

A BILL FOR AN ACT

To enact a new chapter 18 of title 12 of the Code of the Federated States of Micronesia to establish a Financial Transactions Reporting Law for the Federated States of Micronesia.

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

1 Section 1. Title 12 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by enacting a
3 new chapter 18 entitled "Financial Transactions Reporting".

4 Section 2. Title 12 of the Code of the Federated States of
5 Micronesia, as amended, is hereby amended by adding a new
6 subchapter I of chapter 18 entitled "General Provisions".

7 Section 3. Title 12 of the Code of the Federated States of
8 Micronesia, as amended, is hereby amended by adding a new section
9 1801 of chapter 18 to read as follows:

10 "Section 1801. Title. This act shall be known and
11 cited as the 'Financial Transactions Reporting Act of
12 2008' "

13 Section 4. Title 12 of the Code of the Federated States of
14 Micronesia, as amended, is hereby amended by adding a new section
15 1802 of chapter 18 to read as follows:

16 "Section 1802. Purpose. The purpose of this chapter is
17 to facilitate the prevention, detection, investigation
18 and prosecution of money laundering, the financing of
19 terrorism and other serious offenses; enable the
20 establishment of a Financial Intelligence Unit that will

1 collect, analyze, investigate and disseminate suspicious
2 transactions reports and other financial information;
3 and to require financial institutions to undertake due
4 diligence measures and other measures to combat money
5 laundering and the financing of terrorism."

6 Section 5. Title 12 of the Code of the Federated States of
7 Micronesia, as amended, is hereby amended by adding a new section
8 1803 of chapter 18 to read as follows:

9 "Section 1803. Definitions. For purposes of this
10 chapter, the following terms shall have the following
11 meanings:

12 (1) 'Account' means any facility or arrangement by
13 which a financial institution does any of the following:

14 (a) accepts deposits of currency;

15 (b) allows withdrawals of currency; or

16 (c) pays checks or payment orders drawn on the
17 financial institution, or collects checks or payment
18 orders on behalf of a person other than the financial
19 institution; and includes any facility or arrangement
20 for a safety deposit box or for any other form of safe
21 deposit;

22 (2) 'Auditing Authority' means an office of the public
23 auditor established pursuant to National or State laws,
24 or a private auditor that is either paid in whole or in
25 part with National or State funds, or funds received
26 from a foreign government or international organization,

1 or is required by law to be contracted by a financial
2 institution to perform periodic audits;

3 (3) 'Banking Commissioner' means the person appointed
4 pursuant to section 206 of title 29 of the Code of the
5 Federated States of Micronesia;

6 (4) "Beneficial Owner" means the natural person who
7 ultimately owns or controls a customer or an account,
8 the person on whose behalf a transaction is being
9 conducted, or the person who ultimately exercises
10 effective control over a legal person or arrangement.

11 (5) 'Cash' means any coin or paper money that is
12 designated as legal tender in the country of issue and
13 includes bearer bonds, travelers' checks, postal notes
14 and money orders;

15 (6) 'Currency' means the cash, including coin and
16 paper money of the Federated States of Micronesia or of
17 a foreign country, that is designated as legal tender
18 and which is customarily used and accepted as a medium
19 of exchange in the country of issue;

20 (7) 'Customer' in relation to a transaction or an
21 account includes:

22 (a) the person who is arranging, opening or
23 undertaking a transaction or account;

24 (b) the person in whose name, or on whose behalf,
25 a transaction or account is arranged, opened or
26 undertaken;

1 (c) a signatory to a transaction or account;

2 (d) any person to whom a transaction has been
3 assigned or transferred;

4 (e) any person who is authorized to conduct a
5 transaction;

6 (f) an applicant for a transaction or a business
7 relationship; and

8 (g) such other person as may be prescribed by the
9 Secretary through regulations promulgated pursuant to
10 this chapter;

11 (8) 'Data' means representations, in any form, of
12 information or concepts;

13 (9) 'Document' means any material on which data is
14 recorded or marked and which is capable of being read or
15 understood by a person, computer system or other device
16 or any record of information, and includes:

17 (a) anything on which there is writing or
18 printing;

19 (b) anything on which there are marks, figures,
20 symbols, or perforations having meaning for persons
21 qualified to interpret them;

22 (c) anything from which sounds, images or
23 writings can be produced, with or without the aid of
24 anything else;

25 (d) a map, plan, drawing, photograph or similar
26 thing; and

1 (e) an electronic document.

2 (10) 'Financial Intelligence Unit' means the unit
3 established pursuant to section 1818 of this chapter;

4 (11) 'Financial Institution' means any person who
5 carries on any of the following businesses or
6 activities:

7 (a) banking as defined by section 102 of title 29
8 of the Code of the Federated States of Micronesia;

9 (b) acceptance of deposits and other repayable
10 funds from the public;

11 (c) lending, including consumer credit, mortgage
12 credit, factoring (with or without recourse) and
13 financing of commercial transactions;

14 (d) financial leasing;

15 (e) money transmission services;

16 (f) issuing and managing means of payment (such
17 as credit cards, travelers' checks and bankers' drafts);

18 (g) issuing financial guarantees and commitments;

19 (h) trading for his or her own account or for
20 account of customers in money market instruments (such
21 as checks, bills, certificates of deposit), foreign
22 exchange, financial futures and options, exchange and
23 interest rate and index instruments, commodity futures
24 trading and securities;

25 (i) underwriting and participating in shares and
26 securities issues and the provision of financial

- 1 services related to such issues;
- 2 (j) money-broking;
- 3 (k) individual and collective portfolio
4 management and advice;
- 5 (l) investing, administering or managing funds or
6 money on behalf of other persons;
- 7 (m) safekeeping and administration of cash or
8 liquid securities on behalf of other persons;
- 9 (n) safe custody services;
- 10 (o) credit reference services;
- 11 (p) advice to undertakings on capital structure,
12 industrial strategy and related questions, and advice
13 and services relating to mergers and the purchase of
14 undertakings;
- 15 (q) insurance, including insurance
16 intermediaries, agents and brokers;
- 17 (r) dealing in bullion;
- 18 (s) issuing, selling or redeeming travelers'
19 checks, money orders or similar instruments;
- 20 (t) collecting, holding and delivering cash as
21 part of a business providing payroll services;
- 22 (u) operating a gambling house, casino or lottery
23 including carrying on such a business through the
24 internet;
- 25 (v) trustee or manager of a unit trust;
- 26 (w) trustee, administrator or investment manager

1 of a superannuation scheme but excluding closed-ended
2 schemes;

3 (x) real estate agent, broker or other person
4 involved in transactions for clients relating to the
5 buying and selling of real estate;

6 (y) dealer in precious metals, precious stones
7 artwork or antiquities;

8 (z) attorney, notary, other independent legal
9 professional and an accountant, other than internal or
10 in-house legal practitioners and accountants, when
11 preparing for or carrying out transactions for clients
12 relating to the following activities:

13 (i) buying and selling of real estate;

14 (ii) managing of client money, securities or
15 other assets;

16 (iii) management of bank, savings or
17 securities accounts;

18 (iv) organization of contributions for the
19 creation, operation or management of companies; and

20 (v) creation, operation or management of
21 legal persons or arrangements, and buying and selling of
22 business entities;

23 (aa) trust or company service provider
24 not otherwise covered by this definition, which as a
25 business, provides any of the following services to
26 third parties:

1 (i) formation or management of legal
2 persons;

3 (ii) acting as (or arranging for another
4 person to act as) a director or secretary of a company,
5 a partner of a partnership, or a similar position in
6 relation to other legal persons;

7 (iii) providing a registered office, business
8 address or accommodation, correspondence or
9 administrative address for a company, a partnership or
10 any other legal person or arrangement;

11 (iv) acting as (or arranging for another
12 person to act as) a trustee of an express trust;

13 (v) acting as (or arranging for another
14 person to act as) a nominee shareholder for another
15 person; or

16 (bb) a pawnbroker, in relation to
17 transactions carried on by its customer above the
18 threshold prescribed by the Secretary through
19 regulations;

20 (cc) a bookmaker, in relation to
21 transactions carried on by its customer above a
22 threshold as may be prescribed by the Secretary through
23 regulations promulgated pursuant to this chapter;

24 (dd) a travel agent, in relation to
25 transactions carried on by its customer above a
26 threshold as may be prescribed by the Secretary through

1 regulations promulgated pursuant to this chapter;

2 (ee) A motor vehicle, aircraft or other
3 vessels agents or dealers, in relation to transactions
4 carried on by its customer above a threshold as may be
5 prescribed by the Secretary through regulations
6 promulgated pursuant to this chapter;

7 (ff) A superannuation fund or any social
8 security scheme; or

9 (gg) such other business as may be
10 prescribed by the Secretary through regulations
11 promulgated pursuant to this chapter;

12 (12) 'Money Laundering Offense' means an offense under
13 section 912 of title 11 of the Code of Federated States
14 of Micronesia;

15 (13) 'Money Transmission Services' means a person
16 (other than a bank) carrying on a business of:

17 (a) exchanging cash or the value of money;

18 (b) money changing;

19 (c) collecting, holding, exchanging or remitting
20 funds or the value of money, or otherwise negotiating
21 transfers of funds or the value of money, on behalf of
22 other persons;

23 (d) delivering funds; or

24 (e) issuing, selling or redeeming traveler's
25 checks, money orders or similar instruments.

26 (14) 'Negotiable Instrument' means a document

1 representing ownership of debts or obligations,
2 including but not limited to, bank checks, bills of
3 exchange, promissory notes or certificates of deposit,
4 whether made payable to the bearer or not;

5 (15) 'Offense of the Financing of Terrorism' means an
6 offense under subchapter II of chapter 13 of title 11 of
7 the Code of the Federated States of Micronesia;

8 (16) 'Person' means any natural or legal person
9 including a group, association or body of persons,
10 whether it has legal personality or not;

11 (17) 'Politically Exposed Person' includes any person
12 who is or has been entrusted with any prominent public
13 function in a foreign country such as a Head of State or
14 of Government, a senior government, judicial or military
15 official, a senior executive of a state-owned and
16 nationally-owned corporation, an important political
17 party official, an ambassador or head of a consular
18 post, and any family members or close associates of such
19 a person;

20 (18) 'Property' means currency and all other real or
21 personal property of any kind, whether corporeal or
22 incorporeal, moveable or immovable, tangible or
23 intangible, and legal documents or instruments in any
24 form including electronic or digital, evidencing title
25 to, or interest in, such property, including but not
26 limited to bank credits, traveler's checks, bank checks,

1 money orders, shares, securities, bonds, drafts, letters
2 of credit, whether situated in the Federated States of
3 Micronesia or elsewhere and includes any legal or
4 equitable interest in any such property;

5 (19) 'Record' means any material on which data is
6 recorded or marked and which is capable of being read or
7 understood by a person, computer system or other device;

8 (20) 'State' means one of the four states of the
9 Federated States of Micronesia;

10 (21) 'Secretary' means the Secretary of the Department
11 of Justice for the Federated States of Micronesia.

12 (22) 'Serious Offense' shall have the meaning given to
13 it by section 903 of title 11 of the Code of Federated
14 States of Micronesia;

15 (23) 'Shell Bank' means a bank incorporated in a
16 jurisdiction in which it has no physical presence or is
17 unaffiliated with a regulated financial group;

18 (24) 'Specified Entity' means

19 (a) an entity that has knowingly committed,
20 attempted to commit, participated in committing, or
21 facilitated the commission of a terrorist act; or

22 (b) an entity knowingly acting on behalf of, or
23 at the direction of, or in association with, an entity
24 referred to in paragraph (a) and which has been
25 prescribed under a written law relating to terrorism;

26 (25) 'Supervisory Authority' means any department,

1 office, agency, board of directors, or public official
2 established pursuant to the National or State laws of
3 the Federated States of Micronesia that has regulatory
4 or supervisory authority over a financial institution or
5 group of financial institutions;

6 (26) 'Supreme Court' means the Supreme Court of the
7 Federated States of Micronesia, and all its divisions,
8 wherever or whenever constituted;

9 (27) 'Suspicious Transaction Report' means a report
10 required to be made under section 1811 of this chapter
11 and also includes a suspicious activity report.

12 (28) 'Terrorist' shall have the meaning given to it by
13 section 1303 of title 11 of the Code of the Federated
14 States of Micronesia.

15 (29) 'Terrorist Act' shall have the meaning given to it
16 by section 1303 of title 11 of the Code of the Federated
17 States of Micronesia;

18 (30) 'Terrorist Organization' means a group composed of
19 two or more persons, whether organized or not, that
20 engages in terrorism;

21 (31) 'Terrorist Property' means:

22 (a) proceeds from the commission of a terrorist
23 act;

24 (b) property which has been, is being, or is
25 likely to be used to commit a terrorist act;

26 (c) property which has been, is being, or is

1 likely to be used by a terrorist or terrorist
2 organization;

3 (d) property fully or jointly owned or controlled
4 by or on behalf of a terrorist or terrorist
5 organization; or

6 (e) property which has been collected for the
7 purpose of providing support to a terrorist or
8 terrorist organization, or funding a terrorist act; and

9 (32) 'Transaction' includes:

10 (a) opening of an account;

11 (b) any deposit, withdrawal, exchange, remittance
12 or transfer of funds in any currency whether in cash or
13 negotiable instrument, and whether by electronic or
14 other non-physical means;

15 (c) use of a safety deposit box or any other form
16 of safe deposit;

17 (d) entering into any fiduciary relationship;

18 (e) any payment made in satisfaction, in whole or
19 in part, of any contractual or other legal obligation;
20 and

21 (f) such other transactions as may be prescribed
22 by the Secretary through regulations promulgated
23 pursuant to this chapter."

24 Section 6. Title 12 of the Code of the Federated States of
25 Micronesia, as amended, is hereby amended by adding a new
26 subchapter II of chapter 18 entitled "Record Keeping and Identity

1 Verification".

2 Section 7. Title 12 of the Code of the Federated States of
3 Micronesia, as amended, is hereby amended by adding a new section
4 1804 of chapter 18 to read as follows:

5 "Section 1804. Financial institution to verify customer
6 identity.

7 (1) A financial institution shall obtain the identity
8 of a customer on the basis of any official or other
9 identifying document, and shall verify the identity of
10 the customer on the basis of reliable and independent
11 source documents, data or information or other evidence
12 as is reasonably capable of verifying the identity of
13 the customer when -

14 (a) entering into a continuing business
15 relationship, or in the absence of such a relationship,
16 conducts any transaction;

17 (b) carrying out an electronic funds transfer
18 other than an electronic funds transfer referred to in
19 subsections 1809(2) or 1809(3) of this chapter;

20 (c) there is a suspicion of a money laundering or
21 the financing of terrorism offense; or

22 (d) there is doubt about the veracity or adequacy of the
23 customer identification and verification documentation
24 or information previously obtained from the customer.

25 (2) Without limiting the general requirements of
26 subsection (1) of this section, a financial institution

1 shall -

2 (a) when establishing a business relationship,
3 obtain information on the purpose and intended nature of
4 the business relationship; and

5 (b) if the customer is a natural person,
6 adequately verify his or her true identity by:

7 (i) obtaining the customer's name, address,
8 occupation; and

9 (ii) requiring the customer to produce a
10 birth certificate, national identity card, passport or
11 other official identifying document prescribed by law or
12 the Secretary through regulations promulgated pursuant
13 to this chapter;

14 (c) if the customer is a legal person who is not
15 a natural person, adequately verify its legal existence
16 and structure, including obtaining information relating
17 to:

18 (i) the customer's name, address and legal
19 form and its control structure, including obtaining a
20 certificate of incorporation for corporate entities,
21 articles of association, if applicable, together with
22 the customer's latest tax return filed with the National
23 government of the Federated States of Micronesia

24 (ii) the principal owners, directors and
25 beneficiaries;

26 (iii) provisions regulating the power to bind

1 the entity; and

2 (iv) whether the person purporting to act on
3 behalf of the customer is so authorized, and to identify
4 the person, or

5 (d) if the customer or beneficial owner is a
6 politically exposed person,

7 (i) adequately identify and verify his or
8 her identity as set out in this section;

9 (ii) have appropriate risk management systems
10 to determine whether the customer or beneficial owner is
11 a politically exposed person;

12 (iii) obtain the approval of senior management
13 of the financial institution before establishing a
14 business relationship with the customer;

15 (iv) conduct regular and ongoing enhanced
16 monitoring of the business relationship

17 (e) For all customers, including Politically
18 Exposed Persons, take reasonable measures to establish
19 the source of wealth and the source of funds; and

20 (3) Where a customer requests a financial institution
21 to enter into a continuing business relationship, or in
22 the absence of such a relationship, any transaction,
23 then the institution shall take reasonable measures to
24 establish whether the person is acting on behalf of
25 another person in addition to complying with subsections
26 2(a), (b) and (c) of this section, whether as a trustee,

1 nominee, agent, power of attorney or otherwise. If it
2 appears to a financial institution that a customer is
3 acting on behalf of another person, then the financial
4 institution shall obtain and verify the identity of any
5 person on whose behalf, or for whose ultimate benefit,
6 the customer may be acting in the transaction or
7 business relationship.

8 (4) A financial institution shall, in relation to its
9 cross-border correspondent banking and other similar
10 business relationships -

11 (a) adequately identify and verify the
12 correspondent financial institution, or other similar
13 business, with whom it conducts such a business
14 relationship;

15 (b) gather sufficient information about the
16 nature of the business of the correspondent financial
17 institution, or other similar business;

18 (c) determine from publicly available information
19 the reputation of the correspondent financial
20 institution or other similar business, and the quality
21 of supervision to which the correspondent financial
22 institution, or other similar business, is subject;

23 (d) assess the correspondent financial
24 institution's, or other similar business', anti-money
25 laundering and anti-terrorist financing controls;

26 (e) obtain approval from senior management of the

1 financial institution before establishing a new
2 correspondent banking relationship, or relationship with
3 other similar businesses; and

4 (f) document the responsibilities of the
5 financial institution and the correspondent financial
6 institution, or other similar business.

7 (g) shall not approve the establishment or accept
8 the continued operation of shell banks; and should
9 refuse to enter into, or continue, a correspondent
10 banking relationship with shell banks; and should also
11 guard against establishing relations with respondent
12 foreign financial institutions that permit their
13 accounts to be used by shell banks.

14 (5) A financial institution shall, in relation to its
15 payable-through account and other similar business
16 relationships, ensure that the correspondent financial
17 institution with whom it has established the business
18 relationship -

19 (a) has verified the identity of and performed
20 ongoing due diligence on that correspondent financial
21 institution's customers that have direct access to
22 accounts of the financial institution; and

23 (b) is able to provide the relevant customer
24 identification data upon request to the financial
25 institution.

26 (6) Where a financial institution relies on an

1 intermediary or third party to undertake its obligations
2 under subsections (1), (2) or (3) of this section, or to
3 introduce business to it, it shall -

4 (a) immediately obtain the necessary information
5 required by subsections (1), (2) and (3) of this
6 section;

7 (b) ensure that copies of identification data and
8 other relevant documentation relating to the
9 requirements of subsections (1), (2) and (3) of this
10 section will be made available to it from the
11 intermediary or the third party upon request without
12 delay; and

13 (c) satisfy itself that the intermediary or third
14 party is regulated and supervised for, and has measures
15 in place to comply with, the requirements set out in
16 sections 1804, 1805 and 1806 of this chapter.

17 (7) The Secretary may prescribe through regulations -

18 (a) the official or identifying documents, or the
19 reliable and independent source documents, data or
20 information or other evidence that is required for
21 identification and verification of any particular
22 customer or class of customers;

23 (b) the timing of the identification and
24 verification requirements under this section of any
25 particular customer or class of customers; and

26 (c) the threshold for, or the circumstances in

1 which, the provisions of this section shall apply in
2 relation to any particular customer or class of
3 customers.

4 (8) Nothing in this section shall require the
5 production of any evidence of identity where:

6 (a) the transaction or series of transactions is
7 part of an existing and regular business relationship
8 with a person who has already produced satisfactory
9 evidence of identity unless the financial institution
10 has reason to suspect that the transaction is suspicious
11 or unusual;

12 (b) the transaction is an occasional transaction
13 not exceeding \$1,000, other than an electronic funds or
14 wire transfer, unless the financial institution has
15 reason to suspect that the transaction is suspicious or
16 unusual; or

17 (c) in such other circumstances as may be
18 prescribed by the Secretary through regulations
19 promulgated pursuant to this chapter.

20 (9) For purposes of this section, 'occasional
21 transaction' means any transaction involving cash that
22 is conducted by a person other than through an account
23 in respect of which the person is the customer."

24 (10) Subsection (1) or (2) does not apply:

25 (a) if the transaction is part of an existing and
26 regular business relationship with a person who has

1 already produced satisfactory evidence of identity
2 unless the financial institution has reason to suspect
3 that the transaction is suspicious or unusual;

4 (b) if the electronic funds transfer is between
5 financial institutions where the originator and
6 beneficiary of the funds transfer are acting on their
7 own behalf;

8 (c) if the electronic funds transfer is other
9 than a money transfer effected from the use of a credit
10 or debit card as a means of payment, that results from a
11 transaction.

12 (11) Penalty. A financial institution which
13 contravenes subsection (1), (2), or (3), commits an
14 offense and is liable on conviction:

15 (a) for an individual: to a fine not exceeding
16 \$50,000 or to a term of imprisonment not exceeding 10
17 years or both; or

18 (b) for a legal person who is not a natural
19 person, by a fine not exceeding \$250,000.

20 Section 8. Title 12 of the Code of the Federated States of
21 Micronesia, as amended, is hereby amended by adding a new section
22 1805 of chapter 18 to read as follows:

23 "Section 1805. Necessity of identification to conduct
24 business. If adequate evidence of identity is not
25 submitted to or obtained by a financial institution
26 under section 1804 of this chapter, the financial

1 institution shall not proceed any further with the
2 transaction unless -

3 (1) it reports the attempted transaction to the
4 Financial Intelligence Unit as a suspicious transaction
5 under section 1811 of this chapter; and

6 (2) the Financial Intelligence Unit authorizes the
7 financial institution to proceed with the transaction.”

8 Section 9. Title 12 of the Code of the Federated States of
9 Micronesia, as amended, is hereby amended by adding a new section
10 1806 of chapter 18 to read as follows:

11 "Section 1806. Financial institutions to establish and
12 maintain customer records.

13 (1) A financial institution shall establish and
14 maintain files of:

15 (a) records of all transactions carried out by
16 it, in accordance with the requirements of subsection
17 (2) of this section;

18 (b) records of a person's identity obtained in
19 accordance with section 1804 of this chapter;

20 (c) records of all reports made to the Financial
21 Intelligence Unit; and

22 (d) all enquiries relating to money laundering
23 and the financing of terrorism made to it by the
24 Financial Intelligence Unit and other law enforcement
25 agencies.

26 (2) Records required under subsection (1)(a) of this

1 section shall be those records as are reasonably
2 necessary to enable the transaction to be readily
3 reconstructed at any time by the Financial Intelligence
4 Unit or other law enforcement agency, including, but not
5 limited to, information sufficient to identify the:

6 (a) name, address and occupation (or where
7 appropriate, business or principal activity) of each
8 customer conducting the transaction, and if applicable,
9 on whose behalf the transaction is being conducted, as
10 well as the documents used by the financial institution
11 to obtain and verify the identity of each such customer;

12 (b) nature and date of the transaction;

13 (c) type and amount of currency involved;

14 (d) type and identifying number of any account
15 with the financial institution involved in the
16 transaction;

17 (e) if the transaction involves a negotiable
18 instrument other than currency, the name of the drawer
19 of the instrument, the name of the institution on which
20 it was drawn, the name of the payee (if any), the amount
21 and date of the instrument, the number (if any) of the
22 instrument and details of any endorsements appearing on
23 the instrument; and

24 (f) the name and address of the financial
25 institution, and of the officer, employee or agent of
26 the financial institution who gathered and reported the

1 information specified in this subsection.

2 (3) The records listed in subsection (1) of this
3 section shall be kept for a minimum period of 5 years
4 from the later of the following dates:

5 (a) the date that evidence of a customer's
6 identity was obtained;

7 (b) the date of any transaction or
8 correspondence; or

9 (c) the date the account is closed or the
10 business relationship ceased.

11 (4) Where any record is required to be kept under this
12 chapter -

13 (a) it shall be maintained in a manner and form
14 that will enable the financial institution to comply
15 immediately with requests for information from the
16 Financial Intelligence Unit, the Banking Commissioner or
17 other law enforcement agency or supervisory authority;
18 and

19 (b) a copy of it shall be kept:

20 (i) in a machine-readable form, if a paper
21 copy can be readily produced from it; or

22 (ii) in an electronic form, if a paper copy
23 can be readily produced from it and an electronic
24 signature of the person who keeps the record is
25 retained.

26 (5) The records maintained under subsection (1) of

1 this section shall be made available upon request to the
2 Banking Commissioner and Financial Intelligence Unit and
3 for purposes of ensuring compliance with, and
4 disseminating for investigations into money laundering,
5 investigations into terrorist financing offenses and
6 activites, and investigations pursuant to this chapter.

7 (6) Any financial institution, or any director,
8 officer, employee or agent of a financial institution,
9 that knowingly fails to comply with subsection (1) or
10 (2) of this section shall be guilty of a felony offense
11 punishable on conviction:

12 (a) in the case of a natural person, by
13 imprisonment for a maximum of five (5) years, or a
14 maximum fine of \$50,000, or both; or

15 (b) in the case of a legal person that is not a
16 natural person, by a maximum fine of \$250,000.

17 Section 10. Title 12 of the Code of the Federated States of
18 Micronesia, as amended, is hereby amended by adding a new section
19 1807 of chapter 18 to read as follows:

20 "Section 1807. Financial institutions to maintain
21 account in true name.

22 (1) A financial institution shall maintain accounts in
23 the true name of the account holder.

24 (2) A financial institution shall not open or maintain
25 any anonymous or numbered account, or any account which

1 is in a fictitious, false or incorrect name.

2 (3) Any financial institution, or director, officer,
3 employee or agent of a financial institution, that
4 knowingly violates subsection (1) or (2) of this section
5 shall be guilty of a felony offense punishable on
6 conviction:

7 (a) in the case of a natural person, by
8 imprisonment for a maximum of five (5) years, or a
9 maximum fine of \$50,000, or both; or

10 (b) in the case of a legal person that is not a
11 natural person, by a maximum fine of \$250,000."

12 Section 11. Title 12 of the Code of the Federated States of
13 Micronesia, as amended, is hereby amended by adding a new section
14 1808 of chapter 18 to read as follows:

15 "Section 1808. Financial institutions to monitor
16 transactions.

17 (1) A financial institution shall pay special
18 attention to:

19 (a) any complex, unusual or large transactions,
20 and any unusual patterns of transactions, that have no
21 apparent or visible economic or lawful purpose;

22 (b) business relations and transactions with
23 persons in or from jurisdictions that do not have
24 adequate systems in place to prevent or deter money
25 laundering or the financing of terrorism where such
26 relations and transactions have no apparent economic or

1 lawful purpose; and

2 (c) electronic funds transfers, other than an
3 electronic funds transfer referred to in subsections
4 1809(2) and 1809(3) of this chapter that do not contain
5 complete originator information.

6 (2) In relation to subsection (1) of this section, a
7 financial institution shall:

8 (a) establish policies and procedures for
9 identifying transactions requiring special attention;

10 (b) examine as far as possible the background and
11 purpose of the transactions or business relations and
12 record its findings in writing; and

13 (c) upon request, make available such findings to
14 the Financial Intelligence Unit.

15 (3) A financial institution shall conduct ongoing due
16 diligence on the business relationships with its
17 customers to ensure that:

18 (a) its obligations under section 1804 of this
19 chapter are met and the transactions conducted by or on
20 behalf of a customer are consistent with the information
21 that the financial institution has of its customer and
22 the profile of the customer's business; and

23 (b) any transaction undertaken throughout the
24 course of the business relationship with a customer is
25 consistent with the financial institution's knowledge
26 of the customer, the customer's business and risk

1 profile, including, where necessary, the source of
2 funds."

3 Section 12. Title 12 of the Code of the Federated States of
4 Micronesia, as amended, is hereby amended by adding a new section
5 1809 of chapter 18 to read as follows:

6 "Section 1809. Banks and money transmission service
7 providers to include originator information.

8 (1) A financial institution shall include accurate
9 originator information and other related messages on
10 electronic funds, wire and other forms of funds
11 transfers, and such information shall remain with the
12 transfer.

13 (2) Subsection (1) of this section shall not apply to
14 an electronic funds transfer, other than a money
15 transfer effected as means of payment, that results from
16 a transaction carried out using a credit or debit card;
17 provided that, the credit or debit card number is
18 included in the information accompanying such a
19 transfer.

20 (3) Subsection (1) of this section shall not apply to
21 electronic funds transfers and settlements between
22 financial institutions where the originator and
23 beneficiary of the funds transfer are acting on their
24 own behalf."

25 Section 13. Title 12 of the Code of the Federated States of
26 Micronesia, as amended, is hereby amended by adding a new

1 subchapter III of chapter 18 entitled "Reporting Obligations".

2 Section 14. Title 12 of the Code of the Federated States of
3 Micronesia, as amended, is hereby amended by adding a new section
4 1810 of chapter 18 to read as follows:

5 "Section 1810. Financial institutions to report certain
6 financial transactions.

7 (1) A financial institution shall report to the
8 Financial Intelligence Unit in such form and manner as
9 prescribed by the Secretary through regulations
10 promulgated pursuant to this chapter the following
11 transactions:

12 (a) any transaction of an amount in cash equal to
13 or exceeding \$10,000, or its equivalent in foreign
14 currency in a single transaction, unless both the
15 recipient and the sender is a financial institution
16 carrying on the business or activity set out in
17 subsection 1803(10)(a) of this chapter;

18 (b) any transmission out of the Federated States
19 of Micronesia at the request of a customer of an
20 electronic funds or wire transfer equal to or exceeding
21 \$5,000, or its equivalent in foreign currency, in the
22 course of a single transaction; and

23 (c) the receipt from outside the Federated States
24 of Micronesia at the request of, or for the benefit of,
25 a customer of an electronic funds or wire transfer of an
26 amount equal to or exceeding \$5,000, or its equivalent

1 in foreign currency, in the course of a single
2 transaction.

3 (2) The Secretary may prescribe other threshold
4 amounts for subsection (1) of this section through
5 regulations promulgated pursuant to this chapter.

6 (3) Any financial institution, or director, officer,
7 employee or agent of a financial institution, that
8 knowingly fails to comply with subsection (1) of this
9 section shall be guilty of a felony offense punishable
10 on conviction:

11 (a) in the case of a natural person, by
12 imprisonment for a maximum of five (5) years, or a
13 maximum fine of \$50,000, or both; or

14 (b) in the case of a legal person that is not a
15 natural person, by a maximum fine of \$250,000.

16 (4) Where a customer conducts two or more transactions
17 or electronic funds transfers that are individually of
18 an amount below the threshold set out in subsection (1)
19 of this section but which cumulatively are equal to or
20 exceed the threshold amount, a financial institution
21 shall report the transactions to the Financial
22 Intelligence Unit if it appears to the financial
23 institution that the customer is trying to circumvent
24 the reporting requirements of this section. In making
25 this determination, a financial institution shall
26 consider the manner and form in which the transactions

1 were conducted, including without limitation, the
2 following:

3 (a) the value of the currency involved in each
4 transaction;

5 (b) the aggregate value of the currency involved
6 in the transactions;

7 (c) the period of time over which the
8 transactions occurred;

9 (d) the interval of time between any of the
10 transactions;

11 (e) the locations at which the transactions were
12 initiated or conducted; and

13 (f) any explanation made by the customer as to
14 the manner or form in which the transactions were
15 conducted."

16 (5) A person who conducts 2 or more transactions or
17 electronic funds transfers as described in subsection
18 (4) shall be guilty of a felony offense punishable on
19 conviction:

20 (c) for an individual: to a fine not exceeding
21 \$50,000 or to a term of imprisonment not exceeding 10
22 years or both;

23 (d) for a legal person who is not a natural
24 person, by a fine not exceeding \$250,000.

25 Section 15. Title 12 of the Code of the Federated States of
26 Micronesia, as amended, is hereby amended by adding a new section

1 1811 of chapter 18 to read as follows:

2 "Section 1811. Financial institutions to report
3 suspicious transactions.

4 (1) Where a financial institution:

5 (a) suspects or has reasonable grounds to suspect
6 that any transaction or attempted transaction may be
7 related to the commission of, or preparation to commit,
8 a serious offense, a money laundering offense, an
9 offense of the financing of terrorism or a violation of
10 this chapter; or

11 (b) has any information that it suspects or has
12 reasonable grounds to suspect may be relevant to:

13 (i) the commission of, or preparation to
14 commit, a serious offense, a money laundering offense,
15 an offense of the financing of terrorism or a violation
16 of this chapter;

17 (ii) an investigation or prosecution of a
18 person or persons for a serious offense, a money
19 laundering offense, an offense of financing of terrorism
20 or a violation of this chapter; or

21 (iii) may otherwise be of assistance in the
22 enforcement of this chapter, subchapter II of chapter 9
23 of title 11 of the Code of the Federated States of
24 Micronesia or subchapter II of chapter 13 of title 11 of
25 the Code of the Federated States of Micronesia;
26 then the financial institution shall, as soon as

1 practicable, after forming that suspicion or receiving
2 the information, but no later than three working
3 days, (report the transaction, attempted transaction or
4 the information to the Financial Intelligence Unit.

5 (2) A report under subsection (1) of this section
6 shall be in writing and shall:

7 (a) contain information concerning the purpose of
8 the transaction, the origin and ultimate destination of
9 the funds involved, the identity and address of the
10 customer and beneficiary, and such other details as the
11 Secretary may prescribe through regulations promulgated
12 pursuant to this chapter;

13 (b) contain a statement of the grounds on which
14 the financial institution bases the suspicion;

15 (c) be signed or otherwise authenticated by the
16 financial institution; and

17 (d) be transmitted in such form and manner as the
18 Secretary may prescribe through regulations promulgated
19 pursuant to this chapter.

20 (3) A financial institution that has made a report
21 pursuant to this section, or has given any information
22 to the Financial Intelligence Unit_or a law enforcement
23 agency that is carrying out an investigation arising
24 from, or relating to, the information contained in the
25 report, regarding a suspicious transaction, shall give
26 the Financial Intelligence Unit or law enforcement

1 agency any further information that it has about the
2 transaction or attempted transaction or the parties to
3 the transaction if requested to do so in writing by the
4 Financial Intelligence Unit or law enforcement agency.

5 (4) Any financial institution, or director, officer,
6 employee or agent of a financial institution, that
7 knowingly fails to comply with subsection (1) or (3) of
8 this section shall be guilty of a felony offense
9 punishable on conviction:

10 (a) in the case of a natural person, by
11 imprisonment for a maximum of five (5) years, or a
12 maximum fine of \$50,000, or both; or

13 (b) in the case of a legal person that is not a
14 natural person, by a maximum fine of \$250,000."

15 Section 16. Title 12 of the Code of the Federated States of
16 Micronesia, as amended, is hereby amended by adding a new section
17 1812 of chapter 18 to read as follows:

18 "Section 1812. Supervisory or auditing authority to
19 report suspicious transactions. A supervisory authority
20 or auditing authority of a financial institution shall
21 report to the Financial Intelligence Unit as soon as
22 practicable any information that it has concerning any
23 transaction or attempted transaction that it suspects or
24 has reasonable grounds to suspect may be -

25 (1) related to the commission of, or preparation to
26 commit, a serious offense, a money laundering offense,

1 an offense of financing of terrorism or a violation of
2 this chapter;

3 (2) relevant to an investigation or prosecution of a
4 person or persons for a serious offense, a money
5 laundering offense, an offense of financing of terrorism
6 or a violation of this chapter; or

7 (3) may otherwise be of assistance in the enforcement
8 of this chapter, subchapter II of chapter 9 of title 11
9 of the Code of the Federated States of Micronesia or
10 subchapter II of chapter 13 of title 11 of the Code of
11 the Federated States of Micronesia."

12 Section 17. Title 12 of the Code of the Federated States of
13 Micronesia, as amended, is hereby amended by adding a new section
14 1813 of chapter 18 to read as follows:

15 "Section 1813. Duty to disclose information relating to
16 terrorist property.

17 (1) Every person shall immediately disclose to the
18 Financial Intelligence Unit:

19 (a) the existence of any property in his or her
20 possession or control that he or she knows, or has
21 reasonable grounds to suspect, is terrorist property;

22 (b) any information regarding a transaction or
23 attempted transaction that he or she knows, or has
24 reasonable grounds to suspect, involves terrorist
25 property;

26 (c) the existence of any property in his or her

1 possession or control, owned or controlled by or on
2 behalf of a specified entity or for which there are
3 reasonable grounds to suspect is owned or controlled by
4 or on behalf of a specified entity.

5 (2) The Financial Intelligence Unit may disclose to
6 the appropriate authority of a foreign state any
7 information in its possession relating to any terrorist
8 property, if such information is requested in accordance
9 with chapter 17 of title 12 of the Code of the Federated
10 States of Micronesia, or if the Financial Intelligence
11 Unit is of the view that the information would be
12 relevant to an investigation or prosecution of a
13 terrorist or terrorist organization in the foreign
14 state.

15 (3) Any person who knowingly fails to comply with
16 subsection (1) of this section shall be guilty of a
17 felony offense punishable on conviction:

18 (a) in the case of a natural person, by
19 imprisonment for a maximum of five (5) years, or a
20 maximum fine of \$50,000, or both; or

21 (b) in the case of a legal person that is not a
22 natural person, by a maximum fine of \$250,000."

23 (4) False or Misleading Statements. A person who, in
24 making a report under section 13, 14, 15, or 16, makes
25 any statement that the person knows is false or
26 misleading in a material particular or omits from any

1 statement any matter or thing without which the person
2 knows that the statement is false or misleading in a
3 material particular commits an offense and is liable on
4 conviction:

5 (a) for an individual: to a fine not exceeding
6 \$60,000 or to a term of imprisonment not exceeding 10
7 years or both; or

8 Section 18. Title 12 of the Code of the Federated States of
9 Micronesia, as amended, is hereby amended by adding a new section
10 1814 of chapter 18 to read as follows:

11 "Section 1814. Disclosure of suspicious transaction
12 reports and other information.

13 (1) A person shall not disclose to any other person:

14 (a) that information or a report has been
15 provided, or may be provided, to the Financial
16 Intelligence Unit pursuant to subsection 1805, 1806(6),
17 subsection 1808(2), section 1810, section 1811, section
18 1812 or section 1813 of this chapter;

19 (b) that a financial institution or supervisory
20 authority has formed a suspicion in relation to a
21 transaction or attempted transaction for purposes of
22 sections 1811 and 1812 of this chapter; or

23 (c) that any other information from which the
24 person to whom the information is disclosed could
25 reasonably be expected to infer that a suspicion has
26 been formed by a financial institution or that a

1 financial institution has or may provide information or
2 a report to the Financial Intelligence Unit regarding
3 the transaction or attempted transaction.

4 (2) Subsection (1) of this section shall not apply to
5 disclosures made to:

6 (a) an officer, employee or agent of the person
7 providing the information or report pursuant to section
8 1805, subsection 1806(6), subsection 1808(2), section
9 1810, section 1811, section 1812 or section 1813 of this
10 chapter for any purpose connected with the performance
11 of that person's duties under this chapter;

12 (b) an attorney or legal advisor for the purposes
13 of obtaining legal advice in relation to the person's
14 obligations under this chapter;

15 (c) a supervisory or auditing authority of a
16 financial institution for the purposes of carrying out
17 the authority's functions; or

18 (d) pursuant to an order of a court of competent
19 jurisdiction in the Federated States of Micronesia.

20 (3) Nothing in this section prohibits the disclosure
21 of any information for the purposes of the investigation
22 or prosecution of any offence under section 1814.

23 (4) A person to whom a disclosure is made pursuant to
24 subsection (2) of this section is subject to the
25 nondisclosure requirements of subsection (1).

26 (5) Any person who knowingly violates subsection (1)

1 or (3) of this section shall be guilty of a felony
2 offense punishable on conviction:

3 (a) in the case of a natural person, by
4 imprisonment for a maximum of five (5) years, or a
5 maximum fine of \$50,000, or both; or

6 (b) in the case of a legal person that is not a
7 natural person, by a maximum fine of \$250,000.

8 (6) Any person who knowingly violates subsection (1)
9 or (3) of this section with the intent to prejudice an
10 investigation of a serious offense, a money laundering
11 offense, an offense of the financing of terrorism or a
12 violation of this chapter, or for the purpose of
13 obtaining a direct or indirect advantage or pecuniary
14 gain for him or herself or any other person, shall be
15 guilty of a felony offense punishable on conviction:

16 (a) in the case of a natural person, by
17 imprisonment for a maximum of ten (10) years, or a
18 maximum fine of \$100,000, or both; or

19 (b) in the case of a legal person that is not a
20 natural person, by a maximum fine of \$500,000."

21 Section 19. Title 12 of the Code of the Federated States of
22 Micronesia, as amended, is hereby amended by adding a new section
23 1815 of chapter 18 to read as follows:

24 "Section 1815. Protection of identity of persons and
25 information.

26 (1) Other than for the purpose of enforcing,

1 investigating or prosecuting a serious offense, a money
2 laundering offense, an offense of the financing of
3 terrorism or a violation of this chapter, a person shall
4 not disclose any information that will identify or is
5 likely to identify:

6 (a) any person who has handled a transaction in
7 respect of which information or a report has been
8 provided to the Financial Intelligence Unit pursuant to
9 section 1805, subsection 1806(6), subsection 1808(2),
10 section 1810, section 1811, section 1812 or section 1813
11 of this chapter;

12 (b) any person who has made, prepared or
13 submitted a suspicious transaction report pursuant to
14 sections 1811 or 1812 of this chapter; or

15 (c) any information contained in a suspicious
16 transaction report or other reports or information
17 provided to the Financial Intelligence Unit pursuant to
18 section 1805, subsection 1806(6), subsection 1808(2),
19 section 1810, section 1811, section 1812 or section 1813
20 of this chapter.

21 (2) No person shall be required to disclose any
22 information to which this section applies in any
23 judicial proceedings unless the judge or other presiding
24 officer is satisfied that the disclosure of information
25 is necessary and in the interests of justice."

26 (3) A person who contravenes subsection 1 commits an

1 offense and is liable on conviction:

2 (a) for an individual: to a fine not exceeding
3 \$50,000 or to a term of imprisonment not exceeding ten
4 (10) years, or both; or

5 (b) in the case of a legal person that is not a
6 natural person by a maximum fine of \$250,000

7 Section 20. Title 12 of the Code of the Federated States of
8 Micronesia, as amended, is hereby amended by adding a new section
9 1816 of chapter 18 to read as follows:

10 "Section 1816. Protection of persons reporting
11 suspicious transactions.

12 (1) In relation to any action carried out in good
13 faith under section 1805, subsection 1806(6), subsection
14 1808(2), section 1810, section 1811, section 1812 or
15 section 1813 of this chapter, or in compliance with
16 directions given by the Financial Intelligence Unit
17 pursuant to subsections 1820(1)(b), (c) or (i), or in
18 compliance with orders of the Supreme Court pursuant to
19 sections 1828 and 1829 of this chapter, no civil,
20 criminal or disciplinary proceedings shall be taken
21 against:

22 (a) a financial institution, or an auditing or
23 supervisory authority of a financial institution; or

24 (b) its director, officer, employee or agent
25 acting the the course of that person's employment or
26 agency.

1 (2) Subsection (1) of this section shall not apply in
2 respect of proceedings for an offense against section
3 1814 of this chapter."

4 Section 21. Title 12 of the Code of the Federated States of
5 Micronesia, as amended, is hereby amended by adding a new section
6 1817 of chapter 18 to read as follows:

7 "Section 1817. Other preventative measures by financial
8 institutions.

9 (1) A financial institution shall:

10 (a) appoint a compliance officer who shall be
11 responsible for ensuring the financial institution's
12 compliance with the requirements of this chapter;

13 (b) establish and maintain procedures and systems
14 to:

15 (i) implement the customer identification
16 requirements under section 1804 of this chapter;

17 (ii) implement the record keeping and
18 retention requirements under section 1806 and 1807 of
19 this chapter;

20 (iii) implement the monitoring requirements
21 under section 1808 of this chapter;

22 (iv) implement the reporting requirements
23 under sections 1810 and 1811 of this chapter;

24 (v) make its officers, employees and agents
25 aware of the laws relating to money laundering and the
26 financing of terrorism; and

1 (vi) screen persons before hiring them as
2 employees to ensure that they have not been convicted of
3 a serious offense, a money laundering offense, an
4 offense of the financing of terrorism or a violation of
5 this chapter;

6 (vii) manage the risks of misuse of
7 technological developments and non-face-face-to
8 transactions.

9 (c) establish an audit process to test its anti-
10 money laundering and anti-financing of terrorism
11 procedures and systems;

12 (d) train its officers, employees and agents to
13 recognize suspicious transactions.

14 (2) Subsection (1) of this section does not apply to
15 an individual who, in the course of carrying on his or
16 her business, does not employ or act in association with
17 any other person.

18 (3) A financial institution shall ensure that its
19 foreign branches and majority owned subsidiaries adopt
20 and observe measures consistent with subchapters II and
21 III of this chapter to the extent that local laws and
22 regulations permit and where the foreign branch or
23 subsidiary is unable to adopt and observe such measures,
24 to report the matter to the relevant supervisory
25 authority, or in the absence of a supervisory authority,
26 to the Financial Intelligence Unit."

1 Section 22. Title 12 of the Code of the Federated States of
2 Micronesia, as amended, is hereby amended by adding a new
3 subchapter IV of chapter 18 entitled "Financial Intelligence
4 Unit".

5 Section 23. Title 12 of the Code of the Federated States of
6 Micronesia, as amended, is hereby amended by adding a new section
7 1818 of chapter 18 to read as follows:

8 "Section 1818. Establishment of Financial Intelligence
9 Unit.

10 (1) A Financial Intelligence Unit is hereby
11 established within the Department of Justice of the
12 Federated States of Micronesia.

13 (2) The Financial Intelligence Unit shall be headed by
14 a Director appointed by the Secretary on such terms as
15 the Secretary may determine. The Director shall
16 exercise all the powers, duties and functions of the
17 Financial Intelligence Unit under this chapter and shall
18 report to the Secretary on the exercise and performance
19 of these powers, duties and functions.

20 (3) An officer, employee or consultant of the
21 Financial Intelligence Unit, or any other person acting
22 on behalf of the Financial Intelligence Unit, shall take
23 an oath of confidentiality and shall receive credentials
24 that identify that person as authorized to act on behalf
25 of the Financial Intelligence Unit."

26 (4) The Director may authorize in writing any person,

1 subject to any terms and conditions that the Director
2 may specify, to carry out any power, duty or function
3 conferred on the Director under this chapter.

4 Section 24. Title 12 of the Code of the Federated States of
5 Micronesia, as amended, is hereby amended by adding a new section
6 1819 of chapter 18 to read as follows:

7 "Section 1819. Establishment of the Financial Crimes
8 Task Force.

9 (1) The Financial Crimes Task Force is established and
10 shall be comprised of the following or their respective
11 designee:

12 (a) The Secretary of Justice, Department of
13 Justice of the Federated States of Micronesia;

14 (a) the Director of the Financial Intelligence
15 Unit;

16 (b) the Chief of the National Police, Department
17 of Justice of the Federated States of Micronesia;

18 (c) the Assistant Secretary of the Division of
19 Customs and Tax Administration, Department of Finance
20 and Administration of the Federated States of
21 Micronesia;

22 (d) the Director of the Division of Immigration
23 and Labor, Department of Justice of the Federated States
24 of Micronesia;

25 (e) the National Public Auditor of the Federated
26 States of Micronesia;

1 (f) the Banking Commissioner;

2 (g) Team Leader, the Micronesia Transnational
3 Crime Unit; and

4 (h) representatives from such other departments,
5 offices, agencies or institutions of the Federated
6 States of Micronesia who the Secretary may determine
7 will assist with the functions of the Financial Crimes
8 Task Force.

9 (2) The Secretary may through regulations promulgated
10 pursuant to this chapter prescribe the operational
11 implementation of the functions of the Financial Crimes
12 Task Force.

13 (3) The Financial Crimes Task Force shall:

14 (a) advise the Financial Intelligence Unit on any
15 matters relating to the prevention of money laundering
16 or the financing of terrorism;

17 (b) assist the Financial Intelligence Unit in the
18 formation of policies or strategies relating to the
19 prevention of money laundering or the financing of
20 terrorism; and

21 (c) assist the Financial Intelligence Unit in
22 coordinating activities and information sharing between
23 the various National and State government departments,
24 offices, agencies and institutions, and liaising with
25 the financial institutions and private sector."

26 (d) Except for the purpose of the performance of

1 his duties or the exercise of his functions under this
2 Act or when lawfully required to do so by any court, a
3 member of the Task Force must not disclose any
4 information or matter which has been obtained by him in
5 the performance of his duties or the exercise of his
6 functions under this Act, except:

7 (i) for the detection, investigation or
8 prosecution of a serious offence, a money laundering
9 offence or an offense of the financing of terrorism; or

10 (ii) for the enforcing of Title 11 FSMC
11 Chapter 9, as amended.

12 Section 25. Title 12 of the Code of the Federated States of
13 Micronesia, as amended, is hereby amended by adding a new section
14 1820 of chapter 18 to read as follows:

15 "Section 1820. Functions and Powers of the Financial
16 Intelligence Unit.

17 (1) The Financial Intelligence Unit -

18 (a) shall receive information and reports
19 provided under section 1805, section 1810, section 1811,
20 section 1812, section 1813 and subsection 1826(7) of
21 this chapter and information provided to the Financial
22 Intelligence Unit by any agency of another country,
23 information provided to the Financial Intelligence Unit
24 by a law enforcement agency or a National or State
25 government institution or agency, and any other
26 information voluntarily provided to the Financial

1 Intelligence Unit about a serious offense, a money
2 laundering offense, the offense of the financing of
3 terrorism, or a violation of this chapter;

4 (b) shall have the authority to request
5 information or reports from financial institutions under
6 subsections 1806(6) and 1808(2);

7 (c) for transactions or transfers that occurred
8 prior to the entry into force of this chapter, shall
9 have the authority to require a financial institution to
10 disclose records in the financial institution's
11 possession, custody or control that pertain to
12 transactions or transfers for a particular account or
13 person, and for a particular time period, that meet the
14 threshold amounts specified in section 1810 of this
15 chapter;

16 (d) may enter the premises of any financial
17 institution during ordinary business hours with or without
18 prior notice and without warrant to inspect any records
19 kept pursuant to sections 1810 and 1811 of this chapter,
20 ask any questions of any employee of the financial
21 institution relating to such records, and make notes and
22 take copies of the records.

23 (e) shall have the authority to collect any
24 information that the Financial Intelligence Unit
25 considers relevant to serious offenses, money laundering
26 activities, the financing of terrorism or violations of

1 this chapter whether or not publicly available,
2 including commercially available databases, or
3 information that is collected or maintained, including
4 information that is stored in databases maintained by
5 the National government, a State government or a
6 subdivision or agency of the National or a State
7 government;

8 (f) shall have the authority to obtain from the
9 Department of Finance and Administration of the
10 Federated States of Micronesia tax and customs records
11 of a person under investigation for committing, or
12 attempting to commit, a serious offense, a money
13 laundering offense, an offense of the financing of
14 terrorism or a violation of this chapter;

15 (g) shall have the authority to obtain from the
16 Telecommunications Corporation of the Federated States
17 of Micronesia telephone call records of a person under
18 investigation for committing, or attempting to commit, a
19 serious offense, a money laundering offense, an offense
20 of the financing of terrorism or a violation of this
21 chapter;

22 (h) shall have the authority to act on behalf of
23 the Federated States of Micronesia in seeking
24 information from any National, State or foreign
25 government agency, law enforcement agency, supervisory
26 authority and auditing authority for purposes of this

1 chapter;

2 (i) shall analyze and assess all reports and
3 information received;

4 (j) may refer any report, and information
5 pertaining to that report and any other information
6 received, to the appropriate National or State law
7 enforcement agency or foreign government agency if, on
8 the basis of its analysis and assessment, the Financial
9 Intelligence Unit has reasonable grounds to suspect that
10 the transaction would be relevant to the investigation
11 or prosecution of a serious offense, money laundering
12 offense, or terrorist financing offense, and in
13 connection therewith, the Financial Intelligence Unit
14 may send a copy of such referral or information to the
15 relevant supervisory authority;

16 (k) shall have the authority to instruct any
17 financial institution to take such steps as may be
18 appropriate in relation to any information or report
19 received by the Financial Intelligence Unit, to enforce
20 compliance with this chapter and to facilitate any
21 investigation anticipated by the Financial Intelligence
22 Unit or a law enforcement agency;

23 (m) shall compile statistics and records, and may
24 disseminate information within the Federated States of
25 Micronesia or elsewhere and make recommendations arising
26 out of any information received;

1 (n) in consultation with the relevant supervisory
2 authority, may issue guidelines to financial
3 institutions in relation to customer identification,
4 record keeping and reporting obligations, and the
5 identification of suspicious transactions;

6 (o) shall, where appropriate, periodically
7 provide feedback to financial institutions and relevant
8 government departments, offices, agencies and
9 institutions regarding outcomes relating to the reports
10 or information provided pursuant to this chapter;

11 (p) may obtain further information from any
12 National or State government agency on persons or
13 transactions referred to in a report made to it pursuant
14 to this chapter;

15 (q) may provide training programs for financial
16 institutions in relation to customer identification,
17 record keeping and reporting obligations, and the
18 identification of suspicious transactions;

19 (r) may conduct research into trends and
20 developments in the area of money laundering and the
21 financing of terrorism and improved ways of detecting,
22 preventing and deterring money laundering and the
23 financing of terrorist activities;

24 (s) may educate the public and create awareness
25 on matters relating to money laundering and the
26 financing of terrorism;

1 (t) may disclose any report, or information
2 derived from such report or any other information
3 received, to a National government department, office or
4 agency subject to the confidentiality requirements of
5 this chapter;

6 (u) may disclose any report, or information
7 derived from such report_or any other information
8 received, to a foreign or State government institution
9 or agency, or an international organization, in
10 accordance with section 1821 of this chapter;

11 (v) may liaise with, and enter into any agreement
12 or arrangement with, any foreign National or State
13 government institution or agency, or international
14 organization, regarding the exchange of information
15 pursuant to section 1821 of this chapter; and

16 (w) shall report to the President and the
17 Congress of the Federated States of Micronesia prior to
18 the end of each fiscal year on the activities of the
19 Financial Intelligence Unit during the previous year and
20 the expected activities of the Financial Intelligence
21 Unit during the subsequent year, without disclosing
22 confidential information or information that may
23 jeopardize an ongoing investigation or prosecution; and

24 (x) may undertake due diligence checks and other
25 inquiries as may be requested in writing by a State or
26 National government institution or agency.

1 (2) The Attorney General may apply for a production
2 order pursuant to section 971 of title 11 of the Code of
3 the Federated States of Micronesia, or a restraining or
4 monitoring order pursuant to subchapter VII of this
5 chapter, or a search warrant from the Supreme Court to
6 obtain information and evidence relevant to an
7 investigation or prosecution of an actual or attempted
8 serious offense, money laundering offense, terrorist
9 financing offense or offense under this chapter."

10 Section 26. Title 12 of the Code of the Federated States of
11 Micronesia, as amended, is hereby amended by adding a new section
12 1821 of chapter 18 to read as follows:

13 "Section 1821. Information sharing arrangements with
14 foreign and State governments"

15 (1) The Financial Intelligence Unit may disclose any
16 report or information to a foreign or State government
17 agency or institution, or an international organization,
18 that has powers and duties similar to those of the
19 Financial Intelligence Unit -

20 (a) on such terms and conditions as are set out
21 in an agreement or arrangement between the Financial
22 Intelligence Unit and the foreign national or state
23 government institution or agency, or international
24 organization, regarding the exchange of such information
25 under subsection (2) of this section; or

26 (b) where such an agreement or arrangement has

1 not been entered into, on such terms and conditions as
2 may be agreed upon by the Financial Intelligence Unit
3 and the institution, agency or organization at the time
4 of disclosure.

5 (2) The Financial Intelligence Unit, with the approval
6 of the Secretary, may enter into a formal agreement or
7 arrangement, in writing, with a foreign national or
8 state government institution or agency, or international
9 organization, with powers and duties similar to the
10 Financial Intelligence Unit regarding the exchange of
11 information between the Financial Intelligence Unit and
12 that institution, agency or organization.

13 (3) The information exchanged under subsection (1) or
14 (2) of this section shall be limited to information that
15 the Financial Intelligence Unit, the foreign national or
16 state government institution or agency, or the
17 international organization has reasonable grounds to
18 suspect would be relevant to the investigation or
19 prosecution of a serious offense, a money laundering
20 offense or a financing of terrorism offense, or an
21 offense that is substantially similar to these offenses;
22 and

23 (4) Agreements or arrangements entered into under
24 subsection (1) or (2) of this section shall include the
25 following terms:

26 (a) a restriction on the use of the report or

1 information to purposes relevant to investigating or
2 prosecuting a serious offense, a money laundering
3 offense or an offense of the financing of terrorism, or
4 an offense that is substantially similar to these
5 offenses; and

6 (b) a stipulation that the report or information
7 be treated in a confidential manner and not be further
8 disclosed without the express consent of the Financial
9 Intelligence Unit."

10 Section 27. Title 12 of the Code of the Federated States of
11 Micronesia, as amended, is hereby amended by adding a new section
12 1822 of chapter 18 to read as follows:

13 "Section 1822. Protection against liability. Any
14 employee of the Financial Intelligence Unit, or any
15 officer, agent or person authorized to act on behalf of
16 the Financial Intelligence Unit, shall not be liable for
17 damages for any acts or omissions made in the discharge
18 of his or her duties under this chapter unless it is
19 shown that the act or omission was made in bad faith."

20 Section 28. Title 12 of the Code of the Federated States of
21 Micronesia, as amended, is hereby amended by adding a new
22 subchapter V of chapter 18 entitled "Compliance".

23 Section 29. Title 12 of the Code of the Federated States of
24 Micronesia, as amended, is hereby amended by adding a new section
25 1823 of chapter 18 to read as follows:

26 "Section 1823. Power to examine.

1 (1) The Banking Commissioner, or his or her authorized
2 representative, may examine the records and inquire into
3 the business and affairs of any financial institution
4 for the purpose of ensuring compliance with this chapter
5 or any regulations promulgated pursuant to this chapter,
6 and for that purpose may:

7 (a) at any reasonable time and with or without
8 warrant, enter any premises in which the Banking
9 Commissioner or his or her authorized representative has
10 reasonable grounds to believe that there are records
11 relevant to ensuring compliance with subchapters II and
12 III;

13 (b) use or cause to be used any computer system
14 or data processing system in the premises to examine any
15 data contained in or available to the system;

16 (c) reproduce any record, or cause it to be
17 reproduced from the data, in the form of a printout or
18 other intelligible output and remove the printout or
19 other output for examination or copying; and

20 (d) use or cause to be used any copying equipment
21 in the premises to make copies of any record.

22 (2) The owner or person responsible for the premises
23 referred to in subsection (1) of this section, and every
24 person found therein, shall give the Banking
25 Commissioner and any of his or her authorized
26 representatives all reasonable assistance to enable them

1 to carry out their responsibilities and shall furnish
2 them with any information that they may reasonably
3 require with respect to the administration of
4 subchapters II and III or the regulations promulgated
5 pursuant to this chapter.

6 (3) The Banking Commissioner shall report any
7 instances of noncompliance with this chapter or any
8 regulations promulgated pursuant to this chapter to the
9 Financial Intelligence Unit.

10 (4) The Attorney General may apply for a search
11 warrant from the Supreme Court to enter any premises
12 belonging to a financial institution, or a director,
13 officer, employee or agent of the financial institution,
14 that the Financial Intelligence Unit has probable cause
15 to believe has failed to comply with the obligations
16 imposed by the provisions of this chapter, including an
17 order of the Supreme Court pursuant to subsection (4) of
18 section 1824 of this chapter.

19 (5) Any person who willfully obstructs, hinders, or
20 fails to cooperate with an examination pursuant to
21 subsections (1) and (2) of this section or a search
22 pursuant to subsection (4) of this section, or threatens
23 harm to a person conducting an examination or search
24 pursuant to these subsections, shall be guilty of a
25 felony offense punishable on conviction:

26 (a) in the case of a natural person, by

1 imprisonment for a maximum of five (5) years, or a
2 maximum fine of \$50,000, or both; or

3 (b) in the case of a legal person that is not a
4 natural person, by a maximum fine of \$250,000."

5 Section 30. Title 12 of the Code of the Federated States of
6 Micronesia, as amended, is hereby amended by adding a new section
7 1824 of chapter 18 to read as follows:

8 "Section 1824. Powers to enforce compliance.

9 (1) All directors, officers, employees and agents of a
10 financial institution shall take all reasonable steps to
11 ensure compliance by that financial institution with its
12 obligations under this chapter or the regulations
13 promulgated pursuant to this chapter. Failure to
14 implement an action plan to ensure compliance with this
15 chapter and the regulations promulgated pursuant to this
16 chapter shall be grounds for a finding of noncompliance
17 under this subchapter.

18 (2) The Banking Commission shall establish through
19 regulations a schedule of fines for each instance of a
20 financial institution's noncompliance with this chapter,
21 or regulations promulgated pursuant to this chapter.

22 (3) If the Banking Commissioner determines that a
23 financial institution has without reasonable excuse
24 failed to comply with this chapter, or the regulations
25 promulgated pursuant to this chapter, he or she shall

1 transmit his or her findings to the financial
2 institution, including the amount of and justification
3 for any fines imposed upon the financial institution for
4 noncompliance. The financial institution shall have
5 thirty (30) days to respond in writing to the Banking
6 Commissioner's findings. Upon receipt of the financial
7 institution's response, the Banking Commission shall
8 have fifteen (15) days to review the financial
9 institution's response and either affirm, amend or
10 revoke his or her decision to impose fines upon the
11 financial institution. Upon receipt of the Banking
12 Commissioner's decision to affirm, amend or revoke the
13 fines, the financial institution shall have fifteen (15)
14 days to file a complaint with the Supreme Court seeking
15 review of the fines. Judicial review shall be limited
16 to determining whether the Banking Commissioner acted
17 arbitrarily or abused his or her discretion in fining
18 the financial institution for noncompliance.

19 (4) Where a financial institution fails without
20 reasonable excuse to comply with this chapter, or the
21 regulations promulgated pursuant to this chapter, or
22 fails to comply with a decision of the Banking
23 Commissioner under subsection (3) of this section, the
24 Department of Justice for the Federated States of
25 Micronesia may obtain an order from the Supreme Court
26 against any or all of the directors, officers, employees

1 or agents of that financial institution in such terms as
2 the Court deems necessary to enforce compliance with
3 such obligations. If a financial institution, or any of
4 its directors, officers, employees or agents, fail to
5 comply with the Court's order in the time period
6 specified by the Court, the Court may impose a financial
7 penalty of up to \$1,000 for each day of noncompliance in
8 addition to any fines imposed by the Banking
9 Commissioner pursuant to subsection (3) of this
10 section."

11 Section 31. Title 12 of the Code of the Federated States of
12 Micronesia, as amended, is hereby amended by adding a new
13 subchapter VI of chapter 18 entitled "Cash or Bearer Negotiable
14 Instruments at the Border".

15 Section 32. Title 12 of the Code of the Federated States of
16 Micronesia, as amended, is hereby amended by adding a new section
17 1825 of chapter 18 to read as follows:

18 "Section 1825. Reporting at the border.

19 (1) Any person referred to in subsection (3) of this
20 section importing to or exporting from the Federated
21 States of Micronesia, cash or bearer negotiable
22 instruments of a collective value equal to or greater
23 than \$10,000 or any other such amount as prescribed by
24 the Secretary, shall report the value and nature of the
25 cash or bearer negotiable instruments to an authorized
26 officer in the form and manner prescribed by the

1 Secretary through regulations promulgated pursuant to
2 this chapter.

3 (2) Any person who knowingly violates, or attempts to
4 violate, the reporting requirements of subsection (1) of
5 this section shall be guilty of a felony offense
6 punishable on conviction:

7 (a) in the case of a natural person, by
8 imprisonment for a maximum of five (5) years, or a
9 maximum fine of \$50,000, or both; or

10 (b) in the case of a legal person that is not a
11 natural person, by a maximum fine of \$250,000.

12 (3) Cash or bearer negotiable instruments shall be
13 reported under subsection (1) of this section by the
14 following persons:

15 (a) where the cash or bearer negotiable
16 instruments are in the possession, custody or control of
17 a person leaving or entering the Federated States of
18 Micronesia onboard a vessel, aircraft or other means of
19 transport, or are carried onboard along with that person
20 in his or her baggage or cargo, by that person;

21 (b) where cash or bearer negotiable instruments
22 are imported to the Federated States of Micronesia by
23 courier or mail, by the importer;

24 (c) where cash or bearer negotiable instruments
25 are exported from the Federated States of Micronesia by

1 courier or mail, by the exporter;

2 (d) where cash or bearer negotiable instruments
3 are imported into or exported from the Federated States
4 of Micronesia, other than through the means specified in
5 paragraphs (a), (b) and (c) of this subsection, by the
6 person in charge of the means of transport; and

7 (e) in any other case, by the person on whose
8 behalf the cash or bearer negotiable instruments are
9 imported or exported.

10 (4) For the purpose of this section and sections 1826
11 and 1827 of this chapter, the term 'authorized officer'
12 means:

13 (a) a Customs Officer of the Division of Customs
14 and Tax Administration, Department of Finance and
15 Administration of the Federated States of Micronesia;

16 (b) a National Police Officer of the Department
17 of Justice of the Federated States of Micronesia;

18 (c) any other law enforcement officer authorized
19 by the Secretary through regulations promulgated
20 pursuant to this chapter."

21 Section 33. Title 12 of the Code of the Federated States of
22 Micronesia, as amended, is hereby amended by adding a new section
23 1826 of chapter 18 to read as follows:

24 "Section 1826. Searches and seizures.

25 (1) If an authorized officer has probable cause to
26 believe that a person has failed to fully and accurately

1 report cash or bearer negotiable instruments in his or
2 her possession in contravention of subsection (1) of
3 section 1825, the authorized officer may, with such
4 assistance and force as is reasonable, search the person
5 and any baggage, package, container or other article in
6 the person's possession, custody or control.

7 (2) If an authorized officer has probable cause to
8 believe that there is onboard an aircraft, ship or other
9 means of transport, cash or bearer negotiable
10 instruments that has not been reported in accordance
11 with subsection (1) of section 1825, the authorized
12 officer may stop, board and search the vessel, and any
13 baggage, package, container, cargo or other article
14 onboard the vessel, or direct the vessel moved to a
15 suitable location for the search.

16 (3) If an authorized officer has probable cause to
17 believe that there is in any baggage, package or other
18 article, cash or bearer negotiable instruments that has
19 not been reported in accordance with subsection (1) of
20 section 1825, the authorized officer may search the
21 baggage, package, container or other article, or direct
22 that the baggage, package or other article be moved to a
23 suitable place for the search.

24 (4) If an authorized officer has probable cause to
25 believe that there is mail which contains cash or bearer
26 negotiable instruments that has not been reported in

1 accordance with subsection (1) of section 1825, the
2 authorized officer may search the mail, or direct that
3 the mail to be moved to a suitable place for the search.

4 (5) An authorized officer may seize any cash or bearer
5 negotiable instrument, or any other document or tangible
6 object, discovered in the course of a search pursuant to
7 this section that the officer has probable cause to
8 believe is evidence of the commission or attempted
9 commission of a a serious offense, a money laundering
10 offense, an offense of the financing of terrorism or an
11 offense under section 1825(2) of this chapter.

12 (6) An authorized officer who has seized cash or
13 bearer negotiable instruments, or any other document or
14 tangible object, under subsections (5) or (6) of this
15 section shall report such seizure to the Financial
16 Intelligence Unit within 24 hours of seizure.

17 (7) Nothing in this section shall be interpreted as
18 preventing authorized agents from performing routine
19 inspections of persons, articles or vessels at a border
20 or port of entry of the Federated States of Micronesia
21 consistent with the laws and constitution of the
22 Federated States of Micronesia."

23 Section 34. Title 12 of the Code of the Federated States of
24 Micronesia, as amended, is hereby amended by adding a new section
25 1827 of chapter 18 to read as follows:

26 "Section 1827. Retention and release of seized cash and

1 | bearer negotiable instruments.

2 | (1) Cash or bearer negotiable instruments seized under
3 | subsections (5) or (6) of section 1826 shall not be
4 | detained for more than five (5) business days, within
5 | which time an authorized officer shall file an ex parte
6 | application to the Supreme Court for an order for the
7 | continued detention of the seized cash or negotiable
8 | instruments.

9 | (2) The Supreme Court shall issue an ex parte order
10 | within five (5) business days of the making of an
11 | application by an authorized officer, failing which the
12 | cash or bearer negotiable instruments shall be released
13 | to the person from whom the cash or negotiable
14 | instruments were seized.

15 | (3) The Supreme Court shall grant an order for the
16 | continued detention of cash or bearer negotiable
17 | instruments seized pursuant to subsection (5) of section
18 | 1826 for a period not exceeding three months from the
19 | date of seizure upon being satisfied that:

20 | (a) there are reasonable grounds to suspect that
21 | the cash or bearer negotiable instruments are evidence
22 | of a serious offense, a money laundering offense or an
23 | offense of the financing of terrorism; and

24 | (b) the detention of the cash or bearer
25 | negotiable instruments is justified while the matter is
26 | further investigated.

1 (4) The Supreme Court shall grant an order for the
2 continued detention of cash or bearer negotiable
3 instruments seized pursuant to subsection (6) of section
4 1826 for a period not exceeding six months from the date
5 of seizure upon being satisfied that:

6 (a) there is probable cause to believe that the
7 cash or bearer negotiable instruments are evidence of a
8 serious offense, a money laundering offense, an offense
9 of the financing of terrorism or an offense under
10 section 1825(2) of this chapter or is intended by any
11 person for use in the commission of such an offense; and

12 (b) the detention of the cash or bearer
13 negotiable instruments is justified while the matter is
14 further investigated.

15 (5) The Supreme Court may subsequently order, after a
16 hearing, with notice to all parties concerned, the
17 continued detention of the cash or bearer negotiable
18 instruments seized pursuant to subsection (6) of section
19 1826 if it is satisfied that the conditions listed in
20 subsection (4) of this section are still met; provided
21 however, the total period of detention shall not exceed
22 two years from the date of the seizure. The notice to
23 an interested party shall be mailed to the last known
24 address of the party.

25 (6) No cash or bearer negotiable instrument shall be
26 ordered released by the Supreme Court where:

1 (a) an application has been made under subchapter III of
2 chapter 9 of title 11 of the Code of the Federated
3 States of Micronesia for a restraining, confiscation or
4 pecuniary penalty order for all or part of the value of
5 the cash or negotiable instrument; or

6 (b) the cash or bearer negotiable instrument is
7 relevant evidence in a pending criminal proceeding
8 alleging a serious offense, a money laundering offense,
9 an offense of the financing of terrorism, or a violation
10 of this chapter or is relevant to an investigation,
11 prosecution or proceedings under the Mutual Assistance
12 Act and any written law relating to the financing of
13 terrorism.

14 (7) Where the cash or bearer negotiable instrument
15 seized pursuant to subsections (5) or (6) of section
16 1826 has not been claimed by any person within two (2)
17 years of it being seized, an authorized officer may
18 apply to the Supreme Court for such cash or negotiable
19 instrument to be forfeited to the Forfeited Assets Fund
20 established under section 980 of title 11 of the Code of
21 the Federated States of Micronesia."

22 Section 35. Title 12 of the Code of the Federated States of
23 Micronesia, as amended, is hereby amended by adding a new
24 subchapter VII of chapter 18 entitled "Restraining and Monitoring
25 Orders.

26 Section 36. Title 12 of the Code of the Federated States of

1 Micronesia, as amended, is hereby amended by adding a new section
2 1828 of chapter 18 to read as follows:

3 "Section 1828. Restraining orders.

4 (1) Where the Attorney General's Office has reasonable
5 grounds to suspect that a transaction or attempted
6 transaction may involve the proceeds of a serious
7 offense, a money laundering offense, or an offense of
8 the financing of terrorism, or be preparatory to the
9 offense of the financing of terrorism, it may by an ex
10 parte application in writing and supported by affidavit
11 request that the Supreme Court order a financial
12 institution not to proceed with the carrying out of that
13 transaction or attempted transaction or any other
14 transaction in respect of the funds affected by that
15 transaction or attempted transaction in order to allow
16 the Financial Intelligence Unit:

17 (a) to make any necessary inquiries concerning
18 the transaction or attempted transaction; and

19 (b) if the Financial Intelligence Unit deems it
20 appropriate, to consult or advise the relevant law
21 enforcement agency.

22 (2) Upon receipt of an application submitted pursuant
23 to subsection (1) of this section, and upon being
24 satisfied that there are reasonable grounds to suspect
25 that a transaction or attempted transaction may involve
26 the proceeds of a serious offense, a money laundering

1 offense, an offense of the financing of terrorism or may
2 be preparatory to the offense of the financing of
3 terrorism, the Supreme Court may grant the requested
4 order in writing, or by telephone to be followed up in
5 writing within 24 hours, for a period to be determined
6 by the Court, which may not be more than fourteen (14)
7 days.

8 (3) The Attorney General's Office may apply for an
9 extension of time setting out the grounds for the
10 extension of the order set out in subsection (2) of this
11 section."

12 Section 37. Title 12 of the Code of the Federated States of
13 Micronesia, as amended, is hereby amended by adding a new section
14 1829 of chapter 18 to read as follows:

15 "Section 1829. Monitoring orders.

16 (1) Where the Attorney General's Office has probable
17 cause to believe that a person has committed, was
18 involved in the commission, or is about to commit or be
19 involved in the commission of a serious offense, a money
20 laundering offense, an offense of the financing of
21 terrorism, the Attorney General's Office may by an ex
22 parte application in writing and supported by affidavit
23 request the Supreme Court to issue a monitoring order
24 directing a financial institution to give information to
25 the Financial Intelligence Unit regarding any accounts
26 held by that person with the financial institution.

1 (2) The Supreme Court shall not issue a monitoring
2 order unless the Court is satisfied that there is
3 probable cause to believe that the person in respect of
4 whose account the order is sought:

5 (a) has committed or was involved in the
6 commission, or is about to commit or be involved in the
7 commission of a serious offense, a money laundering
8 offense or an offense of the financing of terrorism;

9 (b) has benefited directly or indirectly, or is
10 about to benefit directly or indirectly from the
11 commission of a serious offense, a money laundering
12 offense, an offense of the financing of terrorism; or

13 (c) has used the account for purposes of the
14 commission of a serious offense, a money laundering
15 offense, an offense of the financing of terrorism.

16 (3) A monitoring order:

17 (a) may direct the financial institution to
18 disclose information obtained by the institution about
19 transactions conducted through an account held by a
20 particular person with the institution;

21 (b) shall not have retrospective effect;

22 (c) shall only apply for a period of a maximum of
23 12 months from the date of making; and

24 (d) shall specify the name or names in which the
25 account is believed to be held and the type of information
26 that the institution is required to give.

1 (4) A financial institution that is, or has been
2 subject to a monitoring order shall not knowingly
3 disclose the existence or operation of the order to any
4 person except:

5 (a) an officer or agent of the institution for the
6 purpose of ensuring compliance with the order;

7 (b) a legal adviser for the purpose of obtaining
8 legal advice or representation in respect of the order; or

9 (c) a police officer authorized in writing by the
10 Financial Intelligence Unit to receive the information.

11 (5) A person described in sections (4) (a), (b) or (c)
12 shall not knowingly disclose the existence or operation of a
13 monitoring order except to another such person, and may do
14 so only for the purposes of the performance of the person's
15 duties or functions.

16 (6) Any financial institution, or director, officer,
17 employee or agent of a financial institution, that
18 knowingly fails to comply with a monitoring order issued
19 pursuant to this section, or that provides the Financial
20 Intelligence Unit with materially false or misleading
21 information pursuant to a monitoring order issued
22 pursuant to this section, shall be guilty of a felony
23 offense punishable on conviction:

24 (a) in the case of a natural person, by
25 imprisonment for a maximum of five (5) years, or a
26 maximum fine of \$50,000, or both; or

1 (b) in the case of a legal person that is not a natural
2 person, by a maximum fine of \$250,000.

3 (7) Any person who knowingly violates subsections (4)
4 or (5) of this section shall be guilty of a felony
5 offense punishable on conviction:

6 (a) in the case of a natural person, by
7 imprisonment for a maximum of five (5) years, or a
8 maximum fine of \$50,000, or both; or

9 (b) in the case of a legal person that is not a
10 natural person, by a maximum fine of \$250,000.

11 (8) Nothing in this section prevents the disclosure of
12 information concerning a monitoring order for the purposes
13 of or in connection with legal proceedings or in the course
14 of proceedings before a court, provided that nothing in this
15 section shall be construed as requiring a legal adviser to
16 disclose to any court the existence or operation of a
17 monitoring order."

18 Section 38. Title 12 of the Code of the Federated States of
19 Micronesia, as amended, is hereby amended by adding a new
20 subchapter VIII of chapter 18 entitled "Registration and Licensing
21 of Financial Institutions.

22 Section 39. Title 12 of the Code of the Federated States of
23 Micronesia, as amended, is hereby amended by adding a new section
24 1830 of chapter 18 to read as follows:

25 "Section 1830. Registration of financial institutions.

26 (1) A financial institution shall register with the

1 Financial Intelligence Unit in the form, time period and
2 manner prescribed by the Secretary through regulations
3 promulgated pursuant to this chapter.

4 (2) After registering with the Financial Intelligence
5 Unit, the financial institution shall provide written
6 notification to the Financial Intelligence Unit, within
7 thirty (30) days, of any information contained in the
8 original registration form that has changed or that has
9 become no longer accurate."

10 Section 40. Title 12 of the Code of the Federated States of
11 Micronesia, as amended, is hereby amended by adding a new section
12 1831 of chapter 18 to read as follows:

13 "Section 1831. Penalties for failure to register or
14 provide truthful registration information.

15 (1) If a financial institution fails to comply with
16 section 1830 of this chapter, the financial institution,
17 and its owners and directors, shall be subject to a
18 civil penalty of \$20,000 for each violation.

19 (2) Any financial institution, or director, officer,
20 employee or agent of a financial institution, that
21 knowingly fails to comply with section 1828 of this
22 chapter, or knowingly provides the Financial
23 Intelligence Unit with materially false or misleading
24 registration information, shall be guilty of a felony
25 offense punishable on conviction:

26 (a) in the case of a natural person, by

1 imprisonment for a maximum of two (2) years, or a
2 maximum fine of \$20,000, or both; or

3 (b) in the case of a legal person that is not a
4 natural person, by a maximum fine of \$100,000."

5 Section 41. Title 12 of the Code of the Federated States of
6 Micronesia, as amended, is hereby amended by adding a new section
7 1832 of chapter 18 to read as follows:

8 "Section 1832. Licensing of financial institutions
9 engaging in money transmission services.

10 (1) All financial institutions that provide money
11 transmission services shall be required to be licensed
12 by the competent supervisory authority established by
13 law, or in absence of a supervisory authority, the
14 Secretary.

15 (2) A financial institution shall receive a license to
16 engage in money transmission services only after the
17 supervisory authority, or in the absence of a
18 supervisory authority, the Secretary, is satisfied that
19 the financial institution is in compliance with the
20 requirements of this chapter, regulations promulgated
21 pursuant to this chapter, and any other applicable laws
22 of the Federated States of Micronesia.

23 (3) The supervisory authority, or in the absence of a
24 supervisor authority, the Secretary may promulgate
25 regulations establishing the procedures and requirements
26 for a financial institution seeking to engage in money

1 transmission service to obtain and maintain a license,
2 including any licensing fees.”

3 Section 42. Title 12 of the Code of the Federated States of
4 Micronesia, as amended, is hereby amended by adding a new
5 subchapter IX of chapter 18 entitled “Other Matters”.

6 Section 43. Title 12 of the Code of the Federated States of
7 Micronesia, as amended, is hereby amended by adding a new section
8 1833 of chapter 18 to read as follows:

9 "Section 1833. Obligations of supervisory authorities.

10 The relevant supervisory authority of a financial
11 institution shall:

12 (1) adopt any necessary measures to prevent or avoid
13 any person who is unsuitable from controlling, or
14 participating in, directly or indirectly, the
15 directorship, management or operation of a financial
16 institution;

17 (2) verify through regular examinations, that the
18 financial institution complies with the requirements of
19 this chapter;

20 (3) issue guidelines to assist the financial
21 institution, and its directors, officers, employees and
22 agents, in detecting suspicious transactions; and

23 (4) cooperate with the Financial Intelligence Unit and
24 other domestic and foreign law enforcement agencies in
25 any investigation, prosecution or proceedings relating
26 to a serious offense, a money laundering offense, an

1 offense of the financing of terrorism, or an offense
2 under this chapter."

3 Section 44. Title 12 of the Code of the Federated States of
4 Micronesia, as amended, is hereby amended by adding a new section
5 1834 of chapter 18 to read as follows:

6 "Section 1834. Overriding of secrecy.

7 (1) A financial institution shall comply with the
8 requirements of this chapter notwithstanding any
9 obligation as to secrecy or other restriction on the
10 disclosure of information imposed by any law, regulation
11 or policy."

12 (2) Notwithstanding subsection (1), lawyers, notaries,
13 other independent legal professionals, and accountants
14 acting as independent legal professionals, are not
15 required to report their suspicions if the relevant
16 information was obtained in circumstances where they are
17 subject to professional secrecy or legal professional
18 privilege.

19 Section 44. Title 12 of the Code of the Federated States of
20 Micronesia, as amended, is hereby amended by adding a new section
21 1835 of chapter 18 to read as follows:

22 "Section 1835. Account in fictitious, false or
23 incorrect name.

24 (1) A person shall not open, operate or authorize the
25 opening or operation of an account with a financial
26 institution in a numbered, fictitious, false or

1 incorrect name.

2 (2) Where a person is commonly known by two or more
3 different names, the person shall not use one of those
4 names in opening an account with a financial
5 institution, unless the person has previously disclosed
6 the other name or names to the financial institution.

7 (3) Where a person using a particular name in his or
8 her dealings with a financial institution discloses to
9 it a different name or names by which he or she is
10 commonly known, the financial institution shall make a
11 record of the disclosure and shall alert the Financial
12 Intelligence Unit and shall give the Financial
13 Intelligence Unit a copy of that record upon request by
14 the Financial Intelligence Unit.

15 (4) A person who knowingly violates subsection (1) or
16 (2) of this section is guilty of a felony offense
17 punishable on conviction:

18 (a) in the case of a natural person, by
19 imprisonment for a maximum of five (5) years, or a
20 maximum fine of \$50,000, or both; or

21 (b) in the case of a legal person that is not a
22 natural person, by a maximum fine of \$250,000.

23 (5) For purposes of this section:

24 (a) a person opens an account in a fictitious,
25 false or incorrect name if the person, in opening the
26 account, or becoming a signatory to the account, uses a

1 name other than their real name or a name by which the
2 person is commonly known having disclosed it in
3 compliance with this Section.

4 (b) a person operates an account in a fictitious,
5 false or incorrect name if the person does any act or
6 thing in relation to the account, whether by way of
7 making a deposit or withdrawal or by way of
8 communication with the financial institution concerned
9 or otherwise, and in doing so uses a name other than a
10 person's real name or name by which the person is
11 commonly known; and

12 (c) an account is in a fictitious, false or
13 incorrect name if it was opened in a fictitious, false
14 or incorrect name, whether before or after the
15 commencement date of this chapter."

16 Section 46. Title 12 of the Code of the Federated States of
17 Micronesia, as amended, is hereby amended by adding a new section
18 1836 of chapter 18 to read as follows:

19 "Section 1836. False or misleading statements. A
20 person who in making a report under section 1805,
21 subsection 1806(6), 1808(2), section 1810, section 1811,
22 section 1812, section 1813 or subsection 1825(1) of this
23 chapter makes a material representation that the person
24 knows is false or misleading, or omits from any
25 statement any matter or thing without which the person
26 knows will render the statement materially false or

1 misleading, is guilty of a felony offense punishable on
2 conviction:

3 (a) in the case of a natural person, by
4 imprisonment for a maximum of five (5) years, or a
5 maximum fine of \$50,000, or both; or

6 (b) in the case of a legal person that is not a
7 natural person, by a maximum fine of \$250,000."

8 Section 47. Title 12 of the Code of the Federated States of
9 Micronesia, as amended, is hereby amended by adding a new section
10 1837 of chapter 18 to read as follows:

11 "Section 1837. Circumventing reporting requirements.
12 A person conducts two or more transactions or transfers
13 in a manner or form for the purpose of ensuring that no
14 report in relation to the transactions or transfers
15 would be made by a financial institution under section
16 1810 is guilty of a felony offense punishable on
17 conviction:

18 (a) in the case of a natural person, by
19 imprisonment for a maximum of five (5) years, or a
20 maximum fine of \$50,000, or both; or

21 (b) in the case of a legal person that is not a
22 natural person, by a maximum fine of \$250,000."

23 Section 48. Title 12 of the Code of the Federated States of
24 Micronesia, as amended, is hereby amended by adding a new section
25 1838 of chapter 18 to read as follows:

26 "Section 1838. Liability of employers and principals.

1 (1) If an offense under this chapter or any regulation
2 promulgated pursuant to this chapter is committed by a
3 person as an employee, the supervisor of the employee
4 shall be guilty of the offense if he or she knew that
5 the employee was committing the offense, or if he or she
6 should have known, after a reasonable inquiry, that the
7 employee was committing the offense and failed to take
8 all necessary and reasonable measures within his or her
9 powers to prevent the commission of the offense or to
10 submit the matter to the Department of Justice for the
11 Federated States of Micronesia for investigation and
12 prosecution.

13 (2) If an offense under this chapter or any regulation
14 promulgated pursuant to this chapter is committed by a
15 person as an agent, the principal shall be guilty of the
16 offense if he or she knew the agent was committing the
17 offense, or if he or she should have known, after a
18 reasonable inquiry, that the agent was committing the
19 offense and failed to take all necessary and reasonable
20 measures within his or her powers to prevent the
21 commission of the offense or to submit the matter to the
22 Department of Justice for the Federated States of
23 Micronesia for investigation and prosecution. This
24 subsection shall only apply where the agent acted within
25 the terms of his or her agency or contract."

26 Section 49. Title 12 of the Code of the Federated States of

1 Micronesia, as amended, is hereby amended by adding a new section
2 1839 of chapter 18 to read as follows:

3 "Section 1839. Liability of directors, controllers or
4 officers of corporations. Where any corporation is
5 convicted of an offense under this chapter or any
6 regulations promulgated pursuant to this chapter, every
7 director, controller or officer concerned in the
8 management of the corporation shall be guilty of the
9 offense where the act or omission that constituted the
10 offense took place with that person's knowledge,
11 authority, permission or consent."

12 Section 50. Title 12 of the Code of the Federated States of
13 Micronesia, as amended, is hereby amended by adding a new section
14 1840 of chapter 18 to read as follows:

15 "Section 1840. Regulations. The Secretary may
16 promulgate regulations consistent with this chapter:

17 (1) for or with respect to any matter that by this
18 chapter is required or permitted to be prescribed;

19 (2) that are necessary or convenient for implementing
20 or giving effect to the requirements and purposes of
21 this chapter;

22 (3) for the imposing of penalties and sanctions for
23 the noncompliance with any regulations promulgated
24 pursuant to this chapter; and

25 (4) without limiting the foregoing, for:

26 (i) the requirements, policies and

1 procedures for customer identification and verification,
2 record keeping and reporting obligations and internal
3 controls required under this chapter; or

4 (ii) where it is necessary to determine
5 whether the amount of cash or negotiable instruments
6 exceed any prescribed amount, and the manner and method
7 of determining whether any cash denominated in a foreign
8 currency is taken to be the equivalent in the domestic
9 currency.”

10 (iii) prescribing the relevant supervisory
11 authority of a class of financial institution; or

12 (iv) prescribing forms and fees for the
13 purposes of this chapter.

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18 Section 51. This act shall become law upon approval by the
19 President of the Federated States of Micronesia or upon its
20 becoming law without such approval.

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22 Date: 5/30/08

Introduced by: /s/ Joe N. Suka

23 Joe N. Suka
24 (by request)
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