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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:

1 Section 1. Short title. This act shall be known and may be cited  
2 as the "Offshore Banking Act."

3 Section 2. Definitions. As used in this act:

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

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

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

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

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

23 (4) "Offshore banking license," hereinafter referred to as  
24 "license," means a license issuable, suspendable, renewable, or revo-  
25 cable by the Chairman of the Federated States of Micronesia Banking

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1 Board in consultation with the Secretary of the Department of Resources  
2 and Development of the National Government of the Federated States of  
3 Micronesia.

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

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

9 Section 3. License required.

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

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

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

25 (4) Any person may be issued an offshore banking license after

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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

1 that the value of its assets is at least \$750,000 in excess of the value of  
2 its liabilities.

3 (5) All licenses issued pursuant to this act are conditional and  
4 shall remain in force and effect for 5 years; PROVIDED that all fees are  
5 paid and the provisions of this act, and any regulations promulgated here-  
6 under, and other applicable laws are complied with. Licenses issued pursuant  
7 to this act are fully transferable upon payment of a transfer fee of \$10,000  
8 and upon the approval of the Chairman in consultation with the Secretary.  
9 The transferee shall possess the same qualifications and meet the same require-  
10 ments as the transferor at the time of transference.

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

14 Section 4. Duties of the Chairman.

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

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

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

25 (3) An offshore banking license shall only be denied to an applicant

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1 by the Chairman, in consultation with the Secretary, for any of the  
2 following reasons:

3 (a) Failure of the applicant to supply the necessary infor-  
4 mation, documents, or required fees, or for submitting fraudulent or  
5 misleading information; or

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

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

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

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

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

25 Section 5. Judicial review. The decision of the Chairman in

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1 consultation with the Secretary shall be final, unless a party  
2 aggrieved thereby alleges an abuse of discretion, in which  
3 case the decision shall be appealable to the Trial Division  
4 of the Supreme Court of the Federated States of Micronesia.

5 Section 6. Prohibited acts; Penalties.

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

19 (2) No offshore bank shall accept any deposit of,  
20 loan money to, or otherwise transact business with any  
21 citizen of the Federated States of Micronesia, except that it  
22 may extend loans to the Federated States of Micronesia, or a  
23 political subdivision thereof, or to the Federated States of  
24 Micronesia Development Bank, or to any commercial bank not  
25 wholly owned by citizens of the Federated States of Micronesia.

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1 Any offshore bank which violates the provisions of this subsection may be  
2 fined not more than \$100,000.

3 (3) No offshore bank shall conduct any trade or business within the  
4 Federated States of Micronesia, except for the operation of an offshore bank.  
5 Any offshore bank which violates the provisions of this subsection may be  
6 fined not more than \$150,000.

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

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

1 Section 11. General provisions.

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

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

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

12 (4) Offshore banks shall be exempt from chapter 1, title 33, of the  
13 Trust Territory Code, and chapters 1, 2, 3, 4, 5, and 6 of title 29 and chapters  
14 1 and 2 of title 32 of the Code of the Federated States of Micronesia.

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

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

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

21 Section 12. Reports required. Every offshore bank shall, on the 1st of  
22 January of each year, make a written report to the Chairman and the Secretary  
23 under oath of one of its officers or directors, showing that the value of its  
24 assets is at least \$750,000 in excess of the value of its liabilities, and also  
25 verifying that no depositor, borrower, or other customer is a citizen of the



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1 Federated States of Micronesia. Failure to make such a report or the  
2 inclusion of a false or misleading statement in the report shall be punish-  
3 able by forfeiture of the license to operate an offshore bank, or a fine of  
4 not more than \$200,000, or both.

5 Section 13. Service of process. Every offshore bank licensed under this  
6 act submits itself to the jurisdiction of the courts of the Federated States  
7 of Micronesia and, in the absence of any agent/employee thereof within the  
8 Federated States of Micronesia, is deemed to have designated the Registrar of  
9 Corporations as its agent upon whom process against it may be served in any  
10 action or special proceeding arising out of or in connection with banking  
11 operations. Service of such process upon the Registrar shall be made by per-  
12 sonally delivering to and leaving with him, or his designee, a copy of such  
13 process. Service made as provided in this section shall have the same force  
14 as personal service made upon a designated agent, employee, officer, or director.  
15 Nothing in this section shall affect the right to serve process upon any  
16 designated agent, employee, officer, or director of an offshore bank.

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

20 Section 15. Severability. If any provision of this act, or the application  
21 thereof to any person or circumstance is held invalid, the invalidity does  
22 not affect other provisions or applications of the act which can be given effect  
23 without the invalid provision or application, and to this end the provisions of  
24 this act are severable.

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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.

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5 Date: Oct. 25, 1983

Introduced by: Elias H. Thomas  
Elias H. Thomas

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