
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: Any person who is not a citizen of the
7 Federated States of Micronesia, and any business in which any interest is
8 owned by a person who is not a citizen of the Federated States of Micronesia.

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

11 (3) "Secretary" means the Secretary of Resources and Development
12 of the Federated States of Micronesia.

13 (4) "President" means President of the Federated States of
14 Micronesia.

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

17 (6) "State authority" means any official or entity designated
18 by a state of the Federated States of Micronesia to consider foreign
19 investment applications under this act and, failing such designation,
20 means the Governor of a state.

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

1 noncitizen.

2 Section 3. Permit Required.

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

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

16 Section 4. Application for a Foreign Investment Permit.

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

24 (2) The application shall contain the following information:

25 (a) Name of the applicant's business, its officers, and

1 directors;

2 (b) Proposed principal office in the Federated States,
3 and the state or states in which the applicant desires to do business;

4 (c) Purpose, scope, and objective of the business
5 activities to be conducted by the applicant;

6 (d) Amount of ownership in the business to be held by
7 noncitizen;

8 (e) Extent to which the business will involve foreign or
9 interstate commerce;

10 (f) The name, business address, and personal address of
11 a person residing in the Federated States of Micronesia on whom process
12 issued under law may be served;

13 (g) Any additional information which the Secretary deems
14 necessary to evaluate the application and make the determination required
15 by Section 6 of this act.

16 Section 5. Foreign Investment Board. A Foreign Investment Board
17 is established, hereinafter called the "Board". The Board is composed of
18 the Secretary, the National Planner of the Federated States of Micronesia,
19 and a third member appointed, from time to time, by the Speaker of the
20 Congress of the Federated States of Micronesia. A member may not
21 participate in the determination of any matter before the Board if he
22 or any member of his immediate family has an interest in the outcome
23 which may affect his impartial consideration of the matter. Members
24 shall serve until replaced by the President of the Federated States of
25 Micronesia, in the case of the Secretary and the National Planner, and

1 until replaced by the Speaker in the case of the third member. Two
2 members of the Board must be present to make up a quorum and action can
3 only be taken by a majority vote of the members present, with the
4 Secretary having, in addition to a regular vote, a casting vote in case
5 of a tie. The Secretary shall provide clerical and administrative
6 assistance to the Board and shall serve as chairman.

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

11 (1) Will the applicant engage in business in more than one
12 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
15 state or nation;

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

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
25 set 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.
3 The Secretary shall collect any further information which he believes
4 will be useful for the evaluation of the application and shall present
5 all information obtained to the Board within 30 days of receiving the
6 application from the Board.

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

15 (3) Upon receipt of the information and recommendations called
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, which-
18 ever occurs first, the Board shall, within an additional 30 days, decide
19 whether or not to grant the foreign investment permit, based on all
20 relevant factors, 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 extent to which such activities will deplete a

1 non-renewable natural resource, or will disturb the environmental balance
2 or the conservation of renewable natural resources, or will pollute the
3 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 owner-
9 ship 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
12 positions in management and at other levels by instituting training
13 programs;

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

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

22 (h) The recommendations, if any, made by the state
23 authorities.

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

1 permit.

2 (5) The Board shall deliver notice of the action it takes on the
3 permit application, together with a statement of reasons in support of the
4 action taken, to the President as soon as the permit is granted or denied.

5 Section 8. Applications not within Categories. If the Board deter-
6 mines that the applicant's business does not fall within any of the catego-
7 ries set out in Section 6 of this act, the following procedure shall apply:

8 (1) Upon making the Section 6 determination, the Board shall
9 refer the foreign investment permit application to the state authority of
10 the state affected by the applicant's business.

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

17 (3) If the state authority approves the application it may
18 impose limitations on the issuance of the permit.

19 Section 9. President's Action on Foreign Investment Permits. Within
20 20 days of receipt of notice of a permit action taken by the Board, the
21 President may reverse the decision of the Board if he determines that the
22 action taken would adversely affect a compelling national interest relating
23 to foreign affairs or to the general public welfare. If the President
24 takes no action within the prescribed time limits, the Board action stands.
25 If the President reverses the action taken by the Board he shall notify the

1 Board, the applicant, and the state authorities by certified mail, of his
2 decision and the reasons for the decision. No Board permit decision is
3 final until the requirements of this section have been met.

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

12 Section 11. Commencement and Operations of Business.

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

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

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

1 Section 12. Licensee Reporting Requirements.

2 (1) Every licensee shall file an annual report with the
3 Secretary in such form as he may prescribe by regulation, containing a
4 full and accurate statement of business activities undertaken by the
5 licensee in the Federated States of Micronesia, a profit and loss state-
6 ment, and an updated statement of the information provided in the
7 original permit application, which report shall be due within 60 days
8 immediately following the end of the licensee's financial year.

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

11 (3) Every corporate licensee shall file copies of any change
12 in the provisions of its original charter, articles of incorporation,
13 or by-laws within 60 days of the change with the Registrar of Corporations
14 and the Secretary.

15 Section 13. Insurance Companies.

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

25 (2) Every insurance company granted a foreign investment permit

1 pursuant to this act shall file a verified statement summarizing all
2 commercial activity transacted within the Federated States of Micronesia
3 by the company during its previous financial year and a duly certified
4 copy of its annual report to any authorized official of the state, terri-
5 tory, possession, or country in which the company is organized. The
6 statement shall be filed with the Secretary within 60 days of the end of
7 the insurance company's financial year.

8 Section 14. Change in Licensee's Business. If a licensee intends
9 to substantially alter the business activity on which the foreign invest-
10 ment permit is based or intends to undertake significant additional
11 business activities not contemplated at the time of the original applica-
12 tion, the licensee shall submit an application for a new foreign
13 investment permit to the Secretary, which shall be considered in
14 accordance with Sections 6 through 9 of this act except that the Board,
15 the Secretary, or the state authority need not duplicate investigatory
16 efforts made in connection with the original application. The licensee
17 shall not alter its business activities or add new business activities
18 until a new permit is granted.

19 Section 15. Permit Renewal. If a licensee wishes to renew an
20 expiring permit a renewal application may be submitted to the Secretary
21 in a form which he prescribes and shall be disposed of by the Secretary
22 according to regulations promulgated to implement this section. A
23 licensee may continue business activities while the renewal application
24 is pending.

25 Section 16. Modification, Suspension, or Revocation of Permit.

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

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

5 (b) The licensee bribed or otherwise influenced or
6 attempted to bribe or influence the Secretary or any member of the Board
7 or any member of a state authority to issue the permit;

8 (c) The licensee presented false or fraudulent informa-
9 tion to the Board or to a state authority in support of the application;

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

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

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

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

21 (h) The licensee refuses or fails to comply with orders for
22 production of documents and things or for attendance of witnesses under
23 Section 19 of this act.

24 (2) The Board shall, upon receipt of information which indicates
25 that a permit should be modified, suspended, or revoked, schedule a hearing

1 on the matter before the Board. At least 21 days written notice of the
2 hearing shall be given to the licensee stating the alleged violations.
3 Hearing procedure shall be prescribed by the Board by regulation and shall
4 include the right of the licensee to participate and to be represented by
5 counsel, to call witnesses, and to cross-examine witnesses called against
6 the licensee. After the hearing the Board may, by majority vote, modify,
7 suspend, or revoke the permit, and in such cases the Secretary shall notify
8 the licensee of the action taken by certified mail within five days of the
9 hearing, stating the reasons for the action taken. A licensee whose permit
10 has been modified, suspended, or revoked, may appeal the decision of the
11 Board to the High Court of the Trust Territory of the Pacific Islands or the
12 Supreme Court of the Federated States of Micronesia within 20 days after
13 receipt of notice of the action of the Board. Copies of the notice of
14 appeal shall be served on the Secretary and the Attorney General.

15 Section 17. Surrender of Foreign Business Permit.

16 (1) A licensee may surrender a permit by filing a certificate
17 signed and acknowledged by the licensee with the Secretary, stating the
18 following:

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

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

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

25 (d) That the licensee consents to service of process

1 against the licensee in any action or claim for relief based upon
2 liability or obligation incurred within the Federated States of Micronesia
3 prior to the filing of the certificate of surrender by service on the
4 Registrar of Corporations; and

5 (e) An address to which the Registrar of Corporations
6 shall mail a copy of any process served upon the licensee, which address
7 may be changed from time to time by filing a certificate entitled
8 "notification of change of address" signed and acknowledged by the
9 licensee before an appropriately commissioned notary public or Clerk of
10 Court.

11 (2) The foreign investment permit shall be attached to the
12 certificate described in Subsection (1) of this section unless it has been
13 lost or destroyed, in which case an affidavit of the licensee shall be
14 attached attesting to such loss.

15 (3) Mere retirement from doing business in the Federated States
16 of Micronesia without a filing of the certificate described in Subsection
17 (1) of this section does not revoke the appointment of an agent for the
18 service of process within the Federated States of Micronesia.

19 Section 18. Service of Process on Noncitizen after Revocation of
20 Business Permit.

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

25 (2) In any case where, under the provisions of this section, the

1 Registrar of Corporations is served with process, he shall immediately
2 send by certified or registered mail a notice of service and a copy of the
3 summons and complaint to the noncitizen concerned, at the noncitizen's
4 last address of record.

5 Section 19. Enforcement of this Act.

6 (1) Primary responsibility for the enforcement of this act
7 shall be placed in the Board, with the assistance of the Secretary, and,
8 as to criminal sanctions provided in Section 22 of this act, appropriate
9 law enforcement authorities within the Federated States of Micronesia.

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

16 Section 20. Rules and Regulations. The Board shall promulgate the
17 regulations necessary to implement this act, which regulations shall have
18 the force and effect of law.

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

20 (1) Cooperative associations and credit unions duly organized
21 and incorporated under the laws of the Trust Territory or the Federated
22 States of Micronesia or a state thereof; and

23 (2) Banking and savings and loan institutions authorized to do
24 business under the laws of the Trust Territory or the Federated States of
25 Micronesia.

Section 22. Criminal Penalty.

(1) Any noncitizen:

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

(b) Who, after obtaining a foreign investment permit, intentionally engages in business not authorized by the permit or intentionally fails to comply with the limitations, if any, stated in the permit; or

(c) Who obtains a foreign investment permit by fraud or misrepresentation shall be deemed guilty of a criminal offense and upon conviction thereof by a court of competent jurisdiction within the Federated States of Micronesia shall be imprisoned for a period of not more than one year or fined not more than two thousand dollars, or both.

(2) Any citizen or noncitizen, who aids or abets a noncitizen in violating any of the terms of Subsection (1) of this section shall be guilty of a criminal offense and upon conviction thereof in a court of competent jurisdiction within the Federated States of Micronesia, shall be imprisoned for a period not exceeding one year or fined two thousand dollars, or both.

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

Public Law No. 1-137

CONGRESSIONAL BILL NO. 1-355, C.D.1

1 Section 24. Effective Date. This act shall become law upon approval
2 by the President of the Federated States of Micronesia, or upon its
3 becoming law without such approval.

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5
6 January 7, 1980

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8
9 Tosiwo Nakayama
10 Tosiwo Nakayama
11 President
12 Federated States of Micronesia

