

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 Section 2. Definitions. When words defined in this section are used
4 in this act, unless otherwise required by the context, the following
5 definitions shall govern:

6 (1) "Noncitizen" means:

7 (a) Until the termination of the Trusteeship for the Trust
8 Territory of the Pacific Islands, any person who is not a Trust Territory
9 citizen and any business in which any interest is owned by a person who is
10 not a Trust Territory citizen;

11 (b) Upon termination of the Trusteeship, any person who is
12 not a citizen of the Federated States of Micronesia, and any business in
13 which any interest is owned by a person who is not a citizen of the
14 Federated States of Micronesia.

15 (2) "Citizen" means any person or business not included in the
16 definition of noncitizen contained in this act.

17 (3) "Secretary" means the Secretary of Resources and Development
18 of the Federated States of Micronesia.

19 (4) "President" means the President of the Federated States of Micro-
20 nesia.

21 (5) "Business" means any sole proprietorship, partnership,
22 corporation, or any other association engaged in commerce.

23 (6) "State authority" means any official or entity designated by
24 a State of the Federated States of Micronesia to consider foreign investment
25 applications under this act and, failing such designation, means the

1 Governor of a State.

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

4 Section 3. Permit required.

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

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

18 Section 4. Application for a foreign investment permit.

19 (1) A noncitizen intending to engage in business in the Federated
20 States of Micronesia, or intending to acquire an interest in a business in
21 the Federated States of Micronesia, shall apply to the Secretary for a foreign
22 investment permit. Every application shall be accompanied by a filing fee
23 of \$250, which shall accrue to the General Fund of the Federated States of
24 Micronesia and which shall not be refundable. The Secretary shall establish
25 the form of the application by regulation.

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- 1 (2) The application shall contain the following information:
- 2 (a) Name of the applicant's business, its officers, and
- 3 directors;
- 4 (b) Proposed principal office in the Federated States, and
- 5 the State or States in which the applicant desires to do business;
- 6 (c) Purpose, scope, and objective of the business activities
- 7 to be conducted by the applicant;
- 8 (d) Amount of ownership in the business to be held by
- 9 noncitizen;
- 10 (e) Extent to which the business will involve foreign or
- 11 interstate commerce;
- 12 (f) The name, business address, and personal address of
- 13 a person residing in the Federated States of Micronesia on whom process
- 14 issued under law may be served; and
- 15 (g) Any additional information which the Secretary deems
- 16 necessary to evaluate the application and make the determination required
- 17 by section 6 of this act.

18 Section 5. Foreign Investment Board. A Foreign Investment Board is

19 established, hereinafter called the "Board." The Board is composed of the

20 Secretary, the National planner of the Federated States of Micronesia, and

21 a third member appointed, from time to time, by the Speaker of the Congress

22 of the Federated States of Micronesia. A member may not participate in the

23 determination of any matter before the Board if he or any member of his

24 immediate family has an interest in the outcome which may affect his impartial

25 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 Section 6. Action on application. The Board shall review each foreign
 9 investment permit application, and shall, within 20 days of the filing of
 10 the application, determine whether or not the business activities proposed
 11 will fall within any of the following categories:

12 (1) Will the applicant engage in business in more than one State;

13 (2) Will the applicant's business receive 50 percent or more
 14 of its total revenue from the export of goods or services to another State
 15 or nation;

16 (3) Will the applicant engage in the processing, manufacturing,
 17 assembling, or building of goods or products, and if so, will 50 percent
 18 or more of the materials processed or used be imported from another State
 19 or nation; or

20 (4) Will the applicant engage in communications, air or sea
 21 transportation, or the shipment of fuel between States or between the
 22 Federated States of Micronesia and another nation.

23 Section 7. Applications within categories. If the Board determines
 24 that the applicant's business falls within one or more of the categories set
 25 out in section 6 of this act, the following procedure shall apply:

1 (1) Upon making the section 6 determination the Board shall
2 refer the application to the Secretary for review and investigation. The
3 Secretary shall collect any further information which he believes will be
4 useful for the evaluation of the application and shall present all information
5 obtained to the Board within 30 days of receiving the application from the
6 Board.

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

15 (3) ~~UPON RECEIPT OF THE INFORMATION AND RECOMMENDATIONS~~ ~~collected~~
16 for in subsections (1) and (2) of this section, or upon expiration of the
17 time set for submission of such information and recommendations, whichever
18 occurs first, the Board shall, within an additional 30 days, decide whether
19 or not to grant the foreign investment permit, based on all revelant factors,
20 including:

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

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

25 (c) ~~The~~ 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
11 give employment preference to citizens and to train citizens for positions
12 in management and at other levels by instituting training programs;

13 (f) The extent to which the capital, managerial skills,
14 and technical skills required for such an enterprise are available among
15 ~~the population of the State at the current time or can be expected to be~~
16 available in the near future;

17 (g) The extent to which an operation will contribute to
18 the overall economic well-being of the nation and each State affected and
19 the extent to which any interest, including economic, social, traditional,
20 or environmental, of any State or the nation may be affected; and

21 (h) The recommendations, if any, made by the State authorities.

22 (4) If the Board decides that the foreign investment permit
23 should be granted, it may also impose limitations on the issuance of the
24 permit.

25 ~~(5)~~ The Board shall deliver notice of the action it takes on

1 the permit application, together with a statement of reasons in support of
2 the action taken, to the President as soon as the permit is granted or denied.

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

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

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

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

17 Section 9. President's action on foreign investment permits. Within
18 20 days of receipt of notice of a permit action taken by the Board, the
19 President may reverse the decision of the Board if he determines that the
20 action taken would adversely affect a compelling National interest relating
21 to foreign affairs or to the general public welfare. If the President
22 takes no action within the prescribed time limits, the Board action stands.
23 If the President reverses the action taken by the Board, he shall notify the
24 Board, the applicant, and the State authorities by certified mail of his
25 decision and the reasons for the decision. No Board permit decision is

1 final until the requirements of this section have been met.

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

9 Section 11. Commencement and operations of business.

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

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

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

21 Section 12. Licensee reporting requirements.

22 (1) Every licensee shall file an annual report with the Secretary
23 in such form as he may prescribe by regulation, containing a full and accurate
24 statement of business activities undertaken by the licensee in the Federated
25 States of Micronesia, a profit and loss statement, and an updated statement

1 of the information provided in the original permit application, which report
2 shall be due within 60 days immediately following the end of the licensee's
3 financial year.

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

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

10 Section 13. Insurance companies.

11 (1) Every insurance company granted a foreign investment permit
12 shall file a \$100,000 deposit with the Secretary in cash, negotiable
13 securities, or a bond from a corporate surety, or any combination totaling
14 \$100,000 which is acceptable to the Secretary, to be filed within 30 days
15 from the issuance of the permit and held in trust by the Secretary for the
16 account of the company to satisfy any judgment that may be rendered against
17 it under insurance policies that it may issue. The deposit shall be main-
18 tained as long as the insurance company conducts business in the Federated
19 States of Micronesia.

20 (2) Every insurance company granted a foreign investment permit
21 pursuant to this act shall file a verified statement summarizing all
22 commercial activity transacted within the Federated States of Micronesia by
23 the company during its previous financial year and a duly certified copy of
24 its annual report to any authorized official of the state, territory,
25 possession, or country in which the company is organized. The statement

1 shall be filed with the Secretary within 60 days of the end of the insurance
2 company's financial year.

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

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

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

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

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

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

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

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

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

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

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

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

17 (2) The Board shall, upon receipt of information which indicates
18 that a permit should be modified, suspended, or revoked, schedule a hearing
19 on the matter before the Board. At least 21 days written notice of the
20 hearing shall be given to the licensee stating the alleged violations.
21 Hearing procedure shall be prescribed by the Board by regulation and shall
22 include the right of the licensee to participate and to be represented by
23 counsel, to call witnesses, and to cross-examine witnesses called against
24 the licensee. After the hearing the Board may, by majority vote, modify,
25 ~~suspend, or revoke the permit,~~ and in such cases the Secretary shall notify

1 the licensee of the action taken by certified mail within five days of the
2 hearing, stating the reasons for the action taken. A licensee whose permit
3 has been modified, suspended, or revoked, may appeal the decision of the
4 Board to the High Court of the Trust Territory of the Pacific Islands or the
5 Supreme Court of the Federated States of Micronesia within 20 days after
6 receipt of notice of the action of the Board. Copies of the notice of
7 appeal shall be served on the Secretary and the Attorney General.

8 Section 17. Surrender of foreign business permit.

9 (1) A licensee may surrender a permit by filing a certificate
10 signed and acknowledged by the licensee with the Secretary, stating the
11 following:

12 (a) The name of the licensee as shown on the records of the
13 Secretary and the licensee's permit number;

14 (b) A revocation of the licensee's designation of agent
15 for the service of process;

16 (c) That the licensee surrenders authority to engage in
17 business in the Federated States of Micronesia;

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

23 (e) An address to which the Registrar of Corporations shall
24 mail a copy of any process served upon the licensee, which address may be
25 changed from time to time by filing a certificate entitled "notification of

1 change of address" signed and acknowledged by the licensee before an appro-
2 priately commissioned notary public or Clerk of Court.

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

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

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

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

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

22 Section 19. Enforcement of this act.

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

1 enforcement authorities within the Federated States of Micronesia.

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

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

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

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

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

17 Section 22. Criminal penalty.

18 (1) Any noncitizen:

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

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

25 (c) ~~Who~~ obtains a foreign investment permit by fraud or

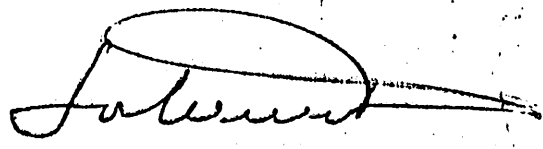
1 misrepresentation shall be deemed guilty of a criminal offense and upon
2 conviction thereof by a court of competent jurisdiction within the Federated
3 States of Micronesia shall be imprisoned for a period of not more than one
4 year or fined not more than \$2,000, or both.

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

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

12 Section 24. Effective date. This act shall become law upon approval
13 by the President of the Federated States of Micronesia or upon its becoming
14 law without such approval.

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16 Date: 5/22/81

Introduced by: 

(By Request)