AN ACT

To further amend title 29 of the Code of the Federated States of Micronesia, as amended, by amending sections 102, 201, 601, 603, 605, 613, 617, 619, 621, 701, 702, 801, and 802 thereof and by enacting a new section 106 and a new Chapter 9 to incorporate the requirements imposed on FDIC-insured banks by the amendments to the Compact of Free Association, to enact laws governing treatment of dormant bank accounts, to make certain other necessary changes, and for other purposes.

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

1. Section 1. Section 102 of title 29 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 9-130 and 12-57, is hereby further 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) 'Article XI' means Article XI of the Programs and Services Agreement of the Compact of Free Association, as amended, entitled 'Federal Deposit Insurance Corporation Programs and Services Agreements'.

(3) 'Bank' means 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.

(4) 'Banking business' means the business of accepting deposits of money from the public, 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 considered a generally accepted banking practice, for the account and at the risk of the person doing such business.

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

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

(7) 'Branch' means an office of a bank where banking business is transacted and at which accounting records are maintained.

(8) 'Demand deposit' means any deposit which is repayable by its terms not more than three days after the time it is made.
(9) '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.

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

(11) 'FDB' means a Domestic bank that is insured by the Federal Deposit Insurance Corporation.


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

(14) 'IAP' or 'institution-affiliated party' means:

(a) any director, officer, employee, or
controlling stockholder of, or agent for, an FDB;

(b) any other person who has filed or is required
to file a change-in-control notice with the appropriate
U.S. Federal banking agency under section 7(j) of the
FDI Act;

(c) any shareholder (other than a bank holding
company), consultant, joint venture partner, and any
other person as determined by the appropriate U.S.
Federal banking agency (by regulation or case-by-case)
who participates in the conduct of the affairs of an
FDB;

(d) any independent contractor (including any
attorney, appraiser, or accountant) who knowingly or
recklessly participates in (i) any violation of any law
or regulation; (ii) any breach of fiduciary duty; or
(iii) any unsafe or unsound practice, which caused or is
likely to cause more than a minimal financial loss to,
or a significant adverse affect on, the FDB.

(15) '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.

(16) '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.

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

(18) '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.

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

(20) '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.

(21) 'Secretary of Finance' means the Secretary of the
Department of Finance and Administration of the
Federated States of Micronesia."

Section 2. Title 29 of the Code of the Federated States of
Micronesia is hereby further amended by enacting a new section 106
to read as follows:

"Section 106. Banking Practices – Dormant and Inactive
Accounts.

(1) In the event there has been no activity of
deposits or withdrawals in a savings account and no
contact has been made with the account holder of such
savings account for at least ten (10) years, the account shall be deemed a 'dormant account' and the bank in which such account is kept shall act to close the dormant account in accordance with the procedures set forth below in this section.

(2) In the event there has been no activity of deposits or withdrawals in a checking account and no contact has been made with the account holder of such checking account for at least two (2) years, the account shall be deemed a 'dormant account' and the bank in which such account is kept shall act to close the dormant account in accordance with the procedures set forth below in this section.

(3) Bank actions in crediting interest payments to an account or assessing service charges against an account shall not count as activity for the purposes of determining dormancy.

(4) Dormant accounts shall be identified annually by each bank during the month of June. Any dormant account with a balance of $25.00 or less is not subject to the procedures required by this section.

(5) Upon identification of a dormant account, the bank shall send written notice to the depositor at the depositor's last known address, informing the depositor that the depositor's account will be closed and the funds therein transferred to the Secretary of Finance if
the depositor does not claim the funds in the dormant account by December 31 of that calendar year. The notice shall be sent no later than October 1 of that calendar year.

(6) Between November 1 and November 15 and between December 1 and December 15 of each year, each bank shall publish a "Notice of Inactive Bank Accounts", which shall contain:

(a) the names, in alphabetical order, and last known addresses of depositors of dormant accounts; and

(b) a statement that, if not claimed, such funds shall be transferred to the Secretary of Finance during the month of January of the following year. The Notice of Inactive Bank Accounts shall be published in a newspaper of general circulation or by other means as determined by the Banking Board.

(7) During the month of January of the calendar year immediately following the notification and publication required by subsections (4) and (5) above, each bank shall transfer to the Secretary of Finance, for the account of the depositor, the full balance of each dormant account, provided however, that the bank may deduct costs of notice and publication in a manner to be determined by the Banking Board in regulations.

(8) Except as provided for in this section, no bank shall assess any fee against any bank account for
reasons of inactivity.

(9) In the event that a bank holds, for three (3) years or more, any funds for which the owner or payor cannot be determined by the bank or for which the owner or payor cannot be located by the bank, the bank shall transfer such funds to the Secretary of Finance for the account of the owner or payor, in the event such owner or payor is determined or located at a later date.

(10) Upon receiving sums of money pursuant to this section, the Secretary of Finance shall furnish the transferring bank with a receipt for such transferred funds and shall deposit such sums into a custodial interest bearing account separate and apart from the General Fund of the FSM National Government. Interest earned on funds deposited with the Secretary of Finance pursuant to this section shall be deemed the property of the FSM National Government and shall not be paid to the owner of the funds.

(11) The Secretary of Finance shall be responsible for maintaining accurate records of funds received pursuant to this section in accordance with any regulations adopted by the Banking Board.

(12) At any time within twenty (20) years of the date of transfer of funds to the Secretary of Finance pursuant to this section, such funds may be claimed by their rightful owner or owners by furnishing proof of
his, her or their right to such funds, which proof is deemed satisfactory to the Secretary of Finance.

(13) All funds transferred to the Secretary of Finance pursuant to this section shall escheat to the National Government of the Federated States of Micronesia twenty (20) years following the date of such transfer.

(14) Each bank shall hold the FSM National Government harmless for any liability incurred due to the handling of an account by the bank. The FSM National Government shall not be liable for any transaction on an account made by any bank, including the transfer of the balance of the account to the Secretary of Finance pursuant to this section. The FSM National Government shall not be liable for damages or penalties for any payment to a claimant of funds deposited pursuant to this section.

(15) The bank shall not be liable for any mishandling of an account by the Secretary of Finance.

(16) The Banking Board may adopt such rules and regulations as may be necessary to implement the provisions of this section."

Section 3. Section 201 of title 29 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-130, is hereby further amended to read as follows:

"Section 201. Creation.

(1) There is hereby established a Banking Board which shall be composed of three members appointed by the
President and with the advice and consent of the Congress of the Federated States of Micronesia.

(2) All appointments shall be for a term of four years, provided however, that, unless otherwise provided by the President, all rights and powers of a Banking Board member shall be maintained by each member until the appointment of such member's successor. Banking Board members shall be eligible for reappointment.

(3) The Chairman of the Banking Board shall be appointed by the President from among the members appointed pursuant to subsection (1) of this section."

Section 4. Section 601 of title 29 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 9-130 and 12-57, is hereby further amended to read as follows:

"Section 601. Regulation and supervision of banks - 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."
(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.

(3) 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 Bank 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.

(4) All FDBs shall comply with all existing and future banking and banking-related laws, rules and regulations of the United States relating to supervision, regulatory, and resolution and receivership matters, except any portions of such laws, rules and regulations that conflict with sections 4 or 5 of Article XIII of the FSM Constitution."

Section 5. Section 603 of title 29 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-130, is hereby amended to read as follows:

"Section 603. Examination of banks — Authority; Testimony; Document Production; Fees.

(1) The Banking Commissioner may examine, or cause to be examined, every domestic or foreign bank for the purpose of ascertaining whether it has complied with this title and other applicable laws and for such other purposes and such other matters as the Banking Board may
prescribe.

(2) The Banking Commissioner and every examiner appointed by him may administer an oath to any person whose testimony may be required on the examination of any bank and summon and compel the appearance and attendance of any person for the purpose of the examination.

(3) As part of any examination, the Banking Commissioner may also require the production of books, records or other documents in whatever form.

(4) As an examination fee, each bank so examined shall pay the total cost of such examination, and the sum so paid shall be deposited into the General Fund of the Federated States of Micronesia."

Section 6. Section 605 of title 29 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 9-130 and 12-57, is hereby further amended to read as follows:

"Section 605. Special reports.

(1) 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 $100 per day until the correct information has been provided to the satisfaction of the Banking Commissioner.

(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 7. Section 613 of title 29 of the Code of the Federated States of Micronesia, as amended by Public Law No. 12-57, is hereby further 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, employees, or holders of more than ten percent (10%) of the outstanding stock of the bank, 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 or executive committee of the board (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 or executive committee of the board 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, employee, or shareholder 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; PROVIDED however, that a bank may offer preferential terms to employees under an internally established employee benefit program."

Section 8. Section 617 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 617. Applications for credit – denials and records. Each bank must provide an applicant with a written explanation of the basis on which a decision is
made to deny a written application for a loan, a credit card, or other request for extension of credit within thirty (30) days from the date of receipt of such application by the bank. Each bank shall keep records of all applications for credit received and denials and written explanations given in the manner determined by the Banking Commissioner."

Section 9. Section 619 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 619. Acceptance of deposits – Minimum capital requirements. No domestic bank may accept deposits at any time that its paid-in capital, surplus, and undivided profits are less than $1,000,000 in the aggregate."

Section 10. Section 621 of title 29 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 621. Bank stock – Ownership limitations. No person or group of related persons (including entities that are affiliated as parent or subsidiary companies or are otherwise under common control) may acquire ten percent or more of the stock of a domestic bank without the prior approval of the Banking Board."

Section 11. Section 701 of title 29 of the Code of the Federated States of Micronesia, as enacted by Public Law No.
12-57, is hereby amended to read as follows:

"Section 701. Unsafe or unsound practices.

(1) This section shall apply when the Banking Board has determined 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:

(a) shall issue a directive to such Bank to cease and desist from such practice, contravention or non-compliance or to take such other action as the Banking Board determines is necessary;

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

(c) may 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 12. Section 702 of title 29 of the Code of the
Federated States of Micronesia, as enacted by Public Law No.
12-57, is hereby amended to read as follows:

"Section 702. Enforcement of directives.

(1) The Banking Commissioner shall promptly and fully
enforce all FDIC directives and orders against or
involving any FDB or any IAP, except to the extent that
such directives or orders conflict with the Constitution
of the FSM.

(2) If a Bank to which section 701 of this title has
been applied fails to comply promptly with any
directive or order of the FDIC or Banking Commissioner,
such failure shall constitute grounds for an application
under section 801 of this title."

Section 13. Section 801 of title 29 of the Code of the
Federated States of Micronesia, as amended by Public Law No.
9-130, is hereby further amended to read as follows:

"Section 801. Receivership — Application by Banking
Commissioner. If, in consequence of an examination or
report made by an examiner, or otherwise, the Banking
Board should have reason to believe that a domestic bank
or foreign bank is in an unsafe or unsound condition or
is engaging in unsafe or unsound practices; or that its
affairs are being conducted in such a manner that the
public or the persons or entities having securities or
funds under its custody are in danger of being
defrauded; or if any such bank shall violate its charter
or any law relative thereto, or this title in any
material respect; or if it becomes insolvent, then,
subject to Chapter 9 of this title, the Banking
Commissioner may apply to the Trial Division of the
Supreme Court of the Federated States of Micronesia for
the appointment of a receiver to take charge of and wind
up the affairs of such bank."

Section 14. Section 802 of title 29 of the Code of the
Federated States of Micronesia, as amended by Public Law No.
9-130, is hereby further amended to read as follows:

"Section 802. Receivership — Appointment and duties of
receiver.

(1) If the Court, after hearing all parties concerned,
determines that the facts alleged by the Banking
Commissioner are supported by the evidence, except in
the event that the FDIC has appointed itself receiver
pursuant to Chapter 9, the Court shall appoint a
receiver.

(2) Upon his appointment the receiver shall, under the
direction of the Banking Commissioner, take possession
of the assets and liabilities, books, records, papers,
and files of every description belonging to the bank;
and collect all loans, fees, and claims of the bank; and
see to the payment of its obligations and debts, and to
the necessary expenses of receivership.

(3) The receiver shall proceed to liquidate the
affairs of the bank as soon as possible, and to this end
may sell the personal and real property and other assets
of the bank, but subject to the approval of the Banking
Commissioner. The receiver shall continue to perform
his duties in the manner prescribed herein until the
bank or foreign bank is fully liquidated."

Section 15. Title 29 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new Chapter 9 entitled
"FDIC Proceedings and FDBs".

Section 16. Title 29 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 901 of
chapter 9 to read as follows:

"Section 901. Authority, Scope. This Chapter is
enacted in accordance with Article XI in order to set
forth the rights and obligations between FDBs, the FDIC
and the government and courts of the FSM."

Section 17. Title 29 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new section 902 of
chapter 9 to read as follows:

"Section 902. Administrative Enforcement Actions.
Any proceeding involving administrative enforcement
actions against the FDB or any IAP of the FDB shall be
in accordance with the FDI Act and FDIC Regulations. Any proceeding against the FDB or an IAP shall be held in the State of Pohnpei, unless the parties agree to hold a hearing in another location, or unless an Administrative Law Judge finds good cause to hold a hearing in a different location.

(1) The FDB or an affected IAP may appeal administrative orders pursuant to Article XI.

(2) The FDIC may sue to enforce administrative orders or directives pursuant to Article XI.

(3) The government and courts of the FSM shall recognize orders and directives of the FDIC and other orders pursuant to Article XI."

Section 18. Title 29 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 903 to read as follows:

"Section 903. Receivership. If the FDB becomes 'critically undercapitalized' as that term is used in Article XI, the Banking Commissioner shall act to close the FDB.

(1) The FDIC has the authority to appoint itself receiver of the FDB under the circumstances provided in Article XI and to exercise all powers conferred by the FDIC Act.

(2) Upon closure of a FDB for any reason, the FDIC shall become the receiver of the FDB on the date of the
closing unless the FDIC notifies the Banking
Commissioner in writing that it will not serve as
receiver.

(3) A closed FDB shall pay the receiver’s
administrative expenses prior to the payment of any
other claims of unsecured creditors. The subrogated
claim of the FDIC as insurer of deposits shall have
priority over the payment of any claims of general
unsecured creditors of the FDB, other than the
receiver’s administrative expenses.

(4) No person alleging a claim against a FDB in
receivership shall be permitted to bring an action in a
court of law or other body (including any action that
existed against the FDB prior to its failure) until such
person has permitted the receiver a reasonable period to
review such claim.

(5) No claim against a receiver arising prior to the
failure of the FDB shall be valid unless it appears in
the FDB’s records.

(6) No claim against the receiver for its actions in
liquidating the FDB shall prevail unless the plaintiff
proves by clear and convincing evidence that the
receiver acted in willful disregard of the law.

(7) No court or administrative agency shall enjoin the
operations of the receivership.

(8) Officers, directors and other professionals shall
be liable to the receiver for any damages caused to the failed FDB.

(9) The receiver shall not be required to perform any executory contract that had been entered into by the FDB prior to its failure.

(10) Litigation between the receiver and the creditors or debtors of the FDB shall not be commenced until after the receiver has conducted a complete administrative review of the claim.

(11) All suits of a civil nature to which the FDIC as receiver is a party must be brought pursuant to the provisions of Article XI."

Section 19. Title 29 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 904 to read as follows:

"Section 904. Prohibited participation. Participation in the conduct of the affairs of a FDB is prohibited by any IAP, person or party who:

(1) is subject to a final or temporary order of suspension, removal, or prohibition issued by the FDIC, other United States banking or regulatory agency, or United States court; and/or

(2) has been convicted of, or has agreed to enter a pre-trial diversion or similar program, in connection with the prosecution for an offense of the type covered by section 19 of the FDI Act, including any conviction
and/or diversion that takes place in the FSM or in any other nation or jurisdiction."

Section 20. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

December 8, 2004

/s/ Joseph J. Urusemal
Joseph J. Urusemal
President
Federated States of Micronesia