

THIRTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FIRST REGULAR SESSION, 2002

SENATE BILL
NO. 13-40

A BILL FOR AN ACT

To officially declare the CNMI's "Open Door" foreign investment policy; to clarify standards for immigration and residency privileges in connection with foreign investment; to repeal Chapter 9 (Regulation of Foreign Investment) of Division 5 of Title 4 of the Commonwealth Code; to add a new Chapter 5 (Foreign Investor Certificates) to 3 CMC, Div. 4 (Immigration) of the Commonwealth Code; and for other purposes.

BE IT ENACTED BY THE TWELFTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 Section 1. Short Title. This Act may be cited as the "CNMI 'Open Door'
2 Foreign Investment and Economic Revitalization Act of 2002."

3 Section 2. Findings and Purpose. The Legislature finds that much confusion has
4 arisen from \$100,000 deposit requirement imposed on foreign investors by Public
5 Law 10-44. Although intended as part of a regulatory system governing the conditions
6 under which foreign investors can obtain immigration and residency privileges in the
7 Commonwealth, the law has come to be perceived as a barrier to foreign investment and
8 an impediment to capital flows into the CNMI, stifling economic growth. This is largely
9 the consequence of the unfortunate circumstance of having enacted the Department of
10 Commerce's regulations for certificates of foreign investment into statutory form, with
11 the addition of the \$100,000 security deposit, with all of this then codified in Title 4 of
12 the Commonwealth Code under the headings "Business Regulation; Regulation of
13 Foreign Investment." This perception is a misconception, and the headings and
14 codification misleading, because the CNMI has in fact had an "open door" to foreign
15 investment since 1983 when the Foreign Investment Act was repealed. The
16 misperception is nonetheless real, and widespread. Because the law is seen as a
17 restriction on foreign investment – as a bureaucratic precondition to investing in the
18 islands – the Omnibus Labor and Business Reform Act of 2000 (Public Law 12-11)'s
19 relaxation of the \$100,000 deposit requirement did little to improve matters.

20 Accordingly, the Legislature finds it is now imperative that the Commonwealth
21 clearly and unequivocally declare its "Open Door" policy to foreign investment. The

1 standards for immigration and residency privileges extended to qualifying foreign
2 investors need to be clearly set out as part of the immigration code. This Act is intended
3 to accomplish these purposes and promote economic growth and revitalization by
4 encouraging foreign investment and foreign investors who will be good corporate
5 citizens in our community.

6 Section 3. Definition. “CNMI” means the Commonwealth of the Northern
7 Mariana Islands and the geographical area of which it is comprised.

8 Section 4. “Open Door” Foreign Investment Policy. It is hereby declared to be
9 the policy of the Commonwealth to encourage foreign investment in the CNMI. No
10 department or agency of the executive branch shall promulgate or implement any
11 regulation, rule, or policy imposing or purporting to impose any restriction on investment
12 in, or capital flows into, the CNMI, other than regulations, rules, and policies required by
13 other law or implemented for data collection or information gathering purposes or to
14 facilitate regulatory aims unconnected to limiting foreign investment or discriminating
15 against foreign investors. Nothing in this section exempts any foreign investor or
16 prospective foreign investor from compliance with the laws of the Commonwealth or
17 qualifies any foreign investor for any government program, grant, or service otherwise
18 restricted to citizens or residents.

19 Section 5. Immigration and Residency Privileges of Qualifying Foreign
20 Investors. A new Chapter 5 is hereby added to 3 CMC, Div. 4 of the Commonwealth
21 Code, to read as follows:

22 “CHAPTER 5

23 Business Entry and Foreign Investor Certificates

24 Article 1. General Provisions

25 § 4501. Definitions.

26 For the purposes of this chapter, the following definitions shall apply:

27 (a) ‘Alien’ means the same as defined in 3 CMC § 4303(a).

28 (b) ‘Alien investor’ is an alien who is seeking the benefits of this chapter
29 on account of having expressed a willingness to invest, having invested in, or
30 being in the process of investing in an enterprise in the Commonwealth. An
31 excludable alien under 3 CMC § 4322 may not be an alien investor. An alien
32 investor does not include entities such as corporations, partnerships or other
33 entities existing solely by virtue of the law.

1 (c) 'Approved letter' means a letter issuable by the secretary certifying
2 the acceptance of a qualifying investment subject to the minimum investment
3 criteria and standards set forth in article 3 of this chapter for a regular-term
4 business certificate, article 4 of this chapter for a long-term business certificate,
5 and article 5 of this chapter for a foreign investor certificate.

6 (d) 'Capital' means cash, equipment, inventory, other tangible property
7 and cash equivalents, such as certificates of deposits, Treasury bonds, or other
8 instruments that can be readily converted into cash used or committed to be used
9 in an enterprise in the form of equity or ownership interest.

10 (e) 'Commerce certificate' means a certificate issued by the secretary to
11 an applicant whose application has been approved by the Foreign Investment
12 Review Committee.

13 (f) 'Commonwealth' or 'CNMI' means the Commonwealth of the
14 Northern Mariana Islands and the geographical area of which it is comprised.

15 (g) 'Domestic corporation' means a corporation authorized by law to
16 issue stock, organized under the laws of the Commonwealth of the Northern
17 Mariana Islands.

18 (h) 'Enterprise' means a commercial or business activity carried on for
19 profit in the Commonwealth. The term 'enterprise' refers to a single corporation,
20 branch, office, subsidiary or facility of a foreign corporation, a partnership,
21 association, or other entity which is qualifying investment.

22 (1) 'Existing enterprise' means a present or existing enterprise that
23 is engaged in business in the Commonwealth and in which the alien
24 investor previously had no ownership interest. To qualify, investments in
25 existing businesses must result in an increase in the net worth of the
26 company and expansion of existing business activity.

27 (2) 'New enterprise' means an enterprise which has been or will
28 be established by an alien investor for the purpose of doing business
29 within the Commonwealth. This may include creation of a new business
30 or purchase of an existing business which would undergo restructuring or
31 reorganization resulting in a new commercial enterprise.

32 (i) 'Foreign corporation' means a corporation formed under the laws of a
33 jurisdiction other than the Commonwealth of the Northern Mariana Islands.

1 (j) 'Foreign investment' means a direct investment or investments by an
2 alien investor or foreign corporation that is incorporated outside the United States
3 in a business entity, existing or proposed in the Commonwealth.

4 (k) 'Foreign investor visa' means that visa granted by the Department of
5 Labor and Immigration pursuant to Section 706G of the comprehensive
6 immigration regulations.

7 (l) 'Foreign national' means an alien.

8 (m) 'Immediate family' means the spouse, parents and natural or adopted
9 children under the age of 21.

10 (n) 'Long-term business entry permit' means a permit granted by the
11 Department of Labor and Immigration pursuant to Section 706N of the
12 comprehensive immigration regulations.

13 (o) 'Public organization' means a Commonwealth public corporation or
14 agency of the Commonwealth government.

15 (p) 'Qualifying investment' is an investment approved by the Foreign
16 Investment Review Committee.

17 (q) 'Regular-term business entry permit' means a permit granted by the
18 Department of Labor and Immigration pursuant to Section 706A of the
19 comprehensive immigration regulations.

20 (r) 'Secretary' means the Secretary of the Department of Commerce.

21 (s) 'Short-term business entry permit' means a permit granted at the point
22 of entry by the Department of Labor and Immigration pursuant to Section 704A
23 of the comprehensive immigration regulations.

24 **§ 4502. Foreign Investment Policy.**

25 The following declarations are made:

26 (a) It is the policy of the government of the Commonwealth of the
27 Northern Mariana Islands to encourage foreign investment in the CNMI and to
28 permit free and unrestrained capital flows into the CNMI.

29 (b) It is intended that the immigration policies and practices of the
30 Commonwealth reasonably facilitate the conduct of business, and the evaluation
31 of investment opportunities, in the CNMI by foreign enterprises and foreign
32 nationals, subject to compliance with the laws of the Commonwealth.

1 (c) It is the policy of the Commonwealth to promote foreign investment
2 and economic growth and expansion in the CNMI by granting immigration entry
3 and residency privileges in appropriate cases to qualified foreign investors.

4 (d) It is further the policy of the Commonwealth to preserve and protect,
5 in accordance with their terms, all rights and privileges granted alien investors
6 under prior law.

7 (e) The policies of this Act are intended to provide foreign investors with
8 encouragement, guidelines and a sense of direction to move progressively into
9 greater participation in the Commonwealth economy and through associated
10 investor classifications and attendant immigration entry and residency privileges.
11 Thus, an alien investor might move from short-term business entry permit holder
12 to regular-term business certificate or two-year term business certificate and
13 ideally to the foreign investor certificate classification. Holders of a one-year
14 term business entry permits are encouraged to apply for the two-year business
15 certificate. Nothing in this Act, however, is intended to discourage any alien
16 investor from immediately seeking foreign investor certification.

17 **§ 4503. Transfer of Authority.**

18 The responsibilities of the Department of Labor and Immigration and of
19 the Department of Commerce with respect to the administration of the provisions
20 of this chapter, in relation to the functions and duties of the respective
21 departments, shall be as the respective secretaries may determine by
22 memorandum of understanding approved by the Governor.

23 **§ 4504. Certification.**

24 The secretary or his or her designee shall certify that an alien investor has
25 met the requirements for a commerce certificate before an immigration business
26 or foreign investor visa shall be processed by the Division of Immigration of the
27 Department of Labor and Immigration. The certification by the secretary shall be
28 consistent with the recommendation by the Foreign Investment Review
29 Committee. No business or foreign visa shall be issued or granted by the Director
30 of the Immigration Service without the expressed approval by way of certification
31 of the secretary.

Article 2. Foreign Investment Review Committee**§ 4511. Foreign Investment Review Committee; Created; Composition.**

There is hereby created a Foreign Investment Review Committee (hereafter “review committee”) composed of the secretary or his or her designee and the Attorney General or his or her designee and any other person(s) whom the secretary deems appropriate. The Attorney General’s presence on the review committee is limited to ensuring that the activities of the review committee are in compliance with the laws of the Commonwealth.

§ 4512. Foreign Investment Review Committee; Duties.

The review committee shall review all applications for or renewals of regular-term business certificates, long-term business certificates, and foreign investor certificates. The standards for review are set forth in article 3 of this chapter for a regular-term business certificate, article 4 of this chapter for a long-term business certificate, and article 5 of this chapter for a foreign investor certificate. The review committee through the secretary shall regularly consult with the Governor regarding the Commonwealth’s policies with respect to immigration and residency privileges in connection with foreign investments and foreign business activity in the Commonwealth.

§ 4513. Foreign Investment Review Committee; Procedures.

The review committee shall establish in writing standard operating procedures for the review of all applications for a commerce certificate and other applications assigned to it by the secretary. The review committee shall communicate its findings and decision in writing regarding each application for a commerce certificate to the secretary no later than 30 calendar days from the date the application form is filed with the Department of Commerce. The secretary shall notify the applicant of the decision of the review committee within five working days of receipt of the decision of the review committee. The secretary shall issue an approved letter to an applicant whose application has been approved. An application which has been received the Department of Commerce and has not received an approval or denial on the 91st day after its receipt shall be deemed approved with conditions stipulated for completeness.

§ 4514. Foreign Investment Review Committee; Appeal.

An applicant whose permit has been disapproved shall have up to seven working days in which to appeal the decision of the review committee. The

1 request for appeal shall be made in writing and presented to the secretary. The
2 secretary shall comply with the requirements of the Administrative Procedures
3 Act (1 CMC § 9101 et seq.) regarding the appeals process. Appeals received after
4 expiration of the seven-day period shall be denied.

5 **§ 4515. Foreign Investment Review Committee; Authority to Request for**
6 **Documents, Interviews, and Public Hearings.**

7 The review committee shall have the authority to request the applicant to
8 provide documents to substantiate representations made in the application for a
9 commerce certificate through correspondence or interviews. The review
10 committee may request and hold public hearings from time to time on the type of
11 investments needed in the Commonwealth.

12 **§ 4516. Classification.**

13 The review committee may classify an alien who owns an interest in a
14 foreign corporation that incorporates in the Commonwealth as an alien investor if
15 the alien satisfactorily establishes his or her ownership interest in the foreign
16 corporation and meets the requisite criteria and standards of the commerce
17 certificate for which application is made. The review committee may review,
18 upon request and submission of sufficient documentation, the status of an alien
19 not owning any interest in a Commonwealth corporation, and who is requesting
20 issuance of either a 90-day business certificate and visa or a two-year term
21 business certificate and visa. The review committee may qualify such alien for
22 either of the two business entry certificates. This exception shall be limited to
23 applicants from existing enterprises and corporations whose investments have
24 been approved by the review committee and in which applicant will engage in a
25 managerial or policy-making capacity and consistent with CNMI laws.

26 **Article 3. Regular-Term Business Certificate**

27 **§ 4531. Regular Term Business Certificate; Conditions.**

28 (a) A regular-term business certificate entitles the holder to multiple
29 entries into the CNMI for the purpose of lawfully engaging in business, and to
30 remain in the Commonwealth for not more than an aggregate of 90 days within
31 the 12-month period covered by the certificate.

32 (b) The application fee for a regular-term business certificate shall be paid
33 to the CNMI Treasurer prior to filing an application for a regular term business
34 certificate with the secretary.

1 (c) All applications for a regular term business certificate must be made
2 only after the applicant has lawfully entered the Commonwealth. Only a holder
3 of a short-term business entry permit is allowed to apply for a regular-term
4 business entry certificate.

5 (d) Applicants for a regular term business certificate must file the
6 application with the secretary at least 10 days prior to the expiration of the
7 applicant's immigration permit. Applications received with less than 10 days
8 from expiration of applicant's short term business entry permit may be denied.

9 **§ 4532. Regular Term Business Certificate; Standard of Review.**

10 The standard of review of the regular-term business certificate shall be
11 determined by the secretary. The criteria, requirements, and basis of approval
12 shall be contained in standard operating procedures held at the office of the
13 secretary.

14 **§ 4533. Regular Term Business Certificate; Application Process.**

15 Applicants for a regular-term business certificate shall file with the
16 Department of Commerce a completed application form approved by the
17 secretary, to include a police clearance valid for the previous 90 days from the
18 date of application for the regular term business certificate. The procedures for
19 the review of regular term business certificates are set forth in sections 4511-
20 4515 of this chapter.

21 **Article 4. Long-Term Business Certificate**

22 **§ 4541. Long-Term Business Certificate; Conditions.**

23 (a) A long-term business certificate entitles the holder to unlimited
24 multiple entries and to remain in the Commonwealth without restriction, for the
25 purpose of lawfully engaging in business, for a period of two years; provided,
26 however, that the alien investor shall provide a one hundred thousand dollar
27 (\$100,000) security deposit. The deposit shall be in either one of the following
28 forms:

29 (1) a cash deposit in the sum of \$100,000 on deposit in a banking,
30 trust, or finance institution approved by the Secretary of the Department of
31 Commerce. The security deposit may be held in any form of account,
32 including a timed account, acceptable to the secretary. Any interest
33 accrued on the timed account shall be paid to the alien investor. Exclusive

1 authorized signature authority for the security deposit shall be the
2 Secretary of the Department of Commerce.

3 (2) a bond in the sum of one hundred thousand dollars (\$100,000)
4 issued by a surety company licensed to transact business in the
5 Commonwealth, and approved by the Commonwealth Insurance
6 Commissioner, naming the secretary as the beneficiary. Such surety
7 company shall be one listed as acceptable for federal projects by the
8 United States Department of the Treasury. The secretary may, by
9 regulation, impose such other requirements as the secretary may find
10 reasonably necessary to ensure the reliability and capability of such
11 surety. The bond must run for a minimum term of two years, must
12 provide for a minimum of thirty (30) days notice to the secretary prior to
13 cancellation, and must contain such other terms as the secretary, by
14 regulation, deems necessary and proper.

15 No matter the type of security used for the deposit, the security shall not
16 be released until the alien investor provides the secretary with a statement from
17 the Department of Finance that all applicable taxes have been paid, and the
18 provisions of this subsection concerning potential claims against the security
19 deposit have been fully satisfied. The alien investor must publish notice, in at
20 least one daily newspaper distributed throughout the Commonwealth, once a
21 week for four (4) consecutive weeks, that he has either ceased operation or has
22 divested himself of his interest in his business in the Commonwealth, or intends
23 to surrender his long-term business certificate and depart the Commonwealth, and
24 has applied to the Secretary of the Department of Commerce for release of his
25 security deposit. Said notice must also contain any details as prescribed by the
26 secretary by regulation, but that, at a minimum, will apprise any reader that the
27 security deposit shall be released unless a claim is served upon the secretary
28 within six (6) months of the date of final publication of the notice together with a
29 copy of a complaint or other court paper showing that a civil action is pending in
30 a court of competent jurisdiction in the Commonwealth or a judgment remains
31 unsatisfied. If no claim is filed, or if the claim is for less than the entire security
32 deposit, then the security deposit, or the excess of the same over the amount of the
33 claim, as the case may be, shall be refunded to the alien investor. If a claim is
34 filed, then the security deposit, or such portion thereof as may be necessary to

1 satisfy the claim if finally established in court, shall be transferred to the Clerk of
2 Court and shall be held by the same until a final disposition of the matter
3 according to law.

4 (b) The application fee shall be paid to the CNMI Treasurer prior to filing
5 an application for a long-term business certificate with the secretary.

6 (c) Holders of a short-term business entry permit or a regular-term
7 business certificate are eligible to apply for a long-term business certificate.

8 (d) Applicants for this certificate must file an application with the
9 secretary 10 days prior to the expiration of the applicant's entry permit or visa.
10 Applications received with less than 10 days from expiration of applicant's
11 commerce certificate and entry visa may be denied.

12 **§ 4542. Long-Term Business Certificate; Standard of Review.**

13 (a) Qualifying Investment - General Standard. A qualifying investment is
14 one in which the review committee finds that the alien has invested or is actively
15 in the process of investing, a significant amount of capital in a bona fide
16 enterprise which benefits the Commonwealth. A certificate holder shall not
17 deviate substantially from an approved investment, but may file for a
18 modification of the approved qualifying investment. Approval of a modification
19 to an approved qualifying investment shall not be unreasonably withheld.

20 (b) The review committee shall determine the criteria for approval of the
21 application for a long-term business certificate, which may include, but are not
22 limited to, the following:

23 (1) The representations made by the alien in his or her application
24 and representations made through interviews with members of the review
25 committee;

26 (2) The length of time for which the long-term business
27 certificate may be granted before it becomes subject to reconsideration for
28 renewal;

29 (3) The types and scope of business activities in which the alien
30 may engage;

31 (4) The creation and guarantees of employment preferences for
32 Commonwealth residents; and

33 (5) Such other conditions as the review committee deems
34 appropriate.

1 (c) Evaluation Factors - New Enterprises. In determining whether a
2 proposed investment in a new enterprise is a qualifying investment, the review
3 committee shall consider the following:

4 (1) The amount of capital invested or to be invested by the alien
5 investor, which shall not be less than \$150,000.

6 (2) The type of enterprise proposed by the alien investor;

7 (3) The reputation and business experience of the alien investor;

8 (4) The number and type of employment opportunities to be
9 created for Commonwealth residents by the enterprise;

10 (5) The number of alien workers to be employed by the enterprise;

11 (6) The demand for the type of enterprise and existing
12 competition;

13 (7) The island or islands on which the enterprise will be located;

14 (8) The extent to which the enterprise will reduce imports and
15 increase exports;

16 (9) The extent of which the enterprise will increase the availability
17 of goods and services at competitive prices to Commonwealth residents;

18 (10) The extent to which the enterprise will support or enhance
19 existing industries in the Commonwealth;

20 (11) The extent to which the enterprise will develop the resources
21 of the Commonwealth;

22 (12) The extent of any equity participation in the enterprise by
23 Commonwealth residents;

24 (13) Whether the enterprise will be a substantial, on-going
25 business, as distinguished from a marginal enterprise established solely for
26 the purpose of earning a living for the alien and his family; and

27 (14) The extent to which the enterprise will contribute to the
28 overall economic well-being of the Commonwealth without adversely
29 affecting existing social, cultural, and ethnic conditions in the
30 Commonwealth.

31 (d) Evaluation Factors - Existing Enterprises. In determining whether a
32 proposed investment in an existing enterprise is a qualifying investment, the
33 review committee shall consider the following:

1 (1) The amount of capital invested or to be invested by the alien
2 investor, which shall be not less than \$150,000 in a public organization or
3 not less than \$250,000 in a private investment;

4 (2) The type of business engaged in by the existing enterprise;

5 (3) The size and financial integrity of the existing enterprise;

6 (4) The ownership of the existing enterprise;

7 (5) The nature and extent of the alien investor's participation in
8 the management of the existing enterprise; and

9 (6) The number of resident worker employees, which shall not be
10 less than 20% of total employees of the existing enterprise.

11 **§ 4543. Long-Term Business Certificate; Application Process.**

12 (a) The applicant shall file an application for a long-term business
13 certificate with the secretary. The application will not be accepted without the
14 necessary supporting documents and shall become the property of the secretary
15 once submitted. All documents shall be filled out under penalty of perjury.

16 (b) The following documents shall be attached to a completed application
17 form:

18 (1) Certified copy of birth certificate;

19 (2) Any document deemed necessary by the secretary to
20 substantiate the applicants immigration entry classification;

21 (3) One and one-quarter inch (1-1/4") frontal photograph in either
22 black and white or color;

23 (4) Evidence that capital has been invested may include bank
24 statements showing amounts deposited in CNMI business accounts,
25 invoices, receipts or contracts for assets purchased, stock purchase
26 transaction records, loan or other borrowing agreements, land leases,
27 financial statements, business gross tax receipts, and any other agreements
28 supporting the application;

29 (5) Evidence that applicant has invested or is actively in the
30 process of investing the amount required. These may include evidence of
31 assets which have been purchased for use in the enterprise, evidence of
32 property transferred from abroad for use in the enterprise, evidence of
33 monies transferred or committed to be transferred to the new or existing
34 enterprise in exchange for shares of stock, any loan or mortgage,

1 promissory note, security agreement or other evidence of borrowing which
2 is secured by assets of applicant;

3 (6) Business plan/proposal incorporating evaluation factors for
4 new enterprises;

5 (7) Articles of incorporation, by-laws, partnership agreements,
6 joint venture agreements, corporate minutes and annual reports, affidavits,
7 declarations or certifications of paid-in capital;

8 (8) Current business license(s);

9 (9) Foreign business registration records, recent tax returns of any
10 kind, evidence of other sources of capital;

11 (10) Listing of all resident and nonresident employees;

12 (11) Listing of all holders of business certificates for the business
13 establishment;

14 (12) Listing of all corporations held by applicants;

15 (13) Any other documents required by the secretary; and

16 (14) A police clearance valid for the previous two years from the
17 date of application for the long-term business certificate.

18 (c) Applicants for a long-term business certificate shall file with the
19 Department of Commerce a completed application form approved by the
20 secretary. The procedures for the review of an application for a long term
21 business certificate are set forth in sections 4511- 4515 of this chapter.

22 **§ 4544. Renewal of Long-Term Business Certificate (two year and one year**
23 **term business permits/certificate).**

24 (a) The holder of a long-term business certificate has no absolute right to
25 renewal of the certificate. An application for renewal will be denied when the
26 review committee finds:

27 (1) That the application has remained incomplete for at least 30
28 days since submission; or

29 (2) Applicant obtained business entry permit illegally, or that
30 applicant should not have been granted a permit in the initial application;
31 or

32 (3) Applicant violated any provision of this chapter; or

1 (4) Applicant has not maintained an approved investment in
2 continuing compliance with standards of issuance of business certificates;
3 or

4 (5) Applicant committed fraud or misrepresentation in any
5 material assertion in the application for the initial or renewal of
6 certification; or

7 (6) Applicant has been subjected to adjudication of bankruptcy
8 regarding the approved investment.

9 (b) An alien may apply for a renewal by submitting an application for a
10 renewal with the secretary at least 90 days prior to the expiration of the alien
11 investor's previously issued long-term business entry permit. Applications
12 received after the expiration of the entry visa and commerce certificate may be
13 denied.

14 The applicant shall be afforded the 90-day business certificate and an
15 opportunity to take steps necessary to liquidate, transfer, or dispose of assets of an
16 approved investment following termination or non-renewal of application.

17 The long-term business certificate may be renewed if the review
18 committee finds that the alien's investment continues to be in compliance with the
19 standards set forth in this chapter. Holders of long-term business entry permits
20 with investments of less than the required amount must meet the requirement
21 within two years after a finding of non-compliance.

22 **Article 5. Foreign Investment Certificate**

23 **§ 4551. Foreign Investment Certificate; Conditions.**

24 (a) A certificate of foreign investment is a certificate issued to an alien
25 who has met all the standards and conditions enumerated in this chapter as proof
26 of the holder's participation as an alien investor in a qualifying investment in the
27 Commonwealth. The holder shall have the right to enter, reside, and remain in
28 the CNMI for the purpose of lawfully engaging in business in the Commonwealth
29 indefinitely, for so long as the alien investor complies with the terms upon which
30 the certificate was issued; Provided, however, that the alien investor shall provide
31 a one hundred thousand dollar (\$100,000) security deposit. The deposit shall be
32 in any of the forms permitted for the security deposit required of a holder of a
33 long-term business certificate and shall be subject to the same terms and
34 conditions, as provided by section 4541(a) of this chapter.

1 (b) The application fee for a foreign investor certificate shall be paid to
2 the CNMI Treasurer prior to filing an application for this certificate with the
3 secretary.

4 (c) All applications for a foreign investor certificate must be made only
5 after the applicant has lawfully entered the Commonwealth. Holders of a
6 short-term business entry permit, a regular-term business certificate, or a long-
7 term business certificate shall be eligible to apply for a foreign investor
8 certificate.

9 **§ 4552. Foreign Investment Certificate; Standard of Review.**

10 A qualifying investment for the purposes of this section means an
11 investment approved by the secretary, which approval shall be subject to the
12 following standards:

13 (a) Minimum Amount of Investment. The amount of the
14 “Qualifying Investment” shall be \$100,000 per person in an aggregate
15 “Qualifying Investment” in excess of \$2,000,000; or \$250,000 by an
16 individual in a single “Qualifying Investment”.

17 (b) Qualifying Investment Standards. In reviewing the
18 acceptability of an investment for purposes of determining issuance or
19 denial of a certificate of foreign investment, the secretary shall consider:

20 (1) The relative need for or desirability of the type of
21 enterprise described by the applicant;

22 (2) Whether or not the proposed enterprise is in
23 compliance with local and federal laws;

24 (3) The number and description of employment positions
25 created by the enterprise or which will be created for qualified
26 Commonwealth residents and the extent to which non-resident
27 personnel are or will be utilized at the outset of the applicant’s
28 enterprise, and the quality and projected performance of a resident
29 employee training program, if any;

30 (4) The effect which the enterprise will have upon the
31 ecology of the Commonwealth including its pollutant or
32 non-pollutant status, its potential impact on the fresh water table,
33 and the likelihood of creating waste products that would be
34 detrimental to the environment.

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(5) The personal integrity and business reputation of the alien investor and any associate investors involved in the enterprise;

(6) To the extent that such factor can be determined, the likelihood that the enterprise will continue its operation in the Commonwealth for a substantial period of time;

(7) The extent to which contractors, subcontractors, labor and materials and other supplies available locally have been or will be utilized in the establishment, construction, and operation of the enterprise;

(8) The extent to which the enterprise will impact upon power and water resources in the Commonwealth, whether or not the enterprise includes water catchments, separate power plant, separate water wells, other independent water or power resource; and if not, the amounts of water and power necessary for establishment, construction, and operation of the enterprise;

(9) The likelihood that the enterprise has not been organized in good faith or with a permanent character or that the issuance of a certificate of foreign investment will be misused.

(c) Nothing in these standards shall preclude any foreign investor from investing in an ongoing enterprise.

§ 4553. Foreign Investment Certificate; Application Process.

(a) Issuance of Certificates of Foreign Investment.

(1) The alien investor shall submit an application for a qualifying investment subject to the standards and criteria outlined in this chapter. The applicant shall provide all information and supporting documents as deemed necessary by the secretary.

(2) The review committee shall review the application for a qualifying investment and, in the event that the proposal complies with the standards and criteria outlined in this section, shall communicate its decision to the secretary in writing. The secretary shall inform the applicant of the decision of the review committee. If the application is approved, the secretary shall issue an approval letter to the applicant. The approval letter shall not be evidence of a certificate of foreign investment

1 as referenced in section 4551(a). The approval letter shall be issued or
2 denied within a time period not to exceed 45 days from the date of
3 application.

4 (3) After receiving an approval letter regarding a proposed
5 qualifying investment, the alien investor shall secure the necessary
6 financial backing to proceed with the approved qualifying investment.

7 (4) After obtaining necessary financial backing to finance the
8 qualifying investment, the alien investor shall supply documentary proof
9 of such backing to the secretary for his review and approval. This
10 documentation shall be sufficient to convince the secretary that the alien
11 investor has sufficient backing to initiate the approved qualifying
12 investment within 180 days following the issuance of a certificate of
13 foreign investment. This documentation may include cash deposits, letters
14 of credit, or any other evidence of financial ability acceptable to the
15 secretary.

16 (5) Upon receipt and approval of documentation proving financial
17 ability of the alien investor, the secretary shall issue a certificate of foreign
18 investment. Issuance or denial of the certificate of foreign investment
19 shall be effected by the secretary within a time period not to exceed 30
20 days after the receipt of the financial backing documentation.

21 (6) In the event the secretary denies issuance of either an approval
22 letter or a certificate of foreign investment to any applicant, the secretary
23 shall deliver the reasons for denial in writing to the applicant within the
24 time periods specified in subsection (a)(2) and or subsection (a)(5) of this
25 section.

26 (b) Certification. After the issuance of an approval letter to the applicant,
27 the secretary shall certify to the Director of the Immigration Service that the
28 applicant is eligible for a foreign investor visa.

29 **§ 4554. Foreign Investment Certificate; Duration of Certificate.**

30 The duration of the certificate of foreign investment shall be indefinite for
31 the life of the alien investor and immediate family members covered by the
32 certificate; Provided, that the qualifying investment continues to comply with the
33 standards of issuance.

34 **§ 4555. Foreign Investment Certificate; Annual report.**

1 The holder of a certificate of foreign investment must submit to the
2 secretary an annual report of investment activities in the Commonwealth on or
3 before January 15 of each year. The report shall contain the information
4 necessary for the secretary to determine whether or not the certificate holder is
5 under continuing compliance with the standards of issuance. This report shall be
6 accompanied by an annual financial audit report performed by an independent
7 certified public accountant.

8 **§ 4556. Foreign Investment Certificate; Fees.**

9 An application for a certificate of foreign investment shall be
10 accompanied by a non-refundable fee of \$10,000 for the processing of the
11 application.

12 **§ 4557. Foreign Investment Certificate; Revocation of Certificate.**

13 (a) The secretary, after permitting the certificate holder (or his authorized
14 representative) to appear before him, in person, and finding, upon a
15 preponderance of the evidence reviewed by him, that the alien investor has:

16 (1) Not maintained the qualifying investment in continuing
17 compliance with the standards of issuance of a certificate of foreign
18 investment; or

19 (2) Committed fraud or misrepresentation in any material
20 assertion in the application for the approval letter, the certificate of foreign
21 investment, or the annual report required pursuant to section 4555; and/or

22 (3) Been subjected to an adjudication of bankruptcy regarding the
23 qualifying investment; or

24 (4) Failed to comply with any conditions or obligations stated in
25 the certificate of foreign investment, after having been afforded by the
26 secretary reasonable period within which to cure such failure; Provided,
27 however, that should the alien investment fail for reasons beyond the
28 control of the alien investor, the secretary shall provide reasonable time to
29 the alien investor within which to refinance the approved investment, or
30 secure participation in an alternative approved investment; or

31 (5) Been subjected to a finding by the Attorney General that the
32 corporate parent for the enterprise, if any, has been dissolved; or

33 (6) Has violated any provision of this chapter.

1 The secretary shall either take steps to secure correction of any
 2 insufficiency or non-compliance, or revoke the certificate of foreign investment,
 3 the alien investor shall be afforded a six-month grace period following
 4 termination or revocation of his certificate, in order to take steps necessary to
 5 liquidate, transfer or otherwise dispose of assets connected with the alien
 6 investor's approved investment activity. The secretary shall inform the Secretary
 7 of Labor and Immigration in writing of his decision to revoke and/or deny
 8 renewal of the certificate of foreign investment, and compute the six month's
 9 grace period date commencing from the date of denial and/or revocation. The
 10 alien investor's foreign investment visa (and any visas held by members of his
 11 immediate family) shall be valid up to and including the final day of the six-
 12 month grace period following termination of the certificate of foreign investment
 13 and otherwise as may be determined by the Department of Labor and
 14 Immigration.

Article 6. Other Foreign Investment and Fees

§ 4561. Other Foreign Investment.

15 Nothing in this chapter shall preclude foreign investment in the
 16 Commonwealth; however, any other manner of foreign investment shall not
 17 entitle the alien investor to a commerce certificate.
 18

§ 4562. Fee Schedule.

- 19
- 20 (a) Regular-Term Business Certificate \$200;
 - 21 (b) Long-Term Business Certificate \$1,000;
 - 22 (c) Renewals of One-Year Business Certificate \$750;
 - 23 (d) Foreign Investment Visa
 - 24 (1) \$2,500 to a holder of a Foreign Investment Certificate;
 - 25 (2) \$2,500 per family member;
 - 26 (e) Foreign Investment Certificate \$10,000;
 - 27 (f) Penalties for any violation of this chapter: \$100 per day the violation
 28 is not resolved and \$100 per violation.
 29

30 All fees collected under this chapter shall be deposited with the CNMI
 31 Treasurer. All fees are non-refundable.”

32 Section 6. Conforming Amendment. 3 CMC § 4303(a) is amended to read:

33 “(a) ‘Alien’ means any person who is not either a citizen or national of
 34 the United States, a citizen of the Federated States of Micronesia, a citizen of the

1 Republic of Palau, a citizen of the Republic of the Marshall Islands, a CNMI
2 permanent resident, a holder of a CNMI Certificate of Identity, or a person
3 ‘lawfully admitted for permanent residence’ in the United States as that term is
4 defined in 8 U.S.C. § 1101(a)(20).”

5 Section 7. Repealer. Chapter 9 of Division 5 of Title 4 of the Commonwealth
6 Code is hereby repealed.

7 Section 8. Severability. If any provision of this Act or the application of any
8 such provision to any person or circumstance should be held invalid by a court of
9 competent jurisdiction, the remainder of this Act or the application of its provisions to
10 persons or circumstances other than those to which it is held invalid shall not be affected
11 thereby.

12 Section 9. Savings Clause. Except as expressly provided by this Act, this Act
13 and any repealer contained herein shall not be construed as affecting any existing right
14 acquired under contract or acquired under statutes repealed or under any rule, regulation
15 or order adopted under the statutes. Repealers contained in this Act shall not affect any
16 proceeding instituted under or pursuant to prior law. The enactment of this Act shall not
17 have the effect of terminating, or in any way modifying, any liability, civil or criminal,
18 which shall already be in existence at the date this Act becomes effective.

19 Section 10. Effective Date. This Act shall take effect upon its approval by the
20 Governor or upon its becoming law without such approval.

Date: 02/27/02

Introduced By: /s/
Sen. Jose M. Dela Cruz