

## **CHAPTER 2**

### **Foreign Investment**

#### **SUBCHAPTER I**

##### **Introductory Provisions**

###### **SECTIONS**

- § 201. Short title.**
- § 202. Purpose of this chapter.**
- § 203. Definition.**

#### **SUBCHAPTER II**

##### **General Rules Allocation of Government Responsibilities**

###### **SECTIONS**

- § 204. Requirement that a foreign investor obtain a Foreign Investment Permit.**
- § 205. Categories of economic sectors.**
- § 206. Responsibilities of the National and State Governments regarding foreign investment.**

#### **SUBCHAPTER III**

##### **Foreign Investment Permits**

###### **SECTIONS**

- § 207. Application procedures for FSM Foreign Investment Permits.**
- § 208. Application procedures for State Foreign Investment Permits.**
- § 209. Form, fees, renewal, modification, and cancellation of FSM Foreign Investment Permits.**

## **SUBCHAPTER IV**

### **Expatriate Worker Authorizations and Entry Permits**

#### **SECTIONS**

- § 210. Expatriate Worker Authorizations.**
- § 211. Issuance of entry permits.**
- § 212. Renewal and cancellation of entry permits.**

## **SUBCHAPTER V**

### **Reporting Requirements**

#### **SECTIONS**

- § 213. Reports by holders of FSM Foreign Investment Permits.**
- § 214. Reports by the National Government of the FSM.**
- § 215. Reports by the State Governments.**
- § 215A. Review of compliance by holders of FSM Foreign Investment Permits.**

## **SUBCHAPTER VI**

### **Guarantees and Entitlements**

#### **SECTIONS**

- § 216. Compulsory acquisition of foreign investment property**
- § 217. Transfers of earnings and capital**
- § 218. Change in law and regulations**
- § 219. Non-discriminatory treatment**

## **SUBCHAPTER VII**

### **Sanctions; Judicial Review; Other Provisions**

**SECTIONS**

- § 220. **Injunction and penalties.**
- § 221. **Judicial review.**
- § 222. **Confidentiality.**
- § 223. **Enforcement.**
- § 224. **Transitional provisions.**
- § 225. **Effectiveness; repeal.**

**SUBCHAPTER I****Introductory Provisions****§ 201. Short title.**

This chapter is known and may be cited as the "Foreign Investment Act of 1997".

**Source:** PL 10-49 § 4.

**Editor's note:** The division of this chapter into parts in PL 10-49 was changed to subchapters in accordance with standard code format.

**Cross-reference:** For provisions on Trade and Property Rights, see title 1 (General Provisions), § 113 of this code.

**§ 202. Purpose of this chapter.**

The purpose of this chapter is to encourage foreign investment within the territory of the FSM in a manner that serves the economic, social, and cultural interests of its citizens. This purpose shall be borne in mind in the implementation and interpretation of the provisions of this chapter.

**Source:** PL 10-49 § 5.

**§ 203. Definition.**

When words defined in this section are used in this chapter, unless otherwise required by the context, the following definitions shall govern:

- (1) “business entity” means any sole proprietorship, partnership, company, corporation, joint venture, or other association of persons engaging in business;
- (2) “character criteria” means the criteria established in the FSM Foreign Investment Regulations pursuant section 205(3) of this chapter;
- (3) “citizen” means a citizen of the FSM;
- (4) “Department” means the Department of Resources and Development of the FSM or its successor;
- (5) “engaging in business” means carrying out any activity relating to the conduct of a business, and shall include the activities enumerated in subsection (5)(a) of this section but shall not include the activities enumerated in subsection (5)(b) of this section:
  - (a) “engaging in business” shall include:
    - (i) buying, selling, leasing, or exchanging goods, products, or property of any kind for commercial purposes;
    - (ii) buying, selling, or exchanging services of any kind for commercial purposes;
    - (iii) conducting negotiations for transactions of the types described in items (i) or (ii) of this section; provided, however, that negotiations with licensed importers for periods of less than 14 days per calendar year shall not be considered “engaging in business”;
    - (iv) appointing a representative, agent, or distributor by a noncitizen to perform any of the acts described in items (i) through (iii) of this section, unless said representative, agent, or distributor has an independent status and transacts business in its name for its own account and not in the name of or for the account of any noncitizen principal;
    - (v) maintaining a stock of goods in the FSM for the purpose of having the same processed by another person in the FSM;
    - (vi) establishing or operating a factory, workshop, processing plant, warehouse, or store, whether wholesale or retail;
    - (vii) mining or exploring for minerals, or the commercial exploitation or extraction of other natural resources;
    - (viii) providing services as a management firm or professional consultant in the management, supervision, or control of any business entity; and
    - (ix) providing professional services as an attorney, physician, dentist, engineer, surveyor, accountant, auditor, or other professional providing service for a fee; provided, however, that such a professional shall not be considered to be "engaging in business" unless he or she, while present in the FSM, performs his or her respective professional services for more than 14 days in any calendar year;
  - (b) engaging in business shall not include:
    - (i) the publication of general advertisements through newspapers, brochures, or other publications, or through radio or television;
    - (ii) the conducting of scientific research or investigations, if

(A) the research or investigation is sponsored by a university, college, agency, or institution normally engaged in such activities primarily for purposes other than commercial profit, and

(B) the particular research or investigation at issue is not for purposes of, or expected to yield, commercial profit;

(iii) the collection of information by a *bona fide* journalist for news publication or broadcast;

(iv) maintaining or defending any action or suit, or participating in administrative proceedings, arbitration, or mediation;

(v) maintaining bank accounts; or

(vi) the lawful sale of corporate shares or other interests or holdings in a business entity acquired not for speculation or profit; or

(vii) the making of occasional sales as defined by the FSM Foreign Investment Regulations;

(6) “foreign investment” means any activity in the FSM by a noncitizen that amounts to “engaging in business” as defined above;

(7) “Foreign Investment Permit” means an FSM Foreign Investment Permit, a State Foreign Investment Permit, or a Pre-Existing Foreign Investment Permit;

(8) “foreign investor” means a noncitizen who is engaging in business in the FSM, as defined above;

(9) “FSM” means the Federated States of Micronesia;

(10) “FSM Foreign Investment Permit” means a permit issued by the Secretary in accordance with the provisions of this chapter;

(11) “FSM Foreign Investment Regulations” means Regulations promulgated by the Secretary in accordance with the provisions of this chapter;

(12) “noncitizen” means any person who is not a citizen of the FSM, and any business entity in which any ownership interest is held by a person who is not a citizen of the FSM;

(13) “ownership interest” in a business entity means ownership of or control over, whether directly, indirectly, legally or beneficially, some or all of the shares of, property or assets of, voting rights in, or rights to profits or revenue from, that business entity; provided, however, that:

(a) ownership interest shall not include a *bona fide* security interest in real or personal property for the purpose of securing a loan or other obligation; and

(b) any interest owned or controlled by the spouse, minor child, or other dependent of a person shall be counted as owned or controlled by that person in determining whether he or she has an ownership interest in a business entity, provided that this subsection shall not apply to a noncitizen spouse who is married to a citizen and who does not hold an ownership interest in his or her own right;

(14) “person” includes both individuals and legal entities;

(15) “Pre-Existing Foreign Investment Permit” means a permit issued by the Secretary or by a State prior to the date on which this Act took effect, and which has not expired according to its terms or been suspended or canceled;

(16) “Secretary” means the Secretary of the Department Economic Affairs of the FSM;

(17) “State” means one of the States of the FSM;

(18) “State Foreign Investment Legislation” means legislation enacted and currently effective in one of the States to regulate foreign investment within that State;

(19) “State Foreign Investment Permit” means a permit issued by authorized officials within one of the States pursuant to relevant State Foreign Investment Legislation;

(20) “Substantial ownership interest” means an ownership interest in a business entity of at least 30 percent.

**Source:** PL 10-49 § 6; PL 14-32 § 1.

**Case annotations:** By statute the practice of law is specifically included in businesses engaged in by noncitizens requiring a foreign investment permit. 32 F.S.M.C. 203. *Michelsen v. FSM*, 5 FSM R. 249, 254 (App. 1991).

## SUBCHAPTER II

### General Rules Allocation of Government Responsibilities

#### **§ 204. Requirement that a foreign investor obtain a Foreign Investment Permit.**

A noncitizen may not conduct any activity in the FSM that amounts to “engaging in business”, as defined in section 203 of this chapter, unless that noncitizen holds a currently valid Foreign Investment Permit authorizing that noncitizen to conduct that activity, except as provided in section 419 of chapter 4 of title 55 of this code.

**Source:** PL 10-49 § 7; PL 14-48 § 2.

**Cross-reference:** Title 55 of this code is on Government Finance and Contracts. Section 419 of chapter 4 (Government Contracts) of title 55 of this code is on Implementation of Infrastructure Development Plan.

**Case annotation:** A noncitizen cannot engage in business in the FSM unless that noncitizen holds a valid foreign investment permit. A “noncitizen” is any business entity in which any ownership interest is held by a person who is not a citizen of the FSM. *Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co.*, 12 FSM R. 413, 414-15 (Chk. 2004).

#### **§ 205. Categories of economic sectors.**

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

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

(1) *Categories for National Regulation*—economic sectors that are of special national significance and therefore fall within the jurisdiction of the National Government in respect of foreign investment regulation. These Categories are the following:

(a) *Category A (“National Red List”)*—the set of economic sectors that are closed to foreign investment anywhere in the FSM. Economic sectors in the National Red List are the following:

- (i) arms manufacture;
- (ii) the minting of coins or printing of notes for use as currency;
- (iii) business activities relating to nuclear power or radioactivity; and
- (iv) such other economic sectors as the Secretary may, after consultation with States pursuant to section 206(2) of this chapter, designate in the FSM Foreign Investment Regulations as being on the National Red List.

(b) *Category B (“National Amber List”)*—the set of economic sectors that are subject to National Government regulation and as to which certain criteria specified in the FSM Foreign Investment Regulations must be met. Economic Sectors on the National Amber List include the following:

- (i) banking, other than as defined in title 29 of this code; and
- (ii) insurance; and
- (iii) such other economic sectors as the Secretary may, after consultation with States pursuant to section 206(2) of this chapter, designate in the FSM Foreign Investment Regulations as being on the National Amber List.

(c) *Category C (“National Green List”)*—the set of economic sectors that are subject to National Government regulation but as to which no special criteria need to be met before a Foreign Investment Permit is to be issued. Economic sectors on the National Green List include the following:

- (i) banking, as defined in title 29 of this code;
- (ii) telecommunications;
- (iii) fishing in the FSM's Exclusive Economic Zone;
- (iv) international and interstate air transport;
- (v) international shipping; and
- (vi) such other economic sectors as the Secretary may, after consultation with States pursuant to section 206(2) of this chapter, designate in the FSM Foreign Investment Regulations as being on the National Green List.

(2) *Categories for State Regulation*—economic sectors that are not of special national significance and therefore are delegated to the jurisdiction of the State Governments in respect of foreign investment regulation. These Categories are to be established separately by each State, by means of the State Foreign Investment Regulations in each State. An economic sector included in any of the Categories for National Regulation pursuant to subsection (1) of this section shall not appear in any of the Categories for State Regulation.

(3) Notwithstanding anything to the contrary in subsection (1) of this section, and regardless of the economic

category involved:

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

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

**Source:** PL 10-49 § 9; PL 14-32 § 2.

**Case annotations:** The Foreign Investment Act regulates the operation of noncitizen business within the Federated States of Micronesia, not individual investors. 32 F.S.M.C. §§ 203(2) and 204 have no application to acquisitions of interests in a business operating in the Federated States of Micronesia with a national foreign investment permit. *Michelsen v. FSM*, 3 FSM R. 416, 426 (Pon. 1988).

The Foreign Investment Act of 1997 establishes a system of Categories of economic sectors for the purposes of implementing the FSM policy to welcome foreign investment in all sectors of the FSM economy. Three of these categories are made up of economic sectors that are of special national significance and therefore fall within the national government's jurisdiction in respect of foreign investment regulation. The first is the National Red List. No foreign investment is permitted in the activities specified on this list, which includes the minting of money and arms manufacture. The second is the National Amber List. Banking (other than as defined in Title 29 of the FSM Code) and insurance are included on this list. Certain criteria specified in the FSM Foreign Investment Regulations must be met before investment is permitted in these areas. A third category of activities that fall within the jurisdiction of the national government appear on the National Green List. *Helicopter Aerial Survey Pty., Ltd. v. Pohnpei*, 15 FSM R. 329, 333-34 (Pon. 2007).

Foreign investment Category C (National Green List) comprises the set of economic sectors that are subject to national government regulation but as to which no special criteria need to be met before a foreign investment permit is to be issued. It includes banking, as defined in title 29 of the FSM Code; telecommunications; fishing in the FSM's Exclusive Economic Zone; international and interstate air transport; international shipping; and such other economic sectors as the Secretary may, after consultation with States, designate in the FSM Foreign Investment Regulations as being on the National Green List. *Helicopter Aerial Survey Pty., Ltd. v. Pohnpei*, 15 FSM R. 329, 334 (Pon. 2007).

In contrast to the three areas subject to national regulation, economic sectors that are not of special national significance are delegated to the jurisdiction of the state governments in respect of foreign investment regulation, which are to be established separately by each state, except that an economic sector included in any of the categories for national regulation cannot appear in any of the categories for state regulation. *Helicopter Aerial Survey Pty., Ltd. v. Pohnpei*, 15 FSM R. 329, 334 (Pon. 2007).

## **§ 206. Responsibilities of the National and State Governments regarding foreign investment.**

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

(a) determining, after consultation with the States as required under subsection (2) of this section, which economic sectors, in addition to those enumerated in section 205(1) of this chapter, shall be designated for inclusion in Category A (National Red List), Category B (National Amber List), and Category C (National Green List).

(b) determining what criteria, if any, shall be specified for foreign investments in Category B (National Amber List) economic sectors.



(c) the issuance of FSM Foreign Investment Permits in respect of Category B and Category C economic sectors, and in general for the administration of foreign investment rules established by this act or by the FSM Foreign Investment Regulations.

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

(2) The National Government shall meet regularly, at least once every two years, with authorities designated by the Governments of the States to review sectoral developments and to discuss proposals to add economic sectors to, or remove them from, Category A (National Red List), Category B (National Amber List), or Category C (National Green List) under section 205(1) of this chapter.

(3) The Government of each individual State shall be responsible for the regulation of foreign investment, including the issuance of State Foreign Investment Permits, in respect of foreign investment taking place or proposed to take place within the territory of that State in all economic sectors other than those designated for inclusion in Categories A, B, or C pursuant to section 205(1) of this chapter.

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

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

(6) If any foreign investment or proposed foreign investment involves more than one economic sector, and those economic sectors are designated for inclusion in more than one Category pursuant to section 205 of this chapter, such investment or proposed investment shall be subject to the rules and jurisdiction applicable to each such Category as described in this section and elsewhere in this chapter.

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

(a) to States in the areas of foreign investment policy and promotion, under terms to be specified in the FSM Foreign Investment Regulations; and

(b) to foreign investors with investments taking place or proposed to take place within the territory of more than one State, under terms and guidelines agreed with the concerned States.

(8) In the absence of State Foreign Investment Legislation, the National Government will continue to regulate foreign investment in that State pursuant to provisions of the Foreign Investment Regulations which shall be substantially the same as the Foreign Investment Act which is superseded by this Act.

**Source:** PL 10-49 § 10.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions,

committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

**Case annotations:** The following case annotations that interpreted provisions of the previous Foreign Investment Act have been retained below for reference purposes.

Based on the language and legislative history of the FSM Foreign Investment Act, 32 F.S.M.C. 201-232, and on that law's similarity to its Trust Territory predecessor, there is no indication that Congress intended the Foreign Investment Act to apply to the provision of legal services. *Carlos v. FSM*, 4 FSM R. 17, 28-29 (App. 1989) (Following this decision, the FSM Congress amended 32 F.S.M.C. 203 and 210(8) to specifically include legal services).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in art. XIII, § 1 of the FSM Constitution in enacting Foreign Investment Act, 32 F.S.M.C. 201-232, the avoidance of potential conflict with Constitution calls for conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in art. XIII, § 1 of the Constitution. *Carlos v. FSM*, 4 FSM R. 17, 30 (App. 1989) (Following this decision, the FSM Congress amended 32 F.S.M.C. 203 and 210(8) to specifically include legal services).

By statute the practice of law is specifically included in businesses engaged in by noncitizens requiring a foreign investment permit. 32 F.S.M.C. 203. *Michelsen v. FSM*, 5 FSM R. 249, 254 (App. 1991).

The Foreign Investment Act does not explicitly limit judicial review therefore an aggrieved person affected by an agency decision may seek review under the Administrative Procedures Act. *Michelsen v. FSM*, 5 FSM R. 249, 254 (App. 1991).

The scheme of national, constitutionally-authorized foreign investment legislation is so pervasive there is no room for state to supplement it. Non-FSM citizen attorneys and their private practice of law are expressly subjected to the national legislative scheme. Insofar as attorneys who are engaged in the private practice of law and whose business activities are within the scope of the nat'l FIA, the state FIA is invalid. *Berman v. Pohnpei*, 5 FSM R. 303, 306 (Pon. 1992).

An isolated interest-free unsecured loan is not engaging in business within the meaning of the Pohnpei State Foreign Investment law. *Kihara v. Nanpei*, 5 FSM R. 342, 345 (Pon. 1992).

### SUBCHAPTER III

#### Foreign Investment Permits

#### **§ 207. Application procedures for FSM Foreign Investment Permits.**

(1) An application for an FSM Foreign Investment Permit shall be made on the form or forms prescribed in the FSM Foreign Investment Regulations, as may be supplemented in particular cases by order of the Secretary. Such application form or forms shall be made publicly available by the Secretary and by responsible authorities in each of the States. The application form shall require the applicant to identify clearly the person(s) resident in the Federated States of Micronesia who are designated as agent for service of process.

(2) Submission of an application for an FSM Foreign Investment Permit may be made either (a) to the Secretary or (b) to the responsible authorities in the State in whose territory the foreign investment takes place or is proposed to take place. In the latter case, the responsible State authorities shall forward the application directly to the Secretary.

(3) Upon receiving an application for an FSM Foreign Investment Permit, the Secretary shall, within such periods of time as may be prescribed for this purpose in the FSM Foreign Investment Regulations, take one or more of the following actions, as appropriate:

(a) determine whether the application relates to a foreign investment in a Category A, Category B, or Category C.

(b) deny the application if;

(i) it relates to a foreign investment in a Category A (National Red List) economic sector, or

(ii) it relates to a foreign investment in a Category B (National Amber List) economic sector but is incomplete or does not satisfactorily demonstrate that the investment would meet all of the applicable national criteria established in the FSM Foreign Investment Regulations pursuant to section 206(1)(b) of this chapter;

(c) forward the application to the responsible State authorities if it relates to a foreign investment in an economic sector other than those designated for inclusion in Category A, Category B, or Category C;

(d) Forward a notification copy of the application to the responsible State Authorities if it relates to a Foreign Investment in economic sector categories A, B, or C.

(e) require the applicant to submit further information if the application is incomplete or does not provide enough information for the Secretary to determine

(i) what economic sector(s) is (are) involved, or

(ii) whether the requirements for an FSM Foreign Investment Permit have been or will be met.

(f) issue an FSM Foreign Investment Permit if:

(i) the application

(A) relates to a foreign investment in a Category B (National Amber List) economic sector;

(B) is complete; and

(C) demonstrates that the foreign investment meets all of the applicable national criteria established in the FSM Foreign Investment Regulations pursuant to section 206(1)(b) of this chapter; or

(ii) the application is complete and relates to a foreign investment in a Category C (National Green List) economic sector.

(4) Upon taking any action described in paragraph (b), (e), or (f) of subsection (3) of this section, the Secretary shall, within such periods of time as may be prescribed for this purpose in the FSM Foreign Investment Regulations, advise the applicant of the action and the reasons therefor.

(5) The nature and amount of the application fee, if any, to be paid by an applicant seeking an FSM Foreign Investment Permit shall be established in the FSM Foreign Investment Regulations.

(6) If the Secretary issues an FSM Foreign Investment Permit pursuant to subsection (3)(f) of this section, the FSM Foreign Investment Permit will be sent to the applicant, with copies to be (a) inserted into a register to be maintained by the Department for this purpose and (b) sent to the responsible authority in each State, for insertion in a register to be maintained by such authorities for this purpose.

(7) If the Secretary denies an application for an FSM Foreign Investment Permit pursuant to subsection (3)(b)(ii) of this section, the applicant may (a) resubmit the application with modifications designed to meet the applicable national criteria established in the FSM Foreign Investment Regulations pursuant to section 206(1)(d) of this chapter, or (b) provide to the Secretary additional information or explanation to indicate how, in the applicant's opinion, the foreign investment would satisfy such criteria. On receipt of such modifications or additional information, the Secretary shall review the application and make a determination under the procedures prescribed in subsection (3) of this section. There is no limit to the number of times an applicant may modify an application in an attempt to satisfy the applicable criteria.

**Source:** PL 10-49 § 12; PL 14-32 § 3.

**Case annotations:** The “applicant” referred to in the Foreign Investment Act is one interested in doing business, not just investing money, in the FSM, and considerations to be employed in determining whether to grant an application relate to business operations within the FSM, not to investment of funds. *Michelsen v. FSM*, 3 FSM R. 416, 425 (Pon. 1988).

Since engaging in business is defined as carrying out any activity relating to the conduct of a business and expressly includes leasing property of any kind for commercial purposes, when a foreign investment permittee engaged in the business of providing operational and maintenance support to helicopters servicing fishing vessels in the FSM, its leasing helicopters is one aspect of its business that relates to its fishing activity and is therefore that leasing activity is subject to the FSM’s exclusive jurisdiction and regulation for foreign investment purposes. Thus Pohnpei may not require it to apply for a foreign investment permit. *Helicopter Aerial Survey Pty., Ltd. v. Pohnpei*, 15 FSM R. 329, 335 (Pon. 2007).

Since, by statute, an economic sector included in any of the Categories for National Regulation must not appear in any of the Categories for State Regulation, the statutory provision contemplates that state and national regulation will be mutually exclusive, and works hand in glove with the stated purpose of the Foreign Investment Act, which is to encourage foreign investment. *Helicopter Aerial Survey Pty., Ltd. v. Pohnpei*, 15 FSM R. 329, 335-36 (Pon. 2007).

When a company has obtained a national foreign investment permit in an area in which the FSM’s jurisdiction is exclusive and the company has complied with national laws and regulations in this regard, Pohnpei may not require it to obtain a state foreign investment permit in addition to the FSM permit that it already has. *Helicopter Aerial Survey Pty., Ltd. v. Pohnpei*, 15 FSM R. 329, 336 (Pon. 2007).

When the court has granted summary judgment on the basis that the plaintiff’s helicopters are engaged in fishing, the court need not address the plaintiff’s further contention that it is also subject to exclusive national regulation by virtue of the fact that its helicopters are engaged in interstate and international air transport and international shipping. *Helicopter Aerial Survey Pty., Ltd. v. Pohnpei*, 15 FSM R. 329, 336 (Pon. 2007).

Public hearings are a standard part of the foreign investment permit application process. *Smith v. Nimea*, 18 FSM R. 36, 45 (Pon. 2011).

### **§ 208. Application procedures for State Foreign Investment Permits.**

An application for a State Foreign Investment Permit shall be made in accordance with the provisions of State Foreign Investment Legislation and State Foreign Investment Regulations. In the interest of coordination and reducing administrative burdens on foreign investors, such provisions should:

- (1) establish rules and procedures consistent with the provisions of this chapter and with the provisions of the FSM Foreign Investment Regulations;
- (2) direct the responsible State authorities to make available to the Department copies of the application forms for State Foreign Investment Permits, together with such other materials and information necessary for the Department to assist prospective foreign investors;
- (3) direct the responsible State authorities to forward to the Secretary any application for an FSM Foreign Investment Permit, or any information submitted in support of such an application; and
- (4) direct the responsible State authorities to forward to the Department a copy of any State Foreign Investment Permit issued by those authorities.

**Source:** PL 10-49 § 13.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 209. Form, fees, duration modification, and cancellation of FSM Foreign Investment Permits.**

(1) FSM Foreign Investment Permits shall be in the form prescribed in the FSM Foreign Investment Regulations. State Foreign Investment Permits shall be in the form prescribed in State Foreign Investment Legislation and State Foreign Investment Regulations.

(2) Upon the issuance of an FSM Foreign Investment Permit, the holder shall fulfill the requirements, if any, included in the FSM Foreign Investment Regulations for the payment of an annual fee.

(3) An FSM Foreign Investment Permit shall be valid until it has been canceled, suspended, or surrendered pursuant to subsections (7) to (11) of this section.

(4) An FSM Foreign Investment Permit shall not be transferable between investments or investors and shall not be assignable to any investment or investor other than the one for which it was issued.

(5) The holder of an FSM Foreign Investment Permit may not make a change in the business that the holder is engaging in without obtaining either

(a) a new FSM Foreign Investment Permit for that purpose under section 207 of this chapter (or, if applicable, a new State Foreign Investment Permit under the relevant State Foreign Investment Legislation) or

(b) a modification in the terms of its FSM Foreign Investment Permit. Such a modification may be requested by the business entity, and granted by the Secretary, in accordance with such procedures and requirements as the Secretary shall establish in the FSM Foreign Investment Regulations. However, no such modification is necessary if an existing business entity for which an FSM Foreign Investment Permit has been

issued is expanded, without any change in the business it is engaging in.

(6) For purposes of subsection (5) of this section, a "change in the business" a person is engaging in occurs if that person begins operations in a different economic sector from the one(s) for which the FSM Foreign Investment Permit was issued.

(7) The Secretary may cancel an FSM Foreign Investment Permit only if the Secretary determines, following the procedural requirements of subsection (9) of this section, that one or more of the following circumstances exist:

(a) the annual fee, if any, required under either subsection (2) or subsection (3) of this section has not been paid;

(b) the holder of the Permit requests its cancellation;

(c) the permit application is found to have contained false or fraudulent information;

(d) the holder of the Permit bribed or otherwise exercised, or attempted to exercise, undue influence on the decision to issue the Permit;

(e) the holder of the Permit fails or refuses to comply with the reporting requirements under section 213 of this chapter or with any other requirements of this chapter or of the FSM Foreign Investment Regulations;

(f) the holder of the Permit fails or refuses to comply with any restrictions or conditions included in the Permit, or engages in activities not authorized by the Permit;

(g) a substantial ownership interest in the holder is owned by a noncitizen who does not meet the character criteria established pursuant to section 205(3) of this chapter.

(8) If an FSM Foreign Investment Permit is canceled pursuant to subsection (7) of this section, the noncitizen holding that canceled Permit shall:

(a) immediately stop engaging in business in the FSM;

(b) take such steps as the Secretary shall direct in order to dispose of that noncitizen's interest in any applicable business entity; and

(c) pay any fines or other penalties that may be imposed under section 220 of this chapter.

(9) If it appears to the Secretary that one or more of the grounds for cancellation of an FSM Foreign Investment Permit, as enumerated in subsection (7) of this section, may exist, the Secretary may temporarily suspend the validity of that FSM Foreign Investment Permit and shall commence the following procedures leading to cancellation:

(a) The Secretary or his designee may schedule a hearing on the matter before the Secretary or his designee. At least 21 days' written notice of the hearing shall be given to the holder or registered agent of the FSM Foreign Investment Permit or the holder's registered agent, stating the alleged grounds for cancellation. If during that time the holder of the FSM Foreign Investment Permit takes action satisfactory to the Secretary to disprove the allegations or otherwise remedy the situation, the Secretary may cancel the hearing and reinstate the FSM Foreign Investment Permit if it was temporarily suspended.

(b) Hearing procedures shall be prescribed by the Secretary in the FSM Foreign Investment Regulations and shall include the right of the holder of the FSM Foreign Investment Permit to participate and to be represented by counsel, to call witnesses, and to cross-examine witnesses called against the holder of the FSM Foreign Investment Permit.

(c) Within ten days after a hearing, the Secretary shall issue a written decision including reasons for the action taken and the remedy to be imposed pursuant to subsection (8) of this section, and shall transmit that decision immediately to the holder of the FSM Foreign Investment Permit.

(d) If a decision has not been issued pursuant to subsection (9)(c) of this section within the ten days specified, any temporary suspension ordered by the Secretary shall automatically end, and the validity of the FSM Foreign Investment Permit shall automatically be reinstated.

(e) Within 20 days after receiving the notice of the decision of the Secretary, the holder of the FSM Foreign Investment Permit may appeal the decision to the Supreme Court of the FSM. Copies of any notice of appeal shall be served on the Secretary and the FSM Secretary of Justice.

(10) If an FSM Foreign Investment Permit is suspended pursuant to this chapter, the noncitizen holding that suspended permit shall immediately stop engaging in business in the FSM and refrain from resuming the business unless and until the FSM Foreign Investment Permit is reinstated.

(11) A holder of an FSM Foreign Investment Permit may surrender it by meeting requirements specified for this purpose in the FSM Foreign Investment Regulations. Mere cessation of engaging in business in the FSM, without meeting such requirements, does not relieve the holder of an FSM Foreign Investment Permit from the requirements incident thereto.

**Source:** PL 10-49 § 14; PL 14-32 § 4.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

**Case annotations:** PL 10-49 repealed the previous Foreign Investment Act, as amended by PL 5-134. The following case annotations that interpreted provisions of the previous Foreign Investment Act have been retained below for reference purposes.

The national government has neither the constitutional authority nor law enforcement capacity to oversee, on a worldwide basis, every noncitizen acquisition of an interest in a business operating within the FSM. *Michelsen v. FSM*, 3 FSM R. 416, 423 (Pon. 1988).

Since Congress used TT Investment Act as overall model in drafting FSM Foreign Investment Act and adopted language similar to that employed in the TT statute for describing activities to be covered in the FSM law, analysis of the new Act must begin with a presumption that Congress intended that the FSM Foreign Investment Act would regulate essentially the same activities as those covered by the TT Investment Act. *Carlos v. FSM*, 4 FSM R. 17, 26 (App. 1989).

The Foreign Investment Act does not explicitly limit judicial review therefore an aggrieved person affected by an agency decision may seek review under the Administrative Procedures Act. *Michelsen v. FSM*, 5 FSM R. 249, 254 (App. 1991).

Scheme of national, constitutionally-authorized foreign investment legislation is so pervasive there is no room for the state to supplement it. Non-FSM citizen attorneys and their private practice of law are expressly subjected to the nat'l legislative scheme. Insofar as attorneys

who are engaged in private practice of law and whose business activities are within the scope of the nat'l FIA, the state FIA is invalid. *Berman v. Pohnpei*, 5 FSM R. 303, 306 (Pon. 1992).

An isolated interest-free unsecured loan is not engaging in business within the meaning of the Pohnpei State Foreign Investment law. *Kihara v. Nanpei*, 5 FSM R. 342, 345 (Pon. 1992).

## SUBCHAPTER IV

### Expatriate Worker Authorizations and Entry Permits

#### **§ 210. Expatriate Worker Authorizations.**

(1) A business entity as to which either have an FSM Foreign Investment Permit or a State Foreign Investment Permit has been issued shall be entitled automatically to an expatriate worker authorization ("EWA") for one expatriate senior management position.

(2) If the business entity as to which either an FSM Foreign Investment Permit or a State Foreign Investment Permit has been issued meets the applicable criteria established for this purpose in the FSM Foreign Investment Regulations, the holder of such Permit shall be entitled automatically to one or more additional EWAs for expatriate senior management positions.

(3) An EWA that is automatically allocated under either subsection (1) or (2) of this section shall remain valid during the entire period that the corresponding Foreign Investment Permit remains valid. However, the criteria to be established pursuant to subsection (2) of this section may provide that, notwithstanding the continued validity of an EWA, a new or renewal entry permit requested under that EWA may be denied and the existing entry permit issued under that EWA may be canceled during any period when those criteria are not being met.

(4) The holder of a Foreign Investment Permit may apply for additional expatriate workers pursuant to title 51 of this code.

**Source:** PL 10-49 § 16; PL 14-32 § 5.

**Cross-reference:** Title 51 of this code is on Labor.

#### **§ 211. Issuance of entry permits.**

(1) The holder of a Foreign Investment Permit may, upon the allocation of an EWA to the relevant business entity, submit to the immigration authorities an application for an entry permit for a nominee to fill the position to which the EWA applies.

(2) If the immigration authorities approve an application for an entry permit applied for under subsection (1) of this section, the immigration authorities shall issue such permit upon the payment of a fee in such an amount and



under such procedures as may be established for this purpose by the immigration authorities.

(3) The immigration authorities shall issue an entry permit for a nominee to fill a position to which an EWA applies except in cases of

(a) criminal character or

(b) medical risk to the nation or the nominee, as set forth in pertinent regulations issued by the immigration authorities. If the immigration authorities deny an application for an entry permit for a nominee to fill a position to which an EWA applies, the immigration authorities shall so advise the holder of the Foreign Investment Permit and shall give reasons for the denial. In such a case of denial, the holder of the Foreign Investment Permit may

(i) request the immigration authorities to review the application after submission of additional information on the nominee, or

(ii) apply for an entry permit nominating a different person to fill the position.

(4) If, for whatever reason, a position to which an EWA applies is or becomes vacant during the period of validity of that EWA, the holder of the relevant Foreign Investment Permit may apply to the immigration authorities for an entry permit for a nominee to fill the vacant position.

(5) In addition to entry permits issued pursuant to EWAs, a foreign investor shall be entitled to one or more foreign investor entry permits as follows:

(a) one if the foreign investor is a sole proprietorship; or

(b) one for each individual holder of a substantial ownership interest in the foreign investor if the foreign investor is any other kind of business entity.

(6) Nothing in this chapter shall be interpreted to require that a noncitizen have an entry permit if that noncitizen is not otherwise required to have an entry permit.

**Source:** PL 10-49 § 17; PL 14-32 § 6.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Immigration are found in title 50 of this code.

### **§ 212. Renewal and cancellation of entry permits.**

(1) An entry permit issued pursuant to section 211 of this chapter, whether a foreign investor entry permit or an entry permit issued under the EWA, shall be valid upon its issuance and thereafter until the sooner of:

(a) five years, or such shorter period as may be prescribed in regulations by the immigrations authorities, after the date of its issuance;

(b) expiration, cancellation, or surrender of the applicable Foreign Investment Permit or EWA; or

(c) cancellation of the entry permit as provided in subsection (4) of this section.

(2) Solely for purposes of subsection (1)(b) of this section:

(a) a Foreign Investment Permit which is renewable annually shall not be deemed to have expired unless and until the official who issued the Foreign Investment Permit has declared it to be expired and so notified the immigration officials in writing; and

(b) an EWA shall not be deemed to have expired unless and until the Foreign Investment Permit under which it was issued is cancelled or deemed to have expired.

(3) Except as provided in subsection (4) of this section, an entry permit issued pursuant to section 211 of this chapter shall be automatically renewed upon its expiration.

(4) An entry permit issued pursuant to section 211 of this chapter may be canceled, or its renewal may be denied, by the immigration authorities only if:

(a) the required immigration fee, if any, is unpaid;

(b) the person to whom the entry permit has been issued is convicted by a court in the FSM of an offense in respect of which he or she has been sentenced to imprisonment for a term of six months or more; or

(c) the entry permit, or the EWA to which the entry permit relates, was obtained under false pretenses;

(d) the conduct of the person to whom the entry has been issued constitutes a threat to the security of the FSM. In this case an entry permit may be canceled only after receiving a recommendation of cancellation from a committee appointed for this purpose and consisting of representatives from each of the following: the immigration authorities, the applicable State official responsible for foreign investment regulation in the State, the FSM Secretary of Justice, and the Department;

(e) the person to whom the entry permit has been issued leaves the position the basis of which the entry permit was issued:

(f) the person to whom the entry permit has been issued engages in employment outside the scope of the employment specified by the relevant EWA, whether or not the employment is with the foreign investor to whom the EWA was issued;

(g) the person to whom the entry permit has been issued is deported in accordance with law;

(h) the conditions for cancellation pursuant to section 210(3) of this chapter are satisfied;

(i) the applicable Foreign Investment Permit is canceled or surrendered; or

(j) it is required or permitted under subsection (5) of this section.

(5) An entry permit issued pursuant to section 211 of this chapter shall be canceled by the immigration authorities if the official who issued the Foreign Investment Permit to which the entry permit relates makes a finding, concurred in the FSM Secretary of Justice, that the holder of the permit is not engaged in a *bona fide* attempt to commerce, operate, wind up, or recommence any business to which the Foreign Investment Permit relates. Such a finding shall be in writing, signed by the FSM Secretary of Justice and the relevant State or national official, and arrived at through procedures which afforded the holder of the entry permit notice and an opportunity to be heard by the relevant State or national official.

**Source:** PL 10-49 § 18; PL 14-32 § 7.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Immigration are found in title 50 of this code.

## SUBCHAPTER V

### Reporting Requirements

#### **§ 213. Reports by holders of FSM Foreign Investment Permits.**

(1) The holder of any FSM Foreign Investment Permit shall submit to the Secretary such reports concerning the foreign investment as the Secretary may prescribe in the FSM Foreign Investment Regulations. Details of the information required, the reasons for the requirements, and the frequency and form of such reports shall be set forth in the FSM Foreign Investment Regulations.

(2) Notwithstanding any other provision of this chapter, an FSM Foreign Investment Permit shall be automatically suspended for a failure to meet a reporting deadline or a failure to include required information in a report pursuant to subsection (1) of this section. Any such suspension shall be effective from the 60<sup>th</sup> day after the day on which the report or information is due unless, during the 60 day period, the holder of the Foreign Investment Permit submits the requisite report or information or provides a written explanation of the failure to do so that is acceptable to the Secretary. The Secretary may move to cancel the FSM Foreign Investment Permit in accordance with section 209 of this chapter at any time after the suspension becomes effective.

(3) Any change in foreign ownership of an investment for which an FSM Foreign Investment Permit has been issued which results in ownership of a substantial ownership interest by a noncitizen who did not previously own a substantial ownership interest shall be reported immediately to the Secretary, who may take such action as he or she considers appropriate in respect of the FSM Foreign Investment Permit, including its cancellation if appropriate under the provisions of section 209(7) of this chapter.

**Source:** PL 10-49 § 20; PL 14-32 § 8.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

#### **§ 214. Reports by the National Government of the FSM.**

(1) The Department shall publish information annually, in such form and detail as may be prescribed in the FSM Foreign Investment Regulations, concerning the extent of foreign investment in the FSM, both in the aggregate and desegregated by State.

(2) The Department shall issue the following types of reports, in such detail and form as may be prescribed in the FSM Foreign Investment Regulations, to the authorities in each State responsible for regulating foreign investment in that State:

(a) within one week after issuing an FSM Foreign Investment Permit, a report of that fact and of the name and activities to which the FSM Foreign Investment Permit applies.

(b) every three months, a report of the applications for FSM Foreign Investment Permits that the Secretary has denied and the reasons for each such denial.

**Source:** PL 10-49 § 21.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 215. Reports by the State Governments.**

(1) In order to facilitate smooth implementation of the foreign investment rules applicable at both the State Government level and the National Government level, the Secretary shall consult with the responsible State authorities regarding the form and frequency of reports that such authorities in each State should provide to the Department concerning:

- (a) the extent of foreign investment in that State; and
- (b) applications received in that State for State Foreign Investment Permits.

(2) The Secretary shall provide, by way of the FSM Foreign Investment Regulations, guidelines for States in providing reports of the types referred to in subsection (1) of this section.

**Source:** PL 10-49 § 22.

### **§ 215A. Review of compliance by holders of FSM Foreign Investment Permits.**

(1) The Secretary shall undertake an annual review of the compliance of each FSM Foreign Investment Permit holder with the provisions of this chapter, the FSM Foreign Investment Regulations and any conditions that attach to the relevant FSM Foreign Investment Permit.

(2) The Secretary shall prepare a written report in respect of each review setting out his or her findings.

(3) Any non-compliance identified during a review conducted pursuant to in subsection (1) of this section may be dealt with in accordance with the provisions of this chapter.

(4) The Secretary shall include aggregate information on compliance in the annual publication required pursuant to subsection 214(1) of this chapter

**Source:** PL 10-49 § 22; PL 14-32 § 9.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

## SUBCHAPTER VI

### Guarantees and Entitlements

#### **§ 216. Compulsory acquisition of foreign investment property.**

(1) There shall be no compulsory acquisition or expropriation of the property of any business entity as to which a Foreign Investment Permit has been issued, except under the following circumstances:

(a) in order to apply sanctions for violation of laws or regulations, as provided for in section 220 of this chapter; or

(b) in extraordinary cases in which

(i) such compulsory acquisition or expropriation is consistent with existing FSM law governing eminent domain;

(ii) such compulsory acquisition or expropriation is necessary to serve overriding national interests and

(iii) the conditions of subsection (2) of this section are met; or

(c) pursuant to generally applicable laws and regulations of the FSM or any State.

(2) Compulsory acquisition or expropriation of a type described in subsection (1)(b) of this section may be undertaken only after:

(a) the National Congress has, following a recommendation to this effect by the Secretary, taken official action to identify in writing

(i) the property to be acquired or expropriated and

(ii) the overriding national interests that make such acquisition or expropriation necessary;  
and

(b) the Secretary has issued a notification to any holder of a Foreign Investment Permit whose property is to be acquired or expropriated, indicating

(i) what property is affected by the action;

(ii) what compensation will be paid for the acquisition or expropriation of the property; and

(iii) what appeal or other forms of legal recourse are available to the holder of the Foreign Investment Permit affected by the action.

(3) Payment of compensation pursuant to subsection (2)(b) of this section shall be promptly made and adequate in amount.

(4) Neither the National Government nor any State Government nor any other entity within the FSM shall take any action that, although not formally designated or acknowledged as compulsory acquisition or expropriation,

indirectly has the same injurious effect ("creeping expropriation").

**Source:** PL 10-49 § 24; PL 14-32 § 10.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

**Case annotations:** By statute, the national government guarantees that there will be no compulsory acquisition or expropriation of any foreign investment property for which a Foreign Investment Certificate has been issued and that the national government will not take action, or permit any state or other entity within the FSM to take action that although not formally designated or acknowledged as compulsory acquisition or expropriation, indirectly has the same injurious effect ("creeping expropriation") and that if such action nevertheless takes place, the national government is responsible for the prompt and adequate compensation of any injured noncitizen. This statute creates a cause of action by the aggrieved alien against the FSM for compensation for a state's conduct in violation of § 216(1) and (4). *AHPW, Inc. v. FSM*, 12 FSM R. 114, 120 (Pon. 2003).

The national government guarantees that there will be no compulsory acquisition or expropriation of the property of any foreign investment as to which a Foreign Investment Certificate has been issued. *AHPW, Inc. v. FSM*, 12 FSM R. 164, 166 (Pon. 2003).

When a party has not alleged that the state has dispossessed it of any property, and that property is now in the possession of the state or its designee, the party has not stated a cause of action for expropriation under the FSM foreign investment statutes. *AHPW, Inc. v. FSM*, 12 FSM R. 164, 167 (Pon. 2003).

There is no meaningful distinction between the terms "compulsory acquisition" and "expropriation." *AHPW, Inc. v. FSM*, 12 FSM R. 164, 167 (Pon. 2003).

### **§ 217. Transfers of earnings and capital.**

(1) The National Government guarantees that no holder of a currently valid Foreign Investment Permit will be subject to any restrictions on making lawful remittances of profits and carrying out other lawful current international transactions as defined in the Articles of Agreement of the International Monetary Fund.

(2) The National Government guarantees that any holder of a currently valid Foreign Investment Permit will be permitted to lawfully repatriate any amount of capital that was brought into the FSM for, or that lawfully accrued on, a business entity to which such Permit applies.

**Source:** PL 10-49 § 25; PL 14-32 § 11.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 218. Changes in law and regulations.**

Upon payment of such additional fees as the Secretary may prescribe for this purpose, the holder of an FSM Foreign Investment Permit shall be entitled, for a period agreed upon with the Secretary but not to exceed five years, to an exemption from any future changes in:

- (1) the customs duties and other regulations or restrictions relating to the importation of machinery, equipment, and other goods used in carrying out the activities authorized in the FSM Foreign Investment Permit; or
- (2) gross revenue tax rates and rules applicable to the business entity to which the FSM Foreign Investment Permit applies.

**Source:** PL 10-49 § 26.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on taxes are found in title 54 of this code.

### **§ 219. Non-discriminatory treatment.**

Subject to the provisions of this chapter and regulations promulgated hereunder, and subject further to the express provisions of any other statute applicable to specific business categories, the National Government shall not take action, or permit any State to take action, that would result in a foreign investor being given treatment that is less favorable than the treatment given to citizens, engaging in business in the FSM.

**Source:** PL 10-49 § 27; PL 14-32 § 12.

**Case annotation:** A state would have to actually acquire the property in some fashion for there to be an expropriation, and 32 F.S.M.C. 219 only authorizes injunctive relief and does not create a cause of action for damages. *Pohnpei v. AHPW, Inc.*, 14 FSM R. 1, 24 (App. 2006).

While injunctive relief would be available to prospectively enforce 32 F.S.M.C. 219, noticeably absent from this section is any language which creates a cause of action for damages on the aggrieved party's part. *AHPW, Inc. v. FSM*, 12 FSM R. 114, 122 (Pon. 2003).

While § 219 of the Foreign Investment Laws admits of a cause of action for prospective, injunctive relief against the FSM, it does not permit an action for damages. Chapter 3 provides a remedy for damages, but notwithstanding the fact that the remedy is against Pohnpei, and not the FSM, it is nevertheless a remedy. If the plaintiff prevails, the conduct alleged will not go unsanctioned. *AHPW, Inc. v. FSM*, 12 FSM R. 164, 167 (Pon. 2003).

By statute, the national government will not take action, or permit action, or permit action to be taken by any state or other entity within the FSM, that although not formally designated or acknowledged as compulsory acquisition or expropriation, indirectly has the same injurious effect ("creeping expropriation"), and that if such action takes place, the national government will be responsible for the prompt and adequate compensation of any injured noncitizen. *Pohnpei v. AHPW, Inc.*, 14 FSM R. 1, 23 (App. 2006).

By statute, the national government will not take action, or permit any state to take action, that would result in a foreign investor being given treatment that is less favorable than the treatment given to citizens, or business entities wholly owned by citizens, engaging in business in the FSM. *Pohnpei v. AHPW, Inc.*, 14 FSM R. 1, 23 (App. 2006).

## SUBCHAPTER VII

### Sanctions; Judicial Review; Other Provisions

#### **§ 220. Injunction and penalties.**

(1) Where, on application by the Secretary, the Supreme Court is satisfied that a noncitizen has acted, or is about to act, in contravention of the provisions of this chapter, or the FSM Foreign Investment Regulations, the court may impose an injunction on any such action. The Secretary shall provide to the concerned noncitizens at least two business days' prior notice of an intention to file such an application with the court.

(2) If the Secretary determines that any person has failed or refused to comply with requirements imposed under or pursuant to this chapter or the FSM Foreign Investment Regulations, the Secretary may, in addition to taking action under subsection (1) of this section,

(a) suspend or cancel a Foreign Investment Permit pursuant to subsections (7) and (9) of section 209 of this chapter;

(b) impose such administrative fines and penalties as may be prescribed in the FSM Foreign Investment Regulations; or

(c) initiate measures for the imposition of criminal penalties as described in subsection (3) of this section or in other laws of the FSM.

(3) Any person who willfully contravenes the provisions of section 204 of this chapter, or who obtains a Foreign Investment Permit by fraud or misrepresentation, commits a national crime and shall, upon conviction by a court, be subject to the following penalties:

(a) in the case of an individual, the imposition of a monetary fine in an amount up to \$10,000 or imprisonment for up to 12 months, or both.

(b) in the case of a legal entity, the imposition of a monetary fine in an amount of up to \$50,000.

(c) in any case, the forfeiture to the National Government of assets or property rights in any business entity engaging in business in contravention of this chapter or the FSM Foreign Investment Regulations; provided, however, that the value of such assets or property so forfeited shall not be unreasonable in relation to the illegal behavior and the injury it has caused.

**Source:** PL 10-49 § 29.

**Cross-reference:** The statutory provisions on the Executive are found in title 2 of this code. The statutory provisions of the FSM Supreme Court are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

#### **§ 221. Judicial review.**



A decision by the Secretary pursuant to section 207(3) of this chapter regarding an application for an FSM Foreign Investment Permit may be appealed by the applicant. A notice of any such appeal shall be filed with the Supreme Court of the FSM within 30 days of receipt of notice of the Secretary's decision. A copy of any such notice shall also be served on the Attorney General of the FSM and the Secretary. Such appeals shall be made under applicable rules of civil procedure.

**Source:** PL 10-49 § 30.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

**Case annotations:** A foreign investment permit applicant aggrieved by a final permit decision may appeal the decision to the FSM Supreme Court. 32 F.S.M.C. 215. *Michelsen v. FSM*, 5 FSM R. 249, 252-53 (App. 1991).

### **§ 222. Confidentiality.**

In carrying out the responsibilities imposed by this chapter regarding the regulation of foreign investment in the FSM, the Secretary shall maintain the confidentiality of any sensitive business information relating to a particular foreign investor or prospective foreign investor, if so requested by such person; provided, however, that this provision shall not prevent the Secretary or the Department from disclosing information upon order of a court or pursuant to other laws and regulations of the FSM or as necessary to enforce this law.

**Source:** PL 10-49 § 31.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 223. Enforcement.**

(1) Primary responsibility for the enforcement of this chapter shall be placed in the Secretary and, as to criminal sanctions provided in section 220 of this chapter, in appropriate law-enforcement authorities within the FSM.

(2) In carrying out the responsibilities imposed by this chapter the Secretary may require the attendance of any citizen or noncitizen at a meeting or hearing conducted by the Secretary and may require such persons to testify or to produce at, before, or after such meeting or hearing documents, information, and things relevant to enforcement of the provisions of this chapter.

(3) The Secretary shall promulgate the regulations necessary to implement this chapter, which regulations

shall have the force and effect of law.

**Source:** PL 10-49 § 32.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

#### **§ 224. Transitional provisions.**

(1) For a period of 12 months after the date on which this Act becomes effective, any Pre-Existing Foreign Investment Permit shall continue to be valid in accordance with its terms, subject to the provisions of this chapter and the provisions of any applicable State Foreign Investment Legislation.

(2) Notwithstanding the provisions of section 204 of this chapter, any noncitizen who was, as of the date on which this act becomes effective, conducting any activity that amounts to "engaging in business", as defined in section 203 of this chapter, but who was not required, under the law in effect immediately prior to that date, to obtain a Foreign Investment Permit for that activity, shall have a period of three months from that date in which to either

- (a) apply for and obtain a Foreign Investment Permit or
- (b) cease conducting the activity.

**Source:** PL 10-49 § 33.

#### **§ 225. Effectiveness; repeal.**

(1) This Act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

(2) This Act shall be effective on the first day of the first month which begins no less than 90 days after this Act becomes law.

(3) Upon the effectiveness of this Act as provided for in subsection (1) and (2) of this section, this Act shall supersede the Foreign-Investment Act (as amended by Public Law No. 5-134); that Act is hereby repealed and shall no longer have any force of law.

**Source:** PL 10-49 § 34.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.