

A BILL FOR AN ACT

To further amend the Foreign Investment Act of 1997, as amended, in order to introduce improvements thereof and streamlining of foreign investment by nationalizing the approval of applications of foreign investment permit, 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 a 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
12 conflicting requirements of foreign investment set out in the
13 national and state laws. While Efforts have been undertaken to
14 encourage foreign investment, little has been achieved so far
15 because of the fundamental weaknesses arising from the national
16 and state foreign investment legislations lacking in harmony.

1 Therefore, it is the policy of the national government to
 2 centralize and fully nationalize the regulation of foreign
 3 investment with a view towards achieving the following objectives
 4 and principles:

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

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

11 (c) National government recognizes the role of
 12 foreign investment in the economic development of the nation and
 13 the states.

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

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

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

25 Section 2. Section 202 of title 32 of the Code of the

1 Federated States of Micronesia (Annotated), is hereby amended to
 2 read as follows:

3 “Section 202. Purpose of this chapter.

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

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

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

22 Section 3. Chapter 2 of title 32 of the Code of the
 23 Federated States of Micronesia (Annotated), is hereby amended by
 24 inserting a new section 202A, to read as follows:

25 “Section 202A. National preemption. (a) Except as

1 provided in subsection (b) of this section, the
2 provisions of this act shall supersede any and all State
3 laws insofar as they may now or hereafter relate to
4 foreign investment regulation. This section shall take
5 effect immediately.

6 (b) Construction and interpretation.

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

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

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

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

22 "Section 205. Categories of economic sectors.
23 The following system of Categories of economic sectors
24 is hereby established for the purpose of implementing
25 the policy of the FSM to welcome foreign investment in

1 all sectors of the FSM economy, insofar as such foreign
 2 investment is consistent with the economic, social, and
 3 cultural well-being of its citizens:

4 (1) *Categories for National Regulation*—economic
 5 sectors that are of special national significance and
 6 therefore fall within the jurisdiction of the National
 7 Government in respect of foreign investment regulation.
 8 These Categories are the following:

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

- 13 (i) arms manufacture;
- 14 (ii) the minting of coins or printing of
 15 notes for use as currency;
- 16 (iii) business activities relating to nuclear
 17 power or radioactivity; and

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

23 (b) *Category B ("National Amber List")*—the set
 24 of economic sectors that are subject to National
 25 Government regulation and as to which certain criteria

1 specified in the FSM Foreign Investment Regulations must
 2 be met. Economic Sectors on the National Amber List
 3 include the following:

- 4 (i) banking, other than as defined in title
- 5 29 of this code; and
- 6 (ii) insurance; and
- 7 (iii) such other economic sectors as the
- 8 Secretary may, after consultation with States pursuant
- 9 to section 206(2) of this chapter, designate in the FSM
- 10 Foreign Investment Regulations as being on the National
- 11 Amber List.

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

- 18 (i) banking, as defined in title 29 of this
- 19 code;
- 20 (ii) telecommunications;
- 21 (iii) fishing in the FSM's Exclusive Economic
- 22 Zone;
- 23 (iv) international and interstate air transport;
- 24 (v) international shipping; and
- 25 (vi) such other economic sectors as the Secretary

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

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

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

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

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

12 Section 5. Section 206 of title 32 of the Code of the
 13 Federated States of Micronesia (Annotated), is hereby amended to
 14 read as follows:

15 “Section 206. Responsibilities of the National and
 16 State Governments regarding foreign investment.

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

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

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

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

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

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

25 ~~(3) The Government of each individual State shall be~~

1 ~~responsible for the regulation of foreign investment,~~
2 ~~including the issuance of State Foreign Investment~~
3 ~~Permits, in respect of foreign investment taking place~~
4 ~~or proposed to take place within the territory of that~~
5 ~~State in all economic sectors other than those~~
6 ~~designated for inclusion in Categories A, B, or C~~
7 ~~pursuant to section 205(1) of this chapter.~~

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

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

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

1 ~~[(7) The Department shall, upon request, offer~~
2 ~~assistance:~~

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

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

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

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

19 Section 7. Title 32 of the Code of the Federated States of
20 Micronesia (Annotated), is hereby amended by inserting a new
21 section 208 to read as follows:

22 “Section 208. Transition
23 Within one year from the effective date of this act,
24 holder of existing foreign investment permit issued by
25 state authority is required to apply for a foreign

1 investment permit and to qualify for issuance of foreign
2 investment permit in accordance with this chapter to be
3 able to continue to engage in business. Failing to
4 apply for permit or to qualify for issuance of permit
5 will result in the immediate discontinuance of business.
6 During the one-year period, state authority shall
7 refrain from issuing any new foreign investment permit."

8 Section 7. This act shall become law upon approval by the
9 President of the Federated States of Micronesia or upon its
10 becoming law without such approval.

11
12 Date: 5/24/17

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