

TITLE 32
BUSINESS REGULATION

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§ 101. Business license required—Generally.

(1) Any person, partnership, corporation, or association engaging in the business of importing, exporting, selling of securities, or insurance, as a condition precedent to engaging or continuing in such business, shall obtain from the Secretary of Resources and Development a license to engage in or conduct such business.

(2) Prior consultation with the Secretary of Finance by the Secretary of Resources and Development shall be required prior to issuance of licenses to businesses engaged in selling of securities or importing.

Source: TT Code 1966 § 1144; COM PL 3-32 § 1(part); TT Code 1970, 77 TTC 1; TT Code 1980, 77 TTC 1; PL 1-67 § 1(1).

Cross-reference: For the statutory provisions on licensing of the copra trade, see title 27, chapter 3 of this code. For the statutory provisions on the President and the Executive, see title 2 of this code.

§ 102. Terms and conditions of licenses.

Licenses issued under this chapter shall not be transferable and shall be valid on the basis of a fiscal year period (October 1st to September 30th) and, regardless of when issued, shall expire on the 30th day of September of the year for which issued or renewed; provided, that all original license fees shall be prorated and one-fourth of the annual fee charged for each quarter or portion of a quarter remaining in the fiscal year from the date of issuance.

Source: COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 2; TT Code 1980, 77 TTC 2; PL 1-67 § 1(2).

§ 103. License fees.

The following annual fees shall be paid for the respective license at time of issuance and on or before the 30th day of September of each year, except as otherwise provided for in section 102 of this chapter:

- (1) importer, \$100 per annum;
- (2) exporter, \$10 per annum;
- (3) securities dealers, \$250 per annum;

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- (4) insurance companies, \$1,000 per annum;
- (5) insurance brokers, \$200 per annum;
- (6) insurance agents, \$100 per annum.

Source: TT Code 1966 § 1144; COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 3; TT Code 1980, 77 TTC 3; PL 1-67 § 1(3).

§ 104. Licenses for combination of businesses.

Any person, partnership, corporation, or association who operates or conducts business in the Federated States of Micronesia which consists of a combination of two or more of the classes of businesses outlined in this chapter shall obtain a separate license for each such class of business.

Source: COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 4; TT Code 1980, 77 TTC 4; PL 1-67 § 1(4).

§ 105. License renewal.

A licensee may renew his license upon the expiration thereof by the payment of the annual license fee.

Source: COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 5; TT Code 1980, 77 TTC 5.

§ 106. License revocation or suspension.

The Secretary of Resources and Development with the approval of the Attorney General may revoke or suspend any license issued under this chapter, upon finding, after public notice and adequate hearing, that such revocation or suspension is in the public interest.

Source: TT Code 1966 § 1144; COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 6 (part); TT Code 1980, 77 TTC 6 (part); PL 1-67 § 6 (part).

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

§ 107. License—Judicial review of revocation or suspension.

(1) Any person aggrieved by any such decision of the Secretary of Resources and Development shall be entitled to a review of the same by a competent court upon written appeal made within 30 days from the date the decision is issued.

(2) Upon review, the findings of the Secretary of Resources and Development, if supported by substantial evidence, shall be conclusive.

(3) The filing of an appeal shall not stay the order of revocation or suspension, unless irreparable damage is alleged.

Source: TT Code 1966 § 1144; COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 6 (part); TT Code 1980, 77 TTC 6 (part); PL 1-67 § 6 (part).

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.

§ 108. Prepayment of license fees; Revocation of license for failure to pay fees.

(1) The prepayment of any license fee imposed or authorized under this chapter or under any district law may be made a condition of the issuance of the license.

(2) If the licensing authority issued the license without prepayment of the fee, the license may be revoked by the licensing authority at any time if the fee is not paid within such time as the licensing authority shall fix.

Source: TT Code 1966 § 1147(b); COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 153; TT Code 1980, 77 TTC 153.

§ 109. Willful violation of revenue laws.

Any person who willfully violates any of the provisions of this chapter, or any license, rule, or regulation issued thereunder, shall upon conviction be imprisoned for a period of not more than one year, or fined not more than \$500, or both.

Source: COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 201; TT Code 1980, 77 TTC 201.

§ 110. Monthly penalty upon unpaid fees.

In case of failure to pay any tax, fee, or charge levied or imposed under this chapter when due, there shall be added to the amount due ten percent of the amount of such tax, fee, or charge if the failure is not for more than one month, with an additional ten percent for each additional month or fraction thereof during which such failure continues, not exceeding 100 percent in the aggregate.

Source: COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 202; TT Code 1980, 77 TTC 202.

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**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.

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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

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(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

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(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

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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.

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(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).

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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

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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.

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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;

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(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

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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 60th day after the day on which the report or information is due unless, during the 60 grade 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.

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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,

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- (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.

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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.

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(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/>.

CHAPTER 3
Anticompetitive Practices

SECTIONS

- § 301. Definitions.**
- § 302. Prohibited activities.**
- § 303. Agreements lessening competition—Unlawful.**
- § 304. Unlawful agreements void.**
- § 305. Competitive agreements.**
- § 306. Criminal and civil liability of violators.**

§ 301. Definitions.

As used in this chapter, “person or persons” includes an individual or individuals, corporations, firms, partnerships or any other association existing under or authorized by the laws of the Trust Territory.

Source: COM PL 3C-57 § 1; TT Code 1970, 33 TTC 301; TT Code 1980, 33 TTC 301.

§ 302. Prohibited activities.

It is illegal for one or more persons to create or use an existing combination of capital, skill, or acts the effect of which is:

- (1) to create or carry out restrictions in trade or commerce;
- (2) to limit or reduce the production, or increase the price of, merchandise or of any commodity;
- (3) to prevent competition in the manufacture, making, transportation, sale, or purchase of any merchandise, produce, or commodity;
- (4) to fix at any standard or figure whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption;
- (5) to discriminate in price between different purchasers of commodities of like grade and quality, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce; provided, that nothing herein contained shall prevent differentials in price which only make allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to be purchased, sold, and delivered;
- (6) to make or enter into or carry out any contract, obligation, or agreement by which the persons do any of the following:
 - (a) bind themselves not to sell, dispose of, or transport any article or commodity below a common standard figure or fixed value;
 - (b) agree to keep the price of such article, commodity, or transportation at a fixed or graduated figure;
 - (c) establish or set the price of any article, commodity, or transportation between them or themselves and others, so as directly or indirectly to preclude free and unrestricted competition among themselves or any purchaser or consumer in the sale or transportation of any such article or commodity;

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(d) agree to pool, combine, or directly or indirectly unite any interest that they may have connected with the sale or transportation of any such article or commodity that might in any way affect its price.

Source: COM PL 3C-57 § 2; TT Code 1970, 33 TTC 302; TT Code 1980, 33 TTC 302.

Case annotation: Any person who proves a violation of 32 F.S.M.C. 302 or 32 F.S.M.C. 303 may recover reasonable attorney's fees. *AHPW, Inc. v. FSM*, 13 FSM R. 36, 39 (Pon. 2004).

When there is no doubt about the violation of 32 F.S.M.C. 302(2), but when there is nothing of record to establish that even if a *trochus* harvest had been held after 1994, the plaintiff would have been successful in purchasing enough *trochus* so that it would have had an adequate source of supply for its button operation, the plaintiff has failed to establish that it was damaged by the defendant's conduct as proscribed 32 F.S.M.C. 302(2). Since that conduct was tortious in nature, the plaintiff is entitled only to nominal damages. *AHPW, Inc. v. FSM*, 12 FSM R. 544, 555 (Pon. 2004).

Averaging three years of normal operations when the pepper supply was continuous when the manufacturing process was uninterrupted to arrive at an annual profit, is a projection that provides a reasonable basis from which a plaintiff's lost profits can be approximated or inferred under the lower burden of proof applicable for damages in anticompetitive practices cases. *AHPW, Inc. v. FSM*, 12 FSM R. 544, 555 (Pon. 2004).

When the conduct's nature was discrete and specific, and would have been amenable to injunctive relief had the plaintiff sought it, once that relief had been awarded there could have been no prospective damages since the conduct giving rise to those damages would necessarily have ceased. There should be no recovery for further diminution of a business's value, predicated on the defendant's continuing wrongdoing, after the defendant has been enjoined. The court will thus not award prospective damages from the time of the lawsuit's filing onward because injunctive relief, to which the claim would have been amenable, would have terminated the conduct complained of. But since under the continuing tort doctrine, a plaintiff is entitled to recover all of the damages that result from on-going tortious conduct, even though the inception of the conduct lies outside the limitations period, the court will award damages from the start of the anticompetitive pepper processing operation in mid-1995 until the plaintiff filed suit. *AHPW, Inc. v. FSM*, 12 FSM R. 544, 555-56 (Pon. 2004).

When the lack of details provided in an attorney's fee affidavit is problematic, but Congress felt that the policy concerns underlying 32 F.S.M.C. 301 *et seq.* were strong, because a successful plaintiff may recover both reasonable attorney's fees and treble damages and the plaintiff has successfully vindicated an interest protected by this statute and when the case presented complex, novel issues and the relief sought was ultimately achieved, in lieu of denying a fee request altogether, the court may reduce the amount of the fee claimed. *AHPW, Inc. v. FSM*, 13 FSM R. 36, 41 (Pon. 2004).

When it is not clear whether the plaintiff can demonstrate the type of illegal "combination" contemplated by 32 F.S.M.C. 302, and there is no relevant case law found in the FSM which interprets the anti-competitive practices law and when the court does not have before it any evidence of the parties' relative market shares, it is difficult to evaluate the likelihood of success of plaintiff's claims under 32 F.S.M.C. 301 *et seq.* *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 409, 417 (Pon. 2001).

The long-arm statute provides how service may be effected, outside of the FSM Supreme Court's territorial jurisdiction, against those who have done certain acts which subject them to the personal jurisdiction of the FSM Supreme Court, and such service has the same force and effect as though it had been personally made within the FSM. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 200, 204 (Pon. 2001).

The Attorney General has the authority to prosecute violations of the Consumer Protection Act, but private business entities do not. The Act recognizes that unfair or deceptive trade practices are criminal, and also

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confers standing on consumers who are injured by the practices to recover their actual damages or \$100, whichever is greater. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 409, 418 (Pon. 2001).

§ 303. Agreements lessening competition—Unlawful.

It shall be unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, machinery, supplies, or commodities for use within the Trust Territory, or to fix a price charged therefor, or discount from, or rebate upon, such price, on condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale, or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in any district of the Trust Territory.

Source: COM PL 3C-57 § 3; TT Code 1970, 33 TTC 303; TT Code 1980, 33 TTC 303.

Case annotation: Attempts to threaten or induce merchants not to sell competing products violate 32 F.S.M.C. 303. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 409, 417 (Pon. 2001).

A foreign corporation served pursuant to 4 F.S.M.C. 204 may be sued within the FSM for violations of 32 F.S.M.C. 302 or 303, regardless of where the service occurs, so long as that foreign corporation has done specific acts within the FSM to bring it within the jurisdiction of the FSM Supreme Court. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 200, 204-05 (Pon. 2001).

§ 304. Unlawful agreements void.

Any contract or agreement in violation of this chapter is, to that extent, void and not enforceable at law or equity.

Source: COM PL 3C-57 § 4; TT Code 1970, 33 TTC 304; TT Code 1980, 33 TTC 304.

§ 305. Competitive agreements.

It is not unlawful to enter into agreements or form an association or combination the purposes and effect of which is to promote, encourage, or increase competition in any trade or industry.

Source: COM PL 3C-57 § 5; TT Code 1970, 33 TTC 305; TT Code 1980, 33 TTC 305.

§ 306. Criminal and civil liability of violators.

(1) Any person who violates section 302 or 303 of this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$5,000.

(2) Any person who is injured in his business, personal property, or real property by reason of another's violation of sections 302 or 303 of this chapter may sue therefor in the High Court in the district where the defendant resides or where service may be obtained, and may recover three times the damages sustained by him together with a reasonable attorney's fee and the costs of suit; provided, that the Trust Territory and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this section, and may, through the Attorney General or the District Attorney, bring an action on behalf of the Trust Territory, its

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political subdivisions, or public agencies to recover the damages provided by this section, including a reasonable attorney's fee together with the costs of the suit.

(3) Upon conviction under this chapter of a noncitizen business, as defined in chapter 2 of this title, the High Commissioner may revoke such noncitizen's business permit.

Source: COM PL 3C-57 § 6; TT Code 1970, 33 TTC 306; TT Code 1980, 33 TTC 306.

Case annotation: The venue provision of 32 F.S.M.C. 306(2) must be read in conjunction with the service provisions of the FSM "long-arm statute," 4 F.S.M.C. 204, and with the FSM Code's venue provisions. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 200, 204 (Pon. 2001).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 200, 204 (Pon. 2001).

Damages under 32 F.S.M.C. 306(2) are subject to trebling. *AHPW, Inc. v. FSM*, 12 FSM R. 544, 555, 556 (Pon. 2004).

**CHAPTER 4
Notaries Public**

**SUBCHAPTER I
General Provisions**

SECTIONS

- § 411. **Appointment; Term; Removal; Reporting of change of status.**
- § 412. **Rules and regulations.**
- § 413. **Application; Qualifications; Oath.**
- § 414. **Filing and certification of commission, seal, and signature.**
- § 415. **Official bond; Appointment of agent for service of process.**
- § 416. **Liabilities of notary and surety on bond.**
- § 417. **Compliance with chapter required—Penalties.**

**SUBCHAPTER II
Powers and Duties**

SECTIONS

- § 421. **Generally.**
- § 422. **Seal.**
- § 423. **Records; Form and effect of granted copies or certificates.**
- § 424. **Disposition of records.**
- § 425. **Schedule of fees.**
- § 426. **Certain notaries not entitled to fees.**

**SUBCHAPTER I
General Provisions**

§ 411. Appointment; Term; Removal; Reporting of change of status.

(1) The High Commissioner may in his discretion appoint and commission such numbers of notaries public for the Trust Territory as he shall deem necessary for the public good and convenience.

(2) The term of office of a notary public shall be two years from the date of his commission, unless sooner removed by the High Commissioner on recommendation of the Attorney General made on findings of cause after due hearing; provided, that after due hearing the commission of a notary public may be revoked by the High Commissioner in any case where any change shall occur in such notary's office, occupation or employment which in the judgment of the High Commissioner renders the holding of such commission no longer necessary for the public good and convenience.

(3) Each notary shall, upon any change in his office, occupation or employment, forthwith report the same to the Attorney General.

Source: TT Code 1966 § 1075; TT Code 1970, 31 TTC 201; TT Code 1980, 31 TTC 201.

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

§ 412. Rules and regulations.

(1) The Attorney General, with the approval of the High Commissioner shall have power to prescribe such rules and regulations having the force and effect of law as he may deem advisable concerning the appointment and duties of notaries public and the administration of this chapter.

(2) The Attorney General shall file a copy of such rules and regulations with each district Clerk of Courts.

Source: TT Code 1966 § 1082; TT Code 1970, 31 TTC 202; TT Code 1980, 31 TTC 202.

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

§ 413. Application; Qualifications; Oath.

(1) Except as otherwise provided in this chapter, application for a commission as notary public for the Trust Territory shall be submitted to the Attorney General and must be accompanied by two letters of recommendation.

(2) Every person appointed a notary public must be, at the time of his appointment, of good character, at least 25 years of age, and a permanent resident of the Trust Territory who has resided in it for at least three years, or a United States citizen, resident in the Trust Territory and employed by the United States Government or by a contractor engaged in work for the United States Government in the Trust Territory.

(3) Every person appointed a notary public shall, before acting in that capacity, take and subscribe an oath for the faithful discharge of his duties, which oath may be taken before a District Administrator, a judge, a Clerk of Courts, or other official authorized to administer oaths. This oath shall be executed in duplicate. The original shall be filed in the Office of the Attorney General and a duplicate original filed in the Office of the Clerk of Courts for the district or districts in which said notary shall be acting.

Source: TT Code 1966 § 1076; TT Code 1970, 31 TTC 203; TT Code 1980, 31 TTC 203.

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.

Editor's note: Subsections (1) and (2) were originally one subsection prior to the 1982 edition of this code.

§ 414. Filing and certification of commission, seal, and signature.

(1) It shall be the duty of each person appointed and commissioned a notary public under the provisions of this chapter to forthwith file a literal or photostatic copy of his commission, an impression of his seal, and a specimen of his official signature with the Clerk of Courts of each district for and in which he decides to act. Thereafter, such Clerk, when so

requested, shall certify to the official character and acts of any such notary public whose commission, impression of seal, and specimen of official signature is filed in his office.

(2) The Clerk of Courts of each district shall charge and receive a fee of one dollar for filing a copy of a commission and a fee of 25 cents for filing each certificate of authentication.

Source: TT Code 1966 § 1078, 1083; TT Code 1970, 31 TTC 204; TT Code 1980, 31 TTC 204.

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.

§ 415. Official bond; Appointment of agent for service of process.

(1) Each notary public forthwith and before entering upon the duties of his office may, at the discretion of the High Commissioner, be required to execute at his own expense, an official surety bond in a sum not exceeding \$1,000.

(2) The obligee of each bond shall be the Trust Territory and the condition contained therein shall be that the notary public will well, truly, and faithfully perform all the duties of his office which are then and may thereafter be required, prescribed, or defined by law or by any rule or regulation made under the express or implied authority of any law of the Trust Territory, and all duties and acts are undertaken, assumed or performed by the notary public by virtue or color of his office.

(3) The surety on any such bond shall be a surety company approved by the High Commissioner.

(4) The notary public by accepting his commission, and the surety company by issuing the bond, thereby agree and appoint the District Administrator of any district in which the notary public performs any official act as his agent to accept service of process on his behalf for any purpose.

(5) After approval, the bond shall be deposited and kept in the Office of the Attorney General, who will certify to the Clerk of Courts in the district in which the notary public is commissioned that the bond has been accepted and filed in proper form.

Source: TT Code 1966 § 1079; TT Code 1970, 31 TTC 205; TT Code 1980, 31 TTC 205.

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.

§ 416. Liabilities of notary and surety on bond.

For the official misconduct of a notary public or breach of any of the conditions of his official bond, he and the surety on his official bond shall be liable to the party injured thereby for all damages sustained. Such party shall have a right of action in his own name and upon such bond and may prosecute the same to final judgment and execution.

Source: TT Code 1966 § 1080; TT Code 1970, 31 TTC 206; TT Code 1980, 31 TTC 206.

Case annotation: The act of notarizing a document is in itself a verification of the identity and signature of the person who signed the document. If an affiant is not present, however, the notary cannot make the

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necessary verifications and should under no circumstances notarize the document, and is subject to liability for misconduct of a notary public. *Peter v. Jessy*, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

§ 417. Compliance with chapter required; Penalties.

(1) No person shall be qualified to act as a notary public or shall enter upon any of the duties of such office, or offer or assume to perform any such duties until he shall have fully complied with the requirements of this chapter.

(2) Any person willfully violating any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, such person shall be punished by a fine of not more than \$500, or by imprisonment for not more than one year, or both.

(3) Nothing in this section shall be construed to restrict or to do away with any liability for civil damages.

Source: TT Code 1966 § 1081; TT Code 1970, 31 TTC 207; TT Code 1980, 31 TTC 207.

SUBCHAPTER II Powers and Duties

§ 421. Generally.

A notary public has the power and is authorized to administer oaths and affirmations, receive proof and acknowledgment of writings, and present and protest commercial paper. A notary public may act officially anywhere in the Federated States of Micronesia, but shall, before so acting in any State thereof, comply with the provisions of section 414, subchapter I of this chapter. A notary public who serves as an officer or employee of the Federated States of Micronesia in any embassy, representative office, consulate or liaison office may also act officially anywhere in the jurisdiction in which such embassy, representative office, consulate or liaison office is located, PROVIDED that such notary public files a literal or photostatic copy of his commission, an impression of his seal and a specimen of his official signature with the Clerk of the Supreme Court of the Federated States of Micronesia in each State thereof and, if required by law, with the clerk of any appropriate court in the jurisdiction in which the embassy, representative office, consulate or liaison office is located.

Source: TT Code 1966 § 1084; TT Code 1970, 31 TTC 251; COM PL 4C-27 § 2; TT Code 1980, 31 TTC 251; PL 6-36 § 1.

Cross-reference: 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.

Case annotations: While the majority of notaries are employed by the state government, several are employed by other offices and by private entities. The duties of a notary public are the same, regardless of where they are employed. A notarization performed by a court employee carries the same weight as a notarization performed by a privately employed individual. *In re Phillip*, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notary only confirms that the person appeared before him or her, was identified by the notary, and signed the affidavit (or other document) in the presence of the notary. Identity is confirmed by personal knowledge or by appropriate documentation. The identity and signature of the person signing the affidavit

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are verified by the notary public, and so noted on the document. *In re Phillip*, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notary cannot and does not verify or confirm the statements in the affidavit because the notary does not have personal knowledge of those statements. *In re Phillip*, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. *Peter v. Jessy*, 17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

§ 422. Seal.

(1) Every notary public shall constantly keep a seal of office, which may be a rubber stamp or impression seal, whereon shall be engraved his name, and the words "Notary Public" and "Trust Territory of the Pacific Islands." He shall authenticate all of his official acts, attestations, certificates, and instruments therewith.

(2) Upon resignation, death, expiration of term of office without reappointment, removal from or abandonment of office, or change in residence from the Trust Territory, he shall immediately deliver his seal to the Attorney General, who shall deface or destroy the same. By failing for 60 days to comply with the above requirement, the notary public, his executor or administrator, shall forfeit to the Trust Territory not more than \$200, in the discretion of the Court, to be recovered in an action to be brought by the Attorney General on behalf of the Trust Territory.

Source: TT Code 1966 § 1077; TT Code 1970, 31 TTC 252; TT Code 1980, 31 TTC 252.

Case annotation: Before a notary can apply the notary seal to an affidavit, the notary must confirm that the affiant has personally appeared to sign the affidavit before the notary, the affiant must be identified at that time by the notary, and the affiant must sign the affidavit in the notary's presence. The notary confirms the affiant's identity by personal knowledge or by reviewing appropriate documentation. When applying the notary seal, the notary notes on the affidavit that the affiant's identity and signature have been verified. *Peter v. Jessy*, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

§ 423. Records; Form and effect of granted copies or certificates.

Every notary public shall record at length in a book of records all acts, protests, depositions, and other things noted by him or done in his official capacity. All copies or certificates granted by him shall be under his hand and notarial seal, and shall be received as evidence of such transactions.

Source: TT Code 1966 § 1085; TT Code 1970, 31 TTC 253; TTC Code 1980, 31 TTC 253.

Case annotation: Notarization of a document does not establish truth to the statements made in the document: notarization only verifies the identity and signature of the person who signed the document. Consequently, notarization of a document by a court employee does not represent any court endorsement or certification of the statements made in the document. *In re Phillip*, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

§ 424. Disposition of records.

(1) The records of each notary public shall each year on the 30th of June and upon the resignation, death, expiration of term of office, removal from or abandonment of office, or

change of residence from the Trust Territory be deposited with the Clerk of Courts for the Truk District.

(2) By a failure for 60 days to comply with the requirement of this section, the notary public, his executor or administrator shall forfeit to the Trust Territory not less than \$10 nor more than \$100, in the discretion of the Court, in an action brought therefor by the Attorney General on behalf of the Trust Territory.

Source: TT Code 1966 § 1086; TT Code 1970, 31 TTC 254; TT Code 1980, 31 TTC 254.

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.

§ 425. Schedule of fees.

Every notary public, except as provided in section 426 of this chapter, shall be entitled to demand and receive the following fees:

- (1) noting the protest of mercantile paper, one dollar;
- (2) each notice and certified copy of protest of mercantile paper, one dollar;
- (3) noting any protest other than of mercantile paper, two dollars;
- (4) each notice and certified copy of protest other than of mercantile paper, two dollars;
- (5) each deposition or official certificate, two dollars;
- (6) administration of oath, including the certificate of such oath, 25 cents;
- (7) affixing the certificate of such oath to each duplicate original instrument beyond four, 15 cents;
- (8) taking any acknowledgment, 50 cents for each party signing; and
- (9) affixing to each duplicate original, beyond one of any instrument acknowledged before him, his certificate of acknowledgment, 25 cents for each person making such acknowledgment.

Source: TT Code 1966 § 1087; TT Code 1970, 31 TTC 255; TTC 1980, 31 TTC 255.

§ 426. Certain notaries not entitled to fees.

A notary public who is also a paid employee of the United States, or the Government of the Trust Territory, or of any district administration, and is permitted to perform services as a notary public during the working hours for which he is paid by one of these Governments, shall not be entitled to demand or receive any fees for services performed as notary public during such hours or for such services performed at any other time which are in connection with or in aid of his regular employment.

Source: TT Code 1966 § 1088; TT Code 1970, 31 TTC 256; TT Code 1980, 31 TTC 256.

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

CHAPTER 5
Noncitizen Peddlers
[REPEALED in its entirety by PL 5-54 § 1]

Editor’s note: The former chapter 5, “Noncitizen Peddlers,” was repealed by PL 5-54, § 1.

CHAPTER 6
Lateritic Soil Development Franchises

SECTIONS

- § 601. Agreements authorized.**
- § 602. Contents of agreement.**
- § 603. Appropriation.**
- § 604. Administration of appropriation.**
- § 605. Annual report to Congress.**
- § 606. Use of funds.**

§ 601. Agreements authorized.

The Secretary of Resources and Development of the Federated States of Micronesia is authorized and directed to undertake development of lateritic soils and other resources utilizing domestic or foreign expertise, including, but not limited to, entering into a franchise agreement with a foreign or domestic business venture, which is referred to in this chapter as “company,” for the purpose of securing franchise rights for the Federated States of Micronesia to use patented methods relating to lateritic soil in the process of manufacturing bricks, blocks, roofing tile, and floor tile, as well as all other building components. All negotiations with the selection of such company shall be made in accordance with applicable laws, U.S. Secretary of Interior Orders, and standard Federated States of Micronesia procedures for businesses entering into franchise agreements with the Federated States of Micronesia.

Source: PL 6-132 § 1; PL 1-55 § 1 (part); PL 1-119 § 1 (part); PL 2-52 § 1 (part).

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

§ 602. Contents of agreement.

In the event the Secretary of Resources and Development elects to enter into a franchise agreement pursuant to section 601 of this chapter, the franchise agreement shall provide sufficient latitude to the company to establish and put in operation a pilot plant in one of the States of the Federated States of Micronesia, using lateritic and other soil deposits in the Federated States of Micronesia; to train residents of the Federated States of Micronesia to operate such a plant; and to determine the feasibility of constructing and operating similar plants at other locations in the Federated States of Micronesia. The company shall furnish information to the Secretary of Resources and Development as to the cost estimate of all equipment involved in the industrial process, given the size of the plant specified by the Secretary of Resources and Development; approximate shipping cost from the place of origin to the Federated States of

Micronesia; and approximate cost of installation under the supervision of an engineer of the company. The Secretary of Resources and Development shall seek to include in the agreement such conditions and terms as will be required by the company to research the possibilities of firing limestone locally for hydrated lime, or producing other materials required in the industrial process. The Secretary of Resources and Development is authorized to include such other and additional conditions, terms, limitations and stipulations as he shall deem necessary, proper or appropriate and acceptable to the company. The Secretary of Resources and Development is authorized to conduct negotiations with the State governments concerning the location of the pilot plant and to consider previous recommendations relating to the location of the pilot plant.

Source: PL 6-132 § 2; PL 1-55 § 1 (part); PL 1-119 § 1 (part); PL 2-52 § 1 (part).

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

§ 603. Appropriation.

The sum of \$100,000, or so much thereof as may be necessary, is appropriated from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1982, for the purpose of carrying out the provisions of this chapter.

Source: PL 6-132 § 3; PL 1-55 § 1 (part); PL 1-119 § 1 (part); PL 2-52 § 1 (part).

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

§ 604. Administration of appropriation.

The Secretary of Resources and Development shall administer and expend the sum herein appropriated solely for the purpose of this chapter.

Source: PL 6-132 § 4; PL 1-55 § 1 (part); PL 1-119 § 1 (part); PL 2-52 § 1 (part).

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

§ 605. Annual report to Congress.

The Secretary of Resources and Development shall submit to the Congress of the Federated States of Micronesia, an annual report of his activities pursuant to this chapter, with his recommendations as to additional ways and means to better effectuate the provisions of this chapter.

Source: PL 6-132 § 5; PL 1-55 § 1 (part); PL 1-119 § 1 (part); PL 2-52 § 1 (part).

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.

§ 606. Use of funds.

All funds appropriated by this chapter shall be allotted, managed, administered, and accounted for in accordance with applicable law, including, but not limited to the Financial

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Management Act of 1979. The allottee shall be responsible for ensuring that these funds, or so much thereof as may be necessary, are used solely for the purpose specified in this chapter, and that no obligations are incurred in excess of the sum appropriated. The authority of the allottee to obligate funds appropriated by this chapter shall lapse as of September 30, 1983.

Source: PL 6-132 § 6; PL 1-55 § 1 (part); PL 1-119 § 1 (part); PL 2-52 § 1 (part).

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.