
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, 5-109, 5-134 and 6-36, by repealing section 211 in its entirety and by further amending sections 202, 209, 210, 213 and 214, as amended by Public Laws Nos. 5-21 and 5-134, to amend the Foreign-Investment Act to eliminate the power of the Secretary of Resources and Development to impose limitations on the issuance of foreign-investment permits; to require the Secretary of Resources and Development to obtain the approval of certain State authorities before issuing an interstate foreign-investment permit; and to require the President to approve foreign-investment permits before their issuance; by renumbering section 212 and sections 215 through 229; and for other purposes.

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

1 Section 1. Section 211 of title 32 of the Code of the Federated
2 States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134,
3 is hereby repealed in its entirety.

4 Section 2. Section 202 of title 32 of the Code of the Federated
5 States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134,
6 is hereby further amended to read as follows:

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

10 (1) 'Applicant' means any individual or entity which
11 has filed an application for a foreign-investment permit
12 pursuant to this chapter.

13 (2) 'Business' means any sole proprietorship,
14 partnership, corporation, or any other association engaged
15 in commerce.

16 (3) 'Citizen' means any person or business not
17 included in the definition of noncitizen contained in this
18 chapter.

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

22 (5) 'Listed State' means any State of the Federated
23 States of Micronesia which is listed in a foreign-investment
24 permit application pursuant to section 205 of this chapter
25 as a State in which the applicant desires to do business.

1 (46) 'Noncitizen' means any person who is not a citizen
2 of the Federated States of Micronesia, and any business in
3 which any interest is owned by a person who is not a citizen
4 of the Federated States of Micronesia.

5 (57) 'President' means the President of the Federated
6 States of Micronesia.

7 (68) 'Secretary' means the Secretary of Resources and
8 Development of the Federated States of Micronesia.

9 (79) 'State authority' means any official or entity
10 designated by a State of the Federated States of Micronesia
11 to consider foreign-investment applications under this
12 chapter and, failing such designation, means the Governor
13 of a State.

14 (10) 'Unlisted State' means any State of the Federated
15 States of Micronesia which is not listed in a foreign-
16 investment permit application pursuant to section 205 of
17 this chapter as a State in which the applicant desires to
18 do business."

19 Section 3. Section 209 of title 32 of the Code of the Federated
20 States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134,
21 is hereby further amended to read as follows:

22 "Section 209. Application - State ~~recommendation~~ approval.

23 (1) At the time the application is received by the
24 Secretary, a copy of the application shall within 3 days
25 be delivered to the State authority of each State. *THd*

1 *State authorities may examine the application and may make*
2 *a recommendation as to the approval of the application.*
3 The Secretary shall deliver copies of any information which
4 he obtains under section 208 of this chapter to the State
5 authorities.

6 (2) The State authorities from unlisted States may
7 examine the application and may make a timely recommendation
8 as to the approval or disapproval of the application. The
9 State authorities from unlisted States shall have ~~thirty~~
10 45 days from receipt of the informational material
11 from the Secretary to deliver recommendations to the
12 Secretary.

13 (3) The State authorities from listed States shall
14 examine and approve or disapprove the application in a
15 timely manner before its submission to the Secretary and
16 President for final approval. The State authority from
17 each listed State shall within 25 days of receipt of the
18 application and immediately provide its reasons for approving
19 or disapproving the application within 20 days of reaching
20 its decision in a report which shall be delivered to the
21 Secretary, the President and the applicant. The Secretary
22 and President cannot approve a permit application allowing
23 investment in a listed State unless the State authority
24 from the listed State approves the application.

25 (4) The scope of all foreign-investment permits will

1 be limited to business activities in listed States which
2 have approved the subject application. The conduct of
3 business in unlisted States constitutes a violation of
4 section 229 of this chapter."

5 Section 4. Section 210 of title 32 of the Code of the Federated
6 States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134,
7 is hereby further amended to read as follows:

8 "Section 210. Application - Decision by Secretary.

9 (1) Prior to rendering a decision concerning the
10 application, the Secretary must receive the information and
11 input called for in sections 208 and 209 of this chapter,
12 including approval of the application by the State authority
13 from each listed State!

14 (2) Upon receipt of the information and recommendations
15 input called for in sections 208 and 209 of this chapter,
16 or upon expiration of the time set for submission of such
17 information and recommendations, whichever occurs first, and
18 upon satisfying the requirements of subsection (1) of this
19 section, or upon the expiration of the time set for the
20 submission of such input, whichever occurs first, the
21 Secretary shall, within an additional thirty days, decide
22 whether or not to grant the foreign-investment permit with
23 respect to some or all of the listed States that have approved
24 the application, based on all relevant factors, including:

25 (a) the economic, social, or environmental need for

1 the business activity to be performed;

2 (2b2) the degree to which such activities will
3 effect change in exports or imports;

4 (3a3) the extent to which such activities will deplete
5 a nonrenewable natural resource, or will disturb the environ-
6 mental balance or the conservation of renewable natural
7 resources, or will pollute the atmosphere or water;

8 (4d4) the extent of participation by citizens at the
9 outset in the ownership and management of the enterprise,
10 and in the case of an applicant which is a corporation
11 chartered outside the Federated States, the degree of
12 willingness and specific plans to form a Federated States
13 corporation in the future and to offer at least fifty-one
14 percent of the ownership and capital to citizens;

15 (5a5) the willingness and specific plans of the
16 applicant to give employment preference to citizens and to
17 train citizens for positions in management and at other
18 levels by instituting training programs;

19 (6f6) the extent to which the capital, managerial
20 skills, and technical skills required for such an
21 enterprise are available among the Federated States
22 citizens at the current time or can be expected to be
23 available in the near future;

24 (7g7) the extent to which an operation will
25 contribute to the overall economic well-being of the Nation

1 and each State affected and the extent to which any interest,
2 including economic, social, traditional, or environmental,
3 of any State or the Nation may be affected;

4 (~~818~~) the extent to which the activity will contribute
5 to the constitutional policy of making education, health
6 care, and legal services available to the people of the
7 Federated States of Micronesia; and

8 (~~919~~) the recommendations, if any, made by the State
9 authorities from unlisted States."

10 Section 5. Section 213 of title 32 of the Code of the Federated
11 States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134,
12 is hereby further amended to read as follows:

13 "~~Section 212.~~ Section 212. Application - Business lacking interstate
14 or international character. If the Secretary determines
15 that the applicant's business does not fall within any of
16, the categories set out in section 206 of this chapter, the
17 following procedure shall apply:

18 (1) Upon making the section 206 determination, the
19 Secretary shall refer the foreign-investment permit appli-
20 cation to the State authority of the single listed State
21 affected by the applicant's business.

22 (2) The State authority from the single listed State
23 shall approve or disapprove the permit application, stating
24 its reasons for approving or disapproving the application
25 within 20 days of reaching its decision in a report

1 which shall be delivered to the Secretary, the President
2 and the applicant within forty-five days of the
3 receipt of the application by the State authority. The
4 Secretary shall promptly grant or deny the permit in
5 conformity with the action taken by the State authority
6 from the single listed State and shall immediately notify
7 the applicant and the President of the action taken. When
8 the State authority has approved the application, the
9 permit shall become effective 30 days after receipt by the
10 Secretary of such notice, unless within such 30 days,
11 the President, pursuant to section 213, has requested the
12 State authority to reconsider the application. The
13 Secretary may not grant a permit without first receiving
14 approval from the State authority from the single listed
15 State.

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

18 Section 6. Section 214 of title 32 of the Code of the Federated
19 States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134,
20 is hereby further amended to read as follows:

21 "Section 214/213. President's action on foreign-vestment
22 permits.

23 (1) Within twenty days of receipt of notice of a
24 permit action taken by the Secretary, the President ~~shall~~
25 review the Secretary's decision on a permit application and

1 approve or disapprove the Secretary's decision. The
2 ~~President may reverse~~ may review the decision of the Secretary
3 only and if he determines that the action taken would
4 adversely affect a compelling National interest relating to
5 foreign affairs or to the general public welfare/, the
6 President may:

7 (a) if the application is for a business with an
8 interstate or international character, reverse the decision
9 of the Secretary;

10 (b) if the application is for a business lacking
11 an interstate or international character, request the
12 authority of the single listed State to reconsider the
13 application, providing such information as the President
14 deems appropriate. Such State authority shall then have 10
15 days to reconsider its original decision. The decision made
16 by the State authority in response to the President's request
17 shall be final. If the State authority takes no action
18 within 10 days of receiving the President's request, the
19 original decision of the State authority becomes final.

20 (2) If the President takes no action within the
21 prescribed time limits, the Secretary's action stands. No
22 permit application may be granted without first receiving
23 approval of the President.

24 (3) If the President reverses the action taken by the
25 Secretary, he shall notify the Secretary, the applicant,

1 and the State authorities by certified mail of his decision
2 and the reasons for the decision.

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

5 Section 7. Sections 212, 215, 216, 217, 218, 219, 220, 221,
6 222, 223, 224, 225, 226, 227, 228 and 229 of title 32 of the Code of
7 the Federated States of Micronesia are hereby renumbered as sections
8 211, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226,
9 227 and 228, respectively.

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

13

14 Date: May 21, 1993

Introduced by: /s/ Moses Mackwelung
Moses T. Mackwelung

15

16 *

17

18

19

20

21

22

23

24

25