 pursuant to this section, such funds may be claimed by
4 their rightful owner or owners by furnishing proof of
5 his, her or their right to such funds, which proof is
6 deemed satisfactory to the Secretary of Finance.

7 (13) All funds transferred to the Secretary of Finance
8 pursuant to this section shall escheat to the National
9 Government of the Federated States of Micronesia twenty
10 (20) years following the date of such transfer.

11 (14) Each bank shall hold the FSM National Government
12 harmless for any liability incurred due to the handling
13 of an account by the bank. The FSM National Government
14 shall not be liable for any transaction on an account
15 made by any bank, including the transfer of the balance
16 of the account to the Secretary of Finance pursuant to
17 this section. The FSM National Government shall not be
18 liable for damages or penalties for any payment to a
19 claimant of funds deposited pursuant to this section.

20 (15) The bank shall not be liable for any mishandling
21 of an account by the Secretary of Finance.

22 (16) The Banking Board may adopt such rules and
23 regulations as may be necessary to implement the
24 provisions of this section.

25 Section 3. Section 201 of title 29 of the Code of the
26 Federated States of Micronesia, as amended by Public Law No. 9-

1 130, is hereby further amended to read as follows:

2 "Section 201. Creation.

3 (1) There is hereby established a Banking Board which
4 shall be composed of three members appointed by the
5 President and with the advice and consent of the
6 Congress of the Federated States of Micronesia.

7 (2) All appointments shall be for a term of four
8 years, provided however, that, unless otherwise provided
9 by the President, all rights and powers of a Banking
10 Board member shall be maintained by each member until
11 the appointment of such member's successor. Banking
12 Board [~~and~~] members shall be eligible for reappointment.

13 (3) The Chairman of the Banking Board shall be
14 appointed by the President from among the members
15 appointed pursuant to subsection (1) of this section."

16 Section 4. Section 601 of title 29 of the Code of the
17 Federated States of Micronesia, as amended by Public Laws Nos. 9-
18 130 and 12-57, is hereby further amended to read as follows:

19 "Section 601. Regulation and supervision of banks [by
20 Banking Board] - General policies.

21 (1) All domestic banks and, to the extent of and with
22 respect to business done at any branches established in
23 the Federated States of Micronesia, all foreign banks
24 doing business in the Federated States of Micronesia
25 shall be regulated and supervised by the Banking Board
26 in such manner as to secure the safe and sound conduct

1 of such business, to prevent unsound practices, and to
2 maintain the public confidence in such business and
3 protect the public interest and the interests of
4 depositors [~~, creditors, and stockholders~~].

5 (2) In determining if a Bank is carrying on its
6 business in a prudent manner, the Banking Board will
7 have regard to the following:

8 (a) capital adequacy in relation to the size and
9 nature of the business;

10 (b) asset concentration and risk exposure;

11 (c) separation of Banking Business from other
12 business and from other interests of any person owning
13 or controlling the Bank;

14 (d) adequacy of liquidity in relation to
15 liabilities;

16 (e) asset quality and adequacy of provisions for
17 losses;

18 (f) internal controls, risk management and
19 accounting systems;

20 (g) adequacy of governance arrangements
21 (including Directors and senior management) in relation
22 to the nature and scale of the business; and

23 (h) such other matters as the Banking Board
24 considers relevant.

25 (3) Every foreign bank licensed pursuant to section
26 501 of this title shall, with the concurrence of the

1 Banking Commissioner, designate the branch in the
2 Federated States of Micronesia which may be used as the
3 channel of communication between the Banking Board and
4 the Bank with respect to the application of this title
5 to its business throughout the Federated States of
6 Micronesia. Such branch shall be responsible for the
7 timely provision of reports and information by other
8 branches requested under this title. The head office of
9 a domestic bank shall be the channel of communication
10 between the Banking Board and its branches, and shall be
11 responsible for the timely provision of reports and
12 information by other branches requested under this
13 title.

14 (4) All FDBs shall comply with all existing and future
15 banking and banking-related laws, rules and regulations
16 of the United States relating to supervision,
17 regulatory, and resolution and receivership matters,
18 except any portions of such laws, rules and regulations
19 that conflict with Sections 4 or 5 of Article XIII of
20 the FSM Constitution."

21 Section 5. Section 603 of title 29 of the Code of the
22 Federated States of Micronesia, as amended by Public Law 9-130, is
23 hereby amended to read as follows:

24 "Section 603. Examination of banks - Authority;
25 Testimony; Document Production; Fees.

26 (1) The Banking Commissioner may examine, or cause to

1 be examined, every domestic or foreign bank for the
2 purpose of ascertaining whether it has complied with
3 this title and other applicable laws and for such other
4 purposes and such other matters as the Banking Board may
5 prescribe.

6 (2) The Banking Commissioner and every examiner
7 appointed by him may administer an oath to any person
8 whose testimony may be required on the examination of
9 any bank and summon and compel the appearance and
10 attendance of any person for the purpose of the
11 examination.

12 (3) As part of any examination, the Banking
13 Commissioner may also require the production of books,
14 records or other documents in whatever form.

15 [~~3~~](4) As an examination fee, each bank so examined
16 shall pay the total cost of such examination, and the
17 sum so paid shall be deposited into the General Fund of
18 the Federated States of Micronesia."

19 Section 6. Section 605 of title 29 of the Code of the
20 Federated States of Micronesia, as amended by Public Laws Nos. 9-
21 130 and 12-57, is hereby further amended to read as follows:

22 "Section 605. Special reports.

23 (1) The Banking Commissioner may request from the
24 banks special reports.

25 (2) The Banking Commissioner may, from time to time,
26 by notice in writing, require any domestic or foreign

1 bank to submit such reports and returns as he may
2 require for the purposes of the administration and
3 enforcement of the provisions of this title and any
4 regulations made thereunder.

5 (3) Any bank notified in writing under subsection (2)
6 of this section shall comply with accurate and timely
7 submissions or be subject to a penalty imposed by the
8 Banking Board in an amount not to exceed \$~~50~~100 per
9 day until the correct information has been provided to
10 the satisfaction of the Banking Commissioner.

11 (4) During the first five years of operations in the
12 Federated States of Micronesia by any domestic bank, the
13 Banking Commissioner shall call for special reports of
14 its condition not less frequently than each calendar
15 quarter."

16 Section 7. Section 613 of title 29 of the Code of the
17 Federated States of Micronesia, as amended by Public Law No. 12-
18 57, is hereby further amended to read as follows:

19 "Section 613. Limitations on loans - Related persons.

20 (1) Except as herein provided, no domestic bank shall
21 make any extension of credit to any of its officers,
22 directors, agents, ~~or~~ employees, or holders of more
23 than ten percent (10%) of the outstanding stock of the
24 bank, or to any related person, either directly or
25 indirectly, except upon the written application of such
26 person or related person stating the line of credit

1 applied for, terms and security, if any, offered
2 therefor to the board of directors or to the loan or
3 executive committee of the board, and then only with
4 the written approval of a majority of the board or a
5 majority of the loan or executive committee of the
6 board [~~committee of the bank~~] (excluding the person
7 seeking the credit) before the loan is made; and the
8 approval of the loan as allowed by the board or the
9 loan or executive committee of the board [~~committee of~~
10 ~~the bank~~] shall be made a part of the minutes of the
11 next directors' meeting of the bank.

12 (2) Loans may be made to any officer, director, agent,
13 [~~or~~] employee, or shareholder of any domestic bank or
14 any related person, without such application and
15 approval, in amounts not in excess of \$5,000 in
16 aggregate principal owing by any such individual and
17 related person at any one time.

18 (3) Extensions of credit may only be made pursuant to
19 subsections (1) and (2) of this section if they are made
20 on substantially the same terms, including interest
21 rates and collateral, as those prevailing at the time
22 for comparable transactions by the bank with members of
23 the general public; PROVIDED however, that a bank may
24 offer preferential terms to employees under an
25 internally established employee benefit program."

26 Section 8. Section 617 of title 29 of the Code of the

1 Federated States of Micronesia is hereby amended to read as
2 follows:

3 "Section 617. [~~Disclosure of grounds for denial of~~
4 ~~requests for extension of credit]~~ Applications for
5 credit - denials and records. Each bank must provide an
6 applicant with a written explanation of the basis on
7 which a decision is made to deny a [~~loan~~] written
8 application for a loan, a credit card [~~application~~], or
9 other request for extension of credit within thirty (30)
10 days from the date of receipt of such application by the
11 bank. Each bank shall keep records of all applications
12 for credit received and denials and written explanations
13 given in the manner determined by the Banking
14 Commissioner."

15 Section 9. Section 619 of title 29 of the Code of the
16 Federated States of Micronesia is hereby amended to read as
17 follows:

18 "Section 619. Acceptance of deposits - Minimum capital
19 requirements. No domestic bank may accept deposits at
20 any time that its paid-in capital, surplus, and
21 undivided profits [~~is~~] are less than \$~~[500,000]~~ 1,000,000
22 in the aggregate."

23 Section 10. Section 621 of title 29 of the Code of the
24 Federated States of Micronesia is hereby amended to read as
25 follows:

26 "Section 621. Bank stock - Ownership limitations. No

1 person or group of related persons (including entities
2 that are affiliated as parent or subsidiary companies or
3 are otherwise under common control) may acquire [~~twenty-~~
4 ~~five~~] ten percent or more of the stock of a domestic
5 bank without the prior approval of the Banking Board."

6 Section 11. Section 701 of title 29 of the Code of the
7 Federated States of Micronesia, as amended by Public Law No. 12-
8 57, is hereby further amended to read as follows:

9 "Section 701. Unsafe or unsound practices.

10 (1) This section shall apply when the Banking Board
11 has determined that a Bank licensed under this title:

12 (a) is following unsafe or unsound practices in
13 the conduct of its business that if continued may
14 jeopardize its obligations to its depositors, or
15 adversely affect the operation or stability of the
16 banking system of the FSM; or

17 (b) has contravened or failed to comply with the
18 terms and conditions of its license or the provisions of
19 this title.

20 (2) When a bank is engaged in practices described in
21 subsection (1) of this section, the Banking Board
22 [~~shall~~]:

23 (a) shall issue a directive to such Bank to cease
24 and desist from such practice, contravention or non-
25 compliance or to take such other action as the Banking
26 Board determines is necessary;

1 (b) shall issue a directive to such Bank to take
2 such action (including action to replace or strengthen
3 ~~[management]~~ officers or directors) as may be specified
4 in such directive in order to correct the conditions
5 resulting from such practices, contravention or non-
6 compliance; and

7 (c) may appoint a qualified person to advise the
8 bank on the proper conduct of its business and measures
9 to be taken to rectify its situation; the remuneration
10 to be paid to such advisor shall be fixed by the Banking
11 Board and paid by the Bank."

12 Section 12. Section 702 of title 29 of the Code of the
13 Federated States of Micronesia, as amended by Public Law No. 12-
14 57, is hereby further amended to read as follows:

15 "Section 702. ~~[Penalty for failure to comply with~~
16 ~~section 701 of this title]~~ Enforcement of directives.

17 (1) The Banking Commissioner shall promptly and fully
18 enforce all FDIC directives and orders against or
19 involving any FDB or any IAP, except to the extent that
20 such directives or orders conflict with the Constitution
21 of the FSM.

22 (2) If a Bank to which section 701 of this title has
23 been applied fails to comply promptly ~~[within a~~
24 ~~reasonable time]~~ with [a] any directive or order of the
25 FDIC or Banking Commissioner, such failure shall
26 constitute grounds for an application under section 801

1 of this title."

2 Section 13. Section 801 of title 29 of the Code of the
3 Federated States of Micronesia, as amended by Public Law No. 9-
4 130, is hereby further amended to read as follows:

5 "Section 801. Receivership – Application by Banking
6 Commissioner. If, in consequence of an examination or
7 report made by an examiner, or otherwise, the Banking
8 Board should have reason to believe that a domestic bank
9 or foreign bank is [~~not in sound financial condition to~~
10 ~~continue doing business~~] in an unsafe or unsound
11 condition or is engaging in unsafe or unsound practices;
12 or that its affairs are being conducted in such a manner
13 that the public or the persons or entities having
14 securities or funds under its custody are in danger of
15 being defrauded; or if any such bank shall violate its
16 charter or any law relative thereto, or this title in
17 any material respect; or if it becomes insolvent, then,
18 subject to Chapter 9 of this title, the Banking
19 Commissioner [~~shall~~] may apply to the Trial Division of
20 the Supreme Court of the Federated States of Micronesia
21 for the appointment of a receiver to take charge of and
22 wind up the affairs of such bank."

23 Section 14. Section 802 of title 29 of the Code of the
24 Federated States of Micronesia, as amended by Public Law 9-130, is
25 hereby further amended to read as follows:

26 "Section 802. Receivership – Appointment and duties of

1 receiver.

2 (1) If the Court, after hearing all parties concerned,
3 determines that the facts alleged by the Banking
4 Commissioner are supported by the evidence, except in
5 the event that the FDIC has appointed itself receiver
6 pursuant to Chapter 9, the Court [~~it~~] shall appoint a
7 receiver.

8 (2) Upon his appointment the receiver shall, under the
9 direction of the Banking Commissioner, take possession
10 of the assets and liabilities, books, records, papers,
11 and files of every description belonging to the bank;
12 and collect all loans, fees, and claims of the bank; and
13 see to the payment of its obligations and debts, and to
14 the necessary expenses of receivership.

15 (3) The receiver shall proceed to liquidate the
16 affairs of the bank as soon as possible, and to this end
17 may sell the personal and real property and other assets
18 of the bank, but subject to the approval of the Banking
19 Commissioner. The receiver shall continue to perform his
20 duties in the manner prescribed herein until the bank or
21 foreign bank is fully liquidated."

22 Section 15. Title 29 of the Code of the Federated States of
23 Micronesia is hereby amended by enacting a new Chapter 9 entitled
24 "FDIC Proceedings and FDBs".

25 Section 16. Title 29 of the Code of the Federated States of
26 Micronesia is hereby amended by enacting a new section 901 of

1 chapter 9 to read as follows:

2 "Section 901. Authority, Scope. This Chapter is
3 enacted in accordance with Article XI in order to set
4 forth the rights and obligations between FDBs, the FDIC
5 and the government and courts of the FSM."

6 Section 17. Title 29 of the Code of the Federated States of
7 Micronesia is hereby amended by enacting a new section 902 of
8 chapter 9 to read as follows:

9 "Section 902. Administrative Enforcement Actions.
10 Any proceeding involving administrative enforcement
11 actions against the FDB or any IAP of the FDB shall be
12 in accordance with the FDI Act and FDIC Regulations.
13 Any proceeding against the FDB or an IAP shall be held
14 in the State of Pohnpei, unless the parties agree to
15 hold a hearing in another location, or unless an
16 Administrative Law Judge finds good cause to hold a
17 hearing in a different location.

18 (1) The FDB or an affected IAP may appeal
19 administrative orders pursuant to Article XI.

20 (2) The FDIC may sue to enforce administrative orders
21 or directives pursuant to Article XI.

22 (3) The government and courts of the FSM shall
23 recognize orders and directives of the FDIC and other
24 orders pursuant to Article XI."

25 Section 18. Title 29 of the Code of the Federated States of
26 Micronesia is hereby amended by enacting a new section 903 to read

1 as follows:

2 "Section 903. Receivership. If the FDB becomes
3 'critically undercapitalized'" as that term is used in
4 Article XI, the Banking Commissioner shall act to close
5 the FDB.

6 (1) The FDIC has the authority to appoint itself
7 receiver of the FDB under the circumstances provided in
8 Article XI and to exercise all powers conferred by the
9 FDIC Act.

10 (2) Upon closure of a FDB for any reason, the FDIC
11 shall become the receiver of the FDB on the date of the
12 closing unless the FDIC notifies the Banking
13 Commissioner in writing that it will not serve as
14 receiver.

15 (3) A closed FDB shall pay the receiver's
16 administrative expenses prior to the payment of any
17 other claims of unsecured creditors. The subrogated
18 claim of the FDIC as insurer of deposits shall have
19 priority over the payment of any claims of general
20 unsecured creditors of the FDB, other than the
21 receiver's administrative expenses.

22 (4) No person alleging a claim against a FDB in
23 receivership shall be permitted to bring an action in a
24 court of law or other body (including any action that
25 existed against the FDB prior to its failure) until such
26 person has permitted the receiver a reasonable period to

1 review such claim.

2 (5) No claim against a receiver arising prior to the
3 failure of the FDB shall be valid unless it appears in
4 the FDB's records.

5 (6) No claim against the receiver for its actions in
6 liquidating the FDB shall prevail unless the plaintiff
7 proves by clear and convincing evidence that the
8 receiver acted in willful disregard of the law.

9 (7) No court or administrative agency shall enjoin the
10 operations of the receivership.

11 (8) Officers, directors and other professionals shall
12 be liable to the receiver for any damages caused to the
13 failed FDB.

14 (9) The receiver shall not be required to perform any
15 executory contract that had been entered into by the FDB
16 prior to its failure.

17 (10) Litigation between the receiver and the creditors
18 or debtors of the FDB shall not be commenced until after
19 the receiver has conducted a complete administrative
20 review of the claim.

21 (11) All suits of a civil nature to which the FDIC as
22 receiver is a party must be brought pursuant to the
23 provisions of Article XI."

24 Section 20. Title 29 of the Code of the Federated States of
25 Micronesia is hereby amended by enacting a new section 904 to read
26 as follows:

1 "Section 904. Prohibited participation. Participation
2 in the conduct of the affairs of a FDB is prohibited by
3 any IAP, person or party who:

4 (1) is subject to a final or temporary order of
5 suspension, removal, or prohibition issued by the FDIC,
6 other United States banking or regulatory agency, or
7 United States court; and/or

8 (2) has been convicted of, or has agreed to enter a
9 pre-trial diversion or similar program, in connection
10 with the prosecution for an offense of the type covered
11 by section 19 of the FDI Act, including any conviction
12 and/or diversion that takes place in the FSM or in any
13 other nation or jurisdiction."

14 Section 21. This act shall become law upon approval by the
15 President of the Federated States of Micronesia or upon its
16 becoming law without such approval.

17
18 Date: 10/26/04

Introduced by: /s/ Henry C. Asugar
Henry C. Asugar