

Regulation of Foreign Investment. § 5901

Article 1. General Provisions. § 5901

§ 5901. Definitions.

§ 5902. Foreign Investment Policy.

§ 5903. Transfer of Authority.

§ 5904. Certification.

§ 5901. Definitions.

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

(a) Alien means an individual who is not a United States citizen, a citizen of the former Trust Territory of the Pacific Islands, a CNMI permanent resident or a holder of a CNMI Certificate of Identity.

(b) Alien investor is an alien who has expressed a willingness to invest, has invested in or is in the process of investing in an enterprise in the Commonwealth of the Northern Mariana Islands (the Commonwealth or CNMI). An alien investor shall not be an excludable alien under 3 CMC § 4322 (Commonwealth Entry and Deportation Act of 1983, as amended [3 CMC § 4301 et seq.]). An alien investor does not include entities such as corporations, partnerships or other entities existing solely by virtue of the law.

(c) Approved investment is an investment approved by the Foreign Investment Review Committee.

(d) Approved letter means a letter issuable by the secretary certifying the acceptance of an approved investment subject to the minimum investment criterias and standards set forth in article 3 of this chapter [4 CMC § 5931 et seq.] for a regular term business certificate, article 4 of this chapter [4 CMC § 5941 et seq.] for a long term business certificate, and article 5 of this chapter [4 CMC § 5951 et seq.] for a foreign investor certificate.

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

(f) Commerce certificate means a certificate issued by the secretary to an applicant whose application has been approved by the Foreign Investment Review Committee.

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

(h) Enterprise means a commercial or business activity carried on for profit in the Commonwealth. This enterprise is limited to one corporation, branch, office, subsidiary or facility of a foreign corporation, a partnership, or association which is an approved investment.

(1) Existing enterprise means a present or existing enterprise that is engaged in business in the Commonwealth and in which the alien investor previously had no ownership interest. Investments in existing businesses must result in increase in the net worth of the company and expansion of existing

business.

(2) New enterprise means an enterprise existing or prospective which has been established by an alien investor for the purpose of doing business within the Commonwealth. This may include creation of a new business; purchase of an existing business which would undergo restructuring or reorganization resulting in a new commercial enterprise.

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

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

(k) Foreign national means an alien.

(l) Immediate family means the spouse, parents and natural or adopted children under the age of 21.

(m) Public organization means a Commonwealth public corporation or agency of the Commonwealth government.

(n) Secretary means the Secretary of the Department of Commerce.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 201, modified).
Commission Comment: PL 10-44 took effect February 7, 1997. According to PL 10-44, § 7:

Section 7. Regulations Enacted as Statute.

(a) Except as provided by subsections (b), (c), and (d), the Department of Commerce's rules and regulations governing foreign investments in the Commonwealth, adopted January 13, 1995, in the Commonwealth Register, Volume 17, Number 1, beginning at page 5, as amended in the Commonwealth Register, Volume 18, Number 8, are hereby incorporated by reference and enacted as statutory law. The Commonwealth Law Revision Commission shall codify these rules and regulations in the appropriate Commonwealth Code statutory format.

(b) Section 1001, B., 3., a., entitled Evaluation Factors - New Enterprises, and Section 1001, B., 3., a., entitled Evaluation Factors - Existing Enterprises, are not incorporated by reference and are rescinded and reenacted to read:

3. a. The amount of capital invested or to be invested by the Alien Investor, shall not be less than \$150,000.

4. a. The amount of capital invested or to be invested by the Alien Investor, shall be not less than \$150,000 in a public organization or not less than \$250,000, in a private investment.

(c) Section 1001, A., 1., is not incorporated by reference and is rescinded and reenacted to read:

1. A holder of a long term business certificate entitles the Alien Investor to lawfully engage in business in the Commonwealth for a period of two (2) years; Provided, however, that the Alien Investor shall provide a security deposit in the sum of \$100,000 on deposit in a banking or trust institution approved by the Secretary of the Department of Finance. Exclusive authorized signature authority for the security deposit shall be the Secretary of the Department of Commerce.

The security deposit may be withdrawn only upon dissolution of the business. Any funds remaining on deposit, after all applicable taxes are fully satisfied, shall be used to pay for any and all unpaid accounts with creditors in the Commonwealth. Any funds remaining in the account after taxes and creditors claims have been satisfied shall be returned to the certificate holder.

(d) Section 1101, A., 1., is not incorporated by reference and is rescinded and reenacted to read:

1. A certificate of Foreign Investment is a certificate issued to an alien who has met all the standards and conditions enumerated in this Part as proof of the holder's participation as an alien investor in an approved investment in the Commonwealth. The holder shall have the right to lawfully engage in business in the Commonwealth as long as the Alien Investor complies with the terms upon which the certificate was issued; Provided, however, that the Alien Investor shall provide a security deposit in the sum of \$100,000 on deposit in a banking or trust institution approved by the Secretary of the Department of Finance. Exclusive authorized signature authority for the security deposit shall be the Secretary of the Department of Commerce. The security deposit may be withdrawn only upon dissolution of the business. Any funds remaining on deposit, after all applicable taxes are fully satisfied, shall be used to pay for any and all unpaid accounts with creditors in the Commonwealth. Any funds remaining in the account after taxes and creditors' claims have been satisfied shall be returned to the certificate holder.

Section 101 and 301 of Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) set forth the following:

SECTION 101. AUTHORITY. These regulations are promulgated pursuant to 1 CMC § 2454 which authorizes the Secretary of Commerce to promulgate regulations regarding those matters over which the Department of Commerce has jurisdiction. These regulations are promulgated pursuant to 1 CMC § 2453 (a) thru (f), and § 2454, 4 CMC § 1503 and 3 CMC Div. 4 § 4331(e) and (j).

. . .

SECTION 301. PURPOSE. To provide for standards and criterias for the issuance of Commerce certificates to aliens who invest in business entities in the Commonwealth; to transfer the processing, approval, issuance and renewal of Regular Term Business Entry Permits from the Department of Labor and Immigration to the Department of Commerce; to transfer the processing, approval, issuance and renewal of Long Term Business Entry Permits from the Department of Labor and Immigration to the Department of Commerce; these transfers are accomplished through the Secretary of Labor and Immigration's repeal and the Secretary of Commerce's adoption of applicable provisions of the Immigration's rules and regulations; to amend the Foreign Investor Certificate program; to establish a Foreign Investment Review Committee and for other purposes.

The order of subsections (h)(1) and (h)(2) have been switched to place them in alphabetical order.

§ 5902. Foreign Investment Policy.

The secretary makes the following declarations:

(a) It is declared that all investments in the Commonwealth by foreign nationals shall fall under the classification of foreign investment;

(b) It is declared that all investments by foreign nationals in existing enterprises shall fall under the foreign investment classification;

(c) It is declared that all investments by foreign nationals or foreign corporations, proposed or actual, in new enterprises which are not engaged in business, but are proposed to engage shall fall under the classification of foreign investment;

(d) It is declared that if an investment in a proposed or existing enterprise cannot be categorized as falling under foreign investment, the secretary must make findings and determine whether such an investment should be classified as a foreign investment or an investment by United States citizens; and

(e) These regulations should provide foreign investors a sense of direction and guideline to proceed onto the next phases of investor classifications from short term business entry permit holder to regular term business certificate or two year term business certificate and ideally to the foreign investor certificate classification. Holders of a one year term business entry permits are encouraged to apply for the two year business certificate.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 401, modified). § 5903. Transfer of Authority.

The responsibilities of the Department of Labor and Immigration over the processing, approval, issuance and renewal of regular term business entry permits under section 706A of the Immigration Rules and Regulations and long term business entry permits under section 706N of the Immigration Rules and Regulations are repealed by the Secretary of Labor and Immigration, and are adopted by the Secretary of Commerce in these regulations. Regular term business entry permits shall henceforth be renamed regular term business certificates and long term business entry permits shall be renamed long term business certificates .

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 501, modified). § 5904. Certification.

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

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 601, modified).

Article 2. Foreign Investment Review Committee. § 5911

§ 5911. Foreign Investment Review Committee; Created; Composition.

§ 5912. Foreign Investment Review Committee; Duties.

§ 5913. Foreign Investment Review Committee; Procedures.

§ 5914. Foreign Investment Review Committee; Appeal.

§ 5915. Foreign Investment Review Committee; Authority to Request for Documents, Interviews, and Public Hearings.

§ 5916. Classification.

§ 5911. 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.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 701, modified).

§ 5912. 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 standard of review are set forth in article 3 of this chapter [4 CMC § 5931 et seq.] for a regular term business certificate, article 4 of this chapter [4 CMC § 5941 et seq.] for a long term business certificate, and article 5 of this chapter [4 CMC § 5951 et seq.] 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 foreign investments.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 701A., modified).

§ 5913. 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.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 701B., modified).

Commission Comment: Following section 1301 of Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) the following form was set forth on page 12747:

FOREIGN INVESTMENT REVIEW COMMITTEE

DATE SUBMITTED: _____

*THE FOLLOWING DOCUMENTS WERE SUBMITTED TO THE FOREIGN INVESTMENT REVIEW COMMITTEE IN ORDER TO CONSIDER APPLICATION.

CHECK LIST

_____ Documents to support financial backing

_____ Description of proposed project or line of business

_____ Evidence of character and business reputation of all involved investors

_____ Immigration status of involved investors and family members

Principal: _____

_____ Copy of Certificate of Incorporation

_____ Fees paid Receipt no. _____

Following section 1301 of Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) the following form was set forth on page 12748:

FOREIGN INVESTMENT REVIEW COMMITTEE

* Application for Foreign Investment Certificate for _____
has been:
_____Approved_____Denied

Review CommitteeDateReview CommitteeDate

Review CommitteeDateReview CommitteeDate

Review CommitteeDateReview CommitteeDate

COMMENTS:

§ 5914. Foreign Investment Review Committee; Appeal.

The applicant whose permit has been disapproved shall have up to seven working days in which to appeal the decision of the review committee. The request for appeal shall be made in writing and presented to the secretary. The secretary shall comply with the requirements of the Administrative Procedures Act [1 CMC § 9101 et seq.] regarding the appeals process. Appeals received after the seven days shall be denied.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 701C., modified).

§ 5915. Foreign Investment Review Committee; Authority to Request for Documents, Interviews, and Public Hearings.

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

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 701D., modified).

§ 5916. Classification.

The review committee may classify an alien who owns an interest in a foreign

corporation that incorporates in the Commonwealth as an alien investor if the alien satisfactorily establishes his or her ownership interest in the foreign corporation and meets the requisite criterias and standards of the commerce certificate applied for. The review committee may review, upon request and submission of sufficient documentation, the status of an alien not owning any interest in a Commonwealth corporation, and who is requesting issuance of either a 90 day business certificate and visa or a two year term business certificate and visa. The review committee may qualify such alien for any of the two business entry certificates. This exclusion shall only be limited to applicants from existing enterprises and corporations whose investments have been approved by the review committee and in which applicant will engage in a managerial or policy-making capacity and consistent with CNMI laws.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 801, modified).

Article 3. Regular Term Business Certificate. § 5931

§ 5931. Regular Term Business Certificate; Conditions.

§ 5932. Regular Term Business Certificate; Standard of Review.

§ 5933. Regular Term Business Certificate; Application Process.

§ 5931. Regular Term Business Certificate; Conditions.

(a) A holder of a regular term business certificate entitles the alien investor to lawfully engage in business in the Commonwealth for not more than 90 days within a 12 month period.

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

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

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

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 901A., modified).

§ 5932. Regular Term Business Certificate; Standard of Review.

The standard of review of the regular term business certificate shall be determined by the secretary. The criterias, requirements, and basis of approval shall be contained in standard operating procedures held at the office of the secretary.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 901B., modified).

Commission Comment: Following section 1301 of Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) the following form was set forth on page 12751:

CRITERIAS ON APPROVING 90 DAY BUSINESS ENTRY CERTIFICATES

1. The 90 day entry permit sets out the initial stage in the foreign investment process. Due diligence is therefore necessary in the review process. This is a vital stage in the guidance and regulation of foreign investment. Below is a listing of business activities by priority as set forth by the Secretary of Commerce:

- A.. Hotels/Motels
- B.. Manufacturing
- C. Air Transportation/Transportation Services/Shipping
- D. Construction
- E. Banking/Finance
- F. Agriculture/Fishing
- G. Professional Service
- H.. Retail/Wholesale Trade
- I.. Restaurants and Bars
- J. All others

2. Business activity to be engaged in must be disclosed. A proposal or a business plan must be submitted incorporating evaluation factors for new enterprises A thru M.

3. Amount of capital invested or to be invested. Financial statements of principals, including companies owned or affiliated with principals.

4. Investment or financing schemes. Bank references, business background/experiences and references must be submitted. Commitment letters from financiers/banks to fund the project.

5. With investments of less than \$50,000, equity participation with U.S. citizens are encouraged.

6. Number of employees expected to be hired immediately. Training programs, management incentives and other employee benefits.

7. Expected duration of stays of applicants in the CNMI to tend to business.

8. Criterias in evaluating new enterprises under the Long Term Business Entry Permits program must be incorporated at this stage and not until a business is already opened and operating.

§ 5933. Regular Term Business Certificate; Application Process.

Applicants for a regular term business certificate shall file with the Department of Commerce a completed application form approved by the secretary, to include a police clearance valid for the previous 90 days from the date of application for the regular term business certificate. The procedures for the review of regular term business certificates are set forth in 4 CMC §§ 5911- 5915.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 901C., modified; amended by Commonwealth Register, Vol. 18, No. 08, August 15, 1996, Page 14314).

Article 4. Long Term Business Certificate. § 5941

§ 5941. Long Term Business Certificate; Conditions.

§ 5942. Long Term Business Certificate; Standard of Review.

§ 5943. Long Term Business Certificate; Application Process.

§ 5944. Renewal of Long Term Business Certificate (two year and one year term business permits/certificate).

§ 5941. Long Term Business Certificate; Conditions.

(a) A holder of a long term business certificate is entitled to lawfully engage in business in the Commonwealth for a period of two years; provided, however, that the holder shall provide a \$100,000 security deposit. The deposit shall be in either one of the following forms;

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

(2) A bond in the sum of \$100,000 issued by a surety company licensed to transact business in the Commonwealth, and approved by the Commonwealth Insurance Commissioner, naming the Secretary of the Department of Commerce as the beneficiary. Such surety company shall be listed as acceptable for federal projects by the United States Department of the Treasury. The Secretary of the Department of Commerce may, by regulation, impose such other requirements as the Secretary may find reasonably necessary to ensure the reliability and capability of such surety. The bond must run for a minimum term of two years, must provide for a minimum of 30 days notice to the Secretary prior to its being canceled, and must contain such other terms that the Secretary, by regulation, deems necessary and proper.

No matter the type of security used for the deposit, the security shall not be released until the alien investor provides the Secretary of the Department of Commerce with a statement from the Department of Finance that all applicable taxes are fully satisfied. The alien investor must also publish notice, in at least one daily newspaper distributed throughout the Commonwealth, once a week for four consecutive weeks, that he has either ceased operation or has divested himself of his interest of his business in the Commonwealth and has applied to the Secretary of the Department of Commerce for release of his security deposit. Said notice must also contain any details as prescribed by the Secretary of the Department of Commerce by regulation, but, at a minimum, will apprise any reader that the security deposit shall be released unless a claim is served upon the Secretary of the Department of Commerce within six months of the last publication of the notice together with a copy of a complaint showing that a civil action has been filed in a court of competent jurisdiction in the Commonwealth during said six month period. If no claim is filed, or if the claim is for less than the entire security deposit, then the excess shall be refunded to the alien investor. If a claim is filed, then the security deposit, or remaining balance thereof, shall be transferred to the Clerk of Court and shall be held by the same until the matter is finally resolved.

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

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

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

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1001A., modified; § 1001A.1., that is redesignated as subsection (a) of this section, was rescinded and reenacted by PL 10-44, § 7(c); subsection (a) amended by PL 12-11, § 4 a., modified.

Commission Comment: PL 12-11, which amended subsection (a) of this section took effect on August 3, 2000. PL 12-11 contained title, findings and purpose, severability, and savings clause provisions as follows:

Section 1. Title. This Act may be cited as the Omnibus Labor and Business Reform Act of 2000.

Section 2. Findings and Purpose. The Legislature finds that over the past several years, many laws have been enacted that unduly restrict the ability of people to do business. We do not believe that it is in the interests of the Commonwealth to stifle commerce by enacting restrictive laws, especially when our economy is in great need of revitalization. The Legislature further finds that although there is a need to protect jobs for our local residents, if there is no qualified local person to fill a business need, then the government should adopt policies to help business otherwise meet staffing needs. Finally, the Legislature recognizes the need to encourage new business development, and this should be done with as little government intrusion or regulation as necessary.

...

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

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

Subsections designated with numbers have been changed to lower case alphabets and subsections designated with lower case alphabets have been

changed to numbers to comply with standard code formatting pursuant to the authority provided by 1 CMC § 3806.

§ 5942. Long Term Business Certificate; Standard of Review.

(a) Approved Investment - General Standard. An approved investment is one which the review committee finds that the alien has invested or is actively in the process of investing, a significant amount of capital in a bona fide enterprise which benefits the Commonwealth. A certificate holder shall not deviate from an approved investment.

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

- (1) The representations made by the alien in his or her application and representations made through interviews by members of the review committee;
- (2) The length of time for which the long term business certificate may be granted before it shall be subject to reconsideration for renewal;
- (3) The types and scope of business activities in which the alien may engage;
- (4) The creation and guarantees of employment preferences for Commonwealth residents; and,
- (5) Such other conditions as the review committee deems appropriate.

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

- (1) The amount of capital invested or to be invested by the alien investor, shall not be less than \$150,000.
- (2) The type of enterprise proposed by the alien investor;
- (3) The reputation and business experience of the alien investor;
- (4) The number and type of employment opportunities to be created for Commonwealth residents by the enterprise;
- (5) The number of alien workers to be employed by the enterprise;
- (6) The demand for the type of enterprise and existing competition;
- (7) The island or islands on which the enterprise will be located;
- (8) The extent to which the enterprise will reduce imports and increase exports;
- (9) The extent of which the enterprise will increase the availability of goods and services at competitive prices to Commonwealth residents;
- (10) The extent to which the enterprise will support or enhance existing industries in the Commonwealth;
- (11) The extent to which the enterprise will develop the resources of the Commonwealth;
- (12) The extent of any equity participation in the enterprise by Commonwealth residents;
- (13) Whether the enterprise will be a substantial, on going business, as distinct from a marginal enterprise established solely for the purpose of earning a living for the alien and his family; and
- (14) The extent to which the enterprise will contribute to the overall economic well-being of the Commonwealth without adversely affecting existing social, cultural, and ethnic conditions in the Commonwealth.

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

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

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

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

(4) The ownership of the existing enterprise; and

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

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

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1001B., modified; § 1001B.3.a. and § 1001B.4.a., that are redesignated as subsections (c)(1) and (d)(1) of this section, respectively, were rescinded and reenacted by PL 10-44, § 7(b)).

Commission Comment: It should be noted that § 1001B.4.a. (Evaluation Factors - Existing Enterprises) was erroneously numbered as § 1001B.3.a. in the regulations. Therefore there were two § 1001B.3.a. in the regulations.

Subsections (c)(1) and (d)(1) were amended by PL 10-44, § 7(b) which read as follows:

Section 7. Regulations Enacted as Statute.

(a) Except as provided by subsections (b), (c), and (d), the Department of Commerce's rules and regulations governing foreign investments in the Commonwealth, adopted January 13, 1995, in the Commonwealth Register, Volume 17, Number 1, beginning at page 5, as amended in the Commonwealth Register, Volume 18, Number 8, are hereby incorporated by reference and enacted as statutory law. The Commonwealth Law Revision Commission shall codify these rules and regulations in the appropriate Commonwealth Code statutory format.

(b) Section 1001, B., 3., a., entitled Evaluation Factors - New Enterprises, and Section 1001, B., 3., a., entitled Evaluation Factors - Existing Enterprises, are not incorporated by reference and are rescinded and reenacted to read:

3. a. The amount of capital invested or to be invested by the Alien Investor, shall not be less than \$150,000.

4. a. The amount of capital invested or to be invested by the Alien Investor, shall be not less than \$150,000 in a public organization or not less than \$250,000, in a private investment.

. . .

§ 5943. Long Term Business Certificate; Application Process.

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

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

- (1) Certified copy of birth certificate;
- (2) Any document deemed necessary by the secretary to substantiate the applicants immigration entry classification;
- (3) One and one-quarter inch (1-1/4") frontal photograph in either black and white or color; and,
- (4) Evidence that capital has been invested may include bank statements showing amounts deposited in CNMI business accounts, invoices, receipts or contracts for assets purchased, stock purchase transaction records, loan or other borrowing agreements, land leases, financial statements, business gross tax receipts, and any other agreements supporting application;
- (5) Evidence that applicant has invested or is actively in the process of investing amount required. These may include evidence of assets which have been purchased for use in the enterprise, evidence of property transferred from abroad for use in the enterprise, evidence of monies transferred or committed to be transferred to the new or existing enterprise in exchange for shares of stock, any loan or mortgage, promissory note, security agreement or other evidence of borrowing which is secured by assets of applicant;
- (6) Business plan/proposal incorporating evaluation factors for new enterprises;
- (7) Articles on incorporation, by-laws, partnership agreements, joint venture agreements, corporate minutes and annual reports, affidavits, declarations or certifications of paid-in capital;
- (8) Current business license(s);
- (9) Foreign business registration records, recent tax returns of any kind, evidence of other sources of capital;
- (10) Listing of all resident and nonresident employees;
- (11) Listing of all holders of business certificates for the business establishment;
- (12) Listing of all corporations held by applicants;
- (13) Any other documents required by the secretary;
- (14) A police clearance valid for the previous two years from the date of application for the long term business certificate.

(c) Applicants for a long term business certificate shall file with the Department of Commerce a completed application form approved by the secretary. The procedures for the review of an application for a long term business certificate are set forth in 4 CMC §§ 5911- 5915.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1001C., modified; amended by Commonwealth Register, Vol. 18, No. 08, August 15, 1996, Page 14314 (added new subsection (b)(14) to this section).

Commission Comment: Following section 1301 of Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) the following form was set forth on page 12749:

LONG TERM BUSINESS ENTRY CERTIFICATE (2 YRS)

*THE FOLLOWING DOCUMENTS ARE TO BE SUBMITTED BEFORE THE REVIEW COMMITTEE IN ORDER TO CONSIDER APPLICATION.

CHECK LIST

- _____ COMPLETED LTBEAC APPLICATION
- _____ PHOTO
- _____ MARRIAGE CERTIFICATE
- _____ CURRENT POLICE CLEARANCE
- _____ HEALTH CERTIFICATE
- _____ COPY OF PASSPORT
- _____ BIRTH CERTIFICATE
- _____ BGRT QUARTERLY
- _____ WITHHOLDING EMPLOYEE TAX
- _____ BUSINESS LICENSE OF EXISTING BUSINESS
- _____ BY-LAWS
- _____ ARTICLES OF INCORPORATION
- _____ CORPORATE CHARTER
- _____ AFFIDAVIT/CERTIFICATION/DECLARATION OF PAID IN CAPITAL
- _____ BUSINESS FINANCIAL STATEMENT
- _____ LEASE AGREEMENT PRIVATE/PUBLIC
- _____ SKETCH OF LOCATION
- _____ LIST OF DEPENDENTS
- _____ INVENTORY OF ASSETS
- _____ FILING FEE PAIDRECEIPT NO. _____

A. IS APPLICANT ON ISLAND _____ OFF ISLAND _____

B. TYPE OF PERMIT _____ NO. _____

C. ANY AMENDMENTS TO BUSINESS(LIST) _____

D. APPLICATION SUBMITTED BY
INCORPORATOR _____ AGENT(NAME) _____

E. SOCIAL SECURITY NUMBER OF INCORPORATOR:
PREVIOUS # _____ NEW # _____

DOCUMENTS REVIEWED BY: _____

STATUS: _____ RECOMMENDED FOR APPROVAL

_____ RECOMMENDED FOR DENIAL

_____ PENDING

COMMENTS: _____

§ 5944. Renewal of Long Term Business Certificate (two year and one year term business permits/certificate).

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

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

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

(c) Applicant violated any provision of these rules and regulations; or

(d) Applicant has not maintained an approved investment in continuing compliance with standards of issuance of business certificates; or
(e) Applicant committed fraud or misrepresentation in any material assertion in the application for the initial or renewal of application; or
(f) Applicant has been subjected to adjudication of bankruptcy regarding the approved investment.

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

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

The long term business certificate may be renewed if the review committee finds that the alien's investment continues to be in compliance with the standards set forth in this chapter. Holders of long term business entry permits with investments of less than the required amount must meet requirement within two years after the final adoption of these rules and regulations.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1001D., modified).

Article 5. Foreign Investment Certificate. § 5951

§ 5951. Foreign Investment Certificate; Conditions.

§ 5952. Foreign Investment Certificate; Standard of Review.

§ 5953. Foreign Investment Certificate; Application Process.

§ 5954. Foreign Investment Certificate; Duration of Certificate.

§ 5955. Foreign Investment Certificate; Annual report.

§ 5956. Foreign Investment Certificate; Fees.

§ 5957. Foreign Investment Certificate; Revocation of Certificate.

§ 5951. Foreign Investment Certificate; Conditions.

(a) A certificate of Foreign Investment is a certificate issued to an alien who has met all the standards and conditions enumerated in this part as proof of the holder's participation as an alien investor in an approved investment in the Commonwealth. The holder shall have the right to lawfully engage in business in the Commonwealth as long as the alien investor complies with the terms upon which the certificate was issued; provided, however, that the alien investor shall provide a \$100,000 security deposit. The deposit shall be in any of the forms permitted for a security deposit to a holder of a long-term business certificate and subject to the same terms and conditions.

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

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

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations

(Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1101A., modified; § 1101A.1., that is redesignated as subsection (a) of this section, was rescinded and reenacted by PL 10-44, § 7(d); subsection (a) amended by PL 12-11, § 4 b., modified.

Commission Comment: PL 12-11, which amended subsection (a) of this section took effect on August 3, 2000. PL 12-11 contained title, findings and purpose, severability, and savings clause provisions as follows:

Section 1. Title. This Act may be cited as the Omnibus Labor and Business Reform Act of 2000.

Section 2. Findings and Purpose. The Legislature finds that over the past several years, many laws have been enacted that unduly restrict the ability of people to do business. We do not believe that it is in the interests of the Commonwealth to stifle commerce by enacting restrictive laws, especially when our economy is in great need of revitalization. The Legislature further finds that although there is a need to protect jobs for our local residents, if there is no qualified local person to fill a business need, then the government should adopt policies to help business otherwise meet staffing needs. Finally, the Legislature recognizes the need to encourage new business development, and this should be done with as little government intrusion or regulation as necessary.

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

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

§ 5952. Foreign Investment Certificate; Standard of Review.

An approved investment for the purposes of section means an investment approved by the secretary, which approval shall be subject to the following standards:

(a) Minimum Amount of Investment. The amount of the Approved Investment shall be \$100,000 per person in an aggregate Approved Investment in excess of \$2,000,000; or \$250,000 by an individual in a single Approved Investment .

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

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

- (2) Whether or not the proposed enterprise is in compliance with local and/or federal laws;
- (3) The number and description of employment positions created by the enterprise or which will be created for qualified Commonwealth residents and the extent to which non-resident personnel are or will be utilized at the outset of the applicant's enterprise, the quality and projected performance of a resident employee training program, if any;
- (4) The effect which the enterprise will have upon the ecology of the Commonwealth including its pollutant or non-pollutant status, its potential impact on the fresh water table, and the likelihood of creating waste products that would be detrimental to the environment.
- (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;
- (10) Nothing in these standards shall preclude the foreign investor from investing in an ongoing enterprise.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1101B., modified).

§ 5953. Foreign Investment Certificate; Application Process.

(a) Issuance of Certificates of Foreign Investment.

(1) The alien investor shall submit an application for an approved 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 an approved investment and, in the event that the proposal complies with the standards and criteria outlined in this section, it 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 as referenced in 4 CMC § 5951(a). The approval letter shall be issued or denied within a time period not to exceed 45 days from the

date of application.

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

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

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

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

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

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1101C., modified).

Commission Comment: Following section 1301 of Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) the following form was set forth on page 12750:

FOREIGN INVESTMENT APPLICATION REQUIREMENTS

*Detailed information on required documents

A. DOCUMENTS TO SUPPORT FINANCIAL BACKING

1. Corporation authorizes Department of Commerce to do bank inquiry or verification.
2. Bank statements, financial statements, bank references submitted.
3. Does corporation have any loan commitments if so, please provide pertinent documents.

B. DESCRIPTION OF PROPOSED PROJECT OR LINE OF BUSINESS

1. Should provide a feasibility study or analysis
2. What type of work force, training program
3. Overall economic impact and environmental impact

C. EVIDENCE OF CHARACTER AND BUSINESS REPUTATION OF ALL INVOLVED INVESTORS

1. Letters of recommendation
2. Affiliations with other corporations
3. Police clearance

D. IMMIGRATION STATUS OF INVOLVED INVESTORS AND FAMILY MEMBERS

1. Number of Family members

E. COPY OF CERTIFICATION ON INCORPORATION

1. Proof or copy of Certification of incorporation

§ 5954. Foreign Investment Certificate; Duration of Certificate.

The duration of the certificate of foreign investment shall be perpetual; provided that the approved investment continues to comply with the standards of issuance.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1101D., modified).

§ 5955. Foreign Investment Certificate; Annual report.

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

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1101E., modified).

§ 5956. Foreign Investment Certificate; Fees.

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

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1101F., modified).

§ 5957. Foreign Investment Certificate; Revocation of Certificate.

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

(1) Not maintained an approved investment in continuing compliance with the standards of issuance of a certificate of foreign investment; and/or

(2) Committed fraud or misrepresentation in any material assertion in the application for the approval letter, the certificate of foreign investment, or the annual report required pursuant to 4 CMC § 5955; and/or

(3) Been subjected to an adjudication of bankruptcy regarding the alien investment; and/or

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

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

(6) Violated any provision of these rules and regulations.

The secretary shall either take steps to secure correction of any insufficiency or non-compliance, or revoke the certificate of foreign investment, the alien investor shall be afforded a six-month grace period following termination or revocation of his certificate, in order to take steps necessary to liquidate, transfer or otherwise dispose of assets connected with the alien investor's approved investment activity. The secretary shall inform the Secretary of Labor and Immigration in writing of his decision to revoke and/or deny renewal of the certificate of foreign investment, and compute the six month's grace period date commencing from the date of denial and/or revocation. The alien investor's foreign investment visa (and any visas held by members of his immediate family) shall be valid up to and including the final day of the six-month grace period following termination of the certificate of foreign investment. Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1101G., modified).

Article 6. Other Foreign Investment and Fees. § 5971

§ 5971. Other Foreign Investment.

§ 5972. Fee Schedule.

§ 5971. Other Foreign Investment.

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

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1201, modified).

§ 5972. Fee Schedule.

(a) Regular Term Business Certificate \$200;

(b) Long Term Business Certificate \$1,000;

(c) Renewals of One Year Business Certificate \$750;

(d) Foreign Investment Visa

(1) \$2,500 to a holder of a Foreign Investment Certificate;

(2) \$2,500 per family member;

(e) Foreign Investment Certificate \$10,000;

(f) Penalties for any violation of this chapter: \$100 per day the violation is not resolved and \$100 per violation.

All fees collected under this chapter shall be deposited with the CNMI Treasurer, and the Secretary of Finance shall permit the Secretary of Commerce to use the funds for the enforcement of this chapter. All fees are non-refundable.

Source: PL 10-44, § 7 (Part II - Foreign Investments regulations (Commonwealth Register, Vol. 17, No. 01, January 15, 1995) § 1301, modified).

CHAPTER 10.

Foreign Retiree Investment Certificate. § 50101

§ 50101. Application for Foreign Retiree Investment Certificate.

§ 50102. Criteria for Eligibility.

§ 50103. Application Process.

§ 50104. Duration of Certificate.

§ 50105. Revocation.

§ 50106. Reports.