A BILL FOR AN ACT

To enact title 31 of the Code of the Federated States of Micronesia, 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:

Section 1. Section 101 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 101. Authority; title. This statute is enacted pursuant to the power of Congress to regulate bankruptcy and insolvency under article IX, section 2(g) of the Constitution. The legislation may be cited as the Bankruptcy Receivership Act of 1998."

Section 2. Section 102 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 102. Definitions.

(1) 'Affiliate' means:

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

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

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

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

(2) 'Claim' means:

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

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

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

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

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

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

(7) 'Insider' means:

   (a) if the debtor is an individual:

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

      (ii) a partnership in which the debtor is a
(iii) a general partner of the debtor; or
(iv) a corporation of which the debtor is a
director, officer, or person in control,

(b) if the debtor is a corporation:
(i) a director, officer or person in control of
the debtor;

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

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

(c) if the debtor is a partnership:
(i) a general partner in the debtor;

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

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

(iv) a general partner of the debtor; or

(v) a person in control of the debtor,

(d) if the debtor is a municipality:
(i) an elected official or relative of an elected
official of the debtor,

(8) 'Municipality' means a political subdivision of a State.

(9) 'Person' as used in this chapter means an individual,

partnership or corporation, but does not include governmental
entities.

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

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

Section 3. Section 103 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 103. Application for appointment of receiver.

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

(a) by any debtor; or

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

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

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

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

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

Section 4. Section 104 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

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

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

(a) there is no objection by an interested party or

(b) if the Court finds that the allegations in the application are true.

(2) Notwithstanding section 104(1), the Court may deny the application, dismiss a pending receivership, or suspend a pending receivership if it finds that such denial, dismissal, or suspension is in the best interest of the debtor and its creditors.

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

(a) the complexity of the case;

(b) the skill and reputation of the receiver;

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

(d) any other relevant criteria which the Court in its discretion may chose to employ."
Section 5. Section 105 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 105. Filing of application.

(1) An application for appointment of a receiver under this act shall be filed with the Trial Division of the FSM Supreme Court located in a State of the Federated States of Micronesia where the debtor resides or has domicile, a place of business, or property.

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

(3) The application must be in the form specified by the court, accompanied by such filing fee as the Court may set, and must contain a statement of financial condition of the debtor, as well as schedules of debts, assets, and exemptions of the debtor.

All applications must be sworn under penalty of perjury by the debtor, or members of the applying creditors group."

Section 6. Section 106 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 106. Stay of proceedings.

(1) Except as provided in section 106(2), an application for a receiver operates throughout the Federated States of Micronesia and every State thereof, as a stay, applicable to all
entities, of the commencement or continuation of all legal
proceedings against the debtor, against the property of the
debtor, and against property held by the receiver.

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

(a) criminal proceedings against the debtor, or
(b) the commencement or continuation of legal
proceedings by a governmental unit to enforce a police or
regulatory power.

(3) The stay authorized by section 106(1) shall continue
until the receivership is terminated, suspended or dismissed, or the
party affected obtains relief from the stay pursuant to section
106(4).

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

(a) grant relief from stay; or
(b) grant such other relief as will
provide adequate protection for the party requesting relief from
stay.

Section 7. Section 107 of title 31 of the Code of the Federated States of
Micronesia is hereby established to read as follows:

"Section 107. Eligibility and qualification of a receiver.

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

(a) competent to perform the duties of a receiver;
(b) resides or has an office in the Federated States of Micronesia;

(c) admitted to practice before the Supreme Court of the Federated States of Micronesia; or holds other relevant professional qualifications as determined by the FSM Supreme Court; and

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

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

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

Section 8. Section 108 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 108. Powers of the receiver.

(1) The powers of the receiver include, but are not limited to:

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

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

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

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

(e) the power to avoid preferences and fraudulent conveyances as provided in sections 111, 112 and 113.

(2) Court approval is required for actions taken pursuant to clauses (a) and (b) of section 108(1) unless the activity occurs in the ordinary course of business. Court approval is also required for actions taken pursuant to clauses (c) and (d) of section 108(1).”

Section 9. Section 109 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

“Section 109. Property to be administered by the receiver.

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

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

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

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

(2) The receivership estate shall be administered in accordance with these rules.”

Section 10. Section 110 of title 31 of the Code of the Federated States of
Micronesia is hereby established to read as follows:

"Section 110. Claims of creditors.

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

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

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

(b) such claim is for unmatured interest;

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

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

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

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

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

Section 11. Section 111 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 111. Distribution of the receivership estate."
(1) Assets of the receivership estate shall, following the satisfaction of secured claims pursuant to section 110(4), be distributed in the following order:

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

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

(c) all allowed claims;

(d) to the debtor."
(i) the transfer had not been made;
(ii) such creditor had received payment in accordance with the provisions of this act.

(2) The receiver may not avoid under section 112(1) a transfer:

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

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

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

(3) The receiver has the burden of proving the avoidability of a transfer under section 112(2). The receiver is entitled to the benefit of a rebuttable presumption that the debtor was insolvent during the 90-day period specified in section 112(1)(d).*

Section 13. Section 113 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

*Section 113. Fraudulent transfers.

(1) The receiver may avoid any transfer of an interest of the debtor in property if:

(a) such transfer is made within 1 year before the application for the receivership; and

(i) the debtor actually intended to hinder,
(ii) the debtor was insolvent.

(2) Except to the extent that transfer is also voidable pursuant to section 11, a good faith transferee for value is entitled to a lien on the transferred property to the extent of such value."

Section 14. Section 114 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 114. Transferee liability.

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

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

(b) subsequent transferees of the initial transferees.

(2) The receiver may not recover under section 113(1)(a) from a good faith transferee for value or a subsequent transferee of such a good faith transferee.

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

Section 15. Section 115 of title 31 of the Code of the Federated States of Micronesia is hereby established to read as follows:

"Section 115. Discharge.

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

(a) the debtor is not an individual; or

(b) the debtor has:

(i) transferred property in violation of section 113(1); or

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

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

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

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

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

(c) to the extent that such debt is subject to disallowance pursuant to section 110(2)(c).

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

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

Section 16. Section 116 of title 31 of the Code of the Federated States of
Micronesia is hereby established to read as follows:

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

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

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

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

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

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

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

(7) Debtor's interest in a retirement plan, to the extent
that the debtor cannot exercise control or benefit from the plan
until retirement.

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

Section 17. This act shall become law upon approval by the President of
the Federated States of Micronesia or upon its becoming law without such
approval.

Date: 2/11/98 Introduced by: Redley Killion

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