

**YAP STATE
FOREIGN INVESTMENT REGULATIONS**

(Effective OCTOBER 27, 2022)

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Part 1
General Provisions

Section 1.1 Purpose and Authority.

(1) The purpose of these Regulations is to carry into effect and to facilitate implementation of the Yap State Foreign Investment Act, Chapter 3 of Title 22 of the Yap State Code, as amended (hereinafter called the "Act").

(2) These Regulations and any amendments thereto are promulgated under the authority of sections 317(c) of the Act and in accordance with the Yap State Administrative Procedures Act. Upon approval by the Board and upon filing with the Attorney General and the Chief Clerk of the Legislature, they shall have the force and effect of law.

Section 1.2 Definitions and Interpretations.

(1) When words defined in the Act are used in these Regulations, the definitions provided in the Act shall govern unless otherwise required by the context.

(2) When words defined in this subsection are used in these Regulations, the following definitions shall govern unless otherwise required by the context:

- (a) "Board" means the Foreign Investment Board as defined in Section 304 of the Act.
- (b) "business day" means a day on which the offices of the Director are open for public business.
- (c) "character criteria" means the criteria established in section 2.4 of this Regulation.
- (d) "Chief" means the Chief of the Division of Commerce and Industries in the Department of Resources and Development of the State of Yap, or his/her designee
- (e) "Director" means the Director of the Department of Resources and Development of the State of Yap, or his or her designee.
- (f) "full-time equivalent" or "FTE" means a single full-time employee or so many part time employees as are necessary to equal a full-time employee. For example, two half-time employees equal one FTE; three 2/3-time employees equal two FTEs.
- (g) "Marine resources" means any physical or bio-genetic material derived from, whether living or non-living, within the territorial waters of the State.

- (h) "occasional sale" means a sale out of the ordinary course of business which occurs no more than twice in a calendar year and for no more than three days on each such occasion.
- (i) "principal" means the general partners of a partnership or the officers, directors, and owners of at least a 20% interest in any other type of business entity.
- (j) "State" means the State of Yap.
- (k) "State Amber List" means the Category of economic sectors ó those in which foreign investment is permitted in the territory of the State subject to certain criteria applicable just to those sectors ó as provided for in Section 305(b)(2) of the Act.
- (l) "State Green List" means the Category of economic sectors ó those in which foreign investment is permitted in the territory of the State subject only to criteria applicable to all sectors ó as provided in Section 305(c) of the Act.
- (m) "State Red List" means the Category of economic sectors ó those in which foreign investment is prohibited anywhere in the territory of the State ó as provided for in Section 305(a) of the Act.
- (n) "Vicinity" means the area near or surrounding a hotel, resort, or business type offering living quarters

(3) For purposes of section 303(b) of the Act, "business" and "engaging in business" do not include:

- (a) occasional sales;
- (b) foreign governments and agencies thereof;
- (c) any business entity insofar, but only insofar, as it is supplying goods or services pursuant to a contract with the State or the FSM or under an international aid project approved by the State or the FSM;
- (d) advertising through newspapers, brochures, or other publications, or through radio, television, or the internet;
- (e) the conducting of scientific research or investigations if:
 - (i) the research or investigation is sponsored by a university, college, agency, or institution normally engaged in such activities primarily for purposes other than commercial profit; and

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

(f) the collection of information by a bona fide journalist for news publication or broadcast;

(g) maintaining or defending any action or suit, or participating in administrative proceedings, arbitration, or mediation;

(h) maintaining bank accounts;

(i) the lawful sale and purchase of corporate shares or other interests or holdings in a business entity acquired not for speculation or profit; or

(j) activity which would otherwise qualify as "business" or "engaging in business" if it is conducted in Yap on no more than 15 days during any calendar year.

(4) For purposes of section 303 of the Act, "personal use" is for one's own use or for the use of a family member. Personal use does not include a sale or other exchange for value.

(5) For purposes of section 303(h) of the Act, "fish" means living marine resources located within the internal waters of the State or the State Fishery Zone.

Part 2

Investment Categories and Criteria

Section 2.1 State Red List.

The economic sectors on the State Red List are as follows:

- (a) As expressly stated in the Act: none.
- (b) As designated by the Board:
 - harvesting or sale of marine resources in the internal waters of the State.
 - Bakery
 - Car rental
 - Farming (growing and selling of betelnut, coconut, yam, and all kinds of taro)
 - Laundromat
 - Plumbing business
 - Retail (including stalls and markets other than those operated within the vicinity of a hotel, resort, and/or operated by foreign owned hotels/resorts)

Taxi and transportation related service
Wholesale

Section 2.2 State Amber List.

- (1) The economic sectors on the State Amber List are as follows:
 - (a) As expressly stated in the Act: commercial fishing, including but not limited to the catching, processing, and commercial exportation of fish caught within the internal waters of the State or within the State Fishery Zone as defined by Title 18 of the Yap State Code.
 - (b) As designated by the Board:
 - Exploration and exploitation of ocean seabed minerals and other non-living resources within the State Fishery Zone, provided that all necessary environmental and fishery permits have been obtained.
 - Construction, subject to the Board's approval after the Board determines that construction business being proposed by a foreign investor cannot be undertaken by existing or local construction firms
 - Restaurant and Bar, subject to the Board's approval after the Board determines that the proposed restaurant business cannot be undertaken by existing or local and potential business owners
- (2) There are no specific criteria for obtaining a State Foreign Investment Permit for a business on the State Amber List except for the following:
 - (a) Character criteria in section 2.4 below
 - (b) In order to comply with Section 305(b)(2) of the Act, all foreign investments must show proof of capital in a financial institution
 - (c) Any proposed investment of less than \$3,000,000 in capital shall require a citizen partner who shall be Yapese by birth and citizen partner's ownership interest shall not be less than 10 percent.
 - (d) Business entity's last ten year's annual reports from where it is currently operating and located,
 - (e) Police reports from countries of citizenships of all persons having ownership interest in the business entity
- (3) The specific criteria for retaining a State Foreign Investment Permit for a business on the State Amber List, including the character criteria in section 2.4 below, shall be shown on or attached to the State Foreign Investment Permit as conditions, violation of which may result in loss of the permit as provided in the Act. Those specific criteria are as shown on the State Foreign Investment Permit form attached as Schedule 2 to these Regulations.

Section 2.3 State Green List.

(1) The economic sectors on the State Green List are all economic sectors that are not on either the State Red List or the State Amber List.

(2) , There are no specific criteria for obtaining or retaining a State Foreign Investment Permit for a business on the State Green List except for the following:

- (a) Character criteria in Section 2.4 below
- (b) In order to comply with Section 305(b)(2) of the Act, all foreign investments must show proof of capital in a financial institution
- (c) Declaration that financial capital will not be raised or provided in and by the State or any of its agencies
- (d) Any proposed investment of less than \$3,000,000 in capital shall require a citizen partner who shall be Yapese by birth and citizen partner's ownership interest shall not be less than 10 percent.
- (e) If applicable, company's annual reports in the last 10 years or certificate of good standing from where it is currently operating and located,
- (f) Police reports from countries of citizenships of all persons having ownership interest in the business entity

Section 2.4 Character Criteria.

(1) An application for a State Foreign Investment Permit shall be denied if the applicant or any noncitizen principal of the applicant:

- (a) was convicted of a felony, a violent crime, a crime founded on dishonesty, or a crime of moral turpitude in the FSM, any state of the FSM, or any foreign jurisdiction during the prior 5 years;
- (b) has been requested to leave another jurisdiction based upon activity which is fraudulent or criminal even if there has been no criminal conviction; or
- (c) has been declared bankrupt, had a receiver appointed, or made a transfer of assets for the benefit of creditors during the prior 5 years.
- (d) the company fails to submit the right annual tax returns or annual reports to the Chief of Commerce and Industries where registered and at any time during its operation in the State.
- (e) the company fails to report the change of its directors and shareholders where registered and at any time during its operation in the State.
- (f) If applicable, applicant fails to submit a certificate of good standing from place of registration

(2) An application for a State Foreign Investment Permit may be denied if any circumstance exists which would allow the Board to cancel the permit pursuant to section 309 (e) of the Act if the permit had already been issued.

(3) A State Foreign Investment Permit may be suspended or cancelled as provided in the Act if, at any time after issuance of the permit, any circumstance described in subsection (1) applies to the holder of the permit or to a principal of the holder.

(4) A violation of any of the character criteria may be waived by the Board, with the concurrence of the State Attorney General, for good cause shown. Any such waiver must be in writing, state the reasons for the waiver, and be signed by both the Chairman of the Board and the State Attorney General.

Part 3

Foreign Investment Permit Requirements and Procedures

Section 3.1 Application forms and submission requirements.

(1) Schedule 1 to these Regulations prescribes the form to be used in applying for a State Foreign Investment Permit.

(2) Signed originals of all applications for State Foreign Investment Permits shall be submitted to the Director at his or her office. An application shall not be deemed submitted until any required application fee is paid.

Section 3.2 Action by the Board on Applications – Time Periods.

(1) The Board shall have up to 10 business days to complete the review of each application for a permit. Within that time period, the Board shall take the following actions pursuant to the Act:

- (a) determine which economic sector the application relates to;
- (b) request additional information from the applicant, if necessary;
- (c) deny the application, issue a permit, or forward the application to the Secretary; and
- (d) advise the applicant of the action taken under subsection (c).

(2) If additional information is requested under subsection (1)(b), a new 10-day time period shall begin when the applicant responds to the request.

(3) If it is impossible for the Secretary to take action on an application within the time periods described above, the Secretary shall, by written notice, inform the applicant of that fact no later than 1 business day after the expiration of the prescribed period, and shall indicate (a) why the action could not be taken within the prescribed period and (b) a specific date (no later than 10 days from the date of the written notice) by which the Secretary will take action.

Section 3.3 Form of Permit.

A State Foreign Investment Permit shall be in the form prescribed in Schedule 2 to these Regulations.

Section 3.4 Application Fees and Annual Fees.

- (1) A nonrefundable application fee shall accompany an application for a State Foreign Investment Permit. The application fee shall be \$500.00
- (2) Every holder of a State Foreign Investment Permit shall pay an annual fee of \$250.00 per permit and shall be payable on or before every anniversary of the issuance of the permit.
- (3) Any report not filed by due date shall be subject to a fee of \$100 per day for up to thirty (30) days after which time the permit shall be suspended or cancelled pursuant to Section 309 of the Act.
- (4) All application, annual, and other fees paid pursuant to these Regulations shall be payable to the Yap State Treasury and deposited in the General Fund.

Section 3.5 Modification, Surrender or Cancellation of a Permit.

(1) A modification to a State Foreign Investment Permit which reflects only a change in the name, address, contact information, or registered agent of the holder shall be effected promptly and without charge upon receipt of a written request therefor.

(2) A modification of a State Foreign Investment Permit pursuant to Section 309(d) of the Act may be made under the following conditions and procedures:

(a) The holder of the permit shall file with the Board a written request for modification, indicating (i) the nature of and reason for the change in the business that has prompted the request for modification and (ii) the specific permit provisions that are proposed to be modified.

(b) The Board, on receipt of such a request for modification, may require the permit holder to provide additional information pertinent to the request. The

Board may deny or suspend action on the request if the holder fails to provide any such information.

(c) A nonrefundable modification request fee shall be paid upon the filing of a written request for modification. The amount of such fee shall be \$250.00 and payable to Yap State Treasury.

(d) In evaluating the request for modification, the Board shall be guided by the principles applicable to the original issuance of a State Foreign Investment Permit, and shall not grant the request for modification if the foreign investment following such modification would not meet all of the applicable criteria for issuance of such a permit.

(e) If the Board determines that the permit should be modified, the Board may modify it as appropriate. Such modification need not be precisely as requested by the holder.

(f) The Board shall, within 10 business days after receiving the written request for modification and any further information required pursuant to subsection (2)(b) above, notify the holder of the permit as to whether the request for modification has been granted or denied and, if it has been granted, the precise terms of the modification.

(3) Surrender of a State Foreign Investment Permit shall be carried on in appropriate case as follows:

- (a) The holder of the permit shall notify the Board in writing of the reasons for the requested surrender.
- (b) The Board shall determine whether any taxes or fees remain unpaid or any other requirements remain unfulfilled by the holder and require the holder to take appropriate action in that regard.
- (c) If no further obligations remain outstanding, the Board shall declare the permit surrendered and shall so notify the holder and the Director's counterpart in any other FSM state where the holder is or was formerly engaged in business.

(4) Cancellation of permit shall be carried out on the following grounds:

- (a) Fees required under the law is not paid
- (b) The holder requests cancellation
- (c) Application found to contain false and fraudulent information
- (d) The holder of the permit bribed or otherwise exercised, or attempted to exercise, undue influence on the decision to issue the permit
- (e) The holder of the permit fails or refuses to comply with the reporting requirements or any other requirements under the Act and regulation

- (f) The holder of the permit knowingly included false and fraudulent information in any report required under the Act or Regulation
- (g) The holder of the permit fails or refuses to comply with any restrictions or conditions included in the permit or engage in business in a prohibited economic sector(s) for which a foreign investment permit has not been issued
- (h) The investor or company fails to submit the right annual tax returns or annual reports to the Registrar of corporations where registered and at any time during its operation in the State.
- (i) The company fails to report the change of its directors and shareholders or change the directors and shareholders after registered without first approval of the Board or at any time with the approval of the Board first obtained during its operation in the State
- (j) If any of the Director or Partner who is a local that abused his position and privilege or acted without declaring his personal and financial interest to the Foreign Investment Board during the course of awarding any permit under this Act, Regulation or any other laws relating to investments or any laws of the State

Part 4 Other Provisions

Section 4.1 Expatriate worker authorization (EWA) entitlements.

The Director shall coordinate efforts with the Secretary, and with the immigration authorities of the National Government, in implementing the provisions of section 311 of the Act and of sections 210, 211, and 212 of the FSM Foreign Investment Act and regulations promulgated thereunder.

Section 4.2 Reports by Holders of Permits.

(1) For the purpose of monitoring the amount and flow of foreign investment in the State, and to provide services to foreign investors, the Chief shall, pursuant to section 307 of the Act, collect reports from holders of State Foreign Investment Permits:

(a) on an annual basis, with the time of submission for each holder to be established by the Director or, failing that, by October 31 of each year (covering the fiscal year ended September 30); and

(b) immediately in the case of a change in circumstances which results in a new or existing noncitizen principal of the holder of the permit who is not in compliance with the character criteria in section 2.4 above.

(2) The form to be used for the annual reports referred to in subsection (1)(a) appears as Schedule 3 to these Regulations.

(3) In the event of a change described in subsection (1)(b) above, the Board may request further information before taking any action under section 309 of the Act.

Section 4.3 Reports by the Board through the Director.

The information to be published annually pursuant to section 312(a) of the Act shall include data regarding the number of foreign investments, the types of business entities involved, the numbers of foreign investors, their shares of ownership in the business entities, and any unusual developments during the year being reported on, including cancellations or penalties imposed. Such information shall be published within 3 months after the end of each reporting year.

Section 4.4 Fines and Penalties.

(1) Administrative fines and penalties applicable under section 314(b)(2) of the Act are as follows:

(a) Up to \$100 per day for a maximum of 30 days for failure to comply with the reporting requirements under section 307 of the Act or section 4.2 of these Regulations.

(b) Subject to the Board, between \$1,000 and \$10,000 for failure or refusal to comply with any restrictions or conditions included in the State Foreign Investment Permit or for engaging in activities not authorized by the permit including any other violation of the Act or these Regulations.

(2) Administrative fines or penalties shall be paid to the Yap State Treasury and deposited in the General Fund.

Section 4.5 Hearing Procedures.

(1) The following procedures shall be followed during any foreign investment permit cancellation hearing under section 309(g) and (h) of the Act:

(a) The permit holder shall have the right to participate and to be represented by counsel, to call witnesses, and to cross-examine witnesses called against the holder.

(b) The hearing shall be public, unless otherwise requested by the permit holder. The entire proceedings shall be tape recorded.

(c) Formal rules of evidence shall not apply.

(d) The hearing officer, as defined in the Act, shall preside over the hearing. Counsel for the State shall present the evidence of the grounds for cancellation of the permit.

(2) Except as otherwise provided in the Act or these Regulations, the provisions of the State Administrative Procedures Act, Chapter 1 of Title 10 of the Yap State Code, shall apply to permit cancellation and any other hearings under the Act.

Section 4.6 Transitional Provisions

- (1) State Foreign Investment Permits first issued before the effective date of these Regulations shall continue to be subject to the State Foreign Investment Act and Regulations in effect as of January 1st, 2006 (the old Act and Regulations).
- (2) On and after the effective date as stated under Section 4.8, the Act and Regulations then in effect (the new Act and Regulations) shall control. No new application shall be required for such preexisting permit holders, but the Board shall issue new permits to such holders and those holders shall commence reporting in conformance with the new Act and Regulations.
- (3) No permit in existence as of the effective date of these Regulations shall be cancelled or otherwise penalized by reason of a violation of the character criteria which occurred before that date.
- (4) No permit in existence as of the effective date of these Regulations shall be cancelled or otherwise penalized by reason of a change in the Regulations except holders shall be subject to Section 4.4 of these Regulations unless their reporting date is less than 30 days from the effective date of these Regulations. Such holders shall have a grace period of 30 days.

Section 4.7 Repeal of Existing Regulations.

Any existing Yap State Foreign Investment Regulations are hereby repealed.

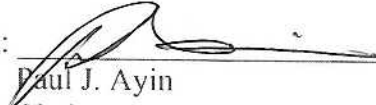
Section 4.8 Effective Date

These Regulations shall be effective 20 days after filing with the Office of the Attorney General and Chief Clerk of the Legislature.

ADOPTION

Pursuant to the authority vested in the Board by 22 YSC § 304, as amended by YSL 8-25, and having complied with the State Administrative Procedure Act, the Board hereby adopt these regulations.


Date: 09/07/2022

Signed: 
Paul J. Ayin
Chairman
Foreign Investment Board

FILING

These regulations have been reviewed by the Office of the Attorney General and are in the proper legal form. Further, these regulations are received and filed on

Date: 9/20/22

Signed: 
AG. Attorney General

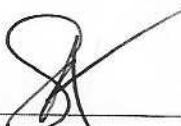
Filed on this 7th day of October 2022 by the Chief Clerk of the Yap State Legislature.

Signed: 
Chief Clerk
Yap State Legislature

Effective Date

The approval of the Board having been obtained and Title 10 of the Yap State Code having been complied with these Regulations become effective on 27th day of October 2022.

Date: October 10, 2022

Signed: 
Director
Department of Resources and Development
Government of the State of Yap