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:

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

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

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

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

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

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

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

Section 2. Section 202 of of title 32 of the Code of the Federated States of Micronesia (Annotated), is hereby amended to read as follows:
"Section 202. Purpose of this chapter.

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

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

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

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

"Section 202A. National preemption. (a) Except as provided in subsection (b) of this section, the provisions of this act shall supersede any and all State laws insofar
as they may now or hereafter relate to foreign investment regulation. This section shall take effect immediately.

(b) Construction and interpretation

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

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

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

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

“Section 205. Categories of economic sectors.

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

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

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

(i) arms manufacture;

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

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

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

(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. Economic Sectors on the National Amber List include the following:

(i) banking, other than as defined in title
29 of this code; and

(ii) insurance; and

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

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

(i) banking, as defined in title 29 of this code;

(ii) telecommunications;

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

(iv) international and interstate air transport;

(v) international shipping; and

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

(2) **Category D [Other categories for State Regulation]** economic sectors [that] other than those under categories A, B and C are not required to conform to the special conditions and criteria set in those categories, category D economic sectors shall be permitted in accordance with regulations promulgated by the Secretary. In promulgating the applicable regulations, the Secretary shall accord preferential consideration to protecting local labor and domestic investors. [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) of this section shall not appear in any of the Categories for State Regulation.]

(3) Notwithstanding anything to the contrary in subsection (1) of this section, and regardless of the economic category involved:

(a) every applicant for or holder of an FSM Foreign Investment Permit may be required to meet such character criteria as may be specified in the FSM
Foreign Investment Regulations in order to obtain or retain an FSM Foreign Investment Permit; and

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

Section 5. Section 206 of title 32 of the Code of the Federated States of Micronesia (Annotated), is hereby amended 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:

(a) determining, after consultation with the States as required under subsection (2) of this section, 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 and the state governments or their designated agencies or authorities shall consult [meet] regularly, at least once every two years, [with authorities designated by the Governments of the States] to review sectoral development priorities and to formulate policy recommendations in order to improve the implementation of this chapter. [to discuss proposals to add economic sectors to, or remove them from, Category A (National Red List), Category B (National Amber List), or Category C (National Green List) under section 205(1) of this chapter.

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

(4) If any foreign investment of a type described in subsection (3) of this section 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) of this section shall be consistent with the provisions of this chapter and the FSM Foreign Investment Regulations.

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

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

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

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

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

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

“Section 208. Transition [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].”

Within one year from the effective date of this act, holder of existing foreign investment permit issued by state authority is required to apply for a foreign investment permit and to qualify for issuance of foreign investment permit in accordance with this chapter to be able to continue to engage in business. Failing to apply for permit or to qualify for issuance of permit will result in the immediate discontinuance of business. During the one-year period, state authority shall refrain from issuing any new foreign investment permit.”
Section 7. 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: 5/11/16   Introduced by: for /s/ Joseph J. Urusemal    Florencio S. Harper    (by request)