

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 States of
2 Micronesia (Annotated), is hereby amended by repealing chapter 1
3 in its entirety.

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

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

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

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

16 "Section 102. Application. This chapter applies to
17 Major Corporations as defined by 54 FSMC (312)(2) and to
18 corporations permitted or required to be formed under

1 the national laws of the Federated States of Micronesia.
2 This chapter does not apply to any corporation formed
3 under the laws of any State of the Federated States of
4 Micronesia. Corporations formed under the national laws
5 of the Federated States of Micronesia in existence on
6 the effective date of this Act remain in existence and
7 henceforth are to be governed by the provisions of this
8 Act."

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

12 "Section 103. Definitions. As used in this chapter:

13 (1) "Articles of Incorporation" means articles of
14 incorporation including amended and restated articles of
15 incorporation and articles of merger;

16 (2) "Authorized Shares" means the shares of all
17 classes a domestic corporation is authorized to issue;

18 (3) "Certificate of Incorporation" means the
19 certificate issued by the Registrar at the time of
20 filing the articles of incorporation signifying the
21 corporation's existence;

22 (4) "Conspicuous" means so written that a reasonable
23 person against whom the writing is to operate should
24 have noticed it. For example, printing in italics or
25 boldface or contrasting color, or typing in capitals or

1 underlined, is conspicuous;

2 (5) "Corporation" or "domestic corporation" means a
3 corporation for profit, which is not a foreign
4 corporation, incorporated under or subject to this
5 chapter;

6 (6) "Deliver" includes mail;

7 (7) "Distribution" means a direct or indirect
8 transfer of money or other property except its own
9 shares or incurrence of indebtedness by a corporation to
10 or for the benefit of its shareholders in respect of any
11 of its shares. A distribution may be in the form of a
12 declaration or payment of a dividend; a purchase,
13 redemption, or other acquisition of shares; a
14 distribution of indebtedness; or otherwise;

15 (8) "Effective date of notice" is defined in section
16 104.

17 (9) "Electronic transmission" means any form of
18 communication, not directly involving the physical
19 transmission of paper, that creates a record that may be
20 retained, retrieved, and reviewed by a recipient
21 thereof, and that may be directly reproduced in paper
22 form by such a recipient through an automated process;

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

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- 1 (11) "Entity" includes domestic and foreign
2 corporations, domestic professional corporations,
3 domestic and foreign limited liability companies,
4 domestic and foreign nonprofit corporations, domestic
5 and foreign business trusts, estates, domestic and
6 foreign partnerships, domestic and foreign limited
7 partnerships, domestic and foreign limited liability
8 partnerships, trusts, two or more persons having a joint
9 or common economic interest, associations and
10 cooperative associations, and state, national, and
11 foreign governments;
- 12 (12) "Foreign corporation" means a corporation for
13 profit incorporated under a law other than the laws of
14 the Federated States of Micronesia or any State thereof;
- 15 (13) "Governmental subdivision" includes any State or
16 municipality;
- 17 (14) "Includes" denotes a partial definition;
- 18 (15) "Individual" means a natural person;
- 19 (16) "Means" denotes an exhaustive definition;
- 20 (17) "Notice" is defined in section 104;
- 21 (18) "Person" includes individual and entity;
- 22 (19) "Principal Office" means the office designated in
23 the annual report where the principal executive officers
24 of a domestic or foreign corporation are located.
- 25 (20) "Proceeding" includes civil suit and criminal,

1 administrative and investigatory action;

2 (21) "Record date" means the date established under
3 this chapter on which a corporation determines the
4 identity of its shareholders and their shareholdings for
5 purposes of this chapter. The determinations shall be
6 made as of the close of business on the record date
7 unless another time for doing so is specified when the
8 record date is fixed;

9 (22) "Registrar" means the Registrar of Corporations
10 of the Government of the Federated States of Micronesia
11 and includes Assistant Registrars;

12 (23) "Secretary" means the corporate officer to whom
13 the board of directors has delegated responsibility for
14 preparation and custody of the minutes of the meetings
15 of the board of directors and of the shareholders and
16 for authenticating records of the corporation;

17 (24) "Shareholder" means the person whose shares are
18 registered in the records of a corporation or the
19 beneficial owner of shares to the extent of the rights
20 granted by a nominee certificate on file with a
21 corporation;

22 (25) "Shares" means the units into which the
23 proprietary interests in a corporation are divided;

24 (26) "Subscriber" means a person who subscribes for
25 shares in a corporation, whether before or after

1 incorporation;

2 (27) "Voting group" means all shares of one or more
3 classes or series that under the articles of
4 incorporation or this chapter are entitled to vote and
5 be counted together collectively on a matter at a
6 meeting of shareholders. All shares entitled by the
7 articles of incorporation or this chapter to vote
8 generally on the matter are for that purpose a single
9 voting group."

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

13 "Section 104. Notice.

14 (1) Notice under this chapter shall be in writing
15 unless oral notice is reasonable under the
16 circumstances.

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

25 (3) Written notice by a domestic or foreign

1 corporation to its shareholders, if in a comprehensible
2 form, is effective five days after it is mailed, if
3 mailed postpaid and correctly addressed to the
4 shareholder's address shown in the corporation's current
5 record of shareholders.

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

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

18 (a) When received;

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

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

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

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

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

16 (a) The corporation is unable to deliver by
17 electronic transmission two consecutive notices given by
18 the corporation in accordance with such consent; and

19 (b) The inability to deliver becomes known to
20 the secretary or an assistant secretary of the
21 corporation, to the transfer agent, or other person
22 responsible for giving notice; provided that the
23 inadvertent failure to treat such inability as a
24 revocation shall not invalidate any meeting or other
25 action.

1 (9) Notice given pursuant to subsection (8) shall be
2 deemed given:

3 (a) If by facsimile telecommunication, when
4 directed to a number at which the shareholder has
5 consented to receive notice;

6 (b) If by electronic mail, when directed to an
7 electronic mail address at which the shareholder has
8 consented to receive notice;

9 (c) If by posting on an electronic network
10 together with separate notice to the shareholder of such
11 specific posting, upon the later of the posting and the
12 giving of such separate notice; and

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

15 An affidavit of the secretary, assistant secretary,
16 transfer agent, or other agent of the corporation that
17 the notice has been given by a form of electronic
18 transmission, in the absence of fraud, shall be prima
19 facie evidence of the facts stated therein."

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

23 "Section 105. Shareholders.

24 (1) For purposes of this chapter, the following
25 identified as a shareholder in a corporation's current

1 record of shareholders constitute one shareholder if it
2 is reasonable to believe that the names represent the
3 same person.

4 (a) An individual;

5 (b) A corporation, partnership, trust, estate,
6 or other entity; or

7 (c) The trustees, guardians, custodians, or
8 other fiduciaries of a single trust, estate, or account.

9 (2) For purposes of this chapter, shareholdings
10 registered in substantially similar names constitute one
11 shareholder if it is reasonable to believe that the
12 names present the same person."

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

16 "Section 106. Registrar of Corporations. The Registrar
17 of Corporations has the power reasonably necessary to
18 perform the duties required of the Registrar by this
19 chapter, and to administer this chapter efficiently.
20 The Registrar of Corporations with the approval of the
21 Secretary of the Department of Justice and the President
22 of the Federated States of Micronesia shall have the
23 power to prescribe such rules and regulations as are
24 deemed advisable to administer and carry into effect the
25 provisions of this chapter. The duties of the Registrar

1 may be delegated to such Assistant Registrars as the
2 Registrar may deem appropriate including Assistant
3 Registrars who carry out the functions of the Registrar
4 in embassies of the Federated States of Micronesia
5 situated in foreign countries. Assistant Registrars
6 shall perform their duties under the direction and
7 supervision of the Registrar. Wherever the term
8 "Registrar" is used in this chapter, it shall be deemed
9 to include all Assistant Registrars, if any."

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

13 "Section 107. Filing requirements.

14 (1) A document must satisfy the requirements of this
15 section, and of any other section that adds to or varies
16 these requirements, to be entitled to filing by the
17 Registrar.

18 (2) This chapter must require or permit filing the
19 document in the office of the Registrar.

20 (3) The documents must contain the information
21 required by this chapter. It may contain other
22 information as well.

23 (4) The document must be typewritten or printed.

24 (5) The document must be in English language. A
25 corporate name need not be in English if written in

1 English letters or Arabic or Roman numerals, and the
2 certificate of good standing required of foreign
3 corporations need not be in English if accompanied by an
4 English translation under oath of a translator.

5 (6) The document must be certified and executed:

6 (a) By the chairperson of the board of directors
7 of a domestic or foreign corporation, by its president,
8 or by another of its officers;

9 (b) If directors have not been selected or the
10 corporation has not been formed, by an incorporator; or

11 (c) If the corporation is in the hands of a
12 receiver, trustee, or other court-appointed fiduciary,
13 by that fiduciary.

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

18 (a) The corporate seal;

19 (b) An attestation by the secretary or an
20 assistant secretary; or

21 (c) An acknowledgement, verification,
22 notarization or proof.

23 (8) If the Registrar has prescribed a mandatory form
24 for the document under Section 108, the document must be
25 in or on the prescribed form.

1 (9) The document must be delivered to the office of
2 the Registrar for filing and must be accompanied by the
3 correct filing fee and any penalty required by this
4 chapter."

5 Section 9. Title 36 of the Code of the Federated States of
6 Micronesia (Annotated), is hereby amended by inserting a new
7 section 108 of chapter 1, to read as follows:

8 "Section 108. Forms.

9 (1) The Registrar may prescribe and furnish on
10 request forms for:

11 (a) An application for a certificate of good
12 standing;

13 (b) A foreign corporation's application for a
14 certificate of authority to transact business in the
15 Federated States of Micronesia;

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

18 (d) The annual report.

19 If the Registrar so requires, use of these forms is
20 mandatory.

21 (2) The Registrar may prescribe and furnish on
22 request forms for other documents required or permitted
23 to be filed by this chapter but their use is not
24 mandatory.

25 (3) Upon request the Registrar shall promptly, and in

1 no case more than five business days, issue certificates
2 of incorporation, certificates of good standing,
3 certificates of authority and certificates of withdrawal
4 to corporations entitled thereto."

5 Section 10. Title 36 of the Code of the Federated States of
6 Micronesia (Annotated), is hereby amended by inserting a new
7 section 109 of chapter 1, to read as follows:

8 "Section 109. Filing, service and copying fees.

9 (1) The following fees shall be paid to the Registrar
10 upon the filing of corporate documents:

11 (a) Articles of Incorporation, \$100;

12 (b) Articles of Amendment, \$25;

13 (c) Restated articles of incorporation, \$25;

14 (d) Articles of conversion or merger, \$100;

15 (e) Articles of merger (subsidiary corporation),
16 \$50;

17 (f) Articles of dissolution, \$25;

18 (g) Annual report of domestic and foreign
19 corporations organize for profit, \$25;

20 (h) Agent's statement of change of registered
21 office, \$25 for each affected domestic corporation or
22 foreign corporation, except if simultaneous filings are
23 made, the fee is reduced to \$1 for each affected
24 domestic corporation or foreign corporation in excess of
25 two hundred;

1 (i) Any other statement, report, certificate,
2 application, or other corporate document, except an
3 annual report, of a domestic or foreign corporation,
4 \$25;

5 (j) Application for a certificate of authority,
6 \$100;

7 (k) Application for a certificate of withdrawal,
8 \$25;

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

10 (m) Transfer of reservation of corporate name,
11 \$10;

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

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

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

18 (4) The Registrar shall charge and collect:

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

23 (b) at the time of any services of process on
24 the Registrar as agent for service of process of a
25 corporation, \$10, which amount may be recovered as

1 taxable costs by the party to the suit or action causing
2 the service to be made if the party prevails in suit or
3 action."

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

7 "Section 110. Effective time and date of document.

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

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

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

25 "Section 111. Correcting filed document.

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

3 (a) Contains an incorrect statement; or

4 (b) Was defectively executed, attested, sealed,
5 verified, or acknowledged.

6 (2) A document is corrected by:

7 (a) Preparing articles of correction that:

8 (i) Describe the document including its
9 filing date or attach a copy of it to the articles;

10 (ii) Specify the incorrect statement and the
11 reason it is incorrect or the manner in which the
12 execution was defective; and

13 (iii) Correct the incorrect statement or
14 defective execution; and

15 (b) Delivering the articles of correction to the
16 Registrar for filing.

17 (3) Articles of correction are effective on the
18 effective date of the document they correct except as to
19 persons relying on the uncorrected document and
20 adversely affected by the correction. As to those
21 persons, articles of correction are effective when
22 filed."

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

1 "Section 112. Filing duty of Registrar.

2 (1) If a document delivered to the Registrar for
3 filing satisfies the requirement of section 107, the
4 Registrar shall file it.

5 (2) The Registrar files a document by stamping or
6 otherwise endorsing the document including the date and
7 time of receipt.

8 (3) If the Registrar refuses to file a document, the
9 Registrar shall return it to the domestic or foreign
10 corporation or its representative together with a brief,
11 written explanation of the reason for the Registrar's
12 refusal.

13 (4) The Registrar's duty to file documents under this
14 section is ministerial. The Registrar's filing or
15 refusing to file a document does not:

16 (a) Affect the validity or invalidity of the
17 document in whole or part;

18 (b) Relate to the correctness or incorrectness
19 of information contained in the document; and

20 (c) Create a presumption that the document is
21 valid or invalid or that information contained in the
22 document is correct or incorrect."

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

1 "Section 113. Appeal from Registrar's refusal to file
2 document.

3 (1) If the Registrar refuses to file a document
4 delivered to the Registrar for filing, the domestic or
5 foreign corporation may appeal the refusal within thirty
6 days after the return of the document in the Supreme
7 Court of the Federated States of Micronesia. The appeal
8 is commenced by petitioning the court to compel filing
9 the document and by attaching to the petition the
10 document and the Registrar's explanation of the
11 Registrar's refusal to file.

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

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

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

20 "Section 114. Evidentiary effect of copy of filed
21 document. A certificate attached to a copy of a
22 document filed by the Registrar bearing the Registrar's
23 signature which may be in facsimile and contain the seal
24 of the Registrar is conclusive evidence that the
25 original document is on file with the Registrar."

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

4 "Section 115. Certificates and certified copies to be
5 received in evidence. All certificates issued by the
6 Registrar pursuant to this chapter, and all copies of
7 documents filed with Registrar pursuant to this chapter
8 when certified by the Registrar, shall be taken and
9 received in all courts, public offices and official
10 bodies as prima facie evidence of the facts therein
11 stated. A certificate by the Registrar under the seal
12 of Registrar as to the existence or nonexistence of the
13 facts relating to corporations, shall be taken and
14 received in all courts, public offices, and official
15 bodies as prima facie evidence of the existence or
16 nonexistence of the facts therein stated."

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

20 "Section 116. Incorporators. One or more individuals
21 may act as the incorporator or incorporators of a
22 corporation by delivering articles of incorporation to
23 the Registrar for filing."

24 Section 19. Title 36 of the Code of the Federated States of
25 Micronesia (Annotated), is hereby amended by inserting a new

1 section 117 of chapter 1, to read as follows:

2 "Section 117. Articles of incorporation.

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

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

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

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

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

14 (2) The articles of incorporation may set forth:

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

17 (b) Provisions not inconsistent with law
18 regarding:

19 (i) The purpose or purposes for which the
20 corporation is organized;

21 (ii) Managing the business and regulating
22 the affairs of the corporation;

23 (iii) Defining, limiting, and regulating the
24 powers of the corporation, its board of directors, and
25 shareholders;

1 (iv) A par value for authorized shares or
2 classes of shares; and

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

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

8 (d) A provision eliminating or limiting the
9 liability of a director or officer to the corporation or
10 its shareholders for money damages for any action taken,
11 or any failure to take any action, as a director or
12 officer, subject to section 195;

13 (e) A provision permitting or making obligatory
14 indemnification of a director for liability as defined
15 in section 202 to any person for any action taken, or
16 any failure to take any action, as a director, except
17 liability for:

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

20 (ii) An intentional infliction of harm on
21 the corporation or its shareholders;

22 (iii) A violation of section 196.

23 (iv) An intentional violation of criminal
24 law.

25 (3) The articles of incorporation need not set forth

1 any of the corporate powers enumerated in this chapter.”

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

5 “Section 118. Incorporation.

6 (1) The corporate existence begins when the articles
7 of incorporation are filed.

8 (2) The Register’s filing of the articles of
9 incorporation is conclusive proof that the incorporators
10 satisfied all conditions precedent to incorporation
11 except in a proceeding by the Federated States of
12 Micronesia to cancel or revoke the incorporation or
13 involuntarily dissolve the corporation.”

14 Section 21. Title 36 of the Code of the Federated States of
15 Micronesia (Annotated), is hereby amended by inserting a new
16 section 119 of chapter 1, to read as follows:

17 “Section 119. Liability for pre-incorporation
18 transactions. All persons purporting to act as or on
19 behalf of a corporation, knowing there was no
20 incorporation under this chapter, are jointly and
21 severally liable for all liabilities created while so
22 acting.”

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

1 "Section 120. Organization of corporation.

2 (1) After incorporation:

3 (a) If initial directors are named in the
4 articles of incorporation, the initial directors shall
5 hold an organizational meeting, at the call of a
6 majority of the directors, to complete the organization
7 of the corporation by appointing officers, adopting
8 bylaws, and carrying on any other business brought
9 before the meeting;

10 (b) If initial directors are not named in the
11 articles, the incorporator or incorporators shall hold
12 an organizational meeting at the call of a majority of
13 the incorporators to elect:

14 (i) Directors and complete the organization
15 of the corporation; or

16 (ii) A board of directors who shall complete
17 the organization of the corporation.

18 (2) Action required or permitted by this chapter to
19 be taken by incorporators at an organizational meeting
20 may be taken without a meeting if the action taken is
21 evidenced by one or more written consents describing the
22 action taken and signed by each incorporator.

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

25 Section 23. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 121 of chapter 1, to read as follows:

3 "Section 121. Bylaws.

4 (1) The incorporators or board of directors of a
5 corporation may adopt initial bylaws for the
6 corporation.

7 (2) The bylaws of a corporation may contain any
8 provision for managing the business and regulating the
9 affairs of the corporation that is not inconsistent with
10 law or the articles of incorporation."

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

14 "Section 122. Emergency bylaws.

15 (1) Unless the articles of incorporation provide
16 otherwise, the board of directors of a corporation may
17 adopt bylaws to be effective only in an emergency
18 defined in subsection (4) below. The emergency bylaws,
19 which are subject to amendment or repeal by the
20 shareholders, may make all provisions necessary for
21 managing the corporation during the emergency,
22 including:

23 (a) Procedures for calling a meeting of the
24 board of directors;

25 (b) Quorum requirements for the meeting; and

1 (c) Designation of additional or substitute
2 directors.

3 (2) All provisions of the regular bylaws consistent
4 with the emergency bylaws remain effective during the
5 emergency. The emergency bylaws are not effective after
6 the emergency ends.

7 (3) Corporate action taken in good faith in
8 accordance with the emergency bylaws:

9 (a) Binds the corporation; and

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

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

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

19 "Section 123. Purposes. Every corporation incorporated
20 under this chapter has the purpose of engaging in any
21 lawful business unless a more limited purpose is set
22 forth in the articles of incorporation."

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

1 "Section 124. General powers.

2 (1) Unless its articles of incorporation provide
3 otherwise, every corporation has perpetual duration and
4 succession in its corporate name and has the same powers
5 as an individual to do all things necessary or
6 convenient to carry out its business and affairs,
7 including without limitation, the power:

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

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

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

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

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

1 (f) to purchase, receive, subscribe for, or
2 otherwise acquire; own, hold, vote, use, sell, mortgage,
3 lend, pledge, or otherwise dispose of; and deal in and
4 with shares or other interests in, or obligations of,
5 any other entity;

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

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

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

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

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

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

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

8 (n) To transact any lawful business that will
9 aid governmental policy; and

10 (o) To make payments or donations, or do any
11 other acts, not inconsistent with law, that furthers the
12 business and affairs of the corporation."

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

16 "Section 125. Emergency powers.

17 (1) In anticipation of or during an emergency defined
18 in subsection (4), the board of directors of a
19 corporation may:

20 (a) Modify lines of succession to accommodate
21 the incapacity of any director, officer, employee, or
22 agent; and

23 (b) Relocate the principal office, designate
24 alternative principal offices or regional offices, or
25 authorize the officers to do so.

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

3 (a) Notice of a meeting of the board of
4 directors need to be given only to those directors whom
5 it is practicable to reach and may be given in any
6 practicable manner, including by publication and radio;
7 and

8 (b) One or more officers of the corporation
9 present at a meeting of the board of directors may be
10 deemed to be directors for the meeting, in order of rank
11 and with the same rank in order of seniority, as
12 necessary to achieve a quorum.

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

16 (a) Binds the corporation; and

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

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

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

1 "Section 126. Ultra vires.

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

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

6 (a) In a proceeding by a shareholder against the
7 corporation to enjoin the act;

8 (b) In a proceeding by the corporation,
9 directly, derivatively, or through a receiver, trustee,
10 or other legal representative, against an incumbent or
11 former director, officer, employee, or agent of the
12 corporation; or

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

15 (3) In a shareholder's proceeding under subsection
16 (2)(a) to enjoin an unauthorized corporate act, the
17 court may enjoin or set aside the act, if equitable and
18 if all affected persons are parties to the proceeding,
19 and may award damages for loss other than anticipated
20 profits suffered by the corporation or another party
21 because of enjoining the unauthorized act."

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

25 "Section 127. Corporate name.

1 (1) A corporate name:

2 (a) Must contain the word "corporation",
3 "incorporated", or "limited", or the abbreviation
4 "corp.", "inc.", or "ltd."; and

5 (b) May not contain language stating or implying
6 that the corporation is organized for a purpose other
7 than that permitted by section 123 and its articles of
8 incorporation.

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

12 (a) The name of any entity registered or
13 authorized to transact business or conduct affairs under
14 the laws of the Federated States of Micronesia;

15 (b) A name the exclusive right to which is, at
16 the time, reserved in the Federated States of
17 Micronesia;

18 (c) The fictitious name adopted by a foreign
19 corporation authorized to transact business in the
20 Federated States of Micronesia because its real name is
21 unavailable; and

22 (d) Any trade name, trademark, or service mark
23 registered in the Federated States of Micronesia.

24 (3) A corporation may apply to the Registrar for
25 authorization to use a name that is substantially

1 identical, based upon the Registrar's records, to one or
2 more of the names described in subsection (2). The
3 Registrar shall authorize use of the name applied for
4 if:

5 (a) The other entity or holder of a reserved or
6 registered name consents to the use in writing and one
7 or more words are added to make the name distinguishable
8 from the name of the applying corporation; or

9 (b) The applicant delivers to the Registrar a
10 certified copy of the final judgment of a court of
11 competent jurisdiction establishing the applicant's
12 right to use the name applied for in the Federated
13 States of Micronesia.

14 (4) A corporation may use the name including the
15 fictitious name of another domestic or foreign
16 corporation that is used in the Federated States of
17 Micronesia if the other corporation is incorporated or
18 authorized to transact business in the Federated States
19 of Micronesia and the proposed user corporation:

20 (a) Has merged with the other corporation;

21 (b) Has been formed by reorganization of the
22 other corporation; or

23 (c) Has acquired all or substantially all of the
24 assets, including the corporate name, of the other
25 corporation.

1 (5) This chapter does not control the use of
2 fictitious names."

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

6 "Section 128. Reserved name.

7 (1) A person may reserve the exclusive use of a
8 domestic or foreign corporate name including a
9 fictitious name for a foreign corporation whose
10 corporate name is not available by delivering an
11 application to the Registrar for filing. The
12 application shall set forth the name and address of the
13 applicant and the name proposed to be reserved. If the
14 Registrar finds that the corporate name applied for is
15 available, the Registrar shall reserve the name for the
16 applicant's exclusive use for a one hundred twenty day
17 period.

18 (2) The owner of a reserved corporate name may
19 transfer the reservation to another person by delivering
20 to the Registrar a signed notice of the transfer that
21 states the name and address of the transferee."

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

25 "Section 129. Administrative order of abatement for

1 infringement of corporate name.

2 (1) Any domestic corporation in good standing or
3 foreign corporation authorized to do business in the
4 Federated States of Micronesia claiming that the name of
5 any entity registered or authorized to transact business
6 under the laws of the Federated States of Micronesia is
7 substantially identical to, or confusingly similar to,
8 its name may file a petition with the Registrar for an
9 administrative order of abatement to address the
10 infringement of its name. The petition shall set forth
11 the facts and authority that support the petitioner's
12 claim that further use of the name should be abated.
13 The petitioner, at the petitioner's expense, shall
14 notify the registrant of the hearing in the manner
15 prescribed by law.

16 (2) In addition to any other remedy or sanction
17 allowed by law, the order of abatement may:

18 (a) Allow the entity to retain its registration
19 name, but:

20 (i) Require the entity to register a new
21 trade name with the Registrar; and

22 (ii) Require the entity to conduct business
23 in the Federated States of Micronesia under this new
24 trade name; or

25 (b)(i) Require the entity to change its

1 registered name;

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

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

7 If the entity fails to comply with the order of
8 abatement within sixty days, the Registrar may
9 involuntarily dissolve or terminate the entity, or
10 cancel or revoke the entity's registration or
11 certificate of authority; after the time to appeal has
12 lapsed and no appeal has been timely filed. The
13 Registrar shall mail notice of the dissolution,
14 termination, or cancellation to the entity at its last
15 known mailing address. The entity shall wind up its
16 affairs in accordance with this chapter.

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

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

24 "Section 130. Registered office and registered agent.
25 Each corporation shall continuously maintain in the

1 Federated States of Micronesia:

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

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

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

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

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

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

19 "Section 131. Designation or change of registered
20 office or registered agent.

21 (1) A corporation that does not already have a
22 registered office and registered agent shall designate
23 its registered office and registered agent by delivering
24 to the Registrar for filing a statement of designation
25 that sets forth:

1 (a) The name of the corporation;

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

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

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

11 (a) The name of the corporation;

12 (b) The street address of its current registered
13 office, the name of its current registered agent at its
14 registered office, and any changes required to keep the
15 information current; and

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

19 (3) If the registered agent's street address changes,
20 the registered agent may change the street address of
21 the corporation's registered office by notifying the
22 corporation in writing of the change and signing either
23 manually or in facsimile and delivering to the Registrar
24 for filing a statement that complies with the
25 requirements of subsection (1) and recites that the

1 corporation has been notified of the change.”

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

5 “Section 132. Resignation of registered agent.

6 (1) A registered agent may resign from the registered
7 agent’s appointment by signing and delivering to the
8 Registrar for filing the signed statement of
9 resignation. The statement may include a statement that
10 the registered office is also discontinued.

11 (2) The registered agent shall mail one copy to the
12 registered office (if not discontinued) and the other
13 copy to the corporation at its principal office.

14 (3) The appointment of the agent is terminated, and
15 the registered office discontinued if so provided, on
16 the thirty-first day after the date on which the
17 statement was filed.”

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

21 “Section 133. Service on corporation.

22 (1) Service of any notice or process authorized by
23 law issued against any corporation, whether domestic or
24 foreign, by any court, judicial or administrative
25 office, or board, may be made in the manner provided by

1 law upon any registered agent, officer, or director of
2 the corporation who is found within the jurisdiction of
3 the court, officer, or board; or if any registered
4 agent, officer, or director cannot be found, upon the
5 manager or superintendent of the corporation or any
6 person who is found in charge of the property, business,
7 or office of the corporation within the jurisdiction.

8 (2) If no officer, director, manager, superintendent,
9 or other person in charge of the property, business, or
10 office of the corporation can be found within the
11 Federated States of Micronesia, and the corporation has
12 not filed with the Registrar, pursuant to this chapter,
13 the name of a registered agent upon whom legal notice
14 and process from the courts of the Federated States of
15 Micronesia may be served, or the person named is not
16 found within the Federated States of Micronesia, service
17 may be made upon the corporation by registered or
18 certified mail, return receipt requested, addressed to
19 the corporation at its principal office.

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

- 22 (a) The date the corporation receives the mail;
23 (b) The date shown on the return receipt, if
24 signed on behalf of the corporation; or
25 (c) Five days after its deposit in the Federated

1 States of Micronesia mail, as evidenced by the postmark,
2 if mailed postpaid and correctly addressed.

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

7 Section 36. Title 36 of the Code of the Federated States of
8 Micronesia (Annotated), is hereby amended by inserting a new
9 section 134 of chapter 1, to read as follows:

10 "Section 134. Authorized shares.

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

23 (2) The articles of incorporation must authorize:

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

1 (b) One or more classes of shares which may be
2 the same class or classes as those with voting rights
3 that together are entitled to receive the net assets of
4 the corporation upon dissolution.

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

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

10 (b) Are redeemable or convertible as specified
11 in the articles of corporation:

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

15 (ii) For cash, indebtedness, securities, or
16 other property; and

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

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

24 (d) Have preference over any other classes of
25 shares with respect to distributions, including

1 dividends and distributions upon the dissolution of the
2 corporation.

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

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

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

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

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

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

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

22 (3) All shares of a series must have preferences,
23 limitations, and relative rights identical with those of
24 other shares of the same series and, except to the
25 extent otherwise provided in the description of the

1 series, with those of other series of the same class.

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

7 (a) The name of the corporation;

8 (b) The text of the amendment or resolution
9 determining the terms of the class or series or shares;

10 (c) The date it was adopted; and

11 (d) A statement that the amendment or resolution
12 was duly adopted by the board of directors. Upon filing
13 of the articles of amendment or resolution by the
14 Registrar, it shall constitute an amendment of the
15 articles of incorporation."

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

19 "Section 136. Issued and outstanding shares.

20 (1) A corporation may issue the number of shares of
21 each class or series authorized by the articles of
22 incorporation. Shares that are issued are outstanding
23 shares until they are reacquired, redeemed, converted,
24 or cancelled.

25 (2) The reacquisition, redemption, or conversion of

1 outstanding shares is subject to the limitations of
2 subsection (3) and section 149.

3 (3) At all times that shares of the corporation are
4 outstanding, one or more shares that together have
5 unlimited voting rights and one or more shares that
6 together are entitled to receive the net assets of the
7 corporation upon dissolution must be outstanding."

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

11 "Section 137. Fractional shares.

12 (1) A corporation may:

13 (a) Issue fractions of a share or pay in money
14 the value of fractions of a share;

15 (b) Arrange for disposition of fractional shares
16 by the shareholders; or

17 (c) Issue scrip in registered or bearer form
18 entitling the holder to receive a full share upon
19 surrendering enough scrip to equal a full share.

20 (2) Each certificate representing scrip must be
21 conspicuously labeled "scrip" and must contain the
22 information required by section 143.

23 (3) The holder of a fractional share is entitled to
24 exercise the rights of a shareholder, including the
25 right to vote, to receive dividends, and to participate

1 in the assets of the corporation upon liquidation. The
2 holder of scrip is not entitled to any of these rights
3 unless the scrip provides for them.

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

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

9 (b) That the shares for which the scrip is
10 exchangeable may be sold and the proceeds paid to the
11 scripholders."

12 Section 40. Title 36 of the Code of the Federated States of
13 Micronesia (Annotated), is hereby amended by inserting a new
14 section 138 of chapter 1, to read as follows:

15 "Section 138. Subscription for shares before
16 incorporation.

17 (1) A subscription for shares entered into before
18 incorporation is irrevocable for six months unless the
19 subscription agreement provides a longer or shorter
20 period or all the subscribers agree to revocation.

21 (2) The board of directors may determine the payment
22 terms of subscription for shares that were entered into
23 before incorporation, unless the subscription agreement
24 specifies them. A call for payment by the board of
25 directors must be uniform so far as practicable as to

1 all shares of the same class or series, unless the
2 subscription agreement specifies otherwise.

3 (3) Shares issued pursuant to subscriptions entered
4 into before incorporation are fully paid and
5 nonassessable when the corporation receives the
6 consideration specified in the subscription agreement.

7 (4) If a subscriber defaults in payment of money or
8 property under a subscription agreement entered into
9 before incorporation, the corporation may collect the
10 amount owed as any other debt. Alternatively, unless
11 the subscription agreement provides otherwise, the
12 corporation may rescind the agreement and may sell the
13 shares if the debt remains unpaid for more than twenty
14 days after the corporation sends written demand for
15 payment to the subscriber.

16 (5) A subscription agreement entered into after
17 incorporation is a contract between the subscriber and
18 the corporation subject to section 139."

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

22 "Section 139. Issuance of shares.

23 (1) The powers granted in this section to the board
24 of directors may be reserved to the shareholders by the
25 articles of incorporation.

1 (2) The board of directors may authorize shares to be
2 issued for consideration consisting of any tangible or
3 intangible property or benefit to the corporation,
4 including cash, promissory notes, services performed,
5 contracts for services to be performed, or other
6 securities of the corporation.

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

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

25 Section 42. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 140 of chapter 1, to read as follows:

3 "Section 140. Liability of shareholders.

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

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

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

19 "Section 141. Share dividends.

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

1 (2) Shares of one class or series may not be issued
2 as a share dividend in respect of shares of another
3 class or series unless:

4 (a) The articles of incorporation so authorize;

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

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

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

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

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

1 least a specified percentage of the common shares of a
2 corporation from exercising such rights, options, or
3 warrants."

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

7 "Section 143. Form and content of certificates.

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

13 (2) At a minimum each share certificate must state on
14 its face:

15 (a) The name of the issuing corporation and that
16 it is organized under the laws of the Federated States
17 of Micronesia;

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

19 (c) The number and class of shares and the
20 designation of the series, if any, the certificate
21 represents.

22 (3) If the issuing corporation is authorized to issue
23 different classes of shares or different series within a
24 class, the designations, relative rights, preferences,
25 and limitations applicable to each class and the

1 variations in rights, preferences, and limitations
2 determined for each series and the authority of the
3 board of directors to determine variations for future
4 series must be summarized on the front or back of each
5 certificate. Alternatively, each certificate may state
6 conspicuously on its front or back that the corporation
7 will furnish the shareholder this information on request
8 in writing and without charge.

9 (4) Each share certificate:

10 (a) Must be signed either manually or in
11 facsimile by two officers designated in the bylaws or by
12 the board of directors; and

13 (b) May bear corporate seal or its facsimile.

14 (5) If the person who signed either manually or in
15 facsimile a share certificate no longer holds office
16 when the certificate is issued, the certificate is
17 nevertheless valid."

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

21 "Section 144. Shares without certificates.

22 (1) Unless the articles of incorporation or bylaws
23 provide otherwise, the board of directors of a
24 corporation may authorize the issuance of some or all of
25 the shares of any or all of its classes or series

1 without certificates. The authorization does not affect
2 shares already represented by certificates until they
3 are surrendered to the corporation.

4 (2) Within a reasonable time after the issuance or
5 transfer of shares without certificates, the corporation
6 shall send the shareholder a written statement of the
7 information required on certificates by Section 143(2)
8 and (3), and, if applicable, section 145."

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

12 "Section 145. Restriction on transfer of shares and
13 other securities.

14 (1) The articles of incorporation, bylaws, an
15 agreement among shareholders, or an agreement between
16 shareholders and the corporation may impose restrictions
17 on the transfer or registration of transfer of shares of
18 the corporation. A restriction does not affect shares
19 issued before the restriction was adopted unless the
20 holders of the shares are parties to the restriction
21 agreement or voted in favor of the restriction.

22 (2) A restriction on the transfer or registration of
23 transfer of shares is valid and enforceable against the
24 holder or a transferee of the holder if the restriction
25 is authorized by this section and its existence is noted

1 conspicuously on the front or back of the certificate or
2 is contained in the information statement required by
3 Section 144. Unless so noted, a restriction is not
4 enforceable against a person without knowledge of the
5 restriction.

6 (3) A restriction on the transfer or registration of
7 transfer of shares is authorized:

8 (a) To maintain the corporation's status when it
9 is dependent on the number or identity of its
10 shareholders;

11 (b) To preserve exemptions under securities law;
12 or

13 (c) For any other reasonable purpose.

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

16 (a) Obligate the shareholder first to offer the
17 corporation or other persons separately, consecutively,
18 or simultaneously an opportunity to acquire the
19 restricted shares;

20 (b) Obligate the corporation or other persons
21 separately, consecutively, or simultaneously to acquire
22 the restricted shares;

23 (c) Require the corporation, the holders of any
24 class of its shares, or another person to approve the
25 transfer of the restricted shares, if the requirement is

1 not manifestly unreasonable; or

2 (d) Prohibit the transfer of the restricted
3 shares to designated persons or classes of persons, if
4 the prohibition is not manifestly unreasonable.

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

8 Section 48. Title 36 of the Code of the Federated States of
9 Micronesia (Annotated), is hereby amended by inserting a new
10 section 146 of chapter 1, to read as follows:

11 "Section 146. Expense of issue. A corporation may pay
12 the expenses of selling or underwriting its shares, and
13 of organizing or reorganizing the corporation, from the
14 consideration received for shares."

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

18 "Section 147. Shareholders' preemptive rights.

19 (1) The shareholders of a corporation do not have a
20 preemptive right to acquire the corporation's unissued
21 shares except to the extent the articles of
22 incorporation so provide.

23 (2) A statement included in the articles of
24 incorporation that "the corporation elects to have
25 preemptive rights" or words of similar import means that

1 the following principles apply except to the extent the
2 articles of incorporation expressly provide otherwise:

3 (a) The shareholders of the corporation have a
4 preemptive right, granted on uniform terms and
5 conditions prescribed by the board of directors to
6 provide a fair and reasonable opportunity to exercise
7 the right, to acquire proportional amounts of the
8 corporation's unissued shares upon the decision of the
9 board of directors to issue them;

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

14 (c) There is no preemptive right with respect
15 to:

16 (i) Shares issued as compensation to
17 directors, officers, agents, or employees of the
18 corporation, its subsidiaries or affiliates;

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

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

1 (iv) Shares sold otherwise than for money;

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

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

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

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

25 Section 50. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 148 of chapter 1, to read as follows:

3 "Section 148. Corporation's acquisition of its own
4 shares.

5 (1) A corporation may acquire its own shares and
6 shares so acquired constitute authorized but unissued
7 shares.

8 (2) If the articles of incorporation prohibit the
9 reissuance of acquired shares, the number of authorized
10 shares is reduced by the number of shares acquired,
11 effective upon delivery to the Registrar for filing, a
12 statement of cancellation showing the reduction in the
13 authorized shares.

14 (3) The statement of cancellation must set forth:

15 (a) The name of the corporation;

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

18 (c) The total number of authorized shares,
19 itemized by class and series, remaining after reduction
20 of the shares."

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

24 "Section 149. Distributions to shareholders.

25 (1) A board of directors may authorize and the

1 corporation may make distributions to its shareholders
2 subject to restriction by the articles of incorporation
3 and the limitation in subsection (3).

4 (2) If the board of directors does not fix the record
5 date for determining shareholders entitled to a
6 distribution other than one involving a purchase,
7 redemption, or other acquisition of the corporation's
8 shares, it is the date the board of directors authorizes
9 the distribution.

10 (3) No distribution may be made if, after giving it
11 effect:

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

15 (b) The corporation's total assets would be less
16 than the sum of its total liabilities plus (unless the
17 articles of incorporation permit otherwise) the amount
18 that would be needed, if the corporation were to be
19 dissolved at the time of the distribution, to satisfy
20 the preferential rights upon dissolution of shareholders
21 whose preferential rights are superior to those
22 receiving the distribution.

23 (4) The board of directors may base a determination
24 that a distribution is not prohibited under subsection
25 (3) either on financial statements prepared on the basis

1 of accounting practices and principles that are
2 reasonable in the circumstances or on a fair valuation
3 or other method that is reasonable in the circumstances.

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

6 (a) In the case of distribution by purchase,
7 redemption, or other acquisition of the corporation's
8 shares, as of the earlier of:

9 (i) The date money or other property is
10 transferred or debt incurred by the corporation; or

11 (ii) The date the shareholder ceases to be a
12 shareholder with respect to the acquired shares.

13 (b) In the case of any other distribution of
14 indebtedness, as of the date the indebtedness is
15 distributed;

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

17 (i) The date the distribution is authorized
18 if the payment occurs within one hundred twenty days
19 after the date of authorization; or

20 (ii) The date the payment is made if it
21 occurs more than one hundred twenty days after the date
22 of authorization.

23 (6) A corporation's indebtedness to a shareholder
24 incurred by reason of a distribution made in accordance
25 with this section is at parity with the corporation's

1 indebtedness to its general, unsecured creditors except
2 to the extent subordinated by agreement.

3 (7) Indebtedness of a corporation, including
4 indebtedness issued as a distribution, is not considered
5 a liability for purposes of determinations under
6 subsection (3) if its terms provide that payment of
7 principal and interest are made only if and to the
8 extent that payment of a distribution to shareholders
9 could then be made under this section. If the
10 indebtedness is issued as a distribution, each payment
11 of principal or interest is treated as a distribution,
12 the effect of which is measured on the date the payment
13 is actually made."

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

17 "Section 150. Annual meeting.

18 (1) A corporation shall hold a meeting of
19 shareholders annually at a time stated in or fixed in
20 accordance with the bylaws.

21 (2) Annual shareholders' meetings may be held in or
22 out of the Federated States of Micronesia at the place
23 stated in or fixed in accordance with the bylaws. If no
24 place is stated in or fixed in accordance with the
25 bylaws, annual meetings shall be held at the

1 corporation's principal office. Notwithstanding the
2 foregoing, the bylaws may authorize the board of
3 directors, in its sole discretion, to determine that the
4 annual meeting shall not be held at any place, but may
5 instead be held solely by means of remote communication
6 as authorized under subsection (3).

7 (3) If authorized by the board of directors in its
8 sole discretion, and subject to guidelines and
9 procedures adopted by the board, shareholders and
10 proxies of the shareholders not physically present at a
11 meeting of shareholders, by means of remote
12 communication, may:

13 (a) Participate in a meeting of shareholders;
14 and

15 (b) Be deemed present in person and vote at a
16 meeting of shareholders whether the meeting is held at a
17 designated place or solely by means of remote
18 communication; provided that the corporation shall:

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

23 (ii) Implement reasonable measures to
24 provide shareholders and proxies of shareholders a
25 reasonable opportunity to participate in the meeting and

1 to vote on matters submitted to the shareholders,
2 including an opportunity to read or hear the proceedings
3 of the meeting concurrently with the proceedings; and

4 (iii) Maintain a record of voting or action
5 by any shareholder or proxy of a shareholder that votes
6 or takes other action at the meeting by means of remote
7 communication.

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

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

15 "Section 151. Special meeting.

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

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

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

1 describing the purpose or purposes for which it is to be
2 held.

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

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

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

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

25 "Section 152. Court-ordered meeting.

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

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

8 (b) On application of a shareholder who signed a
9 demand for a special meeting valid under section 151,
10 if:

11 (i) Notice of a special meeting was not
12 given within thirty days after the date the demand was
13 delivered to the corporation's secretary; or

14 (ii) The special meeting was not held in
15 accordance with the notice.

16 (2) The court may fix the time and place of the
17 meeting or determine that the meeting shall be held
18 solely by means of remote communication as authorized by
19 Section 150(3), determine the shares entitled to
20 participate in the meeting, specify a record date for
21 determining shareholders entitled to notice of and to
22 vote at the meeting, prescribe the form and content of
23 the meeting notice, fix the quorum required for specific
24 matters to be considered at the meeting or direct that
25 the votes represented at the meeting constitute a quorum

1 for action on those matters, and enter other orders
2 necessary to accomplish the purpose or purposes of the
3 meeting.”

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

7 “Section 153. Action without meeting.

8 (1) Action required or permitted by this chapter to
9 be taken at a shareholders’ meeting may be taken without
10 a meeting if the action is taken by all the shareholders
11 entitled to vote on the action. The action shall be
12 evidenced by one or more written consents describing the
13 action taken, signed before or after the intended
14 effective date of the action by all the shareholders
15 entitled to vote on the action, and delivered to the
16 corporation for inclusion in the minutes for filing with
17 the corporate records.

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

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

25 (4) If this chapter requires that notice of proposed

1 action be given to nonvoting shareholders and the action
2 is to be taken by unanimous consent of the voting
3 shareholders, the corporation shall give its nonvoting
4 shareholders written notice of the proposed action at
5 least ten days before the action is taken. The notice
6 shall contain or be accompanied by the same material
7 that, under this chapter, would have been required to be
8 sent to nonvoting shareholders in a notice of a meeting
9 at which the proposed action would have been submitted
10 to the shareholders for action.

11 (5) An electronic transmission consenting to an
12 action to be taken and transmitted by a shareholder,
13 proxy of a shareholder, or person or persons authorized
14 to act for a shareholder or proxy of a shareholder,
15 shall be deemed to be written, signed, and dated for the
16 purposes of this section; provided that the electronic
17 transmission sets forth or is delivered with information
18 from which the corporation may determine:

19 (a) That the electronic transmission was
20 transmitted by the shareholder, proxy of the
21 shareholder, or person or persons authorized to act for
22 the shareholder or proxy of the shareholder; and

23 (b) The date on which the shareholder, or
24 authorized person or persons transmitted the electronic
25 transmission.

1 The date on which the electronic transmission is
2 transmitted shall be deemed to be the date on which the
3 consent is signed. No consent given by electronic
4 transmission shall be deemed to have been delivered
5 until the consent is reproduced in paper form and
6 delivered to the corporation.

7 (6) Any copy, facsimile, or other reliable
8 reproduction of a consent in writing may be substituted
9 or used in lieu of the original writing for any and all
10 purposes for which the original writing could be used;
11 provided that the copy, facsimile, or other reproduction
12 shall be a complete reproduction of the entire original
13 writing."

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

17 "Section 154. Notice of meeting.

18 (1) A corporation shall notify shareholders of the
19 date, time, and place, if any, of each annual and
20 special shareholders' meeting no fewer than ten nor more
21 than sixty days before the meeting date. If means of
22 remote communication are authorized for use in a
23 meeting, regardless of whether the meeting is held at a
24 designated place or solely by means of remote
25 communication, the notice shall also inform shareholders

1 of the means of remote communication by which
2 shareholders may be deemed to be present in person and
3 allowed to vote. Unless this chapter or the articles of
4 incorporation require otherwise, the corporation is
5 required to give notice only to shareholders entitled to
6 vote at the meeting.

7 (2) Unless this chapter or the articles of
8 incorporation require otherwise, notice of an annual
9 meeting need not include a description of the purpose or
10 purposes for which the meeting is called.

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

14 (4) If not otherwise fixed under Section 152 or 156,
15 the record date for determining shareholders entitled to
16 notice of and to vote at an annual or special
17 shareholders' meeting is the day before the first notice
18 is delivered to shareholders.

19 (5) Unless the bylaws require otherwise, if an annual
20 or special shareholders' meeting is adjourned to a
21 different date, time, or place, notice need not be given
22 of the new date, time or place if the new date, time, or
23 place is announced at the meeting before adjournment.
24 In addition, if the annual or special shareholders'
25 meeting was held solely by means of remote

1 communication, and the adjourned meeting will be held by
2 a means of remote communication by which shareholders
3 may be deemed to be present in person and vote, notice
4 need not be given of the new means of remote
5 communication if the new means of remote communication
6 is announced at the meeting before adjournment. If a
7 new record date for the adjourned meeting is or must be
8 fixed under Section 156, however, notice of the
9 adjourned meeting shall be given under this section to
10 shareholders who are entitled to notice of the new
11 record date."

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

15 "Section 155. Waiver of notice.

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

1 may determine that the electronic transmission was
2 transmitted by the shareholder.

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

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

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

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

16 "Section 156. Record date.

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

25 (2) A record date fixed under this section may not be

1 more than seventy days before the meeting or action
2 requiring a determination of shareholders.

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

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

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

18 "Section 157. Shareholders' list for meeting.

19 (1) After fixing a record date for a meeting, a
20 corporation shall prepare an alphabetical list of the
21 names of all its shareholders who are entitled to notice
22 of a shareholders' meeting. The list shall be arranged
23 by voting group and within each voting group by class or
24 series of shares and show the address of and number of
25 shares held by each shareholder.

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

20 (3) The corporation shall make the shareholders' list
21 available at the meeting, and any shareholder, the
22 shareholder's agent, or shareholder's attorney, is
23 entitled to inspect the list at any time during the
24 meeting or any adjournment.

25 (4) If the corporation refuses to allow a

1 shareholder, the shareholder's agent, or the
2 shareholder's attorney, to inspect the shareholders'
3 list before or at the meeting or copy the list as
4 permitted by subsection (2), the FSM Supreme Court, on
5 application of the shareholder, may summarily order the
6 inspection or copying at the corporations' expense and
7 may postpone the meeting for which the list was prepared
8 until the inspection or copying is complete.

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

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

15 "Section 158. Voting entitlement of shares.

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

21 (2) Absent special circumstances, the shares of a
22 corporation are not entitled to vote if they are owned,
23 directly or indirectly, by a second corporation,
24 domestic or foreign, and the first corporation owns,
25 directly or indirectly, a majority of the shares

1 entitled to vote for directors of the second
2 corporation.

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

6 (4) Redeemable shares are not entitled to vote after
7 notice of redemption is mailed to the holders and a sum
8 sufficient to redeem the shares has been deposited with
9 a bank, trust company, or other financial institution
10 under an irrevocable obligation to pay the holders the
11 redemption price on surrender of the shares."

12 Section 61. Title 36 of the Code of the Federated States of
13 Micronesia (Annotated), is hereby amended by inserting a new
14 section 159 of chapter 1, to read as follows:

15 "Section 159. Proxies.

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

18 (2) A shareholder may appoint a proxy to vote or
19 otherwise act for the shareholder by signing an
20 appointment form. The appointment form shall be signed
21 by either the shareholder personally or by the
22 shareholder's attorney-in-fact.

23 (3) Alternatively, a shareholder may authorize
24 another person to act as a proxy for the shareholder by:

25 (a) Executing a writing authorizing another

1 person or persons to act as a proxy for the shareholder,
2 which may be accompanied by the shareholder or the
3 shareholder's authorized attorney-in-fact, officer,
4 director, employee, or agent signing the writing or
5 causing the shareholder's signature to be affixed to the
6 writing by any reasonable means, including without
7 limitation the use of a facsimile signature; or

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

1 (4) An appointment of a proxy is effective when
2 received by the secretary or other officer or agent
3 authorized to tabulate votes. An appointment is valid
4 for eleven months unless a longer period is expressly
5 provided in the appointment document.

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

11 (a) A pledgee;

12 (b) A person who purchased or agreed to purchase
13 the shares;

14 (c) A creditor of the corporation who extended
15 it credit under terms requiring appointment;

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

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

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

1 under the appointment.

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

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

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

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

20 "Section 160. Shares held by nominees.

21 (1) A corporation may establish a procedure by which
22 the beneficial owner of shares that are registered in
23 the name of the nominee is recognized by the corporation
24 as the shareholder. The extent of this recognition may
25 be determined in the procedure.

- 1 (2) The procedure may set forth:
- 2 (a) The types of nominees to which it applies;
- 3 (b) The rights or privileges that the
- 4 corporation recognizes in a beneficial owner;
- 5 (c) The manner in which the procedure is
- 6 selected by the nominee;
- 7 (d) The information that must be provided when
- 8 the procedure is selected;
- 9 (e) The period for which selection of the
- 10 procedure is effective; and
- 11 (f) Other aspects of the rights and duties
- 12 created."

13 Section 62. Title 36 of the Code of the Federated States of

14 Micronesia (Annotated), is hereby amended by inserting a new

15 section 161 of chapter 1, to read as follows:

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

17 (1) If the name signed on a vote, consent, waiver, or

18 proxy appointment corresponds to the name of a

19 shareholder, the corporation, acting in good faith, is

20 entitled to accept the vote, consent, waiver, or proxy

21 appointment and to give it effect as the act of the

22 shareholder.

23 (2) If the name signed on a vote, consent, waiver, or

24 proxy appointment does not correspond to the name of its

25 shareholder, the corporation acting in good faith is

1 nevertheless entitled to accept the vote, consent,
2 waiver, or proxy appointment and to give it effect as
3 the act of the shareholder if:

4 (a) The shareholder is an entity and the name
5 signed purports to be that of an officer or agent of the
6 entity;

7 (b) The name signed purports to be that of an
8 administrator, executor, guardian, or conservator
9 representing the shareholder and, if the corporation
10 requests, evidence of fiduciary status acceptable to the
11 corporation has been presented with respect to the vote,
12 consent, waiver, or proxy appointment;

13 (c) The name signed purports to be that of a
14 receiver or trustee in bankruptcy of the shareholder
15 and, if the corporation requests, evidence of this
16 status acceptable to the corporation has been presented
17 with respect to the vote, consent, waiver, or proxy
18 appointment;

19 (d) The name signed purports to be that of a
20 pledgee, beneficial owner, or attorney-in-fact of the
21 shareholder and, if the corporation requests, evidence
22 acceptable to the corporation of the signatory's
23 authority to sign for the shareholder has been presented
24 with respect to the vote, consent, waiver, or proxy
25 appointment; or

1 (e) Two or more persons are the shareholder as
2 cotenants or fiduciaries and the name signed purports to
3 be the name of at least one of the co-owners and the
4 person signing appears to be acting on behalf of all the
5 co-owners.

6 (3) The corporation is entitled to reject a vote,
7 consent, waiver, or proxy appointment if the secretary
8 or other officer or agent authorized to tabulate votes,
9 acting in good faith, has reasonable basis to doubt the
10 validity of the signature on the vote, consent, waiver,
11 or proxy appointment or the signatory's authority to
12 sign for the shareholder.

13 (4) The corporation and its officer or agent who
14 accepts or rejects a vote, consent, waiver, or proxy
15 appointment in good faith and in accordance with the
16 standards of this section are not liable in damages to
17 the shareholder for the consequences of the acceptance
18 or rejection.

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

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

1 "Section 162. Quorum and voting requirements for voting
2 groups.

3 (1) Shares entitled to vote as a separate voting
4 group may take action on a matter at a meeting only if a
5 quorum of those shares exists with respect to that
6 matter. Unless the articles of incorporation or this
7 chapter provide otherwise, a majority of the votes
8 entitled to be cast on the matter by the voting group
9 constitutes a quorum of that voting group for action on
10 that matter.

11 (2) Once a share is represented for any purpose at a
12 meeting, it is deemed present for quorum purposes for
13 the remainder of the meeting and for any adjournment of
14 that meeting unless a new record date is or must be set
15 for that adjourned meeting.

16 (3) If a quorum exists, action on a matter other than
17 the election of directors by a voting group is approved
18 if the votes cast within the voting group favoring the
19 action exceed the votes cast opposing the action, unless
20 the articles of incorporation or this chapter require a
21 greater number of affirmative votes.

22 (4) An amendment of articles of incorporation adding,
23 changing, or deleting a quorum or voting requirement for
24 a voting group greater than specified in subsection (1)
25 or (3) is governed by section 164.

1 (5) The election of directors is governed by section
2 165."

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

6 "Section 163. Action by single and multiple voting
7 groups.

8 (1) If the articles of incorporation or this chapter
9 provide for voting by a single voting group on a matter,
10 action on that matter is taken when voted upon by that
11 voting group as provided in Section 162.

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

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

22 "Section 164. Greater quorum or voting requirements.

23 (1) The articles of incorporation may provide for a
24 greater quorum or voting requirement for shareholders or
25 voting groups of shareholders than is provided for by

1 this chapter.

2 (2) An amendment to the articles of incorporation
3 that adds, changes, or deletes a greater quorum or
4 voting requirement must meet the same quorum requirement
5 and be adopted by the same vote and voting groups
6 required to take action under the quorum and voting
7 requirements then in effect or proposed to be adopted,
8 whichever is greater."

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

12 "Section 165. Voting for directors; cumulative voting.

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

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

24 (a) Each shareholder present in person or
25 represented by proxy at the meeting shall have a number

1 of votes equal to the number of shares of capital stock
2 owned by the shareholder multiplied by the number of
3 directors to be elected at the meeting;

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

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

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

22 Section 68. Title 36 of the Code of the Federated States of
23 Micronesia (Annotated), is hereby amended by inserting a new
24 section 166 of chapter 1, to read as follows:

25 "Section 166. Voting trusts.

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

13 (2) A voting trust becomes effective on the date the
14 first shares subject to the trust are registered in the
15 trustee's name. A voting trust is valid for not more
16 than ten years after its effective date unless extended
17 under subsection (3).

18 (3) All or some of the parties to a voting trust may
19 extend it for additional terms of not more than ten
20 years each by signing written consent to the extension.
21 An extension is valid for ten years from the date the
22 first shareholder signs the extension agreement. The
23 voting trustee must deliver copies of the extension
24 agreement and list of beneficial owners to the
25 corporation's principal office. An extension agreement

1 binds only those parties signing it."

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

5 "Section 167. Voting agreements.

6 (1) Two or more shareholders may provide for the
7 manner in which they will vote their shares by signing
8 an agreement for that purpose. A voting agreement
9 created under this section is not subject to Section
10 166.

11 (2) A voting agreement created under this section is
12 specifically enforceable."

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

16 "Section 168. Shareholder agreements.

17 (1) An agreement among the shareholders of a
18 corporation that complies with this section is effective
19 among the shareholders and the corporation even though
20 it is inconsistent with one or more other provisions of
21 this chapter in that it:

22 (a) Eliminates the board of directors or
23 restricts the discretion or powers of the board of
24 directors;

25 (b) Governs the authorization or making of

1 distributions whether or not in proportion to ownership
2 of shares, subject to limitations in section 149,
3 including without limitation the elimination,
4 restriction, or expansion of dissenter's rights;

5 (c) Establishes who shall be directors or
6 officers of the corporation, or their terms of office or
7 manner of selection or removal;

8 (d) Governs, in general or in regard to specific
9 matters, the exercise or division of voting power by or
10 between the shareholders and directors or by or among
11 any of them, including without limitation, the use of
12 weighted voting rights or director proxies, or the
13 validity and enforceability of actions that are approved
14 by the directors or shareholders of a corporation, as
15 applicable, in writing, without a meeting and with
16 written consent of less than all the directors or
17 shareholders entitled to vote on any such action. An
18 agreement covered under this paragraph may include an
19 agreement to permit any action required or permitted by
20 this chapter to be taken at a shareholders' meeting to
21 be taken without a meeting; provided that consents in
22 writing, setting forth the action so taken, shall be
23 signed or given by electronic transmission by the
24 holders of the outstanding shares entitled to vote on
25 the action having not less than the minimum number of

1 votes that would be necessary to authorize or take such
2 action at a meeting at which all shares entitled to vote
3 thereon were present and voted, notwithstanding section
4 153.

5 (e) Establishes the terms and conditions of any
6 agreement for the transfer or use of property or the
7 provision of services between the corporation and any
8 shareholder, director, officer, or employee of the
9 corporation or among any of them;

10 (f) Transfers to one or more shareholders or
11 other persons all or part of the authority to exercise
12 the corporate powers or to manage the business and
13 affairs of the corporation, including the resolution of
14 any issue about which there exists a deadlock among
15 directors or shareholders;

16 (g) Requires dissolution of the corporation at
17 the request of one or more of the shareholders or upon
18 the occurrence of a specified event or contingency; or

19 (h) Otherwise governs the exercise of the
20 corporate powers or the management of the business and
21 affairs of the corporation or the relationship among the
22 shareholders, the directors, and the corporation, or
23 among any of them, and is not contrary to public policy.

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

25 (a)Set forth:

1 (i) In the articles of incorporation or
2 bylaws and approved by all persons who are shareholders
3 at the time of the agreement; or

4 (ii) In a written agreement that is signed
5 by all persons who are shareholders at the time of the
6 agreement and is made known to the corporation;

7 (b) Subject to amendment only by all persons who
8 are shareholders at the time of the amendment, unless
9 the agreement provides otherwise;

10 (c) Valid for ten years; unless the agreement
11 provides otherwise, in which case the agreement may be
12 valid for a longer or shorter term than ten years, or
13 perpetually; and

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

19 (3) The existence of an agreement authorized by this
20 section shall be noted conspicuously in the
21 corporation's articles of incorporation, on the front or
22 back of each certificate for outstanding shares, or on
23 the information statement required by section 144 (2).
24 If, at the time of the agreement, the corporation has
25 shares outstanding represented by certificates and the

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

1 ninety days after discovery of the existence of the
2 agreement or two years after the time of purchase of the
3 shares.

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

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

24 (6) The existence or performance of an agreement
25 authorized by this section shall not be a ground for

1 imposing personal liability on any shareholder for the
2 acts or debts of the corporation even if the agreement
3 or its performance treats the corporation as if it were
4 a partnership or results in the failure to observe the
5 corporate formalities otherwise applicable to the
6 matters governed by the agreement.

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

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

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

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

24 "Section 170. Standing.

25 (1) A shareholder may not commence or maintain a

1 derivative proceeding unless the shareholder:

2 (a) Was a shareholder of the corporation at the
3 time of the act or omission complained of or became a
4 shareholder through transfer by operation of law from
5 one who was a shareholder at that time; and

6 (b) Fairly and adequately represents the
7 interests of the corporation in enforcing the right of
8 the corporation."

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

12 "Section 171. Demand.

13 (1) No shareholder may commence a derivative
14 proceeding until:

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

17 (b) Ninety days have expired from the date the
18 demand was made unless the shareholder has earlier been
19 notified that the demand has been rejected by the
20 corporation or unless irreparable injury to the
21 corporation would result by waiting for the expiration
22 of the ninety-day period."

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

1 "Section 172. Stay of proceedings. If the corporation
2 commences an inquiry into the allegations made in the
3 demand or complaint, the court may stay any derivative
4 proceeding for a period that the court deems
5 appropriate."

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

9 "Section 173. Dismissal.

10 (1) A derivative proceeding shall be dismissed by the
11 court on motion by the corporation if one of the groups
12 specified in subsection (2) or (6) has determined in
13 good faith after conducting a reasonable inquiry upon
14 which its conclusions are based that the maintenance of
15 the derivative proceeding is not in the best interest of
16 the corporation.

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

20 (a) A majority vote of independent directors
21 present at a meeting of the board of directors if the
22 independent directors constitute a quorum; or

23 (b) A majority vote of a committee consisting of
24 two or more independent directors appointed by majority
25 vote of independent directors present at a meeting of

1 the board of directors, whether or not the independent
2 directors constituted a quorum.

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

6 (a) The nomination or election of the director
7 by persons who are defendants in the derivative
8 proceeding or against whom action is demanded;

9 (b) The naming of the director as a defendant in
10 the derivative proceeding or as a persons against whom
11 action is demanded; or

12 (c) The approval by the director of the act
13 being challenged in the derivative proceeding or demand
14 if the act resulted in no personal benefit to the
15 director.

16 (4) If a derivative proceeding is commenced after a
17 determination has been made rejecting a demand by a
18 shareholder, the complaint shall allege with
19 particularity facts establishing either:

20 (a) That a majority of the board of directors
21 did not consist of independent directors at the time the
22 determination was made; or

23 (b) That the requirements of subsection (1) have
24 not been met.

25 (5) If a majority of the board of directors does not

1 consist of independent directors at the time the
2 determination is made, the corporation shall have the
3 burden of proving that the requirements of subsection
4 (1) have been met. If a majority of the board of
5 directors consists of independent directors at the time
6 the determination is made, the plaintiff shall have the
7 burden of proving the requirements of subsection (1)
8 have not been met.

9 (6) The court may appoint a panel of one or more
10 independent persons upon motion by the corporation to
11 make a determination whether the maintenance of the
12 derivative proceeding is in the best interests of the
13 corporation. In the case, the plaintiff shall have the
14 burden of proving that the requirements of subsection
15 (1) have not been met."

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

19 "Section 174. Discontinuance or settlement. A
20 derivative proceeding may not be discontinued or settled
21 without the court's approval. If the court determines
22 that a proposed discontinuance or settlement will
23 substantially affect the interests of the corporation's
24 shareholders or a class of shareholders, the court shall
25 direct that notice be given to the shareholders

1 affected.”

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

5 “Section 175. Payment of expenses.

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

8 (a) Order the corporation to pay the plaintiff’s
9 reasonable expenses including reasonable attorney’s fees
10 incurred in the proceeding if it finds that the
11 proceeding has resulted in a substantial benefit to the
12 corporation;

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

18 (c) Order a party to pay an opposing party’s
19 reasonable expenses including reasonable attorney’s fees
20 incurred because of the filing of a pleading, motion, or
21 other paper, if it finds that the pleading, motion, or
22 other paper was not well-grounded in fact, after
23 reasonable inquiry, or warranted by existing law or a
24 good faith argument for the extension, modification, or
25 reversal of existing law and was interposed for an

1 improper purpose, such as to harass or cause unnecessary
2 delay or needless increase in the cost of litigation.”

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

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

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

15 “Section 177. Requirement for and duties of board of
16 directors.

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

19 (2) All corporate powers shall be exercised by or
20 under the authority of, and the business and affairs of
21 the corporation managed under the direction of, its
22 board of directors, subject to any limitation set forth
23 in the articles of incorporation or in an agreement
24 authorized under section 168.”

25 Section 80. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 178 of chapter 1, to read as follows:

3 "Section 178. Qualifications of directors. The
4 articles of incorporation or bylaws may prescribe
5 qualifications for directors. A director need not be a
6 citizen or resident of the Federated States of
7 Micronesia or a shareholder of the corporation unless
8 the articles of incorporation or bylaws so prescribe."

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

12 "Section 179. Number and election of directors.

13 (1) A board of directors must consist of one or more
14 individuals, with the number specified in or fixed in
15 accordance with the articles of incorporation or bylaws.

16 (2) If a board of directors has power to fix or
17 change the number of directors, the board may increase
18 or decrease by thirty percent or less the number of
19 directors last approved by the shareholders, but only
20 the shareholders may increase or decrease by more than
21 thirty percent the number of directors last approved by
22 the shareholders.

23 (3) The articles of incorporation or bylaws may
24 establish a variable range for the size of the board of
25 directors by fixing a minimum and maximum number of

1 directors. If a variable range is established, the
2 number of directors may be fixed or changed from time to
3 time, within the minimum and maximum, by the
4 shareholders or the board of directors. After shares
5 are issued, only the shareholders may change the range
6 for the size of the board or change from a fixed to a
7 variable-range size board or vice versa.

8 (4) Directors are elected at the first annual
9 shareholders' meeting and at each annual meeting
10 therefore unless their terms are staggered under section
11 182."

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

15 "Section 180. Election of directors by certain classes
16 of shareholders. If the articles of incorporation
17 authorize dividing the shares into classes, the articles
18 may also authorize the election of all or a specified
19 number of directors by the holders of one or more
20 authorized classes of shares. A class or classes of
21 shares entitled to elect one or more directors is a
22 separate voting group for purposes of the election of
23 directors."

24 Section 83. Title 36 of the Code of the Federated States of
25 Micronesia (Annotated), is hereby amended by inserting a new

1 section 181 of chapter 1, to read as follows:

2 "Section 181. Terms of directors generally.

3 (1) The terms of the initial directors of a
4 corporation expire at the first shareholders' meeting at
5 which directors are elected.

6 (2) The terms of all other directors expire at the
7 next annual shareholders' meeting following their
8 election unless their terms are staggered under section
9 182.

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

12 (4) The term of a director elected to fill a vacancy
13 expires at the next shareholders' meeting at which
14 directors are elected.

15 (5) Despite the expiration of a director's term, the
16 director continues to serve until the director's
17 successor is elected and qualified or until there is a
18 decrease in the number of directors."

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

22 "Section 182. Staggered terms for directors. If there
23 are nine or more directors, the articles of
24 incorporation may provide for staggering their terms by
25 dividing the total number of directors into two or three

1 groups, with each group containing one-half or one-third
2 of the total, as near as may be. In that event, the
3 terms of directors in the first group expire at the
4 first annual shareholders' meeting after their election,
5 the terms of the second group expire at the second
6 annual shareholders' meeting after their election, and
7 the terms of the third group, if any, expire at the
8 third annual shareholders' meeting after their election.
9 At each annual shareholders' meeting held thereafter,
10 directors shall be chosen for terms of two years or
11 three years, as the case may be, to succeed those whose
12 terms expire."

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

16 "Section 183. Resignation of directors.

17 (1) A director may resign at any time by delivering
18 notice given in writing or by electronic transmission to
19 the board of directors, its chairperson, or the
20 corporation.

21 (2) A resignation is effective when the notice is
22 delivered unless the notice specifies a later effective
23 date."

24 Section 86. Title 36 of the Code of the Federated States of
25 Micronesia (Annotated), is hereby amended by inserting a new

1 section 184 of chapter 1, to read as follows:

2 "Section 184. Removal of directors by shareholders.

3 (1) The shareholders may remove one or more directors
4 with or without cause unless the articles of
5 incorporation provide that directors may be removed only
6 for cause.

7 (2) If a director is elected by a voting group of
8 shareholders, only the shareholders of that voting group
9 may participate in the vote to remove the director.

10 (3) If cumulative voting is authorized, a director
11 may not be removed if the number of votes sufficient to
12 elect the director under cumulative voting is voted
13 against the director's removal. If cumulative voting is
14 not authorized, a director may be removed only if the
15 number of votes cast to remove the director exceeds the
16 number of votes cast not to remove the director.

17 (4) A director may be removed by the shareholders
18 only at a meeting called for the purpose of removing the
19 director and the meeting notice must state that the
20 purpose, or one of the purposes, of the meeting is
21 removal of the director."

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

25 "Section 185. Removal of directors by judicial

1 proceeding.

2 (1) The Supreme Court of the Federated States of
3 Micronesia may remove a director of the corporation from
4 office in a proceeding commenced either by the
5 corporation or by its shareholders holding at least ten
6 percent of the outstanding shares of any class if the
7 court finds that:

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

11 (b) Removal is in the best interest of the
12 corporation.

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

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

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

22 "Section 186. Vacancy on board.

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

1 number of directors:

2 (a) The shareholders may fill the vacancy;

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

4 or

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

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

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

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

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

25 Section 90. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 188 of chapter 1, to read as follows:

3 "Section 188. Meetings.

4 (1) The board of directors may hold regular or
5 special meetings in or out of the Federated States of
6 Micronesia.

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

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

19 "Section 189. Action without meeting.

20 (1) Unless the articles of incorporation or bylaws
21 provide otherwise, action required or permitted by this
22 chapter to be taken at a board of directors' meeting may
23 be taken without a meeting if the action is taken by all
24 members of the board. The action shall be evidenced by
25 one or more consents describing the action taken, given

1 either in writing and signed before or after the
2 intended effective date of the action by each director,
3 or by electronic transmission, and included in the
4 minutes or filed with the corporate records reflecting
5 the action taken. In the case of a consent by
6 electronic transmission, the electronic transmission
7 shall set forth or be submitted with information from
8 which it may be determined that the electronic
9 transmission was authorized by the director who sent the
10 electronic transmission.

11 (2) Action taken under this section shall be
12 effective when the last director signs the consent or
13 gives a consent by electronic transmission, unless the
14 consent specifies a different effective date.

15 (3) A consent signed or given by electronic
16 transmission under this section has the effect of a
17 meeting vote and may be described as such in any
18 document."

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

22 "Section 190. Notice of meeting.

23 (1) Unless the articles of incorporation or bylaws
24 provide otherwise, regular meetings of the board of
25 directors may be held without notice of the date, time,

1 place, or purpose of the meeting.

2 (2) Unless the articles of incorporation or bylaws
3 provide for a longer or shorter period, special meetings
4 of the board of directors must be preceded by at least
5 two days' notice of the date, time, and place of the
6 meeting. The notice need not described the purpose of
7 the meeting unless required by the articles of
8 incorporation or bylaws."

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

12 "Section 191. Waiver of notice of meeting.

13 (1) A director may waive any notice required by this
14 chapter, the articles of incorporation, or bylaws before
15 or after the date and time stated in the notice. Except
16 as provided by subsection (2), the waiver shall be in
17 writing, signed by the director entitled to the notice
18 or by electronic transmission by the director entitled
19 to notice, and filed with the minutes or corporate
20 records.

21 (2) A director's attendance at or participation in a
22 meeting waives any required notice to the director of
23 the meeting unless the director at the beginning of the
24 meeting or promptly upon the director's arrival objects
25 to holding the meeting or transacting business at the

1 meeting and does not thereafter vote for or assent to
2 action taken at the meeting."

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

6 "Section 192. Quorum and voting.

7 (1)Unless the articles of incorporation or bylaws
8 require a greater number or unless otherwise
9 specifically provided in this chapter, a quorum of a
10 board of directors consists of:

11 (a)A majority of the fixed number of directors if the
12 corporation has a fixed board size; or

13 (b)A majority of the number of directors prescribed, or
14 if no number is prescribed the number in office
15 immediately before the meeting begins, if the
16 corporation has a variable-range size board.

17 (2)The articles of incorporation or bylaws may authorize
18 a quorum of a board of directors to consist of no fewer
19 than one-third of the fixed or prescribed number of
20 directors determined under subsection (1).

21 (3)If a quorum is present when a vote is taken, the
22 affirmative vote of a majority of directors present is
23 the action of the board of directors unless the articles
24 of incorporation or bylaws require the vote of a greater
25 number of directors.

1 (4)A director who is present at a meeting of the board
2 of directors or a committee of the board of directors
3 when corporate action is taken is deemed to have
4 assented to the action taken unless:

5 (a)The director objects at the beginning of the meeting
6 or promptly upon the director's arrival to holding it or
7 transacting business at the meeting;

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

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

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

20 "Section 193. Committees.

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

1 board of directors.

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

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

6 (b) The number of directors required by the
7 articles of incorporation or bylaws to take action under
8 section 192.

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

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

18 (5) A committee may not, however:

19 (a) Authorize distributions;

20 (b) Approve or propose to shareholders action
21 that this chapter requires to be approved by
22 shareholders;

23 (c) Fill vacancies on the board of directors or
24 on any of its committees;

25 (d) Amend articles of incorporation pursuant to

1 section 220;

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

3 (f) Approve a plan of merger not requiring shareholder
4 approval;

5 (g) Authorize or approve reacquisition of
6 shares, except according to a formula or method
7 prescribed by the board of directors; or

8 (h) Authorize or approve the issuance or sale or
9 contract for sale of shares, or determine the
10 designation and relative rights, preferences, and
11 limitations of a class or series of shares, except that
12 the board of directors may authorize a committee or a
13 senior executive officer of the corporation to do so
14 within limits specifically prescribed by the board of
15 directors.

16 (6) The creation of, delegation of authority to, or
17 action by a committee does not alone constitute
18 compliance by a director with the standards of conduct
19 described in section 194."

20 Section 96. Title 36 of the Code of the Federated States of
21 Micronesia (Annotated), is hereby amended by inserting a new
22 section 194 of chapter 1, to read as follows:

23 "Section 194. General standards for directors.

24 (1) A director shall discharge the director's duties
25 as a director, including the director's duties as a

1 member of a committee:

2 (a) In good faith;

3 (b) With the care an ordinarily prudent person
4 in a like position would exercise under similar
5 circumstances; and

6 (c) In a manner the director reasonably believes
7 to be in the best interests of the corporation.

8 (2) In determining the best interests of the
9 corporation, a director, in addition to considering the
10 interests of the corporation's shareholders, may
11 consider, in the director's discretion, any of the
12 following factors:

13 (a) The interests of the corporation's
14 employees, customers, suppliers, and creditors;

15 (b) The economy of the nation;

16 (c) Community and societal considerations,
17 including, without limitation, the impact of any action
18 upon the communities in or near which the corporation
19 has offices or operations; and

20 (d) The long-term as well as short-term
21 interests of the corporation and its shareholders,
22 including without limitation, the possibility that these
23 interests may be best served by the continued
24 independence of the corporation.

25 (3) In discharging duties as a director, the director

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

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

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

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

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

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

22 Section 97. Title 36 of the Code of the Federated States of
23 Micronesia (Annotated), is hereby amended by inserting a new
24 section 195 of chapter 1, to read as follows:

25 "Section 195. Limitation of liability of directors;

1 shareholder approval required.

2 (1) A corporation may eliminate or limit the personal
3 liability of its directors in any action brought by the
4 shareholders or the corporation for monetary damages
5 against any director of the corporation for any action
6 taken, or any failure to take any action, as a director;
7 provided that:

8 (a) The elimination or limitation shall be
9 authorized, directed, or provided for in:

10 (i) The articles of incorporation of the
11 corporation; or

12 (ii) Any duly adopted amendment of the
13 articles of incorporation; and

14 (b) If the provision eliminating or limiting the
15 personal liability of a corporation's directors is
16 authorized, directed, or provided for by amendments to
17 the articles of incorporation, it shall be adopted upon
18 the affirmative vote of the holders of two-thirds of the
19 shares represented at the shareholders' meeting and
20 entitled to vote; provided that the vote also
21 constitutes a majority of the shares entitled to vote.

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

24 (a) The amount of a financial benefit received
25 by a director to which the director is not entitled;

1 (b) An intentional infliction of harm on the
2 corporation or the shareholders'

3 (c) A violation of section 196; or

4 (d) An intentional violation of criminal law.

5 (3) The shareholders of the corporation shall receive
6 written notice of any proposal by the corporation to
7 eliminate or limit the personal liability of the
8 directors under subsection (1)(b), and the corporation
9 shall in such cases submit the duly adopted amendment to
10 the articles of incorporation to the Registrar.

11 (4) Nothing in this section shall impair or affect
12 the validity of any provisions of the bylaws of a
13 corporation eliminating or limiting the personal
14 liability of the directors, which were authorized,
15 directed, or provided for and approved by the
16 shareholders of the corporation in compliance with then
17 existing law prior to the effective date of this
18 chapter."

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

22 "Section 196. Liability for unlawful distributions.

23 (1) A director who votes for or assents to a
24 distribution made in violation of section 149 or the
25 articles of incorporation is personally liable to the

1 corporation for the amount of the distribution that
2 exceeds what could have been distributed without
3 violating section 149 or the articles of incorporation,
4 if it is established that the director did not perform
5 the director's duties in compliance with section 194.
6 In any proceeding commenced under this section, a
7 director has all of the defenses ordinarily available to
8 a director.

9 (2) A director held liable under subsection (1) for
10 an unlawful distribution is entitled to contribution:

11 (a) From every other director who could be held
12 liable under subsection (1) for the unlawful
13 distribution; and

14 (b) From each shareholder for the amount the
15 shareholder accepted knowing the distribution was made
16 in violation of section 1 or the articles of
17 incorporation.

18 (3) A proceeding under this section is barred unless
19 it is commenced within two years after the date on which
20 the effect of the distribution was measured under
21 section 149(5) or (7)."

22 Section 99. Title 36 of the Code of the Federated States of
23 Micronesia (Annotated), is hereby amended by inserting a new
24 section 197 of chapter 1, to read as follows:

25 "Section 197. Required officers.

1 (1) A corporation has the officers described in its
2 articles of incorporation or bylaws or appointed by the
3 board of directors in accordance with the bylaws.

4 (2) A duly appointed officer may appoint one or more
5 officers or assistant officers if authorized by the
6 bylaws or the board of directors.

7 (3) The bylaws or the board of directors shall
8 delegate to one of the officers responsibility for
9 preparation and custody of minutes of the directors' and
10 shareholders' meetings and for authenticating records of
11 the corporation. In the absence of a specific
12 delegation in the bylaws or by the board of directors,
13 the secretary shall have this responsibility.

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

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

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

25 Section 101. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 199 of chapter 1, to read as follows:

3 "Section 199. Standards of conduct for officers.

4 (1) An officer with discretionary authority shall
5 discharge the officer's duties under that authority:

6 (a) In good faith;

7 (b) With the care an ordinarily prudent person
8 in a like position would exercise under similar
9 circumstances; and

10 (c) In a manner the officer reasonably believes
11 to be in the best interests of the corporation.

12 (2) In discharging the duties of an officer, the
13 officer is entitled to rely on information, opinions,
14 reports, or statements, including financial statements
15 and other financial data, if prepared or presented by:

16 (a) One or more officers or employees of the
17 corporation whom the officer reasonably believes to be
18 reliable and competent in the matters presented; or

19 (b) Legal counsel, public accountants, or other
20 persons as to matters the officer reasonably believes
21 are within the person's professional or expert
22 competence.

23 (3) An officer is not acting in good faith if the
24 officer has knowledge concerning the matter in question
25 that makes reliance otherwise permitted by subsection

1 (2) unwarranted.

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

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

9 "Section 200. Resignation and removal of officers.

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

19 (2) Any officer may be removed by the board of
20 directors whenever in its judgment the best interests of
21 the corporation will be served thereby, but the removal
22 shall be without prejudice to the contract rights, if
23 any, of the person so removed."

24 Section 103. Title 36 of the Code of the Federated States of
25 Micronesia (Annotated), is hereby amended by inserting a new

1 section 201 of chapter 1, to read as follows:

2 "Section 201. Contract rights of officers.

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

5 (2) An officer's removal does not affect the
6 officer's contract rights, if any, with the corporation.
7 An officer's resignation does not affect the
8 corporation's contract rights, if any, with the
9 officer."

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

13 "Section 202. Definitions – Indemnification.

14 As used herein:

15 (1) "Corporation" includes any domestic or foreign
16 predecessor entity of a corporation in a merger.

17 (2) "Director" or "officer" means an individual who
18 is or was a director or officer, respectively, of a
19 corporation or who, while a director or officer of the
20 corporation, is or was serving at the corporation's
21 request as a director, officer, partner, trustee,
22 employee, or agent of another domestic or foreign
23 corporation, partnership, joint venture, trust, employee
24 benefit plan, or other entity. A director or officer is
25 considered to be serving an employee benefit plan at the

1 corporation's request if the duties of the director or
2 officer to the corporation also impose duties on, or
3 otherwise involve services by, the director or officer
4 to the plan or to participants in or beneficiaries of
5 the plan. "Director" or "officer" includes, unless the
6 context requires otherwise, the estate or personal
7 representative of a director or officer.

8 (3) "Disinterested director" means a director who, at
9 the time of a vote referred to in section 205(3) or a
10 vote or selection referred to in section 206 or 207, is
11 not:

12 (a) A party to the proceeding; or

13 (b) An individual having a familial, financial,
14 professional, or employment relationship with the
15 directors whose indemnification or advance for expenses
16 is the subject of the decision being made, which
17 relationship would, in the circumstances, reasonably be
18 expected to exert an influence on the director's
19 judgment when voting on the decision being made.

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

21 (5) "Liability" means the obligation to pay a
22 judgment, settlement, penalty, fine including an excise
23 tax assessed with respect to an employee benefit plan,
24 or reasonable expenses incurred with respect to a
25 proceeding.

1 (6) "Official capacity" means:

2 (a) When used with respect to a director, the
3 office of director in a corporation; and

4 (b) When used with respect to an officer, as
5 contemplated in section 208, the office in a corporation
6 held by the officer.

7 (i) "Official capacity" does not include
8 service for any other domestic or foreign corporation or
9 any partnership, joint venture, trust, employee benefit
10 plan, or other entity.

11 (7) "Party" means an individual who was, is, or is
12 threatened to be made, a defendant or respondent in a
13 proceeding.

14 (8) "Proceeding" means any threatened, pending, or
15 completed action, suit, or proceeding, whether civil,
16 criminal, administration, arbitratve, or investigative
17 and whether formal or informal."

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

21 "Section 203. Permissible indemnification.

22 (1) Except as otherwise provided in this section, a
23 corporation may indemnify an individual who is a party
24 to a proceeding because the individual is a director
25 against liability incurred in the proceeding if:

1 (a) The individual conducted the individual's
2 self in good faith; and

3 (b) The individual reasonably believed:

4 (i) In the case of conduct of official
5 capacity, that the individual's conduct was in the best
6 interests of the corporation;

7 (ii) In all other cases, that the
8 individual's conduct was at least not opposed to the
9 best interests of the corporation; and

10 (c) In the case of any criminal proceeding, the
11 individual had no reasonable cause to believe the
12 individual's conduct was unlawful; or

13 (d) The individual engaged in conduct for which
14 broader indemnification has been made permissible or
15 obligatory under a provision of the articles of
16 incorporation as authorized by section 117(2)(e).

17 (2) A director's conduct with respect to an employee
18 benefit plan for a purpose the director reasonably
19 believed to be in the interests of the participants in,
20 and the beneficiaries of, the plan is conduct that
21 satisfies the requirement of subsection (1)(b)(ii).

22 (3) The termination of a proceeding by judgment,
23 order, settlement, or conviction, or upon a plea of nolo
24 contendere or its equivalent, is not, of itself,
25 determinative that the director did not meet the

1 relevant standard of conduct described in this section.

2 (4) Unless ordered by a court under section
3 206(1)(c), a corporation may not indemnify a director:

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

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

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

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

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

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

3 "Section 205. Advance for expenses.

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

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

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

21 (2) The undertaking required by subsection (1)(b)
22 must be an unlimited general obligation of the director
23 but need not be secured and may be accepted without
24 reference to the financial liability of the director to
25 make repayment.

1 (3) Authorization under this section shall be made:

2 (a) By the board of directors:

3 (i) If there are two or more disinterested
4 directors, by a majority vote of all the disinterested
5 directors a majority of whom for this purpose, shall
6 constitute a quorum or by a majority of the members of a
7 committee of two or more disinterested directors
8 appointed by such a vote; or

9 (ii) If there are fewer than two
10 disinterested directors, by the vote necessary for
11 action by the board in accordance with section 192(3),
12 in which authorization directors who do not qualify as
13 disinterested directors may participate; or

14 (b) By the shareholders, but shares owned by or voted
15 under the control of a director who at the time does not
16 qualify as a disinterested director may not be voted on
17 the authorization."

18 Section 108. Title 36 of the Code of the Federated States of
19 Micronesia (Annotated), is hereby amended by inserting a new
20 section 206 of chapter 1, to read as follows:

21 "Section 206. Court-ordered indemnification and advance
22 for expenses.

23 (1) A director who is a party to a proceeding because
24 the director is a director may apply for indemnification
25 or an advance for expenses to the court conducting the

1 proceeding or to another court of competent
2 jurisdiction. After receipt of an application and after
3 giving any notice it considers necessary, the court
4 shall:

5 (a) Order indemnification if the court
6 determines that the director is entitled to mandatory
7 indemnification under section 204;

8 (b) Order indemnification or advance for
9 expenses if the court determines that the director is
10 entitled to indemnification or advance for expenses
11 pursuant to a provision authorization by section 210(1);
12 or

13 (c) Order indemnification or advance for
14 expenses if the court determines, in view of all the
15 relevant circumstances, that it is fair and reasonable:

16 (i) To indemnify the director; or

17 (ii) To advance expenses to the director,
18 even if the director has not met the relevant standard
19 of conduct set forth in section 203(1), failed to comply
20 with section 205 or was adjudged liable in a proceeding
21 referred to in section 203(4)(a) or (b), but if the
22 director was adjudged so liable the director's
23 indemnification shall be limited to reasonable expenses
24 incurred in connection with the proceeding.

25 (2) If the court determines that the director is

1 entitled to indemnification under subsection (1)(a) or
2 to indemnification or advance for expenses under
3 subsection (1)(b), it shall also order the corporation
4 to pay the director's reasonable expenses incurred in
5 connection with obtaining court-ordered indemnification
6 or advance for expenses. If the court determines that
7 the director is entitled to indemnification or advance
8 for expenses under subsection (1)(c), it may also order
9 the corporation to pay the director's reasonable
10 expenses to obtain court-ordered indemnification or
11 advance for expenses."

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

15 "Section 206. Determination and authorization of
16 indemnification.

17 (1) A corporation may not indemnify a director under
18 section 203 unless authorized by a specific proceeding
19 after a determination has been made that indemnification
20 of the director is permissible because the director has
21 met the relevant standard of conduct set forth in
22 section 203.

23 (2) The determination shall be made:

24 (a) If there are two or more disinterested
25 directors, by the board of directors by a majority vote

1 of all the disinterested directors a majority of whom
2 for this purpose shall constitute a quorum, or by a
3 majority of the members of a committee of two or more
4 disinterested directors appointed by such a vote;

5 (b) By special legal counsel:

6 (i) Selected in the manner prescribed in
7 subsection (2)(a); or

8 (ii) If there are fewer than two
9 disinterested directors, selected by the board of
10 directors in which selection directors who do not
11 qualify as disinterested directors may participate or;

12 (c) By the shareholders, but shares owned by or
13 voted under the control of a director who at the time
14 does not qualify as a disinterested director may not be
15 voted on the determination.

16 (3) Authorization of indemnification shall be made in
17 the same manner as a determination that indemnification
18 is permissible, except that if there are fewer than two
19 disinterested directors or if the determination is made
20 by special legal counsel, authorization of
21 indemnification shall be made by those entitled under
22 subsection (2)(b)(ii) to select special legal counsel."

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

1 "Section 208. Officers.

2 (1) A corporation may indemnify and advance expenses
3 to an officer of the corporation who is a party to a
4 proceeding because the officer is an officer of the
5 corporation:

6 (a) To the same extent as a director; and

7 (b) If the person is an officer but not a
8 director, to such further extent as may be provided by
9 the articles of incorporation, the bylaws, a resolution
10 of the board of directors, or contract except for:

11 (i) Liability in connection with a
12 proceeding by or in the right of the corporation other
13 than for reasonable expenses incurred in connection with
14 the proceeding; or

15 (ii) Liability arising out of conduct that
16 constitutes:

17 (a) Receipt by the officer of a financial
18 benefit to which the officer is not entitled;

19 (b) An intentional infliction of harm on the
20 corporation or the shareholders; or

21 (c) an intentional violation of criminal law.

22 (2) Subsection (1)(b) shall apply to an officer who
23 is also a director if the basis on which the officer is
24 made a party to the proceeding is an act or omission
25 solely as an officer.

1 (3) An officer of a corporation who is not a
2 director, is entitled to mandatory indemnification under
3 section 204, and may apply to a court under section 206
4 for indemnification or an advance for expenses, in each
5 case to the same extent to which a director may be
6 entitled to indemnification or advance for expenses
7 under those provisions."

8 Section 111. Title 36 of the Code of the Federated States of
9 Micronesia (Annotated), is hereby amended by inserting a new
10 section 209 of chapter 1, to read as follows:

11 "Section 209. Insurance. A corporation may purchase
12 and maintain insurance on behalf of an individual who is
13 a director or officer of the corporation, or who, while
14 a director or officer of the corporation, serves at the
15 corporation's request as a director, officer, partner,
16 trustee, employee, or agent of another domestic or
17 foreign corporation, partnership, joint venture, trust,
18 employee benefit plan, or other entity, against
19 liability asserted against or incurred by the director
20 or officer in that capacity or arising from the
21 director's or officer's status as a director or officer,
22 whether or not the corporation would have power to
23 indemnify or advance expenses to the director or officer
24 against the same liability under other provisions of
25 this act."

1 Section 112. Title 36 of the Code of the Federated States of
2 Micronesia (Annotated), is hereby amended by inserting a new
3 section 210 of chapter 1, to read as follows:

4 "Section 210. Advance obligation by corporate action.

5 (1) A corporation, by a provision in its articles of
6 incorporation or bylaws or in a resolution adopted or a
7 contract approved by its board of directors or
8 shareholders, may obligate itself in advance of the act
9 or omission giving rise to a proceeding to provide
10 indemnification in accordance with section 203 or
11 advance funds to pay for or reimburse expenses in
12 accordance with section 205. Any such obligatory
13 provision shall be deemed to satisfy the requirements
14 for authorization referred to in section 205(3) and
15 207(3). Any such provision that obligates the
16 corporation to provide indemnification to the fullest
17 extent permitted by law shall be deemed to obligate the
18 corporation to advance funds to pay for or reimburse
19 expenses in accordance with section 205 to the fullest
20 extent permitted by law, unless the provision
21 specifically provides otherwise.

22 (2) Any provision pursuant to subsection (1) shall
23 not obligate the corporation to indemnify or advance
24 expenses to a director of a predecessor of the
25 corporation, pertaining to conduct with respect to the

1 predecessor, unless otherwise specifically provided.
2 Any provision for indemnification or advance for
3 expenses in the articles of incorporation, bylaws, or a
4 resolution of the board of directors or shareholders of
5 a predecessor of the corporation in a merger or in a
6 contract to which the predecessor is a party, existing
7 at the time the merger takes effect, shall be governed
8 by section 238(1)(c).

9 (3) A corporation, by a provision in its articles or
10 incorporation, may limit any of the rights to
11 indemnification or advance for expenses created by or
12 pursuant to this chapter.

13 (4) This chapter does not limit a corporation's power
14 to pay or reimburse expenses incurred by a director or
15 an officer in connection with the director's or
16 officer's appearance as a witness in a proceeding at a
17 time when the officer or director is not a party.

18 (5) This chapter does not limit a corporation's power
19 to indemnify, advance expenses to, or provide or
20 maintain insurance on behalf of an employee or agent."

21 Section 113. Title 36 of the Code of the Federated States of
22 Micronesia (Annotated), is hereby amended by inserting a new
23 section 211 of chapter 1, to read as follows:

24 "Section 211. Nonexclusively of subpart.

25 (1) The indemnification provided by this chapter

1 shall not be deemed exclusive of any other rights to
2 which those indemnified may be entitled under any bylaw,
3 agreement, vote of shareholders, or disinterested
4 directors or otherwise, both as to action in a person's
5 official capacity and as to action in another capacity
6 while holding the office, and shall continue as to a
7 person who has ceased to be a director or officer and
8 shall inure to the benefit of the heirs and personal
9 representatives of that person.

10 (2) These indemnification provisions do not apply to
11 any proceeding against any trustee, investment manager,
12 or other fiduciary of an employee benefit plan in that
13 person's capacity, though the person may also be a
14 director or officer of the employer corporation.
15 Nothing contained in this section shall limit any right
16 to indemnification to which a trustee, investment
17 manager, or other fiduciary may be entitled by contract
18 or otherwise."

19 Section 113. Title 36 of the Code of the Federated States of
20 Micronesia (Annotated), as amended, is hereby further by creating
21 a new section 212 of chapter 1, to read as follows:

22 "Section 212. Definitions-Directors' Conflicting
23 Interest Transactions. As used herein:

24 (1) "Conflicting interest" with respect to a
25 corporation means the interest a director of the

1 corporation has respecting a transaction effected or
2 proposed to be effected by the corporation or by a
3 subsidiary of the corporation or any other entity in
4 which the corporation has a controlling interest if:

5 (a) Whether or not the transaction is brought
6 before the board of directors of the corporation for
7 action, the director knows at the time of commitment
8 that the director or a related person is a party to the
9 transaction or has a beneficial financial interest in or
10 so closely linked to the transaction and of such
11 financial significance to the director or related person
12 that the interest would reasonably be expected to exert
13 an influence on the director's judgment if the director
14 were called upon to vote on the transaction; or

15 (b) The transaction is brought or is of such
16 character and significance to the corporation that it
17 would in the normal course be brought before the board
18 of directors of the corporation for action, and the
19 director knows at the time of commitment that any of the
20 following persons is either a party to the transaction
21 or has a beneficial financial interest in or so closely
22 linked to the transaction and of such financial
23 significance to the person that the interest would
24 reasonably be expected to exert an influence on the
25 director's judgment if the director were called upon to

1 vote on the transaction:

2 (i) An entity other than the corporation of
3 which the director is a director, general partner,
4 agent, or employee;

5 (ii) A person that controls one or more of
6 the entities specified in subparagraph (i) or an entity
7 that is controlled by, or is under common control with,
8 one or more of the entities specified in subparagraph
9 (i); or

10 (iii) An individual who is a general partner, principal,
11 or employer of the director.

12 (2) "Director's conflicting interest transaction"
13 with respect to a corporation means a transaction
14 effected or proposed to be effected by the corporation
15 or by a subsidiary of the corporation or any other
16 entity in which the corporation has a controlling
17 interest respecting which a director of the corporation
18 has a conflicting interest.

19 (3) "Related person" of a director means:

20 (a) The spouse or a parent or sibling thereof of
21 the director, or a child, grandchild, sibling, parent or
22 spouse of any thereof of the director, or an individual
23 having the same home as the director, or a trust or
24 estate of which an individual specified in this
25 paragraph is a substantial beneficiary; or

1 (b) A trust, estate, incompetent, conservatee,
2 or minor of which the director is a fiduciary.

3 (4) "Required disclosure" means disclosure by the
4 director who has a conflicting interest of:

5 (a) The existence and nature of the director's
6 conflicting interest; and

7 (b) All facts known to the director respecting
8 the subject matter of the transaction that an ordinarily
9 prudent person would reasonably believe to be material
10 to a judgment about whether or not to proceed with the
11 transaction.

12 (5) "Time of commitment" respecting a transaction
13 means the time when the transaction is consummated or,
14 if made pursuant to contract, the time when the
15 corporation or its subsidiary or the entity in which it
16 has a controlling interest becomes contractually
17 obligated so that its unilateral withdrawal from the
18 transaction would entail significant loss, liability, or
19 other damage."

20 Section 115. Title 36 of the Code of the Federated States of
21 Micronesia (Annotated), is hereby amended by inserting a new
22 section 213 of chapter 1, to read as follows:

23 "Section 213. Judicial action.

24 (1) A transaction effected or proposed to be effected
25 by a corporation or by a subsidiary of the corporation

1 or any other entity in which the corporation has a
2 controlling interest that is not a director's
3 conflicting interest transaction may not be enjoined,
4 set aside, or give rise to an award of damages or other
5 sanctions, in a proceeding by a shareholder or by or in
6 the right of the corporation, because a director of the
7 corporation, or any person with whom or which the
8 director has a personal, economic, or other association,
9 has an interest in the transaction.

10 (2) A director's conflicting interest transaction may
11 not be enjoined, set aside, or give rise to an award of
12 damages or other sanctions, in a proceeding by a
13 shareholder or by or in the right of the corporation,
14 because the director, or any person with whom or which
15 the director has a personal, economic, or other
16 association, has an interest in the transaction, if:

17 (a) Directors' action respecting the transaction
18 was at any time taken in compliance with section 214;

19 (b) Shareholders' action respecting the
20 transaction was at any time taken in compliance with
21 section 215; or

22 (c) The transaction, judged according to the
23 circumstances at the time of commitment, is established
24 to have been fair to the corporation."

25 Section 116. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 214 of chapter 1, to read as follows:

3 "Section 214. Directors' action.

4 (1) The action of directors respecting a transaction
5 is effective for purposes of section 213(2)(a) if the
6 transaction received the affirmative vote of a majority
7 but no fewer than two of those qualified directors on
8 the board of directors or on a duly empowered committee
9 of the board who voted on the transaction after either
10 required disclosure to them to the extent the
11 information was now known by them or compliance with
12 subsection (2); provided however that action by a
13 committee is so effective only if:

14 (a) All its members are qualified directors; and

15 (b) Its members are either all the qualified
16 directors on the board or are appointed by the
17 affirmative vote of a majority of the qualified
18 directors on the board.

19 (2) If a director has a conflicting interest
20 respecting a transaction, but neither the director nor a
21 related person of the director, as set forth in the
22 definition of "related person", in section 212, is a
23 party to the transaction, and if the director has a duty
24 under law or professional canon, or a duty of
25 confidentiality to another person, respecting

1 information relating to the transaction such that the
2 director may not make the required disclosure described
3 in subsection (b) of the definition of "required
4 disclosure" in section 212, then disclosure is
5 sufficient for purposes of subsection (1) if the
6 director:

7 (a) Discloses to the directors voting on the
8 transaction the existence and nature of the directors'
9 conflicting interest and informs them of the character
10 and limitations imposed by that duty before their vote
11 on the transaction; and

12 (b) Plays no part, directly or indirectly, in
13 their deliberations or vote.

14 (3) A majority but not fewer than two of all of the
15 qualified directors on the board of directors, or on the
16 committee, constitutes a quorum for purposes of action
17 that complies with this section. The action of directors
18 that otherwise complies with this section is not
19 affected by the presence or vote of a director who is
20 not a qualified director.

21 (4) For purposes of this section, "qualified
22 director" means, with respect to a director's
23 conflicting interest transaction, any director who does
24 not have either:

25 (a) A conflicting interest respecting the

1 transaction; or

2 (b) A familial, financial, professional, or
3 employment relationship with a second director who does
4 have a conflicting interest respecting the transaction,
5 which relationship would, in the circumstances,
6 reasonably to be expected to exert an influence on the
7 first director's judgment when voting on the
8 transaction."

9 Section 117. Title 36 of the Code of the Federated States of
10 Micronesia (Annotated), is hereby amended by inserting a new
11 section 215 of chapter 1, to read as follows:

12 "Section 215. Shareholders' action.

13 (1) Shareholders' action respecting a transaction is
14 effective for purposes of section 213 (2)(b) if a
15 majority of the votes entitled to be cast by the holders
16 of all qualified shares were cast in favor of the
17 transaction after:

18 (a) Notice to shareholders describing the
19 director's conflicting interest transaction;

20 (b) Provision of the information referred to in
21 subsection (4); and

22 (c) Required disclosure to the shareholders who
23 voted on the transaction to the extent the information
24 was not known by them.

25 (2) For purposes of this section, "qualified shares"

1 means any shares entitled to vote with respect to the
2 director's conflicting interest transaction except
3 shares that, to the knowledge, before the vote, of the
4 secretary or other officer or agent of the corporation
5 authorized to tabulate votes, are beneficially owned or
6 the voting of which is controlled by a director who has
7 a conflicting interest respecting the transaction or by
8 a related person of the director, or both.

9 (3) A majority of the votes entitled to be cast by
10 the holders of all qualified shares constitutes a quorum
11 for purposes of action that complies with this section.
12 Subject to subsections (4) and (5), shareholders' action
13 that otherwise complies with this section is not
14 affected by the presence of holders, or the voting, of
15 shares that are not qualified shares.

16 (4) For purposes of compliance with subsection (1), a
17 director who has a conflicting interest respecting the
18 transaction, before the shareholders' vote, shall inform
19 the secretary or other officer or agent of the
20 corporation authorized to tabulate votes of the number,
21 and 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 controlled
24 by the director or by a related person of the director,
25 or both.

1 (5) If a shareholders' vote does not comply with
2 subsection (1) solely because of a failure of a director
3 to comply with subsection (4), and if the director
4 establishes that the director's failure did not
5 determine and was not intended by the director to
6 influence the outcome of the vote, the court, with or
7 without further proceedings respecting section 213
8 (2)(c), may take such action respecting the transaction
9 and the director, and give such effect, if any, to the
10 shareholders' vote, as it considers appropriate in the
11 circumstances."

12 Section 118. Title 36 of the Code of the Federated States of
13 Micronesia (Annotated), is hereby amended by inserting a new
14 section 216 of chapter 1, to read as follows:

15 "Section 216. Conversion into and from corporations.

16 (1) A domestic corporation may adopt a plan of
17 conversion and convert to a foreign corporation or any
18 other entity if:

19 (a) The board of directors and shareholders of
20 the domestic corporation approve a plan of conversion in
21 the manner prescribed by section 235 and the conversion
22 is treated as a merger to which the converting entity is
23 a party and not the surviving entity;

24 (b) The conversion is permitted by, and complies
25 with the laws of the state or country in which the

1 converted entity is to be incorporated, formed, or
2 organized; and the incorporation, formulation, or
3 organization of the converted entity complies with those
4 laws;

5 (c) At the time the conversion becomes
6 effective, each shareholder of the domestic corporation,
7 unless otherwise agreed to by that shareholder, owns an
8 equity interest or other ownership interest in, and is a
9 shareholder, partner, member, owner, or other security
10 holder of, the converted entity;

11 (d) The shareholders of the domestic
12 corporation, as a result of the conversion, shall not
13 become liable, without the shareholders' consent, for
14 the liabilities or obligations of the converted entity;

15 (e) The converted entity is incorporated,
16 formed, or organized as part of or pursuant to the plan
17 of conversion.

18 (2) Any foreign corporation or other entity may adopt
19 a plan of conversion and convert to a domestic
20 corporation if the conversion is permitted by and
21 complies with the laws of the states or country in which
22 the foreign corporation or other entity is incorporated,
23 formed, or organized.

24 (3) A plan of conversion shall set forth:

25 (a) The name of the converting entity and the

1 converted entity;

2 (b) A statement that the converting entity is
3 continuing its existence in the organizational form of
4 the converted entity;

5 (c) A statement describing the organizational
6 form of the converted entity and the state or country
7 under the laws of which the converted entity is to be
8 incorporated, formed, or organized; and

9 (d) The manner and basis of converting the
10 shares or other forms of ownership of the converting
11 entity into shares or other forms of ownership of the
12 converted entity; or any combination thereof.

13 (4) A plan of conversion may set forth any other
14 provisions relating to the conversion that are not
15 prohibited by law, including without limitation the
16 initial bylaws and officers of the converted entity.

17 (5) After a conversion of a domestic or foreign
18 corporation is approved, and at any time before the
19 conversion becomes effective, the plan of conversion may
20 be abandoned by the converting entity without
21 shareholder action and in accordance with the procedures
22 set forth in the plan of conversion or, if these
23 procedures are not provided in the plan, in the manner
24 determined by the board of directors. If articles of
25 conversion have been filed with the Registrar, but the

1 conversion has not become effective, the conversion may
2 be abandoned if a statement, executed on behalf of the
3 converting entity by an officer or other duly authorized
4 representative and stating that the plan of conversion
5 has been abandoned in accordance with applicable law, is
6 filed with the Registrar prior to the effective date of
7 the conversion. If the Registrar finds the statement
8 satisfied the requirements provided by law, the
9 Registrar, after all fees have been paid shall:

10 (a) Stamp the statement and include the date of
11 the filing;

12 (b) File the document with the Registrar; and;

13 (c) Issue a certificate of abandonment to the
14 converting entity or its authorized representatives.

15 (6) Once the statement provided in subsection (5) is
16 filed with the Registrar, the conversion shall be deemed
17 abandoned and shall not be effective."

18 Section 119. Title 36 of the Code of the Federated States of
19 Micronesia (Annotated), is hereby amended by inserting a new
20 section 217 of chapter 1, to read as follows:

21 "Section 217. Articles of conversion.

22 (1) If a plan of conversion has been approved in
23 accordance with section 216 and has not been abandoned,
24 articles of conversion shall be executed by an officer
25 or other duly authorized representative of the

1 converting entity and shall set forth:

2 (a) A statement certifying the following:

3 (i) The name, type of entity, and state or
4 country of incorporation, formation, or organization of
5 the converting and converted entities;

6 (ii) That a plan of conversion has been
7 approved in accordance with section 216;

8 (iii) That an executed plan of conversion is
9 on file at the principal place of business of the
10 converting entity and stating the address thereof; and

11 (iv) That a copy of the plan of conversion
12 shall be furnished by the converting entity prior to the
13 conversion or by the converted entity after the
14 conversion on written request and without cost, to any
15 shareholder, partner, member, or owner of the converting
16 entity or the converted entity;

17 (b) If the converting entity is a domestic
18 corporation, the number of shares outstanding and, if
19 the shares of any class or series are entitled to vote
20 as a class, the designation and number of outstanding
21 shares of each class or series;

22 (c) If the converting entity is a domestic
23 corporation, the number of shares outstanding that voted
24 for and against the plan, and, if the shares of any
25 class or series are entitled to vote as a class, the

1 number of shares of each class or series that voted for
2 and against the plan; and

3 (d) If the converting entity is a foreign
4 corporation or other entity, a statement that the
5 approval of the plan of conversion was duly authorized
6 and complied with the laws under which it was
7 incorporated, formed, or organized.

8 (2) The articles of conversion shall be delivered to
9 the Registrar. The converted entity, if a domestic
10 corporation, domestic professional corporation, domestic
11 nonprofit corporation, domestic general partnership,
12 domestic limited partnership, or domestic limited
13 liability company shall attach a copy of its respective
14 registration documents with the articles of conversion.

15 (3) If the Registrar finds that the articles of
16 conversion satisfy the requirements provided by law, and
17 that all required documents are filed, the Registrar,
18 after all fees have been paid, shall:

19 (a) Stamp the articles of conversion and include
20 the date of the filing;

21 (b) File the document with the Registrar; and

22 (c) Issue a certificate of conversion to the
23 converted entity or its authorized representatives."

24 Section 120. Title 36 of the Code of the Federated States of
25 Micronesia (Annotated), is hereby amended by inserting a new

1 section 218 of chapter 1, to read as follows:

2 "Section 218. Effect of conversion.

3 (1) When conversion become effective:

4 (a) The converting entity shall continue to
5 exist without interruption, but in the organizational
6 form of the converted entity;

7 (b) Subject to restrictions on the ownership of
8 real property by non citizens of the Federated States of
9 Micronesia all rights, title, and interest in all real
10 estate and other property owned by the converting entity
11 shall automatically be owned by the converted entity
12 without reversion or impairment, subject to any existing
13 liens or other encumbrances thereon;

14 (c) All liabilities and obligations of the
15 converting entity shall automatically be liabilities and
16 obligations of the converted entity without impairment
17 or diminution due to the conversion;

18 (d) The rights of creditors of the converting
19 entity shall continue against the converted entity and
20 shall not be impaired or extinguished by the conversion;

21 (e) Any action or proceeding pending by or
22 against the converting entity may be continued by or
23 against the converted entity without any need for
24 substitution of parties;

25 (f) The shares and other forms of ownership in

1 the converting entity that are to be converted into
2 shares, and other forms of ownership, in the converted
3 entity as provided in the plan of conversion shall be
4 converted, and if the converting entity is a domestic
5 corporation, the former shareholders of the domestic
6 corporation shall be entitled only to the rights
7 provided in the plan of conversion or to the rights to
8 dissent under section 243.

9 (g) A shareholder, partner, member, or other
10 owner of the converted entity shall be liable for the
11 debts and obligations of the converting entity that
12 existed before the conversion takes effect only to the
13 extent that the shareholder, partner, member, or other
14 owner:

15 (i) Agreed in writing to be liable for the
16 debts or obligations;

17 (ii) Was liable under applicable law prior
18 to the effective date of the conversion, for the debts
19 and obligations; or

20 (iii) Becomes liable under applicable law for
21 existing debts and obligations of the converted entity
22 by becoming a shareholder, partner, member, or other
23 owner of the converted entity;

24 (h) If the converted entity is a foreign
25 corporation or other business entity incorporated,

1 formed, or organized under a law other than the National
2 or State laws of the Federated States of Micronesia, the
3 converted entity shall file with the Registrar:

4 (i) An agreement that the converted entity
5 may be served with process in the Federated States of
6 Micronesia in any action or proceeding for the
7 enforcement of any liability or obligation of the
8 converting domestic corporation;

9 (ii) An irrevocable appointment of a
10 resident of the Federated States of Micronesia including
11 the street address, as its agent to accept service of
12 process in any such proceeding; and

13 (iii) An agreement for the enforcement, as
14 provided in this chapter, of the right of any dissenting
15 shareholder, partner, member, or other owner to receive
16 payment for their interest against the converted entity;
17 and

18 (iv) If the converting entity is a domestic
19 corporation, sections 242 through 253 shall apply as if
20 the converted entity were the survivor of a merger with
21 the converting entity."

22 Section 120. Title 36 of the Code of the Federated States of
23 Micronesia (Annotated), is hereby amended by inserting a new
24 section 219 of chapter 1, of to read as follows:

25 "Section 219. Authority to amend – Articles of

1 Incorporation.

2 (1) A corporation may amend its articles of
3 incorporation at any time and add or change a provision
4 that is required or permitted in the articles of
5 incorporation or to delete a provision not required in
6 the articles of incorporation. Whether a provision is
7 required or permitted in the articles of incorporation
8 is determined as of the effective date of the amendment.

9 (2) A shareholder of the corporation does not have a
10 vested property right resulting from any provision in
11 the articles of incorporation, including provisions
12 relating to management, control, capital structure,
13 dividend, entitlement, or purpose or duration of the
14 corporation."

15 Section 122. Title 36 of the Code of the Federated States of
16 Micronesia (Annotated), is hereby amended by inserting a new
17 section 220 of chapter 1, to read as follows:

18 "Section 220. Amendment by board of directors.

19 (1) Unless the articles of incorporation provide
20 otherwise, a corporation's board of directors may adopt
21 one or more amendments to the corporation's articles of
22 incorporation without shareholder action:

23 (a) To delete the names and addresses of the
24 initial directors;

25 (b) To delete the name and address of the

1 initial registered agent or registered office, if a
2 statement of change is on file with the Registrar; or

3 (c) To make any other change expressly permitted
4 by this chapter to be made without shareholder action."

5 Section 123. Title 36 of the Code of the Federated States of
6 Micronesia (Annotated), is hereby amended by inserting a new
7 section 221 of chapter 1, to read as follows:

8 "Section 221. Amendment by board of directors and
9 shareholders.

10 (1) A corporation's board of directors may propose
11 one or more amendments to the articles of incorporation
12 for submission to the shareholders.

13 (2) For the amendment to be adopted:

14 (a) The board of directors must recommend the
15 amendment to the shareholders unless the board of
16 directors determines that because of conflict of
17 interest or other special circumstances it should make
18 no recommendation and communicates with the basis for
19 its determination to the shareholders with the
20 amendment; and

21 (b) The shareholders entitled to vote on the
22 amendment must approve the amendment as provided in
23 section (5).

24 (3) The board of directors may condition its
25 submission of the proposed amendment on any basis.

1 (4) The corporation shall notify each shareholder,
2 whether or not entitled to vote, of the proposed
3 shareholders' meeting in accordance with section 154.
4 The notice of meeting must also state that the purpose,
5 or one of the purposes, of the meeting is to consider
6 the proposed amendment and contain or be accompanied by
7 a copy or summary of the amendment.

8 (5) Unless this chapter, the articles of
9 incorporation, or the board of directors acting pursuant
10 to subsection (3) require a greater vote or a vote by
11 voting groups, the amendment to be adopted must be
12 approved by a vote of the shareholders entitled to vote.
13 The proposed amendment shall be adopted upon receiving
14 the affirmative vote of the holders of a majority of the
15 shares entitled to vote thereon, unless any class of
16 shares is entitled to vote thereon as a class, in which
17 event the proposed amendment shall be adopted upon
18 receiving the affirmative vote of the shares of each
19 class of shares entitled to vote thereon as a class and
20 of the total shares entitled to vote thereon."

21 Section 124. Title 36 of the Code of the Federated States of
22 Micronesia (Annotated), is hereby amended by inserting a new
23 section 222 of chapter 1, to read as follows:

24 "Section 222. Voting on amendments by voting groups.

25 (1) The holders of the outstanding shares of a class

1 are entitled to vote as a separate voting group if
2 shareholder voting is otherwise required by this chapter
3 on a proposed amendment if the amendment would:

4 (a) Increase or decrease the aggregate number of
5 authorized shares of the class;

6 (b) Effect an exchange or reclassification of
7 all or part of the shares of the class into shares of
8 another class;

9 (c) Effect an exchange or reclassification, or
10 create the right of exchange, of all or part of the
11 shares of another class into shares of the class;

12 (d) Change the designation, rights, preferences,
13 or limitations of all or part of the shares of the
14 class;

15 (e) Change the shares of all or part of the
16 class into a different number of shares of the same
17 class;

18 (f) Create a new class of shares having rights
19 or preferences with respect to distribution or to
20 dissolution that are prior, superior, or substantially
21 equal to the shares of the class;

22 (g) Increase the rights, preferences, or number
23 of authorized shares of any class that, after giving
24 effect to the amendment, have rights or preferences with
25 respect to distributions or to dissolution that are

1 prior, superior, or substantially equal to the shares of
2 the class;

3 (h) Limit or deny an existing preemptive right
4 of all or part of the shares of the class; or

5 (i) Cancel or otherwise affect rights to
6 distributions or dividends that have accumulated but not
7 yet been declared on all or part of the shares of the
8 class.

9 (2) If a proposed amendment would affect a series of
10 a class of shares in one or more of the ways described
11 in subsection (1), the shares of that series are
12 entitled to vote as a separate voting group on the
13 proposed amendment.

14 (3) If a proposed amendment that entitled two or more
15 series of shares to vote as separate voting groups under
16 this section would affect those two or more series in
17 the same or a substantially similar way, the shares of
18 all the series so affected must vote together as a
19 single voting group on the proposed amendment.

20 (4) a class or series of shares is entitled to the
21 voting rights granted by this section although the
22 articles of incorporation provide that the shares are
23 nonvoting shares."

24 Section 125. Title 36 of the Code of the Federated States of
25 Micronesia (Annotated), is hereby amended by inserting a new

1 section 223 of chapter 1, to read as follows:

2 "Section 223. Amendment before issuance of shares. If
3 a corporation has not yet issued shares, its
4 incorporators or board of directors may adopt one or
5 more amendments to the corporations' articles of
6 incorporation."

7 Section 126. Title 36 of the Code of the Federated States
8 of Micronesia (Annotated), is hereby amended by inserting a new
9 section 224 of chapter 1, to read as follows:

10 "Section 224. Articles of amendment.

11 (1) A corporation amending its articles of
12 incorporation shall deliver to the Registrar for filing
13 articles of amendment setting forth:

14 (a) The name of the corporation;

15 (b) The text of each amendment adopted;

16 (c) If an amendment provides for an exchange,
17 reclassification, or cancellation of issued shares, a
18 statement that provisions necessary to effect the
19 exchange, reclassification, or cancellation have been
20 made;

21 (d) the date of each amendment's adoption;

22 (e) If an amendment was adopted by the
23 incorporators or board of directors without shareholder
24 action, a statement to that effect and that shareholder
25 action was not required; and

1 (f) If an amendment was approved by the shareholders:

2 (i) The designation, number of outstanding
3 shares, number of votes entitled to be cast by each
4 voting group entitled to vote separately on the
5 amendment, and number of votes of each voting group
6 indisputably represented at the meeting; and

7 (ii) Either the total number of votes cast
8 for and against the amendment by each voting group
9 entitled to vote separately on the amendment or the
10 total number of undisputed votes cast for the amendment
11 by each voting group and a statement that the number
12 cast for the amendment by each voting group was
13 sufficient for approval by that voting group."

14 Section 127. Title 36 of the Code of the Federated States
15 of Micronesia (Annotated), is hereby amended by inserting a new
16 section 225 of chapter 1, to read as follows:

17 "Section 225. Restated and amended and restated
18 articles of incorporation.

19 (1) A corporation's board of directors may restate
20 its articles of incorporation at any time with or
21 without shareholder action.

22 (2) If the board of directors submits a restatement
23 for shareholder action, the corporation shall notify
24 each shareholder, whether or not entitled to vote, of
25 the proposed shareholders' meeting in accordance with

1 section 154. The notice shall also state that the
2 purpose, or one of the purposes, of the meeting is to
3 consider the proposed restatement and contain or be
4 accompanied by a copy of the restatement.

5 (3) A corporation restating its articles of
6 incorporation shall deliver to the Registrar for filing
7 articles of restatement setting forth the name of the
8 corporation and the text of the restated articles of
9 incorporation together with a statement that the
10 restatement of incorporation correctly sets forth
11 without change the corresponding provisions of the
12 articles of incorporation as theretofore amended and
13 that the restated articles of incorporation supersede
14 the original articles of incorporation and any
15 amendments thereto.

16 (4) Duly adopted restated articles of incorporation
17 supersede the original articles of incorporation and all
18 amendments to them.

19 (5) The Registrar may certify restated articles of
20 incorporation as the articles of incorporation currently
21 in effect, without including the information required by
22 subsection (3). Certification by the Registrar is not a
23 condition of the restated articles of incorporation
24 taking effect.

25 (6) A domestic corporation, at any time, may amend

1 and restate its articles of incorporation by complying
2 with the procedures and requirements of this part."

3 Section 128. Title 36 of the Code of the Federated States of
4 Micronesia (Annotated), is hereby amended by inserting a new
5 section 226 of chapter 1, to read as follows:

6 "Section 226. Amendment pursuant to reorganization.

7 (1) A corporation's articles of incorporation may be
8 amended without action by the board of directors or
9 shareholders to carry out of a plan of reorganization
10 ordered or decreed by the Supreme Court of the Federated
11 States of Micronesia under a national statute, if the
12 articles of incorporation after amended contain only
13 provisions required or permitted by section 117.

14 (2) The individual or individuals designated by the
15 court shall deliver to the Registrar for filing articles
16 of amendment setting forth:

17 (a) The name of the corporation;

18 (b) The text of each amendment approved by the
19 court;

20 (c) The date of the court's order or decree
21 approving the articles of amendment;

22 (d) The title of the reorganization proceeding
23 in which the order or decree was entered; and

24 (e) A statement that the court had jurisdiction
25 of the proceeding under the Federated States of

1 Micronesia statute.

2 (3) Shareholders of a corporation undergoing
3 reorganization do not have dissenter's rights except as
4 and to the extent provided in the reorganization plan.

5 (4) This section does not apply after entry of a
6 final decree in the reorganization proceeding even
7 though the court retains jurisdiction of the proceeding
8 for limited purposes unrelated to consummation of the
9 reorganization plan."

10 Section 129. Title 36 of the Code of the Federated States of
11 Micronesia (Annotated), is hereby amended by inserting a new
12 section 227 of chapter 1, to read as follows:

13 "Section 227. Effect of amendment. An amendment to
14 articles of incorporation does not affect a cause of
15 action existing against or in favor of the corporation,
16 a proceeding to which the corporation is a party, or the
17 existing rights of persons other than shareholders of
18 the corporation. An amendment changing a corporation's
19 name does not abate a proceeding brought by or against
20 the corporation in its former name."

21 Section 130. Title 36 of the Code of the Federated States of
22 Micronesia (Annotated), is hereby amended by inserting a new
23 section 228 of chapter 1, to read as follows:

24 "Section 228. Amendment by board of directors or
25 shareholders - bylaws.

1 (1) A corporation's board of directors may amend or
2 repeal the corporation's bylaws unless:

3 (a) The articles of incorporation or this
4 chapter reserve this power exclusively to the
5 shareholders in whole or part; or

6 (b) The shareholders in amending or repealing a
7 particular bylaw provide expressly that the board of
8 directors may not amend or repeal that bylaw.

9 (2) A corporation's shareholders may amend or repeal
10 the corporation's bylaws even though the bylaw may also
11 be amended or repealed by its board of directors."

12 Section 131. Title 36 of the Code of the Federated States of
13 Micronesia (Annotated), is hereby amended by inserting a new
14 section 229 of chapter 1, to read as follows:

15 "Section 229. Bylaw increasing quorum or voting
16 requirement for shareholders.

17 (1) If authorized by the articles of incorporation,
18 the shareholders may adopt or amend a bylaw that fixes a
19 greater quorum or voting requirement for shareholders or
20 voting groups of shareholders than is required by this
21 chapter. The adoption or amendment of a bylaw that
22 adds, changes, or deletes a greater quorum or voting
23 requirement for shareholders must meet the same quorum
24 requirement and be adopted by the same vote and voting
25 groups required to take action under the quorum and

1 voting requirement then in effect or proposed to be
2 adopted, whichever is greater.

3 (2) A bylaw that fixes a greater quorum or voting
4 requirement for shareholders under subsection (1) may
5 not be adopted, amended, or repealed by the board of
6 directors."

7 Section 132. Title 36 of the Code of the Federated States of
8 Micronesia (Annotated), is hereby amended by inserting a new
9 section 230 of chapter 1, to read as follows:

10 "Section 230. Bylaw increasing quorum or voting
11 requirement for directors.

12 (1) A bylaw that fixes a greater quorum or voting
13 requirement for the board of directors may be amended or
14 repealed:

15 (a) If originally adopted by the shareholders,
16 only by the shareholders;

17 (b) If originally adopted by the board of
18 directors; either by the shareholders or by the board of
19 directors.

20 (2) A bylaw adopted or amended by the shareholders
21 that fixes a greater quorum or voting requirement for
22 the board of directors may provide that it may be
23 amended or repealed only by a specified vote of either
24 the shareholders or the board of directors.

25 (3) Action by the board of directors under subsection

1 (1)(b) to adopt or amend a bylaw that changes the quorum
2 or voting requirement must meet the same quorum
3 requirement and be adopted by the same vote required to
4 take action under the quorum and voting requirement then
5 in effect or proposed to be adopted, whichever is
6 greater."

7 Section 133. Title 36 of the Code of the Federated States of
8 Micronesia (Annotated), is hereby amended by inserting a new
9 section 231 of chapter 1, to read as follows:

10 "Section 231. Definitions – Merger and Share Exchange.

11 As used herein:

12 (1) 'Merger' means the procedure authorized by this
13 chapter in which one domestic or foreign entity combines
14 with one or more domestic or foreign entities resulting
15 in either one surviving entity or one new entity.

16 (2) 'Organizing articles' means:

17 (a) For an association, corporation, or
18 nonprofit corporation, the articles of incorporation;

19 (b) For a general partnership or limited
20 partnership, the registration statement;

21 (c) For a limited partnership, the certificate
22 of limited partnership; and

23 (d) For a limited liability company, the
24 articles of organization.

25 (3) 'Other business entity' means a nonprofit

1 corporation, limited liability company, general
2 partnership, limited partnership, limited liability
3 partnership, or association."

4 Section 134. Title 36 of the Code of the Federated States of
5 Micronesia (Annotated), is hereby amended by inserting a new
6 section 232 of chapter 1, to read as follows:

7 "Section 232. Merger

8 (1) Pursuant to a plan of merger adopted by the board
9 of directors, and approved by the shareholders if
10 required under section 235, a domestic or foreign
11 corporation may merge with one or more domestic
12 corporations, or with one or more corporations or other
13 business entities formed or organized under the laws of
14 any state of the Federated States of Micronesia, any
15 foreign jurisdiction, or any combination thereof, with
16 one of the domestic corporations, being the surviving
17 entity, as provided in the plan; provided that the
18 merger is permitted by the laws of the jurisdiction
19 under whose law each foreign entity that is a party to
20 the merger is organized.

21 (2) The plan of merger shall set forth:

22 (a) The name and jurisdiction of formation or
23 organization of each entity that is a party to the
24 merger;

25 (b) The name of the surviving entity with or

1 into which the other entity or entities will merge;

2 (c) The terms and conditions of the merger;

3 (d) The manner and basis of converting the
4 shares of each corporation into shares, obligations, or
5 other securities of the surviving entity, or into cash
6 or other property in whole or in part;

7 (e) The street address of the surviving entity's
8 principal place of business or, if no street address is
9 available, the post office number; and

10 (f) Amendments, if any, to the organizing
11 articles of the surviving entity or, if no amendments
12 are desired, a statement that the organizing articles of
13 the surviving entity shall not be amended pursuant to
14 the merger.

15 (3) A plan of merger may set forth other provisions
16 relating to the merger.

17 (4) If a foreign entity survives a merger and intends
18 to do business in the Federated States of Micronesia it
19 shall comply with all laws of the Federated States of
20 Micronesia with respect to doing business in the
21 Federated States of Micronesia.

22 (5) The surviving entity shall furnish a copy of the
23 plan of merger, on request and without cost, to any
24 member, shareholder, or partner of any entity that is a
25 party to the merger."

1 Section 135. Title 36 of the Code of the Federated States of
2 Micronesia (Annotated), is hereby amended by inserting a new
3 section 233 of chapter 1, to read as follows:

4 "Section 233. Foreign mergers.

5 (1) Whenever a foreign entity authorized to transact
6 business in the Federated States of Micronesia shall be
7 a party to statutory merger permitted by the laws of the
8 jurisdiction in which it is organized, and the foreign
9 entity shall be the surviving entity, it shall, within
10 sixty days after the merger becomes effective, file with
11 the Registrar a certificate evidencing the merger, duly
12 authenticated by the proper officer of the jurisdiction
13 under the laws of which the statutory merger was
14 effectuated. The certificate evidencing the merger
15 shall be evidence of a change of name if the name of the
16 surviving entity is changed thereby. If the certificate
17 is in a foreign language, a translation under oath of
18 the translator shall accompany the certificate.

19 (2) Whenever a foreign entity authorized to transact
20 business in the Federated States of Micronesia shall be
21 a party to a statutory merger permitted by the laws of
22 the jurisdiction in which it is organized, and that
23 entity shall not be the surviving entity, the surviving
24 entity shall, within sixty days after the merger becomes
25 effective, file with the Registrar a certificate

1 evidencing the merger in the form prescribed by
2 subsection (1)."

3 Section 136. Title 36 of the Code of the Federated States of
4 Micronesia (Annotated), is hereby amended by inserting a new
5 section 234 of chapter 1, to read as follows:

6 "Section 234. Share Exchange

7 (1) A corporation may acquire all of the outstanding
8 shares of one or more classes or series of another
9 corporation if the board of directors of each
10 corporation adopts, and its shareholders if required by
11 section 235 approve, the exchange.

12 (2) The plan of exchange shall set forth:

13 (a) The name of the corporation whose shares
14 will be acquired and the name of the acquiring
15 corporation;

16 (b) the terms and conditions of the exchange;
17 and

18 (c) The manner and basis of exchanging the
19 shares to be acquired for shares, obligations, or other
20 securities of the acquiring corporation or any other
21 corporation or for cash or other property in whole or in
22 part.

23 (3) The plan of exchange may set forth other
24 provisions relating to the exchange."

25 Section 137. The Code of the Federated States of Micronesia,

1 as amended, is hereby further amended by enacting a new section
2 235 to chapter 1 of Title 36 as follows:

3 "Section 235. Action Plan

4 (1) After adopting a plan of merger or share
5 exchange, the board of directors of each corporation
6 party to the merger, and the board of directors of the
7 corporation whose shares will be acquired in the share
8 exchange, shall submit the plan for approval by its
9 shareholders.

10 (2) For a plan of merger or share exchange to be
11 approved:

12 (a) The board of directors shall recommend the
13 plan of merger or share exchange to the shareholders,
14 unless the board of directors determines that because of
15 conflict of interest or other special circumstances it
16 should make no recommendation and communicates the basis
17 for its determination to the shareholders with the plan;
18 and

19 (b) The shareholders entitled to vote shall
20 approve the plan.

21 (3) The board of directors may condition its
22 submission of the proposed merger or share exchange on
23 any basis.

24 (4) The corporation shall notify each shareholder,
25 whether or not entitled to vote, of the proposed

1 shareholders' meeting in accordance with section 154.
2 The notice shall also state that the purpose, or one of
3 the purposes, of the meeting is to consider the plan of
4 merger or share exchange and contain or be accompanied
5 by a copy or summary of the plan.

6 (5) A vote of the shareholders shall be taken on the
7 proposed plan. The plan shall be approved upon
8 receiving the affirmative vote of the holders of a
9 majority of each class of the shares entitled to vote
10 thereon as a class and of the total shares entitled to
11 vote thereon. Any class of shares of any such
12 corporation shall be entitled to vote as a class if any
13 such plan contains any provision that, if contained in a
14 proposed amendment to articles of incorporation, would
15 entitle that class of shares to vote as a class and, in
16 the case of an exchange, if the class is included in the
17 exchange.

18 (6) Separate voting by voting groups is required:

19 (a) On a plan of merger if the plan contains a
20 provision that, if contained in a proposed amendment to
21 articles of incorporation, would require action by one
22 or more separate voting groups on the proposed amendment
23 under section 222; or

24 (b) On a plan of share exchange by each class or
25 series of shares included in the exchange, with each

1 class or series constituting a separate voting group.

2 (7) Action by the shareholders of the surviving
3 corporation on a plan of merger is not required if:

4 (a) The articles of incorporation of the
5 surviving corporation will not differ except for
6 amendments enumerated in section 220 from the articles
7 of incorporation before the merger;

8 (b) Each shareholder of the surviving
9 corporation whose shares were outstanding immediately
10 before the effective date of the merger will hold the
11 same number of shares, with identical designation,
12 preferences, limitations, and relative rights,
13 immediately after the merger;

14 (c) The number of voting shares outstanding
15 immediately after the merger, plus the number of voting
16 shares issuable as a result of the merger either by the
17 conversion of securities issued pursuant to the merger
18 or the exercise of rights and warrants issued pursuant
19 to the merger, will not exceed by more than twenty per
20 cent the total number of voting shares of the surviving
21 corporation outstanding immediately before the merger;
22 and

23 (d) The number of participating shares
24 outstanding immediately after the merger, plus the
25 number of participating shares issuable as a result of

1 the merger either by the conversion of securities issued
2 pursuant to the merger or exercise of rights and
3 warrants issued pursuant to the merger, will not exceed
4 by more than twenty per cent the total number of
5 participating shares outstanding immediately before the
6 merger.

7 (8) As used in subsection (7):

8 (a) 'Participating shares" means shares that
9 entitle their holders to participate without limitations
10 in distributions.

11 (b) 'Voting shares' means shares that entitle
12 their holders to vote unconditionally in elections of
13 directors.

14 (9) After a merger or share exchange is authorized,
15 and at any time before articles of merger or share
16 exchange are filed, the planned merger or share exchange
17 may be abandoned without prejudice to contractual
18 rights, if any, without further shareholder action, in
19 accordance with the procedure set forth in the plan of
20 merger or share exchange or, if none is set forth, in
21 the manner determined by the board of directors. A plan
22 of merger may provide that at any time prior to the time
23 that the plan becomes effective, the plan may be
24 terminated by the board of directors of any constituent
25 corporations notwithstanding approval of the plan by the

1 stockholders of all or any of the constituent
2 corporations. If the plan of merger is terminated after
3 the filing of the articles but before the plan has
4 become effective, a certificate of termination shall be
5 filed with the Registrar. A plan of merger may allow
6 the boards of directors of the constituent corporations
7 to amend the plan at any time prior to the time that the
8 plan becomes effective; provided that an amendment made
9 subsequent to the adoption of the plan by the
10 stockholders of any constituent corporation shall not:

11 (a) Alter or change the amount or kind of
12 shares, securities, cash, property, or rights or any of
13 them to be received in exchange for or on conversion of
14 all or any of the shares of any class or series thereof
15 of the constituent corporation;

16 (b) Alter or change any term of the organizing
17 articles of the surviving entity to be effected by the
18 merger; or

19 (c) Alter or change any of the terms and
20 conditions of the plan if the alteration or change would
21 adversely affect the holders of any class or series of
22 shares thereof of the constituent corporation.

23 (10) If the plan of merger is amended after the
24 articles are filed with the Registrar but before the
25 plan has become effective, articles of amendment shall

1 be filed with the Registrar.

2 (11) A merger or share exchange takes effect on the
3 filing date of the articles of merger or share exchange,
4 or on the date subsequent to the filing as set forth in
5 the articles of merger or share exchange; provided that
6 the effective date shall not be more than thirty days
7 from the filing date."

8 Section 138. Title 36 of the Code of the Federated States of
9 Micronesia (Annotated), is hereby amended by inserting a new
10 section 236 of chapter 1, to read as follows:

11 "Section 236. Merger of subsidiary.

12 (1) A parent corporation owning at least ninety per
13 cent of the outstanding shares of each class of a
14 subsidiary corporation may merge the subsidiary into
15 itself without approval of the shareholders of the
16 parent or subsidiary.

17 (2) The board of directors of the parent corporation
18 shall adopt a plan of merger that sets forth:

19 (a) The names of the parent and subsidiary; and

20 (b) The manner and basis of converting the
21 shares of the subsidiary into shares, obligations, or
22 other securities of the parent or any other corporation
23 or into cash or other property in whole or in part.

24 (3) The parent corporation shall mail a copy of the
25 plan of merger to each shareholder of the subsidiary

1 corporation who does not waive the mailing requirement
2 in writing.

3 (4) Articles of merger shall be delivered to the
4 Registrar for filing and shall set forth:

5 (a) The name and jurisdiction of incorporation
6 of the subsidiary corporation, and the name and
7 jurisdiction of incorporation of the corporation owning
8 at least ninety percent of its shares, which is
9 hereinafter designated as the surviving corporation;

10 (b) A statement that the plan or merger has been
11 approved by the board of directors of the surviving
12 corporation;

13 (c) The number of outstanding shares of each
14 class of the subsidiary corporation and the number of
15 shares of each class owned by the surviving corporation;

16 (d) The date a copy of the plan of merger was
17 mailed to shareholders of the subsidiary corporation
18 entitled to receive the plan; and

19 (e) A statement that includes:

20 (i) An agreement that the surviving entity
21 may be served with process in the Federated States of
22 Micronesia in any action or proceeding for the
23 enforcement of any liability or obligation of any entity
24 previously subject to suit in the Federated States of
25 Micronesia that is to merge;

1 (ii) An irrevocable appointment of a
2 resident of the Federated States of Micronesia as its
3 agent to accept service of process in a proceeding under
4 subparagraph (i), that includes the resident's street
5 address in the Federated States of Micronesia; and

6 (iii) An agreement for the enforcement, as
7 provided in this chapter, of the right of any dissenting
8 member, shareholder, or partner to receive payment for
9 their interest against the surviving entity.

10 (5) The parent may not deliver articles of merger to
11 the Registrar for filing until at least thirty days
12 after the date it mailed a copy of the plan of merger to
13 each shareholder of the subsidiary corporation who did
14 not waive the mailing requirement.

15 (6) Articles of merger under this section may not
16 contain amendments to the articles of incorporation of
17 the parent corporation except for amendments enumerated
18 in section 220."

19 Section 139. Title 36 of the Code of the Federated States of
20 Micronesia (Annotated), is hereby amended by inserting a new
21 section 237 of chapter 1, to read as follows:

22 "Section 237. Articles of merger or share exchange.

23 (1) After a plan of merger or share exchange is
24 approved by the shareholders, or adopted by the board of
25 directors if shareholder approval is not required,

1 articles of merger or share exchange shall be signed on
2 behalf of each corporation and each other entity that is
3 a party to the merger or share exchange and shall be
4 delivered to the Registrar for filing. The articles of
5 merger or share exchange shall set forth:

6 (a) For a merger, the name and jurisdiction of
7 each entity that is a party to the merger, and the name,
8 address, and jurisdiction of the surviving entity;

9 (b) For a share exchange, the name, address, and
10 jurisdiction of both the corporation whose shares will
11 be acquired and the acquiring corporation;

12 (c) A statement that the plan of merger or share
13 exchange has been approved by each entity involved in
14 the merger or share exchange;

15 (d) If a merger, a statement indicating any
16 changes in the organizing articles of the surviving
17 entity to be given effect by the merger; provided that
18 if no changes are made, a statement that the organizing
19 articles of the surviving entity shall not be amended
20 pursuant to the merger; and

21 (e) A statement that includes:

22 (i) An agreement that the surviving entity
23 may be served with process in the Federated States of
24 Micronesia in any action or proceeding for the
25 enforcement of any liability or obligation of any entity

1 previously subject to suit in the Federated States of
2 Micronesia that is to merge;

3 (ii) An irrevocable appointment of a
4 resident of the Federated States of Micronesia as its
5 agent to accept service of process in a proceeding under
6 subparagraph (i), that includes the resident's street
7 address in the Federated States of Micronesia; and

8 (iii) An agreement for the enforcement, as
9 provided in this chapter, of the right of any dissenting
10 member, shareholder, or partner to receive payment for
11 their interest against the surviving entity.

12 (2) If the articles of merger provide for a future
13 effective date, and:

14 (a) The plan of merger is amended to change the
15 future effective date;

16 (b) The plan of merger permits the amendment of
17 the articles of merger to change the future effective
18 date without an amendment to the plan of merger; or

19 (c) The plan of merger is amended to change any
20 other matter contained in the articles of merger so as
21 to make the articles of merger inaccurate in any
22 material respect, prior to the future effective date;
23 Then the articles of merger shall be amended by filing
24 with the Registrar articles of amendment that identify
25 the articles of merger and set forth the amendment to

1 the articles of merger. If the articles of merger
2 provide for a future effective date and if the plan of
3 merger is terminated prior to the future effective date,
4 the articles of merger shall be terminated by filing
5 with the Registrar a certificate of termination that
6 identifies the articles of merger and states that the
7 plan of merger has been terminated.

8 (3) Articles of merger operate as an amendment to the
9 corporation's articles of incorporation."

10 Section 140. Title 36 of the Code of the Federated States of
11 Micronesia (Annotated), is hereby amended by inserting a new
12 section 238 of chapter 1, to read as follows:

13 "Section 238. Effect of merger or share exchange.

14 (1) When a merger takes effect:

15 (a) Every other entity that is a party to the
16 merger merges into the surviving entity and the separate
17 existence of every entity except the surviving entity
18 ceases;

19 (b) The title to all lawfully owned real estate
20 and other property owned by each entity that is a party
21 to the merger is vested in the surviving entity to the
22 extent permitted by law without reversion or impairment;

23 (c) The surviving entity has all liabilities of
24 each entity that is a party to the merger;

25 (d) A proceeding pending against any entity that

1 is a party to the merger may be continued as if the
2 merger did not occur or the surviving entity may be
3 substituted in the proceeding for the entity whose
4 existence ceased;

5 (e) The organizing articles of the surviving
6 entity are amended to the extent provided in the plan of
7 merger and indicated in the articles of merger; and

8 (f) The shares of each corporation party to the
9 merger that are to be converted into shares,
10 obligations, or other securities of the surviving entity
11 or into cash or other property are converted, and the
12 former holders of the shares are entitled only to the
13 rights provided in the articles of merger or to their
14 rights under section 242 through 255.

15 (2) When a share exchange takes effect, the shares of
16 each acquired corporation are exchanged as provided in
17 the plan, and the former holder of the shares are
18 entitled only to the exchange rights provided in the
19 articles of share exchange or to their rights under
20 section 242 through 255.

21 (3) If a surviving entity fails to appoint or
22 maintain an agent designated for service of process in
23 the Federated States of Micronesia or the agent for
24 service of process cannot with reasonable diligence be
25 found at the designated office, service of process may

1 be made upon the surviving entity by sending a copy of
2 the process by registered or certified mail, return
3 receipt requested, to the surviving entity at the
4 address set forth in the articles of merger. Service is
5 effected under this subsection:

6 (a) The date the surviving entity receives the
7 process, notice, or demand or;

8 (b) The date shown on the return receipt, if
9 signed on behalf of the surviving entity; or

10 (c) Five days after its deposit in the mail, if
11 mailed postpaid and correctly addressed."

12 Section 141. Title 36 of the Code of the Federated States of
13 Micronesia (Annotated), is hereby amended by inserting a new
14 section 239 of chapter 1, to read as follows:

15 "Section 239. Merger of subsidiary corporations.

16 (1) Any corporation owning at least ninety percent of
17 the outstanding shares of each class of two or more
18 corporations may adopt a plan of merger pursuant to
19 section 236 that shall be delivered to the Registrar for
20 filing including articles of merger. The articles of
21 merger shall be signed by the parent corporation and the
22 surviving subsidiary corporation. The plan of merger
23 shall set forth:

24 (a) The name of the parent corporation owning at
25 least ninety percent of the shares of the subsidiary

1 corporations, the name of any nonsurviving subsidiary
2 corporation, and the name of the surviving corporation;
3 and

4 (b) The manner and basis of converting the
5 shares of any nonsurviving subsidiary corporation into
6 shares, obligations, or other securities of the
7 surviving subsidiary corporation or of any other
8 corporation or, in whole or in part, into cash or other
9 property.

10 (2) A copy of the plan of merger shall be mailed to
11 each shareholder of record of any nonsurviving
12 subsidiary corporation.

13 (3) On or after the thirtieth day after the mailing
14 of a copy of the plan of merger to shareholders of any
15 nonsurviving subsidiary corporation or upon the waiver
16 thereof by the holders of all outstanding shares, the
17 articles of merger shall be delivered to the Registrar
18 for filing. Articles of merger shall set forth:

19 (a) A statement that the plan of merger has been
20 approved by the board of directors of the parent
21 corporation;

22 (b) The number of outstanding shares of each
23 class of any nonsurviving subsidiary corporation and the
24 number of the shares of each class owned by the parent
25 corporation; and

1 (c) The date a copy of the plan of merger is
2 mailed to shareholders of any nonsurviving subsidiary
3 corporation entitled to receive the plan of merger."

4 Section 142. Title 36 of the Code of the Federated States of
5 Micronesia (Annotated), is hereby amended by inserting a new
6 section 240 of chapter 1, to read as follows:

7 "Section 240. Sale of assets in regular course of
8 business and mortgage of assets.

9 (1) A corporation, on the terms and conditions and
10 for the consideration determined by the board of
11 directors, may:

12 (a) Sell, lease, exchange, or otherwise dispose
13 of all, or substantially all, of its property in the
14 usual and regular course of business;

15 (b) Mortgage, pledge, dedicate to the repayment
16 of indebtedness whether with or without recourse, or
17 otherwise encumber any or all of its property whether or
18 not in the usual and regular course of business; or

19 (c) Transfer any or all of its property to a
20 corporation all the shares of which are owned by the
21 corporation.

22 (2) Unless the articles of incorporation require it,
23 approval by the shareholders of a transaction described
24 in subsection (1) is not required."

25 Section 143. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 241 of chapter 1, to read as follows:

3 "Section 241. Sale of assets other than in regular
4 course of business.

5 (1) A corporation may sell, lease, exchange, or
6 otherwise dispose of all, or substantially all, of its
7 property with or without the goodwill, otherwise than in
8 the usual and regular course of business, on the terms
9 and conditions and for the consideration determined by
10 the corporation's board of directors, if the board of
11 directors proposes and its shareholders approve the
12 proposed transaction.

13 (2) For a transaction to be authorized:

14 (a) The board of directors must recommend the
15 proposed transaction to the shareholders unless the
16 board of directors determines that because of conflict
17 of interest or other special circumstances it should
18 make no recommendation and communicates the basis for
19 its determination to the shareholders with the
20 submission of the proposed transaction; and

21 (b) The shareholders entitled to vote must
22 approve the transaction.

23 (3) The board of directors may condition its
24 submission of the proposed transaction on any basis.

25 (4) The corporation shall notify each shareholder,

1 whether or not entitled to vote, of the proposed
2 shareholders' meeting in accordance with section 154.
3 The notice must also state that the purpose, or one of
4 the purposes, of the meeting is to consider the sale,
5 lease, exchange, or other disposition of all, or
6 substantially all, the property of the corporation and
7 contain or be accompanied by a description of the
8 transaction.

9 (5) The shareholders may authorize the sale, lease,
10 exchange, or other disposition and may fix, or may
11 authorize the board of directors to fix, any or all of
12 the terms and conditions thereof and the consideration
13 to be received by the corporation thereon. The
14 authorization shall require the affirmative vote of the
15 holders of a majority of the shares of the corporation
16 entitled to vote thereon, unless any class of shares is
17 entitled to vote thereon as a class, in which event the
18 authorization shall require the affirmative vote of the
19 holders of a majority of the shares of each class of
20 shares entitled to vote as a class thereon and of the
21 total shares entitled to vote thereon.

22 (6) After a sale, lease, exchange, or other
23 disposition of property is authorized, the transaction
24 may be abandoned subject to any contractual rights
25 without further shareholder action.

1 (7) A transaction that constitutes a distribution to
2 shareholders is governed by section 149 and not by this
3 section.

4 (8) A sale, lease, exchange, or other disposition of
5 the property of a corporation shall not be deemed to be
6 the sale, lease, exchange, or other disposition of all
7 or substantially all the property of the corporation if
8 the corporation is retaining sufficient property to
9 continue one or more significant business segments or
10 lines of the corporation after the sale, lease,
11 exchange, or other disposition. Furthermore, the
12 business segments or lines retained must not be only
13 temporary operations or merely a pretext to avoid
14 shareholders' rights which might otherwise arise under
15 this chapter."

16 Section 144. Title 36 of the Code of the Federated States of
17 Micronesia (Annotated), is hereby amended by inserting a new
18 section 242 of chapter 1, to read as follows:

19 "Section 242. Definitions – Dissenters Rights. As used
20 herein:

21 (1) 'Beneficial shareholder' means the person who is
22 a beneficial owner of shares held in a voting trust or
23 by a nominee as the record shareholder.

24 (2) 'Corporation' means the issuer of the shares held
25 by a dissenter before the corporate action, or the

1 surviving or acquiring corporation by merger or share
2 exchange of that issuer.

3 (3) 'Dissenter' means a shareholder who is entitled
4 to dissent from corporate action under section 243 and
5 who exercises that right when and in the manner required
6 by section 245 to 253.

7 (4) 'Fair value', with respect to a dissenter's
8 shares, means the value of the shares immediately before
9 the effectuation of the corporate action to which the
10 dissenter objects, excluding any appreciation or
11 depreciation in anticipation of the corporate action
12 unless exclusion would be inequitable.

13 (5) 'Interest' means interest from the effective date
14 of the corporate action until the date of payment, at
15 the average rate currently paid by the corporation on
16 its principal bank loans or, if none, at a rate that is
17 fair and equitable under all the circumstances.

18 (6) 'Record shareholder' means the person in whose
19 name shares are registered in the records of a
20 corporation or the beneficial owner of shares to the
21 extent of the rights granted by a nominee certificate on
22 file with a corporation.

23 (7) 'Shareholders' means the record shareholder or
24 beneficial shareholder."

25 Section 145. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 243 of chapter 1, to read as follows:

3 "Section 243. Right to dissent.

4 (1) A shareholder is entitled to dissent from, and
5 obtain payment of the fair value of the shareholder's
6 shares in the event of, any of the following corporate
7 actions:

8 (a) Consummation of a plan of merger to which
9 the corporation is a party:

10 (i) If shareholder approval is required for
11 the merger by section 235 or the articles of
12 incorporation; provided that the shareholder is entitled
13 to vote on the merger; or

14 (ii) If the corporation is a subsidiary that
15 is merged with its parent under section 236;

16 (b) Consummation of a plan of share exchange to
17 which the corporation is a party as the corporation
18 whose shares will be acquired, if the shareholder is
19 entitled to vote on the plan;

20 (c) Consummation of a sale or exchange of all,
21 or substantially all, of the property of the corporation
22 other than in the usual and regular course of business,
23 if the shareholder is entitled to vote on the sale or
24 exchange, including a sale in dissolution, but not
25 including a sale pursuant to court order or a sale for

1 cash pursuant to a plan by which all or substantially
2 all of the net proceeds of the sale will be distributed
3 to the shareholders within one year after the date of
4 sale;

5 (d) An amendment of the articles of
6 incorporation that materially and adversely affects
7 rights in respect of a dissenter's shares because it:

8 (i) Alters or abolishes a preferential
9 right of the shares;

10 (ii) Creates, alters, or abolishes a right
11 in respect of redemption, including a provision
12 respecting a sinking fund for the redemption or
13 repurchase, of the shares;

14 (iii) Alters or abolishes a preemptive right
15 of the holder of the shares to acquire shares or other
16 securities;

17 (iv) Excludes or limits the right of the
18 holder of the shares to vote on any matter, or to
19 cumulate votes, other than a limitation by dilution
20 through issuance of shares or other securities with
21 similar voting rights; or

22 (v) Reduces the number of shares owned by
23 the shareholder to a fraction of a share if the
24 fractional share so created is to be acquired for cash
25 under section 137;

1 (e) Any corporate action taken pursuant to a
2 shareholder vote to the extent the articles of
3 incorporation, bylaws, or a resolution of the board of
4 directors provides that voting or nonvoting shareholders
5 are entitled to dissent and obtain payment for their
6 shares; or

7 (f) Consummation of a plan of conversion to
8 which the corporation is the converting entity, if the
9 shareholder is entitled to vote on the plan.

10 (2) A shareholder entitled to dissent and obtain
11 payment for the shareholder's shares under this part may
12 not challenge the corporate action creating the
13 shareholder's entitlement unless the action is unlawful
14 or fraudulent with respect to the shareholder or the
15 corporation."

16 Section 146. Title 36 of the Code of the Federated States of
17 Micronesia (Annotated), is hereby amended by inserting a new
18 section 244 of chapter 1, to read as follows:

19 "Section 244. Dissent by nominees and beneficial
20 owners.

21 (1) A record shareholder may assert dissenter's
22 rights as to fewer than all the shares registered in the
23 shareholder's name only if the shareholder dissents with
24 respect to all shares beneficially owned by any one
25 person and notifies the corporation in writing of the

1 name and address of each person on whose behalf the
2 record shareholder asserts dissenters' rights. The
3 rights of a partial dissenter under this subsection are
4 determined as if the shares to which the partial
5 dissenter dissents and the partial dissenter's other
6 shares were registered in the names of different
7 shareholders.

8 (2) A beneficial shareholder may assert dissenter's
9 rights as to shares held on the beneficial shareholder's
10 behalf only if:

11 (a) The beneficial shareholder submits to the
12 corporation the record shareholder's written consent to
13 the dissent not later than the time the beneficial
14 shareholder asserts dissenters' rights; and

15 (b) The beneficial shareholder does so with
16 respect to all shares of which the beneficial
17 shareholder is the beneficial shareholder or over which
18 the beneficial shareholder has power to direct the
19 vote."

20 Section 147. Title 36 of the Code of the Federated States of
21 Micronesia (Annotated), is hereby amended by inserting a new
22 section 245 of chapter 1, to read as follows:

23 "Section 245. Notice of dissenters' rights.

24 (1) If proposed corporate action creating dissenters'
25 rights under section 243 is submitted to a vote at a

1 shareholders' meeting, the meeting notice must state
2 that shareholders are or may be entitled to assert
3 dissenters' rights under this part and be accompanied by
4 a copy of this part.

5 (2) If corporate action creating dissenters' rights
6 under section 243 is taken without a vote of
7 shareholders, the corporation shall notify in writing
8 all shareholders entitled to assert dissenters' rights
9 that the action was taken and send them the dissenters'
10 notice described in section 247."

11 Section 148. Title 36 of the Code of the Federated States of
12 Micronesia (Annotated), is hereby amended by inserting a new
13 section 246 of chapter 1, to read as follows:

14 "Section 246. Notice of intent to demand payment.

15 (1) If proposed corporate action creating dissenters'
16 rights under section 243 is submitted to a vote at a
17 shareholders' meeting, a shareholder who wishes to
18 assert dissenters' rights:

19 (a) Must deliver to the corporation before the
20 vote is taken written notice of the shareholder's intent
21 to demand payment for the shareholder's shares if the
22 proposed action is effectuated; and

23 (b) Must not vote the shareholder's shares in
24 favor of the proposed action.

25 (2) A shareholder who does not satisfy the

1 requirements of subsection (1) is not entitled to
2 payment for the shareholder's shares under this part."

3 Section 149. Title 36 of the Code of the Federated States of
4 Micronesia (Annotated), is hereby amended by inserting a new
5 section 247 of chapter 1, to read as follows:

6 "Section 247. Dissenters' notice.

7 (1) If proposed corporate action creating dissenters'
8 rights under section 243 is authorized at a
9 shareholders' meeting, the corporation shall deliver a
10 written dissenters' notice to all shareholders who
11 satisfied the requirements of section 246.

12 (2) The dissenters' notice must be sent no later than
13 ten days after the corporate action was taken, and must:

14 (a) State where the payment demand must be sent
15 and where and when certificates for certificated shares
16 must be deposited;

17 (b) Inform holders of uncertificated shares to
18 what extent transfer of the shares will be restricted
19 after the payment demand is received;

20 (c) Supply a form for demanding payment that
21 includes the date of the first announcement to news
22 media or to shareholders of the terms of the proposed
23 corporate action and requires that the person asserting
24 dissenters' rights certify whether or not the person
25 acquired beneficial ownership of the shares before that

1 date;

2 (d) Set a date which the corporation must
3 receive the payment demand, which date may not be fewer
4 than thirty days nor more than sixty days after the date
5 the subsection (1) notice is delivered; and

6 (e) Be accompany by a copy of this part."

7 Section 150. Title 36 of the Code of the Federated States of
8 Micronesia (Annotated), is hereby amended by inserting a new
9 section 248 of chapter 1, to read as follows:

10 "Section 248. Duty to demand payment.

11 (1) A shareholder who sent a dissenters' notice
12 described in section 247 must demand payment, certify
13 whether the shareholder acquired beneficial ownership of
14 shares before the date required to be set forth in the
15 dissenters' notice pursuant to section 247(2) and
16 deposit the shareholder's certificates in accordance
17 with the terms of the notice.

18 (2) The shareholder who demands payment and deposits
19 the shareholder's share certificates under subsection
20 (1) retains all other rights of a shareholder until
21 these rights are canceled or modified by the taking of
22 the proposed corporate action.

23 (3) A shareholder who does not demand payment or
24 deposit of the shareholder's share certificates
25 where required, by the date set in the dissenters'

1 notice, is not entitled to payment for the
2 shareholder's shares under this part."

3 Section 151. Title 36 of the Code of the Federated States of
4 Micronesia (Annotated), is hereby amended by inserting a new
5 section 249 of chapter 1, to read as follows:

6 "Section 249. Share restrictions.

7 (1) The corporation may restrict the transfer of
8 uncertificated shares from the date the demand for their
9 payment is received until the proposed corporate action
10 is taken or the restrictions released under section 251.

11 (2) The person for whom dissenters' rights are
12 asserted as to uncertificated shares retains all other
13 rights of a shareholder until these rights are canceled
14 or modified by the taking of the proposed corporate
15 action."

16 Section 152. Title 36 of the Code of the Federated States of
17 Micronesia (Annotated), is hereby amended by inserting a new
18 section 250 of chapter 1, to read as follows:

19 "Section 250. Payment.

20 (1) Except as provided in section 252, as soon as the
21 proposed corporate action is taken, or upon receipt of a
22 payment demand, the corporation shall pay each dissenter
23 who complied with section 248 the amount the corporation
24 estimates to be the fair value of the dissenters'
25 shares, plus accrued interest.

1 (2) The payment must be accompanied by:

2 (a) The corporation's balance sheet as of the
3 end of a fiscal year ending not more than sixteen months
4 before the date of payment, an income statement for that
5 year, a statement of changes in shareholders' equity for
6 that year, and the latest available interim financial
7 statements, if any;

8 (b) A statement of the corporation's estimate of
9 the fair value of the shares;

10 (c) An explanation of how the interest was
11 calculated;

12 (d) A statement of the dissenter's right to
13 demand payment under section 253; and

14 (e) A copy of this part."

15 Section 153. Title 36 of the Code of the Federated States of
16 Micronesia (Annotated), is hereby amended by inserting a new
17 section 251 of chapter 1, to read as follows:

18 "Section 251. Failure to take action.

19 (1) If the corporation does not take the proposed
20 action within sixty days after the date set for
21 demanding payment and depositing share certificates, the
22 corporation shall return the deposited certificates and
23 release the transfer restrictions imposed on
24 uncertificated shares.

25 (2) If after returning deposited certificates and

1 releasing transfer restrictions, the corporation takes
2 the proposed action, it must send a new dissenters'
3 notice under section 247 and repeat the payment demand
4 procedure."

5 Section 154. Title 36 of the Code of the Federated States of
6 Micronesia (Annotated), is hereby amended by inserting a new
7 section 252 of chapter 1, to read as follows:

8 "Section 252. After-acquired shares.

9 (1) A corporation may elect to withhold payment
10 required by section 250 from a dissenter unless the
11 dissenter was the beneficial owner of the shares before
12 the date set forth in the dissenters' notice as the date
13 of the first announcement to news media or to
14 shareholders of the terms of the proposed corporate
15 action.

16 (2) To the extent the corporation elects to withhold
17 payment under subsection (1), after taking the proposed
18 corporate action, it shall estimate the fair value of
19 the shares, plus accrued interest, and shall pay this
20 amount to each dissenter who agrees to accept it in full
21 satisfaction of the dissenter's demand. The corporation
22 shall send with its offer a statement of its estimate of
23 the fair value of the shares, an explanation of how the
24 interest was calculated, and a statement of the
25 dissenter's right to demand payment under section 253."

1 Section 155. Title 36 of the Code of the Federated States of
2 Micronesia (Annotated), is hereby amended by inserting a new
3 section 253 of chapter 1, to read as follows:

4 "Section 253. Procedure if shareholder dissatisfied
5 with payment or offer.

6 (1) A dissenter may notify the corporation in writing
7 of the dissenter's own estimate of the fair value of the
8 dissenter's shares and amount of interest due, and
9 demand payment of the dissenter's estimate less any
10 payment under section 250, or reject the corporation's
11 offer under section 252 and demand payment of the fair
12 value of the dissenter's shares and interest due, if:

13 (a) The dissenter believes that the amount paid
14 under section 250 or offered under section 252 is less
15 than the fair value of the dissenter's shares or that
16 the interest due is incorrectly calculated;

17 (b) The corporation fails to make payment under
18 section 250 within sixty days after the date set for
19 demanding payment; or

20 (c) The corporation, having failed to take the
21 proposed action, does not return the deposited
22 certificates or release the transfer restrictions
23 imposed on uncertificated shares within sixty days after
24 the date set for demanding payment.

25 (2) A dissenter waives the dissenter's right to

1 demand payment under this section unless the dissenter
2 notifies the corporation of the dissenter's demand in
3 writing under subsection (1) within thirty days after
4 the corporation made or offered payment for the
5 dissenter's shares."

6 Section 156. Title 36 of the Code of the Federated States of
7 Micronesia (Annotated), is hereby amended by inserting a new
8 section 254 of chapter 1, to read as follows:

9 "Section 254. Court action.

10 (1) If a demand for payment under section 253 remains
11 unsettled, the corporation shall commence a proceeding
12 within sixty days after receiving the payment demand and
13 petition the court to determine the fair value of the
14 shares and accrued interest. If the corporation does
15 not commence the proceeding within the sixty day period,
16 it shall pay each dissenter whose demand remains
17 unsettled the amount demanded.

18 (2) The corporation shall commence the proceeding in
19 the Federated States of Micronesia Supreme Court. If
20 the corporation is a foreign corporation without a
21 registered office in the Federated States of Micronesia,
22 it shall commence the proceeding in the trial division
23 of the Federated States of Micronesia Supreme Court in
24 the State where the registered office of the domestic
25 corporation merged with or whose shares were acquired by

1 the foreign corporation was located or, if no such
2 registered office exists, in the trial division of
3 Pohnpei State.

4 (3) The corporation shall make all dissenters whether
5 or not resident of the Federated States of Micronesia
6 whose demands remain unsettled parties to the proceeding
7 as in an action against their shares and all parties
8 must be served with a copy of the petition.
9 Nonresidents may be served by registered or certified
10 mail or by publication as provided by law.

11 (4) The jurisdiction of the court in which the
12 proceeding is commenced under subsection (2) is plenary
13 and exclusive. The court may appoint one or more person
14 as appraisers to receive evidence and recommend decision
15 on the question of fair value. The appraisers have the
16 power described in the order appointing them, or in any
17 amendment to it. The dissenters are entitled to the
18 same discovery rights as parties in other civil
19 proceedings.

20 (5) Each dissenter made a party to the proceeding is
21 entitled to judgment:

22 (a) For the amount, if any, by which the court
23 finds the fair value of the dissenter's shares, plus
24 interest, exceeds the amount paid by the corporation; or

25 (b) For the fair value, plus accrued interest,

1 of the dissenter's after-acquired shares for which the
2 corporation elected to withhold payment under section
3 252."

4 Section 157. Title 36 of the Code of the Federated States of
5 Micronesia (Annotated), is hereby amended by inserting a new
6 section 255 of chapter 1, to read as follows:

7 "Section 255. Court costs and counsel fees.

8 (1) The court in an appraisal proceeding commenced
9 under section 254 shall determine all costs of the
10 proceeding, including the reasonable compensation and
11 expenses of appraisers appointed by the court. The
12 court shall assess the costs against the corporation,
13 except that the court may assess cost against all or
14 some of the dissenters, in amount the court finds
15 equitable, to the extent the court finds the dissenters
16 acted arbitrarily, vexatiously, or not in good faith in
17 demanding payment under section 253.

18 (2) The court may also assess the fees and expenses
19 of counsel and experts for the respective parties, in
20 amounts the court finds equitable:

21 (a) Against the corporation and in favor of any
22 or all dissenters if the court finds the corporation did
23 not substantially comply with the requirements of
24 sections 245 and 253; or

25 (b) Against either the corporation or a

1 dissenter, in favor of any other party, if the court
2 finds that the party against whom the fees and expenses
3 are assessed acted arbitrarily, vexatiously, or not in
4 good faith with respect to the rights provided herein.

5 (3) If the court finds that the services of counsel
6 for any dissenter were of substantial benefit to other
7 dissenters similarly situated, and that the fees for
8 those services should not be assessed against the
9 corporation, the court may award to these counsel
10 reasonable fees to be paid out of the amounts awarded
11 the dissenters who were benefited."

12 Section 158. Title 36 of the Code of the Federated States of
13 Micronesia (Annotated), is hereby amended by inserting a new
14 section 256 of chapter 1, to read as follows:

15 "Section 256. Dissolution by incorporators or initial
16 directors.

17 (1) A majority of the incorporators or initial
18 directors of a corporation that has not issued shares or
19 has not commenced business may dissolve the corporation
20 by delivering to the Registrar for filing articles of
21 dissolution that set forth:

22 (a) The name of the corporation;

23 (b) The date of its incorporation;

24 (c) Either:

25 (i) That none of the corporation's shares

1 has been issued; or

2 (ii) That the corporation has not commenced
3 business;

4 (d) That no debt of the corporation remains
5 unpaid;

6 (e) That the net assets of the corporation
7 remaining after winding up have been distributed to the
8 shareholders, if shares were issued; and

9 (f) That a majority of the incorporators or
10 initial directors authorized the dissolution."

11 Section 159. Title 36 of the Code of the Federated States of
12 Micronesia (Annotated), is hereby amended by inserting a new
13 section 257 of chapter 1, to read as follows:

14 "Section 257. Dissolution by board of directors and
15 shareholders.

16 (1) A corporation's board of directors may propose
17 dissolution for submission to the shareholders.

18 (2) For a proposal to dissolve to be adopted:

19 (a) The board of directors must recommend
20 dissolution to the shareholders unless the board of
21 directors determines that because of conflict of
22 interest or other special circumstances it should make
23 no recommendation and communicates the basis for its
24 determination to the shareholders; and

25 (b) The shareholders entitled to vote must

1 approve the proposal to dissolve as provided in
2 subsections (5) and (6).

3 (3) The board of directors may condition its
4 submission of the proposal for dissolution on any basis.

5 (4) The corporation shall notify each shareholder,
6 whether or not entitled to vote, of the proposed
7 shareholders' meeting in accordance with section 154.
8 The notice must also state that the purpose, or one of
9 the purposes, of the meeting is to consider dissolving
10 the corporation.

11 (5) At a meeting a vote of shareholders entitled to
12 vote thereat shall be taken on a resolution to dissolve
13 the corporation. The resolution shall be adopted upon
14 receiving the affirmative vote of the holders of a
15 majority of the shares of each class of shares entitled
16 to vote thereon as a class and of the total shares
17 entitled to vote thereon."

18 Section 160. Title 36 of the Code of the Federated States of
19 Micronesia (Annotated), is hereby amended by inserting a new
20 section 258 of chapter 1, to read as follows:

21 "Section 258. Articles of dissolution.

22 (1) At any time after dissolution is authorized, the
23 corporation may dissolve by delivering to the Registrar
24 for filing articles of dissolution setting forth:

25 (a) The name of the corporation;

1 (b) The date dissolution was authorized;

2 (c) If dissolution was approved by the
3 shareholders;

4 (i) The number of votes entitled to be cast
5 on the proposal to dissolve; and

6 (ii) Either the total number of votes cast
7 for and against dissolution or the total number of
8 undisputed votes cast for dissolution and a statement
9 that the number cast for dissolution was sufficient for
10 approval; and

11 (d) If voting by voting groups was required, the
12 information required by paragraph (1)(c) must be
13 separately provided for each voting group entitled to
14 vote separately on the plan to dissolve.

15 (2) A corporation is dissolved upon the effective
16 date of its articles of dissolution. The articles of
17 dissolution may specify a delayed effective time and
18 date, and if it does so the document becomes effective
19 at the time and date specified. If a delayed effective
20 date but no time is specified, the document shall be
21 effective at the close of business on that date. A
22 delayed effective date for a document may not be later
23 than the thirtieth day after the date it is filed."

24 Section 161. Title 36 of the Code of the Federated States of
25 Micronesia (Annotated), is hereby amended by inserting a new

1 section 259 of chapter 1, to read as follows:

2 "Section 259. Revocation of dissolution.

3 (1) A corporation may revoke its dissolution within
4 one hundred twenty days of its effective date.

5 (2) Revocation of dissolution shall be authorized in
6 the same manner as the dissolution was authorized unless
7 that authorization permitted revocation by action of the
8 board of directors alone, in which event the board of
9 directors may revoke the dissolution without shareholder
10 action.

11 (3) After the revocation of dissolution is
12 authorized, the corporation may revoke the dissolution
13 by delivering to the Registrar for filing articles of
14 revocation of dissolution, together with a copy of its
15 articles of dissolution, that set forth:

16 (a) The name of the corporation;

17 (b) The effective date of the dissolution that
18 was revoked;

19 (c) The date that the revocation of dissolution
20 was authorized;

21 (d) If the corporation's board of directors or
22 incorporators revoked the dissolution, a statement to
23 that effect;

24 (e) If the corporation's board of directors
25 revoked the dissolution, the information required by

1 section 258(1)(c) or (d).

2 (4) Within the applicable revocation of dissolution
3 period, should the name of the corporation, or a name
4 substantially identical thereto be registered or
5 reserved by another corporation, partnership, limited
6 partnership, or should the name or a name substantially
7 identical thereto be registered as a trade name,
8 trademark, or service mark, then revocation of
9 dissolution shall be allowed only upon the registration
10 of a new name by the dissolved corporation pursuant to
11 the amendment provisions of this chapter.

12 (5) Revocation of dissolution is effective upon the
13 effective date of the articles of revocation of
14 dissolution.

15 (6) When the revocation of dissolution is effective,
16 it relates back to and takes effect as of the effective
17 date of the dissolution and the corporation resumes
18 carrying on its business as if dissolution had never
19 occurred."

20 Section 162. Title 36 of the Code of the Federated States of
21 Micronesia (Annotated), is hereby amended by inserting a new
22 section 260 of chapter 1, to read as follows:

23 "Section 260. Effect of dissolution.

24 (1) A dissolved corporation continues its corporate
25 existence but may not carry on any business except that

1 appropriate to wind up and liquidate its business and
2 affairs, including:

3 (a) Collecting its assets;

4 (b) Disposing of its properties that will not be
5 distributed in kind to its shareholders;

6 (c) Discharging or making provision for
7 discharging its liabilities;

8 (d) Distributing its remaining property among
9 its shareholders according to their interests; and

10 (e) Doing every other act necessary to wind up
11 and liquidate its business affairs.

12 (2) Dissolution of a corporation does not:

13 (a) Transfer title to the corporation's
14 property;

15 (b) Prevent transfer of its shares or
16 securities, although the authorization to dissolve may
17 provide for closing the corporation's share transfer
18 records;

19 (c) Subject its directors or officers to
20 standards of conduct different from those prescribed in
21 sections 177 through 215;

22 (d) Change quorum or voting requirements for its
23 board of directors or shareholders; change provisions
24 for selection, resignation, or removal of its directors
25 or officers or both; or change provisions for amending

1 its bylaws;

2 (e) Prevent commencement of a proceeding by or
3 against the corporation in its corporate name;

4 (f) Abate or suspend a proceeding pending by or
5 against the corporation on the effective date of
6 dissolution; or

7 (g) Terminate the authority of the registered
8 agent of the corporation."

9 Section 162. Title 36 of the Code of the Federated States of
10 Micronesia (Annotated), as amended, is hereby amended by inserting
11 a new section 261 of chapter 1, to read as follows:

12 "Section 261. Known claims against dissolved
13 corporation.

14 (1) A dissolved corporation may dispose of the known
15 claims against it by following the procedure described
16 in this section.

17 (2) The dissolved corporation shall notify its known
18 claimants in writing of the dissolution at any time
19 after its effective date. The written notice must:

20 (a) Describe information that must be included
21 in a claim;

22 (b) Provide a mailing address where a claim may
23 be sent;

24 (c) State the deadline, which may not be fewer
25 than one hundred twenty days from the effective date of

1 the written notice, by which the dissolved corporation
2 must receive the claim; and

3 (d) State that the claim will be barred if not
4 received by the deadline.

5 (3) A claim against the dissolved corporation is
6 barred:

7 (a) If a claimant who was given written notice
8 under subsection (b) does not deliver the claim to the
9 dissolved corporation by the deadline;

10 (b) If a claimant whose claim was rejected by
11 the dissolved corporation does not commence a proceeding
12 to enforce the claim within ninety days from the
13 effective date of the rejection notice.

14 (4) For purposes of this section, "claim" does not
15 include a contingent liability or a claim based on an
16 event occurring after the effective date of
17 dissolution."

18 Section 164. Title 36 of the Code of the Federated States of
19 Micronesia (Annotated), is hereby amended by inserting a new
20 section 262 of chapter 1, to read as follows:

21 "Section 262. Unknown claims against dissolved
22 corporation.

23 (1) A dissolved corporation may also publish notice
24 of its dissolution and request that persons with claims
25 against the corporation present them in accordance with

1 the notice.

2 (2) The notice must:

3 (a) Be published one time in a newspaper of
4 general circulation in the Federated States of
5 Micronesia;

6 (b) Describe the information that must be
7 included in a claim and provide a mailing address where
8 the claim may be sent; and

9 (c) State that a claim against the corporation
10 will be barred unless a proceeding to enforce the claim
11 is commenced within five years after the publication of
12 the notice.

13 (3) If the dissolved corporation publishes a
14 newspaper notice in accordance with subsection (b), the
15 claim of each of the following claimants is barred
16 unless the claimant commences a proceeding to enforce
17 the claim against the dissolved corporation within five
18 years after the publication date of the newspaper
19 notice:

20 (a) A claimant who did not receive written
21 notice under section 261;

22 (b) A claimant whose claim was timely sent to
23 the dissolved corporation but not acted on;

24 (c) A claimant whose claim is contingent or
25 based on an event occurring after the effective date of

1 dissolution.

2 (4) A claim may be enforced under this section:

3 (a) Against the dissolved corporation, to the
4 extent of its undistributed assets; or

5 (b) If the assets have been distributed in
6 liquidation, against a shareholder of the dissolved
7 corporation to the extent of the shareholder's pro rata
8 share of the shareholder claim or the corporate assets
9 distributed to the shareholder in liquidation, whichever
10 is less, but a shareholder's total liability for all
11 claims under this section may not exceed the total
12 amount of assets distributed to such shareholder."

13 Section 165. Title 36 of the Code of the Federated States of
14 Micronesia (Annotated), is hereby amended by inserting a new
15 section 263 of chapter 1, to read as follows:

16 "Section 263. Grounds for administrative dissolution.

17 (1) The Registrar may commence a proceeding under
18 section 264 to administratively dissolve a corporation
19 if the corporation fails to:

20 (a) Pay any fees prescribed by law;

21 (b) File its annual report for a period of two
22 years;

23 (c) Appoint and maintain an agent for service of
24 process as required; or

25 (d) File a statement of a change in the name or

1 business address of the agent as required under this
2 chapter."

3 Section 166. Title 36 of the Code of the Federated States of
4 Micronesia (Annotated), is hereby amended by inserting a new
5 section 264 of chapter 1, to read as follows:

6 "Section 264. Procedure for and effect of
7 administrative dissolution and effect of expiration.

8 (1) If the Registrar determines that one or more
9 grounds exist under section 263 for dissolving a
10 corporation, the Registrar shall give written notice of
11 the Registrar's determination by mailing the notice to
12 the corporation at its last known address appearing in
13 the records of the Registrar.

14 (2) If the corporation does not correct each ground
15 for dissolution or demonstrate to the reasonable
16 satisfaction of the Registrar that each ground
17 determined by the Registrar does not exist within sixty
18 days after the date of mailing of the Registrar's
19 written notice, the Registrar shall administratively
20 dissolve the corporation by signing a decree of
21 dissolution that recites any grounds for dissolution and
22 its effective date. The decree shall be filed in the
23 Registrar's office.

24 (3) A corporation administratively dissolved
25 continues its corporate existence but may not carry on

1 any business except that necessary to wind up and
2 liquidate its business and affairs under section 260 and
3 notify claimants under sections 261 and 262.

4 (4) The administrative dissolution of a corporation
5 does not terminate the authority of its registered
6 agent.

7 (5) If a corporation's period of duration specified
8 in its articles of incorporation has expired, the
9 corporation may continue its corporate existence but may
10 not carry on any business except as necessary to wind up
11 and liquidate its business and affairs under section 260
12 and notify claimants under sections 261 and 262.

13 (6) The corporation, at any time within two years of
14 the expiration of its period of duration, may amend its
15 articles of incorporation to extend its period of
16 duration, and upon the amendment, the corporation may
17 resume carrying on its business as if the expiration had
18 never occurred; provided that if the name of the
19 corporation, or a name substantially identical is
20 registered or reserved by another entity, or if that
21 name or a name substantially identical is registered as
22 a trade name, trademark, or service mark, the extension
23 of its period of duration shall be allowed only upon the
24 registration of a new name by the corporation pursuant
25 to the amendment provisions of this chapter."

1 Section 167. Title 36 of the Code of the Federated States of
2 Micronesia (Annotated), is hereby amended by inserting a new
3 section 265 of chapter 1, to read as follows:

4 "Section 265. Reinstatement following administrative
5 dissolution.

6 (1) A corporation administratively dissolved under
7 section 264 may apply to the Registrar for reinstatement
8 within two years after the effective date of
9 dissolution. The application shall:

10 (a) Recite the name of the corporation and the
11 effective date of its administrative dissolution;

12 (b) Contain all reports due and unfiled;

13 (c) Contain the payment of all delinquent fees
14 and penalties; and

15 (d) Contain a certificate from the Department of
16 Finance and Administration indicating that all taxes
17 owed by the corporation have been paid, a payment
18 arrangement has been entered into, or the unpaid tax
19 liabilities are being contested in an administrative or
20 judicial appeal with the Department of Finance and
21 Administration.

22 (2) Within the applicable reinstatement period,
23 should the name of the corporation, or a name
24 substantially identical thereto be registered or
25 reserved by another corporation, partnership, limited

1 partnership, limited liability company, or limited
2 liability partnership, or should the name or a name
3 substantially identical thereto be registered as a trade
4 name, trademark, or service mark, then reinstatement
5 shall be allowed only upon the registration of a new
6 name by the involuntarily dissolved corporation pursuant
7 to the amendment provisions of this chapter.

8 (3) When the reinstatement is effective, it relates
9 back to and takes effect as of the effective date of the
10 administrative dissolution and the corporation resumes
11 carrying on its business as if the administrative
12 dissolution had never occurred."

13 Section 168. Title 36 of the Code of the Federated States of
14 Micronesia (Annotated), is hereby amended by inserting a new
15 section 266 of chapter 1, to read as follows:

16 "Section 266. Appeal from denial of reinstatement.

17 (1) If the Registrar denies a corporation's
18 application for reinstatement following administrative
19 dissolution, the Registrar shall mail a written notice
20 to the corporation or its designated representative that
21 explains the reason or reasons for denial.

22 (2) The corporation may appeal the denial of
23 reinstatement to the Supreme Court of the Federated
24 States of Micronesia within thirty days after the notice
25 of denial is mailed. The corporation may appeal by

1 petitioning the court to set aside the dissolution and
2 attaching to the petition copies of the Registrar's
3 certificate of dissolution, the corporation's
4 application for reinstatement, and the Registrar's
5 notice of denial.

6 (3) The court may summarily order the Registrar to
7 reinstate the dissolved corporation or may take other
8 action the court considers appropriate.

9 (4) The court's final decision may be appealed as in
10 other civil proceedings."

11 Section 169. Title 36 of the Code of the Federated States of
12 Micronesia (Annotated), is hereby amended by inserting a new
13 section 267 of chapter 1, to read as follows:

14 "Section 267. Grounds for judicial dissolution.

15 (1) The Supreme Court of the Federated States of
16 Micronesia may dissolve a corporation:

17 (a) In a proceeding by the Secretary of the
18 Department of Justice if it is established that:

19 (i) The corporation obtained its articles
20 of incorporation through fraud; or

21 (ii) The corporation has continued to exceed
22 or abuse the authority conferred upon it by law;

23 (b) In a proceeding by a shareholder if it is
24 established that:

25 (i) The directors are deadlocked in the

1 management of the corporate affairs, the shareholders
2 are unable to break the deadlock, and irreparable injury
3 to the corporation is threatened or being suffered, or
4 the business and affairs of the corporation can no
5 longer be conducted to the advantage of the shareholders
6 generally, because of the deadlock;

7 (ii) The directors or those in control of
8 the corporation have acted, are acting, or will act in a
9 manner that is illegal, oppressive, or fraudulent;

10 (iii) The shareholders are deadlocked in
11 voting power and have failed, for a period that includes
12 at least two consecutive annual meeting dates, to elect
13 successors to directors whose terms have expired; or

14 (iv) The corporate assets are being
15 misapplied or wasted;

16 (c) In a proceeding by a creditor if it is
17 established that:

18 (i) The creditor's claim has been reduced
19 to judgment, the execution on the judgment returned
20 unsatisfied, and the corporation is insolvent; or

21 (ii) The corporation has admitted in writing
22 that the creditor's claim is due and owing and the
23 corporation is insolvent; or

24 (d) In a proceeding by the corporation to have
25 its voluntary dissolution continued under court

1 supervision."

2 Section 170. Title 36 of the Code of the Federated States of
3 Micronesia (Annotated), is hereby amended by inserting a new
4 section 268 of chapter 1, to read as follows:

5 "Section 268. Procedure for judicial dissolution.

6 (1) Jurisdiction for a judicial proceeding to
7 dissolve a corporation lies in the Supreme Court of the
8 Federated States of Micronesia. Venue for a proceeding
9 brought by any party named in section 267 lies in the
10 Trial Division of the Supreme Court in the state where a
11 corporation's principal office is located or, if none,
12 where its registered office is or was last located.

13 (2) It is not necessary to make shareholders parties
14 to a proceeding to dissolve a corporation unless relief
15 is sought against them individually.

16 (3) A court in a proceeding brought to dissolve a
17 corporation may issue injunctions, appoint a receiver or
18 custodian pendente lite with all powers and duties the
19 court directs, take other action required to preserve
20 the corporate assets wherever located, and carry on the
21 business of the corporation until a full hearing can be
22 held.

23 (4) Within ten days after the commencement of a
24 proceeding under section 267 to dissolve a corporation
25 that has no shares listed on a national securities

1 exchange or regularly traded in a market maintained by
2 one or more members of a national or affiliated
3 securities association, the corporation must send to all
4 shareholders, other than the petitioner, a notice
5 stating that the shareholders are entitled to avoid the
6 dissolution of the corporation by electing to purchase
7 the petitioner's shares under section 271 and
8 accompanied by a copy of section 271."

9 Section 171. Title 36 of the Code of the Federated States of
10 Micronesia (Annotated), is hereby amended by inserting a new
11 section 269 of chapter 1, to read as follows:

12 "Section 269. Receivership or custodianship.

13 (1) A court in a judicial proceeding brought to
14 dissolve a corporation may appoint one or more receivers
15 to wind up and liquidate, or one or more custodians to
16 manage, the business and affairs of the corporation.
17 The court shall hold a hearing, after notifying all
18 parties to the proceeding and any interested persons
19 designated by the court, before appointing a receiver or
20 custodian. The court appointing a receiver or custodian
21 has exclusive jurisdiction over the corporation and all
22 of its property wherever located.

23 (2) The court may appoint an individual or a domestic
24 or foreign corporation authorized to transact business
25 in the Federated States of Micronesia as a receiver or

1 custodian. The court may require the receiver or
2 custodian to post bond, with or without sureties, in an
3 amount the court directs.

4 (3) The court shall describe the powers and duties of
5 the receiver or custodian in its appointing order, which
6 may be amended from time to time. Among other powers:

7 (a) The receiver:

8 (i) May dispose of all or any part of the
9 assets of the corporation wherever located, at a public
10 or private sale, if authorized by the court; and

11 (ii) May sue and defend in the receiver's
12 own name as receiver of the corporation; and

13 (b) The custodian may exercise all of the powers
14 of the corporation, through or in place of its board of
15 directors, to the extent necessary to manage the affairs
16 of the corporation in the best interests of its
17 shareholders and creditors.

18 (4) The court during a receivership may redesignate
19 the receiver a custodian, and during a custodianship may
20 redesignate the custodian a receiver, if doing so is in
21 the best interests of the corporation, its shareholders,
22 and creditors.

23 (5) The court from time to time during the
24 receivership or custodianship may order compensation
25 paid and expense disbursements or reimbursements made to

1 the receiver or custodian and the receiver's or
2 custodian's counsel from the assets of the corporation
3 or proceeds from the sale of the assets."

4 Section 172. Title 36 of the Code of the Federated States
5 of Micronesia (Annotated), is hereby amended by inserting a new
6 section 270 of chapter 1, to read as follows:

7 "Section 270. Decree of dissolution.

8 (1) If after a hearing the court determines that one
9 or more grounds for judicial dissolution described in
10 section 267 exist, it may enter a decree dissolving the
11 corporation and specifying the effective date of the
12 dissolution, and the clerk of the court shall deliver a
13 certified copy of the decree to the Registrar, who shall
14 file it.

15 (2) After entering the decree of dissolution, the
16 court shall direct the winding up and liquidation of the
17 corporation's business and affairs in accordance with
18 section 260 and the notification of claimants in
19 accordance with sections 261 and 262."

20 Section 173. Title 36 of the Code of the Federated States of
21 Micronesia (Annotated), is hereby amended by inserting a new
22 section 271 of chapter 1, to read as follows:

23 "Section 271. Election to purchase in lieu of
24 dissolution.

25 (1) In a proceeding under section 267(1)(b) to

1 dissolve a corporation that has no shares listed on a
2 national securities exchange or regularly traded in a
3 market maintained by one or more members of a national
4 or affiliated securities association, the corporation
5 may elect or, if it fails to elect, one or more
6 shareholders may elect to purchase all shares owned by
7 the petitioning shareholder at the fair value of the
8 shares. An election pursuant to this section shall be
9 irrevocable unless the court determines that it is
10 equitable to set aside or modify the election.

11 (2) An election to purchase pursuant to this section
12 may be filed with the court at any time within ninety
13 days after the filing of the petition under section
14 267(1)(b) or at such later time as the court in its
15 discretion may allow. If the election to purchase is
16 filed by one or more shareholders, the corporation,
17 within ten days thereafter, shall give written notice to
18 all shareholders, other than the petitioning
19 shareholder. The notice shall state the name and number
20 of shares owned by the petitioning shareholder and the
21 name and number of shares owned by each electing
22 shareholder and shall advise the recipients of their
23 right to join in the election to purchase shares in
24 accordance with this section. Shareholders who wish to
25 participate shall file notice of their intention to join

1 in the purchase no later than thirty days after the
2 effective date of the notice to them. All shareholders
3 who have filed an election or notice of their intention
4 to participate in the election to purchase thereby
5 become parties to the proceeding and shall participate
6 in the purchase in proportion to their ownership of
7 shares as of the date the first election was filed,
8 unless they otherwise agree or the court otherwise
9 directs. After an election has been filed by the
10 corporation or one or more shareholders, the proceeding
11 under section 267(1)(b) may not be discontinued or
12 settled, nor may the petitioning shareholder sell or
13 otherwise dispose of the shareholder's shares, unless
14 the court determines that it would be equitable to the
15 corporation and the shareholders, other than the
16 petitioning shareholder, to permit the discontinuance,
17 settlement, sale, or other disposition.

18 (3) If, within sixty days of the filing of the first
19 election, the parties reach agreement as to the fair
20 value and terms of purchase of the petitioning
21 shareholder's shares, the court shall enter an order
22 directing the purchase of the petitioning shareholder's
23 shares upon the terms and conditions agreed to by the
24 parties.

25 (4) If the parties are unable to reach an agreement

1 as provided for in subsection (3), the court, upon
2 application of any party, shall stay the section
3 267(1)(b) proceedings and determine the fair value of
4 the petitioning shareholder's shares as of the day
5 before the date on which the petition under section
6 267(1)(b) was filed or as of any other date the court
7 deems appropriate under the circumstances.

8 (5) Upon determining the fair value of the shares,
9 the court shall enter an order directing the purchase
10 upon the terms and conditions that the court deems
11 appropriate, which may include payment of the purchase
12 price in installments, where necessary in the interests
13 of equity, provision for security to assure payment of
14 the purchase price and any additional costs, fees, and
15 expenses as may have been awarded, and, if the shares
16 are to be purchased by shareholders, the allocation of
17 shares among them. In allocating the petitioning
18 shareholder's shares among holders of different classes
19 of shares, the court shall attempt to preserve the
20 existing distribution of voting rights among holders of
21 different classes insofar as practicable and may direct
22 that holders of a specific class or classes shall not
23 participate in the purchase. Interest may be allowed at
24 the rate and from the date determined by the court to be
25 equitable, but if the court finds that the refusal of

1 the petitioning shareholder to accept an offer of
2 payment was arbitrary or otherwise not in good faith, no
3 interest shall be allowed. If the court finds that the
4 petitioning shareholder had probable grounds for relief
5 under section 267(1)(b)(ii), it may award to the
6 petitioning shareholder reasonable fees and expenses of
7 counsel and of any experts employed by the petitioning
8 shareholder.

9 (6) Upon entry of an order under subsection (3) or
10 (5), the court shall dismiss the petition to dissolve
11 the corporation under section 267, and the petitioning
12 shareholder shall no longer have any rights or status as
13 a shareholder of the corporation, except the right to
14 receive the amounts awarded to the petitioning
15 shareholder by the order of the court that shall be
16 enforceable in the same manner as any other judgment.

17 (7) The purchase ordered pursuant to subsection (5),
18 shall be made within ten days after the date the order
19 becomes final unless before that time the corporation
20 files with the court a notice of its intention to adopt
21 articles of dissolution pursuant to sections 257 and
22 258, which articles shall then be adopted and filed
23 within fifty days thereafter. Upon filing of the
24 articles of dissolution, the corporation shall be
25 dissolved in accordance with sections 260 to 262, and

1 the order entered pursuant to subsection (5) shall no
2 longer be of any force or effect, except that the court
3 may award the petitioning shareholder reasonable fees
4 and expenses in accordance with the provisions of the
5 last sentence of subsection (5) and the petitioning
6 shareholder may continue to pursue any claims previously
7 asserted on behalf of the corporation.

8 (8) Any payment by the corporation pursuant to an
9 order under subsection (3) or (5), other than an award
10 of fees and expenses pursuant to subsection (5), is
11 subject to section 149."

12 Section 174. Title 36 of the Code of the Federated States of
13 Micronesia (Annotated), is hereby amended by inserting a new
14 section 272 of chapter 1, to read as follows:

15 "Section 272. Deposit with Secretary of Finance and
16 Administration. Assets of a dissolved corporation that
17 should be transferred to a creditor, claimant, or
18 shareholder of the corporation who cannot be found or
19 who is not competent to receive them shall be reduced to
20 cash and deposited with the Secretary of Finance and
21 Administration for disposition by order of court."

22 Section 175. Title 36 of the Code of the Federated States of
23 Micronesia (Annotated), is hereby amended by inserting a new
24 section 273 of chapter 1, to read as follows:

25 "Section 273. Trustees or receivers for dissolved

1 corporations; appointment; powers; duties.

2 (1) When any corporation organized and authorized to
3 issue shares under the laws of the Federated States of
4 Micronesia shall be or shall have been dissolved or
5 shall cease or shall have ceased to exist, the Supreme
6 Court of the Federated States of Micronesia, upon
7 application of any creditor, stockholder, or director of
8 the corporation, or any other person who shows good
9 cause therefore, and upon a finding that the persons
10 responsible for settling the unfinished business and
11 winding up the affairs of the corporation either are not
12 diligently pursuing such obligations, or cannot be found
13 or otherwise are not available, may either appoint one
14 or more of the directors of the corporation to be
15 trustees or appoint one or more persons to be receivers
16 of and for the corporation, to do all acts that are
17 necessary for the final settlement of the unfinished
18 business of the corporation. The powers of the trustees
19 or receivers shall be effective for the time period
20 determined by the Supreme Court of the Federated States
21 of Micronesia.

22 (2) The relief provided in this section shall be in
23 addition to, and shall not limit or diminish, any
24 remedies otherwise available under the common law or
25 other laws or regulations of the Federated States of

1 Micronesia. In the event of a conflict between this
2 section and any common law, statute, or rule on the
3 subject, the more beneficial provisions favoring the
4 applicant shall prevail."

5 Section 176. Title 36 of the Code of the Federated States of
6 Micronesia (Annotated), is hereby amended by inserting a new
7 section 274 of chapter 1, to read as follows:

8 "Section 274. Authority to transact business required.

9 (1) A foreign corporation may not transact business
10 in the Federated States of Micronesia until it obtains a
11 certificate of authority from the Registrar and has
12 complied with the State and National foreign investment
13 and other similar laws applicable to it.

14 (2) The following activities, among others, do not
15 constitute transacting business within the meaning of
16 subsection (1):

17 (a) Maintaining, defending, or settling any
18 proceeding;

19 (b) Holding meetings of the board of directors
20 or shareholders or carrying on other activities
21 concerning internal corporate affairs;

22 (c) Maintaining bank accounts;

23 (d) Maintaining offices or agencies for the
24 transfer, exchange, and registration of the
25 corporation's own securities or maintaining trustees or

- 1 depositories with respect to those securities;
- 2 (e) Selling through independent contractors;
- 3 (f) Soliciting or obtaining orders, whether by
- 4 mail or through employees or agents or otherwise, if the
- 5 orders require acceptance outside of the Federated
- 6 States of Micronesia before they become contracts;
- 7 (g) Creating as borrower or lender, or
- 8 acquiring, as borrower or lender, indebtedness,
- 9 mortgages, and security interests in real or personal
- 10 property;
- 11 (h) Securing or collecting debts or enforcing
- 12 mortgages and security interests in property securing
- 13 the debts;
- 14 (i) Owning, without more, personal property or
- 15 leasing real property;
- 16 (j) Conducting an isolated transaction that is
- 17 completed within fourteen days and that is not one in
- 18 the course of repeated transactions of a like nature;
- 19 and
- 20 (k) Transacting business in international
- 21 commerce.
- 22 (3) The list of activities in subsection (2) is not
- 23 exhaustive."

24 Section 177. Title 36 of the Code of the Federated States of

25 Micronesia (Annotated), is hereby amended by inserting a new

1 section 275 of chapter 1, to read as follows:

2 "Section 275. Consequences of transacting business
3 without authority.

4 (1) A foreign corporation transacting business in the
5 Federated States of Micronesia without a certificate of
6 authority may not maintain a proceeding in any court in
7 the Federated States of Micronesia until it obtains a
8 certificate of authority.

9 (2) The successor to a foreign corporation that
10 transacted business in the Federated States of
11 Micronesia without a certificate of authority and the
12 assignee of a cause of action arising out of that
13 business may not maintain a proceeding based on that
14 cause of action in any court in the Federated States of
15 Micronesia until the foreign corporation or its
16 successor obtains a certificate of authority.

17 (3) A court may stay a proceeding commenced by a
18 foreign corporation, its successor, or assignee until it
19 determines whether the foreign corporation or its
20 successor requires a certificate of authority. If it so
21 determines, the court may further stay the proceeding
22 until the foreign corporation or its successor obtains
23 the certificate.

24 (4) A foreign corporation that transacts business in
25 the Federated States of Micronesia without a certificate

1 of authority shall be liable to the Federated States of
2 Micronesia, for the years or parts thereof during which
3 it transacted business in the Federated States of
4 Micronesia without a certificate of authority, in an
5 amount equal to all fees that would have been imposed by
6 this chapter upon the corporation had it duly applied
7 for and received a certificate of authority to transact
8 business in the Federated States of Micronesia as
9 required by this chapter and thereafter filed all
10 reports required by this chapter, plus all penalties
11 imposed by this chapter for failure to pay the fees.
12 The Department of Justice shall bring proceedings to
13 recover all amounts due to the Federated States of
14 Micronesia under this section.

15 (5) Notwithstanding subsections (1) and (2), the
16 failure of a foreign corporation to obtain a certificate
17 of authority does not impair the validity of its
18 corporate acts or prevent it from defending any
19 proceeding in the Federated States of Micronesia."

20 Section 178. Title 36 of the Code of the Federated States of
21 Micronesia (Annotated), is hereby amended by inserting a new
22 section 276 of chapter 1, to read as follows:

23 "Section 276. Application for certificate of authority.

24 (1) A foreign corporation may apply for a certificate
25 of authority to transact business in the Federated

1 States of Micronesia by delivering an application to the
2 Registrar for filing. The application shall set forth:

3 (a) The name of the foreign corporation or, if
4 its name is unavailable for use in the Federated States
5 of Micronesia, a corporate name that satisfies the
6 requirements of section 279;

7 (b) The name of the jurisdiction under whose law
8 it is incorporated;

9 (c) Its date of incorporation;

10 (d) The mailing address of the corporation's
11 principal office, the street address of its registered
12 office in the Federated States of Micronesia, and the
13 name of its registered agent at its registered office in
14 the Federated States of Micronesia; and

15 (e) The names and usual business addresses of
16 its current directors and officers.

17 (2) The foreign corporation shall deliver with the
18 completed application a certificate of good standing or
19 other similar record duly authenticated by the secretary
20 of state or other official having custody of corporate
21 records in the state or country under whose law it is
22 incorporated; provided that the certificate shall be
23 dated not earlier than sixty days prior to the filing of
24 the application. If the certificate is in a foreign
25 language, a translation attested to under oath by the

1 translator shall accompany the certificate."

2 Section 179. Title 36 of the Code of the Federated States of
3 Micronesia (Annotated), is hereby amended by inserting a new
4 section 277 of chapter 1, to read as follows:

5 "Section 277. Change of name by foreign corporation.

6 (1) Whenever the name of a foreign corporation
7 authorized to transact business in the Federated States
8 of Micronesia is changed by the amendment of its
9 articles of incorporation, the foreign corporation,
10 within sixty days after the amendment becomes effective,
11 shall deliver to the Registrar a certificate evidencing
12 the name change, duly authenticated by the proper
13 officer of the state or country under the laws of which
14 it is incorporated. If the certificate is in a foreign
15 language, a translation under oath of the translator
16 shall accompany the certificate.

17 (2) Whenever a foreign corporation that is authorized
18 to transact business in the Federated States of
19 Micronesia shall change its name to one under which a
20 certificate of authority would not be granted to it on
21 application therefor, the foreign corporation shall not
22 thereafter transact any business in the Federated States
23 of Micronesia until it has changed its name to a name
24 that is available to it under the laws of the Federated
25 States of Micronesia or has otherwise complied with this

1 chapter.

2 (3) If a foreign corporation is unable to change its
3 name to a name that is available to it under the laws of
4 the Federated States of Micronesia, it may deliver to
5 the Registrar a copy of a certificate of registration of
6 a trade name and thereafter shall become authorized to
7 transact business in the Federated States of Micronesia
8 under that name."

9 Section 180. Title 36 of the Code of the Federated States of
10 Micronesia (Annotated), is hereby amended by inserting a new
11 section 278 of chapter 1, to read as follows:

12 "Section 278. Effect of certificate of authority.

13 (1) A certificate of authority together with
14 compliance with all State and National foreign
15 investment and similar laws authorizes the foreign
16 corporation to which it is issued to transact business
17 in the Federated States of Micronesia subject to the
18 right of the Federated States of Micronesia to revoke
19 the certificate as provided in this chapter.

20 (2) With respect to Federated States of Micronesia
21 Corporations law, a foreign corporation with a valid
22 certificate of authority has the same but no greater
23 rights and has the same but no greater privileges, and
24 except as otherwise provided by this chapter is subject
25 to the same duties, restrictions, penalties, and

1 liabilities now or later imposed on, a domestic
2 corporation of like character.

3 (3) This chapter does not authorize the Federated
4 States of Micronesia to regulate the organization or
5 internal affairs of a foreign corporation authorized to
6 transact business in the Federated States of
7 Micronesia."

8 Section 181. Title 36 of the Code of the Federated States of
9 Micronesia (Annotated), is hereby amended by inserting a new
10 section 279 of chapter 1, to read as follows:

11 "Section 279. Corporate name of foreign corporation.

12 (1) If the corporate name of a foreign corporation
13 does not satisfy the requirements of section 127(2), (3)
14 and (4), the foreign corporation to obtain or maintain a
15 certificate of authority to transact business in the
16 Federated States of Micronesia may use a fictitious name
17 to transact business in the Federated States of
18 Micronesia if its real name is unavailable and it
19 delivers to the Registrar for filing a copy of a
20 certificate of registration of a trade name by the
21 foreign corporation under which the foreign corporation
22 will transact business in the Federated States of
23 Micronesia.

24 (2) Except as authorized by subsections (c) and (d),
25 the corporate name including a fictitious name of a

1 foreign corporation may not be the same as, or
2 substantially identical to:

3 (a) The name of any domestic corporation,
4 partnership, limited partnership, limited liability
5 company, or limited liability partnership existing or
6 registered under the laws of the Federated States of
7 Micronesia, or any foreign corporation, partnership,
8 limited partnership, limited liability company, or
9 limited liability partnership authorized to transact
10 business in the Federated States of Micronesia;

11 (b) A name the exclusive right to which is, at
12 the time, reserved in the Federated States of
13 Micronesia;

14 (c) The fictitious name of another foreign
15 corporation authorized to transact business in the
16 Federated States of Micronesia; and

17 (d) Any trade name, trademark, or service mark
18 registered in the Federated States of Micronesia.

19 (3) A foreign corporation may apply to the Registrar
20 for authorization to use in the Federated States of
21 Micronesia the name of another corporation incorporated
22 or authorized to transact business in this State that is
23 substantially identical based upon the Registrar's
24 records to the name applied for. The Registrar shall
25 authorize use of the name applied for if:

1 (a) The other entity or holder of a reserved or
2 registered name consents to the use in writing and one
3 or more words are added to the other entity's name to
4 make the name distinguishable from the name of the
5 applicant; or

6 (b) The applicant delivers to the Registrar a
7 certified copy of a final judgment of a court of
8 competent jurisdiction establishing the applicant's
9 right to use the name applied for in this State.

10 (4) A foreign corporation may use in the Federated
11 States of Micronesia the name including the fictitious
12 name of another domestic or foreign corporation that is
13 used in the Federated States of Micronesia if the other
14 corporation is incorporated or authorized to transact
15 business in the Federated States of Micronesia and the
16 foreign corporation:

17 (a) Has merged with the other corporation;

18 (b) Has been formed by reorganization of the
19 other corporation; or

20 (c) Has acquired all or substantially all of the
21 assets, including the corporate name, of the other
22 corporation."

23 Section 182. Title 36 of the Code of the Federated States of
24 Micronesia (Annotated), is hereby amended by inserting a new
25 section 280 of chapter 1, to read as follows:

1 "Section 280. Registered office and registered agent of
2 foreign corporation.

3 (1) Each foreign corporation authorized to transact
4 business in the Federated States of Micronesia must
5 continuously maintain in the Federated States of
6 Micronesia:

7 (a) A registered office that may be the same as
8 any of its places of business; and

9 (b) A registered agent, who may be:

10 (i) An individual who resides in the
11 Federated States of Micronesia and whose business office
12 is identical with the registered office;

13 (ii) A domestic entity authorized to
14 transact business in the Federated States of Micronesia
15 whose business office is identical with the registered
16 office; or

17 (iii) A foreign entity authorized to transact
18 business in the Federated States of Micronesia whose
19 business office is identical with the registered
20 office."

21 Section 183. Title 36 of the Code of the Federated States of
22 Micronesia (Annotated), is hereby amended by inserting a new
23 section 281 of chapter 1, to read as follows:

24 "Section 281. Change of registered office or registered
25 agent of foreign corporation.

1 (1) A foreign corporation authorized to transact
2 business in the Federated States of Micronesia may
3 change its registered office or its registered agent by
4 delivering to the Registrar for filing a statement of
5 change that sets forth:

6 (a) Its name;

7 (b) The street address of its current registered
8 office, the name of its current registered agent at its
9 registered office, and any changes required to keep the
10 information current; and

11 (c) That after the change or changes are made,
12 the street addresses of its registered office and the
13 business office of its registered agent shall be
14 identical.

15 (2) If a registered agent changes the street address
16 of the agent's business office, the agent may change the
17 street address of the registered office of any foreign
18 corporation for which the agent is the registered agent
19 by notifying the corporation in writing of the change
20 and signing either manually or in facsimile and
21 delivering to the Registrar for filing a statement of
22 change that complies with the requirements of subsection
23 (1) and recites that the corporation has been notified
24 of the change."

25 Section 184. Title 36 of the Code of the Federated States of

1 Micronesia (Annotated), is hereby amended by inserting a new
2 section 282 of chapter 1, to read as follows:

3 "Section 282. Resignation of registered agent of
4 foreign corporation.

5 (1) The registered agent of a foreign corporation may
6 resign from the registered agent's appointment by
7 signing and delivering to the Registrar for filing a
8 statement of resignation. The statement of resignation
9 may include a statement that the registered office is
10 also discontinued.

11 (2) The registered agent shall attach the filing
12 receipt to a copy of the statement of resignation and
13 mail the copy and receipt to the registered office if
14 not discontinued. The registered agent shall mail a
15 second copy to the foreign corporation at its principal
16 office address shown in its most recent annual report.

17 (3) The appointment of the agent is terminated, and
18 the registered office discontinued if so provided, on
19 the thirty-first day after the date on which the
20 statement was filed."

21 Section 185. Title 36 of the Code of the Federated States of
22 Micronesia (Annotated), is hereby amended by inserting a new
23 section 283 of chapter 1, to read as follows:

24 "Section 283. Service on foreign corporation.

25 (1) Service of any notice or process authorized by

1 law that is issued against any foreign corporation by
2 any court, judicial or administrative officer, or board,
3 may be made in the manner provided by law upon any
4 registered agent, officer, or director of the foreign
5 corporation who is found within the jurisdiction of the
6 court, officer, or board; or if any registered agent,
7 officer, or director cannot be found, upon the manager
8 or superintendent of the foreign corporation or any
9 person who is found in charge of the property, business,
10 or office of the foreign corporation within the
11 jurisdiction.

12 (2) If no officer, director, manager, superintendent,
13 or other person in charge of the property, business, or
14 office of the foreign corporation can be found within
15 the Federated States of Micronesia, and if the foreign
16 corporation has not filed with the Registrar pursuant to
17 this chapter the name of a registered agent upon whom
18 legal notice and process from the courts of the
19 Federated States of Micronesia may be served, and
20 likewise if the person named is not found within the
21 Federated States of Micronesia, service may be made upon
22 the foreign corporation by registered or certified mail,
23 return receipt requested, addressed to the secretary of
24 the foreign corporation at its principal office shown in
25 its application for a certificate of authority or in its

1 most recent annual report.

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

4 (a) The date the foreign corporation receives
5 the mail;

6 (b) The date shown on the return receipt, if
7 signed on behalf of the foreign corporation; or

8 (c) Five days after its deposit in the mail, as
9 evidenced by the postmark, if mailed postpaid and
10 correctly addressed.

11 (d) Nothing contained herein shall limit or
12 affect the right to serve any process, notice, or demand
13 required or permitted by law to be served upon a foreign
14 corporation in any other manner permitted by law."

15 Section 186. Title 36 of the Code of the Federated States of
16 Micronesia (Annotated), is hereby amended by inserting a new
17 section 284 of chapter 1, to read as follows:

18 "Section 284. Application to corporations heretofore
19 authorized to transact business in the Federated States
20 of Micronesia. Foreign corporations that are duly
21 authorized to transact business in the Federated States
22 of Micronesia on the effective date of this act, for a
23 purpose or purposes for which a corporation might secure
24 the authority under this chapter, shall be entitled to
25 all of the rights and privileges applicable to foreign

1 corporations procuring certificates of authority to
2 transact business in the Federated States of Micronesia
3 under this chapter, and from the effective date of this
4 act, the corporations shall be subject to all of the
5 limitations, restrictions, liabilities, and duties
6 prescribed herein for foreign corporations procuring
7 certificates of authority to transact business in the
8 Federated States of Micronesia under this chapter."

9 Section 187. Title 36 of the Code of the Federated States of
10 Micronesia (Annotated), is hereby amended by inserting a new
11 section 285 of chapter 1, to read as follows:

12 "Section 285. Withdrawal of foreign corporation.

13 (1) A foreign corporation or branch authorized to
14 transact business in the Federated States of Micronesia
15 under this chapter may not withdraw from the Federated
16 States of Micronesia until it obtains a certificate of
17 withdrawal from the Registrar which certificate shall be
18 issued within five business days of request; provided
19 however, if the certificate of withdrawal is not issued
20 within the time required by this subsection the
21 corporation seeking withdrawal shall be deemed to have
22 lawfully withdrawn upon expiration of the time limit for
23 issuance of the certificate.

24 (2) A foreign corporation or branch authorized to
25 transact business in the Federated States of Micronesia

1 may apply for a certificate of withdrawal by delivering
2 an application to the Registrar for filing. The
3 application shall set forth:

4 (a) The name of the foreign corporation and the
5 name of the state or country under whose law it is
6 incorporated;

7 (b) That it is not transacting business in the
8 Federated States of Micronesia and that it surrenders
9 its authority to transact business in the Federated
10 States of Micronesia;

11 (c) That it revokes the authority of its
12 registered agent to accept service on its behalf and
13 consents that service of process in any action or
14 proceeding based upon any cause of action arising in the
15 Federated States of Micronesia during the time the
16 corporation was authorized to transact business in the
17 Federated States of Micronesia may thereafter be made on
18 such corporation by service thereof on the Registrar;
19 and

20 (d) A mailing address to which the Registrar may
21 mail a copy of any process served on the Registrar under
22 paragraph (c).

23 (e) After the withdrawal of the corporation is
24 effective, service of process on the Registrar under
25 this section is service on the foreign corporation.

1 name or business address of the agent as required; or
2 (b) A misrepresentation has been made of any
3 material matter in any application, report, affidavit,
4 or other record or document submitted by the
5 corporation."

6 Section 189. Title 36 of the Code of the Federated States of
7 Micronesia (Annotated), is hereby amended by inserting a new
8 section 287 of chapter 1, to read as follows:

9 "Section 287. Procedure for and effect of revocation.

10 (1) If the Registrar determines that one or more
11 grounds exist under section 286 for revocation of a
12 certificate of authority, the Registrar shall give
13 written notice of the Registrar's determination by
14 mailing the notice to the foreign corporation at its
15 last known address appearing in the records of the
16 Registrar.

17 (2) If the foreign corporation does not correct each
18 ground for revocation or demonstrate to the reasonable
19 satisfaction of the Registrar that each ground
20 determined by the Registrar does not exist within sixty
21 days after the date of mailing of the Registrar's
22 written notice, the Registrar may revoke the foreign
23 corporation's certificate of authority by signing a
24 certificate of revocation that recites the ground or
25 grounds for revocation and its effective date.

1 (3) Upon revoking any certificate of authority, the
2 Registrar shall issue a certificate of revocation that
3 shall be filed in the Registrar's office, and the
4 authority of a foreign corporation to transact business
5 in this State shall immediately cease thereafter.

6 (4) Revocation of a foreign corporation's certificate
7 of authority does not terminate the authority of the
8 registered agent of the corporation."

9 Section 190. Title 36 of the Code of the Federated States of
10 Micronesia (Annotated), is hereby amended by inserting a new
11 section 288 of chapter 1, to read as follows:

12 "Section 288. Appeal from revocation.

13 (1) A foreign corporation may appeal the Registrar's
14 revocation of its certificate of authority to the
15 Supreme Court of the Federated States of Micronesia
16 within thirty days after the certificate of revocation
17 is signed. The foreign corporation appeals by
18 petitioning the court to set aside the revocation and
19 attaching to the petition copies of its certificate of
20 authority and the Registrar's certificate of revocation.

21 (2) The court may summarily order the Registrar to
22 reinstate the certificate of authority or may take any
23 other action the court considers appropriate.

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

1 Section 191. Title 36 of the Code of the Federated States of
2 Micronesia (Annotated), is hereby amended by inserting a new
3 section 289 of chapter 1, to read as follows:

4 "Section 289. Books and records.

5 (1) Each corporation shall keep accurate and complete
6 books and records of account and shall keep and maintain
7 at its principal office, or other place as its board of
8 directors may order, minutes of the proceedings of its
9 shareholders and board of directors. The books and
10 records of account shall include accounts of the
11 corporation's assets, liabilities, receipts,
12 disbursements, gains, and losses. The minutes of the
13 proceedings of the shareholders and board of directors
14 of the corporation shall show, as to each meeting of the
15 shareholders or the board of directors, the time and
16 place, if any, thereof, whether regular or special,
17 whether notice thereof was given, and if so in what
18 manner, the names of those present at directors'
19 meetings, the number of shares present or represented at
20 shareholders' meetings, and the proceedings at each
21 meeting. Any of the books and records described in this
22 subsection may be kept on, or by means of, or be in the
23 form of, any information storage device or method;
24 provided that the books and records can be converted
25 into clearly legible paper form within a reasonable

1 time. Upon the request of any person entitled to
2 inspect the books and records pursuant to any provision
3 of this chapter, a corporation, at its own expense,
4 shall convert the requested stored books and records.
5 When books and records are kept pursuant to this
6 subsection, a clearly legible paper form produced from
7 or by means of the information storage device or method
8 shall be admissible as evidence, and accepted for all
9 other purposes, to the same extent as an original paper
10 record of the same information would have been; provided
11 that the paper form accurately portrays the record.

12 (2) In every corporation incorporated under this
13 chapter, the board of directors of the corporation shall
14 cause a book to be kept for registering the names of all
15 persons who are or shall become shareholders of the
16 corporation, showing the number of shares of stock held
17 by them respectively, and the time when they
18 respectively became the owner of the shares. The book
19 shall be open at all reasonable times for the inspection
20 of the shareholders. The secretary or the person having
21 the charge thereof shall give a certified transcript of
22 anything therein contained to any shareholder applying
23 therefor; provided that the shareholder pays a
24 reasonable charge for the preparation of the certified
25 transcript. The transcript shall be legal evidence of

1 the facts therein set forth in any suit by or against
2 the corporation."

3 Section 192. Title 36 of the Code of the Federated States of
4 Micronesia (Annotated), is hereby amended by inserting a new
5 section 290 of chapter 1, to read as follows:

6 "Section 290. Annual report.

7 (1) Each domestic corporation, and each foreign
8 corporation authorized to transact business in the
9 Federated States of Micronesia, shall deliver to the
10 Registrar for filing an annual report that sets forth:

11 (a) The name of the corporation and the state or
12 country under whose law it is incorporated;

13 (b) The mailing address of its principal office,
14 the address of its registered office in the Federated
15 States of Micronesia, and the name of its registered
16 agent at its registered office in the Federated States
17 of Micronesia;

18 (c) The names and business addresses of its
19 directors and officers; and

20 (d) A brief description of the nature of its
21 business.

22 (2) Domestic corporations shall also provide the
23 total number of authorized shares, itemized by class and
24 series, if any, within each class, and the total number
25 of issued and outstanding shares, itemized by class and

1 series, if any, within each class.

2 (3) Notwithstanding any of the provisions of this
3 chapter to the contrary, annual reports reflecting the
4 previous fiscal or calendar year shall be filed not
5 later than June 30 of each year.

6 (4) If an annual report does not contain the
7 information required by this section, or no annual
8 report is filed, the Registrar shall promptly notify the
9 reporting domestic or foreign corporation in writing.
10 If the report is provided or corrected to contain the
11 information required by this section as the case may be
12 and delivered to the Registrar within thirty days after
13 the effective date of notice, it is deemed to be timely
14 filed."

15 Section 193. Title 36 of the Code of the Federated States of
16 Micronesia (Annotated), is hereby amended by inserting a new
17 section 291 of chapter 1, to read as follows:

18 "Section 291. Penalties imposed upon corporations.
19 Subject to the provisions of section 290, each
20 corporation, domestic or foreign, that fails or refuses
21 to file its annual report for any year within the time
22 prescribed by this part shall be subject to a forfeiture
23 of an amount to be determined by the Registrar not
24 exceeding \$100 for every violation, neglect, or failure,
25 to be recovered by action brought in the name of the

1 Federated States of Micronesia by the Registrar. A
2 continuance of a failure to file the required report
3 shall be a separate offense for each thirty days of the
4 continuance. The Registrar, for good cause shown, may
5 reduce or waive the penalty imposed by this section."

6 Section 194. Title 36 of the Code of the Federated States of
7 Micronesia (Annotated), is hereby amended by inserting a new
8 section 292 of chapter 1, to read as follows:

9 "Section 292. Severability. If any provision of this
10 chapter or its application to any person or circumstance
11 is held invalid by a court of competent jurisdiction,
12 the invalidity shall not affect other provisions or
13 applications of this chapter that can be given effect
14 without the invalid provision or application, and to
15 this end the provisions of this chapter are severable."

16 Section 195. Amendment of chapter 2. Chapter 2 of title 36
17 of the Code of the Federated States of Micronesia is hereby
18 renamed "Chapter 3: Registrar of Corporations".

19 Sections 196. 201 through 209 of title 36 of the Code of the
20 Federated States of Micronesia are hereby renumbered sections 301
21 through 309, respectively.

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1 Section 197. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its
3 becoming law without such approval.

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August 03 _____, 2017

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/s/ Peter M. Christian
Peter M. Christian
President
Federated States of Micronesia

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