

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.

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           (3) 'citizen' means a citizen of the FSM;

15           (4) 'Department' means the Department of Economic  
16 Affairs of the FSM or its successor;

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

20           (5) (a) below but shall not include the activities

1 enumerated in subsection (5) (b) below:

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

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

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

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

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

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

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

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

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

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

15                  (b) engaging in business shall not include:

16                         (i) the publication of general  
17                         advertisements through newspapers, brochures, or other  
18                         publications, or through radio or television;

19                         (ii) the conducting of scientific research or  
20                         investigations, if

21                                 a) the research or investigation is  
22                                 sponsored by a university, college, agency, or  
23                                 institution normally engaged in such activities  
24                                 primarily for purposes other than commercial profit, and

25                                 b) the particular research or

1 investigation at issue is not for purposes of, or  
2 expected to yield, commercial profit;

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

5 (iv) maintaining or defending any action or  
6 suit, or participating in administrative proceedings,  
7 arbitration, or mediation;

8 (v) maintaining bank accounts;

9 (vi) the lawful sale of corporate shares or  
10 other interests or holdings in a business entity  
11 acquired not for speculation or profit; or

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

14 (6) 'foreign investment' means any activity in the  
15 FSM by a noncitizen that amounts to 'engaging in  
16 business' as defined above;

17 (7) 'Foreign Investment Permit' means an FSM  
18 Foreign Investment Permit, a State Foreign Investment  
19 Permit, or a Pre-Existing Foreign Investment Permit;

20 (8) 'foreign investor' means a noncitizen who is  
21 engaging in business in the FSM, as defined above;

22 (9) 'FSM' means the Federated States of  
23 Micronesia;

24 (10) 'FSM Foreign Investment Permit' means a permit  
25 issued by the Secretary in accordance with the

1 provisions of this chapter;

2 (11) 'FSM Foreign Investment Regulations' means  
3 Regulations promulgated by the Secretary in accordance  
4 with the provisions of this chapter;

5 (12) 'noncitizen' means any person who is not a citizen  
6 of the FSM, and any business entity in which any  
7 ownership interest is held by a person who is not a  
8 citizen of the FSM;

9 (13) 'ownership interest' in a business entity  
10 means ownership of or control over, whether directly,  
11 indirectly, legally or beneficially, some or all of the  
12 shares of, property or assets of, voting rights in, or  
13 rights to profits or revenue from, that business entity;  
14 provided, however, that:

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

18 (b) any interest owned or controlled by the  
19 spouse, minor child, or other dependent of a person  
20 shall be counted as owned or controlled by that person  
21 in determining whether he or she has an ownership  
22 interest in a business entity, provided that this  
23 subsection shall not apply to a noncitizen spouse who is  
24 married to a citizen and who does not hold an ownership  
25 interest in his or her own right;

1           (14) 'person' includes both individuals and legal  
2 entities;

3           (15) 'Pre-Existing Foreign Investment Permit' means  
4 a permit issued by the Secretary or by a State prior to  
5 the date on which this act took effect, and which has  
6 not expired according to its terms or been suspended or  
7 canceled;

8           (16) 'Secretary' means the Secretary of the  
9 Department Economic Affairs of the FSM;

10          (17) 'State' means one of the States of the FSM;

11          (18) 'State Foreign Investment Legislation' means  
12 legislation enacted and currently effective in one of  
13 the States to regulate foreign investment within that  
14 State;

15          (19) 'State Foreign Investment Permit' means a permit  
16 issued by authorized officials within one of the States  
17 pursuant to relevant State Foreign Investment  
18 Legislation;

19          (20) 'Substantial ownership interest' means an  
20 ownership interest in a business entity of at least  
21 thirty percent (30%)."

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

25                 "Section 205. Categories of economic sectors. The

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1 following system of Categories of economic sectors is  
2 hereby established for the purpose of implementing the  
3 policy of the FSM to welcome foreign investment in all  
4 sectors of the FSM economy, insofar as such foreign  
5 investment is consistent with the economic, social, and  
6 cultural well-being of its citizens:

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

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

16 (i) arms manufacture;

17 (ii) the minting of coins or printing of  
18 notes for use as currency;

19 (iii) business activities relating to nuclear  
20 power or radioactivity; and

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

1                   (b) Category B ('National Amber List') -- the set  
2                   of economic sectors that are subject to National  
3                   Government regulation and as to which certain criteria  
4                   specified in the FSM Foreign Investment Regulations must  
5                   be met. Economic Sectors on the National Amber List  
6                   include the following:

7                   (i) banking, other than as defined in title  
8                   29 of the FSM Code; and

9                   (ii) insurance; and

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

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

21                   (i) banking, as defined in title 29  
22                   of the FSM Code;

23                   (ii) telecommunications;

24                   (iii) fishing in the FSM's Exclusive  
25                   Economic Zone;



1                   (iv) international and interstate air  
2           transport;  
3                   (v) international shipping; and  
4                   (vi) such other economic sectors as  
5           the Secretary may, after consultation with States  
6           pursuant to section 206(2) of this chapter,  
7           designate in the FSM Foreign Investment Regulations  
8           as being on the National Green List.

9           (2) Categories for State Regulation -- economic  
10           sectors that are not of special national  
11           significance and therefore are delegated to the  
12           jurisdiction of the State Governments in respect of  
13           foreign investment regulation. These Categories  
14           are to be established separately by each State, by  
15           means of the State Foreign Investment Regulations  
16           in each State. An economic sector included in any  
17           of the Categories for National Regulation pursuant  
18           to subsection (1) above shall not appear in any of  
19           the Categories for State Regulation.

20           (3) Notwithstanding anything to the contrary in  
21           subsection (1), and regardless of the economic category  
22           involved:

23                   (a) every applicant for or holder of an FSM  
24           Foreign Investment Permit may be required to meet such  
25           character criteria as may be specified in the FSM

1 Foreign\_Investment Regulations in order to obtain or  
2 retain an FSM Foreign Investment Permit; and

3 (b) every present or future holder of a  
4 substantial ownership interest in an applicant for or  
5 holder of an FSM Foreign Investment Permit may be  
6 required to meet those same character criteria in order  
7 to obtain or retain that substantial ownership  
8 interest."

9 Section 3. Section 207 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 207. Application procedures for FSM Foreign  
13 Investment Permits.

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

24 (2) Submission of an application for an FSM Foreign  
25 Investment Permit may be made either (a) to the

1 Secretary or (b) to the responsible authorities in the  
2 State in whose territory the foreign investment takes  
3 place or is proposed to take place. In the latter case,  
4 the responsible State authorities shall forward the  
5 application directly to the Secretary.

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

11 (a) determine whether the application relates to  
12 a foreign investment in a Category A, Category B, or  
13 Category C economic sector;

14 (b) deny the application if;

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

17 (ii) it relates to a foreign investment in  
18 any other Category for National Regulation and does not  
19 meet the character criteria for obtaining an FSM Foreign  
20 Investment Permit that are established in the FSM  
21 Foreign Investment Regulations pursuant to section  
22 205(3) of this chapter;

23 (c) forward the application to the responsible  
24 State authorities if it relates to a foreign investment  
25 in an economic sector other than those designated for

1 inclusion in Category A, Category B, or Category C;

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

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

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

12 (ii) whether the character criteria have been  
13 met;

14 (f) issue an FSM Foreign Investment Permit  
15 if the application:

16 (i) is complete;

17 (ii) meets the character criteria; and

18 (iii) relates to a foreign investment in  
19 either Category B (National Amber List) or Category C  
20 (National Green List) economic sector.

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

1 reasons therefor.

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

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

14 (7) If the Secretary denies an application for an FSM  
15 Foreign Investment Permit pursuant to subsection  
16 (3)(b)(ii) above, the applicant may (a) resubmit the  
17 application with modifications designed to meet the  
18 applicable national criteria established in the FSM  
19 Foreign Investment Regulations pursuant to section  
20 206(1)(d) of this chapter, or (b) provide to the  
21 Secretary additional information or explanation to  
22 indicate how, in the applicant's opinion, the foreign  
23 investment would satisfy such criteria. On receipt of  
24 such modifications or additional information, the  
25 Secretary shall review the application and make a

1           determination under the procedures prescribed in  
2           subsection (3) above. There is no limit to the number  
3           of times an applicant may modify an application in an  
4           attempt to satisfy the applicable criteria."

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

8           "Section 209. Form, fees, duration modification, and  
9           cancellation of FSM Foreign Investment Permits.

10           (1) FSM Foreign Investment Permits shall be in the  
11 form prescribed in the FSM Foreign Investment  
12 Regulations. State Foreign Investment Permits shall be  
13 in the form prescribed in State Foreign Investment  
14 Legislation and State Foreign Investment Regulations.

15           (2) Upon the issuance of an FSM Foreign Investment  
16 Permit, the holder shall fulfill the requirements, if  
17 any, included in the FSM Foreign Investment Regulations  
18 for the payment of an annual fee.

19           (3) An FSM Foreign Investment Permit shall be valid  
20 until it has been canceled, suspended, or surrendered  
21 pursuant to subsections (7) 11 below.

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

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1           (5) The holder of an FSM Foreign Investment Permit may  
2           not make a change in the business that the holder is  
3           engaging in without obtaining either (a) a new FSM  
4           Foreign Investment Permit for that purpose under section  
5           207 of this chapter (or, if applicable, a new State  
6           Foreign Investment Permit under the relevant State  
7           Foreign Investment Legislation) or (b) a modification in  
8           the terms of its FSM Foreign Investment Permit. Such a  
9           modification may be requested by the business entity,  
10          and granted by the Secretary, in accordance with such  
11          procedures and requirements as the Secretary shall  
12          establish in the FSM Foreign Investment Regulations.  
13          However, no such modification is necessary if an  
14          existing business entity for which an FSM Foreign  
15          Investment Permit has been issued is expanded, without  
16          any change in the business it is engaging in.

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

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

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

4                   (b) the holder of the Permit requests its  
5                   cancellation;

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

8                   (d) the holder of the Permit bribed or otherwise  
9                   exercised, or attempted to exercise, undue influence on  
10                  the decision to issue the Permit;

11                  (e) the holder of the Permit fails or refuses to  
12                  comply with the reporting requirements under section 213  
13                  of this chapter or with any other requirements of this  
14                  chapter or of the FSM Foreign Investment Regulations;

15                  (f) the holder of the Permit fails or refuses to  
16                  comply with any restrictions or conditions included in  
17                  the Permit, or engages in activities not authorized by  
18                  the Permit;

19                  (g) a substantial ownership interest in the  
20                  holder is owned by a noncitizen who does not meet the  
21                  character criteria established pursuant to section  
22                  205(3) of this chapter.

23                  (8) If an FSM Foreign Investment Permit is canceled  
24                  pursuant to subsection (7) above, the noncitizen holding  
25                  that canceled Permit shall:



1                   (a) immediately stop engaging in business in the  
2                   FSM;

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

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

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

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

1 if it was temporarily suspended.

2 (b) Hearing procedures shall be prescribed by the  
3 Secretary in the FSM Foreign Investment Regulations and  
4 shall include the right of the holder of the FSM Foreign  
5 Investment Permit to participate and to be represented  
6 by counsel, to call witnesses, and to cross-examine  
7 witnesses called against the holder of the FSM Foreign  
8 Investment Permit.

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

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

20 (e) Within 20 days after receiving the notice of  
21 the decision of the Secretary, the holder of the FSM  
22 Foreign Investment Permit may appeal the decision to the  
23 Supreme Court of the FSM. Copies of any notice of  
24 appeal shall be served on the Secretary and the FSM  
25 Secretary of Justice.

1           (10) If an FSM Foreign Investment Permit is suspended  
2           pursuant to this chapter, the noncitizen holding that  
3           suspended permit shall immediately stop engaging in  
4           business in the FSM and refrain from resuming the  
5           business unless and until the FSM Foreign Investment  
6           Permit is reinstated.

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

14          Section 5. Section 210 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 210. Expatriate Worker Authorizations.

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

24           (2) If the business entity as to which either an  
25           FSM Foreign Investment Permit or a State Foreign

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1 Investment Permit has been issued meets the  
2 applicable criteria established for this purpose  
3 in the FSM Foreign Investment Regulations, the  
4 holder of such Permit shall be entitled  
5 automatically to one or more additional EWAs for  
6 expatriate senior management positions.

7 (3) An EWA that is automatically allocated under  
8 either subsection (1) or (2) above shall remain valid  
9 during the entire period that the corresponding Foreign  
10 Investment Permit remains valid. However, the criteria  
11 to be established pursuant to subsection (2) above may  
12 provide that, notwithstanding the continued validity of  
13 an EWA, a new or renewal entry permit requested under  
14 that EWA may be denied and the existing entry permit  
15 issued under that EWA may be canceled during any period  
16 when those criteria are not being met.

17 (4) The holder of a Foreign Investment permit may  
18 apply for additional expatriate workers pursuant to  
19 title 51 of the FSM Code."

20 Section 6. Section 211 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 211. Issuance of entry permits.

24 (1) The holder of a Foreign Investment Permit may,  
25 upon the allocation of an EWA to the relevant business

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1           entity, submit to the immigration authorities an  
2           application for an entry permit for a nominee to fill  
3           the position to which the EWA applies.

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

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

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

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

10           (a) one if the foreign investor is a sole  
11           proprietorship; or

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

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

20           Section 7. Section 212 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 212. Renewal and cancellation of entry  
24           permits.

25           (1) An entry permit issued pursuant to section 211 of

1           this chapter, whether a foreign investor entry permit or  
2           an entry permit issued under the EWA, shall be valid  
3           upon its issuance and thereafter until the sooner of:

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

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

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

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

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

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

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

25                         (4) An entry permit issued pursuant to section 211 of

1           this chapter may be cancelled, or its renewal may be  
2           denied, by the immigration authorities only if:

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

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

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

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

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

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



1 issued engages in employment outside the scope of the  
2 employment specified by the relevant EWA, whether or not  
3 the employment is with the foreign investor to whom the  
4 EWA was issued;

5 (g) the person to whom the entry permit has been  
6 issued is deported in accordance with law;

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

9 (i) the applicable Foreign Investment Permit is  
10 canceled or surrendered; or

11 (j) it is required or permitted under subsection  
12 (5) below.

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

1 State or national official."

2 Section 8. Section 213 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 213. Reports by holders of FSM Foreign  
6 Investment Permits.

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

14 (2) Notwithstanding any other provision of this  
15 chapter, an FSM Foreign Investment Permit shall be  
16 automatically suspended for a failure to meet a  
17 reporting deadline or a failure to include required  
18 information in a report pursuant to subsection (1) of  
19 this section. Any such suspension shall be effective  
20 from the sixtieth day after the day on which the report  
21 or information is due unless, during the 60 grade  
22 period, the holder of the Foreign Investment Permit  
23 submits the requisite report or information or provides  
24 a written explanation of the failure to do so that is  
25 acceptable to the Secretary. The Secretary may move to

1 cancel the FSM Foreign Investment Permit in accordance  
2 with section 209 of this chapter at any time after the  
3 suspension becomes effective.

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

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

17 "Section 215A. Review of compliance by holders of FSM  
18 Foreign Investment Permits.

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

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

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

5           (4) The Secretary shall include aggregate information  
6           on compliance in the annual publication required  
7           pursuant\_to subsection 214(1) of this chapter."

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

11          "Section 216. Compulsory acquisition of foreign  
12          investment property.

13           (1) There shall be no compulsory acquisition or  
14           expropriation of the property of any business entity as  
15           to which a Foreign Investment Permit has been issued,  
16           except under the following circumstances:

17                   (a) in order to apply sanctions for violation of  
18                   laws or regulations, as provided for in section 220 of  
19                   this chapter; or

20                           (b) in extraordinary cases in which  
21                                   (i) such compulsory acquisition or  
22                                   expropriation is consistent with existing FSM law  
23                                   governing eminent domain;

24                                   (ii) such compulsory acquisition or  
25                                   expropriation is necessary to serve overriding national

1 interests and

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

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

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

9 (a) the National Congress has, following a  
10 recommendation to this effect by the Secretary, taken  
11 official action to identify in writing

12 (i) the property to be acquired or  
13 expropriated and

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

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

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

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

22 (iii) what appeal or other forms of legal  
23 recourse are available to the holder of the Foreign  
24 Investment Permit affected by the action.

25 (3) Payment of compensation pursuant to subsection

1           (2) (b) above shall be promptly made and adequate in  
2           amount.

3           (4) Neither the National Government nor any State  
4           Government nor any other entity within the FSM shall  
5           take any action that, although not formally designated  
6           or acknowledged as compulsory acquisition or  
7           expropriation, indirectly has the same injurious effect  
8           ('creeping expropriation')."

9           Section 11. Section 217 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 217. Transfers of earnings and capital.

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

19                 (2) The National Government guarantees that any holder  
20                 of a currently valid Foreign Investment Permit will be  
21                 permitted to lawfully repatriate any amount of capital  
22                 that was brought into the FSM for, or that lawfully  
23                 accrued on, a business entity to which such Permit  
24                 applies."

25          Section 12. Section 219 of chapter 2 of title 32 of the Code

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

3 "Section 219. Non-discriminatory treatment. Subject to  
4 the provisions of this chapter and regulations  
5 promulgated hereunder, and subject further to the  
6 express provisions of any other statute applicable to  
7 specific business categories, the National Government  
8 shall not take action, or permit any State to take  
9 action, that would result in a foreign investor being  
10 given treatment that is less favorable than the  
11 treatment given to citizens, or business entities wholly  
12 owned by citizens, engaging in business in the FSM."

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

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19 November 2, 2005

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/s/Joseph J. Urusemal  
Joseph J. Urusemal  
President  
Federated States of Micronesia

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