

AN ACT

To further amend title 12 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-22, 5-23, 10-30 and 11-71, by amending sections 1704, 1709, 1713, 1714, 1716 and 1719, as enacted by Public Law No. 11-71, to make clarifying and technical corrections, to make sharing arrangements subject to approval by Congress and to ensure that proceeds of crime received by the Federated States of Micronesia are deposited into the General Fund of the Federated States of Micronesia, and for other purposes.

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

1 Section 1. Section 1704 of title 12 of the Code of the Federated
2 States of Micronesia, as enacted by Public Law No. 11-71, is hereby
3 amended to read as follows:

4 "Section 1704. Definitions. Unless the subject or context
5 otherwise requires, in this act:

6 (1) 'Appeal' includes proceedings by way of discharging or
7 setting aside a judgment, and an application for a new_trial
8 or for a stay of execution.

9 (2) 'Data' means representations, in any form, of
10 information or concepts.

11 (3) 'Document' means any record of information and any
12 material on which data is recorded or marked and which is
13 capable of being read or understood by a person, computer
14 system or other device, and includes, but is not limited to:

15 (a) anything on which there is writing;

16 (b) anything on which there are marks, figures,
17 symbols, or perforations having meaning for persons qualified
18 to interpret them;

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

21 (d) a map, plan, drawing, photograph or similar thing.

22 (4) 'Foreign confiscation order' means an order, made by a

1 court in a foreign state, for the purposes of the
2 confiscation or forfeiture of property in connection with, or
3 recovery of the proceeds of, a serious offense.

4 (5) 'Foreign restraining order' means an order made in
5 respect of a serious offense by a court in a foreign state
6 for the purpose of restraining a particular person or all
7 persons from dealing with property.

8 (6) 'Foreign state' means:

9 (a) any country other than the Federated States of
10 Micronesia; and

11 (b) every constituent part of such country, including
12 a territory, dependency or protectorate, or political
13 subdivision which administers its own laws relating to
14 international cooperation.

15 (7) 'Interest', in relation to property, means a:

16 (a) legal or equitable estate or interest in the
17 property; or

18 (b) right, power or privilege in connection with the
19 property, whether present or future and whether vested or
20 contingent.

21 (8) 'Person' means any natural or legal person.

22 (9) 'Place' includes any land (whether vacant, enclosed or
23 built upon, or not) and any premises.

24 (10) 'Premises' includes the whole or any part of a
25 structure, building, aircraft, or vessel.

26 (11) 'Proceedings' means any proceeding conducted by or

1 under the supervision of a judge, magistrate or judicial
2 officer, however described, in relation to any alleged or
3 proven offense, or property derived from such offense, and
4 includes an inquiry, investigation, or preliminary or final
5 determination of facts.

6 (12) 'Proceeds of crime' means fruits of a crime, or any
7 property derived or realized directly or indirectly from a
8 serious offense and includes, on a proportional basis,
9 property into which any property derived or realized directly
10 from the offense was later successively converted,
11 transformed or intermingled, as well as income, capital or
12 other economic gains derived or realized from such property
13 at any time since the offense.

14 (13) 'Property' means real or personal property of every
15 description, whether situated in the Federated States of
16 Micronesia or elsewhere and whether tangible or intangible,
17 and includes an interest in any such real or personal
18 property.

19 (14) 'Secretary' means the Secretary of the Department of
20 Justice of the Federated States of Micronesia or the chief
21 law enforcement officer of the Federated States of
22 Micronesia, whatever the title of such position is or in the
23 future may become.

24 (15) 'Serious offense' means a violation of:

25 (a) any law of the Federated States of Micronesia or
26 any of its States or political subdivisions, which is a

1 criminal offense punishable by imprisonment for a term of
2 more than one year; or

3 (b) a law of a foreign state, in relation to acts or
4 omissions, which, had they occurred in the Federated States
5 of Micronesia or any of its States or political_subdivisions,
6 would have constituted a criminal offense punishable by
7 imprisonment for a term of more than one year.

8 (16) 'Supreme Court' means the Supreme Court of the
9 Federated States of Micronesia, and all its divisions,
10 wherever or whenever constituted.

11 (17) A reference in this act to the law of the Federated
12 States of Micronesia, any State of the Federated States of
13 Micronesia, or any foreign state includes a reference to a
14 written or unwritten law of, or in force in, any part of the
15 Federated States of Micronesia (including its States and
16 political subdivisions), any part of that State of the
17 Federated States of Micronesia, or any part of that foreign
18 state, as the case may be."

19 Section 2. Section 1709 of title 12 of the Code of the Federated
20 States of Micronesia, as enacted by Public Law No. 11-71, is hereby
21 amended to read as follows:

22 "Section 1709. Foreign requests for an evidence-gathering
23 order or a search warrant.

24 (1) Notwithstanding anything contained in any other law,
25 where the Secretary grants a request by a foreign state to
26 obtain evidence in the Federated States of Micronesia, an

1 authorized person may apply to the Supreme Court for:

2 (a) a search warrant; or

3 (b) an evidence-gathering order.

4 (2) The Supreme Court, to which an application is made
5 under subsection (1) of this section, may issue an evidence-
6 gathering order or a search warrant under this subsection,
7 where it is satisfied that there is probable cause to believe
8 that:

9 (a) a serious offense has been or may have been
10 committed against the laws of the foreign state; and

11 (b) evidence relating to that offense may:

12 (i) be found in a building, receptacle or place
13 in the Federated States of Micronesia; or

14 (ii) be able to be given by a person believed to
15 be in the Federated States of Micronesia; and

16 (c) in the case of an application for a search
17 warrant, it would not, in all the circumstances, be more
18 appropriate to grant an evidence-gathering order.

19 (3) For the purposes of subsection (2)(a) of this section,
20 a statement contained in the foreign request to the effect
21 that a serious offense has been or may have been committed
22 against the laws of the foreign state is prima facie evidence
23 of that fact.

24 (4) An evidence-gathering order:

25 (a) shall provide for the manner in which the evidence
26 is to be obtained in order to give proper effect to the

1 foreign request, unless such manner is prohibited under the
2 laws of the Federated States of Micronesia, and in
3 particular, may require any person named therein to:

4 (i) make a record from data or make a copy of a
5 record;

6 (ii) attend court to give evidence on oath or
7 otherwise until excused;

8 (iii) produce to the Supreme Court or to any person
9 designated by the Court, any thing, including any document,
10 or copy thereof; and

11 (b) may include such other terms and conditions as the
12 Supreme Court considers desirable, including those relating
13 to the interests of the person named therein or of third
14 parties.

15 (5) A person named in an evidence-gathering order may
16 refuse to answer a question or to produce a document or
17 thing where the refusal is based on:

18 (a) a law currently in force in the Federated States
19 of Micronesia;

20 (b) a privilege recognized by a law in force in the
21 foreign state that made the request; or

22 (c) a law currently in force in the foreign state that
23 would render the answering of that question or the production
24 of that document or thing by that person, in the person's own
25 jurisdiction, an offense.

26 (6) Where a person refuses to answer a question or to

1 produce a document or thing pursuant to subsection (5)(b) or
2 (c) of this section, the Supreme Court shall report the
3 matter to the Secretary who shall notify the foreign state
4 and request the foreign state to provide a written statement
5 on whether the person's refusal was well founded under the
6 law of the foreign state.

7 (7) Any written statement received by the Secretary from
8 the foreign state in response to a request under subsection
9 (6) of this section, shall be admissible in the evidence-
10 gathering proceedings, and for the purposes of this section
11 be determinative of whether the person's refusal is well
12 founded under the foreign law.

13 (8) A person who, without reasonable excuse, refuses to
14 comply with a lawful order of the Supreme Court made under
15 this section, or who having refused pursuant to
16 subsection (5) of this section, continues to refuse,
17 notwithstanding the admission into evidence of a statement
18 under subsection (7) of this section, to the effect that the
19 refusal is not well founded, commits a contempt of court and
20 may be punished accordingly.

21 (9) A search warrant shall be in the usual form in which a
22 search warrant is issued in the Federated States of
23 Micronesia, varied to the extent necessary to suit the case.

24 (10) No document or thing seized and ordered to be sent to a
25 foreign state shall be sent until the Secretary is satisfied
26 that the foreign state has agreed to comply with any terms or

1 conditions imposed in respect of the sending abroad of the
2 document or thing.

3 (11) The Supreme Court is hereby authorized to adopt,
4 recognize and enforce foreign court orders certified or under
5 seal, which orders shall be presumed to be valid in the
6 absence of any evidence to the contrary."

7 Section 3. Section 1713 of title 12 of the Code of the Federated
8 States of Micronesia, as enacted by Public Law No. 11-71, is hereby
9 amended to read as follows:

10 "Section 1713. Foreign requests for Federated States of
11 Micronesia restraining orders.

12 (1) The Secretary may apply to the Supreme Court for a
13 restraining order under subsection (2) of this section where:

14 (a) a foreign state requests the Secretary to obtain
15 the issuance of a restraining order against property, some or
16 all of which is believed to be located in the Federated
17 States of Micronesia;

18 (b) criminal proceedings have begun in the foreign
19 state in respect of a serious offense; and

20 (c) there is probable cause to believe that the
21 property relating to the offense or belonging to the
22 defendant or the defendant's co-conspirators is located in
23 the Federated States of Micronesia.

24 (2) Where the Secretary makes application to the Supreme
25 Court under subsection (1) of this section, the Court may
26 make a restraining order in respect of the property, and this

1 act or the relevant provisions of chapter 9 of title 11 of
2 the Code of the Federated States of Micronesia shall apply as
3 requested by the Secretary in relation to the application and
4 to any restraining order issued as a result, as if the
5 serious offense that is the subject of the order had been
6 committed in the Federated States of Micronesia."

7 Section 4. Section 1714 of title 12 of the Code of the Federated
8 States of Micronesia, as enacted by Public Law No. 11-71, is hereby
9 amended to read as follows:

10 "Section 1714. Requests for enforcement of foreign
11 confiscation or restraining orders.

12 (1) Where a foreign state requests the Secretary to make
13 arrangements for the enforcement of a foreign restraining
14 order or a foreign confiscation order, the Secretary may
15 apply to the Supreme Court of the Federated States of
16 Micronesia for entry and enforcement of the order under this
17 act or under chapter 9 of title 11 of the Code of the
18 Federated States of Micronesia.

19 (2) The Supreme Court shall, upon application by the
20 Secretary, enter and enforce a foreign restraining order
21 under this act or under chapter 9 of title 11 of the Code of
22 the Federated States of Micronesia, if the Court is satisfied
23 that at the time of entry and registration, the order is in
24 force in the foreign state.

25 (3) The Supreme Court shall, upon application by the
26 Secretary, enter and enforce a foreign confiscation order,

1 which is legally capable of enforcement in the Federated
2 States of Micronesia and its States, if the Court is
3 satisfied:

4 (a) at the time of entry and enforcement, that the
5 order is in force in the foreign state and is not subject to
6 appeal; and

7 (b) where the person subject of the order did not
8 appear in the confiscation proceedings in the foreign state,
9 that:

10 (i) the person was given fair notice of the
11 proceedings; or

12 (ii) the person had absconded or had died before
13 such notice could be given, and if the person died, the
14 decedent's estate was given fair notice of the proceedings.

15 (4) For the purposes of subsections (2) and (3) of this
16 section, a statement contained in the foreign request to the
17 effect that:

18 (a) the foreign restraining order is in force in the
19 foreign state;

20 (b) the foreign confiscation order is in force in the
21 foreign state and is not subject to appeal; or

22 (c) the person, who is the subject of the foreign
23 confiscation order, was given notice of the proceedings in
24 sufficient time to enable him or her to defend them, or that
25 the person had absconded or died before such notice could be
26 given and if the person died, the decedent's estate was given

1 fair notice of the proceedings; is prima facie evidence of
2 those facts, without proof of the signature or official
3 character of the person appearing to have signed the foreign
4 request.

5 (5) Where a foreign restraining order or foreign
6 confiscation order is entered for enforcement in accordance
7 with this section, a copy of any amendments made to the order
8 in the foreign state (whether before or after entry and
9 enforcement), may be entered and enforced in the same way as
10 the order, but shall not have effect for the purposes of
11 chapter 9 of title 11 of the Code of the Federated States of
12 Micronesia, until they are so entered and enforced.

13 (6) The Supreme Court shall, upon application by the
14 Secretary, rescind entry of:

15 (a) a foreign restraining order, if it appears to the
16 Court that the order has ceased to have effect; or

17 (b) a foreign confiscation order, if it appears to the
18 Court that the order has been satisfied or has ceased to have
19 effect.

20 (7) Subject to subsection (9) of this section, where the
21 foreign restraining order or foreign confiscation order
22 comprises a facsimile copy of a duly authenticated foreign
23 order, or amendment made to such an order, the facsimile
24 shall be regarded, for the purposes of this act, as the same
25 as the duly authenticated foreign order.

26 (8) Entry and registration effected by means of a facsimile

1 ceases to have effect at the end of the period of twenty-one
2 (21) days, commencing on the date of entry and registration,
3 unless a duly authenticated original of the order has been
4 entered and registered by that time.

5 (9) Where a foreign restraining order or a foreign
6 confiscation order has been entered pursuant to this section,
7 the relevant provisions of chapter 9 of title 11 of the Code
8 of the Federated States of Micronesia shall be deemed to
9 apply in relation to the order as if the serious offense that
10 is the subject of the order had been committed in the
11 Federated States of Micronesia, and the order had been made
12 pursuant to that act."

13 Section 5. Section 1716 of title 12 of the Code of the Federated
14 States of Micronesia, as enacted by Public Law No. 11-71, is hereby
15 amended to read as follows:

16 "Section 1716. Sharing confiscated property with foreign
17 states.

18 (1) Subject to approval by Congress or if Congress is not
19 in session, subject to approval by the Judiciary and
20 Governmental Operations Committee of Congress, the Secretary
21 may enter into an arrangement with the competent authorities
22 of a foreign state, in respect of money laundering and
23 proceeds of crime, for the reciprocal sharing with that state
24 of such part of any property realized:

25 (a) in the foreign state, as a result of action taken
26 by the Secretary pursuant to section 1707(4) of this title;

1 or

2 (b) in the Federated States of Micronesia, as a result
3 of action taken in the Federated States of Micronesia
4 pursuant to section 1714(1) of this title.

5 (2) Except as otherwise provided by law, any proceeds of
6 crime that have been received by the Federated States of
7 Micronesia pursuant to this chapter shall be deposited in the
8 General Fund of the Federated States of Micronesia."

9 Section 6. Section 1719 of title 12 of the Code of the Federated
10 States of Micronesia, as enacted by Public Law No. 11-71, is hereby
11 amended to read as follows:

12 "Section 1719. Confiscated proceeds of drug crime to be
13 deposited in the General Fund of the Federated States of
14 Micronesia or in a Fund for Drug Abuse Prevention and
15 Control. To the extent available under any sharing of
16 confiscated property arrangement referred to in section 1716
17 of this title, or otherwise, any proceeds of drug related
18 crime which have been:

19 (1) confiscated in a foreign state pursuant to a request by
20 the Federated States of Micronesia under section 1707(4) of
21 this title; or

22 (2) confiscated in the Federated States of Micronesia
23 pursuant to a request by a foreign state under section
24 1714(1) of this title; shall be deposited in the General Fund
25 of the Federated States of Micronesia until such time as a

1 Fund for Drug Abuse Prevention and Control is established by
2 law."

3 Section 7. This act shall become law upon approval by the
4 President of the Federated States of Micronesia or upon its becoming
5 law without such approval.

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April 23rd, 2001

_____/s/
Leo A. Falcam
President
Federated States of Micronesia