A BILL FOR AN ACT

To create a National Commercial Bank of the Federated States of Micronesia, and for other purposes.

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

Section 1. Short title. This act shall be known and may be cited as the "National Commercial Bank Act of 1983."

Section 2. Statement of intent. It is the intent of the Congress of the Federated States of Micronesia to create a financial institution that will be capable of attracting and maintaining both domestic and foreign capital and of providing the people of the Federated States of Micronesia with adequate banking facilities and of promoting the general welfare of the people of the Federated States of Micronesia.

Section 3. Creation of a National Commercial Bank. There is hereby created a body corporate to be known as the National Commercial Bank of the Federated States of Micronesia, hereinafter referred to as the "National Bank."

Section 4. Duration. The National Bank shall exist until such time as it is dissolved by the Congress of the Federated States of Micronesia, or otherwise dissolved pursuant to law.

Section 5. Place of business. The principal office of the National Bank shall be in the State of Yap. The National Bank may establish such branch office or offices as the Board of Directors may deem necessary and appropriate.

Section 6. Duties of the National Bank. The duties of the National Bank include, inter alia, the following:

1. To do, conduct, and transact generally the business of a commercial bank and to do all things and exercise all powers and perform all functions which a commercial bank is authorized or empowered
to do, exercise, or perform under and by virtue of the laws of the Federated States of Micronesia, or which it may by law hereafter be authorized to do, exercise, or perform; to receive deposits of money, deal in commercial paper, make loans thereon, lend money on real or personal property, discount bills, notes, or other commercial paper, and to buy and sell securities, gold and silver bullion, foreign coins or bills of exchange; and to do all the things in this subsection as the functions of such commercial bank and insofar as is consistent with the laws of the Federated States of Micronesia;

(2) To do, conduct, and transact generally the business of a savings bank, and to do all things, exercise all powers, and perform all functions which a savings bank is authorized or empowered to do, exercise, or perform under and by virtue of the laws of the Federated States of Micronesia, or which it may by law hereafter be authorized to do, exercise, or perform; to accumulate, loan, and invest the funds of its depositors; to receive deposits of money; to loan, invest, and collect the same with interest; to repay depositors with or without interest; to invest such funds in such property, securities, and obligations; to declare and pay dividends on its general deposits; to pay a stipulated rate of interest on deposits made for a stated period, or upon special terms; and to do all of the things in this subsection as the functions of such savings bank and insofar as is consistent with the laws of the Federated States of Micronesia;

(3) To do, conduct, and transact generally the business of a trust company and do all things, exercise all powers, and perform all
functions which a trust company is authorized or empowered to do,
exercise, or perform under and by virtue of the laws of the Federated
States of Micronesia, or which it may, by law, hereafter be authorized
to do, exercise, or perform; to take, receive, and hold in trust,
property both real and personal, for individuals, firms, companies,
associations, or corporations, and to accept and execute trusts of
every description which may be committed to it by any person, executor,
administrator, administrator with the will annexed, guardian, trustee,
assignee, receiver, or by any corporation, or by any State, or by the
National Government of the Federated States of Micronesia; to accept the
employment of and act as executor of any last will and testament and as
administrator, or administrator with the will annexed, of the estates of
deceased persons, and as assignee, receiver, trustee, and depositary in
all such matters, and in a legal manner to attend to the management and
settlement of estates, guardianships, assigneeships, and receiverships, and to act as
trustee, agent, or attorney for individuals, firms, companies, associations,
or corporations, and to attend to any and all manner of trusts; to act as
agent for the purpose of registering or countersigning the certificates
of stocks, bonds, or other indebtedness of any corporation, company,
association, municipality, State, or public authority on such terms as
may be agreed upon; to act as transfer agent and registrar of certificates,
stocks, or bonds; to purchase, hold, sell, and take such property, real
and personal, as may be mortgaged, pledged, and hypothecated or conveyed
to it in trust, or for its benefit for money loaned in pursuance of its
regular business, and as may be purchased by it at sales under mortgages,
pledges, hypothecations, or deeds of trust made for its benefit for
money so loaned or as may be conveyed to it by borrowers of money in
satisfaction of or in discharge of loans made thereon; to purchase,
hold, own, and sell personal property; and to do all of the things in
this subsection as the functions of such trust company, and insofar as
is consistent with the laws of the Federated States of Micronesia;
(4) To conduct a safe deposit business, and in the conduct
of said safe deposit business to store and hold for others personal
property and securities with or without compensation, and to maintain
vaults and safes and receptacles therein for the storage, safe-depositing,
and safe-keeping of personal property and securities, and to rent and
hire such safes and receptacles to others upon such terms and conditions
as the corporation may deem advisable; and
(5) To conduct the business of a commercial bank, savings bank,
and trust company, as hereinafter set forth, in and as separate or dif-
ferent departments of said National Bank, in a manner consistent with the
laws of the Federated States of Micronesia.
Section 7. Corporate powers. Subject to any limitations contained
in the Articles of Incorporation and in compliance with other provisions
of this act and other applicable laws of the Federated States of Micronesia,
the National Bank shall have all the powers of a natural person in carrying
out its business activities, including, but not limited to, the power to:
(1) Adopt, use, and at will alter a corporate seal, but failure
to affix a seal does not affect the validity of any instrument;
(2) Adopt, amend, and repeal bylaws;
(3) Qualify to do business in any other State, territory, dependency, or foreign country;
(4) Issue, purchase, redeem, receive, take, or otherwise acquire; own, hold, sell, lend, exchange, transfer, or otherwise dispose of; pledge, use, and otherwise deal in and with its own shares, bonds, debentures, and other securities;
(5) Make donations, regardless of specific corporate benefit, for the public welfare or for community funds, or hospitals, or for educational, scientific, civic, or similar purposes;
(6) Assume obligations; enter into contracts, including contracts of guaranty or suretyship; incur liabilities; borrow and lend money; and otherwise use its credit, and secure any of its obligations, contracts, or liabilities by mortgage, pledge, or other encumbrance of all or any part of its property, franchises, or income;
(7) Participate with others in any partnership, joint venture, or other association, transaction, or arrangement of any kind, whether or not such participation involves sharing or delegating control with or to others;
(8) Sue and be sued on its own name; and
(9) Exercise such powers, consistent with its Articles of Incorporation and bylaws and with the provisions of this act and other applicable laws of the Federated States of Micronesia, as the Board may deem necessary and proper to perform the duties provided under section 6 of this act.

Section 8. Shares of the National Bank.
(1) The National Bank is hereby authorized to issue share accounts as provided in this section. All share accounts shall be represented by share account books containing a certificate of membership and evidencing the participation value of the share account.

(2) Share accounts may be purchased by any person who is a citizen of the Federated States of Micronesia or by any domestic corporation. Share accounts may be purchased by a foreign participator; PROVIDED that such foreign participation shall not exceed 40 percent of the outstanding share accounts. Share accounts shall not be transferable or assignable.

(3) Share accounts shall be sold for __________ or multiples thereof.

Section 9. Dividend. The Board may not declare a dividend nor make any distribution thereof unless:

(1) The amount of the retained earnings of the National Bank immediately prior thereto equals or exceeds the amount of the proposed distribution;

(2) Immediately after giving effect thereto:

(a) The sums of the assets of the National Bank would be at least equal to \(\frac{13}{4}\) times its liabilities; and

(b) The current assets of the corporation would at least be equal to its current liabilities; PROVIDED that 10 percent of the assets of the National Bank shall be set aside as reserve; PROVIDED FURTHER that such reserve shall not be available as a dividend.

Section 10. Management. The business and affairs of the National
Bank shall be managed and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of the day-to-day operation of the business of the National Bank to the general manager thereof, who shall be hired by the Board; PROVIDED that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 11. Board of Directors.

(1) There is hereby created a Board of Directors of the National Bank, hereinafter referred to as the "Board."

(2) The Board shall consist of five members to be appointed or elected as follows:

(a) One member shall be appointed by the President of the Federated States of Micronesia with the advice and consent of the Congress of the Federated States of Micronesia; and,

(b) Four members shall be selected by majority vote of the shareholders.

(3) Members of the Board shall serve their terms as follows:

(a) The President's appointee shall serve a 4-year term;

and

(b) The four members elected by the shareholders shall separately determine by lot which member among them shall serve an initial term of 1 year, which member shall serve an initial term of 2 years, which member shall serve an initial term of 3 years, and which member shall serve an initial term of 4 years.
(4) The initial terms of the Board members shall expire at noon on the day of the first meeting of the Board in the first, second, third, or fourth year, respectively, following the first meeting.

Section 12. Vacancy on the Board. A vacancy on the Board of the one member appointed by the President shall be filled by appointment by the President of the Federated States of Micronesia, subject to the advice and consent of the Congress of the Federated States of Micronesia. The appointee shall serve for the unexpired term of the member he replaces. Any vacancy on the Board of one of those elected members shall be filled by majority vote of the stockholders.

Section 13. Officers of the Board. At the first meeting of the Board the members shall proceed to elect a Chairman by majority vote of the members present; PROVIDED that a quorum is present. Any officer of the Board may be removed from office by the affirmative vote of two-thirds of the members of the Board.

Section 14. Employees of the Bank. The Board shall hire a general manager who shall be responsible for the day-to-day affairs of the Bank. The Board may hire other employees as it deems fit and proper.

Section 15. Provisional Board of Directors. The President is hereby authorized to appoint four members to the provisional Board of Directors, subject to the advice and consent of the Congress of the Federated States of Micronesia.

Section 16. Duties of the Provisional Board of Directors. The provisional Board of Directors shall plan, organize, and implement measures
necessary and proper to effect the provisions of this act until such time as the permanent Board is organized. The provisional Board of Directors shall be in existence for a period of not more than 2 years from the date of the confirmation of the last nominee.

Section 17. Bylaws. The shareholders may by majority vote of the entire membership adopt, amend, alter, or repeal such bylaws for the Bank in a manner consistent with this act. The bylaws may provide for the management of the business of the Bank; the regulation of its affairs; the organization, conduct, and meetings of the Board; the duties of the officers of the Bank; the officers for whom bonds could be furnished and the amounts thereof; and for any other matters consistent with the purposes of this act.

Section 18. Disqualifications. No member of the Board or officer of the National Bank during the term for which he was appointed or reappointed and for 2 years following the expiration of the term for which he was appointed or reappointed shall be eligible either to borrow money from or through the National Bank or to assume responsibility in whole or in part under a guarantee of indemnity or by the deposit of a security to the National Bank with respect to a debt or obligation of a third party.

Section 19. Audit. The books and records of the Bank shall be examined and audited annually by the Public Auditor of the Federated States of Micronesia. The audit report shall be made available to all interested persons. A copy of the audit report shall be transmitted to the President of the Federated States of Micronesia and to the Speaker
1 of the Congress of the Federated States of Micronesia.

Section 20. Costs of administration. There is hereby authorized
to be appropriated from the General Fund of the Federated States of
Micronesia such amount of funds as is necessary to carry out the cost
of administration of this act. The Board of Directors of the National
Bank shall, to the extent feasible, forecast the needed appropriations
for the fiscal year and request the funds from the Congress of the
Federated States of Micronesia. Nothing herein contained shall pro-
hibit the Board from seeking or soliciting funds for its operation
and capitalization from additional sources within or outside the
Federated States of Micronesia.

Section 21. Expenses. All members of the Board shall be entitled
to necessary travel expenses and per diem at standard rates of the
National Government of the Federated States of Micronesia while on the
business of the National Bank. Board members who are neither employees
nor officials of a State government or of the National Government of the
Federated States of Micronesia shall be paid $35 per day plus per diem,
where applicable, while on the business of the National Bank.

Section 22. Tax exemption. It is hereby found and declared that the
purpose for which the National Bank is created is a public purpose for the
benefit of the people of the Federated States of Micronesia, and that,
therefore, the National Bank shall not be required to pay any taxes or
assessments on any of its property acquired or to be acquired by it or
on its operations or activities.

Section 23. Debts of National Bank not public debts. The debts or
obligations of the National Bank shall not be debts or obligations of the National Government of the Federated States of Micronesia, nor shall the National Government of the Federated States of Micronesia be responsible for the same.

Section 24. Willfully defrauding the National Bank. Any Board member, director, officer, employee, or agent of the National Bank who embezzles, abstracts, or willfully misapplies any monies, funds, credits, or securities of the National Bank, or who willfully makes any false entry in any book, report, or statement of the National Bank, or who does any other act, with intent to injure or defraud the National Bank; or any individual who, with like intent, aids or abets any director, officer, employee, or agent in any violation of this section; or any individual who makes a false statement with the intent of defrauding the National Bank of monies, funds, credits, or securities, shall be fined not more than $20,000, or imprisoned for not more than 10 years, or both.

Section 25. Appropriation of funds. The sum of $100,000, or so much thereof as may be necessary, is hereby appropriated from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1983, for the purpose of carrying out the provisions of this act. The Board shall be the allottee of the funds.

Section 26. Allotment of funds. All funds appropriated by this act shall be allotted, managed, administered, and accounted for in accordance with applicable law, including, but not limited to, the Financial Management Act of 1979. The allottee shall be responsible for ensuring that these funds, or so much thereof as may be necessary, are used solely for
the purpose specified in this act, and that no obligations are
incurred in excess of the sum appropriated. The authority of the
allottee to obligate funds appropriated by this act shall lapse as
of September 30, 1984.

Section 27. Effective date. This act shall become law upon
approval by the President of the Federated States of Micronesia or
upon its becoming law without such approval.

Date: 6/3/83 Introduced by: Elías N. Thomas

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