
AN ACT

To further amend title 29 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 6-41 and 6-73, by amending sections 102, 204, 302, 306, 307, 308, 403, 404, 406, 407, 408, 601, 603, 604, 605, 608, 611, and 802; by further amending sections 623, 626, and 627, as amended by Public Law No. 6-41; by further amending section 801, as amended by Public Law No. 6-73; by repealing and reenacting sections 201, 202, 203, 501, 502, and 503; by adding new sections 204, 205, 206 and 311; by renumbering section 205; by repealing section 504; for the purpose of establishing the position of Banking Commissioner and revising the laws and procedures for licensing and regulating banks; and for other purposes.

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

Section 1. Section 102 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

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

(1) 'Bank' means a stock or mutual corporation or unincorporated association with sufficient capital, authorized by law to receive deposits of money or securities, to open credits, checking accounts, and savings accounts, to make loans, and in general to engage in all kinds of banking transactions, but does not mean a National banking association established by the Federated States of Micronesia. 'Bank' includes a savings and loan association but does not include a credit union.

(2) 'Banking Board' means the Board established pursuant to section 201 of this title.

(3) 'Banking Commissioner' means the Banking Commissioner appointed pursuant to section 206 of this title.

(4) 'Branch' means an office of a bank at which deposits are received and either checks are paid or money is lent.

(5) 'Demand deposit' means any deposit which is repayable by its terms not more than three days after the time it is made.

(6) 'Deposits' means money or other property

transferred or assigned to any person pursuant to an agreement, expressed or implied, that the person shall repay such moneys upon demand (whether in person or by written order) or after a fixed or determinable period of time. Money loaned to a bank which is to be repaid not sooner than five years from the date of loan, and pursuant to a loan agreement under which the obligation to repay is subordinate to the rights of depositors, shall not be deemed to be a deposit. Money transferred to a credit union as a purchase of its shares shall not be deemed to be a deposit.

(7) 'Domestic bank' means a bank organized under the provisions of chapter 3 of this title.

(8) 'Foreign bank' means a corporation or other financial institution organized for the purpose of engaging in the banking business under the laws of the United States or of a territory or State of the United States, or of a foreign country, operating a bank in its home territory, State, or country.

(9) 'Legal reserve' means the sum which every domestic bank and foreign bank shall at all times have available for the payment of their deposit liabilities pursuant to the provisions of this title.

(10) 'Paid-in capital, surplus, and undistributed profits' means, in the case of a foreign bank, the aggregate paid-in capital, surplus, and undistributed profits of such bank and not merely that allocated to, located in, or arising out of its operations in the Federated States of Micronesia.

(11) 'Person' includes individuals, corporations, partnerships, and any other business entity.

(12) 'Public Auditor' means the Public Auditor appointed by the President of the Federated States of Micronesia with the advice and consent of the Congress pursuant to the Constitution.

(13) 'Registrar of Corporations' means the Registrar of Corporations of the National Government of the Federated States of Micronesia.

(14) 'Related person' with respect to any person

means his spouse, child, parents, brothers, or sisters, or any partnership, corporation, or firm in which he owns more than a ten percent interest."

Section 2. Section 201 of title 29 of the Code of the Federated States of Micronesia is hereby repealed and reenacted to read as follows:

"Section 201. Creation.

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

(2) All appointments shall be for a term of four years, and members shall be eligible for reappointment.

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

Section 3. Section 202 of title 29 of the Code of the Federated States of Micronesia is hereby repealed and reenacted to read as follows:

"Section 202. Principal purposes. The principal purposes of the Banking Board shall be:

(1) To undertake the licensing and supervision of banks;

(2) To protect the interests of depositors; and

(3) To promote the soundness, stability, and development of the banking system of the Federated States of Micronesia."

Section 4. Section 203 of title 29 of the Code of the Federated States of Micronesia is hereby repealed and reenacted to read as follows:

"Section 203. Powers. The Banking Board shall be responsible for its policy and affairs, shall have the powers conferred upon it by this title and may issue directives for the purpose of giving effect to the provisions of this act."

Section 5. Title 29 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 204 to read as follows:

"Section 204. Meetings; Quorum; Majority.

(1) The Banking Board shall meet as often as may be required, at such times, places and with such prior notice as the members thereof shall fix, but not less frequently than once in every three months;

provided that any member thereof may request a special meeting upon giving at least twenty-four hours' notice to the Chairman. A majority of the members of the Banking Board shall constitute a quorum. Decisions shall be adopted by a simple majority of the votes of the members present.

(2) No act or proceeding of the Banking Board shall be invalidated merely by reason of the existence of a vacancy among the members thereof."

Section 6. Title 29 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 205 to read as follows:

"Section 205. Reports.

(1) The Banking Board shall prepare a report each year on the condition of the banking system of the Federated States of Micronesia and on the operations of the Board during the year. Copies of the report shall be submitted to the President and the Speaker of the Congress within three months of the end of each year. The report shall also be published.

(2) The Banking Board shall also make up and publish a consolidated statement of assets and liabilities of the Federated States of Micronesia banking system not less frequently than quarterly, and send copies of the statement to the President and the Speaker of the Congress."

Section 7. Title 29 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 206 to read as follows:

"Section 206. Banking Commissioner.

(1) The President shall appoint a person to be Banking Commissioner, who shall serve as the Chief Executive Officer of the Banking Board, responsible to it for the execution of its policy and the performance of duties and exercise of powers conferred by this title.

(2) The Banking Commissioner shall be a person of recognized experience in banking and financial matters and shall be eligible for reappointment. The Banking Commissioner shall not hold or occupy any other office unless approved in writing by the President.

(3) The remuneration and other terms and conditions of

employment of the Banking Commissioner shall be determined from time to time by the Banking Board.

(4) The Banking Commissioner shall, except as may otherwise be provided in this title or the resolutions of the Banking Board, have the power to act and sign instruments and documents on behalf of the Banking Board.

(5) The Banking Commissioner shall serve, ex officio, as a non-voting member of the Banking Board.

(6) During any period when there is no duly appointed person serving as Banking Commissioner, the Chairman of the Banking Board shall perform the duties and exercise the rights of the Banking Commissioner."

Section 8. Section 204 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 207. Services of Public Auditor and others. The Banking Board and the Banking Commissioner shall be entitled to utilize the services of the Public Auditor and such independent accountants, lawyers, and other experts as they may select in carrying out their powers and duties under this title. The President of the Federated States of Micronesia shall provide such administrative support and staff as may be needed to conduct the business of the Banking Board."

Section 9. Section 205 of title 29 of the Code of the Federated States of Micronesia is hereby renumbered as section 208.

Section 10. Section 302 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 302. Application for permit - Banking Commissioner's investigation. It shall be the duty of the Banking Commissioner, immediately after the Banking Board receives an application for a permit, to make whatever investigations and hold such hearings as he deems may be necessary as to:

(1) the banking and commercial ability and experience of the applicants;

(2) whether such ability and experience are sufficient to warrant the efficient functioning and operation of the bank;

- (3) whether local need justifies the application;
- (4) the character and repute, as well as the banking and commercial experience of the prospective directors or officers who are to conduct the business of said bank;
- (5) whether the bank shall be of benefit to the general public; and
- (6) the capital which the bank has available for its operations."

Section 11. Section 306 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 306. Issuance of certificate; Transmittal to Banking Commissioner. Upon the issuance by the Registrar of Corporations of a certificate of incorporation, as provided in section 305 of this title, the Registrar of Corporations shall so notify the Banking Commissioner and at the same time shall transmit to the Banking Commissioner a duplicate copy of the articles of incorporation."

Section 12. Section 307 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 307. Examination for compliance.

(1) When the duplicate copy is received by the Banking Commissioner, he shall notify the corporation, and the corporation shall then file with the Banking Commissioner a statement of all the facts necessary to enable him to determine whether the bank has in fact complied with all the requirements of law and is lawfully entitled to commence business, such statement to be sworn to by a majority of the directors and by the president or the manager of the bank.

(2) Upon receipt of such statement by the Banking Commissioner, he shall examine the condition of the corporation and ascertain specifically the amount of its capital paid in; the names and places of residence of its stockholders, directors, and officers; the amount of the capital stock which each owns in good faith; and, generally, whether such corporation has complied with all the provisions of law required to entitle it to a license to engage in the business of banking."

Section 13. Section 308 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 308. Issuance of bank license.

(1) If, upon careful examination of the facts so reported, or of any other relevant facts which may come to his knowledge, the Banking Commissioner is satisfied that such bank has complied with all the applicable provisions of this title, with any conditions in the Banking Board permit required to be satisfied prior to licensing, and with other laws required to be complied with before a bank shall be authorized to commence the business of banking, he shall issue a license to engage in the banking business pursuant to section 501 of this title. The license shall contain any conditions of the Banking Board permit intended to survive past issuance of the license.

(2) The Banking Commissioner may withhold from a bank the license authorizing it to commence business whenever he is satisfied that the shareholders have organized the bank for any other than the legitimate objectives determined by this title.

(3) The expenses incurred by the Banking Commissioner in connection with such investigations shall be paid by the corporation in conformity with the regulations the Banking Board may promulgate for that purpose."

Section 14. Title 29 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 311 to read as follows:

"Section 311. Establishment of offices abroad. Except with the consent in writing of the Banking Board, no domestic bank licensed under this title shall establish a branch, agency or office outside the Federated States of Micronesia."

Section 15. Section 403 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 403. Application for permit - Banking Commissioner's investigation. It shall be the duty of the Banking Commissioner, immediately after the Banking Board receives an application for a permit, to make whatever investigations may be necessary as to:

(1) the overall financial condition of the application;

(2) whether or not granting the application would reasonably be apt to result in an over-extension of applicant's resources or facilities;

(3) the character and repute, as well as the banking and commercial experience, of applicant and the bank's directors and executive officers;

(4) whether the bank shall be of benefit to the general public; and

(5) the investment which the bank has made or has available for its operations in the Federated States of Micronesia."

Section 16. Section 404 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 404. Application for permit - Issuance by Board. The Banking Board may issue the permit applied for if, in its judgment, the results of the investigations are satisfactory. Any permit may be granted subject to such conditions as the Banking Board, in its discretion, deems necessary to protect the interests of the people of the Federated States of Micronesia. The decision of the Banking Board shall be final. All expenses incurred by the Banking Board in connection with such investigations shall be paid by the applicant in conformity with regulations which the Banking Board may make."

Section 17. Section 406 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 406. Examination for compliance.

(1) When the permit of the Banking Board is received by the foreign bank, as provided in section 405, it shall proceed to comply with all applicable provisions of law so as to place it in readiness to commence operations upon issuance to it of the license provided by section 501 of this title.

(2) When such foreign bank is in such position of readiness, it shall notify the Banking Commissioner by means of a statement of all facts necessary to enable the Banking Commissioner to determine whether such foreign bank has, in fact, complied with all the requirements of law and is lawfully entitled to commence operations, such statement to

be sworn to by a majority of the directors or by the president or manager of such foreign bank.

(3) Upon receipt of such statement, the Banking Commissioner shall make such investigations as may be necessary to assure himself that the foreign bank has, in fact, complied with all the provisions of law to entitle it to a license to engage in the business of banking."

Section 18. Section 407 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 407. Issuance of bank license.

(1) If, upon a careful examination of the facts so reported or any other relevant facts which may come to his knowledge, he is satisfied that the foreign bank has complied with all of the provisions of this title and the Banking Board permit required before a foreign bank shall be authorized to open or operate a branch or office in the Federated States of Micronesia, the Banking Commissioner shall issue a license to engage in the banking business pursuant to section 501 of this title.

(2) The Banking Commissioner may withhold from a foreign bank the license authorizing it to commence operations whenever he is satisfied that the foreign bank seeks to operate in the Federated States of Micronesia for any other than the legitimate objectives determined by this title.

(3) The expenses incurred by the Banking Commissioner in connection with such investigation shall be paid by the foreign bank in conformity with regulations which the Banking Board may make and issue for that purpose."

Section 19. Section 408 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 408. Appointment of agent for service of process.

Before commencing business in the Federated States of Micronesia, a foreign bank shall file with the Banking Board an appointment of the Banking Commissioner as its agent upon whom all process in any action or proceeding against it arising out of the operations or activities of its office or offices in the Federated States of Micronesia may be served, which appointment shall be by its terms perpetual and irrevocable."

Section 20. Section 501 of title 29 of the Code of the Federated States of Micronesia is hereby repealed and reenacted to read as follows:

"Section 501. Licensing of banks.

(1) The Banking Commissioner shall issue licenses to engage in banking business to banks pursuant to sections 308 and 407 of this title. A license shall be in writing and subject to such terms and conditions, including but not limited to capital which a bank shall maintain in relation to the size and nature of its business, with which the bank shall comply, as may be specified in its license.

(2) A copy of the license issued under this section shall be displayed and kept displayed conspicuously in a public part of all places of business of the bank in the Federated States of Micronesia.

(3) The Banking Board may from time to time, by notice in writing to a bank holding a license issued, or deemed to have been issued, under this section, impose new or additional conditions of the license or vary or remove any conditions already imposed.

(4) The Banking Board shall not take any action under subsection (3) of this section without first consulting the bank concerned and affording it an opportunity to make submissions to the Banking Board.

(5) A license issued under this section shall remain valid unless canceled in accordance with the provisions of this title."

Section 21. Section 502 of title 29 of the Code of the Federated States of Micronesia is hereby repealed and reenacted to read as follows:

"Section 502. License fees. Banks holding a valid license issued pursuant to section 501 of this title shall pay an annual license fee of \$2,000 for each office or branch to be operated in the Federated States of Micronesia during the succeeding calendar year. The license fee shall be paid before the 31st day of December each year, in respect of the next succeeding calendar year."

Section 22. Section 503 of title 29 of the Code of the Federated States of Micronesia is hereby repealed and reenacted to read as follows:

"Section 503. Transitional arrangement. Any bank now holding a

valid license to engage in banking business issued pursuant to this title shall be deemed to be licensed under the provisions of section 501 of this title, shall be issued with a license accordingly, and shall be subject to the provisions of this title."

Section 23. Section 504 of title 29 of the Code of the Federated States of Micronesia is hereby repealed in its entirety.

Section 24. Section 601 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 601. Regulation and supervision of banks by Banking Board - General policies.

(1) All domestic banks and, to the extent of and with respect to business done at any branches established in the Federated States of Micronesia, all foreign banks doing business in the Federated States of Micronesia shall be regulated and supervised by the Banking Board in such manner as to secure the safe and sound conduct of such business, to prevent unsound practices, and to maintain the public confidence in such business and protect the public interest and the interests of depositors, creditors, and stockholders.

(2) Every foreign bank licensed pursuant to section 501 of this title shall, with the concurrence of the Banking Commissioner, designate the branch in the Federated States of Micronesia which may be used as the channel of communication between the Banking Board and the bank with respect to the application of this title to its business throughout the Federated States of Micronesia. Such branch shall be responsible for the timely provision of reports and information by other branches requested under this title. The head office of a domestic bank shall be the channel of communication between the Banking Board and its branches, and shall be responsible for the timely provision of reports and information by other branches requested under this title."

Section 25. Section 603 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 603. Examination of banks - Authority; Testimony; Fees.

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

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

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

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

Section 26. Section 604 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 604. Reports of banks.

(1) Every domestic or foreign bank shall make at least one report of its condition each year to the Banking Commissioner within ninety days after the close of the bank's fiscal year, and according to forms to be prescribed by him, verified by the oath of the chief executive officer or chief financial officer and attesting officer, certifying and subscribing under oath that each of them has personal knowledge of the facts stated therein and that the same are true.

(2) Such reports shall exhibit in detail and under appropriate heads the total resources and liabilities of the bank, and, in the case of a foreign bank, shall show separately the resources, liabilities, and operations in the Federated States of Micronesia.

(3) The Banking Commissioner shall have the right to require that any such reports be audited at the bank's expense by independent accountants approved by the Banking Commissioner.

(4) Every domestic and foreign bank holding a license under this title shall forward to the Banking Commissioner no later than the 31st day of December each year a report outlining the bank's policy regarding employment of citizens of the Federated States of Micronesia in

executive positions in the bank, and the steps being taken to maximize such employment."

Section 27. Section 605 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 605. Special reports.

(1) The Banking Commissioner may also call for special reports from any domestic or foreign bank whenever in his judgment the same are necessary in order to obtain full knowledge of its condition.

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

Section 28. Section 608 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 608. Alternative examination and reports.

(1) The Banking Commissioner may accept, in lieu of the examination required or authorized by section 603 of this title, the most current examination made by the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or a Federal Reserve Bank, or in case of a foreign bank not examined by such agencies, an examination acceptable by the appropriate government agency in the home jurisdiction of that bank.

(2) The Banking Commissioner may accept, in lieu of any report of condition which may be required by sections 604 or 605 of this chapter, a report of condition obtained by said Corporation, Board of Governors, Federal Reserve Bank, or government agency."

Section 29. Section 611 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 611. Legal reserve - Notification. The Banking Commissioner shall notify any domestic or foreign bank whose legal reserve is less than that required by this title of its obligations to make up the full amount. If such bank fails to do so within a period of thirty days, it may be declared in liquidation by the Banking Board. In such event, the Banking Commissioner shall apply to the Trial Division of the Supreme Court of

the Federated States of Micronesia for the appointment of a receiver to take charge of and wind up the affairs of such bank and thereafter the matter shall be governed by the provisions of section 802 of this title."

Section 30. Section 623 of title 29 of the Code of the Federated States of Micronesia, as amended by Public Law No. 6-41, is hereby further amended to read as follows:

"Section 623. Deposit and other insurance.

(1) If and while it is available under the laws of the United States, all domestic banks and foreign banks, as a condition to operating an office or branch in the Federated States of Micronesia, shall secure their depositors by deposit insurance of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation of the United States, or their successor entities.

(2) All domestic and foreign banks operating an office or branch in the Federated States of Micronesia shall provide themselves with protection and indemnity against burglary, embezzlement, and other similar insurable loss. If a domestic or foreign bank refuses to comply with this requirement, the Banking Commissioner shall have the right to make arrangements to furnish such protection and indemnity, charging the cost thereof to said bank."

Section 31. Section 626 of title 29 of the Code of the Federated States of Micronesia, as amended by Public Law No. 6-41, is hereby further amended to read as follows:

"Section 626. Filing fees; Disposition of fines.

(1) Every domestic bank or foreign bank in the Federated States of Micronesia shall, upon filing its articles of incorporation in the Office of the Registrar of Corporations, pay a filing fee of fifty dollars.

(2) Every domestic or foreign bank desiring to file in the Office of the Registrar of Corporations articles amendatory or supplementary or a certificate of increase or decrease of capital stock shall pay a fee of twenty-five dollars.

(3) The fee for furnishing a certified copy of any of the documents referred to in the preceding subsections of this section shall be fifty cents per folio, but not less than five dollars.

(4) All fees required under the provisions of this title shall be paid to the Office of the Registrar of Corporations and shall be accounted for and deposited into the General Fund of the Federated States of Micronesia.

(5) All fines under this title shall be paid to the Banking Commissioner and shall be accounted for and deposited into the General Fund of the Federated States of Micronesia."

Section 32. Section 627 of title 29 of the Code of the Federated States of Micronesia, as amended by Public Law No. 6-41, is hereby further amended to read as follows:

"Section 627. General penalties.

(1) For any violation of this title or the regulations prescribed pursuant to section 602 of this title, the delinquent domestic or foreign bank shall be subject to a fine of not more than \$1,000 for each day that the violation continues and, in the case of a material violation, to the cancellation of its license.

(2) Such fine or cancellation shall be imposed by the Banking Board only with the approval of the President of the Federated States of Micronesia and after notice to the delinquent bank and a hearing concerning the alleged violation.

(3) In any such case, the Banking Commissioner shall send written notice of his action to the bank affected as quickly as circumstances will allow, and if the cancellation of the bank's license has been decided upon, shall transmit a written order to that effect to the Registrar of Corporations for appropriate action."

Section 33. Section 801 of title 29 of the Code of the Federated States of Micronesia, as amended by Public Law No. 6-73, is hereby further amended to read as follows:

"Section 801. Receivership - Application by Banking Commissioner. If, in consequence of an examination or report made by an examiner, or otherwise, the Banking Board should have reason to believe that a bank or foreign bank is not in sound financial condition to continue doing business; or that its affairs are being conducted in such a manner that the public or the persons or entities having securities or

funds under its custody are in danger of being defrauded; or if any such bank shall violate its charter or any law relative thereto, or this title in any material respect; or if it becomes insolvent, the Banking Commissioner shall apply to the Trial Division of the Supreme Court of the Federated States of Micronesia for the appointment of a receiver to take charge of and wind up the affairs of such bank."

Section 34. Section 802 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 802. Receivership - Appointment and duties of receiver.

(1) If the Court, after hearing all parties concerned, determines that the facts alleged by the Banking Commissioner are supported by the evidence, it shall appoint a receiver.

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

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

Section 35. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

January 22 _____, 1997

for /s/ Jacob Nena
Bailey Olter
President
Federated States of Micronesia