

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:

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2   Micronesia is hereby repealed in its entirety.

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

6           Section 3. Title 32 of the Code of the Federated States of Micronesia is  
7   hereby further amended by adding a new part 1 of chapter 2 to be entitled  
8   "Introductory Provisions".

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

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

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

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

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

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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

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- 1 (x) holding at least twenty percent (20%)  
2 ownership interest in a business entity;
- 3 (b) engaging in business shall not include:
- 4 (i) the publication of general advertisements  
5 through newspapers, brochures, or other publications, or through  
6 radio or television;
- 7 (ii) the conducting of scientific research or  
8 investigations, if a) the research or investigation is sponsored by  
9 a university, college, agency, or institution normally engaged in  
10 such activities primarily for purposes other than commercial  
11 profit, and b) the particular research or investigation at issue is  
12 not for purposes of, or expected to yield, commercial profit;
- 13 (iii) the collection of information by a bona fide  
14 journalist for news publication or broadcast;
- 15 (iv) maintaining or defending any action or suit,  
16 or participating in administrative proceedings, arbitration, or  
17 mediation;
- 18 (v) maintaining bank accounts; or
- 19 (vi) the lawful sale of corporate shares or other  
20 interests or holdings in a business entity acquired not for  
21 speculation or profit;
- 22 (5) 'foreign investment' means any activity in the FSM by a  
23 noncitizen that amounts to 'engaging in business' as defined  
24 above;
- 25 (6) 'Foreign Investment Permit' means an FSM Foreign

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1 Investment Permit, a State Foreign Investment Permit, or a Pre-  
2 Existing Foreign Investment Permit;

3 (7) 'foreign investor' means a noncitizen who is engaging in  
4 business in the FSM, as defined above;

5 (8) 'FSM' means the Federated States of Micronesia;

6 (9) 'FSM Foreign Investment Permit' means a permit issued  
7 by the Secretary in accordance with the provisions of this  
8 chapter;

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

12 (11) 'noncitizen' means any person who is not a citizen of  
13 the FSM, and any business entity in which any ownership interest is  
14 held by a person who is not a citizen of the FSM;

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

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

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

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1 in a business entity;

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

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

7 (15) 'Secretary' means the Secretary of the Department  
8 of Resources and Development of the FSM;

9 (16) 'State' means one of the States of the FSM;

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

13 (18) 'State Foreign Investment Permit' means a permit  
14 issued by authorized officials within one of the States pursuant to  
15 relevant State Foreign Investment Legislation."

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

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

22 "Section 204. Requirement that a foreign investor obtain a  
23 Foreign Investment Permit. A noncitizen may not conduct any  
24 activity in the FSM that amounts to 'engaging in business', as  
25 defined in section 203 of this chapter, unless that noncitizen holds

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1 a currently valid Foreign Investment Permit authorizing that  
2 noncitizen to conduct that activity."

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

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

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

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

20 (i) arms manufacture;

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

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

25 (iv) such other economic sectors as the

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

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

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

12 (ii) Insurance

13 (iii) such other economic sectors as the  
14 Secretary may, after consultation with States pursuant to section  
15 206(2) of this chapter, designate in the FSM Foreign Investment  
16 Regulations as being on the National Amber List.

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

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

24 (ii) telecommunications;

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



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(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.

(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:

"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:

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(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.

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(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

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1 policy and promotion, under terms to be specified in the FSM  
2 Foreign Investment Regulations; and

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

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

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

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

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

20 (1) An application for an FSM Foreign Investment Permit  
21 shall be made on the form or forms prescribed in the FSM Foreign  
22 Investment Regulations, as may be supplemented in particular  
23 cases by order of the Secretary. Such application form or forms  
24 shall be made publicly available by the Secretary and by  
25 responsible authorities in each of the States. The application form

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1 shall require the applicant to identify clearly the person(s) resident  
2 in the Federated States of Micronesia who are designated as  
3 agent for service of process.

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

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

15 (a) determine whether the application relates to a  
16 foreign investment in a Category A, Category B, or Category C

17 (b) deny the application if;

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

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

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(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

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1 sector.

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

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

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

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

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

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

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

17 (1) establish rules and procedures consistent with the  
18 provisions of this chapter and with the provisions of the FSM  
19 Foreign Investment Regulations;

20 (2) direct the responsible State authorities to make  
21 available to the Department copies of the application forms for  
22 State Foreign Investment Permits, together with such other  
23 materials and information necessary for the Department to assist  
24 prospective foreign investors;

25 (3) direct the responsible State authorities to forward to



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1 the Secretary any application for an FSM Foreign Investment  
2 Permit, or any information submitted in support of such an  
3 application; and

4 (4) direct the responsible State authorities to forward to  
5 the Department a copy of any State Foreign Investment Permit  
6 issued by those authorities."

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

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

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

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

21 (3) An FSM Foreign Investment Permit shall be valid for one  
22 year, and, unless it has been canceled, suspended, or surrendered  
23 pursuant to subsections (7) - (10) below, it shall be renewable on  
24 an annual basis upon the fulfillment by the holder of the  
25 requirements, if any, included in the FSM Foreign Investment

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1 Regulations for the payment of an annual fee.

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

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

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

25 (7) The Secretary may cancel an FSM Foreign Investment

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1 Permit only if the Secretary determines, following the procedural  
2 requirements of subsection (9) below, that one or more of the  
3 following circumstances exist:

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

6 (b) the holder of the Permit requests its  
7 cancellation;

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

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

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

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

20 (g) the holder fails to comply with any applicable  
21 State or National laws.

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

25 (a) immediately stop engaging in business in the

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1 FSM;

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

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

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

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

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

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

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

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

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

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

25 Section 15. Title 32 of the Code of the Federated States of Micronesia

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1 is hereby further amended by adding a new part IV of chapter 2 to be entitled  
2 "Expatriate Worker Authorizations and Entry Permits".

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

6 "Section 210. Expatriate Worker Authorizations.

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

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

18 (3) An EWA that is automatically allocated under either  
19 subsection (1) or (2) above shall remain valid during the entire  
20 period that the corresponding Foreign Investment Permit remains  
21 valid, including during the period of any renewal as provided for in  
22 section 209 of this chapter.

23 (4) The holder of a Foreign Investment Permit may apply  
24 for additional EWAs to be allocated to the relevant business  
25 entity, beyond those automatically allocated under either

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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:

"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

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TENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST REGULAR SESSION, 1997

C.B. NO. 10-5

A BILL FOR AN ACT

To further amend title 32 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21, 5-109, and 5-134, 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:

1           Section 1. Chapter 2 of Title 32 of the Code of the Federated States  
2 of Micronesia, as amended by Public Laws Nos. 5-21, 5-109 and 5-134, is  
3 hereby repealed in its entirety.

4           Section 2. A new Chapter 2 of Title 32 is hereby enacted, which  
5 shall be entitled "Foreign Investment."

6           Section 3. Chapter 2 of Title 32 of the Code of the Federated States  
7 of Micronesia is hereby enacted by adding a new Part I, which shall be  
8 entitled "Introductory Provisions".

9           Section 4. Chapter 2, Part I, of Title 32 of the Code of the  
10 Federated States of Micronesia is hereby enacted by adding a new section  
11 201 to read as follows:

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

14           Section 5. Chapter 2, Part I, of Title 32 of the Code of the  
15 Federated States of Micronesia is hereby enacted by adding a new section  
16 202 to read as follows:

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

23           Section 6. Chapter 2, Part I, of Title 32 of the Code of the  
24 Federated States of Micronesia is hereby enacted by adding a new section  
25 203 to read as follows:

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"Section 203 Definitions. 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';

1                    (iv) appointing a representative, agent, or  
2                    distributor by a noncitizen to perform any of the acts described  
3                    in items (i) through (iii) above, unless said representative,  
4                    agent, or distributor has an independent status and transacts  
5                    business in its name for its own account and not in the name of  
6                    or for the account of any noncitizen principal;

7                    (v) maintaining a stock of goods in the FSM for  
8                    the purpose of having the same processed by another person in  
9                    the FSM;

10                   (vi) establishing or operating a factory,  
11                   workshop, processing plant, warehouse, or store, whether  
12                   wholesale or retail;

13                   (vii) mining or exploring for minerals, or the  
14                   commercial exploitation or extraction of other natural  
15                   resources;

16                   (viii) providing services as a management firm or  
17                   professional consultant in the management, supervision, or  
18                   control of any business entity;

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

1                                    (x) holding an ownership interest in a business  
2                                    entity;

3                                    (b) 'engaging in business' shall not include:

4                                    (i) the publication of general advertisements  
5                                    through newspapers, brochures, or other publications, or through  
6                                    radio or television;

7                                    (ii) the conducting of scientific research or  
8                                    investigations, if (I) the research or investigation is  
9                                    sponsored by a university, college, agency, or institution  
10                                   normally engaged in such activities primarily for purposes other  
11                                   than commercial profit, and (I) the particular research or  
12                                   investigation at issue is not for purposes of or expected to  
13                                   yield, commercial profit;

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

16                                   (iv) maintaining or defending any action or  
17                                   suit, or participating in administrative proceedings,  
18                                   arbitration, or mediation;

19                                   (v) maintaining bank accounts; or

20                                   (vi) the lawful sale of corporate shares or  
21                                   other interests or holdings in a business entity acquired not  
22                                   for speculation or profit;

23                                   (5) 'foreign investment' means any activity in the FSM by  
24                                   a noncitizen that amounts to 'engaging in business' as defined  
25                                   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 cancelled;

(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."

Section 7. Chapter 2 of Title 32 of the Code of the Federated States  
of Micronesia is hereby enacted by adding a new Part II, which shall be  
entitled "General Rules & Allocation of Government Responsibilities".

Section 8. Chapter 2, Part II, of Title 32 of the Code of the  
Federated States of Micronesia is hereby enacted by adding a new section  
204, 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

1 defined in Section 203 of this Chapter, unless that noncitizen  
2 holds a currently valid Foreign Investment Permit authorizing  
3 that noncitizen to conduct that activity."

4 Section 9. Chapter 2, Part II, of Title 32 of the Code of the  
5 Federated States of Micronesia is hereby enacted by adding a new section  
6 205, to read as follows:

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

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

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

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

25 (iii) business activities relating to nuclear

power or radioactivity;

(iv) [insert others, such as postal services];

and

(v) 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.

(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) \_\_\_\_\_;

(ii) \_\_\_\_\_;

(iii) \_\_\_\_\_; 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 Amber 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:

1                    (i) banking;  
2                    (ii) telecommunications;  
3                    (iii) fishing in the FSM's Exclusive Economic  
4                    Zone;  
5                    (iv) international and interstate air  
6                    transport;  
7                    (v) international shipping;  
8                    (vi) [ insert others ] ; and  
9                    (vii) such other economic sectors as the  
10                   Secretary may, after consultation with States pursuant to  
11                   Section 206(2) of this Chapter, designate in the FSM Foreign  
12                   Investment Regulations as being on the National Green List.

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

23                   Category D ('State Red List') -- the set of economic  
24                   sectors that are subject to State Government regulation and that  
25                   a State designates as being closed to foreign investment within



1 the territory of that State.

2 Category E ('State Amber List') -- the set of economic  
3 sectors that are subject to State Government regulation and as  
4 to which certain criteria specified in the State Foreign  
5 Investment Regulations must be met before a State Foreign  
6 Investment Permit will be issued by that State.

7 Category F ('State Green List') -- the set of economic  
8 sectors that are subject to State Government regulation but as  
9 to which no special criteria need to be met before a State  
10 Foreign Investment Permit is to be issued. Economic sectors on  
11 the State Green List include any economic sector that is not  
12 included on any other list (Categories A through E above)."

13 Section 10. Chapter 2, Part II, of Title 32 of the Code of the  
14 Federated States of Micronesia is hereby enacted by adding a new section  
15 206, to read as follows:

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

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

20 (a) determining, after consultation with the States  
21 as required under subsection (2) below, which economic sectors,  
22 in addition to those enumerated in Section 205(1) of this  
23 Chapter, shall be designated for inclusion in Category A  
24 (National Red List), Category B (National Amber List), and  
25 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

1           to Section 205(1) of this Chapter.

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

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

11          (6) If any foreign investment or proposed foreign  
12          investment involves more than one economic sector, and those  
13          economic sectors are designated for inclusion in more than one  
14          Category pursuant to Section 205 of this Chapter, such  
15          investment or proposed investment shall be subject to the rules  
16          and jurisdiction applicable to each such Category as described  
17          in this Section and elsewhere in this Chapter.

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

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

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

Section 11. Chapter 2 of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new Part III, which shall be entitled "Foreign Investment Permits".

Section 12. Chapter 2, Part III, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 207, to read as follows:

"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) 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, Category C, Category D, Category E, or Category F economic sector, as described in Section 205 of this Chapter;

(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) 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.

(e) 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), (d), or (e) 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)(e) above, the FSM Foreign

Investment Permit will be sent to the applicant, with copies to be (i) inserted into a register to be maintained by the Department for this purpose and (ii) 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 (i) 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 (ii) 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. Chapter 2, Part III, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 208, to read as follows:

"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. Chapter 2, Part III, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 209, to read as follows:

"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 cancelled, 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 and shall not be assignable to any investment 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 may 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 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.

(8) If an FSM Foreign Investment Permit is canceled  
pursuant to subsection (7) above, the noncitizen holding that  
cancelled 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 shall schedule a hearing on the  
matter before the Secretary. At least 21 days' written notice

1 of the hearing shall be given to the holder of the FSM Foreign  
2 Investment Permit, stating the alleged grounds for cancellation.  
3 If during that time the holder of the FSM Foreign Investment  
4 Permit takes action satisfactory to the Secretary to disprove  
5 the allegations or otherwise remedy the situation, the Secretary  
6 may cancel the hearing and reinstate the FSM Foreign Investment  
7 Permit if it was temporarily suspended.

8 (b) Hearing procedures shall be prescribed by the  
9 Secretary in the FSM Foreign Investment Regulations and shall  
10 include the right of the holder of the FSM Foreign Investment  
11 Permit to participate and to be represented by counsel, to call  
12 witnesses, and to cross-examine witnesses called against the  
13 holder of the FSM Foreign Investment Permit.

14 (c) Within five days after a hearing, the Secretary shall  
15 issue a written decision including reasons for the action taken  
16 and the remedy to be imposed pursuant to subsection (8) above,  
17 and shall transmit that decision immediately to the holder of  
18 the FSM Foreign Investment Permit.

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

24 (e) Within 20 days after receiving the notice of the  
25 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. Chapter 2 of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new Part IV, which shall be entitled "Expatriate Worker Authorizations and Entry Permits".

Section 16. Chapter 2, Part IV, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 210, to read as follows:

"Section 210. Expatriate Worker Authorizations.

(1) A business entity as to which either 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."

Section 17. Chapter 2, Part IV, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 211, to read as follows:

"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 Department an application for an entry permit for a nominee to fill the position to which the EWA applies.

(2) If the Immigration Department approves an application for an entry permit applied for under subsection (1) above, the Immigration Department 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 Department

(3) The Immigration Department shall issue an entry permit for a nominee to fill a position to which an EWA applies except in cases of (i) criminal character or (ii) medical risk to the nation or the nominee, as set forth in pertinent regulations issued by the Immigration Department. If the Immigration Department denies an application for an entry permit for a nominee to fill a position to which an EWA applies, the Immigration Department 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 Department 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 Department for an entry permit for a nominee to fill the vacant position."

Section 18. Chapter 2, Part IV, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 212, 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 cancelled by the Immigration Department 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 presences; 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 cancelled 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 Department, the applicable State official responsible for foreign investment regulation in the State, the Attorney General of the FSM, and the Department."

Section 19. Chapter 2 of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new Part V, which shall be entitled "Reporting Requirements".



Section 20. Chapter 2, Part V, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 213, 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. Chapter 2, Part V, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 214, to read as follows:

"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 disaggregated 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. Chapter 2, Part V, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 215, to read as follows:

"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 States in providing reports of the types referred to in subsection (1) above."

Section 23. Chapter 2 of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new Part VI, which shall be entitled "Guarantees and Entitlements".

Section 24. Chapter 2, Part VI, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 216, 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

1 national interests and (ii) the conditions of subsection (2)  
2 below are met.

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

6 (a) the National Congress has, following a  
7 recommendation to this effect by the Secretary, taken official  
8 action to identify in writing (i) the property to be acquired or  
9 expropriated and (ii) the overriding national interests that  
10 make such acquisition or expropriation necessary; and

11 (b) the Secretary has issued a notification to any  
12 holder of a Foreign Investment Permit whose property is to be  
13 acquired or expropriated, indicating (i) what property is  
14 affected by the action; (ii) what compensation will be paid for  
15 the acquisition or expropriation of the property; and (iii) what  
16 appeal or other forms of legal recourse are available to the  
17 holder of the Foreign Investment Permit affected by the action.

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

20 (4) The National Government shall not take action, or  
21 permit action to be taken by any State or other entity within  
22 the FSM, that, although not formally designated or acknowledged  
23 as compulsory acquisition or expropriation, indirectly has the  
24 same injurious effect ('creeping expropriation'). If such  
25 action nevertheless takes place, the National Government shall

1 be responsible for the prompt and adequate compensation of any  
2 injured noncitizen."

3 Section 25. Chapter 2, Part VI, of Title 32 of the Code of the  
4 Federated States of Micronesia is hereby enacted by adding a new section  
5 217, to read as follows:

6 "Section 217. Transfers of earnings and capital.

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

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

21 Section 26. Chapter 2, Part VI, of Title 32 of the Code of the  
22 Federated States of Micronesia is hereby enacted by adding a new section  
23 218, to read as follows:

24 "Section 218. Changes in law and regulations. Upon payment of  
25 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."

Section 27. Chapter 2, Part VI, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 219, 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."

Section 28. Chapter 2 of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new Part VII, which shall be entitled "Sanctions; Judicial Review; Other Provisions".

Section 29. Chapter 2, Part VII, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section

1 220, to read as follows:

2 "Section 220. Injunction and penalties.

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

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

16 (a) suspend or cancel a Foreign Investment Permit  
17 pursuant to subsections (7) and (9) of Section 209 of this  
18 Chapter;

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

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

25 (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. Chapter 2, Part VII, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 221, 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 or by another agency of the National Government. A notice of any such appeal shall be filed with the Supreme Court of the FSM within 30 days of receipt of notice of



1 the Secretary's decision. A copy of any such notice shall also  
2 be served on the Attorney General of the FSM and the Secretary.  
3 Such appeals shall be made under applicable rules of civil  
4 procedure."

5 Section 31. Chapter 2, Part VII, of Title 32 of the Code of the  
6 Federated States of Micronesia is hereby enacted by adding a new section  
7 222, to read as follows:

8 "Section 222. Confidentiality. In carrying out the  
9 responsibilities imposed by this Chapter regarding the  
10 regulation of foreign investment in the FSM, the Secretary shall  
11 maintain the confidentiality of any sensitive business  
12 information relating to a particular foreign investor or  
13 prospective foreign investor, if so requested by such person;  
14 provided, however, that this provision shall not prevent the  
15 Secretary or the Department from disclosing information upon  
16 order of a court or pursuant to other laws and regulations of  
17 the FSM."

18 Section 32. Chapter 2, Part VII, of Title 32 of the Code of the  
19 Federated States of Micronesia is hereby enacted by adding a new section  
20 223, to read as follows:

21 "Section 223. Enforcement.

22 (1) Primary responsibility for the enforcement of this  
23 Chapter shall be placed in the Secretary and, as to criminal  
24 sanctions provided in Section 220 of this Chapter, in  
25 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. Chapter 2, Part VII, of Title 32 of the Code of the Federated States of Micronesia is hereby enacted by adding a new section 224, to read as follows:

"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

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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. Chapter 2, Part VII, of Title 32 of the Code of the  
Federated States of Micronesia is hereby enacted by adding a new section  
225, to read as follows:

"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 approval.

(2) Upon the effectiveness of this Act as provided for in  
subsection (1) above, this Act shall supersede the Foreign-  
Investment Act (as amended by Public Law 5-134); that Act is  
hereby repealed and shall no longer have any force of law."

Section 35. This act shall become law upon approval by the President  
of the Federated States of Micronesia or upon its becoming law without such  
approval.

Date: 5/11/97

Introduced by: 

Joseph J. Urusemal  
(by request)