A BILL FOR AN ACT

To license and regulate offshore banks within 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 "Offshore Banking Act."

Section 2. Definitions. As used in this act:

(1) "Bank" means a corporation whose business it is to receive money and other personal property on deposit; issue and cash checks or drafts; discount commercial paper; make loans; issue promissory notes; buy and sell bills of exchange, coin, or bullion; deal in negotiable securities; underwrite or distribute bonds, stocks, or other securities; rent vaults and safe-deposit boxes; issue letters of credit; and transmit money.

(2) "Chairman" means the Chairman of the Banking Board created pursuant to chapter 2 of title 29 of the Code of the Federated States of Micronesia.

(3) "Offshore bank" means any bank at least 60 percent of whose outstanding voting stock is owned by persons who are not citizens of the Federated States of Micronesia, which is licensed by the National Government as provided herein, and whose primary purposes and activities shall be limited to:

(a) Negotiating, making, and extending loans to borrowers who are not citizens of the Federated States of Micronesia; or

(b) Borrowing from lenders or accepting deposits from depositors who are not citizens of the Federated States of Micronesia.

(4) "Offshore banking license," hereinafter referred to as "license," means a license issuable, suspendable, renewable, or revocable by the Chairman of the Federated States of Micronesia Banking
Board in consultation with the Secretary of the Department of Resources and Development of the National Government of the Federated States of Micronesia.

(5) "Person" means any individual, corporation, association, partnership, joint venture, trust, or other group, however organized.

(6) "Secretary" means the Secretary of the Department of Resources and Development of the Federated States of Micronesia National Government.

Section 3. License required.

(1) No person shall operate an offshore bank within the Federated States of Micronesia without first obtaining a license from the Chairman of the Federated States of Micronesia Banking Board as provided in this act.

(2) An application for a license to operate an offshore bank shall be in writing, under oath, and shall be in the form prescribed by the Chairman of the Federated States of Micronesia Banking Board.

(3) All persons applying for an offshore banking license or a renewal of the same shall pay an application fee of $30,000, payable to the National Treasurer of the Federated States of Micronesia. If the license is not issued, $25,000 of the application fee shall be refunded to the applicant. The remaining $5,000 shall be deposited in the General Fund of the Federated States of Micronesia as reimbursement for expenses incurred as a result of the processing of the application and any investigation conducted in connection thereto.

(4) Any person may be issued an offshore banking license after
1 it has met the following requirements:
2   (a) It is duly incorporated under the laws of the Federated
3 States of Micronesia and is authorized by its articles of incorporation
4 to operate an offshore bank.
5   (b) It has filed with the Registrar of Corporations a duly
6 certified copy of its articles of incorporation and of its bylaws and a copy
7 of its application for an offshore banking license.
8   (c) It has furnished the Chairman of the Federated States of
9 Micronesia Banking Board and the Secretary of the Department of Resources and
10 Development of the Federated States of Micronesia National Government with
11 management and stock ownership information and any other relevant information
12 the Chairman and Secretary may reasonably require.
13   (d) It has complied with all applicable requirements of the
14 Federated States of Micronesia relating to domestic corporations, except
15 those specifically exempted by this act.
16   (e) It has a manager or an agent residing in the Federated
17 States of Micronesia who has taken an oath that he will, as far as the duty
18 devolves upon him, diligently and honestly administer the affairs of the
19 corporation and will not knowingly violate or willfully permit to be violated
20 any of the provisions of law applicable to the corporation.
21   (f) It provides proof of payment of the application fee.
22   (g) It provides such character information as may be required
23 by the Chairman or the Secretary.
24   (h) It submits a complete and detailed financial statement as
25 of a date within 60 days prior to the date of such application which shows
that the value of its assets is at least $750,000 in excess of the value of its liabilities.

(5) All licenses issued pursuant to this act are conditional and shall remain in force and effect for 5 years; PROVIDED that all fees are paid and the provisions of this act, and any regulations promulgated hereunder, and other applicable laws are complied with. Licenses issued pursuant to this act are fully transferable upon payment of a transfer fee of $10,000 and upon the approval of the Chairman in consultation with the Secretary.

The transferee shall possess the same qualifications and meet the same requirements as the transferor at the time of transference.

(6) Every offshore bank shall, on or before the first day of each January, pay to the National Treasurer of the Federated States of Micronesia an annual fee of $25,000 for the calendar year beginning on the 1st of January.

Section 4. Duties of the Chairman.

(1) Upon receipt of all necessary information and fees pertaining to an application for an offshore banking license, the Chairman, in consultation with the Secretary, shall, by whatever investigations or hearings he may deem necessary to accord due process, determine the following:

(a) The overall financial condition of the applicant; and
(b) The character and repute as well as the banking experience of the applicant.

(2) Within 60 days of receipt of all information required by this act, an order either approving or denying an application shall be issued by the Chairman.

(3) An offshore banking license shall only be denied to an applicant
by the Chairman, in consultation with the Secretary, for any of the following reasons:

(a) Failure of the applicant to supply the necessary information, documents, or required fees, or for submitting fraudulent or misleading information; or

(b) Failure of the applicant to satisfy the requirements of this act or any regulations promulgated hereunder; or

(c) Failure of the applicant to comply with relevant Federated States of Micronesia laws which are applicable to offshore banks.

(4) The Chairman shall prepare and file with the Registrar of Corporations a statement of reasons for approving or denying an application. Such statement shall include, but not be limited to, a finding of facts.

(5) A license may be renewed, suspended, or revoked by the Chairman in consultation with the Secretary. When a license is suspended or revoked, the Chairman shall file with the Registrar of Corporations a statement of reasons in the same manner as provided under subsection (3) of this section.

(6) The Chairman is hereby authorized and empowered to make such rules and regulations, conduct such hearings, and make such specific rulings, orders, demands, and findings as may be necessary for the proper conduct of offshore banking and for the enforcement of this act. Such regulations shall comply with the requirements of the Administrative Procedure Act of 1979.

Section 5. Judicial review. The decision of the Chairman in
consultation with the Secretary shall be final, unless a party aggrieved thereby alleges an abuse of discretion, in which case the decision shall be appealable to the Trial Division of the Supreme Court of the Federated States of Micronesia.

Section 6. Prohibited acts; Penalties.

(1) No officer, director, stockholder, trustee, employee, or agent of an offshore bank shall communicate any information as to any transaction between the offshore bank and its customers, or information as to any account, loan, or deposit, or any other banking information about a customer to any person or stockholder, trustee, employee, or agent of the same offshore bank, including, but not limited to, any governmental unit, employee, or agent. Any person who violates the provisions of this subsection may be imprisoned for not more than 5 years or fined not more than $100,000, or both. Information may be disclosed pursuant to an order of an appropriate Federal Court of the United States Government, provided that such order is obtained in compliance with the requirements of due process.

(2) No offshore bank shall accept any deposit of, loan money to, or otherwise transact business with any citizen of the Federated States of Micronesia, except that it may extend loans to the Federated States of Micronesia, or a political subdivision thereof, or to the Federated States of Micronesia Development Bank, or to any commercial bank not wholly owned by citizens of the Federated States of Micronesia.
Any offshore bank which violates the provisions of this subsection may be fined not more than $100,000.

(3) No offshore bank shall conduct any trade or business within the Federated States of Micronesia, except for the operation of an offshore bank.

Any offshore bank which violates the provisions of this subsection may be fined not more than $150,000.

(4) No official of the National Government of the Federated States of Micronesia, including, but not limited to, the President, the Vice President, Secretaries of the Departments, division chiefs, Speakers and Vice Speakers of the Congress of the Federated States of Micronesia, National Senators, key staff of the Congress of the Federated States of Micronesia, the Justices and key staff of the Federated States of Micronesia Supreme Court, the head of each and all of the governmental agencies or entities, the Attorney Generals, and the Registrars of Corporations, shall be an officer, stockholder, director, employee, or agent of an offshore bank licensed under this act. Any person who violates this subsection may be imprisoned for not more than 5 years, or fined not more than $50,000, or both.

Section 10. Reports. Every offshore bank shall, on the 1st of January of each year, make a written report to the Chairman and Secretary under the oath of one of its officers or directors, showing that the value of its assets is at least $750,000 in excess of the value of its liabilities, and also verifying that no depositor, borrower, or other customer is a citizen of the Federated States of Micronesia. Failure to make such a report or the inclusion of a false or misleading statement in the report shall be punishable by forfeiture of the license to operate an offshore bank and a fine of not more than $100,000.
Section 11. General provisions.

(1) Offshore banks shall operate in the corporate form and have not less than 5 percent of their voting shares of stock owned by persons of Federated States of Micronesia citizenship at all times.

(2) Offshore banks shall be exempt from all fees and taxes levied by the National Government of the Federated States of Micronesia and any State government or political subdivision thereof, except as provided herein.

(3) Offshore banks shall be exempt from all laws, rules, regulations, or ordinances with regard to the operation of offshore banks as may be imposed by any State of the Federated States of Micronesia or any political subdivision thereof.

(4) Offshore banks shall be exempt from chapter 1, title 33, of the Trust Territory Code, and chapters 1, 2, 3, 4, 5, and 6 of title 29 and chapters 1 and 2 of title 32 of the Code of the Federated States of Micronesia.

(5) Offshore banks shall be exempt from chapters 2 and 3 of title 34 of the Code of the Federated States of Micronesia.

(6) Offshore banks shall train and employ citizens of the Federated States of Micronesia to hold all positions of employment whenever practicable.

(7) Interest paid by an offshore bank to a depositor shall not be taxed by the Federated States of Micronesia or any political subdivision thereof.

Section 12. Reports required. Every offshore bank shall, on the 1st of January of each year, make a written report to the Chairman and the Secretary under oath of one of its officers or directors, showing that the value of its assets is at least $750,000 in excess of the value of its liabilities, and also verifying that no depositor, borrower, or other customer is a citizen of the
Federated States of Micronesia. Failure to make such a report or the
inclusion of a false or misleading statement in the report shall be punish-
able by forfeiture of the license to operate an offshore bank, or a fine of
not more than $200,000, or both.

Section 13. Service of process. Every offshore bank licensed under this
act submits itself to the jurisdiction of the courts of the Federated States
of Micronesia and, in the absence of any agent/employee thereof within the
Federated States of Micronesia, is deemed to have designated the Registrar of
Corporations as its agent upon whom process against it may be served in any
action or special proceeding arising out of or in connection with banking
operations. Service of such process upon the Registrar shall be made by per-
sonally delivering to and leaving with him, or his designee, a copy of such
process. Service made as provided in this section shall have the same force
as personal service made upon a designated agent, employee, officer, or director.

Nothing in this section shall affect the right to serve process upon any
designated agent, employee, officer, or director of an offshore bank.

Section 14. Conflict of law. Any law, rule, regulation, or ordinance in
conflict with this act is hereby superseded and is null and void, as to off-
shore banks, to the extent of the conflict.

Section 15. Severability. If any provision of this act, or the application
thereof to any person or circumstance is held invalid, the invalidity does
not affect other provisions or applications of the act which can be given effect
without the invalid provision or application, and to this end the provisions of
this act are severable.
1. Section 16. Effective date. This act shall become law upon
2. approval by the President of the Federated States of Micronesia or
3. upon its becoming law without such approval.

Date: Oct. 25, 1983

Introduced by:
Elias H. Thomas