

## CHAPTER 4

### FSM Venture Funds

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**Editor's note:** Section 1 of PL 15-29 enacted a new chapter 4 of title 30 entitled Federated States of Micronesia Venture Funds. The "Federated States of Micronesia" in the title of the chapter was shortened to its abbreviation "FSM".

#### **§ 401. Short title.**

This chapter may be cited as the "Federated States of Micronesia Venture Funds Act of 2007".

**Source:** PL 15-29 § 2.

**Editor's note:** PL 15-29 was signed into law by President Manny Mori on March 20, 2008.

### **§ 402. Purpose.**

The purpose of this Act is to encourage the establishment of Venture Funds in the Federated States of Micronesia, hereinafter referred to as “FSM”, and to provide an incentive for large foreign companies to register Major Corporations in the FSM. The Congress finds it desirable and necessary to promote the continued expansion of the tax base of the nation. The Congress believes that agreeing to invest a portion of large corporate income tax payments by Major Corporations in Venture Funds, to be managed by parents or affiliates of such Major Corporations, would attract large foreign-owned enterprises to more seriously consider registering Major Corporations in the FSM and directing larger amounts of profitable business through such Major Corporations. By requiring that a portion of such Venture Funds be invested in new companies and industries registered in the FSM, the Congress is encouraging the development of “knowledge industries” that tap into humankind’s creative genius in developing new forms of communications, materials, energy, and healthcare. Such new FSM corporations with intellectual property could continue to generate income over the coming years and decades. The government will be able to then tax these incomes, thus expanding the tax base that is needed by the government to provide the services that the citizens and residents of the FSM demand. It is recognized that the nation currently does not have the resources to make investments in these new industries and that a private-public partnership is needed to finance and grow these industries. Therefore, it is in the best interests of the FSM and its people that incentives are provided for Major Corporations to establish professionally managed funds that will consider new business opportunities and make wise investments.

**Source:** PL 15-29 § 3.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

### **§ 403. Creation.**

(1) Any Major Corporation that pays corporate income tax to the FSM exceeding \$50,000,000 in any one calendar year may require that an amount equivalent to up to 30% of the amount of income taxes it paid will be invested by the FSM into a FSM Venture Fund, and the Major Corporation may also select the Fund Manager for this Fund.

(2) Any Major Corporation that pays corporate income tax to the FSM exceeding \$80,000,000 in any one calendar year may require that an amount equivalent to up to 48% of the amount of income taxes it paid will be invested by the FSM into a FSM Venture Fund, and that the Major Corporation may also select the Fund Manager for this Fund.

(3) Any Major Corporation that pays corporate income tax to the FSM exceeding \$100,000,000 in any one calendar year may require that an amount equivalent to up to 57% of the amount of income taxes it paid will be invested by the FSM into a FSM Venture Fund, and that the Major Corporation may also select the Fund Manager for this Fund.

(4) These FSM Venture Funds, hereinafter each referred to as a “Fund”, will invest in new industries that may include software development, development of new drugs, medicines, and medical devices and procedures, entertainment, internet content and distribution, telecommunication devices and access, high growth technology businesses benefiting from the rapid adoption and deployment of broadband and mobile technologies, development of new and improved materials, new forms of energy and other types of investments that that Fund Manager may deem worthy.

**Source:** PL 15-29 § 4.

#### **§ 404. Letter of intent.**

Each Major Corporation that intends to establish a Fund must deliver a letter to the President of the Federated States of Micronesia Development Bank, between 60 days and 90 days after the delivery of its payment of corporate income tax to the FSM, signed by a director of the Major Corporation, stating that it intends to establish a Fund and specifying the amount of the Fund, specifying the amount it requires the FSM Government to invest in that Fund, and selecting the Fund Manager of the Fund. The letter will also describe the guarantor of the Fund and give evidence that the guarantor meets the requirements listed in section 409 of this chapter. Attached to this letter must be an Investment Statement that describes the qualifications, capabilities, and experience of the Fund Manager, the general strategy of the Fund along with the projected allocation of the investments by industry, stage of development, and country.

**Source:** PL 15-29 § 5.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

#### **§ 405. Public notice.**

Within 30 days of the date of the letter described in section 404 of this chapter, the President of the Federated States of Micronesia Development Bank will publish in a newspaper of general circulation within the FSM, a notice regarding the establishment of a Fund. The notice will describe how to obtain an Investment Statement.

**Source:** PL 15-29 § 6.

#### **§ 406. Deadline for depositing funds.**

Each fund will be established by the Secretary of Finance and Administration no later than 60 days after the date of publication of the notice described in section 405 of this chapter, and all investors must have deposited their monies into the Fund no later than the end of the 60th day after publication. The President of the Federated States of

Micronesia Development Bank will ensure that the government and all other investors have their funds deposited into the Fund by this date. The Secretary of Finance and Administration is authorized and required to deposit into the Fund such tax revenue as may be required pursuant to sections 403 and 404 of this chapter.

**Source:** PL 15-29 § 7.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

#### **§ 407. Duration of funds.**

Each Fund will have a life of ten years, at which time the original capital amount of the funds will be returned to the investors, along with three percent of the value of the Fund which is then in excess of the original capital amount, after all interest payments are made to investors. Furthermore, interest at the rate of three percent per annum will also be paid to the investors within 30 days of the end of each fiscal year.

**Source:** PL 15-29 § 8.

#### **§ 408. Investment in Venture Funds by FSM citizens and corporations.**

Citizens and corporations of the Federated States of Micronesia may invest in a Fund. The minimum investment shall be \$100,000.

**Source:** PL 15-29 § 9.

#### **§ 409. Guarantee of repayment of original capital amounts.**

The fund manager, or its parent organization, or an unrelated party (the “Guarantor”), must at the outset guarantee the repayment of the original capital amounts invested in a Fund, at the end of the life of the Fund. The Guarantor must be rated at least investment grade rated by Moody’s or Standard and Poors or Fitch or a national rating organization acceptable to the President of the Federated States of Micronesia Development Bank, or it must have a net worth of least ten times the original capital of the Fund. The President of the Federated States of Micronesia Development Bank will ensure that the Guarantor meets the criteria set out in this section.

**Source:** PL 15-29 § 10.

#### **§ 420. Guarantee of payment of interest.**

The Guarantor must also guarantee the payment of interest to investors at the end of each fiscal year during the

life of the Fund, at the rate of three percent per annum.

**Source:** PL 15-29 § 11.

#### **§ 421. Required investment in corporations registered in the FSM.**

By the end of the fifth year and at the end of the tenth year of the Fund, at least 15% of the Fund must be invested in corporations registered in the FSM.

**Source:** PL 15-29 § 12.

**Editor's note:** The "Federated States of Micronesia" in the title of this section has been shortened to "FSM".

#### **§ 422. Reports to investors.**

At the end of each year, the Fund Manager will issue a report to each investor stating new investments, sales or other dispositions of investments, the rationale for new investments and dispositions of investments, and the rationale for each current holding, and its estimate of the value of each investment and the resulting gain or loss during the current year and since the inception of the Fund.

**Source:** PL 15-29 § 13.

#### **§ 423. Appraiser's annual report.**

Ninety days before the end of the tenth year of the Fund, an independent appraiser qualified in the valuation of companies will value each of the holdings in the Fund, and the overall Fund. The appraiser will issue a report detailing the current value of each investment, and the methodology for determining each investment's valuation. The report will be signed by the appraiser and sent directly to each investor 30 days before the end of the tenth year of the Fund. The cost of the appraiser will be an appropriate expense of the Fund. Six months before the end of the tenth year of the Fund, the Fund Manager will recommend an appraiser to the President of the Federated States of Micronesia Development Bank. If the Board of Directors of the Federated States of Micronesia Development Bank approves the recommendation, the appraiser will be hired. If it does not, the matter will be decided by the arbitration panel described in the contract between the Investors and the Fund Manager.

**Source:** PL 15-29 § 14.

#### **§ 424. Advisory board.**

Each Fund shall have an Advisory Board that shall give advice to the Fund Manager. The Board shall consist of at least five people that are selected by the President of the Federated States of Micronesia, with the advice and consent of the Congress. The Board shall meet at least once a year and shall give advice to the Fund Manager. The costs of the Advisory Board shall be an appropriate expense of the Fund.

**Source:** PL 15-29 § 15.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

**§ 425. Expiration date.**

The provisions in this Act, specifically section 401 of this chapter, will expire on April 1, 2014, unless extended by law.

**Source:** PL 15-29 § 16.

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**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

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