
A BILL FOR AN ACT

To further amend the Foreign Investment Act of 1997, as amended, in order to introduce improvements thereto and streamline foreign investment by nationalizing the approval of applications of foreign investment permits, and creating a national pre-emption over foreign investment, and to achieve the stated purposes by amending sections 202, 205, 206 and 208 of, and by inserting new section 202A to, title 32 of the Code of the Federated States of Micronesia (Annotated), and by providing for a transition clause, and for other purposes.

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

1 Section 1. Statement of policy. Among countries in the
2 world, the Federated States of Micronesia continues to rank very
3 low in terms of friendliness towards foreign investment. This
4 inadequate performance perpetuates a negative impact that is not
5 only counterproductive but also inimical to the interest of the
6 nation and its people. It is the duty of the national government
7 to utilize its constitutional power under the commerce clause in
8 order to rectify the misconception and bring innovations and
9 changes to foreign investment legislation. Some of the perceived
10 reasons for the poor foreign investment rating of the Federated
11 States of Micronesia are the complicated and oftentimes conflicting
12 requirements of foreign investment set out in the national and
13 state laws. While efforts have been undertaken to encourage
14 foreign investment, little has been achieved so far because of the
15 fundamental weaknesses arising from the national and state foreign
16 investment legislations lacking in harmony. Therefore, it is the
17 policy of the national government to centralize and fully

1 nationalize the regulation of foreign investment with a view
2 towards achieving the following objectives and principles:

3 (a) Priorities of foreign investments shall align
4 with the goals and objectives of national development plan.

5 (b) Procedures in processing foreign investment
6 applications shall start at the national government and endorsed to
7 the relevant state government to facilitate the commencement
8 business operation.

9 (c) The national government recognizes the role of
10 foreign investment in the economic development of the nation and
11 the states.

12 (d) Foreign investment is to be encouraged in
13 accordance with transparent, fair, and consistent rules of
14 engagement.

15 (e) The national government recognizes the
16 potential contribution of foreign investment towards creating jobs
17 for Micronesians, efficient utilization of resources, and increased
18 public revenue.

19 (f) Foreign investment is subject to special
20 requirements of development training and capacity building of
21 domestic labor force, technology transfer, and incentive on
22 apprenticeship.

23 Section 2. Section 202 of of title 32 of the Code of the
24 Federated States of Micronesia (Annotated), is hereby amended to
25 read as follows:

1 "Section 202. Purpose of this chapter.

2 (a) The purpose of this chapter is to encourage
3 foreign investment within the territory of the FSM in a
4 manner that serves the economic, social, and cultural
5 interests of its citizens. This purpose shall be borne
6 in mind in the implementation and interpretation of the
7 provisions of this chapter.

8 (b) In achieving the purpose stated in
9 subsection (a), Congress intends uniformity in the
10 application and interpretation of the law and in the
11 procedures adopted to give effect to the law in order to
12 minimize differentiated treatment of investors,
13 uncoordinated policy application, and potential
14 discrimination among prospective investors.

15 (c) In adopting this act, Congress intends to
16 exercise its expressly delegated powers to regulate
17 banking, foreign and interstate commerce and the
18 interplay of related powers enumerated in section 2
19 Article IX of the Constitution."

20 Section 3. Title 32 of the Code of the Federated States of
21 Micronesia (Annotated), is hereby amended by inserting new section
22 202A following section 202 to read as follows:

23 "Section 202A. National preemption. (a) Except as
24 provided in subsection (b) of this section, the provisions
25 of this act shall supersede any and all State laws insofar

1 as they may now or hereafter relate to foreign investment
2 regulation. This section shall take effect immediately.

3 (b) Construction and interpretation

4 (1) This section shall not apply with respect to any
5 cause of action, which arose, or any act or omission,
6 which occurred, before the effective date of this act.

7 (2) Nothing in this act shall be construed to exempt or
8 relieve any person with foreign investment or employees
9 from any state or municipal law with respect to state and
10 municipal fees or taxes, if applicable.

11 (3) Nothing in this act shall be construed as negating
12 the authority of the states to require health and
13 environmental standards and measures, provided, that, they
14 are uniformly applied to foreign and domestic businesses.”

15 Section 4. Section 205 of title 32 of the Code of the
16 Federated States of Micronesia (Annotated), is hereby amended to
17 read as follows:

18 “Section 205. Categories of economic sectors.

19 The following system of Categories of economic sectors
20 is hereby established for the purpose of implementing
21 the policy of the FSM to welcome foreign investment in
22 all sectors of the FSM economy, insofar as such foreign
23 investment is consistent with the economic, social, and
24 cultural well-being of its citizens:

25 (1) *Categories for National Regulation*—economic

1 sectors that are of special national significance and
 2 therefore fall within the jurisdiction of the National
 3 Government in respect of foreign investment regulation.
 4 These Categories are the following:

5 (a) *Category A ("National Red List")*—the set of
 6 economic sectors that are closed to foreign investment
 7 anywhere in the FSM. Economic sectors in the National
 8 Red List are the following:

9 (i) arms manufacture;

10 (ii) the minting of coins or printing of
 11 notes for use as currency;

12 (iii) business activities relating to nuclear
 13 power or radioactivity; and

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

19 (b) *Category B ("National Amber List")*—the set
 20 of economic sectors that are subject to National
 21 Government regulation and as to which certain criteria
 22 specified in the FSM Foreign Investment Regulations must
 23 be met. Economic Sectors on the National Amber List
 24 include the following:

25 (i) banking, other than as defined in title

1 29 of this code; and
 2 (ii) insurance; and
 3 (iii) such other economic sectors as the
 4 Secretary may, after consultation with States pursuant
 5 to section 206(2) of this chapter, designate in the FSM
 6 Foreign Investment Regulations as being on the National
 7 Amber List.

8 (c) *Category C ("National Green List")*—the set
 9 of economic sectors that are subject to National
 10 Government regulation but as to which no special
 11 criteria need to be met before a Foreign Investment
 12 Permit is to be issued. Economic sectors on the National
 13 Green List include the following:

- 14 (i) banking, as defined in title 29 of this
 15 code;
- 16 (ii) telecommunications;
- 17 (iii) fishing in the FSM's Exclusive Economic
 18 Zone;
- 19 (iv) international and interstate air
 20 transport;
- 21 (v) international shipping; and
- 22 (vi) such other economic sectors as the
 23 Secretary may, after consultation with States pursuant
 24 to section 206(2) of this chapter, designate in the FSM
 25 Foreign Investment Regulations as being on the National

1 Green List.

2 (2) Category D [~~Other categories for State~~
 3 ~~Regulation~~] economic sectors [~~that~~] other than those
 4 under categories A, B and C are not required to conform
 5 to the special conditions and criteria set in those
 6 categories, category D economic sectors shall be
 7 permitted in accordance with regulations promulgated by
 8 the Secretary. In promulgating the applicable
 9 regulations, the Secretary shall accord preferential
 10 consideration to protecting local labor and domestic
 11 investors. [~~are not of special national significance and~~
 12 ~~therefore are delegated to the jurisdiction of the State~~
 13 ~~Governments in respect of foreign investment regulation.~~
 14 ~~These Categories are to be established separately by~~
 15 ~~each State, by means of the State Foreign Investment~~
 16 ~~Regulations in each State. An economic sector included~~
 17 ~~in any of the Categories for National Regulation~~
 18 ~~pursuant to subsection (1) of this section shall not~~
 19 ~~appear in any of the Categories for State Regulation.]~~

20 (3) Notwithstanding anything to the contrary in
 21 subsection (1) of this section, and regardless of the
 22 economic category 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 5. Section 206 of title 32 of the Code of the
10 Federated States of Micronesia (Annotated), is hereby amended to
11 read as follows:

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

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

16 (a) determining, after consultation with the
17 States as required under subsection (2) of this section,
18 which economic sectors, in addition to those enumerated
19 in section 205(1) of this chapter, shall be designated
20 for inclusion in Category A (National Red List),
21 Category B (National Amber List), and Category C
22 (National Green List).

23 (b) determining what criteria, if any, shall be
24 specified for foreign investments in Category B
25 (National Amber List) economic sectors.

1 (c) the issuance of FSM Foreign Investment
 2 Permits in respect of Category B and Category C economic
 3 sectors, and in general for the administration of
 4 foreign investment rules established by this act or by
 5 the FSM Foreign Investment Regulations.

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

11 (2) The National Government and the state governments
 12 or their designated agencies or authorities shall
 13 consult [meet] regularly, at least once every two years,
 14 [with authorities designated by the Governments of the
 15 States] to review sectoral developments priorities and
 16 to formulate policy recommendations in order to improve
 17 the implementation of this chapter. [to discuss
 18 proposals to add economic sectors to, or remove them
 19 from, Category A (National Red List), Category B
 20 (National Amber List), or Category C (National Green
 21 List) under section 205(1) of this chapter.

22 ~~(3) The Government of each individual State shall be~~
 23 ~~responsible for the regulation of foreign investment,~~
 24 ~~including the issuance of State Foreign Investment~~
 25 ~~Permits, in respect of foreign investment taking place~~

1 ~~or proposed to take place within the territory of that~~
 2 ~~State in all economic sectors other than those~~
 3 ~~designated for inclusion in Categories A, B, or C~~
 4 ~~pursuant to section 205(1) of this chapter.~~

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

11 ~~(5) Action taken by the Government of a State under~~
 12 ~~subsections (3) and (4) of this section shall be~~
 13 ~~consistent with the provisions of this chapter and the~~
 14 ~~FSM Foreign Investment Regulations.]~~

15 (3) ~~[(6)]~~ If any foreign investment or proposed
 16 foreign investment involves more than one economic
 17 sector, and those economic sectors are designated for
 18 inclusion in more than one Category pursuant to section
 19 205 of this chapter, such investment or proposed
 20 investment shall be subject to the rules and
 21 jurisdiction applicable to each such Category as
 22 described in this section and elsewhere in this chapter.

23 ~~[(7) The Department shall, upon request, offer~~
 24 ~~assistance:~~

25 ~~(a) to States in the areas of foreign investment~~

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

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

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

13 Section 6. Section 208 of title 32 of the Code of the
14 Federated States of Micronesia (Annotated), is hereby repealed in
15 its entirety.

16 “Section 208. Transition [~~Application procedures for~~
17 ~~State Foreign Investment Permits.~~

18 ~~An application for a State Foreign Investment Permit~~
19 ~~shall be made in accordance with the provisions of State~~
20 ~~Foreign Investment Legislation and State Foreign~~
21 ~~Investment Regulations. In the interest of coordination~~
22 ~~and reducing administrative burdens on foreign~~
23 ~~investors, such provisions should:~~

24 ~~(1) establish rules and procedures consistent with~~
25 ~~the provisions of this chapter and with the provisions~~

1 ~~of the FSM Foreign Investment Regulations;~~
2 ~~(2) direct the responsible State authorities to make~~
3 ~~available to the Department copies of the application~~
4 ~~forms for State Foreign Investment Permits, together~~
5 ~~with such other materials and information necessary for~~
6 ~~the Department to assist prospective foreign investors;~~
7 ~~(3) direct the responsible State authorities to~~
8 ~~forward to the Secretary any application for an FSM~~
9 ~~Foreign Investment Permit, or any information submitted~~
10 ~~in support of such an application; and~~
11 ~~(4) direct the responsible State authorities to~~
12 ~~forward to the Department a copy of any State Foreign~~
13 ~~Investment Permit issued by those authorities]."~~
14 Within one year from the effective date of this act,
15 holder of existing foreign investment permit issued by
16 state authority is required to apply for a foreign
17 investment permit and to qualify for issuance of foreign
18 investment permit in accordance with this chapter to be
19 able to continue to engage in business. Failing to apply
20 for permit or to qualify for issuance of permit will
21 result in the immediate discontinuance of business.
22 During the one-year period, state authority shall refrain
23 from issuing any new foreign investment permit."

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1 Section 7. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its
3 becoming law without such approval.

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5 Date: 5/11/16 Introduced by: for /s/ Joseph J. Urusemal
Florencio S. Harper
(by request)

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