

FOREIGN INVESTMENT ACT of 1997

TENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST SPECIAL SESSION, 1997
CONGRESSIONAL BILL NO. 10-5 C.D.1
PUBLIC LAW NO. 10-49

AN ACT

To further amend title 32 of the Code of the Federated States of Micronesia, as amended, by repealing chapter 2 and replacing it with a new chapter 2, and for other purposes.

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

Section 1. Chapter 2 of title 32 of the Code of the Federated States of Micronesia is hereby repealed in its entirety.

Section 2. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by enacting a new chapter 2 to be entitled "Foreign Investment".

Section 3. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new part I of chapter 2 to be entitled "Introductory Provisions".

Section 4. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 201 of part 1 of chapter 2 to read as follows:

"Section 201. Short title. This Chapter is known and may be cited as the 'Foreign Investment Act of 1997'."

Section 5. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 202 of part 1 of chapter 2 to read as follows:

"Section 202. Purpose of this chapter. The purpose of this chapter is to encourage foreign investment within the territory of the FSM in a manner that serves the economic, social, and cultural interests of its citizens. This purpose shall be borne in mind in the implementation and interpretation of the provisions of this chapter."

Definitions

Section 6. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 203 of part I of chapter 2 to read as follows:

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

- (1) 'business entity' means any sole proprietorship, partnership, company, corporation, joint venture, or other association of persons engaging in business;
- (2) 'citizen' means a citizen of the FSM;
- (3) 'Department' means the Department of Resources and Development of the FSM;

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

(a) 'engaging in business' shall include:

- (i) buying, selling, leasing, or exchanging goods, products, or property of any kind for commercial purposes;
 - (ii) buying, selling, or exchanging services of any kind for commercial purposes;
 - (iii) conducting negotiations for transactions of the types described in items (i) or (ii) above; provided, however, that negotiations with licensed importers for periods of less than 14 days per calendar year shall not be considered 'engaging in business';
 - (iv) appointing a representative, agent, or distributor by a noncitizen to perform any of the acts described in items (i) through (iii) above, unless said representative, agent, or distributor has an independent status and transacts business in its name for its own account and not in the name of or for the account of any noncitizen principal;
 - (v) maintaining a stock of goods in the FSM for the purpose of having the same processed by another person in the FSM;
 - (vi) establishing or operating a factory, workshop, processing plant, warehouse, or store, whether wholesale or retail;
 - (vii) mining or exploring for minerals, or the commercial exploitation or extraction of other natural resources;
 - (viii) providing services as a management firm or professional consultant in the management, supervision, or control of any business entity;
 - (ix) providing professional services as an attorney, physician, dentist, engineer, surveyor, accountant, auditor, or other professional providing service for a fee; provided, however, that such a professional shall not be considered to be 'engaging in business' unless he or she, while present in the FSM, performs his or her respective professional services for more than 14 days in any calendar year; and
 - (x) holding at least twenty percent (20%) ownership interest in a business entity;
- (b) engaging in business shall not include:

- (i) the publication of general advertisements through newspapers, brochures, or other publications, or through radio or television;
- (ii) the conducting of scientific research or investigations, if a) the research or investigation is sponsored by a university, college, agency, or institution normally engaged in such activities primarily for purposes other than commercial profit, and b) the particular research or investigation at issue is not for purposes of, or expected to yield, commercial profit;
- (iii) the collection of information by a bona fide journalist for news publication or broadcast;
- (iv) maintaining or defending any action or suit, or participating in administrative proceedings, arbitration, or mediation;
- (v) maintaining bank accounts; or
- (vi) the lawful sale of corporate shares or other interests or holdings in a business entity acquired not for speculation or profit;

- (5) 'foreign investment' means any activity in the FSM by a noncitizen that amounts to 'engaging in business' as defined above;
- (6) 'Foreign Investment Permit' means an FSM Foreign Investment Permit, a State Foreign Investment Permit, or a Pre-Existing Foreign Investment Permit;
- (7) 'foreign investor' means a noncitizen who is engaging in business in the FSM, as defined above;
- (8) 'FSM' means the Federated States of Micronesia;
- (9) 'FSM Foreign Investment Permit' means a permit issued by the Secretary in accordance with the provisions of this chapter;
- (10) 'FSM Foreign Investment Regulations' means Regulations promulgated by the Secretary in accordance with the provisions of this chapter;
- (11) 'noncitizen' means any person who is not a citizen of the FSM, and any business entity in which any ownership interest is held by a person who is not a citizen of the FSM;
- (12) 'ownership interest' in a business entity means ownership of or control over, either directly or indirectly, some or all of the shares of, property or assets of, voting rights in, or rights to profits or revenue from, that business entity; provided, however, that:
 - (a) ownership interest shall not include a security interest in real or personal property for the purpose of securing a loan; and
 - (b) any interest held by the spouse, minor child, or other dependent of a person shall be counted as owned by that person in determining whether he or she has an ownership interest in a business entity;
- (13) 'person' includes both individuals and legal entities;
- (14) 'Pre-Existing Foreign Investment Permit' means a permit issued by the Secretary or by a State prior to the date on which this act took effect, and which has not expired according to its terms or been suspended or canceled;
- (15) 'Secretary' means the Secretary of the Department of Resources and Development of the FSM;
- (16) 'State' means one of the States of the FSM;
- (17) 'State Foreign Investment Legislation' means legislation enacted and currently effective in one of the States to regulate foreign investment within that State;
- (18) 'State Foreign Investment Permit' means a permit issued by authorized officials within one of the States pursuant to relevant State Foreign Investment Legislation."

Foreign Investment Permits

Section 7. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new part II of chapter 2 to be entitled "General Rules & Allocation of Government Responsibilities".

Section 8. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 204 of part II of chapter 2 to read as follows:

"Section 204. Requirement that a foreign investor obtain a Foreign Investment Permit. A noncitizen may not conduct any activity in the FSM that amounts to 'engaging in business', as

defined in section 203 of this chapter, unless that noncitizen holds a currently valid Foreign Investment Permit authorizing that noncitizen to conduct that activity."

Categories of Economic Sectors

Section 9. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 205 of part II of chapter 2 to read as follows:

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

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

National Red List

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

- (i) arms manufacture;
- (ii) the minting of coins or printing of notes for use as currency;
- (iii) business activities relating to nuclear power or radioactivity; and
- (iv) such other economic sectors as the Secretary may, after consultation with States pursuant to section 206(2) of this chapter, designate in the FSM Foreign Investment Regulations as being on the National Red List.

National Amber List

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

- (i) banking, other than as defined in title 29 of the FSM Code; and
- (ii) Insurance
- (iii) such other economic sectors as the Secretary may, after consultation with States pursuant to section 206(2) of this chapter, designate in the FSM Foreign Investment Regulations as being on the National Amber List.

National Green List

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

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

Categories for State Regulation

(2) Categories for State Regulation -- economic sectors that are not of special national significance and therefore are delegated to the jurisdiction of the State Governments in respect of foreign investment regulation. These Categories are to be established separately by each State, by means of the State Foreign Investment Regulations in each State. An economic sector included in any of the Categories for National Regulation pursuant to subsection (1) above shall not appear in any of the Categories for State Regulation. In the absence of State foreign investment legislation, the National government will continue to regulate foreign investment in that State pursuant to provisions of the FSM Foreign Investment Act superseded by this act."

Section 10. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 206 of part II of chapter 2 to read as follows:

Responsibilities of the National and State Governments

"Section 206. Responsibilities of the National and State Governments regarding foreign investment.

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

- (a) determining, after consultation with the States as required under subsection (2) below, which economic sectors, in addition to those enumerated in section 205(1) of this chapter, shall be designated for inclusion in Category A (National Red List), Category B (National Amber List), and Category C (National Green List).
- (b) determining what criteria, if any, shall be specified for foreign investments in Category B (National Amber List) economic sectors.
- (c) the issuance of FSM Foreign Investment Permits in respect of Category B and Category C economic sectors, and in general for the administration of foreign investment rules established by this act or by the FSM Foreign Investment Regulations.

(d) promulgating such FSM Foreign Investment Regulations as may be necessary for the effective and efficient discharge of the responsibilities enumerated in this subsection and in general for the proper administration of this chapter.

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

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

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

(5) Action taken by the Government of a State under subsections (3) and (4) above shall be consistent with the provisions of this chapter and the FSM Foreign Investment Regulations.

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

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

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

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

In the absence of State Foreign Investment Legislation

(8) In the absence of State Foreign Investment Legislation, the National Government will continue to regulate foreign investment in that State pursuant to provisions of the Foreign Investment Regulations which shall be substantially the same as the Foreign Investment Act which is superseded by this act."

Section 11. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new part III of chapter 2 to be entitled "Foreign Investment Permits".

Section 12. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 207 of part III of chapter 2 to read as follows:

Application Procedures for FSM Foreign Investment Permits

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

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

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

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

(a) determine whether the application relates to a foreign investment in a Category A, Category B, or Category C (b) deny the application if;

(i) it relates to a foreign investment in a Category A (National Red List) economic sector, or
(ii) it relates to a foreign investment in a Category B (National Amber List) economic sector but is incomplete or does not satisfactorily demonstrate that the investment would meet all of the applicable national criteria established in the FSM Foreign Investment Regulations pursuant to section 206(1)(b) of this chapter;

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

(d) Forward a notification copy of the application to the responsible State Authorities if it relates to a Foreign Investment in economic sector categories A, B, or C.

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

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

(ii) whether the requirements for an FSM Foreign Investment Permit have been or will be met.

(f) issue an FSM Foreign Investment Permit if:

(i) the application

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

b) is complete; and

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

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

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

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

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

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

Section 13. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 208 of part III of chapter 2 to read as follows:

Application procedures for State Foreign Investment Permits.

"Section 208. Application procedures for State Foreign Investment Permits. An application for a State Foreign Investment Permit shall be made in accordance with the provisions of State Foreign Investment Legislation and State Foreign Investment Regulations. In the interest of coordination and reducing administrative burdens on foreign investors, such provisions should:

- (1) establish rules and procedures consistent with the provisions of this chapter and with the provisions of the FSM Foreign Investment Regulations;
- (2) direct the responsible State authorities to make available to the Department copies of the application forms for State Foreign Investment Permits, together with such other materials and information necessary for the Department to assist prospective foreign investors;
- (3) direct the responsible State authorities to forward to the Secretary any application for an FSM Foreign Investment Permit, or any information submitted in support of such an application; and
- (4) direct the responsible State authorities to forward to the Department a copy of any State Foreign Investment Permit issued by those authorities."

Section 14. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 209 of part III of chapter 2 to read as follows:

Form, fees, renewal, modification, and cancellation of FSM Foreign Investment Permits

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

- (1) FSM Foreign Investment Permits shall be in the form prescribed in the FSM Foreign Investment Regulations. State Foreign Investment Permits shall be in the form prescribed in State Foreign Investment Legislation and State Foreign Investment Regulations.
- (2) Upon the issuance of an FSM Foreign Investment Permit, the holder shall fulfill the requirements, if any, included in the FSM Foreign Investment Regulations for the payment of an annual fee.
- (3) An FSM Foreign Investment Permit shall be valid for one year, and, unless it has been canceled, suspended, or surrendered pursuant to subsections (7) - (10) below, it shall be renewable on an annual basis upon the fulfillment by the holder of the requirements, if any, included in the FSM Foreign Investment Regulations for the payment of an annual fee.
- (4) An FSM Foreign Investment Permit shall not be transferable between investments or investors and shall not be assignable to any investment or investor other than the one for which it was issued.
- (5) The holder of an FSM Foreign Investment Permit may not make a change in the business that the holder is engaging in without obtaining either (a) a new FSM Foreign Investment Permit for that purpose under section 207 of this chapter (or, if applicable, a new State Foreign Investment Permit under the relevant State Foreign Investment Law) or (b) a modification in the terms of its FSM Foreign Investment Permit. Such a modification may be requested by the business entity, and granted by the Secretary, in accordance with such procedures and requirements as the Secretary shall establish in the FSM Foreign Investment Regulations. However, no such modification is necessary if an existing business entity for which an FSM Foreign Investment Permit has been issued is expanded, without any change in either (a) the business it is engaging in or (b) the degree of interest held by any noncitizen in that business entity.
- (6) For purposes of subsection (5) above, a 'change in the business' a person is engaging in occurs if that person begins operations in a different economic sector from the one(s) for which the FSM Foreign Investment Permit was issued.
- (7) The Secretary may cancel an FSM Foreign Investment Permit only if the Secretary determines, following the procedural requirements of subsection (9) below, that one or more of the following circumstances exist:
 - (a) the annual fee, if any, required under either subsection (2) or subsection (3) above has not been paid;
 - (b) the holder of the Permit requests its cancellation;
 - (c) the permit application is found to have contained false or fraudulent information;
 - (d) the holder of the Permit bribed or otherwise exercised, or attempted to exercise, undue influence on the decision to issue the Permit;
 - (e) the holder of the Permit fails or refuses to comply with the reporting requirements under section 213 of this chapter or with any other requirements of this chapter or of the FSM Foreign Investment Regulations;
 - (f) the holder of the Permit fails or refuses to comply with any restrictions or conditions included in the Permit, or engages in activities not authorized by the Permit;
 - (g) the holder fails to comply with any applicable State or National laws.
- (8) If an FSM Foreign Investment Permit is canceled pursuant to subsection (7) above, the noncitizen holding that canceled Permit shall:

- (a) immediately stop engaging in business in the FSM;
 - (b) take such steps as the Secretary shall direct in order to dispose of that noncitizen's interest in any applicable business entity; and
 - (c) pay any fines or other penalties that may be imposed under section 220 of this chapter.
- (9) If it appears to the Secretary that one or more of the grounds for cancellation of an FSM Foreign Investment Permit, as enumerated in subsection (7) above, may exist, the Secretary may temporarily suspend the validity of that FSM Foreign Investment Permit and shall commence the following procedures leading to cancellation:

- (a) The Secretary or his designee may schedule a hearing on the matter before the Secretary or his designee. At least 21 days' written notice of the hearing shall be given to the holder or registered agent of the FSM Foreign Investment Permit or the holder's registered agent, stating the alleged grounds for cancellation. If during that time the holder of the FSM Foreign Investment Permit takes action satisfactory to the Secretary to disprove the allegations or otherwise remedy the situation, the Secretary may cancel the hearing and reinstate the FSM Foreign Investment Permit if it was temporarily suspended.
 - (b) Hearing procedures shall be prescribed by the Secretary in the FSM Foreign Investment Regulations and shall include the right of the holder of the FSM Foreign Investment Permit to participate and to be represented by counsel, to call witnesses, and to cross-examine witnesses called against the holder of the FSM Foreign Investment Permit.
 - (c) Within ten days after a hearing, the Secretary shall issue a written decision including reasons for the action taken and the remedy to be imposed pursuant to subsection (8) above, and shall transmit that decision immediately to the holder of the FSM Foreign Investment Permit.
 - (d) If a decision has not been issued pursuant to subsection (9)(c) above within the ten days specified, any temporary suspension ordered by the Secretary shall automatically end, and the validity of the FSM Foreign Investment Permit shall automatically be reinstated.
 - (e) Within 20 days after receiving the notice of the decision of the Secretary, the holder of the FSM Foreign Investment Permit may appeal the decision to the Supreme Court of the FSM. Copies of any notice of appeal shall be served on the Secretary and the Attorney General.
- (10) A holder of an FSM Foreign Investment Permit may surrender it by meeting requirements specified for this purpose in the FSM Foreign Investment Regulations. Mere cessation of engaging in business in the FSM, without meeting such requirements, does not relieve the holder of an FSM Foreign Investment Permit from the requirements incident thereto."

Section 15. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new part IV of chapter 2 to be entitled "Expatriate Worker Authorizations and Entry Permits".

Expatriate Worker Authorizations

Section 16. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 210 of part IV of chapter 2 to read as follows:

"Section 210. Expatriate Worker Authorizations.

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

- (2) If the business entity as to which either an FSM Foreign Investment Permit or a State Foreign Investment Permit has been issued meets the applicable criteria established for this purpose in the FSM Foreign Investment Regulations, the holder of such Permit shall be entitled automatically to one or more additional EWAs for expatriate senior management positions.
- (3) An EWA that is automatically allocated under either subsection (1) or (2) above shall remain valid during the entire period that the corresponding Foreign Investment Permit remains valid, including during the period of any renewal as provided for in section 209 of this chapter.
- (4) The holder of a Foreign Investment Permit may apply for additional EWAs to be allocated to the relevant business entity, beyond those automatically allocated under either subsection (1) or paragraph (2) above, if a suitably qualified and experienced citizen is not available. The procedures for applying for such additional EWAs shall be established in the FSM Foreign Investment Regulations.
- (5) The holder of a Foreign Investment permit may apply for additional expatriate workers pursuant to title 51 of the FSM Code."

Section 17. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 211 of part IV of chapter 2 to read as follows:

Issuance of entry permits

"Section 211. Issuance of entry permits.

- (1) The holder of a Foreign Investment Permit may, upon the allocation of an EWA to the relevant business entity, submit to the immigration authorities an application for an entry permit for a nominee to fill the position to which the EWA applies.
- (2) If the immigration authorities approve an application for an entry permit applied for under subsection (1) above, the immigration authorities shall issue such permit upon the payment of a fee in such an amount and under such procedures as may be established for this purpose by the immigration authorities.
- (3) The immigration authorities shall issue an entry permit for a nominee to fill a position to which an EWA applies except in cases of (a) criminal character or (b) medical risk to the nation or the nominee, as set forth in pertinent regulations issued by the immigration authorities. If the immigration authorities deny an application for an entry permit for a nominee to fill a position to which an EWA applies, the immigration authorities shall so advise the holder of the Foreign Investment Permit and shall give reasons for the denial. In such a case of denial, the holder of the Foreign Investment Permit may (a) request the immigration authorities to review the application after submission of additional information on the nominee, or (b) apply for an entry permit nominating a different person to fill the position.
- (4) If, for whatever reason, a position to which an EWA applies is or becomes vacant during the period of validity of that EWA, the holder of the relevant Foreign Investment Permit may apply to the immigration authorities for an entry permit for a nominee to fill the vacant position."

Section 18. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 212 of part IV of chapter 2 to read as follows:

"Section 212. Renewal and cancellation of entry permits.

- (1) An entry permit issued pursuant to section 211 of this chapter shall be valid upon its issuance (or upon automatic renewal) for a period equal to the period of validity of the EWA to which the entry permit relates.

- (2) An entry permit may be canceled by the immigration authorities only if:
- (a) the required fee is unpaid;
 - (b) the person to whom the entry permit has been issued is convicted by a court in the FSM of an offense in respect of which he or she has been sentenced to imprisonment for a term of six months or more; or
 - (c) the entry permit, or the EWA to which the entry permit relates, was obtained under false pretenses; or
 - (d) the conduct of the person to whom the entry permit has been issued constitutes a threat to the security of the FSM. In this case an entry permit may be canceled only after receiving a recommendation of cancellation from a committee appointed for this purpose and consisting of representatives from each of the following: the immigration authorities, the applicable State official responsible for foreign investment regulation in the State, the Attorney General of the FSM, and the Department;
 - (e) the person to whom the entry permit has been issued leaves the position the basis of which the entry permit was issued;
 - (f) the person to whom the entry permit has been issued engages in employment other than that for which the entry permit was issued without a proper permit; or
 - (g) the person to whom the entry permit has been issued is deported in accordance with law."

Reporting Requirements

Section 19. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new part V of chapter 2 to be entitled "Reporting Requirements".

Section 20. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 213 of part V of chapter 2 to read as follows:

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

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

(2) Any change in foreign ownership of an investment for which an FSM Foreign Investment Permit has been issued shall be reported immediately to the Secretary, who may take such action as he or she considers appropriate in respect of the FSM Foreign Investment Permit, including its cancellation if appropriate under the provisions of section 209(7) of this chapter."

Section 21. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 214 of part V of chapter 2 to read as follows:

Reports by the National Government

"Section 214. Reports by the National Government of the FSM.

(1) The Department shall publish information annually, in such form and detail as may be prescribed in the FSM Foreign Investment Regulations, concerning the extent of foreign investment in the FSM, both in the aggregate and desegregated by State.

(2) The Department shall issue the following types of reports, in such detail and form as may be prescribed in the FSM Foreign Investment Regulations, to the authorities in each State responsible for regulating foreign investment in that State:

- (a) within one week after issuing an FSM Foreign Investment Permit, a report of that fact and of the name and activities to which the FSM Foreign Investment Permit applies.
- (b) every three months, a report of the applications for FSM Foreign Investment Permits that the Secretary has denied and the reasons for each such denial."

Section 22. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 215 of part V of chapter 2 to read as follows:

Reports by the State Governments

"Section 215. Reports by the State Governments.

(1) In order to facilitate smooth implementation of the foreign investment rules applicable at both the State Government level and the National Government level, the Secretary shall consult with the responsible State authorities regarding the form and frequency of reports that such authorities in each State should provide to the Department concerning:

- (a) the extent of foreign investment in that State; and
 - (b) applications received in that State for State Foreign Investment Permits.
- (2) The Secretary shall provide, by way of the FSM Foreign Investment Regulations, guidelines for

Guarantees and Entitlements

Section 23. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new part VI of chapter 2 to be entitled "Guarantees and Entitlements".

Section 24. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 216 of part VI of chapter 2 to read as follows:

"Section 216. Compulsory acquisition of foreign investment property.

(1) The National Government guarantees that there shall be no compulsory acquisition or expropriation of the property of any foreign investment as to which a Foreign Investment Certificate has been issued, except under the following circumstances:

- (a) in order to apply sanctions for violation of laws or regulations, as provided for in section 220 of this chapter; or
 - (b) in extraordinary cases in which (i) such compulsory acquisition or expropriation is consistent with existing FSM law governing eminent domain; (ii) such compulsory acquisition or expropriation is necessary to serve overriding national interests and (iii) the conditions of subsection (2) below are met; or
 - (c) pursuant to generally applicable laws and regulations of the FSM or any State.
- (2) Compulsory acquisition or expropriation of a type described in subsection (1)(b) above may be undertaken only after:

(a) the National Congress has, following a recommendation to this effect by the Secretary, taken official action to identify in writing (i) the property to be acquired or expropriated and (ii) the overriding national interests that make such acquisition or expropriation necessary; and
(b) the Secretary has issued a notification to any holder of a Foreign Investment Permit whose property is to be acquired or expropriated, indicating (i) what property is affected by the action; (ii) what compensation will be paid for the acquisition or expropriation of the property; and (iii) what appeal or other forms of legal recourse are available to the holder of the Foreign Investment Permit affected by the action.

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

(4) The National Government shall not take action, or permit action to be taken by any State or other entity within the FSM, that, although not formally designated or acknowledged as compulsory acquisition or expropriation, indirectly has the same injurious effect ('creeping expropriation'). If such action nevertheless takes place, the National Government shall be responsible for the prompt and adequate compensation of any injured noncitizen."

Section 25. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 217 of part VI of chapter 2 to read as follows:

"Section 217. Transfers of earnings and capital.

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

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

Section 26. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 218 of part VI of chapter 2 to read as follows:

"Section 218. Changes in law and regulations. Upon payment of such additional fees as the Secretary may prescribe for this purpose, the holder of an FSM Foreign Investment Permit shall be entitled, for a period agreed upon with the Secretary but not to exceed five years, to an exemption from any future changes in:

(1) the customs duties and other regulations or restrictions relating to the importation of machinery, equipment, and other goods used in carrying out the activities authorized in the FSM Foreign Investment Permit; or

(2) gross revenue tax rates and rules applicable to the business entity to which the FSM Foreign Investment Permit applies."

Non-discriminatory treatment

Section 27. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 219 of part VI of chapter 2 to read as follows:

"Section 219. Non-discriminatory treatment. Subject to the provisions of this chapter and regulations promulgated hereunder, the National Government shall not take action, or permit any

State to take action, that would result in a foreign investor being given treatment that is less favorable than the treatment given to citizens, or business entities wholly owned by citizens, engaging in business in the FSM."

Sanctions; Judicial Review; Other Provisions

Section 28. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new part VII of chapter 2 to be entitled "Sanctions; Judicial Review; Other Provisions".

Section 29. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 220 of part VII of chapter 2 to read as follows:

"Section 220. Injunction and penalties.

(1) Where, on application by the Secretary, the Supreme Court is satisfied that a noncitizen has acted, or is about to act, in contravention of the provisions of this chapter, or the FSM Foreign Investment Regulations, the court may impose an injunction on any such action. The Secretary shall provide to the concerned noncitizens at least two business days' prior notice of an intention to file such an application with the court.

(2) If the Secretary determines that any person has failed or refused to comply with requirements imposed under or pursuant to this chapter or the FSM Foreign Investment Regulations, the Secretary may, in addition to taking action under subsection (1) above,

(a) suspend or cancel a Foreign Investment Permit pursuant to subsections (7) and (9) of section 209 of this chapter;

(b) impose such administrative fines and penalties as may be prescribed in the FSM Foreign Investment Regulations; or

(c) initiate measures for the imposition of criminal penalties as described in subsection (3) below or in other laws of the FSM.

(3) Any person who willfully contravenes the provisions of section 204 of this chapter, or who obtains a Foreign Investment Permit by fraud or misrepresentation, commits a national crime and shall, upon conviction by a court, be subject to the following penalties:

(a) in the case of an individual, the imposition of a monetary fine in an amount up to \$10,000 or imprisonment for up to 12 months, or both.

(b) in the case of a legal entity, the imposition of a monetary fine in an amount of up to \$50,000.

(c) in any case, the forfeiture to the National Government of assets or property rights in any business entity engaging in business in contravention of this chapter or the FSM Foreign Investment Regulations; provided, however, that the value of such assets or property so forfeited shall not be unreasonable in relation to the illegal behavior and the injury it has caused."

Section 30. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 221 of part VII of chapter 2 to read as follows:

"Section 221. Judicial review. A decision by the Secretary pursuant to section 207(3) of this chapter regarding an application for an FSM Foreign Investment Permit may be appealed by the applicant. A notice of any such appeal shall be filed with the Supreme Court of the FSM within 30 days of receipt of notice of the Secretary's decision. A copy of any such notice shall also be served on the Attorney General of the FSM and the Secretary. Such appeals shall be made under applicable rules of civil procedure."

Confidentiality

Section 31. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 222 of part VII of chapter 2 to read as follows:

"Section 222. Confidentiality. In carrying out the responsibilities imposed by this chapter regarding the regulation of foreign investment in the FSM, the Secretary shall maintain the confidentiality of any sensitive business information relating to a particular foreign investor or prospective foreign investor, if so requested by such person; provided, however, that this provision shall not prevent the Secretary or the Department from disclosing information upon order of a court or pursuant to other laws and regulations of the FSM or as necessary to enforce this law."

Section 32. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 223 of part VII of chapter 2 to read as follows:

Enforcement

"Section 223. Enforcement.

(1) Primary responsibility for the enforcement of this chapter shall be placed in the Secretary and, as to criminal sanctions provided in section 220 of this chapter, in appropriate law-enforcement authorities within the FSM.

(2) In carrying out the responsibilities imposed by this chapter the Secretary may require the attendance of any citizen or noncitizen at a meeting or hearing conducted by the Secretary and may require such persons to testify or to produce at, before, or after such meeting or hearing documents, information, and things relevant to enforcement of the provisions of this chapter.

(3) The Secretary shall promulgate the regulations necessary to implement this chapter, which regulations shall have the force and effect of law."

Section 33. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 224 of part VII of chapter 2 to read as follows:

Transitional provisions

"Section 224. Transitional provisions.

(1) For a period of 12 months after the date on which this act becomes effective, any Pre-Existing Foreign Investment Permit shall continue to be valid in accordance with its terms, subject to the provisions of this chapter and the provisions of any applicable State Foreign Investment Legislation.

(2) Notwithstanding the provisions of section 204 of this chapter, any noncitizen who was, as of the date on which this act becomes effective, conducting any activity that amounts to 'engaging in business', as defined in section 203 of this chapter, but who was not required, under the law in effect immediately prior to that date, to obtain a Foreign Investment Permit for that activity, shall have a period of three months from that date in which to either (a) apply for and obtain a Foreign Investment Permit or (b) cease conducting the activity."

Section 34. Title 32 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 225 of part VII of chapter 2 to read as follows:

Effectiveness; repeal

"Section 225. Effectiveness; repeal.

(1) This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approved in the permit; or who obtains a foreign investment permit by fraud or misrepresentation shall be deemed guilty of a criminal offense and upon conviction thereof by a Count of competent jurisdiction within the Federated States of Micronesia shall be imprisoned for a period of not more than 1 year; or fined not more than \$2,000, or both.

Any citizen or noncitizen, who aids or abets a noncitizen in violating any of the terms of Subsection (1) above, shall be guilty of a criminal offense and upon conviction on its becoming law without such approval.

President
Federated States of Micronesia