



Office of the _____
Pohnpei State Government
P. O. Box _____
Kolonia, Pohnpei FSM 96941

OFFICE OF THE _____

NOTICE TO THE PUBLIC

**PROPOSED REGULATIONS PERTAINING TO THE FOREIGN
INVESTMENT ACT, CHAPTER 7 OF TITLE 37 OF THE POHNPEI CODE, AS
AMENDED.**

FOR COMMENT

The Office of the _____ has approved the publication for comment of the following proposed regulations.

COMMENT PERIOD:

Comments on the proposed regulations are being sought by the Office of the _____ for a thirty (30) day period, commencing at the posting of this Notice To the Public, prior to the adoption of the proposed regulations. Any comments should be submitted in writing during this period to:

**_____, The Office of _____
Pohnpei State Government
Kolonia, Pohnpei 96941 FM**

PROPOSED REGULATIONS

**PROPOSED REGULATIONS TO BE ENACTED UNDER CHAPTER 7 of
TITLE 37 OF THE POHNPEI CODE, AS AMENDED.**

PART I. GENERAL PROVISIONS

Section 1. The purpose of these regulations is to set forth guidelines concerning foreign investment in the State of Pohnpei.

Section 2. Legal Effect of the Regulations. Upon meeting the requirements of S.L. No.2L-12-80, and upon approval by the Governor, these rules and regulations shall have the force and effect of law.

Section 3. Legal Authority. These regulations are promulgated pursuant to Chapter 7 of Title 37 of the Pohnpei Code, as amended by S.L. No. 7L-83-11 and S.L. No. 7L-91-11 and the procedures set forth in S.L. No.2L-12-80 and issued provided by the Administrative Procedures Act, Title 8 Chapter 1 of the Pohnpei Code.

Tel: (691)320-_____

Fax: (691)320-_____

Section 4. Definitions. Unless the context clearly indicates otherwise, the following meanings shall apply to these regulations:

A. “Act” means the Pohnpei Foreign Investment Act of 2011, as amended by S.L. No. 7L-83-11 and S.L. No. 7L-91-11 and any other amendments or successors thereto.

B. “Business” means any activity engaged in, or any interest in property sought or obtained for the purpose of immediate or anticipated pecuniary or other gain or profit, but shall not include those activities specifically exempted by these regulations.

C. “Citizen” means a citizen of the Federated States of Micronesia. “Foreign investment” means any activity in the state by a noncitizen that amounts to “engaging in business” as defined in 37 PC 7-102 (1).

D. “Noncitizen” means:

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

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

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

E. “Permit” means a foreign investors permit under the Foreign Investment Act of 2011.

F. “Professional” means an individual who is a medical practitioner, dentist, lawyer, certified public accountant, architect, engineer or similar category of occupation found by the Registrar of Corporations to require advanced professional training.

G. “Registrar of Corporations” means the Pohnpei Registrar of Corporations as specified in Chapter 1 of Title 37 of the Code.

Section 5. Exemptions to Engaging in Business. 37 PC 7-102 (1) (b)

““Engaging in business” does not include:” outlines which types of businesses do not amount to “Engaging in business.” Other categories of business which do not amount to Engaging in business” are the following:

“(a) Any person who provides services and/or goods solely to any agency of the national, state or municipal governments in the FSM by contract or as an employee, provided that a permit shall be required if and when that person provides or offers to provide any services and/or goods to any others in or from Pohnpei.

(b) Any business engaged solely and strictly for genuine charitable, religious or philanthropic purposes; where the monetary gains and receipts are used entirely for such purposes within the FSM.

(c) Any professional whose presence in Pohnpei is limited to a single transaction during any twelve (12) month period – provided that his/her presence in Pohnpei does not exceed thirty (30) days during this twelve month period.

(d) The acquisition of any lien or collateral interest in real or personal property or other assets of a business to secure the payment of valid loans and debts of the business: provided the person acquiring such interest is not engaged in the business of lending money or marketing such security interests.

(e) A noncitizen employed by one (1) employer during any six month period at fixed wages or salary and not sharing directly in the profits of the employer’s business, and not having a vote in the decisions regarding the business.

(f) Businesses within such economic sectors as the Registrar of Corporations shall find, following consultation with the appropriate officers and agencies of the national government, are subject to principal regulation by the national government under the FSM Constitution.”

Section 6. Basis of foreign investment permits. 37 PC 7-107 outlines the categories of economic sectors while 37 PC 7-110 outlines the procedure for granting foreign investments. Each permit is based on the Category of Economic Sector Investment under which permit is sought.

The categories are: 1) Open “Pohnpei Green List” category: Preferred Joint Venture Sector; Initial Capitalization Sector; Special Investment Sector; 2) Discretionary “Pohnpei Amber List” category: Less than citizenship investment required; Less than the initial capitalization required; More than the required noncitizen owned equity; 3) Prohibited “Pohnpei Red List” category: Prohibited; 4) Temporary category: Temporary.

Section 7. Initial Capitalization. The term “Initial capitalization” in

37PC 7-107(1)(b) means the following: Initial capitalization amounts to the reasonable value of the capital investment which is accessible to the applicant. Applicants for Permits are required to provide documentary evidence of reasonably accessible capital. Initial capitalization includes, but is not limited to: foreign and local in cash and in kind contributions, machinery, equipment, spare parts, material and supplies, capital assets, and loan and borrowed funds.

Section 8. Prohibited Acts. It is unlawful for any person to violate any provisions of these regulations.

Section 9. Penalty Provisions. Violations of these regulations shall be subject to penalties pursuant to the provisions in 37 PC 7-118.

Section 8. Effective Date. This regulation shall take effect upon approval by the Governor.

Kevin Pelep
Registrar of Corporations

Date: _____

John Ehsa
Governor, State of Pohnpei

Date: _____

Approved as to legal Form:

Scott Garvey
Attorney General, State of Pohnpei

Date: _____

Promulgated by:

_____ of the _____

Date: _____

Certification of Posting

I, the undersigned hereby certify that I have caused to be posted the foregoing Regulations pertaining to the Foreign Investment Act at the Pohnpei Supreme Court and all local government office buildings this ____ day of November, 2011.

**Certification for Announcement on
Local Radio Broadcast Station**

I, the undersigned, hereby certify that I have personally caused the foregoing Regulations to be broadcasted at least seven (7) times on the Radio Broadcast Station V6AH, the local radio broadcast station today, this ____ day of November, 2011.

Approved as to Form:

Scott G. Garvey
Attorney General, State of Pohnpei