

Establishing a Business in the FSM

Conducting business in the FSM is similar to operating a business in the U.S. because FSM business laws are modeled after that of the U.S.

Business may operate as sole proprietorships, partnerships, or corporations. Whatever its form, FSM laws do not require local citizens to share in the ownership of the business if a foreign investor prefers 100% ownership. However, in certain cases, the preferred approach is for outside investors to enter into joint ventures with local partners.

The FSM Government as well as the four state governments will assist investors who request for assistance although investors are free to contact on their own prospective local citizen partners.

Business management is arranged strictly between a foreign investor and a local citizen with assistance from the governments if requested. Those who are interested in finding local citizen partners in any of the four states of the FSM should direct their inquiries to the Secretary of the Department of Economic Affairs, P.O. Box PS-12, Palikir, Pohnpei FM 96941 or to the respective state government.

Foreign Investment Permit:

The process begins with the submission of an application for a foreign investment permit either to the Secretary of the Department of Economic Affairs or to the main office of the State Government authorities in the State in whose territory the foreign investment is proposed to take place. Only one copy of the application is required and there is no fee charged.

The review process can take anywhere from 5 to 10 days. Among the issues for consideration are:

- need of the FSM for the proposed business;
- impact of the business on imports and exports;
- impact on material resources;
- impact on the environment;
- plans on inclusion of citizens in the venture;
- specific plans to employ and train citizens;
- extent to which capital, managerial and technical skills for the business exist in the FSM; and
- comments/recommendations of state authorities.

Criteria for Approval of Investment:

In determining whether to issue an FSM Foreign Investment Permit in an economic sector on the National Amber List, the regulation of which is not already provided for under FSM law, the Secretary shall base his decision on all relevant factors including:

- the extent to which the activity would deplete any non-renewable natural resources;
- the extent to which the activity would have a favorable effect on the balance of trade;
- the extent to which the activity would cause pollution in or harm the environment;
- the willingness and specific plans of the applicant to give employment preference to citizens and to train citizens for positions in management and at other levels by training programs;
- the extent to which the capital, managerial skills, and technical skills required for such an enterprise are available among FSM citizens at the current time or can be expected to be available in the near future;
- the extent to which an operation will contribute to the overall economic well-being of the Nation and/or each State affected and the extent to which any interest, including economic, social, traditional, or environmental, of any State or the Nation may be affected;
- the extent to which the activity will contribute to the constitutional policy of making education, health care, and legal services available to the people of the FSM; and
- the financial responsibilities of the applicant (i.e. latest balance sheet, profit and loss statement, bank reference, bank statement). If the applicant is a sole proprietorship, personal financial statement must be provided.

Immigration and Labor:

Non FSM citizens are required to have both valid passports and round-trip airline tickets when entering the FSM. Entry for non-citizen visitors is granted up to 30 days. Persons coming for a longer period or for purposes other than tourism must have an entry permit. Foreign investors entry permits are granted for the duration of the foreign investors' business permits.

Expatriate Worker Authorizations (EWAs):

A business with either an FSM Foreign Investment Permit or a State Foreign Investment Permit is automatically entitled to an Expatriate Worker Authorization (EWA) for one expatriate senior management position. The business shall be entitled automatically to one or more additional EWAs for expatriate senior management positions if it meets the applicable criteria established in the FSM Foreign Investment Regulations. Furthermore, the business may apply for additional EWAs beyond those automatically allocated if a suitably qualified and experienced citizen is not available.

The following are some criteria that may be considered in determining whether to approve or disapprove additional EWAs for senior management positions and other EWAs as mentioned above:

- notification to the Secretary of the available EWA positions;
- proof of thirty-day public announcement of the available positions;
- application must be endorsed by the Governor, or his designee, of the State where the position is located;

- applicant must be a professional in the specific area of employment, having graduated from a recognized college or university with at least four years of progressive work experience in the area of work applied for;
- submission to the Secretary of a negotiated employment contract between parties;
- contract of employment must explicitly state the employer's responsibility in the recruitment and repatriation of the non-citizen worker;
- submission to the Secretary of notarized affidavit by the applicant stating that he or she has not been convicted of a crime involving moral turpitude;
- provision of false or misleading material information shall be grounds for denial of an application;
- the Secretary must be satisfied that the worker is not likely to become a public charge;
- the Secretary must be satisfied that the worker is not carrying, bringing or intending to carry or bring controlled substances into the FSM; and
- submission to the Secretary of physical examination performed by a licensed physician.

Entry Permits:

The holder of a Foreign Investment Permit may, upon the allocation of an EWA to the relevant business entity, submit to the immigration authorities an application for an entry permit for a nominee to fill the position to which the EWA applies. Upon approval of an application for an entry permit, the immigration authorities shall issue such permit upon the payment of a fee in such an amount and under such procedures as may be established for this purpose by the immigration authorities.

The immigration authorities shall issue an entry permit for a nominee to fill a position to which an EWA applies except in cases of (a) criminal character or (b) medical risk to the nation or the nominee. In the case of an application denial, the authorities shall so advise the holder of the Foreign Investment Permit and shall give reasons for the denial. In such a case, the holder of the permit may (a) request the immigration authorities to review the application after submission of additional information on the nominee, or (b) apply for an entry permit nominating a different person to fill the position.

Registration and Licenses:

Upon determining the form of business to be formed, the first step to take is to obtain legal recognition within the FSM by registering/incorporating. If an investor chooses to operate as a company in the country, it must register itself with the Registrar of Corporations before starting. If an investor determines to establish an FSM corporation, it should file an application of charter with the Office of the Registrar of Corporations, Department of Economic Affairs, P.O. Box PS-12, Palikir, Pohnpei FM 96941. Corporations may be formed with at least three incorporators. An original and two copies of the proposed articles and bylaws must be filed with the Registrar of Corporations.

Issuance of a Corporate Charter in the FSM can be accomplished quickly.

Prior to engaging in the business of importing, exporting, selling of securities, or insurance, a license to engage in or conduct such business must be obtained from the Secretary of the Department of Economic Affairs. The license issued is not transferable and is valid on the basis of a fiscal year period (October 1st to September 30th) and, regardless of when issued, expires on the 30th day of September of the year for which issued or renewed; provided, that the original license fee is prorated and one-fourth of the annual fee charged for each quarter or portion of a quarter remaining in the fiscal year from the date of issuance.

The following annual fees are charged for the respective licenses at time of issuance and on or before the 30th day of September of each year:

- importer, \$100 per annum;
- exporter, \$10 per annum;
- securities dealers, \$250 per annum;
- insurance companies, \$1,000 per annum;
- insurance brokers, \$200 per annum;
- insurance agents, \$100 per annum.

Any person, partnership, corporation, or association that operates or conducts business in the FSM which consists of a combination of two or more of the classes of business above shall obtain a separate license for each such class of business.