FIFTH REGULAR SESSION, 2006

C.B. NO. 14-208

## A BILL FOR AN ACT

To further amend title 12 of the Code of the Federated States of Micronesia by amending chapter 17, and for other purposes. BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Section 1704 of title 12 of the Code of the Federated States 1 of Micronesia, as amended, is hereby further amended to read as follows: 2 "Section 1704. Definitions. Unless the subject or context 3 4 otherwise requires, in this chapter [act]: 5 (1) 'Appeal' includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for 6 a stay of execution. 7 8 (2) 'Criminal investigation' means -9 (a) an investigation commenced in the Federated States of Micronesia in respect of an offense committed, suspected on 10 11 reasonable grounds to have been committed or to be likely to be 12 committed against the law of the Federated States of Micronesia; or 13 (b) in relation to a foreign state, an investigation 14 commenced in the foreign state in respect of an offense committed, 15 suspected on reasonable grounds to have been committed or to be 16 likely to be committed against the law of that foreign state. 17 (3) 'Criminal matter' means criminal investigations and criminal 18 proceedings. 19 (4) 'Criminal proceedings' means -20 (a) proceedings instituted in respect of an offense committed, or suspected on reasonable grounds to have been 21

1	committed, against the law of the Federated States of Micronesia,
2	and includes the trial of a person for the offense and any
3	proceedings to determine whether or not a person should be tried
4	for the offense; or
5	(b) proceedings instituted in respect of an offense
6	committed, or suspected on reasonable grounds to have been
7	committed, against the law of a foreign state, and includes the
8	trial of a person for the offense and any proceedings to determine
9	whether or not a person should be tried for the offense.
10	(5 [2]) 'Data' means representations, in any form, of
11	information or concepts.
12	( $\frac{6}{3}$ ]) 'Document' means any record of information and
13	any material on which data is recorded or marked and which is
14	capable of being read or understood by a person, computer system or
15	other device, and includes, but is not limited to:
16	(a) anything on which there is writing;
17	(b) anything on which there are marks, figures, symbols,
18	or perforations having meaning for persons qualified to interpret
19	them;
20	(c) anything from which sounds, images or writings can be
21	produced, with or without the aid of anything else; <del>or</del>
22	(d) a map, plan, drawing, photograph or similar thing <u>; or</u>
23	<u>(e) an electronic document</u> .
24	$(\frac{7}{4})$ 'Foreign confiscation order' means an order, made
25	by a court in a foreign state, for the purposes of the confiscation
26	or forfeiture of property in connection with, or recovery of the

1	proceeds of, a serious offense.
2	(8) 'Foreign pecuniary penalty order' means an order, made by a
3	court or other judicial authority in a foreign state, for the
4	purposes of imposing a pecuniary penalty in respect of benefits
5	derived by a person from the commission of an offense against the
6	law of that state, but does not include an order for the payment of
7	a sum of money by way of compensation, restitution or damages to an
8	injured person.
9	( <u>9</u> [ <del>5</del> ]) `Foreign restraining order' means an order made
10	in respect of a serious offense by a court in a foreign
11	state for the purpose of restraining a particular person
12	or all persons from dealing with property.
13	( <u>10</u> [ <del>6</del> ]) 'Foreign State' means:
14	(a) any country other than the Federated States of
15	Micronesia; and
16	(b) every constituent part of such country, including a
17	territory, dependency or protectorate, or political subdivision
18	which administers its own laws relating to international
19	cooperation.
20	$(\underline{11} [7])$ 'Interest', in relation to property, means a:
21	(a) legal or equitable estate or interest in the property;
22	or
23	(b) right, power or privilege in connection with the
24	property, whether present or future and whether vested or
25	contingent.
26	$(\underline{12} \ [\underline{8}])$ 'Person' means any natural or legal person.

## 3 of 46

1	$(\underline{13} \ [9])$ 'Place' includes any land (whether vacant,
2	enclosed or built upon, or not), and any premises.
3	$(\underline{14} \ [\underline{10}])$ 'Premises' includes the whole or any part of
4	a structure, building, aircraft, or vessel.
5	( <u>15</u> [ <del>11</del> ]) 'Proceedings' means any procedure conducted
6	by or under the supervision of a judge, magistrate or
7	judicial officer, however described, in relation to any
8	alleged or proven offense, or property derived from
9	such offense, and includes an inquiry, investigation, or
10	preliminary or final determination of facts.
11	( <u>16</u> [ <del>12</del> ]) 'Proceeds of crime' <u>has the meaning given to it</u>
12	by section 903 of title 11 of the Code of the Federated
13	States of Micronesia [means fruits of a crime, or any]
14	[property derived or realized directly or indirectly
15	from a serious offense and includes, on a proportional
16	basis, property into which any property derived or
17	realized directly from the offense was later
18	successively converted, transformed or intermingled, as
19	well as income, capital or other economic gains derived
20	or realized from such property at any time since the
21	offense].
22	$(\underline{17} \ [\underline{13}])$ 'Property' means real or personal property of
23	every description, whether situated in the Federated
24	States of Micronesia or elsewhere and whether tangible
25	or intangible, and includes an interest in any such real

4 of 46

or personal property.

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1	$(\underline{18}\ [\underline{14}])$ 'Secretary' means the Secretary of the
2	Department of Justice of the Federated States of
3	Micronesia or chief law enforcement officer of the
4	Federated States of Micronesia, whatever the title of
5	such position is or in the future may become.
6	( <u>19</u> [ <del>15</del> ]) `serious offense' <u>has the meaning given to it</u>
7	by section 903 of title 11 of the Code of the Federated
8	States of Micronesia [means a violation of:
9	(a) any law of Federated States of Micronesia or
10	any of its States or political subdivisions, which is a
11	criminal offense punishable by imprisonment for a term
12	of more than one year;
13	[ <del>(b) a law of a foreign state, in relation to acts</del>
14	or omissions, which had they occurred in Federated
15	States of Micronesia or any of its States or political
16	subdivisions, would have constituted a criminal offense
17	punishable by imprisonment for a term of more than one
18	year].
19	$(\underline{20}\ [\underline{16}])$ 'Supreme Court' means the Supreme Court of the
20	Federated States of Micronesia, and all its divisions,
21	wherever or whenever constituted.
22	(21) 'Tainted property' has the meaning given to it by
23	section 903 of title 11 of the Code of the Federated
24	<u>States of Micronesia.</u>
25	$(\underline{22} \ [\underline{17}])$ A reference in this <u>chapter</u> [act] to the law of
26	the Federated States of Micronesia, any State of the

## 5 of 46

C.B. NO. 14-208

Federated States of Micronesia, or any foreign state includes a reference to written or unwritten law of, or in force in, any part of the Federated States of Micronesia (including its States and political subdivisions), any part of that State of the Federated States of Micronesia, or any part of that foreign state, as the case may be."

8 Section 2. Section 1705 of title 12 of the Code of the Federated States 9 of Micronesia, as amended, is hereby further amended to read as follows:

10 "Section 1705. <u>Authority to make and act on mutual legal</u>
 11 <u>assistance requests.</u>

12 (1) The Secretary may make requests on behalf of the 13 Federated States of Micronesia to the appropriate authority 14 of a foreign state for mutual legal assistance in any 15 criminal matter [investigation commenced or proceeding] instituted in the Federated States of Micronesia, relating to 16 17 any serious offense. When the request is to a foreign state 18 [country], the request shall be made through the Secretary 19 who shall give notice to the Secretary of the Department of 20 Foreign Affairs of the Federated States of Micronesia, of the 21 name of the foreign state [country] to which the request is 22 being made, the nature of the request, and the nature of the criminal matter. At the Secretary's request, the Secretary 23 of the Department of Foreign Affairs shall keep information 24 25 provided pursuant to this subsection confidential.

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(2) The Secretary may, in respect of any request from a

foreign state for mutual assistance in any criminal matter 1 2 [investigation commenced or proceeding] instituted in that 3 state relating to a serious offense: 4 (a) grant the request, in whole or in part, on such terms 5 and conditions as he or she deems fit; 6 (b) refuse the request, in whole or in part, on the 7 grounds that to grant the request would be likely to prejudice the 8 sovereignty, security or other essential public interest of the 9 Federated States of Micronesia; or 10 (c) after consulting with the competent authority of the 11 foreign state, postpone the request, in whole or in part, on the 12 grounds that granting the request immediately would be likely to 13 prejudice the conduct of an investigation or proceeding in the 14 Federated States of Micronesia. 15 (3) Requests on behalf of the Federated States of Micronesia to the appropriate authorities of foreign states for assistance of the 16 17 kind referred to in section 1707 of this <u>chapter</u> [title] shall be 18 made only by or with the authority of the Secretary. 19 (4) Notwithstanding any other provision of this <u>chapter</u> [act], 20 nothing in this <u>chapter</u> [act] shall be construed or interpreted to 21 affect or take away such powers of a State of the Federated States 22 of Micronesia to deal with a foreign state regarding its own criminal investigations and other mutual assistance in criminal 23 24 matters to the extent such dealings do not conflict with any 25 constitutional powers of the Federated States of Micronesia on the 26 same subjects or matters. A State 27

C.B. NO. 14-208

of the Federated States of Micronesia may request through the 1 2 Secretary any assistance in criminal matters that it may need 3 from a foreign state, as authorized in this <u>chapter</u> [act]." 4 Section 3. Section 1706 of title 12 of the Code of the Federated States 5 of Micronesia, as amended, is hereby further amended to read as follows: "Section 1706. Saving provision for other requests or assistance 6 7 in criminal matters. Nothing in this chapter [act] shall be taken to limit: 8 (1) the power of the Secretary, apart from this <u>chapter</u> [act], 9 10 to make requests to foreign states or act on requests from foreign 11 states for assistance in [investigations or proceedings in] 12 criminal matters; 13 (2) the power of any other person or court, apart from this 14 chapter [act], to make requests to foreign states or act on 15 requests from foreign states for forms of international assistance other than those specified in section 1707 of this chapter [title]; 16 17 or 18 (3) the nature or extent of assistance in investigations or 19 proceedings in criminal matters which the Federated States of 20 Micronesia may lawfully give to or receive from foreign states; or (4) the existing and new forms of cooperation, whether formal or 21 22 informal in respect of criminal 23

C.B. NO. 14-208

1	matters between the Federated States of Micronesia and any foreign
2	state, or the development of other forms of such cooperation."
3	Section 4. Section 1707 of title 12 of the Code of the
4	Federated States of Micronesia, as amended, is hereby further
5	amended to read as follows:
6	"Section 1707. Mutual legal assistance requests by the Federated
7	States of Micronesia. The requests which the Secretary is
8	authorized to make under section 1705 are that the foreign state:
9	(1) have evidence taken, obtain other documents or articles, or
10	<u>have</u> documents or other articles produced in evidence [in the
11	<pre>foreign state];</pre>
12	(2) obtain and execute search warrants or other lawful
13	instruments authorizing a search for things [believed to be located
14	in that foreign state], which may be relevant to investigations or
15	proceedings in the Federated States of Micronesia, and if found,
16	seize them;
17	(3) locate and $[\frac{\partial r}{\partial r}]$ restrain any property believed to be the
18	proceeds of crime [ <del>located in the foreign state</del> ] <u>or that is subject</u>
19	to a restraining order made pursuant to chapter 9 of title 11 of
20	the Code of the Federated States of Micronesia;
21	(4) <u>locate and</u> confiscate any property [ <del>believed to</del> ]
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be located in the foreign state, which is the subject of a
confiscation <u>or pecuniary penalty</u> order made pursuant to chapter 9
of title 11 of the Code of the Federated States of Micronesia, <u>or</u>
any other forfeiture order;

5 (5) transmit to the Federated States of Micronesia any such 6 confiscated property or any proceeds realized therefrom, or any 7 such evidence, documents, articles or things;

8 (6) transfer in custody to the Federated States of Micronesia a 9 person detained in the foreign state who consents to assist the 10 Federated States of Micronesia in the relevant investigation or 11 proceedings, and make arrangements for other persons in a foreign 12 state travel to the Federated States of Micronesia to give evidence 13 or assist in investigations;

(7) provide any other form of assistance in any investigation
commenced or proceeding instituted in the Federated States of
Micronesia that involves or is likely to involve the exercise of a
coercive power over a person or property believed to be in the
foreign state; or

(8) permit the presence of nominated persons during the
execution of any request made under this <u>chapter</u> act; or

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## 10 of 46

1	(9) identify, locate and detain a person in a foreign state for
2	extradition or other purposes."
3	Section 5. Section 1709 of title 12 of the Code of the Federated
4	States of Micronesia, as amended, is hereby deleted in its entirety
5	and a new section 1709 is enacted to read as follows:
6	"Section 1709. Assistance in locating or identifying persons in a
7	foreign state. If the Secretary is satisfied that there are
8	reasonable grounds for believing that there is, in a foreign
9	<u>state, a person who -</u>
10	(a) is a fugitive or is subject to an arrest warrant in the
11	Federated States of Micronesia;
12	(b) is or might be concerned in or affected by any criminal
13	matter in Federated of States of Micronesia; or
14	(c) could give or provide evidence or assistance relevant to
15	any criminal matter;
16	the Secretary may request a foreign state to assist in locating
17	that person, or, if the person's identity is unknown, in
18	identifying and locating that person."
19	Section 6. Section 1710 of title 12 of the Code of the Federated
20	States of Micronesia, as amended, is hereby re-designated as section
21	1720 and a new section 1710 is enacted to read as follows:
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1	"Section 1710. Assistance in obtaining evidence in a foreign
2	<u>state.</u>
3	(1) The Secretary may, if the Secretary is satisfied that there
4	are reasonable grounds for believing any evidence, document or
5	other article would be relevant to any criminal matter in
6	Federated States of Micronesia, request a foreign state to arrange
7	<u>for -</u>
8	(a) such evidence, including testimony, to be taken in the
9	foreign state; or
10	(b) such document or other article in the foreign state to
11	be produced;
12	and for the evidence or document be transmitted to the Department
13	of Justice for the Federated States of Micronesia.
14	(2) Any testimony taken under oath during a deposition or
15	judicial proceeding that is received from a foreign state pursuant
16	to a request made under subsection (1) of this section, and that
17	purports to have been signed by the deponent or witness and the
18	person taking the evidence, or to have been certified as a correct
19	record by the person taking the testimony shall, subject to the
20	rules relating to the admission of evidence, be admissible as
21	evidence in the criminal proceedings to which the request relates.
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1	(3) Any document, other than a deposition or hearing
2	transcript, received from a foreign state pursuant to a request
3	made under subsection (1) of this section shall, subject to the
4	rules relating to the admission of evidence, be admissible as
5	evidence in criminal proceedings to which the request relates as
6	if produced by the person who produced the document pursuant to
7	the order of the court or other judicial authority of that foreign
8	state.
9	(4) When making a request under subsection (1) of this section,
10	the Secretary may also request that an opportunity be given for
11	the person giving testimony, or producing the document or other
12	article, to be examined or cross-examined through telephone, video
13	or internet link, or any other means, from the Federated States of
14	<u>Micronesia by -</u>
15	(a) a party to the proceeding, or the party's legal
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16	representative; or
16	<u>representative; or</u> (b) a person being investigated, or the person's legal
17	(b) a person being investigated, or the person's legal
17 18	(b) a person being investigated, or the person's legal representative.
17 18 19	(b) a person being investigated, or the person's legal representative. (5) All courts or other judicial authorities in the Federated
17 18 19 20	(b) a person being investigated, or the person's legal representative. (5) All courts or other judicial authorities in the Federated States of Micronesia shall take judicial notice of any seal or
17 18 19 20 21	(b) a person being investigated, or the person's legal representative. (5) All courts or other judicial authorities in the Federated States of Micronesia shall take judicial notice of any seal or signature impressed, affixed, appended, or subscribed on or to any
17 18 19 20 21 22	(b) a person being investigated, or the person's legal representative. (5) All courts or other judicial authorities in the Federated States of Micronesia shall take judicial notice of any seal or signature impressed, affixed, appended, or subscribed on or to any deposition or other form of testimony tendered in evidence under
17 18 19 20 21 22 23	<pre>(b) a person being investigated, or the person's legal representative. (5) All courts or other judicial authorities in the Federated States of Micronesia shall take judicial notice of any seal or signature impressed, affixed, appended, or subscribed on or to any deposition or other form of testimony tendered in evidence under this section."</pre>

1	"Section 1711. Assistance in arranging attendance of a foreign
2	person.
3	(1) The Secretary may, if the Secretary is satisfied that there
4	are reasonable grounds for believing that a person in a foreign
5	state could give or provide evidence or assistance relevant to any
6	criminal matter in Federated of States of Micronesia, request the
7	foreign state to assist in arranging the attendance of that person
8	in Federated of States of Micronesia to give or provide evidence
9	<u>or assistance.</u>
10	(2) Where the Secretary is satisfied that a person in respect
11	of whom a request is made to a foreign state under subsection (1)
12	of this section consents to travel to Federated of States of
13	Micronesia to give or provide evidence or assistance pursuant to
14	that request, the Secretary may make arrangements with that
15	<u>foreign state for the purposes of -</u>
16	(a) the removal of the person to Federated of States of
17	<u>Micronesia;</u>
18	(b) in the case of a foreign prisoner who the foreign state
19	requests to be kept in custody, the custody of that person while
20	in Federated of States of
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1	Micronesia;
2	(c) the return of the person to the foreign state; and
3	(d) other relevant arrangements.
4	(3) Where, pursuant to this section, the Secretary requests the
5	assistance of a foreign state in arranging the attendance of any
6	person in Federated of States of Micronesia, the person to whom
7	the request relates shall not be subject to any penalty or
8	liability or otherwise prejudiced in law by reason only of that
9	person's refusal or failure to consent to attend as requested."
10	Section 8. Section 1712 of title 12 of the Code of the Federated
11	States of Micronesia, as amended, is hereby deleted in its entirety and
12	a new section 1712 is enacted to read as follows:
13	"Section 1712. Safe conduct guarantee of foreign person.
14	(1) Subject to subsection (3) of this section, a person,
15	including a foreign prisoner, who is in Federated of States of
16	Micronesia pursuant to a request made under section 1711 of this
17	<u>chapter, shall not -</u>
18	(a) be detained, prosecuted, or punished in Federated of
19	States of Micronesia for any offense that
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1	is alleged to have been committed, or that was committed, before
2	the person's departure from the foreign state pursuant to the
3	<u>request;</u>
4	(b) be subjected to any civil proceedings in Federated of
5	States of Micronesia in respect of any act or omission that is
6	alleged to have occurred, or that occurred, before the person's
7	departure from the foreign state pursuant to the request, being
8	civil proceedings to which the person could not be subjected if
9	the person were not in Federated of States of Micronesia;
10	(c) be required to give or provide evidence or assistance in
11	relation to any criminal matter in Federated of States of
12	Micronesia other than the criminal matter to which the request
13	<u>relates;</u>
14	(d) be required, in the proceedings or investigation to
15	which the request relates, to answer any question that the person
16	would not be required to answer if those proceedings or that
17	investigation were taking place in the foreign state; or
18	(e) be required, in the proceedings or investigation to
19	which the request relates, to produce any document or article that
20	the person would not be required to produce if those proceedings
21	or that investigation were taking place in the foreign state.
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1	(2) For the purposes of subsection (1) of this section, a duly
2	authenticated foreign law immunity certificate is admissible in
3	proceedings as prima facie evidence of the matters stated in the
4	certificate.
5	(3) Subsection (1) of this section shall not apply in relation
6	<u>to a person where -</u>
7	(a) the person has left Federated of States of Micronesia
8	and then returns otherwise than pursuant to the same or another
9	request;
10	(b) the person has had the opportunity to leave Federated of
11	States of Micronesia and has remained in Federated of States of
12	<u>Micronesia for a purpose other than for-</u>
13	(i) the purpose to which the request relates;
14	(ii) the purpose of giving evidence in any criminal
15	proceedings in Federated of States of Micronesia certified by the
16	Secretary, in writing, to be proceedings in which it is desirable
17	that the person give evidence; or
18	(iii) the purpose of giving assistance in relation
19	to an investigation in Federated of States of Micronesia certified
20	by the Secretary, in writing, to be an investigation in relation
21	to which it is
22	desirable that the person give assistance; or
23	(c) the person, by voluntary agreement and written
24	consent, entered into a stipulated settlement or resolution of any
25	criminal charges pending in the Federated States of Micronesia, or
26	of any civil matter.

1	(4) A certificate given by the Secretary for the purposes of
2	subsections (3) (b) (ii) or 3(b)(iii) of this section has effect
3	from the day specified in the certificate."
4	Section 9. Section 1713 of title 12 of the Code of the Federated
5	States of Micronesia, as amended, is hereby deleted in its entirety and a
6	new section 1713 is enacted to read as follows:
7	"Section 1713. Assistance in serving documents in a foreign
8	state. The Secretary may, if the Secretary is satisfied that
9	for the purposes of, or in connection with, any criminal
10	matter in Federated of States of Micronesia it is necessary or
11	desirable to serve any process on a person or an authority in
12	a foreign state, request a foreign state to assist in
13	effecting service of the process."
14	Section 10. Section 1714 of title 12 of the Code of the Federated
15	States of Micronesia, as amended, is hereby deleted in its entirety and a new
16	section 1714 is enacted to read as follows:
17	"Section 1714. Assistance in obtaining documents or other articles
18	in a foreign state. The Secretary may, if the Secretary is
19	satisfied that there are reasonable grounds for believing that a
20	document or other article is in a foreign state and would, if
21	produced, be relevant to any criminal matter in Federated of States
22	of Micronesia, request that foreign state to assist in obtaining,
23	by search and seizure, if necessary, that document or other
24	article."
25	Section 11. Section 1715 of title 12 of the Code of the Federated States
26	of Micronesia, as amended, is hereby deleted in its entirety and a new section

1 1715 is enacted to read as follows:

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2	"Section 1715. Request for enforcement of restraining,
3	confiscation and pecuniary penalty orders in a foreign state. The
4	Secretary may, if the Secretary is satisfied that there are
5	reasonable grounds for believing that some or all of any property
6	in respect of which an order for the enforcement of a restraining
7	order, confiscation order or pecuniary penalty order is made is
8	located in a foreign state, request a foreign state to make
9	arrangements for the enforcement and satisfaction of the order."
10	Section 12. Section 1716 of title 12 of the Code of the Federated States
11	of Micronesia, as amended, is hereby deleted in its entirety and a new section
12	1716 is enacted to read as follows:
13	"Section 1716. Request for issuance of warrants or orders in a
14	foreign state. The Secretary may request a foreign state to assist
15	in obtaining and executing a warrant or order in respect to a
16	criminal matter relating to a serious offense, including, but not
17	limited to:
18	(1) <u>a restraining order, confiscation order or a pecuniary</u>
19	penalty order;
20	(2) <u>a search warrant;</u>
21	(3) <u>a production order; or</u>
22	(4) <u>a monitoring order.</u> "
23	Section 13. Section 1717 of title 12 of the Code of the Federated States
24	of Micronesia, as amended, is hereby re-designated as section 1729 and a new
25	section 1717 is enacted to read as follows:
26	"Section 1717. Foreign requests for issuance of a warrant.

1	(1) Notwithstanding anything contained in any other law, where
2	the Secretary grants a request by a foreign state to obtain
3	evidence in the Federated States of Micronesia, the authority of
4	the foreign state may request that the Department of Justice for
5	the Federated States of Micronesia apply to the Supreme Court for a
6	search warrant on behalf of the authority.
7	(2) The Supreme Court, to which an application is made under
8	subsection (1) of this section, may issue a search warrant under
9	this subsection, where it is satisfied that there is probable cause
10	to believe that:
11	(a) a serious offense has been or may have been committed
12	against the laws of the foreign state; and
13	(b) evidence relating to that offense may be found in or
14	on a premises, building, receptacle or other place or thing located
15	in the Federated States of Micronesia, including evidence of:
16	(i) any article or thing upon or in respect of which
17	a serious offense under the law of a foreign state has been, or may
18	have been, committed; or
19	(ii) any document or other article which there are
20	reasonable grounds for believing will be evidence as to the
21	commission of a serious offense; or
22	(iii) any document or other article which there are
23	reasonable grounds for believing is intended to be used for purpose
24	of committing a serious offense; and
25	(c) it would not, in all the circumstances, be more
26	appropriate to grant an order under section 1718 of this chapter.

1	(3) For the purposes of subsection (2)(a) of this section, a
2	statement contained in the foreign request to the effect that a
3	serious offense has been or may have been committed against the
4	laws of the foreign state is prima facie evidence of that fact,
5	without proof of the signature or official character of the person
6	appearing to have signed the foreign request.
7	(4) Subject to any conditions specified in the warrant issued
8	pursuant to this section, every warrant issued shall authorize the
9	law enforcement officer executing the warrant -
10	(a) to enter and search the premises, building,
11	receptacle, place or thing specified in the warrant at any time of
12	day or night, or during specified hours, within the time frame of
13	the warrant;
14	(b) to use such assistance as may be reasonable in the
15	circumstances for the purpose of the entry and search;
16	(c) to use such force as is reasonable in the
17	circumstances for the purposes of effecting entry, and for breaking
18	open anything in or on the premises, building, receptacle, place or
19	thing searched; and
	(d) to search for and seize any document or other article
20	referred to in subsection (2) (b) of this section.
20 21	(5) A search warrant shall be in the usual form in which a
21	search warrant is issued in the Federated States of Micronesia,
21 22	search warrant is issued in the Federated States of Micronesia, varied to the extent necessary to suit the case.
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1	officer shall deliver the document or other article into the
2	custody of the National Police of Department of Justice for the
3	Federated States of Micronesia, which shall arrange for the
4	document or other article to be kept for a reasonable period
5	pending further direction from the Secretary as to the manner in
6	which the document or other article is to be dealt with.
7	(7) If no direction is given by the Secretary before the expiry
8	of the period referred to in subsection (6) of this section, the
9	National Police shall arrange for the document or other article to
10	be returned to the person from whose possession it was seized as
11	soon as practicable after that period has expired.
12	(8) Before authorizing assistance under this section, the
13	Secretary shall obtain undertakings from the foreign state that any
14	document or other article that is seized, provided or produced
15	pursuant to the request by the foreign state shall be used only for
16	the purpose of, or in connection with, the criminal matter to which
17	the request relates, unless the Secretary consents to the use of
18	the evidence, document or other article for another purpose.
19	(9) No document or other article seized and ordered to be sent
20	to a foreign state shall be sent until the Secretary is satisfied
21	that the foreign state has agreed to comply with any terms or
22	conditions imposed in respect of the sending abroad of the document
23	or other article.
24	(10) Where a search warrant is issued under this section, the
25	Secretary shall, at the request of the authority of that foreign
26	state, provide such certification as that the authority may require

1	concerning the result of any search conducted pursuant to the
2	warrant, the place and circumstances of the seizure of any document
3	or other article pursuant to the warrant, and the custody of any
4	document or other article so seized.
5	(11) The Supreme Court may adopt, recognize and enforce foreign
6	court orders certified or under seal, which orders shall be
7	presumed to be valid in the absence of any evidence to the
8	<u>contrary.</u> "
9	Section 14. Section 1718 of title 12 of the Code of the Federated States
10	of Micronesia, as amended, is hereby deleted in its entirety and a new section
11	1718 is enacted to read as follows:
12	"Section 1718. Foreign requests for obtaining evidence.
13	(1) Notwithstanding anything contained in any other law, where
14	the Secretary grants a request by a foreign state to obtain
15	evidence in the Federated States of Micronesia, the Department of
16	Justice for the Federated States of Micronesia may apply to the
17	Supreme Court for the taking of evidence, including testimony, in
18	the Federated States of Micronesia or the production of documents
19	or other articles in the Federated States of Micronesia on behalf
20	of the authority.
21	(2) The Supreme Court, to which an application is made under
22	subsection (1) of this section, may issue an order under this
23	subsection, where it is satisfied that there is probable cause to
24	believe that:
25	(a) a serious offense has been or may have been committed
26	against the laws of the foreign state or the request relates to

1	criminal proceedings in the foreign state; and
2	(b) there are reasonable grounds for believing that the
3	evidence can be taken from or given by a person believed to be in
4	the Federated States of Micronesia or, as the case may be, the
5	documents or other articles can be produced in the Federated States
6	<u>of Micronesia.</u>
7	(3) For the purposes of subsection (2)(a) of this section, a
8	statement contained in the foreign request to the effect that a
9	serious offense has been or may have been committed against the
10	laws of the foreign state is prima facie evidence of that fact,
11	without proof of the signature or official character of the person
12	appearing to have signed the foreign request.
13	(4) An order under subsection (2) of this section:
14	(a) shall provide for the manner in which the evidence is
15	to be obtained in order to give proper effect to the foreign
16	state's request, and in particular, may require any person named
17	therein to:
18	<u>(i) make a record from data or make a copy of a</u>
19	record;
20	(ii) attend a deposition or hearing to give testimony
21	or provide other evidence under oath or otherwise until excused; or
22	(iii) produce to the Supreme Court or to any person
23	designated by the Court, any document, or copy thereof or other
24	article; and
25	(b) may include such other terms and conditions as the
26	Supreme Court considers desirable, including those relating to the

1	interests of the person named therein or of third parties.
2	(5) Where the Secretary authorizes the taking of evidence under
3	this section, the Supreme Court may require each witness to provide
4	testimony under oath either at a hearing before the Supreme Court
5	<u>or at a deposition, and shall -</u>
6	(a) cause the evidence to be put in writing and certify,
7	in the prescribed form, that the evidence was taken by or under the
8	authority of the Supreme Court; and
9	(b) cause the writing to be sent to the Secretary.
10	(6) Where the Secretary authorizes the production of documents
11	or other articles, the Supreme Court may require the production of
12	the documents or other articles and, unless the Supreme Court
13	otherwise orders, shall send the documents, or copies of the
14	documents certified by the Supreme Court to be true copies, or the
15	other articles to the Secretary.
16	(7) A person named in an order under subsection (2) of this
17	section shall not be required to give any evidence, or to produce
18	any document or other article, that the person could not be
19	compelled to give or produce in the proceedings in the foreign
20	state. The person may refuse to answer a question or to produce a
21	document or other article where the refusal is based on:
22	(a) a law currently in force in the Federated States of
23	<u>Micronesia;</u>
24	(b) a privilege recognized by a law in force in the
25	foreign state that made the request; or

1	(c) a law currently in force in the foreign state that
2	would render the answering of that question or the production of
3	that document or other article by that person, in the person's own
4	jurisdiction, an offense.
5	(8) Where a person refuses to answer a question or to produce a
6	document or other article pursuant to subsection (5)(b) or (c) of
7	this section, the Supreme Court shall report the matter to the
8	Secretary who shall notify the foreign state and request the
9	foreign state to provide a written statement on whether the
10	person's refusal was well founded under the law of the foreign
11	state.
12	(9) Any written statement received by the Secretary from the
13	foreign state in response to a request under subsection (8) of this
14	section, shall be admissible in the evidence-gathering proceedings,
15	and for the purposes of this section be determinative of whether
16	the person's refusal is well founded under the foreign law.
17	(10) A person who, without reasonable excuse, refuses to comply
18	with a lawful order of the Supreme Court made under this section,
19	or who having refused to comply with that order pursuant to
20	subsection (7) of this section, continues to refuse,
21	notwithstanding the admission into evidence of a statement under
22	subsection (9) of this section, to the effect that the refusal is
23	not well founded, commits a contempt of court and may be punished
24	accordingly.
25	(11) Any person giving evidence or producing documents or other
26	articles at a hearing or deposition, and the authority of the

1	foreign state, may appear and be represented by counsel, and the
2	certificate by the Judge under subsection (5) of this section shall
3	state whether or not any such persons were present at the hearing
4	or deposition and, if so, whether or not they were legally
5	represented.
6	(12) Before authorizing assistance under this section, the
7	Secretary shall obtain undertakings from the foreign state that any
8	evidence, document or other article that is obtained, provided or
9	produced pursuant to the request by the foreign state shall be used
10	only for the purpose of, or in connection with, the criminal matter
11	to which the request relates, unless the Secretary consents to the
12	use of the evidence, document or other article for another purpose.
13	(13) No evidence, document or other article given or produced
14	pursuant to this section shall be sent to a foreign state until the
15	Secretary is satisfied that the foreign state has agreed to comply
16	with any terms or conditions imposed in respect of the sending
17	abroad of the evidence, document or other article.
18	(14) The Supreme Court may adopt, recognize and enforce foreign
19	court orders certified or under seal, which orders shall be
20	presumed to be valid in the absence of any evidence to the
21	<u>contrary.</u> "
22	Section 15. Section 1719 of title 12 of the Code of the Federated
23	States of Micronesia, as amended, is hereby
24	re-designated as section 1731 and a new section 1719 is enacted to read as
25	follows:
26	"Section 1719. Foreign requests for obtaining attendance of

1	persons in a foreign state.
2	(1) Where the Secretary approves a request of a foreign state to
3	assist in arranging for the attendance in that state of a person in
4	the Federated States of Micronesia to provide evidence or to assist
5	in an investigation or proceeding in that state relating to a
6	serious offense, the Secretary may authorize assistance in
7	accordance with this section to facilitate that attendance.
8	(2) Where an application is made under subsection (1) of this
9	section, the Secretary may authorize such assistance under this
10	section where he or she is satisfied, having considered any
11	document filed or information given in support of the application,
12	that:
13	(a) a serious offense has been or may have been committed
14	against the laws of the foreign state and there are reasonable
15	grounds for believing that the person concerned could provide
16	evidence or assistance relevant to that criminal matter;
17	(b) the person is in the Federated States of Micronesia;
18	and
19	(c) the foreign state has given adequate
20	undertakings in respect of the matters specified in sections 1721
21	and 1722 of this chapter.
22	(3) Where the Secretary authorizes assistance in accordance with
23	this section, the Secretary shall forward the request to the
24	appropriate authority in the Federated States of Micronesia, and
25	that authority shall use its best endeavors to identify and locate
26	the person to whom the request relates, and shall advise the

1		Secretary of the outcome of those endeavors.
2		(4) On receipt of such advice, the Secretary shall inform the
3		requesting foreign state of the result of the inquiries made
4		pursuant to the request."
5	Secti	on 16. Title 12 of the Code of the Federated States of Micronesia,
6	as amended,	is hereby further amended to add a new section 1721 to read as
7	follows:	
8		"Section 1721. Undertakings required from foreign state. Before
9		authorizing assistance in accordance with sections 1719 and 1720 of
10		this chapter, the Secretary shall obtain undertakings from the
11		foreign state in relation to the following matters-
12		(1) that the person to whom the request relates shall not -
13		(a) be detained, prosecuted, or punished for any offense
14		against the law of the foreign state that is
15		alleged to have been committed, or that was committed, before the
16		person's departure from the Federated States of Micronesia;
17		(b) be subjected to any civil proceedings in respect of
18		any act or omission of the person that is alleged to have occurred,
19		or that occurred, before the person's departure from the Federated
20		States of Micronesia, being civil proceedings to which that person
21		could not be subjected if the person were not in the foreign state;
22		or
23		(c) be required to give or provide evidence or assistance
24		in respect of any criminal matter in the foreign state other than
25		the matter to which the request relates;
26		unless the person has left the foreign state, or has had the

1	opportunity to leave the foreign state, and has remained in that
2	state for purposes other than for providing evidence or assistance
3	in respect of the matter to which the request relates;
4	(2) that any evidence given by the person in the criminal
5	proceedings to which the request relates shall be inadmissible or
6	otherwise disqualified from use in the prosecution of the person
7	for an offense against a law of the foreign state other than the
8	offense of perjury in relation to the giving of that
9	evidence;
10	(3) that the person will be returned to the Federated Sates of
11	Micronesia in accordance with arrangements agreed by the Secretary
12	as soon as practicable after giving the evidence;
13	(4) in a case where the request relates to a person who is a
14	prisoner in the Federated States of Micronesia and the Secretary
15	requests the foreign state to make arrangements for the keeping of
16	the person in custody while the person is in the foreign state -
17	(i) that appropriate arrangements will be made for
18	that purpose;
19	(ii) that the person will not be released from
20	custody in the foreign state without the prior approval of the
21	Secretary; and
22	(iii) if the person is released in the foreign state,
23	at the request of the Secretary, before the completion of the
24	proceedings to which the request relates, that the person's
25	accommodation and expenses will be met by the foreign state; and
26	(5) such other arrangements as the Secretary deems appropriate."

Section 17. Title 12 of the Code of the Federated States of Micronesia, 1 2 as amended, is hereby further amended to add a new section 1722 to read as 3 follows: "Section 1722. Penalty not to be imposed for refusal to 4 5 consent. The person to whom the request pursuant to section 6 1719 and 1720 of this chapter relates shall not be subject to 7 any penalty or liability, or otherwise prejudiced in law by reason only of that person's refusal or failure to consent to 8 9 attend as requested." 10 Section 18. Title 12 of the Code of the Federated States of Micronesia, as amended, is hereby further amended to add a new section 1723 to read as 11 12 follows: 13 "Section 1723. Custody of persons in transit from foreign state. 14 (1) If a person is to be transported in custody from a foreign 15 state through the Federated States of Micronesia to another foreign state for the purposes of giving evidence in a criminal matter in 16 17 the other foreign state, the person -18 (a) may be transported through the Federated States of 19 Micronesia in the custody of another person; and 20 (b) if an aircraft or ship by which the person is being 21 transported lands or calls at a place in the Federated States of 22 Micronesia, shall be kept in such 23 custody as the Secretary directs in writing until his or her transportation is continued. 24 25 (2) Where a person is being held in custody pursuant to a 26 direction under subsection (1) (b) of this section and the person's

1	transportation is not, in the opinion of the Secretary continued			
2	within a reasonable time, the Secretary may direct that the person			
3	be transported in custody back to the foreign state from which the			
4	person was first transported.			
5	Section 16. Title 12 of the Code of the Federated States of Micronesia,			
6	as amended, is hereby further amended by adding a new section 1725 of chapter			
7	7 17 to read as follows:			
8	"Section 1725. Foreign requests for restraining orders.			
9	(1) The Secretary may apply to the Supreme Court for a			
10	restraining order under subsection (2) of this section where:			
11	(a) a foreign state requests the Secretary to obtain the			
12	issuance of a restraining order against property, some or all of			
13	which is believed to be located in the Federated States of			
14	<u>Micronesia;</u>			
15	(b) criminal proceedings have begun in the foreign state			
16	in respect of a serious offense; and			
17	(c) there is probable cause to believe that the			
18	property relating to the offense or belonging to the defendant or			
19	the defendant's co-conspirators is located in the Federated States			
20	<u>of Micronesia.</u>			
21	(2) Where the Secretary makes application to the Supreme Court			
22	under subsection (1) of this section, the Supreme Court may make a			
23	restraining order in respect of the property, and this chapter or			
24	the relevant provisions of chapter 9 of title 11 of the Code of the			
	Federated States of Micronesia shall apply as requested by the			
25	rederated states of Micronesia sharr apply as requested by the			

1	order issued as a result, as if the serious offense that is the			
2	subject of the order had been committed in the Federated States of			
3	Micronesia."			
4	Section 17. Title 12 of the Code of the Federated States of			
5	Micronesia, as amended, is hereby further amended by adding a new section			
6	1726 of chapter 17 to read as follows:			
7	"Section 1726. Requests for enforcement of foreign restraining,			
8	confiscation or pecuniary penalty orders.			
9	(1) Where a foreign state requests the Secretary to make			
10	arrangements for the enforcement of a foreign restraining order,			
11	foreign confiscation order or foreign pecuniary penalty order, the			
12	Secretary may apply to the Supreme Court for entry and enforcement			
13	of the order under this chapter or under chapter 9 of title 11 of			
14	the Code of the Federated States of Micronesia.			
15	(2) The Supreme Court shall, on application by the Secretary,			
16	enter and enforce a foreign restraining order or foreign pecuniary			
17	penalty order under this chapter or under chapter 9 of title 11 of			
18	the Code of the Federated States of Micronesia if the Court is			
19	satisfied that at the time of entry and registration, the order is			
20	in force in the foreign state.			
21	(3) The Supreme Court shall, on application by the Secretary,			
22	enter and enforce a foreign confiscation order, which is legally			
23	capable of enforcement in the Federated States of Micronesia and			
24	its States, if the Court is satisfied that:			
25	(a) at the time of entry and enforcement, the order is in			
26	force in the foreign state and is not subject to appeal; and			

1	(b) where the person who is the subject of the order did
2	not appear in the confiscation proceedings in the foreign state,
3	<u>that:</u>
4	(i) the person was given fair notice of the
5	confiscation proceeding; or
6	(ii) the person had absconded or had died before such
7	notice could be given, and if the person died, the decedent's
8	estate was given fair notice of the proceedings.
9	(4) For the purposes of subsections (2) and (3) of this section,
10	a statement contained in the foreign request to the effect that:
11	(a) the foreign restraining order or foreign pecuniary
12	penalty order is in force in the foreign state;
13	(b) the foreign confiscation order is in force in the
14	foreign state and is not subject to appeal; or
15	(c) the person who is the subject of the foreign
16	confiscation order was given fair notice of the proceedings, or
17	that the person had absconded or died before such notice could be
18	given and if the person died, the decedent's estate was given fair
19	notice of the proceedings;
20	is prima facie evidence of those facts, without proof of the
21	signature or official character of the person appearing to have
22	signed the foreign request.
23	(5) Where a foreign restraining order, foreign confiscation
24	order or foreign pecuniary penalty order is entered for enforcement
25	in accordance with this section, a copy of any amendments made to

1	the order in the foreign state (whether before or after entry and
2	enforcement), may be entered and enforced in the same
3	way as the order, but shall not have effect for the purposes of
4	chapter 9 of title 11 of the Code of the Federated States of
5	Micronesia, until they are so entered and enforced.
6	(6) The Supreme Court shall, on application by the Secretary
7	rescind entry of:
8	(a) a foreign restraining order, if it appears to the
9	Court that the order has ceased to have effect; or
10	(b) a foreign confiscation order or foreign pecuniary
11	penalty order, if it appears to the Court that the order has been
12	satisfied or has ceased to have effect.
13	(7) Subject to subsection (9) of this section, where the foreign
14	restraining order, foreign confiscation order or foreign pecuniary
15	penalty order comprises a facsimile copy of a duly authenticated
16	foreign order, or amendment made to such an order, the facsimile
17	shall be regarded for the purposes of this chapter as the same as
18	the duly authenticated foreign order.
19	(8) Entry and registration effected by means of a facsimile
20	ceases to have effect at the end of the period of 60 days
21	commencing on the date of entry and registration, unless a duly
22	authenticated original of the order has been entered and registered
23	by that
24	<u>time.</u>
25	(9) Where a foreign restraining order, a foreign confiscation
26	order or a foreign pecuniary penalty order has been entered

1	pursuant to this section, the relevant provisions of chapter 9 of
2	title 11 of the Code of the Federated States of Micronesia shall be
3	deemed to apply in relation to the order as if the serious offense
4	that is the subject of the order had been committed in the
5	Federated States of Micronesia, and the order had been made
6	pursuant to that chapter."
7	Section 18. Title 12 of the Code of the Federated States of Micronesia,
8	as amended, is hereby further amended by adding a new section 1727 of chapter
9	17 to read as follows:
10	"Section 1727. Foreign requests for the location and tracking of
11	proceeds of crime or tainted property. Where a foreign state
12	requests the Secretary to assist in locating property believed to
13	be the proceeds of crime or tainted property related to a serious
14	offense committed in that state, the Secretary may authorize the
15	making of any application under sections 971 or 976 of chapter 9 of
16	title 11 of the Code of the Federated States of Micronesia, or
17	under sections 1828 or 1829 of chapter 18 of title 12 of the Code
18	of the Federated States of Micronesia, for the purpose of acquiring
19	the information sought by the foreign state."
20	Section 19. Title 12 of the Code of the Federated States of Micronesia,
21	as amended, is hereby further amended by adding a new section 1728 of chapter
22	17 to read as follows:
23	"Section 1728. Sharing confiscated property with foreign states.
24	(1) Subject to approval by the Congress of the Federated States
25	of Micronesia, or if Congress is not in session, subject to
26	approval by the Judiciary and Governmental Operations Committee of

1	Congress, the Secretary may enter into an arrangement with the			
2	competent authorities of a foreign state, in respect of tainted			
3	property and the proceeds of crime, for the reciprocal sharing with			
4	that State of such part of any property realized:			
5	(a) in the foreign state, as a result of action taken by			
6	the Secretary pursuant to subsection 1707(4) of this chapter; or			
7	(b) in the Federated States of Micronesia, as a result of			
8	action taken in the Federated States of Micronesia pursuant to			
9	subsection 1726(1) of this chapter.			
10	(2) Except as otherwise provided by law, any			
11	proceeds of crime that have been received by the Federated States			
12	of Micronesia pursuant to this chapter shall be deposited in the			
13	Forfeited Assets Fund of the Federated States of Micronesia."			
14	14 Section 20. Title 12 of the Code of the Federated States of Micronesia,			
15	as amended, is hereby further amended by adding a new section 1729 of chapter			
16	17 to read as follows:			
17	"Section 1729. Restriction on use of evidence and materials			
18	obtained by mutual assistance.			
19	(1) A person who is in the Federated States of Micronesia			
20	pursuant to a request made under section 1711 of this chapter and			
21	provides evidence in any criminal proceedings -			
22	(a) to which the request relates or any criminal			
23	proceedings consequent on the investigation to which the request			
24	<u>relates; or</u>			
24 25	relates; or (b) certified by the Secretary pursuant to subsection			

1	that evidence shall not be admitted or otherwise used in any			
2	prosecution of the person for any offense against the laws of the			
3	Federated States of Micronesia, except on the trial of the person			
4	for perjury in respect of the giving of that evidence.			
5	(2) Any evidence, document or other article that			
6	is obtained, provided or produced pursuant to a request by the			
7	Federated States of Micronesia shall be used only for the purpose			
8	of, or in connection with, the criminal matter to which the request			
9	<u>relates, unless -</u>			
10	(a) the foreign state to which the request was made			
11	consents to the use of the evidence, document or other article for			
12	another purpose; and			
13	(b) in the case of any evidence, document or other article			
14	obtained from, or provided or produced by, a person while he or she			
15	is in the Federated States of Micronesia pursuant to a request made			
16	under section 1711, that person consents to the use of the			
17	evidence, document or other article for another purpose."			
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23	Section 21. This act shall become law upon approval by the President of			
24	the Federated States of Micronesia or upon its becoming law without such			
25	approval.			
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2	Date: <u>9/14/06</u>	Introduced by:	/s/ Simiram Sipenuk
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