
A BILL FOR AN ACT

To amend title 32 of the Code of the Federated States of Micronesia by repealing chapter 2 in its entirety; 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 of 1985."

3 Section 2. Exemptions. The following activities shall be exempt
4 from the provisions of this act:

5 (1) Business organizations engaged in the business of bulk
6 distribution of petroleum products;

7 (2) International and interstate airline operations;

8 (3) International and interstate shipping;

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

12 (5) Cooperative associations and credit unions duly organized
13 and incorporated under the laws of the Federated States of Micronesia, any
14 State, or the Trust Territory of the Pacific Islands.

15 Section 3. Definitions. As used in this act, unless otherwise
16 provided, or unless the context requires a different construction,
17 application, or meaning:

18 (1) "Engaging in business" means engaging in any form of
19 commerce, including, but not limited to, industrial, commercial, fishery,
20 agricultural, trading, construction, service or other type of business
21 activity, or providing professional services within the Federated States
22 of Micronesia, regardless of whether or not such activity or activities
23 are for commercial gain, profit, or benefit;

24 (2) "Issuing authority" means the government of a State;

25 (3) "Noncitizen" means:

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1 (a) Until termination of the Trusteeship for the Trust
2 Territory of the Pacific Islands, any person who is not a Trust Territory
3 citizen and any business in which any interest is owned by a person who is
4 not a Trust Territory citizen; and

5 (b) Upon termination of the Trusteeship for the Trust
6 Territory of the Pacific Islands, 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
9 Micronesia; and

10 (4) "Office" means the Office of Foreign Investment established
11 pursuant to this act.

12 Section 4. Regulation of noncitizens engaging in business. The
13 regulation of any noncitizen engaging in business shall be the
14 responsibility of the government of each State in which the noncitizen
15 engages in business, except for those matters set forth in section 9 of this act.

16 Section 5. Prohibitions.

17 (1) A noncitizen may not engage in business in the Federated
18 States of Micronesia without first obtaining permission from the issuing
19 authority.

20 (2) A noncitizen engaged in business in the Federated States of
21 Micronesia on the effective date of this act under a valid foreign
22 investment permit or under an agreement with the Government of the Trust
23 Territory of the Pacific Islands shall not continue to engage in business
24 in the Federated States of Micronesia after the expiration of such permit
25 or agreement without first obtaining permission from the issuing authority.

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1 Section 6. Office of Foreign Investment. The Office of Foreign
2 Investment of the Federated States of Micronesia is hereby established
3 within the executive branch of the Government of the Federated States of
4 Micronesia. The President shall nominate and, with the advice and consent
5 of the Congress, as provided in article X, section 2(d) of the
6 Constitution, shall appoint the Foreign Investment Officer. The
7 Department of Resources and Development shall provide the necessary
8 administrative and technical staff support for the Office of Foreign
9 Investment.

10 Section 7. Application.

11 (1) Any noncitizen intending to engage in business in the
12 Federated States of Micronesia shall submit an application to the issuing
13 authority, in the form prescribed by the issuing authority. Within 1 week
14 of receipt of an application, the issuing authority shall forward one copy
15 of the application to the Office.

16 (2) The issuing authority shall take no final action on an
17 application until the review by the Office has been completed, as provided
18 for by section 8 of this act.

19 (3) If the Office fails to report its findings, pursuant to the
20 review procedures set forth in sections 8 and 9 of this act, to the issuing
21 authority within 60 days of receipt of the application, the issuing authority may
22 appeal directly to the President of the Federated States of Micronesia to
23 determine if the National interest, as set forth in section 9 of this act,
24 will be adversely affected.

25 (4) If an appeal is filed pursuant to subsection 3 of this

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1 section and the President fails to provide the requisite determination
2 within 30 days of the filing of an appeal, the Office shall be deemed to
3 have waived all right to deny an application and the issuing authority may
4 proceed with the review of the application.

5 Section 8. Office of Foreign Investment - Powers and functions.

6 The Office shall have the following powers and perform the following
7 functions:

8 (1) To advise the issuing authority if a proposed enterprise
9 which is the subject of an application for a noncitizen to engage in
10 business is the same as, or substantially similar to, an enterprise which
11 is already in existence or which is the subject of a pending application;

12 (2) To coordinate with the States on promotion of foreign
13 investment in the Federated States of Micronesia;

14 (3) To advise the issuing authority of the financial viability
15 of the noncitizen applicant; and

16 (4) To review all applications to determine if the application
17 must be denied in accordance with section 9 of this act. If the Foreign
18 Investment Officer determines that an application shall not be denied, he
19 shall immediately inform both the applicant and the issuing authority.

20 The issuing authority shall then make the determination if, and under what
21 conditions, the applicant may engage in business.

22 Section 9. Foreign investment issues affecting the National interest.

23 (1) The following issues are matters affecting the National
24 interest. The Office shall deny an application for any of the following
25 reasons:

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1 (a) Approval of the application would constitute a treaty
2 or international trade agreement with a foreign country or controvert an
3 existing treaty or international trade agreement;

4 (b) Approval of the application would create a financial
5 liability for the National Government of the Federated States of
6 Micronesia; or

7 (c) Approval of the application would be contrary to the
8 immigration policy or resident worker preference policy of the Federated
9 States of Micronesia.

10 (2) If an application is denied pursuant to subsection 1 of
11 this section, the issuing authority may appeal the denial to the trial
12 division of the Supreme Court.

13 Section 10. Enforcement.

14 (1) The Office shall have the primary responsibility for the
15 enforcement of this act, except that the Attorney General shall have the
16 responsibility for enforcing the criminal provisions set forth in section
17 12 of this act.

18 (2) In carrying out the duties conferred upon it by this act,
19 the Office may require the attendance of any citizen or noncitizen at a
20 meeting or hearing conducted by the Office, and may require such person or
21 persons to testify or to produce at, before, or after such meeting or
22 hearing documents, information, and other things relevant to the
23 enforcement of the provisions of this act.

24 Section 11. Regulations. The Office may promulgate regulations
25 necessary to implement this act, which regulations shall have the force

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1 and effect of law.

2 Section 12. Criminal penalties. Any noncitizen who:

3 (1) Intentionally engages in business in the Federated States
4 of Micronesia without first obtaining permission from the issuing
5 authority in violation of section 5 of this act;

6 (2) After obtaining permission to engage in business from the
7 Office of Foreign Investment, intentionally fails to comply with the
8 limitations, if any, imposed on the conduct of his business; or

9 (3) Furnishes fraudulent information or intentionally omits
10 material information pertaining to the determination to be made by the
11 Office of Foreign Investment pursuant to section 8 of this act,
12 shall be deemed guilty of a criminal offense, and, upon conviction
13 thereof, shall be imprisoned for a period of not more than 1 year or fined
14 not more than \$2,000, or both.

15 Section 13. Repealer. Chapter 2 of title 32 of the Code of the
16 Federated States of Micronesia is hereby repealed in its entirety.

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

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21 Date: Nov. 6, 1985

Introduced by:


John R. Hagielgam
(by request)