
A BILL FOR AN ACT

To further amend title 11 of the Code of the Federated States of Micronesia by amending chapter 9, and for other purposes.

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

1 Section 1. Section 903 of title 11 of the Code of the Federated States
2 of Micronesia, as amended, is hereby further amended to read as follows:

3 "Section 903. Definitions. Under this chapter, unless the context
4 otherwise requires:

5 (1) 'Account' shall have the meaning given to it by section 1803
6 of title 12 of the Code of the Federated States of Micronesia.

7 ~~[means any facility or arrangement by which a financial institution~~
8 ~~or cash dealer does any one or more of the following:~~

9 ~~[(a) accepts deposits of currency;~~

10 ~~(b) allows withdrawals of currency or transfers into~~
11 ~~or out of the account;~~

12 ~~(c) pays checks or payment orders drawn on a financial~~
13 ~~institution or cash dealer by, or collects checks or payment~~
14 ~~orders, made by or on behalf of, a person; or~~

15 ~~(d) supplies a facility or arrangement for a safety~~
16 ~~deposit box.]~~

17 (2) 'Appeal' includes proceedings by way of discharging or
18 setting aside a judgment, and an application for a new trial or for
19 a stay of execution.

20 (3) 'Authorized officer' means a person or class of persons
21 designated by the Secretary pursuant to applicable law as an

1 authorized officer or officers for the purposes of enforcing or
2 implementing the provisions of this chapter and related laws.

3 [~~4) 'Cash dealer' means:~~

4 ~~(a) a person who carries on a business of an insurer,~~
5 ~~an insurance intermediary, a securities dealer or a futures broker,~~

6 ~~(b) a person who carries on a business of dealing in~~
7 ~~bullion, of issuing, selling or redeeming travelers' checks, money~~
8 ~~orders or similar instruments, or of collecting holding and~~
9 ~~delivering cash as part of a business of providing payroll~~
10 ~~services,~~

11 ~~(c) an operator of a gambling house, bingo parlor,~~
12 ~~casino or lottery,~~

13 ~~(d) a trustee, or manager of a unit trust.]~~

14 (4[~~5~~]) 'Covered property' means:

15 (a) any property held by a defendant;

16 (b) any property in which defendant has an interest; or

17 (c) any property held by a person to whom a defendant has
18 directly or indirectly made a gift caught by this
19 chapter [~~act~~].

20 (5[~~6~~]) 'Currency' shall have the meaning given to it by
21 section 1803 of title 12 of the Code of the Federated States of
22 Micronesia. [~~means the coin and paper money of the Federated States~~
23 ~~of Micronesia or of a foreign country that is designated as legal~~
24 ~~tender and which is customarily used and accepted as a medium of~~
25 ~~exchange in the country of issue.]~~

26 (6 [~~7~~]) 'Defendant' means a person charged or about to be

1 charged with a serious offense, whether or not he or she has been
2 convicted of the offense, and includes in the case of proceedings
3 for a restraining order under section 957, a person who is about to
4 be charged with a serious offense.

5 (~~7~~ [8]) 'Document' shall have the meaning given to it by
6 section 1803 of title 12 of the Code of the Federated States of
7 Micronesia. [~~means any material on which data is recorded or~~
8 ~~marked and which is capable of being read or understood by a~~
9 ~~person, computer system or other device, and any record of~~
10 ~~information, and includes:~~

11 ~~(a) anything on which there is writing;~~

12 ~~[(b) anything on which there are marks, figures, symbols,~~
13 ~~or perforations having meaning for persons qualified to interpret~~
14 ~~them;~~

15 ~~(c) anything from which sounds, images or writings can be~~
16 ~~produced, with or without the aid of anything else;~~

17 ~~(d) a map, plan, drawing, photograph or similar thing;~~

18 ~~(e) an electronic document.]~~

19 (~~8~~ [9]) 'Financial institution' shall have the meaning
20 given to it by section 1803 of title 12 of the Code of the
21 Federated States of Micronesia. [~~means any person who or entity~~
22 ~~which carries on a business of:~~

23 ~~[(a) acceptance of deposits and other repayable funds from~~
24 ~~the public;~~

1 ~~(b) lending, including consumer credit, mortgage credit,~~
2 ~~factoring (with or without recourse) and financing of commercial~~
3 ~~transactions;~~

4 ~~(c) financial leasing;~~

5 ~~(d) money transmission services;~~

6 ~~(e) issuing and administering means of payment (such as~~
7 ~~credit cards, travelers' checks and bankers' drafts);~~

8 ~~(f) guarantees and commitments;]~~

9 ~~[(g) trading for their own account or for account of~~
10 ~~customers in money market instruments (such as checks, bills,~~
11 ~~certificates of deposit), foreign exchange, financial futures and~~
12 ~~options, exchange and interest rate instruments, and transferable~~
13 ~~securities;~~

14 ~~(h) underwriting share issues and participation in such~~
15 ~~issues;~~

16 ~~(i) advice to undertakings on capital structure,~~
17 ~~industrial strategy and related questions, and advice and services~~
18 ~~relating to mergers and the purchase of~~
19 ~~undertakings;~~

20 ~~(j) money brokering;~~

21 ~~(k) portfolio management and advice;~~

22 ~~(l) safekeeping and administration of securities;~~

23 ~~(m) credit reference services; or~~

24 ~~(n) safe custody services.]~~

25 (9 [10]) 'Gift' includes any transfer of property by a
26 person to another person directly or indirectly:

1 (a) after the commission of a serious crime by the first
2 person;

3 (b) for a consideration the value of which is
4 significantly less than the value of the property transferred; and

5 (c) to the extent of the difference between the market
6 value of the property transferred and the consideration provided by
7 the transferee.

8 (10 [~~11~~]) 'Interest', in relation to property, means:

9 (a) a legal or equitable estate or interest in the
10 property; or

11 (b) a right, power or privilege in connection with the
12 property.

13 (11 [~~12~~]) 'Money laundering' shall have the meaning given
14 to it by section 912 of this chapter. [~~means:~~

15 [~~(a) engaging, directly or indirectly, in a transaction~~
16 ~~that involves property that is proceeds of crime;~~

17 [~~(b) receiving, possessing, concealing, disguising,~~
18 ~~transferring, converting, disposing of, removing from or bringing~~
19 ~~into the country any property which is a proceeds of crime;~~

20 [~~(c) knowing, or having reasonable grounds for suspecting~~
21 ~~that the property is derived or realized, directly or indirectly,~~
22 ~~from some form of unlawful activity;~~

23 [~~(d) where the conduct is conduct of a natural person,~~
24 ~~without reasonable excuse, failing to take reasonable steps to~~
25 ~~ascertain whether or not the]-[property is derived or realized~~
26 ~~directly or indirectly, from some form of unlawful activity; or~~

1 ~~(d) where the conduct is a conduct of a financial~~
2 ~~institution, failing to implement or apply procedures and control~~
3 ~~to prevent or combat money laundering.]~~

4 (12[13]) 'Person' means any natural or legal person.

5 (13 [14]) 'Proceeding' or 'proceedings' means any procedure
6 conducted by or under the supervision of a judge or judicial
7 officer, however described, in relation to any alleged or proven
8 offense, or property derived from such offense, and includes an
9 inquiry, investigation, or preliminary or final determination of
10 facts.

11 (14 [15]) 'Proceeds of crime' means fruits of a crime, or
12 any property that is:

13 (a) wholly or partly derived or realized directly or
14 indirectly from the commission of a serious offense;

15 (b) wholly or partly derived or realized from a disposal
16 or other dealing with proceeds of the offense; or

17 (c) wholly or partly acquired using proceeds of the
18 offense;

19 and includes, on a proportional basis, property into which any
20 property derived or realized directly from the offense was later
21 successively converted, transformed or intermingled, as well as
22 income, capital or other economic gains wholly or partially derived
23 or realized from such property at any time since the offense.

24 (15 [16]) 'Property' shall have the meaning given to
25 it by section 1803 of title 12 of the Code of the Federated States
26 of Micronesia. ~~means currency and all other real or personal~~

1 ~~property of every description, whether situated in the Federated~~
2 ~~States of Micronesia or elsewhere and whether tangible or~~
3 ~~intangible, and includes an interest in any such property.~~

4 (16 [17]) 'Property of or in the possession or control of
5 any person' includes any gift made by that person.

6 (17 [18]) 'Realizable', with respect to 'covered property'
7 as defined by subsection (4 6), means:

8 (a) capable of being acquired, obtained, taken,
9 seized, confiscated, or procured, and is either cash or is capable
10 of being liquidated and converted into cash; or (b) capable of
11 being detected, located, found, discovered, and converted into cash
12 through payment of the amount or value of the defendant's interest
13 therein.

14 (18 [19]) 'Secretary' means and is synonymous with the
15 Secretary of the Department of Justice of the Federated States of
16 Micronesia, or with the chief law enforcement officer of the
17 Federated States of Micronesia, whatever the title of such position
18 is or in the future becomes.

19 (19 [20]) 'Serious offense' means a violation of:

20 (a) any law of Federated States of Micronesia or any of
21 its States or political subdivisions, which is a criminal offense
22 punishable by imprisonment for a term of more than one year or a
23 fine of more than \$10,000; or

24 (b) a law of a foreign State, in relation to acts or
25 omissions, which, had they occurred in Federated States of
26 Micronesia or any of its States or political subdivisions, would

1 have constituted a criminal offense punishable by imprisonment for
2 a term of more than one year or a fine of more than \$10,000.

3 (~~20~~ [21]) 'Supreme Court' means the Supreme Court of
4 the Federated States of Micronesia, and all its divisions, wherever
5 or whenever constituted.

6 (~~21~~ [22]) 'Tainted property' means:

7 (a) property used in or in connection with, or intended to
8 be used in or in connection with the commission
9 of a serious offense; or

10 (b) proceeds of crime, as defined in subsection (~~14~~ 16) of
11 this section.

12 (~~22~~ [23]) 'Unit trust' means any arrangement made for
13 the purpose or having the effect of providing for a person to have
14 funds available for investment; facilities for the participation by
15 a person as a beneficiary under a trust, or in any profits or
16 income arising from the acquisition, holding, management or
17 disposal of any property pursuant to the trust.

18 (~~23~~ [24]) A reference in this chapter to the law of:

19 (a) the Federated States of Micronesia;

20 (b) any State of the Federated States of Micronesia; or

21 (c) any foreign State,

22 includes a reference to a written or unwritten law of, or in force
23 in, any part of the Federated States of Micronesia (including its
24 States and political subdivisions), any part
25 of that State of the Federated States of Micronesia, or any part of
26 that foreign State, as the case may be."

1 Section 2. Section 908 of title 11 of the Code of the Federated States
2 of Micronesia, as amended, is hereby further amended by adding to read as
3 follows:

4 "Section 908. Dealing with property. For the purposes of this
5 chapter [~~act~~], dealing with property held by any person includes,
6 without prejudice to the generality of the expression:

7 (1) where the property is a debt owed to that person, making a
8 payment to any person in reduction or full settlement of the amount
9 of the debt;

10 (2) giving, taking ~~making~~ or receiving property as a gift [~~of~~
11 ~~the property~~]; or

12 (3) removing the property from Federated States of Micronesia."

13 Section 3. Section 911 of title 11 of the Code of the Federated States
14 of Micronesia, as amended, is hereby further amended to read as follows:

15 "Section 912. Benefiting from the proceeds of a serious offense.

16 For the purposes of this chapter [~~act~~]:

17 (1) a person has benefited from an offense if that person has at
18 any time (whether before or after the commencement of this chapter
19 [~~act~~]) received any payment or other reward in connection with, or
20 derived any pecuniary advantage from, the commission of a serious
21 offense, whether committed by that person or someone else.

22 ~~[(2) a person's proceeds of a serious offense (whether received~~
23 ~~or derived before or after the commencement of this Act) are:~~

24 ~~(a) any payments or other rewards received by the person~~
25 ~~at any time in connection with the offense, and/or]~~

1 ~~[(b) any pecuniary advantage derived by the person at any~~
2 ~~time from the commission of offense.]~~

3 (2 [3]) The value of a person's proceeds of a serious
4 offense is the aggregate of the values of all payments, rewards or
5 pecuniary advantages received by that person in connection with, or
6 derived by the person from, the commission of the offense."

7 Section 4. Section 912 of title 11 of the Code of the
8 Federated States of Micronesia, as amended, is hereby deleted in
9 its entirety and a new section 912 is enacted to read as follows:

10 "Section 912. Money laundering offenses.

11 (1) A person commits the offense of money laundering if the
12 person:

13 (a) acquires, possesses or uses property, knowing or
14 having reason to believe that it is derived directly or indirectly
15 from acts or omissions that would constitute a serious offense;

16 (b) conceals, disguises, converts, transfers, removes from
17 or brings into the Federated States of Micronesia property knowing
18 or having reason to believe that it is derived directly or
19 indirectly from acts or omissions that would constitute a serious
20 offense;

21 (c) engages directly or indirectly in a transaction that
22 involves property knowing or having reason to believe that it is
23 derived directly or indirectly from acts or omissions that would
24 constitute a serious offense; or

25 (d) enters into or becomes concerned in an arrangement
26 knowing or having reason to believe that it facilitates (by

1 whatever means) the acquisition, retention, use or control of
2 property derived directly or indirectly from acts or omissions that
3 would constitute a serious offense.

4 (2) Concealing or disguising property includes concealing or
5 disguising its nature, source, location, disposition, movement,
6 ownership or any rights with respect to it.

7 (3) An offense under subsection (1) of this section is committed
8 by a person who:

9 (a) commits or attempts to commit the offense;

10 (b) organizes, solicits or directs another person to
11 commit the offense;

12 (c) conspires with another person to commit the offense;

13 (d) participates as an accomplice to a person committing,
14 or attempting to commit, the offense; or

15 (e) aids or abets another person to commit the offense.

16 (4) The offense of money laundering, established under
17 subsection (1) or (3) of this section, is a felony offense,
18 punishable by imprisonment for a maximum term of ten years or a
19 maximum fine of \$100,000, or both; provided, however, in the case
20 of a corporation, company, commercial enterprise, commercial entity
21 or other legal person, the maximum fine shall be increased to
22 \$500,000.

23 (5) Any person may be convicted of a money laundering offense
24 under subsection (1) or (3) of this section notwithstanding the
25 absence of a conviction in respect of the underlying serious

1 offense which generated the proceeds alleged to have been
2 laundered."

3 Section 5. Section 913 of title 11 of the Code of the
4 Federated States of Micronesia, as amended, is hereby deleted in
5 its entirety and a new section 913 is enacted to read as follows:

6 "Section 913. Property tracking. For the purpose of
7 determining whether any property belongs to, or is in
8 the possession or under the control of, any person
9 subject to an investigation of a serious offense or a
10 money laundering offense, the Department of Justice for
11 the Federated States of Micronesia may, upon application
12 to the Supreme Court, obtain an production order
13 pursuant to section 971 of this chapter."

14 Section 6. Section 914 of title 11 of the Code of the
15 Federated States of Micronesia, as amended, is hereby deleted in
16 its entirety and a new section 914 is enacted to read as follows:

17 "Section 914. Secrecy and confidentiality obligations overridden.
18 The provisions of this chapter shall have effect notwithstanding
19 any obligation as to secrecy, confidentiality, or other restriction
20 on disclosure of information imposed by law or otherwise."

21 Section 7. Section 915 of title 11 of the Code of the Federated States
22 of Micronesia, as amended, is hereby deleted in its entirety and a new section
23 915 is enacted to read as follows:

24 "Section 915. Immunity where official powers or functions
25 exercised in good faith. No suit, prosecution or other legal
26 proceedings shall lie against the government of the Federated

1 States of Micronesia, or any officer or other person in respect of
2 anything done by or on behalf of that person, with due diligence
3 and in good faith, in the exercise of any power or the performance
4 of any function under this chapter or any regulation or order made
5 pursuant to this chapter."

6 Section 8. Sections 916, 917, 918, 919, 920, 921, 922, 923, 924, 925,
7 926, 927 and 928 of title 11 of the Code of the Federated States of Micronesia,
8 as amended, are hereby deleted in their entirety.

9 Section 9. Section 929 of title 11 of the Code of the Federated States
10 of Micronesia, as amended, is hereby further
11 amended to read as follows:

12 "Section 929. Application for confiscation and pecuniary penalty
13 orders.

14 (1) Where a defendant is convicted of a serious offense or
15 property has been seized or restrained, the Department of Justice
16 for the Federated States of Micronesia [~~Secretary~~] may apply to the
17 Supreme Court for one or both of the following orders:

18 (a) a confiscation order against property that is tainted
19 property [~~in respect of the offense~~]; or

20 (b) a pecuniary penalty order against the defendant in
21 respect of benefits derived by the defendant from the commission of
22 the offense; provided however, such application must be made within
23 three [~~one~~] years of the date the defendant was convicted for the
24 serious offense.

25 (2) An application under subsection (1) of this section may be
26 made in respect of one or more than one offense.

1 (3) Where an application under this section is finally
2 determined, no further application for a confiscation order or a
3 pecuniary penalty order may be made [~~in respect of the offense for~~
4 ~~which the defendant~~]-[~~was convicted~~] without the leave of the
5 Supreme Court. The Supreme Court shall not give such leave unless
6 it is satisfied that:

7 (a) the property or benefit to which the new application
8 relates[~~7~~] was acquired, accrued or ~~was~~
9 identified after the previous application was determined;

10 (b) necessary evidence became available after the previous
11 application was determined and could not reasonably have been
12 discovered before such determination; or

13 (c) it is in the interest of justice that the new
14 application be made.

15 (4) Proceedings on an application for a confiscation or
16 pecuniary penalty order shall be civil proceedings and the standard
17 of proof shall be by the preponderance of the evidence."

18 Section 10. Section 930 of title 11 of the Code of the Federated States
19 of Micronesia, as amended, is hereby further amended to read as follows:

20 "Section 930. Notice of application.

21 (1) Where Secretary applies for a confiscation order pursuant to
22 section 929 of this chapter [~~against property in respect of the~~
23 ~~defendant's conviction of a serious offense~~]:

24 (a) the Department of Justice [~~Secretary~~] must give no
25 less than 14 days written notice of the application to the

1 defendant and to any other person who the Secretary has reason to
2 believe may have an interest in the property;

3 (b) the defendant and any other person who claims an
4 interest in the property may appear and adduce evidence at the
5 hearing of the application; and

6 (c) the Supreme Court may, at any time before the final
7 determination of the application, direct the Secretary to:

8 (i) give notice of the application to any other
9 person who, in the opinion of the Supreme Court, appears to have an
10 interest in the property;

11 (ii) announce on public radio, post a notice at the
12 main Post Office and all branch offices, and at the National
13 Government headquarters in Palikir, and publish in a newspaper
14 published and circulating in the Federated States of Micronesia, a
15 notice of the application.

16 (2) Where the Secretary applies for a pecuniary penalty order
17 against a defendant:

18 (a) the Secretary shall give the defendant no less than 14
19 days notice of the application; and

20 (b) the defendant may appear and adduce evidence at the
21 hearing of the application."

22 Section 11. Section 931 of title 11 of the Code of the Federated States
23 of Micronesia, as amended, is hereby further amended to read as follows:

24 "Section 931. Amendment of application.

25 (1) The Supreme Court hearing the application under subsection
26 929(1) of this chapter may, before the final determination of the

1 application, and on the application of the Secretary, amend the
2 application to include any other property or benefit, as the case
3 may be, upon being satisfied that:

4 (a) the property or benefit was not reasonably capable of
5 identification when the application was made;

6 (b) necessary evidence became available only after the
7 application was originally made; or

8 (c) the property was acquired after the application was
9 made.

10 (2) Where the Secretary applies to amend an application for a
11 confiscation order and the amendment would have the effect of
12 including additional property in the application for confiscation,
13 the Secretary must give no less than 14 days written notice of the
14 application to amend, to any person who the Secretary has a reason
15 to believe may have an interest in the property to be included in
16 the application for a confiscation order.

17 (3) Any person who claims an interest in the property to be
18 included in the application of a confiscation order may appear and
19 adduce evidence at the hearing of the application to amend.

20 (4) Where the Secretary applies to amend an application for a
21 pecuniary penalty order against a defendant and the effect of the
22 amendment would be to include an additional benefit in the
23 application the Secretary must give the defendant no less than 14
24 days written notice of the application to amend."

25 Section 12. Section 932 of title 11 of the Code of the Federated States
26 of Micronesia, as amended, is hereby further amended to read as follows:

1 "Section 932. Procedure on application.

2 (1) Where an application is made to the Supreme Court for a
3 confiscation order or a pecuniary penalty order [~~in respect of a~~
4 ~~defendant's conviction of a serious offense~~], the Supreme Court
5 may, in determining the application, have regard to the transcript
6 of any related proceedings against the defendant for the offense.

7 (2) Where an application is made for a confiscation order or a
8 pecuniary penalty order to the Supreme Court before which the
9 defendant was convicted, and the Supreme Court has not, when the
10 application is made, passed sentence on the defendant for the
11 offense, the Supreme Court may, if it is satisfied that it is
12 reasonable to do so in all the circumstances, defer passing
13 sentence until it has determined the application for the order."

14 Section 13. Section 935 of title 11 of the Code of the Federated States
15 of Micronesia, as amended, is hereby further amended to read as follows:

16 "Section 935. Confiscation order [~~on conviction~~].

17 (1) Where, upon application by the Secretary, the Supreme Court
18 is satisfied that property is tainted property [~~in respect of a~~
19 ~~serious offense of which a person has been convicted~~], the Supreme
20 Court may order that specified property be confiscated.

21 (2) In determining whether property is tainted property the
22 Supreme Court may presume, in the absence of evidence to the
23 contrary:

24 (a) that the property was used in or in connection with,
25 or was intended to be used in or in connection with, the commission
26 of the offense if it was in the person's possession or effective

1 control at the time of, or immediately after the commission of the
2 offense [~~for which the person was convicted~~]; and/or

3 (b) that the property was derived, obtained or realized as
4 a result of the commission of the offense if

5 (i) the property was found during investigations
6 before or after the person was arrested for and charged with the
7 offense, in the person's possession or under the person's control
8 in a building, vehicle, receptacle or place; or

9 (ii) the property [it] was acquired by the person
10 before, during or within a reasonable time after the period of the
11 commission of the offense [~~of which the person was convicted~~], and
12 the Supreme Court is satisfied that the income of that person from
13 sources unrelated to criminal activity of that person, cannot
14 reasonably account for the acquisition of that property.

15 (3) For purposes of subsection 935(2)(a) of this section,
16 'effective control' shall have the meaning given to it under
17 subsections 947(1) and (2) of this chapter.

18 (4 [~~3~~]) Where the Supreme Court orders that property,
19 other than money, be confiscated, the Supreme Court shall specify
20 in the order the amount that it considers to be the value of the
21 property at the time when the order is made, taking account of how
22 such value is to be determined under section 907 of this chapter
23 [~~act~~].

24 (5 [~~4~~]) In considering whether a confiscation order
25 should be made under subsection (1) of this section the Supreme
26 Court shall have regard to:

1 (a) the rights and interests, if any, of innocent third
2 parties in the property;

3 (b) the gravity of the offense concerned;

4 (c) any hardship that may reasonably be expected to be
5 caused to any innocent person by the operation of the order; and

6 (d) the use that is ordinarily made of the property, or
7 the use to which the property was intended to be put.

8 (6 [~~5~~]) Where the Supreme Court makes a confiscation
9 order, the Supreme Court may give such directions as are necessary
10 or convenient for giving effect to the order."

11 Section 14. Section 937 of title 11 of the Code of the Federated States
12 of Micronesia, as amended, is hereby further to read as follows:

13 "Section 937. Voidable transfers. The Supreme Court may, before
14 making a confiscation order or pecuniary penalty order, and in the
15 case of property in respect of which a restraining order was made,
16 where the order was served in accordance with section 960 of this
17 chapter title, set aside any conveyance or transfer of the property
18 [~~that occurred after the seizure of the property or~~] that occurred
19 in circumstances that give rise to a reasonable inference that the
20 property was transferred for the purpose of avoiding a restraining,
21 confiscation or pecuniary penalty order [~~the service of the~~
22 ~~restraining order~~], unless the conveyance or transfer was made for
23 valuable consideration to a person acting in good faith and without
24 notice."

25 Section 15. Section 940 of title 11 of the Code of the Federated States
26 of Micronesia, as amended, is hereby further amended to read as follows:

1 "Section 940. Payment instead of a confiscation order. Where the
2 Supreme Court is satisfied that a confiscation order should be made
3 in respect of the property of a person [~~convicted of a serious~~
4 ~~offense~~], but that the property or any part thereof or interest
5 therein cannot be made subject to such an order and, in particular:

6 (1) cannot, on the exercise of due diligence be located;

7 (2) has been transferred to a bona fide third party purchaser
8 for value and without notice, or to a third party in circumstances
9 which do not give rise to a reasonable inference that the title or
10 interest was transferred for the purpose of avoiding the
11 confiscation of the property;

12 (3) is located outside Federated States of Micronesia;

13 (4) has been substantially diminished in value or rendered
14 worthless; [~~or~~]

15 (5) has been commingled with other property that cannot be
16 divided without difficulty; or

17 (6) is subject to customary or native land rights and cannot be
18 confiscated;

19 the Supreme Court may, instead of ordering the property
20 or part thereof or interest therein to be confiscated,
21 order the person to pay to the Federated States of
22 Micronesia an amount equal to the value of the property,
23 part or interest, or to forfeit other property of
24 equivalent value, taking account of section 907 of this
25 chapter [~~act~~]."

1 Section 16. Section 942 of title 11 of the Code of the Federated States
2 of Micronesia, as amended, is hereby further amended to read as follows:

3 "Section 942. Pecuniary penalty order on conviction.

4 (1) Subject to this section, where the Secretary applies to the
5 Supreme Court for a pecuniary penalty order against a defendant [~~in~~
6 ~~respect of the defendant's conviction for a serious offense~~], the
7 Court shall, if it is satisfied that the defendant has benefited
8 from that offense, order the defendant to pay to the Federated
9 States of Micronesia an amount equal to the value of the
10 defendant's benefit from the offense or such lesser amount as the
11 Court determines in accordance with section 945 of this chapter
12 [~~title~~], to be the amount that might be recovered at the time the
13 pecuniary penalty order is made.

14 (2) The Supreme Court shall assess the value of the benefits
15 derived by a person from the commission of an offense in accordance
16 with sections 943, 944, 945, and 946 of this chapter [~~title~~].

17 (3) The Supreme Court shall not make a pecuniary penalty order
18 under this section:

19 (a) until the period allowed by the rules of court for the
20 lodging of an appeal against the conviction has expired without
21 such appeal having been lodged; or

22 (b) where an appeal against the conviction has been
23 lodged, until the appeal is dismissed in accordance with the rules
24 of court or is finally determined; whichever is the later date."

25 Section 17. Section 943 of title 11 of the Code of the Federated States
26 of Micronesia, as amended, is hereby further amended to read as follows:

1 "Section 943. Determination of benefit and assessment of value.

2 (1) Where a defendant obtains property as the result of,
3 or in connection with the commission of a serious offense, the
4 defendant's benefit is the value of the property so obtained.
5 Value means fair market value at the time the property was obtained
6 or at the time of conviction, at whichever time the value is
7 greater.

8 (2) Where a defendant derived an advantage as a result of or in
9 connection with the commission of a serious offense, the
10 defendant's advantage shall be deemed to be a sum of money equal to
11 the value of the advantage so derived.

12 (3) The Supreme Court, in determining whether a person has
13 benefited from the commission of a serious offense or from that
14 offense taken together with other serious offenses shall, unless
15 the contrary is proved by the defendant beyond a reasonable doubt,
16 presume:

17 (a) all property appearing to the Supreme Court to be held
18 by the person:

19 (i) on the day on which the application is made;

20 (ii) at any time within the period between the day
21 the serious offense, or the earliest serious offense, was committed
22 and the day on which the application is made; or

23 (iii) within the period of six years immediately
24 before the day on which the application is made;
25 whichever is the longer, to be property that came into the
26 possession or under the control of the person by reason of the

1 commission of that serious offense or those serious offenses [~~for~~
2 ~~which the defendant was convicted~~];

3 (b) any expenditure by the defendant since the commission
4 of the offense to be expenditure meted out of payments received by
5 the defendant as a result of, or in connection with, the commission
6 of that serious offense or those serious offenses; and

7 (c) any property received or deemed to have been received
8 by the defendant at any time as a result of, or in connection with
9 the commission by the defendant of that serious offense, or those
10 serious offenses, to be property received by the defendant free of
11 any interest therein.

12 (4) Where a pecuniary penalty order has been previously made
13 against a defendant, in assessing the value of any benefit derived
14 by the defendant from the commission of the serious offense, the
15 Supreme Court shall leave out of account any benefits that are
16 shown to the Supreme Court to have been taken into account in
17 determining the amount to be recovered under that order.

18 (5) If evidence is given at the hearing of the application that
19 the value of the defendant's property at any time after the
20 commission of the serious offense exceeded the value of the
21 defendant's property before the commission of the offense, then the
22 Supreme Court shall, subject to subsection (6) of this section,
23 treat the value of the benefit as being not less than the amount of
24 that excess.

25 (6) If, after evidence of the kind referred to in subsection (5)
26 of this section is given, the defendant satisfies the Supreme Court

1 beyond a reasonable doubt that the whole or part of the excess was
2 due to causes unrelated to the commission of the serious offense,
3 subsection (5) of this section does not apply to the excess or, as
4 the case may be, that part.”

5 Section 18. Section 944 of title 11 of the Code of the Federated States
6 of Micronesia, as amended, is hereby further amended to read as follows:

7 “Section 944. Statements relating to benefits from commission of
8 serious offenses.

9 (1) Where:

10 (a) a defendant has committed [~~been convicted of~~] a
11 serious offense and the Secretary tenders to the Supreme Court a
12 statement as to any matters relevant to:

13 (i) determining whether the defendant has benefited
14 from the offense or from any other serious offense of which
15 defendant is convicted in the same proceedings or which is taken
16 into account in determining his or her sentence; or

17 (ii) an assessment of the value of the defendant’s
18 benefit from the offense or any other serious offense of which
19 defendant is convicted in the same proceedings or which is taken
20 into account; and

21 (b) the defendant admits to any extent an allegation in
22 the statement;
23 the Supreme Court may, for the purposes of so determining or making
24 that assessment, treat the defendant’s admission as conclusive of
25 the matters to which it relates.

26 (2) Where:

1 (a) a statement is tendered under subsection (1)(a) of
2 this section; and

3 (b) the Court is satisfied that a copy of that statement
4 has been served on the defendant;

5 the Supreme Court may require the defendant to indicate to what
6 extent the defendant admits each allegation in the statement and,
7 so far as the defendant does not admit any allegation, to indicate
8 any matters the defendant proposes to deny or reply on.

9 (3) Where the defendant fails in any respect to comply with a
10 requirement under subsection (2) of this section, the defendant may
11 be treated for the purposes of this section, as having admitted
12 every allegation in the statement except for any allegation in
13 respect of which the defendant complied with the requirements of
14 subsection (2) of this section.

15 (4) Where:

16 (a) the defendant tenders to the Supreme Court a statement
17 as to any matters relevant to determining the amount that might be
18 recovered at the time the pecuniary penalty order is made; and

19 (b) the Secretary admits to any extent any allegation in
20 the statement;

21 the Supreme Court may, for the purposes of that determination,
22 treat the admission of the Secretary as conclusive of the matters
23 to which it relates.

24 (5) An allegation may be admitted, denied, or a matter indicated
25 for the purposes of this section, either:

26 (a) orally before the Supreme Court; or

1 (b) in writing, in accordance with rules of court.

2 (6) An admission by a defendant under this section that the
3 defendant received any benefits from the commission of a serious
4 offense is admissible in any proceedings for any offense."

5 Section 19. Section 950 of title 11 of the Code of the Federated States
6 of Micronesia, as amended, is hereby further amended to read as follows:

7 "Section 950. Powers to search for and seize tainted property.

8 (1) In addition to any powers granted under title 12 of the Code
9 of the Federated States of Micronesia and other applicable laws,
10 the Department of Justice of the Federated States of Micronesia may
11 authorize a police officer to [~~may~~]:

12 (a) search a person for tainted property;

13 (b) enter upon land or upon or into premises and search
14 the land or premises for tainted property or evidence relating to a
15 serious offense; and

16 (c) in either case, seize any property found in the course
17 of the search that the police officer believes, on reasonable
18 grounds to be tainted property or evidence relating to a serious
19 offense, provided that the search or seizure is made:

20 (i) with the consent of the person or the occupier
21 of the land or premises as the case may be;

22 (ii) under a warrant issued under section 951 of this
23 chapter [~~title~~]; or

24 (iii) under section 953 of this chapter [~~title~~].

25 (2) Where a police officer may search a person under this
26 chapter [~~act~~], the officer may also search:

- 1 (a) the clothing that is being worn by the person; and
2 (b) any property in, or apparently in, the person's
3 immediate control."

4 Section 20. Section 951 of title 11 of the Code of the Federated States
5 of Micronesia, as amended, is hereby further amended to read as follows:

6 "Section 951. Search warrants in relation to tainted property.

7 (1) Where a police officer has probable cause to believe that
8 there is, or may be [~~within the next 72 hours~~], tainted property of
9 a particular kind or evidence relating to a serious offense - [+]

- 10 (a) on a person;
11 (b) in the clothing that is being worn by a person;
12 (c) otherwise in a person's immediate control; or
13 (d) upon land or upon or in any premises,

14 the police officer may lay before a judge, a sworn affidavit
15 setting out those grounds and apply for the issuance of a warrant
16 under this chapter [~~act~~] or under title 12 of the Code of the
17 Federated States of Micronesia, to search the person, the land or
18 the premises as the case may be, for tainted property of that kind
19 or evidence relating to a serious offense.

20 (2) Where an application is made under subsection (1) of this
21 section for a warrant to search a person, land or premises, the
22 justice may, subject to subsection (4) of this section issue a
23 warrant authorizing a police officer (whether or not named in the
24 warrant) with such assistance and by such force as is necessary and
25 reasonable:

1 (a) to search the person for tainted property of that kind
2 or evidence of a serious offense;

3 (b) to enter upon the land or in or upon any premises and
4 to search the land or premises for tainted property of that kind or
5 evidence of a serious offense; and

6 (c) to seize property found in the course of the search
7 that the police officer has probable cause to believe to be tainted
8 property of that kind or evidence of a serious offense.

9 (3) A warrant may be issued under subsection (2) of this section
10 in relation to tainted property or evidence of a serious offense,
11 whether or not an information or complaint has been filed in
12 respect of the relevant offense.

13 (4) A judge shall not issue a warrant under subsection (2) of
14 this section unless, where an information or complaint has not been
15 filed in respect of the relevant offense at the time when the
16 application for the warrant is made, the judge is satisfied that
17 there is probable cause to believe a crime has been or is about to
18 be committed and that tainted property or evidence of such crime is
19 located at the place or on the person or thing to be searched.

20 (5) A warrant issued under this section shall state:

21 (a) the purpose for which it is issued, including a
22 reference to the nature of the relevant offense;

23 (b) a description of the kind of property authorized to be
24 seized;

25 (c) a time at which the warrant ceases to be in force; and

1 (d) whether entry is authorized to be made at any time of
2 the day or night or during specified hours.

3 (6) If during the course of searching under a warrant issued
4 under this section, a police officer finds:

5 (a) property that the police officer has probable cause to
6 believe to be tainted property either of a type not specified in
7 the warrant or tainted property in relation to another serious
8 offense; or

9 (b) any thing the police officer has probable cause to
10 believe will afford evidence as to the commission of a serious
11 offense (whether or not such offense is the same as that described
12 in the warrant);
13 the police officer may seize that property or thing and the warrant
14 shall be deemed to authorize such seizure."

15 Section 21. Section 953 of title 11 of the Code of the Federated States
16 of Micronesia, as amended, is hereby further amended to read as follows:

17 "Section 953. Searches in emergencies.

18 (1) Where a police officer has probable cause to believe that:

19 (a) particular property is tainted property or evidence
20 relating to a serious offense;

21 (b) it is necessary to exercise the power of search and
22 seizure in order to prevent the concealment, loss or destruction of
23 the property; and

24 (c) the circumstances are so urgent that they require
25 immediate exercise of the power without the authority of a warrant
26 or the order of a court;

1 the police officer may:

2 (i) search a person;

3 (ii) enter upon land, or upon or into premises and
4 search for the property; and

5 (iii) if property is found, seize the property.

6 (2) If during the course of a search conducted under this
7 section, a police officer finds:

8 (a) property that the police officer has probable cause to
9 believe to be tainted property; or

10 (b) anything the police officer has probable cause to
11 believe will afford evidence as to the commission of a serious
12 offense;

13 the police officer may seize that property or thing."

14 Section 22. Section 957 of title 11 of the Code of the Federated States
15 of Micronesia, as amended, is hereby further amended to read as follows:

16 "Section 957. Application for restraining order.

17 (1) The Secretary may apply to the Supreme Court for a
18 restraining order against any covered property whether held by a
19 defendant or held by a person other than a defendant.

20 (2) An application for a restraining order may be made ex parte
21 and shall be in writing and be accompanied by an
22 affidavit stating:

23 (a) where a defendant has been convicted of a serious
24 offense, the serious offense for which the defendant was convicted,
25 the date of the conviction, the court before which the conviction

1 was obtained and whether an appeal has been lodged against the
2 conviction;

3 (b) where a defendant has not been convicted of a serious
4 offense, the serious offense with which the defendant is charged or
5 about to be charged, or is believe to have committed, and the
6 grounds for believing that the defendant committed the offense;

7 (c) a description of the property sought to be restrained;

8 (d) the name and address of the person who is believed to
9 be in possession of the property;

10 (e) the grounds for the belief that the property is
11 tainted property in relation to an [~~the~~] offense;

12 (f) the grounds for the belief that the defendant derived
13 a benefit directly or indirectly from the commission of an [~~the~~]
14 offense;

15 (g) where the application seeks a restraining order
16 against property of a person other than the defendant, the grounds
17 for the belief that the property is tainted property in relation to
18 an [~~the~~] offense or [~~and~~] is subject to the effective control of
19 the defendant; and

20 (h) the grounds for the belief that a confiscation order
21 or a pecuniary penalty order may be or is likely to be made under
22 this subchapter in respect of the property."

23 Section 23. Section 958 of title 11 of the Code of the Federated States
24 of Micronesia, as amended, is hereby further amended to read as follows:

25 "Section 958. Restraining orders.

1 (1) Subject to this section, where the Secretary applies to the
2 Supreme Court for a restraining order against property and the
3 Supreme Court is satisfied that:

4 (a) the defendant has been convicted of a serious offense,
5 or has been charged or is about to be charged with a serious
6 offense;

7 (b) where the defendant has not been convicted of a
8 serious offense, there are reasonable grounds for believing that
9 the defendant committed the offense;

10 (c) there is reasonable cause to believe that the property
11 is tainted property in relation to an offense, or that the
12 defendant derived a benefit directly or indirectly from the
13 commission of an ~~[the]~~ offense;

14 (d) where the application seeks a restraining order
15 against property of a person other than the defendant, there are
16 reasonable grounds for believing that the property is tainted
17 property ~~[in relation to an offense]~~, or ~~[and]~~ that the property is
18 subject to the effective control of the defendant; and

19 (e) there are reasonable grounds for believing that a
20 confiscation order or a pecuniary penalty order is likely to be
21 made under this subchapter in respect of the property;
22 the Supreme Court may make an order prohibiting the defendant or
23 any person from disposing of, or otherwise dealing with, the
24 property or such part thereof or interest therein as is specified
25 in the order, except in such manner as may be specified in the
26 order, and at the request of the Secretary, or upon its own motion,

1 where the Supreme Court is satisfied that the circumstances so
2 require:

3 (i) [~~the court is authorized to~~] appoint a receiver
4 or fiduciary to take custody of the property or such part thereof
5 as is specified in the order, and to manage or otherwise deal with
6 all or any part of the property in accordance with the directions
7 of the Supreme Court; and

8 (ii) require any person having possession of the
9 property to give possession thereof to the receiver or fiduciary.

10 (2) In extreme cases, where undue hardship to innocent parties
11 would otherwise occur, an order under subsection (1) of this
12 section may be made subject to such conditions as the Supreme Court
13 deems fit providing for meting out of the property, or a specified
14 part of the property, the reasonable living expenses of defendant's
15 immediate family where the Court is satisfied that such expenses
16 cannot be covered out of property that is not subject to a
17 restraining order.

18 (3) In determining whether there are reasonable
19 grounds for believing property is subject to the
20 effective control of the defendant, the Court may take
21 into account the matters referred to in section 947 of
22 this chapter [~~title~~].

23 (4) Where the court appointed receiver or fiduciary is given a
24 direction in relation to any property, he or she may apply to the
25 Supreme Court for directions or any question respecting the

1 management or preservation of the property under his or her
2 control.

3 ~~[(5) An application under section 957 of this title shall be
4 served on all persons interested in the application or such of them
5 as the Court deems expedient and all such persons shall have the
6 right to appear at the hearing and be heard.]~~

7 (5) The Supreme Court may issue a restraining order even if
8 there is no risk of the property being dissipated, disposed of or
9 otherwise dealt with.

10 (6) The Supreme Court may specify that a restraining order cover
11 property that is acquired by the defendant after the issuance of
12 the order.

13 (7) Proceedings on an application for restraining order shall be
14 civil proceedings and the standard of proof shall be by the
15 preponderance of the evidence."

16 ~~[(6) When the application is made under section 957 of this title
17 on the basis that a person is about to be charged, any order made
18 by the Supreme Court shall lapse if the person is not charged:~~

19 ~~(a) where the offense is an offense against the law of the
20 Federated States of Micronesia, within five working days; and~~

21 ~~(b) where the offense is an offense against the law of a
22 foreign State, within 150 working days.]"~~

23 Section 24. Section 959 of title 11 of the Code of the Federated States
24 of Micronesia, as amended, is hereby further amended to read as follows:

25 "Section 959. Notice of application for restraining order. Before
26 entering a restraining order the Supreme Court shall ~~[may]~~ require

1 notice be given to, and may hear, any person who, in the opinion of
2 the Supreme Court, appears to have an interest in the property,
3 unless the Supreme Court is of the opinion that giving such notice
4 before making the order would result in the disappearance,
5 dissipation or reduction in value of the property."

6 Section 25. Section 963 of title 11 of the Code of the Federated States
7 of Micronesia, as amended, is hereby further
8 amended to read as follows:

9 "Section 963. Duration of restraining order.

10 (1) Where a defendant has not been charged with a serious
11 offense, a ~~A~~ restraining order issued under this subchapter ~~[act]~~
12 shall ~~remain~~s in force until:

13 ~~[(1) it is discharged, revoked or varied;]~~

14 (a ~~[2]~~) the period of 6 months from the date on
15 which it is made or such later time as the Supreme Court may
16 determine, not to exceed one year; or

17 (b ~~[3]~~) an application for a confiscation order or a pecuniary
18 penalty order, as the case may be, is made in respect of property
19 which is the subject of the order;
20 whichever occurs first.

21 (2) Where a defendant has been charged with a serious offense, a
22 restraining order shall remain in force until:

23 (a) the period of 6 months from the final disposition of
24 the criminal proceedings against the defendant, or such later time
25 as the Supreme Court may determine; or

1 (b) an application for a confiscation order or a pecuniary
2 penalty order, as the case may be, is made in respect of property
3 which is the subject of the order;
4 whichever occurs first.

5 (3) The Secretary may apply to the Supreme Court for an
6 extension of a restraining order for a specified period. After a
7 hearing, with notice to any person that in the opinion of the
8 Supreme Court appears to have an interest in the restrained
9 property, the Supreme Court may grant the extension requested, or
10 such lesser period it deems appropriate, if it is satisfied that an
11 application for a confiscation or pecuniary penalty order may be
12 made against a person with respect to that property.

13 (4) In the event that a restraining order expires before an
14 application for a confiscation or pecuniary penalty order is made,
15 the property subject to the restraining order shall be released to
16 the person or persons determined by the Supreme Court to have a
17 lawful ownership interest in the property or who are entitled to
18 lawful possession of the property.

19 (5) Nothing in this section shall require the discharge of
20 property that is relevant evidence in a pending criminal proceeding
21 against a defendant."

22 Section 26. Section 964 of title 11 of the Code of the Federated States
23 of Micronesia, as amended, is hereby further amended to read as follows:

24 "Section 964. Review of restraining orders.

25 (1) A person, other than the defendant, who has an interest in
26 property in respect of which a restraining order was entered, or

1 has been appointed by the Supreme Court as a receiver or fiduciary
2 of the property, may, at any time, apply to the Supreme Court for
3 an order under subsection (4) of this section.

4 (2) An application made under subsection (1) shall not be heard
5 by the Supreme Court unless the applicant has given the Secretary
6 at least 14 [~~5 working~~] days notice in writing of the application.

7 (3) The Supreme Court shall not hear an application under
8 subsection (1) of this section unless the applicant has given
9 reasonable written notice of the application to every person who
10 has an interest in the property at issue. The Supreme Court may
11 require notice of the application to be given to, and may hear, any
12 person who in the opinion of the Supreme Court, appears to have an
13 interest in the property.

14 (4) On an application under subsection (1) of this section the
15 Supreme Court may revoke or vary the order or make the order
16 subject to such conditions as the Supreme Court deems appropriate.
17 For the purposes of this subsection the Supreme Court may:

18 (a) impose conditions on the applicant; [~~or~~]

19 (b) vary the order to permit the payment of reasonable
20 living expenses of the applicant, including his or her dependents,
21 if any, and reasonable legal or business expenses of the applicant;

22 (c) vary the property to which the restraining order
23 relates;

24 (d) order a person to be examined under oath before the
25 Court concerning the affairs of the owner of the property or the
26 defendant;

1 (e) direct the owner of the property or the defendant to
2 give a specified person a statement under oath setting out the
3 particulars of the property or dealings with the property; or

4 (f) if the restraining order directs a receiver or
5 fiduciary to take custody and control of the property:

6 (i) regulate the performance of the duties or powers
7 of the receiver or fiduciary under the restraining order;

8 (ii) decide a question relating to the property;

9 (iii) order a person to do anything to enable the
10 receiver or fiduciary to take custody or control of the property;

11 (iv) if the restraining order provides that a
12 person's reasonable expenses in defending a criminal charge be met
13 out of the property, direct that those expenses be taxed as
14 provided in the ancillary order before being met; or

15 (v) provide for the payment to the receiver or
16 fiduciary out of the property of the costs, charges and expenses
17 incurred in connection with the performance of the receiver or
18 fiduciary's duties under the restraining order;

19 or

20 (g) anything else that the Supreme Court considers
21 necessary under the circumstances.

22 (5) Where the applicant is a person who claims an interest in
23 the property, an order under subsection (4) of this section may
24 only be made if the Supreme Court is satisfied that ~~the~~:

25 (a) the applicant is the lawful owner of the property or
26 is entitled to lawful possession thereof~~[, and appears to be~~

1 ~~innocent of any complicity in the commission of a serious offense~~
2 ~~or of];~~

3 (b) the applicant was not involved in the commission of
4 the offense or in any collusion in relation to such offense; [and]

5 (c) if the applicant acquired interest in the property at
6 the time of or after the alleged commission of the offense, the
7 applicant acquired the interest:

8 (i) for sufficient consideration; and

9 (ii) without knowing, and in circumstances such as
10 not to raise a reasonable suspicion, that the property was tainted
11 property or that the property was a benefit obtained as a result of
12 or in connection with the commission of a serious offense;

13 (d [b]) [that] the property will no longer be required for the
14 purposes of any investigation or as evidence in any

15

1 proceedings; and

2 (e) the property is not tainted property and is not
3 required to satisfy any confiscation or pecuniary penalty order.

4 (6) If a person is required, in accordance with an order
5 pursuant to subsection (4) (d) or (4) (e) of this section to make a
6 statement under oath:

7 (a) the person is not excused from making the statement on
8 the ground that the statement, or part of it, might tend to
9 incriminate the person or make the person's property liable to
10 confiscation or penalty; and

11 (b) the statement, and any information, document or thing
12 obtained as a direct or indirect consequence of the statement, is
13 not admissible against the person in any criminal proceedings
14 except a proceeding for perjury in making the statement."

15 Section 27. Section 965 of title 11 of the Code of the Federated States
16 of Micronesia, as amended, is hereby deleted in its entirety.

17 Section 28. Section 966 of title 11 of the Code of the Federated States
18 of Micronesia, as amended, is hereby further amended to read as follows:

19 "Section 966. Realization of covered property.

20 (1) Where:

21 (a) a restraining order, confiscation order or
22

1 pecuniary penalty order is made in respect to covered property;

2 (b) all conditions of the order have been met; and

3 (c) the order is not discharged;

4 the Supreme Court may, on an application by the Secretary, exercise
5 the powers conferred upon the Supreme Court by this section with
6 respect to covered property [~~as defined by section 903(1)(f) of~~
7 ~~this title~~].

8 (2) The Supreme Court may appoint a receiver in respect of
9 covered property.

10 (3) The Supreme Court may empower a receiver appointed under
11 subsection (2) of this section to take possession of any covered
12 property subject to such conditions or exceptions as may be
13 specified by the Supreme Court.

14 (4) The Supreme Court may order any person having possession of
15 covered property to give possession of it to any such receiver.

16 (5) The Supreme Court may empower any such receiver to realize
17 ~~[(liquidate and convert into cash and/or obtain payment of the~~
18 ~~value of defendant's interest)]~~ any covered property in such manner
19 as the Supreme Court may direct, including empowering the receiver
20 to liquidate and convert into cash, or obtain payment of the value
21 of a defendant's interest.

22 (6) The Supreme Court may order any person holding an interest
23 in covered property to make such payment to the
24 receiver in respect of any interest held by the defendant or, as
25 the case may be, the recipient of a gift caught by this chapter
26 ~~act~~] as the Supreme Court may direct, and the Supreme Court may,

1 on the payment being made, by order transfer, grant or extinguish
2 any interest in the property.

3 (7) The Supreme Court shall not, in respect of any property,
4 exercise the powers conferred by subsections (3), (4), (5) or (6)
5 of this section, unless a reasonable opportunity has been given for
6 persons holding any interest in the property to make
7 representations to the Supreme Court."

8 Section 29. Section 967 of title 11 of the Code of the Federated States
9 of Micronesia, as amended, is hereby further amended to read as follows:

10 "Section 967. Application of proceeds of realization and other
11 sums.

12 (1) Subject to subsection (2) of this section, the following
13 property in the hands of a receiver appointed under this chapter
14 ~~[act]~~, being:

15 (a) the proceeds of the realization of any property under
16 section 966; and

17 (b) any other sums, being property held by the defendant;
18 shall, after such payments, if any, as the Supreme Court may direct
19 have been made out of those sums, be payable to the Clerk of the
20 Supreme Court and be applied on the defendant's behalf towards the
21 satisfaction of the confiscation order or pecuniary penalty order
22 in the manner provided by subsection (3) of this section.

23 (2) If, after the amount payable under the confiscation order or
24 pecuniary penalty order has been fully paid, any such sums remain
25 in the hands of such a receiver, the receiver shall distribute
26 those sums:

1 (a) among such of those innocent third persons who held
2 covered property which has been recovered under this subchapter
3 (either through seizure and liquidation or by payment of the
4 defendant's interest therein by the holder) who have come forward
5 and made application to the Court for return of the property; and
6 (b) in such proportions, as the Supreme Court may direct, after
7 giving a reasonable opportunity for those persons to make
8 representations to the Supreme Court.

9 (3) Property received by the Clerk of the Supreme Court on
10 account of an amount payable under a confiscation order or
11 pecuniary penalty order shall be applied as follows:

12 (a) if received by the Clerk from a receiver under
13 subsection (1) of this section, it shall first be applied in
14 payment of the receiver's remuneration and expenses; and

15 (b) the balance shall be paid or, as the case may be,
16 transferred, to the Forfeited Assets Fund established under section
17 980 of this chapter [~~General Fund of the Federated States of~~
18 ~~Micronesia until such time that a Federated States of Micronesia~~
19 ~~Fund For Drug Abuse Prevention And Control is established pursuant~~
20 ~~to law, at which time, any balance then accrued, shall be paid, or~~
21 ~~as the case may be, transferred, to said Fund.]”~~

22 Section 30. Section 971 of title 11 of the Code of the Federated States
23 of Micronesia, as amended, is hereby further amended to read as follows:

24 “Section 971. Production orders.

25 (1) Where a defendant has been charged with or convicted of a
26 serious offense, or there is probable cause to believe that a

1 person has committed a serious offense, and a police officer has
2 reasonable grounds [~~probable cause~~] to believe that any person has
3 possession or control of:

4 (a) a document relevant to identifying, locating or
5 quantifying property of the defendant, or to identifying or
6 locating a document necessary for the transfer of property of the
7 defendant; or

8 (b) a document relevant to identifying, locating or
9 quantifying tainted property in relation to the offense, or to
10 identifying or locating a document necessary for the transfer of
11 tainted property in relation to the offense;

12 the police officer may apply ex parte and in writing to a judge for
13 an order against the person suspected of having possession or
14 control of a document of the kind referred. The application shall
15 be supported by an affidavit.

16 (2) The judge may, if he or she finds [~~considers~~] there is
17 probable cause for so doing, make an order under this chapter
18 [~~act~~], that the person produce to a police officer, or make
19 available to a police officer for inspection, at a time and place
20 specified in the order, any documents of the kind referred to in
21 subsection (1) of this section.

22 (3) A police officer to whom documents are produced may:

23 (a) inspect the documents;

24 (b) make hard or electronic copies of or print the
25 documents; [~~or~~]

1 (c) retain the documents for so long as is reasonably
2 necessary for the purposes of this chapter ~~[act]~~; or

3 (d) take extracts from it.

4 (4) Where a police officer retains the documents produced, the
5 officer shall make a copy of the documents available to the person
6 who produced them.

7 (5) A person is not entitled to refuse to produce documents
8 ordered to be produced under this section on the ground that the
9 document might tend to incriminate that person or make such person
10 liable to a penalty, or the production of the document would be in
11 breach of an obligation of the person not to disclose the existence
12 or contents of the document.

13 (6) Where a document is stored on a computer, the person in
14 possession or control of the computer shall grant the police
15 officer access to the computer and any software necessary to open
16 and inspect the document."

17 Section 31. Section 976 of title 11 of the Code of the Federated States
18 of Micronesia, as amended, is hereby further amended to read as follows:

19 "Section 976. Search warrant for location of documents relevant to
20 locating property.

21 (1) Where:

22 (a) a defendant has been charged or convicted of a serious
23 offense, or there is probable cause to believe that person has
24 committed a serious offense; or

25 (b) the police officer has probable cause to believe that
26 there is, or may be ~~[within the next 72 hours]~~, upon any land or

1 upon or in any premises, a document of the type described in
2 subsection 971(1) of this chapter [title] in relation to the
3 offense;

4 the police officer may make an application supported by sworn
5 affidavit to a judge for a search warrant in respect of that land
6 or those premises.

7 (2) Where an application is made under subsection (1) of this
8 section for a warrant to search land or premises, the judge may,
9 subject to subsection (4) of this section issue a warrant
10 authorizing a police officer (whether or not named in the warrant),
11 with such assistance and by such force as is necessary and
12 reasonable:

13 (a) to enter upon the land or in or upon any premises and
14 to search the land or premises for property of that kind; and

15 (b) to seize property found in the course of the search
16 that the police officer has probable cause to believe to be
17 property of that kind.

18 (3) A judge shall not issue a warrant under subsection (2) of
19 this section unless the judge is satisfied that:

20 (a) a production order has been issued in respect of the
21 document and has not been complied with;

22 (b) a production order in respect of the document would be
23 unlikely to be effective, or the document may be destroyed or
24 altered if notice is given to any person;

25 (c) the investigation for the purposes of which the search
26 warrant is being sought might be seriously prejudiced if the police

1 officer does not gain immediate access to the document without any
2 notice to any person; or

3 (d) the document involved cannot be identified or
4 described with sufficient particularity to enable a production
5 order to be obtained.

6 (4) A warrant issued under this section shall state:

7 (a) the purpose for which it is issued, including a
8 reference to the nature of the relevant offense;

9 (b) a description of the kind of documents authorized to
10 be seized;

11 (c) a time at which the warrant ceases to be in force; and

12 (d) whether entry is authorized to be made at any time of
13 the day or night or during specified hours.

14 (5) If during the course of searching under a warrant issued
15 under this section, a police officer finds:

16 (a) a document of the type described in section 971(1)
17 that the police officer believes on probable cause, to relate to
18 the relevant offense, or to another serious offense; or

19 (b) any thing the police officer believes on probable
20 cause will afford evidence as to the commission of a serious
21 offense;

22 the police officer may seize that property or thing and the warrant
23 shall be deemed to authorize such seizure."

24 Section 32. Sections 978 and 979 of title 11 of the Code of the
25 Federated States of Micronesia, as amended, are hereby deleted in their
26 entirety.

1 Section 33. Title 11 of the Code of the Federated
2 States of Micronesia, as amended, is hereby amended by adding a new part 7
3 of subchapter III of chapter 9 entitled "Forfeited Assets Fund".

4 Section 34. Title 11 of the Code of the Federated States of
5 Micronesia, as amended, is hereby amended by adding a new section 980 of
6 chapter 9 to read as follows:

7 "Section 980. Establishment of Forfeited Assets Fund. There is
8 hereby established the Forfeited Assets Fund and the Secretary may
9 make regulations for the administration and use of this fund."

10 Section 35. Title 11 of the Code of the Federated States of
11 Micronesia, as amended, is hereby amended by adding a new section 981 of
12 chapter 9 to read as follows:

13 "Section 981. Credit to fund. There shall be placed in the
14 Forfeited Assets Fund amounts equal to:

15 (1) proceeds of confiscation orders;

16 (2) proceeds paid pursuant to section 940 of this chapter;

17 (3) proceeds of pecuniary penalty orders;

18 (4) money paid to the Federated States of Micronesia by a

19 foreign country in connection with assistance provided by the

20 Federated States of Micronesia in relation to the recovery by that

21 country of the proceeds of unlawful activity or the investigation

22 or prosecution of unlawful activity; and

23 (5) proceeds of forfeiture order made under any other law."

24 Section 36. Title 11 of the Code of the Federated States of
25 Micronesia, as amended, is hereby amended by adding a new section 982 of
26 chapter 9 to read as follows:

1 "Section 982. Payments out of fund. Funds in the Forfeited Assets
2 Fund may be used for the following purposes:

3 (1) making any payments to foreign countries that the Secretary
4 deems appropriate under an equitable sharing program pursuant to
5 section 1728 of title 12 of the Code of the Federated States of
6 Micronesia;

7 (2) making any payments under a program approved by the
8 Secretary under section 983 of this chapter;

9 (3) making any payments that the Secretary deems necessary to
10 satisfy the obligation of the Federated States of Micronesia in
11 respect of a registered foreign forfeiture order or a registered
12 foreign pecuniary penalty order;

13 (4) making any payments necessary for the administration of the
14 Forfeited Assets Fund; and

15 (5) for such other purposes as Congress shall from time to time
16 legislate."

17 Section 37. Title 11 of the Code of the Federated States of
18 Micronesia, as amended, is hereby amended by adding a new section 983 of
19 chapter 9 to read as follows:

20 "Section 983. Special programs. The Secretary may, in writing,
21 approve a program for the expenditure in a particular fiscal year
22 of funds in the Forfeited Assets Fund for the following purposes:

23 (1) to assist in the treatment of persons convicted of crimes
24 who suffer from drug or alcohol addiction;

1 (2) to assist the treatment of persons who as a result of a
2 mental condition pose a danger to themselves or persons in the
3 community;

4 (3) to promote awareness of National and international efforts
5 to combat money laundering and the financing of terrorism; and

6 (4) to renovate the prisons in the Federated State of
7 Micronesia."

8 Section 38. Title 11 of the Code of the Federated States of Micronesia,
9 as amended, is hereby amended by adding a new section 984 of chapter 9 to read
10 as follows:

11 "Section 984. Annual report. The Secretary shall report to the
12 President and the Congress of the Federated States of Micronesia on
13 the status of the fund prior to the close of each fiscal year.

14 Section 39. This act shall become law upon approval by the President of
15 the Federated States of Micronesia or upon its becoming law without such
16 approval.

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18 Date: 9/14/06

Introduced by: /s/ Simiram Sipenuk

Simiram Sipenuk
(by request)

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