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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 section 203, 205, 207, 209, 210, 211, 212, 213, 216, 217 and 219, in order 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 Development~~] Economic Affairs of the FSM or its  
17 successor;

18 [~~4~~] (5) 'engaging in business' means carrying out any  
19 activity relating to the conduct of a business, and  
20 shall include the activities enumerated in subsection

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1            [~~(4)~~] (5) (a) below but shall not include the activities  
2            enumerated in subsection [~~(4)~~] (5) (b) below:

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

4                            (i) buying, selling, leasing, or  
5            exchanging goods, products, or property of any kind for  
6            commercial purposes;

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

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

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

21                            (v) maintaining a stock of goods in the FSM  
22           for the purpose of having the same processed by another  
23           person in the FSM;

24                            (vi) establishing or operating a factory,  
25           workshop, processing plant, warehouse, or store, whether

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1           wholesale or retail;

2                       (vii) mining or exploring for minerals, or the  
3           commercial exploitation or extraction of other natural  
4           resources;

5                       (viii) providing services as a management firm  
6           or professional consultant in the management,  
7           supervision, or control of any business entity; and

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

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

18                      (b) engaging in business shall not include:

19                               (i) the publication of general  
20          advertisements through newspapers, brochures, or other  
21          publications, or through radio or television;

22                               (ii) the conducting of scientific research or  
23          investigations, if

24                                       a) the research or investigation is  
25          sponsored by a university, college, agency, or

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1 institution normally engaged in such activities  
2 primarily for purposes other than commercial profit, and

3 b) the particular research or  
4 investigation at issue is not for purposes of, or  
5 expected to yield, commercial profit;

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

8 (iv) maintaining or defending any action or  
9 suit, or participating in administrative proceedings,  
10 arbitration, or mediation;

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

12 (vi) the lawful sale of corporate shares or  
13 other interests or holdings in a business entity  
14 acquired not for speculation or profit; or

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

17 [~~(5)~~] (6) 'foreign investment' means any activity in the  
18 FSM by a noncitizen that amounts to 'engaging in  
19 business' as defined above;

20 [~~(6)~~] (7) 'Foreign Investment Permit' means an FSM  
21 Foreign Investment Permit, a State Foreign Investment  
22 Permit, or a Pre-Existing Foreign Investment Permit;

23 [~~(7)~~] (8) 'foreign investor' means a noncitizen who is  
24 engaging in business in the FSM, as defined above;

25 [~~(8)~~] (9) 'FSM' means the Federated States of

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1           Micronesia;

2       ~~[(9)]~~ (10) 'FSM Foreign Investment Permit' means a permit  
3           issued by the Secretary in accordance with the  
4           provisions of this chapter;

5       ~~[(10)]~~ (11) 'FSM Foreign Investment Regulations' means  
6           Regulations promulgated by the Secretary in accordance  
7           with the provisions of this chapter;

8       ~~[(11)]~~ (12) 'noncitizen' means any person who is not a citizen  
9           of the FSM, and any business entity in which any  
10          ownership interest is held by a person who is not a  
11          citizen of the FSM;

12       ~~[(12)]~~ (13) 'ownership interest' in a business entity  
13          means ownership of or control over, ~~[either directly or~~  
14          ~~indirectly]~~ whether directly, indirectly, legally or  
15          beneficially, some or all of the shares of, property or  
16          assets of, voting rights in, or rights to profits or  
17          revenue from, that business entity; provided, however,  
18          that:

19               (a) ownership interest shall not include a bona  
20               fide security interest in real or personal property for  
21               the purpose of securing a loan or other obligation; and

22               (b) any interest ~~[held]~~ owned or controlled by  
23               the spouse, minor child, or other dependent of a person  
24               shall be counted as owned or controlled by that person  
25               in determining whether he or she has an ownership

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1            interest in a business entity, provided that this  
2            subsection shall not apply to a noncitizen spouse who is  
3            married to a citizen and who does not hold an ownership  
4            interest in his or her own right;

5        [~~(13)~~] (14) 'person' includes both individuals and legal  
6            entities;

7        [~~(14)~~] (15) 'Pre-Existing Foreign Investment Permit' means  
8            a permit issued by the Secretary or by a State prior to  
9            the date on which this act took effect, and which has  
10           not expired according to its terms or been suspended or  
11           canceled;

12        [~~(15)~~] (16) 'Secretary' means the Secretary of the  
13           Department [~~of Resources and Development~~] Economic  
14           Affairs of the FSM;

15        [~~(16)~~] (17) 'State' means one of the States of the FSM;

16        [~~(17)~~] (18) 'State Foreign Investment Legislation' means  
17           legislation enacted and currently effective in one of  
18           the States to regulate foreign investment within that  
19           State;

20        [~~(18)~~] (19) 'State Foreign Investment Permit' means a  
21           permit issued by authorized officials within one of the  
22           States pursuant to relevant State Foreign Investment  
23           Legislation;

24           (20) 'Substantial ownership interest' means an  
25           ownership interest in a business entity of at least

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1           thirty percent (30%)."

2           Section 2. Section 205 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 205. Categories of economic sectors. The  
6 following system of Categories of economic sectors is  
7 hereby established for the purpose of implementing the  
8 policy of the FSM to welcome foreign investment in all  
9 sectors of the FSM economy, insofar as such foreign  
10 investment is consistent with the economic, social, and  
11 cultural well-being of its citizens:

12           (1) Categories for National Regulation -- economic  
13 sectors that are of special national significance and  
14 therefore fall within the jurisdiction of the National  
15 Government in respect of foreign investment regulation.  
16 These Categories are the following:

17           (a) Category A ('National Red List') -- the set  
18 of economic sectors that are closed to foreign  
19 investment anywhere in the FSM. Economic sectors in the  
20 National Red List are the following:

21                   (i) arms manufacture;

22                   (ii) the minting of coins or printing of  
23 notes for use as currency;

24                   (iii) business activities relating to nuclear  
25 power or radioactivity; and

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

6 (b) Category B ('National Amber List') -- the set  
7 of economic sectors that are subject to National  
8 Government regulation and as to which certain criteria  
9 specified in the FSM Foreign Investment Regulations must  
10 be met [~~before a Foreign Investment Permit may be~~  
11 ~~issued~~]. Economic Sectors on the National Amber List  
12 include the following:

13 (i) banking, other than as defined in title  
14 29 of the FSM Code; and

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

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

21 (c) Category C (~~[national]~~ 'National Green List')  
22 -- the set of economic sectors that are subject to  
23 National Government regulation but as to which no  
24 special criteria need to be met before a Foreign  
25 Investment Permit is to be issued. Economic sectors on

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1 the National Green List include the following:

- 2 (i) banking, as defined in title 29  
3 of the FSM Code;  
4 (ii) telecommunications;  
5 (iii) fishing in the FSM's Exclusive  
6 Economic Zone;  
7 (iv) international and interstate air  
8 transport;  
9 (v) international shipping; and  
10 (vi) such other economic sectors as  
11 the Secretary may, after consultation with States  
12 pursuant to section 206(2) of this chapter,  
13 designate in the FSM Foreign Investment Regulations  
14 as being on the National Green List.

15 (2) Categories for State Regulation -- economic  
16 sectors that are not of special national  
17 significance and therefore are delegated to the  
18 jurisdiction of the State Governments in respect of  
19 foreign investment regulation. These Categories  
20 are to be established separately by each State, by  
21 means of the State Foreign Investment Regulations  
22 in each State. An economic sector included in any  
23 of the Categories for National Regulation pursuant  
24 to subsection (1) above shall not appear in any of  
25 the Categories for State Regulation. [~~In the~~

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1 ~~absence of State foreign investment legislation,~~  
2 ~~the National government will continue to regulate~~  
3 ~~foreign investment in that State pursuant to~~  
4 ~~provisions of the FSM Foreign Investment Act~~  
5 ~~superseded by this act.]~~

6 (3) Notwithstanding anything to the contrary in  
7 subsection (1), and regardless of the economic category  
8 involved:

9 (a) every applicant for or holder of an FSM  
10 Foreign Investment Permit may be required to meet such  
11 character criteria as may be specified in the FSM  
12 Foreign Investment Regulations in order to obtain or  
13 retain an FSM Foreign Investment Permit; and

14 (b) every present or future holder of a  
15 substantial ownership interest in an applicant for or  
16 holder of an FSM Foreign Investment Permit may be  
17 required to meet those same character criteria in order  
18 to obtain or retain that substantial ownership  
19 interest."

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

23 "Section 207. Application procedures for FSM Foreign  
24 Investment Permits.

25 (1) An application for an FSM Foreign Investment

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1 Permit shall be made on the form or forms prescribed in  
2 the FSM Foreign Investment Regulations, as may be  
3 supplemented in particular cases by order of the  
4 Secretary. Such application form or forms shall be made  
5 publicly available by the Secretary and by responsible  
6 authorities in each of the States. The application form  
7 shall require the applicant to identify clearly the  
8 person(s) resident in the Federated States of Micronesia  
9 who are designated as agent for service of process.

10 (2) Submission of an application for an FSM Foreign  
11 Investment Permit may be made either (a) to the  
12 Secretary or (b) to the responsible authorities in the  
13 State in whose territory the foreign investment takes  
14 place or is proposed to take place. In the latter case,  
15 the responsible State authorities shall forward the  
16 application directly to the Secretary.

17 (3) Upon receiving an application for an FSM Foreign  
18 Investment Permit, the Secretary shall, within such  
19 periods of time as may be prescribed for this purpose in  
20 the FSM Foreign Investment Regulations, take one or more  
21 of the following actions, as appropriate:

22 (a) determine whether the application relates to  
23 a foreign investment in a Category A, Category B, or  
24 Category C economic sector;

25 (b) deny the application if;

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

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

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

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

22 (e) require the applicant to submit further  
23 information if the application is incomplete or does not  
24 provide enough information for the Secretary to  
25 determine;

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1 (i) what economic sector(s) is (are)  
2 involved, or

3 (ii) whether the [~~requirements for an FSM~~  
4 ~~Foreign Investment Permit~~] character criteria have been  
5 [~~or will be~~] met[.];

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

7 ~~(i) the application~~

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

10 ~~b) is complete; and~~

11 ~~e) demonstrates that the foreign~~  
12 ~~investment meets all of the applicable national criteria~~  
13 ~~established in the FSM Foreign Investment Regulations~~  
14 ~~pursuant to section 206(1)(b) of this chapter; or]~~

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

18 (f) issue an FSM Foreign Investment Permit  
19 if the application:

20 (i) is complete;

21 (ii) meets the character criteria; and

22 (iii) relates to a foreign investment in  
23 either Category B (National Amber List) or Category C  
24 (National Green List) economic sector.

25 (4) Upon taking any action described in paragraph (b),

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1 (e), or (f) of subsection (3) above, the Secretary  
2 shall, within such periods of time as may be prescribed  
3 for this purpose in the FSM Foreign Investment  
4 Regulations, advise the applicant of the action and the  
5 reasons therefor.

6 (5) The nature and amount of the application fee, if  
7 any, to be paid by an applicant seeking an FSM Foreign  
8 Investment Permit shall be established in the FSM  
9 Foreign Investment Regulations.

10 (6) If the Secretary issues an FSM Foreign Investment  
11 Permit pursuant to subsection (3) (f) above, the FSM  
12 Foreign Investment Permit will be sent to the applicant,  
13 with copies to be (a) inserted into a register to be  
14 maintained by the Department for this purpose and (b)  
15 sent to the responsible authority in each State, for  
16 insertion in a register to be maintained by such  
17 authorities for this purpose.

18 (7) If the Secretary denies an application for an FSM  
19 Foreign Investment Permit pursuant to subsection  
20 (3) (b) (ii) above, the applicant may (a) resubmit the  
21 application with modifications designed to meet the  
22 applicable national criteria established in the FSM  
23 Foreign Investment Regulations pursuant to section  
24 206(1) (d) of this chapter, or (b) provide to the  
25 Secretary additional information or explanation to

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1           indicate how, in the applicant's opinion, the foreign  
2           investment would satisfy such criteria. On receipt of  
3           such modifications or additional information, the  
4           Secretary shall review the application and make a  
5           determination under the procedures prescribed in  
6           subsection (3) above. There is no limit to the number  
7           of times an applicant may modify an application in an  
8           attempt to satisfy the applicable criteria."

9           Section 4. Section 209 of chapter 2 of title 32 of the Code  
10          of the Federated States of Micronesia, as enacted by Public Law  
11          No. 10-49, is hereby amended to read as follows:

12                 "Section 209. Form, fees, ~~[renewal]~~ [duration]  
13                 modification, and cancellation of FSM Foreign Investment  
14                 Permits.

15                 (1) FSM Foreign Investment Permits shall be in the  
16                 form prescribed in the FSM Foreign Investment  
17                 Regulations. State Foreign Investment Permits shall be  
18                 in the form prescribed in State Foreign Investment  
19                 Legislation and State Foreign Investment Regulations.

20                 (2) Upon the issuance of an FSM Foreign Investment  
21                 Permit, the holder shall fulfill the requirements, if  
22                 any, included in the FSM Foreign Investment Regulations  
23                 for the payment of an annual fee.

24                 (3) An FSM Foreign Investment Permit shall be valid  
25                 ~~[for one year, and, unless]~~ until it has been canceled,

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1           suspended, or surrendered pursuant to subsections (7) -  
2           ~~[(10)] 11~~ below ~~[, it shall be renewable on an annual~~  
3           ~~basis upon the fulfillment by the holder of the~~  
4           ~~requirements, if any, included in the FSM Foreign~~  
5           ~~Investment Regulations for the payment of an annual~~  
6           ~~fee].~~

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

11          (5) The holder of an FSM Foreign Investment Permit may  
12          not make a change in the business that the holder is  
13          engaging in without obtaining either (a) a new FSM  
14          Foreign Investment Permit for that purpose under section  
15          207 of this chapter (or, if applicable, a new State  
16          Foreign Investment Permit under the relevant State  
17          Foreign Investment ~~[Law]~~ Legislation) or (b) a  
18          modification in the terms of its FSM Foreign Investment  
19          Permit. Such a modification may be requested by the  
20          business entity, and granted by the Secretary, in  
21          accordance with such procedures and requirements as the  
22          Secretary shall establish in the FSM Foreign Investment  
23          Regulations. However, no such modification is necessary  
24          if an existing business entity for which an FSM Foreign  
25          Investment Permit has been issued is expanded, without

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1 any change in [~~either (a)~~] the business it is engaging  
2 in [~~or (b) the degree of interest held by any noncitizen~~  
3 ~~in that business entity~~].

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

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

13 (a) the annual fee, if any, required under either  
14 subsection (2) or subsection (3) above has not been  
15 paid;

16 (b) the holder of the Permit requests its  
17 cancellation;

18 (c) the permit application is found to have  
19 contained false or fraudulent information;

20 (d) the holder of the Permit bribed or otherwise  
21 exercised, or attempted to exercise, undue influence on  
22 the decision to issue the Permit;

23 (e) the holder of the Permit fails or refuses to  
24 comply with the reporting requirements under section 213  
25 of this chapter or with any other requirements of this

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1 chapter or of the FSM Foreign Investment Regulations;

2 (f) the holder of the Permit fails or refuses to  
3 comply with any restrictions or conditions included in  
4 the Permit, or engages in activities not authorized by  
5 the Permit;

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

11 (8) If an FSM Foreign Investment Permit is canceled  
12 pursuant to subsection (7) above, the noncitizen holding  
13 that canceled Permit shall:

14 (a) immediately stop engaging in business in the  
15 FSM;

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

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

21 (9) If it appears to the Secretary that one or more of  
22 the grounds for cancellation of an FSM Foreign  
23 Investment Permit, as enumerated in subsection (7)  
24 above, may exist, the Secretary may temporarily suspend  
25 the validity of that FSM Foreign Investment Permit and

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1 shall commence the following procedures leading to  
2 cancellation:

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

15 (b) Hearing procedures shall be prescribed by the  
16 Secretary in the FSM Foreign Investment Regulations and  
17 shall include the right of the holder of the FSM Foreign  
18 Investment Permit to participate and to be represented  
19 by counsel, to call witnesses, and to cross-examine  
20 witnesses called against the holder of the FSM Foreign  
21 Investment Permit.

22 (c) Within ten days after a hearing, the  
23 Secretary shall issue a written decision including  
24 reasons for the action taken and the remedy to be  
25 imposed pursuant to subsection (8) above, and shall

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1 transmit that decision immediately to the holder of the  
2 FSM Foreign Investment Permit.

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

8 (e) Within 20 days after receiving the notice of  
9 the decision of the Secretary, the holder of the FSM  
10 Foreign Investment Permit may appeal the decision to the  
11 Supreme Court of the FSM. Copies of any notice of  
12 appeal shall be served on the Secretary and the  
13 ~~Attorney General~~ FSM Secretary of Justice.

14 (10) If an FSM Foreign Investment Permit is suspended  
15 pursuant to this chapter, the noncitizen holding that  
16 suspended permit shall immediately stop engaging in  
17 business in the FSM and refrain from resuming the  
18 business unless and until the FSM Foreign Investment  
19 Permit is reinstated.

20 [~~10~~] (11) A holder of an FSM Foreign Investment Permit  
21 may surrender it by meeting requirements specified for  
22 this purpose in the FSM Foreign Investment Regulations.  
23 Mere cessation of engaging in business in the FSM,  
24 without meeting such requirements, does not relieve the  
25 holder of an FSM Foreign Permit from the requirements

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1 incident thereto."

2 Section 5. Section 210 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 210. Expatriate Worker Authorizations.

6 (1) A business entity as to which either  
7 have an FSM Foreign Investment Permit or a State  
8 Foreign Investment Permit has been issued shall be  
9 entitled automatically to an expatriate worker  
10 authorization ('EWA') for one expatriate senior  
11 management position.

12 (2) If the business entity as to which  
13 either an FSM Foreign Investment Permit or a State  
14 Foreign Investment Permit has been issued meets  
15 the applicable criteria established for this  
16 purpose in the FSM Foreign Investment Regulations,  
17 the holder of such Permit shall be entitled  
18 automatically to one or more additional EWAs for  
19 expatriate senior management positions.

20 (3) An EWA that is automatically allocated under  
21 either subsection (1) or (2) above shall remain valid  
22 during the entire period that the corresponding Foreign  
23 Investment Permit remains valid [~~including during the~~  
24 ~~period of any renewal as provided for in section 209 of~~  
25 ~~this chapter~~]. However, the criteria to be established

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1           pursuant to subsection (2) above may provide that,  
2           notwithstanding the continued validity of an EWA, a new  
3           or renewal entry permit requested under that EWA may be  
4           denied and the existing entry permit issued under that  
5           EWA may be canceled during any period when those  
6           criteria are not being met.

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

15           ~~[(5)]~~ (4) The holder of a Foreign Investment permit may  
16           apply for additional expatriate workers pursuant to  
17           title 51 of the FSM Code."

18           Section 6. Section 211 of chapter 2 of title 32 of the Code  
19 of the Federated States of Micronesia, as enacted by Public Law  
20 No. 10-49, is hereby amended to read as follows:

21           "Section 211. Issuance of entry permits.

22           (1) The holder of a Foreign Investment Permit may,  
23 upon the allocation of an EWA to the relevant business  
24 entity, submit to the immigration authorities an  
25 application for an entry permit for a nominee to fill

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1 the position to which the EWA applies.

2 (2) If the immigration authorities approve an  
3 application for an entry permit applied for under  
4 subsection (1) above, the immigration authorities shall  
5 issue such permit upon the payment of a fee in such an  
6 amount and under such procedures as may be established  
7 for this purpose by the immigration authorities.

8 (3) The immigration authorities shall issue an entry  
9 permit for a nominee to fill a position to which an EWA  
10 applies except in cases of (a) criminal character or (b)  
11 medical risk to the nation or the nominee, as set forth  
12 in pertinent regulations issued by the immigration  
13 authorities. If the immigration authorities deny an  
14 application for an entry permit for a nominee to fill a  
15 position to which an EWA applies, the immigration  
16 authorities shall so advise the holder of the Foreign  
17 Investment Permit and shall give reasons for the denial.  
18 In such a case of denial, the holder of the Foreign  
19 Investment Permit may (a) request the immigration  
20 authorities to review the application after submission  
21 of additional information on the nominee, or (b) apply  
22 for an entry permit nominating a different person to  
23 fill the position.

24 (4) If, for whatever reason, a position to which an  
25 EWA applies is or becomes vacant during the period of

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1            validity of that EWA, the holder of the relevant Foreign  
2            Investment Permit may apply to the immigration  
3            authorities for an entry permit for a nominee to fill  
4            the vacant position.

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

8            (a) one if the foreign investor is a sole  
9            proprietorship; or

10           (b) one for each individual holder of a  
11           substantial ownership interest in the foreign investor  
12           if the foreign investor is any other kind of business  
13           entity.

14           (6) Nothing in this chapter shall be interpreted to  
15           require that a noncitizen have an entry permit if that  
16           noncitizen is not otherwise required to have an entry  
17           permit."

18           Section 7. Section 212 of chapter 2 of title 32 of the Code  
19 of the Federated States of Micronesia, as enacted by Public Law  
20 No. 10-49, is hereby amended to read as follows:

21           "Section 212. Renewal and cancellation of entry  
22           permits.

23           (1) An entry permit issued pursuant to section 211 of  
24 this chapter, whether a foreign investor entry permit or  
25 an entry permit issued under the EWA, shall be valid

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1           upon its issuance [~~(or upon automatic renewal) for a~~  
2           ~~period equal to the period of validity of the EWA to~~  
3           ~~which the entry permit relates.~~] and thereafter until  
4           the sooner of:

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

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

10                   (c) cancellation of the entry permit as provided  
11                   in subsection (4) below.

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

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

18                   (b) an EWA shall not be deemed to have expired  
19                   unless and until the Foreign Investment Permit under  
20                   which it was issued is cancelled or deemed to have  
21                   expired.

22                   (3) Except as provided in subsection (4) below, an  
23                   entry permit issued pursuant to section 211 of this  
24                   chapter shall be automatically renewed upon its  
25                   expiration.

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1           ~~[-(2)]~~ (4) An entry permit issued pursuant to section  
2           211 of this chapter may be cancelled, or its renewal may  
3           be denied, by the immigration authorities only if:

4                   (a) the required immigration fee, if any, is  
5           unpaid;

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

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

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

23                   (e) the person to whom the entry permit has been  
24           issued leaves the position the basis of which the entry  
25           permit was issued;

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1 (f) the person to whom the entry permit has been  
2 issued engages in employment outside the scope of the  
3 employment specified by the relevant EWA, whether or not  
4 the employment is with the foreign investor to whom the  
5 EWA was issued; [other than that for which the entry  
6 permit was issued without a proper permit; or]

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

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 the FSM Secretary of  
20 Justice, that the holder of the permit is not engaged in  
21 a bona fide attempt to commerce, 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 8. 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) Notwithstanding any other provision of this  
17          chapter, an FSM Foreign Investment Permit shall be  
18          automatically suspended for a failure to meet a  
19          reporting deadline or a failure to include required  
20          information in a report pursuant to subsection (1) of  
21          this section. Any such suspension shall be effective  
22          from the sixtieth day after the day on which the report  
23          or information is due unless, during the 60 grade  
24          period, the holder of the Foreign Investment Permit  
25          submits the requisite report or information or provides

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1           a written explanation of the failure to do so that is  
2           acceptable to the Secretary. The Secretary may move to  
3           cancel the FSM Foreign Investment Permit in accordance  
4           with section 209 of this chapter at any time after the  
5           suspension becomes effective.

6           ~~[(2)]~~ (3) Any change in foreign ownership of an  
7           investment for which an FSM Foreign Investment Permit  
8           has been issued which results in ownership of a  
9           substantial ownership interest by a noncitizen who did  
10           not previously own a substantial ownership interest  
11           shall be reported immediately to the Secretary, who may  
12           take such action as he or she considers appropriate in  
13           respect of the FSM Foreign Investment Permit, including  
14           its cancellation if appropriate under the provisions of  
15           section 209(7) of this chapter."

16           Section 9. Title 32 of the Code of the Federated States of  
17           Micronesia, as enacted by Public Law No. 10-49, is hereby further  
18           amended by adding a new section 215A to read as follows:

19           "Section 215A. Review of compliance by holders of FSM  
20           Foreign Investment Permits.

21           (1) The Secretary shall undertake an annual review of  
22           the compliance of each FSM Foreign Investment Permit  
23           holder with the provisions of this chapter, the FSM  
24           Foreign Investment Regulations and any conditions that  
25           attach to the relevant Foreign Investment Permit.

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1           (2) The Secretary shall prepare a written report in  
2           respect of each review setting out his or her findings

3           (3) Any non-compliance identified during a review  
4           conducted pursuant to subsection (1) of this section may  
5           be dealt with in accordance with the provisions of this  
6           chapter.

7           (4) The Secretary shall include aggregate information  
8           on compliance in the annual publication required  
9           pursuant to subsection 214(1) of this chapter."

10          Section 10. Section 216 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 216. Compulsory acquisition of foreign  
14           investment property.

15           (1) [~~The National Government guarantees that there~~]  
16           There shall be no compulsory acquisition or  
17           expropriation of the property of any [~~foreign~~  
18           ~~investment~~] business entity as to which a Foreign  
19           Investment [~~Certificate~~] Permit has been issued, except  
20           under the following circumstances:

21                   (a) in order to apply sanctions for violation of  
22                   laws or regulations, as provided for in section 220 of  
23                   this chapter; or

24                   (b) in extraordinary cases in which

25                           (i) such compulsory acquisition or

1           expropriation is consistent with existing FSM law  
2           governing eminent domain;

3                   (ii) such compulsory acquisition or  
4           expropriation is necessary to serve overriding national  
5           interests and

6                   (iii) the conditions of subsection (2) below  
7           are met; or

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

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

13                   (a) the National Congress has, following a  
14           recommendation to this effect by the Secretary, taken  
15           official action to identify in writing

16                           (i) the property to be acquired or  
17           expropriated and

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

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

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

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

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1 (iii) what appeal or other forms of legal  
2 recourse are available to the holder of the Foreign  
3 Investment Permit affected by the action.

4 (3) Payment of compensation pursuant to subsection  
5 (2) (b) above shall be promptly made and adequate in  
6 amount.

7 ~~[(4) The National Government shall not take action, or~~  
8 ~~permit action to be taken by any State or other entity~~  
9 ~~within the FSM] Neither the National Government nor nay~~  
10 ~~State Government nor any other entity within the FSM~~  
11 ~~shall take any action~~ that, although not formally  
12 designated or acknowledged as compulsory acquisition or  
13 expropriation, indirectly has the same injurious effect  
14 ('creeping expropriation'). ~~[If such action~~  
15 ~~nevertheless takes place, the National Government shall~~  
16 ~~be responsible for the prompt and adequate compensation~~  
17 ~~of any injured noncitizen.]"~~

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

21 "Section 217. Transfers of earnings and capital.

22 (1) The National Government guarantees that no holder  
23 of a currently valid Foreign Investment Permit will be  
24 subject to any restrictions on making lawful remittances  
25 of profits and carrying out other lawful current

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1 international transactions as defined in the Articles of  
2 Agreement of the International Monetary Fund.

3 (2) The National Government guarantees that any holder  
4 of a currently valid Foreign Investment Permit will be  
5 permitted to lawfully repatriate any amount of capital  
6 that was brought into the FSM for, or that lawfully  
7 accrued on, a business entity to which such Permit  
8 applies [~~; provided, however, that prior notification~~  
9 ~~must be given to the Secretary, in accordance with~~  
10 ~~procedures that the Secretary may establish by~~  
11 ~~regulation, of any capital repatriation in an amount~~  
12 ~~exceeding \$50,000 or such higher amount as the Secretary~~  
13 ~~may establish for this purpose]."~~

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

17 "Section 219. Non-discriminatory treatment. Subject to  
18 the provisions of this chapter and regulations  
19 promulgated hereunder, and subject further to the  
20 express provisions of any other statute applicable to  
21 specific business categories, the National Government  
22 shall not take action, or permit any State to take  
23 action, that would result in a foreign investor being  
24 given treatment that is less favorable than the  
25 treatment given to citizens, or business entities wholly

1           owned by citizens, engaging in business in the FSM."

2           Section 13. This act shall become law upon approval by the  
3 President of the Federated States of Micronesia or upon its  
4 becoming law without such approval.

5

6 Date: 9/19/20

Introduced by: /s/ Claude H. Phillip  
for Simiram Sipenuk  
(by request)

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