
A BILL FOR AN ACT

To further amend title 12 of the Code of the Federated States of Micronesia by amending chapter 17, and for other purposes.

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

1 Section 1. Section 1704 of title 12 of the Code of the Federated
2 States of Micronesia, as amended, is hereby further amended to read as
3 follows:

4 "Section 1704. Definitions. Unless the subject or context
5 otherwise requires, in this chapter [~~act~~]:

6 (1) 'Appeal' includes proceedings by way of
7 discharging or setting aside a judgment, and an
8 application for a new trial or for a stay of execution.

9 (2) 'Criminal investigation' means -

10 (a) an investigation commenced in the Federated
11 States of Micronesia in respect of an offense committed,
12 suspected on reasonable grounds to have been committed
13 or to be likely to be committed against the law of the
14 Federated States of Micronesia; or

15 (b) in relation to a foreign state, an
16 investigation commenced in the foreign state in respect
17 of an offense committed, suspected on reasonable grounds
18 to have been committed or to be likely to be committed
19 against the law of that foreign state.

20 (3) 'Criminal matter' means criminal investigations

1 and criminal proceedings.

2 (4) 'Criminal proceedings' means -

3 (a) proceedings instituted in respect of an
4 offense committed, or suspected on reasonable grounds to
5 have been committed, against the law of the Federated
6 States of Micronesia, and includes the trial of a person
7 for the offense and any proceedings to determine whether
8 or not a person should be tried for the offense; or

9 (b) proceedings instituted in respect of an
10 offense committed, or suspected on reasonable grounds to
11 have been committed, against the law of a foreign state,
12 and includes the trial of a person for the offense and
13 any proceedings to determine whether or not a person
14 should be tried for the offense.

15 (5 [2]) 'Data' means representations, in any form, of
16 information or concepts.

17 (6 [3]) 'Document' means any record of information and
18 any material on which data is recorded or marked and
19 which is capable of being read or understood by a
20 person, computer system or other device, and includes,
21 but is not limited to:

22 (a) anything on which there is writing;

23 (b) anything on which there are marks, figures,
24 symbols, or perforations having meaning for persons
25 qualified to interpret them;

26 (c) anything from which sounds, images or

1 writings can be produced, with or without the aid of
2 anything else; ~~or~~

3 (d) a map, plan, drawing, photograph or similar
4 thing; or

5 (e) an electronic document.

6 (7 [4]) 'Foreign confiscation order' means an order, made
7 by a court in a foreign state, for the purposes of the
8 confiscation or forfeiture of property in connection
9 with, or recovery of the proceeds of, a serious offense.

10 (8) 'Foreign pecuniary penalty order' means an order,
11 made by a court or other judicial authority in a foreign
12 state, for the purposes of imposing a pecuniary penalty
13 in respect of benefits derived by a person from the
14 commission of an offense against the law of that state,
15 but does not include an order for the payment of a sum
16 of money by way of compensation, restitution or damages
17 to an injured person.

18 (9 [5]) 'Foreign restraining order' means an order made
19 in respect of a serious offense by a court in a foreign
20 state for the purpose of restraining a particular person
21 or all persons from dealing with property.

22 (10 [6]) 'Foreign State' means:

23 (a) any country other than the Federated States
24 of Micronesia; and

25 (b) every constituent part of such country,
26 including a territory, dependency or protectorate, or

1 political subdivision which administers its own laws
2 relating to international cooperation.

3 (~~11~~ [7]) 'Interest', in relation to property, means a:

4 (a) legal or equitable estate or interest in the
5 property; or

6 (b) right, power or privilege in connection with
7 the property, whether present or future and whether
8 vested or contingent.

9 (~~12~~ [8]) 'Person' means any natural or legal person.

10 (~~13~~ [9]) 'Place' includes any land (whether vacant,
11 enclosed or built upon, or not), and any premises.

12 (~~14~~ [~~10~~]) 'Premises' includes the whole or any part of
13 a structure, building, aircraft, or vessel.

14 (~~15~~ [~~11~~]) 'Proceedings' means any procedure conducted
15 by or under the supervision of a judge, magistrate or
16 judicial officer, however described, in relation to any
17 alleged or proven offense, or property derived from
18 such offense, and includes an inquiry, investigation, or
19 preliminary or final determination of facts.

20 (~~16~~ [~~12~~]) 'Proceeds of crime' has the meaning given to it
21 by section 903 of title 11 of the Code of the Federated
22 States of Micronesia [~~means fruits of a crime, or any~~]
23 [~~property derived or realized directly or indirectly~~
24 ~~from a serious offense and includes, on a proportional~~
25 ~~basis, property into which any property derived or~~
26 ~~realized directly from the offense was later~~

1 ~~successively converted, transformed or intermingled, as~~
2 ~~well as income, capital or other economic gains derived~~
3 ~~or realized from such property at any time since the~~
4 ~~offense].~~

5 (17 [13]) 'Property' means real or personal property of
6 every description, whether situated in the Federated
7 States of Micronesia or elsewhere and whether tangible
8 or intangible, and includes an interest in any such real
9 or personal property.

10 (18 [14]) 'Secretary' means the Secretary of the
11 Department of Justice of the Federated States of
12 Micronesia or chief law enforcement officer of the
13 Federated States of Micronesia, whatever the title of
14 such position is or in the future may become.

15 (19 [15]) 'serious offense' has the meaning given to it
16 by section 903 of title 11 of the Code of the Federated
17 States of Micronesia [~~means a violation of:~~

18 ~~(a) any law of Federated States of Micronesia or~~
19 ~~any of its States or political subdivisions, which is a~~
20 ~~criminal offense punishable by imprisonment for a term~~
21 ~~of more than one year;]~~

22 ~~[(b) a law of a foreign state, in relation to acts~~
23 ~~or omissions, which had they occurred in Federated~~
24 ~~States of Micronesia or any of its States or political~~
25 ~~subdivisions, would have constituted a criminal offense~~
26 ~~punishable by imprisonment for a term of more than one~~

1 year].

2 (20 [16]) 'Supreme Court' means the Supreme Court of the
3 Federated States of Micronesia, and all its divisions,
4 wherever or whenever constituted.

5 (21) 'Tainted property' has the meaning given to it by
6 section 903 of title 11 of the Code of the Federated
7 States of Micronesia.

8 (22 [17]) A reference in this chapter [~~act~~] to the law of
9 the Federated States of Micronesia, any State of the
10 Federated States of Micronesia, or any foreign state
11 includes a reference to written or unwritten law of, or
12 in force in, any part of the Federated States of
13 Micronesia (including its States and political
14 subdivisions), any part of that State of the Federated
15 States of Micronesia, or any part of that foreign state,
16 as the case may be."

17 Section 2. Section 1705 of title 12 of the Code of the
18 Federated States of Micronesia, as amended, is hereby further
19 amended to read as follows:

20 "Section 1705. Authority to make and act on mutual
21 legal assistance requests.

22 (1) The Secretary may make requests on behalf of
23 the Federated States of Micronesia to the
24 appropriate authority of a foreign state for mutual
25 legal assistance in any criminal matter
26 [~~investigation commenced or proceeding~~] instituted

1 in the Federated States of Micronesia, relating to
2 any serious offense. When the request is to a
3 foreign state [~~country~~], the request shall be made
4 through the Secretary who shall give notice to the
5 Secretary of the Department of Foreign Affairs of
6 the Federated States of Micronesia, of the name of
7 the foreign state [~~country~~] to which the request is
8 being made, the nature of the request, and the
9 nature of the criminal matter.

10 (2) The Secretary may, in respect of any request
11 from a foreign state for mutual assistance in any
12 criminal matter [~~investigation commenced or~~
13 ~~proceeding~~] instituted in that state relating to a
14 serious offense:

15 (a) grant the request, in whole or in part, on
16 such terms and conditions as he or she deems fit;

17 (b) refuse the request, in whole or in part, on
18 the grounds that to grant the request would be likely to
19 prejudice the sovereignty, security or other essential
20 public interest of the Federated States of Micronesia;
21 or

22 (c) after consulting with the competent authority
23 of the foreign state, postpone the request, in whole or
24 in part, on the grounds that granting the request
25 immediately would be likely to prejudice the conduct of
26 an investigation or proceeding in the Federated States

1 of Micronesia.

2 (3) Requests on behalf of the Federated States of
3 Micronesia to the appropriate authorities of foreign
4 states for assistance of the kind referred to in section
5 1707 of this chapter [~~title~~] shall be made only by or
6 with the authority of the Secretary.

7 (4) Notwithstanding any other provision of this
8 chapter [~~act~~], nothing in this chapter [~~act~~] shall be
9 construed or interpreted to affect or take away such
10 powers of a State of the Federated States of Micronesia
11 to deal with a foreign state regarding its own criminal
12 investigations and other mutual assistance in criminal
13 matters to the extent such dealings do not conflict with
14 any constitutional powers of the Federated States of
15 Micronesia on the same subjects or matters. A State of
16 the Federated States of Micronesia may request through
17 the Secretary any assistance in criminal matters that it
18 may need from a foreign state, as authorized in this
19 chapter [~~act~~]."

20 Section 3. Section 1706 of title 12 of the Code of the
21 Federated States of Micronesia, as amended, is hereby further
22 amended to read as follows:

23 "Section 1706. Saving provision for other requests or
24 assistance in criminal matters. Nothing in this chapter
25 [~~act~~] shall be taken to limit:

26 (1) the power of the Secretary, apart from this

1 chapter [act], to make requests to foreign states or act
2 on requests from foreign states for assistance in
3 [~~investigations or proceedings in~~] criminal matters;

4 (2) the power of any other person or court, apart from
5 this chapter [act], to make requests to foreign states
6 or act on requests from foreign states for forms of
7 international assistance other than those specified in
8 section 1707 of this chapter [title, or]

9 (3) the nature or extent of assistance in
10 investigations or proceedings in criminal matters which
11 the Federated States of Micronesia may lawfully give to
12 or receive from foreign states; or

13 (4) the existing and new forms of cooperation, whether
14 formal or informal in respect of criminal matters
15 between the Federated States of Micronesia and any
16 foreign state, or the development of other forms of such
17 cooperation."

18 Section 4. Section 1707 of title 12 of the Code of the
19 Federated States of Micronesia, as amended, is hereby further
20 amended to read as follows:

21 "Section 1707. Mutual legal assistance requests by the
22 Federated States of Micronesia. The requests which the
23 Secretary is authorized to make under section 1705 are
24 that the foreign state:

25 (1) have evidence taken, obtain other documents or
26 articles, or have documents or other articles produced

1 in evidence in the foreign state;

2 (2) obtain and execute search warrants or other lawful
3 instruments authorizing a search for things believed to
4 be located in that foreign state, which may be relevant
5 to investigations or proceedings in the Federated States
6 of Micronesia, and if found, seize them;

7 (3) locate and [~~or~~] restrain any property believed to
8 be the proceeds of crime [~~located in the foreign state~~]
9 or that is subject to a restraining order made pursuant
10 to chapter 9 of title 11 of the Code of the Federated
11 States of Micronesia;

12 (4) locate and confiscate any property [~~believed to be~~
13 ~~located in the foreign state,~~] which is the subject of a
14 confiscation or pecuniary penalty order made pursuant to
15 chapter 9 of title 11 of the Code of the Federated
16 States of Micronesia, or any other forfeiture order;

17 (5) transmit to the Federated States of Micronesia any
18 such confiscated property or any proceeds realized
19 therefrom, or any such evidence, documents, articles or
20 things;

21 (6) transfer in custody to the Federated States of
22 Micronesia a person detained in the foreign state who
23 consents to assist the Federated States of Micronesia in
24 the relevant investigation or proceedings, and make
25 arrangements for other persons in a foreign state travel
26 to the Federated States of Micronesia to give evidence

1 or assist in investigations;

2 (7) provide any other form of assistance in any
3 investigation commenced or proceeding instituted in the
4 Federated States of Micronesia that involves or is
5 likely to involve the exercise of a coercive power over
6 a person or property believed to be in the foreign
7 state; ~~[or]~~

8 (8) permit the presence of nominated persons during
9 the execution of any request made under this chapter
10 ~~act; or~~

11 (9) identify, locate and detain a person in a foreign
12 state for extradition or other purposes."

13 Section 5. Section 1709 of title 12 of the Code of the
14 Federated States of Micronesia, as amended, is hereby deleted in
15 its entirety and a new section 1709 is enacted to read as follows:

16 "Section 1709. Assistance in locating or identifying
17 persons in a foreign state. If the Secretary is
18 satisfied that there are reasonable grounds for
19 believing that there is, in a foreign state, a person
20 who -

21 (1) is a fugitive or is subject to an arrest
22 warrant in the Federated States of Micronesia;

23 (2) is or might be concerned in or affected by any
24 criminal matter in Federated of States of Micronesia; or

25 (3) could give or provide evidence or assistance
26 relevant to any criminal matter;

1 the Secretary may request a foreign state to assist in
2 locating that person, or, if the person's identity is
3 unknown, in identifying and locating that person."

4 Section 6. Section 1710 of title 12 of the Code of the
5 Federated States of Micronesia, as amended, is hereby re-
6 designated as section 1720 and a new section 1710 is enacted to
7 read as follows:

8 "Section 1710. Assistance in obtaining evidence in a
9 foreign state.

10 (1) The Secretary may, if the Secretary is satisfied
11 that there are reasonable grounds for believing any
12 evidence, document or other article would be relevant to
13 any criminal matter in Federated States of Micronesia,
14 request a foreign state to arrange for -

15 (a) such evidence, including testimony, to be
16 taken in the foreign state; or

17 (b) such document or other article in the foreign
18 state to be produced;

19 and for the evidence or document be transmitted to the
20 Department of Justice for the Federated States of
21 Micronesia.

22 (2) Any testimony taken under oath during a deposition
23 or judicial proceeding that is received from a foreign
24 state pursuant to a request made under subsection (1) of
25 this section, and that purports to have been signed by
26 the deponent or witness and the person taking the

1 evidence, or to have been certified as a correct record
2 by the person taking the testimony shall, subject to the
3 rules relating to the admission of evidence, be
4 admissible as evidence in the criminal proceedings to
5 which the request relates.

6 (3) Any document, other than a deposition or hearing
7 transcript, received from a foreign state pursuant to a
8 request made under subsection (1) of this section shall,
9 subject to the rules relating to the admission of
10 evidence, be admissible as evidence in criminal
11 proceedings to which the request relates as if produced
12 by the person who produced the document pursuant to the
13 order of the court or other judicial authority of that
14 foreign state.

15 (4) When making a request under subsection (1) of
16 this section, the Secretary may also request that
17 an opportunity be given for the person giving
18 testimony, or producing the document or other
19 article, to be examined or cross-examined through
20 telephone, video or internet link, or any other
21 means, from the Federated States of Micronesia by -

22 (a) a party to the proceeding, or the party's
23 legal representative; or

24 (b) a person being investigated, or the person's
25 legal representative.

26 (5) All courts or other judicial authorities in the

1 Federated States of Micronesia shall take judicial
2 notice of any seal or signature impressed, affixed,
3 appended, or subscribed on or to any deposition or other
4 form of testimony tendered in evidence under this
5 section."

6 Section 7. Section 1711 of title 12 of the Code of the
7 Federated States of Micronesia, as amended, is hereby re-
8 designated as section 1724 and a new section 1711 is enacted to
9 read as follows:

10 "Section 1711. Assistance in arranging attendance of a
11 foreign person.

12 (1) The Secretary may, if the Secretary is satisfied
13 that there are reasonable grounds for believing that a
14 person in a foreign state could give or provide evidence
15 or assistance relevant to any criminal matter in
16 Federated of States of Micronesia, request the foreign
17 state to assist in arranging the attendance of that
18 person in Federated of States of Micronesia to give or
19 provide evidence or assistance.

20 (2) Where the Secretary is satisfied that a person in
21 respect of whom a request is made to a foreign state
22 under subsection (1) of this section consents to travel
23 to Federated of States of Micronesia to give or provide
24 evidence or assistance pursuant to that request, the
25 Secretary may make arrangements with that foreign state
26 for the purposes of -

1 (a) the removal of the person to Federated of
2 States of Micronesia;

3 (b) in the case of a foreign prisoner who the
4 foreign state requests to be kept in custody, the
5 custody of that person while in Federated of States of
6 Micronesia;

7 (c) the return of the person to the foreign
8 state; and

9 (d) other relevant arrangements.

10 (3) Where, pursuant to this section, the Secretary
11 requests the assistance of a foreign state in arranging
12 the attendance of any person in Federated of States of
13 Micronesia, the person to whom the request relates shall
14 not be subject to any penalty or liability or otherwise
15 prejudiced in law by reason only of that person's
16 refusal or failure to consent to attend as requested."

17 Section 8. Section 1712 of title 12 of the Code of the
18 Federated States of Micronesia, as amended, is hereby deleted in
19 its entirety and a new section 1712 is enacted to read as follows:

20 "Section 1712. Safe conduct guarantee of foreign person.

21 (1) Subject to subsection (3) of this section, a
22 person, including a foreign prisoner, who is in
23 Federated of States of Micronesia pursuant to a request
24 made under section 1711 of this chapter, shall not -

25 (a) be detained, prosecuted, or punished in
26 Federated of States of Micronesia for any offense that

1 is alleged to have been committed, or that was
2 committed, before the person's departure from the
3 foreign state pursuant to the request;

4 (b) be subjected to any civil proceedings in
5 Federated of States of Micronesia in respect of any act
6 or omission that is alleged to have occurred, or that
7 occurred, before the person's departure from the foreign
8 state pursuant to the request, being civil proceedings
9 to which the person could not be subjected if the person
10 were not in Federated of States of Micronesia;

11 (c) be required to give or provide evidence or
12 assistance in relation to any criminal matter in
13 Federated of States of Micronesia other than the
14 criminal matter to which the request relates;

15 (d) be required, in the proceedings or
16 investigation to which the request relates, to answer
17 any question that the person would not be required to
18 answer if those proceedings or that investigation were
19 taking place in the foreign state; or

20 (e) be required, in the proceedings or
21 investigation to which the request relates, to produce
22 any document or article that the person would not be
23 required to produce if those proceedings or that
24 investigation were taking place in the foreign state.

25 (2) For the purposes of subsection (1) of this
26 section, a duly authenticated foreign law immunity

1 certificate is admissible in proceedings as prima facie
2 evidence of the matters stated in the certificate.

3 (3) Subsection (1) of this section shall not apply in
4 relation to a person where -

5 (a) the person has left Federated of States of
6 Micronesia and then returns otherwise than pursuant to
7 the same or another request;

8 (b) the person has had the opportunity to leave
9 Federated of States of Micronesia and has remained in
10 Federated of States of Micronesia for a purpose other
11 than for-

12 (i) the purpose to which the request
13 relates;

14 (ii) the purpose of giving evidence in any
15 criminal proceedings in Federated of States of
16 Micronesia certified by the Secretary, in writing, to be
17 proceedings in which it is desirable that the person
18 give evidence; or

19 (iii) the purpose of giving assistance in
20 relation to an investigation in Federated of States of
21 Micronesia certified by the Secretary, in writing, to be
22 an investigation in relation to which it is
23 desirable that the person give assistance; or

24 (c) the person, by voluntary agreement and
25 written consent, entered into a stipulated settlement or
26 resolution of any criminal charges pending in the

1 Federated States of Micronesia, or of any civil matter.
2 (4) A certificate given by the Secretary for the
3 purposes of subsections (3) (b) (ii) or 3(b)(iii) of
4 this section has effect from the day specified in the
5 certificate.”

6 Section 9. Section 1713 of title 12 of the Code of the
7 Federated States of Micronesia, as amended, is hereby deleted
8 in its entirety and a new section 1713 is enacted to read as
9 follows:

10 “Section 1713. Assistance in serving documents in a
11 foreign state. The Secretary may, if the Secretary is
12 satisfied that for the purposes of, or in connection
13 with, any criminal matter in Federated of States of
14 Micronesia it is necessary or desirable to serve any
15 process on a person or an authority in a foreign state,
16 request a foreign state to assist in effecting service
17 of the process.”

18 Section 10. Section 1714 of title 12 of the Code of the
19 Federated States of Micronesia, as amended, is hereby deleted in
20 its entirety and a new section 1714 is enacted to read as follows:

21 “Section 1714. Assistance in obtaining documents or
22 other articles in a foreign state. The Secretary may,
23 if the Secretary is satisfied that there are reasonable
24 grounds for believing that a document or other article
25 is in a foreign state and would, if produced, be
26 relevant to any criminal matter in Federated of States

1 of Micronesia, request that foreign state to assist in
2 obtaining, by search and seizure, if necessary, that
3 document or other article."

4 Section 11. Section 1715 of title 12 of the Code of the
5 Federated States of Micronesia, as amended, is hereby deleted in
6 its entirety and a new section 1715 is enacted to read as follows:

7 "Section 1715. Request for enforcement of restraining,
8 confiscation and pecuniary penalty orders in a foreign
9 state. The Secretary may, if the Secretary is satisfied
10 that there are reasonable grounds for believing that
11 some or all of any property in respect of which an order
12 for the enforcement of a restraining order, confiscation
13 order or pecuniary penalty order is made is located in a
14 foreign state, request a foreign state to make
15 arrangements for the enforcement and satisfaction of the
16 order."

17 Section 12. Section 1716 of title 12 of the Code of the
18 Federated States of Micronesia, as amended, is hereby deleted in
19 its entirety and a new section 1716 is enacted to read as follows:

20 "Section 1716. Request for issuance of warrants or
21 orders in a foreign state. The Secretary may request a
22 foreign state to assist in obtaining and executing a
23 warrant or order in respect to a criminal matter
24 relating to a serious offense, including, but not
25 limited to:

26 (1) a restraining order, confiscation order or a

-
-
- 1 pecuniary penalty order;
2 (2) a search warrant;
3 (3) a production order; or
4 (4) a monitoring order."

5 Section 13. Section 1717 of title 12 of the Code of the
6 Federated States of Micronesia, as amended, is hereby re-
7 designated as section 1729 and a new section 1717 is enacted to
8 read as follows:

9 "Section 1717. Foreign requests for issuance of a
10 warrant.

11 (1) Notwithstanding anything contained in any other
12 law, where the Secretary grants a request by a foreign
13 state to obtain evidence in the Federated States of
14 Micronesia, the authority of the foreign state may
15 request that the Department of Justice for the Federated
16 States of Micronesia apply to the Supreme Court for a
17 search warrant on behalf of the authority.

18 (2) The Supreme Court, to which an application is made
19 under subsection (1) of this section, may issue a search
20 warrant under this subsection, where it is satisfied
21 that there is probable cause to believe that:

22 (a) a serious offense has been or may have been
23 committed against the laws of the foreign state; and

24 (b) evidence relating to that offense may be
25 found in or on a premises, building, receptacle or other
26 place or thing located in the Federated States of

1 Micronesia, including evidence of:

2 (i) any article or thing upon or in respect
3 of which a serious offense under the law of a foreign
4 state has been, or may have been, committed; or

5 (ii) any document or other article which
6 there are reasonable grounds for believing will be
7 evidence as to the commission of a serious offense; or

8 (iii) any document or other article which
9 there are reasonable grounds for believing is intended
10 to be used for purpose of committing a serious offense;

11 and

12 (c) it would not, in all the circumstances, be
13 more appropriate to grant an order under section 1718 of
14 this chapter.

15 (3) For the purposes of subsection (2)(a) of this
16 section, a statement contained in the foreign request to
17 the effect that a serious offense has been or may have
18 been committed against the laws of the foreign state is
19 prima facie evidence of that fact, without proof of the
20 signature or official character of the person appearing
21 to have signed the foreign request.

22 (4) Subject to any conditions specified in the warrant
23 issued pursuant to this section, every warrant issued
24 shall authorize the law enforcement officer executing
25 the warrant -

1 (a) to enter and search the premises, building,
2 receptacle, place or thing specified in the warrant at
3 any time of day or night, or during specified hours,
4 within the time frame of the warrant;

5 (b) to use such assistance as may be reasonable
6 in the circumstances for the purpose of the entry and
7 search;

8 (c) to use such force as is reasonable in the
9 circumstances for the purposes of effecting entry, and
10 for breaking open anything in or on the premises,
11 building, receptacle, place or thing searched; and

12 (d) to search for and seize any document or other
13 article referred to in subsection (2) (b) of this
14 section.

15 (5) A search warrant shall be in the usual form in
16 which a search warrant is issued in the Federated States
17 of Micronesia, varied to the extent necessary to suit
18 the case.

19 (6) Where a law enforcement officer seizes any
20 document or other article pursuant to a warrant issued
21 under this section, the officer shall deliver the
22 document or other article into the custody of the
23 National Police of Department of Justice for the
24 Federated States of Micronesia, which shall arrange for
25 the document or other article to be kept for a
26 reasonable period pending further direction from the

1 Secretary as to the manner in which the document or
2 other article is to be dealt with.

3 (7) If no direction is given by the Secretary before
4 the expiry of the period referred to in subsection (6)
5 of this section, the National Police shall arrange for
6 the document or other article to be returned to the
7 person from whose possession it was seized as soon as
8 practicable after that period has expired.

9 (8) Before authorizing assistance under this section,
10 the Secretary shall obtain undertakings from the foreign
11 state that any document or other article that is seized,
12 provided or produced pursuant to the request by the
13 foreign state shall be used only for the purpose of, or
14 in connection with, the criminal matter to which the
15 request relates, unless the Secretary consents to the
16 use of the evidence, document or other article for
17 another purpose.

18 (9) No document or other article seized and ordered to
19 be sent to a foreign state shall be sent until the
20 Secretary is satisfied that the foreign state has agreed
21 to comply with any terms or conditions imposed in
22 respect of the sending abroad of the document or other
23 article.

24 (10) Where a search warrant is issued under this
25 section, the Secretary shall, at the request of the
26 authority of that foreign state, provide such

1 certification as that the authority may require
2 concerning the result of any search conducted pursuant
3 to the warrant, the place and circumstances of the
4 seizure of any document or other article pursuant to the
5 warrant, and the custody of any document or other
6 article so seized.

7 (11) The Supreme Court may adopt, recognize and enforce
8 foreign court orders certified or under seal, which
9 orders shall be presumed to be valid in the absence of
10 any evidence to the contrary."

11 Section 14. Section 1718 of title 12 of the Code of the
12 Federated States of Micronesia, as amended, is hereby deleted in
13 its entirety and a new section 1718 is enacted to read as follows:

14 "Section 1718. Foreign requests for obtaining evidence.

15 (1) Notwithstanding anything contained in any other
16 law, where the Secretary grants a request by a foreign
17 state to obtain evidence in the Federated States of
18 Micronesia, the Department of Justice for the Federated
19 States of Micronesia may apply to the Supreme Court for
20 the taking of evidence, including testimony, in the
21 Federated States of Micronesia or the production of
22 documents or other articles in the Federated States of
23 Micronesia on behalf of the authority.

24 (2) The Supreme Court, to which an application is made
25 under subsection (1) of this section, may issue an order
26 under this subsection, where it is satisfied that there

1 is probable cause to believe that:

2 (a) a serious offense has been or may have been
3 committed against the laws of the foreign state or the
4 request relates to criminal proceedings in the foreign
5 state; and

6 (b) there are reasonable grounds for believing
7 that the evidence can be taken from or given by a person
8 believed to be in the Federated States of Micronesia or,
9 as the case may be, the documents or other articles can
10 be produced in the Federated States of Micronesia.

11 (3) For the purposes of subsection (2)(a) of this
12 section, a statement contained in the foreign request to
13 the effect that a serious offense has been or may have
14 been committed against the laws of the foreign state is
15 prima facie evidence of that fact, without proof of the
16 signature or official character of the person appearing
17 to have signed the foreign request.

18 (4) An order under subsection (2) of this section:

19 (a) shall provide for the manner in which the
20 evidence is to be obtained in order to give proper
21 effect to the foreign state's request, and in
22 particular, may require any person named therein to:

23 (i) make a record from data or make a copy
24 of a record;

25 (ii) attend a deposition or hearing to give
26 testimony or provide other evidence under oath or

1 otherwise until excused; or

2 (iii) produce to the Supreme Court or to any
3 person designated by the Court, any document, or copy
4 thereof or other article; and

5 (b) may include such other terms and conditions
6 as the Supreme Court considers desirable, including
7 those relating to the interests of the person named
8 therein or of third parties.

9 (5) Where the Secretary authorizes the taking of
10 evidence under this section, the Supreme Court may
11 require each witness to provide testimony under oath
12 either at a hearing before the Supreme Court or at a
13 deposition, and shall -

14 (a) cause the evidence to be put in writing and
15 certify, in the prescribed form, that the evidence was
16 taken by or under the authority of the Supreme Court;
17 and

18 (b) cause the writing to be sent to the
19 Secretary.

20 (6) Where the Secretary authorizes the production of
21 documents or other articles, the Supreme Court may
22 require the production of the documents or other
23 articles and, unless the Supreme Court otherwise orders,
24 shall send the documents, or copies of the documents
25 certified by the Supreme Court to be true copies, or the
26 other articles to the Secretary.

1 (7) A person named in an order under subsection (2) of
2 this section shall not be required to give any evidence,
3 or to produce any document or other article, that the
4 person could not be compelled to give or produce in the
5 proceedings in the foreign state. The person may refuse
6 to answer a question or to produce a document or other
7 article where the refusal is based on:

8 (a) a law currently in force in the Federated
9 States of Micronesia;

10 (b) a privilege recognized by a law in force in
11 the foreign state that made the request; or

12 (c) a law currently in force in the foreign state
13 that would render the answering of that question or the
14 production of that document or other article by that
15 person, in the person's own jurisdiction, an offense.

16 (8) Where a person refuses to answer a question or to
17 produce a document or other article pursuant to
18 subsection (5) (b) or (c) of this section, the Supreme
19 Court shall report the matter to the Secretary who shall
20 notify the foreign state and request the foreign state
21 to provide a written statement on whether the person's
22 refusal was well founded under the law of the foreign
23 state.

24 (9) Any written statement received by the Secretary
25 from the foreign state in response to a request under
26 subsection (8) of this section, shall be admissible in

1 the evidence-gathering proceedings, and for the purposes
2 of this section be determinative of whether the person's
3 refusal is well founded under the foreign law.

4 (10) A person who, without reasonable excuse, refuses
5 to comply with a lawful order of the Supreme Court made
6 under this section, or who having refused to comply with
7 that order pursuant to subsection (7) of this section,
8 continues to refuse, notwithstanding the admission into
9 evidence of a statement under subsection (9) of this
10 section, to the effect that the refusal is not well
11 founded, commits a contempt of court and may be punished
12 accordingly.

13 (11) Any person giving evidence or producing documents
14 or other articles at a hearing or deposition, and the
15 authority of the foreign state, may appear and be
16 represented by counsel, and the certificate by the Judge
17 under subsection (5) of this section shall state whether
18 or not any such persons were present at the hearing or
19 deposition and, if so, whether or not they were legally
20 represented.

21 (12) Before authorizing assistance under this section,
22 the Secretary shall obtain undertakings from the foreign
23 state that any evidence, document or other article that
24 is obtained, provided or produced pursuant to the
25 request by the foreign state shall be used only for the
26 purpose of, or in connection with, the criminal matter

1 to which the request relates, unless the Secretary
2 consents to the use of the evidence, document or other
3 article for another purpose.

4 (13) No evidence, document or other article given or
5 produced pursuant to this section shall be sent to a
6 foreign state until the Secretary is satisfied that the
7 foreign state has agreed to comply with any terms or
8 conditions imposed in respect of the sending abroad of
9 the evidence, document or other article.

10 (14) The Supreme Court may adopt, recognize and enforce
11 foreign court orders certified or under seal, which
12 orders shall be presumed to be valid in the absence of
13 any evidence to the contrary."

14 Section 15. Section 1719 of title 12 of the Code of the
15 Federated States of Micronesia, as amended, is hereby re-
16 designated as section 1731 and a new section 1719 is enacted to
17 read as follows:

18 "Section 1719. Foreign requests for obtaining
19 attendance of persons in a foreign state.

20 (1) Where the Secretary approves a request of a
21 foreign state to assist in arranging for the attendance
22 in that state of a person in the Federated States of
23 Micronesia to provide evidence or to assist in an
24 investigation or proceeding in that state relating to a
25 serious offense, the Secretary may authorize assistance
26 in accordance with this section to facilitate that

1 attendance.

2 (2) Where an application is made under subsection (1)
3 of this section, the Secretary may authorize such
4 assistance under this section where he or she is
5 satisfied, having considered any document filed or
6 information given in support of the application, that:

7 (a) a serious offense has been or may have been
8 committed against the laws of the foreign state and
9 there are reasonable grounds for believing that the
10 person concerned could provide evidence or assistance
11 relevant to that criminal matter;

12 (b) the person is in the Federated States of
13 Micronesia; and

14 (c) the foreign state has given adequate
15 undertakings in respect of the matters specified in
16 sections 1721 and 1722 of this chapter.

17 (3) Where the Secretary authorizes assistance in
18 accordance with this section, the Secretary shall
19 forward the request to the appropriate authority in the
20 Federated States of Micronesia, and that authority shall
21 use its best endeavors to identify and locate the person
22 to whom the request relates, and shall advise the
23 Secretary of the outcome of those endeavors.

24 (4) On receipt of such advice, the Secretary shall
25 inform the requesting foreign state of the result of the
26 inquiries made pursuant to the request."

1 Section 16. Title 12 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended to add a new
3 section 1721 to read as follows:

4 "Section 1721. Undertakings required from foreign
5 state. Before authorizing assistance in accordance with
6 sections 1719 and 1720 of this chapter, the Secretary
7 shall obtain undertakings from the foreign state in
8 relation to the following matters-

9 (1) that the person to whom the request relates shall
10 not -

11 (a) be detained, prosecuted, or punished for any
12 offense against the law of the foreign state that is
13 alleged to have been committed, or that was committed,
14 before the person's departure from the Federated States
15 of Micronesia;

16 (b) be subjected to any civil proceedings in
17 respect of any act or omission of the person that is
18 alleged to have occurred, or that occurred, before the
19 person's departure from the Federated States of
20 Micronesia, being civil proceedings to which that person
21 could not be subjected if the person were not in the
22 foreign state; or

23 (c) be required to give or provide evidence or
24 assistance in respect of any criminal matter in the
25 foreign state other than the matter to which the request
26 relates;

1 unless the person has left the foreign state, or has had
2 the opportunity to leave the foreign state, and has
3 remained in that state for purposes other than for
4 providing evidence or assistance in respect of the
5 matter to which the request relates;

6 (2) that any evidence given by the person in the
7 criminal proceedings to which the request relates shall
8 be inadmissible or otherwise disqualified from use in
9 the prosecution of the person for an offense against a
10 law of the foreign state other than the offense of
11 perjury in relation to the giving of that
12 evidence;

13 (3) that the person will be returned to the Federated
14 States of Micronesia in accordance with arrangements
15 agreed by the Secretary as soon as practicable after
16 giving the evidence;

17 (4) in a case where the request relates to a person
18 who is a prisoner in the Federated States of Micronesia
19 and the Secretary requests the foreign state to make
20 arrangements for the keeping of the person in custody
21 while the person is in the foreign state -

22 (i) that appropriate arrangements will be
23 made for that purpose;

24 (ii) that the person will not be released
25 from custody in the foreign state without the prior
26 approval of the Secretary; and

1 (iii) if the person is released in the foreign
2 state, at the request of the Secretary, before the
3 completion of the proceedings to which the request
4 relates, that the person's accommodation and expenses
5 will be met by the foreign state; and
6 (5) such other arrangements as the Secretary deems
7 appropriate."

8 Section 17. Title 12 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended to add a new
10 section 1722 to read as follows:

11 "Section 1722. Penalty not to be imposed for refusal to
12 consent. The person to whom the request pursuant to
13 section 1719 and 1720 of this chapter relates shall not
14 be subject to any penalty or liability, or otherwise
15 prejudiced in law by reason only of that person's
16 refusal or failure to consent to attend as requested."

17 Section 18. Title 12 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended to add a new
19 section 1723 to read as follows:

20 "Section 1723. Custody of persons in transit from
21 foreign state.

22 (1) If a person is to be transported in custody from a
23 foreign state through the Federated States of Micronesia
24 to another foreign state for the purposes of giving
25 evidence in a criminal matter in the other foreign
26 state, the person -

1 (a) may be transported through the Federated
2 States of Micronesia in the custody of another person;
3 and

4 (b) if an aircraft or ship by which the person is
5 being transported lands or calls at a place in the
6 Federated States of Micronesia, shall be kept in such
7 custody as the Secretary directs in writing until his or
8 her transportation is continued.

9 (2) Where a person is being held in custody pursuant
10 to a direction under subsection (1)(b) of this section
11 and the person's transportation is not, in the opinion
12 of the Secretary continued within a reasonable time, the
13 Secretary may direct that the person be transported in
14 custody back to the foreign state from which the person
15 was first transported.

16 Section 19. Title 12 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a new
18 section 1725 of chapter 17 to read as follows:

19 "Section 1725. Foreign requests for restraining orders.

20 (1) The Secretary may apply to the Supreme Court for a
21 restraining order under subsection (2) of this section
22 where:

23 (a) a foreign state requests the Secretary to
24 obtain the issuance of a restraining order against
25 property, some or all of which is believed to be located
26 in the Federated States of Micronesia;

1 (b) criminal proceedings have begun in the
2 foreign state in respect of a serious offense; and

3 (c) there is probable cause to believe that the
4 property relating to the offense or belonging to the
5 defendant or the defendant's co-conspirators is located
6 in the Federated States of Micronesia.

7 (2) Where the Secretary makes application to the
8 Supreme Court under subsection (1) of this section, the
9 Supreme Court may make a restraining order in respect of
10 the property, and this chapter or the relevant
11 provisions of chapter 9 of title 11 of the Code of the
12 Federated States of Micronesia shall apply as requested
13 by the Secretary in relation to the application and to
14 any restraining order issued as a result, as if the
15 serious offense that is the subject of the order had
16 been committed in the Federated States of Micronesia."

17 Section 20. Title 12 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by adding a new
19 section 1726 of chapter 17 to read as follows:

20 "Section 1726. Requests for enforcement of foreign
21 restraining, confiscation or pecuniary penalty orders.

22 (1) Where a foreign state requests the Secretary to
23 make arrangements for the enforcement of a foreign
24 restraining order, foreign confiscation order or foreign
25 pecuniary penalty order, the Secretary may apply to the
26 Supreme Court for entry and enforcement

1 of the order under this chapter or under chapter 9 of
2 title 11 of the Code of the Federated States of
3 Micronesia.

4 (2) The Supreme Court shall, on application by the
5 Secretary, enter and enforce a foreign restraining order
6 or foreign pecuniary penalty order under this chapter or
7 under chapter 9 of title 11 of the Code of the Federated
8 States of Micronesia if the Court is satisfied that at
9 the time of entry and registration, the order is in
10 force in the foreign state.

11 (3) The Supreme Court shall, on application by the
12 Secretary, enter and enforce a foreign confiscation
13 order, which is legally capable of enforcement in the
14 Federated States of Micronesia and its States, if the
15 Court is satisfied that:

16 (a) at the time of entry and enforcement, the
17 order is in force in the foreign state and is not
18 subject to appeal; and

19 (b) where the person who is the subject of the
20 order did not appear in the confiscation proceedings in
21 the foreign state, that:

22 (i) the person was given fair notice of the
23 confiscation proceeding; or

24 (ii) the person had absconded or had died
25 before such notice could be given, and if the person

1 died, the decedent's estate was given fair notice of the
2 proceedings.

3 (4) For the purposes of subsections (2) and (3) of
4 this section, a statement contained in the foreign
5 request to the effect that:

6 (a) the foreign restraining order or foreign
7 pecuniary penalty order is in force in the foreign
8 state;

9 (b) the foreign confiscation order is in force in
10 the foreign state and is not subject to appeal; or

11 (c) the person who is the subject of the foreign
12 confiscation order was given fair notice of the
13 proceedings, or that the person had absconded or died
14 before such notice could be given and if the person
15 died, the decedent's estate was given fair notice of the
16 proceedings;
17 is prima facie evidence of those facts, without proof of
18 the signature or official character of the person
19 appearing to have signed the foreign request.

20 (5) Where a foreign restraining order, foreign
21 confiscation order or foreign pecuniary penalty order is
22 entered for enforcement in accordance with this section,
23 a copy of any amendments made to the order in the
24 foreign state (whether before or after entry and
25 enforcement), may be entered and enforced in the same

1 way as the order, but shall not have effect for the
2 purposes of chapter 9 of title 11 of the Code of the
3 Federated States of Micronesia, until they are so
4 entered and enforced.

5 (6) The Supreme Court shall, on application by the
6 Secretary rescind entry of:

7 (a) a foreign restraining order, if it appears to
8 the Court that the order has ceased to have effect; or

9 (b) a foreign confiscation order or foreign
10 pecuniary penalty order, if it appears to the Court that
11 the order has been satisfied or has ceased to have
12 effect.

13 (7) Subject to subsection (9) of this section, where
14 the foreign restraining order, foreign confiscation
15 order or foreign pecuniary penalty order comprises a
16 facsimile copy of a duly authenticated foreign order, or
17 amendment made to such an order, the facsimile shall be
18 regarded for the purposes of this chapter as the same as
19 the duly authenticated foreign order.

20 (8) Entry and registration effected by means of a
21 facsimile ceases to have effect at the end of the period
22 of 60 days commencing on the date of entry and
23 registration, unless a duly authenticated original of
24 the order has been entered and registered by that
25 time.

1 (9) Where a foreign restraining order, a foreign
2 confiscation order or a foreign pecuniary penalty order
3 has been entered pursuant to this section, the relevant
4 provisions of chapter 9 of title 11 of the Code of the
5 Federated States of Micronesia shall be deemed to apply
6 in relation to the order as if the serious offense that
7 is the subject of the order had been committed in the
8 Federated States of Micronesia, and the order had been
9 made pursuant to that chapter."

10 Section 21. Title 12 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by adding a new
12 section 1727 of chapter 17 to read as follows:

13 "Section 1727. Foreign requests for the location and
14 tracking of proceeds of crime or tainted property. Where
15 a foreign state requests the Secretary to assist in
16 locating property believed to be the proceeds of crime
17 or tainted property related to a serious offense
18 committed in that state, the Secretary may authorize the
19 making of any application under sections 971 or 976 of
20 chapter 9 of title 11 of the Code of the Federated
21 States of Micronesia, or under sections 1828 or 1829 of
22 chapter 18 of title 12 of the Code of the Federated
23 States of Micronesia, for the purpose of acquiring the
24 information sought by the foreign state."

1 Section 22. Title 12 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a new
3 section 1728 of chapter 17 to read as follows:

4 "Section 1728. Sharing confiscated property with
5 foreign states.

6 (1) Subject to approval by the Congress of the
7 Federated States of Micronesia, or if Congress is not in
8 session, subject to approval by the Judiciary and
9 Governmental Operations Committee of Congress, the
10 Secretary may enter into an arrangement with the
11 competent authorities of a foreign state, in respect of
12 tainted property and the proceeds of crime, for the
13 reciprocal sharing with that State of such part of any
14 property realized:

15 (a) in the foreign state, as a result of action
16 taken by the Secretary pursuant to subsection 1707(4) of
17 this chapter; or

18 (b) in the Federated States of Micronesia, as a
19 result of action taken in the Federated States of
20 Micronesia pursuant to subsection 1726(1) of this
21 chapter.

22 (2) Except as otherwise provided by law, any
23 proceeds of crime that have been received by the
24 Federated States of Micronesia pursuant to this chapter
25 shall be deposited in the Forfeited Assets Fund of the
26 Federated States of Micronesia."

1 Section 23. Title 12 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a new
3 section 1718 of chapter 17 to read as follows:

4 "Section 1718. Restriction on use of evidence and
5 materials obtained by mutual assistance.

6 (1) A person who is in the Federated States of
7 Micronesia pursuant to a request made under section 1711
8 of this chapter and provides evidence in any criminal
9 proceedings -

10 (a) to which the request relates or any criminal
11 proceedings consequent on the investigation to which the
12 request relates; or

13 (b) certified by the Secretary pursuant to
14 subsection 1712(3)(b)(ii) in relation to that person;
15 that evidence shall not be admitted or otherwise used in
16 any prosecution of the person for any offense against
17 the laws of the Federated States of Micronesia, except
18 on the trial of the person for perjury in respect of the
19 giving of that evidence.

20 (2) Any evidence, document or other article that
21 is obtained, provided or produced pursuant to a request
22 by the Federated States of Micronesia shall be used only
23 for the purpose of, or in connection with, the criminal
24 matter to which the request relates, unless -

25 (a) the foreign state to which the request was
26 made consents to the use of the evidence, document or

1 other article for another purpose; and
2 (b) in the case of any evidence, document or
3 other article obtained from, or provided or produced by,
4 a person while he or she is in the Federated States of
5 Micronesia pursuant to a request made under section
6 1711, that person consents to the use of the evidence,
7 document or other article for another purpose."

8 Section 24. This act shall become law upon approval by the
9 President of the Federated States of Micronesia or upon its
10 becoming law without such approval.

11

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13 Date: 5/30/08

Introduced by: /s/ Joe N. Suka

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Joe N. Suka
(by request)

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