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A BILL FOR AN ACT

To provide for the regulation of foreign enterprises; to further amend title 32 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21, 5-54, 5-109, 5-134 and 6-36, by repealing chapter 2 in its entirety; and for other purposes.

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

1 CHAPTER 1

2 GENERAL

3 Section 101. Short title. This act is known and may be cited
4 as the "Foreign Enterprise Act of 1990."

5 Section 102. Intent of Congress. It is the intent of Congress
6 that the National Government have exclusive jurisdiction, in
7 consultation with affected States, to regulate foreign enterprises
8 engaging in foreign or interstate commerce as defined in this act.

9 Section 103. Exemptions. The following organizations and
10 activities shall be exempt from the provisions of this act:

11 (1) Business organizations engaged in the business of bulk
12 distribution of petroleum products to the State or National
13 Governments;

14 (2) International airline operations;

15 (3) International shipping of freight;

16 (4) Banks and banking activities regulated pursuant to
17 title 29 of the Code of the Federated States of Micronesia, or
18 pursuant to any law intended to replace the provisions of said title;

19 (5) Credit unions and cooperatives organized under the laws
20 of the Federated States of Micronesia or a State thereof with less
21 than five percent noncitizen ownership; and

22 (6) Foreign fishing vessels with valid permits issued
23 pursuant to title 24 of the Code of the Federated States of
24 Micronesia.

25 Section 104. Definitions. As used in this act, unless

1 otherwise provided:

2 (1) "Applicant" means one who submits an application for a
3 foreign enterprise permit.

4 (2) "Application" means an application for a foreign
5 enterprise permit.

6 (3) "Business organization" means any individual, sole
7 proprietorship, partnership, corporation, or other form of
8 association, which engages in business. A business organization does
9 not include an individual who is an employee of a government or a
10 single business organization.

11 (4) "Director" means the person designated as the Director
12 of Foreign Enterprises, in the Department of Resources and
13 Development.

14 (5) "Engaging in business" means engaging in any
15 manufacturing, industrial, commercial, fishery, agricultural,
16 trading, construction, service, or other type of business activity,
17 or providing professional services within the Federated States of
18 Micronesia, regardless of whether or not such activity or activities
19 are for commercial gain, profit, or benefit, except when such
20 activity or activities are performed as an agent, independent
21 contractor, or consultant under agreement with a governmental entity
22 in the Federated States of Micronesia.

23 (6) "Engaging in foreign or interstate commerce" means
24 engaging in:

25 (a) Business in more than one State of the Federated

1 States of Micronesia;

2 (b) Business with the expectation of receiving fifty
3 percent or more of the gross revenue from domestic operations from
4 the shipment of goods or provision of services to another state, or
5 from the export of goods or provision of services to another nation;

6 (c) The processing, manufacturing, assembly, or
7 building of goods or products with the expectation that fifty percent
8 or more of the materials processed or utilized in domestic operations
9 will be shipped from another state or imported from another nation; or

10 (d) Business activities catering to visitors which
11 take place in more than one state or in a foreign nation.

12 (7) "Foreign enterprise" means any noncitizen business
13 organization engaging in foreign or interstate commerce.

14 (8) "Licensee" means the holder of a foreign investment
15 permit.

16 (9) "Noncitizen" means any entity that is not a citizen
17 of the Federated States of Micronesia, including any business
18 organization in which any interest is owned by an entity who is not a
19 citizen of the Federated States of Micronesia.

20 (10) "Permit" means a foreign enterprise permit which is
21 issued in accordance with the provisions of this act.

22 (11) "President" means the President of the Federated
23 States of Micronesia.

24 (12) "Secretary" means the Secretary of the Department of
25 Resources and Development.

1 (13) "State authority" means the entity in each State
2 which is authorized by that State to grant permission for noncitizens
3 to engage in business in that State, and to make recommendations to
4 the Director pursuant to sections 202 and 203 of this act.

5 Section 105. Prohibitions.

6 (1) A foreign enterprise may not engage in business in the
7 Federated States of Micronesia without first complying with the
8 applicable provisions of this act.

9 (2) A foreign enterprise engaged in business in the
10 Federated States of Micronesia on the effective date of this act
11 under a valid foreign investment permit shall be permitted to engage
12 in business for 12 months after the effective date of this act.
13 During that 12 months, the foreign enterprise may apply for a foreign
14 enterprise permit and such application shall be treated as a renewal
15 under this act.

16 CHAPTER 2

17 FILING AND REVIEW OF APPLICATION FOR

18 FOREIGN ENTERPRISE PERMIT

19 Section 201. Application for foreign enterprise permit;
20 Contents.

21 (1) Every foreign enterprise shall file an application for
22 a foreign enterprise permit with the Director. The application for a
23 foreign enterprise permit shall set forth, at a minimum, the
24 following information:

25 (a) Name of the applicant;

1 (b) Address of the applicant;

2 (c) A list of all persons or entities holding a
3 greater than five percent interest in the business organization, the
4 percentage interest held by each such person or entity and the
5 addresses of all persons or entities holding an interest in the
6 business organization;

7 (d) A statement as to the jurisdictions in which the
8 applicant is incorporated or in which it has met the statutory
9 requirements for juridical existence as a partnership, limited
10 partnership, voluntary association, joint venture, or any other form
11 of business organization which the applicant purports to be;

12 (e) The nature, purpose, scope, and objective of the
13 business in which the applicant proposes to engage;

14 (f) A statement as to whether or not the applicant
15 intends to engage in:

16 (i) Business in more than one State of the
17 Federated States of Micronesia;

18 (ii) Business with the expectation of receiving
19 fifty percent or more of its gross revenue from the shipment of goods
20 or the provision of services to another state, or from the export of
21 goods or provision of services to another nation;

22 (iii) The processing, manufacturing, assembly, or
23 building of goods or products with the expectation that fifty percent
24 or more of the material processed or utilized in domestic operations
25 will be shipped from another state or imported from another nation; or

1 (iv) Business activities catering to visitors
2 which take place in more than one state or in a foreign country;

3 (g) Proposed principal office in the Federated States
4 of Micronesia, and the State or States in which the applicant desires
5 to engage in business;

6 (h) A statement as to how many people, both citizen
7 and noncitizen, that the applicant proposes to employ in the
8 Federated States of Micronesia;

9 (i) The name, business address, and personal address
10 of a person residing in the Federated States of Micronesia for
11 service of legal process;

12 (j) The time period requested to be covered by the
13 permit; and

14 (k) Such other information as the Secretary may
15 prescribe by regulation.

16 (2) The application for a foreign enterprise permit shall
17 be accompanied by an application fee of \$100. The fee shall be
18 refunded to applicants whose application is approved or returned
19 because the business organization is not subject to the prohibitions
20 of this act.

21 Section 202. Review of application for foreign enterprise
22 permit; Denial of permission to engage in business because of adverse
23 effect on a matter or matters of National interest.

24 (1) The Director shall review each application for a
25 foreign enterprise permit to determine if approval of the proposed

1 business organization would adversely affect a matter of National
2 interest as set forth in subsections (2) and (3) of this section and
3 to determine if the applicant proposes to engage in foreign or
4 interstate commerce.

5 (2) In considering whether the proposed business
6 organization would adversely affect a matter of National interest,
7 the Director shall deny permission to engage in business in the
8 Federated States of Micronesia for any of the following reasons:

9 (a) Approval of the business organization would be in
10 conflict with an existing treaty or international trade agreement; or

11 (b) Approval of the business organization would be
12 contrary to the immigration policy or resident worker preference
13 policy of the Federated States of Micronesia.

14 (3) In considering whether the proposed business
15 organization would adversely affect a matter of National interest,
16 the Director shall consider:

17 (a) The contribution the proposed business activity
18 will make to the overall economy of the Federated States of
19 Micronesia;

20 (b) The credentials, expertise, and experience of the
21 applicant and its investors;

22 (c) The extent to which the proposed business
23 activity is consistent with the goals and strategies of National
24 development plans;

25 (d) The extent of transfer of technical, managerial,

1 and organizational skills to citizens of the Federated States of
2 Micronesia;

3 (e) The extent and nature of utilization of natural
4 resources of the Federated States of Micronesia, including the
5 development and conservation of such natural resources;

6 (f) The environmental and social impact of the
7 investment;

8 (g) Comments and recommendations of the appropriate
9 State authority or authorities; and

10 (h) Such other factors as the Secretary may prescribe
11 by regulation.

12 (4) Upon receipt of an application, the Director shall
13 transmit a copy of the application to the appropriate State authority
14 or authorities. The State authority or authorities shall have 30
15 days to provide comments and recommendations on the application to
16 the Director.

17 Section 203. Time for review of an application for a foreign
18 enterprise permit, and notification of the applicant and the
19 appropriate State authority or authorities. The Director shall,
20 within 45 days of receipt of an application for a foreign investment
21 permit, complete his review of the application and shall notify the
22 applicant and the appropriate State authority or authorities, in
23 writing, as follows:

24 (1) If the Director determines that the proposed business
25 organization is not subject to this act, he shall notify the

1 applicant and the appropriate State authority or authorities that the
2 applicant can engage in business without a national foreign
3 enterprise permit;

4 (2) If the Director determines that the proposed business
5 organization is subject to this act and that approval of the
6 proposed business organization would adversely affect a matter or
7 matters of National interest, he shall notify the applicant and the
8 appropriate State authority or authorities that the application for a
9 foreign enterprise permit is denied. The reason or reasons for such
10 denial shall be set forth in writing; or

11 (3) If the Director determines that the proposed business
12 organization is subject to this act and that approval of the proposed
13 business organization would not adversely affect a matter or matters
14 of National interest, he shall notify the applicant and the
15 appropriate State authority or authorities that the application for a
16 foreign enterprise permit is approved.

17 If no notification is transmitted within 45 days the application
18 shall be deemed granted for the time period requested, but not more
19 than 10 years.

20 Section 204. Limitations on approved applications. If the
21 Director grants the applicant a foreign enterprise permit, he may
22 also prescribe conditions or limitations to be attached to the
23 permit. The Director shall determine the expiration date of the
24 permit.

25 Section 205. Motion to reconsider the Director's decision.

1 (1) The applicant, or the State authority or authorities
2 in the State or States in which the proposed business organization
3 shall operate may, within 15 days of receiving the Director's
4 decision pursuant to sections 203 and 204 of this act, file a motion
5 with the Director requesting that the Director reconsider his
6 decision as not being in accordance with National law.

7 (2) Upon receipt of a motion for reconsideration, the
8 Director shall transmit the motion to the applicant if he is not the
9 moving party and to the State authority or authorities which are not
10 moving parties for reply. Replies must be received within 21 days of
11 the transmittal of the motion to the replying party.

12 (3) After all the responses are received or 21 days after
13 transmittal of the motion, the Director shall have 7 days to grant or
14 deny the motion of the applicant or the State authority or
15 authorities. The Director shall notify the State authority or
16 authorities and applicant of the action taken by certified mail
17 stating the reasons for the action taken.

18 Section 206. Appeal of the decision of the Director. The
19 decision by the Director on a motion for reconsideration shall be
20 final and not subject to a hearing before the Secretary pursuant to
21 title 17 of the Code of the Federated States of Micronesia. The
22 decision on the motion for reconsideration shall be appealable to the
23 Trial Division of the Supreme Court of the Federated States of
24 Micronesia within 20 days after receipt of notice of the action of
25 the Director. Copies of the complaint filed in the Supreme Court

1 shall be served on the Secretary and the Attorney General of the
2 Federated States of Micronesia.

3 CHAPTER 3

4 CONTINUING RESPONSIBILITIES OF LICENSEES

5 Section 301. Scope of this chapter. The provisions of this
6 chapter shall apply to foreign enterprise permits granted pursuant to
7 chapter 2 of this act.

8 Section 302. Commencement of business - Responsibilities of
9 licensee.

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

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

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

24 Section 303. Licensee reporting requirements.

25 (1) Every licensee shall file an annual report with the

1 Director, in such form as the Secretary may prescribe by regulation,
2 containing a full and accurate statement of business activities
3 undertaken by the licensee in the Federated States of Micronesia, a
4 profit and loss statement, and a statement of any changes in the
5 information provided in the original permit application, which report
6 shall be due within 60 days after the end of the licensee's financial
7 year.

8 (2) Every licensee shall advise the Director of any change
9 in the financial year used by the licensee within 60 days after the
10 change.

11 (3) Every corporate licensee who is not subject to the
12 reporting requirements of chapter 1 of title 36 of the Code of the
13 Federated States of Micronesia shall file with the Director copies of
14 its corporate charter, articles of incorporation, and bylaws, and
15 shall file with the Director copies of any change in the provisions
16 of its original charter, articles of incorporation, or bylaws within
17 60 days after the change.

18 Section 304. Insurance companies - Deposits; Reports.

19 (1) Every insurance company granted a foreign enterprise
20 permit shall file a \$100,000 deposit with the Secretary in cash,
21 negotiable securities, or a bond from a corporate surety, or any
22 combination thereof totalling \$100,000 which is acceptable to the
23 Secretary. The deposit shall be filed within 30 days after the
24 issuance of the foreign enterprise permit and held in trust by the
25 Secretary for the account of the company to satisfy any judgment that

1 may be rendered against it under insurance policies that it may
2 issue. The deposit shall be maintained as long as the insurance
3 company conducts business in the Federated States of Micronesia.

4 (2) Every insurance company granted a foreign enterprise
5 permit shall file a verified statement summarizing all commercial
6 activity transacted within the Federated States of Micronesia by the
7 company during its previous financial year and a duly certified copy
8 of its annual report to any authorized official of the jurisdiction
9 in which the company is organized. The statement shall be filed with
10 the Secretary within 60 days after the end of the insurance company's
11 financial year.

12 Section 305. Change in scope or character of licensee's
13 business. If a licensee intends to substantially alter the scope or
14 character of the business authorized by the foreign enterprise permit
15 or intends to undertake significant additional business activities
16 not contemplated at the time of the original application, the
17 licensee shall submit to the Director an application for a new
18 foreign enterprise permit. The Director shall consider the
19 application in accordance with the provisions of chapter 2 of this
20 act, except that the Director may elect not to repeat investigatory
21 efforts made in connection with the original application. The
22 licensee shall not substantially alter the scope or character of its
23 business or undertake new business activities until a new foreign
24 enterprise permit is granted.

25 Section 306. Change in ownership. Any increase in noncitizen

1 ownership or any transfer of over twenty percent of the noncitizen
2 ownership of a licensee to another noncitizen shall require a new
3 foreign enterprise permit. The Director shall consider the
4 application in accordance with the provisions of chapter 2 of this
5 act. No such transfer of ownership may take place until a new
6 foreign enterprise permit is granted.

7 Section 307. Foreign enterprise permit renewal - Continuation
8 of business pending action on renewal.

9 (1) If a licensee wishes to renew a foreign enterprise
10 permit, it shall submit a renewal application to the Director no
11 later than 60 days before the expiration of the foreign enterprise
12 permit. The renewal application shall be in a form prescribed by
13 regulation.

14 (2) No application for renewal shall be denied unless the
15 Director finds that the foreign enterprise has engaged in activities
16 covered by section 401 of this act.

17 (3) Upon receipt of an application for renewal, the
18 Director shall send a copy to the relevant State authority or
19 authorities for comment. Such comments shall be returned within 15
20 days from transmittal. The Director shall act on the application
21 within 30 days.

22 (4) A licensee may continue its venture pursuant to the
23 terms of its foreign enterprise permit while the renewal application
24 is pending.

25 CHAPTER 4

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ENFORCEMENT

Section 401. Modification, suspension, or revocation of foreign enterprise permit - Grounds. A foreign enterprise permit granted pursuant to the provisions of chapter 2 of this act may be modified, suspended, or revoked by the Secretary if:

(1) The application for a foreign enterprise permit or any supplementation thereof is found to have contained false or fraudulent information;

(2) The licensee, any of its owners, or its representatives bribed or otherwise influenced or attempted to bribe or influence the Director, the Secretary, or any representative or member of a State authority to issue the permit;

(3) The licensee presented false or fraudulent information to the Director, 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 authorized by the permit;

(5) The licensee engages in business activities which violate any limitation or condition set forth in the permit;

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

(7) The licensee fails or refuses to comply with the

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1 reporting requirements of section 303 or section 304 of this act and
2 such failure continues for a period of 60 days after any report is
3 due; or

4 (8) The licensee refuses or fails to comply with orders
5 for production of documents, information, or other items or for
6 attendance of witnesses pursuant to section 406 of this chapter.

7 Section 402. Modification, suspension, or revocation of foreign
8 enterprise permit - Procedure.

9 (1) The Director shall, upon receipt of information which
10 indicates that a foreign enterprise permit should be modified,
11 suspended, or revoked, schedule a hearing on the matter before the
12 Secretary. At least 21 days written notice of the hearing shall be
13 given to the licensee stating the alleged violations.

14 (2) The hearing procedure shall be prescribed by the
15 Secretary by regulation and shall include the right of the licensee
16 to participate and to be represented by counsel, to call witnesses,
17 and to cross-examine witnesses called against the licensee.

18 (3) After the hearing, the Secretary may dismiss the
19 proceedings or modify, suspend, or revoke the foreign enterprise
20 permit, and in such cases the Secretary shall notify the licensee of
21 the action taken by certified or registered mail within 7 days after
22 the hearing, stating the reasons for the action taken.

23 (4) A licensee whose foreign enterprise permit has been
24 modified, suspended, or revoked may appeal the decision of the
25 Secretary to the Trial Division of the Supreme Court of the Federated

1 States of Micronesia within 20 days after receipt of notice of the
2 action of the Secretary. Copies of the complaint filed in the
3 Supreme Court shall be served on the Secretary and the Attorney
4 General of the Federated States of Micronesia.

5 Section 403. Surrender of foreign enterprise permit.

6 (1) A licensee may surrender a foreign enterprise permit
7 by filing with the Director a certificate of surrender signed and
8 acknowledged by the licensee, stating the following:

9 (a) The name of the licensee as shown on the records
10 of the Director and the licensee's foreign enterprise permit number;

11 (b) That revocation of the license revokes the
12 designation of an agent for service of process;

13 (c) That the licensee surrenders the right to engage
14 in business in the Federated States of Micronesia;

15 (d) That the licensee consents to service of process
16 against the licensee in any action or claim for relief based upon any
17 liability or obligation incurred within the Federated States of
18 Micronesia prior to the filing of the certificate of surrender by
19 service on the Registrar of Corporations; and

20 (e) An address to which the Registrar of Corporations
21 shall mail a copy of any process served upon the licensee, which
22 address may be changed from time to time by filing a notification of
23 change of address, signed and acknowledged by the licensee before an
24 appropriately commissioned notary public or clerk of court.

25 (2) The foreign enterprise permit shall be attached to the

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

4 (3) Mere retirement from doing business in the Federated
5 States of Micronesia without filing the certificate of surrender
6 specified in subsection (1) of this section does not revoke the
7 appointment of an agent for service of process within the Federated
8 States of Micronesia.

9 Section 404. Service of process on a noncitizen after
10 revocation of a foreign enterprise permit.

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

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

21 Section 405. Enforcement responsibility. Primary
22 responsibility for the enforcement of this act shall be placed in the
23 Director, with the assistance of other appropriate officials, and, as
24 to criminal sanctions provided in section 409 of this chapter, in the
25 Attorney General of the Federated States of Micronesia.

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1 Section 406. Production of information. In carrying out the
2 duties imposed by this chapter, the Secretary may require the
3 attendance of any citizen or noncitizen at a meeting or hearing
4 conducted by the Secretary or Director, and may require such persons
5 to testify or to produce at, before, or after such meeting or hearing
6 documents, information, and other items relevant to enforcement of
7 the provisions of this act.

8 Section 407. Audits and inspections authorized. The Secretary
9 may appoint officers, employees or contractors to audit and report on
10 the accounts of a foreign enterprise and such officers, employees or
11 contractors shall have the right at any and all times to inspect,
12 examine and audit the books and accounts of such foreign enterprises.

13 Section 408. Rules and regulations. The Secretary shall
14 promulgate such rules and regulations as are necessary to implement
15 this act, which rules and regulations shall have the force and effect
16 of law.

17 Section 409. Criminal penalties.

18 (1) Any noncitizen:

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

22 (b) Who, after obtaining a foreign enterprise permit,
23 intentionally fails to comply with the conditions or limitations, if
24 any, stated in the permit; or

25 (c) Who obtains a foreign enterprise permit by fraud

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1 or misrepresentation;
2 shall be guilty of a criminal offense and upon conviction thereof by
3 a court of competent jurisdiction within the Federated States of
4 Micronesia shall be imprisoned for a period not exceeding 1 year, or
5 fined not more than \$2,000, or both.

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

12 CHAPTER 5

13 MISCELLANEOUS PROVISIONS

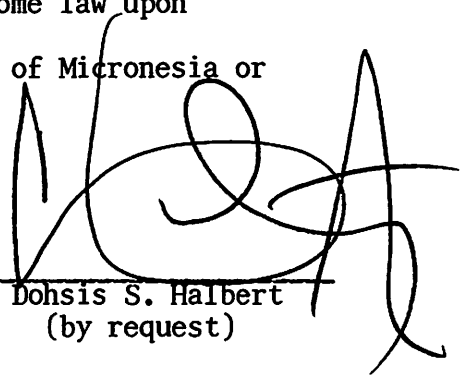
14 Section 501. Repealer. Title 32 of the Code of the Federated
15 States of Micronesia is hereby further amended by repealing chapter 2
16 in its entirety.

17 Section 502. Effective date. This act shall become effective 60
18 days after it becomes law.

19 Section 503. Enactment. This act shall become law upon
20 approval by the President of the Federated States of Micronesia or
21 upon its becoming law without such approval.

22
23 Date: 6-6-90

Introduced by:


Dohsis S. Halbert
(by request)

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