

A BILL FOR AN ACT

To further amend title 12 of the Code of the Federated States of Micronesia by amending chapter 17, and for other purposes.

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

1 Section 1. Section 1704 of title 12 of the Code of the Federated States
2 of Micronesia, as amended, is hereby further amended to read as follows:

3 "Section 1704. Definitions. Unless the subject or context
4 otherwise requires, in this chapter [~~act~~]:

5 (1) 'Appeal' includes proceedings by way of discharging or
6 setting aside a judgment, and an application for a new trial or for
7 a stay of execution.

8 (2) 'Criminal investigation' means -

9 (a) an investigation commenced in the Federated States of
10 Micronesia in respect of an offense committed, suspected on
11 reasonable grounds to have been committed or to be likely to be
12 committed against the law of the Federated States of Micronesia; or

13 (b) in relation to a foreign state, an investigation
14 commenced in the foreign state in respect of an offense committed,
15 suspected on reasonable grounds to have been committed or to be
16 likely to be committed against the law of that foreign state.

17 (3) 'Criminal matter' means criminal investigations and criminal
18 proceedings.

19 (4) 'Criminal proceedings' means -

20 (a) proceedings instituted in respect of an offense
21 committed, or suspected on reasonable grounds to have been

1 committed, against the law of the Federated States of Micronesia,
2 and includes the trial of a person for the offense and any
3 proceedings to determine whether or not a person should be tried
4 for the offense; or

5 (b) proceedings instituted in respect of an offense
6 committed, or suspected on reasonable grounds to have been
7 committed, against the law of a foreign state, and includes the
8 trial of a person for the offense and any proceedings to determine
9 whether or not a person should be tried for the offense.

10 (5 [2]) 'Data' means representations, in any form, of
11 information or concepts.

12 (6 [3]) 'Document' means any record of information and
13 any material on which data is recorded or marked and which is
14 capable of being read or understood by a person, computer system or
15 other device, and includes, but is not limited to:

16 (a) anything on which there is writing;

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

20 (c) anything from which sounds, images or writings can be
21 produced, with or without the aid of anything else; ~~[or]~~

22 (d) a map, plan, drawing, photograph or similar thing; or

23 (e) an electronic document.

24 (7 [4]) 'Foreign confiscation order' means an order, made
25 by a court in a foreign state, for the purposes of the confiscation
26 or forfeiture of property in connection with, or recovery of the

1 proceeds of, a serious offense.

2 (8) 'Foreign pecuniary penalty order' means an order, made by a
3 court or other judicial authority in a foreign state, for the
4 purposes of imposing a pecuniary penalty in respect of benefits
5 derived by a person from the commission of an offense against the
6 law of that state, but does not include an order for the payment of
7 a sum of money by way of compensation, restitution or damages to an
8 injured person.

9 (9 [5]) 'Foreign restraining order' means an order made
10 in respect of a serious offense by a court in a foreign
11 state for the purpose of restraining a particular person
12 or all persons from dealing with property.

13 (10 [6]) 'Foreign State' means:

14 (a) any country other than the Federated States of
15 Micronesia; and

16 (b) every constituent part of such country, including a
17 territory, dependency or protectorate, or political subdivision
18 which administers its own laws relating to international
19 cooperation.

20 (11 [7]) 'Interest', in relation to property, means a:

21 (a) legal or equitable estate or interest in the property;

22 or

23 (b) right, power or privilege in connection with the
24 property, whether present or future and whether vested or
25 contingent.

26 (12 [8]) 'Person' means any natural or legal person.

1 (13 [9]) 'Place' includes any land (whether vacant,
2 enclosed or built upon, or not), and any premises.

3 (14 [~~10~~]) 'Premises' includes the whole or any part of
4 a structure, building, aircraft, or vessel.

5 (15 [~~11~~]) 'Proceedings' means any procedure conducted
6 by or under the supervision of a judge, magistrate or
7 judicial officer, however described, in relation to any
8 alleged or proven offense, or property derived from
9 such offense, and includes an inquiry, investigation, or
10 preliminary or final determination of facts.

11 (16 [~~12~~]) 'Proceeds of crime' has the meaning given to it
12 by section 903 of title 11 of the Code of the Federated
13 States of Micronesia [~~means fruits of a crime, or any~~
14 ~~property derived or realized directly or indirectly~~
15 ~~from a serious offense and includes, on a proportional~~
16 ~~basis, property into which any property derived or~~
17 ~~realized directly from the offense was later~~
18 ~~successively converted, transformed or intermingled, as~~
19 ~~well as income, capital or other economic gains derived~~
20 ~~or realized from such property at any time since the~~
21 ~~offense].~~

22 (17 [~~13~~]) 'Property' means real or personal property of
23 every description, whether situated in the Federated
24 States of Micronesia or elsewhere and whether tangible
25 or intangible, and includes an interest in any such real
26 or personal property.

1 (18 [14]) 'Secretary' means the Secretary of the
2 Department of Justice of the Federated States of
3 Micronesia or chief law enforcement officer of the
4 Federated States of Micronesia, whatever the title of
5 such position is or in the future may become.

6 (19 [15]) 'serious offense' has the meaning given to it
7 by section 903 of title 11 of the Code of the Federated
8 States of Micronesia [~~means a violation of:~~

9 ~~(a) any law of Federated States of Micronesia or~~
10 ~~any of its States or political subdivisions, which is a~~
11 ~~criminal offense punishable by imprisonment for a term~~
12 ~~of more than one year;]~~

13 ~~[(b) a law of a foreign state, in relation to acts~~
14 ~~or omissions, which had they occurred in Federated~~
15 ~~States of Micronesia or any of its States or political~~
16 ~~subdivisions, would have constituted a criminal offense~~
17 ~~punishable by imprisonment for a term of more than one~~
18 ~~year].~~

19 (20 [16]) 'Supreme Court' means the Supreme Court of the
20 Federated States of Micronesia, and all its divisions,
21 wherever or whenever constituted.

22 (21) 'Tainted property' has the meaning given to it by
23 section 903 of title 11 of the Code of the Federated
24 States of Micronesia.

25 (22 [17]) A reference in this chapter [~~act~~] to the law of
26 the Federated States of Micronesia, any State of the

1 Federated States of Micronesia, or any foreign state
2 includes a reference to written or unwritten law of, or
3 in force in, any part of the Federated States of
4 Micronesia (including its States and political
5 subdivisions), any part of that State of the Federated
6 States of Micronesia, or any part of that foreign state,
7 as the case may be.”

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

10 “Section 1705. Authority to make and act on mutual legal
11 assistance requests.

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

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

1 foreign state for mutual assistance in any criminal matter
2 [~~investigation commenced or proceeding~~] instituted in that
3 state relating to a serious offense:

4 (a) grant the request, in whole or in part, on such terms
5 and conditions as he or she deems fit;

6 (b) refuse the request, in whole or in part, on the
7 grounds that to grant the request would be likely to prejudice the
8 sovereignty, security or other essential public interest of the
9 Federated States of Micronesia; or

10 (c) after consulting with the competent authority of the
11 foreign state, postpone the request, in whole or in part, on the
12 grounds that granting the request immediately would be likely to
13 prejudice the conduct of an investigation or proceeding in the
14 Federated States of Micronesia.

15 (3) Requests on behalf of the Federated States of Micronesia to
16 the appropriate authorities of foreign states for assistance of the
17 kind referred to in section 1707 of this chapter [~~title~~] shall be
18 made only by or with the authority of the Secretary.

19 (4) Notwithstanding any other provision of this chapter [~~act~~],
20 nothing in this chapter [~~act~~] shall be construed or interpreted to
21 affect or take away such powers of a State of the Federated States
22 of Micronesia to deal with a foreign state regarding its own
23 criminal investigations and other mutual assistance in criminal
24 matters to the extent such dealings do not conflict with any
25 constitutional powers of the Federated States of Micronesia on the
26 same subjects or matters. A State

1 of the Federated States of Micronesia may request through the
2 Secretary any assistance in criminal matters that it may need
3 from a foreign state, as authorized in this chapter [act]."

4 Section 3. Section 1706 of title 12 of the Code of the Federated States
5 of Micronesia, as amended, is hereby further amended to read as follows:

6 "Section 1706. Saving provision for other requests or assistance
7 in criminal matters. Nothing in this chapter [act] shall be taken
8 to limit:

9 (1) the power of the Secretary, apart from this chapter [act],
10 to make requests to foreign states or act on requests from foreign
11 states for assistance in [~~investigations or proceedings in~~]
12 criminal matters;

13 (2) the power of any other person or court, apart from this
14 chapter [act], to make requests to foreign states or act on
15 requests from foreign states for forms of international assistance
16 other than those specified in section 1707 of this chapter [title];
17 ~~or~~

18 (3) the nature or extent of assistance in investigations or
19 proceedings in criminal matters which the Federated States of
20 Micronesia may lawfully give to or receive from foreign states; or

21 (4) the existing and new forms of cooperation, whether formal or
22 informal in respect of criminal
23 matters between the Federated States of Micronesia and any foreign
24 state, or the development of other forms of such cooperation."

25 Section 4. Section 1707 of title 12 of the Code of the
26 Federated States of Micronesia, as amended, is hereby further

1 amended to read as follows:

2 "Section 1707. Mutual legal assistance requests by the Federated
3 States of Micronesia. The requests which the Secretary is

4 authorized to make under section 1705 are that the foreign state:

5 (1) have evidence taken, obtain other documents or articles, or
6 have documents or other articles produced in evidence [~~in the~~
7 ~~foreign state~~];

8 (2) obtain and execute search warrants or other lawful
9 instruments authorizing a search for things [~~believed to be located~~
10 ~~in that foreign state~~], which may be relevant to investigations or
11 proceedings in the Federated States of Micronesia, and if found,
12 seize them;

13 (3) locate and [~~or~~] restrain any property believed to be the
14 proceeds of crime [~~located in the foreign state~~] or that is subject
15 to a restraining order made pursuant to chapter 9 of title 11 of
16 the Code of the Federated States of Micronesia;

17 (4) locate and confiscate any property [~~believed to~~
18 ~~be located in the foreign state,~~] which is the subject of a
19 confiscation or pecuniary penalty order made pursuant to chapter 9
20 of title 11 of the Code of the Federated States of Micronesia, or
21 any other forfeiture order;

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

25 (6) transfer in custody to the Federated States of Micronesia a
26 person detained in the foreign state who consents to assist the

1 Federated States of Micronesia in the relevant investigation or
2 proceedings, and make arrangements for other persons in a foreign
3 state travel to the Federated States of Micronesia to give evidence
4 or assist in investigations;

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

10 (8) permit the presence of nominated persons during the
11 execution of any request made under this chapter ~~[act]~~; or

12 (9) identify, locate and detain a person in a foreign state for
13 extradition or other purposes."

14 Section 5. Section 1709 of title 12 of the Code of the Federated
15 States of Micronesia, as amended, is hereby deleted in its entirety
16 and a new section 1709 is enacted to read as follows:

17 "Section 1709. Assistance in locating or identifying persons in a
18 foreign state. If the Secretary is satisfied that there are
19 reasonable grounds for believing that there is, in a foreign state,
20 a person who -

21 (a) is a fugitive or is subject to an arrest warrant in
22 the Federated States of Micronesia;

23 (b) is or might be concerned in or affected by any
24 criminal matter in Federated of States of Micronesia; or

25 (c) could give or provide evidence or assistance relevant
26 to any criminal matter;

1 the Secretary may request a foreign state to assist in locating
2 that person, or, if the person's identity is unknown, in
3 identifying and locating that person."

4 Section 6. Section 1710 of title 12 of the Code of the Federated States
5 of Micronesia, as amended, is hereby re-designated as section 1720 and a new
6 section 1710 is enacted to read as follows:

7 "Section 1710. Assistance in obtaining evidence in a foreign
8 state.

9 (1) The Secretary may, if the Secretary is satisfied that there
10 are reasonable grounds for believing any evidence, document or
11 other article would be relevant to any criminal matter in Federated
12 States of Micronesia, request a foreign state to arrange for -

13 (a) such evidence, including testimony, to be taken in the
14 foreign state; or

15 (b) such document or other article in the foreign state to
16 be produced;

17 and for the evidence or document be transmitted to the Department
18 of Justice for the Federated States of Micronesia.

19 (2) Any testimony taken under oath during a deposition or
20 judicial proceeding that is received from a foreign state pursuant
21 to a request made under subsection (1) of this section, and that
22 purports to have been signed by the deponent or witness and the
23 person taking the evidence, or to have been certified as a correct
24 record by the person taking the testimony shall, subject to the
25 rules relating to the admission of evidence, be admissible as
26 evidence in the criminal proceedings to which the request relates.

1 (3) Any document, other than a deposition or hearing transcript,
2 received from a foreign state pursuant to a request made under
3 subsection (1) of this section shall, subject to the rules relating
4 to the admission of evidence, be admissible as evidence in criminal
5 proceedings to which the request relates as if produced by the
6 person who produced the document pursuant to the order of the court
7 or other judicial authority of that foreign state.

8 (4) When making a request under subsection (1) of this section,
9 the Secretary may also request that an opportunity be given for
10 the person giving testimony, or producing the document or other
11 article, to be examined or cross-examined through telephone, video
12 or internet link, or any other means, from the Federated States of
13 Micronesia by -

14 (a) a party to the proceeding, or the party's legal
15 representative; or

16 (b) a person being investigated, or the person's legal
17 representative.

18 (5) All courts or other judicial authorities in the Federated
19 States of Micronesia shall take judicial notice of any seal or
20 signature impressed, affixed, appended, or subscribed on or to any
21 deposition or other form of testimony tendered in evidence under
22 this section."

23 Section 7. Section 1711 of title 12 of the Code of
24 the Federated States of Micronesia, as amended, is hereby re-designated
25 as section 1724 and a new section 1711 is enacted to read as follows:

26 "Section 1711. Assistance in arranging attendance of a foreign

1 person.

2 (1) The Secretary may, if the Secretary is satisfied that there
3 are reasonable grounds for believing that a person in a foreign
4 state could give or provide evidence or assistance relevant to any
5 criminal matter in Federated of States of Micronesia, request the
6 foreign state to assist in arranging the attendance of that person
7 in Federated of States of Micronesia to give or provide evidence or
8 assistance.

9 (2) Where the Secretary is satisfied that a person in respect of
10 whom a request is made to a foreign state under subsection (1) of
11 this section consents to travel to Federated of States of
12 Micronesia to give or provide evidence or assistance pursuant to
13 that request, the Secretary may make arrangements with that foreign
14 state for the purposes of -

15 (a) the removal of the person to Federated of States of
16 Micronesia;

17 (b) in the case of a foreign prisoner who the foreign
18 state requests to be kept in custody, the custody of that person
19 while in Federated of States of
20 Micronesia;

21 (c) the return of the person to the foreign state; and

22 (d) other relevant arrangements.

23 (3) Where, pursuant to this section, the Secretary requests the
24 assistance of a foreign state in arranging the attendance of any
25 person in Federated of States of Micronesia, the person to whom the
26 request relates shall not be subject to any penalty or liability or

1 otherwise prejudiced in law by reason only of that person's refusal
2 or failure to consent to attend as requested."

3 Section 8. Section 1712 of title 12 of the Code of the Federated States
4 of Micronesia, as amended, is hereby deleted in its entirety and a new section
5 1712 is enacted to read as follows:

6 "Section 1712. Safe conduct guarantee of foreign person.

7 (1) Subject to subsection (3) of this section, a person,
8 including a foreign prisoner, who is in Federated of States of
9 Micronesia pursuant to a request made under section 1711 of this
10 chapter, shall not -

11 (a) be detained, prosecuted, or punished in Federated of
12 States of Micronesia for any offense that
13 is alleged to have been committed, or that was committed, before
14 the person's departure from the foreign state pursuant to the
15 request;

16 (b) be subjected to any civil proceedings in Federated of
17 States of Micronesia in respect of any act or omission that is
18 alleged to have occurred, or that occurred, before the person's
19 departure from the foreign state pursuant to the request, being
20 civil proceedings to which the person could not be subjected if the
21 person were not in Federated of States of Micronesia;

22 (c) be required to give or provide evidence or assistance
23 in relation to any criminal matter in Federated of States of
24 Micronesia other than the criminal matter to which the request
25 relates;

26 (d) be required, in the proceedings or investigation to

1 which the request relates, to answer any question that the person
2 would not be required to answer if those proceedings or that
3 investigation were taking place in the foreign state; or

4 (e) be required, in the proceedings or investigation to
5 which the request relates, to produce any document or article that
6 the person would not be required to produce if those proceedings or
7 that investigation were taking place in the foreign state.

8 (2) For the purposes of subsection (1) of this section, a duly
9 authenticated foreign law immunity certificate is admissible in
10 proceedings as prima facie evidence of the matters stated in the
11 certificate.

12 (3) Subsection (1) of this section shall not apply in relation
13 to a person where -

14 (a) the person has left Federated of States of Micronesia
15 and then returns otherwise than pursuant to the same or another
16 request;

17 (b) the person has had the opportunity to leave Federated
18 of States of Micronesia and has remained in Federated of States of
19 Micronesia for a purpose other than for-

20 (i) the purpose to which the request relates;

21 (ii) the purpose of giving evidence in any criminal
22 proceedings in Federated of States of Micronesia certified by the
23 Secretary, in writing, to be proceedings in which it is desirable
24 that the person give evidence; or

25 (iii) the purpose of giving assistance in relation to
26 an investigation in Federated of States of Micronesia certified by

1 the Secretary, in writing, to be an investigation in relation to
2 which it is
3 desirable that the person give assistance; or

4 (c) the person, by voluntary agreement and written
5 consent, entered into a stipulated settlement or resolution of any
6 criminal charges pending in the Federated States of Micronesia, or
7 of any civil matter.

8 (4) A certificate given by the Secretary for the purposes of
9 subsections (3) (b) (ii) or 3(b)(iii) of this section has effect
10 from the day specified in the certificate."

11 Section 9. Section 1713 of title 12 of the Code of the Federated States
12 of Micronesia, as amended, is hereby deleted in its entirety and a new section
13 1713 is enacted to read as follows:

14 "Section 1713. Assistance in serving documents in a foreign state.
15 The Secretary may, if the Secretary is satisfied that for the
16 purposes of, or in connection with, any criminal matter in
17 Federated of States of Micronesia it is necessary or desirable to
18 serve any process on a person or an authority in a foreign state,
19 request a foreign state to assist in effecting service of the
20 process."

21 Section 10. Section 1714 of title 12 of the Code of the Federated States
22 of Micronesia, as amended, is hereby deleted in its entirety and a new section
23 1714 is enacted to read as follows:

24 "Section 1714. Assistance in obtaining documents or other articles
25 in a foreign state. The Secretary may, if the Secretary is
26 satisfied that there are reasonable grounds for believing that a

1 document or other article is in a foreign state and would, if
2 produced, be relevant to any criminal matter in Federated of States
3 of Micronesia, request that foreign state to assist in obtaining,
4 by search and seizure, if necessary, that document or other
5 article."

6 Section 11. Section 1715 of title 12 of the Code of the Federated States
7 of Micronesia, as amended, is hereby deleted in its entirety and a new section
8 1715 is enacted to read as follows:

9 "Section 1715. Request for enforcement of restraining,
10 confiscation and pecuniary penalty orders in a foreign state. The
11 Secretary may, if the Secretary is satisfied that there are
12 reasonable grounds for believing that some or all of any property
13 in respect of which an order for the enforcement of a restraining
14 order, confiscation order or pecuniary penalty order is made is
15 located in a foreign state, request a foreign state to make
16 arrangements for the enforcement and satisfaction of the order."

17 Section 12. Section 1716 of title 12 of the Code of the Federated States
18 of Micronesia, as amended, is hereby deleted in its entirety and a new section
19 1716 is enacted to read as follows:

20 "Section 1716. Request for issuance of warrants or orders in a
21 foreign state. The Secretary may request a foreign state to assist
22 in obtaining and executing a warrant or order in respect to a
23 criminal matter relating to a serious offense, including, but not
24 limited to:

25 (1) a restraining order, confiscation order or a pecuniary
26 penalty order;

-
-
- 1 (2) a search warrant;
2 (3) a production order; or
3 (4) a monitoring order."

4 Section 13. Section 1717 of title 12 of the Code of the Federated States
5 of Micronesia, as amended, is hereby re-designated as section 1729 and a new
6 section 1717 is enacted to read as follows:

7 "Section 1717. Foreign requests for issuance of a warrant.

8 (1) Notwithstanding anything contained in any other law, where
9 the Secretary grants a request by a foreign state to obtain
10 evidence in the Federated States of Micronesia, the authority of
11 the foreign state may request that the Department of Justice for
12 the Federated States of Micronesia apply to the Supreme Court for a
13 search warrant on behalf of the authority.

14 (2) The Supreme Court, to which an application is made under
15 subsection (1) of this section, may issue a search warrant under
16 this subsection, where it is satisfied that there is probable cause
17 to believe that:

18 (a) a serious offense has been or may have been committed
19 against the laws of the foreign state; and

20 (b) evidence relating to that offense may be found in or
21 on a premises, building, receptacle or other place or thing located
22 in the Federated States of Micronesia, including evidence of:

23 (i) any article or thing upon or in respect of which
24 a serious offense under the law of a foreign state has been, or may
25 have been, committed; or

26 (ii) any document or other article which there are

1 reasonable grounds for believing will be evidence as to the
2 commission of a serious offense; or

3 (iii) any document or other article which there are
4 reasonable grounds for believing is intended to be used for purpose
5 of committing a serious offense; and

6 (c) it would not, in all the circumstances, be more
7 appropriate to grant an order under section 1718 of this chapter.

8 (3) For the purposes of subsection (2)(a) of this section, a
9 statement contained in the foreign request to the effect that a
10 serious offense has been or may have been committed against the
11 laws of the foreign state is prima facie evidence of that fact,
12 without proof of the signature or official character of the person
13 appearing to have signed the foreign request.

14 (4) Subject to any conditions specified in the warrant issued
15 pursuant to this section, every warrant issued shall authorize the
16 law enforcement officer executing the warrant -

17 (a) to enter and search the premises, building,
18 receptacle, place or thing specified in the warrant at any time of
19 day or night, or during specified hours, within the time frame of
20 the warrant;

21 (b) to use such assistance as may be reasonable in the
22 circumstances for the purpose of the entry and search;

23 (c) to use such force as is reasonable in the
24 circumstances for the purposes of effecting entry, and for breaking
25 open anything in or on the premises, building, receptacle, place or
26 thing searched; and

1 (d) to search for and seize any document or other article
2 referred to in subsection (2)(b) of this section.

3 (5) A search warrant shall be in the usual form in which a
4 search warrant is issued in the Federated States of Micronesia,
5 varied to the extent necessary to suit the case.

6 (6) Where a law enforcement officer seizes any document or other
7 article pursuant to a warrant issued under this section, the
8 officer shall deliver the document or other article into the
9 custody of the National Police of Department of Justice for the
10 Federated States of Micronesia, which shall arrange for the
11 document or other article to be kept for a reasonable period
12 pending further direction from the Secretary as to the manner in
13 which the document or other article is to be dealt with.

14 (7) If no direction is given by the Secretary before the expiry
15 of the period referred to in subsection (6) of this section, the
16 National Police shall arrange for the document or other article to
17 be returned to the person from whose possession it was seized as
18 soon as practicable after that period has expired.

19 (8) Before authorizing assistance under this section, the
20 Secretary shall obtain undertakings from the foreign state that any
21 document or other article that is seized, provided or produced
22 pursuant to the request by the foreign state shall be used only for
23 the purpose of, or in connection with, the criminal matter to which
24 the request relates, unless the Secretary consents to the use of
25 the evidence, document or other article for another purpose.

26 (9) No document or other article seized and ordered to be sent

1 to a foreign state shall be sent until the Secretary is satisfied
2 that the foreign state has agreed to comply with any terms or
3 conditions imposed in respect of the sending abroad of the document
4 or other article.

5 (10) Where a search warrant is issued under this section, the
6 Secretary shall, at the request of the authority of that foreign
7 state, provide such certification as that the authority may require
8 concerning the result of any search conducted pursuant to the
9 warrant, the place and circumstances of the seizure of any document
10 or other article pursuant to the warrant, and the custody of any
11 document or other article so seized.

12 (11) The Supreme Court may adopt, recognize and enforce foreign
13 court orders certified or under seal, which orders shall be
14 presumed to be valid in the absence of any evidence to the
15 contrary."

16 Section 14. Section 1718 of title 12 of the Code of the Federated States
17 of Micronesia, as amended, is hereby deleted in its entirety and a new section
18 1718 is enacted to read as follows:

19 "Section 1718. Foreign requests for obtaining evidence.

20 (1) Notwithstanding anything contained in any other law, where
21 the Secretary grants a request by a foreign state to obtain
22 evidence in the Federated States of Micronesia, the Department of
23 Justice for the Federated States of Micronesia may apply to the
24 Supreme Court for the taking of evidence, including testimony, in
25 the Federated States of Micronesia or the production of documents
26 or other articles in the Federated States of Micronesia on behalf

1 of the authority.

2 (2) The Supreme Court, to which an application is made under
3 subsection (1) of this section, may issue an order under this
4 subsection, where it is satisfied that there is probable cause to
5 believe that:

6 (a) a serious offense has been or may have been committed
7 against the laws of the foreign state or the request relates to
8 criminal proceedings in the foreign state; and

9 (b) there are reasonable grounds for believing that the
10 evidence can be taken from or given by a person believed to be in
11 the Federated States of Micronesia or, as the case may be, the
12 documents or other articles can be produced in the Federated States
13 of Micronesia.

14 (3) For the purposes of subsection (2)(a) of this section, a
15 statement contained in the foreign request to the effect that a
16 serious offense has been or may have been committed against the
17 laws of the foreign state is prima facie evidence of that fact,
18 without proof of the signature or official character of the person
19 appearing to have signed the foreign request.

20 (4) An order under subsection (2) of this section:

21 (a) shall provide for the manner in which the evidence is
22 to be obtained in order to give proper effect to the foreign
23 state's request, and in particular, may require any person named
24 therein to:

25 (i) make a record from data or make a copy of a
26 record;

1 (ii) attend a deposition or hearing to give testimony
2 or provide other evidence under oath or otherwise until excused; or

3 (iii) produce to the Supreme Court or to any person
4 designated by the Court, any document, or copy thereof or other
5 article; and

6 (b) may include such other terms and conditions as the
7 Supreme Court considers desirable, including those relating to the
8 interests of the person named therein or of third parties.

9 (5) Where the Secretary authorizes the taking of evidence under
10 this section, the Supreme Court may require each witness to provide
11 testimony under oath either at a hearing before the Supreme Court
12 or at a deposition, and shall -

13 (a) cause the evidence to be put in writing and certify,
14 in the prescribed form, that the evidence was taken by or under the
15 authority of the Supreme Court; and

16 (b) cause the writing to be sent to the Secretary.

17 (6) Where the Secretary authorizes the production of documents
18 or other articles, the Supreme Court may require the production of
19 the documents or other articles and, unless the Supreme Court
20 otherwise orders, shall send the documents, or copies of the
21 documents certified by the Supreme Court to be true copies, or the
22 other articles to the Secretary.

23 (7) A person named in an order under subsection (2) of this
24 section shall not be required to give any evidence, or to produce
25 any document or other article, that the person could not be
26 compelled to give or produce in the proceedings in the foreign

1 state. The person may refuse to answer a question or to produce a
2 document or other article where the refusal is based on:

3 (a) a law currently in force in the Federated States of
4 Micronesia;

5 (b) a privilege recognized by a law in force in the
6 foreign state that made the request; or

7 (c) a law currently in force in the foreign state that
8 would render the answering of that question or the production of
9 that document or other article by that person, in the person's own
10 jurisdiction, an offense.

11 (8) Where a person refuses to answer a question or to produce a
12 document or other article pursuant to subsection (5)(b) or (c) of
13 this section, the Supreme Court shall report the matter to the
14 Secretary who shall notify the foreign state and request the
15 foreign state to provide a written statement on whether the
16 person's refusal was well founded under the law of the foreign
17 state.

18 (9) Any written statement received by the Secretary from the
19 foreign state in response to a request under subsection (8) of this
20 section, shall be admissible in the evidence-gathering proceedings,
21 and for the purposes of this section be determinative of whether
22 the person's refusal is well founded under the foreign law.

23 (10) A person who, without reasonable excuse, refuses to comply
24 with a lawful order of the Supreme Court made under this section,
25 or who having refused to comply with that order pursuant to
26 subsection (7) of this section, continues to refuse.

1 notwithstanding the admission into evidence of a statement under
2 subsection (9) of this section, to the effect that the refusal is
3 not well founded, commits a contempt of court and may be punished
4 accordingly.

5 (11) Any person giving evidence or producing documents or other
6 articles at a hearing or deposition, and the authority of the
7 foreign state, may appear and be represented by counsel, and the
8 certificate by the Judge under subsection (5) of this section shall
9 state whether or not any such persons were present at the hearing
10 or deposition and, if so, whether or not they were legally
11 represented.

12 (12) Before authorizing assistance under this section, the
13 Secretary shall obtain undertakings from the foreign state that any
14 evidence, document or other article that is obtained, provided or
15 produced pursuant to the request by the foreign state shall be used
16 only for the purpose of, or in connection with, the criminal matter
17 to which the request relates, unless the Secretary consents to the
18 use of the evidence, document or other article for another purpose.

19 (13) No evidence, document or other article given or produced
20 pursuant to this section shall be sent to a foreign state until the
21 Secretary is satisfied that the foreign state has agreed to comply
22 with any terms or conditions imposed in respect of the sending
23 abroad of the evidence, document or other article.

24 (14) The Supreme Court may adopt, recognize and enforce foreign
25 court orders certified or under seal, which orders shall be
26 presumed to be valid in the absence of any evidence to the

1 contrary.”

2 Section 15. Section 1719 of title 12 of the Code of the Federated
3 States of Micronesia, as amended, is hereby
4 re-designated as section 1731 and a new section 1719 is enacted to read as
5 follows:

6 “Section 1719. Foreign requests for obtaining attendance of
7 persons in a foreign state.

8 (1) Where the Secretary approves a request of a foreign state to
9 assist in arranging for the attendance in that state of a person in
10 the Federated States of Micronesia to provide evidence or to assist
11 in an investigation or proceeding in that state relating to a
12 serious offense, the Secretary may authorize assistance in
13 accordance with this section to facilitate that attendance.

14 (2) Where an application is made under subsection (1) of this
15 section, the Secretary may authorize such assistance under this
16 section where he or she is satisfied, having considered any
17 document filed or information given in support of the application,
18 that:

19 (a) a serious offense has been or may have been committed
20 against the laws of the foreign state and there are reasonable
21 grounds for believing that the person concerned could provide
22 evidence or assistance relevant to that criminal matter;

23 (b) the person is in the Federated States of Micronesia;
24 and

25 (c) the foreign state has given adequate
26 undertakings in respect of the matters specified in sections 1721

1 and 1722 of this chapter.

2 (3) Where the Secretary authorizes assistance in accordance with
3 this section, the Secretary shall forward the request to the
4 appropriate authority in the Federated States of Micronesia, and
5 that authority shall use its best endeavors to identify and locate
6 the person to whom the request relates, and shall advise the
7 Secretary of the outcome of those endeavors.

8 (4) On receipt of such advice, the Secretary shall inform the
9 requesting foreign state of the result of the inquiries made
10 pursuant to the request."

11 Section 16. Title 12 of the Code of the Federated States of Micronesia,
12 as amended, is hereby further amended to add a new section 1721 to read as
13 follows:

14 "Section 1721. Undertakings required from foreign state. Before
15 authorizing assistance in accordance with sections 1719 and 1720 of
16 this chapter, the Secretary shall obtain undertakings from the
17 foreign state in relation to the following matters-

18 (1) that the person to whom the request relates shall not -

19 (a) be detained, prosecuted, or punished for any offense
20 against the law of the foreign state that is alleged to have been
21 committed, or that was committed, before the person's departure
22 from the Federated States of Micronesia;

23 (b) be subjected to any civil proceedings in respect of
24 any act or omission of the person that is alleged to have occurred,
25 or that occurred, before the person's departure from the Federated
26 States of Micronesia, being civil proceedings to which that person

1 could not be subjected if the person were not in the foreign state;

2 or

3 (c) be required to give or provide evidence or assistance
4 in respect of any criminal matter in the foreign state other than
5 the matter to which the request relates;

6 unless the person has left the foreign state, or has had the
7 opportunity to leave the foreign state, and has remained in that
8 state for purposes other than for providing evidence or assistance
9 in respect of the matter to which the request relates;

10 (2) that any evidence given by the person in the criminal
11 proceedings to which the request relates shall be inadmissible or
12 otherwise disqualified from use in the prosecution of the person
13 for an offense against a law of the foreign state other than the
14 offense of perjury in relation to the giving of that
15 evidence;

16 (3) that the person will be returned to the Federated States of
17 Micronesia in accordance with arrangements agreed by the Secretary
18 as soon as practicable after giving the evidence;

19 (4) in a case where the request relates to a person who is a
20 prisoner in the Federated States of Micronesia and the Secretary
21 requests the foreign state to make arrangements for the keeping of
22 the person in custody while the person is in the foreign state -

23 (i) that appropriate arrangements will be made for
24 that purpose;

25 (ii) that the person will not be released from
26 custody in the foreign state without the prior approval of the

1 Secretary; and
2 (iii) if the person is released in the foreign state,
3 at the request of the Secretary, before the completion of the
4 proceedings to which the request relates, that the person's
5 accommodation and expenses will be met by the foreign state; and
6 (5) such other arrangements as the Secretary deems appropriate."

7 Section 17. Title 12 of the Code of the Federated States of Micronesia,
8 as amended, is hereby further amended to add a new section 1722 to read as
9 follows:

10 "Section 1722. Penalty not to be imposed for refusal to
11 consent. The person to whom the request pursuant to section
12 1719 and 1720 of this chapter relates shall not be subject to
13 any penalty or liability, or otherwise prejudiced in law by
14 reason only of that person's refusal or failure to consent to
15 attend as requested."

16 Section 18. Title 12 of the Code of the Federated States of Micronesia,
17 as amended, is hereby further amended to add a new section 1723 to read as
18 follows:

19 "Section 1723. Custody of persons in transit from foreign state.
20 (1) If a person is to be transported in custody from a foreign
21 state through the Federated States of Micronesia to another foreign
22 state for the purposes of giving evidence in a criminal matter in
23 the other foreign state, the person -
24 (a) may be transported through the Federated States of
25 Micronesia in the custody of another person; and
26 (b) if an aircraft or ship by which the person is being

1 transported lands or calls at a place in the Federated States of
2 Micronesia, shall be kept in such custody as the Secretary directs
3 in writing until his or her transportation is continued.

4 (2) Where a person is being held in custody pursuant to a
5 direction under subsection (1) (b) of this section and the person's
6 transportation is not, in the opinion of the Secretary continued
7 within a reasonable time, the Secretary may direct that the person
8 be transported in custody back to the foreign state from which the
9 person was first transported.

10 Section 16. Title 12 of the Code of the Federated States of Micronesia,
11 as amended, is hereby further amended by adding a new section 1725 of chapter
12 17 to read as follows:

13 "Section 1725. Foreign requests for restraining orders.

14 (1) The Secretary may apply to the Supreme Court for a
15 restraining order under subsection (2) of this section where:

16 (a) a foreign state requests the Secretary to obtain the
17 issuance of a restraining order against property, some or all of
18 which is believed to be located in the Federated States of
19 Micronesia;

20 (b) criminal proceedings have begun in the foreign state
21 in respect of a serious offense; and

22 (c) there is probable cause to believe that the
23 property relating to the offense or belonging to the defendant or
24 the defendant's co-conspirators is located in the Federated States
25 of Micronesia.

26 (2) Where the Secretary makes application to the Supreme Court

1 under subsection (1) of this section, the Supreme Court may make a
2 restraining order in respect of the property, and this chapter or
3 the relevant provisions of chapter 9 of title 11 of the Code of the
4 Federated States of Micronesia shall apply as requested by the
5 Secretary in relation to the application and to any restraining
6 order issued as a result, as if the serious offense that is the
7 subject of the order had been committed in the Federated States of
8 Micronesia."

9 Section 17. Title 12 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by adding a new section
11 1726 of chapter 17 to read as follows:

12 "Section 1726. Requests for enforcement of foreign restraining,
13 confiscation or pecuniary penalty orders.

14 (1) Where a foreign state requests the Secretary to make
15 arrangements for the enforcement of a foreign restraining order,
16 foreign confiscation order or foreign pecuniary penalty order, the
17 Secretary may apply to the Supreme Court for entry and enforcement
18 of the order under this chapter or under chapter 9 of title 11 of
19 the Code of the Federated States of Micronesia.

20 (2) The Supreme Court shall, on application by the Secretary,
21 enter and enforce a foreign restraining order or foreign pecuniary
22 penalty order under this chapter or under chapter 9 of title 11 of
23 the Code of the Federated States of Micronesia if the Court is
24 satisfied that at the time of entry and registration, the order is
25 in force in the foreign state.

26 (3) The Supreme Court shall, on application by the Secretary,

1 enter and enforce a foreign confiscation order, which is legally
2 capable of enforcement in the Federated States of Micronesia and
3 its States, if the Court is satisfied that:

4 (a) at the time of entry and enforcement, the order is in
5 force in the foreign state and is not subject to appeal; and

6 (b) where the person who is the subject of the order did
7 not appear in the confiscation proceedings in the foreign state,
8 that:

9 (i) the person was given fair notice of the
10 confiscation proceeding; or

11 (ii) the person had absconded or had died before such
12 notice could be given, and if the person died, the decedent's
13 estate was given fair notice of the proceedings.

14 (4) For the purposes of subsections (2) and (3) of this section,
15 a statement contained in the foreign request to the effect that:

16 (a) the foreign restraining order or foreign pecuniary
17 penalty order is in force in the foreign state;

18 (b) the foreign confiscation order is in force in the
19 foreign state and is not subject to appeal; or

20 (c) the person who is the subject of the foreign
21 confiscation order was given fair notice of the proceedings, or
22 that the person had absconded or died before such notice could be
23 given and if the person died, the decedent's estate was given fair
24 notice of the proceedings;

25 is prima facie evidence of those facts, without proof of the
26 signature or official character of the person appearing to have

1 signed the foreign request.

2 (5) Where a foreign restraining order, foreign confiscation
3 order or foreign pecuniary penalty order is entered for enforcement
4 in accordance with this section, a copy of any amendments made to
5 the order in the foreign state (whether before or after entry and
6 enforcement), may be entered and enforced in the same way as the
7 order, but shall not have effect for the purposes of chapter 9 of
8 title 11 of the Code of the Federated States of Micronesia, until
9 they are so entered and enforced.

10 (6) The Supreme Court shall, on application by the Secretary
11 rescind entry of:

12 (a) a foreign restraining order, if it appears to the
13 Court that the order has ceased to have effect; or

14 (b) a foreign confiscation order or foreign pecuniary
15 penalty order, if it appears to the Court that the order has been
16 satisfied or has ceased to have effect.

17 (7) Subject to subsection (9) of this section, where the foreign
18 restraining order, foreign confiscation order or foreign pecuniary
19 penalty order comprises a facsimile copy of a duly authenticated
20 foreign order, or amendment made to such an order, the facsimile
21 shall be regarded for the purposes of this chapter as the same as
22 the duly authenticated foreign order.

23 (8) Entry and registration effected by means of a facsimile
24 ceases to have effect at the end of the period of 60 days
25 commencing on the date of entry and registration, unless a duly
26 authenticated original of the order has been entered and registered

1 by that
2 time.

3 (9) Where a foreign restraining order, a foreign confiscation
4 order or a foreign pecuniary penalty order has been entered
5 pursuant to this section, the relevant provisions of chapter 9 of
6 title 11 of the Code of the Federated States of Micronesia shall be
7 deemed to apply in relation to the order as if the serious offense
8 that is the subject of the order had been committed in the
9 Federated States of Micronesia, and the order had been made
10 pursuant to that chapter."

11 Section 18. Title 12 of the Code of the Federated States of Micronesia,
12 as amended, is hereby further amended by adding a new section 1727 of chapter
13 17 to read as follows:

14 "Section 1727. Foreign requests for the location and tracking of
15 proceeds of crime or tainted property. Where a foreign state
16 requests the Secretary to assist in locating property believed to
17 be the proceeds of crime or tainted property related to a serious
18 offense committed in that state, the Secretary may authorize the
19 making of any application under sections 971 or 976 of chapter 9 of
20 title 11 of the Code of the Federated States of Micronesia, or
21 under sections 1828 or 1829 of chapter 18 of title 12 of the Code
22 of the Federated States of Micronesia, for the purpose of acquiring
23 the information sought by the foreign state."

24 Section 19. Title 12 of the Code of the Federated States of Micronesia,
25 as amended, is hereby further amended by adding a new section 1728 of chapter
26 17 to read as follows:

1 "Section 1728. Sharing confiscated property with foreign states.

2 (1) Subject to approval by the Congress of the Federated States
3 of Micronesia, or if Congress is not in session, subject to
4 approval by the Judiciary and Governmental Operations Committee of
5 Congress, the Secretary may enter into an arrangement with the
6 competent authorities of a foreign state, in respect of tainted
7 property and the proceeds of crime, for the reciprocal sharing with
8 that State of such part of any property realized:

9 (a) in the foreign state, as a result of action taken by
10 the Secretary pursuant to subsection 1707(4) of this chapter; or

11 (b) in the Federated States of Micronesia, as a result of
12 action taken in the Federated States of Micronesia pursuant to
13 subsection 1726(1) of this chapter.

14 (2) Except as otherwise provided by law, any
15 proceeds of crime that have been received by the Federated States
16 of Micronesia pursuant to this chapter shall be deposited in the
17 Forfeited Assets Fund of the Federated States of Micronesia."

18 Section 20. Title 12 of the Code of the Federated States of Micronesia,
19 as amended, is hereby further amended by adding a new section 1729 of chapter
20 17 to read as follows:

21 "Section 1729. Restriction on use of evidence and materials
22 obtained by mutual assistance.

23 (1) A person who is in the Federated States of Micronesia
24 pursuant to a request made under section 1711 of this chapter and
25 provides evidence in any criminal proceedings -

26 (a) to which the request relates or any criminal

1 proceedings consequent on the investigation to which the request
2 relates; or

3 (b) certified by the Secretary pursuant to subsection
4 1712(3)(b)(ii) in relation to that person;
5 that evidence shall not be admitted or otherwise used in any
6 prosecution of the person for any offense against the laws of the
7 Federated States of Micronesia, except on the trial of the person
8 for perjury in respect of the giving of that evidence.

9 (2) Any evidence, document or other article that
10 is obtained, provided or produced pursuant to a request by the
11 Federated States of Micronesia shall be used only for the purpose
12 of, or in connection with, the criminal matter to which the request
13 relates, unless -

14 (a) the foreign state to which the request was made
15 consents to the use of the evidence, document or other article for
16 another purpose; and

17 (b) in the case of any evidence, document or other article
18 obtained from, or provided or produced by, a person while he or she
19 is in the Federated States of Micronesia pursuant to a request made
20 under section 1711, that person consents to the use of the
21 evidence, document or other article for another purpose."

22 Section 21. This act shall become law upon approval by the President of
23 the Federated States of Micronesia or upon its becoming law without such
24 approval.

25

26 Date: 5/18/07

Introduced by: /s/ Joe N. Suka
Joe N. Suka

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