A BILL FOR AN ACT

To further amend title 32 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21, 5-54, and 5-109, by further amending section 202, as amended by Public Law No. 5-21; by amending section 203; and by amending sections 206-214, 219, 221, 222, and 225-227, as renumbered by Public Law No. 5-21; for the purposes of clarifying that the foreign investment law is applicable to business relating to the practice of law and other professions, amending the criteria for permit decisions, making technical amendments; and for other purposes.

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

Section 1. Section 202 of title 32 of the Code of the Federated States of Micronesia, as amended by Public Law No. 5-21, is hereby further amended to read as follows:

"Section 202. Definitions. When words defined in this section are used in this chapter, unless otherwise required by the context, the following definitions shall govern:

1. Secretary of Resources and Development

2. 'Business' means any sole proprietorship, partnership, corporation, or any other association engaged in commerce.

3. 'Citizen' means any person or business not included in the definition of noncitizen contained in this chapter.

4. 'Licensee' means any noncitizen who has been issued a foreign-investment permit under this chapter, including agents or employees of the noncitizen.

5. 'Noncitizen' means any person who is not a citizen of the Federated States of Micronesia, and any business in which any interest is owned by a person who is not a citizen of the Federated States of Micronesia.

6. 'President' means the President of the Federated States of Micronesia.

7. 'Secretary' means the Secretary of Resources and
Development of the Federated States of Micronesia.

(§7) 'State authority' means any official or entity designated by a State of the Federated States of Micronesia to consider foreign-investment applications under this chapter and, failing such designation, means the Governor of a State."

Section 2. Section 203 of title 32 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 203. Business activities and interests for which permits required.

(1) A noncitizen may not engage in any business in the Federated States of Micronesia, including, but not limited to, business relating to the practice of law and other professions, without first obtaining a foreign-investment permit.

(2) 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.

(3) A noncitizen engaged in business in the Federated States of Micronesia on the effective date of this chapter under a permit issued under the Trust Territory Foreign Investors' Business Permit Act 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 3. Section 206 of title 32 of the Code of the
Federated States of Micronesia, as renumbered by Public Law
No. 5-21, is hereby amended to read as follows:
"Section 206. Application — Identification of interstate
or international character of business. The Director Secretary
shall review each foreign-investment permit application, and
shall, within twenty days of the filing of the application,
determine whether or not the business activities proposed
will fall within any of the following categories:
(1) Will the applicant engage in business in more
than one State;
(2) Will the applicant's business receive fifty
percent or more of its total revenue from the export
of goods or services to another State or nation;
(3) Will the applicant engage in the processing,
manufacturing, assembling, or building of goods or
products, and if so, will fifty percent or more of the
materials processed or used be imported from another State
or nation; or
(4) Will the applicant engage in communications, air
or sea transportation, or the shipment of fuel between
States or between the Federated States of Micronesia and
another nation?"
Section 4. Section 207 of title 32 of the Code of the
Federated States of Micronesia, as renumbered by Public Law
No. 5-21, is hereby amended to read as follows
"Section 207. Application – Business with interstate or
international character. If the Board Secretary determines
that the applicant's business falls within one or more of
the categories set out in section 209 206 of this chapter,
the procedures set forth in sections 408 208 through 412
212 of this chapter shall apply."
Section 5. Section 208 of title 32 of the Code of the Federated
States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
amended to read as follows:
"Section 208. Application – Review and investigation.
(I) Upon making the section 209 206 determination, the
Board shall refer the application to the Secretary for review
and investigation.
(II) 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 thirty days of
receiving the application from the Board."
Section 6. Section 209 of title 32 of the Code of the Federated
States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
amended to read as follows:
"Section 209. Application - State recommendation. At the time the application is submitted to received by 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 of the application. The Secretary shall deliver copies of any information which he obtains under section III 208 of this chapter to the State authorities. The State authorities shall have thirty days from receipt of the informational material from the Secretary to deliver recommendations to the [Redacted] Secretary."

Section 7. Section 210 of title 32 of the Code of the Federated States of Micronesia, as renumbered by Public Law No. 5-21, is hereby amended to read as follows:

"Section 210. Application - Decision by [Redacted] Secretary. Upon receipt of the information and recommendations called for in sections III 208 and III 209 of this chapter, or upon expiration of the time set for submission of such information and recommendations, whichever occurs first, the [Redacted] Secretary shall, within an additional thirty days, decide whether or not to grant the foreign-investment permit, based on all relevant factors, including:

(1) the economic, social, or environmental need for the business activity to be performed;"
(2) the degree to which such activities will effect change in exports or imports;

(3) the extent to which such activities will deplete a nonrenewable natural resource, or will disturb the environmental balance or the conservation of renewable natural resources, or will pollute the atmosphere or water;

(4) the extent of participation by citizens at the outset in the ownership and management of the enterprise, and in the case of an applicant which is a corporation chartered outside the Federated States, the degree of willingness and specific plans to form a Federated States corporation in the future and to offer at least fifty-one percent of the ownership and capital to citizens;

(5) 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;

(6) the extent to which the capital, managerial skills, and technical skills required for such an enterprise are available among Federated States citizens at the current time or can be expected to be available in the near future;

(7) 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
(8) the extent to which the activity will contribute
to the constitutional policy of making education, health
care, and legal services available to the people of the
Federated States of Micronesia; and
(#9) the recommendations, if any, made by the
State authorities."

Section 8. Section 211 of title 32 of the Code of the Federated
States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
amended to read as follows:

"Section 211. Approval of application - Limitations
authorized. If the Secretary decides that the
foreign-investment permit should be granted, it may also
impose limitations on the issuance of the permit."

Section 9. Section 212 of title 32 of the Code of the Federated
States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
amended to read as follows:"

"Section 212. Notice to President of action on application.
The Secretary 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 10. Section 213 of title 32 of the Code of the Federated
States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
amended to read as follows:

"Section 213. Application — Business lacking interstate or international character. If the Secretary determines that the applicant's business does not fall within any of the categories set out in section 209-206 of this chapter, the following procedure shall apply:

(1) Upon making the section 209-206 determination, the Secretary 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 Secretary within forty-five days of the receipt of the application by the State authority. The Secretary 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 11. Section 214 of title 32 of the Code of the Federated States of Micronesia, as renumbered by Public Law No. 5-21, is hereby amended to read as follows:

"Section 214. President's action on foreign-investment permits."
(1) Within twenty days of receipt of notice of a permit action taken by the Secretary, the President may reverse the decision of the Secretary if he determines that the action taken would adversely affect a compelling National interest relating to foreign affairs or to the general public welfare.

(2) If the President takes no action within the prescribed time limits, the Secretary's action stands.

(3) If the President reverses the action taken by the Secretary, he shall notify the Secretary, the applicant, and the State authorities by certified mail of his decision and the reasons for the decision.

(4) No permit decision by the Secretary is final until the requirements of this section have been met."

Section 12. Section 219 of title 32 of the Code of the Federated States of Micronesia, as renumbered by Public Law No. 5-21, is hereby amended to read as follows:

"Section 219. 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 209 206 through 217214 of this chapter except that 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 13. Section 221 of title 32 of the Code of the Federated States of Micronesia, as renumbered by Public Law No. 5-21, is hereby amended to read as follows:

"Section 221. Modification, suspension, or revocation of permit – Grounds. A foreign-investment permit may be modified, suspended, or revoked by the Secretary if:

(1) the original permit application is found to have contained false or fraudulent information;

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

(3) the licensee presented false or fraudulent information to the Secretary or to a State authority in support of the application;

(4) 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;

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

(6) the licensee engages in business activities
substantially outside the scope of the permit;

(7) the licensee fails or refuses to comply with the
reporting requirements of section 220 217 or 221 218 of
this chapter, and such failure continues for a period of
sixty days after any report is due; or

(8) the licensee refuses or fails to comply with
orders for production of documents and things or for
attendance of witnesses under section 220 226 of this
chapter."

Section 14. Section 222 of title 32 of the Code of the Federated
States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
amended to read as follows:

"Section 222. Modification, suspension, or revocation of
permit - Procedure.

(1) The Aiētē Secretary shall, upon receipt of
information which indicates that a permit should be
modified, suspended, or revoked, schedule a hearing on the
matter before the Aiētē Secretary. At least twenty-one
days' written notice of the hearing shall be given to the
licensee stating the alleged violations.

(2) Hearing procedure shall be prescribed by the
Secretary 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.

(3) After the hearing the Secretary may, by
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.

(4) A licensee whose permit has been modified,
suspended, or revoked may appeal the decision of the
Secretary to the High Court of the Trust Territory of
the Pacific Islands of the Supreme Court of the Federated States
of Micronesia within twenty days after receipt of notice
of the action of the Secretary. Copies of the notice
of appeal shall be served on the Secretary and the Attorney
General."

Section 15. Section 225 of title 32 of the Code of the Federated
States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
amended to read as follows:

"Section 225. Enforcement responsibility. Primary
responsibility for the enforcement of this chapter shall be
placed in the Board, with the assistance of the Secretary,
and, as to criminal sanctions provided in section 232.229
of this chapter, appropriate law-enforcement authorities
within the Federated States of Micronesia."

Section 16. Section 226 of title 32 of the Code of the Federated States of Micronesia, as renumbered by Public Law No. 5-21, is hereby amended to read as follows:

"Section 226. Production of information. In carrying out the duties imposed by this chapter the Secretary may require the attendance of any citizen or noncitizen at a meeting or hearing conducted by the Secretary 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 chapter."

Section 17. Section 227 of title 32 of the Code of the Federated States of Micronesia, as renumbered by Public Law No. 5-21, is hereby amended to read as follows:

"Section 227. Rules and regulations. The Secretary shall promulgate the regulations necessary to implement this chapter, which regulations shall have the force and effect of law."

Section 18. 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: 3-27-89

Introduced by: Dohais Haibert

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