To further amend title 29 of the Code of the Federated States of Micronesia, as amended, by amending sections 102, 104, 205, 301, 309, 402, 601, 604, 605, 606, 612, 613, 622 and 627, and by enacting a new section 209 and a new chapter 7, to incorporate the Basle Principles and other international standards of banking supervision into the banking laws of the Federated States of Micronesia, and for other purposes.

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

Section 1. Section 102 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 102. Definitions. As used in this title, unless it is otherwise provided or the context requires a different construction, application, or meaning:

(1) 'Agency' means a place of business where transactions are effected with customers on behalf of a branch or main office of a bank, but the accounting records for such transactions are maintained at the branch or main office; includes a remote service facility.

(2) 'Bank' means a stock or mutual corporation or unincorporated association with sufficient capital, authorized by law to receive deposits of money or securities, to open credits, checking accounts, and savings accounts, to make loans, and in general to engage in all kinds of banking transactions, but does not mean a National banking association established by the Federated States of
any person or body of persons or a corporation authorized by law to engage in the banking business, and to accept from the public deposits which are withdrawable and transferable by check or other means of payment transfer. 'Bank' includes a savings and loan association but does not include a credit union.

(3) 'Banking business' means the business of accepting deposits of money from the public or members thereof, withdrawable or payable on demand or after a fixed period or after notice, or any similar operation through the frequent sale or placement of notes or other securities, and the use of such funds either in whole or part for loans, investments or any other operation either authorized by law or customary banking practice, for the account and at the risk of the person doing such business.

(4) 'Banking Board' means the Board established pursuant to section 201 of this title.

(5) 'Banking Commissioner' means the Banking Commissioner appointed pursuant to section 206 of this title.

(6) 'Branch' means an office of a bank [at which deposits are received and either or checks are paid or money is lent.] where banking business is transacted and at which accounting records are maintained.

(7) 'Demand deposit' means any deposit which is repayable by its terms not more than three days after the time it is
made.

' Deposits' means money or other property transferred or assigned to any person pursuant to an agreement, expressed or implied, that the person shall repay such moneys upon demand (whether in person or by written order) or after a fixed or determinable period of time. Money loaned to a bank which is to be repaid not sooner than five years from the date of loan, and pursuant to a loan agreement under which the obligation to repay is subordinate to the rights of depositors, shall not be deemed to be a deposit. Money transferred to a credit union as a purchase of its shares shall not be deemed to be a deposit.

'Domestic bank' means a bank organized under the provisions of chapter 3 of this title.

'Foreign bank' means a corporation or other financial institution organized for the purpose of engaging in the banking business under the laws of the United States or of a territory or State of the United States, or of a foreign country, operating a bank in its home territory, State, or country.

'Legal reserve' means the sum which every domestic bank and foreign bank shall at all times have available for the payment of their deposit liabilities pursuant to the provisions of this title.

'Paid-in capital, surplus, and undistributed profits'
means, in the case of a foreign bank, the aggregate paid-in
capital, surplus, and undistributed profits of such bank and
not merely that allocated to, located in, or arising out of
its operations in the Federated States of Micronesia.

'Person' includes individuals, corporations,
partnerships, and any other business entity.

'Public Auditor' means the Public Auditor appointed
by the President of the Federated States of Micronesia with
the advice and consent of the Congress pursuant to the
Constitution.

'Registrar of Corporations' means the Registrar of
Corporations of the National Government of the Federated
States of Micronesia.

'Related person' with respect to any person means his
spouse, child, parents, brothers, sisters, or any
partnership, corporation, or firm in which he owns more than
a ten percent interest."

Section 2. Section 104 of title 29 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 104. Requirements for banking business.

(1) No person shall engage in the business of accepting
deposits in the Federated States of Micronesia or shall use
the term 'bank' or 'savings and loan association' or any form
thereof in the conduct of its business unless it has been
granted a license pursuant to the provisions of this title

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and such license has not expired and has not been canceled.

(2) Any person holding such a license shall engage in no business in the Federated States of Micronesia other than the banking business and shall engage in such business only at the locations authorized by the Banking Board. Any such person shall give prior notice in writing to the Banking Board of any intention to cease operations at such authorized location. Such notice should be given not later than 30 days prior to the proposed cessation date, and shall include details of alternative arrangements proposed for customers using such location."

Section 3. Section 205 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 205. Reports.

(1) The Banking Board shall prepare a report each year on the condition of the banking system of the Federated States of Micronesia and on the operations of the Board during the year. Copies of the report shall be submitted to the President and the Speaker of the Congress within three months of the end of each year. The report shall also be published.

(2) The Banking Board shall also make up and publish a consolidated statement of assets and liabilities of the Federated States of Micronesia banking system not less frequently than quarterly, and send copies of the statement to the President and the Speaker of the Congress. The
Banking Board may also publish from time to time a 
consolidated statement of assets and liabilities of the 
Federated States of Micronesia banking system showing figures 
separately by state."

Section 4. Title 29 of the Code of the Federated States of 
Micronesia, as amended, is hereby further amended by enacting a new 
section 209 to read as follows:

"Section 209. Indemnity.
Neither the Banking Board nor any of its members, the Banking 
Commissioner, employee or any person duly appointed to assist 
the Banking Board in carrying out its powers and duties under 
this title shall incur any liability as a result of anything 
done in good faith in the exercise of any power or the 
performance of any duty under this title."

Section 5. Section 301 of title 29 of the Code of the Federated 
States of Micronesia is hereby amended to read as follows:

"Section 301. Organization - Permit required; Application.
(1) Any five or more persons of sufficient legal capacity 
may organize a domestic bank, but for such purpose they shall 
first apply in writing for a permit from the Banking Board. 
(2) The application shall set forth and prove the need of 
the services of a banking institution in the locality wherein 
the bank is sought to be established, and that the services 
rendered by other banking institutions do not answer the 
needs of the locality."
(3) The application shall also set forth the following:

(a) A business plan showing the intended strategy for the first three years of operation, including the administrative and organizational structure of the bank, internal controls, and projected balance sheet, profit and loss and cash flow statements for each of the three years, together with the assumptions on which they are based;

(b) The structure and adequacy of the proposed capital in relation to the projected volume of risk assets detailed in the business plan;

(c) The financial capacity, history, qualifications and experience of the applicants and the proposed management."

Section 6. Section 309 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 309. Amount and ownership of capital stock. No domestic bank shall be organized and established in the Federated States of Micronesia with a capital stock less than [$500,000] $1,000,000, [not less than 50 percent of] which shall be paid in cash before the bank shall be authorized to commence business, and at least two-thirds of which shall be owned by persons who are citizens of the Federated States of Micronesia and who shall have resided in the Federated States of Micronesia for at least one year prior to the application."
Section 7. Section 402 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 402. Establishment - Application for permit required.

(1) No foreign bank may open any branch or office or change the location of any branch or office in the Federated States of Micronesia without a permit to do so from the Banking Board.

(2) An application to the Banking Board for such permit shall state the benefit to the public expected to result from the granting of the permit applied for.

(3) The Banking Board, upon receipt of such application, may require the submittal of such additional information as may be necessary in order for it to make the necessary investigations.

(4) An application by a foreign bank to open a new branch in the FSM must be accompanied by written confirmation from the supervisory authority in the applicants' country of incorporation that the supervisory authority has no objection to the proposal to establish the branch in the FSM; and that the foreign bank is subject to consolidated supervision and regulation in its country of incorporation."

Section 8. Section 601 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 601. Regulation and supervision of banks by Banking Board..."
Board - General policies.

(1) All domestic banks and, to the extent of and with respect to business done at any branches established in the Federated States of Micronesia, all foreign banks doing business in the Federated States of Micronesia shall be regulated and supervised by the Banking Board in such manner as to secure the safe and sound conduct of such business, to prevent unsound practices, and to maintain the public confidence in such business and protect the public interest and the interests of depositors, creditors, and stockholders.

(2) In determining if a Bank is carrying on its business in a prudent manner, the Banking Board will have regard to the following:

(a) capital adequacy in relation to the size and nature of the business;

(b) asset concentration and risk exposure;

(c) separation of Banking Business from other business and from other interests of any person owning or controlling the Bank;

(d) adequacy of liquidity in relation to liabilities;

(e) asset quality and adequacy of provisions for losses;

(f) internal controls, risk management and accounting systems;

(g) adequacy of governance arrangements (including
Directors and senior management) in relation to the nature and scale of the business; and

(h) such other matters as the Banking Board considers relevant.

(2) Every foreign bank licensed pursuant to section 501 of this title shall, with the concurrence of the Banking Commissioner, designate the branch in the Federated States of Micronesia which may be used as the channel of communication between the Banking Board and the [banks] with respect to the application of this title to its business throughout the Federated States of Micronesia. Such branch shall be responsible for the timely provision of reports and information by other branches requested under this title.

The head office of a domestic bank shall be the channel of communication between the Banking Board and its branches, and shall be responsible for the timely provision of reports and information by other branches requested under this title."

Section 9. Section 604 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:


(1) Every domestic or foreign bank shall make at least one report of its condition each year to the Banking Commissioner within [ninety] 90 days after the close of the bank's fiscal year, and according to forms to be prescribed by him, verified by the oath of the chief executive officer or chief
financial officer and attesting officer, certifying and
subscribing under oath that each of them has personal
knowledge of the facts stated therein and that the same are
true.

(2) Such reports shall exhibit in detail and under
appropriate heads the total resources and liabilities of the
bank, and, in the case of a foreign bank, shall show
separately the resources, liabilities, and operations in the
Federated States of Micronesia.

(3) The Banking Commissioner shall have the right to
require that any such reports be audited at the bank's
expense by independent accountants approved by the Banking
Commissioner.

(4) Every domestic and foreign bank holding a license under
this title shall forward to the Banking Commissioner no later
than the 31st day of December each year a report outlining
the bank's policy regarding employment of citizens of the
Federated States of Micronesia in executive positions in the
bank, and the steps being taken to maximize such employment.

(5) Every domestic and foreign bank shall publish in such
manner as the Banking Commissioner shall direct, within 4
months after the close of its fiscal year, an audited report
of its condition as described in subsections (1) and (2) of
this section.

(6) Each Bank shall deliver to the Banking Board within
such period as may be specified and in such form as the Board may from time to time approve, a periodic statement of its:

(a) assets and liabilities;
(b) earnings and expenses;
(c) loans and advances; and
(d) such other data as the Board may deem necessary to carry out the purpose of this act."

Section 10. Section 605 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 605. Special reports.

(1) [The Banking Commissioner may also call for special reports from any domestic or foreign bank whenever in his judgement the same are necessary in order to obtain full knowledge of its condition.] The Banking Commissioner may request from the banks special reports.

(2) The Banking Commissioner may, from time to time, by notice in writing, require any domestic or foreign bank to submit such reports and returns as he may require for the purposes of the administration and enforcement of the provisions of this title and any regulations made thereunder.

(3) Any bank notified in writing under subsection (2) of this section shall comply with accurate and timely submissions or be subject to a penalty imposed by the Banking Board in an amount not to exceed $50 per day until the correct information has been provided to the satisfaction of
the Banking Commissioner.

([2]4) During the first five years of operations in the Federated States of Micronesia by any domestic bank, the Banking Commissioner shall call for special reports of its condition not less frequently than each calendar quarter."

Section 11. Section 606 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 606. [Penalty for false reporting] Misleading or obstructive conduct an offense.

(1) Whoever willfully makes any false entry in any book, report, or statement of a bank or certifies and subscribes to any report required by sections 604 or 605 of this chapter which is false in any material respect shall be fined not more than $1,000, or imprisoned for not more than one year, or both] Whoever, with intent to deceive:

(a) makes a false or misleading entry in any bank book or record;

(b) makes, provides or certifies any report required by section 604 or 605 of this title, or provides any information required under this title, which is false in any material particular;

(c) omits an entry or alters or conceals any entry in any bank book or record; or

(d) conceals or destroys any information, book, voucher, record, report, return, minutes or document relating
Section 12. Section 612 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 612. Limitations on loans - Maximum amount.

(1) No domestic bank shall permit a person to become indebted or liable to it, either directly or indirectly, in an amount in excess of [twenty] 20 percent of the aggregate paid-in and unimpaired capital, surplus, and undivided profits of the bank; provided however, that this subsection shall not apply to transactions entered into with another bank which is a member of the Federal Deposit Insurance Corporation of the United States, and for which quarterly reports of condition are monitored.

(2) In computing the total liabilities, direct or indirect,
of any person to a bank, there shall be included all liabilities to the bank of any related person and any loans made for his benefit or for the benefit of any related person.

(3) In computing the total liabilities of any firm, copartnership, or unincorporated association to the bank, there shall be included all liabilities of its individual members and all loans made for the benefit of the copartnership or unincorporated association or any members thereof.

(4) In computing the total liabilities of any corporation to a bank there shall be included all liabilities of and all loans made for the benefit of the corporation and its majority owned subsidiaries."

Section 13. Section 613 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 613. Limitations on loans - Related persons.

(1) Except as herein provided, no domestic bank shall make any extension of credit to any of its officers, directors, agents, or employees, or to any related person, either directly or indirectly, except upon the written application of such person or related person stating the line of credit applied for, terms and security, if any, offered therefor to the board of directors or to the loan or executive committee of the board, and then only with the written approval of a
majority of the board or a majority of the loan committee of
the bank (excluding the person seeking the credit) before the
loan is made; and the approval of the loan as allowed by the
board or the loan committee of the bank shall be made a part
of the minutes of the next directors' meeting of the bank.

(2) Loans may be made to any officer, director, agent, or
employee of any domestic bank or any related person, without
such application and approval, in amounts not in excess of
$5,000 in aggregate principal owing by any such individual
and related person at any one time.

(3) Extensions of credit may only be made pursuant to
subsections (1) and (2) of this section if they are made on
substantially the same terms, including interest rates and
collateral, as those prevailing at the time for comparable
transactions by the bank with members of the general public,
except for internally established employee benefit programs."

Section 14. Section 622 of title 29 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 622. Limitations on sale of assets, merger, etc.
No domestic bank may merge or consolidate with, or sell a
substantial portion of its assets to, another bank without
the approval of the Banking Board. No foreign bank may make
any arrangement or enter into any agreement for the sale or
disposal of its business, or part thereof, in the Federated
States of Micronesia to any other person without the prior
Section 15. Section 627 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 627. General penalties.

(1) For any violation of this title, license conditions imposed by the Banking Board pursuant to section 501 of this title, directives issued by the Banking Board pursuant to section 701 of this title, or the regulations prescribed pursuant to section 602 of this title chapter, the delinquent domestic or foreign bank shall be subject to a fine of not more than $5,000 and if the violation is a continuing one, to a further fine not exceeding $1,000 for [each] every day [that] during which the violation continues; and, in the case of a material violation, to the cancellation of its license.

(2) [Such fine or cancellation shall be imposed by the Banking Board only with the approval of the President of the Federated States of Micronesia and after notice to the delinquent bank and a hearing concerning the alleged violation.] The Banking Board must give notice to the Bank concerned of the intention to impose a penalty pursuant to subsection (1) of this section, and allow it a hearing in respect to the alleged violation. The Banking Board must take into account the outcome of the hearing in its final decision. The approval of the President of the Federated
States of Micronesia must be given for a cancellation of
license or the imposition of a fine exceeding $1,000.

(3) [In any such case, the Banking Commissioner shall send
written notice of his action to the bank affected as quickly
as circumstances will allow, and if the cancellation of the
bank's license has been decided upon, shall transmit a
written order to that effect to the Registrar of Corporations
for appropriate action.] The Banking Commissioner shall
immediately notify the Bank concerned in writing of any
penalty imposed pursuant to subsections (1) and (2) of this
section. If the penalty involves cancellation of license,
the Bank must immediately cease to carry on banking business,
the Banking Commissioner must notify the Registrar of
Corporations of the cancellation, and the provisions of
section 801 of this title shall apply."

Section 16. Title 29 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by enacting a new
chapter 7 entitled "Control over Banks".

Section 17. Title 29 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by enacting a new
section 701 of chapter 7 to read as follows:

"Section 701. Unsafe or unsound practices.

(1) This section shall apply when the Banking Board is of
the opinion, either as a result of an examination carried out
under this title, or otherwise, that a Bank licensed under
this title:

(a) is following unsafe or unsound practices in the
conduct of its business that if continued may jeopardize its
obligations to its depositors, or adversely affect the
operation or stability of the banking system of the FSM; or

(b) has contravened or failed to comply with the terms
and conditions of its license or the provisions of this
title.

(2) When a Bank is engaged in practices described in
subsection (1) of this section, the Banking Board may:

(a) issue a directive to such Bank to cease and desist
from such practice, contravention or non-compliance;

(b) issue a directive to such Bank to take such action
(including action to replace or strengthen management) as may
be specified in such directive in order to correct the
conditions resulting from such practice, contravention or
non-compliance; and

(c) appoint a qualified person to advise the bank on
the proper conduct of its business and measures to be taken
to rectify its situation; the remuneration to be paid to such
advisor shall be fixed by the Banking Board and paid by the
Bank."

Section 18. Title 29 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by enacting a new
section 702 of chapter 7 to read as follows:
"Section 702. Penalty for failure to comply with section 701 of this title. If a Bank to which section 701 of this title has been applied fails to comply within a reasonable time with a directive, such failure may constitute grounds for an application under section 801 of this title."

Section 19. Title 29 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 703 of chapter 7 to read as follows:

"Section 703. Prevention against money laundering.

(1) Any director, manager or other officer concerned in the management of a Bank in the Federated States of Micronesia who makes or authorizes, or permits to be made or authorized by any officer of the Bank any transaction:

(a) without taking or causing to be taken all reasonable steps to establish the true identity of the persons concerned in the transaction; or

(b) when he or the officer concerned doubts or has reason to doubt the authenticity of documents and the truth of written or oral statements material to the transaction; or

(c) when he or the officer concerned knows or has reason to suspect that any of the funds involved in the transaction have been obtained by any party as the direct or indirect result of activity that is illegal inside or outside the Federated States of Micronesia;

is guilty of an offense and is liable on conviction to a fine
of $10,000 or imprisonment for one year or both.

(2) No director, manager or other officer concerned in the management of a financial institution who discloses in good faith to the Banking Commissioner information regarding any customer or transaction which he believes to be connected to illegal activity, shall incur any liability as a result of such disclosure."

Section 20. Title 29 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 704 of chapter 7 to read as follows:

"Section 704. Prohibition on disclosure.

(1) No person who has acquired knowledge in his capacity as director, manager, officer, employee or agent of any licensed bank shall disclose to any person any information concerning a customer of that licensed bank except:

(a) with the written authorization of the customer or his legal personal representative;

(b) for the purpose of performing his duties under this title;

(c) when required to do so by a court in the Federated States of Micronesia;

(d) in order to comply with the provisions of this title or any other written law; or

(e) to provide to a person, upon a legitimate business request, a general credit rating, a copy of which shall be
provided to the subject of the credit rating upon his request.

(2) No member of the Banking Board, Banking Commissioner, employee or agent of the Banking Board shall disclose to any person any information, returns or data whatsoever relating to any licensed Bank or to its customers that he has acquired in the performance of his duties under this title except:

(a) for the purpose of the performance of his duties or the exercise of his functions;
(b) when lawfully required to do so by any court, or in proceedings for an offense against this title;
(c) with the consent of the person to whom the information relates;
(d) to the extent that the information is available under any other law or in a public document;
(e) in aggregated or summary form, in such a manner as to prevent any information disclosed from being identified by any person as being related to a particular person; or
(f) in confidence to a supervisory authority in any other country for the purposes of the exercise of functions corresponding to or similar to those conferred on the Banking Board under this title, so long as the Banking Board is reasonably satisfied the recipient of the information will maintain confidentiality."

Section 21. Title 29 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by enacting a new section 705 of chapter 7 to read as follows:

"Section 705. Retention of records.

(1) A licensed bank must retain, for a period of at least 5 years, checks and other negotiable instruments drawn on it and paid by it, and other items comprising records of transactions processed by it.

(2) It shall be sufficient compliance with the duty imposed by subsection (1) of this section if a copy of the item has been made by the licensed Bank on microfilm, microfiche, tape, disk, or electronic or photographic storage media, and is retained by the licensed Bank for the same period as the item is required to be retained pursuant to subsection (1) of this section.

(3) Notwithstanding the provisions of any other law, a copy of an item made pursuant to this section shall be admissible as evidence in any legal proceeding to the same extent as the item of which it is a copy would have been admissible."

Section 22. 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: _____________ Introduced by: __________________________

Joseph J. Urusemal (by request)