

SIXTH POHNPEI LEGISLATURE
FIFTEENTH SPECIAL SESSION, 2006

L.B. No. 254-05
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S.L.NO. 6L-86-06

AN ACT

To further amend S.L. No. 1L-85-86, relating to foreign investment, including the transfer of the Foreign Investment Board's promotion functions to the Office of Economic Affairs; and for other purposes.

BE IT ENACTED BY THE POHNPEI LEGISLATURE:

1 Section 1. Section 2 of S.L. No. 1L-85-86, as amended, is hereby
2 further amended to read as follows:

3 "Section 2. Definitions. For the purposes of this act, unless
4 it is otherwise provided or the context requires a different
5 construction, application or meaning:

6 (1) "Engaging in business" means carrying out any
7 activity relating to the conduct of a business, and shall
8 include the activities enumerated in Subsections (1)(a) and
9 (1)(b) of this section but shall not include the activities
10 enumerated in Subsection (1)(c) of this section:

11 (a) "Engaging in business" shall include:

12 (i) Buying, selling, leasing, or
13 exchanging goods, products; or property of any kind for
14 commercial purposes;

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

17 (iii) Conducting negotiations for

18 transactions of the types described in Subparagraphs (i) and

1 paragraph, unless said representative, agent, or distributor
2 has an independent status and transacts business in its name
3 for its own account and not in the name of or for the
4 account of any noncitizen principal;

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

7 (vi) Establishing or operating a factory,
8 workshop, processing plant, warehouse, or store, whether
9 wholesale or retail;

10 (vii) Mining or exploring for minerals, or
11 the commercial exploitation or extraction of other natural
12 resources;

13 (viii) Providing services as a management
14 firm or professional consultant in the management,
15 supervision, or control of any business entity;

16 (ix) Providing professional services as
17 defined by this act which are offered for a fee; PROVIDED,
18 HOWEVER, that such a professional shall not be
19 considered to be "engaging in business" unless he or she,
20 while present in this jurisdiction, performs his or her
21 respective professional services for more than fourteen (14)
22 days in any calendar year;

23 (b) "Engaging in business" shall include:

24 (i) Exercising primary managerial
25 control over any person or entity carrying out any activity

1 relating to the conduct of a business, including the activities
2 enumerated in Subsection (1)(a) of this act:

3 (ii) Exercising primary financial control
4 over any person or entity carrying out any activity relating
5 to the conduct of a business, including the activities
6 enumerated in Subsection (1)(a) of this act; and

7 (c) "Engaging in business" does not include:

8 (i) The publication of general
9 advertisements through newspapers, brochures and other
10 publications, or through radio or television;

11 (ii) The conducting of scientific research,
12 or investigation, if:

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

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

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

22 (iv) The lawful sale of corporate shares or
23 other interest or holdings in a business entity acquired not
24 for speculation or profit.

25 (2) "Foreign investment" means any activity in the

1 state by a noncitizen that amounts to “engaging in business”
2 as defined in Subsection (1) of this section.

3 (3) “Manufacturing” means engaging at any stage in
4 the production, preparation or processing of goods by hand
5 or by machine, and includes any packaging, repackaging,
6 labeling or relabeling, except that this term does not include
7 the production, preparation or processing of goods by an
8 individual for the individual’s own use. For purposes of
9 this act, manufacturing includes the assemblage and
10 packaging of partially assembled goods, and the processing
11 and/or packaging of marine and agricultural products.

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
17 any 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
22 arrangement more than ten percent (10%) of its annual net
23 profit.

24 (5) “Omnibus development statute” within the
25 context of this act, means a statute enacted by the Pohnpei

1 Legislature, which statute prescribes the terms and
2 incentives for the establishment and operation of one or
3 more businesses within a particular area designated as a
4 state economic development priority project under the
5 provisions of Subsection (10) of this section, and which
6 statute, upon acceptance thereof by a noncitizen developer
7 or owner of such business or businesses, shall exempt said
8 noncitizens and their respective business activities within
9 the project that are specifically listed in the omnibus
10 development statute from the provisions of this act and one
11 or more other statutory or regulatory requirements of this
12 state for the period or periods prescribed in the omnibus
13 development statute.

14 (6) "Professional services" means engaging in
15 occupational services of a medical practitioner, dentist,
16 lawyer, certified public accountant, architect, engineer or
17 similar category of occupational service found by the Board
18 to require advanced professional training.

19 (7) "Retail trade" means engaging in the activity of
20 selling merchandise directly to consumers situated within
21 the state of Pohnpei; PROVIDED that, solely for purposes
22 of this act, a manufacturing business which is authorized to
23 do business within this state shall not be deemed to be
24 engaged in a retail trade for the sale at its factory outlet
25 directly to consumers of products wholly manufactured

1 within the state by that business or with at least fifty percent
2 (50%) value added by the manufacturing processes of that
3 business within the state.

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

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1 prospective business is within the category of service
2 industry.

3 (9) "State Attorney" means the Attorney General.

4 (10) "State economic development priority project"
5 means a project site dedicated to certain development
6 endeavors found by the Legislature to be in accordance with
7 S.L. No. 4L-28-97, the Pohnpei Development Plan, as of
8 statewide importance for the economic well-being of the
9 state, and which project is designated as such under state
10 law.

11 (11) "Tourist services" means the operation of hotels,
12 visitors' lodges, golf courses, marinas or other recreational
13 facilities found by the Board to principally serve the visitor
14 industry."

15 Section 2. Section 5 of S.L. No. 1L-85-86, as amended, is hereby
16 further amended to read as follows:

17 "Section 5. Board: powers and duties.

18 (1) For the purposes of this act, and without
19 limitation on the scope or responsibilities vested in it by
20 other laws of Pohnpei, the powers and duties of the Board
21 shall be as follows:

22 (a) To receive applications for foreign
23 investment permits under this act, obtain opinions and
24 recommendations from officers of the Pohnpei Government

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1 applications, make studies, investigations and inquiries
2 relevant to the applications, evaluate the applications
3 according to the standards of this act and decide which
4 applicants shall be granted foreign investment permits.

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

19 (2) The Board shall administer this act under rules
20 and regulations promulgated by the Board, which, with the
21 approval of the Governor, shall have the force and effect of
22 law, and shall be issued as provided by S.L. No. 2L-12-80,
23 the Administrative Procedures Act.”

24 Section 3. Section 6 of S.L. No. 1L-85-86, as amended, is hereby
25 further amended to read as follows:

1 “Section 6. Application for a foreign investment permit.

2 (1) Every noncitizen required to obtain a foreign
3 investment permit under this act shall submit an application
4 to the Foreign Investment Board. Every application shall be
5 accompanied by a filing fee of \$250, which fee shall accrue
6 to the General Fund of the Pohnpei Treasury and shall not
7 be refundable.

8 (2) The application for a foreign investment permit
9 shall contain the following information:

10 (a) The name of the applicant’s business, the
11 form of the business organization under which the applicant
12 proposes to do business, its officers, directors, and proposed
13 and existing stockholders, and their citizenship, or the
14 citizenship of the owners of the applicant’s business if it is
15 in a form of business other than a corporation;

16 (b) The location of the proposed principal
17 office in Pohnpei;

18 (c) The purpose, scope, and objective of the
19 business activity to be conducted by the applicant;

20 (d) The employment preference to be accorded
21 citizens, the initial number of citizens to be employed, and
22 the training programs to be offered to citizens in managerial
23 and other positions;

24 (e) A listing of total capital anticipated to be
25 invested initially, identifying borrowed funds and their

1 sources for each of the five years prior to and after receipt
2 of the foreign investment permit, and from where such
3 capital funds have been or will be obtained; and

4 (f) Any additional information the Board may
5 prescribe for the category of investment for which the
6 application is being filed or that the Board may deem
7 necessary to evaluate the application being filed, and any
8 other information that the applicant may deem appropriate.

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

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

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

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

25 Section 4. Section 6A of S.L. No. 1L-85-86 is hereby repealed in

1 its entirety and replaced by a new Section 6A to read as follows:

2 "Section 6A. Local ownership requirement. The following
3 business activities are reserved exclusively for citizens and
4 business enterprises in which citizens have the entire ownership
5 interest and shall not be permitted to be undertaken by any
6 business enterprise in which a non-citizen has an ownership
7 interest; PROVIDED, that the provisions of this section shall
8 apply only prospectively, and that non-citizens currently
9 holding business permits issued under predecessors to this
10 section or otherwise approved by the State of Pohnpei, for any
11 of the business activities listed below, either solely or jointly
12 with citizens, shall be permitted to continue such business
13 activities:

14 (1) wholesale or retail sale of goods; PROVIDED that
15 wholesale of petroleum, oil, lubrication, and gasoline
16 products shall be exempt from this subsection;

17 (2) all land transportation including bus services, taxi
18 services, and car rentals;

19 (3) handicraft and gift shops; PROVIDED, however,
20 that handicraft or gift shops located on the premises of
21 hotels or at the Pohnpei International Airport; or a duty-free
22 gift shop at the Pohnpei International Airport; shall be
23 exempt from the prohibition of this subsection;

24 (4) beauty shops and barber shops, except within a

- 1 (5) bakeries;
- 2 (6) bar services not associated and contained within a
- 3 restaurant or a hotel having at least 12 rooms for the
- 4 accommodation of guests;
- 5 (7) tour guides, fishing guides, diving guides, and any
- 6 other form of water transportation services;
- 7 (8) travel and tour agencies;
- 8 (9) hotels of less than 12 rooms;
- 9 (10) operations manufacturing products being
- 10 produced by locally-owned enterprises; except where the
- 11 Board finds that the potential economic benefit of the
- 12 applicant's business outweighs the need to protect the
- 13 locally-owned enterprise;
- 14 (11) equipment rentals for both land and water within
- 15 the State, including rentals related to tourism; and
- 16 (12) commercial fishing for other than highly
- 17 migratory species."

18 Section 5. S.L. No. 1L-85-86 is hereby amended by adding a new

19 Section 6A1, to read as follows:

20 "Section 6A1. Minimum requirements. No foreign

21 investment approval certificate shall be issued for carrying

22 on a business enterprise which involves a foreign

23 investment in the State of less than \$50,000 or which will

24 maintain a work force of which less than 20 percent of such

1 Micronesia; PROVIDED, however, that foreign investment
2 in an apartment building must be at least \$500,000.”

3 Section 6. Section 7 of S.L. No. 1L-85-86, as amended, is hereby
4 further amended to read as follows:

5 “Section 7. Procedure for granting foreign investment
6 permits.

7 (1) Upon receipt of an application, the Foreign
8 Investment Board shall first determine that an application
9 will not lead to a permit in violation of Section 6A. Any
10 application not passing this determination shall be returned
11 to the applicant.

12 (2) Thereafter, the Board shall undertake such
13 investigations and consultations as it deems appropriate
14 under the regulations of the Board issued pursuant to this
15 act.

16 (3) When the Board is satisfied that it has sufficient
17 information and opinion, the Board shall determine whether
18 a permit should be granted to the applicant to do business in
19 the state.

20 (4) Upon reaching a determination, the Board shall
21 grant or deny the applicant a permit and so notify the
22 applicant, with courtesy copies thereof provided to the
23 Administrator of the Office of Economic Affairs and to the
24 Secretary of the FSM Department of Economic Affairs.

25 (5) A decision of the Board to grant or deny a permit

1 and, where appropriate, to prescribe the conditions thereof
2 shall be final, subject to judicial review as prescribed by
3 Title 14 of the Pohnpei Judiciary Act of 1995, as amended
4 or superseded by state law; PROVIDED that an applicant,
5 within 60 days following receipt of the Board's decision, or
6 of the court's decision, should judicial review be sought,
7 may submit a supplemental application containing additional
8 information, which supplemental application shall be filed
9 and reviewed in the same manner as an original application;
10 PROVIDED FURTHER that a supplemental application
11 under this subsection shall require a filing fee of \$250,
12 which fee shall accrue to the General Fund of the Pohnpei
13 Treasury and shall not be refundable.

14 (6) If the Board's actions are not completed within a
15 reasonable time, but not less than 45 working days, the
16 applicant may submit a show-cause demand to the Board to
17 determine why the action has not been completed in the time
18 prescribed. The Board shall answer the demand for
19 explanation within five working days of the receipt thereof."

20 Section 7. Objective of the Office of Economic Affairs. The Office
21 of Economic Affairs, created by Section 1-10 of S.L. No. 5L-14-00, shall
22 have the objectives of implementing policy determinations with respect to
23 economic development in the State and stimulating those agricultural,
24 industrial and economic development efforts which offer the most
25 immediate promise of expanding the economy of the State. The office

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1 shall endeavor to gain an understanding of those functions and activities of
2 other governmental and of private agencies, which relate to the field of
3 economic development. It shall, at all times, encourage initiative and
4 creative thinking in harmony with its objectives.

5 Section 8. Specific function of the Office. Without prejudice to
6 its general functions and duties, the Office of Economic Affairs shall
7 have the following specific function:

8 *Promotion.* The Office shall disseminate information
9 developed for or by the Office pertaining to economic development to
10 assist present business and commerce in the State, attract new
11 investments to the State, and assist new and emerging business with
12 good growth potential or prospects in jobs, exports, and new products.
13 The economic promotional activities of the Office may include the use
14 of literature, advertising, demonstrations, displays, market testing,
15 lectures, travel, films, and such other promotional and publicity devices
16 as may be appropriate.

17 Section 9. This act shall take effect upon its approval by the
18 Governor, or upon its becoming law without such approval.

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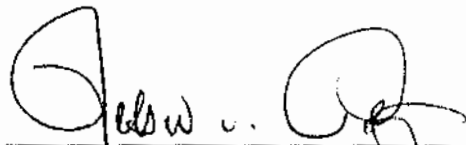
20 PASSED BY THE POHNPEI LEGISLATURE ON THE 19TH DAY OF
21 OCTOBER, 2006.

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Speaker, Pohnpei Legislature

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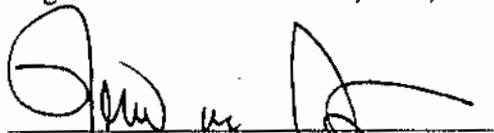
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1 Pursuant to Subsection 2 of Section 14 of Article 8 of the Pohnpei Constitution,
2 Legislature Bill No. 254-05, LD4, was repassed into law on December 20, 2006.

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Speaker, Pohnpei Legislature

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Attest: 
Legislative Clerk

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