

A BILL FOR 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. Title 31 of the Code of the Federated States of
2 Micronesia is hereby enacted by adding a new chapter 1 entitled
3 "General Provisions".

4 Section 2. Title 31 of the Code of the Federated States of
5 Micronesia is hereby enacted by adding a new section 101 to read
6 as follows:

7 "Section 101. Authority; title. This statute is
8 enacted pursuant to the power of Congress to regulate
9 bankruptcy and insolvency under article IX, section 2(g)
10 of the Constitution of the Federated States of
11 Micronesia. This act may be cited as the 'Bankruptcy
12 Act of 2004'."

13 Section 3. Title 31 of the Code of the Federated States of
14 Micronesia is hereby enacted by adding a new section 102 to read
15 as follows:

16 "Section 102. Definitions.

17 (1) 'Affiliate' means:

18 (a) an entity that directly or indirectly owns,
19 controls, or has the power to vote, twenty percent or

1 more of the outstanding voting securities of the debtor;

2 (b) a corporation twenty percent or more of whose
3 outstanding voting securities are directly or indirectly
4 controlled, or held with power to vote, by the debtor,
5 or by an entity that directly or indirectly owns,
6 controls, or holds with power to vote, twenty percent or
7 more of the outstanding voting securities of the debtor;

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

12 (d) an entity that operates the business of, or
13 all or substantially all of the property of the debtor
14 under a lease or operating agreement.

15 (2) 'Claim' means:

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

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

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

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

5 (5) 'Debtor' means a person, or corporation with
6 regard to which a case under this title has been
7 commenced.

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

12 (7) 'Insider' means:

13 (a) if the debtor is an individual:

14 (i) a relative of the debtor, or of a
15 general partner of the debtor;

16 (ii) a partnership in which the debtor is a
17 general partner;

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

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

21 (b) if the debtor is a corporation:

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

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

1 (iii) a relative of a general partner,
2 affiliate, director, officer or person in control of the
3 debtor.

4 (c) if the debtor is a partnership:

5 (i) a general partner in the debtor;

6 (ii) a relative of a general partner, a
7 general partner of, or a person in control of the
8 debtor;

9 (iii) a partnership in which the debtor is a
10 general partner;

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

12 (v) an affiliate or person in control of the
13 debtor.

14 (8) 'Interested party' means the debtor, any creditor
15 of the debtor, any equity holder in a corporation that
16 is a debtor, and any other party that the court
17 supervising an application under this title may
18 determine to have a right to be heard on issues
19 pertaining to that application.

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

23 (10) 'Relative' means an individual related by blood,
24 marriage within the third degree as determined by common
25 law, persons who are considered close relatives under

1 applicable Micronesian custom, or a step or adoptive
2 relationship within such third degree.

3 (11) 'State' means a State of the Federated States of
4 Micronesia.

5 Section 4. Title 31 of the Code of the Federated States of
6 Micronesia is hereby enacted by adding a new section 103 to read
7 as follows:

8 "Section 103. Application for relief.

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

11 (a) by any debtor; or

12 (b) by three or more creditors whose combined
13 claims are in excess of \$7,500, provided that each
14 creditor's claim is at least \$1,000, and further
15 provided that such claims are not contingent and are not
16 subject to a bona fide dispute.

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

20 (3) Any application under this title shall allege that
21 the debtor resides or has a domicile, a place of
22 business, or property in the Federated States of
23 Micronesia.

24 (4) When the application is brought by creditors, the
25 application shall also allege:

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

4 (b) that the debtor is generally not, at the time
5 of the application, paying its debts as they become due,
6 and has generally not been paying its debts as they
7 became due for at least sixty (60) days prior to the
8 date of the application.

9 Section 5. Title 31 of the Code of the Federated States of
10 Micronesia is hereby enacted by adding a new section 104 to read
11 as follows:

12 Section 104. Filing of application.

13 (1) An application for relief under this title shall
14 be filed with the Trial Division of the FSM Supreme
15 Court located in a State of the Federated States of
16 Micronesia where the debtor resides or has domicile, a
17 place of business, or property.

18 (2) The court in which the application is filed shall
19 supervise the proceeding unless the court, in its
20 discretion, determines that the proceeding may be more
21 efficiently supervised by the FSM Supreme Court Trial
22 Division located in another State of the Federated
23 States of Micronesia.

24 (3) The application must be in the form specified by
25 the court, accompanied by such filing fee as the court

1 may set, and must contain a statement of financial
2 condition of the debtor, as well as schedules of debts,
3 assets and exemptions of the debtor. All applications
4 must be sworn under penalty of perjury by the debtor, or
5 members of the applying creditors group."

6 Section 6. Title 31 of the Code of the Federated States of
7 Micronesia is hereby enacted by adding a new section 105 to read
8 as follows:

9 "Section 105. Notice.

10 Notice to Interested Parties of the filing of an
11 application under this title and of motions, hearings
12 and other events relating to proceedings under this
13 title shall be given at such time and in such manner as
14 the court may determine for the purposes of (a) giving
15 as many interested parties as reasonably practicable an
16 opportunity to be heard concerning matters affecting
17 their interests in the proceedings, and (b) maximizing
18 the number of claims against the debtor that can be
19 discharged compromised, paid or otherwise resolved
20 through the proceedings."

21 Section 7. Title 31 of the Code of the Federated States of
22 Micronesia is hereby enacted by adding a new section 106 to read
23 as follows:

24 "Section 106. Stay of proceedings.

25 (1) Except as provided in subsection (2) of this

1 section, an application under this title operates
2 throughout the Federated States of Micronesia and every
3 State thereof as a stay, applicable to all entities, of
4 the commencement or continuation of all legal
5 proceedings against the debtor, against the property of
6 the debtor, and against property held by the receiver.

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

9 (a) criminal proceedings against the debtor; or

10 (b) the commencement or continuation of legal
11 proceedings by a governmental unit to enforce a police
12 or regulatory power.

13 (3) The stay authorized by subsection (1) of this
14 section shall continue until the proceedings related to
15 the application are terminated, suspended or dismissed,
16 or the party affected obtains relief from the stay
17 pursuant to subsection (4) of this section.

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

20 (a) grant relief from stay; or

21 (b) grant such other relief as will provide
22 adequate protection for the party requesting relief from
23 stay."

24 Section 8. Title 31 of the Code of the Federated States of
25 Micronesia is hereby enacted by adding a new section 107 to read

1 as follows:

2 "Section 107. Claims of creditors.

3 (1) Any creditor may file a sworn claim in such manner
4 and within such time limits as the court shall
5 prescribe.

6 (2) Each claim shall be allowed except to the extent
7 that:

8 (a) such claim is unenforceable for any reason
9 other than because such claim is contingent or
10 unmatured;

11 (b) such claim is for unmatured interest;

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

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

16 (3) In the event of a dispute as to whether or in what
17 amount a claim is allowable under this section, the
18 court may (a) summarily determine the matter upon
19 motion, (b) conduct a trial on the claim, or (c) refer
20 the matter to another court for determination.

21 (4) An allowed claim of a creditor is a secured claim
22 to the extent of the value of the collateral, provided
23 all criteria under applicable law for perfecting
24 security interests have been complied with. An allowed
25 claim is an unsecured claim to the extent that the value

1 of the collateral pledged by the debtor as security for
2 that claim is less than the amount of the claim.

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

7 (6) Assets shall be distributed to the holder of an
8 allowed unsecured claim in accordance with the
9 provisions of this title."

10 Section 9. Title 31 of the Code of the Federated States of
11 Micronesia is hereby enacted by adding a new section 108 to read
12 as follows:

13 "Section 108. Priorities.

14 (1) The following claims and expenses shall have
15 priority in the following order:

16 (a) all necessary administrative expenses
17 incurred in connection with the proceeding as may be
18 determined by the court, including compensation of any
19 receiver or trustee, applicable attorneys fees, and
20 wages, salaries and other expenses incurred, after the
21 date of the application, in connection with continuing
22 to operate any business of the debtor, to the extent
23 that such continued operations are permitted by this
24 title or by order of the court;

25 (b) all allowed unsecured claims of the National

1 Government or any State or local government of the
2 Federated States of Micronesia, or any entity or public
3 corporation of any such government;

4 (c) all claims by employees of the debtor for
5 wages and salaries for services prior to the date of the
6 application, except for such claims by persons who hold
7 an ownership interest in a debtor that is a business,
8 persons who hold a management position in the business
9 of the debtor and relatives of the debtor;

10 (d) other allowed unsecured claims, including any
11 unsecured portions of claims held by secured creditors,
12 but not including claims within subsections (e) and (f)
13 of this section;

14 (e) if the debtor is a corporation or a
15 partnership, all allowed claims arising from the
16 ownership, purchase or sale of any equity or partnership
17 interest in the debtor;

18 (f) all rights, claims and interests of the
19 debtor.

20 (2) Payment of professional fees and other
21 administrative costs of the debtor, as described in
22 subsection (1)(a) of this section, may be made during
23 the course of a proceeding, subject to approval by the
24 court. Such payments may include advance payments if
25 determined by the court to be necessary and appropriate

1 to accomplish the purposes of this title."

2 Section 10. Title 31 of the Code of the Federated States of
3 Micronesia is hereby enacted by adding a new section 109 to read
4 as follows:

5 "Section 109. Setoff.

6 The law of setoff shall apply in the event that the
7 debtor has any right to recover, arising prior to the
8 filing of an application hereunder, against a creditor
9 filing a claim under this title, provided that that
10 creditor's claim is allowable under section 107 hereof."

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

14 "Section 110. Rulemaking power of the court.

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

21 Section 12. Title 31 of the Code of the Federated States of
22 Micronesia is hereby enacted by adding a new section 111 to read
23 as follows:

24 "Section 111. Retention of professionals.

25 The debtor may retain, for the purposes of proceedings

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

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

16 "Section 112. Qualifications of receivers and trustees.

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

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

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

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

25 (e) has never been convicted of a crime of moral

1 turpitude, fraud, theft, deceit or other act which
2 involves dishonesty.

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

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

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

15 (a) the complexity of the case;

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

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

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

22 Section 14. Title 31 of the Code of the Federated States of
23 Micronesia is hereby enacted by adding a new chapter 2 entitled
24 "Receivership Proceedings.

25 Section 15. Title 31 of the Code of the Federated States of

1 Micronesia is hereby enacted by adding a new section 201 to read
2 as follows:

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

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

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

12 (b) if the court finds that the allegations in
13 the application are true.

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

23 Section 16. Title 31 of the Code of the Federated States of
24 Micronesia is hereby enacted by adding a new section 202 to read
25 as follows:

1 "Section 202. Powers of the receiver.

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

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

7 (b) the power to obtain credit on behalf of the
8 receivership estate;

9 (c) the power to assume and reject executory
10 contracts and leases of the debtor;

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

13 (e) the power to transfer title to property of
14 the estate pursuant to distribution orders from the
15 court under section 204 of this title; and

16 (f) the power to avoid preferences and
17 fraudulent conveyances as provided in sections 205, 206
18 and 207 of this title.

19 (2) Court approval is required for actions taken
20 pursuant to subsection (1)(a) and (1)(b) of this section
21 unless the activity occurs in the ordinary course of
22 business. Court approval is also required for actions
23 taken pursuant to subsection (1)(c), (1)(d), (1)(e) and
24 1(f) of this section."

25 Section 17. Title 31 of the Code of the Federated States of

1 Micronesia is hereby enacted by adding a new section 203 to read
2 as follows:

3 "Section 203. Property to be administered by the
4 receiver.

5 (1) The application for a receiver pursuant to these
6 rules creates a receivership estate. The estate shall
7 consist of the following:

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

11 (b) all property acquired by the debtor through
12 bequest, devise, or inheritance, or as beneficiary of a
13 life-insurance policy in the 180 days after such
14 application; and

15 (c) all property acquired by the receivership
16 estate after the date of application.

17 (2) The receivership estate shall be administered in
18 accordance with this title and as may be ordered by the
19 court."

20 Section 18. Title 31 of the Code of the Federated States of
21 Micronesia is hereby enacted by adding a new section 204 and then
22 change to read as follows:

23 "Section 204. Distribution of the receivership estate.
24 Assets of the receivership estate, following the
25 satisfaction of secured claims pursuant to section 107

1 of this title, shall be distributed according to the
2 priorities set forth in section 108 of this title. Such
3 distribution shall occur by order of the court, upon
4 application by the receiver. The order shall identify
5 the assets to be distributed and include a schedule of
6 the distributions to be made."

7 Section 19. Title 31 of the Code of the Federated States of
8 Micronesia is hereby enacted by adding a new section 205 and then
9 change to read as follows:

10 "Section 205. Preferences.

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

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

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

16 (c) made while the debtor was insolvent;

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

21 (e) that enables such creditor to receive:

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

24 (ii) more than such creditor would have
25 received if his claim, right or entitlement had been

1 treated as a claim in a proceeding under chapter 2 of
2 this title.

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

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

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

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

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

20 Section 20. Title 31 of the Code of the Federated States of
21 Micronesia is hereby enacted by adding a new section 206 to read
22 as follows:

23 "Section 206. Fraudulent transfers.

24 (1) The receiver may avoid any obligation incurred by
25 the debtor or transfer of an interest of the debtor in

1 property if such transfer is made or obligation incurred
2 within one year before the application for the
3 receivership; and

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

6 (b) the debtor has entered into a transaction or
7 incurred an obligation, without receiving a reasonably
8 equivalent value for the obligation or transfer and,

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

16 (ii) the debtor was engaged in a business for
17 which, following the transaction, the remaining assets
18 of the business were unreasonably small in relation to
19 the business.

20 (2) Except to the extent that the transfer is also
21 voidable pursuant to section 205 of this chapter, a good
22 faith transferee for value is entitled to a lien on the
23 transferred property to the extent of such value."

24 Section 21. Title 31 of the Code of the Federated States of
25 Micronesia is hereby enacted by adding a new section 207 to read

1 as follows:

2 "Section 207. Transferee liability.

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

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

9 (b) subsequent transferees of the initial
10 transferees.

11 (2) The receiver may not recover under subsection (1)
12 of this section from a good faith transferee for value
13 or a subsequent transferee of such a good faith
14 transferee.

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

17 Section 22. Title 31 of the Code of the Federated States of
18 Micronesia is hereby enacted by adding a new section 209 to read
19 as follows:

20 "Section 209. Discharge.

21 (1) A debtor who is the subject of receivership
22 proceedings is entitled to a discharge from the claims
23 of all creditors, unless:

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

25 (b) the debtor has:

1 (i) transferred property in violation of
2 section 206 of this title; or

3 (ii) with intent to defraud has concealed,
4 transferred or damaged property of the receivership
5 estate after the date of the application; or

6 (c) the debtor has been granted a discharge
7 pursuant to this rule in a receivership commenced within
8 seven years before the commencement of the pending
9 receivership.

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

12 (a) for money, property and the like obtained by
13 actual fraud;

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

16 (c) to the extent that such debt is subject to
17 disallowance pursuant to section 107(2)(c) of this
18 title.

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

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

24 Section 23. Title 31 of the Code of the Federated States of
25 Micronesia is hereby enacted by adding a new section 210 to read

1 as follows:

2 "Section 210. Exempt property. An individual debtor
3 may exempt from the receivership estate the property
4 described in either subsection (1) or subsection (2)
5 below:

6 (1) The debtor may exempt from the receivership estate
7 any property that is exempt under the law, in effect at
8 the time of the filing of the application, of the State
9 in which the debtor was domiciled for the 180 days
10 immediately preceding the filing of the application, or
11 for the largest portion of said 180-day period.

12 (2) Alternatively, the debtor may exempt from the
13 receivership estate, the following property, except to
14 the extent that such exemption is expressly not
15 permitted under the law of the State applicable to
16 debtor under subsection 1 of this section:

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

21 (b) Necessities for trade or occupation. All
22 tools, implements, utensils, two work animals and
23 equipment necessary to enable debtor to carry on his
24 usual occupation. This section does not apply to
25 corporate filings, or individual filings where the debt

1 is primarily of a business nature.

2 (c) Land and interests in land. All interests in
3 land, including crops on such land, however, any
4 interest owned solely by a debtor, in his own right, may
5 be ordered sold, transferred or subdivided by the
6 receiver if the court making the order finds that

7 (i) justice so requires,

8 (ii) the transfer, sale or subdivision of the
9 interest would not be inconsistent the law relating to
10 exemptions of the State in which the land is located;

11 (iii) after the sale or transfer, the debtor
12 will have sufficient land and crops remaining to support
13 himself and those persons directly dependent on him
14 according to recognized local custom.

15 In order to accomplish the purposes of this title, the
16 court, after notice to all interested parties in such
17 manner as may be ordered by the court, may enter rulings
18 as to the nature and extent of the debtor's interests in
19 land, which rulings shall be binding upon and
20 enforceable against any person, who claims or may later
21 claim an interest in that land.

22 (d) Vehicles. A motor vehicle, not to
23 exceed \$1,500 in value.

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

1 (f) Cash. Cash on hand in any checking or
2 savings account not to exceed \$400.00.

3 (g) Retirement. Debtors interest in a
4 retirement plan, except to the extent that the
5 retirement plan has been funded by contributions from
6 the debtor and the debtor has the ability to exercise
7 control or benefit from the plan before retirement.

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

11 Section 24. Chapter 3 of title 31 of the Code of the
12 Federated States of Micronesia is hereby enacted by enacting a
13 chapter 3 entitled "Reorganization Proceedings".

14 Section 25. Title 31 of the Code of the Federated States of
15 Micronesia is hereby enacted by adding a new section 301 to read
16 as follows:

17 Section 301. Approval of application, Suspension,
18 dismissal or conversion of pending reorganization.

19 (1) An application for the reorganization of a debtor
20 that is a corporation may be filed by the debtor
21 pursuant to the requirements of sections 103 and 104 of
22 this title, provided that, in addition to the
23 requirements of those sections, an application for
24 reorganization shall also allege that (a) there is a
25 reasonable likelihood that the debtor can be

1 successfully reorganized so as to be able generally to
2 pay debts incurred in continuing to do business and (b)
3 such reorganization is in the best interests of the
4 creditors.

5 (2) The court shall permit the application and permit
6 debtor to continue to operate its business during the
7 pendency of reorganization proceedings if:

8 (a) there is no objection by an Interested Party;
9 or

10 (b) the court finds that the allegations in the
11 application are true.

12 (3) Notwithstanding subsections (1) and (2) of this
13 section, the court may, at any time prior to the
14 confirmation of a plan of reorganization, and after
15 notice and a hearing, dismiss a pending reorganization
16 proceeding, suspend such a proceeding or convert a
17 reorganization proceeding to a receivership proceeding
18 under chapter 2 of this title, whichever is in the best
19 interests of the creditors and the estate, if it finds

20 (a) that there is continuing reduction of the
21 debtor's assets and absence of a reasonable likelihood
22 of a successful reorganization of debtor;

23 (b) that there is an inability to effectuate a
24 plan;

25 (c) that there has been unreasonable delay by the

1 debtor that is prejudicial to creditors or
2 (d) that there has been a failure by the debtor
3 to submit a plan of reorganization in the time permitted
4 by this chapter or by order of the court.

5 Section 26. Title 31 of the Code of the Federated States of
6 Micronesia is hereby enacted by adding a new section 302 to read
7 as follows:

8 "Section 302. Operation of the debtor's business and
9 appointment of trustee.
10 The business of the debtor, during the pendency of the
11 reorganization proceeding, shall be operated by the
12 management that existed on the application date, except
13 that the court may at any time, after notice and a
14 hearing, appoint a trustee to replace that management if
15 it finds that such replacement is in the best interests
16 of the debtor and the creditors."

17 Section 27. Title 31 of the Code of the Federated States of
18 Micronesia is hereby enacted by adding a new section 303 to read
19 as follows:

20 "Section 303. Powers of debtor or trustee.
21 During the pendency of the reorganization proceeding,
22 the debtor, or the trustee if one has been appointed,
23 shall have the following powers, subject to any
24 limitations ordered by the court:
25 (a) the power to use, sell and lease property of

1 the debtor;

2 (b) the power to obtain credit on behalf of the
3 debtor;

4 (c) the power to assume and reject executory
5 contracts and leases of the debtor;

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

8 (e) the power to avoid preferences and
9 fraudulent conveyances upon the same terms and in the
10 same circumstances as a receiver as provided in sections
11 205, 206 and 207 of this title.

12 Court approval is required for actions taken pursuant to
13 subsection (a) and (b) of this section unless the
14 activity occurs in the ordinary course of business.

15 Court approval is also required for actions taken
16 pursuant to subsection (1)(c), (1)(d) and (1)(e) of this
17 section."

18 Section 28. Title 31 of the Code of the Federated States of
19 Micronesia is hereby enacted by adding a new section 304 to read
20 as follows:

21 "Section 304. Filing of a plan.

22 (1) The debtor may file a plan of reorganization at
23 the time of filing its application under this chapter,
24 or at any other time during the course of a proceeding
25 under this chapter.

1 (2) Any other interested party may file a plan of
2 reorganization only if

3 (a) a trustee has been appointed by the court,

4 (b) the debtor has failed to file a plan within
5 90 days of the commencement of a proceeding under this
6 chapter, or such longer or shorter period as may be
7 ordered by the court,

8 (c) the debtor has failed to file a plan that has
9 been approved by a vote of creditors as described in
10 subsection 308 below, within 120 days of the
11 commencement of a proceeding under this chapter, or such
12 shorter or longer period as may be ordered by the court,
13 or

14 (d) the court so orders after notice and a
15 hearing."

16 Section 29. Title 31 of the Code of the Federated States of
17 Micronesia is hereby enacted by adding a new section 305 to read
18 as follows:

19 "Section 305. Classification of claims.

20 (1) A plan may separate claims into multiple classes
21 provided that a claim may be placed in a particular
22 class only if it is substantially similar to other
23 claims in that class, except as provided in subsection
24 (2) of this section.

25 (2) A plan may include a class of convenience claims

1 all of which are (a) less than an amount approved by the
2 court as necessary for administrative convenience, or
3 (b) have been reduced to that amount by agreement of the
4 creditors holding those claims."

5 Section 30. Title 31 of the Code of the Federated States of
6 Micronesia is hereby enacted by adding a new section 306 to read
7 as follows:

8 "Section 306. Contents of the plan.

9 (1) The plan shall--

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

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

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

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

19 (e) provide adequate means for the plan's
20 implementation, such as

21 (i) retention by the debtor of any assets of
22 the debtor so as to enable the debtor to continue its
23 business;

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

1 (iii) merger or consolidation with another
2 person;

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

6 (v) cancellation of stock or other ownership
7 interests in the debtor; and

8 (f) include such other information as the court,
9 after notice and a hearing, may determine to be
10 necessary to adequately inform creditors for the
11 purposes of voting on the plan.

12 (2) The plan may propose the resolution of claims
13 against the debtor through the distribution to creditors
14 of value in the form of (a) cash, (b) other assets of
15 the debtor, (c) equity in the reorganized debtor, (d)
16 secured or unsecured debt of the reorganized debtor, or
17 (e) any combination thereof. Subject to the provisions
18 of section 308(7) of this title, the plan may propose
19 that there be no distribution of value to one or more
20 classes of creditors."

21 Section 31. Title 31 of the Code of the Federated States of
22 Micronesia is hereby enacted by adding a new section 307 to read
23 as follows:

24 "Section 307. Impairment.

25 A class of claims is impaired under the plan unless the

1 plan leaves unaltered or restores to the holders of the
2 claims in the class all of the legal, equitable and
3 contractual rights to which they would have been
4 entitled in the absence of the commencement of the
5 proceeding under this title, except that no claim shall
6 be considered impaired solely by reason of the plan's
7 failure to give effect to any provision allowing a
8 creditor (a) to accelerate payment of a debt or (b) to
9 foreclose or otherwise enforce a lien against property
10 of the debtor based upon a default or other action
11 occurring prior to or during the proceeding under this
12 title."

13 Section 32. Title 31 of the Code of the Federated States of
14 Micronesia is hereby enacted by adding a new section 308 to read
15 as follows:

16 "Section 308. Voting on the plan.

17 (1) If, after notice and a hearing, the court finds
18 that (a) the proposed plan satisfies the requirements of
19 section 306 of this chapter, (b) is fair and equitable
20 to the creditors, and (c) has a reasonable likelihood of
21 being successfully implemented, the plan shall be
22 submitted to a vote of the creditors according to the
23 terms of this section.

24 (2) Voting by the creditors on the plan shall be at
25 such time and in such manner as may be determined by the

1 court.

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

7 (4) A class of claims shall be deemed to have accepted
8 the plan if creditors holding a majority of claims in
9 number and two-thirds of claims in value in the class
10 vote in favor of the plan.

11 (5) Persons holding claims that are not impaired by
12 the plan shall be deemed to have voted to accept the
13 plan, and need not be included in the voting.

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

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

20 (a) At least one class of claims has voted in
21 favor of the plan, or is deemed to have voted in favor
22 of the plan as provided in subsection 5 of this section,
23 and

24 (b) No class of claims that has voted to reject
25 the plan will receive or retain, under the plan, less

1 value than the holders of claims in that class would
2 receive if debtor were liquidated under chapter 2 of
3 this title."

4 Section 33. Title 31 of the Code of the Federated States of
5 Micronesia is hereby enacted by adding a new section 309 to read
6 as follows:

7 "Section 309. Plan rejection.
8 If, on a vote of the creditors under section 308 of this
9 chapter, the plan has not been accepted, the court,
10 after notice and a hearing, may take such action as it
11 finds to be in the best interest of the creditors and
12 the debtor, such as permitting modification of the plan,
13 permitting other interested parties to submit a plan,
14 converting the reorganization proceeding to a
15 receivership proceeding under chapter 2 of this title,
16 or dismissing the reorganization proceeding."

17 Section 34. Title 31 of the Code of the Federated States of
18 Micronesia is hereby enacted by adding a new section 310 to read
19 as follows:

20 "Section 310. Confirmation.
21 If, on a vote of the creditors under section 308 of this
22 chapter, the plan has been accepted, the court shall
23 enter an order confirming the plan. The confirmation
24 order shall contain such terms and conditions as the
25 court may find to be necessary and appropriate to the

1 implementation of the plan. The confirmed plan and the
2 confirmation order shall be binding on the debtor and
3 upon all creditors. Except as specifically stated in the
4 plan or the confirmation order, the entry of the
5 confirmation order---

6 (1) discharges the debtor from all debts that arose
7 before the date of such confirmation order regardless of
8 (a) whether the debt was submitted as a claim in the
9 proceeding under this title and (b) whether the creditor
10 holding such debt voted in favor of the plan;

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

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

15 Section 35. Title 31 of the Code of the Federated States of
16 Micronesia is hereby enacted by adding a new section 311 to read
17 as follows:

18 Section 311. Retention of jurisdiction.

19 (1) Following the entry of the order of confirmation,
20 the court shall retain jurisdiction, for such time as it
21 determines to be reasonable, for the purpose of
22 resolving issues arising from the implementation of the
23 plan.

24 (2) If, upon application by any interested party, and
25 after notice and a hearing, the court finds that the

1 debtor has failed or is unable to implement any portion
2 of the plan or to comply with any provision of the
3 confirmation order, the court may modify or revoke the
4 confirmation order, or take such other action as it
5 determines to be necessary and appropriate to accomplish
6 the purposes of this chapter."

7 Section 36. This act shall become law upon approval by the
8 President of the Federated States of Micronesia or upon its
9 becoming law without such approval.

10
11 Date: 9/3/04

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

12
13
14 /s/ Alik L. Alik
Alik L. Alik
15
16
17
18
19
20
21
22