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 Micronesia is hereby enacted by adding a new chapter 1 entitled "General Provisions".

2. Section 2. Title 31 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 101 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 of the Federated States of Micronesia. This act may be cited as the 'Bankruptcy Act of 2004'."

3. Section 3. Title 31 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 102 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, or corporation 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 general partner;

(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) an affiliate, 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, affiliate, 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) an affiliate or person in control of the debtor.

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

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

"Section 103. Application for relief.

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

(a) by any debtor; or

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

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

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

(4) When the application is brought by creditors, the
application shall also allege:
(a) that the claims held by such creditors amount
in the aggregate to at least $7,500, are not contingent
and are not subject to a bona fide dispute; and

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

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

Section 104. Filing of application.

(1) An application for relief under this title 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 in which the application is filed shall
supervise the proceeding unless the court, in its
discretion, determines that the proceeding 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. Title 31 of the Code of the Federated States of
Micronesia is hereby enacted by adding a new section 105 to read
as follows:

"Section 105. Notice.
Notice to Interested Parties of the filing of an
application under this title and of motions, hearings
and other events relating to proceedings under this
title shall be given at such time and in such manner as
the court may determine for the purposes of (a) giving
as many interested parties as reasonably practicable an
opportunity to be heard concerning matters affecting
their interests in the proceedings, and (b) maximizing
the number of claims against the debtor that can be
discharged compromised, paid or otherwise resolved
through the proceedings."

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

"Section 106. Stay of proceedings.
(1) Except as provided in subsection (2) of this
section, an application under this title 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 under this title 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 subsection (1) of this section shall continue until the proceedings related to the application are terminated, suspended or dismissed, or the party affected obtains relief from the stay pursuant to subsection (4) of this section.

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

"Section 107. Claims of creditors.

(1) Any creditor may file a sworn claim in such manner and 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) In the event of a dispute as to whether or in what amount a claim is allowable under this section, the court may (a) summarily determine the matter upon motion, (b) conduct a trial on the claim, or (c) refer the matter to another court for determination.

(4) 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 pledged by the debtor as security for
that claim is less than the amount of the claim.

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

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

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

"Section 108. Priorities.

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

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

(b) all allowed unsecured 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 claims by employees of the debtor for wages and salaries for services prior to the date of the application, except for such claims by persons who hold an ownership interest in a debtor that is a business, persons who hold a management position in the business of the debtor and relatives of the debtor;

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

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

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

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

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

"Section 109. Setoff.
The law of setoff shall apply in the event that the debtor has any right to recover, arising prior to the filing of an application hereunder, against a creditor filing a claim under this title, provided that that creditor's claim is allowable under section 107 hereof."

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

"Section 110. Rulemaking power of the court.
The Supreme Court of the Federated States of Micronesia may adopt such rules, not inconsistent with the provisions of the title, as it may deem necessary or appropriate to the supervision of proceedings under this title or otherwise to effect the purposes of this title."

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

"Section 111. Retention of professionals.
The debtor may retain, for the purposes of proceedings
under this title, one or more attorneys, accountants or other professionals, provided that the retention and terms of retention of each such professional shall be subject to approval by the court. The court may retain one or more appraisers, accountants or other professionals to appraise property of the debtor, to examine the financial condition of the debtor or otherwise to assist the court in connection with a proceeding under this title. Unless otherwise ordered by the court, the fees and costs of any professionals retained by the court shall be treated as administrative costs under section 108 hereof."

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

"Section 112. Qualifications of receivers and trustees. (1) A person may serve as a receiver or trustee under this title only if such person is:

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

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

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

(e) 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 or trustee 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 or trustee under this title.

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

(a) the complexity of the case;

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

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

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

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

Section 15. Title 31 of the Code of the Federated States of
Micronesia is hereby enacted by adding a new section 201 to read as follows:

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

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

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

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

(2) Notwithstanding subsection (1) of this section, 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 interests of the debtor and its creditors. If the court finds that an application under this title has been filed in bad faith, it may award to interested parties injured thereby their reasonable costs and attorneys fees to be paid by the filing parties."

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

(1) Subject to such limitations as may be ordered by the court, 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;

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

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

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

Section 17. Title 31 of the Code of the Federated States of
Micronesia is hereby enacted by adding a new section 203 to read as follows:

"Section 203. 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 209 of this title, 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 this title and as may be ordered by the court."

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

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

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

"Section 205. Preferences.

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

(a) to or for the benefit of a creditor;
(b) for or on account of an antecedent debt;
(c) made while the debtor was insolvent;
(d) made on or within 90 days, or within one year
if the creditor was an insider, affiliate or relative of
the debtor, before the date of the application for the
receivership; and

(e) that enables such creditor to receive:

(i) more than such creditor would have
received if the transfer had not been made;
(ii) more than such creditor would have
received if his claim, right or entitlement had been
(2) The receiver may not avoid under subsection (1) of this section 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 subsection (2) of this section. The receiver is entitled to the benefit of a rebuttable presumption that the debtor was insolvent during the 90 day period specified in subsection (1)(d) of this section."

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

"Section 206. Fraudulent transfers.

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

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

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

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

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

(2) Except to the extent that the transfer is also
voidable pursuant to section 205 of this chapter, a good
faith transferee for value is entitled to a lien on the
transferred property to the extent of such value."
"Section 207. Transferee liability.

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

(a) the initial 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 subsection (1) of this section 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 206(1) of this title."

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

"Section 209. 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 206 of this title; 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 seven 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 107(2)(c) of this title.

(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 23. Title 31 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 210 to read
"Section 210. Exempt property. An individual debtor may exempt from the receivership estate the property described in either subsection (1) or subsection (2) below:

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

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

(a) 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.

(b) Necessities for trade or occupation. All tools, implements, utensils, two work animals and equipment necessary to enable debtor 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.

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

(i) justice so requires,

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

(iii) 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.

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

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

(e) Boats. A boat and motor with a combined value not in excess of $2,500.
(f) Cash. Cash on hand in any checking or savings account not to exceed $400.00.

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

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

The business of the debtor, during the pendency of the
reorganization proceeding, shall be operated by the
management that existed on the application date, except
that the court may at any time, after notice and a
hearing, appoint a trustee to replace that management if
it finds that such replacement is in the best interests
of the debtor and the creditors."

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

"Section 303. Powers of debtor or trustee.

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

(a) the power to use, sell and lease property of
the debtor;
(b) the power to obtain credit on behalf of the
debtor;
(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 debtor; and
(e) the power to avoid preferences and
fraudulent conveyances upon the same terms and in the
same circumstances as a receiver as provided in sections
205, 206 and 207 of this title.
Court approval is required for actions taken pursuant to
subsection (a) and (b) of this section unless the
activity occurs in the ordinary course of business.
Court approval is also required for actions taken
pursuant to subsection (1)(c), (1)(d) and (1)(e) of this
section."
Section 28. Title 31 of the Code of the Federated States of
Micronesia is hereby enacted by adding a new section 304 to read
as follows:
"Section 304. Filing of a plan.
(1) The debtor may file a plan of reorganization at
the time of filing its application under this chapter,
or at any other time during the course of a proceeding
under this chapter.
(2) Any other interested party may file a plan of reorganization only if

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

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

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

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

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

"Section 305. Classification of claims.

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

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

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

"Section 306. Contents of the plan.

(1) The plan shall--

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

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

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

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

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

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

(ii) transfer of all or any part of the
assets of the debtor to another person;"
(iii) merger or consolidation with another person;

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

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

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

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

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

"Section 307. Impairment.

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

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

"Section 308. Voting on the plan.

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

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

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

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

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

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

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

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

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

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

"Section 309. Plan rejection.

If, on a vote of the creditors under section 308 of this chapter, the plan has not been accepted, the court, after notice and a hearing, may take such action as it finds to be in the best interest of the creditors and the debtor, such as permitting modification of the plan, permitting other interested parties to submit a plan, converting the reorganization proceeding to a receivership proceeding under chapter 2 of this title, or dismissing the reorganization proceeding."

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

"Section 310. Confirmation.

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

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

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

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

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

Section 311. Retention of jurisdiction.

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

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

Section 36. 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: 9/3/04

Introduced by: /s/ Sabino S. Asor

Sabino S. Asor

/s/ Alik L. Alik

Alik L. Alik