December 19, 2014

The Honorable Dohsis Halbert
Speaker
Eighteenth Congress of the Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear Speaker Halbert:

I am pleased to transmit the following Congressional Act, which I have signed to become Public Law No. 18-103:


As I indicated before, this amendment was designed to capture the additional potential benefits from the major corporation scheme, by providing incentives to foreign corporations that encourage them to accelerate the transfer of their assets and investments to FSM. This is a major undertaking that will be very beneficial to this nation.

In view of the foregoing, I take this opportunity to thank Congress and its staff for taking favorable action on this important subject matter.

Sincerely,

Manny Mori
President

Enclosures:

Yr: Acting Chief Justice, FSM Supreme Court
Secretary, Department of Justice
Director, Office of SBOC
Legislative Counsel, CFSM
Library, CFSM
PIO, FSM
December 01, 2014

His Excellency Manny Mori  
President  
Federated States of Micronesia  
Palikir, Pohnpei FM 96941

Dear President Mori:

I have the honor to transmit herewith Congressional Act No. 18-106, "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.", which was passed by the Eighteenth Congress of the Federated States of Micronesia, Fifth Special Session, 2014, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

[Signature]

Liwiana Ramon Ioanis  
Chief Clerk, Congress of the  
Federated States of Micronesia

Enclosures
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.

INTRODUCED BY SENATOR: FLORENCIO S. HARPER (BY REQUEST)
DATE: NOVEMBER 18, 2014

REFERRED TO: COMMITTEE ON WAYS AND MEANS
FIRST READING: NOVEMBER 25, 2014
SECOND READING: NOVEMBER 26, 2014

Liwiana Ramon Ioains
Chief Clerk, FSM Congress
ACT NO. 18-106

(CONGRESSIONAL BILL NO. 18-237)

We hereby certify that on November 26 the foregoing act passed Second and Final Reading of the Eighteenth Congress of the Federated States of Micronesia, Fifth Special Session, 2014, by a two-thirds vote of all the State delegations as required under article IX, section 20, of the Constitution of the Federated States of Micronesia.

Dohsis Halbert
Speaker
Congress of the Federated States of Micronesia

Liwiana Ramon Iloanis
Chief Clerk
Congress of the Federated States of Micronesia
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 312. Definitions.

(1) 'Control group' of a corporation for purposes of this chapter shall mean a group of corporations comprising of:

(a) the corporation,

(b) other corporations in which the corporation 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 paragraph (c) of this section.

(2) 'Major Corporation' means any corporation not
principally engaged in business in the Federated States of Micronesia as a bank (as such term is defined in title 29 of the Code of the Federated States of Micronesia, section 102(1)), formed on or after January 1, 2005, and,

(a) whose shareholders equity or paid-Capital as of the beginning of its fiscal year is $1,000,000 or more; or

(b) the aggregate amount of the shareholders equity or Paid-in Capital of the control group is $10,000,000 or more; or

(c) that is a captive insurance company licensed pursuant to title 37 of the Code of the Federated States of Micronesia regardless of the amount of capitalization.

(3) 'Major FSM Branch' means any corporation not principally engaged in business in the Federated States of Micronesia as a bank (as such term is defined in title 29 of the Code of the Federated States of Micronesia, section 102(1) authorized by law to issue stock, organized under laws other than the laws of the 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 States of Micronesia.
States of Micronesia and whose Paid-in Capital as of the
beginning of its fiscal year is $1,000,000 or more.

(4) 'Permanent Establishment' means a fixed
place of business through which the business of an
enterprise is wholly or party carried on.

(5) 'Secretary' means the Secretary of the Department
of Finance and Administration.

(6) 'Taxable Year' shall means the fiscal year of a
Major Corporation or Major FSM Branch, as the case may
be, as reported under section 314 of this chapter.

(7) 'Paid-in Capital' for purpose of this chapter
shall mean: (I) in the case of a Major Corporation, the
total amount of consideration contributed to the company
for the issuance of shares; and (II) in the case of a
Major FSM Branch, the total amount of Domestic Capital
(as defined in section 314(2) registered with the
Registrar of Corporation."

Section 2. Section 313 of title 54 the Code of the Federated
States of Micronesia, as amended by Public Laws Nos. 14-110, 16-19
and 16-52, is hereby further amended to read as follows:

"Section 313. Applicability of this chapter. Taxes
imposed under this chapter shall apply to all Major
Corporations as defined in section 312. In case of
conflict, this chapter shall prevail over other laws or
regulations of the Federated States of Micronesia.
Section 3. Section 314 of title 54 of the Code of the
Federated States of Micronesia, as enacted by Public Laws Nos.
13-71, is hereby amended to read as follows:

"Section 314. Filing of report. A major corporation
shall file an initial written report with the Secretary.
The written report shall be signed by the authorized
representative of the major corporation and shall state:

(1) A Major Corporation that is a Domestic
Corporation shall file an initial written report with
the Secretary. The written report shall be signed by
the authorized representative of the Major Corporation
and shall state:

(a) the true and correct name of the Major
Corporation;

(b) the taxpayer identification number or other
identifying number, if any, of the Major Corporation;

(c) the mailing and office address of the Major
Corporation;

(d) the name, address, telephone, and fax
numbers of the authorized representative for the Major
Corporation;

(e) the nature of the Major Corporation’s
principal business; and

(f) the last day of the Major Corporation's
fiscal year. The report shall be filed by the Major
Corporation within sixty (60) days of the Major Corporation becoming subject to this chapter."

(2) Every Foreign Corporation which undertakes to do or carry on business in the Federated States of Micronesia as a Major Corporation shall be permitted to do so upon:

(a) remitting the sum of $1,000,000 or more (or its equivalent in another currency) to a commercial bank licensed to business in the Federated States of Micronesia, hereinafter referred to as a "Licensed Bank", as initial capital for the purpose of doing or carrying on business in the Federated States of Micronesia;

(b) registering such amount as its initial domestic capital ("Domestic Capital") by filing with the Registrar of Corporations a copy of a statement prepared by such Licensed Bank duly confirming its receipt from the corporation of such Domestic Capital;

(c) filing with the Registrar of Corporations a declaration stating:

(i) the true and correct name of the corporation;

(ii) the state or country wherein it was incorporated;

(iii) the location and address of its
principal office;

(iv) the location and address of its branch office in the Federated States of Micronesia, including its mailing address;

(v) the names and addresses of its officers and directors;

(vi) the nature of the corporation's principal business (unless otherwise stated in the Certificate of Incorporation, Charter, Articles of Association or equivalent document to be filed pursuant to paragraph (d) of this subsection);

(vii) its Domestic Capital which shall be $1,000,000 or more;

(viii) the name and branch address of the licensed Bank which received the Domestic Capital;

(ix) the name, citizenship and business address of the person residing within the Federated States of Micronesia, or notices from officials of the Federated States of Micronesia, may be served;

(x) the last day of the corporation's fiscal year; and

(d) filing with the Registrar of Corporations a copy of the corporation's Certificate of Incorporation, Charter, Articles of Association or equivalent document."
Section 4. Section 322 of title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 16-52, is hereby further amended to read as follows:

"Section 322. Taxable income defined.

(1) The taxable income of a Major Corporation equals its income, before income taxes, earned in the taxable year as determined under International Financial Reporting Standard ('IFRS') or Generally Accepted Accounting Principles ('GAAP'), as IFRS or GAAP, as the case may be, is regularly utilized to calculate taxable income in the Major Corporation corporation's principal shareholder's, if a corporation, place of incorporation or, if an individual, country of primary residence.

(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."

Section 5. Section 331 of title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 16-52, is hereby amended to read as follows:

"Section 331. Non-refundable credit for payment of
foreign taxes.

(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 Federated States of Micronesia, as amended by Public Law No. 16-52 and 17-73, is hereby further amended to read as follows:

"Section 352. Payment of tax due. Taxes shall be paid as follows:

(1) Each Major Corporation and Major FSM Branch shall, pay fifty percent (50%) of the tax it paid for the income of the previous fiscal year, if any, hereinafter referred to as "Tax Deposit", to the FSM by the end of the eighth (8th) month of the current fiscal year. This is unless the Major Corporation or Major FSM Branch, as the case may be, requests a reduction or waiver as the Tax Deposit is rendered unnecessary because the expected tax payable in the current fiscal year is less than the amount of the Tax Deposit. Reduction or waiver of the Tax Deposit is subject to approval by the Secretary; however, such approval must not be unreasonably 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 (8th) 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
the sixth month period following the last day of the
fiscal year of Major Corporation or Major FSM Branch,
respectfully;

(b) To have the overpaid tax amount credited to
any tax payments by the Major Corporation or the Major
FSM Branch, as the case may be to the Federated States
of Micronesia."

Section 7. Section 360 title 54 of the Code of the Federated
States of Micronesia, as amended by Public Laws Nos. 16-52 and
17-73, is hereby further amended to read as follows:

"Section 360. Engaging in business or operating a
business in the Federated States of Micronesia. A Major
Corporation incorporated in the Federated States of
Micronesia or a Major FSM Branch that only holds, buys,
sell, transfers or otherwise transacts with overseas
Assets (as defined below) is not engaging in business in
the Federated States of Micronesia or a business
operating in the Federated States of Micronesia for the
purposes of section 323 of this chapter or title 32,
chapter 2: the Foreign-Investment Act of the Code of the
Federated States of Micronesia. For the purposes of
this section 360, "Oversea Assets" means assets or
property located outside of the Federated States of
Micronesia, including but not limited to, businesses,
shares, stocks, bonds, annuities, treasury bills,
partnership units or trust units, real estate, precious
metals, antiques and art."

Section 8. This act shall become law upon approval by the
President of the Federated States of Micronesia or upon its
becoming law without such approval.

December 19, 2014

Manny Mori
President
Federated States of Micronesia