AN ACT

To further amend title 32 of the Code of the Federated States of Micronesia, as amended, by amending sections 203, 205, 207, 209, 210, 211, 212, 213, 216, 217 and 219, in order to make changes to the Foreign Investment Act, and for other purposes.

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

Section 1. Section 203 of chapter 2 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 203. Definition. When words defined in this section are used in this chapter, unless otherwise required by the context, the following definitions shall govern:

(1) 'business entity' means any sole proprietorship, partnership, company, corporation, joint venture, or other association of persons engaging in business;

(2) 'character criteria' means the criteria established in the FSM Foreign Investment Regulations pursuant to section 205(3) of this chapter;

(3) 'citizen' means a citizen of the FSM;

(4) 'Department' means the Department of Economic Affairs of the FSM or its successor;

(5) 'engaging in business' means carrying out any activity relating to the conduct of a business, and shall include the activities enumerated in subsection (5) (a) below but shall not include the activities
enumerated in subsection (5) (b) below:

(a) 'engaging in business' shall include:

(i) buying, selling, leasing, or exchanging goods, products, or property of any kind for commercial purposes;

(ii) buying, selling, or exchanging services of any kind for commercial purposes;

(iii) conducting negotiations for transactions of the types described in items (i) or (ii) above; provided, however, that negotiations with licensed importers for periods of less than 14 days per calendar year shall not be considered 'engaging in business';

(iv) appointing a representative, agent, or distributor by a noncitizen to perform any of the acts described in items (i) through (iii) above, unless said representative, agent, or distributor has an independent status and transacts business in its name for its own account and not in the name of or for the account of any noncitizen principal;

(v) maintaining a stock of goods in the FSM for the purpose of having the same processed by another person in the FSM;

(vi) establishing or operating a factory, workshop, processing plant, warehouse, or store, whether wholesale or retail;
(vii) mining or exploring for minerals, or the commercial exploitation or extraction of other natural resources;

(viii) providing services as a management firm or professional consultant in the management, supervision, or control of any business entity; and

(ix) providing professional services as an attorney, physician, dentist, engineer, surveyor, accountant, auditor, or other professional providing service for a fee; provided, however, that such a professional shall not be considered to be 'engaging in business' unless he or she, while present in the FSM, performs his or her respective professional services for more than 14 days in any calendar year;

(b) engaging in business shall not include:

(i) the publication of general advertisements through newspapers, brochures, or other publications, or through radio or television;

(ii) the conducting of scientific research or investigations, if

a) the research or investigation is sponsored by a university, college, agency, or institution normally engaged in such activities primarily for purposes other than commercial profit, and

b) the particular research or
investigation at issue is not for purposes of, or expected to yield, commercial profit;

(iii) the collection of information by a bona fide journalist for news publication or broadcast;

(iv) maintaining or defending any action or suit, or participating in administrative proceedings, arbitration, or mediation;

(v) maintaining bank accounts;

(vi) the lawful sale of corporate shares or other interests or holdings in a business entity acquired not for speculation or profit; or

(vii) the making of occasional sales as defined by the FSM Foreign Investment Regulations;

(6) 'foreign investment' means any activity in the FSM by a noncitizen that amounts to 'engaging in business' as defined above;

(7) 'Foreign Investment Permit' means an FSM Foreign Investment Permit, a State Foreign Investment Permit, or a Pre-Existing Foreign Investment Permit;

(8) 'foreign investor' means a noncitizen who is engaging in business in the FSM, as defined above;

(9) 'FSM' means the Federated States of Micronesia;

(10) 'FSM Foreign Investment Permit' means a permit issued by the Secretary in accordance with the
provisions of this chapter;

(11) 'FSM Foreign Investment Regulations' means Regulations promulgated by the Secretary in accordance with the provisions of this chapter;

(12) 'noncitizen' means any person who is not a citizen of the FSM, and any business entity in which any ownership interest is held by a person who is not a citizen of the FSM;

(13) 'ownership interest' in a business entity means ownership of or control over, whether directly, indirectly, legally or beneficially, some or all of the shares of, property or assets of, voting rights in, or rights to profits or revenue from, that business entity; provided, however, that:

(a) ownership interest shall not include a bona fide security interest in real or personal property for the purpose of securing a loan or other obligation; and

(b) any interest owned or controlled by the spouse, minor child, or other dependent of a person shall be counted as owned or controlled by that person in determining whether he or she has an ownership interest in a business entity, provided that this subsection shall not apply to a noncitizen spouse who is married to a citizen and who does not hold an ownership interest in his or her own right;
(14) 'person' includes both individuals and legal entities;

(15) 'Pre-Existing Foreign Investment Permit' means a permit issued by the Secretary or by a State prior to the date on which this act took effect, and which has not expired according to its terms or been suspended or canceled;

(16) 'Secretary' means the Secretary of the Department Economic Affairs of the FSM;

(17) 'State' means one of the States of the FSM;

(18) 'State Foreign Investment Legislation' means legislation enacted and currently effective in one of the States to regulate foreign investment within that State;

(19) 'State Foreign Investment Permit' means a permit issued by authorized officials within one of the States pursuant to relevant State Foreign Investment Legislation;

(20) 'Substantial ownership interest' means an ownership interest in a business entity of at least thirty percent (30%)."

Section 2. Section 205 of chapter 2 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 205. Categories of economic sectors. The
following system of Categories of economic sectors is hereby established for the purpose of implementing the policy of the FSM to welcome foreign investment in all sectors of the FSM economy, insofar as such foreign investment is consistent with the economic, social, and cultural well-being of its citizens:

(1) Categories for National Regulation -- economic sectors that are of special national significance and therefore fall within the jurisdiction of the National Government in respect of foreign investment regulation. These Categories are the following:

(a) Category A ('National Red List') -- the set of economic sectors that are closed to foreign investment anywhere in the FSM. Economic sectors in the National Red List are the following:

(i) arms manufacture;

(ii) the minting of coins or printing of notes for use as currency;

(iii) business activities relating to nuclear power or radioactivity; and

(iv) such other economic sectors as the Secretary may, after consultation with States pursuant to section 206(2) of this chapter, designate in the FSM Foreign Investment Regulations as being on the National Red List.
(b) Category B ('National Amber List') -- the set of economic sectors that are subject to National Government regulation and as to which certain criteria specified in the FSM Foreign Investment Regulations must be met. Economic Sectors on the National Amber List include the following:

(i) banking, other than as defined in title 29 of the FSM Code; and

(ii) insurance; and

(iii) such other economic sectors as the Secretary may, after consultation with States pursuant to section 206(2) of this chapter, designate in the FSM Foreign Investment Regulations as being on the National Amber List.

(c) Category C ('National Green List') -- the set of economic sectors that are subject to National Government regulation but as to which no special criteria need to be met before a Foreign Investment Permit is to be issued. Economic sectors on the National Green List include the following:

(i) banking, as defined in title 29 of the FSM Code;

(ii) telecommunications;

(iii) fishing in the FSM's Exclusive Economic Zone;
(iv) international and interstate air transport;

(v) international shipping; and

(vi) such other economic sectors as the Secretary may, after consultation with States pursuant to section 206(2) of this chapter, designate in the FSM Foreign Investment Regulations as being on the National Green List.

(2) Categories for State Regulation -- economic sectors that are not of special national significance and therefore are delegated to the jurisdiction of the State Governments in respect of foreign investment regulation. These Categories are to be established separately by each State, by means of the State Foreign Investment Regulations in each State. An economic sector included in any of the Categories for National Regulation pursuant to subsection (1) above shall not appear in any of the Categories for State Regulation.

(3) Notwithstanding anything to the contrary in subsection (1), and regardless of the economic category involved:

(a) every applicant for or holder of an FSM Foreign Investment Permit may be required to meet such character criteria as may be specified in the FSM
Foreign Investment Regulations in order to obtain or retain an FSM Foreign Investment Permit; and

(b) every present or future holder of a substantial ownership interest in an applicant for or holder of an FSM Foreign Investment Permit may be required to meet those same character criteria in order to obtain or retain that substantial ownership interest."

Section 3. Section 207 of chapter 2 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 207. Application procedures for FSM Foreign Investment Permits.

(1) An application for an FSM Foreign Investment Permit shall be made on the form or forms prescribed in the FSM Foreign Investment Regulations, as may be supplemented in particular cases by order of the Secretary. Such application form or forms shall be made publicly available by the Secretary and by responsible authorities in each of the States. The application form shall require the applicant to identify clearly the person(s) resident in the Federated States of Micronesia who are designated as agent for service of process.

(2) Submission of an application for an FSM Foreign Investment Permit may be made either (a) to the
Secretary or (b) to the responsible authorities in the State in whose territory the foreign investment takes place or is proposed to take place. In the latter case, the responsible State authorities shall forward the application directly to the Secretary.

(3) Upon receiving an application for an FSM Foreign Investment Permit, the Secretary shall, within such periods of time as may be prescribed for this purpose in the FSM Foreign Investment Regulations, take one or more of the following actions, as appropriate:

(a) determine whether the application relates to a foreign investment in a Category A, Category B, or Category C economic sector;

(b) deny the application if;

(i) it relates to a foreign investment in a Category A (National Red List) economic sector, or

(ii) it relates to a foreign investment in any other Category for National Regulation and does not meet the character criteria for obtaining an FSM Foreign Investment Permit that are established in the FSM Foreign Investment Regulations pursuant to section 205(3) of this chapter;

(c) forward the application to the responsible State authorities if it relates to a foreign investment in an economic sector other than those designated for
inclusion in Category A, Category B, or Category C;

(d) forward a notification copy of the application to the responsible State Authorities if it relates to a Foreign Investment in economic sector categories A, B, or C;

(e) require the applicant to submit further information if the application is incomplete or does not provide enough information for the Secretary to determine:

(i) what economic sector(s) is (are) involved, or

(ii) whether the character criteria have been met;

(f) issue an FSM Foreign Investment Permit if the application:

(i) is complete;

(ii) meets the character criteria; and

(iii) relates to a foreign investment in either Category B (National Amber List) or Category C (National Green List) economic sector.

(4) Upon taking any action described in paragraph (b), (e), or (f) of subsection (3) above, the Secretary shall, within such periods of time as may be prescribed for this purpose in the FSM Foreign Investment Regulations, advise the applicant of the action and the
(5) The nature and amount of the application fee, if any, to be paid by an applicant seeking an FSM Foreign Investment Permit shall be established in the FSM Foreign Investment Regulations.

(6) If the Secretary issues an FSM Foreign Investment Permit pursuant to subsection (3)(f) above, the FSM Foreign Investment Permit will be sent to the applicant, with copies to be (a) inserted into a register to be maintained by the Department for this purpose and (b) sent to the responsible authority in each State, for insertion in a register to be maintained by such authorities for this purpose.

(7) If the Secretary denies an application for an FSM Foreign Investment Permit pursuant to subsection (3)(b)(ii) above, the applicant may (a) resubmit the application with modifications designed to meet the applicable national criteria established in the FSM Foreign Investment Regulations pursuant to section 206(1)(d) of this chapter, or (b) provide to the Secretary additional information or explanation to indicate how, in the applicant's opinion, the foreign investment would satisfy such criteria. On receipt of such modifications or additional information, the Secretary shall review the application and make a
determination under the procedures prescribed in subsection (3) above. There is no limit to the number of times an applicant may modify an application in an attempt to satisfy the applicable criteria."

Section 4. Section 209 of chapter 2 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 209. Form, fees, duration modification, and cancellation of FSM Foreign Investment Permits.

(1) FSM Foreign Investment Permits shall be in the form prescribed in the FSM Foreign Investment Regulations. State Foreign Investment Permits shall be in the form prescribed in State Foreign Investment Legislation and State Foreign Investment Regulations.

(2) Upon the issuance of an FSM Foreign Investment Permit, the holder shall fulfill the requirements, if any, included in the FSM Foreign Investment Regulations for the payment of an annual fee.

(3) An FSM Foreign Investment Permit shall be valid until it has been canceled, suspended, or surrendered pursuant to subsections (7) 11 below.

(4) An FSM Foreign Investment Permit shall not be transferable between investments or investors and shall not be assignable to any investment or investor other than the one for which it was issued.
(5) The holder of an FSM Foreign Investment Permit may not make a change in the business that the holder is engaging in without obtaining either (a) a new FSM Foreign Investment Permit for that purpose under section 207 of this chapter (or, if applicable, a new State Foreign Investment Permit under the relevant State Foreign Investment Legislation) or (b) a modification in the terms of its FSM Foreign Investment Permit. Such a modification may be requested by the business entity, and granted by the Secretary, in accordance with such procedures and requirements as the Secretary shall establish in the FSM Foreign Investment Regulations. However, no such modification is necessary if an existing business entity for which an FSM Foreign Investment Permit has been issued is expanded, without any change in the business it is engaging in.

(6) For purposes of subsection (5) above, a 'change in the business' a person is engaging in occurs if that person begins operations in a different economic sector from the one(s) for which the FSM Foreign Investment Permit was issued.

(7) The Secretary may cancel an FSM Foreign Investment Permit only if the Secretary determines, following the procedural requirements of subsection (9) below, that one or more of the following circumstances exist:

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(a) the annual fee, if any, required under either subsection (2) or subsection (3) above has not been paid;

(b) the holder of the Permit requests its cancellation;

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

(d) the holder of the Permit bribed or otherwise exercised, or attempted to exercise, undue influence on the decision to issue the Permit;

(e) the holder of the Permit fails or refuses to comply with the reporting requirements under section 213 of this chapter or with any other requirements of this chapter or of the FSM Foreign Investment Regulations;

(f) the holder of the Permit fails or refuses to comply with any restrictions or conditions included in the Permit, or engages in activities not authorized by the Permit;

(g) a substantial ownership interest in the holder is owned by a noncitizen who does not meet the character criteria established pursuant to section 205(3) of this chapter.

(8) If an FSM Foreign Investment Permit is canceled pursuant to subsection (7) above, the noncitizen holding that canceled Permit shall:
(a) immediately stop engaging in business in the FSM;

(b) take such steps as the Secretary shall direct in order to dispose of that noncitizen's interest in any applicable business entity; and

(c) pay any fines or other penalties that may be imposed under section 220 of this chapter.

(9) If it appears to the Secretary that one or more of the grounds for cancellation of an FSM Foreign Investment Permit, as enumerated in subsection (7) above, may exist, the Secretary may temporarily suspend the validity of that FSM Foreign Investment Permit and shall commence the following procedures leading to cancellation:

(a) The Secretary or his designee may schedule a hearing on the matter before the Secretary or his designee. At least 21 days' written notice of the hearing shall be given to the holder or registered agent of the FSM Foreign Investment Permit or the holder's registered agent, stating the alleged grounds for cancellation. If during that time the holder of the FSM Foreign Investment Permit takes action satisfactory to the Secretary to disprove the allegations or otherwise remedy the situation, the Secretary may cancel the hearing and reinstate the FSM Foreign Investment Permit
if it was temporarily suspended.

(b) Hearing procedures shall be prescribed by the Secretary in the FSM Foreign Investment Regulations and shall include the right of the holder of the FSM Foreign Investment Permit to participate and to be represented by counsel, to call witnesses, and to cross-examine witnesses called against the holder of the FSM Foreign Investment Permit.

(c) Within ten days after a hearing, the Secretary shall issue a written decision including reasons for the action taken and the remedy to be imposed pursuant to subsection (8) above, and shall transmit that decision immediately to the holder of the FSM Foreign Investment Permit.

(d) If a decision has not been issued pursuant to subsection (9)(c) above within the ten days specified, any temporary suspension ordered by the Secretary shall automatically end, and the validity of the FSM Foreign Investment Permit shall automatically be reinstated.

(e) Within 20 days after receiving the notice of the decision of the Secretary, the holder of the FSM Foreign Investment Permit may appeal the decision to the Supreme Court of the FSM. Copies of any notice of appeal shall be served on the Secretary and the FSM Secretary of Justice.
(10) If an FSM Foreign Investment Permit is suspended pursuant to this chapter, the noncitizen holding that suspended permit shall immediately stop engaging in business in the FSM and refrain from resuming the business unless and until the FSM Foreign Investment Permit is reinstated.

(11) A holder of an FSM Foreign Investment Permit may surrender it by meeting requirements specified for this purpose in the FSM Foreign Investment Regulations. Mere cessation of engaging in business in the FSM, without meeting such requirements, does not relieve the holder of an FSM Foreign Permit from the requirements incident thereto."

Section 5. Section 210 of chapter 2 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 210. Expatriate Worker Authorizations.

(1) A business entity as to which either have an FSM Foreign Investment Permit or a State Foreign Investment Permit has been issued shall be entitled automatically to an expatriate worker authorization ('EWA') for one expatriate senior management position.

(2) If the business entity as to which either an FSM Foreign Investment Permit or a State Foreign
Investment Permit has been issued meets the applicable criteria established for this purpose in the FSM Foreign Investment Regulations, the holder of such Permit shall be entitled automatically to one or more additional EWAs for expatriate senior management positions.

(3) An EWA that is automatically allocated under either subsection (1) or (2) above shall remain valid during the entire period that the corresponding Foreign Investment Permit remains valid. However, the criteria to be established pursuant to subsection (2) above may provide that, notwithstanding the continued validity of an EWA, a new or renewal entry permit requested under that EWA may be denied and the existing entry permit issued under that EWA may be canceled during any period when those criteria are not being met.

(4) The holder of a Foreign Investment permit may apply for additional expatriate workers pursuant to title 51 of the FSM Code."

Section 6. Section 211 of chapter 2 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 211. Issuance of entry permits.

(1) The holder of a Foreign Investment Permit may, upon the allocation of an EWA to the relevant business
entity, submit to the immigration authorities an
application for an entry permit for a nominee to fill
the position to which the EWA applies.

(2) If the immigration authorities approve an
application for an entry permit applied for under
subsection (1) above, the immigration authorities shall
issue such permit upon the payment of a fee in such an
amount and under such procedures as may be established
for this purpose by the immigration authorities.

(3) The immigration authorities shall issue an entry
permit for a nominee to fill a position to which an EWA
applies except in cases of (a) criminal character or (b)
medical risk to the nation or the nominee, as set forth
in pertinent regulations issued by the immigration
authorities. If the immigration authorities deny an
application for an entry permit for a nominee to fill a
position to which an EWA applies, the immigration
authorities shall so advise the holder of the Foreign
Investment Permit and shall give reasons for the denial.
In such a case of denial, the holder of the Foreign
Investment Permit may (a) request the immigration
authorities to review the application after submission
of additional information on the nominee, or (b) apply
for an entry permit nominating a different person to
fill the position.
(4) If, for whatever reason, a position to which an EWA applies is or becomes vacant during the period of validity of that EWA, the holder of the relevant Foreign Investment Permit may apply to the immigration authorities for an entry permit for a nominee to fill the vacant position.

(5) In addition to entry permits issued pursuant to EWAs, a foreign investor shall be entitled to one or more foreign investor entry permits as follows:

(a) one if the foreign investor is a sole proprietorship; or

(b) one for each individual holder of a substantial ownership interest in the foreign investor if the foreign investor is any other kind of business entity.

(6) Nothing in this chapter shall be interpreted to require that a noncitizen have an entry permit if that noncitizen is not otherwise required to have an entry permit.

Section 7. Section 212 of chapter 2 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 212. Renewal and cancellation of entry permits.

(1) An entry permit issued pursuant to section 211 of
this chapter, whether a foreign investor entry permit or
an entry permit issued under the EWA, shall be valid
upon its issuance and thereafter until the sooner of:

(a) five years, or such shorter period as may be
prescribed in regulations by the immigration
authorities, after the date of its issuance;

(b) expiration, cancellation, or surrender of the
applicable Foreign Investment Permit or EWA; or

(c) cancellation of the entry permit as provided
in subsection (4) below.

(2) Solely for purposes of subsection (1)(b) above:

(a) a Foreign Investment Permit which is
 renewable annually shall not be deemed to have expired
unless and until the official who issued the Foreign
Investment Permit has declared it to be expired and so
notified the immigration officials in writing; and

(b) an EWA shall not be deemed to have expired
unless and until the Foreign Investment Permit under
which it was issued is cancelled or deemed to have
expired.

(3) Except as provided in subsection (4) below, an
entry permit issued pursuant to section 211 of this
chapter shall be automatically renewed upon its
expiration.

(4) An entry permit issued pursuant to section 211 of
this chapter may be cancelled, or its renewal may be denied, by the immigration authorities only if:

(a) the required immigration fee, if any, is unpaid;

(b) the person to whom the entry permit has been issued is convicted by a court in the FSM of an offense in respect of which he or she has been sentenced to imprisonment for a term of six months or more; or

(c) the entry permit, or the EWA to which the entry permit relates, was obtained under false pretenses;

(d) the conduct of the person to whom the entry permit has been issued constitutes a threat to the security of the FSM. In this case an entry permit may be canceled only after receiving a recommendation of cancellation from a committee appointed for this purpose and consisting of representatives from each of the following: the immigration authorities, the applicable State official responsible for foreign investment regulation in the State, the FSM Secretary of Justice, and the Department;

(e) the person to whom the entry permit has been issued leaves the position the basis of which the entry permit was issued;

(f) the person to whom the entry permit has been
issued engages in employment outside the scope of the employment specified by the relevant EWA, whether or not the employment is with the foreign investor to whom the EWA was issued;

(g) the person to whom the entry permit has been issued is deported in accordance with law;

(h) the conditions for cancellation pursuant to section 210(3) of this chapter are satisfied;

(i) the applicable Foreign Investment Permit is canceled or surrendered; or

(j) it is required or permitted under subsection (5) below.

(5) An entry permit issued pursuant to section 211 of this chapter shall be canceled by the immigration authorities if the official who issued the Foreign Investment Permit to which the entry permit relates makes a finding, concurred in the FSM Secretary of Justice, that the holder of the permit is not engaged in a bona fide attempt to commerce, operate, wind up, or recommence any business to which the Foreign Investment Permit relates. Such a finding shall be in writing, signed by the FSM Secretary of Justice and the relevant State or national official, and arrived at through procedures which afforded the holder of the entry permit notice and an opportunity to be heard by the relevant
Section 8. Section 213 of chapter 2 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 213. Reports by holders of FSM Foreign Investment Permits.

(1) The holder of any FSM Foreign Investment Permit shall submit to the Secretary such reports concerning the foreign investment as the Secretary may prescribe in the FSM Foreign Investment Regulations. Details of the information required, the reasons for the requirements, and the frequency and form of such reports shall be set forth in the FSM Foreign Investment Regulations.

(2) Notwithstanding any other provision of this chapter, an FSM Foreign Investment Permit shall be automatically suspended for a failure to meet a reporting deadline or a failure to include required information in a report pursuant to subsection (1) of this section. Any such suspension shall be effective from the sixtieth day after the day on which the report or information is due unless, during the 60 grade period, the holder of the Foreign Investment Permit submits the requisite report or information or provides a written explanation of the failure to do so that is acceptable to the Secretary. The Secretary may move to
cancel the FSM Foreign Investment Permit in accordance with section 209 of this chapter at any time after the suspension becomes effective.

(3) Any change in foreign ownership of an investment for which an FSM Foreign Investment Permit has been issued which results in ownership of a substantial ownership interest by a noncitizen who did not previously own a substantial ownership interest shall be reported immediately to the Secretary, who may take such action as he or she considers appropriate in respect of the FSM Foreign Investment Permit, including its cancellation if appropriate under the provisions of section 209(7) of this chapter."

Section 9. Title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby further amended by adding a new section 215A to read as follows:

"Section 215A. Review of compliance by holders of FSM Foreign Investment Permits.

(1) The Secretary shall undertake an annual review of the compliance of each FSM Foreign Investment Permit holder with the provisions of this chapter, the FSM Foreign Investment Regulations and any conditions that attach to the relevant Foreign Investment Permit.

(2) The Secretary shall prepare a written report in respect of each review setting out his or her findings.
(3) Any non-compliance identified during a review conducted pursuant to subsection (1) of this section may be dealt with in accordance with the provisions of this chapter.

(4) The Secretary shall include aggregate information on compliance in the annual publication required pursuant to subsection 214(1) of this chapter."

Section 10. Section 216 of chapter 2 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 216. Compulsory acquisition of foreign investment property.

(1) There shall be no compulsory acquisition or expropriation of the property of any business entity to which a Foreign Investment Permit has been issued, except under the following circumstances:

(a) in order to apply sanctions for violation of laws or regulations, as provided for in section 220 of this chapter; or

(b) in extraordinary cases in which

   (i) such compulsory acquisition or expropriation is consistent with existing FSM law governing eminent domain;

   (ii) such compulsory acquisition or expropriation is necessary to serve overriding national
(iii) the conditions of subsection (2) below are met; or

(c) pursuant to generally applicable laws and regulations of the FSM or any State.

(2) Compulsory acquisition or expropriation of a type described in subsection (1)(b) above may be undertaken only after:

(a) the National Congress has, following a recommendation to this effect by the Secretary, taken official action to identify in writing

(i) the property to be acquired or expropriated and

(ii) the overriding national interests that make such acquisition or expropriation necessary; and

(b) the Secretary has issued a notification to any holder of a Foreign Investment Permit whose property is to be acquired or expropriated, indicating

(i) what property is affected by the action;

(ii) what compensation will be paid for the acquisition or expropriation of the property; and

(iii) what appeal or other forms of legal recourse are available to the holder of the Foreign Investment Permit affected by the action.

(3) Payment of compensation pursuant to subsection
(2)(b) above shall be promptly made and adequate in amount.

(4) Neither the National Government nor any State Government nor any other entity within the FSM shall take any action that, although not formally designated or acknowledged as compulsory acquisition or expropriation, indirectly has the same injurious effect ("creeping expropriation")."

Section 11. Section 217 of chapter 2 of title 32 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 217. Transfers of earnings and capital.

(1) The National Government guarantees that no holder of a currently valid Foreign Investment Permit will be subject to any restrictions on making lawful remittances of profits and carrying out other lawful current international transactions as defined in the Articles of Agreement of the International Monetary Fund.

(2) The National Government guarantees that any holder of a currently valid Foreign Investment Permit will be permitted to lawfully repatriate any amount of capital that was brought into the FSM for, or that lawfully accrued on, a business entity to which such Permit applies."

Section 12. Section 219 of chapter 2 of title 32 of the Code
of the Federated States of Micronesia, as enacted by Public Law No. 10-49, is hereby amended to read as follows:

"Section 219. Non-discriminatory treatment. Subject to the provisions of this chapter and regulations promulgated hereunder, and subject further to the express provisions of any other statute applicable to specific business categories, the National Government shall not take action, or permit any State to take action, that would result in a foreign investor being given treatment that is less favorable than the treatment given to citizens, or business entities wholly owned by citizens, engaging in business in the FSM."

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

November 2, 2005

/s/Joseph J. Urusemal
Joseph J. Urusemal
President
Federated States of Micronesia