
A BILL FOR AN ACT

To amend sections 402, 403, 404, 406, 407, 408, 409, 420, 422, 423, 424 and 425 of title 30 of the Code of the Federated States of Micronesia (Annotated), as authorized by Public Law No. 18-96, by increasing the percentage of corporate income tax above a certain level to be invested in a FSM venture fund, accelerating redemption payments while eliminating interest payments, providing for a fund management fee, allowing subsequent contributions to the venture fund for an extended three year period, and for other purposes.

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

1 Section 1. Section 402 of title 30 of the Code of the
2 Federated States of Micronesia (Annotated), as authorized by
3 Public Law No. 18-96, is hereby amended to read as follows:
4 "Section 402. Purpose. The purpose of this act is to
5 encourage the establishment of Venture Funds in the
6 Federated States of Micronesia, hereinafter referred to
7 as 'FSM', and to provide an incentive for large foreign-
8 owned companies to register Major Corporations in the
9 FSM. The Congress finds it desirable and necessary to
10 promote the continued expansion of the tax base of the
11 nation. The Congress believes that agreeing to invest a
12 portion of large corporate income tax payments by Major
13 Corporations in Venture Funds, to be managed by parents
14 or affiliates of such Major Corporations, would attract
15 large foreign-owned enterprises to more seriously
16 consider registering Major Corporations in the FSM and

1 directing larger amounts of profitable business through
2 such Major Corporations. [~~By requiring that a portion~~
3 ~~of such Venture Funds be invested in new companies and~~
4 ~~industries registered in the FSM, the Congress is~~
5 ~~encouraging the development of "knowledge industries"~~
6 ~~that tap into humankind's creative genius in developing~~
7 ~~new forms of communications, materials, energy, and~~
8 ~~healthcare]. Such new FSM corporations with
9 intellectual property could continue to generate income
10 over the coming years and decades. The government will
11 be able to then tax these incomes, thus expanding the
12 tax base that is needed by the government to provide the
13 services that the citizens and residents of the FSM
14 demand. It is recognized that the nation currently does
15 not have the resources to make investments in these new
16 industries and that a private-public partnership is
17 needed to finance and grow these industries. Therefore,
18 it is in the best interests of the FSM and its people
19 that incentives are provided for Major Corporations to
20 establish professionally managed funds that will
21 consider new business opportunities and make wise
22 investments."~~

23 Section 2. Section 403 of title 30 of the Code of the
24 Federated States of Micronesia (Annotated), as authorized by
25 Public Law No. 18-96, is hereby amended to read as follows:

1 "Section 403. Creation.

2 (1) Any Major Corporation that pays corporate income
3 tax to the FSM exceeding \$100,000,000 but not exceeding
4 \$500,000,000 in any one calendar year may require that
5 an amount equivalent to up to fifty percent (50%) of the
6 amount of income taxes it paid will be invested by the
7 FSM into a FSM Venture Fund, and that the Major
8 Corporation may also select the Fund Manager for this
9 Fund.

10 (2) Any Major Corporation that pays corporate income
11 tax to the FSM exceeding \$500,000,000 in any one
12 calendar year may require that an amount equivalent to
13 up to 50% of \$500,000,000 and up to [75%] 100% of the
14 amount in excess of \$500,000,000 of income taxes it paid
15 will be invested by the FSM into a FSM Venture Fund, and
16 that the Major Corporation may also select the Fund
17 Manager for this Fund.

18 (3) [~~These FSM Venture Funds, hereinafter each~~
19 ~~referred to as a 'Fund', will invest in new industries~~
20 ~~that may include software development, development of~~
21 ~~new drugs, medicines, and medical devices and~~
22 ~~procedures, entertainment, Internet content and~~
23 ~~distribution, telecommunication devices and access, high~~
24 ~~growth technology businesses benefiting from the rapid~~
25 ~~adoption and deployment of broadband and mobile~~

1 ~~technologies, development of new and improved materials,~~
2 ~~new forms of energy and other types of investments that~~
3 ~~that Fund Manager may deem worthy]~~ If a Major
4 Corporation has paid corporate income tax to the FSM in
5 any one calendar year so that a Fund has consequently
6 been established pursuant to paragraph (1) or (2) above,
7 and such Major Corporation thereafter pays corporate
8 income tax exceeding \$100,000,000 to the FSM in any
9 subsequent calendar year during the term of the Fund,
10 then the Major Corporation may require that an amount
11 equivalent to up to fifty percent (50%) of the amount of
12 income tax it paid in such subsequent calendar year be
13 invested by the FSM into the existing Fund, until the
14 Major Corporation has paid an aggregate amount of
15 corporate income tax to the FSM equal to \$500,000,000.
16 The remaining tax payment made in the first calendar
17 year after the establishment of the Fund shall be
18 deposited to the Trust Fund established under the Trust
19 Fund Agreement between the Government of the United
20 States and the Government of the Federated States of
21 Micronesia implementing sections 215 and 216 of the
22 Compact of Free Association, as amended. After the
23 Major Corporation has paid an aggregate amount of
24 corporate income tax to the FSM in excess of
25 \$500,000,000, then the Major Corporation may require

1 that an amount equivalent to up to one-hundred percent
2 (100%) of the amount of income tax it paid in such
3 subsequent calendar year be invested by the FSM into the
4 Fund. The number of Fund ownership interests received by
5 the Fund Investors in connection with such subsequent
6 investments will be calculated based on the net asset
7 value per Fund ownership interest in effect in the date
8 of each such subsequent investment. For the purposes,
9 the aggregate amount of corporate income tax paid by the
10 Major Corporation to the FSM will include the income
11 taxes pad in the initial calendar year in respect of
12 which the Fund was originally established and in all
13 subsequent calendar years.

14 (4) The FSM may designate any other investor that is
15 authorized to invest pursuant to section 408 (such
16 designated investor, together with the FSM, "Fund
17 Investors") to provide a portion of the amounts required
18 to be invested into the Fund by the FSM pursuant to
19 paragraph (2) or (3) above.

20 (5) For the purposes of calculating the corporate
21 income tax paid by a Major Corporation under paragraphs
22 (1), (2) or (3) above, corporate income taxes paid to
23 the FSM by any other entity that directly or indirectly
24 controls, is controlled by, or is under common control
25 with, the Major Corporation will be deemed paid by such

1 Major Corporation.

2 (6) Within 30 days of the date of the letter
3 described in section 404, (i) the Secretary of Finance
4 and Administration shall authorize the establishment of
5 each FSM Venture Fund, hereinafter referred to as a
6 'Fund', and (ii) the Fund Manager shall establish the
7 Fund in a jurisdiction selected by it."

8 Section 3. Section 404 of title 30 of the Code of the
9 Federated States of Micronesia (Annotated), as authorized by
10 Public Law No. 18-96, is hereby amended to read as follows:

11 "Section 404. Letter of intent. Each of the Major
12 Corporation that intends to establish a Fund must
13 deliver a letter to the President of the Federated
14 States of Micronesia Development Bank, between 60 days
15 and 90 days after the delivery of its payment of
16 corporate income tax to the FSM, signed by a director of
17 the Major Corporation, (i) stating that it intends to
18 establish a Fund [and], (ii) specifying the amount of
19 [the Fund, specifying] investment, being the capital
20 amount [it requires the FSM Government to invest]
21 pursuant to section 403, in that Fund at the initial
22 closing of such Fund, and (iii) selecting the Fund
23 Manager of the Fund. The letter will also describe the
24 [guarantor of] Designated Entity for the Fund [and],
25 give evidence that the [guarantor] Designated Entity

1 meets the requirements listed in section 409 below, and
2 describe the mechanism by which the Designated Entity
3 elects to meet its obligations under section 409.
4 Attached to this letter must be an Investment Statement
5 that describes the qualifications, capabilities, and
6 experience of the Fund Manager, the general strategy of
7 the Fund along with the projected allocation of the
8 investments by industry, stage of development, and
9 country."

10 Section 4. Section 406 of title 30 of the Code of the
11 Federated States of Micronesia (Annotated), as authorized by
12 Public Law No. 18-96, is hereby amended to read as follows:

13 "Section 406. Deadline for depositing funds. [~~Each~~
14 ~~fund will be established by the Secretary of Finance and~~
15 ~~Administration no later than 60 days after the date of~~
16 ~~publication of the notice described in Section 405, and~~
17 ~~all investors] All Fund Investors must have deposited
18 their monies into the Fund no later than the end of the
19 60th day after publication[~~-~~] of the notice described in
20 section 405. The President of the Federated States of
21 Micronesia Development Bank will ensure that the
22 government and all other investors have their funds
23 deposited into the Fund by this date. The Secretary of
24 Finance and Administration is authorized and required to
25 deposit into the Fund such tax revenue as may be~~

1 required pursuant to sections 403 and 404 of this
2 Chapter."

3 Section 5. Section 407 of title 30 of the Code of the
4 Federated States of Micronesia (Annotated), as authorized by
5 Public Law No. 18-96, is hereby amended to read as follows:

6 "Section 407. Duration of funds. ~~[Each Fund will end~~
7 ~~on the date that is the earlier of 10 years from the~~
8 ~~date the Fund was created, or December 31, 2032.];~~
9 Settlement; capital return; management fee. The term of
10 each Fund will be as specified by the Fund Manager, but
11 no Fund may have a term beyond September 30, 2043. For
12 any Fund with a term beyond September 30, 2033, the
13 Secretary of Finance and Administration will have the
14 option to end such term on September 30, 2033 by
15 delivering a notice thereof to the Fund Manager at least
16 three years in advance. At the end of the life of a
17 Fund, the following amounts must be paid to ~~[investors]~~
18 each investor: (1) the ~~[original]~~ capital amounts
19 invested in the ~~[funds]~~ Fund by that investor, net of
20 all amounts of invested capital previously returned to
21 that investor; and (2) ~~[20% of]~~ with respect to any
22 amount remaining in the Fund after repayment of the
23 ~~[original capital amount and all interest payments are~~
24 ~~made to investors. Each investor's share of the 20% of~~
25 ~~any amount remaining in the Fund after repayment of the~~

1 ~~original capital amount and all interest payments are~~
2 ~~made to investors]~~ invested capital amounts under the
3 preceding clause (1), net of withholdings for taxes due
4 upon, and costs and expenses of, liquidation (such
5 remaining amount hereinafter referred to as the "Net
6 Gain",), a pro-rata portion of an amount equal to 20% of
7 the first \$100,000,000 of Net Gain, plus a pro-rata
8 portion of an amount equal to 10% of any Net Gain in
9 excess of \$100,000,000. Each investor's pro-rata
10 portion of the Net Gain will be in proportion to [each
11 ~~investor's original investment in the Fund.]~~ such
12 investor's Fund ownership interests. Any remaining Net
13 Gain not paid to the investors under clause (2) above
14 will be paid to the Fund Manager. Notwithstanding the
15 preceding [sentence, beginning in 2023, all Funds must
16 ~~begin returning the original capital amount]~~ paragraph,
17 in fiscal year 2023 each Fund must return to the
18 investors [, by making equal payments each year so that
19 ~~the entire payment of the original capital amount]~~ in
20 aggregate an amount equal to twenty percent (20%) of the
21 net asset value of the Fund as of the end of the
22 preceding fiscal year (in addition to the previous
23 returns of invested capital to the investors [is made by
24 ~~the earlier of 10 years from the creation of the Fund,
25 ~~or December 31, 2032. Any installment payment of the~~~~

1 ~~original capital]~~ made pursuant to the following
2 paragraph of this section 407). Such amount will be
3 paid to the investors within [~~30~~] 120 days of the [~~end~~
4 ~~of each fiscal year, except for payments for the final~~
5 ~~year of the Fund.~~ beginning of fiscal year 2023. With
6 respect to each fiscal year during the term of the Fund,
7 an annual partial return of invested capital equal to 2%
8 of the greater of (a) the net asset value of the Fund as
9 of the end of the preceding FSM National Government
10 fiscal year and (b) the capital amounts invested in the
11 Fund by the investors will also be paid to the investors
12 in aggregate within 120 days after the beginning of the
13 fiscal year, except that (i) the initial partial return
14 of invested capital will be based on the amounts
15 deposited in the Fund by the deadline specified in
16 section 406 of this chapter; (ii) payment in respect of
17 the final fiscal year of the Fund may be made on or
18 prior to the Fund's liquidation; and (iii) Fund
19 ownership interests received by the Fund Investors
20 pursuant to section 403(3) of this chapter will instead
21 be entitled to an annual partial return of invested
22 capital so payable to the Fund Investors at the rate of
23 three-percent (3%) per annum. Notwithstanding the
24 preceding sentence, if, with respect to any fiscal year
25 during the term of the Fund, any partial return of

1 invested capital payable to the investors pursuant to
2 the foregoing provisions would result in the investors
3 receiving in aggregate, including all prior partial
4 returns of invested capital paid to the investors, an
5 amount greater than if in each year the investors had
6 received two-percent (2%) or three-percent (3%), as
7 applicable, of the capital amounts invested in the Fund
8 by the investors, then the Fund Manager shall be
9 entitled to pay to the investors, in respect of such
10 fiscal year, such amount so that the partial returns of
11 capital paid to the investors each year, in aggregate,
12 do not exceed two-percent (2%) or three-percent (3%), as
13 applicable, of the capital amounts invested in the Fund
14 by the investors. Furthermore, [~~interest at the rate of~~
15 ~~3% per annum of any Capital amount in the Fund at]~~ with
16 respect to each fiscal year during the term of the Fund,
17 the Fund Manager may require that the Fund pay an annual
18 management fee equal to up to two-percent (2%) of the
19 net asset value of the Fund as of the end of the
20 preceding fiscal year to the Fund Manager within 120
21 days after the beginning of the fiscal year [~~will also~~
22 ~~be paid to the investors within 30 days of the end of~~
23 ~~each fiscal year, except for the final year of the Fund.~~
24 ~~Any payments due to the investors for the final year of~~
25 ~~the Fund will be due on the earlier of the last day for~~

1 ~~the fiscal year of the Fund, or December 31, 2032.],~~
2 except that (i) the initial management fee will be based
3 on the amounts deposited in the Fund by the deadline
4 specified in section 406 of this chapter and (ii)
5 payment of the management fee owed with respect to the
6 final fiscal year of the Fund may be made on or prior to
7 the Fund's liquidation."

8 Section 6. Section 408 of title 30 of the Code of the
9 Federated States of Micronesia (Annotated), as authorized by Public
10 Law No. 18-96, is hereby amended to read as follows:

11 "Section 408. Investment in Venture Funds by Federated
12 States of Micronesia citizens and corporations.
13 [~~Citizens~~] As provided in this Chapter, citizens and
14 corporations of the Federated States of Micronesia may
15 invest in a Fund, any time that the FSM is required to
16 invest in such Fund pursuant to section 403. The minimum
17 investment shall be \$100,000."

18 Section 7. Section 409 of title 30 of the Code of the
19 Federated States of Micronesia (Annotated), as authorized by Public
20 Law No. 18-96, is hereby amended to read as follows:

21 "Section 409. [~~Guarantee of repayment of original~~
22 ~~capital amounts. The Fund manger or its parent~~
23 ~~organization, or an unrelated party (the "Guarantor"),~~
24 ~~must at the outset] Repayment of capital amounts. If at
25 the liquidation of a Fund the amounts payable to the~~

1 Fund Investors, together with all amounts of invested
2 capital previously returned to the Fund Investors, would
3 not be sufficient to return to the Fund Investors in
4 aggregate an amount equal to the aggregate capital
5 amount invested in the Fund by the Fund Investors, then
6 the Fund Manager shall return to the Fund Investors such
7 portion of the aggregate management fees paid to it to
8 remedy such capital shortfall. In addition, upon
9 establishment of a Fund the Designated Entity will, at
10 its option, either guarantee the repayment [of the
11 ~~original~~] to Fund Investors of the capital amounts
12 invested in a Fund[-] by the Fund Investors at the end
13 of the life of the Fund or commit to provide
14 supplemental capital to remedy any such capital
15 shortfall. "Designated Entity" means the Fund Manager,
16 its parent organization or an unrelated party. The
17 Designated Entity must be rated at least investment
18 grade rated by Moody's or Standard and Poor's or Fitch
19 or a national rating organization acceptable to the
20 President of the Federated States of Micronesia
21 Development Bank, or it must have a net worth of least
22 ten times the original capital of the Fund. The
23 President of the Federated States of Micronesia
24 Development Bank will ensure that the [Guarantor]
25 Designated Entity meets the criteria set out in this

1 section."

2 Section 8. Section 420 of title 30 of the Code of the
3 Federated States of Micronesia (Annotated), as authorized by
4 Public Law No. 18-96, is hereby amended to read as follows:

5 "Section 420. Section 420. [~~Guarantee of payment of~~
6 ~~interest. The Guarantor must also guarantee~~] Payment of
7 partial capital returns. The provisions of section 409
8 will also apply with respect to the payment of [interest
9 ~~to investors at]~~ partial capital returns to the [end of]
10 Fund Investors each fiscal year during the life of the
11 Fund[, at the rate of 3% per annum] under section 407 of
12 this Chapter."

13 Section 9. Section 422 of title 30 of the Code of the
14 Federated States of Micronesia (Annotated), as authorized by
15 Public Law No. 18-96, is hereby amended to read as follows:

16 "Section 422. Reports [to investors]. [At] Within 90
17 days after the end of each fiscal year during the term
18 of the Fund, the Fund Manager will issue a report to
19 [each investor] the Advisory Board stating new
20 investments, sales or other dispositions of investments,
21 the rationale for new investments and dispositions of
22 investments, and the rationale for each current holding,
23 [and its] the net asset value of the Fund as of the end
24 of such fiscal year, the estimate of the value of each
25 investment as of the end of such fiscal year, and the

1 resulting gain or loss during [~~the current~~] such fiscal
2 year and since the inception of the Fund. The net asset
3 value of the Fund as of the end of each fiscal year as
4 well as the estimate of the value of each investment as
5 of the end of such fiscal year, and the resulting gain
6 or loss during such fiscal year and since the inception
7 of the Fund, must be approved by the Fund's auditor or
8 another independent appraiser."

9 Section 10. Section 423 of title 30 of the Code of the
10 Federated States of Micronesia (Annotated), as authorized by
11 Public Law No. 18-96, is hereby amended to read as follows:

12 "Section 423. Appraiser[~~'s annual report~~]. Ninety days
13 before the end of the [~~final year~~] term of the Fund, an
14 independent appraiser qualified in the valuation of
15 companies, appointed by the Fund Manager and reasonably
16 acceptable to the Advisory Board, will value each of the
17 holdings in the Fund, and the overall Fund. The
18 appraiser will issue a report detailing the current
19 value of each investment, and the methodology for
20 determining each investment's valuation. The report will
21 be signed by the appraiser and sent [~~directly to each~~
22 ~~investor~~] to the Advisory Board 30 days before the end
23 of the [~~final year~~] term of the Fund. The cost of the
24 appraiser will be an appropriate expense of the Fund.
25 [~~Six months before the end of the final year of the~~

1 ~~Fund, the Fund Manager will recommend an appraiser to~~
2 ~~the President of the Federated States of Micronesia~~
3 ~~Development Bank. If the Board of Directors of the~~
4 ~~Federated States of Micronesia Development Bank approves~~
5 ~~the recommendation, the appraiser will be hired. If it~~
6 ~~does not, the matter will be decided by the arbitration~~
7 ~~panel described in the contract between the Investors~~
8 ~~and the Fund Manager]."~~

9 Section 11. Section 424 of title 30 of the Code of the
10 Federated States of Micronesia (Annotated), as authorized by
11 Public Law No. 18-96, is hereby amended to read as follows:

12 "Section 424. Advisory [board] Board. Each Fund shall
13 have an Advisory Board that shall give advice to the
14 Fund Manager. The Board shall consist of at least
15 5 people that are selected by the President of the
16 Federated States of Micronesia, with the advice and
17 consent of the Congress; provided, that each investor
18 that invests in aggregate \$10,000,000 or more but less
19 than \$20,000,000 in the Fund shall be entitled to a
20 representative in the Advisory Board, and each investor
21 that invests in aggregate \$20,000,000 or more in the
22 Fund shall be entitled to two representatives in the
23 Advisory Board. The Board shall meet at least once a
24 year in person at the headquarters of the Fund Manager
25 and shall give advice to the Fund Manager. The costs of

1 the Advisory Board shall be an appropriate expense of
2 the Fund.”

3 Section 12. Section 425 of title 30 of the Code of the
4 Federated States of Micronesia (Annotated), as authorized by
5 Public Law No. 18-96, is hereby amended to read as follows:

6 “Section 425. Expiration date. No new [~~investments~~]
7 Fund may be [~~made and no Funds~~] created pursuant to
8 [~~section~~] Section 403 of this [~~act, specifically section~~
9 ~~401~~] Chapter, on or after April 1, [~~2025, unless~~
10 ~~extended by law. The provisions in this act,~~
11 ~~specifically Section 401, will expire on January 1,~~
12 ~~2033~~] 2028, unless extended by law.”

13 Section 13. This act shall become law upon approval by the
14 President of the Federated States of Micronesia or upon its
15 becoming law without such approval.

16

17 Date: 4/14/15

Introduced by: /s/ David W. Panuelo
David W. Panuelo

18

19

20

21

22

23

24

25