
A BILL FOR AN ACT

To enact title 31 of the Code of the Federated States of Micronesia, Bankruptcy and Insolvency, to establish a National bankruptcy receivership 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. Section 101 of title 31 of the Code of the
2 Federated States of Micronesia is hereby enacted to read as
3 follows:

4 "Section 101. Authority; title. This statute is
5 enacted pursuant to the power of Congress to regulate
6 bankruptcy and insolvency under article IX, section 2(g)
7 of the Constitution of the Federated States of
8 Micronesia. This act may be cited as the 'Bankruptcy
9 Receivership Act of 2003'."

10 Section 2. Section 102 of title 31 of the Code of the
11 Federated States of Micronesia is hereby enacted to read as
12 follows:

13 "Section 102. Definitions.

14 (1) 'Affiliate' means:

15 (a) an entity that directly or indirectly owns,
16 controls, or has the power to vote, twenty percent or
17 more of the outstanding voting securities of the debtor;

18 (b) a corporation twenty percent or more of whose
19 outstanding voting securities are directly or indirectly

1 controlled, or held with power to vote, by the debtor,
2 or by an entity that directly or indirectly owns,
3 controls, or holds with power to vote, twenty percent or
4 more of the outstanding voting securities of the debtor;

5 (c) a person whose business is operated under a
6 lease or operating agreement by the debtor, or a person
7 substantially all of whose property is operated under an
8 operating agreement with the debtor;

9 (d) an entity that operates the business of, or
10 all or substantially all of the property of the debtor
11 under a lease or operating agreement.

12 (2) 'Claim' means:

13 (a) a right to payment, whether or not such right
14 is reduced to judgment, liquidated, unliquidated, fixed,
15 contingent, matured, unmatured, disputed, undisputed,
16 legal, equitable, secured, or unsecured; or

17 (b) a right to an equitable remedy for breach of
18 performance if such breach gives rise to a right to
19 payment, whether or not such right is reduced to
20 judgment, liquidated, unliquidated, fixed, contingent,
21 matured, unmatured, disputed, undisputed, legal,
22 equitable, secured, or unsecured.

23 (3) 'Creditor' means a person or entity that has a
24 claim against the debtor that arose at the time of or
25 before the order for relief concerning the debtor.

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

2 (5) 'Debtor' means a person, corporation or
3 municipality with regard to which a case under this
4 title has been commenced.

5 (6) 'Governmental entity' means the Federated States
6 of Micronesia, a state, a foreign state, a municipality,
7 or an agency, instrumentality or department of any of
8 the foregoing.

9 (7) 'Insider' means:

10 (a) if the debtor is an individual:

11 (i) a relative of the debtor, or of a
12 general partner of the debtor;

13 (ii) a partnership in which the debtor is a
14 general partner;

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

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

18 (b) if the debtor is a corporation:

19 (i) a director, officer or person in control
20 of the debtor;

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

23 (iii) a relative of a general partner,
24 director, officer or person in control of the debtor.

25 (c) if the debtor is a partnership:

1 (i) a general partner in the debtor;

2 (ii) a relative of a general partner, a
3 general partner of, or a person in control of the
4 debtor;

5 (iii) a partnership in which the debtor is a
6 general partner;

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

8 (v) a person in control of the debtor.

9 (d) if the debtor is a municipality:

10 (i) an elected official or relative of an
11 elected official of the debtor.

12 (8) 'Municipality' means a political subdivision of a
13 state.

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

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

22 (11) 'State' means a State of the Federated States of
23 Micronesia."

24 Section 3. Section 103 of title 31 of the Code of the
25 Federated States of Micronesia is hereby enacted to read as

1 follows:

2 "Section 103. Application for appointment of receiver.

3 (1) An application for the appointment of a receiver
4 may be made:

5 (a) by any debtor; or

6 (b) by three or more creditors whose combined
7 claims are in excess of \$7,500, provided each creditor's
8 claim is at least \$1,000.

9 (2) The application shall allege that the debtor
10 resides or has a domicile, a place of business, or
11 property in the Federated States of Micronesia.

12 (3) When the receivership is sought by creditors, the
13 application shall also allege:

14 (a) that the claims held by such creditors amount
15 in the aggregate to at least \$7,500; and

16 (b) that the debtor is generally not paying its
17 debts as they become due."

18 Section 4. Section 104 of title 31 of the Code of the
19 Federated States of Micronesia is hereby enacted to read as
20 follows:

21 "Section 104. Approval of application; Suspension or
22 dismissal of pending receivership.

23 (1) The court shall appoint a receiver within such
24 time as the court shall prescribe if:

25 (a) there is no objection by an interested party;

1 or

2 (b) if the court finds that the allegations in
3 the application are true.

4 (2) Notwithstanding subsection (1) of this section,
5 the court may deny the application, dismiss a pending
6 receivership, or suspend a pending receivership if it
7 finds that such denial, dismissal or suspension is in
8 the best interest of the debtor and its creditors.

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

15 (a) the complexity of the case;

16 (b) the skill and reputation of the receiver;

17 (c) the benefit to the receivership estate of all
18 work provided by the receiver;

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

21 Section 5. Section 105 of title 31 of the Code of the
22 Federated States of Micronesia is hereby enacted to read as
23 follows:

24 "Section 105. Filing of application.

25 (1) An application for appointment of a receiver under

1 this act shall be filed with the Trial Division of the
2 FSM Supreme Court located in a State of the Federated
3 States of Micronesia where the debtor resides or has
4 domicile, a place of business, or property.

5 (2) The court approving the application for
6 appointment shall supervise the receivership unless the
7 court, in its discretion, determines that the
8 receivership may be more efficiently supervised by the
9 FSM Supreme Court Trial Division located in another
10 State of the Federated States of Micronesia.

11 (3) The application must be in the form specified by
12 the court, accompanied by such filing fee as the court
13 may set, and must contain a statement of financial
14 condition of the debtor, as well as schedules of debts,
15 assets and exemptions of the debtor. All applications
16 must be sworn under penalty of perjury by the debtor, or
17 members of the applying creditors group."

18 Section 6. Section 106 of title 31 of the Code of the
19 Federated States of Micronesia is hereby enacted to read as
20 follows:

21 "Section 106. Stay of proceedings.

22 (1) Except as provided in subsection (2) of this
23 section, an application for a receiver operates
24 throughout the Federated States of Micronesia and every
25 State thereof, as a stay, applicable to all entities, of

1 the commencement or continuation of all legal
2 proceedings against the debtor, against the property of
3 the debtor, and against property held by the receiver.

4 (2) An application for a receiver does not operate as
5 a stay of:

6 (a) criminal proceedings against the debtor; or

7 (b) the commencement or continuation of legal
8 proceedings by a governmental unit to enforce a police
9 or regulatory power.

10 (3) The stay authorized by subsection (1) of this
11 section shall continue until the receivership is
12 terminated, suspended or dismissed, or the party
13 affected obtains relief from the stay pursuant to
14 subsection (4) of this section.

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

17 (a) grant relief from stay; or

18 (b) grant such other relief as will provide
19 adequate protection for the party requesting relief from
20 stay."

21 Section 7. Section 107 of title 31 of the Code of the
22 Federated States of Micronesia is hereby enacted to read as
23 follows:

24 "Section 107. Eligibility and qualification of a
25 receiver.

1 (1) A person may serve as a receiver only if such
2 person is:

3 (a) competent to perform the duties of a
4 receiver;

5 (b) resides or has an office in the Federated
6 States of Micronesia;

7 (c) admitted to practice before the Supreme Court
8 of the Federated States of Micronesia;

9 (d) or holds other relevant professional
10 qualifications as determined by the FSM Supreme Court;
11 and

12 (e) has never been convicted of a crime of moral
13 turpitude, fraud, theft, deceit or other act which
14 involves dishonesty.

15 (2) Nothing in this act will preclude the FSM Supreme
16 Court from removing a receiver in any case for good
17 cause shown.

18 (3) No relative, associate, affiliate or other such
19 insider of the debtor shall be appointed to serve as a
20 receiver."

21 Section 8. Section 108 of title 31 of the Code of the
22 Federated States of Micronesia is hereby enacted to read as
23 follows:

24 "Section 108. Powers of the receiver.

25 (1) The powers of the receiver include, but are not

1 limited to:

2 (a) the power to use, sell and lease property of
3 the receivership estate;

4 (b) the power to obtain credit on behalf of the
5 receivership estate;

6 (c) the power to assume and reject executory
7 contracts and leases of the debtor;

8 (d) the power to abandon or disregard property of
9 inconsequential value of the receivership estate; and

10 (e) the power to avoid preferences and
11 fraudulent conveyances as provided in sections 111, 112
12 and 113 of this act.

13 (2) Court approval is required for actions taken
14 pursuant to subsection (1) (a) and (1) (b) of this section
15 unless the activity occurs in the ordinary course of
16 business. Court approval is also required for actions
17 taken pursuant to subsection (1) (c), (1) (d) and (1) (e)
18 of this section."

19 Section 9. Section 109 of title 31 of the Code of the
20 Federated States of Micronesia is hereby enacted to read as
21 follows:

22 "Section 109. Property to be administered by the
23 receiver.

24 (1) The application for a receiver pursuant to these
25 rules creates a receivership estate. The estate shall

1 consist of the following:

2 (a) subject to the exemptions contained in
3 section 116 of this act, all property owned by the
4 debtor on the date of the application;

5 (b) all property acquired by the debtor through
6 bequest, devise, or inheritance, or as beneficiary of a
7 life-insurance policy in the 180 days after such
8 application; and

9 (c) all property acquired by the receivership
10 estate after the date of application.

11 (2) The receivership estate shall be administered in
12 accordance with these rules."

13 Section 10. Section 110 of title 31 of the Code of the
14 Federated States of Micronesia is hereby enacted to read as
15 follows:

16 "Section 110. Claims of creditors.

17 (1) Any creditor may file a sworn claim with the
18 receiver within such time limits as the court shall
19 prescribe.

20 (2) Each claim shall be allowed except to the extent
21 that:

22 (a) such claim is unenforceable for any reason
23 other than because such claim is contingent or
24 unmatured;

25 (b) such claim is for unmatured interest;

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

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

5 (3) An allowed claim of a creditor is a secured claim
6 to the extent of the value of the collateral, provided
7 all criteria under applicable law for perfecting
8 security interests have been complied with, an allowed
9 claim is an unsecured claim to the extent that the value
10 of the collateral offered by the debtor as security
11 against that claim is less than the amount of the claim.

12 (4) The holder of an allowed secured claim is entitled
13 to the approved value in the collateral or its
14 equivalent.

15 (5) Assets shall be distributed to the holder of an
16 allowed unsecured claim in accordance with the
17 provisions of this act."

18 Section 11. Section 111 of title 31 of the Code of the
19 Federated States of Micronesia is hereby enacted to read as
20 follows:

21 "Section 111. Distribution of the receivership estate.

22 (1) Assets of the receivership estate shall, following
23 the satisfaction of secured claims pursuant to section
24 110(4) of this act, be distributed in the following
25 order:

1 (a) all necessary administrative expenses of the
2 receivership, including compensating the receiver and
3 applicable attorneys fees;

4 (b) all allowed claims of the National Government
5 or any State or local government of the Federated States
6 of Micronesia, or any entity or public corporation of
7 any such government;

8 (c) all allowed claims;

9 (d) to the debtor."

10 Section 12. Section 112 of title 31 of the Code of the
11 Federated States of Micronesia is hereby enacted to read as
12 follows:

13 "Section 112. Preference.

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

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

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

19 (c) made while the debtor was insolvent;

20 (d) made on or within 90 days, or within one year
21 if the creditor was an insider, affiliate or relative of
22 the debtor, before the date of the application for the
23 receivership; and

24 (e) that enables such creditor to receive more
25 than such creditor would have if:

1 (i) the transfer had not been made;

2 (ii) such creditor had received payment in
3 accordance with the provisions of this act.

4 (2) The receiver may not avoid under subsection (1) of
5 this section a transfer:

6 (a) to the extent that such transfer was intended
7 to be, and in fact was, a contemporaneous exchange for
8 new value;

9 (b) to the extent that such transfer was a
10 payment of debt in the ordinary course of business of
11 both the debtor and the transferee; or

12 (c) to the extent that, after such transfer, such
13 creditor advanced new value to or for the benefit of the
14 debtor.

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

21 Section 13. Section 113 of title 31 of the Code of the
22 Federated States of Micronesia is hereby enacted to read as
23 follows:

24 "Section 113. Fraudulent transfers.

25 (1) The receiver may avoid any transfer of an interest

1 of the debtor in property if:

2 (a) such transfer is made within one year before
3 the application for the receivership; and

4 (i) the debtor actually intended to hinder,
5 delay or defraud a creditor or creditors; or

6 (ii) the debtor was insolvent.

7 (2) Except to the extent that transfer is also
8 voidable pursuant to subsection (1) of this section, a
9 good faith transferee for value is entitled to a lien on
10 the transferred property to the extent of such value."

11 Section 14. Section 114 of title 31 of the Code of the
12 Federated States of Micronesia is hereby enacted to read as
13 follows:

14 "Section 114. Transferee liability.

15 (1) To the extent that a transfer is avoided under
16 either section 112 or 113 of this act, the receiver is
17 entitled to recover the property transferred or, in
18 appropriate cases, its value from:

19 (a) the initial transferee of such transference
20 or the entity for whose benefit such transfer was made;
21 or

22 (b) subsequent transferees of the initial
23 transferees.

24 (2) The receiver may not recover under section
25 113(1)(a) of this act from a good faith transferee for

1 value or a subsequent transferee of such a good faith
2 transferee.

3 (3) The receiver is entitled to only a single
4 satisfaction under section 113(1) of this act."

5 Section 15. Section 115 of title 31 of the Code of the
6 Federated States of Micronesia is hereby enacted to read as
7 follows:

8 "Section 115. Discharge.

9 (1) A debtor who is the subject of receivership
10 proceedings is entitled to a discharge from the claims
11 of all creditors, unless:

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

13 (b) the debtor has:

14 (i) transferred property in violation of
15 section 113(1) of this act; or

16 (ii) with intent to defraud has concealed,
17 transferred or damaged property of the receivership
18 estate after the date of the application; or

19 (c) the debtor has been granted a discharge
20 pursuant to this rule in a receivership commenced within
21 seven years before the commencement of the pending
22 receivership.

23 (2) A discharge granted pursuant to this rule does not
24 discharge the debtor from any debt:

25 (a) for money, property and the like obtained by

1 actual fraud;

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

4 (c) to the extent that such debt is subject to
5 disallowance pursuant to section 110(2)(c) of this act.

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

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

11 Section 16. Section 116 of title 31 of the Code of the
12 Federated States of Micronesia is hereby enacted to read as
13 follows:

14 "Section 116. Exempt property. The following property
15 is exempt from inclusion in the receivership estate:

16 (1) Personal and household goods. All necessary
17 household furniture, cooking and eating utensils, and
18 all necessary wearing apparel, bedding and provisions
19 for household use sufficient for six months.

20 (2) Necessities for trade or occupation. All tools,
21 implements, utensils, two work animals and equipment
22 necessary to enable the person against whom the
23 receivership estate is commenced to carry on his usual
24 occupation. This section does not apply to corporate
25 filings, or individual filings where the debt is

1 primarily of a business nature.

2 (3) Land and interests in land. All interests in
3 land, including crops on such land, however, any
4 interest owned solely by a judgment debtor, in his own
5 right, may be ordered sold, transferred or subdivided by
6 the receiver if the court making the order deems that
7 justice so requires and finds as a fact that after the
8 sale or transfer, the debtor will have sufficient land
9 and crops remaining to support himself and those persons
10 directly dependent on him according to recognized local
11 custom.

12 (4) Vehicles. A motor vehicle, not to exceed \$1,500
13 in value.

14 (5) Boats. A boat and motor with a combined value not
15 in excess of \$2,500.

16 (6) Cash. Cash on hand in any checking or savings
17 account not to exceed \$400.00.

18 (7) Retirement. Debtors interest in a retirement
19 plan, to the extent that the debtor cannot exercise
20 control or benefit from the plan until retirement.

21 (8) Others. Other personal or household goods not
22 previously exempted not to exceed \$1,200 in the
23 aggregate or \$200 per item."

24 Section 17. This act shall become law upon approval by the
25 President of the Federated States of Micronesia or upon its

1 becoming law without such approval.

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5 Date: 5/27/03

Introduced by: /s/ Sabino S. Asor
Sabino S. Asor

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/s/ Alik L. Alik
Alik L. Alik

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