
A BILL FOR AN ACT

To enact a new chapter 1 of Title 36 of the Code of the Federated States of Micronesia (Annotated), and to repeal the existing chapter 1 in its entirety, to renumber chapter 2 of Title 36 of the Code of the Federated States of Micronesia as chapter 3, for the purpose of creating a new FSM national corporations law, and for other purposes.

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

1 Section 1. Title 36 of the Code of the Federated
2 States of Micronesia (Annotated), is hereby amended by
3 repealing chapter 1 in its entirety.

4 Section 2. Title 36, of the Federated States of
5 Micronesia (Annotated), is hereby amended by creating a new
6 chapter 1 of title 36, entitled: "Business Organization Act
7 of 2016".

8 Section 3. Title 36 of the Code of the Federated
9 States of Micronesia (Annotated), is hereby amended by
10 inserting a new section 101 of chapter 1, to read as
11 follows:

12 "Section 101. Short Title. This chapter shall be
13 known and may be cited as the "Business
14 Organization Act of 2016"."

15 Section 4. Section 102 of Title 36 of the Code of the
16 Federated States of Micronesia (Annotated), is hereby
17 amended by inserting a new section 102 of chapter 1, to read

1 as follows:

2 "Section 102. Application. This chapter applies
3 to Major Corporations as defined by 54 FSMC
4 (312)(2) and to corporations permitted or required
5 to be formed under the national laws of the
6 Federated States of Micronesia. This chapter does
7 not apply to any corporation formed under the laws
8 of any State of the Federated States of
9 Micronesia. Corporations formed under the
10 national laws of the Federated States of
11 Micronesia in existence on the effective date of
12 this Act remain in existence and henceforth are to
13 be governed by the provisions of this Act."

14 Section 5. Title 36 of the Code of the Federated
15 States of Micronesia (Annotated), is hereby amended by
16 inserting a new section 103 of chapter 1, to read as
17 follows:

18 "Section 103. Definitions. As used in this
19 chapter:

20 (1) "Articles of Incorporation" means
21 articles of incorporation including amended and
22 restated articles of incorporation and articles of
23 merger;

24 (2) "Authorized Shares" means the shares of
25 all classes a domestic corporation is authorized

1 to issue;

2 (3) "Certificate of Incorporation" means the
3 certificate issued by the Registrar at the time of
4 filing the articles of incorporation signifying
5 the corporation's existence;

6 (4) "Conspicuous" means so written that a
7 reasonable person against whom the writing is to
8 operate should have noticed it. For example,
9 printing in italics or boldface or contrasting
10 color, or typing in capitals or underlined, is
11 conspicuous;

12 (5) "Corporation" or "domestic corporation"
13 means a corporation for profit, which is not a
14 foreign corporation, incorporated under or subject
15 to this chapter;

16 (6) "Deliver" includes mail;

17 (7) "Distribution" means a direct or
18 indirect transfer of money or other property
19 except its own shares or incurrence of
20 indebtedness by a corporation to or for the
21 benefit of its shareholders in respect of any of
22 its shares. A distribution may be in the form of
23 a declaration or payment of a dividend; a
24 purchase, redemption, or other acquisition of
25 shares; a distribution of indebtedness; or

1 otherwise;

2 (8) "Effective date of notice" is defined in
3 section 104.

4 (9) "Electronic transmission" means any form
5 of communication, not directly involving the
6 physical transmission of paper, that creates a
7 record that may be retained, retrieved, and
8 reviewed by a recipient thereof, and that may be
9 directly reproduced in paper form by such a
10 recipient through an automated process;

11 (10) "Employee" includes an officer, but not
12 a director. A director may accept duties that
13 make the director also an employee;

14 (11) "Entity" includes domestic and foreign
15 corporations, domestic professional corporations,
16 domestic and foreign limited liability companies,
17 domestic and foreign nonprofit corporations,
18 domestic and foreign business trusts, estates,
19 domestic and foreign partnerships, domestic and
20 foreign limited partnerships, domestic and foreign
21 limited liability partnerships, trusts, two or
22 more persons having a joint or common economic
23 interest, associations and cooperative
24 associations, and state, national, and foreign
25 governments;

1 (12) "Foreign corporation" means a
2 corporation for profit incorporated under a law
3 other than the laws of the Federated States of
4 Micronesia or any State thereof;

5 (13) "Governmental subdivision" includes any
6 State or municipality;

7 (14) "Includes" denotes a partial definition;

8 (15) "Individual" means a natural person;

9 (16) "Means" denotes an exhaustive
10 definition;

11 (17) "Notice" is defined in section 104;

12 (18) "Person" includes individual and entity;

13 (19) "Principal Office" means the office
14 designated in the annual report where the
15 principal executive officers of a domestic or
16 foreign corporation are located.

17 (20) "Proceeding" includes civil suit and
18 criminal, administrative and investigatory action;

19 (21) "Record date" means the date established
20 under this chapter on which a corporation
21 determines the identity of its shareholders and
22 their shareholdings for purposes of this chapter.
23 The determinations shall be made as of the close
24 of business on the record date unless another time
25 for doing so is specified when the record date is

1 fixed;

2 (22) "Registrar" means the Registrar of
3 Corporations of the Government of the Federated
4 States of Micronesia and includes Assistant
5 Registrars;

6 (23) "Secretary" means the corporate officer
7 to whom the board of directors has delegated
8 responsibility for preparation and custody of the
9 minutes of the meetings of the board of directors
10 and of the shareholders and for authenticating
11 records of the corporation;

12 (24) "Shareholder" means the person is whose
13 name shares are registered in the records of a
14 corporation or the beneficial owner of shares to
15 the extent of the rights granted by a nominee
16 certificate on file with a corporation;

17 (25) "Shares" means the units into which the
18 proprietary interests in a corporation are
19 divided;

20 (26) "Subscriber" means a person who
21 subscribes for shares in a corporation, whether
22 before or after incorporation;

23 (27) "Voting group" means all shares of one
24 or more classes or series that under the articles
25 of incorporation or this chapter are entitled to

1 vote and be counted together collectively on a
2 matter at a meeting of shareholders. All shares
3 entitled by the articles of incorporation or this
4 chapter to vote generally on the matter are for
5 that purpose a single voting group."

6 Section 6. Title 36 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 104 of chapter 1, to read as
9 follows:

10 "Section 104. Notice.

11 (1) Notice under this chapter shall be in
12 writing unless oral notice is reasonable under the
13 circumstances.

14 (2) Notice is effective if communicated in
15 person; by telephone, telegraph, teletype,
16 electronic transmission or other form of wire or
17 wireless communication; or by mail or private
18 carrier. If these forms of personal notice are
19 impracticable, notice may be communicated by a
20 newspaper of general circulation in the area where
21 published; or by radio, television, or other form
22 of public broadcast communication.

23 (3) Written notice by a domestic or foreign
24 corporation to its shareholders, if in a
25 comprehensible form, is effective five days after

1 it is mailed, if mailed postpaid and correctly
2 addressed to the shareholder's address shown in
3 the corporation's current record of shareholders.

4 (4) Written notice to a domestic or foreign
5 corporation authorized to transact business in the
6 Federated States of Micronesia may be addressed to
7 its registered agent at its registered office or
8 to the corporation or its secretary at its
9 principal office shown in its most recent annual
10 report or, in the case of a foreign corporation
11 that has not yet delivered an annual report, in
12 its application for a certificate of authority.

13 (5) Except as provided in subsection (3)
14 above and (5)(c) below, written notice, if in a
15 comprehensible form, is effective at the earliest
16 of the following:

17 (a) When received;

18 (b) Five days after its deposit in the
19 Federated States of Micronesia mail, as
20 evidenced by a postmark, if mailed postpaid
21 and correctly addressed; or

22 (c) On the date shown on the return
23 receipt, if sent by registered or certified
24 mail, return receipt requested, and the
25 receipt is signed by or on behalf of the

1 addressee.

2 (6) Oral notice is effective when
3 communicated if communicated in a comprehensible
4 manner.

5 (7) If this chapter prescribes notice
6 requirements for particular circumstances, those
7 requirements govern. If articles of incorporation
8 or bylaws prescribe notice requirements not
9 inconsistent with this section or other provisions
10 of this chapter, those requirements govern.

11 (8) Without limiting the manner by which
12 notice otherwise may be given to shareholders,
13 notice to shareholders given by the corporation
14 under this chapter, the articles of incorporation,
15 or the bylaws shall be effective if provided by
16 electronic transmission consented to by the
17 shareholder by written notice to the corporation.
18 Any consent shall be deemed revoked if:

19 (a) The corporation is unable to
20 deliver by electronic transmission two consecutive
21 notices given by the corporation in accordance
22 with such consent; and

23 (b) The inability to deliver becomes
24 known to the secretary or an assistant secretary
25 of the corporation, to the transfer agent, or

1 other person responsible for giving notice;
2 provided that the inadvertent failure to treat
3 such inability as a revocation shall not
4 invalidate any meeting or other action.

5 (9) Notice given pursuant to subsection (8)
6 shall be deemed given:

7 (a) If by facsimile telecommunication,
8 when directed to a number at which the shareholder
9 has consented to receive notice;

10 (b) If by electronic mail, when
11 directed to an electronic mail address at which
12 the shareholder has consented to receive notice;

13 (c) If by posting on an electronic
14 network together with separate notice to the
15 shareholder of such specific posting, upon the
16 later of the posting and the giving of such
17 separate notice; and

18 (d) If by any other form of electronic
19 transmission, when directed to the shareholder.

20 An affidavit of the secretary, assistant
21 secretary, transfer agent, or other agent of the
22 corporation that the notice has been given by a
23 form of electronic transmission, in the absence of
24 fraud, shall be prima facie evidence of the facts
25 stated therein."

1 Section 6. Title 36 of the Code of the Federated
2 States of Micronesia (Annotated), is hereby amended by
3 inserting a new section 104 of chapter 1, to read as
4 follows:

5 "Section 105. Shareholders.

6 (1) For purposes of this chapter, the
7 following identified as a shareholder in a
8 corporation's current record of shareholders
9 constitute one shareholder if it is reasonable to
10 believe that the names represent the same person.

11 (a) An individual;

12 (b) A corporation, partnership, trust,
13 estate, or other entity; or

14 (c) The trustees, guardians,
15 custodians, or other fiduciaries of a single
16 trust, estate, or account.

17 (2) For purposes of this chapter,
18 shareholdings registered in substantially similar
19 names constitute one shareholder if it is
20 reasonable to believe that the names present the
21 same person."

22 Section 7. Title 36 of the Code of the Federated
23 States (Annotated), is hereby amended by inserting a new
24 section 106 of chapter 1, to read as follows:

25 "Section 106. Registrar of Corporations. The

1 Registrar of Corporations has the power reasonably
2 necessary to perform the duties required of the
3 Registrar by this chapter, and to administer this
4 chapter efficiently. The Registrar of
5 Corporations with the approval of the Secretary of
6 the Department of Justice and the President of the
7 Federated States of Micronesia shall have the
8 power to prescribe such rules and regulations as
9 are deemed advisable to administer and carry into
10 effect the provisions of this chapter. The duties
11 of the Registrar may be delegated to such
12 Assistant Registrars as the Registrar may deem
13 appropriate including Assistant Registrars who
14 carry out the functions of the Registrar in
15 embassies of the Federated States of Micronesia
16 situated in foreign countries. Assistant
17 Registrars shall perform their duties under the
18 direction and supervision of the Registrar.
19 Wherever the term "Registrar" is used in this
20 chapter, it shall be deemed to include all
21 Assistant Registrars, if any."

22 Section 8. Title 36 of the Code of the Federated
23 States of Micronesia (Annotated), is hereby amended by
24 inserting a new section 107 of chapter 1, to read as
25 follows:

1 "Section 107. Filing requirements.

2 (1) A document must satisfy the requirements
3 of this section, and of any other section that
4 adds to or varies these requirements, to be
5 entitled to filing by the Registrar.

6 (2) This chapter must require or permit
7 filing the document in the office of the
8 Registrar.

9 (3) The documents must contain the
10 information required by this chapter. It may
11 contain other information as well.

12 (4) The document must be typewritten or
13 printed.

14 (5) The document must be in English
15 language. A corporate name need not be in English
16 if written in English letters or Arabic or Roman
17 numerals, and the certificate of good standing
18 required of foreign corporations need not be in
19 English if accompanied by an English translation
20 under oath of a translator.

21 (6) The document must be certified and
22 executed:

23 (a) By the chairperson of the board of
24 directors of a domestic or foreign corporation, by
25 its president, or by another of its officers;

1 (b) If directors have not been selected
2 or the corporation has not been formed, by an
3 incorporator; or

4 (c) If the corporation is in the hands
5 of a receiver, trustee, or other court-appointed
6 fiduciary, by that fiduciary.

7 (7) The person executing the document shall
8 sign it and print beneath or opposite that
9 person's signature the person's name and the
10 capacity in which the person signs. The document
11 may but need not contain:

12 (a) The corporate seal;

13 (b) An attestation by the secretary or
14 an assistant secretary; or

15 (c) An acknowledgement, verification,
16 notarization or proof.

17 (8) If the Registrar has prescribed a
18 mandatory form for the document under Section 108,
19 the document must be in or on the prescribed form.

20 (9) The document must be delivered to the
21 office of the Registrar for filing and must be
22 accompanied by the correct filing fee and any
23 penalty required by this chapter."

24 Section 9. Title 36 of the Code of the Federated
25 States of Micronesia (Annotated), is hereby amended by

1 inserting a new section 108 of chapter 1, to read as
2 follows:

3 "Section 108. Forms.

4 (1) The Registrar may prescribe and furnish
5 on request forms for:

6 (a) An application for a certificate of
7 good standing;

8 (b) A foreign corporation's application
9 for a certificate of authority to transact
10 business in the Federated States of Micronesia;

11 (c) A foreign corporation's application
12 for a certificate of withdrawal; and

13 (d) The annual report.

14 If the Registrar so requires, use of
15 these forms is mandatory.

16 (2) The Registrar may prescribe and furnish
17 on request forms for other documents required or
18 permitted to be filed by this chapter but their
19 use is not mandatory.

20 (3) Upon request the Registrar shall
21 promptly, and in no case more than five business
22 days, issue certificates of incorporation,
23 certificates of good standing, certificates of
24 authority and certificates of withdrawal to
25 corporations entitled thereto."

1 certificate, application, or other corporate
2 document, except an annual report, of a domestic
3 or foreign corporation, \$25;

4 (j) Application for a certificate of
5 authority, \$100;

6 (k) Application for a certificate of
7 withdrawal, \$25;

8 (l) Reservation of corporate name, \$10;

9 (m) Transfer of reservation of
10 corporate name, \$10;

11 (n) Good standing certificate, \$5.

12 (2) All fees shall be paid to the Federated
13 States of Micronesia Treasurer for deposit in the
14 General Fund.

15 (3) The Registrar may adjust the fees
16 assessed under this section, as necessary from
17 time to time, through regulation adopted pursuant
18 to section 106.

19 (4) The Registrar shall charge and collect:

20 (a) For furnishing a certified copy of
21 any document, instrument, or paper relating to a
22 corporation, \$10 for the certificate and affixing
23 the seal thereto; and

24 (b) at the time of any services of
25 process on the Registrar as agent for service of

1 process of a corporation, \$10, which amount may be
2 recovered as taxable costs by the party to the
3 suit or action causing the service to be made if
4 the party prevails in suit or action."

5 Section 12. Title 36 of the Code of the Federated
6 States of Micronesia (Annotated), is hereby amended by
7 inserting a new section 110 of chapter 1, to read as
8 follows:

9 "Section 110. Effective time and date of
10 document.

11 (1) Except as provided in subsection (2)
12 below and section 111, a document accepted for
13 filing is effective at the time of filing on the
14 date it is filed, as evidenced by the Registrar
15 and time endorsement on the original document.

16 (2) Articles of dissolution, articles of
17 conversion, and articles of merger or share
18 exchange may specify a delayed effective time and
19 date, and if it does so the document becomes
20 effective at the time and date specified. If a
21 delayed effective date but not time is specified,
22 the document is effective at the close of business
23 on that date. A delayed effective date for a
24 document may not be later than the thirtieth day
25 after the date it is filed."

1 Section 13. Title 36 of the Code of the Federated
2 States of Micronesia (Annotated), is hereby amended by
3 inserting a new section 111 of chapter 1, to read as
4 follows:

5 "Section 111. Correcting filed document.

6 (1) A domestic or foreign corporation may
7 correct a document filed by the Registrar if the
8 document:

9 (a) Contains an incorrect statement; or

10 (b) Was defectively executed, attested,
11 sealed, verified, or acknowledged.

12 (2) A document is corrected by:

13 (a) Preparing articles of correction
14 that:

15 (i) Describe the document including
16 its filing date or attach a copy of it to the
17 articles;

18 (ii) Specify the incorrect
19 statement and the reason it is incorrect or the
20 manner in which the execution was defective; and

21 (iii) Correct the incorrect
22 statement or defective execution; and

23 (b) Delivering the articles of
24 correction to the Registrar for filing.

25 (3) Articles of correction are effective on

1 the effective date of the document they correct
2 except as to persons relying on the uncorrected
3 document and adversely affected by the correction.
4 As to those persons, articles of correction are
5 effective when filed."

6 Section 14. Title 36 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 112 of chapter 1, to read as
9 follows:

10 "Section 112. Filing duty of Registrar.

11 (1) If a document delivered to the Registrar
12 for filing satisfies the requirement of section
13 107, the Registrar shall file it.

14 (2) The Registrar files a document by
15 stamping or otherwise endorsing the document
16 including the date and time of receipt.

17 (3) If the Registrar refuses to file a
18 document, the Registrar shall return it to the
19 domestic or foreign corporation or its
20 representative together with a brief, written
21 explanation of the reason for the Registrar's
22 refusal.

23 (4) The Registrar's duty to file documents
24 under this section is ministerial. The
25 Registrar's filing or refusing to file a document

1 does not:

2 (a) Affect the validity or invalidity
3 of the document in whole or part;

4 (b) Relate to the correctness or
5 incorrectness of information contained in the
6 document; and

7 (c) Create a presumption that the
8 document is valid or invalid or that information
9 contained in the document is correct or
10 incorrect."

11 Section 15. Title 36 of the Code of the Federated
12 States of Micronesia (Annotated), is hereby amended by
13 inserting a new section 113 of chapter 1, to read as
14 follows:

15 "Section 113. Appeal from Registrar's refusal to
16 file document.

17 (1) If the Registrar refuses to file a
18 document delivered to the Registrar for filing,
19 the domestic or foreign corporation may appeal the
20 refusal within thirty days after the return of the
21 document in the Supreme Court of the Federated
22 States of Micronesia. The appeal is commenced by
23 petitioning the court to compel filing the
24 document and by attaching to the petition the
25 document and the Registrar's explanation of the

1 Registrar's refusal to file.

2 (2) The court shall summarily order the
3 Registrar to file the document or take other
4 action the court considers appropriate.

5 (3) The court's final decision may be
6 appealed as in other civil proceedings."

7 Section 16. Title 36 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 114 of chapter 1, to read as
10 follows:

11 "Section 114. Evidentiary effect of copy of filed
12 document. A certificate attached to a copy of a
13 document filed by the Registrar bearing the
14 Registrar's signature which may be in facsimile
15 and the seal of the Registrar is conclusive
16 evidence that the original document is on file
17 with the Registrar."

18 Section 17. Title 36 of the Code of the Federated
19 States of Micronesia (Annotated), is hereby amended by
20 inserting a new section 115 of chapter 1, to read as
21 follows:

22 "Section 115. Certificates and certified copies
23 to be received in evidence. All certificates
24 issued by the Registrar pursuant to this chapter,
25 and all copies of documents filed with Registrar

1 pursuant to this chapter when certified by the
2 Registrar, shall be taken and received in all
3 courts, public offices and official bodies as
4 prima facie evidence of the facts therein stated.
5 A certificate by the Registrar under the seal of
6 Registrar as to the existence or nonexistence of
7 the facts relating to corporations, shall be taken
8 and received in all courts, public offices, and
9 official bodies as prima facie evidence of the
10 existence or nonexistence of the facts therein
11 stated."

12 Section 18. Title 36 of the Code of the Federated
13 States of Micronesia (Annotated), is hereby amended by
14 inserting a new section 116 of chapter 1, to read as
15 follows:

16 "Section 116. Incorporators. One or more
17 individuals may act as the incorporator or
18 incorporators of a corporation by delivering
19 articles of incorporation to the Registrar for
20 filing."

21 Section 19. Title 36 of the Code of the Federated
22 States of Micronesia (Annotated), is hereby amended by
23 inserting a new section 117 of chapter 1, to read as
24 follows:

25 "Section 117. Articles of incorporation.

1 (1) The articles of incorporation shall set
2 forth:

3 (a) A corporate name for the
4 corporation that satisfies the requirements of
5 section 127;

6 (b) The number of shares the
7 corporation is authorized to issue;

8 (c) The mailing address of the
9 corporation's initial principal office, the street
10 address of the corporation's initial registered
11 office, and the name of its initial registered
12 agent at its initial registered office; and

13 (d) The name and address of each
14 incorporator.

15 (2) The articles of incorporation may set
16 forth:

17 (a) The names and addresses of the
18 individuals who are to serve as initial directors;

19 (b) Provisions not inconsistent with
20 law regarding:

21 (i) The purpose or purposes for
22 which the corporation is organized;

23 (ii) Managing the business and
24 regulating the affairs of the corporation;

25 (iii) Defining, limiting, and

1 regulating the powers of the corporation, its
2 board of directors, and shareholders;

3 (iv) A par value for authorized
4 shares or classes of shares; and

5 (v) The imposition of personal
6 liability on shareholders for the debts of
7 the corporation to a specified extent and
8 upon specified conditions;

9 (c) Any provision that under this
10 chapter is required or permitted to be set
11 forth in the bylaws;

12 (d) A provision eliminating or limiting
13 the liability of a director or officer to the
14 corporation or its shareholders for money
15 damages for any action taken, or any failure
16 to take any action, as a director or officer,
17 subject to section 195;

18 (e) A provision permitting or making
19 obligatory indemnification of a director for
20 liability as defined in section 202 to any
21 person for any action taken, or any failure
22 to take any action, as a director, except
23 liability for:

24 (i) Receipt of a financial benefit
25 to which the director is not entitled;

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- 1 (ii) An intentional infliction of
2 harm on the corporation or its shareholders;
3 (iii) A violation of section 196.
4 (iv) An intentional violation of
5 criminal law.

6 (3) The articles of incorporation need not
7 set forth any of the corporate powers enumerated
8 in this chapter."

9 Section 20. Title 36 of the Code of the Federated
10 States of Micronesia (Annotated), is hereby amended by
11 inserting a new section 118 of chapter 1, to read as
12 follows:

13 "Section 118. Incorporation.

14 (1) The corporate existence begins when the
15 articles of incorporation are filed.

16 (2) The Register's filing of the articles of
17 incorporation is conclusive proof that the
18 incorporators satisfied all conditions precedent
19 to incorporation except in a proceeding by the
20 Federated States of Micronesia to cancel or revoke
21 the incorporation or involuntarily dissolve the
22 corporation."

23 Section 21. Title 36 of the Code of the Federated
24 States of Micronesia (Annotated), is hereby amended by
25 inserting a new section 119 of chapter 1, to read as

1 follows:

2 "Section 119. Liability for pre-incorporation
3 transactions. All persons purporting to act as or
4 on behalf of a corporation, knowing there was no
5 incorporation under this chapter, are jointly and
6 severally liable for all liabilities created while
7 so acting."

8 Section 22. Title 36 of the Code of the Federated
9 States of Micronesia (Annotated), is hereby amended by
10 inserting a new section 120 of chapter 1, to read as
11 follows:

12 "Section 120. Organization of corporation.

13 (1) After incorporation:

14 (a) If initial directors are named in
15 the articles of incorporation, the initial
16 directors shall hold an organizational
17 meeting, at the call of a majority of the
18 directors, to complete the organization of
19 the corporation by appointing officers,
20 adopting bylaws, and carrying on any other
21 business brought before the meeting;

22 (b) If initial directors are not named
23 in the articles, the incorporator or
24 incorporators shall hold an organizational
25 meeting at the call of a majority of the

1 incorporators to elect:

2 (i) Directors and complete the
3 organization of the corporation; or

4 (ii) A board of directors who shall
5 complete the organization of the corporation.

6 (2) Action required or permitted by this
7 chapter to be taken by incorporators at an
8 organizational meeting may be taken without a
9 meeting if the action taken is evidenced by one or
10 more written consents describing the action taken
11 and signed by each incorporator.

12 (3) An organizational meeting may be held in
13 or out of the Federated States of Micronesia."

14 Section 23. Title 36 of the Code of the Federated
15 States of Micronesia (Annotated), is hereby amended by
16 inserting a new section 121 of chapter 1, to read as
17 follows:

18 "Section 121. Bylaws.

19 (1) The incorporators or board of directors
20 of a corporation may adopt initial bylaws for the
21 corporation.

22 (2) The bylaws of a corporation may contain
23 any provision for managing the business and
24 regulating the affairs of the corporation that is
25 not inconsistent with law or the articles of

1 incorporation."

2 Section 24. Title 36 of the Code of the Federated
3 States of Micronesia (Annotated), is hereby amended by
4 inserting a new section 122 of chapter 1, to read as
5 follows:

6 "Section 122. Emergency bylaws.

7 (1) Unless the articles of incorporation
8 provide otherwise, the board of directors of a
9 corporation may adopt bylaws to be effective only
10 in an emergency defined in subsection (4) below.

11 The emergency bylaws, which are subject to
12 amendment or repeal by the shareholders, may make
13 all provisions necessary for managing the
14 corporation during the emergency, including:

15 (a) Procedures for calling a meeting of
16 the board of directors;

17 (b) Quorum requirements for the
18 meeting; and

19 (c) Designation of additional or
20 substitute directors.

21 (2) All provisions of the regular bylaws
22 consistent with the emergency bylaws remain
23 effective during the emergency. The emergency
24 bylaws are not effective after the emergency ends.

25 (3) Corporate action taken in good faith in

1 accordance with the emergency bylaws:

2 (a) Binds the corporation; and

3 (b) May not be used to impose liability
4 on a corporate director, officer, employee, or
5 agent.

6 (4) An emergency exists for purposes of this
7 section if a quorum of the corporation's directors
8 cannot readily be assembled because of some
9 catastrophic event."

10 Section 26. Title 36 of the Code of the Federated
11 States of Micronesia (Annotated), is hereby amended by
12 inserting a new section 123 of chapter 1, to read as
13 follows:

14 "Section 123. Purposes. Every corporation
15 incorporated under this chapter has the purpose of
16 engaging in any lawful business unless a more
17 limited purpose is set forth in the articles of
18 incorporation."

19 Section 27. Title 36 of the Code of the Federated
20 States of Micronesia (Annotated), is hereby amended by
21 inserting a new section 124 of chapter 1, to read as
22 follows:

23 "Section 124. General powers.

24 (1) Unless its articles of incorporation
25 provide otherwise, every corporation has perpetual

1 duration and succession in its corporate name and
2 has the same powers as an individual to do all
3 things necessary or convenient to carry out its
4 business and affairs, including without
5 limitation, the power:

6 (a) To sue and be sued, complain and
7 defend in its corporate name;

8 (b) To have a corporate seal, which may
9 be altered at will, and to use it, or a facsimile
10 of it, by impressing or affixing it or in any
11 other manner reproducing it;

12 (c) To make and amend bylaws, not
13 inconsistent with its articles of incorporation or
14 with the laws of the Federated States of
15 Micronesia, for managing the business and
16 regulating the affairs of the corporation;

17 (d) To lawfully purchase, receive,
18 lease, or otherwise acquire, and own, hold,
19 improve, use, and otherwise deal with, real or
20 personal property, or any legal or equitable
21 interest in property, wherever located;

22 (e) To sell, convey, mortgage, pledge,
23 lease, exchange, and otherwise dispose of all or
24 any part of its property;

25 (f) to purchase, receive, subscribe

1 for, or otherwise acquire; own, hold, vote, use,
2 sell, mortgage, lend, pledge, or otherwise dispose
3 of; and deal in and with shares or other interests
4 in, or obligations of, any other entity;

5 (g) To make contracts and guarantees,
6 incur liabilities, borrow money, issue its notes,
7 bonds, and other obligations which may be
8 convertible into or include the option to purchase
9 other securities of the corporation, and secure
10 any of its obligations by mortgage or pledge of
11 any of its property, franchises, or income;

12 (h) To lend money, invest and reinvest
13 its funds, and receive and hold real and personal
14 property as security for repayment;

15 (i) To be a promoter, member,
16 associate, or manager of any partnership, joint
17 venture, trust, or other entity;

18 (j) To conduct its business, locate
19 offices, and exercise the powers granted by this
20 chapter within or without the Federated States of
21 Micronesia;

22 (k) To elect directors and appoint
23 officers, employees, and agents of the
24 corporation, define their duties, fix their
25 compensation, and lend them money and credit;

1 (l) To pay pensions and establish
2 pension plans, pension trusts, profit sharing
3 plans, share bonus plans, share option plans, and
4 benefit or incentive plans for any or all of its
5 current or former directors, officers, employees,
6 and agents;

7 (m) To make donations for the public
8 welfare or for charitable, scientific, or
9 educational purposes;

10 (n) To transact any lawful business
11 that will aid governmental policy; and

12 (o) To make payments or donations, or
13 do any other acts, not inconsistent with law, that
14 furtheres the business and affairs of the
15 corporation."

16 Section 27. Title 36 of the Code of the Federated
17 States of Micronesia (Annotated), is hereby amended by
18 inserting a new section 125 of chapter 1, to read as follows:

19 "Section 125. Emergency powers.

20 (1) In anticipation of or during an
21 emergency defined in subsection (4), the board of
22 directors of a corporation may:

23 (a) Modify lines of succession to
24 accommodate the incapacity of any director,
25 officer, employee, or agent; and

1 (b) Relocate the principal office,
2 designate alternative principal offices or
3 regional offices, or authorize the officers to do
4 so.

5 (2) During an emergency defined in
6 subsection (4), unless emergency bylaws provide
7 otherwise:

8 (a) Notice of a meeting of the board of
9 directors need to be given only to those directors
10 whom it is practicable to reach and may be given
11 in any practicable manner, including by
12 publication and radio; and

13 (b) One or more officers of the
14 corporation present at a meeting of the board of
15 directors may be deemed to be directors for the
16 meeting, in order of rank and with the same rank
17 in order of seniority, as necessary to achieve a
18 quorum.

19 (3) Corporate action taken in good faith
20 during an emergency under this section to further
21 the ordinary business affairs of the corporation:

22 (a) Binds the corporation; and

23 (b) May not be used to impose liability
24 on a corporate director, officer, employee, or
25 agent.

1 (4) An emergency exists for purposes of this
2 section if a quorum of the corporation's directors
3 cannot readily be assembled because of some
4 catastrophic event."

5 Section 28. Title 36 of the Code of the Federated
6 States of Micronesia (Annotated), is hereby amended by
7 inserting a new section 126 of chapter 1, to read as
8 follows:

9 "Section 126. Ultra vires.

10 (1) Except as provided in subsection (2) the
11 validity of corporate action may not be challenged
12 on the ground that the corporation lacks or lacked
13 power to act.

14 (2) A corporation's power to act may be
15 challenged:

16 (a) In a proceeding by a shareholder
17 against the corporation to enjoin the act;

18 (b) In a proceeding by the corporation,
19 directly, derivatively, or through a receiver,
20 trustee, or other legal representative, against an
21 incumbent or former director, officer, employee,
22 or agent of the corporation; or

23 (c) In a proceeding by the Secretary of
24 the Department of Justice under section 267.

25 (3) In a shareholder's proceeding under

1 subsection (2)(a) to enjoin an unauthorized
2 corporate act, the court may enjoin or set aside
3 the act, if equitable and if all affected persons
4 are parties to the proceeding, and may award
5 damages for loss other than anticipated profits
6 suffered by the corporation or another party
7 because of enjoining the unauthorized act."

8 Section 29. Title 36 of the Code of the Federated
9 States of Micronesia (Annotated), is hereby amended by
10 inserting a new section 127 of chapter 1, to read as
11 follows:

12 "Section 127. Corporate name.

13 (1) A corporate name:

14 (a) Must contain the word
15 "corporation", "incorporated", or "limited", or
16 the abbreviation "corp.", "inc.", or "ltd."; and

17 (b) May not contain language stating or
18 implying that the corporation is organized for a
19 purpose other than that permitted by section 123
20 and its articles of incorporation.

21 (2) Except as authorized by subsections (3)
22 and (4), a corporate name may not be the same as
23 or substantially identical to:

24 (a) The name of any entity registered
25 or authorized to transact business or conduct

1 affairs under the laws of the Federated States of
2 Micronesia;

3 (b) A name the exclusive right to which
4 is, at the time, reserved in the Federated States
5 of Micronesia;

6 (c) The fictitious name adopted by a
7 foreign corporation authorized to transact
8 business in the Federated States of Micronesia
9 because its real name is unavailable; and

10 (d) Any trade name, trademark, or
11 service mark registered in the Federated States of
12 Micronesia.

13 (3) A corporation may apply to the Registrar
14 for authorization to use a name that is
15 substantially identical, based upon the
16 Registrar's records, to one or more of the names
17 described in subsection (2). The Registrar shall
18 authorize use of the name applied for if:

19 (a) The other entity or holder of a
20 reserved or registered name consents to the use in
21 writing and one or more words are added to make
22 the name distinguishable from the name of the
23 applying corporation; or

24 (b) The applicant delivers to the
25 Registrar a certified copy of the final judgment

1 of a court of competent jurisdiction establishing
2 the applicant's right to use the name applied for
3 in the Federated States of Micronesia.

4 (4) A corporation may use the name including
5 the fictitious name of another domestic or foreign
6 corporation that is used in the Federated States
7 of Micronesia if the other corporation is
8 incorporated or authorized to transact business in
9 the Federated States of Micronesia and the
10 proposed user corporation:

11 (a) Has merged with the other
12 corporation;

13 (b) Has been formed by reorganization
14 of the other corporation; or

15 (c) Has acquired all or substantially
16 all of the assets, including the corporate name,
17 of the other corporation.

18 (5) This chapter does not control the use of
19 fictitious names."

20 Section 30. Title 36 of the Code of the Federated
21 States of Micronesia (Annotated), is hereby amended by
22 inserting a new section 128 of chapter 1, to read as
23 follows:

24 "Section 128. Reserved name.

25 (1) A person may reserve the exclusive use

1 of a domestic or foreign corporate name including
2 a fictitious name for a foreign corporation whose
3 corporate name is not available by delivering an
4 application to the Registrar for filing. The
5 application shall set forth the name and address
6 of the applicant and the name proposed to be
7 reserved. If the Registrar finds that the
8 corporate name applied for is available, the
9 Registrar shall reserve the name for the
10 applicant's exclusive use for a one hundred twenty
11 day period.

12 (2) The owner of a reserved corporate name
13 may transfer the reservation to another person by
14 delivering to the Registrar a signed notice of the
15 transfer that states the name and address of the
16 transferee."

17 Section 31. Title 36 of the Code of the Federated
18 States of Micronesia (Annotated), is hereby amended by
19 inserting a new section 129 of chapter 1, to read as
20 follows:

21 "Section 129. Administrative order of abatement
22 for infringement of corporate name.

23 (1) Any domestic corporation in good
24 standing or foreign corporation authorized to do
25 business in the Federated States of Micronesia

1 (ii) Require the entity to register the
2 new name with the Registrar; and

3 (iii) Require the entity to conduct
4 business in the Federated States of Micronesia
5 under its new name.

6 If the entity fails to comply with the order of
7 abatement within sixty days, the Registrar may
8 involuntarily dissolve or terminate the entity, or
9 cancel or revoke the entity's registration or
10 certificate of authority; after the time to appeal
11 has lapsed and no appeal has been timely filed.

12 The Registrar shall mail notice of the
13 dissolution, termination, or cancellation to the
14 entity at its last known mailing address. The
15 entity shall wind up its affairs in accordance
16 with this chapter.

17 (3) Any person aggrieved by the Registrar's
18 order under this section may obtain judicial
19 review in accordance with Title 17 of the Code of
20 the Federated States of Micronesia."

21 Section 32. Title 36 of the Code of the Federated
22 States of Micronesia (Annotated), is hereby amended by
23 inserting a new section 130 of chapter 1, to read as
24 follows:

25 "Section 130. Registered office and registered

1 agent. Each corporation shall continuously maintain in
2 the Federated States of Micronesia:

3 (1) A registered office that may be the same
4 as any of its places of business; and

5 (2) A registered agent, who may be:

6 (a) An individual who resides in the
7 Federated States of Micronesia and whose business
8 office is identical with the registered office;

9 (b) A domestic entity authorized to
10 transact business or conduct affairs in the
11 Federated States of Micronesia whose business
12 office is identical with the registered office; or

13 (c) A foreign entity authorized to
14 transact business or conduct affairs in the
15 Federated States of Micronesia whose business
16 office is identical with the registered office."

17 Section 33. Title 36 of the Code of the Federated
18 States of Micronesia (Annotated), is hereby amended by
19 inserting a new section 131 of chapter 1, to read as
20 follows:

21 "Section 131. Designation or change of registered
22 office or registered agent.

23 (1) A corporation that does not already have
24 a registered office and registered agent shall
25 designate its registered office and registered

1 agent by delivering to the Registrar for filing a
2 statement of designation that sets forth:

3 (a) The name of the corporation;

4 (b) The street address of its initial
5 registered office in the Federated States of
6 Micronesia and the name of its initial registered
7 agent at its initial registered office; and

8 (c) That the street addresses of its
9 registered office and agent shall be identical.

10 (2) A corporation may change its registered
11 office or its registered agent by delivering to
12 the Registrar for filing a statement of change
13 that sets forth:

14 (a) The name of the corporation;

15 (b) The street address of its current
16 registered office, the name of its current
17 registered agent at its registered office, and any
18 changes required to keep the information current;
19 and

20 (c) That after the change or changes
21 are made, the street addresses of its registered
22 office and agent shall be identical.

23 (3) If the registered agent's street address
24 changes, the registered agent may change the
25 street address of the corporation's registered

1 office by notifying the corporation in writing of
2 the change and signing either manually or in
3 facsimile and delivering to the Registrar for
4 filing a statement that complies with the
5 requirements of subsection (1) and recites that
6 the corporation has been notified of the change."

7 Section 34. Title 36 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 132 of chapter 1, to read as
10 follows:

11 "Section 132. Resignation of registered agent.

12 (1) A registered agent may resign from the
13 registered agent's appointment by signing and
14 delivering to the Registrar for filing the signed
15 statement of resignation. The statement may
16 include a statement that the registered office is
17 also discontinued.

18 (2) The registered agent shall mail one copy
19 to the registered office (if not discontinued) and
20 the other copy to the corporation at its principal
21 office.

22 (3) The appointment of the agent is
23 terminated, and the registered office discontinued
24 if so provided, on the thirty-first day after the
25 date on which the statement was filed."

1 Section 35. Title 36 of the Code of the Federated
2 States of Micronesia (Annotated), is hereby amended by
3 inserting a new section 133 of chapter 1, to read as
4 follows:

5 "Section 133. Service on corporation.

6 (1) Service of any notice or process
7 authorized by law issued against any corporation,
8 whether domestic or foreign, by any court,
9 judicial or administrative office, or board, may
10 be made in the manner provided by law upon any
11 registered agent, officer, or director of the
12 corporation who is found within the jurisdiction
13 of the court, officer, or board; or if any
14 registered agent, office, or director cannot be
15 found, upon the manager or superintendent of the
16 corporation or any person who is found in charge
17 of the property, business, or office of the
18 corporation within the jurisdiction.

19 (2) If no officer, director, manager,
20 superintendent, or other person in charge of the
21 property, business, or office of the corporation
22 can be found within the Federated States of
23 Micronesia, and the corporation has not filed with
24 the Registrar, pursuant to this chapter, the name
25 of a registered agent upon whom legal notice and

1 process from the courts of the Federated States of
2 Micronesia may be served, or the person named is
3 not found within the Federated States of
4 Micronesia, service may be made upon the
5 corporation by registered or certified mail,
6 return receipt requested, addressed to the
7 corporation at its principal office.

8 (3) Service using registered or certified
9 mail is perfected at the earliest of:

10 (a) The date the corporation receives
11 the mail;

12 (b) The date shown on the return
13 receipt, if signed on behalf of the corporation;
14 or

15 (c) Five days after its deposit in the
16 Federated States of Micronesia mail, as evidenced
17 by the postmark, if mailed postpaid and correctly
18 addressed.

19 (4) Nothing contained in this section shall
20 limit or affect the right to serve any process,
21 notice, or demand required or permitted by law to
22 be served upon a corporation in any other manner
23 permitted by law."

24 Section 36. Title 36 of the Code of the Federated
25 States of Micronesia (Annotated), is hereby amended by

1 inserting a new section 134 of chapter 1, to read as
2 follows:

3 "Section 134. Authorized shares.

4 (1) The articles of incorporation must
5 prescribe the classes of shares and the number of
6 shares of each class that the corporation is
7 authorized to issue. If more than one class of
8 shares is authorized, the articles of
9 incorporation must prescribe a distinguishing
10 designation for each class, and, prior to the
11 issuance of shares of a class, the preferences,
12 limitations, and relative rights of that class
13 must be described in the articles of
14 incorporation. All shares of a class must have
15 preferences, limitations, and relative rights
16 identical with those of other shares of the same
17 class except to the extent otherwise permitted by
18 section 135.

19 (2) The articles of incorporation must
20 authorize:

21 (a) One or more classes of shares that
22 together have unlimited voting rights; and

23 (b) One or more classes of shares which
24 may be the same class or classes as those with
25 voting rights that together are entitled to

1 receive the net assets of the corporation upon
2 dissolution.

3 (3) The articles of incorporation may
4 authorize one or more classes of shares that:

5 (a) Have special, conditional, or
6 limited voting rights, or no right to vote, except
7 to the extent prohibited by this chapter;

8 (b) Are redeemable or convertible as
9 specified in the articles of corporation:

10 (i) At the option of the
11 corporation, the shareholder, or another person or
12 upon the occurrence of a designated event;

13 (ii) For cash, indebtedness,
14 securities, or other property; and

15 (iii) In a designated amount or in
16 an amount determined in accordance with a
17 designated formula or by reference to extrinsic
18 data or events;

19 (c) Entitle the holders to
20 distributions calculated in any manner, including
21 dividends that may be cumulative, noncumulative,
22 or partially cumulative; or

23 (d) Have preference over any other
24 classes of shares with respect to distributions,
25 including dividends and distributions upon the

1 dissolution of the corporation.

2 (4) The description of the designations,
3 preferences, limitations, and relative rights of
4 share classes in subsection (3) is not
5 exhaustive."

6 Section 37. Title 36 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 135 of chapter 1, to read as
9 follows:

10 "Section 135. Terms of class or series determined
11 by board of directors.

12 (1) If and to the extent that articles of
13 incorporation so provide, the board of directors
14 may determine, in whole or part, the preferences,
15 limitations, and relative rights within the limits
16 set forth in section 134 of:

17 (a) Any class of shares before the
18 issuance of any shares of that class; or

19 (b) One or more series within a class
20 before the issuance of any shares of that series.

21 (2) Each series of a class must be given a
22 distinguishing designation.

23 (3) All shares of a series must have
24 preferences, limitations, and relative rights
25 identical with those of other shares of the same

1 series and, except to the extent otherwise
2 provided in the description of the series, with
3 those of other series of the same class.

4 (4) Before issuing any shares of a class or
5 series created under this section, the corporation
6 must deliver to the Registrar for filing an
7 articles of amendment, or a resolution, which is
8 effective without shareholder action, that sets
9 forth:

10 (a) The name of the corporation;

11 (b) The text of the amendment or
12 resolution determining the terms of the class or
13 series or shares;

14 (c) The date it was adopted; and

15 (d) A statement that the amendment or
16 resolution was duly adopted by the board of
17 directors. Upon filing of the articles of
18 amendment or resolution by the Registrar, it shall
19 constitute an amendment of the articles of
20 incorporation."

21 Section 38. Title 36 of the Code of the Federated
22 States of Micronesia (Annotated), is hereby amended by
23 inserting a new section 136 of chapter 1, to read as
24 follows:

25 "Section 136. Issued and outstanding shares.

1 (1) A corporation may issue the number of
2 shares of each class or series authorized by the
3 articles of incorporation. Shares that are issued
4 are outstanding shares until they are reacquired,
5 redeemed, converted, or cancelled.

6 (2) The reacquisition, redemption, or
7 conversion of outstanding shares is subject to the
8 limitations of subsection (3) and section 149.

9 (3) At all times that shares of the
10 corporation are outstanding, one or more shares
11 that together have unlimited voting rights and one
12 or more shares that together are entitled to
13 receive the net assets of the corporation upon
14 dissolution must be outstanding."

15 Section 39. Title 36 of the Code of the Federated
16 States of Micronesia (Annotated), is hereby amended by
17 inserting a new section 137 of chapter 1, to read as
18 follows:

19 "Section 137. Fractional shares.

20 (1) A corporation may:

21 (a) Issue fractions of a share or pay
22 in money the value of fractions of a share;

23 (b) Arrange for disposition of
24 fractional shares by the shareholders; or

25 (c) Issue scrip in registered or bearer

1 form entitling the holder to receive a full share
2 upon surrendering enough scrip to equal a full
3 share.

4 (2) Each certificate representing scrip
5 must be conspicuously labeled "scrip" and must
6 contain the information required by section 143.

7 (3) The holder of a fractional share is
8 entitled to exercise the rights of a shareholder,
9 including the right to vote, to receive dividends,
10 and to participate in the assets of the
11 corporation upon liquidation. The holder of scrip
12 is not entitled to any of these rights unless the
13 scrip provides for them.

14 (4) The board of directors may authorize the
15 issuance of scrip subject to any condition
16 considered desirable, including:

17 (a) That the scrip will become void if
18 not exchanged for full shares before a specified
19 date; and

20 (b) That the shares for which the scrip
21 is exchangeable may be sold and the proceeds paid
22 to the scripholders."

23 Section 40. Title 36 of the Code of the Federated
24 States of Micronesia (Annotated), is hereby amended by
25 inserting a new section 138 of chapter 1, to read as

1 follows:

2 "Section 138. Subscription for shares before
3 incorporation.

4 (1) A subscription for shares entered into
5 before incorporation is irrevocable for six months
6 unless the subscription agreement provides a
7 longer or shorter period or all the subscribers
8 agree to revocation.

9 (2) The board of directors may determine the
10 payment terms of subscription for shares that were
11 entered into before incorporation, unless the
12 subscription agreement specifies them. A call for
13 payment by the board of directors must be uniform
14 so far as practicable as to all shares of the same
15 class or series, unless the subscription agreement
16 specifies otherwise.

17 (3) Shares issued pursuant to subscriptions
18 entered into before incorporation are fully paid
19 and nonassessable when the corporation receives
20 the consideration specified in the subscription
21 agreement.

22 (4) If a subscriber defaults in payment of
23 money or property under a subscription agreement
24 entered into before incorporation, the corporation
25 may collect the amount owed as any other debt.

1 Alternatively, unless the subscription agreement
2 provides otherwise, the corporation may rescind
3 the agreement and may sell the shares if the debt
4 remains unpaid for more than twenty days after the
5 corporation sends written demand for payment to
6 the subscriber.

7 (5) A subscription agreement entered into
8 after incorporation is a contract between the
9 subscriber and the corporation subject to section
10 139."

11 Section 41. Title 36 of the Code of the Federated
12 States of Micronesia (Annotated), is hereby amended by
13 inserting a new section 139 of chapter 1, to read as
14 follows:

15 "Section 139. Issuance of shares.

16 (1) The powers granted in this section to
17 the board of directors may be reserved to the
18 shareholders by the articles of incorporation.

19 (2) The board of directors may authorize
20 shares to be issued for consideration consisting
21 of any tangible or intangible property or benefit
22 to the corporation, including cash, promissory
23 notes, services performed, contracts for services
24 to be performed, or other securities of the
25 corporation.

1 (3) Before the corporation issues shares,
2 the board of directors must determine that the
3 consideration received or to be received for
4 shares to be issued is adequate. That
5 determination by the board of directors is
6 conclusive insofar as the adequacy of
7 consideration for the issuance of shares related
8 to whether the shares are validly issued, fully
9 paid, and nonassessable.

10 (4) The corporation may place in escrow
11 shares issued for a contract for future services
12 or benefits or a promissory note, or make other
13 arrangements to restrict the transfer of the
14 shares, and may credit distributions in respect of
15 the shares against their purchase price, until the
16 services are performed, the note is paid, or the
17 benefits received. If the services are not
18 performed, the note is not paid, or the benefits
19 are not received, the shares escrowed or
20 restricted and the distributions credited may be
21 cancelled in whole or part."

22 Section 42. Title 36 of the Code of the Federated
23 States of Micronesia (Annotated), is hereby amended by
24 inserting a new section 140 of chapter 1, to read as
25 follows:

1 "Section 140. Liability of shareholders.

2 (1) A purchaser from a corporation of the
3 corporation's own shares is not liable to the
4 corporation or its creditors with respect to the
5 shares except to pay the consideration for which
6 the shares were authorized to be issued or
7 specified in the subscription agreement.

8 (2) Unless otherwise provided in the
9 articles of incorporation a shareholder of a
10 corporation is not personally liable for the acts
11 or debts of the corporation except that such
12 shareholder may become personally liable by reason
13 of such shareholder's own acts or conduct."

14 Section 43. Title 36 of the Code of the Federated
15 States of Micronesia (Annotated), is hereby amended by
16 inserting a new section 141 of chapter 1, to read as
17 follows:

18 "Section 141. Share dividends.

19 (1) Unless the articles of incorporation
20 provide otherwise, shares may be issued pro rata
21 and without consideration to the corporation's
22 shareholders or to the shareholders of one or more
23 classes or series. An issuance of shares under
24 this subsection is a share dividend.

25 (2) Shares of one class or series may not be

1 issued as a share dividend in respect of shares of
2 another class or series unless:

3 (a) The articles of incorporation so
4 authorize;

5 (b) A majority of the votes entitled to
6 be cast by the class or series to be issued
7 approves the issue; or

8 (c) There are no outstanding shares of
9 the class or series to be issued.

10 (3) If the board of directors does not fix
11 the record date for determining shareholders
12 entitled to a share dividend, it is the date the
13 board of directors authorizes the share dividend."

14 Section 44. Title 36 of the Code of the Federated
15 States of Micronesia (Annotated), is hereby amended by
16 inserting a new section 142 of chapter 1, to read as
17 follows:

18 "Section 142. Share Options. A corporation may
19 issue rights, options, or warrants for the
20 purchase of shares of the corporation. The board
21 of directors shall determine the terms upon which
22 the rights, options, or warrants are issued, their
23 form and content, and the consideration for which
24 the shares are to be issued. The documents
25 evidencing such rights, options, or warrants may

1 include conditions that preclude the holder or
2 holders, including any subsequent transferees, of
3 at least a specified percentage of the common
4 shares of a corporation from exercising such
5 rights, options, or warrants."

6 Section 45. Title 36 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 143 of chapter 1, to read as
9 follows:

10 "Section 143. Form and content of certificates.

11 (1) Shares may but need not be represented
12 by certificates. Unless this chapter or another
13 statute expressly provides otherwise, the rights
14 and obligations of shareholder are identical
15 whether or not their shares are represented by
16 certificates.

17 (2) At a minimum each share certificate must
18 state on its face:

19 (a) The name of the issuing corporation
20 and that it is organized under the laws of the
21 Federated States of Micronesia;

22 (b) The name of the person to whom
23 issued; and

24 (c) The number and class of shares and
25 the designation of the series, if any, the

1 certificate represents.

2 (3) If the issuing corporation is authorized
3 to issue different classes of shares or different
4 series within a class, the designations, relative
5 rights, preferences, and limitations applicable to
6 each class and the variations in rights,
7 preferences, and limitations determined for each
8 series and the authority of the board of directors
9 to determine variations for future series must be
10 summarized on the front or back of each
11 certificate. Alternatively, each certificate may
12 state conspicuously on its front or back that the
13 corporation will furnish the shareholder this
14 information on request in writing and without
15 charge.

16 (4) Each share certificate:

17 (a) Must be signed either manually or
18 in facsimile by two officers designated in the
19 bylaws or by the board of directors; and

20 (b) May bear corporate seal or its
21 facsimile.

22 (5) If the person who signed either manually
23 or in facsimile a share certificate no longer
24 holds office when the certificate is issued, the
25 certificate is nevertheless valid."

1 Section 46. Title 36 of the Code of the Federated
2 States of Micronesia (Annotated), is hereby amended by
3 inserting a new section 144 of chapter 1, to read as
4 follows:

5 "Section 144. Shares without certificates.

6 (1) Unless the articles of incorporation or
7 bylaws provide otherwise, the board of directors
8 of a corporation may authorize the issuance of
9 some or all of the shares of any or all of its
10 classes or series without certificates. The
11 authorization does not affect shares already
12 represented by certificates until they are
13 surrendered to the corporation.

14 (2) Within a reasonable time after the
15 issuance or transfer of shares without
16 certificates, the corporation shall send the
17 shareholder a written statement of the information
18 required on certificates by Section 143(2) and
19 (3), and, if applicable, section 145."

20 Section 47. Title 36 of the Code of the Federated
21 States of Micronesia (Annotated), is hereby amended by
22 inserting a new section 145 of chapter 1, to read as
23 follows:

24 "Section 145. Restriction on transfer of shares
25 and other securities.

1 (1) The articles of incorporation, bylaws,
2 an agreement among shareholders, or an agreement
3 between shareholders and the corporation may
4 impose restrictions on the transfer or
5 registration of transfer of shares of the
6 corporation. A restriction does not affect shares
7 issued before the restriction was adopted unless
8 the holders of the shares are parties to the
9 restriction agreement or voted in favor of the
10 restriction.

11 (2) A restriction on the transfer or
12 registration of transfer of shares is valid and
13 enforceable against the holder or a transferee of
14 the holder if the restriction is authorized by
15 this section and its existence is noted
16 conspicuously on the front or back of the
17 certificate or is contained in the information
18 statement required by Section 144. Unless so
19 noted, a restriction is not enforceable against a
20 person without knowledge of the restriction.

21 (3) A restriction on the transfer or
22 registration of transfer of shares is authorized:

23 (a) To maintain the corporation's
24 status when it is dependent on the number or
25 identity of its shareholders;

1 (b) To preserve exemptions under
2 securities law; or

3 (c) For any other reasonable purpose.

4 (4) A restriction on the transfer or
5 registration of transfer of shares may:

6 (a) Obligate the shareholder first to
7 offer the corporation or other persons separately,
8 consecutively, or simultaneously an opportunity to
9 acquire the restricted shares;

10 (b) Obligate the corporation or other
11 persons separately, consecutively, or
12 simultaneously to acquire the restricted shares;

13 (c) Require the corporation, the
14 holders of any class of its shares, or another
15 person to approve the transfer of the restricted
16 shares, if the requirement is not manifestly
17 unreasonable; or

18 (d) Prohibit the transfer of the
19 restricted shares to designated persons or classes
20 of persons, if the prohibition is not manifestly
21 unreasonable.

22 (5) For purposes of this section, "shares"
23 includes a security convertible into or carrying a
24 right to subscribe for or acquire shares."

25 Section 48. Title 36 of the Code of the Federated

1 States of Micronesia (Annotated), is hereby amended by
2 inserting a new section 146 of chapter 1, to read as
3 follows:

4 "Section 146. Expense of issue. A corporation
5 may pay the expenses of selling or underwriting
6 its shares, and of organizing or reorganizing the
7 corporation, from the consideration received for
8 shares."

9 Section 49. Title 36 of the Code of the Federated
10 States of Micronesia (Annotated), is hereby amended by
11 inserting a new section 147 of chapter 1, to read as
12 follows:

13 "Section 147. Shareholders' preemptive rights.

14 (1) The shareholders of a corporation do not
15 have a preemptive right to acquire the
16 corporation's unissued shares except to the extent
17 the articles of incorporation so provide.

18 (2) A statement included in the articles of
19 incorporation that "the corporation elects to have
20 preemptive rights" or words of similar import
21 means that the following principles apply except
22 to the extent the articles of incorporation
23 expressly provide otherwise:

24 (a) The shareholders of the corporation
25 have a preemptive right, granted on uniform terms

1 and conditions prescribed by the board of
2 directors to provide a fair and reasonable
3 opportunity to exercise the right, to acquire
4 proportional amounts of the corporation's unissued
5 shares upon the decision of the board of directors
6 to issue them;

7 (b) A shareholder may waive the
8 shareholder's preemptive right. A waiver
9 evidenced by a writing is irrevocable even though
10 it is not supported by consideration;

11 (c) There is no preemptive right with
12 respect to:

13 (i) Shares issued as compensation
14 to directors, officers, agents, or employees of
15 the corporation, its subsidiaries or affiliates;

16 (ii) Shares issued to satisfy
17 conversion or option rights created to provide
18 compensation to directors, officers, agents, or
19 employees of the corporation, its subsidiaries or
20 affiliates;

21 (iii) Shares authorized in articles
22 of incorporation that are issued within six months
23 from the effective date of incorporation; or

24 (iv) Shares sold otherwise than for
25 money;

1 (d) Holders of shares of any class
2 without general voting rights but with
3 preferential rights to distributions or assets
4 have no preemptive rights with respect to shares
5 of any class;

6 (e) Holders of shares of any class with
7 general voting rights but without preferential
8 rights to distributions or assets have no
9 preemptive rights with respect to shares of any
10 class with preferential rights to distributions or
11 assets unless the shares with preferential rights
12 are convertible into or carry a right to subscribe
13 for or acquire shares without preferential rights;
14 or

15 (f) Shares subject to preemptive rights
16 that are not acquired by shareholders may be
17 issued to any person for a period of one year
18 after being offered to shareholders at a
19 consideration set by the board of directors that
20 is not lower than the consideration set for the
21 exercise of preemptive rights. An offer at a
22 lower consideration or after the expiration of one
23 year is subject to the shareholders' preemptive
24 rights.

25 (3) For purposes of this section, "shares"

1 includes a security convertible into or carrying a
2 right to subscribe for or acquire shares."

3 Section 50. Title 36 of the Code of the Federated
4 States of Micronesia (Annotated), is hereby amended by
5 inserting a new section 148 of chapter 1, to read as
6 follows:

7 "Section 148. Corporation's acquisition of its
8 own shares.

9 (1) A corporation may acquire its own shares
10 and shares so acquired constitute authorized but
11 unissued shares.

12 (2) If the articles of incorporation
13 prohibit the reissuance of acquired shares, the
14 number of authorized shares is reduced by the
15 number of shares acquired, effective upon delivery
16 to the Registrar for filing, a statement of
17 cancellation showing the reduction in the
18 authorized shares.

19 (3) The statement of cancellation must set
20 forth:

21 (a) The name of the corporation;

22 (b) The number of acquired shares
23 cancelled, itemized by class and series; and

24 (c) The total number of authorized
25 shares, itemized by class and series, remaining

1 after reduction of the shares."

2 Section 51. Title 36 of the Code of the Federated
3 States of Micronesia (Annotated), is hereby amended by
4 inserting a new section 149 of chapter 1, to read as
5 follows:

6 "Section 149. Distributions to shareholders.

7 (1) A board of directors may authorize and
8 the corporation may make distributions to its
9 shareholders subject to restriction by the
10 articles of incorporation and the limitation in
11 subsection (3).

12 (2) If the board of directors does not fix
13 the record date for determining shareholders
14 entitled to a distribution other than one
15 involving a purchase, redemption, or other
16 acquisition of the corporation's shares, it is the
17 date the board of directors authorizes the
18 distribution.

19 (3) No distribution may be made if, after
20 giving it effect:

21 (a) The corporation would not be able
22 to pay its debts as they become due in the usual
23 course of business; or

24 (b) The corporation's total assets
25 would be less than the sum of its total

1 liabilities plus (unless the articles of
2 incorporation permit otherwise) the amount that
3 would be needed, if the corporation were to be
4 dissolved at the time of the distribution, to
5 satisfy the preferential rights upon dissolution
6 of shareholders whose preferential rights are
7 superior to those receiving the distribution.

8 (4) The board of directors may base a
9 determination that a distribution is not
10 prohibited under subsection (3) either on
11 financial statements prepared on the basis of
12 accounting practices and principles that are
13 reasonable in the circumstances or on a fair
14 valuation or other method that is reasonable in
15 the circumstances.

16 (5) Except as provided in subsection (7),
17 the effect of a distribution under subsection (3)
18 is measured.

19 (a) In the case of distribution by
20 purchase, redemption, or other acquisition of the
21 corporation's shares, as of the earlier of:

22 (i) The date money or other property
23 is transferred or debt incurred by the corporation;
24 or

25 (ii) The date the shareholder

1 ceases to be a shareholder with respect to the
2 acquired shares.

3 (b) In the case of any other
4 distribution of indebtedness, as of the date the
5 indebtedness is distributed;

6 (c) In all other cases, as of:

7 (i) The date the distribution is
8 authorized if the payment occurs within one
9 hundred twenty days after the date of
10 authorization; or

11 (ii) The date the payment is made
12 if it occurs more than one hundred twenty days
13 after the date of authorization.

14 (6) A corporation's indebtedness to a
15 shareholder incurred by reason of a distribution
16 made in accordance with this section is at parity
17 with the corporation's indebtedness to its
18 general, unsecured creditors except to the extent
19 subordinated by agreement.

20 (7) Indebtedness of a corporation, including
21 indebtedness issued as a distribution, is not
22 considered a liability for purposes of
23 determinations under subsection (3) if its terms
24 provide that payment of principal and interest are
25 made only if and to the extent that payment of a

1 distribution to shareholders could then be made
2 under this section. If the indebtedness is issued
3 as a distribution, each payment of principal or
4 interest is treated as a distribution, the effect
5 of which is measured on the date the payment is
6 actually made."

7 Section 52. Title 36 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 150 of chapter 1, to read as
10 follows:

11 "Section 150. Annual meeting.

12 (1) A corporation shall hold a meeting of
13 shareholders annually at a time stated in or fixed
14 in accordance with the bylaws.

15 (2) Annual shareholders' meetings may be
16 held in or out of the Federated States of
17 Micronesia at the place stated in or fixed in
18 accordance with the bylaws. If no place is stated
19 in or fixed in accordance with the bylaws, annual
20 meetings shall be held at the corporation's
21 principal office. Notwithstanding the foregoing,
22 the bylaws may authorize the board of directors,
23 in its sole discretion, to determine that the
24 annual meeting shall not be held at any place, but
25 may instead be held solely by means of remote

1 communication as authorized under subsection (3).

2 (3) If authorized by the board of directors
3 in its sole discretion, and subject to guidelines
4 and procedures adopted by the board, shareholders
5 and proxies of the shareholders not physically
6 present at a meeting of shareholders, by means of
7 remote communication, may:

8 (a) Participate in a meeting of
9 shareholders; and

10 (b) Be deemed present in person and
11 vote at a meeting of shareholders whether the
12 meeting is held at a designated place or solely by
13 means of remote communication; provided that the
14 corporation shall:

15 (i) Implement reasonable measures
16 to verify that each person deemed present and
17 permitted to vote at the meeting by means of
18 remote communication is a shareholder or proxy of
19 a shareholder;

20 (ii) Implement reasonable measures
21 to provide shareholders and proxies of
22 shareholders a reasonable opportunity to
23 participate in the meeting and to vote on matters
24 submitted to the shareholders, including an
25 opportunity to read or hear the proceedings of the

1 meeting concurrently with the proceedings; and
2 (iii) Maintain a record of voting
3 or action by any shareholder or proxy of a
4 shareholder that votes or takes other action at
5 the meeting by means of remote communication.

6 (4) The failure to hold an annual meeting at
7 the time stated in or fixed in accordance with a
8 corporation's bylaws shall not affect the validity
9 of any corporate action."

10 Section 53. Title 36 of the Code of the Federated
11 States of Micronesia (Annotated), is hereby amended by
12 inserting a new section 151 of chapter 1, to read as
13 follows:

14 "Section 151. Special meeting.

15 (1) A corporation shall hold a special
16 meeting of shareholders:

17 (a) On call of its board of directors
18 or the person or persons authorized to do so by
19 the articles of incorporation or bylaws; or

20 (b) If the holders of at least ten
21 percent of all of the votes entitled to be cast on
22 any issue proposed to be considered at the
23 proposed special meeting sign, date, and deliver
24 to the corporation's secretary one or more written
25 demands for the meeting describing the purpose or

1 purposes for which it is to be held.

2 (2) If not otherwise fixed under section 152
3 or 156, the record date for determining
4 shareholders entitled to demand a special meeting
5 is the date the first shareholder signs the
6 demand.

7 (3) Special shareholders' meetings may be
8 held in or out of the Federated States of
9 Micronesia at the place stated in or fixed in
10 accordance with the bylaws. If no place is stated
11 in or fixed in accordance with the bylaws, special
12 meetings shall be held at the corporation's
13 principal office. Notwithstanding the foregoing,
14 the bylaws may authorize the board of directors,
15 in its sole discretion, to determine that the
16 special meeting shall not be held at any place,
17 but may instead be held solely by means of remote
18 communication as authorized by section 150(3).

19 (4) Only business within the purpose or
20 purposes described in the meeting notice required
21 by section 154(3) may be conducted at a special
22 shareholders' meeting."

23 Section 54. Title 36 of the Code of the Federated
24 States of Micronesia (Annotated), is hereby amended by
25 inserting a new section 152 of chapter 1, to read as

1 follows:

2 "Section 152. Court-ordered meeting.

3 (1) The Supreme Court of the Federated
4 States of Micronesia may summarily order a meeting
5 to be held:

6 (a) On application of any shareholder
7 of the corporation entitled to participate in an
8 annual meeting if an annual meeting was not held
9 within the earlier of six months after the end of
10 the corporation's fiscal year or fifteen months
11 after its last annual meeting; or

12 (b) On application of a shareholder who
13 signed a demand for a special meeting valid under
14 section 151, if:

15 (i) Notice of a special meeting
16 was not given within thirty days after the date
17 the demand was delivered to the corporation's
18 secretary; or

19 (ii) The special meeting was not
20 held in accordance with the notice.

21 (2) The court may fix the time and place of
22 the meeting or determine that the meeting shall be
23 held solely by means of remote communication as
24 authorized by Section 150(3), determine the shares
25 entitled to participate in the meeting, specify a

1 record date for determining shareholders entitled
2 to notice of and to vote at the meeting, prescribe
3 the form and content of the meeting notice, fix
4 the quorum required for specific matters to be
5 considered at the meeting or direct that the votes
6 represented at the meeting constitute a quorum for
7 action on those matters, and enter other orders
8 necessary to accomplish the purpose or purposes of
9 the meeting.”

10 Section 55. Title 36 of the Code of the Federated
11 States of Micronesia (Annotated), is hereby amended by
12 inserting a new section 153 of chapter 1, to read as
13 follows:

14 “Section 153. Action without meeting.

15 (1) Action required or permitted by this
16 chapter to be taken at a shareholders’ meeting may
17 be taken without a meeting if the action is taken
18 by all the shareholders entitled to vote on the
19 action. The action shall be evidenced by one or
20 more written consents describing the action taken,
21 signed before or after the intended effective date
22 of the action by all the shareholders entitled to
23 vote on the action, and delivered to the
24 corporation for inclusion in the minutes for
25 filing with the corporate records.

1 (2) If not otherwise fixed under Section 152
2 or 156, the record date for determining
3 shareholders entitled to take action without a
4 meeting is the date the first shareholder signs
5 the consent under subsection (1).

6 (3) A consent signed under this section has
7 the effect of a meeting vote and may be described
8 as such in any document.

9 (4) If this chapter requires that notice of
10 proposed action be given to nonvoting shareholders
11 and the action is to be taken by unanimous consent
12 of the voting shareholders, the corporation shall
13 give its nonvoting shareholders written notice of
14 the proposed action at least ten days before the
15 action is taken. The notice shall contain or be
16 accompanied by the same material that, under this
17 chapter, would have been required to be sent to
18 nonvoting shareholders in a notice of a meeting at
19 which the proposed action would have been
20 submitted to the shareholders for action.

21 (5) An electronic transmission consenting to
22 an action to be taken and transmitted by a
23 shareholder, proxy of a shareholder, or person or
24 persons authorized to act for a shareholder or
25 proxy of a shareholder, shall be deemed to be

1 written, signed, and dated for the purposes of
2 this section; provided that the electronic
3 transmission sets forth or is delivered with
4 information from which the corporation may
5 determine:

6 (a) That the electronic transmission
7 was transmitted by the shareholder, proxy of the
8 shareholder, or person or persons authorized to
9 act for the shareholder or proxy of the
10 shareholder; and

11 (b) The date on which the shareholder,
12 or authorized person or persons transmitted the
13 electronic transmission.

14 The date on which the electronic transmission is
15 transmitted shall be deemed to be the date on
16 which the consent is signed. No consent given by
17 electronic transmission shall be deemed to have
18 been delivered until the consent is reproduced in
19 paper form and delivered to the corporation.

20 (6) Any copy, facsimile, or other reliable
21 reproduction of a consent in writing may be
22 substituted or used in lieu of the original
23 writing for any and all purposes for which the
24 original writing could be used; provided that the
25 copy, facsimile, or other reproduction shall be a

1 complete reproduction of the entire original
2 writing."

3 Section 56. Title 36 of the Code of the Federated
4 States of Micronesia (Annotated), is hereby amended by
5 inserting a new section 154 of chapter 1, to read as
6 follows:

7 "Section 154. Notice of meeting.

8 (1) A corporation shall notify shareholders
9 of the date, time, and place, if any, of each
10 annual and special shareholders' meeting no fewer
11 than ten nor more than sixty days before the
12 meeting date. If means of remote communication
13 are authorized for use in a meeting, regardless of
14 whether the meeting is held at a designated place
15 or solely by means of remote communication, the
16 notice shall also inform shareholders of the means
17 of remote communication by which shareholders may
18 be deemed to be present in person and allowed to
19 vote. Unless this chapter or the articles of
20 incorporation require otherwise, the corporation
21 is required to give notice only to shareholders
22 entitled to vote at the meeting.

23 (2) Unless this chapter or the articles of
24 incorporation require otherwise, notice of an
25 annual meeting need not include a description of

1 the purpose or purposes for which the meeting is
2 called.

3 (3) Notice of a special meeting must include
4 a description of the purpose or purposes for which
5 the meeting is called.

6 (4) If not otherwise fixed under Section 152
7 or 156, the record date for determining
8 shareholders entitled to notice of and to vote at
9 an annual or special shareholders' meeting is the
10 day before the first notice is delivered to
11 shareholders.

12 (5) Unless the bylaws require otherwise, if
13 an annual or special shareholders' meeting is
14 adjourned to a different date, time, or place,
15 notice need not be given of the new date, time or
16 place if the new date, time, or place is announced
17 at the meeting before adjournment. In addition,
18 if the annual or special shareholders' meeting was
19 held solely by means of remote communication, and
20 the adjourned meeting will be held by a means of
21 remote communication by which shareholders may be
22 deemed to be present in person and vote, notice
23 need not be given of the new means of remote
24 communication if the new means of remote
25 communication is announced at the meeting before

1 adjournment. If a new record date for the
2 adjourned meeting is or must be fixed under
3 Section 156, however, notice of the adjourned
4 meeting shall be given under this section to
5 shareholders who are entitled to notice of the new
6 record date."

7 Section 57. Title 36 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 155 of chapter 1, to read as
10 follows:

11 "Section 155. Waiver of notice.

12 (1) A shareholder may waive any notice
13 required by this chapter, the articles of
14 incorporation, or bylaws before or after the date
15 and time stated in the notice. The waiver shall
16 be in writing and be signed by the shareholder
17 entitled to the notice or shall be by electronic
18 transmission by the shareholder entitled to
19 notice, and delivered to the corporation for
20 inclusion in the minutes or filing with the
21 corporate records; provided that the electronic
22 transmission sets forth, or is delivered with
23 information from which the corporation may
24 determine that the electronic transmission was
25 transmitted by the shareholder.

1 (2) A shareholder's attendance at a meeting:

2 (a) Waives objection to lack of notice
3 or defective notice of the meeting, unless the
4 shareholder at the beginning of the meeting
5 objects to holding the meeting or transacting
6 business at the meeting; and

7 (b) Waives objection to consideration
8 of a particular matter at the meeting that is not
9 within the purpose or purposes described in the
10 meeting notice, unless the shareholder objects to
11 considering the matter when it is presented."

12 Section 58. Title 36 of the Code of the Federated
13 States of Micronesia (Annotated), is hereby amended by
14 inserting a new section 156 of chapter 1, to read as
15 follows:

16 "Section 156. Record date.

17 (1) The bylaws may fix or provide the manner
18 of fixing the record date for one or more voting
19 groups to determine the shareholders entitled to
20 notice of a shareholders' meeting, to demand a
21 special meeting, to vote, or to take any other
22 action. If the bylaws do not fix or provide for
23 fixing a record date, the board of directors of
24 the corporation may fix a future date as the
25 record date.

1 (2) A record date fixed under this section
2 may not be more than seventy days before the
3 meeting or action requiring a determination of
4 shareholders.

5 (3) A determination of shareholders entitled
6 to notice of or to vote at a shareholders' meeting
7 is effective for any adjournment of the meeting
8 unless the board of directors fixes a new record
9 date, which it must do if the meeting is adjourned
10 to a date more than one hundred twenty days after
11 the date fixed for the original meeting.

12 (4) If a court orders a meeting adjourned to
13 a date more than one hundred twenty days after the
14 date fixed for the original meeting, it may
15 provide that the original record date continues in
16 effect or it may fix a new record date."

17 Section 59. Title 36 of the Code of the Federated
18 States of Micronesia (Annotated), is hereby amended by
19 inserting a new section 157 of chapter 1, to read as
20 follows:

21 "Section 157. Shareholders' list for meeting.

22 (1) After fixing a record date for a
23 meeting, a corporation shall prepare an
24 alphabetical list of the names of all its
25 shareholders who are entitled to notice of a

1 shareholders' meeting. The list shall be arranged
2 by voting group and within each voting group by
3 class or series of shares and show the address of
4 and number of shares held by each shareholder.

5 (2) The shareholders' list shall be
6 available for inspection by any shareholder,
7 beginning two business days after notice of the
8 meeting for which the list was prepared is given
9 and continuing through the meeting, at the
10 corporation's principal office or at a place
11 identified in the meeting notice in the city where
12 the meeting will be held, or on a reasonably
13 accessible electronic network; provided that the
14 information required to gain access to the
15 shareholders' list is provided with the notice of
16 the meeting. A shareholder, the shareholder's
17 agent, or the shareholder's attorney, shall be
18 entitled on written demand to inspect and to copy
19 the list, during regular business hours and at the
20 shareholder's expense, during the period it is
21 available for inspection. If the corporation
22 determines that the list will be made available on
23 an electronic network, the corporation shall take
24 reasonable steps to ensure that such information
25 is available only to shareholders of the

1 corporation.

2 (3) The corporation shall make the
3 shareholders' list available at the meeting, and
4 any shareholder, the shareholder's agent, or
5 shareholder's attorney, is entitled to inspect the
6 list at any time during the meeting or any
7 adjournment.

8 (4) If the corporation refuses to allow a
9 shareholder, the shareholder's agent, or the
10 shareholder's attorney, to inspect the
11 shareholders' list before or at the meeting or
12 copy the list as permitted by subsection (2), the
13 FSM Supreme Court, on application of the
14 shareholder, may summarily order the inspection or
15 copying at the corporations' expense and may
16 postpone the meeting for which the list was
17 prepared until the inspection or copying is
18 complete.

19 (5) Refusal or failure to prepare or make
20 available the shareholders' list does not affect
21 the validity of action taken at the meeting."

22 Section 60. Title 36 of the Code of the Federated
23 States of Micronesia (Annotated), is hereby amended by
24 inserting a new section 158 of chapter 1, to read as
25 follows:

1 "Section 158. Voting entitlement of shares.

2 (1) Except as provided in subsections (2)
3 and (4) or unless the articles of incorporation
4 provide otherwise, each outstanding share,
5 regardless of class, is entitled to one vote on
6 each matter voted on at a shareholders' meeting.
7 Only shares are entitled to vote.

8 (2) Absent special circumstances, the shares
9 of a corporation are not entitled to vote if they
10 are owned, directly or indirectly, by a second
11 corporation, domestic or foreign, and the first
12 corporation owns, directly or indirectly, a
13 majority of the shares entitled to vote for
14 directors of the second corporation.

15 (3) Subsection (2) does not limit the power
16 of a corporation to vote any shares, including its
17 own shares, held by it in a fiduciary capacity.

18 (4) Redeemable shares are not entitled to
19 vote after notice of redemption is mailed to the
20 holders and a sum sufficient to redeem the shares
21 has been deposited with a bank, trust company, or
22 other financial institution under an irrevocable
23 obligation to pay the holders the redemption price
24 on surrender of the shares."

25 Section 61. Title 36 of the Code of the Federated

1 States of Micronesia (Annotated), is hereby amended by
2 inserting a new section 159 of chapter 1, to read as
3 follows:

4 "Section 159. Proxies.

5 (1) A shareholder may vote the shareholder's
6 shares in person or by proxy.

7 (2) A shareholder may appoint a proxy to
8 vote or otherwise act for the shareholder by
9 signing an appointment form. The appointment form
10 shall be signed by either the shareholder
11 personally or by the shareholder's attorney-in-
12 fact.

13 (3) Alternatively, a shareholder may
14 authorize another person to act as a proxy for the
15 shareholder by:

16 (a) Executing a writing authorizing
17 another person or persons to act as a proxy for
18 the shareholder, which may be accompanied by the
19 shareholder or the shareholder's authorized
20 attorney-in-fact, officer, director, employee, or
21 agent signing the writing or causing the
22 shareholder's signature to be affixed to the
23 writing by any reasonable means, including without
24 limitation the use of a facsimile signature; or

25 (b) Transmitting or authorizing the

1 transmission of an electronic transmission
2 authorizing the person or persons to act as a
3 proxy for the shareholder to the person or persons
4 who will be the holder of the proxy or to a proxy
5 solicitation firm, proxy support service
6 organization, or similar agent duly authorized by
7 the person who will be the holder of the proxy to
8 receive the transmission; provided that any such
9 transmission shall specify that the transmission
10 was authorized by the shareholder. A copy,
11 facsimile telecommunication, or other reliable
12 reproduction of the writing or transmission
13 created pursuant to the foregoing may be used in
14 lieu of the original writing or transmission for
15 any and all purposes for which the original
16 writing or transmission could be used; provided
17 that any such copy, facsimile telecommunication,
18 or other reproduction shall be a complete
19 reproduction of the entire original writing or
20 transmission.

21 (4) An appointment of a proxy is effective
22 when received by the secretary or other officer or
23 agent authorized to tabulate votes. An
24 appointment is valid for eleven months unless a
25 longer period is expressly provided in the

1 appointment document.

2 (5) An appointment of a proxy is revocable
3 by the shareholder unless the appointment document
4 conspicuously states that it is irrevocable and
5 the appointment is coupled with an interest.
6 Appointments coupled with an interest include the
7 appointment of:

8 (a) A pledgee;

9 (b) A person who purchased or agreed to
10 purchase the shares;

11 (c) A creditor of the corporation who
12 extended it credit under terms requiring
13 appointment;

14 (d) An employee of the corporation
15 whose employment contract requires the
16 appointment; or

17 (e) A party to a voting agreement
18 created under Section 167.

19 (6) The death or incapacity of the
20 shareholder appointing a proxy does not affect the
21 right of the corporation to accept the proxy's
22 authority unless notice of the death or incapacity
23 is received by the secretary or other officer or
24 agent authorized to tabulate votes before the
25 proxy exercises authority under the appointment.

1 (7) An appointment made irrevocable under
2 subsection (5) is revoked when the interest with
3 which it is coupled is extinguished.

4 (8) A transferee for value of shares subject
5 to an irrevocable appointment may revoke the
6 appointment if the transferee did not know of its
7 existence when the transferee acquired the shares
8 and the existence of the irrevocable appointment
9 was not noted conspicuously on the certificate
10 representing the shares or on the information
11 statement for shares without certificates.

12 (9) Subject to Section 161 and to any
13 express limitation on the proxy's authority
14 appearing on the face of the appointment document,
15 a corporation is entitled to accept the proxy's
16 vote or other action as that of the shareholder
17 making the appointment."

18 Section 62. Title 36 of the Code of the Federated
19 States of Micronesia (Annotated), is hereby amended by
20 inserting a new section 160 of chapter 1, to read as
21 follows:

22 "Section 160. Shares held by nominees.

23 (1) A corporation may establish a procedure
24 by which the beneficial owner of shares that are
25 registered in the name of the nominee is

1 recognized by the corporation as the shareholder.
2 The extent of this recognition may be determined
3 in the procedure.

4 (2) The procedure may set forth:

5 (a) The types of nominees to which it
6 applies;

7 (b) The rights or privileges that the
8 corporation recognizes in a beneficial owner;

9 (c) The manner in which the procedure
10 is selected by the nominee;

11 (d) The information that must be
12 provided when the procedure is selected;

13 (e) The period for which selection of
14 the procedure is effective; and

15 (f) Other aspects of the rights and
16 duties created."

17 Section 62. Title 36 of the Code of the Federated
18 States of Micronesia (Annotated), is hereby amended by
19 inserting a new section 161 of chapter 1, to read as
20 follows:

21 "Section 161. Corporation's acceptance of votes,
22 etc.

23 (1) If the name signed on a vote, consent,
24 waiver, or proxy appointment corresponds to the
25 name of a shareholder, the corporation, acting in

1 good faith, is entitled to accept the vote,
2 consent, waiver, or proxy appointment and to give
3 it effect as the act of the shareholder.

4 (2) If the name signed on a vote, consent,
5 waiver, or proxy appointment does not correspond
6 to the name of its shareholder, the corporation
7 acting in good faith is nevertheless entitled to
8 accept the vote, consent, waiver, or proxy
9 appointment and to give it effect as the act of
10 the shareholder if:

11 (a) The shareholder is an entity and
12 the name signed purports to be that of an officer
13 or agent of the entity;

14 (b) The name signed purports to be that
15 of an administrator, executor, guardian, or
16 conservator representing the shareholder and, if
17 the corporation requests, evidence of fiduciary
18 status acceptable to the corporation has been
19 presented with respect to the vote, consent,
20 waiver, or proxy appointment;

21 (c) The name signed purports to be that
22 of a receiver or trustee in bankruptcy of the
23 shareholder and, if the corporation requests,
24 evidence of this status acceptable to the
25 corporation has been presented with respect to the

1 vote, consent, waiver, or proxy appointment;

2 (d) The name signed purports to be that
3 of a pledgee, beneficial owner, or attorney-in-
4 fact of the shareholder and, if the corporation
5 requests, evidence acceptable to the corporation
6 of the signatory's authority to sign for the
7 shareholder has been presented with respect to the
8 vote, consent, waiver, or proxy appointment; or

9 (e) Two or more persons are the
10 shareholder as cotenants or fiduciaries and the
11 name signed purports to be the name of at least
12 one of the co-owners and the person signing
13 appears to be acting on behalf of all the co-
14 owners.

15 (3) The corporation is entitled to reject a
16 vote, consent, waiver, or proxy appointment if the
17 secretary or other officer or agent authorized to
18 tabulate votes, acting in good faith, has
19 reasonable basis to doubt the validity of the
20 signature on the vote, consent, waiver, or proxy
21 appointment or the signatory's authority to sign
22 for the shareholder.

23 (4) The corporation and its officer or agent
24 who accepts or rejects a vote, consent, waiver, or
25 proxy appointment in good faith and in accordance

1 with the standards of this section are not liable
2 in damages to the shareholder for the consequences
3 of the acceptance or rejection.

4 (5) Corporate action based on the acceptance
5 or rejection of a vote, consent, waiver, or proxy
6 appointment under this section is valid unless a
7 court of competent jurisdiction determines
8 otherwise."

9 Section 64. Title 36 of the Code of the Federated
10 States of Micronesia (Annotated), is hereby amended by
11 inserting a new section 162 of chapter 1, to read as
12 follows:

13 "Section 162. Quorum and voting requirements for
14 voting groups.

15 (1) Shares entitled to vote as a separate
16 voting group may take action on a matter at a
17 meeting only if a quorum of those shares exists
18 with respect to that matter. Unless the articles
19 of incorporation or this chapter provide
20 otherwise, a majority of the votes entitled to be
21 cast on the matter by the voting group constitutes
22 a quorum of that voting group for action on that
23 matter.

24 (2) Once a share is represented for any
25 purpose at a meeting, it is deemed present for

1 quorum purposes for the remainder of the meeting
2 and for any adjournment of that meeting unless a
3 new record date is or must be set for that
4 adjourned meeting.

5 (3) If a quorum exists, action on a matter
6 other than the election of directors by a voting
7 group is approved if the votes cast within the
8 voting group favoring the action exceed the votes
9 cast opposing the action, unless the articles of
10 incorporation or this chapter require a greater
11 number of affirmative votes.

12 (4) An amendment of articles of
13 incorporation adding, changing, or deleting a
14 quorum or voting requirement for a voting group
15 greater than specified in subsection (1) or (3) is
16 governed by section 164.

17 (5) The election of directors is governed by
18 section 165."

19 Section 65. Title 36 of the Code of the Federated
20 States of Micronesia (Annotated), is hereby amended by
21 inserting a new section 163 of chapter 1, to read as
22 follows:

23 "Section 163. Action by single and multiple
24 voting groups.

25 (1) If the articles of incorporation or this

1 chapter provide for voting by a single voting
2 group on a matter, action on that matter is taken
3 when voted upon by that voting group as provided
4 in Section 162.

5 (2) If the articles of incorporation or this
6 chapter provide for voting by two or more voting
7 groups on a matter, action on that matter is taken
8 only when voted upon by each of those voting
9 groups counted separately as provided in Section
10 162. Action may be taken by one voting group on a
11 matter even though no action is taken by another
12 voting group entitled to vote on the matter."

13 Section 66. Title 36 of the Code of the Federated
14 States of Micronesia (Annotated), is hereby amended by
15 inserting a new section 164 of chapter 1, to read as
16 follows:

17 "Section 164. Greater quorum or voting
18 requirements.

19 (1) The articles of incorporation may
20 provide for a greater quorum or voting requirement
21 for shareholders or voting groups of shareholders
22 than is provided for by this chapter.

23 (2) An amendment to the articles of
24 incorporation that adds, changes, or deletes a
25 greater quorum or voting requirement must meet the

1 same quorum requirement and be adopted by the same
2 vote and voting groups required to take action
3 under the quorum and voting requirements then in
4 effect or proposed to be adopted, whichever is
5 greater."

6 Section 67. Title 36 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 164 of chapter 1, to read as
9 follows:

10 "Section 165. Voting for directors; cumulative
11 voting.

12 (1) Unless otherwise provided in the
13 articles of incorporation, directors shall be
14 elected by a plurality of the votes cast by the
15 shares entitled to vote in the election at a
16 meeting at which a quorum is present.

17 (2) If, not less than forty-eight hours
18 prior to the time fixed for any annual or special
19 meeting, any shareholder or shareholders deliver
20 to any officer of the corporation, a request that
21 the election of directors to be elected at the
22 meeting be by cumulative voting, then the
23 directors to be elected at the meeting shall be
24 chosen as follows:

25 (a) Each shareholder present in person

1 or represented by proxy at the meeting shall have
2 a number of votes equal to the number of shares of
3 capital stock owned by the shareholder multiplied
4 by the number of directors to be elected at the
5 meeting;

6 (b) Each shareholder shall be entitled
7 to cumulate the votes of a shareholder and to give
8 all of the votes to one nominee or to distribute
9 the votes among any or all of the nominees; and

10 (c) The nominees receiving the highest
11 number of votes on the foregoing basis, up to the
12 total number of directors to be elected at the
13 meeting, shall be the successful nominees.

14 The right to have directors elected by cumulative
15 voting as provided in this section shall exist
16 notwithstanding that provision therefor is not
17 included in the articles of incorporation or
18 bylaws, and this right shall not be restricted,
19 qualified, or eliminated by a provision of the
20 articles of incorporation or bylaws. This section
21 shall not prevent the filling of vacancies in the
22 board of directors, which vacancies may be filled
23 in any manner that may be provided in the articles
24 of incorporation or bylaws."

25 Section 68. Title 36 of the Code of the Federated

1 States of Micronesia (Annotated), is hereby amended by
2 inserting a new section 166 of chapter 1, to read as
3 follows:

4 "Section 166. Voting trusts.

5 (1) One or more shareholders may create a
6 voting trust, conferring on a trustee the right to
7 vote or otherwise act for them, by signing an
8 agreement setting out the provisions of the trust
9 which may include anything consistent with its
10 purpose and transferring their shares to the
11 trustee. When a voting trust agreement is signed,
12 the trustee shall prepare a list of the names and
13 addresses of all owners of beneficial interests in
14 the trust, together with the number and class of
15 shares each shareholder transferred to the trust,
16 and deliver copies of the list and agreement to
17 the corporation's principal office.

18 (2) A voting trust becomes effective on the
19 date the first shares subject to the trust are
20 registered in the trustee's name. A voting trust
21 is valid for not more than ten years after its
22 effective date unless extended under subsection
23 (3).

24 (3) All or some of the parties to a voting
25 trust may extend it for additional terms of not

1 more than ten years each by signing written
2 consent to the extension. An extension is valid
3 for ten years from the date the first shareholder
4 signs the extension agreement. The voting trustee
5 must deliver copies of the extension agreement and
6 list of beneficial owners to the corporation's
7 principal office. An extension agreement binds
8 only those parties signing it."

9 Section 69. Title 36 of the Code of the Federated
10 States of Micronesia (Annotated), is hereby amended by
11 inserting a new section 167 of chapter 1, to read as
12 follows:

13 "Section 167. Voting agreements.

14 (1) Two or more shareholders may provide for
15 the manner in which they will vote their shares by
16 signing an agreement for that purpose. A voting
17 agreement created under this section is not
18 subject to Section 166.

19 (2) A voting agreement created under this
20 section is specifically enforceable."

21 Section 70. Title 36 of the Code of the Federated
22 States of Micronesia (Annotated), is hereby amended by
23 inserting a new section 168 of chapter 1, to read as
24 follows:

25 "Section 168. Shareholder agreements.

1 (1) An agreement among the shareholders of a
2 corporation that complies with this section is
3 effective among the shareholders and the
4 corporation even though it is inconsistent with
5 one or more other provisions of this chapter in
6 that it:

7 (a) Eliminates the board of directors
8 or restricts the discretion or powers of the board
9 of directors;

10 (b) Governs the authorization or making
11 of distributions whether or not in proportion to
12 ownership of shares, subject to limitations in
13 section 149, including without limitation the
14 elimination, restriction, or expansion of
15 dissenter's rights;

16 (c) Establishes who shall be directors
17 or officers of the corporation, or their terms of
18 office or manner of selection or removal;

19 (d) Governs, in general or in regard to
20 specific matters, the exercise or division of
21 voting power by or between the shareholders and
22 directors or by or among any of them, including
23 without limitation, the use of weighted voting
24 rights or director proxies, or the validity and
25 enforceability of actions that are approved by the

1 directors or shareholders of a corporation, as
2 applicable, in writing, without a meeting and with
3 written consent of less than all the directors or
4 shareholders entitled to vote on any such action.
5 An agreement covered under this paragraph may
6 include an agreement to permit any action required
7 or permitted by this chapter to be taken at a
8 shareholders' meeting to be taken without a
9 meeting; provided that consents in writing,
10 setting forth the action so taken, shall be signed
11 or given by electronic transmission by the holders
12 of the outstanding shares entitled to vote on the
13 action having not less than the minimum number of
14 votes that would be necessary to authorize or take
15 such action at a meeting at which all shares
16 entitled to vote thereon were present and voted,
17 notwithstanding section 153.

18 (e) Establishes the terms and
19 conditions of any agreement for the transfer or
20 use of property or the provision of services
21 between the corporation and any shareholder,
22 director, officer, or employee of the corporation
23 or among any of them;

24 (f) Transfers to one or more
25 shareholders or other persons all or part of the

1 authority to exercise the corporate powers or to
2 manage the business and affairs of the
3 corporation, including the resolution of any issue
4 about which there exists a deadlock among
5 directors or shareholders;

6 (g) Requires dissolution of the
7 corporation at the request of one or more of the
8 shareholders or upon the occurrence of a specified
9 event or contingency; or

10 (h) Otherwise governs the exercise of
11 the corporate powers or the management of the
12 business and affairs of the corporation or the
13 relationship among the shareholders, the
14 directors, and the corporation, or among any of
15 them, and is not contrary to public policy.

16 (2) An agreement authorized by this section
17 shall be:

18 (a) Set forth:

19 (i) In the articles of
20 incorporation or bylaws and approved by all
21 persons who are shareholders at the time of the
22 agreement; or

23 (ii) In a written agreement that is
24 signed by all persons who are shareholders at the
25 time of the agreement and is made known to the

1 corporation;

2 (b) Subject to amendment only by all
3 persons who are shareholders at the time of the
4 amendment, unless the agreement provides
5 otherwise;

6 (c) Valid for ten years; unless the
7 agreement provides otherwise, in which case the
8 agreement may be valid for a longer or shorter
9 term than ten years, or perpetually; and

10 (d) Enforceable against the corporation
11 and all present and future shareholders of the
12 corporation, including persons who become
13 shareholders subsequent to the approval or
14 execution of the agreement and who did not approve
15 or execute the agreement.

16 (3) The existence of an agreement authorized
17 by this section shall be noted conspicuously in
18 the corporation's articles of incorporation, on
19 the front or back of each certificate for
20 outstanding shares, or on the information
21 statement required by section 144 (2). If, at the
22 time of the agreement, the corporation has shares
23 outstanding represented by certificates and the
24 existence of the agreement is not noted in the
25 corporation's articles of incorporation in

1 compliance with this subsection, the corporation
2 shall recall the outstanding certificates and
3 issue substitute certificates that comply with
4 this subsection. The failure to note the
5 existence of the agreement in the articles of
6 incorporation, on the certificate, or on the
7 information statement shall not affect the
8 validity of the agreement or any action taken
9 pursuant to it. Any purchaser of shares who, at
10 the time of the purchase did not have knowledge of
11 the existence of the agreement shall be entitled
12 to rescission of the purchase. A purchaser shall
13 not be entitled to rescission as described in the
14 preceding sentence if, at the time of purchase,
15 the existence of the agreement is noted in the
16 articles of incorporation, on the certificate for
17 the shares, or on the information statement for
18 the shares, in compliance with this subsection
19 and, if the shares are not represented by a
20 certificate and the existence of the agreement is
21 not noted in the articles of incorporation in
22 compliance with this subsection, the information
23 statement is delivered to the purchaser at or
24 prior to the time of purchase of the shares. An
25 action to enforce the right of rescission

1 authorized by this subsection must be commenced
2 within the earlier of ninety days after discovery
3 of the existence of the agreement or two years
4 after the time of purchase of the shares.

5 (4) An agreement authorized by this section
6 shall cease to be effective when shares of the
7 corporation are listed on a national securities
8 exchange or regularly traded in a market
9 maintained by one or more members of a national or
10 affiliated securities association. If the
11 agreement ceases to be effective for any reason,
12 the board of directors, if the agreement is
13 contained or referred to in the corporation's
14 articles of incorporation or bylaws, may adopt an
15 amendment to the articles of incorporation or
16 bylaws, without shareholder action, to delete the
17 agreement and any references to it.

18 (5) An agreement authorized by this section
19 that limits the discretion or powers of the board
20 of directors shall relieve the directors of, and
21 impose upon the person or persons in whom the
22 discretion or powers are vested, liability for
23 acts or omissions imposed by law on directors to
24 the extent that the discretion or powers of the
25 directors are limited by the agreement.

1 (6) The existence or performance of an
2 agreement authorized by this section shall not be
3 a ground for imposing personal liability on any
4 shareholder for the acts or debts of the
5 corporation even if the agreement or its
6 performance treats the corporation as if it were a
7 partnership or results in the failure to observe
8 the corporate formalities otherwise applicable to
9 the matters governed by the agreement.

10 (7) Incorporators or subscribers for shares
11 may act as shareholders with respect to an
12 agreement authorized by this section if no shares
13 have been issued when the agreement is made."

14 Section 71. Title 36 of the Code of the Federated
15 States of Micronesia (Annotated), is hereby amended by
16 inserting a new section 169 of chapter 1, to read as
17 follows:

18 "Section 169. Definitions – Derivative Actions.
19 As used herein "Derivative proceeding" means a
20 civil suit in the right of a domestic corporation
21 or, to the extent provided in section 176, in the
22 right of a foreign corporation. "Shareholder"
23 includes a beneficial owner whose shares are held
24 in a voting trust or held by a nominee on the
25 beneficial owner's behalf."

1 Section 72. Title 36 of the Code of the Federated
2 States of Micronesia (Annotated), is hereby amended by
3 inserting a new section 170 of chapter 1, to read as
4 follows:

5 "Section 170. Standing.

6 (1) A shareholder may not commence or
7 maintain a derivative proceeding unless the
8 shareholder:

9 (a) Was a shareholder of the
10 corporation at the time of the act or omission
11 complained of or became a shareholder through
12 transfer by operation of law from one who was a
13 shareholder at that time; and

14 (b) Fairly and adequately represents
15 the interests of the corporation in enforcing the
16 right of the corporation."

17 Section 73. Title 36 of the Code of the Federated
18 States of Micronesia (Annotated), is hereby amended by
19 inserting a new section 171 of chapter 1, to read as
20 follows:

21 "Section 171. Demand.

22 (1) No shareholder may commence a derivative
23 proceeding until:

24 (a) A written demand has been made upon
25 the corporation to take suitable action; and

1 (b) Ninety days have expired from the
2 date the demand was made unless the shareholder
3 has earlier been notified that the demand has been
4 rejected by the corporation or unless irreparable
5 injury to the corporation would result by waiting
6 for the expiration of the ninety-day period."

7 Section 74. Title 36 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 172 of chapter 1, to read as
10 follows:

11 "Section 172. Stay of proceedings. If the
12 corporation commences an inquiry into the
13 allegations made in the demand or complaint, the
14 court may stay any derivative proceeding for a
15 period that the court deems appropriate."

16 Section 75. Title 36 of the Code of the Federated
17 States of Micronesia (Annotated), is hereby amended by
18 inserting a new section 173 of chapter 1, to read as
19 follows:

20 "Section 173. Dismissal.

21 (1) A derivative proceeding shall be
22 dismissed by the court on motion by the
23 corporation if one of the groups specified in
24 subsection (2) or (6) has determined in good faith
25 after conducting a reasonable inquiry upon which

1 its conclusions are based that the maintenance of
2 the derivative proceeding is not in the best
3 interest of the corporation.

4 (2) Unless a panel is appointed pursuant to
5 subsection (6), the determination in subsection
6 (1) shall be made by:

7 (a) A majority vote of independent
8 directors present at a meeting of the board of
9 directors if the independent directors constitute
10 a quorum; or

11 (b) A majority vote of a committee
12 consisting of two or more independent directors
13 appointed by majority vote of independent
14 directors present at a meeting of the board of
15 directors, whether or not the independent
16 directors constituted a quorum.

17 (3) None of the following by itself shall
18 cause a director to be considered not independent
19 for purposes of this section:

20 (a) The nomination or election of the
21 director by persons who are defendants in the
22 derivative proceeding or against whom action is
23 demand;

24 (b) The naming of the director as a
25 defendant in the derivative proceeding or as a

1 persons against whom action is demanded; or

2 (c) The approval by the director of the
3 act being challenged in the derivative proceeding
4 or demand if the act resulted in no personal
5 benefit to the director.

6 (4) If a derivative proceeding is commenced
7 after a determination has been made rejecting a
8 demand by a shareholder, the complaint shall
9 allege with particularity facts establishing
10 either:

11 (a) That a majority of the board of
12 directors did not consist of independent directors
13 at the time the determination was made; or

14 (b) That the requirements of subsection
15 (1) have not been met.

16 (5) If a majority of the board of directors
17 does not consist of independent directors at the
18 time the determination is made, the corporation
19 shall have the burden of proving that the
20 requirements of subsection (1) have been met. If
21 a majority of the board of directors consists of
22 independent directors at the time the
23 determination is made, the plaintiff shall have
24 the burden of proving the requirements of
25 subsection (1) have not been met.

1 (6) The court may appoint a panel of one or
2 more independent persons upon motion by the
3 corporation to make a determination whether the
4 maintenance of the derivative proceeding is in the
5 best interests of the corporation. In the case,
6 the plaintiff shall have the burden of proving
7 that the requirements of subsection (1) have not
8 been met."

9 Section 76. Title 36 of the Code of the Federated
10 States of Micronesia (Annotated), is hereby amended by
11 inserting a new section 174 of chapter 1, to read as
12 follows:

13 "Section 174. Discontinuance or settlement. A
14 derivative proceeding may not be discontinued or
15 settled without the court's approval. If the
16 court determines that a proposed discontinuance or
17 settlement will substantially affect the interests
18 of the corporation's shareholders or a class of
19 shareholders, the court shall direct that notice
20 be given to the shareholders affected."

21 Section 77. Title 36 of the Code of the Federated
22 States of Micronesia (Annotated), is hereby amended by
23 inserting a new section 175 of chapter 1, to read as
24 follows:

25 "Section 175. Payment of expenses.

1 (1) On termination of the derivative
2 proceeding the court may:

3 (a) Order the corporation to pay the
4 plaintiff's reasonable expenses including
5 reasonable attorney's fees incurred in the
6 proceeding if it finds that the proceeding has
7 resulted in a substantial benefit to the
8 corporation;

9 (b) Order the plaintiff to pay any
10 defendant's reasonable expenses including
11 reasonable attorney's fees incurred in defending
12 the proceeding if it finds that the proceeding was
13 commenced or maintained without reasonable cause
14 or for an improper purpose; or

15 (c) Order a party to pay an opposing
16 party's reasonable expenses including reasonable
17 attorney's fees incurred because of the filing of
18 a pleading, motion, or other paper, if it finds
19 that the pleading, motion, or other paper was not
20 well-grounded in fact, after reasonable inquiry,
21 or warranted by existing law or a good faith
22 argument for the extension, modification, or
23 reversal of existing law and was interposed for an
24 improper purpose, such as to harass or cause
25 unnecessary delay or needless increase in the cost

1 of litigation."

2 Section 78. Title 36 of the Code of the Federated
3 States of Micronesia (Annotated), is hereby amended by
4 inserting a new section 176 of chapter 1, to read as
5 follows:

6 "Section 176. Applicability to foreign
7 corporations. In any derivative proceeding with
8 respect to a foreign corporation, matters related
9 to derivative proceedings shall be governed by the
10 laws of the jurisdiction of the incorporation of
11 the foreign corporation except for sections 174
12 and 175."

13 Section 79. Title 36 of the Code of the Federated
14 States of Micronesia (Annotated), is hereby amended by
15 inserting a new section 177 of chapter 1, to read as
16 follows:

17 "Section 177. Requirement for and duties of board
18 of directors.

19 (1) Except as provided in section 168, each
20 corporation must have a board of directors.

21 (2) All corporate powers shall be exercised
22 by or under the authority of, and the business and
23 affairs of the corporation managed under the
24 direction of, its board of directors, subject to
25 any limitation set forth in the articles of

1 incorporation or in an agreement authorized under
2 section 168."

3 Section 80. Title 36 of the Code of the Federated
4 States of Micronesia (Annotated), is hereby amended by
5 inserting a new section 178 of chapter 1, to read as
6 follows:

7 "Section 178. Qualifications of directors. The
8 articles of incorporation or bylaws may prescribe
9 qualifications for directors. A director need not
10 be a citizen or resident of the Federated States
11 of Micronesia or a shareholder of the corporation
12 unless the articles of incorporation or bylaws so
13 prescribe."

14 Section 81. Title 36 of the Code of the Federated
15 States of Micronesia (Annotated), is hereby amended by
16 inserting a new section 179 of chapter 1, to read as
17 follows:

18 "Section 179. Number and election of directors.

19 (1) A board of directors must consist of one
20 or more individuals, with the number specified in
21 or fixed in accordance with the articles of
22 incorporation or bylaws.

23 (2) If a board of directors has power to fix
24 or change the number of directors, the board may
25 increase or decrease by thirty percent or less the

1 number of directors last approved by the
2 shareholders, but only the shareholders may
3 increase or decrease by more than thirty percent
4 the number of directors last approved by the
5 shareholders.

6 (3) The articles of incorporation or bylaws
7 may establish a variable range for the size of the
8 board of directors by fixing a minimum and maximum
9 number of directors. If a variable range is
10 established, the number of directors may be fixed
11 or changed from time to time, within the minimum
12 and maximum, by the shareholders or the board of
13 directors. After shares are issued, only the
14 shareholders may change the range for the size of
15 the board or change from a fixed to a variable-
16 range size board or vice versa.

17 (4) Directors are elected at the first
18 annual shareholders' meeting and at each annual
19 meeting therefore unless their terms are staggered
20 under section 182."

21 Section 82. Title 36 of the Code of the Federated
22 States of Micronesia (Annotated), is hereby amended by
23 inserting a new section 180 of chapter 1, to read as
24 follows:

25 "Section 180. Election of directors by certain

1 classes of shareholders. If the articles of
2 incorporation authorize dividing the shares into
3 classes, the articles may also authorize the
4 election of all or a specified number of directors
5 by the holders of one or more authorized classes
6 of shares. A class or classes of shares entitled
7 to elect one or more directors is a separate
8 voting group for purposes of the election of
9 directors."

10 Section 83. Title 36 of the Code of the Federated
11 States of Micronesia (Annotated), is hereby amended by
12 inserting a new section 181 of chapter 1, to read as
13 follows:

14 "Section 181. Terms of directors generally.

15 (1) The terms of the initial directors of a
16 corporation expire at the first shareholders'
17 meeting at which directors are elected.

18 (2) The terms of all other directors expire
19 at the next annual shareholders' meeting following
20 their election unless their terms are staggered
21 under section 182.

22 (3) A decrease in the number of directors
23 does not shorten an incumbent director's term.

24 (4) The term of a director elected to fill a
25 vacancy expires at the next shareholders' meeting

1 at which directors are elected.

2 (5) Despite the expiration of a director's
3 term, the director continues to serve until the
4 director's successor is elected and qualified or
5 until there is a decrease in the number of
6 directors."

7 Section 84. Title 36 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 182 of chapter 1, to read as
10 follows:

11 "Section 182. Staggered terms for directors. If
12 there are nine or more directors, the articles of
13 incorporation may provide for staggering their
14 terms by dividing the total number of directors
15 into two or three groups, with each group
16 containing one-half or one-third of the total, as
17 near as may be. In that event, the terms of
18 directors in the first group expire at the first
19 annual shareholders' meeting after their election,
20 the terms of the second group expire at the second
21 annual shareholders' meeting after their election,
22 and the terms of the third group, if any, expire
23 at the third annual shareholders' meeting after
24 their election. At each annual shareholders'
25 meeting held thereafter, directors shall be chosen

1 for terms of two years or three years, as the case
2 may be, to succeed those whose terms expire."

3 Section 85. Title 36 of the Code of the Federated
4 States of Micronesia (Annotated), is hereby amended by
5 inserting a new section 183 of chapter 1, to read as
6 follows:

7 "Section 183. Resignation of directors.

8 (1) A director may resign at any time by
9 delivering notice given in writing or by
10 electronic transmission to the board of directors,
11 its chairperson, or the corporation.

12 (2) A resignation is effective when the
13 notice is delivered unless the notice specifies a
14 later effective date."

15 Section 86. Title 36 of the Code of the Federated
16 States of Micronesia (Annotated), is hereby amended by
17 inserting a new section 184 of chapter 1, to read as
18 follows:

19 "Section 184. Removal of directors by
20 shareholders.

21 (1) The shareholders may remove one or more
22 directors with or without cause unless the
23 articles of incorporation provide that directors
24 may be removed only for cause.

25 (2) If a director is elected by a voting

1 group of shareholders, only the shareholders of
2 that voting group may participate in the vote to
3 remove the director.

4 (3) If cumulative voting is authorized, a
5 director may not be removed if the number of votes
6 sufficient to elect the director under cumulative
7 voting is voted against the director's removal.
8 If cumulative voting is not authorized, a director
9 may be removed only if the number of votes cast to
10 remove the director exceeds the number of votes
11 cast not to remove the director.

12 (4) A director may be removed by the
13 shareholders only at a meeting called for the
14 purpose of removing the director and the meeting
15 notice must state that the purpose, or one of the
16 purposes, of the meeting is removal of the
17 director."

18 Section 87. Title 36 of the Code of the Federated
19 States of Micronesia (Annotated), is hereby amended by
20 inserting a new section 185 of chapter 1, to read as
21 follows:

22 "Section 185. Removal of directors by judicial
23 proceeding.

24 (1) The Supreme Court of the Federated
25 States of Micronesia may remove a director of the

1 corporation from office in a proceeding commenced
2 either by the corporation or by its shareholders
3 holding at least ten percent of the outstanding
4 shares of any class if the court finds that:

5 (a) The director engaged in fraudulent
6 or dishonest conduct, or gross abuse of authority
7 or discretion, with respect to the corporation;
8 and

9 (b) Removal is in the best interest of
10 the corporation.

11 (2) The court that removes a director may
12 bar the director from reelection for a period
13 prescribed by the court.

14 (3) If shareholders commence a proceeding
15 under subsection (1), they shall make the
16 corporation a party defendant."

17 Section 88. Title 36 of the Code of the Federated
18 States of Micronesia (Annotated), is hereby amended by
19 inserting a new section 186 of chapter 1, to read as
20 follows:

21 "Section 186. Vacancy on board.

22 (1) Unless the articles of incorporation
23 provide otherwise, if a vacancy occurs on a board
24 of directors, including a vacancy resulting from
25 an increase in the number of directors:

1 (a) The shareholders may fill the
2 vacancy;

3 (b) The board of directors may fill the
4 vacancy; or

5 (c) If the directors remaining in
6 office constitute fewer than a quorum of the
7 board, they may fill the vacancy by the
8 affirmative vote of a majority of all the
9 directors remaining in office.

10 (2) If the vacant office was held by a
11 director elected by a voting group of
12 shareholders, only the holders of shares of that
13 voting group are entitled to vote to fill the
14 vacancy if it is filled by the shareholders.

15 (3) A vacancy that will occur at a specific
16 later date by reason of a resignation effective at
17 a later date under section 183 (2) or otherwise
18 may be filled before the vacancy occurs."

19 Section 89. Title 36 of the Code of the Federated
20 States of Micronesia (Annotated), is hereby amended by
21 inserting a new section 187 of chapter 1, to read as
22 follows:

23 "Section 187. Compensation of directors. Unless
24 the articles of incorporation or bylaws provide
25 otherwise, the board of directors may fix the

1 compensation of directors.”

2 Section 90. Title 36 of the Code of the Federated
3 States of Micronesia (Annotated), is hereby amended by
4 inserting a new section 188 of chapter 1, to read as
5 follows:

6 “Section 188. Meetings.

7 (1) The board of directors may hold regular
8 or special meetings in or out of the Federated
9 States of Micronesia.

10 (2) Unless the articles of incorporation or
11 bylaws provide otherwise, the board of directors
12 may permit any or all directors to participate in
13 a regular or special meeting by, or conduct the
14 meeting through the use of, any means of
15 communication by which all directors participating
16 may simultaneously hear each other during the
17 meeting. A director participating in a meeting by
18 this means is deemed to be present in person at
19 the meeting.”

20 Section 91. Title 36 of the Code of the Federated
21 States of Micronesia (Annotated), is hereby amended by
22 inserting a new section 189 of chapter 1, to read as
23 follows:

24 “Section 189. Action without meeting.

25 (1) Unless the articles of incorporation or

1 bylaws provide otherwise, action required or
2 permitted by this chapter to be taken at a board
3 of directors' meeting may be taken without a
4 meeting if the action is taken by all members of
5 the board. The action shall be evidenced by one
6 or more consents describing the action taken,
7 given either in writing and signed before or after
8 the intended effective date of the action by each
9 director, or by electronic transmission, and
10 included in the minutes or filed with the
11 corporate records reflecting the action taken. In
12 the case of a consent by electronic transmission,
13 the electronic transmission shall set forth or be
14 submitted with information from which it may be
15 determined that the electronic transmission was
16 authorized by the director who sent the electronic
17 transmission.

18 (2) Action taken under this section shall be
19 effective when the last director signs the consent
20 or gives a consent by electronic transmission,
21 unless the consent specifies a different effective
22 date.

23 (3) A consent signed or given by electronic
24 transmission under this section has the effect of
25 a meeting vote and may be described as such in any

1 document."

2 Section 92. Title 36 of the Code of the Federated
3 States of Micronesia (Annotated), is hereby amended by
4 inserting a new section 190 of chapter 1, to read as
5 follows:

6 "Section 190. Notice of meeting.

7 (1) Unless the articles of incorporation or
8 bylaws provide otherwise, regular meetings of the
9 board of directors may be held without notice of
10 the date, time, place, or purpose of the meeting.

11 (2) Unless the articles of incorporation or
12 bylaws provide for a longer or shorter period,
13 special meetings of the board of directors must be
14 preceded by at least two days' notice of the date,
15 time, and place of the meeting. The notice need
16 not described the purpose of the meeting unless
17 required by the articles of incorporation or
18 bylaws."

19 Section 93. Title 36 of the Code of the Federated
20 States of Micronesia (Annotated), is hereby amended by
21 inserting a new section 191 of chapter 1, to read as
22 follows:

23 "Section 191. Waiver of notice of meeting.

24 (1) A director may waive any notice required
25 by this chapter, the articles of incorporation, or

1 bylaws before or after the date and time stated in
2 the notice. Except as provided by subsection (2),
3 the waiver shall be in writing, signed by the
4 director entitled to the notice or by electronic
5 transmission by the director entitled to notice,
6 and filed with the minutes or corporate records.

7 (2) A director's attendance at or
8 participation in a meeting waives any required
9 notice to the director of the meeting unless the
10 director at the beginning of the meeting or
11 promptly upon the director's arrival objects to
12 holding the meeting or transacting business at the
13 meeting and does not thereafter vote for or assent
14 to action taken at the meeting."

15 Section 94. Title 36 of the Code of the Federated
16 States of Micronesia (Annotated), is hereby amended by
17 inserting a new section 192 of chapter 1, to read as
18 follows:

19 "Section 192. Quorum and voting.

20 (1) Unless the articles of incorporation or
21 bylaws require a greater number or unless
22 otherwise specifically provided in this chapter,
23 a quorum of a board of directors consists of:

24 (a) A majority of the fixed number of
25 directors if the corporation has a fixed board

1 size; or

2 (b) A majority of the number of
3 directors prescribed, or if no number is
4 prescribed the number in office immediately before
5 the meeting begins, if the corporation has a
6 variable-range size board.

7 (2) The articles of incorporation or bylaws
8 may authorize a quorum of a board of directors to
9 consist of no fewer than one-third of the fixed or
10 prescribed number of directors determined under
11 subsection (1).

12 (3) If a quorum is present when a vote is
13 taken, the affirmative vote of a majority of
14 directors present is the action of the board of
15 directors unless the articles of incorporation or
16 bylaws require the vote of a greater number of
17 directors.

18 (4) A director who is present at a meeting
19 of the board of directors or a committee of the
20 board of directors when corporate action is taken
21 is deemed to have assented to the action taken
22 unless:

23 (a) The director objects at the
24 beginning of the meeting or promptly upon the
25 director's arrival to holding it or transacting

1 business at the meeting;

2 (b) The director's dissent or
3 abstention from the action taken is entered in the
4 minutes of the meeting; or

5 (c) The director delivers written
6 notice of the director's dissent or abstention to
7 the presiding officer of the meeting before its
8 adjournment or to the corporation immediately
9 after adjournment of the meeting. The right of
10 dissent or abstention is not available to a
11 director who votes in favor of the action taken."

12 Section 94. Title 36 of the Code of the Federated
13 States of Micronesia (Annotated), is hereby amended by
14 inserting a new section 193 of chapter 1, to read as
15 follows:

16 "Section 193. Committees.

17 (1) Unless the articles of incorporation or
18 bylaws provide otherwise, a board of directors may
19 create one or more committees and appoint members
20 of the board of directors to serve on them. Each
21 committee must have two or more members, who serve
22 at the pleasure of the board of directors.

23 (2) The creation of a committee and
24 appointment of members to it must be approved by
25 the greater of:

1 (a) A majority of all the directors in
2 the office when the action is taken; or

3 (b) The number of directors required by
4 the articles of incorporation or bylaws to take
5 action under section 192.

6 (3) Sections 188 to 192, which govern
7 meetings, action without meetings, notice and
8 waiver of notice, and quorum and voting
9 requirements of the board of directors, apply to
10 committees and their members as well.

11 (4) To the extent specified by the board of
12 directors or in the articles of incorporation or
13 bylaws, each committee may exercise the authority
14 of the board of directors under section 177.

15 (5) A committee may not, however:

16 (a) Authorize distributions;

17 (b) Approve or propose to shareholders
18 action that this chapter requires to be approved
19 by shareholders;

20 (c) Fill vacancies on the board of
21 directors or on any of its committees;

22 (d) Amend articles of incorporation
23 pursuant to section 220;

24 (e) Adopt, amend, or repeal bylaws;

25 (f) Approve a plan of merger not

1 director is entitled to rely on information,
2 opinions, reports, or statements, including
3 financial statements and other financial data, if
4 prepared or presented by:

5 (a) One or more officers or employees
6 of the corporation whom the director reasonably
7 believes to be reliable and competent in the
8 matters presented;

9 (b) Legal counsel, public accountants,
10 or other persons as to matters the director
11 reasonably believes are within the person's
12 professional or expert competence; or

13 (c) A committee of the board of
14 directors of which the director is not a member if
15 the director reasonably believes the committee
16 merits confidence.

17 (4) A director is not acting in good faith
18 if the director has knowledge concerning the
19 matter in question that makes reliance otherwise
20 permitted by subsection (3) unwarranted.

21 (5) A director is not liable for any action
22 taken as a director, or any failure to take any
23 action, if the director performed the duties of
24 the director's office in compliance with this
25 section."

1 provided that the vote also constitutes a majority
2 of the shares entitled to vote.

3 (2) A corporation shall not eliminate or
4 limit the personal liability of a director for:

5 (a) The amount of a financial benefit
6 received by a director to which the director is
7 not entitled;

8 (b) An intentional infliction of harm
9 on the corporation or the shareholders'

10 (c) A violation of section 196; or

11 (d) An intentional violation of
12 criminal law.

13 (3) The shareholders of the corporation
14 shall receive written notice of any proposal by
15 the corporation to eliminate or limit the personal
16 liability of the directors under subsection
17 (1)(b), and the corporation shall in such cases
18 submit the duly adopted amendment to the articles
19 of incorporation to the Registrar.

20 (4) Nothing in this section shall impair or
21 affect the validity of any provisions of the
22 bylaws of a corporation eliminating or limiting
23 the personal liability of the directors, which
24 were authorized, directed, or provided for and
25 approved by the shareholders of the corporation in

1 compliance with then existing law prior to the
2 effective date of this chapter."

3 Section 98. Title 36 of the Code of the Federated
4 States of Micronesia (Annotated), is hereby amended by
5 inserting a new section 196 of chapter 1, to read as
6 follows:

7 "Section 196. Liability for unlawful
8 distributions.

9 (1) A director who votes for or assents to a
10 distribution made in violation of section 149 or
11 the articles of incorporation is personally liable
12 to the corporation for the amount of the
13 distribution that exceeds what could have been
14 distributed without violating section 149 or the
15 articles of incorporation, if it is established
16 that the director did not perform the director's
17 duties in compliance with section 194. In any
18 proceeding commenced under this section, a
19 director has all of the defenses ordinarily
20 available to a director.

21 (2) A director held liable under subsection
22 (1) for an unlawful distribution is entitled to
23 contribution:

24 (a) From every other director who could
25 be held liable under subsection (1) for the

1 responsibility for preparation and custody of
2 minutes of the directors' and shareholders'
3 meetings and for authenticating records of the
4 corporation. In the absence of a specific
5 delegation in the bylaws or by the board of
6 directors, the secretary shall have this
7 responsibility.

8 (4) The same individual may simultaneously
9 hold more than one office in a corporation."

10 Section 100. Title 36 of the Code of the Federated
11 States of Micronesia (Annotated), is hereby amended by
12 inserting a new section 198 of chapter 1, to read as
13 follows:

14 "Section 198. Duties of officers. Each officer
15 has the authority and shall perform the duties set
16 forth in the bylaws or, to the extent consistent
17 with the bylaws, the duties prescribed by the
18 board of directors or by direction of an officer
19 authorized by the board of directors to prescribe
20 the duties of other officers."

21 Section 101. Title 36 of the Code of the Federated
22 States of Micronesia (Annotated), is hereby amended by
23 inserting a new section 199 of chapter 1, to read as
24 follows:

25 "Section 199. Standards of conduct for officers.

1 in question that makes reliance otherwise
2 permitted by subsection (2) unwarranted.

3 (4) An officer is not liable for any action
4 taken as an officer, or any failure to take any
5 action, if the officer performed the duties of the
6 officer's office in compliance with this section."

7 Section 102. Title 36 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 200 of chapter 1, to read as follows:

10 "Section 200. Resignation and removal of
11 officers.

12 (1) An officer may resign at any time by
13 delivering notice to the corporation. A
14 resignation is effective when the notice is
15 delivered unless the notice specifies a late
16 effective date. If a resignation is made
17 effective at a later date and the corporation
18 accepts the future effective date, its board of
19 directors may fill the pending vacancy before the
20 effective date if the board of directors provides
21 that the successor does not take office until the
22 effective date.

23 (2) Any officer may be removed by the board
24 of directors whenever in its judgment the best
25 interests of the corporation will be served

1 thereby, but the removal shall be without
2 prejudice to the contract rights, if any, of the
3 person so removed."

4 Section 103. Title 36 of the Code of the Federated
5 States of Micronesia (Annotated), is hereby amended by
6 inserting a new section 201 of chapter 1, to read as
7 follows:

8 "Section 201. Contract rights of officers.

9 (1) The appointment or election of an
10 officer does not itself create contract rights.

11 (2) An officer's removal does not affect the
12 officer's contract rights, if any, with the
13 corporation. An officer's resignation does not
14 affect the corporation's contract rights, if any,
15 with the officer."

16 Section 104. Title 36 of the Code of the Federated
17 States of Micronesia (Annotated), is hereby amended by
18 inserting a new section 202 of chapter 1, to read as
19 follows:

20 "Section 202. Definitions – Indemnification.

21 As used herein:

22 (1) "Corporation" includes any domestic or
23 foreign predecessor entity of a corporation in a
24 merger.

25 (2) "Director" or "officer" means an

1 individual who is or was a director or officer,
2 respectively, of a corporation or who, while a
3 director or officer of the corporation, is or was
4 serving at the corporation's request as a
5 director, officer, partner, trustee, employee, or
6 agent of another domestic or foreign corporation,
7 partnership, joint venture, trust, employee
8 benefit plan, or other entity. A director or
9 officer is considered to be serving an employee
10 benefit plan at the corporation's request if the
11 duties of the director or officer to the
12 corporation also impose duties on, or otherwise
13 involve services by, the director or officer to
14 the plan or to participants in or beneficiaries of
15 the plan. "Director" or "officer" includes,
16 unless the context requires otherwise, the estate
17 or personal representative of a director or
18 officer.

19 (3) "Disinterested director" means a
20 director who, at the time of a vote referred to in
21 section 205(3) or a vote or selection referred to
22 in section 206 or 207, is not:

- 23 (a) A party to the proceeding; or
24 (b) An individual having a familial,
25 financial, professional, or employment

1 relationship with the directors whose
2 indemnification or advance for expenses is the
3 subject of the decision being made, which
4 relationship would, in the circumstances,
5 reasonably be expected to exert an influence on
6 the director's judgment when voting on the
7 decision being made.

8 (4) "Expenses" includes attorney's fees.

9 (5) "Liability" means the obligation to pay
10 a judgment, settlement, penalty, fine including an
11 excise tax assessed with respect to an employee
12 benefit plan, or reasonable expenses incurred with
13 respect to a proceeding.

14 (6) "Official capacity" means:

15 (a) When used with respect to a
16 director, the office of director in a corporation;
17 and

18 (b) When used with respect to an
19 officer, as contemplated in section 208, the
20 office in a corporation held by the officer.

21 (i) "Official capacity" does not
22 include service for any other domestic or foreign
23 corporation or any partnership, joint venture,
24 trust, employee benefit plan, or other entity.

25 (7) "Party" means an individual who was, is,

1 or is threatened to be made, a defendant or
2 respondent in a proceeding.

3 (8) "Proceeding" means any threatened,
4 pending, or completed action, suit, or proceeding,
5 whether civil, criminal, administration,
6 arbitrative, or investigative and whether formal
7 or informal."

8 Section 105. Title 36 of the Code of the Federated
9 States of Micronesia (Annotated), is hereby amended by
10 inserting a new section 203 of chapter 1, to read as
11 follows:

12 "Section 203. Permissible indemnification.

13 (1) Except as otherwise provided in this
14 section, a corporation may indemnify an individual
15 who is a party to a proceeding because the
16 individual is a director against liability
17 incurred in the proceeding if:

18 (a) The individual conducted the
19 individual's self in good faith; and

20 (b) The individual reasonably believed:

21 (i) In the case of conduct of
22 official capacity, that the individual's conduct
23 was in the best interests of the corporation;

24 (ii) In all other cases, that the
25 individual's conduct was at least not opposed to

1 the best interests of the corporation; and

2 (c) In the case of any criminal
3 proceeding, the individual had no reasonable cause
4 to believe the individual's conduct was unlawful;
5 or

6 (d) The individual engaged in conduct
7 for which broader indemnification has been made
8 permissible or obligatory under a provision of the
9 articles of incorporation as authorized by section
10 117(2)(e).

11 (2) A director's conduct with respect to an
12 employee benefit plan for a purpose the director
13 reasonably believed to be in the interests of the
14 participants in, and the beneficiaries of, the
15 plan is conduct that satisfies the requirement of
16 subsection (1)(b)(ii).

17 (3) The termination of a proceeding by
18 judgment, order, settlement, or conviction, or
19 upon a plea of nolo contendere or its equivalent,
20 is not, of itself, determinative that the director
21 did not meet the relevant standard of conduct
22 described in this section.

23 (4) Unless ordered by a court under section
24 206(1)(c), a corporation may not indemnify a
25 director:

1 (a) In connection with a proceeding by
2 or in the right of the corporation, except for
3 reasonable expenses incurred in connection with
4 the proceeding if it is determined that the
5 director has met the relevant standard of conduct
6 under subsection (1); or

7 (b) In connection with any proceeding
8 with respect to conduct for which the director was
9 adjudged liable on the basis that the director
10 received a financial benefit to which the director
11 was not entitled, whether or not involving action
12 in the director's official capacity."

13 Section 106. Title 36 of the Code of the Federated
14 States of Micronesia (Annotated), is hereby amended by
15 inserting a new section 204 of chapter 1, to read as
16 follows:

17 "Section 204. Mandatory indemnification. A
18 corporation shall indemnify a director who was
19 wholly successful, on the merits or otherwise, in
20 the defense of any proceeding to which the
21 director was a party because the director was a
22 director of the corporation against reasonable
23 expenses incurred by the director in connection
24 with the proceeding."

25 Section 107. Title 36 of the Code of the Federated

1 States of Micronesia (Annotated), is hereby amended by
2 inserting a new section 205 of chapter 1, to read as follows:

3 “Section 205. Advance for expenses.

4 (1) A corporation, before final disposition
5 of a proceeding, may advance funds to pay for or
6 reimburse the reasonable expenses incurred by a
7 director who is a party to a proceeding because
8 the director is a director if the director
9 delivers to the corporation:

10 (a) A written affirmation of the
11 director’s good faith belief that the director has
12 met the relevant standard of conduct described in
13 section 203 or that the proceeding involves
14 conduct for which liability has been eliminated
15 under a provision of the articles of incorporation
16 as authorized by section 117(2)(d); and

17 (b) The director’s written undertaking
18 to repay any funds advanced if the director is not
19 entitled to mandatory indemnification under
20 section 204 and it is ultimately determined under
21 section 206 or 207 that the director has not met
22 the relevant standard of conduct described in
23 section 203.

24 (2) The undertaking required by subsection
25 (1)(b) must be an unlimited general obligation of

1 the director but need not be secured and may be
2 accepted without reference to the financial
3 liability of the director to make repayment.

4 (3) Authorization under this section shall
5 be made:

6 (a) By the board of directors:

7 (i) If there are two or more
8 disinterested directors, by a majority vote of all
9 the disinterested directors a majority of whom for
10 this purpose, shall constitute a quorum or by a
11 majority of the members of a committee of two or
12 more disinterested directors appointed by such a
13 vote; or

14 (ii) If there are fewer than two
15 disinterested directors, by the vote necessary for
16 action by the board in accordance with section
17 192(3), in which authorization directors who do
18 not qualify as disinterested directors may
19 participate; or

20 (b) By the shareholders, but shares
21 owned by or voted under the control of a director
22 who at the time does not qualify as a
23 disinterested director may not be voted on the
24 authorization."

25 Section 108. Title 36 of the Code of the Federated

1 States of Micronesia (Annotated), is hereby amended by
2 inserting a new section 206 of chapter 1, to read as follows:

3 "Section 206. Court-ordered indemnification and
4 advance for expenses.

5 (1) A director who is a party to a
6 proceeding because the director is a director may
7 apply for indemnification or an advance for
8 expenses to the court conducting the proceeding or
9 to another court of competent jurisdiction. After
10 receipt of an application and after giving any
11 notice it considers necessary, the court shall:

12 (a) Order indemnification if the court
13 determines that the director is entitled to
14 mandatory indemnification under section 204;

15 (b) Order indemnification or advance
16 for expenses if the court determines that the
17 director is entitled to indemnification or advance
18 for expenses pursuant to a provision authorization
19 by section 210(1); or

20 (c) Order indemnification or advance
21 for expenses if the court determines, in view of
22 all the relevant circumstances, that it is fair
23 and reasonable:

24 (i) To indemnify the director; or

25 (ii) To advance expenses to the

1 director, even if the director has not met the
2 relevant standard of conduct set forth in section
3 203(1), failed to comply with section 205 or was
4 adjudged liable in a proceeding referred to in
5 section 203(4)(a) or (b), but if the director was
6 adjudged so liable the director's indemnification
7 shall be limited to reasonable expenses incurred
8 in connection with the proceeding.

9 (2) If the court determines that the
10 director is entitled to indemnification under
11 subsection (1)(a) or to indemnification or advance
12 for expenses under subsection (1)(b), it shall
13 also order the corporation to pay the director's
14 reasonable expenses incurred in connection with
15 obtaining court-ordered indemnification or advance
16 for expenses. If the court determines that the
17 director is entitled to indemnification or advance
18 for expenses under subsection (1)(c), it may also
19 order the corporation to pay the director's
20 reasonable expenses to obtain court-ordered
21 indemnification or advance for expenses."

22 Section 109. Title 36 of the Code of the Federated States
23 of Micronesia (Annotated), is hereby amended by inserting a new
24 section 206 of chapter 1, to read as follows:

25 "Section 206. Determination and authorization of

1 indemnification.

2 (1) A corporation may not indemnify a
3 director under section 203 unless authorized by a
4 specific proceeding after a determination has been
5 made that indemnification of the director is
6 permissible because the director has met the
7 relevant standard of conduct set forth in section
8 203.

9 (2) The determination shall be made:

10 (a) If there are two or more
11 disinterested directors, by the board of directors
12 by a majority vote of all the disinterested
13 directors a majority of whom for this purpose
14 shall constitute a quorum, or by a majority of the
15 members of a committee of two or more
16 disinterested directors appointed by such a vote;

17 (b) By special legal counsel:

18 (i) Selected in the manner
19 prescribed in subsection (2)(a); or

20 (ii) If there are fewer than two
21 disinterested directors, selected by the board of
22 directors in which selection directors who do not
23 qualify as disinterested directors may participate
24 or;

25 (c) By the shareholders, but shares

1 owned by or voted under the control of a director
2 who at the time does not qualify as a
3 disinterested director may not be voted on the
4 determination.

5 (3) Authorization of indemnification shall
6 be made in the same manner as a determination that
7 indemnification is permissible, except that if
8 there are fewer than two disinterested directors
9 or if the determination is made by special legal
10 counsel, authorization of indemnification shall be
11 made by those entitled under subsection (2)(b)(ii)
12 to select special legal counsel."

13 Section 110. Title 36 of the Code of the Federated States
14 of Micronesia (Annotated), is hereby amended by inserting a new
15 section 208 of chapter 1, to read as follows:

16 "Section 208. Officers.

17 (1) A corporation may indemnify and advance
18 expenses to an officer of the corporation who is a
19 party to a proceeding because the officer is an
20 officer of the corporation:

21 (a) To the same extent as a director;

22 and

23 (b) If the person is an officer but not
24 a director, to such further extent as may be
25 provided by the articles of incorporation, the

1 bylaws, a resolution of the board of directors, or
2 contract except for:

3 (i) Liability in connection with a
4 proceeding by or in the right of the corporation
5 other than for reasonable expenses incurred in
6 connection with the proceeding; or

7 (ii) Liability arising out of
8 conduct that constitutes:

9 (a) Receipt by the officer of a
10 financial benefit to which the officer is not
11 entitled;

12 (b) An intentional infliction of harm
13 on the corporation or the shareholders; or

14 (c) an intentional violation of
15 criminal law.

16 (2) Subsection (1)(b) shall apply to an
17 officer who is also a director if the basis on
18 which the officer is made a party to the
19 proceeding is an act or omission solely as an
20 officer.

21 (3) An officer of a corporation who is not a
22 director, is entitled to mandatory indemnification
23 under section 204, and may apply to a court under
24 section 206 for indemnification or an advance for
25 expenses, in each case to the same extent to which

1 a director may be entitled to indemnification or
2 advance for expenses under those provisions."

3 Section 111. Title 36 of the Code of the Federated States of
4 Micronesia (Annotated), is hereby amended by inserting a new
5 section 209 of chapter 1, to read as follows:

6 "Section 209. Insurance. A corporation may
7 purchase and maintain insurance on behalf of an
8 individual who is a director or officer of the
9 corporation, or who, while a director or officer
10 of the corporation, serves at the corporation's
11 request as a director, officer, partner, trustee,
12 employee, or agent of another domestic or foreign
13 corporation, partnership, joint venture, trust,
14 employee benefit plan, or other entity, against
15 liability asserted against or incurred by the
16 director or officer in that capacity or arising
17 from the director's or officer's status as a
18 director or officer, whether or not the
19 corporation would have power to indemnify or
20 advance expenses to the director or officer
21 against the same liability under other provisions
22 of this act."

23 Section 112. Title 36 of the Code of the Federated States of
24 Micronesia (Annotated), is hereby amended by inserting a new
25 section 210 of chapter 1, to read as follows:

1 "Section 210. Advance obligation by corporate
2 action.

3 (1) A corporation, by a provision in its
4 articles of incorporation or bylaws or in a
5 resolution adopted or a contract approved by its
6 board of directors or shareholders, may obligate
7 itself in advance of the act or omission giving
8 rise to a proceeding to provide indemnification in
9 accordance with section 203 or advance funds to
10 pay for or reimburse expenses in accordance with
11 section 205. Any such obligatory provision shall
12 be deemed to satisfy the requirements for
13 authorization referred to in section 205(3) and
14 207(3). Any such provision that obligates the
15 corporation to provide indemnification to the
16 fullest extent permitted by law shall be deemed to
17 obligate the corporation to advance funds to pay
18 for or reimburse expenses in accordance with
19 section 205 to the fullest extent permitted by
20 law, unless the provision specifically provides
21 otherwise.

22 (2) Any provision pursuant to subsection (1)
23 shall not obligate the corporation to indemnify or
24 advance expenses to a director of a predecessor of
25 the corporation, pertaining to conduct with

1 respect to the predecessor, unless otherwise
2 specifically provided. Any provision for
3 indemnification or advance for expenses in the
4 articles of incorporation, bylaws, or a resolution
5 of the board of directors or shareholders of a
6 predecessor of the corporation in a merger or in a
7 contract to which the predecessor is a party,
8 existing at the time the merger takes effect,
9 shall be governed by section 238(1)(c).

10 (3) A corporation, by a provision in its
11 articles or incorporation, may limit any of the
12 rights to indemnification or advance for expenses
13 created by or pursuant to this chapter.

14 (4) This chapter does not limit a
15 corporation's power to pay or reimburse expenses
16 incurred by a director or an officer in connection
17 with the director's or officer's appearance as a
18 witness in a proceeding at a time when the officer
19 or director is not a party.

20 (5) This chapter does not limit a
21 corporation's power to indemnify, advance expenses
22 to, or provide or maintain insurance on behalf of
23 an employee or agent."

24 Section 113. Title 36 of the Code of the Federated States of
25 Micronesia (Annotated), is hereby amended by inserting a new

1 section 211 of chapter 1, to read as follows:

2 "Section 211. Nonexclusively of subpart.

3 (1) The indemnification provided by this
4 chapter shall not be deemed exclusive of any other
5 rights to which those indemnified may be entitled
6 under any bylaw, agreement, vote of shareholders,
7 or disinterested directors or otherwise, both as
8 to action in a person's official capacity and as
9 to action in another capacity while holding the
10 office, and shall continue as to a person who has
11 ceased to be a director or officer and shall inure
12 to the benefit of the heirs and personal
13 representatives of that person.

14 (2) These indemnification provisions do not
15 apply to any proceeding against any trustee,
16 investment manager, or other fiduciary of an
17 employee benefit plan in that person's capacity,
18 though the person may also be a director or
19 officer of the employer corporation. Nothing
20 contained in this section shall limit any right to
21 indemnification to which a trustee, investment
22 manager, or other fiduciary may be entitled by
23 contract or otherwise."

24 Section 113. Title 36 of the Code of the Federated States of
25 Micronesia (Annotated), as amended, is hereby further by creating

1 a new section 212 of chapter 1, to read as follows:

2 "Section 212. Definitions-Directors' Conflicting
3 Interest Transactions. As used herein:

4 (1) "Conflicting interest" with respect to a
5 corporation means the interest a director of the
6 corporation has respecting a transaction effected
7 or proposed to be effected by the corporation or
8 by a subsidiary of the corporation or any other
9 entity in which the corporation has a controlling
10 interest if:

11 (a) Whether or not the transaction is
12 brought before the board of directors of the
13 corporation for action, the director knows at the
14 time of commitment that the director or a related
15 person is a party to the transaction or has a
16 beneficial financial interest in or so closely
17 linked to the transaction and of such financial
18 significance to the director or related person
19 that the interest would reasonably be expected to
20 exert an influence on the director's judgment if
21 the director were called upon to vote on the
22 transaction; or

23 (b) The transaction is brought or is of
24 such character and significance to the corporation
25 that it would in the normal course be brought

1 before the board of directors of the corporation
2 for action, and the director knows at the time of
3 commitment that any of the following persons is
4 either a party to the transaction or has a
5 beneficial financial interest in or so closely
6 linked to the transaction and of such financial
7 significance to the person that the interest would
8 reasonably be expected to exert an influence on
9 the director's judgment if the director were
10 called upon to vote on the transaction:

11 (i) An entity other than the
12 corporation of which the director is a director,
13 general partner, agent, or employee;

14 (ii) A person that controls one or
15 more of the entities specified in subparagraph (i)
16 or an entity that is controlled by, or is under
17 common control with, one or more of the entities
18 specified in subparagraph (i); or

19 (iii) An individual who is a
20 general partner, principal, or employer of the
21 director.

22 (2) "Director's conflicting interest
23 transaction" with respect to a corporation means a
24 transaction effected or proposed to be effected by
25 the corporation or by a subsidiary of the

1 corporation or any other entity in which the
2 corporation has a controlling interest respecting
3 which a director of the corporation has a
4 conflicting interest.

5 (3) "Related person" of a director means:

6 (a) The spouse or a parent or sibling
7 thereof of the director, or a child, grandchild,
8 sibling, parent or spouse of any thereof of the
9 director, or an individual having the same home as
10 the director, or a trust or estate of which an
11 individual specified in this paragraph is a
12 substantial beneficiary; or

13 (b) A trust, estate, incompetent,
14 conservatee, or minor of which the director is a
15 fiduciary.

16 (4) "Required disclosure" means disclosure
17 by the director who has a conflicting interest of:

18 (a) The existence and nature of the
19 director's conflicting interest; and

20 (b) All facts known to the director
21 respecting the subject matter of the transaction
22 that an ordinarily prudent person would reasonably
23 believe to be material to a judgment about whether
24 or not to proceed with the transaction.

25 (5) "Time of commitment" respecting a

1 transaction means the time when the transaction is
2 consummated or, if made pursuant to contract, the
3 time when the corporation or its subsidiary or the
4 entity in which it has a controlling interest
5 becomes contractually obligated so that its
6 unilateral withdrawal from the transaction would
7 entail significant loss, liability, or other
8 damage."

9 Section 115. Title 36 of the Code of the Federated States of
10 Micronesia (Annotated), is hereby amended by inserting a new
11 section 213 of chapter 1, to read as follows:

12 "Section 213. Judicial action.

13 (1) A transaction effected or proposed to be
14 effected by a corporation or by a subsidiary of
15 the corporation or any other entity in which the
16 corporation has a controlling interest that is not
17 a director's conflicting interest transaction may
18 not be enjoined, set aside, or give rise to an
19 award of damages or other sanctions, in a
20 proceeding by a shareholder or by or in the right
21 of the corporation, because a director of the
22 corporation, or any person with whom or which the
23 director has a personal, economic, or other
24 association, has an interest in the transaction.

25 (2) A director's conflicting interest

1 transaction may not be enjoined, set aside, or
2 give rise to an award of damages or other
3 sanctions, in a proceeding by a shareholder or by
4 or in the right of the corporation, because the
5 director, or any person with whom or which the
6 director has a personal, economic, or other
7 association, has an interest in the transaction,
8 if:

9 (a) Directors' action respecting the
10 transaction was at any time taken in compliance
11 with section 214;

12 (b) Shareholders' action respecting the
13 transaction was at any time taken in compliance
14 with section 215; or

15 (c) The transaction, judged according
16 to the circumstances at the time of commitment, is
17 established to have been fair to the corporation."

18 Section 116. Title 36 of the Code of the Federated States of
19 Micronesia (Annotated), is hereby amended by inserting a new
20 section 214 of chapter 1, to read as follows:

21 "Section 214. Directors' action.

22 (1) The action of directors respecting a
23 transaction is effective for purposes of section
24 213(2)(a) if the transaction received the
25 affirmative vote of a majority but no fewer than

1 two of those qualified directors on the board of
2 directors or on a duly empowered committee of the
3 board who voted on the transaction after either
4 required disclosure to them to the extent the
5 information was now known by them or compliance
6 with subsection (2); provided however that action
7 by a committee is so effective only if:

8 (a) All its members are qualified
9 directors; and

10 (b) Its members are either all the
11 qualified directors on the board or are appointed
12 by the affirmative vote of a majority of the
13 qualified directors on the board.

14 (2) If a director has a conflicting interest
15 respecting a transaction, but neither the director
16 nor a related person of the director, as set forth
17 in the definition of "related person", in section
18 212, is a party to the transaction, and if the
19 director has a duty under law or professional
20 canon, or a duty of confidentiality to another
21 person, respecting information relating to the
22 transaction such that the director may not make
23 the required disclosure described in subsection
24 (b) of the definition of "required disclosure" in
25 section 212, then disclosure is sufficient for

1 purposes of subsection (1) if the director:

2 (a) Discloses to the directors voting
3 on the transaction the existence and nature of the
4 directors' conflicting interest and informs them
5 of the character and limitations imposed by that
6 duty before their vote on the transaction; and

7 (b) Plays no part, directly or
8 indirectly, in their deliberations or vote.

9 (3) A majority but not fewer than two of all
10 of the qualified directors on the board of
11 directors, or on the committee, constitutes a
12 quorum for purposes of action that complies with
13 this section. The action of directors that
14 otherwise complies with this section is not
15 affected by the presence or vote of a director who
16 is not a qualified director.

17 (4) For purposes of this section, "qualified
18 director" means, with respect to a director's
19 conflicting interest transaction, any director who
20 does not have either:

21 (a) A conflicting interest respecting
22 the transaction; or

23 (b) A familial, financial,
24 professional, or employment relationship with a
25 second director who does have a conflicting

1 interest respecting the transaction, which
2 relationship would, in the circumstances,
3 reasonably to be expected to exert an influence on
4 the first director's judgment when voting on the
5 transaction."

6 Section 117. Title 36 of the Code of the Federated States of
7 Micronesia (Annotated), is hereby amended by inserting a new
8 section 215 of chapter 1, to read as follows:

9 "Section 215. Shareholders' action.

10 (1) Shareholders' action respecting a
11 transaction is effective for purposes of section
12 213 (2)(b) if a majority of the votes entitled to
13 be cast by the holders of all qualified shares
14 were cast in favor of the transaction after:

15 (a) Notice to shareholders describing
16 the director's conflicting interest transaction;

17 (b) Provision of the information
18 referred to in subsection (4); and

19 (c) Required disclosure to the
20 shareholders who voted on the transaction to the
21 extent the information was not known by them.

22 (2) For purposes of this section, "qualified
23 shares" means any shares entitled to vote with
24 respect to the director's conflicting interest
25 transaction except shares that, to the knowledge,

1 before the vote, of the secretary or other officer
2 or agent of the corporation authorized to tabulate
3 votes, are beneficially owned or the voting of
4 which is controlled by a director who has a
5 conflicting interest respecting the transaction or
6 by a related person of the director, or both.

7 (3) A majority of the votes entitled to be
8 cast by the holders of all qualified shares
9 constitutes a quorum for purposes of action that
10 complies with this section. Subject to
11 subsections (4) and (5), shareholders' action that
12 otherwise complies with this section is not
13 affected by the presence of holders, or the
14 voting, of shares that are not qualified shares.

15 (4) For purposes of compliance with
16 subsection (1), a director who has a conflicting
17 interest respecting the transaction, before the
18 shareholders' vote, shall inform the secretary or
19 other officer or agent of the corporation
20 authorized to tabulate votes of the number, and
21 the identity of persons holding or controlling the
22 vote, of all shares that the director knows are
23 beneficially owned or the voting of which is
24 controlled by the director or by a related person
25 of the director, or both.

1 (5) If a shareholders' vote does not comply
2 with subsection (1) solely because of a failure of
3 a director to comply with subsection (4), and if
4 the director establishes that the director's
5 failure did not determine and was not intended by
6 the director to influence the outcome of the vote,
7 the court, with or without further proceedings
8 respecting section 213 (2)(c), may take such
9 action respecting the transaction and the
10 director, and give such effect, if any, to the
11 shareholders' vote, as it considers appropriate in
12 the circumstances."

13 Section 118. Title 36 of the Code of the Federated States of
14 Micronesia (Annotated), is hereby amended by inserting a new
15 section 216 of chapter 1, to read as follows:

16 "Section 216. Conversion into and from
17 corporations.

18 (1) A domestic corporation may adopt a plan
19 of conversion and convert to a foreign corporation
20 or any other entity if:

21 (a) The board of directors and
22 shareholders of the domestic corporation approve a
23 plan of conversion in the manner prescribed by
24 section 235 and the conversion is treated as a
25 merger to which the converting entity is a party

1 and not the surviving entity;

2 (b) The conversion is permitted by, and
3 complies with the laws of the state or country in
4 which the converted entity is to be incorporated,
5 formed, or organized; and the incorporation,
6 formulation, or organization of the converted
7 entity complies with those laws;

8 (c) At the time the conversion becomes
9 effective, each shareholder of the domestic
10 corporation, unless otherwise agreed to by that
11 shareholder, owns an equity interest or other
12 ownership interest in, and is a shareholder,
13 partner, member, owner, or other security holder
14 of, the converted entity;

15 (d) The shareholders of the domestic
16 corporation, as a result of the conversion, shall
17 not become liable, without the shareholders'
18 consent, for the liabilities or obligations of the
19 converted entity;

20 (e) The converted entity is
21 incorporated, formed, or organized as part of or
22 pursuant to the plan of conversion.

23 (2) Any foreign corporation or other entity
24 may adopt a plan of conversion and convert to a
25 domestic corporation if the conversion is

1 permitted by and complies with the laws of the
2 states or country in which the foreign corporation
3 or other entity is incorporated, formed, or
4 organized.

5 (3) A plan of conversion shall set forth:

6 (a) The name of the converting entity
7 and the converted entity;

8 (b) A statement that the converting
9 entity is continuing its existence in the
10 organizational form of the converted entity;

11 (c) A statement describing the
12 organizational form of the converted entity and
13 the state or country under the laws of which the
14 converted entity is to be incorporated, formed, or
15 organized; and

16 (d) The manner and basis of converting
17 the shares or other forms of ownership of the
18 converting entity into shares or other forms of
19 ownership of the converted entity; or any
20 combination thereof.

21 (4) A plan of conversion may set forth any
22 other provisions relating to the conversion that
23 are not prohibited by law, including without
24 limitation the initial bylaws and officers of the
25 converted entity.

1 (5) After a conversion of a domestic or
2 foreign corporation is approved, and at any time
3 before the conversion becomes effective, the plan
4 of conversion may be abandoned by the converting
5 entity without shareholder action and in
6 accordance with the procedures set forth in the
7 plan of conversion or, if these procedures are not
8 provided in the plan, in the manner determined by
9 the board of directors. If articles of conversion
10 have been filed with the Registrar, but the
11 conversion has not become effective, the
12 conversion may be abandoned if a statement,
13 executed on behalf of the converting entity by an
14 officer or other duly authorized representative
15 and stating that the plan of conversion has been
16 abandoned in accordance with applicable law, is
17 filed with the Registrar prior to the effective
18 date of the conversion. If the Registrar finds
19 the statement satisfied the requirements provided
20 by law, the Registrar, after all fees have been
21 paid shall:

22 (a) Stamp the statement and include the
23 date of the filing;

24 (b) File the document with the
25 Registrar; and;

1 (c) Issue a certificate of abandonment
2 to the converting entity or its authorized
3 representatives.

4 (6) Once the statement provided in
5 subsection (5) is filed with the Registrar, the
6 conversion shall be deemed abandoned and shall not
7 be effective."

8 Section 119. Title 36 of the Code of the Federated States
9 of Micronesia (Annotated), is hereby amended by inserting a new
10 section 217 of chapter 1, to read as follows:

11 "Section 217. Articles of conversion.

12 (1) If a plan of conversion has been
13 approved in accordance with section 216 and has
14 not been abandoned, articles of conversion shall
15 be executed by an officer or other duly authorized
16 representative of the converting entity and shall
17 set forth:

18 (a) A statement certifying the
19 following:

20 (i) The name, type of entity, and state
21 or country of incorporation, formation, or
22 organization of the converting and converted
23 entities;

24 (ii) That a plan of conversion has been
25 approved in accordance with section 216;

1 (iii) That an executed plan of
2 conversion is on file at the principal place of
3 business of the converting entity and stating the
4 address thereof; and

5 (iv) That a copy of the plan of
6 conversion shall be furnished by the converting
7 entity prior to the conversion or by the converted
8 entity after the conversion on written request and
9 without cost, to any shareholder, partner, member,
10 or owner of the converting entity or the converted
11 entity;

12 (b) If the converting entity is a
13 domestic corporation, the number of shares
14 outstanding and, if the shares of any class or
15 series are entitled to vote as a class, the
16 designation and number of outstanding shares of
17 each class or series;

18 (c) If the converting entity is a
19 domestic corporation, the number of shares
20 outstanding that voted for and against the plan,
21 and, if the shares of any class or series are
22 entitled to vote as a class, the number of shares
23 of each class or series that voted for and against
24 the plan; and

25 (d) If the converting entity is a

1 foreign corporation or other entity, a statement
2 that the approval of the plan of conversion was
3 duly authorized and complied with the laws under
4 which it was incorporated, formed, or organized.

5 (2) The articles of conversion shall be
6 delivered to the Registrar. The converted entity,
7 if a domestic corporation, domestic professional
8 corporation, domestic nonprofit corporation,
9 domestic general partnership, domestic limited
10 partnership, or domestic limited liability company
11 shall attach a copy of its respective registration
12 documents with the articles of conversion.

13 (3) If the Registrar finds that the articles
14 of conversion satisfy the requirements provided by
15 law, and that all required documents are filed,
16 the Registrar, after all fees have been paid,
17 shall:

18 (a) Stamp the articles of conversion
19 and include the date of the filing;

20 (b) File the document with the
21 Registrar; and

22 (c) Issue a certificate of conversion
23 to the converted entity or its authorized
24 representatives."

25 Section 120. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 218 of chapter 1, to read as follows:

3 "Section 218. Effect of conversion.

4 (1) When conversion become effective:

5 (a) The converting entity shall
6 continue to exist without interruption, but in the
7 organizational form of the converted entity;

8 (b) Subject to restrictions on the
9 ownership of real property by non citizens of the
10 Federated States of Micronesia all rights, title,
11 and interest in all real estate and other property
12 owned by the converting entity shall automatically
13 be owned by the converted entity without reversion
14 or impairment, subject to any existing liens or
15 other encumbrances thereon;

16 (c) All liabilities and obligations of
17 the converting entity shall automatically be
18 liabilities and obligations of the converted
19 entity without impairment or diminution due to the
20 conversion;

21 (d) The rights of creditors of the
22 converting entity shall continue against the
23 converted entity and shall not be impaired or
24 extinguished by the conversion;

25 (e) Any action or proceeding pending by

1 or against the converting entity may be continued
2 by or against the converted entity without any
3 need for substitution of parties;

4 (f) The shares and other forms of
5 ownership in the converting entity that are to be
6 converted into shares, and other forms of
7 ownership, in the converted entity as provided in
8 the plan of conversion shall be converted, and if
9 the converting entity is a domestic corporation,
10 the former shareholders of the domestic
11 corporation shall be entitled only to the rights
12 provided in the plan of conversion or to the
13 rights to dissent under section 243.

14 (g) A shareholder, partner, member, or
15 other owner of the converted entity shall be
16 liable for the debts and obligations of the
17 converting entity that existed before the
18 conversion takes effect only to the extent that
19 the shareholder, partner, member, or other owner:

20 (i) Agreed in writing to be liable
21 for the debts or obligations;

22 (ii) Was liable under applicable
23 law prior to the effective date of the conversion,
24 for the debts and obligations; or

25 (iii) Becomes liable under

1 applicable law for existing debts and obligations
2 of the converted entity by becoming a shareholder,
3 partner, member, or other owner of the converted
4 entity;

5 (h) If the converted entity is a
6 foreign corporation or other business entity
7 incorporated, formed, or organized under a law
8 other than the National or State laws of the
9 Federated States of Micronesia, the converted
10 entity shall file with the Registrar:

11 (i) An agreement that the
12 converted entity may be served with process in the
13 Federated States of Micronesia in any action or
14 proceeding for the enforcement of any liability or
15 obligation of the converting domestic corporation;

16 (ii) An irrevocable appointment of
17 a resident of the Federated States of Micronesia
18 including the street address, as its agent to
19 accept service of process in any such proceeding;
20 and

21 (iii) An agreement for the
22 enforcement, as provided in this chapter, of the
23 right of any dissenting shareholder, partner,
24 member, or other owner to receive payment for
25 their interest against the converted entity; and

1 (iv) If the converting entity is a
2 domestic corporation, sections 242 through 253
3 shall apply as if the converted entity were the
4 survivor of a merger with the converting entity."

5 Section 120. Title 36 of the Code of the Federated States
6 of Micronesia (Annotated), is hereby amended by inserting a new
7 section 219 of chapter 1, of to read as follows:

8 "Section 219. Authority to amend – Articles of
9 Incorporation.

10 (1) A corporation may amend its articles of
11 incorporation at any time and add or change a
12 provision that is required or permitted in the
13 articles of incorporation or to delete a provision
14 not required in the articles of incorporation.
15 Whether a provision is required or permitted in
16 the articles of incorporation is determined as of
17 the effective date of the amendment.

18 (2) A shareholder of the corporation does
19 not have a vested property right resulting from
20 any provision in the articles of incorporation,
21 including provisions relating to management,
22 control, capital structure, dividend, entitlement,
23 or purpose or duration of the corporation."

24 Section 122. Title 36 of the Code of the Federated States
25 of Micronesia (Annotated), is hereby amended by inserting a new

1 section 220 of chapter 1, to read as follows:

2 "Section 220. Amendment by board of directors.

3 (1) Unless the articles of incorporation
4 provide otherwise, a corporation's board of
5 directors may adopt one or more amendments to the
6 corporation's articles of incorporation without
7 shareholder action:

8 (a) To delete the names and addresses
9 of the initial directors;

10 (b) To delete the name and address of
11 the initial registered agent or registered office,
12 if a statement of change is on file with the
13 Registrar; or

14 (c) To make any other change expressly
15 permitted by this chapter to be made without
16 shareholder action."

17 Section 123. Title 36 of the Code of the Federated States of
18 Micronesia (Annotated), is hereby amended by inserting a new
19 section 221 of chapter 1, to read as follows:

20 "Section 221. Amendment by board of directors and
21 shareholders.

22 (1) A corporation's board of directors may
23 propose one or more amendments to the articles of
24 incorporation for submission to the shareholders.

25 (2) For the amendment to be adopted:

1 (a) The board of directors must
2 recommend the amendment to the shareholders unless
3 the board of directors determines that because of
4 conflict of interest or other special
5 circumstances it should make no recommendation and
6 communicates with the basis for its determination
7 to the shareholders with the amendment; and

8 (b) The shareholders entitled to vote
9 on the amendment must approve the amendment as
10 provided in section (5).

11 (3) The board of directors may condition its
12 submission of the proposed amendment on any basis.

13 (4) The corporation shall notify each
14 shareholder, whether or not entitled to vote, of
15 the proposed shareholders' meeting in accordance
16 with section 154. The notice of meeting must also
17 state that the purpose, or one of the purposes, of
18 the meeting is to consider the proposed amendment
19 and contain or be accompanied by a copy or summary
20 of the amendment.

21 (5) Unless this chapter, the articles of
22 incorporation, or the board of directors acting
23 pursuant to subsection (3) require a greater vote
24 or a vote by voting groups, the amendment to be
25 adopted must be approved by a vote of the

1 shareholders entitled to vote. The proposed
2 amendment shall be adopted upon receiving the
3 affirmative vote of the holders of a majority of
4 the shares entitled to vote thereon, unless any
5 class of shares is entitled to vote thereon as a
6 class, in which event the proposed amendment shall
7 be adopted upon receiving the affirmative vote of
8 the shares of each class of shares entitled to
9 vote thereon as a class and of the total shares
10 entitled to vote thereon."

11 Section 124. Title 36 of the Code of the Federated States of
12 Micronesia (Annotated), is hereby amended by inserting a new
13 section 222 of chapter 1, to read as follows:

14 "Section 222. Voting on amendments by voting
15 groups.

16 (1) The holders of the outstanding shares of
17 a class are entitled to vote as a separate voting
18 group if shareholder voting is otherwise required
19 by this chapter on a proposed amendment if the
20 amendment would:

21 (a) Increase or decrease the aggregate
22 number of authorized shares of the class;

23 (b) Effect an exchange or
24 reclassification of all or part of the shares of
25 the class into shares of another class;

1 (c) Effect an exchange or
2 reclassification, or create the right of exchange,
3 of all or part of the shares of another class into
4 shares of the class;

5 (d) Change the designation, rights,
6 preferences, or limitations of all or part of the
7 shares of the class;

8 (e) Change the shares of all or part of
9 the class into a different number of shares of the
10 same class;

11 (f) Create a new class of shares having
12 rights or preferences with respect to distribution
13 or to dissolution that are prior, superior, or
14 substantially equal to the shares of the class;

15 (g) Increase the rights, preferences,
16 or number of authorized shares of any class that,
17 after giving effect to the amendment, have rights
18 or preferences with respect to distributions or to
19 dissolution that are prior, superior, or
20 substantially equal to the shares of the class;

21 (h) Limit or deny an existing
22 preemptive right of all or part of the shares of
23 the class; or

24 (i) Cancel or otherwise affect rights
25 to distributions or dividends that have

1 accumulated but not yet been declared on all or
2 part of the shares of the class.

3 (2) If a proposed amendment would affect a
4 series of a class of shares in one or more of the
5 ways described in subsection (1), the shares of
6 that series are entitled to vote as a separate
7 voting group on the proposed amendment.

8 (3) If a proposed amendment that entitled
9 two or more series of shares to vote as separate
10 voting groups under this section would affect
11 those two or more series in the same or a
12 substantially similar way, the shares of all the
13 series so affected must vote together as a single
14 voting group on the proposed amendment.

15 (4) a class or series of shares is entitled
16 to the voting rights granted by this section
17 although the articles of incorporation provide
18 that the shares are nonvoting shares."

19 Section 125. Title 36 of the Code of the Federated
20 States of Micronesia (Annotated), is hereby amended by
21 inserting a new section 223 of chapter 1, to read as
22 follows:

23 "Section 223. Amendment before issuance of
24 shares. If a corporation has not yet issued
25 shares, its incorporators or board of directors

1 may adopt one or more amendments to the
2 corporations' articles of incorporation."

3 Section 126. Title 36 of the Code of the Federated
4 States of Micronesia (Annotated), is hereby amended by
5 inserting a new section 224 of chapter 1, to read as
6 follows:

7 "Section 224. Articles of amendment.

8 (1) A corporation amending its articles of
9 incorporation shall deliver to the Registrar for
10 filing articles of amendment setting forth:

11 (a) The name of the corporation;

12 (b) The text of each amendment adopted;

13 (c) If an amendment provides for an
14 exchange, reclassification, or cancellation of
15 issued shares, a statement that provisions
16 necessary to effect the exchange,

17 reclassification, or cancellation have been made;

18 (d) the date of each amendment's
19 adoption;

20 (e) If an amendment was adopted by the
21 incorporators or board of directors without
22 shareholder action, a statement to that effect and
23 that shareholder action was not required; and

24 (f) If an amendment was approved by the
25 shareholders:

1 (i) The designation, number of
2 outstanding shares, number of votes entitled to be
3 cast by each voting group entitled to vote
4 separately on the amendment, and number of votes
5 of each voting group indisputably represented at
6 the meeting; and

7 (ii) Either the total number of
8 votes cast for and against the amendment by each
9 voting group entitled to vote separately on the
10 amendment or the total number of undisputed votes
11 cast for the amendment by each voting group and a
12 statement that the number cast for the amendment
13 by each voting group was sufficient for approval
14 by that voting group."

15 Section 127. Title 36 of the Code of the Federated
16 States of Micronesia (Annotated), is hereby amended by
17 inserting a new section 225 of chapter 1, to read as
18 follows:

19 "Section 225. Restated and amended and restated
20 articles of incorporation.

21 (1) A corporation's board of directors may
22 restate its articles of incorporation at any time
23 with or without shareholder action.

24 (2) If the board of directors submits a
25 restatement for shareholder action, the

1 corporation shall notify each shareholder, whether
2 or not entitled to vote, of the proposed
3 shareholders' meeting in accordance with section
4 154. The notice shall also state that the
5 purpose, or one of the purposes, of the meeting is
6 to consider the proposed restatement and contain
7 or be accompanied by a copy of the restatement.

8 (3) A corporation restating its articles of
9 incorporation shall deliver to the Registrar for
10 filing articles of restatement setting forth the
11 name of the corporation and the text of the
12 restated articles of incorporation together with a
13 statement that the restatement of incorporation
14 correctly sets forth without change the
15 corresponding provisions of the articles of
16 incorporation as theretofore amended and that the
17 restated articles of incorporation supersede the
18 original articles of incorporation and any
19 amendments thereto.

20 (4) Duly adopted restated articles of
21 incorporation supersede the original articles of
22 incorporation and all amendments to them.

23 (5) The Registrar may certify restated
24 articles of incorporation as the articles of
25 incorporation currently in effect, without

1 filing articles of amendment setting forth:

2 (a) The name of the corporation;

3 (b) The text of each amendment approved
4 by the court;

5 (c) The date of the court's order or
6 decree approving the articles of amendment;

7 (d) The title of the reorganization
8 proceeding in which the order or decree was
9 entered; and

10 (e) A statement that the court had
11 jurisdiction of the proceeding under the
12 Federated States of Micronesia statute.

13 (3) Shareholders of a corporation undergoing
14 reorganization do not have dissenter's rights
15 except as and to the extent provided in the
16 reorganization plan.

17 (4) This section does not apply after entry
18 of a final decree in the reorganization proceeding
19 even though the court retains jurisdiction of the
20 proceeding for limited purposes unrelated to
21 consummation of the reorganization plan."

22 Section 129. Title 36 of the Code of the Federated
23 States of Micronesia (Annotated), is hereby amended by
24 inserting a new section 227 of chapter 1, to read as
25 follows:

1 repealed by the board of directors."

2 Section 132. Title 36 of the Code of the Federated
3 States of Micronesia (Annotated), is hereby amended by
4 inserting a new section 230 of chapter 1, to read as
5 follows:

6 "Section 230. Bylaw increasing quorum or voting
7 requirement for directors.

8 (1) A bylaw that fixes a greater quorum or
9 voting requirement for the board of directors may
10 be amended or repealed:

11 (a) If originally adopted by the
12 shareholders, only by the shareholders;

13 (b) If originally adopted by the board
14 of directors; either by the shareholders or by the
15 board of directors.

16 (2) A bylaw adopted or amended by the
17 shareholders that fixes a greater quorum or voting
18 requirement for the board of directors may provide
19 that it may be amended or repealed only by a
20 specified vote of either the shareholders or the
21 board of directors.

22 (3) Action by the board of directors under
23 subsection (1)(b) to adopt or amend a bylaw that
24 changes the quorum or voting requirement must meet
25 the same quorum requirement and be adopted by the

1 same vote required to take action under the quorum
2 and voting requirement then in effect or proposed
3 to be adopted, whichever is greater."

4 Section 133. Title 36 of the Code of the Federated
5 States of Micronesia (Annotated), is hereby amended by
6 inserting a new section 231 of chapter 1, to read as
7 follows:

8 "Section 231. Definitions – Merger and Share
9 Exchange. As used herein:

10 (1) 'Merger' means the procedure authorized
11 by this chapter in which one domestic or foreign
12 entity combines with one or more domestic or
13 foreign entities resulting in either one surviving
14 entity or one new entity.

15 (2) 'Organizing articles' means:

16 (a) For an association, corporation, or
17 nonprofit corporation, the articles of
18 incorporation;

19 (b) For a general partnership or
20 limited partnership, the registration statement;

21 (c) For a limited partnership, the
22 certificate of limited partnership; and

23 (d) For a limited liability company,
24 the articles of organization.

25 (3) 'Other business entity' means a

1 party to the merger;

2 (b) The name of the surviving entity
3 with or into which the other entity or entities
4 will merge;

5 (c) The terms and conditions of the
6 merger;

7 (d) The manner and basis of converting
8 the shares of each corporation into shares,
9 obligations, or other securities of the surviving
10 entity, or into cash or other property in whole or
11 in part;

12 (e) The street address of the surviving
13 entity's principal place of business or, if no
14 street address is available, the post office
15 number; and

16 (f) Amendments, if any, to the
17 organizing articles of the surviving entity or, if
18 no amendments are desired, a statement that the
19 organizing articles of the surviving entity shall
20 not be amended pursuant to the merger.

21 (3) A plan of merger may set forth other
22 provisions relating to the merger.

23 (4) If a foreign entity survives a merger
24 and intends to do business in the Federated States
25 of Micronesia it shall comply with all laws of the

1 (a) The name of the corporation whose
2 shares will be acquired and the name of the
3 acquiring corporation;

4 (b) the terms and conditions of the
5 exchange; and

6 (c) The manner and basis of exchanging
7 the shares to be acquired for shares, obligations,
8 or other securities of the acquiring corporation
9 or any other corporation or for cash or other
10 property in whole or in part.

11 (3) The plan of exchange may set forth other
12 provisions relating to the exchange."

13 Section 137. The Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by
15 enacting a new section 235 to chapter 1 of Title 36 as
16 follows:

17 "Section 235. Action Plan

18 (1) After adopting a plan of merger or share
19 exchange, the board of directors of each
20 corporation party to the merger, and the board of
21 directors of the corporation whose shares will be
22 acquired in the share exchange, shall submit the
23 plan for approval by its shareholders.

24 (2) For a plan of merger or share exchange
25 to be approved:

1 shares entitled to vote thereon as a class and of
2 the total shares entitled to vote thereon. Any
3 class of shares of any such corporation shall be
4 entitled to vote as a class if any such plan
5 contains any provision that, if contained in a
6 proposed amendment to articles of incorporation,
7 would entitle that class of shares to vote as a
8 class and, in the case of an exchange, if the
9 class is included in the exchange.

10 (6) Separate voting by voting groups is
11 required:

12 (a) On a plan of merger if the plan
13 contains a provision that, if contained in a
14 proposed amendment to articles of incorporation,
15 would require action by one or more separate
16 voting groups on the proposed amendment under
17 section 222; or

18 (b) On a plan of share exchange by each
19 class or series of shares included in the
20 exchange, with each class or series constituting a
21 separate voting group.

22 (7) Action by the shareholders of the
23 surviving corporation on a plan of merger is not
24 required if:

25 (a) The articles of incorporation of

1 the surviving corporation will not differ except
2 for amendments enumerated in section 220 from the
3 articles of incorporation before the merger;

4 (b) Each shareholder of the surviving
5 corporation whose shares were outstanding
6 immediately before the effective date of the
7 merger will hold the same number of shares, with
8 identical designation, preferences, limitations,
9 and relative rights, immediately after the merger;

10 (c) The number of voting shares
11 outstanding immediately after the merger, plus the
12 number of voting shares issuable as a result of
13 the merger either by the conversion of securities
14 issued pursuant to the merger or the exercise of
15 rights and warrants issued pursuant to the merger,
16 will not exceed by more than twenty per cent the
17 total number of voting shares of the surviving
18 corporation outstanding immediately before the
19 merger; and

20 (d) The number of participating shares
21 outstanding immediately after the merger, plus the
22 number of participating shares issuable as a
23 result of the merger either by the conversion of
24 securities issued pursuant to the merger or
25 exercise of rights and warrants issued pursuant to

1 the merger, will not exceed by more than twenty
2 per cent the total number of participating shares
3 outstanding immediately before the merger.

4 (8) As used in subsection (7):

5 (a) 'Participating shares' means shares
6 that entitle their holders to participate without
7 limitations in distributions.

8 (b) 'Voting shares' means shares that
9 entitle their holders to vote unconditionally in
10 elections of directors.

11 (9) After a merger or share exchange is
12 authorized, and at any time before articles of
13 merger or share exchange are filed, the planned
14 merger or share exchange may be abandoned without
15 prejudice to contractual rights, if any, without
16 further shareholder action, in accordance with the
17 procedure set forth in the plan of merger or share
18 exchange or, if none is set forth, in the manner
19 determined by the board of directors. A plan of
20 merger may provide that at any time prior to the
21 time that the plan becomes effective, the plan may
22 be terminated by the board of directors of any
23 constituent corporations notwithstanding approval
24 of the plan by the stockholders of all or any of
25 the constituent corporations. If the plan of

1 merger is terminated after the filing of the
2 articles but before the plan has become effective,
3 a certificate of termination shall be filed with
4 the Registrar. A plan of merger may allow the
5 boards of directors of the constituent
6 corporations to amend the plan at any time prior
7 to the time that the plan becomes effective;
8 provided that an amendment made subsequent to the
9 adoption of the plan by the stockholders of any
10 constituent corporation shall not:

11 (a) Alter or change the amount or kind
12 of shares, securities, cash, property, or rights
13 or any of them to be received in exchange for or
14 on conversion of all or any of the shares of any
15 class or series thereof of the constituent
16 corporation;

17 (b) Alter or change any term of the
18 organizing articles of the surviving entity to be
19 effected by the merger; or

20 (c) Alter or change any of the terms
21 and conditions of the plan if the alteration or
22 change would adversely affect the holders of any
23 class or series of shares thereof of the
24 constituent corporation.

25 (10) If the plan of merger is amended after

1 the articles are filed with the Registrar but
2 before the plan has become effective, articles of
3 amendment shall be filed with the Registrar.

4 (11) A merger or share exchange takes effect
5 on the filing date of the articles of merger or
6 share exchange, or on the date subsequent to the
7 filing as set forth in the articles of merger or
8 share exchange; provided that the effective date
9 shall not be more than thirty days from the filing
10 date."

11 Section 138. Title 36 of the Code of the Federated
12 States of Micronesia (Annotated), is hereby amended by
13 inserting a new section 236 of chapter 1, to read as
14 follows:

15 "Section 236. Merger of subsidiary.

16 (1) A parent corporation owning at least
17 ninety per cent of the outstanding shares of each
18 class of a subsidiary corporation may merge the
19 subsidiary into itself without approval of the
20 shareholders of the parent or subsidiary.

21 (2) The board of directors of the parent
22 corporation shall adopt a plan of merger that sets
23 forth:

24 (a) The names of the parent and
25 subsidiary; and

1 (b) The manner and basis of converting
2 the shares of the subsidiary into shares,
3 obligations, or other securities of the parent or
4 any other corporation or into cash or other
5 property in whole or in part.

6 (3) The parent corporation shall mail a copy
7 of the plan of merger to each shareholder of the
8 subsidiary corporation who does not waive the
9 mailing requirement in writing.

10 (4) Articles of merger shall be delivered to
11 the Registrar for filing and shall set forth:

12 (a) The name and jurisdiction of
13 incorporation of the subsidiary corporation, and
14 the name and jurisdiction of incorporation of the
15 corporation owning at least ninety percent of its
16 shares, which is hereinafter designated as the
17 surviving corporation;

18 (b) A statement that the plan or merger
19 has been approved by the board of directors of the
20 surviving corporation;

21 (c) The number of outstanding shares of
22 each class of the subsidiary corporation and the
23 number of shares of each class owned by the
24 surviving corporation;

25 (d) The date a copy of the plan of

1 merger was mailed to shareholders of the
2 subsidiary corporation entitled to receive the
3 plan; and

4 (e) A statement that includes:

5 (i) An agreement that the
6 surviving entity may be served with process in the
7 Federated States of Micronesia in any action or
8 proceeding for the enforcement of any liability or
9 obligation of any entity previously subject to
10 suit in the Federated States of Micronesia that is
11 to merge;

12 (ii) An irrevocable appointment of
13 a resident of the Federated States of Micronesia
14 as its agent to accept service of process in a
15 proceeding under subparagraph (i), that includes
16 the resident's street address in the Federated
17 States of Micronesia; and

18 (iii) An agreement for the
19 enforcement, as provided in this chapter, of the
20 right of any dissenting member, shareholder, or
21 partner to receive payment for their interest
22 against the surviving entity.

23 (5) The parent may not deliver articles of
24 merger to the Registrar for filing until at least
25 thirty days after the date it mailed a copy of the

1 plan of merger to each shareholder of the
2 subsidiary corporation who did not waive the
3 mailing requirement.

4 (6) Articles of merger under this section
5 may not contain amendments to the articles of
6 incorporation of the parent corporation except for
7 amendments enumerated in section 220."

8 Section 139. Title 36 of the Code of the Federated
9 States of Micronesia (Annotated), is hereby amended by
10 inserting a new section 237 of chapter 1, to read as
11 follows:

12 "Section 237. Articles of merger or share
13 exchange.

14 (1) After a plan of merger or share exchange
15 is approved by the shareholders, or adopted by the
16 board of directors if shareholder approval is not
17 required, articles of merger or share exchange
18 shall be signed on behalf of each corporation and
19 each other entity that is a party to the merger or
20 share exchange and shall be delivered to the
21 Register for filing. The articles of merger or
22 share exchange shall set forth:

23 (a) For a merger, the name and
24 jurisdiction of each entity that is a party to the
25 merger, and the name, address, and jurisdiction of

1 the surviving entity;

2 (b) For a share exchange, the name,
3 address, and jurisdiction of both the corporation
4 whose shares will be acquired and the acquiring
5 corporation;

6 (c) A statement that the plan of merger
7 or share exchange has been approved by each entity
8 involved in the merger or share exchange;

9 (d) If a merger, a statement indicating
10 any changes in the organizing articles of the
11 surviving entity to be given effect by the merger;
12 provided that if no changes are made, a statement
13 that the organizing articles of the surviving
14 entity shall not be amended pursuant to the
15 merger; and

16 (e) A statement that includes:

17 (i) An agreement that the
18 surviving entity may be served with process in the
19 Federated States of Micronesia in any action or
20 proceeding for the enforcement of any liability or
21 obligation of any entity previously subject to
22 suit in the Federated States of Micronesia that is
23 to merge;

24 (ii) An irrevocable appointment of
25 a resident of the Federated States of Micronesia

1 as its agent to accept service of process in a
2 proceeding under subparagraph (i), that includes
3 the resident's street address in the Federated
4 States of Micronesia; and

5 (iii) An agreement for the
6 enforcement, as provided in this chapter, of the
7 right of any dissenting member, shareholder, or
8 partner to receive payment for their interest
9 against the surviving entity.

10 (2) If the articles of merger provide for a
11 future effective date, and:

12 (a) The plan of merger is amended to
13 change the future effective date;

14 (b) The plan of merger permits the
15 amendment of the articles of merger to change the
16 future effective date without an amendment to the
17 plan of merger; or

18 (c) The plan of merger is amended to
19 change any other matter contained in the articles
20 of merger so as to make the articles of merger
21 inaccurate in any material respect, prior to the
22 future effective date;

23 Then the articles of merger shall be amended by
24 filing with the Registrar articles of amendment
25 that identify the articles of merger and set forth

1 the amendment to the articles of merger. If the
2 articles of merger provide for a future effective
3 date and if the plan of merger is terminated prior
4 to the future effective date, the articles of
5 merger shall be terminated by filing with the
6 Registrar a certificate of termination that
7 identifies the articles of merger and states that
8 the plan of merger has been terminated.

9 (3) Articles of merger operate as an
10 amendment to the corporation's articles of
11 incorporation."

12 Section 140. Title 36 of the Code of the Federated
13 States of Micronesia (Annotated), is hereby amended by
14 inserting a new section 238 of chapter 1, to read as
15 follows:

16 "Section 238. Effect of merger or share exchange.

17 (1) When a merger takes effect:

18 (a) Every other entity that is a party
19 to the merger merges into the surviving entity and
20 the separate existence of every entity except the
21 surviving entity ceases;

22 (b) The title to all lawfully owned
23 real estate and other property owned by each
24 entity that is a party to the merger is vested in
25 the surviving entity to the extent permitted by

1 law without reversion or impairment;

2 (c) The surviving entity has all
3 liabilities of each entity that is a party to the
4 merger;

5 (d) A proceeding pending against any
6 entity that is a party to the merger may be
7 continued as if the merger did not occur or the
8 surviving entity may be substituted in the
9 proceeding for the entity whose existence ceased;

10 (e) The organizing articles of the
11 surviving entity are amended to the extent
12 provided in the plan of merger and indicated in
13 the articles of merger; and

14 (f) The shares of each corporation
15 party to the merger that are to be converted into
16 shares, obligations, or other securities of the
17 surviving entity or into cash or other property
18 are converted, and the former holders of he shares
19 are entitled only to the rights provided in the
20 articles of merger or to their rights under
21 section 242 through 255.

22 (2) When a share exchange takes effect, the
23 shares of each acquired corporation are exchanged
24 as provided in the plan, and the former holder of
25 the shares are entitled only to the exchange

1 rights provided in the articles of share exchange
2 or to their rights under section 242 through 255.

3 (3) If a surviving entity fails to appoint
4 or maintain an agent designated for service of
5 process in the Federated States of Micronesia or
6 the agent for service of process cannot with
7 reasonable diligence be found at the designated
8 office, service of process may be made upon the
9 surviving entity by sending a copy of the process
10 by registered or certified mail, return receipt
11 requested, to the surviving entity at the address
12 set forth in the articles of merger. Service is
13 effected under this subsection at the earliest of:

14 (a) The date of the surviving entity
15 receives the process, notice, or demand;

16 (b) The date shown on the return
17 receipt, if signed on behalf of the surviving
18 entity; or

19 (c) Five days after its deposit in the
20 mail, if mailed postpaid and correctly addressed."

21 Section 141. Title 36 of the Code of the Federated
22 States of Micronesia (Annotated), is hereby amended by
23 inserting a new section 226 of chapter 1, to read as
24 follows:

25 "Section 226. Merger of subsidiary corporations.

1 (1) Any corporation owning at least ninety
2 percent of the outstanding shares of each class of
3 two or more corporations may adopt a plan of
4 merger pursuant to section 236 that shall be
5 delivered to the Registrar for filing including
6 articles of merger. The articles of merger shall
7 be signed by the parent corporation and the
8 surviving subsidiary corporation. The plan of
9 merger shall set forth:

10 (a) The name of the parent corporation
11 owning at least ninety percent of the shares of
12 the subsidiary corporations, the name of any
13 nonsurviving subsidiary corporation, and the name
14 of the surviving corporation; and

15 (b) The manner and basis of converting
16 the shares of any nonsurviving subsidiary
17 corporation into shares, obligations, or other
18 securities of the surviving subsidiary corporation
19 or of any other corporation or, in whole or in
20 part, into cash or other property.

21 (2) A copy of the plan of merger shall be
22 mailed to each shareholder of record of any
23 nonsurviving subsidiary corporation.

24 (3) On or after the thirtieth day after the
25 mailing of a copy of the plan of merger to

1 shareholders of any nonsurviving subsidiary
2 corporation or upon the waiver thereof by the
3 holders of all outstanding shares, the articles of
4 merger shall be delivered to the Registrar for
5 filing. Articles of merger shall set forth:

6 (a) A statement that the plan of merger
7 has been approved by the board of directors of the
8 parent corporation;

9 (b) The number of outstanding shares of
10 each class of any nonsurviving subsidiary
11 corporation and the number of the shares of each
12 class owned by the parent corporation; and

13 (c) The date a copy of the plan of
14 merger is mailed to shareholders of any
15 nonsurviving subsidiary corporation entitled to
16 receive the plan of merger."

17 Section 142. Title 36 of the Code of the Federated
18 States of Micronesia (Annotated), is hereby amended by
19 inserting a new section 240 of chapter 1, to read as
20 follows:

21 "Section 240. Sale of assets in regular course of
22 business and mortgage of assets.

23 (1) A corporation, on the terms and
24 conditions and for the consideration determined by
25 the board of directors, may:

1 (a) Sell, lease, exchange, or otherwise
2 dispose of all, or substantially all, of its
3 property in the usual and regular course of
4 business;

5 (b) Mortgage, pledge, dedicate to the
6 repayment of indebtedness whether with or
7 without recourse, or otherwise encumber any
8 or all of its property whether or not in the
9 usual and regular course of business; or

10 (c) Transfer any or all of its property
11 to a corporation all the shares of which are
12 owned by the corporation.

13 (2) Unless the articles of incorporation
14 require it, approval by the shareholders of a
15 transaction described in subsection (1) is not
16 required."

17 Section 143. Title 36 of the Code of the Federated
18 States of Micronesia (Annotated), is hereby amended by
19 inserting a new section 241 of chapter 1, to read as
20 follows:

21 "Section 241. Sale of assets other than in
22 regular course of business.

23 (1) A corporation may sell, lease, exchange,
24 or otherwise dispose of all, or substantially all,
25 of its property with or without the goodwill,

1 otherwise than in the usual and regular course of
2 business, on the terms and conditions and for the
3 consideration determined by the corporation's
4 board of directors, if the board of directors
5 proposes and its shareholders approve the proposed
6 transaction.

7 (2) For a transaction to be authorized:

8 (a) The board of directors must
9 recommend the proposed transaction to the
10 shareholders unless the board of directors
11 determines that because of conflict of interest or
12 other special circumstances it should make no
13 recommendation and communicates the basis for its
14 determination to the shareholders with the
15 submission of the proposed transaction; and

16 (b) The shareholders entitled to vote
17 must approve the transaction.

18 (3) The board of directors may condition its
19 submission of the proposed transaction on any
20 basis.

21 (4) The corporation shall notify each
22 shareholder, whether or not entitled to vote, of
23 the proposed shareholders' meeting in accordance
24 with section 154. The notice must also state that
25 the purpose, or one of the purposes, of the

1 meeting is to consider the sale, lease, exchange,
2 or other disposition of all, or substantially all,
3 the property of the corporation and contain or be
4 accompanied by a description of the transaction.

5 (5) The shareholders may authorize the sale,
6 lease, exchange, or other disposition and may fix,
7 or may authorize the board of directors to fix,
8 any or all of the terms and conditions thereof and
9 the consideration to be received by the
10 corporation therefore. The authorization shall
11 require the affirmative vote of the holders of a
12 majority of the shares of the corporation entitled
13 to vote thereon, unless any class of shares is
14 entitled to vote thereon as a class, in which
15 event the authorization shall require the
16 affirmative vote of the holders of a majority of
17 the shares of each class of shares entitled to
18 vote as a class thereon and of the total shares
19 entitled to vote thereon.

20 (6) After a sale, lease, exchange, or other
21 disposition of property is authorized, the
22 transaction may be abandoned subject to any
23 contractual rights without further shareholder
24 action.

25 (7) A transaction that constitutes a

1 distribution to shareholders is governed by
2 section 149 and not by this section.

3 (8) A sale, lease, exchange, or other
4 disposition of the property of a corporation shall
5 not be deemed to be the sale, lease, exchange, or
6 other disposition of all or substantially all the
7 property of the corporation if the corporation is
8 retaining sufficient property to continue one or
9 more significant business segments or lines of the
10 corporation after the sale, lease, exchange, or
11 other disposition. Furthermore, the business
12 segments or lines retained must not be only
13 temporary operations or merely a pretext to avoid
14 shareholders' rights which might otherwise arise
15 under this chapter."

16 Section 144. Title 36 of the Code of the Federated
17 States of Micronesia (Annotated), is hereby amended by
18 inserting a new section 242 of chapter 1, to read as
19 follows:

20 "Section 242. Definitions – Dissenters Rights. As
21 used herein:

22 (1) 'Beneficial shareholder' means the
23 person who is a beneficial owner of shares held in
24 a voting trust or by a nominee as the record
25 shareholder.

1 (2) 'Corporation' means the issuer of the
2 shares held by a dissenter before the corporate
3 action, or the surviving or acquiring corporation
4 by merger or share exchange of that issuer.

5 (3) 'Dissenter' means a shareholder who is
6 entitled to dissent from corporate action under
7 section 243 and who exercises that right when and
8 in the manner required by section 245 to 253.

9 (4) 'Fair value', with respect to a
10 dissenter's shares, means the value of the shares
11 immediately before the effectuation of the
12 corporate action to which the dissenter objects,
13 excluding any appreciation or depreciation in
14 anticipation of the corporate action unless
15 exclusion would be inequitable.

16 (5) 'Interest' means interest from the
17 effective date of the corporate action until the
18 date of payment, at the average rate currently
19 paid by the corporation on its principal bank
20 loans or, if none, at a rate that is fair and
21 equitable under all the circumstances.

22 (6) 'Record shareholder' means the person in
23 whose name shares are registered in the records of
24 a corporation or the beneficial owner of shares to
25 the extent of the rights granted by a nominee

1 certificate on file with a corporation.

2 (7) 'Shareholders' means the record
3 shareholder or beneficial shareholder."

4 Section 145. Title 36 of the Code of the Federated
5 States of Micronesia (Annotated), is hereby amended by
6 inserting a new section 243 of chapter 1, to read as
7 follows:

8 "Section 243. Right to dissent.

9 (1) A shareholder is entitled to dissent
10 from, and obtain payment of the fair value of the
11 shareholder's shares in the event of, any of the
12 following corporate actions:

13 (a) Consummation of a plan of merger to
14 which the corporation is a party:

15 (i) If shareholder approval is
16 required for the merger by section 235 or the
17 articles of incorporation; provided that the
18 shareholder is entitled to vote on the merger; or

19 (ii) If the corporation is a
20 subsidiary that is merged with its parent under
21 section 236;

22 (b) Consummation of a plan of share
23 exchange to which the corporation is a party as
24 the corporation whose shares will be acquired, if
25 the shareholder is entitled to vote on the plan;

1 (c) Consummation of a sale or exchange
2 of all, or substantially all, of the property of
3 the corporation other than in the usual and
4 regular course of business, if the shareholder is
5 entitled to vote on the sale or exchange,
6 including a sale in dissolution, but not including
7 a sale pursuant to court order or a sale for cash
8 pursuant to a plan by which all or substantially
9 all of the net proceeds of the sale will be
10 distributed to the shareholders within one year
11 after the date of sale;

12 (d) An amendment of the articles of
13 incorporation that materially and adversely
14 affects rights in respect of a dissenter's shares
15 because it:

16 (i) Alters or abolishes a
17 preferential right of the shares;

18 (ii) Creates, alters, or abolishes
19 a right in respect of redemption, including a
20 provision respecting a sinking fund for the
21 redemption or repurchase, of the shares;

22 (iii) Alters or abolishes a
23 preemptive right of the holder of the shares to
24 acquire shares or other securities;

25 (iv) Excludes or limits the right

1 of the shares to vote on any matter, or to
2 cumulate votes, other than a limitation by
3 dilution through issuance of shares or other
4 securities with similar voting rights; or

5 (v) Reduces the number of shares
6 owned by the shareholder to a fraction of a share
7 if the fractional share so created is to be
8 acquired for cash under section 137;

9 (e) Any corporate action taken pursuant
10 to a shareholder vote to the extent the articles
11 of incorporation, bylaws, or a resolution of the
12 board of directors provides that voting or
13 nonvoting shareholders are entitled to dissent and
14 obtain payment for their shares; or

15 (f) Consummation of a plan of
16 conversion to which the corporation is the
17 converting entity, if the shareholder is entitled
18 to vote on the plan.

19 (2) A shareholder entitled to dissent and
20 obtain payment for the shareholder's shares under
21 this part may not challenge the corporate action
22 creating the shareholder's entitlement unless the
23 action is unlawful or fraudulent with respect to
24 the shareholder or the corporation."

25 Section 146. Title 36 of the Code of the Federated

1 States of Micronesia (Annotated), is hereby amended by
2 inserting a new section 244 of chapter 1, to read as
3 follows:

4 "Section 244. Dissent by nominees and beneficial
5 owners.

6 (1) A record shareholder may assert
7 dissenter's rights as to fewer than all the shares
8 registered in the shareholder's name only if the
9 shareholder dissents with respect to all shares
10 beneficially owned by any one person and notifies
11 the corporation in writing of the name and address
12 of each person on whose behalf the record
13 shareholder asserts dissenters' rights. The
14 rights of a partial dissenter under this
15 subsection are determined as if the shares to
16 which the partial dissenter dissents and the
17 partial dissenter's other shares were registered
18 in the names of different shareholders.

19 (2) A beneficial shareholder may assert
20 dissenter's rights as to shares held on the
21 beneficial shareholder's behalf only if:

22 (a) The beneficial shareholder submits
23 to the corporation the record shareholder's
24 written consent to the dissent not later than the
25 time the beneficial shareholder asserts

1 dissenters' rights; and

2 (b) The beneficial shareholder does so
3 with respect to all shares of which the beneficial
4 shareholder is the beneficial shareholder or over
5 which the beneficial shareholder has power to
6 direct the vote."

7 Section 147. Title 36 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 245 of chapter 1, to read as
10 follows:

11 "Section 245. Notice of dissenters' rights.

12 (1) If proposed corporate action creating
13 dissenters' rights under section 243 is submitted
14 to a vote at a shareholders' meeting, the meeting
15 notice must state that shareholders are or may be
16 entitled to assert dissenters' rights under this
17 part and be accompanied by a copy of this part.

18 (2) If corporate action creating dissenters'
19 rights under section 243 is taken without a vote
20 of shareholders, the corporation shall notify in
21 writing all shareholders entitled to assert
22 dissenters' rights that the action was taken and
23 send them the dissenters' notice described in
24 section 247."

25 Section 148. Title 36 of the Code of the Federated

1 States of Micronesia (Annotated), is hereby amended by
2 inserting a new section 246 of chapter 1, to read as
3 follows:

4 "Section 246. Notice of intent to demand payment.

5 (1) If proposed corporate action creating
6 dissenters' rights under section 243 is submitted
7 to a vote at a shareholders' meeting, a
8 shareholder who wishes to assert dissenters'
9 rights:

10 (a) Must deliver to the corporation
11 before the vote is taken written notice of the
12 shareholder's intent to demand payment for the
13 shareholder's shares if the proposed action is
14 effectuated; and

15 (b) Must not vote the shareholder's
16 shares in favor of the proposed action.

17 (2) A shareholder who does not satisfy the
18 requirements of subsection (1) is not entitled to
19 payment for the shareholder's shares under this
20 part."

21 Section 149. Title 36 of the Code of the Federated
22 States of Micronesia (Annotated), is hereby amended by
23 inserting a new section 247 of chapter 1, to read as
24 follows:

25 "Section 247. Dissenters' notice.

1 (1) If proposed corporate action creating
2 dissenters' rights under section 243 is authorized
3 at a shareholders' meeting, the corporation shall
4 deliver a written dissenters' notice to all
5 shareholders who satisfied the requirements of
6 section 246.

7 (2) The dissenters' notice must be sent no
8 later than ten days after the corporate action was
9 taken, and must:

10 (a) State where the payment demand must
11 be sent and where and when certificates for
12 certificated shares must be deposited;

13 (b) Inform holders of uncertificated
14 shares to what extent transfer of the shares will
15 be restricted after the payment demand is
16 received;

17 (c) Supply a form for demanding payment
18 that includes the date of the first announcement
19 to news media or to shareholders of the terms of
20 the proposed corporate action and requires that
21 the person asserting dissenters' rights certify
22 whether or not the person acquired beneficial
23 ownership of the shares before that date;

24 (d) Set a date which the corporation
25 must receive the payment demand, which date may

1 not be fewer than thirty nor more than sixty days
2 after the date the subsection (1) notice is
3 delivered; and

4 (e) Be accompanied by a copy of this
5 part."

6 Section 150. Title 36 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 248 of chapter 1, to read as
9 follows:

10 "Section 248. Duty to demand payment.

11 (1) A shareholder sent a dissenters' notice
12 described in section 247 must demand payment,
13 certify whether the shareholder acquired
14 beneficial ownership of shares before the date
15 required to be set forth in the dissenters' notice
16 pursuant to section 247(2) and deposit the
17 shareholder's certificates in accordance with the
18 terms of the notice.

19 (2) The shareholder who demands payment and
20 deposits the shareholder's share certificates
21 under subsection (1) retains all other rights of a
22 shareholder until these rights are canceled or
23 modified by the taking of the proposed corporate
24 action.

25 (3) A shareholder who does not demand

1 payment or deposit the shareholder's share
2 certificates where required, each by the date set
3 in the dissenters' notice, is not entitled to
4 payment for the shareholder's shares under this
5 part."

6 Section 151. Title 36 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 249 of chapter 1, to read as
9 follows:

10 "Section 249. Share restrictions.

11 (1) The corporation may restrict the
12 transfer of uncertificated shares from the date
13 the demand for their payment is received until the
14 proposed corporate action is taken or the
15 restrictions released under section 251.

16 (2) The person for whom dissenters' rights
17 are asserted as to uncertificated shares retains
18 all other rights of a shareholder until these
19 rights are canceled or modified by the taking of
20 the proposed corporate action."

21 Section 152. Title 36 of the Code of the Federated
22 States of Micronesia (Annotated), is hereby amended by
23 inserting a new section 250 of chapter 1, to read as
24 follows:

25 "Section 250. Payment.

1 (1) Except as provided in section 252, as
2 soon as the proposed corporate action is taken, or
3 upon receipt of a payment demand, the corporation
4 shall pay each dissenter who complied with section
5 248 the amount the corporation estimates to be the
6 fair value of the dissenters' shares, plus accrued
7 interest.

8 (2) The payment must be accompanied by:

9 (a) The corporation's balance sheet as
10 of the end of a fiscal year ending not more than
11 sixteen months before the date of payment, an
12 income statement for that year, a statement of
13 changes in shareholders' equity for that year, and
14 the latest available interim financial statements,
15 if any;

16 (b) A statement of the corporation's
17 estimate of the fair value of the shares;

18 (c) An explanation of how the interest
19 was calculated;

20 (d) A statement of the dissenter's
21 right to demand payment under section 253; and

22 (e) A copy of this part."

23 Section 153. Title 36 of the Code of the Federated
24 States of Micronesia (Annotated), is hereby amended by
25 inserting a new section 251 of chapter 1, to read as

1 follows:

2 "Section 251 Failure to take action.

3 (1) If the corporation does not take the
4 proposed action within sixty days after the date
5 set for demanding payment and depositing share
6 certificates, the corporation shall return the
7 deposited certificates and release the transfer
8 restrictions imposed on uncertificated shares.

9 (2) If after returning deposited
10 certificates and releasing transfer restrictions,
11 the corporation takes the proposed action, it must
12 send a new dissenters' notice under section 2437
13 and repeat the payment demand procedure."

14 Section 154. Title 36 of the Code of the Federated
15 States of Micronesia (Annotated), is hereby amended by
16 inserting a new section 252 of chapter 1, to read as
17 follows:

18 "Section 252. After-acquired shares.

19 (1) A corporation may elect to withhold
20 payment required by section 250 from a dissenter
21 unless the dissenter was the beneficial owner of
22 the shares before the date set forth in the
23 dissenters' notice as the date of the first
24 announcement to news media or to shareholders of
25 the terms of the proposed corporate action.

1 (2) To the extent the corporation elects to
2 withhold payment under subsection (1), after
3 taking the proposed corporate action, it shall
4 estimate the fair value of the shares, plus
5 accrued interest, and shall pay this amount to
6 each dissenter who agrees to accept it in full
7 satisfaction of the dissenter's demand. The
8 corporation shall send with its offer a statement
9 of its estimate of the fair value of the shares,
10 an explanation of how the interest was calculated,
11 and a statement of the dissenter's right to demand
12 payment under section 253."

13 Section 155. Title 36 of the Code of the Federated
14 States of Micronesia (Annotated), is hereby amended by
15 inserting a new section 253 of chapter 1, to read as
16 follows:

17 "Section 253. Procedure if shareholder
18 dissatisfied with payment or offer.

19 (1) A dissenter may notify the corporation
20 in writing of the dissenter's own estimate of the
21 fair value of the dissenter's shares and amount of
22 interest due, and demand payment of the
23 dissenter's estimate less any payment under
24 section 250, or reject the corporation's offer
25 under section 252 and demand payment of the fair

1 value of the dissenter's shares and interest due,
2 if:

3 (a) The dissenter believes that the
4 amount paid under section 250 or offered under
5 section 252 is less than the fair value of the
6 dissenter's shares or that the interest due is
7 incorrectly calculated;

8 (b) The corporation fails to make
9 payment under section 250 within sixty days after
10 the date set for demanding payment; or

11 (c) The corporation, having failed to
12 take the proposed action, does not return the
13 deposited certificates or release the transfer
14 restrictions imposed on uncertificated shares
15 within sixty days after the date set for demanding
16 payment.

17 (2) A dissenter waives the dissenter's right
18 to demand payment under this section unless the
19 dissenter notifies the corporation of the
20 dissenter's demand in writing under subsection (1)
21 within thirty days after the corporation made or
22 offered payment for the dissenter's shares."

23 Section 156. Title 36 of the Code of the Federated
24 States of Micronesia (Annotated), is hereby amended by
25 inserting a new section 254 of chapter 1, to read as

1 follows:

2 "Section 254. Court action.

3 (1) If a demand for payment under section
4 253 remains unsettled, the corporation shall
5 commence a proceeding within sixty days after
6 receiving the payment demand and petition the
7 court to determine the fair value of the shares
8 and accrued interest. If the corporation does not
9 commence the proceeding within the sixty day
10 period, it shall pay each dissenter whose demand
11 remains unsettled the amount demanded.

12 (2) The corporation shall commence the
13 proceeding in the Federated States of Micronesia
14 Supreme Court. If the corporation is a foreign
15 corporation without a registered office in the
16 Federated States of Micronesia, it shall commence
17 the proceeding in the trial division of the
18 Federated States of Micronesia Supreme Court in
19 the State where the registered office of the
20 domestic corporation merged with or whose shares
21 were acquired by the foreign corporation was
22 located or, if no such registered office exists,
23 in the trial division of Pohnpei State.

24 (3) The corporation shall make all
25 dissenters whether or not resident of the

1 Federated States of Micronesia whose demands
2 remain unsettled parties to the proceeding as in
3 an action against their shares and all parties
4 must be served with a copy of the petition.
5 Nonresidents may be served by registered or
6 certified mail or by publication as provided by
7 law.

8 (4) The jurisdiction of the court in which
9 the proceeding is commenced under subsection (2)
10 is plenary and exclusive. The court may appoint
11 one or more person as appraisers to receive
12 evidence and recommend decision on the question of
13 fair value. The appraisers have the power
14 described in the order appointing them, or in any
15 amendment to it. The dissenters are entitled to
16 the same discovery rights as parties in other
17 civil proceedings.

18 (5) Each dissenter made a party to the
19 proceeding is entitled to judgment:

20 (a) For the amount, if any, by which
21 the court finds the fair value of the dissenter's
22 shares, plus interest, exceeds the amount paid by
23 the corporation; or

24 (b) For the fair value, plus accrued
25 interest, of the dissenter's after-acquired shares

1 for which the corporation elected to withhold
2 payment under section 252."

3 Section 157. Title 36 of the Code of the Federated
4 States of Micronesia (Annotated), is hereby amended by
5 inserting a new section 255 of chapter 1, to read as
6 follows:

7 "Section 255. Court costs and counsel fees.

8 (1) The court in an appraisal proceeding
9 commenced under section 254 shall determine all
10 costs of the proceeding, including the reasonable
11 compensation and expenses of appraisers appointed
12 by the court. The court shall assess the costs
13 against the corporation, except that the court may
14 assess cost against all or some of the dissenters,
15 in amount the court finds equitable, to the extent
16 the court finds the dissenters acted arbitrarily,
17 vexatiously, or not in good faith in demanding
18 payment under section 253.

19 (2) The court may also assess the fees and
20 expenses of counsel and experts for the respective
21 parties, in amounts the court finds equitable:

22 (a) Against the corporation and in
23 favor of any or all dissenters if the court finds
24 the corporation did not substantially comply with
25 the requirements of sections 245 and 253; or

1 (b) Against either the corporation or a
2 dissenter, in favor of any other party, if the
3 court finds that the party against whom the fees
4 and expenses are assessed acted arbitrarily,
5 vexatiously, or not in good faith with respect to
6 the rights provided herein.

7 (3) If the court finds that the services of
8 counsel for any dissenter were of substantial
9 benefit to other dissenters similarly situated,
10 and that the fees for those services should not be
11 assessed against the corporation, the court may
12 award to these counsel reasonable fees to be paid
13 out of the amounts awarded the dissenters who were
14 benefited."

15 Section 158. Title 36 of the Code of the Federated
16 States of Micronesia (Annotated), is hereby amended by
17 inserting a new section 247 of chapter 1, to read as
18 follows:

19 "Section 247. Dissolution by incorporators or
20 initial directors.

21 (1) A majority of the incorporators or
22 initial directors of a corporation that has not
23 issued shares or has not commenced business may
24 dissolve the corporation by delivering to the
25 Registrar for filing articles of dissolution that

1 set forth:

2 (a) The name of the corporation;

3 (b) The date of its incorporation;

4 (c) Either:

5 (i) That none of the corporation's
6 shares has been issued; or

7 (ii) That the corporation has not
8 commenced business;

9 (d) That no debt of the corporation
10 remains unpaid;

11 (e) That the net assets of the
12 corporation remaining after winding up have been
13 distributed to the shareholders, if shares were
14 issued; and

15 (f) That a majority of the
16 incorporators or initial directors authorized the
17 dissolution."

18 Section 159. Title 36 of the Code of the Federated
19 States of Micronesia (Annotated), is hereby amended by
20 inserting a new section 257 of chapter 1, to read as
21 follows:

22 "Section 257. Dissolution by board of directors
23 and shareholders.

24 (1) A corporation's board of directors may
25 propose dissolution for submission to the

1 shareholders.

2 (2) For a proposal to dissolve to be
3 adopted:

4 (a) The board of directors must
5 recommend dissolution to the shareholders unless
6 the board of directors determines that because of
7 conflict of interest or other special
8 circumstances it should make no recommendation and
9 communicates the basis for its determination to
10 the shareholders; and

11 (b) The shareholders entitled to vote
12 must approve the proposal to dissolve as provided
13 subsections (5) and (6).

14 (3) The board of directors may condition its
15 submission of the proposal for dissolution on any
16 basis.

17 (4) The corporation shall notify each
18 shareholder, whether or not entitled to vote, of
19 the proposed shareholders' meeting in accordance
20 with section 154. The notice must also state that
21 the purpose, or one of the purposes, of the
22 meeting is to consider dissolving the corporation.

23 (5) At a meeting a vote of shareholders
24 entitled to vote thereat shall be taken on a
25 resolution to dissolve the corporation. The

1 resolution shall be adopted upon receiving the
2 affirmative vote of the holders of a majority of
3 the shares of each class of shares entitled to
4 vote thereon as a class and of the total shares
5 entitled to vote thereon."

6 Section 160. Title 36 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 258 of chapter 1, to read as
9 follows:

10 "Section 258. Articles of dissolution.

11 (1) At any time after dissolution is
12 authorized, the corporation may dissolve by
13 delivering to the Registrar for filing articles of
14 dissolution setting forth:

15 (a) The name of the corporation;

16 (b) The date dissolution was
17 authorized;

18 (c) If dissolution was approved by the
19 shareholders;

20 (i) The number of votes entitled
21 to be cast on the proposal to dissolve; and

22 (ii) Either the total number of
23 votes cast for and against dissolution or the
24 total number of undisputed votes cast for
25 dissolution and a statement that the number cast

1 for dissolution was sufficient for approval; and

2 (d) If voting by voting groups was
3 required, the information required by paragraph
4 (1)(c) must be separately provided for each voting
5 group entitled to vote separately on the plan to
6 dissolve.

7 (2) A corporation is dissolved upon the
8 effective date of its articles of dissolution.
9 The articles of dissolution may specify a delayed
10 effective time and date, and if it does so the
11 document becomes effective at the time and date
12 specified. If a delayed effective date but no
13 time is specified, the document shall be effective
14 at the close of business on that date. A delayed
15 effective date for a document may not be later
16 than the thirtieth day after the date it is
17 filed."

18 Section 161. Title 36 of the Code of the Federated
19 States of Micronesia (Annotated), is hereby amended by
20 inserting a new section 259 of chapter 1, to read as
21 follows:

22 "Section 259. Revocation of dissolution.

23 (1) A corporation may revoke its dissolution
24 within one hundred twenty days of its effective
25 date.

1 (2) Revocation of dissolution shall be
2 authorized in the same manner as the dissolution
3 was authorized unless that authorization permitted
4 revocation by action of the board of directors
5 alone, in which event the board of directors may
6 revoke the dissolution without shareholder action.

7 (3) After the revocation of dissolution is
8 authorized, the corporation may revoke the
9 dissolution by delivering to the Registrar for
10 filing articles of revocation of dissolution,
11 together with a copy of its articles of
12 dissolution, that set forth:

13 (a) The name of the corporation;

14 (b) The effective date of the
15 dissolution that was revoked;

16 (c) The date that the revocation of
17 dissolution was authorized;

18 (d) If the corporation's board of
19 directors or incorporators revoked the
20 dissolution, a statement to that effect;

21 (e) If the corporation's board of
22 directors revoked the dissolution, the
23 information required by section 258(1)(c) or
24 (d).

25 (4) Within the applicable revocation of

1 dissolution period, should the name of the
2 corporation, or a name substantially identical
3 thereto be registered or reserved by another
4 corporation, partnership, limited partnership, or
5 should the name or a name substantially identical
6 thereto be registered as a trade name, trademark,
7 or service mark, then revocation of dissolution
8 shall be allowed only upon the registration of a
9 new name by the dissolved corporation pursuant to
10 the amendment provisions of this chapter.

11 (5) Revocation of dissolution is effective
12 upon the effective date of the articles of
13 revocation of dissolution.

14 (6) When the revocation of dissolution is
15 effective, it relates back to and takes effect as
16 of the effective date of the dissolution and the
17 corporation resumes carrying on its business as if
18 dissolution had never occurred."

19 Section 162. Title 36 of the Code of the Federated
20 States of Micronesia (Annotated), is hereby amended by
21 inserting a new section 260 of chapter 1, to read as
22 follows:

23 "Section 260. Effect of dissolution.

24 (1) A dissolved corporation continues its
25 corporate existence but may not carry on any

1 business except that appropriate to wind up and
2 liquidate its business and affairs, including:

3 (a) Collecting its assets;

4 (b) Disposing of its properties that
5 will not be distributed in kind to its
6 shareholders;

7 (c) Discharging or making provision for
8 discharging its liabilities;

9 (d) Distributing its remaining property
10 among its shareholders according to their
11 interests; and

12 (e) Doing every other act necessary to
13 wind up and liquidate its business affairs.

14 (2) Dissolution of a corporation does
15 not:

16 (a) Transfer title to the corporation's
17 property;

18 (b) Prevent transfer of its shares or
19 securities, although the authorization to dissolve
20 may provide for closing the corporation's share
21 transfer records;

22 (c) Subject its directors or officers
23 to standards of conduct different from those
24 prescribed in sections 177 through 215;

25 (d) Change quorum or voting

1 requirements for its board of directors or
2 shareholders; change provisions for selection,
3 resignation, or removal of its directors or
4 officers or both; or change provisions for
5 amending its bylaws;

6 (e) Prevent commencement of a
7 proceeding by or against the corporation in its
8 corporate name;

9 (f) Abate or suspend a proceeding
10 pending by or against the corporation on the
11 effective date of dissolution; or

12 (g) Terminate the authority of the
13 registered agent of the corporation."

14 Section 162. Title 36 of the Code of the Federated
15 States of Micronesia (Annotated), as amended, is hereby
16 amended by inserting a new section 261 of chapter 1, to read
17 as follows:

18 "Section 261. Known claims against dissolved
19 corporation.

20 (1) A dissolved corporation may dispose of
21 the known claims against it by following the
22 procedure described in this section.

23 (2) The dissolved corporation shall notify
24 its known claimants in writing of the dissolution
25 at any time after its effective date. The written

1 notice must:

2 (a) Describe information that must be
3 included in a claim;

4 (b) Provide a mailing address where a
5 claim may be sent;

6 (c) State the deadline, which may not
7 be fewer than one hundred twenty days from the
8 effective date of the written notice, by which the
9 dissolved corporation must receive the claim; and

10 (d) State that the claim will be barred
11 if not received by the deadline.

12 (3) A claim against the dissolved
13 corporation is barred:

14 (a) If a claimant who was given written
15 notice under subsection (b) does not deliver the
16 claim to the dissolved corporation by the
17 deadline;

18 (b) If a claimant whose claim was
19 rejected by the dissolved corporation does not
20 commence a proceeding to enforce the claim within
21 ninety days from the effective date of the
22 rejection notice.

23 (4) For purposes of this section, "claim"
24 does not include a contingent liability or a claim
25 based on an event occurring after the effective

1 date of dissolution."

2 Section 164. Title 36 of the Code of the Federated
3 States of Micronesia (Annotated), is hereby amended by
4 inserting a new section 262 of chapter 1, to read as
5 follows:

6 "Section 262. Unknown claims against dissolved
7 corporation.

8 (1) A dissolved corporation may also publish
9 notice of its dissolution and request that persons
10 with claims against the corporation present them
11 in accordance with the notice.

12 (2) The notice must:

13 (a) Be published one time in a
14 newspaper of general circulation in the Federated
15 States of Micronesia;

16 (b) Describe the information that must
17 be included in a claim and provide a mailing
18 address where the claim may be sent; and

19 (c) State that a claim against the
20 corporation will be barred unless a proceeding to
21 enforce the claim is commenced within five years
22 after the publication of the notice.

23 (3) If the dissolved corporation publishes a
24 newspaper notice in accordance with subsection
25 (b), the claim of each of the following claimants

1 is barred unless the claimant commences a
2 proceeding to enforce the claim against the
3 dissolved corporation within five years after the
4 publication date of the newspaper notice:

5 (a) A claimant who did not receive
6 written notice under section 261;

7 (b) A claimant whose claim was timely
8 sent to the dissolved corporation but not acted
9 on;

10 (c) A claimant whose claim is
11 contingent or based on an event occurring after
12 the effective date of dissolution.

13 (4) A claim may be enforced under this
14 section:

15 (a) Against the dissolved corporation,
16 to the extent of its undistributed assets; or

17 (b) If the assets have been distributed
18 in liquidation, against a shareholder of the
19 dissolved corporation to the extent of the
20 shareholder's pro rata share of the shareholder
21 claim or the corporate assets distributed to the
22 shareholder in liquidation, whichever is less, but
23 a shareholder's total liability for all claims
24 under this section may not exceed the total amount
25 of assets distributed to such shareholder."

1 Section 165. Title 36 of the Code of the Federated
2 States of Micronesia (Annotated), is hereby amended by
3 inserting a new section 263 of chapter 1, to read as
4 follows:

5 "Section 263. Grounds for administrative
6 dissolution.

7 (1) The Registrar may commence a proceeding
8 under section 264 to administratively dissolve a
9 corporation if the corporation fails to:

10 (a) Pay any fees prescribed by law;

11 (b) File its annual report for a period
12 of two years;

13 (c) Appoint and maintain an agent for
14 service of process as required; or

15 (d) File a statement of a change in the
16 name or business address of the agent as required
17 under this chapter."

18 Section 166. Title 36 of the Code of the Federated
19 States of Micronesia (Annotated), is hereby amended by
20 inserting a new section 264 of chapter 1, to read as
21 follows:

22 "Section 264. Procedure for and effect of
23 administrative dissolution and effect of
24 expiration.

25 (1) If the Registrar determines that one or

1 more grounds exist under section 263 for
2 dissolving a corporation, the Registrar shall give
3 written notice of the Registrar's determination by
4 mailing the notice to the corporation at its last
5 known address appearing in the records of the
6 Registrar.

7 (2) If the corporation does not correct each
8 ground for dissolution or demonstrate to the
9 reasonable satisfaction of the Registrar that each
10 ground determined by the Registrar does not exist
11 within sixty days after the date of mailing of the
12 Registrar's written notice, the Registrar shall
13 administratively dissolve the corporation by
14 signing a decree of dissolution that recites any
15 grounds for dissolution and its effective date.
16 The decree shall be filed in the Registrar's
17 office.

18 (3) A corporation administratively dissolved
19 continues its corporate existence but may not
20 carry on any business except that necessary to
21 wind up and liquidate its business and affairs
22 under section 260 and notify claimants under
23 sections 261 and 262.

24 (4) The administrative dissolution of a
25 corporation does not terminate the authority of

1 its registered agent.

2 (5) If a corporation's period of duration
3 specified in its articles of incorporation has
4 expired, the corporation may continue its
5 corporate existence but may not carry on any
6 business except as necessary to wind up and
7 liquidate its business and affairs under section
8 260 and notify claimants under sections 261 and
9 262.

10 (6) The corporation, at any time within two
11 years of the expiration of its period of duration,
12 may amend its articles of incorporation to extend
13 its period of duration, and upon the amendment,
14 the corporation may resume carrying on its
15 business as if the expiration had never occurred;
16 provided that if the name of the corporation, or a
17 name substantially identical is registered or
18 reserved by another entity, or if that name or a
19 name substantially identical is registered as a
20 trade name, trademark, or service mark, the
21 extension of its period of duration shall be
22 allowed only upon the registration of a new name
23 by the corporation pursuant to the amendment
24 provisions of this chapter."

25 Section 167. Title 36 of the Code of the Federated

1 States of Micronesia (Annotated), is hereby amended by
2 inserting a new section 247 of chapter 1, to read as
3 follows:

4 "Section 265. Reinstatement following
5 administrative dissolution.

6 (1) A corporation administratively dissolved
7 under section 264 may apply to the Registrar for
8 reinstatement within two years after the effective
9 date of dissolution. The application shall:

10 (a) Recite the name of the corporation
11 and the effective date of its administrative
12 dissolution;

13 (b) Contain all reports due and
14 unfiled;

15 (c) Contain the payment of all
16 delinquent fees and penalties; and

17 (d) Contain a certificate from the
18 Department of Finance indicating that all taxes
19 owed by the corporation have been paid, a payment
20 arrangement has been entered into, or the unpaid
21 tax liabilities are being contested in an
22 administrative or judicial appeal with the
23 Department of Finance.

24 (2) Within the applicable reinstatement
25 period, should the name of the corporation, or a

1 name substantially identical thereto be registered
2 or reserved by another corporation, partnership,
3 limited partnership, limited liability company, or
4 limited liability partnership, or should the name
5 or a name substantially identical thereto be
6 registered as a trade name, trademark, or service
7 mark, then reinstatement shall be allowed only
8 upon the registration of a new name by the
9 involuntarily dissolved corporation pursuant to
10 the amendment provisions of this chapter.

11 (3) When the reinstatement is effective, it
12 relates back to and takes effect as of the
13 effective date of the administrative dissolution
14 and the corporation resumes carrying on its
15 business as if the administrative dissolution had
16 never occurred."

17 Section 168. Title 36 of the Code of the Federated
18 States of Micronesia (Annotated), is hereby amended by
19 inserting a new section 266 of chapter 1, to read as
20 follows:

21 "Section 266. Appeal from denial of
22 reinstatement.

23 (1) If the Registrar denies a corporation's
24 application for reinstatement following
25 administrative dissolution, the Registrar shall

1 mail a written notice to the corporation or its
2 designated representative that explains the reason
3 or reasons for denial.

4 (2) The corporation may appeal the denial of
5 reinstatement to the Supreme Court of the
6 Federated States of Micronesia within thirty days
7 after the notice of denial is mailed. The
8 corporation may appeal by petitioning the court to
9 set aside the dissolution and attaching to the
10 petition copies of the Registrar's certificate of
11 dissolution, the corporation's application for
12 reinstatement, and the Registrar's notice of
13 denial.

14 (3) The court may summarily order the
15 Registrar to reinstate the dissolved corporation
16 or may take other action the court considers
17 appropriate.

18 (4) The court's final decision may be
19 appealed as in other civil proceedings."

20 Section 169. Title 36 of the Code of the Federated
21 States of Micronesia (Annotated), is hereby amended by
22 inserting a new section 267 of chapter 1, to read as
23 follows:

24 "Section 267. Grounds for judicial dissolution.

25 (1) The Supreme Court of the Federated

1 States of Micronesia may dissolve a corporation:

2 (a) In a proceeding by the Secretary of
3 the Department of Justice if it is established
4 that:

5 (i) The corporation obtained its
6 articles of incorporation through fraud; or

7 (ii) The corporation has continued
8 to exceed or abuse the authority conferred upon it
9 by law;

10 (b) In a proceeding by a shareholder if
11 it is established that:

12 (i) The directors are deadlocked
13 in the management of the corporate affairs, the
14 shareholders are unable to break the deadlock, and
15 irreparable injury to the corporation is
16 threatened or being suffered, or the business and
17 affairs of the corporation can no longer be
18 conducted to the advantage of the shareholders
19 generally, because of the deadlock;

20 (ii) The directors or those in
21 control of the corporation have acted, are acting,
22 or will act in a manner that is illegal,
23 oppressive, or fraudulent;

24 (iii) The shareholders are
25 deadlocked in voting power and have failed, for a

1 period that includes at least two consecutive
2 annual meeting dates, to elect successors to
3 directors whose terms have expired; or

4 (iv) The corporate assets are being
5 misapplied or wasted;

6 (c) In a proceeding by a creditor
7 if it is established that:

8 (i) The creditor's claim has been
9 reduced to judgment, the execution on the judgment
10 returned unsatisfied, and the corporation is
11 insolvent; or

12 (ii) The corporation has admitted
13 in writing that the creditor's claim is due and
14 owing and the corporation is insolvent; or

15 (d) In a proceeding by the corporation
16 to have its voluntary dissolution continued under
17 court supervision."

18 Section 170. Title 36 of the Code of the Federated
19 States of Micronesia (Annotated), is hereby amended by
20 inserting a new section 268 of chapter 1, to read as
21 follows:

22 "Section 268. Procedure for judicial dissolution.

23 (1) Jurisdiction for a judicial proceeding
24 to dissolve a corporation lies in the Supreme
25 Court of the Federated States of Micronesia.

1 Venue for a proceeding brought by any party named
2 in section 267 lies in the Trial Division of the
3 Supreme Court in the state where a corporation's
4 principal office is located or, if none, where its
5 registered office is or was last located.

6 (2) It is not necessary to make shareholders
7 parties to a proceeding to dissolve a corporation
8 unless relief is sought against them individually.

9 (3) A court in a proceeding brought to
10 dissolve a corporation may issue injunctions,
11 appoint a receiver or custodian pendente lite with
12 all powers and duties the court directs, take
13 other action required to preserve the corporate
14 assets wherever located, and carry on the business
15 of the corporation until a full hearing can be
16 held.

17 (4) Within ten days after the commencement
18 of a proceeding under section 267 to dissolve a
19 corporation that has no shares listed on a
20 national securities exchange or regularly traded
21 in a market maintained by one or more members of a
22 national or affiliated securities association, the
23 corporation must send to all shareholders, other
24 than the petitioner, a notice stating that the
25 shareholders are entitled to avoid the dissolution

1 of the corporation by electing to purchase the
2 petitioner's shares under section 271 and
3 accompanied by a copy of section 271."

4 Section 171. Title 36 of the Code of the Federated
5 States of Micronesia (Annotated), is hereby amended by
6 inserting a new section 269 of chapter 1, to read as
7 follows:

8 "Section 269. Receivership or custodianship.

9 (1) A court in a judicial proceeding brought
10 to dissolve a corporation may appoint one or more
11 receivers to wind up and liquidate, or one or more
12 custodians to manage, the business and affairs of
13 the corporation. The court shall hold a hearing,
14 after notifying all parties to the proceeding and
15 any interested persons designated by the court,
16 before appointing a receiver or custodian. The
17 court appointing a receiver or custodian has
18 exclusive jurisdiction over the corporation and
19 all of its property wherever located.

20 (2) The court may appoint an individual or a
21 domestic or foreign corporation authorized to
22 transact business in the Federated States of
23 Micronesia as a receiver or custodian. The court
24 may require the receiver or custodian to post
25 bond, with or without sureties, in an amount the

1 court directs.

2 (3) The court shall describe the powers and
3 duties of the receiver or custodian in its
4 appointing order, which may be amended from time
5 to time. Among other powers:

6 (a) The receiver:

7 (i) May dispose of all or any part
8 of the assets of the corporation wherever located,
9 at a public or private sale, if authorized by the
10 court; and

11 (ii) May sue and defend in the
12 receiver's own name as receiver of the
13 corporation; and

14 (b) The custodian may exercise all of
15 the powers of the corporation, through or in place
16 of its board of directors, to the extent necessary
17 to manage the affairs of the corporation in the
18 best interests of its shareholders and creditors.

19 (4) The court during a receivership may
20 redesignate the receiver a custodian, and during a
21 custodianship may redesignate the custodian a
22 receiver, if doing so is in the best interests of
23 the corporation, its shareholders, and creditors.

24 (5) The court from time to time during the
25 receivership or custodianship may order

1 compensation paid and expense disbursements or
2 reimbursements made to the receiver or custodian
3 and the receiver's or custodian's counsel from the
4 assets of the corporation or proceeds from the
5 sale of the assets."

6 Section 172. Title 36 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 270 of chapter 1, to read as
9 follows:

10 "Section 270. Decree of dissolution.

11 (1) If after a hearing the court determines
12 that one or more grounds for judicial dissolution
13 described in section 267 exist, it may enter a
14 decree dissolving the corporation and specifying
15 the effective date of the dissolution, and the
16 clerk of the court shall deliver a certified copy
17 of the decree to the Registrar, who shall file it.

18 (2) After entering the decree of
19 dissolution, the court shall direct the winding up
20 and liquidation of the corporation's business and
21 affairs in accordance with section 260 and the
22 notification of claimants in accordance with
23 sections 261 and 262."

24 Section 173. Title 36 of the Code of the Federated
25 States of Micronesia (Annotated), is hereby amended by

1 inserting a new section 271 of chapter 1, to read as
2 follows:

3 "Section 271. Election to purchase in lieu of
4 dissolution.

5 (1) In a proceeding under section 267(1)(b)
6 to dissolve a corporation that has no shares
7 listed on a national securities exchange or
8 regularly traded in a market maintained by one or
9 more members of a national or affiliated
10 securities association, the corporation may elect
11 or, if it fails to elect, one or more shareholders
12 may elect to purchase all shares owned by the
13 petitioning shareholder at the fair value of the
14 shares. An election pursuant to this section
15 shall be irrevocable unless the court determines
16 that it is equitable to set aside or modify the
17 election.

18 (2) An election to purchase pursuant to this
19 section may be filed with the court at any time
20 within ninety days after the filing of the
21 petition under section 267(1)(b) or at such later
22 time as the court in its discretion may allow. If
23 the election to purchase is filed by one or more
24 shareholders, the corporation, within ten days
25 thereafter, shall give written notice to all

1 shareholders, other than the petitioning
2 shareholder. The notice shall state the name and
3 number of shares owned by the petitioning
4 shareholder and the name and number of shares
5 owned by each electing shareholder and shall
6 advise the recipients of their right to join in
7 the election to purchase shares in accordance with
8 this section. Shareholders who wish to
9 participate shall file notice of their intention
10 to join in the purchase no later than thirty days
11 after the effective date of the notice to them.
12 All shareholders who have filed an election or
13 notice of their intention to participate in the
14 election to purchase thereby become parties to the
15 proceeding and shall participate in the purchase
16 in proportion to their ownership of shares as of
17 the date the first election was filed, unless they
18 otherwise agree or the court otherwise directs.
19 After an election has been filed by the
20 corporation or one or more shareholders, the
21 proceeding under section 267(1)(b) may not be
22 discontinued or settled, nor may the petitioning
23 shareholder sell or otherwise dispose of the
24 shareholder's shares, unless the court determines
25 that it would be equitable to the corporation and

1 the shareholders, other than the petitioning
2 shareholder, to permit the discontinuance,
3 settlement, sale, or other disposition.

4 (3) If, within sixty days of the filing of
5 the first election, the parties reach agreement as
6 to the fair value and terms of purchase of the
7 petitioning shareholder's shares, the court shall
8 enter an order directing the purchase of the
9 petitioning shareholder's shares upon the terms
10 and conditions agreed to by the parties.

11 (4) If the parties are unable to reach an
12 agreement as provided for in subsection (3), the
13 court, upon application of any party, shall stay
14 the section 267(1)(b) proceedings and determine
15 the fair value of the petitioning shareholder's
16 shares as of the day before the date on which the
17 petition under section 267(1)(b) was filed or as
18 of any other date the court deems appropriate
19 under the circumstances.

20 (5) Upon determining the fair value of the
21 shares, the court shall enter an order directing
22 the purchase upon the terms and conditions that
23 the court deems appropriate, which may include
24 payment of the purchase price in installments,
25 where necessary in the interests of equity,

1 provision for security to assure payment of the
2 purchase price and any additional costs, fees, and
3 expenses as may have been awarded, and, if the
4 shares are to be purchased by shareholders, the
5 allocation of shares among them. In allocating
6 the petitioning shareholder's shares among holders
7 of different classes of shares, the court shall
8 attempt to preserve the existing distribution of
9 voting rights among holders of different classes
10 insofar as practicable and may direct that holders
11 of a specific class or classes shall not
12 participate in the purchase. Interest may be
13 allowed at the rate and from the date determined
14 by the court to be equitable, but if the court
15 finds that the refusal of the petitioning
16 shareholder to accept an offer of payment was
17 arbitrary or otherwise not in good faith, no
18 interest shall be allowed. If the court finds
19 that the petitioning shareholder had probable
20 grounds for relief under section 267(1)(b)(ii), it
21 may award to the petitioning shareholder
22 reasonable fees and expenses of counsel and of any
23 experts employed by the petitioning shareholder.

24 (6) Upon entry of an order under subsection
25 (3) or (5), the court shall dismiss the petition

1 to dissolve the corporation under section 267, and
2 the petitioning shareholder shall no longer have
3 any rights or status as a shareholder of the
4 corporation, except the right to receive the
5 amounts awarded to the petitioning shareholder by
6 the order of the court that shall be enforceable
7 in the same manner as any other judgment.

8 (7) The purchase ordered pursuant to
9 subsection (5), shall be made within ten days
10 after the date the order becomes final unless
11 before that time the corporation files with the
12 court a notice of its intention to adopt articles
13 of dissolution pursuant to sections 257 and 258,
14 which articles shall then be adopted and filed
15 within fifty days thereafter. Upon filing of the
16 articles of dissolution, the corporation shall be
17 dissolved in accordance with sections 260 to 262,
18 and the order entered pursuant to subsection (5)
19 shall no longer be of any force or effect, except
20 that the court may award the petitioning
21 shareholder reasonable fees and expenses in
22 accordance with the provisions of the last
23 sentence of subsection (5) and the petitioning
24 shareholder may continue to pursue any claims
25 previously asserted on behalf of the corporation.

1 (8) Any payment by the corporation pursuant
2 to an order under subsection (3) or (5), other
3 than an award of fees and expenses pursuant to
4 subsection (5), is subject to section 149."

5 Section 174. Title 36 of the Code of the Federated
6 States of Micronesia (Annotated), is hereby amended by
7 inserting a new section 272 of chapter 1, to read as
8 follows:

9 "Section 272. Deposit with Secretary of Finance.
10 Assets of a dissolved corporation that should be
11 transferred to a creditor, claimant, or shareholder of
12 the corporation who cannot be found or who is not
13 competent to receive them shall be reduced to cash and
14 deposited with the Secretary of Finance for disposition
15 by order of court."

16 Section 175. Title 36 of the Code of the Federated
17 States of Micronesia (Annotated), is hereby amended by
18 inserting a new section 273 of chapter 1, to read as
19 follows:

20 "Section 273. Trustees or receivers for dissolved
21 corporations; appointment; powers; duties.

22 (1) When any corporation organized and
23 authorized to issue shares under the laws of the
24 Federated States of Micronesia shall be or shall
25 have been dissolved or shall cease or shall have

1 ceased to exist, the Supreme Court of the
2 Federated States of Micronesia, upon application
3 of any creditor, stockholder, or director of the
4 corporation, or any other person who shows good
5 cause therefore, and upon a finding that the
6 persons responsible for settling the unfinished
7 business and winding up the affairs of the
8 corporation either are not diligently pursuing
9 such obligations, or cannot be found or otherwise
10 are not available, may either appoint one or more
11 of the directors of the corporation to be trustees
12 or appoint one or more persons to be receivers of
13 and for the corporation, to do all acts that are
14 necessary for the final settlement of the
15 unfinished business of the corporation. The
16 powers of the trustees or receivers shall be
17 effective for the time period determined by the
18 Supreme Court of the Federated States of
19 Micronesia.

20 (2) The relief provided in this section
21 shall be in addition to, and shall not limit or
22 diminish, any remedies otherwise available under
23 the common law or other laws or regulations of the
24 Federated States of Micronesia. In the event of a
25 conflict between this section and any common law,

1 statute, or rule on the subject, the more
2 beneficial provisions favoring the applicant shall
3 prevail."

4 Section 176. Title 36 of the Code of the Federated
5 States of Micronesia (Annotated), is hereby amended by
6 inserting a new section 274 of chapter 1, to read as
7 follows:

8 "Section 274. Authority to transact business
9 required.

10 (1) A foreign corporation may not transact
11 business in the Federated States of Micronesia
12 until it obtains a certificate of authority from
13 the Registrar and has complied with the State and
14 National foreign investment and other similar laws
15 applicable to it.

16 (2) The following activities, among others,
17 do not constitute transacting business within the
18 meaning of subsection (1):

19 (a) Maintaining, defending, or settling
20 any proceeding;

21 (b) Holding meetings of the board of
22 directors or shareholders or carrying on other
23 activities concerning internal corporate affairs;

24 (c) Maintaining bank accounts;

25 (d) Maintaining offices or agencies for

1 the transfer, exchange, and registration of the
2 corporation's own securities or maintaining
3 trustees or depositories with respect to those
4 securities;

5 (e) Selling through independent
6 contractors;

7 (f) Soliciting or obtaining orders,
8 whether by mail or through employees or agents or
9 otherwise, if the orders require acceptance
10 outside of the Federated States of Micronesia
11 before they become contracts;

12 (g) Creating as borrower or lender, or
13 acquiring, as borrower or lender, indebtedness,
14 mortgages, and security interests in real or
15 personal property;

16 (h) Securing or collecting debts or
17 enforcing mortgages and security interests in
18 property securing the debts;

19 (i) Owning, without more, personal
20 property or leasing real property;

21 (j) Conducting an isolated transaction
22 that is completed within fourteen days and that is
23 not one in the course of repeated transactions of
24 a like nature; and

25 (k) Transacting business in

1 international commerce.

2 (3) The list of activities in subsection (2)
3 is not exhaustive."

4 Section 177. Title 36 of the Code of the Federated
5 States of Micronesia (Annotated), is hereby amended by
6 inserting a new section 275 of chapter 1, to read as
7 follows:

8 "Section 275. Consequences of transacting
9 business without authority.

10 (1) A foreign corporation transacting
11 business in the Federated States of Micronesia
12 without a certificate of authority may not
13 maintain a proceeding in any court in the
14 Federated States of Micronesia until it obtains a
15 certificate of authority.

16 (2) The successor to a foreign corporation
17 that transacted business in the Federated States
18 of Micronesia without a certificate of authority
19 and the assignee of a cause of action arising out
20 of that business may not maintain a proceeding
21 based on that cause of action in any court in the
22 Federated States of Micronesia until the foreign
23 corporation or its successor obtains a certificate
24 of authority.

25 (3) A court may stay a proceeding commenced

1 by a foreign corporation, its successor, or
2 assignee until it determines whether the foreign
3 corporation or its successor requires a
4 certificate of authority. If it so determines,
5 the court may further stay the proceeding until
6 the foreign corporation or its successor obtains
7 the certificate.

8 (4) A foreign corporation that transacts
9 business in the Federated States of Micronesia
10 without a certificate of authority shall be liable
11 to the Federated States of Micronesia, for the
12 years or parts thereof during which it transacted
13 business in the Federated States of Micronesia
14 without a certificate of authority, in an amount
15 equal to all fees that would have been imposed by
16 this chapter upon the corporation had it duly
17 applied for and received a certificate of
18 authority to transact business in the Federated
19 States of Micronesia as required by this chapter
20 and thereafter filed all reports required by this
21 chapter, plus all penalties imposed by this
22 chapter for failure to pay the fees. The attorney
23 general shall bring proceedings to recover all
24 amounts due the Federated States of Micronesia
25 under this section.

1 (5) Notwithstanding subsections (1) and (2),
2 the failure of a foreign corporation to obtain a
3 certificate of authority does not impair the
4 validity of its corporate acts or prevent it from
5 defending any proceeding in the Federated States
6 of Micronesia."

7 Section 178. Title 36 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 276 of chapter 1, to read as
10 follows:

11 "Section 276. Application for certificate of
12 authority.

13 (1) A foreign corporation may apply for a
14 certificate of authority to transact business in
15 the Federated States of Micronesia by delivering
16 an application to the Registrar for filing. The
17 application shall set forth:

18 (a) The name of the foreign corporation
19 or, if its name is unavailable for use in the
20 Federated States of Micronesia, a corporate name
21 that satisfies the requirements of section 279;

22 (b) The name of the jurisdiction under
23 whose law it is incorporated;

24 (c) Its date of incorporation;

25 (d) The mailing address of the

1 corporation's principal office, the street address
2 of its registered office in the Federated States
3 of Micronesia, and the name of its registered
4 agent at its registered office in the Federated
5 States of Micronesia; and

6 (e) The names and usual business
7 addresses of its current directors and officers.

8 (2) The foreign corporation shall deliver
9 with the completed application a certificate of
10 good standing or other similar record duly
11 authenticated by the secretary of state or other
12 official having custody of corporate records in
13 the state or country under whose law it is
14 incorporated; provided that the certificate shall
15 be dated not earlier than sixty days prior to the
16 filing of the application. If the certificate is
17 in a foreign language, a translation attested to
18 under oath by the translator shall accompany the
19 certificate."

20 Section 179. Title 36 of the Code of the Federated
21 States of Micronesia (Annotated), is hereby amended by
22 inserting a new section 277 of chapter 1, to read as
23 follows:

24 "Section 277. Change of name by foreign
25 corporation.

1 (1) Whenever the name of a foreign
2 corporation authorized to transact business in the
3 Federated States of Micronesia is changed by the
4 amendment of its articles of incorporation, the
5 foreign corporation, within sixty days after the
6 amendment becomes effective, shall deliver to the
7 Registrar a certificate evidencing the name
8 change, duly authenticated by the proper officer
9 of the state or country under the laws of which it
10 is incorporated. If the certificate is in a
11 foreign language, a translation under oath of the
12 translator shall accompany the certificate.

13 (2) Whenever a foreign corporation that is
14 authorized to transact business in the Federated
15 States of Micronesia shall change its name to one
16 under which a certificate of authority would not
17 be granted to it on application therefor, the
18 foreign corporation shall not thereafter transact
19 any business in the Federated States of Micronesia
20 until it has changed its name to a name that is
21 available to it under the laws of the Federated
22 States of Micronesia or has otherwise complied
23 with this chapter.

24 (3) If a foreign corporation is unable to
25 change its name to a name that is available to it

1 under the laws of the Federated States of
2 Micronesia, it may deliver to the Registrar a copy
3 of a certificate of registration of a trade name
4 and thereafter shall become authorized to transact
5 business in the Federated States of Micronesia
6 under that name."

7 Section 180. Title 36 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 271 of chapter 1, to read as
10 follows:

11 "Section 278. Effect of certificate of authority.

12 (1) A certificate of authority together with
13 compliance with all State and National foreign
14 investment and similar laws authorizes the foreign
15 corporation to which it is issued to transact
16 business in the Federated States of Micronesia
17 subject to the right of the Federated States of
18 Micronesia to revoke the certificate as provided
19 in this chapter.

20 (2) With respect to Federated States of
21 Micronesia Corporations law, a foreign corporation
22 with a valid certificate of authority has the same
23 but no greater rights and has the same but no
24 greater privileges as, and except as otherwise
25 provided by this chapter is subject to the same

1 duties, restrictions, penalties, and liabilities
2 now or later imposed on, a domestic corporation of
3 like character.

4 (3) This chapter does not authorize the
5 Federated States of Micronesia to regulate the
6 organization or internal affairs of a foreign
7 corporation authorized to transact business in the
8 Federated States of Micronesia."

9 Section 181. Title 36 of the Code of the Federated
10 States of Micronesia (Annotated), is hereby amended by
11 inserting a new section 279 of chapter 1, to read as
12 follows:

13 "Section 279. Corporate name of foreign
14 corporation.

15 (1) If the corporate name of a foreign
16 corporation does not satisfy the requirements of
17 section 127(2), (3) and (4), the foreign
18 corporation to obtain or maintain a certificate of
19 authority to transact business in the Federated
20 States of Micronesia may use a fictitious name to
21 transact business in the Federated States of
22 Micronesia if its real name is unavailable and it
23 delivers to the Registrar for filing a copy of a
24 certificate of registration of a trade name by the
25 foreign corporation under which the foreign

1 corporation will transact business in the
2 Federated States of Micronesia.

3 (2) Except as authorized by subsections (c)
4 and (d), the corporate name including a fictitious
5 name of a foreign corporation may not be the same
6 as, or substantially identical to:

7 (a) The name of any domestic
8 corporation, partnership, limited partnership,
9 limited liability company, or limited liability
10 partnership existing or registered under the laws
11 of the Federated States of Micronesia, or any
12 foreign corporation, partnership, limited
13 partnership, limited liability company, or limited
14 liability partnership authorized to transact
15 business in the Federated States of Micronesia;

16 (b) A name the exclusive right to which
17 is, at the time, reserved in the Federated States
18 of Micronesia;

19 (c) The fictitious name of another
20 foreign corporation authorized to transact
21 business in the Federated States of Micronesia;
22 and

23 (d) Any trade name, trademark, or
24 service mark registered in the Federated States of
25 Micronesia.

1 (3) A foreign corporation may apply to the
2 Registrar for authorization to use in the
3 Federated States of Micronesia the name of another
4 corporation incorporated or authorized to transact
5 business in this State that is substantially
6 identical based upon the Registrar's records to
7 the name applied for. The Registrar shall
8 authorize use of the name applied for if:

9 (a) The other entity or holder of a
10 reserved or registered name consents to the use in
11 writing and one or more words are added to the
12 other entity's name to make the name
13 distinguishable from the name of the applicant; or

14 (b) The applicant delivers to the
15 Registrar a certified copy of a final judgment of
16 a court of competent jurisdiction establishing the
17 applicant's right to use the name applied for in
18 this State.

19 (4) A foreign corporation may use in the
20 Federated States of Micronesia the name including
21 the fictitious name of another domestic or foreign
22 corporation that is used in the Federated States
23 of Micronesia if the other corporation is
24 incorporated or authorized to transact business in
25 the Federated States of Micronesia and the foreign

1 corporation:

2 (a) Has merged with the other
3 corporation;

4 (b) Has been formed by reorganization
5 of the other corporation; or

6 (c) Has acquired all or substantially
7 all of the assets, including the corporate name,
8 of the other corporation."

9 Section 182. Title 36 of the Code of the Federated
10 States of Micronesia (Annotated), is hereby amended by
11 inserting a new section 280 of chapter 1, to read as
12 follows:

13 "Section 280. Registered office and registered
14 agent of foreign corporation.

15 (1) Each foreign corporation authorized to
16 transact business in the Federated States of
17 Micronesia must continuously maintain in the
18 Federated States of Micronesia:

19 (a) A registered office that may be the
20 same as any of its places of business; and

21 (b) A registered agent, who may be:

22 (i) An individual who resides in
23 the Federated States of Micronesia and whose
24 business office is identical with the registered
25 office;

1 (ii) A domestic entity authorized
2 to transact business in the Federated States of
3 Micronesia whose business office is identical with
4 the registered office; or

5 (iii) A foreign entity authorized
6 to transact business in the Federated States of
7 Micronesia whose business office is identical with
8 the registered office."

9 Section 183. Title 36 of the Code of the Federated
10 States of Micronesia (Annotated), is hereby amended by
11 inserting a new section 281 of chapter 1, to read as
12 follows:

13 "Section 281. Change of registered office or
14 registered agent of foreign corporation.

15 (1) A foreign corporation authorized to
16 transact business in the Federated States of
17 Micronesia may change its registered office or its
18 registered agent by delivering to the Registrar
19 for filing a statement of change that sets forth:

20 (a) Its name;

21 (b) The street address of its current
22 registered office, the name of its current
23 registered agent at its registered office, and any
24 changes required to keep the information current;
25 and

1 (c) That after the change or changes
2 are made, the street addresses of its registered
3 office and the business office of its registered
4 agent shall be identical.

5 (2) If a registered agent changes the street
6 address of the agent's business office, the agent
7 may change the street address of the registered
8 office of any foreign corporation for which the
9 agent is the registered agent by notifying the
10 corporation in writing of the change and signing
11 either manually or in facsimile and delivering to
12 the Registrar for filing a statement of change
13 that complies with the requirements of subsection
14 (1) and recites that the corporation has been
15 notified of the change."

16 Section 184. Title 36 of the Code of the Federated
17 States of Micronesia (Annotated), is hereby amended by
18 inserting a new section 282 of chapter 1, to read as
19 follows:

20 "Section 282. Resignation of registered agent of
21 foreign corporation.

22 (1) The registered agent of a foreign
23 corporation may resign from the registered agent's
24 appointment by signing and delivering to the
25 Registrar for filing a statement of resignation.

1 The statement of resignation may include a
2 statement that the registered office is also
3 discontinued.

4 (2) The registered agent shall attach the
5 filing receipt to a copy of the statement of
6 resignation and mail the copy and receipt to the
7 registered office if not discontinued. The
8 registered agent shall mail a second copy to the
9 foreign corporation at its principal office
10 address shown in its most recent annual report.

11 (3) The appointment of the agent is
12 terminated, and the registered office discontinued
13 if so provided, on the thirty-first day after the
14 date on which the statement was filed."

15 Section 185. Title 36 of the Code of the Federated
16 States of Micronesia (Annotated), is hereby amended by
17 inserting a new section 283 of chapter 1, to read as
18 follows:

19 "Section 283. Service on foreign corporation.

20 (1) Service of any notice or process
21 authorized by law that is issued against any
22 foreign corporation by any court, judicial or
23 administrative officer, or board, may be made in
24 the manner provided by law upon any registered
25 agent, officer, or director of the foreign

1 corporation who is found within the jurisdiction
2 of the court, officer, or board; or if any
3 registered agent, officer, or director cannot be
4 found, upon the manager or superintendent of the
5 foreign corporation or any person who is found in
6 charge of the property, business, or office of the
7 foreign corporation within the jurisdiction.

8 (2) If no officer, director, manager,
9 superintendent, or other person in charge of the
10 property, business, or office of the foreign
11 corporation can be found within the Federated
12 States of Micronesia, and if the foreign
13 corporation has not filed with the Registrar
14 pursuant to this chapter the name of a registered
15 agent upon whom legal notice and process from the
16 courts of the Federated States of Micronesia may
17 be served, and likewise if the person named is not
18 found within the Federated States of Micronesia,
19 service may be made upon the foreign corporation
20 by registered or certified mail, return receipt
21 requested, addressed to the secretary of the
22 foreign corporation at its principal office shown
23 in its application for a certificate of authority
24 or in its most recent annual report.

25 (3) Service using registered or certified

1 mail is perfected at the earliest of:

2 (a) The date the foreign corporation
3 receives the mail;

4 (b) The date shown on the return
5 receipt, if signed on behalf of the foreign
6 corporation; or

7 (c) Five days after its deposit in the
8 mail, as evidenced by the postmark, if mailed
9 postpaid and correctly addressed.

10 (d) Nothing contained herein shall
11 limit or affect the right to serve any process,
12 notice, or demand required or permitted by law to
13 be served upon a foreign corporation in any other
14 manner permitted by law."

15 Section 186. Title 36 of the Code of the Federated
16 States of Micronesia (Annotated), is hereby amended by
17 inserting a new section 284 of chapter 1, to read as
18 follows:

19 "Section 284. Application to corporations
20 heretofore authorized to transact business in the
21 Federated States of Micronesia. Foreign
22 corporations that are duly authorized to transact
23 business in the Federated States of Micronesia on
24 the effective date of this act, for a purpose or
25 purposes for which a corporation might secure the

1 authority under this chapter, shall be entitled to
2 all of the rights and privileges applicable to
3 foreign corporations procuring certificates of
4 authority to transact business in the Federated
5 States of Micronesia under this chapter, and from
6 the effective date of this act, the corporations
7 shall be subject to all of the limitations,
8 restrictions, liabilities, and duties prescribed
9 herein for foreign corporations procuring
10 certificates of authority to transact business in
11 the Federated States of Micronesia under this
12 chapter."

13 Section 187. Title 36 of the Code of the Federated
14 States of Micronesia (Annotated), is hereby amended by
15 inserting a new section 285 of chapter 1, to read as
16 follows:

17 "Section 285. Withdrawal of foreign corporation.

18 (1) A foreign corporation or branch
19 authorized to transact business in the Federated
20 States of Micronesia under this chapter may not
21 withdraw from the Federated States of Micronesia
22 until it obtains a certificate of withdrawal from
23 the Registrar which certificate shall be issued
24 within five business days of request; provided
25 however, if the certificate of withdrawal is not

1 issued within the time required by this subsection
2 the corporation seeking withdrawal shall be deemed
3 to have lawfully withdrawn upon expiration of the
4 time limit for issuance of the certificate.

5 (2) A foreign corporation or branch
6 authorized to transact business in the Federated
7 States of Micronesia may apply for a certificate
8 of withdrawal by delivering an application to the
9 Registrar for filing. The application shall set
10 forth:

11 (a) The name of the foreign corporation
12 and the name of the state or country under whose
13 law it is incorporated;

14 (b) That it is not transacting business
15 in the Federated States of Micronesia and that it
16 surrenders its authority to transact business in
17 the Federated States of Micronesia;

18 (c) That it revokes the authority of
19 its registered agent to accept service on its
20 behalf and consents that service of process in any
21 action or proceeding based upon any cause of
22 action arising in the Federated States of
23 Micronesia during the time the corporation was
24 authorized to transact business in the Federated
25 States of Micronesia may thereafter be made on

1 such corporation by service thereof on the
2 Registrar; and

3 (d) A mailing address to which the
4 Registrar may mail a copy of any process served on
5 the Registrar under paragraph (c).

6 (e) After the withdrawal of the
7 corporation is effective, service of process on
8 the Registrar under this section is service on the
9 foreign corporation. Upon receipt of process, the
10 Registrar shall mail a copy of the process to the
11 foreign corporation at the mailing address set
12 forth under subsection (2).

13 (f) After the filing of the application
14 of withdrawal, the Registrar shall issue a
15 certificate of withdrawal that shall be effective
16 as of the date of the filing of the application of
17 withdrawal, and the authority of the foreign
18 corporation to transact business in the Federated
19 States of Micronesia shall cease."

20 Section 188. Title 36 of the Code of the Federated
21 States of Micronesia (Annotated), is hereby amended by
22 inserting a new section 286 of chapter 1, to read as
23 follows:

24 "Section 286. Grounds for revocation.

25 (1) The Registrar may commence a proceeding

1 under section 287 to revoke the certificate of
2 authority of a foreign corporation authorized to
3 transact business in the Federated States of
4 Micronesia if:

5 (a) The corporation fails to:

6 (i) Pay any fees prescribed by
7 law;

8 (ii) File its annual report for a
9 period of two years;

10 (iii) Appoint and maintain an agent
11 for service of process as required; or

12 (iv) File a statement of a change
13 in the name or business address of the agent as
14 required; or

15 (b) A misrepresentation has been made
16 of any material matter in any application, report,
17 affidavit, or other record or document submitted
18 by the corporation."

19 Section 189. Title 36 of the Code of the Federated
20 States of Micronesia (Annotated), is hereby amended by
21 inserting a new section 287 of chapter 1, to read as
22 follows:

23 "Section 287. Procedure for and effect of
24 revocation.

25 (1) If the Registrar determines that one or

1 more grounds exist under section 286 for
2 revocation of a certificate of authority, the
3 Registrar shall give written notice of the
4 Registrar's determination by mailing the notice to
5 the foreign corporation at its last known address
6 appearing in the records of the Registrar.

7 (2) If the foreign corporation does not
8 correct each ground for revocation or demonstrate
9 to the reasonable satisfaction of the Registrar
10 that each ground determined by the Registrar does
11 not exist within sixty days after the date of
12 mailing of the Registrar's written notice, the
13 Registrar may revoke the foreign corporation's
14 certificate of authority by signing a certificate
15 of revocation that recites the ground or grounds
16 for revocation and its effective date.

17 (3) Upon revoking any certificate of
18 authority, the Registrar shall issue a certificate
19 of revocation that shall be filed in the
20 Registrar's office, and the authority of a foreign
21 corporation to transact business in this State
22 shall immediately cease thereafter.

23 (4) Revocation of a foreign corporation's
24 certificate of authority does not terminate the
25 authority of the registered agent of the

1 corporation."

2 Section 190. Title 36 of the Code of the Federated
3 States of Micronesia (Annotated), is hereby amended by
4 inserting a new section 288 of chapter 1, to read as
5 follows:

6 "Section 288. Appeal from revocation.

7 (1) A foreign corporation may appeal the
8 Registrar's revocation of its certificate of
9 authority to the Supreme Court of the Federated
10 States of Micronesia within thirty days after the
11 certificate of revocation is signed. The foreign
12 corporation appeals by petitioning the court to
13 set aside the revocation and attaching to the
14 petition copies of its certificate of authority
15 and the Registrar's certificate of revocation.

16 (2) The court may summarily order the
17 Registrar to reinstate the certificate of
18 authority or may take any other action the court
19 considers appropriate.

20 (3) The court's final decision may be
21 appealed as in other civil proceedings."

22 Section 191. Title 36 of the Code of the Federated
23 States of Micronesia (Annotated), is hereby amended by
24 inserting a new section 289 of chapter 1, to read as
25 follows:

1 "Section 289. Books and records.

2 (1) Each corporation shall keep accurate and
3 complete books and records of account and shall
4 keep and maintain at its principal office, or
5 other place as its board of directors may order,
6 minutes of the proceedings of its shareholders and
7 board of directors. The books and records of
8 account shall include accounts of the
9 corporation's assets, liabilities, receipts,
10 disbursements, gains, and losses. The minutes of
11 the proceedings of the shareholders and board of
12 directors of the corporation shall show, as to
13 each meeting of the shareholders or the board of
14 directors, the time and place, if any, thereof,
15 whether regular or special, whether notice thereof
16 was given, and if so in what manner, the names of
17 those present at directors' meetings, the number
18 of shares present or represented at shareholders'
19 meetings, and the proceedings at each meeting.
20 Any of the books and records described in this
21 subsection may be kept on, or by means of, or be
22 in the form of, any information storage device or
23 method; provided that the books and records can be
24 converted into clearly legible paper form within a
25 reasonable time. Upon the request of any person

1 entitled to inspect the books and records pursuant
2 to any provision of this chapter, a corporation,
3 at its own expense, shall convert the requested
4 stored books and records. When books and records
5 are kept pursuant to this subsection, a clearly
6 legible paper form produced from or by means of
7 the information storage device or method shall be
8 admissible as evidence, and accepted for all other
9 purposes, to the same extent as an original paper
10 record of the same information would have been;
11 provided that the paper form accurately portrays
12 the record.

13 (2) In every corporation incorporated under
14 this chapter, the board of directors of the
15 corporation shall cause a book to be kept for
16 registering the names of all persons who are or
17 shall become shareholders of the corporation,
18 showing the number of shares of stock held by them
19 respectively, and the time when they respectively
20 became the owner of the shares. The book shall be
21 open at all reasonable times for the inspection of
22 the shareholders. The secretary or the person
23 having the charge thereof shall give a certified
24 transcript of anything therein contained to any
25 shareholder applying therefor; provided that the

1 shareholder pays a reasonable charge for the
2 preparation of the certified transcript. The
3 transcript shall be legal evidence of the facts
4 therein set forth in any suit by or against the
5 corporation."

6 Section 192. Title 36 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 290 of chapter 1, to read as
9 follows:

10 "Section 290. Annual report.

11 (1) Each domestic corporation, and each
12 foreign corporation authorized to transact
13 business in the Federated States of Micronesia,
14 shall deliver to the Registrar for filing an
15 annual report that sets forth:

16 (a) The name of the corporation and the
17 state or country under whose law it is
18 incorporated;

19 (b) The mailing address of its principal
20 office, the address of its registered office in
21 the Federated States of Micronesia, and the name
22 of its registered agent at its registered office
23 in the Federated States of Micronesia;

24 (c) The names and business addresses of its
25 directors and officers; and

1 (d) A brief description of the nature of its
2 business.

3 (2) Domestic corporations shall also provide
4 the total number of authorized shares, itemized by
5 class and series, if any, within each class, and
6 the total number of issued and outstanding shares,
7 itemized by class and series, if any, within each
8 class.

9 (3) Notwithstanding any of the provisions of
10 this chapter to the contrary, annual reports
11 reflecting the previous fiscal or calendar year
12 shall be filed not later than June 30 of each
13 year.

14 (4) If an annual report does not contain the
15 information required by this section, or no annual
16 report is filed, the Registrar shall promptly
17 notify the reporting domestic or foreign
18 corporation in writing. If the report is provided
19 or corrected to contain the information required
20 by this section as the case may be and delivered
21 to the Registrar within thirty days after the
22 effective date of notice, it is deemed to be
23 timely filed."

24 Section 193. Title 36 of the Code of the Federated
25 States of Micronesia (Annotated), is hereby amended by

1 inserting a new section 291 of chapter 1, to read as
2 follows:

3 "Section 291. Penalties imposed upon
4 corporations. Subject to the provisions of section
5 290, each corporation, domestic or foreign, that
6 fails or refuses to file its annual report for any
7 year within the time prescribed by this part shall
8 be subject to a forfeiture of an amount to be
9 determined by the Registrar not exceeding \$100 for
10 every violation, neglect, or failure, to be
11 recovered by action brought in the name of the
12 Federated States of Micronesia by the Registrar.
13 A continuance of a failure to file the required
14 report shall be a separate offense for each thirty
15 days of the continuance. The Registrar, for good
16 cause shown, may reduce or waive the penalty
17 imposed by this section."

18 Section 194. Title 36 of the Code of the Federated
19 States of Micronesia (Annotated), is hereby amended by
20 inserting a new section 292 of chapter 1, to read as
21 follows:

22 "Section 292. Severability. If any provision of
23 this chapter or its application to any person or
24 circumstance is held invalid by a court of
25 competent jurisdiction, the invalidity shall not

