

AN ACT

To further amend title 32 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21, 5-54, and 5-109, by further amending section 202, as amended by Public Law No. 5-21; by amending section 203; and by amending sections 206-214, 219, 221, 222, and 225-227, as renumbered by Public Law No. 5-21; for the purpose of amending the Foreign-Investment Act; and for other purposes.

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

1 Section 1. Section 202 of title 32 of the Code of the
2 Federated States of Micronesia, as amended by Public Law No.
3 5-21, is hereby further amended to read as follows:

4 "Section 202. Definitions. When words defined in this
5 section are used in this chapter, unless otherwise
6 required by the context, the following definitions shall
7 govern:

8 (1) 'Business' means any sole proprietorship,
9 partnership, corporation, or any other association
10 engaged in commerce.

11 (2) 'Citizen' means any person or business not
12 included in the definition of noncitizen contained in
13 this chapter.

14 (3) 'Licensee' means any noncitizen who has been issued
15 a foreign-investment permit under this chapter, including
16 agents or employees of the noncitizen.

17 (4) 'Noncitizen' means any person who is not a citizen
18 of the Federated States of Micronesia, and any business in
19 which any interest is owned by a person who is not a
20 citizen of the Federated States of Micronesia.

21 (5) 'President' means the President of the Federated
22 States of Micronesia.

1 (6) 'Secretary' means the Secretary of Resources and
2 Development of the Federated States of Micronesia.

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

8 Section 2. Section 203 of title 32 of the Code of the Federated
9 States of Micronesia is hereby amended to read as follows:

10 "Section 203. Business activities and interests for which
11 permits required.

12 (1) A noncitizen may not engage in any business in
13 the Federated States of Micronesia, including, but not
14 limited to, business relating to the practice of law and
15 other professions, without first obtaining a
16 foreign-investment permit.

17 (2) A noncitizen may not acquire, without first
18 obtaining a foreign-investment permit, greater than a twenty
19 percent interest or having previously obtained a twenty
20 percent or greater interest, may not acquire, without first
21 obtaining a foreign-investment permit, any additional
22 interest, other than a security interest in real or
23 personal property for the purpose of securing a loan, in
24 any business operating in the Federated States of Micronesia.
25 For the purposes of this paragraph, any interest held



1 by the noncitizen spouse, minor child or other dependent of
2 any noncitizen shall be counted as owned by that noncitizen
3 in determining whether he has acquired a twenty percent or
4 greater interest.

5 (3) A noncitizen engaged in business in the Federated
6 States of Micronesia on the effective date of this chapter
7 under a permit issued under the Trust Territory Foreign
8 Investors' Business Permit Act or under an agreement with the
9 Trust Territory Government shall not continue to engage in
10 business in the Federated States of Micronesia after the
11 expiration of that permit or agreement without first
12 obtaining a foreign-investment permit."

13 Section 3. Section 206 of title 32 of the Code of the
14 Federated States of Micronesia, as renumbered by Public Law
15 No. 5-21, is hereby amended to read as follows:

16 "Section 206. Application - Identification of interstate
17 or international character of business. The Secretary
18 shall review each foreign-investment permit application, and
19 shall, within twenty days of the filing of the application,
20 determine whether or not the business activities proposed
21 will fall within any of the following categories:

22 (1) Will the applicant engage in business in more
23 than one State;

24 (2) Will the applicant's business receive fifty
25 percent or more of its total revenue from the export

1 of goods or services to another State or nation;

2 (3) Will the applicant engage in the processing,
3 manufacturing, assembling, or building of goods or
4 products, and if so, will fifty percent or more of the
5 materials processed or used be imported from another State
6 or nation; or

7 (4) Will the applicant engage in communications, air
8 or sea transportation, or the shipment of fuel between
9 States or between the Federated States of Micronesia and
10 another nation?"

11 Section 4. Section 207 of title 32 of the Code of the
12 Federated States of Micronesia, as renumbered by Public Law
13 No. 5-21, is hereby amended to read as follows:

14 "Section 207. Application - Business with interstate or
15 international character. If the Secretary determines
16 that the applicant's business falls within one or more of
17 the categories set out in section 206 of this chapter, the
18 procedures set forth in sections 208 through 212 of this
19 chapter shall apply."

20 Section 5. Section 208 of title 32 of the Code of the Federated
21 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
22 amended to read as follows:

23 "Section 208. Application - Review and investigation.
24 Upon making the section 206 determination, the Secretary
25 shall collect any further information which he believes

1 will be useful for the evaluation of the application."

2 Section 6. Section 209 of title 32 of the Code of the Federated
3 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
4 amended to read as follows:

5 "Section 209. Application - State recommendation. At the
6 time the application is received by the Secretary, a copy
7 of the application shall be delivered to the State authority
8 of each State. The State authorities may examine the
9 application and may make a recommendation as to the approval
10 of the application. The Secretary shall deliver copies of
11 any information which he obtains under section 208 of this
12 chapter to the State authorities. The State authorities
13 shall have thirty days from receipt of the informational
14 material from the Secretary to deliver recommendations
15 to the Secretary."

16 Section 7. Section 210 of title 32 of the Code of the Federated
17 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
18 amended to read as follows:

19 "Section 210. Application - Decision by Secretary.
20 Upon receipt of the information and recommendations called
21 for in sections 208 and 209 of this chapter, or upon
22 expiration of the time set for submission of such
23 information and recommendations, whichever occurs first,
24 the Secretary shall, within an additional thirty days,
25 decide whether or not to grant the foreign-investment permit,

1 based on all relevant factors, including:

2 (1) the economic, social, or environmental need for
3 the business activity to be performed;

4 (2) the degree to which such activities will effect
5 change in exports or imports;

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

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

17 (5) the willingness and specific plans of the
18 applicant to give employment preference to citizens and to
19 train citizens for positions in management and at other
20 levels by instituting training programs;

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

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

6 (8) the extent to which the activity will contribute
7 to the constitutional policy of making education, health
8 care, and legal services available to the people of the
9 Federated States of Micronesia; and

10 (9) the recommendations, if any, made by the
11 State authorities."

12 Section 8. Section 211 of title 32 of the Code of the Federated
13 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
14 amended to read as follows:

15 "Section 211. Approval of application - Limitations
16 authorized. If the Secretary decides that the foreign-
17 investment permit should be granted, he may also impose
18 limitations on the issuance of the permit."

19 Section 9. Section 212 of title 32 of the Code of the Federated
20 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
21 amended to read as follows:"

22 "Section 212. Notice to President of action on application.
23 The Secretary shall deliver notice of the action he takes on
24 the permit application, together with a statement of reasons
25 in support of the action taken, to the President as soon as

1 the permit is granted or denied."

2 Section 10. Section 213 of title 32 of the Code of the Federated
3 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
4 amended to read as follows:

5 "Section 213. Application - Business lacking interstate
6 or international character. If the Secretary determines
7 that the applicant's business does not fall within any of
8 the categories set out in section 206 of this chapter, the
9 following procedure shall apply:

10 (1) Upon making the section 206 determination,
11 the Secretary shall refer the foreign-investment permit
12 application to the State authority of the State affected
13 by the applicant's business.

14 (2) The State authority shall approve or disapprove
15 the permit application, stating its reasons for approving
16 or disapproving in a report which shall be delivered
17 to the Secretary within forty-five days of the receipt
18 of the application by the State authority. The Secretary
19 shall promptly grant or deny the permit in conformity with
20 the action taken by the State authority and shall immediately
21 notify the President of the action taken.

22 (3) If the State authority approves the application,
23 he may impose limitations on the issuance of the permit."

24 Section 11. Section 214 of title 32 of the Code of the Federated
25 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby

1 amended to read as follows:

2 "Section 214. President's action on foreign-investment
3 permits.

4 (1) Within twenty days of receipt of notice of a
5 permit action taken by the Secretary, the President
6 may reverse the decision of the Secretary if he determines
7 that the action taken would adversely affect a compelling
8 National interest relating to foreign affairs or to the
9 general public welfare.

10 (2) If the President takes no action within the
11 prescribed time limits, the Secretary's action stands.

12 (3) If the President reverses the action taken by the
13 Secretary, he shall notify the Secretary, the applicant,
14 and the State authorities by certified mail of his decision
15 and the reasons for the decision.

16 (4) No permit decision by the Secretary is final
17 until the requirements of this section have been met."

18 Section 12. Section 219 of title 32 of the Code of the Federated
19 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
20 amended to read as follows:

21 "Section 219. Change in licensee's business. If a licensee
22 intends to substantially alter the business activity on
23 which the foreign-investment permit is based or intends to
24 undertake significant additional business activities not
25 contemplated at the time of the original application, the

1 licensee shall submit an application for a new foreign-
2 investment permit to the Secretary, which shall be
3 considered in accordance with sections 206 through 214
4 of this chapter except that the Secretary or the State
5 authority need not duplicate investigatory efforts made in
6 connection with the original application. The licensee
7 shall not alter its business activities or add new business
8 activities until a new permit is granted."

9 Section 13. Section 221 of title 32 of the Code of the Federated
10 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
11 amended to read as follows:

12 "Section 221. Modification, suspension, or revocation of
13 permit - Grounds. A foreign-investment permit may be
14 modified, suspended, or revoked by the Secretary if:

15 (1) the original permit application is found to have
16 contained false or fraudulent information;

17 (2) the licensee bribed or otherwise influenced or
18 attempted to bribe or influence the Secretary or any member
19 of a State authority to issue the permit;

20 (3) the licensee presented false or fraudulent
21 information to the Secretary or to a State authority in
22 support of the application;

23 (4) the licensee violates any law of the Federated
24 States of Micronesia or of any political subdivision within
25 the Federated States of Micronesia, or any of the

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

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

5 (6) the licensee engages in business activities
6 substantially outside the scope of the permit;

7 (7) the licensee fails or refuses to comply with the
8 reporting requirements of section 217 or 218 of this
9 chapter, and such failure continues for a period of sixty
10 days after any report is due; or

11 (8) the licensee refuses or fails to comply with
12 orders for production of documents and things or for
13 attendance of witnesses under section 226 of this chapter."

14 Section 14. Section 222 of title 32 of the Code of the Federated
15 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
16 amended to read as follows:

17 "Section 222. Modification, suspension, or revocation of
18 permit - Procedure.

19 (1) The Secretary shall, upon receipt of information
20 which indicates that a permit should be modified, suspended,
21 or revoked, schedule a hearing on the matter before the
22 Secretary. At least twenty-one days' written notice of
23 the hearing shall be given to the licensee stating the
24 alleged violations.

25 (2) Hearing procedure shall be prescribed by the

1 Secretary by regulation and shall include the right
2 of the licensee to participate and to be represented by
3 counsel, to call witnesses, and to cross-examine
4 witnesses called against the licensee.

5 (3) After the hearing the Secretary may modify,
6 suspend, or revoke the permit, and in such cases the
7 Secretary shall notify the licensee of the action taken by
8 certified mail within five days of the hearing, stating the
9 reasons for the action taken.

10 (4) A licensee whose permit has been modified,
11 suspended, or revoked may appeal the decision of the
12 Secretary to the Supreme Court of the Federated States of
13 Micronesia within twenty days after receipt of notice of
14 the action of the Secretary. Copies of the notice of appeal
15 shall be served on the Secretary and the Attorney General."

16 Section 15. Section 225 of title 32 of the Code of the Federated
17 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
18 amended to read as follows:

19 "Section 225. Enforcement responsibility. Primary
20 responsibility for the enforcement of this chapter shall be
21 placed in the Secretary, and, as to criminal sanctions
22 provided in section 229 of this chapter, appropriate
23 law-enforcement authorities within the Federated States
24 of Micronesia."

25 Section 16. Section 226 of title 32 of the Code of the Federated

1 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
2 amended to read as follows:

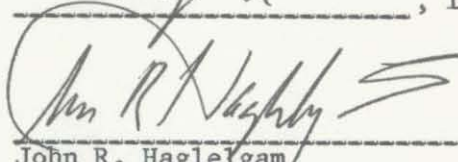
3 "Section 226. Production of information. In carrying out
4 the duties imposed by this chapter the Secretary may
5 require the attendance of any citizen or noncitizen at a
6 meeting or hearing conducted by the Secretary and may
7 require such persons to testify or to produce at, before,
8 or after such meeting or hearing documents, information,
9 and things relevant to enforcement of the provisions
10 of this chapter."

11 Section 17. Section 227 of title 32 of the Code of the Federated
12 States of Micronesia, as renumbered by Public Law No. 5-21, is hereby
13 amended to read as follows:

14 "Section 227. Rules and regulations. The Secretary
15 shall promulgate the regulations necessary to implement
16 this chapter, which regulations shall have the force
17 and effect of law."

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

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May 2, 1989

John R. Haglergam
President
Federated States of Micronesia

