

EIGHTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

SEVENTH SPECIAL SESSION, 2015

CONGRESSIONAL BILL NO. 18-274, C.D.1,  
C.D.2

**P.C. NO. 18-490**

**PUBLIC LAW NO. 18-124**

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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. Such new FSM corporations with  
3 intellectual property could continue to generate income  
4 over the coming years and decades. The government will  
5 be able to then tax these incomes, thus expanding the  
6 tax base that is needed by the government to provide the  
7 services that the citizens and residents of the FSM  
8 demand. It is recognized that the nation currently does  
9 not have the resources to make investments in these new  
10 industries and that a private-public partnership is  
11 needed to finance and grow these industries. Therefore,  
12 it is in the best interests of the FSM and its people  
13 that incentives are provided for Major Corporations to  
14 establish professionally managed funds that will  
15 consider new business opportunities and make wise  
16 investments."

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

20 "Section 403. Creation.

21 (1) Any Major Corporation that pays corporate income  
22 tax to the FSM exceeding \$100,000,000 but not exceeding  
23 \$500,000,000 in any one calendar year may require that  
24 an amount equivalent to up to fifty percent (50%) of the  
25 amount of income taxes it paid will be invested by the

1           FSM into a FSM Venture Fund, and that the Major  
2           Corporation may also select the Fund Manager for this  
3           Fund.

4           (2) Any Major Corporation that pays corporate income  
5           tax to the FSM exceeding \$500,000,000 in any one  
6           calendar year may require that an amount equivalent to  
7           up to 50% of \$500,000,000 and up to 100% of the amount  
8           in excess of \$500,000,000 of income taxes it paid will  
9           be invested by the FSM into a FSM Venture Fund, and that  
10          the Major Corporation may also select the Fund Manager  
11          for this Fund.

12          (3) If a Major Corporation has paid corporate income  
13          tax to the FSM in any one calendar year so that a Fund  
14          has consequently been established pursuant to paragraph  
15          (1) or (2) above, and such Major Corporation thereafter  
16          pays corporate income tax exceeding \$100,000,000 to the  
17          FSM in any subsequent calendar year during the term of  
18          the Fund, then the Major Corporation may require that an  
19          amount equivalent to up to fifty percent (50%) of the  
20          amount of income tax it paid in such subsequent calendar  
21          year be invested by the FSM into the existing Fund,  
22          until the Major Corporation has paid an aggregate amount  
23          of corporate income tax to the FSM equal to  
24          \$500,000,000. Seventy-five percent (75%) of the  
25          remaining tax payment made in the first calendar year

1 after the establishment of the Fund, exclusive of fees,  
2 shall be deposited to the Trust Fund established under  
3 the Trust Fund Agreement between the Government of the  
4 United States and the Government of the Federated States  
5 of Micronesia implementing sections 215 and 216 of the  
6 Compact of Free Association, as amended. After the  
7 Major Corporation has paid an aggregate amount of  
8 corporate income tax to the FSM in excess of  
9 \$500,000,000, then the Major Corporation may require  
10 that an amount equivalent to up to one-hundred percent  
11 (100%) of the amount of income tax it paid in such  
12 subsequent calendar year be invested by the FSM into the  
13 Fund. The number of Fund ownership interests received  
14 by the Fund Investors in connection with such subsequent  
15 investments will be calculated based on the net asset  
16 value per Fund ownership interest in effect in the date  
17 of each such subsequent investment. For the purposes,  
18 the aggregate amount of corporate income tax paid by the  
19 Major Corporation to the FSM will include the income  
20 taxes paid in the initial calendar year in respect of  
21 which the Fund was originally established and in all  
22 subsequent calendar years.

23 (4) The FSM may designate any other investor that is  
24 authorized to invest pursuant to section 408 (such  
25 designated investor, together with the FSM, "Fund

1 Investors") to provide a portion of the amounts required  
2 to be invested into the Fund by the FSM pursuant to  
3 paragraph (2) or (3) above.

4 (5) For the purposes of calculating the corporate  
5 income tax paid by a Major Corporation under paragraphs  
6 (1), (2) or (3) above, corporate income taxes paid to  
7 the FSM by any other entity that directly or indirectly  
8 controls, is controlled by, or is under common control  
9 with, the Major Corporation will be deemed paid by such  
10 Major Corporation.

11 (6) Within 30 days of the date of the letter  
12 described in section 404, (i) the Secretary of Finance  
13 and Administration shall authorize the establishment of  
14 each FSM Venture Fund, hereinafter referred to as a  
15 'Fund', and (ii) the Fund Manager shall establish the  
16 Fund in a jurisdiction selected by it.

17 (7) In order to effectuate the FSM Venture Fund under  
18 this section, the investment by the FSM shall be deemed  
19 appropriated from the General Fund as if set forth in an  
20 appropriation act."

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

24 "Section 404. Letter of intent. Each of the Major  
25 Corporation that intends to establish a Fund must

1 deliver a letter to the President of the Federated  
2 States of Micronesia Development Bank, between 60 days  
3 and 90 days after the delivery of its payment of  
4 corporate income tax to the FSM, signed by a director of  
5 the Major Corporation, (i) stating that it intends to  
6 establish a Fund, (ii) specifying the amount of  
7 investment, being the capital amount pursuant to section  
8 403, in that Fund at the initial closing of such Fund,  
9 and (iii) selecting the Fund Manager of the Fund. The  
10 letter will also describe the Designated Entity for the  
11 Fund, give evidence that the Designated Entity meets the  
12 requirements listed in section 409 below, and describe  
13 the mechanism by which the Designated Entity elects to  
14 meet its obligations under section 409. Attached to  
15 this letter must be an Investment Statement that  
16 describes the qualifications, capabilities, and  
17 experience of the Fund Manager, the general strategy of  
18 the Fund along with the projected allocation of the  
19 investments by industry, stage of development, and  
20 country."

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

24 "Section 406. Deadline for depositing funds. All Fund  
25 Investors must have deposited their monies into the Fund

1 no later than the end of the 60<sup>th</sup> day after publication  
2 of the notice described in section 405. The President  
3 of the Federated States of Micronesia Development Bank  
4 will ensure that the government and all other investors  
5 have their funds deposited into the Fund by this date.  
6 The Secretary of Finance and Administration is  
7 authorized and required to deposit into the Fund such  
8 tax revenue as may be required pursuant to sections 403  
9 and 404 of this Chapter.”

10 Section 5. Section 407 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 407. Duration of funds. Settlement; capital  
14 return; management fee. The term of each Fund will be  
15 as specified by the Fund Manager, but no Fund may have a  
16 term beyond September 30, 2043. For any Fund with a  
17 term beyond September 30, 2033, the Secretary of Finance  
18 and Administration will have the option to end such term  
19 on September 30, 2033 by delivering a notice thereof to  
20 the Fund Manager at least three years in advance. At  
21 the end of the life of a Fund, the following amounts  
22 must be paid to each investor: (1) the capital amounts  
23 invested in the Fund by that investor, net of all  
24 amounts of invested capital previously returned to that  
25 investor; and (2) with respect to any amount remaining

1           in the Fund after repayment of the invested capital  
2           amounts under the preceding clause (1), net of  
3           withholdings for taxes due upon, and costs and expenses  
4           of, liquidation (such remaining amount hereinafter  
5           referred to as the "Net Gain",), a pro-rata portion of  
6           an amount equal to twenty percent (20%) of the first  
7           \$100,000,000 of Net Gain, plus a pro-rata portion of an  
8           amount equal to ten percent (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 such  
11          investor's Fund ownership interests. Any remaining Net  
12          Gain not paid to the investors under clause (2) above  
13          will be paid to the Fund Manager. Notwithstanding the  
14          preceding paragraph, in fiscal year 2023 each Fund must  
15          return to the investors in aggregate an amount equal to  
16          twenty percent (20%) of the net asset value of the Fund  
17          as of the end of the preceding fiscal year (in addition  
18          to the previous returns of invested capital to the  
19          investors made pursuant to the following paragraph of  
20          this section 407). Such amount will be paid to the  
21          investors within 120 days of the beginning of fiscal  
22          year 2023. With respect to each fiscal year during the  
23          term of the Fund, an annual partial return of invested  
24          capital equal to two percent (2%) of the greater of  
25          (a) the net asset value of the Fund as of the end of the

1 preceding FSM National Government fiscal year and  
2 (b) the capital amounts invested in the Fund by the  
3 investors will also be paid to the investors in  
4 aggregate within 120 days after the beginning of the  
5 fiscal year, except that (i) the initial partial return  
6 of invested capital will be based on the amounts  
7 deposited in the Fund by the deadline specified in  
8 section 406 of this chapter; (ii) payment in respect of  
9 the final fiscal year of the Fund may be made on or  
10 prior to the Fund's liquidation; and (iii) Fund  
11 ownership interests received by the Fund Investors  
12 pursuant to section 403(3) of this chapter will instead  
13 be entitled to an annual partial return of invested  
14 capital so payable to the Fund Investors at the rate of  
15 three percent (3%) per annum. Notwithstanding the  
16 preceding sentence, if, with respect to any fiscal year  
17 during the term of the Fund, any partial return of  
18 invested capital payable to the investors pursuant to  
19 the foregoing provisions would result in the investors  
20 receiving in aggregate, including all prior partial  
21 returns of invested capital paid to the investors, an  
22 amount greater than if in each year the investors had  
23 received two percent (2%) or three percent (3%), as  
24 applicable, of the capital amounts invested in the Fund  
25 by the investors, then the Fund Manager shall be

1 entitled to pay to the investors, in respect of such  
2 fiscal year, such amount so that the partial returns of  
3 capital paid to the investors each year, in aggregate,  
4 do not exceed two percent (2%) or three percent (3%), as  
5 applicable, of the capital amounts invested in the Fund  
6 by the investors. Furthermore, with respect to each  
7 fiscal year during the term of the Fund, the Fund  
8 Manager may require that the Fund pay an annual  
9 management fee equal to up to two percent (2%) of the  
10 net asset value of the Fund as of the end of the  
11 preceding fiscal year to the Fund Manager within 120  
12 days after the beginning of the fiscal year, except that  
13 (i) the initial management fee will be based on the  
14 amounts deposited in the Fund by the deadline specified  
15 in section 406 of this chapter and (ii) payment of the  
16 management fee owed with respect to the final fiscal  
17 year of the Fund may be made on or prior to the Fund's  
18 liquidation."

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

22 "Section 408. Investment in Venture Funds by Federated  
23 States of Micronesia citizens and corporations. As  
24 provided in this Chapter, citizens and corporations of  
25 the Federated States of Micronesia may invest in a Fund

1           any time that the FSM is required to invest in such Fund  
2           pursuant to section 403. The minimum investment shall  
3           be \$100,000.”

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

7           “Section 409. Repayment of capital amounts. If at the  
8           liquidation of a Fund the amounts payable to the Fund  
9           Investors, together with all amounts of invested capital  
10          previously returned to the Fund Investors, would not be  
11          sufficient to return to the Fund Investors in aggregate  
12          an amount equal to the aggregate capital amount invested  
13          in the Fund by the Fund Investors, then the Fund Manager  
14          shall return to the Fund Investors such portion of the  
15          aggregate management fees paid to it to remedy such  
16          capital shortfall. In addition, upon establishment of a  
17          Fund the Designated Entity will, at its option, either  
18          guarantee the repayment to Fund Investors of the capital  
19          amounts invested in a Fund by the Fund Investors at the  
20          end of the life of the Fund or commit to provide  
21          supplemental capital to remedy any such capital  
22          shortfall. “Designated Entity” means the Fund Manager,  
23          its parent organization or an unrelated party. The  
24          Designated Entity must be rated at least investment  
25          grade rated by Moody’s or Standard and Poor’s or Fitch

1 or a national rating organization acceptable to the  
2 President of the Federated States of Micronesia  
3 Development Bank, or it must have a net worth of least  
4 ten times the original capital of the Fund. The  
5 President of the Federated States of Micronesia  
6 Development Bank will ensure that the Designated Entity  
7 meets the criteria set out in this section."

8 Section 8. Section 420 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 420. Section 420. Payment of partial capital  
12 returns. The provisions of section 409 will also apply  
13 with respect to the payment of partial capital returns  
14 to the Fund Investors each fiscal year during the life  
15 of the Fund under section 407 of this Chapter."

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

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

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

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

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

1           Section 11. Section 424 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 424. Advisory Board. Each Fund shall have an  
5 Advisory Board that shall give advice to the Fund  
6 Manager. The Board shall consist of at least 5 people  
7 that are selected by the President of the Federated  
8 States of Micronesia, with the advice and consent of the  
9 Congress; provided, that each investor that invests in  
10 aggregate \$10,000,000 or more but less than \$20,000,000  
11 in the Fund shall be entitled to a representative in the  
12 Advisory Board, and each investor that invests in  
13 aggregate \$20,000,000 or more in the Fund shall be  
14 entitled to two representatives in the Advisory Board.  
15 The Board shall meet at least once a year in person at  
16 the headquarters of the Fund Manager and shall give  
17 advice to the Fund Manager. The costs of the Advisory  
18 Board shall be an appropriate expense of the Fund.”

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

22           “Section 425. Expiration date. No new Fund may be  
23 created pursuant to section 403 of this chapter, on or  
24 after April 1, 2028, unless extended by law.”

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

May 8, 2015

/s/ Manny Mori  
Manny Mori  
President  
Federated States of Micronesia