

**AN ACT**

Repealing Chapter 7 of Title 37 of the Pohnpei Code and inserting a new Chapter 7 in lieu thereof relating to foreign investment; and for other purposes.

**BE IT ENACTED BY THE POHNPEI LEGISLATURE:**

1           Section 1. Intent and purpose. The Legislature finds that a positive,  
2 healthy and vibrant climate for investment in this state is essential for the  
3 economic development of Pohnpei. It is with these thoughts in mind that a  
4 new chapter on foreign investment is being enacted into law. The intent and  
5 purpose of this new law is to strengthen Pohnpei's economy with dynamic,  
6 balanced and fair minded policies on investment and to enhance the  
7 government's abilities to encourage, promote and guide investment along  
8 productive lines that are urgently needed for the successful development of  
9 this state.

10           Section 2. Code changes. Chapter 7 of Title 37 of the Pohnpei Code  
11 is repealed in its entirety and a new Chapter 7 is inserted in lieu thereof to  
12 read as follows:

13   **“CHAPTER 7**

14   **FOREIGN INVESTMENT**

15           §7-101. Short title. This chapter is known and may be cited as  
16 the “Pohnpei Foreign Investment Act of 2011”.

17           §7-102. Definitions. For the purposes of this chapter, unless it  
18 is otherwise provided or the context requires a different  
19 construction, application or meaning:

20                           (1) “Engaging in business” means carrying out any  
21 activity relating to the conduct of a business, and shall include  
22 the activities enumerated in Subsection (1)(a) of this section but  
23 shall not include the activities enumerated in Subsection (1)(b)  
24 of this section:

25   (a) “Engaging in business” shall include:

1 (i) Buying, selling, leasing or exchanging  
2 goods, products or property of any kind for commercial  
3 purposes;

4 (ii) Buying, selling or exchanging  
5 services of any kind for commercial purposes;

6 (iii) Conducting negotiations for  
7 transactions of the types described in Subparagraphs (i) and (ii)  
8 of this paragraph; PROVIDED, HOWEVER, that conducting  
9 such negotiations within this jurisdiction for periods of less than  
10 14 days per calendar year shall not be considered “engaging in  
11 business”;

12 (iv) Appointing a representative, agent or  
13 distributor by a noncitizen to perform any of the acts described  
14 in Subparagraphs (i) through (iii) of this paragraph, unless said  
15 representative, agent or distributor has an independent status  
16 and transacts business in its name for its own account and not in  
17 the name of or for the account of any noncitizen principal;

18 (v) Maintaining a stock of goods for the  
19 purpose of having the same processed by another person;

20 (vi) Establishing or operating a factory,  
21 workshop, processing plant, warehouse or store, whether  
22 wholesale or retail;

23 (vii) Mining or exploring for minerals, or the  
24 commercial exploitation or extraction of other natural resources;

25 (viii) Providing services as a management  
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1 firm or professional consultant in the management, supervision  
2 or control of any business entity;

3 (ix) Providing professional services as  
4 defined by this chapter which are offered for a fee;

5 PROVIDED, HOWEVER, that such a professional shall not be  
6 considered to be “engaging in business” unless he or she, while  
7 present in this jurisdiction, performs his or her respective  
8 professional services for more than 30 days in any calendar  
9 year; and

10 (b) “Engaging in business” does not include:

11 (i) The publication of general  
12 advertisements through newspapers, brochures, and other  
13 publications, or through radio, television or the internet;

14 (ii) The conducting of scientific research  
15 or investigation, if:

16 (aa) The research or investigation is  
17 sponsored by a university, college, agency or institution  
18 normally engaged in such activities primarily for purposes other  
19 than commercial profit; and

20 (bb) The particular research or  
21 investigation at issue is not for purposes of, or expected to  
22 yield, commercial profit;

23 (iii) The collection of information by a  
24 bona fide journalist for news publication or broadcast; and

25 (iv) The lawful sale of corporate shares or  
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1 other interest or holdings in a business entity acquired not for  
2 speculation or profit.

3 (2) “Foreign investment” means any activity in the  
4 state by a noncitizen that amounts to “engaging in business” as  
5 defined in Subsection (1) of this section.

6 (3) “Manufacturing” means engaging at any stage in  
7 the production of goods by hand or by machine. For purposes  
8 of this chapter, manufacturing includes the assemblage and  
9 packaging of partially assembled goods, and the processing  
10 and/or packaging of marine and agriculture products for sale at  
11 wholesale or retail.

12 (4) “Noncitizen” means:

13 (a) Any person who is not a citizen of the  
14 Federated States of Micronesia;

15 (b) Any sole proprietorship, partnership,  
16 company, corporation, joint venture or association in which any  
17 interest is owned by a person who is not a citizen of the  
18 Federated States of Micronesia; or

19 (c) Any sole proprietorship, partnership,  
20 company, corporation, joint venture or association that will  
21 disburse to a noncitizen through a profit-sharing arrangement  
22 more than ten percent (10%) of its annual net profit.

23 (5) “Omnibus development statute” within the context  
24 of this chapter, means a statute enacted by the Pohnpei  
25 Legislature, which statute prescribes the terms and incentives  
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1 for the establishment and operation of one or more businesses  
2 in a specialized, priority development project for the state and  
3 which statute, upon acceptance thereof by a noncitizen  
4 developer or owner of such business or businesses, shall  
5 establish a specialized regulatory regime for said project and  
6 correspondingly exempt said noncitizens and their respective  
7 business activities within the project that are specifically listed  
8 in the omnibus development statute from the requirements of  
9 this chapter and one or more other statutory or regulatory  
10 requirements of this state for the period or periods prescribed in  
11 the omnibus development statute.

12 (6) “Professional services” means engaging in occupational  
13 services of a medical practitioner, dentist, lawyer, certified public  
14 accountant, architect, engineer or similar category of occupational  
15 service found by the Registrar of Corporations to require advanced  
16 professional training.

17 (7) “Registrar of Corporations” means the Pohnpei  
18 Registrar of Corporations as specified in Chapter 1 of Title 37 of the  
19 Code.

20 (8) “Retail trade” means engaging in the activity of  
21 selling merchandise directly to consumers situated within the  
22 state of Pohnpei; PROVIDED that, solely for purposes of this  
23 chapter, a manufacturing business which is authorized to do  
24 business within this state shall not be deemed to be engaged in  
25 a retail trade for the sale at its factory outlet directly to  
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1 consumers of products wholly manufactured within the state by  
2 that business or with at least fifty percent (50%) value added by  
3 the manufacturing processes of that business within the state.

4 (9) "Service industry" means that category of business  
5 which derives its principal economic benefit from the work  
6 performed by those engaged or associated with the business,  
7 notwithstanding that some part of the economic benefit is  
8 gained from the sale of a commodity associated with the  
9 performance or delivery of the service. The category of service  
10 industry is distinguished from the category of manufacturing in  
11 that in the manufacturing category, the principal economic  
12 benefit is derived from the sale of the completed product rather  
13 than the service performed. The term "service industry"  
14 includes, but is not limited to, such businesses as rental of  
15 apartments, office space or other commercial properties, beauty  
16 parlors, barber shops, tailor shops, restaurants, machine shops,  
17 marine repair facilities, and vehicle repair shops, but, solely for  
18 the purposes of this chapter, the term "service industry" does  
19 not include professional services or tourist services as defined  
20 by this section. The Registrar of Corporations shall maintain a  
21 comprehensive list of businesses which fall under the category  
22 of service industry. In the event that a prospective business  
23 does not appear directly on the list, an applicant may  
24 request and shall receive from the Registrar of Corporations a  
25 prompt response whether the prospective business is within the

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1 category of service industry.

2 (10) “Tourist services” means the operation of hotels,  
3 visitors’ lodges, golf courses, marinas or other recreational  
4 facilities found by the Registrar of Corporations to principally  
5 serve the visitor industry.

6 (11) “Wholesale trade” solely for purposes of this  
7 chapter means engaging in the activity of selling merchandise  
8 to other merchants who intend to resell a substantial amount of  
9 the merchandise so acquired to consumers situated within the  
10 state of Pohnpei.

11 §7-103. Permit required. Prior to engaging in any business in  
12 Pohnpei, a foreign investment permit must first be obtained by  
13 the following:

- 14 (1) Noncitizen sole proprietorships;
- 15 (2) Noncitizen corporations;
- 16 (3) Noncitizen partnerships;
- 17 (4) Noncitizen joint ventures; and
- 18 (5) Any other noncitizen business association.

19 §7-104. Powers and duties of the Registrar of Corporations.

20 (1) For the purposes of this chapter, and without  
21 limitation on the scope or responsibilities vested in his Office  
22 by other laws of Pohnpei, the powers and duties of the Registrar  
23 of Corporations shall be as follows:

- 24 (a) To receive applications for foreign  
25 investment permits under this chapter, obtain opinions and  
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1 recommendations from officers of the Pohnpei Government and  
2 other interested groups and leaders concerning these  
3 applications, make studies, investigations, and inquiries  
4 relevant to the applications, evaluate the applications according  
5 to the standards of this chapter and decide which applicants  
6 shall be granted foreign investment permits; and

7 (b) To ensure compliance of all noncitizens  
8 doing business in Pohnpei with this chapter and all rules,  
9 regulations, and foreign investment permits issued pursuant to  
10 this chapter, including the performance of investigatory  
11 functions as appropriate thereto and may, upon a sworn  
12 affidavit from any person or a determination on his own  
13 initiative that there is reason to believe that any provision of  
14 this chapter or any regulation issued pursuant hereto has been  
15 violated, investigate such alleged violation, and, in cooperation with  
16 the Office of the Attorney General, enforce this chapter and rules  
17 and regulations issued hereunder. In connection with any hearings  
18 or investigations required by this chapter or rules or regulations  
19 issued hereunder, the Registrar of Corporations may subpoena  
20 witnesses, records, books and documents.

21 (2) The Registrar of Corporations shall administer this  
22 chapter under rules and regulations promulgated by the  
23 Registrar of Corporations, which, with the approval of the  
24 Governor, shall have the force and effect of law, and shall be  
25 issued as provided by the Administrative Procedures Act, Title  
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1                   8 Chapter 1 of this Code.

2                   §7-105. Establishment of the DRP-FIP.

3                   (1)    There is hereby established within the executive  
4                   branch of the Pohnpei Government the Discretionary Review Panel  
5                   on Foreign Investment Permits, hereinafter referred to as the DRP-  
6                   FIP, for purposes of oversight, assurance and guidance as to the  
7                   activities of the Registrar of Corporations in the discretionary  
8                   performance of his duties pursuant to the provisions of this chapter.

9                   (2)    The DRP-FIP shall be composed of seven  
10                  members consisting of:

11                  (a)    Two representatives of the business  
12                  community appointed by the Governor with the advice and  
13                  consent of the Legislature for a term consecutive with that of  
14                  the Governor;

15                  (b)    Two representatives of the consumers of  
16                  Pohnpei appointed by the Governor with the advice and consent  
17                  of the Legislature for a term consecutive with that of the  
18                  Governor;

19                  (c)    The Director of the Department of Land and  
20                  Natural Resources;

21                  (d)    The Administrator of the Office of  
22                  Transportation and Infrastructure; and

23                  (e)    The Administrator of the Office of Economic  
24                  Affairs; PROVIDED that when the DRP-FIP is considering  
25                  discretionary permits with respect to commercial fisheries or  
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1 aquaculture, the Administrator of the Office of Fisheries and  
2 Aquaculture shall replace the Administrator of the Office of  
3 Economic Affairs on the panel.

4 (3) A member of the DRP-FIP representing the  
5 business community or the Pohnpei consumers may be  
6 removed from the DRP-FIP by the Governor solely for cause  
7 but only after written charges are served on the affected DRP-  
8 FIP member and he is given the right to a public hearing and to  
9 be represented by counsel at the hearing of the charges made  
10 against him. Such an action of removal may be appealed to the  
11 Trial Division of the Pohnpei Supreme Court. A member of the  
12 DRP-FIP representing a department or office within the  
13 Pohnpei Government may be removed from the DRP-FIP in the  
14 manner prescribed by the Constitution.

15 (4) The DRP-FIP shall elect its own Chairman and  
16 other officers from among its membership and shall prescribe  
17 the procedures under which it operates.

18 (5) Members of the DRP-FIP shall be compensated at  
19 the rates established by the Government Officers' Salary Act,  
20 Title 9 Chapter 4, as amended or superseded by Pohnpei law,  
21 when actually performing functions of the DRP-FIP at the  
22 direction of the Chairman, except that those members who are  
23 Pohnpei Government employees shall instead be granted  
24 administrative leave from their regular duties while performing  
25 functions of the DRP-FIP. All members shall also receive  
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1 travel expenses and per diem at Pohnpei Government rates  
2 when those amounts would be payable to Pohnpei Government  
3 employees in the same circumstances.

4 §7-106. Application for a foreign investment permit.

5 (1) Every noncitizen required to obtain a foreign  
6 investment permit under this chapter shall submit an application to  
7 the Registrar of Corporations. Every application shall be  
8 accompanied by a filing fee of \$250, which fee shall accrue to the  
9 general fund of the Treasury and shall not be refundable;  
10 PROVIDED that the following areas of investment shall require a  
11 reduced filing fee of \$50:

12 (a) Applications submitted under the Preferred  
13 Joint Venture Sector as provided in §7-107(1)(a) of this chapter;

14 (b) Applications for alternate energy businesses,  
15 irrespective of the category or sector of investment, the main  
16 purpose of which is the production or distribution of alternate  
17 energy intended to reduce the state's reliance on imported fossil  
18 fuels for its energy needs; and

19 (c) [RESERVED].

20 (2) The application for a foreign investment permit shall be  
21 on the form supplied by the Registrar of Corporations for the  
22 category of investment for which the permit is sought and shall  
23 contain the following information:

24 (a) The name of the applicant's business, the  
25 form of the business organization under which the applicant

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1 proposes to do business, its officers, directors, and proposed  
2 and existing stockholders, and their citizenship, or the  
3 citizenship of the owners of the applicant's business if it is in a  
4 form of business other than a corporation;

5 (b) The location of the proposed principal office  
6 in Pohnpei;

7 (c) The purpose, scope, and objective of the  
8 business activity to be conducted by the applicant and an  
9 explanation as to why the business activity fits within the  
10 category of investment as specified by §7-107 of this chapter  
11 under which the permit is being sought;

12 (d) Any additional information that the  
13 Registrar of Corporations may require; PROVIDED that such  
14 additional information is necessary for the Registrar of  
15 Corporations to evaluate the application being filed with respect  
16 to the criteria identified in §7-107 for the category and sector of  
17 investment for which the permit is being sought; PROVIDED  
18 FURTHER that with respect to prospective investments over  
19 which the Registrar of Corporations has discretionary approval  
20 authority pursuant to the provisions of §7-107(2) of this  
21 chapter, such additional information may include, but is not  
22 limited to:

23 (i) The specific benefits to the economy of  
24 the state which the applicant believes will materialize from the  
25 award of a discretionary permit under the provisions of §7-107(2)  
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1 of this chapter;

2 (ii) The employment preference to be accorded  
3 to citizens, the initial number of citizens to be employed, and the  
4 training programs to be offered to citizens in managerial and other  
5 positions;

6 (iii) A listing of total capital anticipated to be  
7 invested initially, identifying borrowed funds and their sources for  
8 each of the five years prior to and after receipt of the foreign  
9 investment permit, and from where such capital funds have been or  
10 will be obtained; and

11 (e) Any other information that the applicant may  
12 deem appropriate.

13 (3) In addition to the information required for noncitizen  
14 applications under Subsection (2) of this section, the application of a  
15 noncitizen that is a corporation (including a joint stock company)  
16 shall contain the following:

17 (a) A duly-certified copy of the articles of  
18 incorporation, charter, and bylaws of the corporation;

19 (b) An affidavit sworn by an authorized officer  
20 of the corporation stating the amount of its authorized capital  
21 stock on or within 60 days before the date of filing; and

22 (c) A designation of a person residing within  
23 Pohnpei upon whom process may be served, and the person's  
24 place of business or residence, and a certified copy of the  
25 minutes of the board of directors of the corporation authorizing  
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1 the designation.

2 §7-107. Categories of economic sectors. The following system  
3 of categories of economic sectors, as listed in Subsections (1)  
4 through (3) of this section and as expanded by Subsection (4) of  
5 this section, is hereby established for the purpose of  
6 implementing the policy of Pohnpei to guide foreign investment  
7 in the state's economy:

8 (1) Open "Pohnpei Green List" category:

9 (a) *Preferred Joint Venture Sector*: Except for the  
10 prohibited category of investments identified in Subsection (3) of  
11 this section, no special criteria needs to be met before a foreign  
12 investment permit is issued to a business in which not less than sixty  
13 percent (60%) of the total equity of the business is held by citizens  
14 of the Federated States of Micronesia; PROVIDED that in order to  
15 qualify as a "preferred joint venture" under this sector, the applicant  
16 must provide convincing evidence to the satisfaction of the Registrar  
17 of Corporations that the named FSM citizen investors in the joint  
18 venture truly own and fully control, by such means as voting rights  
19 of common stock in the corporation, not less than the required sixty  
20 percent (60%) of the total equity in the joint venture.

21 (b) *Initial Capitalization Sector*: Except for  
22 economic sectors restricted by Subsection (1)(c) of this section  
23 and economic sectors prohibited by Subsection (3) of this  
24 section, foreign investment in any business with an  
25 initial capitalization of \$250,000 or more, or \$50,000 in the  
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1 case of a professional service, no further equity requirements  
2 nor special criteria needs to be met, before a foreign investment  
3 permit is issued.

4 (c) *Special Investment Sector:* Subject to the  
5 capitalization requirements of Subsection (1)(b) of this section,  
6 no special criteria needs to be met before a foreign investment  
7 permit is issued to a business in the following economic sectors  
8 in which not more than forty-nine percent (49%) of the total  
9 equity of the business is held by noncitizens; PROVIDED that  
10 in order to qualify as a “special investment” business under this  
11 sector, the applicant must provide convincing evidence to the  
12 satisfaction of the Registrar of Corporations that the named  
13 FSM citizen investors in the business truly own and fully  
14 control, by such means as voting rights of common stock in the  
15 corporation, not less than the required fifty-one percent (51%)  
16 of the total equity in the business:

17 (i) Service industries, except that  
18 businesses providing professional services or tourist services as  
19 defined by §7-102 of this chapter shall be governed pursuant to  
20 Subsections (1)(a) and (1)(b) of this section;

21 (ii) Retail trade;

22 (iii) Exploration, development and  
23 extraction of land-based mineral resources and of marine-based  
24 mineral resources within the marine regulatory jurisdiction of  
25 the state; and  
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1 (iv) Exploration, cutting and milling of  
2 naturally occurring timber resources.

3 (2) *Discretionary "Pohnpei Amber List" category:* In  
4 addition to such permits as may be granted without special  
5 criteria beyond that specified in Subsection (1) of this section, the  
6 Registrar of Corporations may, upon written concurrence of a  
7 majority of the members of the DRP-FIP, grant a foreign  
8 investment permit to a business within such categories with less  
9 than the citizenship investment therein required by Subsection  
10 (1)(a) of this section; less than the initial capitalization  
11 requirement required by Subsection (1)(b) of this section; or  
12 possessing more than forty-nine percent (49%) noncitizen-owned  
13 equity therein stipulated by Subsection (1)(c) of this section;  
14 upon a finding that the applicant business will be of significant  
15 benefit to the economy of Pohnpei. A permit issued under this  
16 subsection may, with the written concurrence of a majority of the  
17 DRP-FIP, carry special conditions as to equity ownership, citizen  
18 employment, minimum capital investment and length of the term  
19 of the investment permit; PROVIDED that such conditions shall  
20 later be waived upon a showing to the satisfaction of the  
21 Registrar of Corporations that the business has attained and will  
22 maintain the capitalization and, where applicable, the equity  
23 requirements of the Pohnpei Green List category of this section.

24 (3) *Prohibited "Pohnpei Red List" category.*  
25 Notwithstanding any other provision of this section, no foreign  
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1 investment shall be permitted in the following economic  
2 sectors:

3 (a) [RESERVED].

4 (4) *Temporary category.* Except as prohibited by  
5 Subsection (3) of this section, a temporary category permit  
6 may be issued by the Registrar of Corporations for a business  
7 activity of limited duration when found by the Registrar of  
8 Corporations in his discretion that the business activity to be  
9 covered by the permit is temporary in nature, will be of  
10 significant benefit to the economy of the state, and is requested  
11 in connection with a project undertaken by the FSM National  
12 Government, the Pohnpei Government, a local government of  
13 Pohnpei, an enterprise licensed to do business in Pohnpei, or a  
14 non-profit organization authorized to conduct religious or  
15 humanitarian activities in Pohnpei. A permit issued under this  
16 subsection may carry special conditions, including, but not  
17 limited to restrictions on side-contracts not related to the project  
18 for which the temporary permit is sought, citizen employment,  
19 and length of the term of the temporary investment permit,  
20 which may not exceed 36 months.

21 §7-108. Criteria for review of application; conditions of certain  
22 permits granted to applicants. In addition to such requirements  
23 as may be prescribed by law, the Registrar of Corporations, by  
24 regulations issued pursuant to this chapter, shall prescribe the  
25 criteria for the review of applications and conditions that may  
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1 be attached for permits granted under §7-107(2) and §7-107(4)  
2 of this chapter.

3 §7-109. Duration of permits.

4 (1) Foreign investment permits issued under the  
5 authority of this chapter shall be valid for the following extent  
6 of time; PROVIDED that discretionary permits issued under  
7 §7-107(2) and temporary permits issued under §7-107(4) of  
8 this chapter shall be valid for the term so prescribed in such  
9 permit but not to exceed the term of years described in  
10 paragraphs (a), (b) and (c) of this subsection or, in the case of  
11 temporary permits, not to exceed the maximum term of months  
12 described in §7-107(4) of this chapter:

13 (a) Businesses principally providing  
14 professional services: 10 years;

15 (b) Businesses, not listed in Paragraph (a) of  
16 this subsection, which meet the capital investment criteria for  
17 the receipt of a 55 year development leasehold under Chapter 5  
18 of Title 41 of this Code: 55 years; and

19 (c) All other businesses: 25 years; PROVIDED  
20 that a business which later meets the criteria of Paragraph (b) of  
21 this subsection may apply to and receive from the Registrar of  
22 Corporations an amended term of the permit of 55 years from  
23 the date of the initial issuance of the permit.

24 (2) A business in good standing under this chapter, as  
25 it may be amended or superseded by state law in the future,  
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1            may apply, at any time during the last trimester of its current  
2            foreign investment permit, for an extension of that permit for  
3            such time, under the terms and conditions and subject to such  
4            restrictions that may apply thereto under this chapter or its  
5            successor then in place, which extension, if granted, shall be  
6            applied from the date that the current permit would have  
7            expired.

8            §7-110. Procedure for granting foreign investment permits.

9            (1)    Upon receipt of an application, the  
10           Registrar of Corporations shall select for the application a  
11           preliminary classification taking into account the category form  
12           utilized by the applicant and the list of categories and sectors  
13           established pursuant to §7-107 of this chapter. The Registrar of  
14           Corporations shall provide a copy of each application and his  
15           preliminary classification thereof to each member of the DRP-  
16           FIP. The Registrar of Corporations shall then undertake such  
17           investigations and consultations as he deems appropriate under  
18           the regulations issued pursuant to this chapter.

19           (2)    When the Registrar of Corporations is satisfied  
20           that his office has sufficient information and opinion, the  
21           Registrar of Corporations shall determine the category and  
22           sector under which the application should be classified and  
23           whether a permit should be granted to the applicant to do  
24           business in the state and so inform the applicant and the DRP-  
25           FIP. If within ten working days following their receipt of the  
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1 Registrar of Corporations's selection of category, a majority of  
2 the DRP-FIP shall determine that the Registrar of Corporations  
3 improperly placed an application under the category specified  
4 in §7-107(1), (*Open*), rather than §7-107(2), (*Discretionary*), or  
5 §7-107(3), (*Prohibited*), the DRP-FIP shall so inform the  
6 Registrar of Corporations and the applicant and the application  
7 shall be reclassified as instructed by the DRP-FIP. Such  
8 determination of the Registrar of Corporations, as may be  
9 modified by the DRP-FIP, shall be made solely on the basis of a  
10 finding of compliance with the eligibility requirements of §7-  
11 103 of this chapter, the filing procedures of §7-106 of this  
12 chapter, and the statutory requirements of §7-107 of this chapter  
13 with respect to applications filed under the respective categories  
14 and sectors listed in §7-107. In addition to the elements of  
15 determination listed above, a decision with respect to an  
16 application filed pursuant to the discretionary category listed in  
17 §7-107(2) of this chapter shall also include a discretionary  
18 determination of the Registrar of Corporations, subject to the  
19 concurrence of a majority of the members of the DRP-FIP, as to  
20 the merits of the application taking into account such conditions  
21 as the Registrar of Corporations, upon concurrence of a  
22 majority of the members of the DRP-FIP, may prescribe for the  
23 granting of a permit to an applicant under said subsection. An  
24 application filed pursuant to the temporary category listed in  
25 §7-107(4) of this chapter shall also include a discretionary  
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1 determination of the Registrar of Corporations as to the merits  
2 of the application taking into account such conditions as the  
3 Registrar of Corporations may prescribe for the granting of a  
4 permit to an applicant under said subsection.

5 (3) Upon reaching a determination, the Registrar of  
6 Corporations, subject to the modification of the classification of  
7 the application by a majority of the members of the DRP-FIP,  
8 where deemed necessary, and the concurrence of a majority of  
9 the members of the DRP-FIP, where required, shall promptly  
10 grant or deny the applicant a permit and so notify the applicant,  
11 with courtesy copies thereof provided to the Administrator of  
12 the Office of Economic Affairs and to the Secretary of the FSM  
13 Department of Resources and Development.

14 (4) If the actions of the above described officials of  
15 the Pohnpei Government are not completed within 60 working  
16 days following receipt of the application, the applicant may  
17 submit a show-cause demand to the Registrar of Corporations  
18 to determine why the action has not been completed in the time  
19 prescribed. The Registrar of Corporations shall answer the  
20 demand for explanation within five working days of the receipt  
21 thereof.

22 (5) A decision of the Registrar of Corporations, and  
23 the concurrence, or denial thereof, by a majority of the  
24 members of the DRP-FIP, where stipulated, to grant or deny a  
25 permit and, where appropriate, to prescribe the conditions  
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1           thereof shall be final, subject to judicial review as prescribed by  
2           Title 8 Chapter 3 of this Code, as amended or superseded;  
3           PROVIDED that an applicant, within 60 days following receipt  
4           of the Registrar of Corporation's decision, alone or in concert  
5           with the DRP-FIP, or of the court's decision, should judicial  
6           review be sought, may submit a supplemental application  
7           containing additional information, which supplemental  
8           application shall be filed and reviewed in the same manner as  
9           an original application; PROVIDED FURTHER that a  
10          supplemental application under this subsection shall require a  
11          filing fee of \$50, which fee shall accrue to the general fund of  
12          the Treasury and shall not be refundable.

13          §7-111. Service of process on noncitizen corporations. In the  
14          case of all noncitizen corporations doing business in Pohnpei  
15          under a foreign investment permit granted under this chapter,  
16          process served on the person designated by the corporation in  
17          its application for a foreign investment permit, or, if he cannot  
18          be found at the place designated, on the Attorney General, is  
19          valid service on the corporation. When the Attorney General is  
20          served with process, he shall send, by registered mail, a notice  
21          of service and a copy of the summons and complaint to the  
22          corporation concerned at its last known address. A default  
23          judgment may not be entered against the corporation in an  
24          action in which process is served on the Attorney General until  
25          at least 60 days after the date of service.

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1           §7-112. Duty to report on an annual basis. Every noncitizen  
2           doing business in Pohnpei under a foreign investment permit  
3           granted under this chapter shall file with the Registrar of  
4           Corporations, within 60 days immediately following the end of  
5           each calendar year, a full and accurate exhibit of business  
6           activities undertaken in Pohnpei, a profit and loss statement, and  
7           an up-to-date listing of information as set forth in §7-106(2)  
8           undertaken by the noncitizen business during the past calendar  
9           year.

10          §7-113. Duty to report changes in documents previously filed.  
11          A noncitizen business that has been issued a permit pursuant to  
12          this chapter shall also file with the Registrar of Corporations  
13          any changes in the provisions of its original charter, articles of  
14          incorporation or bylaws within 30 days of such change.

15          §7-114. Investigation by Office of the Attorney General. The  
16          Attorney General or a person authorized by him for the  
17          purposes of this chapter, may upon his own initiative at any  
18          time, with probable cause, and shall, upon request of the  
19          Registrar of Corporations, call for the production of books and  
20          papers of any noncitizen doing business in Pohnpei, and  
21          examine its officers, members of its board of directors, its  
22          agents or its employees, under oath concerning its business  
23          activities. The Attorney General shall submit to the Registrar  
24          of Corporations copies of all such documents or examinations.

25          §7-115. Application for amendment of permit.

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1                   (1) A noncitizen seeking an amendment to a permit  
2 issued by the Registrar of Corporations and the DRP-FIP,  
3 where required, shall comply with the provisions set forth in  
4 §7-106 of this chapter.

5                   (2) The application shall be processed in accordance  
6 with the procedure set forth in §7-110 of this chapter.

7                   (3) Except as sought by the application for amendment  
8 of permit, the terms of the original permit shall not be altered as  
9 a result of the Registrar of Corporations and the DRP-FIP's,  
10 where required, action on the application.

11 §7-116. Abridgment, modification, suspension or revocation of  
12 foreign investment permit.

13                   (1) *Basis.* A foreign investment permit granted under  
14 this chapter shall, at all times, be subject to abridgment,  
15 modification, suspension or revocation by the Registrar of  
16 Corporations, if:

17                               (a) The application of the grantee is found to  
18 have contained false or fraudulent information;

19                               (b) The grantee bribed or otherwise unlawfully  
20 influenced the Registrar of Corporations or any member of the  
21 DRP-FIP to issue the permit other than on the merits of the  
22 application;

23                               (c) The grantee presented false or fraudulent  
24 information to the Registrar of Corporations or members of the  
25 DRP-FIP in support of his application;

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1 (d) The grantee violated any provisions of  
2 Pohnpei, national or local government law, or of any rules or  
3 regulations issued thereunder which substantially relate to the  
4 conduct of business under the foreign investment permit;

5 (e) The grantee engaged in business activities  
6 which are in violation of any condition or term imposed in the  
7 foreign investment permit; or

8 (f) The grantee engaged in business activities  
9 outside the scope of the foreign investment permit or charter.

10 (2) *Procedure.* The Registrar of Corporations shall,  
11 upon receipt of information that a foreign investment permit  
12 should be abridged, modified, suspended or revoked, call a  
13 public hearing. An advance written notice of at least three  
14 weeks shall be given to the holder of the permit in question, or  
15 his authorized representative, of the alleged violations and of  
16 the time and date set for the hearing. At any such hearing, the  
17 Registrar of Corporations, may abridge, modify, suspend or  
18 revoke said permit. In such cases, the Registrar of Corporations  
19 shall notify the holder of said permit or his authorized  
20 representative, in writing, of the decision of the Registrar of  
21 Corporations and the reasons for the action taken. Action of the  
22 Registrar of Corporations may be appealed to a court of  
23 competent jurisdiction within 20 days following receipt by the  
24 permit holder, or his authorized representative, of notification  
25 of the action so taken by the Registrar of Corporations that the

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1           action of the Registrar of Corporations is improper or that the  
2           action taken is excessive for the infraction upon which it is  
3           based. Action of the Registrar of Corporations may not take  
4           effect until the expiration of 20 days following receipt of said  
5           notification by the permit holder or his authorized  
6           representative, unless the Registrar of Corporations shall  
7           determine that irreparable damage may occur if the action is not  
8           made effective sooner.

9           §7-117. Compliance with laws and regulations. An individual,  
10          partnership, corporation or business association that is granted a  
11          foreign investment permit under this chapter shall be subject to  
12          all present or future laws of the FSM National Government, the  
13          Pohnpei Government or any local government and any rules  
14          and regulations issued thereunder unless exempted therefrom  
15          by the appropriate jurisdiction.

16          §7-118. Criminal penalties. Any person:

17                 (1) Who intentionally engages in business activities in  
18                 Pohnpei for which a foreign investment permit is required  
19                 without first obtaining that permit; or

20                 (2) Who, after obtaining a foreign investment permit,  
21                 intentionally fails to comply with the limitations, if any, stated  
22                 in the permit; or

23                 (3) Who obtains a foreign investment permit by fraud  
24                 or misrepresentation; or

25                 (4) Who violates any other provision of this chapter,  
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1 shall be deemed guilty of a criminal offense and, upon  
2 conviction thereof by a court of competent jurisdiction within  
3 Pohnpei, shall be imprisoned for a period of less than one year,  
4 or fined less than \$1,000, or both such fine and imprisonment.

5 §7-119. State exemptions. The following businesses are  
6 exempt from this chapter:

7 (1) Any business for which an omnibus development  
8 statute has been enacted waiving the requirements of a foreign  
9 investment permit for that business; and

10 (2) Businesses within such economic sectors as the  
11 Registrar of Corporations, subject to direction by state law,  
12 shall find, following consultation with the appropriate officers  
13 and agencies of the national government, are subject to  
14 principal regulation by the national government under the FSM  
15 Constitution.

16 §7-120. Compact exemption.

17 (1) In recognition of the special relationship between  
18 the Federated States of Micronesia and the United States of  
19 America memorialized by the Compact of Free Association, as  
20 amended, businesses that are solely owned by citizens of the  
21 United States of America who have maintained their principal  
22 place of residency within the FSM for at least five consecutive  
23 years immediately preceding the filing of an application for  
24 exemption under this section or jointly owned by citizens of the  
25 Federated States of Micronesia and the United States of

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1           America who have maintained the specified residency within  
2           the FSM may apply to the Registrar of Corporations and be  
3           awarded a special Certificate of Compact Exemption which  
4           shall exempt the holder of said certificate from the provisions  
5           of this chapter for the period that the certificate remains valid.

6           (2)    The application for a Certificate of Compact  
7           Exemption shall require the payment of a non-refundable filing  
8           fee of \$10 which shall be deposited in the general fund of the  
9           Pohnpei Treasury.

10          (3)    The exemption shall apply only to the extent that  
11          citizens of the Federated States of Micronesia are accorded the  
12          same privileges of investing and doing business within the  
13          United States of America.

14          (4)    A Certificate of Compact Exemption shall be valid  
15          until reciprocal privileges for FSM citizens doing business in  
16          the United States of America are revoked or are substantially  
17          regulated beyond that applied to average US citizens doing  
18          business in the United States of America, whichever shall first  
19          occur; PROVIDED that the certificate shall automatically  
20          expire if the recipient due to loss of US citizenship is no longer  
21          eligible therefor.

22          (5)    Notwithstanding the award of a certificate under  
23          the provisions of this section, US citizens desiring the full  
24          benefits of a Pohnpei Foreign Investment Permit, inclusive of  
25          the duration of said permit as prescribed by §7-109 of this  
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1 chapter, are encouraged to apply for a regular permit pursuant  
2 to the provisions of this chapter.

3 (6) The Registrar of Corporations shall annually  
4 review the applications under this section and report to the  
5 Governor and the Pohnpei Legislature on the issuance of  
6 exemption certificates and the impact of the Compact  
7 exemptions on the economy of Pohnpei.

8 §7-121. Grace period for changed circumstances. A business,  
9 duly qualified under state law to conduct business and so  
10 conducts business within the state of Pohnpei, that becomes  
11 subject to the provisions of this chapter because of an  
12 unforeseen event which is not within the decision-making  
13 authority of the business and is outside of the ordinary course of  
14 business, including, but not limited to, the death of a citizen  
15 business owner and the inheritance of the business interests by  
16 a noncitizen family member, shall be accorded a grace period of  
17 one year following the change in circumstances in which it may  
18 continue business activities within the state without the  
19 necessity of obtaining a foreign investment permit under this  
20 chapter. The grace period granted to a business that has  
21 experienced changed circumstances under this section is  
22 intended to provide the opportunity for the business or its  
23 owner(s) to apply for and obtain a foreign investment permit  
24 under this chapter or to take such other steps as may be  
25 necessary to wind up the affairs of the business within the state

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1 or to restore its status as a domestic business that is not subject  
2 to the provisions of this chapter.

3 §7-122. Regulations, permits and licenses issued under  
4 previous authority.

5 (1) Regulations issued under previous versions of this  
6 chapter and previous foreign investment laws for this state shall  
7 continue in force and effect to the extent they are not  
8 inconsistent with the current provisions of this chapter;  
9 PROVIDED that the Registrar of Corporations shall endeavor,  
10 with the assistance of the Attorney General's Office, to  
11 promulgate and maintain a set of updated, consolidated  
12 regulations for the full and effective administration of this  
13 chapter.

14 (2) Permits and licenses issued under previous foreign  
15 investment laws of the Trust Territory, Ponape District, and  
16 Pohnpei State, and the conditions established relative thereto,  
17 shall continue in force and effect under the terms so stated, until  
18 they expire by their own terms, or are abridged, modified,  
19 suspended or revoked by the Registrar of Corporations, alone or  
20 in concert with the DRP-FIP, pursuant to this chapter.

21 §7-123. Authorization for appropriation; administration. There  
22 is hereby authorized for appropriation from the general fund of  
23 Pohnpei such sums as are determined annually in the  
24 Comprehensive Budget Act for the administration of this chapter.  
25 All such sums so appropriated shall be administered and  
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1           expended by the Registrar of Corporations solely for the purposes  
2           specified in this chapter. The Registrar of Corporations shall  
3           submit an annual report to the Governor and the Legislature on or  
4           before October 15 each year on the administration and  
5           expenditure of monies appropriated for the previous fiscal year.  
6           All sums appropriated for any fiscal year remaining unexpended  
7           or unobligated on September 30 thereof shall revert to the general  
8           fund of Pohnpei. The Office of the Attorney General shall  
9           be the successor of all funds appropriated and assets assigned in  
10          Pohnpei to the former Foreign Investment Board for activities  
11          of the Registrar of Corporations as specified in this act.

12          §7-124. Conflict of interest.

13                 (1) If the Registrar of Corporations, or any member of  
14                 the DRP-FIP, advisor thereto or government officer or employee  
15                 involved in the administration of this chapter shall be interested,  
16                 either directly or indirectly, through his business holdings, by an  
17                 agent disclosed or undisclosed or by a marital relationship, in any  
18                 application submitted under this chapter or consideration by the  
19                 Registrar of Corporations of an existing permit, such interest  
20                 shall be disclosed to the Registrar of Corporations and shall be  
21                 set forth in the public records of the Office of the Attorney  
22                 General, and the person having such interest therein shall not  
23                 participate in any further actions of the Pohnpei Government  
24                 relative thereto outside of formal meetings or hearings wherein  
25                 such person is requested to appear.

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1                   (2) The Registrar of Corporations, and each member  
2 of the DRP-FIP, with respect to discretionary permits, shall be  
3 prohibited from obtaining any interest, either directly or  
4 indirectly, through his business holdings, by an agent disclosed  
5 or undisclosed or by undue influence within a marital  
6 relationship, in any business which is granted a foreign  
7 investment permit under this chapter within three years  
8 following the granting of a permit, or a decision of  
9 the Registrar of Corporations to amend the permit to  
10 substantially expand the scope of permitted activities  
11 thereunder.

12                   (3) The Registrar of Corporations, and each member  
13 of the DRP-FIP, with respect to discretionary permits, and any  
14 advisor or government employee having public or fiduciary  
15 responsibilities under this chapter shall not at any time suggest  
16 an arrangement with a potential foreign investor or permit  
17 holder, whether or not personally initiated by said officer,  
18 member, advisor or employee, which would result in a direct or  
19 indirect business relationship therewith, whether in person,  
20 through his business holdings, by disclosed or undisclosed  
21 agent or by marital relationship.”

22                   Section 3. Effective date; transition. This act shall take effect upon  
23 its approval by the Governor, or upon its becoming law without such  
24  
25  
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1 approval. Employees of the Foreign Investment Board on the effective date  
2 of this act shall continue to serve as employees of the Office of the Attorney  
3 General and assigned to the Registrar of Corporations.

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5 PASSED BY THE POHNPEI LEGISLATURE ON THE 10<sup>TH</sup> DAY OF  
6 MARCH, 2011.

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10 \_\_\_\_\_  
Speaker, Pohnpei Legislature

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Attest: \_\_\_\_\_  
Legislative Clerk

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15 Approved: \_\_\_\_\_  
Governor, Pohnpei

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