

AN ACT

To enact title 31 of the Code of the Federated States of Micronesia, entitled "Bankruptcy and Insolvency", to establish a National bankruptcy law for the Federated States of Micronesia, and for other purposes.

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

1 Section 1. Purpose. The purpose of this bill is to
2 establish a bankruptcy system for the Federated States of
3 Micronesia that fairly balances the interests of creditors and
4 debtors in circumstances where the debtor is unable to meet his
5 financial obligations when due. A uniform set of laws and
6 procedures is established for all bankruptcy proceedings,
7 providing increased certainty for creditors, debtors and the
8 courts. The bill is designed to protect the interests of
9 creditors by creating a single proceeding in which multiple
10 creditor claims can be addressed efficiently and equitably,
11 freeing all parties from the uncertainties and costs of numerous,
12 uncoordinated debt enforcement activities, all competing for
13 access to the debtor's assets. It is also intended that creditor
14 interests be served by the appointment of a receiver, in
15 appropriate circumstances, to marshall all of the debtor's non-
16 exempt assets and to manage those assets, during the pendency of
17 the proceeding, in the best interests of the estate. The bill
18 creates for the debtor who meets the requirements of the law an

1 opportunity to get a fresh start where he might otherwise face a
2 protracted struggle with debt beyond his ability to pay. The
3 bill gives to the courts substantial latitude in managing the
4 bankruptcy proceeding to protect the interests of both creditors
5 and debtors, to deal with abuses of the bankruptcy system and to
6 establish a case schedule that takes into consideration the
7 interests of all parties. It is not the purpose of the bill to
8 interfere with or modify state or traditional law with respect to
9 the transfer of interest in land. Instead, the bill directs the
10 bankruptcy court to apply state law in determining whether and to
11 what extent interests in land are subject to distribution to
12 creditors.

13 Section 2. Title 31 of the Code of the Federated States of
14 Micronesia is hereby enacted by adding a new chapter 1 entitled
15 "General Provisions".

16 Section 3. Title 31 of the Code of the Federated States of
17 Micronesia is hereby enacted by adding a new section 101 to read
18 as follows:

19 "Section 101. Authority; title. This statute is
20 enacted pursuant to the power of Congress to regulate
21 bankruptcy and insolvency under article IX, section 2(g)
22 of the Constitution of the Federated States of
23 Micronesia. This act may be cited as the 'Bankruptcy
24 Act of 2004'."

25 Section 4. Title 31 of the Code of the Federated States of

1 Micronesia is hereby enacted by adding a new section 102 to read
2 as follows:

3 "Section 102. Definitions.

4 (1) 'Affiliate' means:

5 (a) a person that directly or indirectly owns,
6 controls, or has the power to vote, twenty percent or
7 more of the outstanding voting securities of the debtor;

8 (b) a corporation twenty percent or more of whose
9 outstanding voting securities are directly or indirectly
10 controlled, or held with power to vote, by the debtor,
11 or by a person that directly or indirectly owns,
12 controls, or holds with power to vote, twenty percent or
13 more of the outstanding voting securities of the debtor;

14 (c) a person whose business is operated under a
15 lease or operating agreement by the debtor, or a person
16 substantially all of whose property is operated under an
17 operating agreement with the debtor;

18 (d) a person that operates the business of, or
19 all or substantially all of the property of the debtor
20 under a lease or operating agreement.

21 (2) 'Claim' means:

22 (a) a right to payment, whether or not such right
23 is reduced to judgment, liquidated, unliquidated, fixed,
24 contingent, matured, unmatured, disputed, undisputed,
25 legal, equitable, secured, or unsecured; or

1 (b) a right to an equitable remedy for breach of
2 performance if such breach gives rise to a right to
3 payment, whether or not such right is reduced to
4 judgment, liquidated, unliquidated, fixed, contingent,
5 matured, unmatured, disputed, undisputed, legal,
6 equitable, secured, or unsecured.

7 (3) 'Creditor' means a person or government entity
8 that has a claim against the debtor that arose at the
9 time of or before the order for relief concerning the
10 debtor.

11 (4) 'Debt' means liability on a claim.

12 (5) 'Debtor' means a person with regard to which a
13 case under this title has been commenced but shall not
14 include a governmental entity or, to the extent that
15 this title conflicts with Article IX of the programs and
16 Services Agreement of the Compact of Free Association,
17 as amended, entitled 'Federal Deposit Insurance
18 Corporation Programs and Services Agreements', the Bank
19 of the Federated States of Micronesia.

20 (6) 'Governmental entity' means the Federated States
21 of Micronesia, a State, a foreign state, a municipality,
22 or an agency, instrumentality or department of any of
23 the foregoing.

24 (7) 'Insider' means:

25 (a) if the debtor is an individual:

1 (i) a relative of the debtor, or of a
2 general partner of the debtor;

3 (ii) a partnership in which the debtor is a
4 general partner;

5 (iii) a general partner of the debtor; or

6 (iv) a corporation of which the debtor is a
7 director, officer, or person in control.

8 (b) if the debtor is a corporation:

9 (i) an affiliate, director, officer or
10 person in control of the debtor;

11 (ii) a partnership in which the debtor is a
12 general partner, or a general partner of the debtor;

13 (iii) a relative of a general partner,
14 affiliate, director, officer or person in control of the
15 debtor.

16 (c) if the debtor is a partnership:

17 (i) a general partner in the debtor;

18 (ii) a relative of a general partner, a
19 general partner of, or a person in control of the
20 debtor;

21 (iii) a partnership in which the debtor is a
22 general partner;

23 (iv) a general partner of the debtor; or

24 (v) an affiliate or person in control of the
25 debtor.

1 (8) 'Interested party' means the debtor, any creditor
2 of the debtor, any equity holder in a corporation that
3 is a debtor, and any other party that the court
4 supervising an application under this title may
5 determine to have a right to be heard on issues
6 pertaining to that application.

7 (9) 'Person' as used in this chapter means an
8 individual, partnership or corporation, but does not
9 include governmental entities.

10 (10) 'Relative' means an individual related by blood,
11 marriage within the third degree as determined by common
12 law, persons who are considered close relatives under
13 applicable Micronesian custom, or a step or adoptive
14 relationship within such third degree.

15 (11) 'State' means a State of the Federated States of
16 Micronesia."

17 Section 5. Title 31 of the Code of the Federated States of
18 Micronesia is hereby enacted by adding a new section 103 to read
19 as follows:

20 "Section 103. Application for relief.

21 (1) An application for the appointment of a receiver
22 under Chapter 2 of this title may be made:

23 (a) by any debtor; or

24 (b) by three or more creditors whose combined
25 claims are in excess of \$7,500, provided that each

1 creditor's claim is at least \$1,000, and further
2 provided that such claims are not contingent and are not
3 subject to a bona fide dispute; or

4 (c) in the case of a partnership, by any person
5 or persons whose interest in the partnership is, in the
6 aggregate, greater than or equal to fifty (50) percent;

7 (2) An application under chapter 3 of this title for
8 the reorganization of a debtor that is a corporation may
9 be made by the debtor.

10 (3) Any application under this title shall allege that
11 the debtor resides or has a domicile, a place of
12 business, or property in the Federated States of
13 Micronesia.

14 (4) When the application is brought by creditors, the
15 application shall also allege:

16 (a) that the claims held by such creditors amount
17 in the aggregate to at least \$7,500, are not contingent
18 and are not subject to a bona fide dispute; and

19 (b) that the debtor is generally not, at the time
20 of the application, paying its debts as they become due,
21 and has generally not been paying its debts as they
22 became due for at least sixty (60) days prior to the
23 date of the application."

24 Section 6. Title 31 of the Code of the Federated States of
25 Micronesia is hereby enacted by adding a new section 104 to read

1 as follows:

2 "Section 104. Filing of application.

3 (1) An application for relief under this title shall
4 be filed with the Trial Division of the FSM Supreme
5 Court located in a State of the Federated States of
6 Micronesia where the debtor resides or has domicile, a
7 place of business, or property.

8 (2) The court in which the application is filed shall
9 supervise the proceeding unless the court, in its
10 discretion, determines that the proceeding may be more
11 efficiently supervised by the FSM Supreme Court Trial
12 Division located in another State of the Federated
13 States of Micronesia.

14 (3) The application must be in the form specified by
15 the court, accompanied by such filing fee as the court
16 may set, and must contain, to the best of the knowledge
17 of the applicant, a statement of financial condition of
18 the debtor, as well as schedules of debts, assets and
19 exemptions of the debtor. All applications must be
20 sworn under penalty of perjury by the debtor, or members
21 of the applying creditors group;

22 (4) In the case of an application made pursuant to
23 subsection 103(1)(b) of this chapter, the debtor may,
24 within the time prescribed by the court, file an answer
25 to the application. An answer may allege one or more of

1 the following:

2 (a) that the debtor is generally able to pay its
3 debts as they come due; or

4 (b) that the claims of the creditors do not
5 satisfy the requirements of subsection 103(1)(b) of this
6 chapter; or

7 (c) in the case of a corporation, that it is in
8 the best interests of the debtor and creditors that the
9 proceeding be converted to a proceeding under chapter 3
10 of this title; or

11 (d) that the allegations in the application are
12 insufficient as a matter of law."

13 Section 7. Title 31 of the Code of the Federated States of
14 Micronesia is hereby enacted by adding a new section 105 to read
15 as follows:

16 "Section 105. Notice.

17 Notice to Interested Parties of the filing of an
18 application under this title and of motions, hearings
19 and other events relating to proceedings under this
20 title shall be given at such time and in such manner as
21 the court may determine for the purposes of (a) giving
22 as many interested parties as reasonably practicable an
23 opportunity to be heard concerning matters affecting
24 their interests in the proceedings, and (b) maximizing
25 the number of claims against the debtor that can be

1 discharged, compromised, paid or otherwise resolved
2 through the proceedings."

3 Section 8. Title 31 of the Code of the Federated States of
4 Micronesia is hereby enacted by adding a new section 106 to read
5 as follows:

6 "Section 106. Stay of proceedings.

7 (1) Except as provided in subsection (2) of this
8 section, an application under this title operates
9 throughout the Federated States of Micronesia and every
10 State thereof as a stay, applicable to all persons and
11 governmental entities, of the commencement or
12 continuation of all legal proceedings against the
13 debtor, against the property of the debtor, and against
14 property held by the receiver.

15 (2) An application under this title does not operate
16 as a stay of:

17 (a) criminal proceedings against the debtor; or

18 (b) the commencement or continuation of legal
19 proceedings by a governmental entity to enforce a police
20 or regulatory power.

21 (3) The stay authorized by subsection (1) of this
22 section shall continue until the proceedings related to
23 the application are terminated, suspended or dismissed,
24 or the party affected obtains relief from the stay
25 pursuant to subsection (4) of this section.

1 (4) Upon the application of a party affected by the
2 stay, the court, for cause shown, shall either:

3 (a) grant relief from stay; or

4 (b) grant such other relief as will provide
5 adequate protection for the party requesting relief from
6 stay."

7 Section 9. Title 31 of the Code of the Federated States of
8 Micronesia is hereby enacted by adding a new section 107 to read
9 as follows:

10 "Section 107. Claims of creditors.

11 (1) Any creditor may file a sworn claim in such manner
12 and within such time limits as the court shall
13 prescribe.

14 (2) Each claim shall be allowed except to the extent
15 that:

16 (a) such claim is unenforceable for any reason
17 other than because such claim is contingent or
18 unmatured;

19 (b) such claim is for unmatured interest;

20 (c) such claim is for punitive damages and is not
21 compensation for actual pecuniary loss; or

22 (d) such claim has not been filed within the time
23 limit prescribed by the court.

24 (3) In the event of a dispute as to whether or in what
25 amount a claim is allowable under this section, the

1 court may (a) summarily determine the matter upon
2 motion, (b) conduct a trial on the claim, or (c) refer
3 the matter to another court for determination.

4 (4) An allowed claim of a creditor is a secured claim
5 to the extent of the value, as determined by the court,
6 of the collateral, provided all criteria under
7 applicable law for perfecting security interests have
8 been complied with, and further provided that no
9 security interest in land shall be treated as a secured
10 claim except to the extent, if any, to which such
11 security interest is enforceable under the laws of the
12 state in which the land is located. An allowed claim is
13 an unsecured claim to the extent that the value of the
14 collateral pledged by the debtor as security for that
15 claim is less than the amount of the claim.

16 (5) The holder of an allowed secured claim is entitled
17 to the approved value of the collateral or its
18 equivalent, unless such creditor agrees to accept a
19 lesser amount.

20 (6) Assets shall be distributed to the holder of an
21 allowed unsecured claim in accordance with the
22 provisions of this title."

23 Section 10. Title 31 of the Code of the Federated States of
24 Micronesia is hereby enacted by adding a new section 108 to read
25 as follows:

1 "Section 108. Priorities.

2 (1) The following claims and expenses shall have
3 priority in the following order:

4 (a) all necessary administrative expenses
5 incurred in connection with the proceeding as may be
6 determined by the court, including compensation of any
7 receiver or trustee, applicable attorneys fees, and
8 wages, salaries and other expenses incurred, after the
9 date of the application, in connection with continuing
10 to operate any business of the debtor, to the extent
11 that such continued operations are permitted by this
12 title or by order of the court;

13 (b) all liens of the FSM Social Security
14 Administration subject to section 607 of title 53 of the
15 Code of the Federated States of Micronesia;

16 (c) all allowed unsecured claims of the National
17 Government or any State or local government of the
18 Federated States of Micronesia, or any entity or public
19 corporation of any such government;

20 (d) all claims by employees of the debtor for
21 wages and salaries for services prior to the date of the
22 application, except for such claims by persons who hold
23 an ownership interest in a debtor that is a business,
24 persons who hold a management position in the business
25 of the debtor and relatives of the debtor;

1 (e) other allowed unsecured claims, including any
2 unsecured portions of claims held by secured creditors,
3 but not including claims within subsections (e) and (f)
4 of this section;

5 (f) if the debtor is a corporation or a
6 partnership, all allowed claims arising from the
7 ownership, purchase or sale of any equity or partnership
8 interest in the debtor;

9 (g) all rights, claims and interests of the
10 debtor.

11 (2) Payment of professional fees and other
12 administrative costs of the debtor, as described in
13 subsection (1)(a) of this section, may be made during
14 the course of a proceeding, subject to approval by the
15 court. Such payments may include advance payments if
16 determined by the court to be necessary and appropriate
17 to accomplish the purposes of this title;

18 (3) Creditors having claims or expenses of the same
19 order of priority shall be treated equally except to the
20 extent that a creditor agrees to be treated less
21 beneficially."

22 Section 11. Title 31 of the Code of the Federated States of
23 Micronesia is hereby enacted by adding a new section 109 to read
24 as follows:

25 "Section 109. Setoff.

1 The law of setoff shall apply in the event that the
2 debtor has any right to recover, arising prior to the
3 filing of an application hereunder, against a creditor
4 filing a claim under this title, provided that the
5 creditor's claim is allowable under section 107 hereof,
6 and further provided that no claim against the debtor by
7 a bank or other financial institution shall be setoff
8 against funds or other assets held by the bank or
9 financial institution on account for the debtor."

10 Section 12. Title 31 of the Code of the Federated States of
11 Micronesia is hereby enacted by adding a new section 110 to read
12 as follows:

13 "Section 110. Rulemaking power of the court.

14 The Supreme Court of the Federated States of Micronesia
15 may adopt such rules, not inconsistent with the
16 provisions of the title, as it may deem necessary or
17 appropriate to the supervision of proceedings under this
18 title or otherwise to effect the purposes of this
19 title."

20 Section 13. Title 31 of the Code of the Federated States of
21 Micronesia is hereby enacted by adding a new section 111 to read
22 as follows:

23 "Section 111. Retention of professionals.

24 The debtor may retain, for the purposes of proceedings
25 under this title, one or more attorneys, accountants or

1 other professionals, provided that the retention and
2 terms of retention of each such professional shall be
3 subject to approval by the court. The court may retain
4 one or more appraisers, accountants or other
5 professionals to appraise property of the debtor, to
6 examine the financial condition of the debtor or
7 otherwise to assist the court in connection with a
8 proceeding under this title. Unless otherwise ordered
9 by the court, the fees and costs of any professionals
10 retained by the court and the debtor shall be treated as
11 administrative costs under section 108 hereof."

12 Section 14. Title 31 of the Code of the Federated States of
13 Micronesia is hereby enacted by adding a new section 112 to read
14 as follows:

15 "Section 112. Qualifications of receivers and trustees.

16 (1) A person may serve as a receiver or trustee under
17 this title only if such person is:

18 (a) competent to perform the duties of a receiver
19 or trustee;

20 (b) resides or has an office in the Federated
21 States of Micronesia;

22 (c) holds relevant professional qualifications as
23 determined by the FSM Supreme Court; and

24 (d) has never been convicted of a crime of moral
25 turpitude, fraud, theft, deceit or other act which

1 involves dishonesty.

2 (2) Nothing in this act will preclude the FSM Supreme
3 Court from removing a receiver or trustee in any case
4 for good cause shown.

5 (3) No relative, affiliate or other such insider of
6 the debtor shall be appointed to serve as a receiver or
7 trustee under this title.

8 (4) The court shall have the authority to fix the
9 compensation of the receiver or trustee, however it
10 shall be specifically prohibited from fixing
11 compensation based solely on time referenced billing.
12 When fixing compensation of the receiver or trustee the
13 court shall take into consideration:

14 (a) the complexity of the case;

15 (b) the skill and reputation of the receiver or
16 trustee;

17 (c) the benefit of all work provided by the
18 receiver or trustee; and

19 (d) any other relevant criteria which the court
20 in its discretion may choose to employ."

21 Section 15. Title 31 of the Code of the Federated States of
22 Micronesia is hereby enacted by adding a new chapter 2 entitled
23 "Receivership Proceedings".

24 Section 16. Title 31 of the Code of the Federated States of
25 Micronesia is hereby enacted by adding a new section 201 to read

1 as follows:

2 "Section 201. Approval of application; Suspension or
3 dismissal of pending receivership.

4 (1) Any application for the appointment of a receiver
5 shall be filed as provided in sections 103 and 104 of
6 this title. Upon such application, the court shall
7 appoint a receiver within such time as the court shall
8 prescribe if:

9 (a) there is no objection by any Interested
10 Party; or

11 (b) the court finds that the party or parties
12 objecting to the application have failed to establish
13 that (i) the allegations of the application are
14 insufficient as a matter of law, or (ii) it is in the
15 best interests of the debtor and the creditors that the
16 application be dismissed.

17 (2) Notwithstanding subsection (1) of this section,
18 the court may deny the application, dismiss a pending
19 receivership, or suspend a pending receivership if it
20 finds that such denial, dismissal or suspension is in
21 the best interests of the debtor and its creditors. If
22 the court finds that an application under this title has
23 been filed in bad faith, it may award to interested
24 parties injured thereby their reasonable costs and
25 attorneys fees to be paid by the filing parties."

1 Section 17. Title 31 of the Code of the Federated States of
2 Micronesia is hereby enacted by adding a new section 202 to read
3 as follows:

4 "Section 202. Powers of the receiver.

5 (1) Subject to such limitations as may be ordered by
6 the court, the powers of the receiver include, but are
7 not limited to:

8 (a) the power to use, sell and lease property of
9 the receivership estate, provided that the receiver
10 shall not make any transfer of an interest in land that
11 would be inconsistent with the law of the state in which
12 the land is located;

13 (b) the power to obtain credit on behalf of the
14 receivership estate;

15 (c) the power to assume and reject executory
16 contracts and leases of the debtor;

17 (d) the power to abandon or disregard property of
18 inconsequential value of the receivership estate;

19 (e) the power to transfer title to property of
20 the estate pursuant to distribution orders from the
21 court under section 204 of this title; and

22 (f) the power to avoid preferences and
23 fraudulent conveyances as provided in sections 205, 206
24 and 207 of this title.

25 (2) Court approval is required for actions taken

1 pursuant to subsection (1)(a) and (1)(b) of this section
2 unless the activity occurs in the ordinary course of
3 business. Court approval is also required for actions
4 taken pursuant to subsection (1)(c), (1)(d), (1)(e) and
5 1(f) of this section."

6 Section 18. Title 31 of the Code of the Federated States of
7 Micronesia is hereby enacted by adding a new section 203 to read
8 as follows:

9 "Section 203. Property to be administered by the
10 receiver.

11 (1) The appointment of a receiver pursuant to this
12 chapter creates a receivership estate. The estate shall
13 consist of the following:

14 (a) subject to the exemptions contained in
15 section 209 of this title, all property owned by the
16 debtor on the date of the application;

17 (b) all property acquired by the debtor through
18 bequest, devise, or inheritance, or as beneficiary of a
19 life-insurance policy in the 180 days after such
20 application; and

21 (c) all property acquired by the receivership
22 estate after the date of application.

23 (2) The receivership estate shall be administered in
24 accordance with this title and as may be ordered by the
25 court."

1 Section 19. Title 31 of the Code of the Federated States of
2 Micronesia is hereby enacted by adding a new section 204 to read
3 as follows:

4 "Section 204. Distribution of the receivership estate.
5 Assets of the receivership estate, following the
6 satisfaction of secured claims pursuant to section 107
7 of this title, shall be distributed according to the
8 priorities set forth in section 108 of this title. Such
9 distribution shall occur by order of the court, upon
10 application by the receiver. The order shall identify
11 the assets to be distributed and include a schedule of
12 the distributions to be made."

13 Section 20. Title 31 of the Code of the Federated States of
14 Micronesia is hereby enacted by adding a new section 205 to read
15 as follows:

16 "Section 205. Preferences.

17 (1) Except as provided in subsection (2) of this
18 section, the receiver may avoid any transfer of an
19 interest of the debtor in property:

20 (a) to or for the benefit of a creditor;

21 (b) for or on account of an antecedent debt;

22 (c) made while the debtor was insolvent;

23 (d) made on or within 90 days, or within one year
24 if the creditor was an insider, affiliate or relative of
25 the debtor, before the date of the application for the

1 receivership; and

2 (e) that enables such creditor to receive:

3 (i) more than such creditor would have
4 received if the transfer had not been made;

5 (ii) more than such creditor would have
6 received if his claim, right or entitlement had been
7 treated as a claim in a proceeding under chapter 2 of
8 this title.

9 (2) The receiver may not avoid under subsection (1) of
10 this section a transfer to the extent that:

11 (a) such transfer was intended to be, and in fact
12 was, a contemporaneous exchange for new value;

13 (b) such transfer was a payment of debt in the
14 ordinary course of business of both the debtor and the
15 transferee; or

16 (c) after such transfer, such creditor advanced
17 new value to or for the benefit of the debtor.

18 (3) The receiver has the burden of proving the
19 avoidability of a transfer under subsection (2) of this
20 section. The receiver is entitled to the benefit of a
21 rebuttable presumption that the debtor was insolvent
22 during the 90 day period specified in subsection (1)(d)
23 of this section."

24 Section 21. Title 31 of the Code of the Federated States of
25 Micronesia is hereby enacted by adding a new section 206 to read

1 as follows:

2 "Section 206. Fraudulent transfers.

3 (1) The receiver may avoid any obligation incurred by
4 the debtor or transfer of an interest of the debtor in
5 property if such transfer is made or obligation incurred
6 within one year before the application for the
7 receivership; and

8 (a) the debtor actually intended to hinder, delay
9 or defraud a creditor or creditors, or

10 (b) the debtor has entered into a transaction or
11 incurred an obligation, without receiving a reasonably
12 equivalent value for the obligation or transfer and,

13 (i) at the time of entering into the
14 transaction to transfer the property or to incur the
15 obligation, the debtor was not generally paying his
16 debts when they became due or should reasonably have
17 believed that, following the consummation of the
18 transaction, he would not be able to pay his debts when
19 they became due; or

20 (ii) the debtor was engaged in a business for
21 which, following the transaction, the remaining assets
22 of the business were unreasonably small in relation to
23 the business.

24 (2) Except to the extent that the transfer is also
25 voidable pursuant to section 205 of this chapter, a good

1 faith transferee for value is entitled to a lien on the
2 transferred property to the extent of such value."

3 Section 22. Title 31 of the Code of the Federated States of
4 Micronesia is hereby enacted by adding a new section 207 to read
5 as follows:

6 "Section 207. Transferee liability.

7 (1) To the extent that a transfer is avoided under
8 either section 205 or 206 of this act, the receiver is
9 entitled to recover the property transferred or, in
10 appropriate cases, its value from:

11 (a) the initial transferee or the entity for
12 whose benefit such transfer was made; or

13 (b) subsequent transferees of the initial
14 transferees.

15 (2) The receiver may not recover under subsection (1)
16 of this section from a good faith transferee for value
17 or a subsequent transferee of such a good faith
18 transferee.

19 (3) The receiver is entitled to only a single
20 satisfaction under section 206(1) of this title."

21 Section 23. Title 31 of the Code of the Federated States of
22 Micronesia is hereby enacted by adding a new section 208 to read
23 as follows:

24 "Section 208. Discharge.

25 (1) A debtor who is the subject of receivership

1 proceedings is entitled to a discharge from the claims
2 of all creditors, unless:

3 (a) the debtor is not an individual; or

4 (b) the debtor has:

5 (i) transferred property in violation of
6 section 206 of this title; or

7 (ii) with intent to defraud has concealed,
8 transferred or damaged property of the receivership
9 estate after the date of the application; or

10 (c) the debtor has been granted a discharge
11 pursuant to this chapter in a receivership commenced
12 within seven years before the commencement of the
13 pending receivership.

14 (2) A discharge granted pursuant to this chapter does
15 not discharge the debtor from any debt:

16 (a) for money, property and the like obtained by
17 actual fraud;

18 (b) to a spouse, former spouse, child or other
19 person for support or maintenance;

20 (c) to the extent that such debt is subject to
21 disallowance pursuant to section 107(2)(c) of this
22 title; or

23 (d) to the extent such debt arises from a student
24 or educational loan that, at any time since the debt was
25 first incurred, has been funded, administered or

1 guaranteed by any government or government agency.

2 (3) A discharge may be revoked for cause at any time
3 prior to the termination of the receivership proceeding.

4 (4) A discharge operates as an injunction against the
5 commencement or continuation of any act or action to
6 collect a debt as a personal liability of the debtor."

7 Section 24. Title 31 of the Code of the Federated States of
8 Micronesia is hereby enacted by adding a new section 209 to read
9 as follows:

10 "Section 209. Exempt property. An individual debtor
11 may exempt from the receivership estate, except for
12 property subject to allowed secured claims, the property
13 described in either subsection (1) or subsection (2)
14 below:

15 (1) The debtor may exempt from the receivership estate
16 any property that is exempt under the law, in effect at
17 the time of the filing of the application, of the State
18 in which the debtor was domiciled for the 180 days
19 immediately preceding the filing of the application, or
20 for the largest portion of said 180-day period.

21 (2) Alternatively, the debtor may exempt from the
22 receivership estate, the following property, except to
23 the extent that such exemption is expressly not
24 permitted under the law of the State applicable to
25 debtor under subsection 1 of this section:

1 (a) *Personal and household goods.* All necessary
2 household furniture, cooking and eating utensils, and
3 all necessary wearing apparel, bedding and provisions
4 for household use sufficient for six months.

5 (b) *Necessities for trade or occupation.* All
6 tools, implements, utensils, two work animals and
7 equipment necessary to enable debtor to carry on his
8 usual occupation. This section does not apply to
9 corporate filings, or individual filings where the debt
10 is primarily of a business nature.

11 (c) *Land and interests in land.* All interests in
12 land, including crops on such land, however, any
13 interest owned solely by a debtor, in his own right, may
14 be ordered sold, transferred or subdivided by the
15 receiver if the court making the order finds that

16 (i) justice so requires,

17 (ii) the transfer, sale or subdivision of the
18 interest would not be inconsistent with the law relating
19 to exemptions of the State in which the land is located,
20 and

21 (iii) after the sale or transfer, the debtor
22 will have sufficient land and crops remaining to support
23 himself and those persons directly dependent on him
24 according to recognized local custom.

25 In order to accomplish the purposes of this title, the

1 court, after notice to all interested parties in such
2 manner as may be ordered by the court, may enter rulings
3 as to the nature and extent of the debtor's interests in
4 land, which rulings shall be binding upon and
5 enforceable against any person, who claims or may later
6 claim an interest in that land.

7 (d) *Vehicles*. A motor vehicle, not to exceed
8 \$1,500 in value.

9 (e) *Boats*. A boat and motor with a combined
10 value not in excess of \$2,500.

11 (f) *Cash*. Cash on hand in any checking or
12 savings account not to exceed \$400.00.

13 (g) *Retirement*. Debtors interest in a retirement
14 plan, except to the extent that the retirement plan has
15 been funded by contributions from the debtor and the
16 debtor has the ability to exercise control or benefit
17 from the plan before retirement.

18 (h) *Others*. Other personal or household goods,
19 not previously exempted, not to exceed \$1,200 in the
20 aggregate or \$200 per item."

21 Section 25. Chapter 3 of title 31 of the Code of the
22 Federated States of Micronesia is hereby enacted by enacting a
23 new chapter 3 entitled "Reorganization Proceedings".

24 Section 26. Title 31 of the Code of the Federated States of
25 Micronesia is hereby enacted by adding a new section 301 to read

1 as follows:

2 "Section 301. Approval of application, Suspension,
3 dismissal or conversion of pending reorganization.

4 (1) An application for the reorganization of a debtor
5 that is a corporation may be filed by the debtor
6 pursuant to the requirements of sections 103 and 104 of
7 this title, provided that, in addition to the
8 requirements of those sections, an application for
9 reorganization shall also allege that (a) there is a
10 reasonable likelihood that the debtor can be
11 successfully reorganized so as to be able generally to
12 pay debts incurred in continuing to do business and (b)
13 such reorganization is in the best interests of the
14 creditors.

15 (2) The court shall permit the application and permit
16 debtor to continue to operate its business during the
17 pendency of reorganization proceedings if:

18 (a) there is no objection by an Interested Party;

19 or

20 (b) the court finds that the party or parties
21 objecting to the application have failed to establish
22 that it is in the best interests of the creditors and
23 the estate that the application be dismissed.

24 (3) Notwithstanding subsections (1) and (2) of this
25 section, the court may, at any time prior to the

1 confirmation of a plan of reorganization, and after
2 notice and a hearing, dismiss a pending reorganization
3 proceeding, suspend such a proceeding or convert a
4 reorganization proceeding to a receivership proceeding
5 under chapter 2 of this title, whichever is in the best
6 interests of the creditors and the estate, if it finds

7 (a) that there is continuing reduction of the
8 debtor's assets and absence of a reasonable likelihood
9 of a successful reorganization of debtor;

10 (b) that there is an inability to effectuate a
11 plan;

12 (c) that there has been unreasonable delay by the
13 debtor that is prejudicial to creditors; or

14 (d) that there has been a failure by the debtor
15 to submit a plan of reorganization in the time permitted
16 by this chapter or by order of the court."

17 Section 27. Title 31 of the Code of the Federated States of
18 Micronesia is hereby enacted by adding a new section 302 to read
19 as follows:

20 "Section 302. Operation of the debtor's business and
21 appointment of trustee.

22 The business of the debtor, during the pendency of the
23 reorganization proceeding, shall be operated by the
24 management that existed on the application date, except
25 that the court may at any time, after notice and a

1 hearing, appoint a trustee to replace that management if
2 it finds that such replacement is in the best interests
3 of the debtor and the creditors."

4 Section 28. Title 31 of the Code of the Federated States of
5 Micronesia is hereby enacted by adding a new section 303 to read
6 as follows:

7 "Section 303. Powers of debtor or trustee.

8 During the pendency of the reorganization proceeding,
9 the debtor, or the trustee if one has been appointed,
10 shall have the following powers, subject to any
11 limitations ordered by the court:

12 (a) the power to use, sell and lease property of
13 the debtor;

14 (b) the power to obtain credit on behalf of the
15 debtor;

16 (c) the power to assume and reject executory
17 contracts and leases of the debtor;

18 (d) the power to abandon or disregard property of
19 inconsequential value of the debtor; and

20 (e) the power to avoid preferences and
21 fraudulent conveyances upon the same terms and in the
22 same circumstances as a receiver as provided in sections
23 205, 206 and 207 of this title.

24 Court approval is required for actions taken pursuant to
25 subsection (a) and (b) of this section unless the

1 activity occurs in the ordinary course of business.
2 Court approval is also required for actions taken
3 pursuant to subsection (1)(c), (1)(d) and (1)(e) of this
4 section."

5 Section 29. Title 31 of the Code of the Federated States of
6 Micronesia is hereby enacted by adding a new section 304 to read
7 as follows:

8 "Section 304. Filing of a plan.

9 (1) The debtor may file a plan of reorganization at
10 the time of filing its application under this chapter,
11 or at any other time during the course of a proceeding
12 under this chapter, provided that the court may, by
13 order, set a time within which the debtor must file a
14 plan.

15 (2) Any other interested party may file a plan of
16 reorganization only if:

17 (a) a trustee has been appointed by the court;

18 (b) the debtor has failed to file a plan within
19 90 days of the commencement of a proceeding under this
20 chapter, or such longer or shorter period as may be
21 ordered by the court;

22 (c) the debtor has failed to file a plan that has
23 been approved by a vote of creditors as described in
24 subsection 308 below, within 120 days of the
25 commencement of a proceeding under this chapter, or such

1 shorter or longer period as may be ordered by the court;

2 or

3 (d) the court so orders after notice and a
4 hearing."

5 Section 30. Title 31 of the Code of the Federated States of
6 Micronesia is hereby enacted by adding a new section 305 to read
7 as follows:

8 "Section 305. Classification of claims.

9 (1) A plan may separate claims into multiple classes
10 provided that a claim may be placed in a particular
11 class only if it is substantially similar to other
12 claims in that class, except as provided in subsection
13 (2) of this section.

14 (2) A plan may include a class of convenience claims
15 all of which are (a) less than an amount approved by the
16 court as necessary for administrative convenience, or
17 (b) have been reduced to that amount by agreement of the
18 creditors holding those claims."

19 Section 31. Title 31 of the Code of the Federated States of
20 Micronesia is hereby enacted by adding a new section 306 to read
21 as follows:

22 "Section 306. Contents of the plan.

23 (1) The plan shall--

24 (a) designate, subject to the requirements of
25 section 305 of this chapter, classes of claims;

1 (b) identify any class of claims that is not
2 impaired under the plan;

3 (c) specify the treatment of each class of claims
4 that is impaired under the plan;

5 (d) treat all claims within a class upon equal
6 terms unless the holder of a claim has agreed to less
7 advantageous treatment;

8 (e) provide adequate means for the plan's
9 implementation, such as

10 (i) retention by the debtor of any assets of
11 the debtor so as to enable the debtor to continue its
12 business;

13 (ii) transfer of all or any part of the
14 assets of the debtor to another person;

15 (iii) merger or consolidation with another
16 person;

17 (iv) sale of any part of the debtor's assets
18 to another person or distribution of such assets to a
19 creditor that holds an interest in the assets; or

20 (v) cancellation of stock or other ownership
21 interests in the debtor; and

22 (f) include such other information as the court,
23 after notice and a hearing, may determine to be
24 necessary to adequately inform creditors for the
25 purposes of voting on the plan.

1 (2) The plan may propose the resolution of claims
2 against the debtor through the distribution to creditors
3 of value in the form of (a) cash, (b) other assets of
4 the debtor, (c) equity in the reorganized debtor, (d)
5 secured or unsecured debt of the reorganized debtor, or
6 (e) any combination thereof. Subject to the provisions
7 of section 308(7) of this title, the plan may propose
8 that there be no distribution of value to one or more
9 classes of creditors."

10 Section 32. Title 31 of the Code of the Federated States of
11 Micronesia is hereby enacted by adding a new section 307 to read
12 as follows:

13 "Section 307. Impairment.

14 A class of claims is impaired under the plan unless the
15 plan leaves unaltered or restores to the holders of the
16 claims in the class all of the legal, equitable and
17 contractual rights to which they would have been
18 entitled in the absence of the commencement of the
19 proceeding under this title, except that no claim shall
20 be considered impaired solely by reason of the plan's
21 failure to give effect to any provision allowing a
22 creditor (a) to accelerate payment of a debt or (b) to
23 foreclose or otherwise enforce a lien against property
24 of the debtor based upon a default or other action
25 occurring prior to or during the proceeding under this

1 title."

2 Section 33. Title 31 of the Code of the Federated States of
3 Micronesia is hereby enacted by adding a new section 308 to read
4 as follows:

5 "Section 308. Voting on the plan.

6 (1) If, after notice and a hearing, the court finds
7 that (a) the proposed plan satisfies the requirements of
8 section 306 of this chapter, (b) is fair and equitable
9 to the creditors, and (c) has a reasonable likelihood of
10 being successfully implemented, the plan shall be
11 submitted to a vote of the creditors according to the
12 terms of this section.

13 (2) Voting by the creditors on the plan shall be at
14 such time and in such manner as may be determined by the
15 court.

16 (3) Prior to voting on the plan, each creditor shall
17 be given, in such manner as may be determined by the
18 court, (a) notice of the time and manner of voting (b) a
19 description of the rules of voting, and (c) an
20 opportunity to review the plan.

21 (4) A class of claims shall be deemed to have accepted
22 the plan if creditors holding a majority of claims in
23 number and two-thirds of claims in value in the class
24 vote in favor of the plan.

25 (5) Persons holding claims that are not impaired by

1 the plan shall be deemed to have voted to accept the
2 plan, and need not be included in the voting.

3 (6) Persons holding claims that, under the plan, will
4 receive no distribution or other value shall be deemed
5 to have voted against the plan and need not be included
6 in the voting.

7 (7) The plan will be deemed to have been accepted by
8 the creditors if:

9 (a) At least one class of claims has voted in
10 favor of the plan, or is deemed to have voted in favor
11 of the plan as provided in subsection 5 of this section,
12 and

13 (b) No class of claims that has voted to reject
14 the plan will receive or retain, under the plan, less
15 value than the holders of claims in that class would
16 receive if debtor were liquidated under chapter 2 of
17 this title."

18 Section 34. Title 31 of the Code of the Federated States of
19 Micronesia is hereby enacted by adding a new section 309 to read
20 as follows:

21 "Section 309. Plan rejection.

22 If, on a vote of the creditors under section 308 of this
23 chapter, the plan has not been accepted, the court,
24 after notice and a hearing, may take such action as it
25 finds to be in the best interest of the creditors and

1 the debtor, such as permitting modification of the plan,
2 permitting other interested parties to submit a plan,
3 converting the reorganization proceeding to a
4 receivership proceeding under chapter 2 of this title,
5 or dismissing the reorganization proceeding."

6 Section 35. Title 31 of the Code of the Federated States of
7 Micronesia is hereby enacted by adding a new section 310 to read
8 as follows:

9 "Section 310. Confirmation.

10 If, on a vote of the creditors under section 308 of this
11 chapter, the plan has been accepted, the court shall
12 enter an order confirming the plan. The confirmation
13 order shall contain such terms and conditions as the
14 court may find to be necessary and appropriate to the
15 implementation of the plan. The confirmed plan and the
16 confirmation order shall be binding on the debtor and
17 upon all creditors. Except as specifically stated in
18 the plan or the confirmation order, the entry of the
19 confirmation order---

20 (1) discharges the debtor from all debts that
21 arose before the date of such confirmation order
22 regardless of (a) whether the debt was submitted as a
23 claim in the proceeding under this title and (b) whether
24 the creditor holding such debt voted in favor of the
25 plan;

1 (2) vests in the debtor all property of the debtor not
2 otherwise dealt with in the plan; and

3 (3) releases all property dealt with in the plan from
4 all claims and liens except as identified in the plan."

5 Section 36. Title 31 of the Code of the Federated States of
6 Micronesia is hereby enacted by adding a new section 311 to read
7 as follows:

8 "Section 311. Retention of jurisdiction.

9 (1) Following the entry of the order of confirmation,
10 the court shall retain jurisdiction, for such time as it
11 determines to be reasonable, for the purpose of
12 resolving issues arising from the implementation of the
13 plan.

14 (2) If, upon application by any interested party, and
15 after notice and a hearing, the court finds that the
16 debtor has failed or is unable to implement any portion
17 of the plan or to comply with any provision of the
18 confirmation order, the court may modify or revoke the
19 confirmation order, or take such other action as it
20 determines to be necessary and appropriate to accomplish
21 the purposes of this chapter."

22 Section 37. This act shall become law upon approval by the
23 President of the Federated States of Micronesia or upon its
24 becoming law without such approval.

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LAW WITHOUT SIGNATURE JANUARY 31, 2005

Joseph J. Urusemal
President
Federated States of Micronesia