A BILL FOR AN ACT

To provide for the regulation of foreign investment, and for other purposes.

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

1 Section 1. Short title. This act is known and may be cited as the
2 "Foreign Investment Act."
3
4 Section 2. Definitions. When words defined in this section are used
5 in this act, unless otherwise required by the context, the following
6 definitions shall govern:
7
8 (1) "Noncitizen" means:
9
10 (a) Until the termination of the Trusteeship for the Trust
11 Territory of the Pacific Islands, any person who is not a Trust Territory
12 citizen and any business in which any interest is owned by a person who is
13 not a Trust Territory citizen;
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15 (b) Upon termination of the Trusteeship, any person who is
16 not a citizen of the Federated States of Micronesia, and any business in
17 which any interest is owned by a person who is not a citizen of the
18 Federated States of Micronesia.
19
20 (2) "Citizen" means any person or business not included in the
21 definition of noncitizen contained in this act.
22
23 (3) "Secretary" means the Secretary of Resources and Development
24 of the Federated States of Micronesia.
25
26 (4) "President" means the President of the Federated States of Micronesia.
27
28 (5) "Business" means any sole proprietorship, partnership,
29 corporation, or any other association engaged in commerce.
30
31 (6) "State authority" means any official or entity designated by
32 a State of the Federated States of Micronesia to consider foreign investment
33 applications under this act and, failing such designation, means the
Governor of a State.

(7) "Licensee" means any noncitizen who has been issued a foreign investment permit under this act, including agents or employees of the noncitizen.

Section 3. Permit required.

(1) A noncitizen may not engage in any business in the Federated States of Micronesia without first obtaining a foreign investment permit. A noncitizen may not acquire an interest, other than a security interest in real or personal property for the purpose of securing a loan, in any business operating in the Federated States of Micronesia without first obtaining a foreign investment permit.

(2) A noncitizen engaged in business in the Federated States of Micronesia on the effective date of this act under a permit issued under the Trust Territory Foreign Investors Business Permit Act (33 TTC Chapter 1) or under an agreement with the Trust Territory Government shall not continue to engage in business in the Federated States of Micronesia after the expiration of that permit or agreement without first obtaining a foreign investment permit.

Section 4. Application for a foreign investment permit.

(1) A noncitizen intending to engage in business in the Federated States of Micronesia, or intending to acquire an interest in a business in the Federated States of Micronesia, shall apply to the Secretary for a foreign investment permit. Every application shall be accompanied by a filing fee of $250, which shall accrue to the General Fund of the Federated States of Micronesia and which shall not be refundable. The Secretary shall establish the form of the application by regulation.
(2) The application shall contain the following information:

(a) Name of the applicant's business, its officers, and directors;

(b) Proposed principal office in the Federated States, and the State or States in which the applicant desires to do business;

(c) Purpose, scope, and objective of the business activities to be conducted by the applicant;

(d) Amount of ownership in the business to be held by noncitizen;

(e) Extent to which the business will involve foreign or interstate commerce;

(f) The name, business address, and personal address of a person residing in the Federated States of Micronesia on whom process issued under law may be served; and

(g) Any additional information which the Secretary deems necessary to evaluate the application and make the determination required by section 6 of this act.

Section 5. Foreign Investment Board. A Foreign Investment Board is established, hereinafter called the "Board." The Board is composed of the Secretary, the National planner of the Federated States of Micronesia, and a third member appointed, from time to time, by the Speaker of the Congress of the Federated States of Micronesia. A member may not participate in the determination of any matter before the Board if he or any member of his immediate family has an interest in the outcome which may affect his impartial consideration of the matter. Members shall serve until replaced by the
1 President of the Federated States of Micronesia, in the case of the Secretary
2 and the National planner, and until replaced by the Speaker in the case of
3 the third member. Two members of the Board must be present to make up a
4 quorum and action can only be taken by a majority vote of the members present,
5 with the Secretary having, in addition to a regular vote, a casting vote in
6 case of a tie. The Secretary shall provide clerical and administrative
7 assistance to the Board and shall serve as chairman.
8
9 Section 6. Action on application. The Board shall review each foreign
10 investment permit application, and shall, within 20 days of the filing of
11 the application, determine whether or not the business activities proposed
12 will fall within any of the following categories:
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14 (1) Will the applicant engage in business in more than one State;
15
16 (2) Will the applicant's business receive 50 percent or more
17 of its total revenue from the export of goods or services to another State
18 or nation;
19
20 (3) Will the applicant engage in the processing, manufacturing,
21 assembling, or building of goods or products, and if so, will 50 percent
22 or more of the materials processed or used be imported from another State
23 or nation; or
24
25 (4) Will the applicant engage in communications, air or sea
26 transportation, or the shipment of fuel between States or between the
27 Federated States of Micronesia and another nation.
28
29 Section 7. Applications within categories. If the Board determines
30 that the applicant's business falls within one or more of the categories set
31 out in section 6 of this act, the following procedure shall apply:
(1) Upon making the section 6 determination the Board shall refer the application to the Secretary for review and investigation. The Secretary shall collect any further information which he believes will be useful for the evaluation of the application and shall present all information obtained to the Board within 30 days of receiving the application from the Board.

(2) At the time the application is referred to the Secretary a copy of the application shall be delivered to the State authority of each State. The State authorities may examine the application and may make a recommendation as to the approval or disapproval of the application. The Secretary shall deliver copies of any information which he obtains under subsection (1) of this section to the State authorities. The State authorities shall have 30 days from receipt of the informational material from the Secretary to deliver recommendations to the Board.

(3) Upon receipt of the information and recommendations called for in subsections (1) and (2) of this section, or upon expiration of the time set for submission of such information and recommendations, whichever occurs first, the Board shall, within an additional 30 days, decide whether or not to grant the foreign investment permit, based on all relevant factors, including:

(a) The economic, social, or environmental need for the business activity to be performed;

(b) The degree to which such activities will effect change in exports or imports;

(c) The extent to which such activities will deplete a
1 nonrenewable natural resource, or will disturb the environmental balance
2 or the conservation of renewable natural resources, or will pollute
3 the atmosphere or water;
4 (d) The extent of participation by citizens at the outset
5 in the ownership and management of the enterprise, and in the case of an
6 applicant which is a corporation chartered outside the Federated States,
7 the degree of willingness and specific plans to form a Federated States
8 corporation in the future and to offer at least 51 percent of the ownership
9 and capital to citizens;
10 (e) The willingness and specific plans of the applicant to
give employment preference to citizens and to train citizens for positions
in management and at other levels by instituting training programs;
11 (f) The extent to which the capital, managerial skills,
and technical skills required for such an enterprise are available among
available in the near future;
12 (g) The extent to which an operation will contribute to
the overall economic well-being of the nation and each State affected and
the extent to which any interest, including economic, social, traditional,
or environmental, of any State or the nation may be affected; and
13 (h) The recommendations, if any, made by the State authorities.
(4) If the Board decides that the foreign investment permit
should be granted, it may also impose limitations on the issuance of the
permit.
15 (5) The Board shall deliver notice of the action it takes on
the permit application, together with a statement of reasons in support of
the action taken, to the President as soon as the permit is granted or denied.

Section 8. Applications not within categories. If the Board determines
that the applicant's business does not fall within any of the categories set
out in section 6 of this act, the following procedure shall apply:

(1) Upon making the section 6 determination, the Board shall
refer the foreign investment permit application to the State authority of
the State affected by the applicant's business.

(2) The State authority shall approve or disapprove the permit
application, stating its reasons for approving or disapproving in a report
which shall be delivered to the Board within 45 days of the receipt of the
application by the State authority. The Board shall promptly grant or deny
the permit in conformity with the action taken by the State authority and
shall immediately notify the President of the action taken.

(3) If the State authority approves the application, it may
impose limitations on the issuance of the permit.

Section 9. President's action on foreign investment permits. Within
20 days of receipt of notice of a permit action taken by the Board, the
President may reverse the decision of the Board if he determines that the
action taken would adversely affect a compelling National interest relating
to foreign affairs or to the general public welfare. If the President
takes no action within the prescribed time limits, the Board action stands.
If the President reverses the action taken by the Board, he shall notify the
Board, the applicant, and the State authorities by certified mail of his
decision and the reasons for the decision. No Board permit decision is
final until the requirements of this section have been met.

Section 10. Right of appeal. An applicant or State authority aggrieved by a final permit decision may appeal the decision by filing a notice of appeal within 30 days of receipt of notice of the decision with the High Court of the Trust Territory of the Pacific Islands or the Supreme Court of the Federated States of Micronesia. The notice of appeal shall also be served on the Attorney General of the Federated States of Micronesia and the Secretary. Such appeals shall be made under applicable rules of civil procedure.

Section 11. Commencement and operations of business.

(1) Before commencing business activity within the Federated States of Micronesia, a licensee shall inform the Secretary of the financial year used by the licensee's business in keeping its financial records.

(2) A licensee shall be subject to all laws of the Federated States of Micronesia, including any rules and regulations promulgated under this act.

(3) A licensee is deemed to have consented to the acceptance of process by service on the individual named for that purpose in the licensee's permit application. If the individual named in the application cannot be found at the address given, process served on the Registrar of Corporations with copies sent by certified mail to the address stated in the application is valid service on the licensee.

Section 12. Licensee reporting requirements.

(1) Every licensee shall file an annual report with the Secretary in such form as he may prescribe by regulation, containing a full and accurate statement of business activities undertaken by the licensee in the Federated States of Micronesia, a profit and loss statement, and an updated statement.
of the information provided in the original permit application, which report
shall be due within 60 days immediately following the end of the licensee's
financial year.

(2) Every licensee shall advise the Secretary of any change in
the financial year used by the licensees within 60 days of the change.

(3) Every corporate licensee shall file copies of any change
in the provisions of its original charter, articles of incorporation, or
bylaws within 60 days of the change with the Registrar of Corporations and
the Secretary.

Section 13. Insurance companies.

(1) Every insurance company granted a foreign investment permit
shall file a $100,000 deposit with the Secretary in cash, negotiable
securities, or a bond from a corporate surety, or any combination totaling
$100,000 which is acceptable to the Secretary, to be filed within 30 days
from the issuance of the permit and held in trust by the Secretary for the
account of the company to satisfy any judgment that may be rendered against
it under insurance policies that it may issue. The deposit shall be main-
tained as long as the insurance company conducts business in the Federated
States of Micronesia.

(2) Every insurance company granted a foreign investment permit
pursuant to this act shall file a verified statement summarizing all
commercial activity transacted within the Federated States of Micronesia by
the company during its previous financial year and a duly certified copy of
its annual report to any authorized official of the state, territory,
possessing, or country in which the company is organized. The statement
shall be filed with the Secretary within 60 days of the end of the insurance
company's financial year.

Section 14. Change in licensee's business. If a licensee intends to
substantially alter the business activity on which the foreign investment
permit is based or intends to undertake significant additional business
activities not contemplated at the time of the original application, the
licensee shall submit an application for a new foreign investment permit to
the Secretary, which shall be considered in accordance with sections 6,
through 9 of this act except that the Board, the Secretary, or the State
authority need not duplicate investigatory efforts made in connection with the
original application. The licensee shall not alter its business activities
or add new business activities until a new permit is granted.

Section 15. Permit renewal. If a licensee wishes to renew an expiring
permit, a renewal application may be submitted to the Secretary in a form
which he prescribes and shall be disposed of by the Secretary according to
regulations promulgated to implement this section. A licensee may continue
business activities while the renewal application is pending.

Section 16. Modification, suspension, or revocation of permit.

(1) A foreign investment permit may be modified, suspended, or
revoked by the Board if:

(a) The original permit application is found to have
contained false or fraudulent information;

(b) The licensee bribed or otherwise influenced or attempted
to bribe or influence the Secretary or any member of the Board or any member
of a State authority to issue the permit;

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(c) The licensee presented false or fraudulent information to the Board or to a State authority in support of the application;

(d) The licensee violates any law of the Federated States of Micronesia or of any political subdivision within the Federated States of Micronesia, or any of the regulations issued under those laws, which are relevant to the business activity conducted under the permit;

(e) The licensee engages in business activities which are violative of any limitation contained in the permit;

(f) The licensee engages in business activity substantially outside the scope of the permit;

(g) The licensee fails or refuses to comply with the reporting requirements of section 12 or 13 of this act, and such failure continues for a period of 60 days after any report is due; or

(h) The licensee refuses or fails to comply with orders for production of documents and things or for attendance of witnesses under section 19 of this act.

(2) The Board shall, upon receipt of information which indicates that a permit should be modified, suspended, or revoked, schedule a hearing on the matter before the Board. At least 21 days written notice of the hearing shall be given to the licensee stating the alleged violations. Hearing procedure shall be prescribed by the Board by regulation and shall include the right of the licensee to participate and to be represented by counsel, to call witnesses, and to cross-examine witnesses called against the licensee. After the hearing the Board may, by majority vote, modify, suspend, or revoke the permit, and in such cases the Secretary shall notify
the licensee of the action taken by certified mail within five days of the
hearing, stating the reasons for the action taken. A licensee whose permit
has been modified, suspended, or revoked, may appeal the decision of the
Board to the High Court of the Trust Territory of the Pacific Islands or the
Supreme Court of the Federated States of Micronesia within 20 days after
receipt of notice of the action of the Board. Copies of the notice of
appeal shall be served on the Secretary and the Attorney General.
Section 17. **Surrender of foreign business permit.**
(1) A licensee may surrender a permit by filing a certificate
signed and acknowledged by the licensee with the Secretary, stating the
following:
(a) The name of the licensee as shown on the records of the
Secretary and the licensee's permit number;
(b) A revocation of the licensee's designation of agent
for the service of process;
(c) That the licensee surrenders authority to engage in
business in the Federated States of Micronesia;
(d) That the licensee consents to service of process, against
the licensee in any action or claim for relief based upon liability or
obligation incurred within the Federated States of Micronesia prior to the
filing of the certificate of surrender by service on the Registrar of
Corporations; and
(e) An address to which the Registrar of Corporations shall
mail a copy of any process served upon the licensee, which address may be
changed from time to time by filing a certificate entitled "notification of
change of address" signed and acknowledged by the licensee before an appro-
priately commissioned notary public or Clerk of Court.

(2) The foreign investment permit shall be attached to the
certificate described in subsection (1) of this section unless it has been
lost or destroyed, in which case an affidavit of the licensee shall be
attached attesting to such loss.

(3) Mere retirement from doing business in the Federated States
of Micronesia without a filing of the certificate described in subsection (1)
of this section does not revoke the appointment of an agent for the service
of process within the Federated States of Micronesia.

Section 18. Service of process on noncitizen after revocation of
business permit.

(1) After the permit of a noncitizen has been revoked, process
against the noncitizen may be served upon the Registrar of Corporations in
any action on a liability or obligation incurred within the Federated States
of Micronesia prior to the revocation.

(2) In any case where, under the provisions of this section,
the Registrar of Corporations is served with process, he shall immediately
send by certified or registered mail a notice of service and a copy of the
summons and complaint to the noncitizen concerned, at the noncitizen's last
address of record.

Section 19. Enforcement of this act.

(1) Primary responsibility for the enforcement of this act shall
be placed in the Board, with the assistance of the Secretary, and, as to
criminal sanctions provided in section 22 of this act, appropriate law

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enforcement authorities within the Federated States of Micronesia.

(2) In carrying out the duties imposed by this act the Board may require the attendance of any citizen or noncitizen at a meeting or hearing conducted by the Board, and may require such persons to testify or to produce at, before, or after such meeting or hearing documents, information, and things relevant to enforcement of the provisions of this act.

Section 20. Rules and regulations. The Board shall promulgate the regulations necessary to implement this act, which regulations shall have the force and effect of law.

Section 21. Exemptions. This act shall not apply to:

(1) Cooperative associations and credit unions duly organized and incorporated under the laws of the Trust Territory or the Federated States of Micronesia or a State thereof; and

(2) Banking and savings and loan institutions authorized to do business under the laws of the Trust Territory or the Federated States of Micronesia.

Section 22. Criminal penalty.

(1) Any noncitizen:

(a) Who intentionally engages in business activities in the Federated States of Micronesia for which a foreign investment permit is required without first obtaining that permit; or

(b) Who, after obtaining a foreign investment permit, intentionally fails to comply with the limitations, if any, stated in the permit; or

(c) Who obtains a foreign investment permit by fraud or
misrepresentation shall be deemed guilty of a criminal offense and upon
conviction thereof by a court of competent jurisdiction within the Federated
States of Micronesia shall be imprisoned for a period of not more than one
year or fined not more than $2,000, or both.

(2) Any citizen or noncitizen, who aids or abets a noncitizen
in violating any of the terms of subsection (1) of this section shall be
guilty of a criminal offense and upon conviction thereof in a court of
competent jurisdiction within the Federated States of Micronesia, shall be
imprisoned for a period not exceeding one year or fined $2,000, or both.

Section 23. Repeal. Chapter 1 of Title 33 of the Trust Territory
Code is hereby repealed.

Section 24. Effective date. 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: 5/22/87

Introduced by: [Signature]
(By Request)