

AN ACT

To enact a set of new sections to title 37 of the Code of the Federated States of Micronesia to establish a Captive Insurance Law for the Federated States of Micronesia, and for other purposes.

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

1 Section 1. Purpose. The purpose of the proposed bill is to
2 create a scheme for the introduction and regulation of a captive
3 insurance industry in the Federated States of Micronesia. The
4 captive insurance industry will complement current and future
5 regulations in the Federated States of Micronesia, such as
6 insurance and income tax for corporations. The captive insurance
7 industry in the Federated States of Micronesia will be regulated
8 by the Insurance Commissioner pursuant to policies established by
9 the Insurance Board.

10 Section 2. The Code of the Federated States of Micronesia,
11 as amended, is hereby further amended by enacting a new Chapter 10
12 to title 37 entitled "The Captive Insurance Act of 2006".

13 Section 3. The Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by enacting a
15 new section 1001 of title 37 to read as follows:

16 "Section 1001. Definitions. As used in this chapter,
17 unless the context otherwise requires:

18 (1) "Affiliated Company" means any company in the same
19 corporate system as a parent or member organization by
20 virtue of common ownership, control, operation, or

1 management.

2 (2) "Association" means any legal association of
3 individuals, corporations, partnerships, associations,
4 or other entities that own, control, or hold with power
5 to vote all of the outstanding voting securities of the
6 captive insurance company.

7 (3) "Captive Insurance Company" means an insurance
8 company formed or licensed under this chapter.

9 (4) "Commissioner" means the individual appointed as
10 the Insurance Commissioner under this title.

11 (5) "Domestic captive insurance company" means a
12 captive insurance company organized under the laws of
13 the Federated States of Micronesia.

14 (6) "Foreign captive insurance company" means a
15 captive insurance company organized under the laws of a
16 jurisdiction other than the Federated States of
17 Micronesia.

18 (7) "Insurance Manager" means an individual or company
19 which provides insurance expertise to or for captive
20 insurance companies and which has in its bona fide
21 employment a person who is a current member in good
22 standing of the applicable professional body or of some
23 other professional insurance association recognized by
24 the Commissioner for the purpose of providing insurance
25 expertise and has been approved by the Commissioner.

1 (8) "Member Organization" means any individual,
2 corporation, partnership, association, or other entity
3 that belongs to an association.

4 (9) "Parent" means a corporation, partnership, other
5 entity, or individual that directly or indirectly owns,
6 controls, or holds with power to vote more than 50% of
7 the outstanding voting securities of a captive insurance
8 company.

9 (10) "Principal Representative" means any individual or
10 corporation registered and in good standing with the
11 Federated States of Micronesia, operating in or from
12 within the Federated States of Micronesia who, not being
13 a bona fide employee of the captive insurance company,
14 maintains for the captive insurance company full and
15 proper records of the business activities of the captive
16 insurance company.

17 (11) "Unaffiliated business" means any company:

18 (a) That is not in the corporate system of a
19 parent and affiliated companies;

20 (b) That has an existing contractual relationship
21 with a parent or affiliated company; and

22 (c) Whose risks are managed by a captive
23 insurance company in accordance with this chapter."

24 Section 4. The Code of the Federated States of Micronesia,
25 as amended, is hereby further amended by enacting a new section

1 1002 of title 37 to read as follows:

2 "Section 1002. Determination of class of captive
3 insurance companies. Each captive insurance company
4 formed under this chapter shall be designated and
5 licensed as one of the following classes of captive
6 insurance companies:

7 (1) A class 1 company shall be a captive insurance
8 company that insures the risks of its parent and
9 affiliated companies or associations;

10 (2) Additional classes of captive insurance companies
11 may, from time to time, be created by amendment of this
12 chapter."

13 Section 5. The Code of the Federated States of Micronesia,
14 as amended, is hereby further amended by enacting a new section
15 1003 of title 37 to read as follows:

16 "Section 1003. Captive Insurance Company Licensing.

17 (1) Captive insurance companies shall be licensed in
18 accordance with Chapter 3 of this Title.

19 (2) In considering whether to license a captive
20 insurance company under this chapter, the Commissioner
21 and Insurance Board shall consider the following
22 factors:

23 (a) Principal office and principal
24 representative:

25 (i) The captive insurance company shall

1 maintain a principal place of business within the
2 Federated States of Micronesia;

3 (ii) appoint a principal representative that
4 shall be approved by the Commissioner;

5 (iii) hold an annual board of directors
6 meeting in the Federated States of Micronesia. In
7 meeting the quorum requirements for this annual board
8 meeting, only the principal representative is required
9 to be physically present in the Federated States of
10 Micronesia. The remainder of the quorum may be present
11 via telephone;

12 (iv) The captive insurance company shall
13 maintain in its principal office accurate documents in
14 English of the insurance business and accounting for
15 examination by the Commissioner.

16 (b) Application documents: the captive insurance
17 company shall file the following documents with its
18 application for an insurance license with the
19 Commissioner and Insurance Board:

20 (i) the amount and liquidity of its assets
21 relative to the risks to be assumed;

22 (ii) the adequacy of the expertise,
23 experience, and character of the person or persons who
24 will manage it;

25 (iii) the overall soundness of its plan of

1 operation;

2 (iv) the adequacy of the loss prevention
3 programs of its insureds; and

4 (v) such other factors deemed relevant by
5 the Commissioner in ascertaining whether the proposed
6 captive insurance company will be able to meet its
7 policy obligations.

8 (3) Each captive insurance company shall pay to the
9 Insurance Board a nonrefundable fee of \$500 for
10 examining, investigating, and processing its application
11 for licensing, and the Commissioner is authorized to
12 retain legal, financial and examination services, the
13 reasonable cost of which may be charged against the
14 applicant. In addition, each captive insurance company
15 shall pay a license fee for the year of registration and
16 a renewal fee each year thereafter of \$500.

17 (4) If the Insurance Board is satisfied that the
18 documents filed by the captive insurance company comply
19 with this title, the Commissioner may grant a license
20 authorizing it to transact insurance business in the
21 Federated States of Micronesia until March 31, of the
22 year of application at which time the license may be
23 renewed."

24 Section 6. The Code of the Federated States of Micronesia, as
25 amended, is hereby further amended by enacting a new section 1004

1 of title 37 to read as follows:

2 "Section 1004. Confidential treatment.

3 (1) No captive insurance company, or person who, in
4 his past or current position with a captive insurance
5 company has acquired information concerning an insured
6 entity shall disclose such information except:

7 (a) to an affiliated entity in the usual course
8 of business;

9 (b) with the written authorization of the policy
10 owner or his legal personal representative;

11 (c) for the purpose of performing his duties
12 under this Act;

13 (d) when required to do so by a court in the
14 Federated States of Micronesia;

15 (e) in order to comply with the provisions of
16 this Act or any other law.

17 (2) No member of the Insurance Board, the Insurance
18 Commissioner or any employee or agent of the Insurance
19 Board or Commissioner shall disclose to any person any
20 information relating to any captive insurance company
21 that he has acquired in the performance of his duties
22 under this Act except:

23 (a) for the purpose of the performance of his
24 duties or the exercise of his functions;

25 (b) when lawfully required to so by any court, or

1 in proceedings for an offense against this title;

2 (c) with the consent of the person to whom the
3 information relates;

4 (d) to the extent that the information is
5 available under any other law or in public documents;

6 (e) in aggregated or summary form, in such a
7 manner as to prevent any information disclosed from
8 being identified by any person as being related to a
9 particular person, including for statistical purposes;

10 (f) in confidence to a supervisory authority in
11 the Federated States of Micronesia or any other country
12 so long as the Insurance Board is reasonably satisfied
13 the recipient of the information will maintain
14 confidentiality;

15 (g) in confidence to advisors from the private
16 sector, international organizations or foreign
17 governments for the purpose of improving the regulatory
18 system and performance of the Insurance Board, so long
19 as the Insurance Board is reasonably satisfied the
20 recipient of the information will maintain
21 confidentiality."

22 Section 7. The Code of the Federated States of Micronesia,
23 as amended, is hereby further amended by enacting a new section
24 1005 of title 37 to read as follows:

25 "Section 1005. Names of Companies. In addition to the

1 requirements of chapter 5 of this title, no captive
2 insurance company shall adopt a name that is the same,
3 deceptively similar, or likely to be confused with or
4 mistaken for any other existing business name registered
5 in the Federated States of Micronesia."

6 Section 8. The Code of the Federated States of Micronesia,
7 as amended, is hereby further amended by enacting a new section
8 1006 of title 37 to read as follows:

9 "Section 1006. Redomestication; approval as domestic
10 captive insurance company. Any foreign captive
11 insurance company may become a domestic captive
12 insurance company by meeting the following requirements:

13 (1) Compliance with all of the requirements relating
14 to the registration and licensing of a captive insurance
15 company as stated in this title, and any additional
16 requirements that the Commissioner or Insurance Board
17 may require;

18 (2) The articles of incorporation or other
19 organizational document shall be amended in compliance
20 with the laws of the Federated States of Micronesia and
21 restated in its entirety before submission to the
22 Commissioner and Insurance Board. Before the amended
23 and restated articles of incorporation and other
24 organizational documents are transmitted to the National
25 Registrar of Corporations, the redomesticating captive

1 insurance company shall petition the Commissioner and
2 Insurance Board to issue a certificate setting forth the
3 Insurance Board's finding that the redomestication and
4 maintenance of the captive insurance company shall
5 promote the general good of the Federated States of
6 Micronesia. In arriving at the finding, the
7 Commissioner and Insurance Board shall consider:

8 (a) The character, reputation, financial
9 standing, and purposes of the foreign captive insurance
10 company;

11 (b) The character, reputation, financial
12 responsibility, insurance experience, and business
13 qualifications of the officers and directors; and

14 (c) Any other aspects as the Commissioner and
15 Insurance Board deem advisable;

16 (3) The following shall be transmitted to the
17 Registrar of Corporations for filing:

18 (a) Articles of redomestication;

19 (b) Certificate issued by the Commissioner;

20 (c) Certificate of good standing duly
21 authenticated by the proper officer of the country under
22 the laws of which the foreign captive insurance company
23 is incorporated; provided that the certificate shall be
24 dated not earlier than forty-five days prior to the
25 filing of the articles of redomestication; and provided

1 further that if the certificate of good standing is in a
2 foreign language, a translation under oath of the
3 translator shall accompany the certificate;

4 (d) Amendments to the articles of incorporation
5 or other organizational document in compliance with the
6 laws of the Federated States of Micronesia; and

7 (e) Restatement of the articles of incorporation
8 or other organizational document in its entirety;

9 (4) The articles of redomestication shall set forth
10 the following:

11 (a) Name of the corporation;

12 (b) Date of incorporation and country of
13 incorporation;

14 (c) Street address of the principal office in the
15 Federated States of Micronesia;

16 (d) Name of the proposed principal
17 representative;

18 (e) Names and titles of the officers and
19 directors of the corporation;

20 (f) A statement that the corporation is moving
21 its domicile from its present country to the Federated
22 States of Micronesia;

23 (g) A statement that redomestication will occur
24 upon filing the articles of redomestication and that the
25 corporation shall be subject to the laws of the

1 Federated States of Micronesia;

2 (h) A statement that copies of the articles of
3 incorporation or other organizational documents and any
4 amendments certified by the proper officer of the
5 country under the laws of which the corporation is
6 incorporated are attached; provided that if any of these
7 documents are in a foreign language, a translation under
8 oath of the translator shall accompany these documents;
9 and

10 (i) Such other documents as may be required by
11 this title or title 36 of the Code of the Federated
12 States of Micronesia and regulations in force pursuant
13 to those titles.

14 (5) The domestic captive insurance company shall be
15 entitled to the necessary or appropriate certificates
16 and licenses to do business in the Federated States of
17 Micronesia and shall be subject to the authority and
18 jurisdiction of the Federated States of Micronesia. No
19 captive insurance company redomesticating into the
20 Federated States of Micronesia need merge, consolidate,
21 transfer assets, or otherwise engage in any other
22 reorganization, other than as specified in this section.

23 (6) Upon redomestication in accordance with this
24 section, the foreign captive insurance company shall
25 become a domestic captive insurance company organized

1 under the laws of the Federated States of Micronesia and
2 shall have all the rights, privileges, immunities, and
3 powers and be subject to all applicable laws, duties,
4 and liabilities of a domestic captive insurance company
5 of the same type. The domestic captive insurance
6 company shall possess all rights that it had prior to
7 the redomestication to the extent permitted by the laws
8 of the Federated States of Micronesia and shall be
9 responsible and liable for all the liabilities and
10 obligations that it was subject to prior to the
11 redomestication. All outstanding policies of the
12 captive insurance company shall remain in full force and
13 effect."

14 Section 9. The Code of the Federated States of Micronesia,
15 as amended, is hereby further amended by enacting a new section
16 1007 of title 37 to read as follows:

17 "Section 1007. Minimum Capital and Surplus
18 Requirements.

19 (1) No captive insurance company shall be registered
20 and issued a license unless it shall possess and
21 thereafter maintain unimpaired paid-in capital and
22 surplus of:

23 (a) In the case of a class 1 captive insurance
24 company, not less than US \$100,000;

25 (b) In the case of a class 2 captive insurance

1 company, not less than US \$100,000.

2 (2) The Insurance Board may prescribe additional
3 capital and surplus based upon the type, volume, and
4 nature of insurance business transacted.

5 (3) Capital and surplus may be in the form of any
6 combination of the following:

7 (a) Cash,

8 (b) letter of credit,

9 (c) investments pursuant to section 1013 of this
10 chapter, or

11 (d) any other security deemed appropriate by the
12 Insurance Board."

13 Section 10. The Code of the Federated States of Micronesia,
14 as amended, is hereby further amended by enacting a new section
15 1008 of title 37 to read as follows:

16 "Section 1008. Dividends. No captive insurance company
17 may pay a dividend out of, or other distribution with
18 respect to, capital or surplus without the prior
19 approval of the Commissioner and Insurance Board. A
20 captive insurance company may submit to the Commissioner
21 and Insurance Board for approval, an ongoing plan for
22 the payment of dividends or other distributions which
23 will take into account the retention at the time of each
24 payment, and capital or surplus in excess of amounts
25 specified by, or determined in accordance with formulas

1 approved by the Commissioner and Insurance Board."

2 Section 11. The Code of the Federated States of Micronesia,
3 as amended, is hereby further amended by enacting a new section
4 1009 of title 37 to read as follows:

5 "Section 1009. Formation of Captive Insurance
6 Companies. Captive insurance companies shall be formed
7 pursuant to the requirements of title 36 of the Code of
8 the Federated States of Micronesia and National
9 Corporation's Regulations in force in the Federated
10 States of Micronesia."

11 Section 12. The Code of the Federated States of Micronesia,
12 as amended, is hereby further amended by enacting a new section
13 1010 of title 37 to read as follows:

14 "Section 1010. Reports and Statements.

15 (1) Captive insurance companies shall not be required
16 to make any annual report or filings except as provided
17 in this chapter.

18 (2) Captive insurance companies shall submit to the
19 Commissioner and Insurance Board the following within
20 three months of the companies fiscal year-end:

21 (a) A report of its financial condition verified
22 by oath of two of its executive officers;

23 (b) Audited financial statements prepared
24 according to generally accepted accounting principles or
25 international accounting standards, unless the

1 Commissioner and Insurance Board approves any
2 appropriate or necessary modifications or changes
3 thereof required or approved or accepted by the
4 Commissioner and Insurance Board for the type of
5 insurance and kinds of insurers to be reported upon, and
6 as supplemented by additional information required by
7 the Commissioner and Insurance Board. The audited
8 financial statements shall be completed by a person
9 approved by the Commissioner and Insurance Board who
10 qualifies as an accountant by examination of one of the
11 Institutes of Chartered Accountants, or Japanese
12 Institute of Certified Public Accountants, or American
13 Institute of Certified Public Accountants, or other
14 qualified accountant as recognized by the Commissioner
15 and Insurance Board;

16 (c) Opinion of loss reserve specialist, regarding
17 reserves for the insurance business underwritten by the
18 captive insurance company. The opinion of loss reserves
19 shall be completed by a person approved by the
20 Commissioner and Insurance Board who is a member of the
21 Institute of Actuaries, or the Institute of Actuaries of
22 Japan, or the American Academy of Actuaries, or other
23 qualified loss reserve specialist recognized by the
24 Commissioner and Insurance Board;

25 (d) Any additional reports as prescribed and

1 requested by the Commissioner and Insurance Board."

2 Section 13. The Code of the Federated States of Micronesia,
3 as amended, is hereby further amended by enacting a new section
4 1011 of title 37 to read as follows:

5 "Section 1011. Examinations and Investigations.

6 (1) At least once in three years, and whenever the
7 Commissioner and Insurance Board determines it to be
8 prudent, the Commissioner shall personally, or by some
9 competent person appointed by the Commissioner and
10 Insurance Board, visit each captive insurance company
11 and thoroughly inspect and examine its affairs to
12 ascertain its financial condition, its ability to
13 fulfill its obligations and whether it has complied with
14 the provisions of this chapter. The Commissioner and
15 Insurance Board may enlarge the aforesaid three-year
16 period to five years, upon petition by the captive
17 insurance company. The expenses and charges of the
18 examination shall be paid to the Insurance Board by the
19 captive insurance company examined within thirty days of
20 receipt of the Insurance Board's warrants for the proper
21 charges incurred for the examination.

22 (2) It shall be the duty of the captive insurance
23 company under examination or investigation and any past
24 or present officer, employee or insurance manager of the
25 captive insurance company to produce to the Insurance

1 Board or Insurance Board's representative upon request,
2 all books, records and documents relating to the captive
3 insurance company under examination or investigation
4 which are in its custody or control and otherwise to
5 give to the Insurance Board or Insurance Board's
6 representative all assistance in connection with the
7 investigation which it is reasonably able to give.

8 (3) All examination reports, preliminary examination
9 reports or results, working papers, recorded
10 information, documents and copies thereof produced by,
11 obtained by or disclosed to the Insurance Board or any
12 other person in the course of an examination made under
13 this section are confidential and are not subject to
14 subpoena and may not be made public by the Commissioner
15 or Insurance Board or an employee or agent of the
16 Commissioner or Insurance Board without the written
17 consent of the company, except to the extent provided in
18 this subsection. Nothing in this subsection shall
19 prevent the Commissioner or Insurance Board from using
20 such information in furtherance of the Commissioner's
21 and Insurance Board's regulatory authority under this
22 title. The Commissioner and Insurance Board may, at
23 their discretion, grant access to such information to
24 public officers having jurisdiction over the regulation
25 of insurance in any other nation, or to law enforcement

1 officers of the Federated States of Micronesia or any
2 other nation so long as such officers receiving the
3 information agree in writing to hold it in a manner
4 consistent with this section."

5 Section 14. The Code of the Federated States of Micronesia,
6 as amended, is hereby further amended by enacting a new section
7 1012 of title 37 to read as follows:

8 "Section 1012. Grounds and procedures for suspension or
9 revocation of license.

10 (1) The license of a captive insurance company may be
11 suspended or revoked by the Commissioner for any of the
12 following reasons:

13 (a) Insolvency or impairment of capital or
14 surplus;

15 (b) Failure to meet the requirements of section
16 1007 of this title;

17 (c) Refusal or failure to submit an annual
18 report, as required by this chapter, or any other report
19 or statement required by law or by lawful order of the
20 Commissioner;

21 (d) Failure to comply with the provisions of its
22 own charter, bylaws or other organizational document;

23 (e) Failure to submit to or pay the cost of
24 examination or any legal obligation relative thereto, as
25 required by this chapter;

1 (f) Use of methods that, although not otherwise
2 specifically prohibited by law, nevertheless render its
3 operation detrimental or its condition unsound with
4 respect to the public or to its policyholders; or

5 (g) Failure otherwise to comply with the laws of
6 the Federated States of Micronesia.

7 (2) If the Insurance Board finds, upon examination,
8 hearing, or other evidence, that any captive insurance
9 company has violated any provision of subsection (1) of
10 this section, the Insurance Board may suspend or revoke
11 such company's license if the Insurance Board deems it
12 in the best interest of the public and the policyholders
13 of such captive insurance company, notwithstanding any
14 other provision of this title.

15 (3) Appeals from agency action may be made pursuant to
16 Title 17 of the Code of the Federated States of
17 Micronesia."

18 Section 15. The Code of the Federated States of Micronesia,
19 as amended, is hereby further amended by enacting a new section
20 1013 of title 37 to read as follows:

21 "Section 1013. Legal Investments.

22 (1) Each captive insurance company shall be allowed to
23 invest any of its funds without limitation in any
24 government obligation issued by and backed by the full
25 faith and credit of the Government of the United States

1 of America or the Government of Japan.

2 (2) Each captive insurance company shall be allowed to
3 invest in any type of investment subject to a limitation
4 of 10% of total captive insurance company assets in any
5 one issuer, if that investment is rated by one of the
6 following:

7 (a) Rating and Investment Information, Inc.
8 rating of BBB or higher;

9 (b) Moody's rating of Baa3 or higher;

10 (c) S&P rating of BBB- or higher;

11 (d) Fitch rating of BBB- or higher;

12 (3) Other investments as approved by the Insurance
13 Board;

14 (4) A captive insurance company may make a loan to or
15 an investment in its parent company or affiliates up to
16 50% of total captive insurance company assets, subject
17 to the approval of the Insurance Board. Any such loan
18 or investment must be evidenced by documentation
19 approved by the Insurance Board. Loans of minimum
20 capital and surplus funds required by section 1007 are
21 prohibited.

22 (5) The Commissioner and Insurance Board may prohibit
23 or limit any investment that threatens the solvency or
24 liquidity of any such captive insurance company."

25 Section 16. The Code of the Federated States of Micronesia,

1 as amended, is hereby further amended by enacting a new section
2 1014 of title 37 to read as follows:

3 "Section 1014. Reinsurance.

4 (1) Any captive insurance company may provide
5 reinsurance on risks ceded by any other insurer only
6 upon approval by the Insurance Board.

7 (2) Any captive insurance company may take credit for
8 reserves on risks ceded to a reinsurer; provided that no
9 captive insurance company shall cede risks without the
10 approval of the Insurance Board.

11 (3) Any captive insurance company may take credit for
12 the reinsurance of risks or portions of risks ceded to a
13 pool, exchange or association acting as a reinsurer
14 which has been authorized by the Insurance Board. The
15 Insurance Board may require any other documents,
16 financial information or other evidence that such a
17 pool, exchange or association will be able to provide
18 adequate security for its financial obligations. The
19 Insurance Board may deny authorization or impose any
20 limitations on the activities of a reinsurance pool,
21 exchange or association that, in the Insurance Board's
22 judgment, are necessary and proper to provide adequate
23 security for the ceding captive insurance company and
24 for the protection and consequent benefit of the public
25 at large."

1 Section 17. The Code of the Federated States of Micronesia,
2 as amended, is hereby further amended by enacting a new section
3 1015 of title 37 to read as follows:

4 "Section 1015. Tax on Premium Collected.

5 (1) Each captive insurance company shall pay into the
6 General Fund of the Federated States of Micronesia on or
7 before June 1 of each year, a tax on gross premiums as
8 follows:

9 (a) .05 percent of gross premiums for insurance
10 written on all risks or property resident, situated or
11 located within the Federated States of Micronesia, and
12 on risks and property situated elsewhere upon which no
13 premium tax is otherwise paid during the year ending on
14 the preceding March 31, less return premiums and less
15 any reinsurance accepted;

16 (b) The annual maximum aggregate tax on premiums
17 to be paid by a captive insurance company calculated
18 under subsection (a) of this section shall be
19 \$20,000.00.

20 (2) Two or more captive insurance companies under
21 common ownership and control shall be taxed, as though
22 they were a single captive insurance company.

23 (a) For the purposes of this section common
24 ownership and control shall mean:

25 (i) in the case of stock corporations, the

1 direct or indirect ownership of 80 percent or more of
2 the outstanding voting stock of two or more corporations
3 by the same shareholder or shareholders; and

4 (ii) in the case of mutual corporations, the
5 direct or indirect ownership of 80 percent or more of
6 the surplus and the voting power of two or more
7 corporations by the same member or members.

8 (3) Annually, ten percent of the premium tax revenues
9 collected pursuant to this section or \$150,000,
10 whichever is greater shall be transferred to the
11 Insurance Board for the regulation of captive insurance
12 companies under this chapter.

13 (4) The tax provided for in this section shall be
14 calculated on an annual basis, notwithstanding policies
15 or contracts of insurance or contracts of reinsurance
16 issued on a multiyear basis. In the case of multiyear
17 policies or contracts, the premium shall be prorated for
18 purposes of determining the tax under this section."

19 Section 18. The Code of the Federated States of Micronesia,
20 as amended, is hereby further amended by enacting a new section
21 1016 of title 37 to read as follows:

22 "Section 1016. Regulations. The Insurance Board may
23 establish and from time to time amend such regulations
24 relating to captive insurance companies as are necessary
25 to enable the Insurance Board to carry out the

AN ACT

To further amend sections 1001, 1002, 1003 and 1007 of title 37 of the Code of the Federated States of Micronesia by including a definition of related third party business; by further defining a Class II captive insurance company; by adding a prohibition on insuring individuals; and by further amending the minimum capital and surplus requirements, and for other purposes.

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

1 Section 1. Section 1001 of title 37 of the Code of the
2 Federated States of Micronesia, as enacted by Public Law No. 14-
3 88, is hereby further amended to read as follows:

4 "Section 1001. Definitions. As used in this chapter,
5 unless the context otherwise requires:

6 (1) 'Affiliated Compact' means any company in the
7 same corporate system as a parent or member organization
8 by virtue of common ownership, control, operation, or
9 management.

10 (2) 'Association' means any legal association of
11 individuals, corporations, partnerships, associations,
12 or other entities that own, control, or hold with power
13 to vote all of the outstanding voting securities of the
14 captive insurance company.

15 (3) 'Captive Insurance Company' means an insurance
16 company formed or licensed under this chapter.

17 (4) 'Commissioner' means the individual appointed as
18 the Insurance Commissioner under this title.

1 (5) 'Domestic captive insurance company' means a
 2 captive insurance company organized under the laws of
 3 the Federated States of Micronesia.

4 (6) 'Foreign captive insurance company' means a
 5 captive insurance company organized under the laws of a
 6 jurisdiction other than the Federated States of
 7 Micronesia.

8 (7) 'Insurance Manager' means an individual or
 9 company which provides insurance expertise to or for
 10 captive insurance companies and which has in its bona
 11 fide employment a person who is a current member in good
 12 standing of the applicable professional body or of some
 13 other professional insurance association recognized by
 14 the Commissioner for the purpose of providing insurance
 15 expertise and has been approved by the Commissioner.

16 (8) 'Member Organization' means any individual,
 17 corporation, partnership, association, or other entity
 18 that belongs to an association.

19 (9) 'Parent' means a corporation, partnership, other
 20 entity, or individual that directly or indirectly owns,
 21 controls, or holds with power to vote more than 50% of
 22 the outstanding voting securities of a captive insurance
 23 company.

24 (10) 'Principal Representative' means any individual
 25 or corporation registered and in good standing with the

1 Federated States of Micronesia, operating in or from
 2 within the Federated States of Micronesia who, not being
 3 a bona fide employee of the captive insurance company,
 4 maintains for the captive insurance company full and
 5 proper records of the business activities of the captive
 6 insurance company."

7 (11) 'Unaffiliated business' means any company:

8 (a) That is not in the corporate system of a
 9 parent and affiliated companies;

10 (b) That has an existing contractual
 11 relationship with a parent or affiliated company; and

12 (c) Whose risks are managed by a captive
 13 insurance company in accordance with this chapter.

14 (12) 'Related Third-Party Business' means any company
 15 or other legal entity:

16 (a) That is not in the corporate system of a
 17 parent and affiliated companies;

18 (b) That has an existing contractual
 19 relationship with a parent or affiliated company; and

20 (c) Whose risks are managed by a captive
 21 insurance company in accordance with this chapter.

22 Section 2. Section 1002 of title 37 of the Code of the
 23 Federated States of Micronesia, is hereby amended to read as
 24 follows:

25 "Section 1002. Determination of class of captive

1 insurance companies. Each captive insurance company
 2 formed under this chapter shall be designated and
 3 licensed as one of the following classes of captive
 4 insurance companies.

5 (1) A class 1 company shall be a captive insurance
 6 company that insures the risks of its parent and
 7 affiliated companies or associations;

8 (2) A class 2 company shall be a captive insurance
 9 company that insures the risks of its parent and
 10 affiliated companies or associations and/or related
 11 third-party businesses.

12 (3) Additional classes of captive insurance companies
 13 may, from time to time, be created by amendment of this
 14 chapter.

15 Section 3. Section 1003 of title 37 of the Code of the
 16 Federated States of Micronesia, is hereby amended to read
 17 as follows:

18 "Section 1003. Captive Insurance Company
 19 Licensing.

20 (1) Captive insurance companies shall be
 21 licensed in accordance with Chapter 3 of this
 22 title.

23 (2) In considering whether to license a captive
 24 insurance company under this chapter, the
 25 Commissioner and Insurance Board shall consider the

1 following factors:

2 (a) Principal office and principal
3 representative;

4 (i) the principal office shall
5 maintain a principal place of business within the
6 Federated States of Micronesia;

7 (ii) appoint a principal representative
8 that shall be approved by the Commissioner;

9 (iii) hold an annual board of directors
10 meeting in the Federated States of Micronesia. In
11 meting the quorum requirements for this annual
12 board meeting, only the principal representative is
13 required to be physically present in the Federated
14 States of Micronesia. The remainder of the quorum
15 may be present via telephone;

16 (iv) the captive insurance company
17 shall maintain in its principal office accurate
18 documents in English of the insurance business and
19 accounting for examination by the Commissioner.

20 (b) Application documents: the captive
21 insurance company shall file the following
22 documents with its application for an insurance
23 license with the Commissioner and Insurance Board:

24 (i) the amount and liquidity of its
25 assets relative to the risks to be assumed;

1 (ii) the adequacy of the expertise,
 2 experience, and character of the person or persons
 3 who will manage it;

4 (iii) the overall soundness its plan of
 5 operation;

6 (iv) the adequacy of the loss
 7 prevention programs of its insured; and

8 (v) such other factors deemed relevant
 9 by the Commissioner in ascertaining whether the
 10 proposed captive insurance company will be able to
 11 meet its policy obligations.

12 (3) Each captive insurance company shall pay to
 13 the Insurance Board of nonrefundable fee of \$500
 14 for examining, investigating, and processing its
 15 application for licensing, and the Commissioner is
 16 authorized to retain legal, financial and
 17 examination services, the reasonable cost of which
 18 may be charged against the applicant. In addition
 19 each captive insurance company shall pay a license
 20 fee for the year or registration and a renewal fee
 21 each year thereafter of \$500.

22 (4) If the Insurance Board is satisfied that the
 23 documents filed by the captive insurance company
 24 comply with this title, the Commissioner may grant
 25 a license authorizing it to transact business in

1 the Federated States of Micronesia until March 31,
2 of the year of application at which time the
3 license may be renewed.

4 (5) No captive insurance company licensed under
5 this chapter shall be allowed to insure the risks
6 of individual citizens of the Federated States of
7 Micronesia.

8 Section 4. Section 1007 of title 37 of the Code of the
9 Federated States of Micronesia, is hereby amended to read as
10 follows:

11 "Section 1007. Minimum Capital and Surplus Requirements:

12 (1) No captive insurance company shall be
13 registered and issued a license unless it has
14 initial paid-in capital of \$1,000,000 and
15 thereafter maintains a minimum capital and surplus
16 of \$100,000;

17 (2) The Commissioner may prescribe additional
18 capital and surplus based upon the type, volume,
19 and nature of insurance business transacted.

20 (3) Capital and surplus may be in the form of
21 any combination of the following:

22 (a) cash

23 (b) letter of credit,

24 (c) investments pursuant to section 1013 of
25 this chapter, or

1 (d) any other security deemed appropriated
2 by the Commissioner."

3 Section 5. This act shall become law upon approval by the
4 President of the Federated States of Micronesia or upon its
5 becoming law without such approval.

6

7

8

9

10

_____, 2008

11

12

13

14

15

Manny Mori
President
Federated States of Micronesia

16

17

18

19

20

21

22

23

24

25