## <u>P.C.</u> NO. 18-419

PUBLIC LAW NO. 18-103

## AN ACT

To amend sections 312, 313, 314, 322, 331, 352 and 360 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 13-71, and as amended by Public Law Nos. 14-110, 16-19, 16-52 and 17-73, to include Major FSM Branches, and for other purposes.

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

- 1 Section 1. Section 312 of title 54 of the Code of the
- 2 Federated States of Micronesia, as amended by Public Laws Nos.
- 3 14-110 and 16-52, is hereby further amended to read as follows:
- 4 "Section 312. Definitions.
- 5 (1) 'Control group' of a corporation for purposes of 6 this chapter shall mean a group of corporations 7 comprising of:
- 8 (a) the corporation,
- 9 (b) other corporations in which the corporation 10 owns directly or indirectly 80% or more of the shares,
- (c) other corporations that own directly or indirectly 80% or more of the shares of the corporation, and,
- (d) corporations other than the corporation

  described in paragraph (a) of this section or

  corporations described in paragraph (b) of this section,

  or corporations where 80% or more shares are owned

  directly or indirectly by the corporations described in
- 20 (2) 'Major Corporation' means any corporation not

paragraph (c) of this section.

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2	of Micronesia as a bank (as such term is defined in
3	title 29 of the Code of the Federated States of
4	Micronesia, section 102(1)), formed on or after January
5	1, 2005, and,
6	(a) whose shareholders equity or paid-Capital as
7	of the beginning of its fiscal year is \$1,000,000 or
8	more; or
9	(b) the aggregate amount of the shareholders
10	equity or Paid-in Capital of the control group is
11	\$10,000,000 or more; or
12	(c) that is a captive insurance company licensed
13	pursuant to title 37 of the Code of the Federated States
14	of Micronesia regardless of the amount of
15	capitalization.
16	(3) 'Major FSM Branch' means any corporation not
17	principally engaged in business in the Federated States
18	of Micronesia as a bank (as such term is defined in
19	title 29 of the Code of the Federated States of
20	Micronesia, section 102(1) authorized by law to issue
21	stock, organized under laws other than the laws of the

principally engaged in business in the Federated States

Federated States of Micronesia for a purpose or purposes

for which a corporation may be organized under the laws

of the Federated States of Micronesia, section 102(1),

which has a Permanent Establishment in the Federated

1	States of Micronesia and whose Paid-in Capital as of the
2	beginning of its fiscal year is \$1,000,000 or more.
3	(4) 'Permanent Establishment' means a fixed
4	place of business through which the business of an
5	enterprise is wholly or party carried on.
6	(5) 'Secretary' means the Secretary of the Department
7	of Finance and Administration.
8	(6) 'Taxable Year' shall means the fiscal year of a
9	Major Corporation or Major FSM Branch, as the case may
L O	be, as reported under section 314 of this chapter.
L1	(7) 'Paid-in Capital' for purpose of this chapter
L2	shall mean: (I) in the case of a Major Corporation, the
L3	total amount of consideration contributed to the company
L4	for the issuance of shares; and (II) in the case of a
L5	Major FSM Branch, the total amount of Domestic Capital
L6	(as defined in section 314(2) registered with the
L7	Registrar of Corporation."
L8	Section 2. Section 313 of title 54 the Code of the Federated
L9	States of Micronesia, as amended by Public Laws Nos. 14-110, 16-19
20	and 16-52, is hereby further amended to read as follows:
21	"Section 313. Applicability of this chapter. Taxes
22	imposed under this chapter shall apply to all Major
23	Corporations as defined in section 312. In case of
24	conflict, this chapter shall prevail over other laws or

regulations of the Federated States of Micronesia.

1	Secti	on 3. Section 314 of title 54 of the Code of the
2	Federated	States of Micronesia, as enacted by Public Laws Nos.
3	13-71, is	hereby amended to read as follows:
4		"Section 314. Filing of report. A major corporation
5		shall file an initial written report with the Secretary.
6		The written report shall be signed by the authorized
7		representative of the major corporation and shall state:
8		(1) A Major Corporation that is a Domestic_Corporation
9		shall file an initial written report with the Secretary.
10		The written report shall be signed by the authorized
11		representative of the Major Corporation and shall state:
12		(a) the true and correct name of the Major
13		Corporation;
14		(b) the taxpayer identification number or other
15		identifying number, if any, of the Major Corporation;
16		(c) the mailing and office address of the Major
17		Corporation;
18		(d) the name, address, telephone, and fax numbers
19		of the authorized representative for the Major
20		Corporation;
21		(e) the nature of the Major Corporation's
22		principal business; and
23		(f) the last day of the Major Corporation's
24		fiscal year. The report shall be filed by the Major
25		Corporation within sixty (60) days of the Major

1	Corporation becoming subject to this chapter."
2	(2) Every Foreign Corporation which undertakes to do
3	or carry on business in the Federated States of
4	Micronesia as a Major Corporation shall be permitted to
5	do so upon:
6	(a) remitting the sum of \$1,000,000 or more (or
7	its equivalent in another currency) to a commercial bank
8	licensed to business in the Federated States of
9	Micronesia, hereinafter referred to as a "Licensed
10	Bank", as initial capital for the purpose of doing or
11	carrying on business in the Federated States of
12	Micronesia;
13	(b) registering such amount as its initial
14	domestic capital ("Domestic Capital") by filing with the
15	Registrar of Corporations a copy of a statement prepared
16	by such Licensed Bank duly confirming its receipt from
17	the corporation of such Domestic Capital;
18	(c) filing with the Registrar of Corporations a
19	declaration stating:
20	(i) the true and correct name of the
21	corporation;
22	(ii) the state or country wherein it was
23	incorporated;
24	(iii) the location and address of its
25	principal office;

1	(iv) the location and address of its branch
2	office in the Federated States of Micronesia, including
3	its mailing address;
4	(v) the names and addresses of its officers
5	and directors;
6	(vi) the nature of the corporation's
7	principal business (unless otherwise stated in the
8	Certificate of Incorporation, Charter, Articles of
9	Association or equivalent document to be filed pursuant
10	to paragraph (d) of this subsection);
11	(vii) its Domestic Capital which shall be
12	\$1,000,000 or more;
13	(viii) the name and branch address of the
14	licensed Bank which received the Domestic Capital;
15	(ix) the name, citizenship and business
16	address of the person residing within the Federated
17	States of Micronesia, or notices from officials of t he
18	Federated States of Micronesia, may be served;
19	(x) the last day of the corporation's fiscal
20	year; and
21	(d) filing with the Registrar of Corporations a
22	copy of the corporation's Certificate of Incorporation,
23	Charter, Articles of Association or equivalent
24	document."
25	Section 4. Section 322 of title 54 of the Code of the

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- 1 Federated States of Micronesia, as amended by Public Law No.
- 2 16-52, is hereby further amended to read as follows:
- 3 "Section 322. <u>Taxable income defined</u>.
- (1) The taxable income of a Major Corporation equals 4 its income, before income taxes, earned in the taxable 5 year as determined under International Financial 6 7 Reporting Standard ('IFRS') or Generally Accepted Accounting Principles ('GAAP'), as IFRS or GAAP, as the 8 case may be, is regularly utilized to calculate taxable 9 income in the Major Corporation corporation's principal 10 shareholder's, if a corporation, place of incorporation 11 or, if an individual, country of primary residence. 12
  - (2) The taxable income of a Major FSM Branch equal its income, before income taxes, earned in the taxable year as determined under IFRS or GAAP, as IFRS or CAAP, as the case may be, is regularly utilized to calculate taxable income in the place of incorporation of the Major FSM Branch, and attributable to a Permanent Establishment in the Federated State of Micronesia through which the corporation carried on its business."
- 21 Section 5. Section 331 of title 54 of the Code of the
- 22 Federated States of Micronesia, as amended by Public Law No.
- 23 16-52, is hereby amended to read as follows:
- 24 "Section 331. Non-refundable credit for payment of
- 25 <u>foreign taxes</u>.

(1) In the case of a Major Corporation, any income
taxes paid or accrued on taxable income during the
taxable year to a foreign country shall be allowed as a
credit against the amount of tax imposed by section 321.

- (2) In the case of a dividend received by a Major Corporation or Major FSM Branch, a credit shall also be allowed against the amount of tax imposed by section 321 in an appropriate amount to reflect any income taxes the Major Corporation or Major FSM Branch, as the case may be, can demonstrate have been paid with respect to such dividend to any foreign country or countries.
- (3) In no case shall a Major Corporation or Major FSM Branch, in any taxable year, be entitled to credits which, in the aggregate, exceed the amount of the tax imposed, for that taxable year, under the provisions of section 321 of this chapter.
- (4) No foreign tax credit shall be permitted to create a refund or credit for overpayment of tax; but any amount of foreign tax not creditable by reason of this provision may be carried forward as a creditable foreign tax to each succeeding year until fully utilized subject to the same restrictions in the succeeding years. In no event, however, shall any such foreign tax credit be carried forward more than seven (7) years."
- Section 6. Section 352 of title 54 of the Code of the

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- 1 Federated States of Micronesia, as amended by Public Law No.
- 2 16-52 and 17-73, is hereby further amended to read as follows:
- 3 "Section 352. <u>Payment of tax due</u>. Taxes shall be paid
- 4 as follows:
- (1) Each Major Corporation and Major FSM Branch shall, 5 pay fifty percent (50%) of the tax it paid for the 6 income of the previous fiscal year, if any, hereinafter 7 referred to as "Tax Deposit", to the FSM by the end of 8 the eighth (8<sup>th</sup>) month of the current fiscal year. 9 is unless the Major Corporation or Major FSM Branch, as 10 the case may be, requests a reduction or waiver as the 11 12 Tax Deposit is rendered unnecessary because the expected tax payable in the current fiscal year is less than the 13 amount of the Tax Deposit. Reduction or waiver of the 14 15 Tax Deposit is subject to approval by the Secretary; however, such approval must not be unreasonably 16 17 withheld.
  - (2) A Major Corporation or Major FSM Branch which pays an amount less than the Tax Deposit shall pay interest on the delinquent tax balance of one-half of one percent (0.5%) for each full month until the full amount is paid unless approval is granted under subsection (1) of this section).
  - (3) A Major Corporation that does not have a previous fiscal year to determine its Tax Deposit either because

it is newly formed or is redomesticating into the
Federated States of Micronesia or a Major FSM Branch
that does not have previous fiscal year to determine its
tax Deposit because it newly created a Permanent
Establishment in the Federated States of Micronesia,
shall be exempt from the payment of Tax Deposit and any
filing requirements pertaining to the Tax Deposit.

- (4) A Major Corporation and Major FSM Branch shall complete and submit to the Department of Finance and Administration an annual statement declaring the taxable income with permitted deductions and exemptions, hereinafter referred to as "Tax Return", by the last business day of the sixth month period following the last day of the fiscal year of the Major Corporation or Major FSM Branch, respectfully. The annual statement shall be accompanied by one of the following:
- (a) Any additional tax payment, after the subtraction of the Tax Deposit, due as shown on the Tax Return of the Major Corporation or Major FSM Branch, as the case may be, shall be paid by the last business day of the sixth month period following the last day of the fiscal year of the Major Corporation or Major FSM Branch, respectfully.
- (b) If the Major Corporation or Major FSM Branch pays, including the Tax Deposit by the end of the eighth

$(8^{th})$ month during the fiscal year, as per sub-section 1
above, an amount less than the tax due as shown on the
annual tax return by the last business day of the six
month period following the last day of the fiscal year
of the Major Corporation or Major FSM Branch,
respectfully, it shall pay interest on the delinquent
tax balance of one half of one percent (0.5%) for each
full month until the full amount is paid.

- (5) Should the Tax Deposit paid by the Major
  Corporation or Major Branch exceed the total annual
  income tax amount shown on the Tax Return resulting in
  overpayment of tax, then the Major Corporation or Major
  FSM Branch, as the case may be shall be entitled to
  their rights conferred under section 332, chapter 3 of
  title 54 of the Code of the Federated States of
  Micronesia. A Major Corporation or Major FSM Branch
  shall apply to the Department of Finance and
  Administration for either of the following tax treatment
  options provided under Section 332 by indicating their
  choice in the Tax Return form:
- (a) To have the overpaid tax amount refunded in full, in which case, the Department of Finance and Administration shall credit the bank account of Major Corporation or Major FSM Branch, as the case may be, within a two (2) month period from the last business of

1	the sixth month period following the last day of the	
2	fiscal year of Major Corporation or Major FSM Branch,	
3	respectfully;	
4	(b) To have the overpaid tax amount credited to	)
5	any tax payments by the Major Corporation or the Major	
6	FSM Branch, as the case may be to the Federated States	
7	of Micronesia."	
8	Section 7. Section 360 title 54 of the Code of the Federat	ed
9	States of Micronesia, as amended by Public Laws Nos. 16-52 and	
10	17-73, is hereby further amended to read as follows:	
11	"Section 360. Engaging in business or operating a	
12	business in the Federated States of Micronesia. A Maj	or
13	Corporation incorporated in the Federated States of	
14	Micronesia or a Major FSM Branch that only holds, buys	,
15	sell, transfers or otherwise transacts with overseas	
16	Assets (as defined below) is not engaging in business	in
17	the Federated States of Micronesia or a business	
18	operating in the Federated States of Micronesia for th	.e
19	purposes of section 323 of this chapter or title 32,	
20	chapter 2: the Foreign-Investment Act of the Code of t	he
21	Federated States of Micronesia. For the purposes of	
22	this section 360, "Overseas Assets" means assets or	
23	property located outside of the Federated States of	
24	Micronesia, including but not limited to, businesses,	
25	shares, stocks, bonds, annuities, treasury bills,	

1	partnership units or trust units, real estate, precious
2	metals, antiques and art."
3	Section 8. 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.
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9	December 19th , 2014
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13	/s/ Manny Mori
14	Manny Mori President
15	Federated States of Micronesia
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