

Foreign Investment Guide

1. Purpose

This guide sets forth the procedures governing the operations of the Foreign Investment Act of 2011, the permit application and review process, and the policy guidelines of the Panel concerning foreign investment in the State of Pohnpei.

2. Application for a Foreign Investment Permit

A. Who must apply:

Prior to engaging in any business in Pohnpei, a foreign investment permit must first be obtained by the following:

1. Noncitizen sole proprietorship; or
2. Noncitizen corporation or other business association; or
3. Noncitizen partnerships; or
4. Noncitizen joint ventures; or
5. Any other noncitizen business association.

B. Exemptions:

A permit shall not be required of or in the following instances:

1. Any person providing a professional service in Pohnpei for thirty (30) days or less during a calendar year.
2. Where permits and licenses were issued under previous foreign investment laws of the Trust Territory, Ponape District, and Pohnpei State, and the relative conditions established. These shall continue in force and effect under the terms so stated, until they expire by their own terms, are

abridged, modified, suspended or revoked by the Registrar of Corporations, alone or in concert with the DRP-FIP.

3. Any business for which an omnibus development statute has been enacted waiving the requirements of a foreign investment permit for that business.
4. When conducting negotiations within Pohnpei for periods of less than fourteen (14) days per calendar year for (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.
5. When engaging in the publication of general advertisements through newspapers, brochures, and other publications, or through radio television or the internet.
6. When conducting scientific research or investigation if:
 - a. The research or investigation is sponsored by a university, college, agency or institution normally engaged in such activities primarily for purposes other than commercial profit; and
 - b. The particular research or investigation at issue is not for purposes of, or expected to yield, commercial profit.
7. A bona fide journalist collecting information for news publication or broadcast.
8. The lawful sale of corporate shares or other interest or holdings in a business entity acquired not for speculation or profit.
9. Businesses that are solely owned by citizens of the United States of America (USA) who have maintained their principal place of residency within the FSM for at least five consecutive years immediately preceding the filing of an application for exemption under a Compact

Exemption may apply to the Registrar of Corporations and be awarded a special Certificate of Compact Exemption which shall exempt the holder of said certificate from the provisions of this chapter for the period that the certificate remains valid.

10. Businesses jointly owned by citizens of the FSM and the USA who have maintained their principal place of residency within the FSM for at least five consecutive years immediately preceding the filing of an application for exemption under a Compact Exemption may apply to the Registrar of Corporations and be awarded a special Certificate of Compact Exemption which shall exempt the holder of said certificate from the provisions of this chapter for the period that the certificate remains valid.

C. Fees:

Standard Filing Fee: \$250

Every noncitizen required to obtain a foreign investment permit must submit an application to the Registrar of Corporations along with a non-refundable filing fee of \$250.

Reduced Filing Fee: \$50

The following areas of investment require a reduced filing fee of \$50:

- (a) Applications submitted under the "Preferred Joint Venture Sector": a business in which not less than sixty percent (60%) of the total equity of the business is held by citizens of the FSM; PROVIDED that the applicant provides convincing evidence to the satisfaction of the Registrar of Corporations that the named FSM citizen investors in the joint venture truly own and fully control, by such means as voting rights of common stock in the corporation, not less than the required

sixty percent (60%) of the total equity in the joint venture.

- (b) Applications for alternate energy businesses, irrespective of the category or sector of investment, the main purpose of which is the production or distribution of alternate energy intended to reduce the state's reliance on imported fossil fuels for its energy needs.

D. Application Form:

The application for a foreign investment permit shall be on the form supplied by the Registrar of Corporations for the category of investment for which the permit is sought.

3. Compact Exemption

In recognition of the special relationship between the FSM and the USA memorialized by the Compact of Free Association, as amended, the businesses listed below may apply to the Registrar of Corporations and be awarded a special Certificate of Compact Exemption which shall exempt the holder from the provisions of this chapter for the period that the certificate remains valid.

(1) Which Businesses the Compact Exemption Applies to:

The Compact Exemption applies to the following businesses:

- A. Businesses solely owned by citizens of the United States of America who have maintained their principal place of residency within the FSM for at least five consecutive years immediately preceding the filing of an application for exemption under this section; or
- B. Businesses jointly owned by citizens of the FSM and the United States of America who have maintained their principal place of residency within the FSM for at least five consecutive years.

(2) Filing Fee

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

(3) Duration of the Compact Exemption

- A. The exemption shall apply only to the extent that citizens of the FSM are accorded the same privileges of investing and doing business within the USA.
- B. A Certificate of Compact Exemption shall be valid until reciprocal privileges for FSM citizens doing business in the USA are revoked or are substantially regulated beyond that applied to average US citizens doing business in the USA, whichever shall first occur; PROVIDED that the certificate shall automatically expire if the recipient is no longer eligible due to loss of US citizenship.

(4) US Citizens are Encouraged to Apply for A Foreign Investment Permit

Notwithstanding the award of a certificate under the provisions of this section, US citizens desiring the full benefits of a Pohnpei Foreign Investment Permit, inclusive of the duration of a permit, are encouraged to apply for a regular permit pursuant to the provisions of this chapter.

4. Categories of Economic Sectors

The following categories of economic sectors exist:

- (1) Open "Pohnpei Green List" category:
 - (a) *Preferred Joint Venture Sector*: No special criteria needs to be met before a foreign investment permit is issued to a business in which not less than sixty percent (60%) of the total equity of the business is held by citizens of the FSM; PROVIDED that the applicant provides convincing evidence to the satisfaction of the Registrar of Corporations that the named FSM citizen investors in the joint venture truly own and fully control, by such means as voting rights of common stock in the corporation, not less than the required sixty percent (60%) of the total equity in the joint venture.
 - (b) *Initial Capitalization Sector*: No further equity requirements nor special criteria need to be met before a foreign investment permit is issued to a business with an initial capitalization of \$250,000 or more, or \$50,000 in the case of a professional service.
 - (c) *Special Investment Sector*: Subject to the capitalization requirements of Subsection (1)(b), no special criteria needs to be met before a foreign investment permit is issued to a business in the following economic sectors in which not more than forty-nine percent (49%) of the total equity of the business is held by noncitizens; PROVIDED that the applicant provided convincing evidence to the satisfaction of the Registrar of Corporations that the named FSM citizen investors in the business truly own and fully control, by such means as voting rights of common stock in the corporation, not less than the required fifty-one percent (51%) of the total equity in the business:

- (i) Service industries, except that businesses providing professional services or tourist services as defined by §7-102 of this chapter shall be governed pursuant to Subsections (1)(a) and (1)(b) of this section;
- (ii) Retail trade;
- (iii) Exploration, development and extraction of land-based mineral resources and of marine-based mineral resources within the marine regulatory jurisdiction of the state; and
- (iv) Exploration, cutting and milling of naturally occurring timber resources.

- (b) citizen employment,
- (c) minimum capital investment, and
- (d) length of the term of the investment permit;

PROVIDED that such conditions shall later be waived upon a showing to the satisfaction of the Registrar of Corporations that the business has attained and will maintain the capitalization and, where applicable, the equity requirements of the Pohnpei Green List category of this section.

(3) *Prohibited "Pohnpei Red List" category:*

This category is reserved.

(4) *Temporary category:*

A temporary category permit may be issued by the Registrar of Corporations for a business activity of limited duration when found by the Registrar of Corporations in his discretion that:

- (a) the business activity to be covered by the permit is temporary in nature,
- (b) will be of significant benefit to the economy of the state, and
- (c) is requested in connection with a project undertaken by:
 - (i) the FSM National Government,
 - (ii) the Pohnpei Government,
 - (iii) a local government of Pohnpei,
 - (iv) an enterprise licensed to do business in Pohnpei, or
 - (v) a non-profit organization authorized to conduct religious or humanitarian activities in Pohnpei.

(2) *Discretionary "Pohnpei Amber List":*

The Registrar of Corporations may grant a foreign investment permit to a business within the categories listed below upon a) written concurrence of a majority of the members of the DRP-FIP, and b) upon finding that the applicant business will be of significant benefit to the economy of Pohnpei:

- (a) a business with less than the citizenship investment therein required by Subsection (1)(a) of this section;
- (b) a business with less than the initial capitalization requirement required by Subsection (1)(b) of this section; or
- (c) a business possessing more than forty-nine percent (49%) noncitizen-owned equity therein stipulated by Subsection (1)(c);

A permit issued under this subsection may, with the written concurrence of a majority of the DRP-FIP, carry special conditions as to:

- (a) equity ownership,

A permit issued under this subsection may carry special conditions, including, but not limited to:

- (a) restrictions on side-contracts not related to the project for which the temporary permit is sought,
- (b) citizen employment,
- (c) and length of the term of the temporary investment permit, which may not exceed 36 months.

services as defined by §7-102 of this chapter shall be governed pursuant to Subsections (1)(a) and (1)(b) of this section;

- 2. Retail trade;
- 3. Exploration, development and extraction of land-based mineral resources and of marine-based mineral resources within the marine regulatory jurisdiction of the state; and
- 4. Exploration, cutting and milling of naturally occurring timber resources.

5. Equity and Capitalization Requirements

(1) Foreign Equity Restrictions and Minimum Capitalization

a. Initial Capitalization Sector

- i. No further equity requirements nor special criteria need to be met before a foreign investment permit is issued to a business with an initial capitalization of \$250,000 or more.
- ii. No further equity requirements nor special criteria need to be met before a foreign investment permit is issued to a professional service with an initial capitalization of \$50,000 or more.

b. Special Investment Sector

- i. No special criteria need to be met before a foreign investment permit is issued to a business in one of the sectors listed below as long as non-citizens hold not more than forty-nine percent (49%) of the total equity and the named FSM citizen investors truly own and fully control not less than fifty-one percent (51%) of the total equity.

- 1. Service industries, except that businesses providing professional services or tourist

(2) Summary of Equity and Capital Requirements

Economic Sector	Foreign Equity Percentage (%)		Minimum Initial Capitalization	Special Criteria Required
Logging	49% or less	OR	\$250,000	NO
Mining	49% or less	OR	\$250,000	NO
Professional Services	40% or less	OR	\$50,000	NO
Retail Trade	49% or less	OR	\$250,000	NO
Service Industry ¹	49% or less	OR	\$250,000	NO
Tourist Services	40% or less	OR	\$250,000	NO
Joint Venture	40% or less			NO
ALL OTHER BUSINESSES			\$250,000 Less than \$250,000	NO YES

6. Duration of Permits

- (1) Foreign investment permits are valid for the following extent of time:

¹ Except professional or tourist services

- (a) Businesses principally providing professional services: 10 years;
 - (b) Businesses, not listed in Paragraph (a) of this subsection, which meet the capital investment criteria for the receipt of a 55 year development leasehold under Chapter 5 of Title 41 of this Code: 55 years;
 - (c) Discretionary permits issued under §7-107(2) and temporary permits issued under §7-107(4) are valid for the term prescribed in the permit not exceeding the terms in paragraphs (a), (b) and (d) or, in the case of temporary permits, not to exceed thirty-six (36) months
 - (d) All other businesses: 25 years; PROVIDED that a business which later meets the criteria of Paragraph (b) of this subsection may apply to and receive from the Registrar of Corporations an amended term of 55 years from the date of the initial issuance of the permit.
- (2) A business in good standing may apply, at any time during the last trimester of its current foreign investment permit, for an extension of that permit for such time, under the terms and conditions and subject to such restrictions that may apply then, the extension of which, if granted, shall be applied from the date that the current permit would have expired.

7. Procedure for Granting Permits

- (1) An Applicant for a Foreign Investment Permit requests an Application for Foreign Investors Business Permit from the Registrar of Corporations.
- (2) The Applicant then completes the Application for Foreign Investors Business Permit and submits the Application, the filing fee, and any required documents to the Registrar of Corporations.
- (3) The Registrar of Corporations, after reviewing the Application, and with the assistance of the DRP-FIP, grants or denies the applicant a

permit and notifies the applicant of the decision. This process could take up to 60 working days.

8. Duty to Report on an Annual Basis

Every noncitizen doing business in Pohnpei under a foreign investment permit granted under this chapter shall file with the Registrar of Corporations, within 60 days immediately following the end of each calendar year:

- 1. a full and accurate exhibit of business activities undertaken in Pohnpei,
- 2. a profit and loss statement, and
- 3. an up-to-date listing of information as set forth in the application per §7-106(2).

9. Duty to Report Changes in Documents Previously Filed

A noncitizen business that has been issued a permit pursuant to this chapter shall also file with the Registrar of Corporations any changes in the provisions of its original charter, articles of incorporation or bylaws within 30 days of such change.

10. Application for Amendment of Permit

- (1) A noncitizen seeking an amendment to a permit issued by the Registrar of Corporations and the DRP-FIP, where required, shall comply with the provisions set forth in §7-106 of this chapter.
- (2) The application shall be processed in accordance with the procedure set forth in §7-110 of this chapter.
- (3) Except as sought by the application for amendment of permit, the terms of the original permit shall not be altered as a result of the Registrar of Corporations and the DRP-FIP's, where required, action on the application.

11. Abridgment, Modification, Suspension or Revocation of Permit

- (1) *Basis.* A foreign investment permit is at all times subject to abridgment, modification, suspension or revocation by the Registrar of Corporations, if:
 - (a) The application of the grantee is found to have contained false or fraudulent information;
 - (b) The grantee bribed or otherwise unlawfully influenced the Registrar of Corporations or any member of the DRP-FIP to issue the permit other than on the merits of the application;
 - (c) The grantee presented false or fraudulent information to the Registrar of Corporations or members of the DRP-FIP in support of his application;
 - (d) The grantee violated any provisions of Pohnpei, national or local government law, or of any rules or regulations issued thereunder which substantially relate to the conduct of business under the foreign investment permit;
 - (e) The grantee engaged in business activities which are in violation of any condition or term imposed in the foreign investment permit; or
 - (f) The grantee engaged in business activities outside the scope of the foreign investment permit or charter.

12. Compliance with Laws and Regulations

An individual, partnership, corporation or business association that is granted a foreign investment permit is subject to all present or future laws of the FSM National Government, the Pohnpei Government or any local government and any rules and regulations issued unless exempted by the appropriate jurisdiction.

13. Criminal Penalties

Any person:

- (1) Who intentionally engages in business activities in Pohnpei for which a foreign investment permit is required without first obtaining that permit; or
- (2) Who, after obtaining a foreign investment permit, intentionally fails to comply with the limitations, if any, stated in the permit; or
- (3) Who obtains a foreign investment permit by fraud or misrepresentation; or
- (4) Who violates any other provision of this Act,

shall be deemed guilty of a criminal offense and, upon conviction thereof by a court of competent jurisdiction within Pohnpei, shall be imprisoned for a period of less than one year, or fined less than \$1,000, or both such fine and imprisonment.

14. Grace Period for Changed Circumstances

A business, duly qualified under state law to conduct business and so conducts business within the state of Pohnpei, which becomes subject to the provisions of this chapter because of an unforeseen event which is:

1. not within the decision-making authority of the business and
2. is outside of the ordinary course of business

shall be accorded a grace period of one year following the change in circumstances in which it may continue business activities within the state without the necessity of obtaining a foreign investment.

Changed circumstances may include, for example, the death of a citizen business owner and the inheritance of the business interests by a noncitizen family member.

The grace period granted to a business that has experienced changed circumstances is intended to provide the opportunity for the business or its

owner(s) to apply for and obtain a foreign investment permit or to take such other steps as may be necessary to wind up the affairs of the business within the state or to restore its status as a domestic business that is not subject to the provisions of this chapter.

15. Regulations, Permits and Licenses issued Previously

- (1) Permits and licenses issued under previous foreign investment laws of the Trust Territory, Ponape District, and Pohnpei State, and the conditions established, shall continue in full force and effect under the terms so stated, until they expire by their own terms, or are abridged, modified, suspended or revoked by the Registrar of Corporations, alone or in concert with the DRP-FIP, pursuant to this chapter.
- (3) Businesses holding a valid permit issued by a previous authority prior to March 18, 2011, whose permit expires prior to December 31, 2011, shall be accorded an automatic extension for one year from the date of expiration on the permit.