

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

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.

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

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

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

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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