

STANDING COMMITTEE REPORT NO. 14-48

RE: C.B. NO. 14-96 /R&D

SUBJECT: FOREIGN INVESTMENT

SEPTEMBER 21, 2005

The Honorable Peter M. Christian
Speaker, Fourteenth Congress
Federated States of Micronesia
Second Regular Session, 2005

Dear Mr. Speaker:

Your Committee on Resources and Development ("R&D"), to which was referred C.B. No. 14-96 entitled:

"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, 207, 209, 210, 211, 212, 213, 216, 217, AND 219, IN ORDER TO MAKE CHANGES TO THE FOREIGN INVESTMENT ACT, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The intent and purpose of the bill are expressed in its title.

The President transmitted the subject bill in order to amend title 32 of the Code in a number of respects. The amendments were prepared in consultation with the Asian Development Bank and are intended to make the FSM more attractive to foreign investors. The Committee has been advised via Presidential Communication No. 14-53 that the FSM's eligibility for the second tranche of the Private Sector Development Loan will depend on the bill passing this session and regulations being in place by no later than November 1, 2005.

The subject bill would introduce the new concept of character criteria to the foreign investment law. An applicant, or the owner of an applicant company, would be required to demonstrate that he or she is of good character in order to obtain and retain a foreign investment permit ("FIP"). For all sectors, except those in which foreign investment is prohibited, an applicant that can demonstrate good character and provides a complete application will automatically be granted an FIP with certain conditions attached to it arising from the nature of the business. Unlike the current situation where FIPs must be renewed annually, if this bill is passed, FIPs would remain valid for the life of the investment unless otherwise cancelled or suspended.

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The subject bill also includes a number of changes that are intended to enhance compliance with the Foreign Investment Law. The bill would require the Executive to undertake an annual review of compliance by each FIP holder and publish aggregate statistics on compliance. In addition, FIPs would be automatically suspended for a failure to comply with reporting requirements.

Your Committee notes that all proposed changes to title 32 would only apply to the limited number of sectors that are subject to National, rather than state FIPs, for example, banking; telecommunications; fisheries; and international and interstate air transport and shipping. However, in accordance with subsection 206(5) of title 32, state actions regarding FIPs must be consistent with the National Law. Your Committee therefore urges each of the States to give consideration to the amendments proposed by CB No. 14-96, should they become law, in order to ensure that the regulatory regime in each State is consistent with the National Law.

Two public hearings were held on this subject on September 14 and 16, 2005 and in light of the comments provided during those hearings; the importance of attracting foreign investment to the FSM; and the requirements set out by the Asian Development Bank for the FSM to qualify for the second tranche of the Private Sector Development loan, your Committee is satisfied that the subject bill is a positive step towards improving the climate for foreign investment in this country.

Thus, your Committee on Resources and Development is in accord with the intent and purpose of C.B. No. 14-96 and recommends its passage on First Reading, and that it be placed on the Calendar for Second and Final Reading subject to the concurrence of your Committee on Ways and Means.

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Respectfully submitted,

Manny Mori, chairman

Ramon Peyal, vice chairman

Alik L. Alik, member

Peter M. Christian, member

Dion G. Neth, member

Simiram Sipenuk, member

Peter Sitan, member