
A BILL FOR AN ACT

To amend sections 202, 205, 206 and 208 and to insert a new section 202A of title 32 of the Code of the Federated States of Micronesia (Annotated), to amend the Foreign Investment Act of 1997, as amended, to streamline the review and screening of foreign investment applications and issuance of permits by creating a National Foreign Investment Single Window, and by providing for a transitional clause, and for other purposes.

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

1 Section 1. Statement of Policy. In order to achieve economic
2 self-sufficiency through sustainable economic growth, it is deemed
3 in the best interest of the FSM to create an open and friendly
4 investment environment within which the private sector will be able
5 to freely conduct business and be guaranteed fair competition and
6 investor protection. Foreign investment plays an important role in
7 the economic development of the nation and the states. However,
8 inadequate business climate perpetuates a negative impact that is
9 not only counterproductive but also inimical to the interest of the
10 nation and its people. Some of the perceived reasons for the poor
11 foreign investment performance in the Federated States of
12 Micronesia are the complicated and oftentimes conflicting
13 requirements of foreign investment set out in the national and
14 state laws. While efforts have been undertaken to encourage foreign
15 investment, little has been achieved so far because of the
16 fundamental weaknesses arising from the national and state foreign

1 investment legislations lacking in harmony. Therefore, it is the
2 policy of the national government to streamline and centralize the
3 regulation of foreign investment with a view towards achieving the
4 following objectives and principles:

5 (a) National government recognizes the role of foreign
6 investment in the economic development of the nation and the
7 states.

8 (b) Priorities of foreign investments shall align with
9 the goals and objectives of national development plan.

10 (c) Procedures in processing foreign investment
11 applications shall start at the national government and
12 endorsed to the relevant state government to facilitate the
13 commencement of business operation.

14 (d) Foreign investment is to be encouraged in accordance
15 with transparent, fair, and consistent rules based on
16 international best practices.

17 (e) The national government recognizes the potential
18 contribution of foreign investment towards creating jobs for
19 Micronesians, efficient utilization of resources, and
20 increased public revenue.

21 (f) Foreign investment is subject to providing
22 development training and capacity building of domestic labor
23 force, technology transfer, and incentive on apprenticeship.
24 Section 2. Section 202 of title 32 of the Code of the

1 Federated States of Micronesia (Annotated), is hereby amended to
2 read as follows:

3 “Section 202. Purpose of this chapter.

4 (a) The purpose of this chapter is to encourage responsible
5 foreign investment and openness to entering into
6 partnership with domestic investors within the territory of
7 the FSM in a manner that serves the economic, social, and
8 cultural interests of its citizens. This purpose shall be
9 borne in mind in the implementation and interpretation of
10 the provisions of this chapter.

11 (b) In achieving the purpose stated in subsection (a),
12 Congress intends uniform application and interpretation of
13 the law and in the procedures adopted to give effect to the
14 law in order to minimize differentiated treatment of
15 investors, uncoordinated policy application, and potential
16 discrimination among prospective investors.

17 (c) In adopting this act, Congress intends to exercise its
18 expressly delegated powers to regulate banking, foreign and
19 interstate commerce and the interplay of related powers
20 enumerated in section 2 Article IX of the Constitution.”

21 Section 3. Title 32 of the Code of the Federated States of
22 Micronesia (Annotated), is hereby amended by inserting a new
23 section 202A to read as follows:

24 “Section 202A. National preemption. (a) Except as

1 provided in subsection (b) of this section, the provisions of
2 this act shall supersede any and all State laws insofar as
3 they may now or hereafter relate to foreign investment
4 regulation. This section shall take effect immediately.

5 (b) Construction and interpretation.

6 (1) This section shall not apply with respect to any
7 cause of action, which arose, or any act or omission, which
8 occurred, before the effective date of this act.

9 (2) Nothing in this act shall be construed to exempt or
10 relieve any person with foreign investment or employees from
11 any state or municipal law with respect to state and municipal
12 fees or taxes, if applicable.

13 (3) Nothing in this act shall be construed as negating
14 the authority of the states to require health and
15 environmental standards and measures, provided, that, they are
16 uniformly applied to foreign and domestic businesses."

17 Section 4. Section 205 of title 32 of the Code of the
18 Federated States of Micronesia (Annotated), is hereby amended to
19 read as follows:

20 "Section 205. Categories of economic sectors.

21 The following system of Categories of economic sectors is
22 hereby established for the purpose of implementing the
23 policy of the FSM to welcome foreign investment in all
24 sectors of the FSM economy, insofar as such foreign

1 investment is consistent with the economic, social, and
2 cultural well-being of its citizens:

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

8 (a) [~~Category A ("National Red List")~~]National Prohibited
9 Category - The following set of economic sectors that are
10 [~~closed~~] prohibited to foreign and domestic investment
11 anywhere in the FSM. Economic sectors in the National Red
12 Prohibited Category List are the following:

13 (i) arms manufacture;

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

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

18 (iv) such other economic sectors as the Secretary
19 may, after consultation with States pursuant to
20 section 206(2) of this chapter, designate in the FSM
21 Foreign Investment Regulations as being on the
22 National [~~Red~~] Prohibited Category List.

23 [~~(b) Category B ("National Amber List")~~] ~~The set of~~
24 ~~economic sectors that are subject to National Government~~

1 ~~regulation and as to which certain criteria specified in~~
2 ~~the FSM Foreign Investment Regulations must be met.~~

3 ~~Economic Sectors on the National Amber List include the~~
4 ~~following:~~

5 ~~(i) banking, other than as defined in title 29 of this~~
6 ~~code;~~

7 ~~(ii) insurance; and~~

8 ~~(iii) such other economic sectors as the Secretary~~
9 ~~may, after consultation with States pursuant to~~

10 ~~section 206(2) of this chapter, designate in the FSM~~

11 ~~Foreign Investment Regulations as being on the~~

12 ~~National Amber List.]~~

13 (b) National Restricted Category

14 The economic sectors under this category shall be
15 identified by the Department and made part of the National
16 Foreign Investment Regulations subject to specified
17 criteria on how they must be met.

18 (c) National Green Investment Category

19 The economic sectors under this category shall be
20 identified by the Department and made part of the National
21 Foreign Investment Regulations subject to specified
22 criteria on how they must be met.

23 ~~[Category C ("National Green List") The set of economic~~
24 ~~sectors that are subject to National Government regulation~~

1 but as to which no special criteria need to be met before
2 a Foreign Investment Permit is to be issued. Economic
3 sectors on the National Green List include the following:

4 (i) banking, as defined in title 29 of this code;

5 (ii) telecommunications;

6 (iii) fishing in the FSM's Exclusive Economic Zone;

7 (iv) international and interstate air transport;

8 (v) international shipping; and

9 (vi) such other economic sectors as the Secretary

10 may, after consultation with States pursuant to

11 section 206(2) of this chapter, designate in the

12 FSM Foreign Investment Regulations as being on

13 the National Green List.]

14 [(2)](d) National Reserved Category [Categories for State

15 Regulation—Economic sectors that are not of special national

16 significance and therefore are delegated to the jurisdiction of

17 the State Governments in respect of foreign investment

18 regulation. These Categories are to be established separately by

19 each State, by means of the State Foreign Investment Regulations

20 in each State. An economic sector included in any of the

21 Categories for National Regulation pursuant to subsection (1)

22 above shall not appear in any of the Categories for State

23 Regulation. In the absence of State foreign investment

24 legislation, the National government will continue to regulate

1 ~~foreign investment in that State pursuant to provisions of the~~
2 ~~FSM Foreign Investment Act superseded by this act.]~~

3 Economic sectors under National Reserved Category shall be
4 developed in consultation with the States following the
5 effective date of this act to be incorporated into the National
6 Foreign Investment Regulations for the purpose of safeguarding
7 the interests of local businesses and reserving business
8 opportunities for the citizens, and to effectively facilitate
9 review, screening, and issuance of permit by the National
10 Foreign Investment Single Window.

11 [~~3~~](2) notwithstanding anything to the contrary in subsection
12 (1) of this section, and regardless of the economic category
13 involved:

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

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

24 Section 5. Section 206 of title 32 of the Code of the

1 Federated States of Micronesia (Annotated), is hereby amended to
2 read as follows:

3 "Section 206. Responsibilities of the National and State
4 Governments regarding foreign investment.

5 (1) The National Government of the FSM shall be
6 responsible, at the initiative of the Secretary, for:

7 (a) determining, after consultation with the States as
8 required under subsection (2) below, which economic
9 sectors, in addition to those enumerated in section
10 205(1) of this chapter, shall be designated for
11 inclusion in [~~Category A~~ ~~()~~ National Red Prohibited
12 Category List], [~~Category B~~ ~~()~~ National Amber
13 Restricted Category List], and Category C ~~()~~ National
14 Green Investment List], and National Reserved
15 Category.

16 (b) determining what criteria, if any, shall be
17 specified for foreign investments in [~~Category B~~
18 ~~()~~ National [Amber] Restricted Category List] economic
19 sectors.

20 (c) the issuance of FSM Foreign Investment Permits in
21 respect of [~~Category B and Category C~~] National
22 Restricted Category List, National Green Investment
23 List, and National Reserved Category economic sectors,
24 and in general for the administration of foreign

1 investment rules established by this act or by the FSM
2 Foreign Investment Regulations.

3 (d) promulgating such FSM Foreign Investment
4 Regulations as may be necessary for the effective and
5 efficient discharge of the responsibilities enumerated
6 in this subsection and in general for the proper
7 administration of this chapter.

8 (e) Develop and execute a national and state
9 monitoring system between designated National and
10 State agencies responsible for monitoring foreign
11 investment to ensure that investors comply with their
12 foreign investment permits and commitments to support
13 the FSM economic development priorities.

14 (2) The National Government and the state governments or
15 their designated agencies or authorities shall meet
16 regularly, at least once every two years, [with authorities
17 designated by the Governments of the States] to review
18 sectoral developments priorities and [to discuss proposals
19 to add economic sectors to, or remove them from, Category A
20 (National Red List), Category B (National Amber List), or
21 Category C (National Green List) under section 205(1) of
22 this chapter.] to formulate policy recommendations in order
23 to improve the implementation of this chapter.

24 [~~3) The Government of each individual State shall be~~

1 ~~responsible for the regulation of foreign investment,~~
2 ~~including the issuance of State Foreign Investment Permits,~~
3 ~~in respect of foreign investment taking place or proposed~~
4 ~~to take place within the territory of that State in all~~
5 ~~economic sectors other than those designated for inclusion~~
6 ~~in Categories A, B, or C pursuant to section 205(1) of this~~
7 ~~chapter.~~

8 ~~(4) If any foreign investment of a type described in~~
9 ~~subsection (3) of this section takes place or is proposed~~
10 ~~to take place within the territories of more than one~~
11 ~~State, each of those States shall have authority to~~
12 ~~regulate such foreign investment within its own territory.~~

13 ~~(5) Action taken by the Government of a State under~~
14 ~~subsections (3) and (4) of this section shall be consistent~~
15 ~~with the provisions of this chapter and the FSM Foreign~~
16 ~~Investment Regulations.]~~

17 (3) [(6)] If any foreign investment or proposed foreign
18 investment involves more than one economic sector, and
19 those economic sectors are designated for inclusion in more
20 than one Category pursuant to section 205 of this chapter,
21 such investment or proposed investment shall be subject to
22 the [rules and jurisdiction applicable to each such
23 Category as described in this section and elsewhere in this
24 chapter.] provisions of this law and FSM Foreign Investment

1 Regulations.

2 [~~(7) The Department shall, upon request, offer assistance:~~

3 ~~(a) to States in the areas of foreign investment~~

4 ~~policy and promotion, under terms to be specified in~~

5 ~~the FSM Foreign Investment Regulations; and~~

6 ~~(b) to foreign investors with investments taking place~~

7 ~~or proposed to take place within the territory of more~~

8 ~~than one State, under terms and guidelines agreed with~~

9 ~~the concerned States.~~

10 ~~(8) In the absence of State Foreign Investment Legislation,~~

11 ~~the National Government will continue to regulate foreign~~

12 ~~investment in that State pursuant to provisions of the~~

13 ~~Foreign Investment Regulations which shall be substantially~~

14 ~~the same as the Foreign Investment Act which is superseded~~

15 ~~by this Act.]”~~

16 Section 6. Section 208 of title 32 of the Code of the

17 Federated States of Micronesia (Annotated), is hereby amended to

18 read as follow:

19 “Section 208. [~~Application procedures for State Foreign~~

20 ~~Investment Permits.~~

21 ~~An application for a State Foreign Investment Permit shall~~

22 ~~be made in accordance with the provisions of State Foreign~~

23 ~~Investment Legislation and State Foreign Investment~~

24 ~~Regulations. In the interest of coordination and reducing~~

1 ~~administrative burdens on foreign investors, such~~
2 ~~provisions should:~~

3 ~~(1) establish rules and procedures consistent with the~~
4 ~~provisions of this chapter and with the provisions of~~
5 ~~the FSM Foreign Investment Regulations;~~

6 ~~(2) direct the responsible State authorities to make~~
7 ~~available to the Department copies of the application~~
8 ~~forms for State Foreign Investment Permits, together~~
9 ~~with such other materials and information necessary for~~
10 ~~the Department to assist prospective foreign investors;~~

11 ~~(3) direct the responsible State authorities to forward to~~
12 ~~the Secretary any application for an FSM Foreign~~
13 ~~Investment Permit, or any information submitted in~~
14 ~~support of such an application; and~~

15 ~~(4) direct the responsible State authorities to forward to~~
16 ~~the Department a copy of any State Foreign Investment~~
17 ~~Permit issued by those authorities]."~~

18 Transition.

19 Within one year from the effective date of this act, holder of
20 existing foreign investment permit issued by state authority
21 is required to apply for a foreign investment permit and to
22 qualify for issuance of foreign investment permit in
23 accordance with this chapter to be able to continue to engage
24 in business. Failing to apply for permit or to qualify for

1 issuance of permit will result in the immediate discontinuance
2 of business. During the one-year period, state authority shall
3 refrain from issuing any new foreign investment permit."

4 Section 7. This act shall become law upon approval by the
5 President of the Federated States of Micronesia or upon its
6 becoming law without such approval.

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8 Date: 5/17/18

Introduced by: /s/ Florencio S. Harper
Florencio S. Harper
(by request)

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