
A BILL FOR AN ACT

To further amend the Foreign Investment Act of 1997, as amended, to streamline the review and screening of foreign investment applications and issuance of permits by creating a National Foreign Investment Single Window to achieve the stated purposes, by amending sections 202, 205, 206, and 208, 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 transitional clause, and for other purposes.

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

1 Section 1. Statement of Policy. In order to achieve
2 economic self-sufficiency through sustainable economic growth, it
3 is deemed in the best interest of the FSM to create an open and
4 friendly investment environment within which the private sector
5 will be able to freely conduct business and be guaranteed fair
6 competition and investor protection. Foreign investment plays an
7 important role [~~of foreign investment~~] in the economic development
8 of the nation and the states. However, [~~this~~] inadequate business
9 climate [~~and performance~~] perpetuates a negative impact that is
10 not only counterproductive but also inimical to the interest of
11 the nation and its people. Some of the perceived reasons for the
12 poor foreign investment performance in the Federated States of
13 Micronesia are the complicated and oftentimes conflicting
14 requirements of foreign investment set out in the national and
15 state laws. While efforts have been undertaken to encourage
16 foreign investment, little has been achieved so far because of the
17 fundamental weaknesses arising from the national and state foreign

1 investment legislations lacking in harmony. Therefore, it is the
2 policy of the national government to streamline and centralize the
3 regulation of foreign investment with a view towards achieving the
4 following objectives and principles:

5 (a) National government recognizes the role of foreign
6 investment in the economic development of the nation and the
7 states.

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

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

14 (d) Foreign investment is to be encouraged in accordance with
15 transparent, fair, and consistent rules based on international
16 best practices.

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

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

24 Section 2. Section 202 of chapter 2 subchapter I of title 32
25 of the Code of the Federated States of Micronesia (Annotated) is

1 hereby amended to read as follows:

2 “Section 202. Purpose of this chapter.

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

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

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

23 Section 3. Chapter 2 subchapter I of title 32 of the Code of
24 the Federated States of Micronesia (Annotated) is hereby amended
25 by inserting new section 202A, following section 202, to read as

1 follows:

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

7 (b) Construction and interpretation.

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

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

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

19 Section 4. Section 205 of chapter 2 subchapter II of title
20 32 of the Code of the Federated States of Micronesia (Annotated),
21 is hereby amended to 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) National Prohibited Category [~~Category A~~
10 ~~(“National Red List”)~~] The following set of economic
11 sectors that are [~~closed~~] prohibited to foreign and
12 domestic investment anywhere in the FSM. Economic
13 sectors in the National Prohibited Category [~~Red~~] List
14 are the following:

15 (i) arms manufacture;

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

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

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

25 [~~(b) National Restricted Category B (“National~~

1 ~~*Amber*~~

2 ~~*List")*~~ The ~~following~~ set of economic sectors that are
3 ~~subject to National Government regulation and as to~~
4 ~~which certain criteria specified in the FSM Foreign~~
5 ~~Investment Regulations must be met. Economic Sectors on~~
6 ~~the National Restricted Amber Category List include the~~
7 ~~following:~~

8 ~~(i) banking, other than as defined in title~~
9 ~~29 of this code;~~

10 ~~(ii) insurance; and~~

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

16 (b) National Restricted Category

17 The economic sectors under this category shall be
18 identified by the Department and made part of the
19 National Foreign Investment Regulations subject to
20 specified criteria on how they must be met.

21 (c) National Green Investment Category

22 The economic sectors under this category shall be
23 identified by the Department and made part of the
24 National Foreign Investment Regulations subject to
25 specified criteria on how they must be met.

1 ~~[Category C ("National Green List") The following set~~
2 ~~of economic sectors that are subject to National~~
3 ~~Government regulation but as to which no special~~
4 ~~criteria need to be met before a Foreign Investment~~
5 ~~Permit is to be issued. Economic sectors on the~~
6 ~~National Green Investment Category List include the~~
7 ~~following:]~~

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

10 ~~(ii) telecommunications;~~

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

13 ~~(iv) international and interstate air~~
14 ~~transport;~~

15 ~~(v) international shipping; and~~

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

21 (2) National Reserved Category ~~[Categories for State~~
22 ~~Regulation Economic sectors that are not of special~~
23 ~~national significance and therefore are delegated to the~~
24 ~~jurisdiction of the State Governments in respect of~~
25 ~~foreign investment regulation. These Categories are to~~

1 ~~be established separately by each State, by means of the~~
2 ~~State Foreign Investment Regulations in each State. An~~
3 ~~economic sector included in any of the Categories for~~
4 ~~National Regulation pursuant to subsection (1) of this~~
5 ~~section shall not appear in any of the Categories for~~
6 ~~State Regulation.] Economic sectors under National~~
7 ~~Reserved Category shall be developed in consultation~~
8 ~~with the States following the effective date of this act~~
9 ~~to be incorporated into the National Foreign Investment~~
10 ~~Regulations for the purpose of safeguarding the~~
11 ~~interests of local businesses and reserving business~~
12 ~~opportunities for the citizens, and to effectively~~
13 ~~facilitate review, screening, and issuance of permit by~~
14 ~~the National Foreign Investment Single Window.~~

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

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

23 (b) every present or future holder of a
24 substantial ownership interest in an applicant for or
25 holder of an FSM Foreign Investment Permit as

1 established by law may be required to meet those same
2 character criteria in order to obtain or retain that
3 substantial ownership interest.

4 Section 5. Section 206 of chapter 2 subchapter II of title 32
5 of the Code of the Federated States of Micronesia (Annotated) is
6 hereby amended to read as follows:

7 "Section 206. Responsibilities of the National and
8 State Governments regarding foreign investment.

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

11 (a) determining, after consultation with the
12 States as required under subsection (2) of this section,
13 which economic sectors, in addition to those enumerated
14 in section 205(1) of this chapter, shall be designated
15 for inclusion in [~~Category A~~] (National [~~Red~~] Prohibited
16 Category List [+]), [~~Category B~~] (National [~~Amber~~]
17 Restricted Category List [+]), [~~and Category C~~] (National
18 Green Investment List [+]) and National Reserved
19 Category.

20 (b) determining what criteria, if any, shall be
21 specified for foreign investments in ~~Category B~~
22 [+]National [~~Amber~~] Restricted Category List [+] economic
23 sectors.

24 (c) the issuance of FSM Foreign Investment
25 Permits in respect of [~~Category B and Category C~~]

1 National Restricted Category List, National Green
2 Investment List, and National Reserved Category 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 (e) Develop and execute a national and state
12 monitoring system between designated national and state
13 agencies responsible for monitoring foreign investment
14 to ensure that investors comply with their foreign
15 investment permits and commitments to support the FSM
16 economic development priorities.

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

1 ~~(National Amber List), or Category C (National Green~~
2 ~~List) under section 205(1) of this chapter.~~

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

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

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

21 ~~(3) [(6)] If any foreign investment or proposed foreign~~
22 ~~investment involves more than one economic sector, and~~
23 ~~those economic sectors are designated for inclusion in~~
24 ~~more than one Category pursuant to section 205 of this~~
25 ~~chapter, such investment or proposed investment shall be~~

1 subject to the provisions of this law and FSM Foreign
2 Regulations. [~~rules and jurisdiction applicable to each~~
3 ~~such Category as described in this section and elsewhere~~
4 ~~in this chapter.~~

5 ~~(7) The Department shall, upon request, offer~~
6 ~~assistance:~~

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

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

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

20 Section 6. Section 208 of chapter 2 subchapter II of title 32
21 of the Code of the Federated States of Micronesia (Annotated), is
22 hereby repealed in its entirety.

23 “Section 208. Transition [~~Application procedures for~~
24 ~~State Foreign Investment Permits.~~

25 ~~An application for a State Foreign Investment Permit~~

1 ~~shall be made in accordance with the provisions of State~~
2 ~~Foreign Investment Legislation and State Foreign~~
3 ~~Investment Regulations. In the interest of coordination~~
4 ~~and reducing administrative burdens on foreign~~
5 ~~investors, such provisions should:~~

6 ~~(1) establish rules and procedures consistent with~~
7 ~~the provisions of this chapter and with the provisions~~
8 ~~of the FSM Foreign Investment Regulations;~~

9 ~~(2) direct the responsible State authorities to make~~
10 ~~available to the Department copies of the application~~
11 ~~forms for State Foreign Investment Permits, together~~
12 ~~with such other materials and information necessary for~~
13 ~~the Department to assist prospective foreign investors;~~

14 ~~(3) direct the responsible State authorities to~~
15 ~~forward to the Secretary any application for an FSM~~
16 ~~Foreign Investment Permit, or any information submitted~~
17 ~~in support of such an application; and~~

18 ~~(4) direct the responsible State authorities to~~
19 ~~forward to the Department a copy of any State Foreign~~
20 ~~Investment Permit issued by those authorities]."~~

21 Within one year from the effective date of this act,
22 holder of existing foreign investment permit issued by
23 state authority is required to apply for a foreign
24 investment permit and to qualify for issuance of foreign
25 investment permit in accordance with this chapter to be

