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A BILL FOR AN ACT

To further amend title 32 of the Code of the Federated States of Micronesia, as amended, by amending sections 203, 205, 206, 207, 209, 210, 211, 212, 213, 216, 217 and 219, and to enact title 37 by adding a new section 101, to make changes to the foreign investment act, and for other purposes.

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

1           Section 1. Section 203 of chapter 2 of title 32 of the Code  
2 of the Federated States of Micronesia, as enacted by Public Law  
3 No. 10-49, is hereby amended to read as follows:

4           "Section 203. Definition. When words defined in this  
5 section are used in this chapter, unless otherwise  
6 required by the context, the following definitions shall  
7 govern:

8           (1) 'business entity' means any sole proprietorship,  
9 partnership, company, corporation, joint venture, or  
10 other association of persons engaging in business;

11           (2) 'character criteria' means the criteria  
12 established in the FSM Foreign Investment Regulations  
13 pursuant to section 205(3) of this chapter;

14           ~~[(2)]~~(3) 'citizen' means a citizen of the FSM;

15           ~~[(3)]~~(4) 'Department' means the Department of [~~Resources~~  
16 ~~and~~

17 ~~Development]~~ Economic Affairs of the FSM or its

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1           successor;

2           ~~[(4)]~~ (5) 'engaging in business' means carrying out any  
3           activity relating to the conduct of a business, and  
4           shall include the activities enumerated in subsection  
5           ~~[(4)]~~ (5) (a) below but shall not include the activities  
6           enumerated in subsection ~~[(4)]~~ (5) (b) below:

7                   (a) 'engaging in business' shall include:

8                           (i) buying, selling, leasing, or exchanging  
9                           goods, products, or property of any kind for commercial  
10                           purposes;

11                           (ii) buying, selling, or exchanging services  
12                           of any kind for commercial purposes;

13                           (iii) conducting negotiations for transactions  
14                           of the types described in items (i) or (ii) above;  
15                           provided, however, that negotiations with licensed  
16                           importers for periods of less than 14 days per calendar  
17                           year shall not be considered 'engaging in business';

18                           (iv) appointing a representative, agent, or  
19                           distributor by a noncitizen to perform any of the acts  
20                           described in items (i) through (iii) above, unless said  
21                           representative, agent, or distributor has an independent  
22                           status and transacts business in its name for its own  
23                           account and not in the name of or for the account of any  
24                           noncitizen principal;

25                           (v) maintaining a stock of goods in the FSM

1 for the purpose of having the same processed by another  
2 person in the FSM;

3 (vi) establishing or operating a factory,  
4 workshop, processing plant, warehouse, or store, whether  
5 wholesale or retail;

6 (vii) mining or exploring for minerals, or the  
7 commercial exploitation or extraction of other natural  
8 resources;

9 (viii) providing services as a management firm  
10 or professional consultant in the management,  
11 supervision, or control of any business entity; and

12 (ix) providing professional services as an  
13 attorney, physician, dentist, engineer, surveyor,  
14 accountant, auditor, or other professional providing  
15 service for a fee; provided, however, that such a  
16 professional shall not be considered to be 'engaging in  
17 business' unless he or she, while present in the FSM,  
18 performs his or her respective professional services for  
19 more than 14 days in any calendar year; ~~and]~~

20 [~~(x) holding at least twenty percent (20%)~~  
21 ~~ownership interest in a business entity;]~~

22 (b) engaging in business shall not include:

23 (i) the publication of general  
24 advertisements through newspapers, brochures, or other  
25 publications, or through radio or television;

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1 (ii) the conducting of scientific research or  
2 investigations, if

3 a) the research or investigation is  
4 sponsored by a university, college, agency, or  
5 institution normally engaged in such activities  
6 primarily for purposes other than commercial profit, and

7 b) the particular research or  
8 investigation at issue is not for purposes of, or  
9 expected to yield, commercial profit;

10 (iii) the collection of information by a bona  
11 fide journalist for news publication or broadcast;

12 (iv) maintaining or defending any action or  
13 suit, or participating in administrative proceedings,  
14 arbitration, or mediation;

15 (v) maintaining bank accounts; [~~or~~]

16 (vi) the lawful sale of corporate shares or  
17 other interests or holdings in a business entity  
18 acquired not for speculation or profit; or

19 (vii) the making of occasional sales as  
20 defined by the FSM Foreign Investment Regulations;

21 [~~(5)~~](6) 'foreign investment' means any activity in the FSM  
22 by a noncitizen that amounts to 'engaging in business'  
23 as defined above;

24 [~~(6)~~](7) 'Foreign Investment Permit' means an FSM Foreign  
25 Investment Permit, a State Foreign Investment Permit, or

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1 a Pre-Existing Foreign Investment Permit;

2 [~~(7)~~](8) 'foreign investor' means a noncitizen who is

3 engaging in business in the FSM, as defined above;

4 [~~(8)~~](9) 'FSM' means the Federated States of Micronesia;

5 [~~(9)~~](10) 'FSM Foreign Investment Permit' means a permit

6 issued by the Secretary in accordance with the

7 provisions of this chapter;

8 [~~(10)~~](11) 'FSM Foreign Investment Regulations' means

9 Regulations promulgated by the Secretary in accordance

10 with the provisions of this chapter;

11 [~~(11)~~](12) 'noncitizen' means any person who is not a

12 citizen

13 of the FSM, and any business entity in which any

14 ownership interest is held by a person who is not a

15 citizen of the FSM;

16 [~~(12)~~](13) 'ownership interest' in a business entity

17 means

18 ownership of or control over, [~~either directly or~~

19 ~~indirectly~~] whether directly, indirectly, legally or

20 beneficially, some or all of the shares of, property or

21 assets of, voting rights in, or rights to profits or

22 revenue from, that business entity; provided, however,

23 that:

24 (a) ownership interest shall not include a bona

25 fide security interest in real or personal property for

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1 the purpose of securing a loan or other obligation; and

2 (b) any interest [~~held~~] owned or controlled by  
3 the spouse, minor child, or other dependent of a person  
4 shall be counted as owned or controlled by that person  
5 in determining whether he or she has an ownership  
6 interest in a business entity, provided that this  
7 subsection shall not apply to a noncitizen spouse who is  
8 married to a citizen and who does not hold an ownership  
9 interest in his or her own right;

10 [~~(13)~~] (14) 'person' includes both individuals and legal  
11 entities;

12 [~~(14)~~] (15) 'Pre-Existing Foreign Investment Permit'  
13 means a  
14 permit issued by the Secretary or by a State prior to  
15 the date on which this act took effect, and which has  
16 not expired according to its terms or been suspended or  
17 canceled;

18 [~~(15)~~] (16) 'Secretary' means the Secretary of the  
19 Department

20 [~~of Resources and Development~~] Economic Affairs of the  
21 FSM;

22 [~~(16)~~] (17) 'State' means one of the States of the FSM;

23 [~~(17)~~] (18) 'State Foreign Investment Legislation' means  
24 legislation enacted and currently effective in one of  
25 the States to regulate foreign investment within that

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1 State;

2 [~~(18)~~] (19) 'State Foreign Investment Permit' means a  
3 permit

4 issued by authorized officials within one of the States  
5 pursuant to relevant State Foreign Investment  
6 Legislation;

7 (20) 'Substantial ownership interest' means an  
8 ownership interest in a business entity of at least  
9 thirty percent (30%).'

10 Section 2. Section 205 of chapter 2 of title 32 of the Code  
11 of the Federated States of Micronesia, as enacted by Public Law  
12 No. 10-49, is hereby amended to read as follows:

13 "Section 205. Categories of economic sectors. The  
14 following system of Categories of economic sectors is  
15 hereby established for the purpose of implementing the  
16 policy of the FSM to welcome foreign investment in all  
17 sectors of the FSM economy, insofar as such foreign  
18 investment is consistent with the economic, social, and  
19 cultural well-being of its citizens:

20 (1) Categories for National Regulation -- economic  
21 sectors that are of special national significance and  
22 therefore fall within the jurisdiction of the National  
23 Government in respect of foreign investment regulation.  
24 These Categories are the following:

25 (a) Category A ('National Red List') -- the set

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1 of economic sectors that are closed to foreign  
2 investment anywhere in the FSM. Economic sectors in the  
3 National Red List are the following:

4 (i) arms manufacture;

5 (ii) the minting of coins or printing of  
6 notes for use as currency;

7 (iii) business activities relating to nuclear  
8 power or radioactivity; and

9 (iv) such other economic sectors as the  
10 Secretary may, after consultation with States pursuant  
11 to section 206(2) of this chapter, designate in the FSM  
12 Foreign Investment Regulations as being on the National  
13 Red List.

14 (b) Category B ('National Amber List') -- the set  
15 of economic sectors that are subject to National  
16 Government regulation and as to which certain criteria  
17 specified in the FSM Foreign Investment Regulations must  
18 be met [~~before a Foreign Investment Permit may be~~  
19 ~~issued~~]. Economic Sectors on the National Amber List  
20 include the following:

21 (i) banking, other than as defined in title  
22 29 of the FSM Code; [~~and~~]

23 (ii) [~~Insurance~~] insurance; and

24 (iii) such other economic sectors as the  
25 Secretary may, after consultation with States pursuant



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1 to section 206(2) of this chapter, designate in the FSM  
2 Foreign Investment Regulations as being on the National  
3 Amber List.

4 (c) Category C (~~[national]~~ 'National Green List')  
5 -- the set of economic sectors that are subject to  
6 National Government regulation but as to which no  
7 special criteria need to be met before a Foreign  
8 Investment Permit is to be issued. Economic sectors on  
9 the National Green List include the following:

10 (i) banking, as defined in title 29 of the  
11 FSM Code;

12 (ii) telecommunications;

13 (iii) fishing in the FSM's Exclusive Economic  
14 Zone;

15 (iv) international and interstate air  
16 transport;

17 (v) international shipping; and

18 (vi) such other economic sectors as the  
19 Secretary may, after consultation with States pursuant  
20 to section 206(2) of this chapter, designate in the FSM  
21 Foreign Investment Regulations as being on the National  
22 Green List.

23 (2) Categories for State Regulation -- economic  
24 sectors that are not of special national significance  
25 and therefore are delegated to the jurisdiction of the

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1 State Governments in respect of foreign investment  
2 regulation. These Categories are to be established  
3 separately by each State, by means of the State Foreign  
4 Investment Regulations in each State. An economic  
5 sector included in any of the Categories for National  
6 Regulation pursuant to subsection (1) above shall not  
7 appear in any of the Categories for State Regulation.  
8 [~~In the absence of State foreign investment legislation,~~  
9 ~~the National government will continue to regulate~~  
10 ~~foreign investment in that State pursuant to provisions~~  
11 ~~of the FSM Foreign Investment Act superseded by this~~  
12 ~~act.~~]

13 (3) Notwithstanding anything to the contrary in  
14 subsection (1), and regardless of the economic category  
15 involved:

16 (a) every applicant for or holder of an FSM  
17 Foreign Investment Permit may be required to meet such  
18 character criteria as may be specified in the FSM  
19 Foreign Investment Regulations in order to obtain or  
20 retain an FSM Foreign Investment Permit; and

21 (b) every present or future holder of a  
22 substantial ownership interest in an applicant for or  
23 holder of an FSM Foreign Investment Permit may be  
24 required to meet those same character criteria in order  
25 to obtain or retain that substantial ownership

1           interest."

2           Section 3. Section 206 of chapter 2 of title 32 of the Code  
3 of the Federated States of Micronesia, as enacted by Public Law  
4 No. 10-49, is hereby amended to read as follows:

5           "Section 206. Responsibilities of the National and  
6 State Government regarding foreign investment.

7           (1) The National Government of the FSM shall be  
8 responsible, at the initiative of the Secretary, for:

9                   (a) determining, after consultation with the  
10 States as required under subsection (2) below, which  
11 economic sectors, in addition to those enumerated in  
12 section 205(1) of this chapter, shall be designated for  
13 inclusion in Category A (National Red List), Category B  
14 (National Amber List), and Category C (National Green  
15 List).

16                   (b) determining what criteria, if any, shall be  
17 specified for foreign investments in Category B  
18 (National Amber List) economic sectors.

19                   (c) the issuance of FSM Foreign Investment  
20 Permits in respect of Category B and Category C economic  
21 sectors, and in general for the administration of  
22 foreign investment rules established by this act or by  
23 the FSM Foreign Investment Regulations.

24                   (d) promulgating such FSM Foreign Investment  
25 Regulations as may be necessary for the effective and

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1           efficient discharge of the responsibilities enumerated  
2           in this subsection and in general for the proper  
3           administration of this chapter.

4           (2) The National Government shall meet regularly, at  
5           least once every two years, with authorities designated  
6           by the Governments of the States to review sectoral  
7           developments and to discuss proposals to add economic  
8           sectors to, or remove them from, Category A (National  
9           Red List), Category B (National Amber List), or Category  
10          C (National Green List) under section 205(1) of this  
11          chapter.

12          (3) The Government of each individual State shall be  
13          responsible for the regulation of foreign investment,  
14          including the issuance of State Foreign Investment  
15          Permits, in respect of foreign investment taking place  
16          or proposed to take place within the territory of that  
17          State in all economic sectors other than those  
18          designated for inclusion in Categories A, B, or C  
19          pursuant to section 205(1) of this chapter.

20          (4) If any foreign investment of a type described in  
21          subsection (3) above takes place or is proposed to take  
22          place within the territories of more than one State,  
23          each of those States shall have authority to regulate  
24          such foreign investment within its own territory.

25          (5) Action taken by the Government of a State under

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1 subsections (3) and (4) above shall be consistent with  
2 the provisions of this chapter and the FSM Foreign  
3 Investment Regulations.

4 (6) If any foreign investment or proposed foreign  
5 investment involves more than one economic sector, and  
6 those economic sectors are designated for inclusion in  
7 more than one Category pursuant to section 205 of this  
8 chapter, such investment or proposed investment shall be  
9 subject to the rules and jurisdiction applicable to each  
10 such Category as described in this section and elsewhere  
11 in this chapter.

12 (7) The Department shall, upon request, offer  
13 assistance:

14 (a) to States in the areas of foreign investment  
15 policy and promotion, under terms to be specified in the  
16 FSM Foreign Investment Regulations; and

17 (b) to foreign investors with investments taking  
18 place or proposed to take place within the territory of  
19 more than one State, under terms and guidelines agreed  
20 with the concerned States.

21 (8) In the absence of State Foreign Investment  
22 Legislation and implementing regulations, the National  
23 Government will continue to regulate foreign investment  
24 in that State pursuant to [~~provisions of the Foreign~~  
25 ~~Investment Regulations which shall be substantially the~~

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1           ~~same as the Foreign Investment Act which is superseded~~  
2           ~~by]~~ this act."

3           Section 4. Section 207 of chapter 2 of title 32 of the Code  
4 of the Federated States of Micronesia, as enacted by Public Law  
5 No. 10-49, is hereby amended to read as follows:

6           "Section 207. Application procedures for FSM Foreign  
7           Investment Permits.

8           (1) An application for an FSM Foreign Investment  
9           Permit shall be made on the form or forms prescribed in  
10           the FSM Foreign Investment Regulations, as may be  
11           supplemented in particular cases by order of the  
12           Secretary. Such application form or forms shall be made  
13           publicly available by the Secretary and by responsible  
14           authorities in each of the States. The application form  
15           shall require the applicant to identify clearly the  
16           person(s) resident in the Federated States of Micronesia  
17           who are designated as agent for service of process.

18           (2) Submission of an application for an FSM Foreign  
19           Investment Permit may be made either (a) to the  
20           Secretary or (b) to the responsible authorities in the  
21           State in whose territory the foreign investment takes  
22           place or is proposed to take place. In the latter case,  
23           the responsible State authorities shall forward the  
24           application directly to the Secretary.

25           (3) Upon receiving an application for an FSM Foreign

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1 Investment Permit, the Secretary shall, within such  
2 periods of time as may be prescribed for this purpose in  
3 the FSM Foreign Investment Regulations, take one or more  
4 of the following actions, as appropriate:

5 (a) determine whether the application relates to  
6 a foreign investment in a Category A, Category B, or  
7 Category C economic sector;

8 (b) deny the application if~~[+]~~:

9 (i) it relates to a foreign investment in a  
10 Category A (National Red List) economic sector, or

11 (ii) it relates to a foreign investment in [~~a~~  
12 ~~Category B (National Amber List) economic sector but is~~  
13 ~~incomplete or does not satisfactorily demonstrate that~~  
14 ~~the investment would meet all of the applicable national~~  
15 ~~criteria established in the FSM Foreign Investment~~  
16 ~~Regulations pursuant to section 206(1)(b) of this~~  
17 ~~chapter]~~ any other Category for National Regulation and  
18 does not meet the character criteria for obtaining an  
19 FSM Foreign Investment Permit that are established in  
20 the FSM Foreign Investment Regulations pursuant to  
21 section 205(3) of this chapter;

22 (c) forward the application to the responsible  
23 State authorities if it relates to a foreign investment  
24 in an economic sector other than those designated for  
25 inclusion in Category A, Category B, or Category C;

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1 (d) ~~[F]~~ forward a notification copy of the  
2 application to the responsible State Authorities if it  
3 relates to a Foreign Investment in economic sector  
4 categories A, B, or C~~[-]~~;

5 (e) require the applicant to submit further  
6 information if the application is incomplete or does not  
7 provide enough information for the Secretary to  
8 determine:

9 (i) what economic sector(s) is (are)  
10 involved, or

11 (ii) whether the ~~[requirements for an FSM~~  
12 ~~Foreign Investment Permit]~~ character criteria have been  
13 ~~[or will be]~~ met~~[-]~~ ;

14 ~~[-(f) issue an FSM Foreign Investment Permit if:~~

15 ~~(i) the application~~

16 ~~a) relates to a foreign investment in~~  
17 ~~a Category B (National Amber List) economic sector;~~

18 ~~b) is complete; and~~

19 ~~c) demonstrates that the foreign~~  
20 ~~investment meets all of the applicable national criteria~~  
21 ~~established in the FSM Foreign Investment Regulations~~  
22 ~~pursuant to section 206(1)(b) of this chapter; or~~

23 ~~(ii) the application is complete and relates~~  
24 ~~to a foreign investment in a Category C (National Green~~  
25 ~~List) economic sector.]~~



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1                   (f) issue an FSM Foreign Investment Permit if the  
2                   application:

3                   (i) is complete;  
4                   (ii) meets the character criteria; and  
5                   (iii) relates to a foreign investment in  
6                   either Category B (National Amber List) or Category C  
7                   (National Green List) economic sector.

8                   (4) Upon taking any action described in paragraph (b),  
9                   (e), or (f) of subsection (3) above, the Secretary  
10                  shall, within such periods of time as may be prescribed  
11                  for this purpose in the FSM Foreign Investment  
12                  Regulations, advise the applicant of the action and the  
13                  reasons therefor.

14                  (5) The nature and amount of the application fee, if  
15                  any, to be paid by an applicant seeking an FSM Foreign  
16                  Investment Permit shall be established in the FSM  
17                  Foreign Investment Regulations.

18                  (6) If the Secretary issues an FSM Foreign Investment  
19                  Permit pursuant to subsection (3)(f) above, the FSM  
20                  Foreign Investment Permit will be sent to the applicant,  
21                  with copies to be (a) inserted into a register to be  
22                  maintained by the Department for this purpose and (b)  
23                  sent to the responsible authority in each State, for  
24                  insertion in a register to be maintained by such  
25                  authorities for this purpose.

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1           (7) If the Secretary denies an application for an FSM  
2 Foreign Investment Permit pursuant to subsection  
3 (3)(b)(ii) above, the applicant may (a) resubmit the  
4 application with modifications designed to meet the  
5 applicable national criteria established in the FSM  
6 Foreign Investment Regulations pursuant to section  
7 206(1)(d) of this chapter, or (b) provide to the  
8 Secretary additional information or explanation to  
9 indicate how, in the applicant's opinion, the foreign  
10 investment would satisfy such criteria. On receipt of  
11 such modifications or additional information, the  
12 Secretary shall review the application and make a  
13 determination under the procedures prescribed in  
14 subsection (3) above. There is no limit to the number  
15 of times an applicant may modify an application in an  
16 attempt to satisfy the applicable criteria."

17       Section 5. Section 209 of chapter 2 of title 32 of the Code  
18 of the Federated States of Micronesia, as enacted by Public Law  
19 No. 10-49, is hereby amended to read as follows:

20           "Section 209. Form, fees, renewal, modification and  
21 cancellation of FSM Foreign Investment Permits.

22           (1) FSM Foreign Investment Permits shall be in the  
23 form prescribed in the FSM Foreign Investment  
24 Regulations. State Foreign Investment Permits shall be  
25 in the form prescribed in State Foreign Investment

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1           Legislation and State Foreign Investment Regulations.

2           (2) Upon the issuance of an FSM Foreign Investment  
3           Permit, the holder shall fulfill the requirements, if  
4           any, included in the FSM Foreign Investment Regulations  
5           for the payment of an annual fee.

6           (3) An FSM Foreign Investment Permit shall be valid  
7           ~~[for one year, and, unless]~~ until it has been canceled,  
8           suspended, or surrendered pursuant to subsections (7) -  
9           ~~[(10)]~~ (11) below ~~[, it shall be renewable on an annual~~  
10          ~~basis upon the fulfillment by the holder of the~~  
11          ~~requirements, if any, included in the FSM Foreign~~  
12          ~~Investment Regulations for the payment of an annual~~  
13          ~~fee].~~

14          (4) An FSM Foreign Investment Permit shall not be  
15          transferable between investments or investors and shall  
16          not be assignable to any investment or investor other  
17          than the one for which it was issued.

18          (5) The holder of an FSM Foreign Investment Permit may  
19          not make a change in the business that the holder is  
20          engaging in without obtaining either (a) a new FSM  
21          Foreign Investment Permit for that purpose under section  
22          207 of this chapter (or, if applicable, a new State  
23          Foreign Investment Permit under the relevant State  
24          Foreign Investment ~~[Law]~~ Legislation) or (b) a  
25          modification in the terms of its FSM Foreign Investment

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1 Permit. Such a modification may be requested by the  
2 business entity, and granted by the Secretary, in  
3 accordance with such procedures and requirements as the  
4 Secretary shall establish in the FSM Foreign Investment  
5 Regulations. However, no such modification is necessary  
6 if an existing business entity for which an FSM Foreign  
7 Investment Permit has been issued is expanded, without  
8 any change in [~~either (a)~~] the business it is engaging  
9 in [~~or (b) the degree of interest held by any noncitizen~~  
10 ~~in that business entity~~].

11 (6) For purposes of subsection (5) above, a 'change in  
12 the business' a person is engaging in occurs if that  
13 person begins operations in a different economic sector  
14 from the one(s) for which the FSM Foreign Investment  
15 Permit was issued.

16 (7) The Secretary may cancel an FSM Foreign Investment  
17 Permit only if the Secretary determines, following the  
18 procedural requirements of subsection (9) below, that  
19 one or more of the following circumstances exist:

20 (a) the annual fee, if any, required under either  
21 subsection (2) or subsection (3) above has not been  
22 paid;

23 (b) the holder of the Permit requests its  
24 cancellation;

25 (c) the permit application is found to have

1 contained false or fraudulent information;

2 (d) the holder of the Permit bribed or otherwise  
3 exercised, or attempted to exercise, undue influence on  
4 the decision to issue the Permit;

5 (e) the holder of the Permit fails or refuses to  
6 comply with the reporting requirements under section 213  
7 of this chapter or with any other requirements of this  
8 chapter or of the FSM Foreign Investment Regulations;

9 (f) the holder of the Permit fails or refuses to  
10 comply with any restrictions or conditions included in  
11 the Permit, or engages in activities not authorized by  
12 the Permit;

13 (g) [~~the holder fails to comply with any~~  
14 ~~applicable State or National laws~~] a substantial  
15 ownership interest in the holder is owned by a  
16 noncitizen who does not meet the character criteria  
17 established pursuant to section 205(3) of this chapter.

18 (8) If an FSM Foreign Investment Permit is canceled  
19 pursuant to subsection (7) above, the noncitizen holding  
20 that canceled Permit shall:

21 (a) immediately stop engaging in business in the  
22 FSM;

23 (b) take such steps as the Secretary shall direct  
24 in order to dispose of that noncitizen's interest in any  
25 applicable business entity; and

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1                   (c) pay any fines or other penalties that may be  
2                   imposed under section 220 of this chapter.

3                   (9) If it appears to the Secretary that one or more of  
4                   the grounds for cancellation of an FSM Foreign  
5                   Investment Permit, as enumerated in subsection (7)  
6                   above, may exist, the Secretary may temporarily suspend  
7                   the validity of that FSM Foreign Investment Permit and  
8                   shall commence the following procedures leading to  
9                   cancellation:

10                  (a) The Secretary or his designee may schedule a  
11                  hearing on the matter before the Secretary or his  
12                  designee. At least 21 days' written notice of the  
13                  hearing shall be given to the holder or registered agent  
14                  of the FSM Foreign Investment Permit or the holder's  
15                  registered agent, stating the alleged grounds for  
16                  cancellation. If during that time the holder of the FSM  
17                  Foreign Investment Permit takes action satisfactory to  
18                  the Secretary to disprove the allegations or otherwise  
19                  remedy the situation, the Secretary may cancel the  
20                  hearing and reinstate the FSM Foreign Investment Permit  
21                  if it was temporarily suspended.

22                  (b) Hearing procedures shall be prescribed by the  
23                  Secretary in the FSM Foreign Investment Regulations and  
24                  shall include the right of the holder of the FSM Foreign  
25                  Investment Permit to participate and to be represented

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1 by counsel, to call witnesses, and to cross-examine  
2 witnesses called against the holder of the FSM Foreign  
3 Investment Permit.

4 (c) Within ten days after a hearing, the  
5 Secretary shall issue a written decision including  
6 reasons for the action taken and the remedy to be  
7 imposed pursuant to subsection (8) above, and shall  
8 transmit that decision immediately to the holder of the  
9 FSM Foreign Investment Permit.

10 (d) If a decision has not been issued pursuant to  
11 subsection (9)(c) above within the ten days specified,  
12 any temporary suspension ordered by the Secretary shall  
13 automatically end, and the validity of the FSM Foreign  
14 Investment Permit shall automatically be reinstated.

15 (e) Within 20 days after receiving the notice of  
16 the decision of the Secretary, the holder of the FSM  
17 Foreign Investment Permit may appeal the decision to the  
18 Supreme Court of the FSM. Copies of any notice of  
19 appeal shall be served on the Secretary and the Attorney  
20 General.

21 (10) If an FSM Foreign Investment Permit is suspended  
22 pursuant to subsection (9) above, the noncitizen holding  
23 that suspended permit shall immediately stop engaging in  
24 business in the FSM and refrain from resuming the  
25 business unless and until the FSM Foreign Investment

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1           Permit is reinstated.

2           ~~[(10)]~~ (11)           A holder of an FSM Foreign Investment Permit  
3           may  
4           surrender it by meeting requirements specified for this  
5           purpose in the FSM Foreign Investment Regulations. Mere  
6           cessation of engaging in business in the FSM, without  
7           meeting such requirements, does not relieve the holder  
8           of an FSM Foreign Investment Permit from the  
9           requirements incident thereto."

10          Section 6. Section 210 of chapter 2 of title 32 of the Code  
11 of the Federated States of Micronesia, as enacted by Public Law  
12 No. 10-49, is hereby amended to read as follows:

13           "Section 210. Expatriate worker authorizations.

14           (1) A business entity as to which either ~~[have]~~ an FSM  
15 Foreign Investment Permit or a State Foreign Investment  
16 Permit has been issued shall be entitled automatically  
17 to an expatriate worker authorization ('EWA') for one  
18 expatriate senior management position.

19           (2) If the business entity as to which either an FSM  
20 Foreign Investment Permit or a State Foreign Investment  
21 Permit has been issued meets the applicable criteria  
22 established for this purpose in the FSM Foreign  
23 Investment Regulations, the holder of such Permit shall  
24 be entitled automatically to one or more additional EWAs  
25 for expatriate ~~[senior management]~~ positions.



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1           (3) An EWA that is automatically allocated under  
2           either subsection (1) or (2) above shall remain valid  
3           during the entire period that the corresponding Foreign  
4           Investment Permit remains valid [~~, including during the~~  
5           ~~period of any renewal as provided for in section 209 of~~  
6           ~~this chapter]~~. However, the criteria to be established  
7           pursuant to subsection (2) above may provide that,  
8           notwithstanding the continued validity of an EWA, new  
9           entry permits requested under that EWA may be denied and  
10           existing entry permits issued under that EWA may be  
11           canceled during any period when those criteria are not  
12           being met.

13           ~~[(4) The holder of a Foreign Investment Permit may~~  
14           ~~apply for additional EWAs to be allocated to the~~  
15           ~~relevant business entity, beyond those automatically~~  
16           ~~allocated under either subsection (1) or paragraph (2)~~  
17           ~~above, if a suitably qualified and experienced citizen~~  
18           ~~is not available, The procedures for applying for such~~  
19           ~~additional EWAs shall be established in the FSM Foreign~~  
20           ~~Investment Regulations.]~~

21           ~~[-(5)]~~(4) The holder of a Foreign Investment permit may  
22           apply

23           for additional expatriate workers pursuant to title 51  
24           of the FSM Code."

25           Section 7. Section 211 of chapter 2 of title 32 of the Code

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1 of the Federated States of Micronesia, as enacted by Public Law  
2 No. 10-49, is hereby amended to read as follows:

3 "Section 211. Issuance of entry permits.

4 (1) The holder of a Foreign Investment Permit may,  
5 upon the allocation of an EWA to the relevant business  
6 entity, submit to the immigration authorities an  
7 application for an entry permit for a nominee to fill  
8 the position to which the EWA applies.

9 (2) If the immigration authorities approve an  
10 application for an entry permit applied for under  
11 subsection (1) above, the immigration authorities shall  
12 issue such permit upon the payment of a fee in such an  
13 amount and under such procedures as may be established  
14 for this purpose by the immigration authorities.

15 (3) The immigration authorities shall issue an entry  
16 permit for a nominee to fill a position to which an EWA  
17 applies except in cases of (a) criminal character or (b)  
18 medical risk to the nation or the nominee, as set forth  
19 in pertinent regulations issued by the immigration  
20 authorities. If the immigration authorities deny an  
21 application for an entry permit for a nominee to fill a  
22 position to which an EWA applies, the immigration  
23 authorities shall so advise the holder of the Foreign  
24 Investment Permit and shall give reasons for the denial.  
25 In such a case of denial, the holder of the Foreign

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1 Investment Permit may (a) request the immigration  
2 authorities to review the application after submission  
3 of additional information on the nominee, or (b) apply  
4 for an entry permit nominating a different person to  
5 fill the position.

6 (4) If, for whatever reason, a position to which an  
7 EWA applies is or becomes vacant during the period of  
8 validity of that EWA, the holder of the relevant Foreign  
9 Investment Permit may apply to the immigration  
10 authorities for an entry permit for a nominee to fill  
11 the vacant position.

12 (5) In addition to entry permits issued pursuant to  
13 EWAs, a foreign investor shall be entitled to one or  
14 more foreign investor entry permits as follows:

15 (a) one if the foreign investor is a sole  
16 proprietorship; or

17 (b) one for each individual holder of a  
18 substantial ownership interest in the foreign investor  
19 if the foreign investor is any other kind of business  
20 entity."

21 Section 8. Section 212 of chapter 2 of title 32 of the Code  
22 of the Federated States of Micronesia, as enacted by Public Law  
23 No. 10-49, is hereby amended to read as follows:

24 "Section 212. Renewal and cancellation of entry  
25 permits.

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1           (1) An entry permit issued pursuant to section 211 of  
2           this chapter, whether a foreign investor entry permit or  
3           an entry permit issued under an EWA, shall be valid upon  
4           its issuance [~~(or upon automatic renewal) for a period~~  
5           ~~equal to the period of validity of the EWA to which the~~  
6           ~~entry permit relates.] and thereafter until the sooner  
7           of:~~

8                   (a) five years, or such shorter period as may be  
9                   prescribed in regulations by the immigration  
10                  authorities, after the date of its issuance;

11                  (b) expiration, cancellation, or surrender of the  
12                  applicable Foreign Investment Permit or EWA; or

13                  (c) cancellation of the entry permit as provided  
14                  in subsection (4) below.

15           (2) Solely for purposes of subsection (1) (b) above:

16                   (a) a Foreign Investment Permit which is  
17                   renewable annually shall not be deemed to have expired  
18                   unless and until the official who issued the Foreign  
19                   Investment Permit has declared it to be expired and so  
20                   notified the immigration officials in writing; and

21                   (b) an EWA shall not be deemed to have expired  
22                   unless and until the Foreign Investment Permit under  
23                   which it was issued is canceled or deemed to have  
24                   expired.

25           (3) Except as provided in subsection (4) below, an

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1           entry permit issued pursuant to section 211 of this  
2           chapter shall be automatically renewed upon its  
3           expiration.

4           ~~[-(2)]~~(4)    An entry permit issued pursuant to section  
5           211 of this chapter may be canceled, or its renewal may  
6           be denied, by the immigration authorities only if:

7                   (a) the required fee is unpaid;

8                   (b) the person to whom the entry permit has been  
9           issued is convicted by a court in the FSM of an offense  
10          in respect of which he or she has been sentenced to  
11          imprisonment for a term of six months or more; ~~[or]~~

12                  (c) the entry permit, or the EWA to which the  
13          entry permit relates, was obtained under false  
14          pretenses; ~~[or]~~

15                  (d) the conduct of the person to whom the entry  
16          permit has been issued constitutes a threat to the  
17          security of the FSM. In this case an entry permit may  
18          be canceled only after receiving a recommendation of  
19          cancellation from a committee appointed for this purpose  
20          and consisting of representatives from each of the  
21          following: the immigration authorities, the applicable  
22          State official responsible for foreign investment  
23          regulation in the State, the Attorney General of the  
24          FSM, and the Department;

25                  (e) the person to whom the entry permit has been

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1            issued leaves the position the basis of which the entry  
2            permit was issued;

3            (f) the person to whom the entry permit has been  
4            issued engages in employment other than that for which  
5            the entry permit was issued without a proper permit;

6            [~~or~~]

7            (g) the person to whom the entry permit has been  
8            issued is deported in accordance with law[~~or~~];

9            (h) the conditions for cancellation pursuant to  
10           section 210(3) of this chapter are satisfied;

11           (i) the applicable Foreign Investment Permit is  
12           canceled or surrendered; or

13           (j) it is required or permitted under subsection  
14           (5) below.

15           (5) An entry permit issued pursuant to section 211 of  
16           this chapter shall be canceled by the immigration  
17           authorities if the official who issued the Foreign  
18           Investment Permit to which the entry permit relates  
19           makes a finding, concurred in by the FSM Secretary of  
20           Justice, that the holder of the permit is not engaged in  
21           a bona fide attempt to commence, operate, wind up, or  
22           recommence any business to which the Foreign Investment  
23           Permit relates. Such a finding shall be in writing,  
24           signed by the FSM Secretary of Justice and the relevant  
25           State or national official, and arrived at through

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1           procedures which afforded the holder of the entry permit  
2           notice and an opportunity to be heard by the relevant  
3           State or national official."

4           Section 9. Section 213 of chapter 2 of title 32 of the Code  
5 of the Federated States of Micronesia, as enacted by Public Law  
6 No. 10-49, is hereby amended to read as follows:

7           "Section 213. Reports by holders of FSM Foreign  
8           Investment Permits.

9           (1) The holder of any FSM Foreign Investment Permit  
10          shall submit to the Secretary such reports concerning  
11          the foreign investment as the Secretary may prescribe in  
12          the FSM Foreign Investment Regulations. Details of the  
13          information required, the reasons for the requirements,  
14          and the frequency and form of such reports shall be set  
15          forth in the FSM Foreign Investment Regulations.

16          (2) Any change in foreign ownership of an investment  
17          for which an FSM Foreign Investment Permit has been  
18          issued which results in ownership of a substantial  
19          ownership interest by a noncitizen who did not  
20          previously own a substantial ownership interest shall be  
21          reported immediately to the Secretary, who may take such  
22          action as he or she considers appropriate in respect of  
23          the FSM Foreign Investment Permit, including its  
24          cancellation if appropriate under the provisions of  
25          section 209(7) of this chapter."

1 Section 10. Section 216 of chapter 2 of title 32 of the Code  
2 of the Federated States of Micronesia, as enacted by Public Law  
3 No. 10-49, is hereby amended to read as follows:

4 "Section 216. Compulsory acquisition of foreign  
5 investment property.

6 (1) The National Government guarantees that there  
7 shall be no compulsory acquisition or expropriation of  
8 the property of any [~~foreign investment~~] business entity  
9 as to which a Foreign Investment [~~Certificate~~] Permit  
10 has been issued, except under the following  
11 circumstances:

12 (a) in order to apply sanctions for violation of  
13 laws or regulations, as provided for in section 220 of  
14 this chapter; or

15 (b) in extraordinary cases in which

16 (i) such compulsory acquisition or  
17 expropriation is consistent with existing FSM law  
18 governing eminent domain;

19 (ii) such compulsory acquisition or  
20 expropriation is necessary to serve overriding national  
21 interests and

22 (iii) the conditions of subsection (2) below  
23 are met; or

24 (c) pursuant to generally applicable laws and  
25 regulations of the FSM or any State.



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1           (2) Compulsory acquisition or expropriation of a type  
2           described in subsection (1) (b) above may be undertaken  
3           only after:

4                   (a) the National Congress has, following a  
5                   recommendation to this effect by the Secretary, taken  
6                   official action to identify in writing

7                           (i) the property to be acquired or  
8                   expropriated and

9                           (ii) the overriding national interests that  
10                   make such acquisition or expropriation necessary; and

11                   (b) the Secretary has issued a notification to  
12                   any holder of a Foreign Investment Permit whose property  
13                   is to be acquired or expropriated, indicating

14                           (i) what property is affected by the action;

15                           (ii) what compensation will be paid for the  
16                   acquisition or expropriation of the property; and

17                           (iii) what appeal or other forms of legal  
18                   recourse are available to the holder of the Foreign  
19                   Investment Permit affected by the action.

20           (3) Payment of compensation pursuant to subsection  
21           (2) (b) above shall be promptly made and adequate in  
22           amount.

23           ~~[(4) The National Government shall not take action, or~~  
24           ~~permit action to be taken by any State or other entity~~  
25           ~~within the FSM, that, although not formally designated~~

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1           ~~or acknowledged as compulsory acquisition or~~  
2           ~~expropriation, indirectly has the same injurious effect~~  
3           ~~(‘creeping expropriation’). If such action nevertheless~~  
4           ~~takes place, the National Government shall be~~  
5           ~~responsible for the prompt and adequate compensation of~~  
6           ~~any injured noncitizen.]”~~

7           Section 11. Section 217 of chapter 2 of title 32 of the Code  
8 of the Federated States of Micronesia, as enacted by Public Law  
9 No. 10-49, is hereby amended to read as follows:

10           "Section 217. Transfers of earnings and capital.

11           (1) The National Government guarantees that no holder  
12 of a currently valid Foreign Investment Permit will be  
13 subject to any restrictions on making lawful remittances  
14 of profits and carrying out other lawful current  
15 international transactions as defined in the Articles of  
16 Agreement of the International Monetary Fund.

17           (2) The National Government guarantees that any holder  
18 of a currently valid Foreign Investment Permit will be  
19 permitted to lawfully repatriate any amount of capital  
20 that was lawfully brought into the FSM for, or that  
21 lawfully accrued on, a business entity to which such  
22 Permit applies [~~; provided, however, that prior~~  
23 ~~notification must be given to the Secretary, in~~  
24 ~~accordance with procedures that the Secretary may~~  
25 ~~establish by regulation, of any capital repatriation in~~

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1           ~~an amount exceeding \$50,000 or such higher amount as the~~  
2           ~~Secretary may establish for this purpose]."~~

3           Section 12. Section 219 of chapter 2 of title 32 of the Code  
4 of the Federated States of Micronesia, as enacted by Public Law  
5 No. 10-49, is hereby amended to read as follows:

6           "Section 219. Non-discriminatory treatment.

7           Subject to the provisions of this chapter and  
8           regulations promulgated hereunder, and subject further  
9           to the express provisions of any other statute  
10           applicable to specific business categories, the National  
11           Government shall not take action, or permit any State to  
12           take action, that would result in a foreign investor  
13           being given treatment that is less favorable than the  
14           treatment given to citizens, or business entities wholly  
15           owned by citizens, engaging in business in the FSM."

16           Section 13. Title 37 of the Code of the Federated States of  
17           Micronesia is hereby enacted by adding a new section 101 thereto  
18           to read as follows:

19           "Section 101. Bond & Reporting.

20           (1) Any person offering to provide insurance in the  
21           FSM shall file a \$100,000 deposit with the Secretary of  
22           Economic Affairs in cash, negotiable securities, or a  
23           bond from a corporate surety, or any combination  
24           totaling \$100,000 which is acceptable to the Secretary,  
25           before the commencement of business. The deposit shall



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