TITLE 36 – SECURITIES; COOPERATIVES, AND NON-PROFIT CORPORATIONS
CHAPTER 2 - FOREIGN INVESTMENT BUSINESS LICENSE

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

FOREIGN INVESTMENT BUSINESS LICENSE ACT 1990

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FOREIGN INVESTMENT BUSINESS LICENSE ACT 1990

AN ACT to encourage and regulate foreign investment in the Republic so as to promote the economic development of the Republic by transferring the powers and functions of the foreign Investment Advisory Board to the Cabinet.

Commencement:			*October 3, 1990*
Source:			*P.L. 1990-99*
Amended By:	*P.L. 1993-37*	*P.L. 2000-5*	*P.L. 2005-30*
	P.L 2015-39		

§201. Short title.

This Chapter shall be known and may be cited as the Foreign Investment Business License Act of 1990. **[P.L. 1990-99, §1]**

§202. Interpretation.

For the purposes of this Chapter, unless it is otherwise provided or the context requires a different meaning:

(a) "**Minister**" means the Minister for Finance;

(b) "**non-citizen**" means:

(i) any person who is not a citizen of the Republic; or

(ii) any corporation, joint venture, partnership, association, or other legal entity in which a person or persons who are not citizens of the Republic own an equity interest.

(c) "**Register**" means the Registrar of Foreign Investment designated under section 203A of this Chapter .**[P.L. 1990-99, §2 Paragraphs and clauses were renumbered for consistency with the format and style of the Code][Modified by P.L. 2000-5, §2][amended by P.L.2005-30]**

§203. License required.

Except as provided for in this Chapter and the regulations promulgated thereunder:

(a) no non-citizen shall be permitted to do business in the Republic without first obtaining a foreign investment business license under this Chapter;

(b) no non-citizen shall be permitted to acquire an interest in any business previously owned entirely by citizens of the Republic until the business obtains a foreign investment business license under this Chapter;

(c) a license shall be in the form set out in the schedule 1 to this Chapter; and

(d) the issuance of a license does not, in any way, provide implicitly or explicitly, any sort of guarantee by the Government with respect to the investment, nor does the license provide any privileges to the foreign investor other than allowing the license holder to be treated equally with resident investors, subject to the laws of the Republic. **[P.L.1990-99, §3][Modified by P.L.2005-5 §2(2)]**

§203A. Registrar of Foreign Investment.

The Secretary of Finance is hereby designated as the Registrar for Foreign Investment.**[P.L.2000-5 §2(3), re-numbered as section "503A"][amended by P.L.2005-30]**

§204. Duties and powers of the Registrar.

For the purposes of this Chapter, the Registrar shall have the following duties and powers:

(1) to receive applications for an issue foreign investment business licenses under the provisions of this Chapter;

(2) to ensure compliance with this Chapter, the regulations promulgated and licenses issued under this Chapter . In this connection, the Registrar may investigate any alleged or suspected violation of this

Chapter, the regulations or the licenses and, in cooperation with the Office of the Attorney General, enforce the provisions of this Chapter, the regulations and the licenses. In hearings or investigations permitted or required under this Chapter or the regulations made thereunder, the Registrar may administer oaths and subpoena witnesses, records, books and documents; and

(3) to provide advice to the Government on policy matters related to foreign investment either at the request of the Cabinet or as an initiative to the Minister. **[P.L.1990-99, §4][modified by P.L.2000-5 §2(4)]**

§204A. Reserved List.

(1) A Reserved List consisting of economic sectors, sub-sectors or activities in which investment is reserved solely for citizen investors shall be maintained and publicly displayed by the Registrar.

(2) The economic sectors, sub-sectors or activities included on the Reserved List shall be approved by the Cabinet on the advice of the sectoral Ministries. The Reserved List, as approved by the Cabinet, together with detailed reasons for inclusion of said sectors or activities, shall be published in the Government Gazette and once in any newspaper published in the Republic. **[P.L.2000-5 §2(5), re-numbered as "504A"]**

§205. Application.

(1) Every non-citizen required to obtain a foreign investment business license under this Chapter shall submit an application to the Registrar.

(2) The application for a foreign investment business license shall contain the following information:

(a) the name of the applicant's business;

(b) the applicant's principal place of business in the Republic and its authorized representative for purposes of the application;

(c) the purpose, scope, and objectives of the business activities to be conducted by the applicant;

(d) the proposed form of the business organization, including the ownership and management structure;

(e) the names, addresses, and citizenship of the initial owners and managers;

(f) proposals for ownership and management by the citizens of the Republic;

(g) proposals to give employment preferences to citizens of the Republic and to train citizens of the Republic for positions in management and at other levels;

(h) anticipated capital contributions, revenue and expenditure for the first three (3) years of operation; and

(i) any other information the Cabinet deems necessary or appropriate.**[P.L.1990-99, §5, amended by P.L. 1993-37, §1. Modified by P.L.2000-5 §5(6).]**

§206. Procedure for granting foreign investment business licenses.

(1) The Registrar shall review all applications and require and collect any further information.

(2) If it is unclear whether the application is for an investment in a sector included on the Reserved List or not, then the Registrar shall clarify the position by seeking the written opinion of the Secretaries of appropriate Ministries. If such opinion is conflicting, the Registrar shall obtain a ruling from the Cabinet.

(3) When the investment sector has been determined, the Registrar shall:

(i) issue a foreign investment business license if the investment application is for a sector or activity not included on the Reserved List; or

(ii) advice the applicant that the application has been denied if the proposed foreign investment is in sector included on the Reserved List. **[P.L.1990-99, §6.][modified by P.L.2000-5, §2(7)]**

§207. Register.

(1) The Registrar shall maintain a register of foreign investment in the Republic in the form set out in Schedule 3 to this Chapter, and such register shall be a public document.

(2) Any foreign investment business license holder shall advise the Registrar of any change in circumstances that necessitates a change to the data contained in the register. **[P.L.1990-99, §7, modified by P.L.2000-5, §2(8)]**

§207A. Requirement for keeping records.

(1) Account records. Every non-citizen granted a foreign investment business license pursuant to this Chapter shall maintain reliable and complete accounting records, to include correct and complete books and records of account. Accounting records must be sufficient to correctly explain all transactions, enable the financial position of the non-citizen to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every non-citizen granted a foreign investment business license pursuant to this section, such as, but not limited to, invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; all sales, and other transactions; and the assets and liabilities of the non-citizen.

(2) Records of ownership. Every non-citizen granted a foreign investment business license pursuant to this Chapter shall keep an up-to-date record containing the names and addresses of all owners.

(3) Forms of records. Any records maintained by a non-citizen in the regular course of its business may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, or any other information storage device, provided that the records so kept can be converted any records so kept upon the request of any person entitled to inspect the same. When records are kept in such manner, a clearly legible written form produced from the cards, tapes, photographs, microphotographs, or other information storage device shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original written record of the same information would have been, provided the written form accurately portrays the record.

(4) Retention period. All records required to be kept, retained, or maintained under this section shall be kept, retained, or maintained for a minimum of five (5) years. **[inserted by P.L 2015-39]**

§208. Modification, suspension, or revocation.

(1) A foreign investment business license granted under this Chapters hall at all times be subject to modification, suspension, or revocation by the Registrar, in accordance with the *Marshall Islands Administrative Procedure Act 1979* (6 MIRC 1), if:

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

(b) the grantee bribed or otherwise unlawfully influenced any government official or member of the Cabinet to issue the license other than on the merits of the application;

(c) the grantee presented false or fraudulent information to the Registrar in support of his applications;

(d) the grantee violates any of the laws of the Republic of the Marshall Islands;

(e) the grantee engages in business activities which are in violation of any condition or term imposed in the license; and

(f) the grantee engages in business activities outside of the scope of the license.

(2) An existing foreign investment license cannot be revoked or canceled once the investment has commenced, if the reason is that the investment activity it was issued for has been added, subsequently, to the Reserved List. **[P.L.1990-99, §8. Paragraphs were renumbered to confirm to the format and style of the Code. Modified by P.L.2000-5, §2(9)]**

§208A. Civil Penalty.

In addition to the provisions of section 208 and 211 of this Chapter, any person who violates a provision of this Chapter shall be liable to a monetary penalty in an amount no exceeding ten thousand dollars ($10,000).**[inserted by P.L.2005-30][amended by P.L 2015-39]**

§209. Loss of benefit of statute of limitations.

A non-citizen who does business in the Republic in violation of this Chapter shall not be entitled to the benefit of the laws of the Republic limiting the time for commencement of civil actions. **[P.L.1990-99, §9]**

§210. Regulations.

The Minister may promulgate such rules and regulations as are necessary and appropriate for the implementation of this Chapter, the rules and regulations shall have the force of the law. **[P.L.1990-99, §10. Modified by P.L.2000-5, §2(10)]**

§211. Prohibited Acts.

Any non-citizen, as defined in this Chapter, who does business without first obtaining a business license, or who after obtaining a license does business not authorized by the license or intentionally fails to comply with the conditions of the offense and shall upon conviction be liable to imprisonment for not more than six (6) months or a fine not more than five thousand dollars (US$5,000), or both. **[P.L.1990-99, §12.][original §11 "Exceptions" repealed by P.L.2000-5, §2(11), this section is renumbered as §511]**

§212. Transitional provisions.

(1) Licenses and permits issued under the Foreign Investors Business Permit Act, 33 TTC, Chapter 1, and under the *Foreign Investment Advisory Board Act 1987*, P.L.1987-21, shall remain in full force and effect in accordance with their terms, subject to modification, suspension, or revocation pursuant to the Act under which they were granted.

(2) Criminal liability for violations of the *Foreign Investment Advisory Board Act 1987*, P.L. 1987-21, shall not be extinguished by the repeal of that Act but shall continue subject to the limitation of prosecution set forth in section 108 of the Criminal Code (31 MIRC 1). **[P.L. 1990-99, 14][Original §11 "Exceptions" repealed by P.L.2000-5, §2(11), this section is renumbered as §512.]**