
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
2 the "Foreign Investment Act."

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

6 (1) "Noncitizen" means:

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

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

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

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

19 (4) "President" means the President of the Federated States
20 of Micronesia.

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

1 (6) "State authority" means any official or entity
2 designated by a State of the Federated States of Micronesia to
3 consider foreign investment applications under this act and, failing
4 such designation, means the Governor of a State.

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

8 Section 3. Permit required.

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

15 (2) A noncitizen engaged in business in the Federated States
16 of Micronesia on the effective date of this act under a permit issued
17 under the Trust Territory Foreign Investors Business Permit Act
18 (33 TTC Chapter 1) or under an agreement with the Trust Territory
19 Government shall not continue to engage in business in the Federated
20 States of Micronesia after the expiration of that permit or agreement
21 without first obtaining a foreign investment permit.

22 Section 4. Application for a foreign investment permit.

23 (1) A noncitizen intending to engage in business in the
24 Federated States of Micronesia, or intending to acquire an interest in
25 a business in the Federated States of Micronesia, shall apply to the

1 Secretary for a foreign investment permit. Every application shall be
2 accompanied by a filing fee of \$250, which shall accrue to the General
3 Fund of the Federated States of Micronesia and which shall not be
4 refundable. The Secretary shall establish the form of the application
5 by regulation.

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

7 (a) Name of the applicant's business, its officers, and
8 directors;

9 (b) Proposed principal office in the Federated States,
10 and the State or States in which the applicant desires to do business;

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

13 (d) Amount of ownership in the business to be held by
14 the noncitizen;

15 (e) Extent to which the business will involve foreign
16 or interstate commerce;

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

20 (g) Any additional information which the Secretary
21 deems necessary to evaluate the application and make the determination
22 required by section 6 of this act.

23 Section 5. Foreign Investment Board. A Foreign Investment Board
24 is established, hereinafter called the "Board." The Board is composed
25 of three members appointed by the President of the Federated States of

1 Micronesia and two members appointed by the Speaker of the Congress of
2 the Federated States of Micronesia. The Board shall elect one of the
3 five members as Chairman. A member may not participate in the deter-
4 mination of any matter before the Board if he or any member of his
5 immediate family has an interest in the outcome which may affect his
6 impartial consideration of the matter. Members shall serve until
7 replaced by the President of the Federated States of Micronesia, or by
8 the Speaker of the Congress of the Federated States of Micronesia.
9 Four members of the Board must be present to make up a quorum and
10 action can only be taken by a majority vote of the members present.
11 The Secretary shall provide clerical and administrative assistance to
12 the Board.

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

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

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

22 (3) Will the applicant engage in the processing, manu-
23 facturing, assembling, or building of goods or products, and if so,
24 will 50 percent or more of the materials processed or used be imported
25 from another State or nation; or

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

4 Section 7. Applications within categories. If the Board deter-
5 mines that the applicant's business falls within one or more of the
6 categories set out in section 6 of this act, the following procedure
7 shall apply:

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

14 (2) At the time the application is referred to the
15 Secretary a copy of the application shall be delivered to the State
16 authority of each State. The State authorities may examine the
17 application and may make a recommendation as to the approval of the
18 application. The Secretary shall deliver copies of any information
19 which he obtains under subsection (1) of this section to the State
20 authorities. The State authorities shall have 30 days from receipt of
21 the informational material from the Secretary to deliver recommenda-
22 tions to the Board.

23 (3) Upon receipt of the information and recommendations
24 called for in subsections (1) and (2) of this section, or upon
25 expiration of the time set for submission of such information and

1 recommendations, whichever occurs first, the Board shall, within an
2 additional 30 days, decide whether or not to grant the foreign invest-
3 ment permit, based on all relevant factors, including:

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

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

8 (c) The extent to which such activities will deplete
9 a nonrenewable natural resource, or will disturb the environmental
10 balance or the conservation of renewable natural resources, or will
11 pollute the atmosphere or water;

12 (d) The extent of participation by citizens at the
13 outset in the ownership and management of the enterprise, and in the
14 case of an applicant which is a corporation chartered outside the
15 Federated States, the degree of willingness and specific plans to
16 form a Federated States corporation in the future and to offer at
17 least 51 percent of the ownership and capital to citizens;

18 (e) The willingness and specific plans of the
19 applicant to give employment preference to citizens and to train
20 citizens for positions in management and at other levels by insti-
21 tuting training programs;

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

1 (g) The extent to which an operation will contribute
2 to the overall economic well-being of the Nation and each State
3 affected and the extent to which any interest, including economic,
4 social, traditional, or environmental, of any State or the Nation may
5 be affected; and

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

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

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

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

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

22 (2) The State authority shall approve or disapprove the
23 permit application, stating its reasons for approving or disapproving
24 in a report which shall be delivered to the Board within 45 days of the
25 receipt of the application by the State authority. The Board shall

1 promptly grant or deny the permit in conformity with the action taken
2 by the State authority and shall immediately notify the President of
3 the action taken.

4 (3) If the State authority approves the application, it may
5 impose limitations on the issuance of the permit.

6 Section 9. President's action on foreign investment permits.

7 Within 20 days of receipt of notice of a permit action taken by the
8 Board, the President may reverse the decision of the Board if he deter-
9 mines that the action taken would adversely affect a compelling
10 National interest relating to foreign affairs or to the general public
11 welfare. If the President takes no action within the prescribed time
12 limits, the Board's action stands. If the President reverses the
13 action taken by the Board, he shall notify the Board, the applicant,
14 and the State authorities by certified mail of his decision and the
15 reasons for the decision. No Board permit decision is final until the
16 requirements of this section have been met.

17 Section 10. Right of appeal. An applicant or State authority
18 aggrieved by a final permit decision may appeal the decision by filing
19 a notice of appeal within 30 days of receipt of notice of the decision
20 with the Supreme Court of the Federated States of Micronesia. The
21 notice of appeal shall also be served on the Attorney General of the
22 Federated States of Micronesia and the Secretary. Such appeals shall
23 be made under applicable rules of civil procedure.

24 Section 11. Commencement and operations of business.

25 (1) Before commencing business activity within the Federated

1 States of Micronesia, a licensee shall inform the Secretary of the
2 financial year used by the licensee's business in keeping its
3 financial records.

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

7 (3) A licensee is deemed to have consented to the acceptance
8 of process by service on the individual named for that purpose in the
9 licensee's permit application. If the individual named in the applica-
10 tion cannot be found at the address given, process served on the
11 Registrar of Corporations with copies sent by certified mail to the
12 address stated in the application is valid service on the licensee.

13 Section 12. Licensee reporting requirements.

14 (1) Every licensee shall file an annual report with the
15 Secretary in such form as he may prescribe by regulation, containing
16 a full and accurate statement of business activities undertaken by
17 the licensee in the Federated States of Micronesia, a profit and loss
18 statement, and an updated statement of the information provided in
19 the original permit application, which report shall be due within 60
20 days immediately following the end of the licensee's financial year.

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

24 (3) Every corporate licensee shall file copies of any
25 change in the provisions of its original charter, articles of

1 incorporation, or by laws within 60 days of the change with the
2 Registrar of Corporations and the Secretary.

3 Section 13. Insurance companies.

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

14 (2) Every insurance company granted a foreign investment
15 permit pursuant to this act shall file a verified statement summari-
16 zing all commercial activity transacted within the Federated States
17 of Micronesia by the company during its previous financial year and
18 a duly certified copy of its annual report to any authorized official
19 of the state, territory, possession, or country in which the company
20 is organized. The statement shall be filed with the Secretary within
21 60 days of the end of the insurance company's financial year.

22 Section 14. Change in licensee's business. If a licensee intends
23 to substantially alter the business activity on which the foreign
24 investment permit is based or intends to undertake significant
25 additional business activities not contemplated at the time of the

1 original application, the licensee shall submit an application for a new
2 foreign investment permit to the Secretary, which shall be considered
3 in accordance with sections 6 through 9 of this act except that the Board,
4 the Secretary, or the State authority need not duplicate investigatory
5 efforts made in connection with the original application. The licensee
6 shall not alter its business activities or add new business activities
7 until a new permit is granted.

8 Section 15. Permit renewal. If a licensee wishes to renew a
9 permit, a renewal application may be submitted to the Secretary no later
10 than 60 days prior to the expiration of the permit in a form which he
11 prescribes and shall be disposed of by the Secretary according to
12 regulations promulgated to implement this section. A licensee may
13 continue business activities while the renewal application is pending.

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

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

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

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

22 (c) The licensee presented false or fraudulent informa-
23 tion to the Board or to a State authority in support of the application;

24 (d) The licensee violates any law of the Federated States
25 of Micronesia or of any political subdivision within the Federated States

1 of Micronesia, or any of the regulations issued under those laws, which
2 are relevant to the business activity conducted under the permit;

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

5 (f) The licensee engages in business activities sub-
6 stantially outside the scope of the permit;

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

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

13 (2) The Board shall, upon receipt of information which
14 indicates that a permit should be modified, suspended, or revoked,
15 schedule a hearing on the matter before the Board. At least 21 days
16 written notice of the hearing shall be given to the licensee stating
17 the alleged violations. Hearing procedure shall be prescribed by the
18 Board by regulation and shall include the right of the licensee to
19 participate and to be represented by counsel, to call witnesses, and to
20 cross-examine witnesses called against the licensee. After the hearing
21 the Board may, by majority vote, modify, suspend, or revoke the permit,
22 and in such cases the Secretary shall notify the licensee of the action
23 taken by certified mail within five days of the hearing, stating the
24 reasons for the action taken. A licensee whose permit has been modified,
25 suspended, or revoked may appeal the decision of the Board to the High

1 Court of the Trust Territory of the Pacific Islands or the Supreme Court
2 of the Federated States of Micronesia within 20 days after receipt of
3 notice of the action of the Board. Copies of the notice of appeal shall
4 be served on the Secretary and the Attorney General.

5 Section 17. Surrender of foreign business permit.

6 (1) A licensee may surrender a permit by filing a certificate
7 signed and acknowledged by the licensee with the Secretary, stating the
8 following:

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

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

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

15 (d) That the licensee consents to service of process
16 against the licensee in any action or claim for relief based upon
17 liability or obligation incurred within the Federated States of Micro-
18 nesia prior to the filing of the certificate of surrender by service on
19 the Registrar of Corporations; and

20 (e) An address to which the Registrar of Corporations
21 shall mail a copy of any process served upon the licensee, which address
22 may be changed from time to time by filing a certificate entitled
23 "notification of change of address" signed and acknowledged by the
24 licensee before an appropriately commissioned notary public or Clerk of
25 Court.

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

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

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

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

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

21 Section 19. Enforcement of this act.

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

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

7 Section 20. Rules and regulations. The Board shall promulgate
8 the regulations necessary to implement this act, which regulations shall
9 have 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
15 do business under the laws of the Trust Territory or the Federated States
16 of Micronesia.

17 Section 22. Criminal penalty.

18 (1) Any noncitizen:

19 (a) Who intentionally engages in business activities in
20 the Federated States of Micronesia for which a foreign investment permit
21 is 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
24 the 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
3 Federated States of Micronesia shall be imprisoned for a period of not
4 more than one 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
9 be imprisoned for a period not exceeding one year or fined \$2,000, or
10 both.

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

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

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July 6, 1981

Tosiwo Nakayama
Tosiwo Nakayama
President
Federated States of Micronesia