

Title 33.

Business Regulations.

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CHAPTER 1.

FOREIGN INVESTORS BUSINESS PERMITS.

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§ 1. Short title. — This chapter is known and may be cited as the "Foreign Investors Business Permit Act." (Code 1970, tit. 33, § 1.)

§ 2. "Noncitizen" defined. — For the purpose of this chapter, unless it is otherwise provided or the context requires a different construction, application, or meaning, "noncitizen" means:

- (1) Any person who is not a Trust Territory citizen; or
- (2) Any person who is married to a person who is not a Trust Territory citizen; or
- (3) Any person under the age of eighteen years and who is adopted by parents, at least one of whom is not a Trust Territory citizen; or
- (4) Any company, corporation, or association in which a person not a Trust Territory citizen or a person who is included in subsections (2) or (3) of this section owns any interest. (Code 1970, tit. 33, § 2; P.L. No. 5-85, § 1.)

Constitutionality. — This section is declared null and void. *Whipps v. Morris* (Tr. Div., November, 1975).

Where less onerous classification is available, equal protection is violated. — Where congress could have settled on a less onerous method for eliminating the use of a Trust Territory citizen as a "front" for a noncitizen in doing business in the Trust Territory, a method which would not have the effect of penalizing all Trust Territory citizens who marry noncitizens, statute clearly denies the equal protection of the law. *Whipps v. Morris* (Tr. Div., November, 1975).

Denial of incident of citizenship by statute is a denial of due process. — The right of citizenship itself is a property right vested in the individual. Citizenship is the very source of rights such as the individual's right to vote, own land or possess a passport. Where statute attempts to deny to a person an important incident of citizenship, reducing that person to a "second class citizen" in any area, it deprives him of his property without due process of law. *Whipps v. Morris* (Tr. Div., November, 1975).

§ 3. Permit required. — No noncitizen shall be permitted to do business in the Trust Territory without first obtaining a business permit under this chapter. No noncitizen shall be permitted to acquire an interest in any business previously owned entirely by Trust Territory citizens until the latter business obtains a business permit under this chapter. (Code 1970, tit. 33, § 3.)

Regulations imposed not violative of interstate commerce. — The United States constitutional provisions as to interstate commerce do not prohibit the regulations imposed by this section. *Trust Territory v. Traid Corp.*, 4 TTR 300 (1969).

Proceeding concerning local ordinance has no bearing on violation of a public law. — A proceeding in the district court to determine whether an accused had violated the provisions of a local ordinance had no bearing on whether such person had violated or helped a corporation violate the provisions of a public law. *Trust Territory v. Traid Corp.*, 4 TTR 300 (1969).

Activities of corporate representative constitute business activity. — Where

Guideline for congressional classifications. — Congress has the authority to make classifications, but that authority not absolute. Classification must be reasonable if it is to comport with the guarantee of equal protection of the law. Arbitrary or capricious classifications conflict with the equal protection guarantee. *Whipps v. Morris* (Tr. Div., November, 1975).

Over-broad statute invalid. — The purpose of section as amended is to eliminate the use of a Trust Territory citizen as a "front" for a noncitizen doing business in the Trust Territory. Such use of a citizen might will be the subject of congressional action but the action taken by congress here is too broad in scope to be valid. *Whipps v. Morris* (Tr. Div., November, 1975).

Law denying privileges of citizenship. — Law which attempts to deny to certain Trust Territory citizens privileges to which they are entitled as citizens is clearly contrary to the very notion of citizenship. *Whipps v. Morris* (Tr. Div., November, 1975).

corporation's representative solicited orders, demonstrated the product, signed the contracts, forwarded the contracts and also accepted down payments on the product, clearly the corporation through such person was engaged in business activity within the Trust Territory. *Trust Territory v. Traid Corp.*, 4 TTR 300 (1969).

Creditor's lack of business license is an affirmative defense in an action for money due. — Creditor's lack of business license to do business in the Trust Territory is an affirmative defense to an action for money due for goods sold and delivered in the Trust Territory. *Bhanabhai & Co. v. Falawaath* (App. Div., March, 1978).

§ 4. District foreign investment boards; established; membership; meetings; compensation; technical, clerical and administrative assistance. — (1) There is hereby established in each district of the Trust Territory a district foreign investment board composed of five members appointed by the district administrator with the advice and consent of the district legislature or a committee thereof as the district legislature may by law or resolution determine; provided, that the initial appointments shall be made within thirty days after the effective date of this chapter and, if the district legislature or a committee thereof is not available to provide advice and consent during such time, the district administrator shall make the

appointments after consulting with the presiding officer of the district legislature, and such appointments shall be subject to confirmation by the district legislature during its next session. The members appointed shall all be Trust Territory citizens residing in the district, and no more than two of the five members selected shall be businessmen. "Businessman" is defined herein to mean a person engaged full time in a managerial capacity in any retail, wholesale, import or export business or any combination thereof in the sale of goods or services for pecuniary profit, excluding casual sales as defined by the director of the department of resources and development. A district representative of the department of resources and development shall be an ex officio member without a vote. No more than two of the appointed members, including the district representative of the department of resources and development, shall be employees of the administrative branch of the Trust Territory government, at either the district or territorial level. The district administrator shall be an ex officio member of the board, without the power to vote.

(2) The term of office of the appointed members of the board shall be three years; provided, that in the case of the first appointments, two of the appointed members chosen by lot shall be appointed for two years. Appointments to fill vacancies shall be for the remainder of the unexpired term.

(3) The first meeting of the board shall be called within sixty days after the appointment of all members. At the first meeting and annually thereafter the board shall elect a chairman from among its appointed members. Meetings shall be held not less than once every three months and may be called by the chairman, the district administrator, or the High Commissioner. A quorum of the board shall be four appointed members, and the assent of three members shall be required for all decisions requiring a vote. The board may adopt bylaws for its own government.

(4) Members of the board shall be compensated at the rate of ten dollars per day when actually performing functions of the board under this chapter at the direction of the chairman, except that those members who are government employees shall instead receive their regular salaries while performing functions of the board. All members shall also receive travel expenses and per diem at Trust Territory government rates when those amounts would be payable to Trust Territory employees in the same circumstances. The chairman shall submit their claims for payment.

(5) The department of resources and development and its district representatives shall offer technical assistance to the board in performing its functions under this chapter. The department of resources and development and the registrar of corporations shall provide information within their possession as requested by the board. The district administrator shall provide clerical and administrative assistance as requested by the board. The board may hire its own staff to the extent that additional assistance is required, and may seek assistance from any other source. (Code 1970, tit. 33, § 4; P.L. No. 5-48; P.L. No. 5-63, § 1; P.L. No. 6-110, § 1.)

§ 5. Same; duties and powers. — For the purposes of this chapter, and without limitations on the scope or responsibilities vested in it by other laws of the Trust Territory or of the district, the powers and duties of each district foreign investment board shall be as follows:

(1) To receive applications for business permits under the provisions of this chapter, obtain opinions and recommendations from members of the district legislature and other local groups and leaders concerning these applications, make studies, investigations and inquiries relevant to the applications, evaluate the applications according to the standards of this chapter and decide which applicants shall be granted business permits.

(2) To cooperate with and assist the department of resources and development, the Congress of Micronesia and the district legislature in making studies to determine the need for and potential sources of foreign investment in the district.

(3) To develop information concerning investment opportunities within the district and potential sources of outside capital and keep the district administrators, district legislatures, and other local groups, leaders and the people informed of such opportunities and sources.

(4) To insure compliance of all noncitizens doing business in the district with the provisions of this chapter and all rules, regulations, and business permits issued pursuant to this chapter, including the performance of investigatory functions as appropriate thereto, and may, upon receipt of a sworn affidavit from any person that there is reason to believe that any provision of this chapter or any regulation issued pursuant thereto has been violated, investigate such alleged violation and in cooperation with the office of the Attorney General, enforce this chapter and rules and regulations issued hereunder. In connection with any hearings or investigations required by this chapter or rules or regulations issued hereunder, the board may subpoena witnesses, records, books and documents. (Code 1970, tit. 33, § 5; P.L. No. 4C-45, § 1; P.L. No. 6-110, § 2.)

§ 6. Application. — (1) Every noncitizen required to obtain a business permit under this chapter shall submit an application to the department of resources and development. Every application shall be accompanied by a filing fee of one hundred dollars, which shall accrue to the general fund of the Congress of Micronesia and shall not be refundable.

(2) The application for a business permit shall contain the following information:

(a) Name of the applicant's business, the form of the business organization under which the applicant proposes to do business, its officers, directors, and proposed and existing stockholders and their citizenship if a corporate form of business, or ownership and management and their citizenship if a form of business other than a corporation.

(b) Proposed principal office in the Trust Territory, and the district or districts in which the applicant desires to do business.

(c) Purpose, scope, and objective of the business activities to be conducted by the applicant.

(d) The following specific proposals:

(i) For the authorized capitalization, par value if any, proposed or initial issuance of shares of stock, consideration per share of stock issued, subsequent contemplated issuance of stock or for Micronesia equity owners to be allowed Trust Territory citizens;

(ii) Agreeing not to revalue stock shares authorized but not issued that have been set aside for purchase by Micronesians within the first five years after receipt of a business permit unless such revaluation is approved by the board and the High Commissioner;

(iii) Agreeing not to restrict in any manner, except by way of pre-emptive rights existing shareholders or the corporation, the issuance or sale of shares of stock to Trust Territory citizens;

(iv) Agreeing to offer shares of stock at the principal place of business in the Trust Territory, and explaining the procedures required to purchase a share of stock;

(v) Setting forth in detail proposed stock purchase programs for employees of the business;

(vi) Relating to establishing a Trust Territory corporation, the proposed date of incorporation, and such other relevant information thereon as the board may request.

(e) Detailed proposals for management participation to be allowed Trust Territory citizens and provisions for the creation of labor-management boards to represent the views of employees at meetings of the board of directors and to management on matters affecting employees.

(f) Employment preference to be accorded Trust Territory citizens and the initial number of Trust Territory citizens to be employed.

(g) Detailed proposals for training programs for Trust Territory citizen employees in management and in upgrading labor skills.

(h) Existing and proposed wage and employment benefit programs.

(i) A listing of total capital anticipated to be invested initially, identifying borrowed funds and their sources for each of the first five years after receipt of the business permit, and from where such capital funds will be obtained.

(j) A detailed investment analysis for each of the first three years of business showing:

(i) Anticipated gross revenues and gross expenditures;

(ii) Anticipated and proposed marketing schemes;

(iii) Anticipated and proposed use of utilities and infrastructure;

(iv) The numbers of employees by nationality in the proposed business activity and the levels of skills required for the operation of the business in the Trust Territory.

(k) Specific economic and social programs the applicant intends to implement for the district to:

(i) Develop and conserve the land and marine resources;

(ii) Provide community related social services such as beautification programs and libraries.

(l) Any additional information which the director of resources and development or the board may deem necessary to evaluate the application being filed, or any other information which the applicant may deem appropriate.

(3) In addition to the information required for noncitizen applications under subsection (2) of this section, the application of a noncitizen which is a corporation (including a joint stock company) shall contain the following, unless it has already been filed with the registrar of corporations:

(a) A duly certified copy of the articles of incorporation, charter, and by-laws of the corporation;

(b) An affidavit sworn by an authorized officer of the corporation stating the amount of its authorized capital stock on or within sixty days before the date of filing; and

(c) A designation of a person residing within the Trust Territory upon whom process issued under any law of the Trust Territory may be served, and his place of business or residence, and a certified copy of the minutes of the board of directors of the corporation authorizing his designation.

(4) In addition to the information required for noncitizen corporations under subsections (2) and (3) of this section, an insurance company organized under the laws of a state, territory or possession of the United States, or of a foreign country, which desired to maintain an office or agent in the Trust Territory, shall file the following:

(a) A certificate of an authorized official, showing that the company is authorized to transact business in the state, territory, possession, or country under whose laws the company is organized; and

(b) A duly certified copy of the last annual statement of the insurance company. (Code 1970, tit. 33, § 6; P.L. No. 4C-44, § 1.)

§ 7. Procedure in granting business permits. — (1) The director of resources and development shall review the application and require and collect any further information which the board or he believes to be useful for evaluation of the applicant by district boards. The entire file containing the

application, the information supplementally gathered, and any other relevant information requested or received shall be transmitted to the chairman of the board in each district where the applicant seeks to do business. The director of resources and development shall notify the applicant in writing by registered mail that his application is under consideration. In addition, the director shall to the extent he or the board deems necessary, undertake an investigation in the applicant's home jurisdiction, investigating any noncitizens who are officers, directors, owners, managers, or stockholders in a joint noncitizen-Micronesian enterprise, and furnish any relevant information obtained to the boards concerned.

(2) When it has reviewed the application file the board shall undertake an investigation of the desirability of allowing such applicant to do business in the district. It shall also contact the district administrator, the presiding officer of the district legislature, the district delegation to the Congress of Micronesia, the mayor or magistrate of any appropriate municipality and any other persons who may have an interest in the matter. The board may furnish them with copies of the application and other pertinent information regarding the applicant and his proposal, and request an opinion from them within an appropriate time period. The board shall discuss the proposal with the local leaders in the district, and, in the case of potential joint foreign-Micronesian enterprises, it shall act as a liaison between the applicant and the local people.

(3) When it is satisfied that it has received sufficient information and opinion the board shall determine whether permitting the applicant to do business would promote the economic advancement of the citizens of the district and Trust Territory, considering, among others, the following criteria:

(a) The economic need for the service or activity to be performed;

(b) The degree to which such an operation will effect a net increase in exports or a net decrease in imports;

(c) The extent to which such an operation will deplete a non-renewable natural resource, or will disturb the environmental balance required for conservation of renewable natural resources, or will pollute the atmosphere or water;

(d) The extent of participation by Trust Territory citizens at the outset in the ownership and management of the enterprise and, in the case of noncitizen corporations chartered outside the Trust Territory, the degree of willingness to form a Trust Territory corporation at some time in the future and to offer a majority of the ownership and capital to Trust Territory citizens;

(e) The willingness of the applicant to give employment preference to Trust Territory citizens, and to train Trust Territory citizens for positions in management and at other levels by instituting training programs;

(f) The extent to which the capital, managerial skills, and technical skills required for such an enterprise are available among Trust Territory citizens at the current time or can be expected to be available in the near future; and

(g) The extent to which an operation will contribute to the overall economic well-being of the district without adversely affecting the existing social and cultural values and ethnic conditions of the district.

(4) If on its final review of the application the board determines that the applicant should be allowed to do business in the district, it shall determine the conditions under which a business permit may be granted. These conditions may include but shall not be limited to the following:

(a) The length of time for which the permit may be granted before it shall be subject to renewal and reconsideration by the board;

(b) The types of business activity or the scope of business activity in which the applicant may engage;

(c) The minimum amount of Trust Territory citizen ownership and control in a noncitizen business, and the number of years a noncitizen corporation chartered outside the Trust Territory may do business under the permit before

it must form a Trust Territory corporation and sell a certain percentage of its stock to Trust Territory citizens;

- (d) Guarantees of employment preference for Trust Territory citizens; and
- (e) Guarantees of training programs for Trust Territory citizens.

(5) Within sixty days after receiving the preliminary opinion of the director of resources and development, the board shall transmit the application file and report its decision to the High Commissioner through the director of resources and development. The report of the board shall describe its findings and state any conditions to be included if the business permit is to be granted, or, if it is denied, detailed reasons supporting the denial. If the High Commissioner objects to the determination of the board he may return the application file and report to the board within fifteen days after receipt, together with his objections and recommendations. He may include among his recommendations a proposal for reconciliation of the differences among the districts if the application has been considered by two or more districts and he believes that the applicant would be unduly burdened by different conditions attached to the granting of a permit by different districts. If the application file has been returned the board shall meet and consider his objections and recommendations and proposed reconciliations, if any, and may in its judgment reverse, modify, or affirm its previous determination. The board shall transmit the file and results of its review to the High Commissioner through the director of resources and development within fifteen days of receipt.

(6) After any objections have been made and considered, if the board has determined that a permit should be granted and if the High Commissioner approves the granting of a permit then he shall draw up and issue the business permit to the applicant. The permit shall state the conditions prescribed by the board under which the applicant may do business in the district, or in the case of applicants wishing to do business in two or more districts, the permit shall state conditions prescribed by the several boards for doing business in their respective districts. The High Commissioner shall sign and transmit a copy of the permit to the applicant. If the High Commissioner does not approve the granting of a business permit as the board has determined, then he shall notify the board and the applicant, stating his reasons. He shall also notify the applicant if the board denies the permit. (Code 1970, tit. 33, § 7; P.L. No. 4C-44, § 2.)

§ 8. Applications involving certain Trust Territory-wide businesses.

— In the case of any application in which (1) the primary purpose of the business is interdistrict communications, or bulk distribution of petroleum products, and (2) the applicant seeks to do business in all districts, and (3) the High Commissioner determines that the business cannot perform an adequate public service unless it operates in all districts, the High Commissioner shall so inform the district boards at the time the application is first transmitted to them. In such cases the reports of the district boards shall be advisory only, and the final determination shall be made by the six chairmen of the district boards in a meeting called by the High Commissioner. An affirmative vote of four of the chairmen and the approval of the High Commissioner shall be necessary for the granting of a permit to do business in all districts under this section and for the conditions of such permit; otherwise the business permit shall be denied. (Code 1970, tit. 33, § 8.)

§ 9. Reservation of the authority of the High Commissioner in certain cases. — In any case where disposition of an application by district boards would be in conflict with executive orders of the President of the United States, secretarial orders of the Department of the Interior, or the commitments of the United States under the trusteeship agreement, the High Commissioner shall so specify at the time the application is forwarded to the district boards. In such

a case the report of the board shall be advisory only, and the final disposition of the application for a business permit shall rest in the High Commissioner (Code 1970, tit. 33, § 9.)

§ 10. Noncitizen corporations doing business in the Trust Territory.

— (1) In the case of all noncitizen corporations doing business in the Trust Territory under a business permit granted under this chapter, process served on the person designated by the corporation in its application for a business permit, or, if he cannot be found at the place designated, on the registrar of corporations, is a valid service on the corporation. When the registrar of corporations is served with process he shall send by registered mail a notice of service and a copy of the summons and complaint to the corporation concerned at its last known address. A default judgment may not be entered against the corporation in an action in which process is served on the registrar of corporations until at least sixty days after the date of service.

(2) Every noncitizen doing business in the Trust Territory under a business permit granted under this chapter shall file, in original copy with the chief of the division of economic development and in duplicate original with the district economic development officer and chairman of the foreign investment board of the district or districts in which the noncitizen is doing business, a full and accurate exhibit of the business activities undertaken in the Trust Territory a profit and loss statement, and an up-to-date listing of information as set forth under subsection (2) of section 6 of this chapter undertaken by the noncitizen business during the past calendar year within ninety days immediately following the end of its calendar year.

(3) A noncitizen business which has been issued a permit pursuant to this chapter shall also file with the registrar of corporations and with the district board and district economic development officer of the district where the noncitizen corporation or business is doing business any changes in the provisions of its original charter, articles of incorporation, or bylaws within fifteen days of such change.

(4) The registrar of corporations or a person authorized by him may, for the purposes of this chapter upon his own initiative at any time or upon request by a district board, shall call for the production of the books and papers of any noncitizen business doing business in the Trust Territory, and examine its officers, members of its board of directors, its agents, or its employees, under oath, concerning the business activities of said business; and the registrar of corporations shall submit to the appropriate boards copies of all such documents or examinations. (Code 1970, tit. 33, § 10; P.L. No. 4C-44, §§ 3 to 5.)

§ 11. Insurance companies doing business in the Trust Territory. —

(1) Every insurance company granted a business permit pursuant to this chapter shall file, within thirty days after it is granted such business permit, a deposit with the registrar of corporations of one hundred thousand dollars in cash, negotiable securities, or a bond from a corporate surety acceptable to the registrar of corporations which shall be held in trust by the registrar of corporations for the account of the company to satisfy any judgment that may be rendered against the company under insurance policies that it may issue, and which shall be maintained as long as the insurance company may do business in the Trust Territory.

(2) Every insurance company granted a business permit pursuant to this chapter shall file with the registrar of corporations before July 1 of each year a verified statement showing the business transacted within the Trust Territory by the company during its previous fiscal year and a duly certified copy of its annual report to an authorized official of the state, territory, possession, or country in which the company is organized. Upon showing of

good cause therefor, the registrar of corporations may extend the time of filing the statement for a period not exceeding two months after July 1. (Code 1970, tit. 33, § 11.)

§ 12. Commencement of business. — Any noncitizen which has been granted a business permit shall commence business in the Trust Territory within a reasonable time after receipt of the permit. (Code 1970, tit. 33, § 12.)

§ 13. Abridgment, modification, suspension, or revocation; conditions. — (1) *Basis.* A business permit granted under this chapter shall at all times be subject to abridgment, modification, suspension or revocation by the High Commissioner or a majority vote of the members of the board of the district in which the permit was issued if:

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

(b) The grantee bribed or otherwise unlawfully influenced any member of the board to issue the permit other than on the merits of the application;

(c) The grantee presented false or fraudulent information to the board in support of his application;

(d) The grantee violates any of the provisions of the Trust Territory Code or any of the rules or regulations issued thereunder;

(e) The grantee engages in business activities which are violative of any condition or term imposed in the business permit; or

(f) The grantee engages in business activities outside the scope of the business permit or charter.

(2) *Procedure.* The chairman of the board, the district economic development officer, or an authorized representative of the High Commissioner, shall, upon receipt of information that a business permit should be abridged, modified, suspended, or revoked, call a meeting of the board. Advance written notice of at least three weeks shall be given to the holder of the permit in question, or his authorized representative, of the alleged violations and of the time and date set for a hearing thereon. Upon receipt of satisfactory evidence before the date set for the hearing that the alleged violation has been corrected, the authority calling the hearing may cancel said hearing. At any such hearing, the board may by majority vote abridge, modify, suspend, or revoke said permit. In such cases, the board shall notify the holder of said permit or his authorized representative, in writing, of the decision of the board and the reasons for the action taken. The holder of a permit which has been abridged, modified, suspended, or revoked, may, within twenty days after receipt of said notice, appeal the decision of the board to the High Commissioner. In such cases, an intent to appeal shall first be filed with the board and the director of resources and development. Thereupon, the board shall forward all information relating to the permit in question to the director of resources and development, who shall prepare in conjunction with the Attorney General a review of the case for the High Commissioner. The High Commissioner may uphold, modify, or overrule the decision of the board.

(3) *Applicability of rules and regulations.* An individual, partnership, corporation, or business association granted a business permit under the provisions of this chapter shall be subject to all rules and regulations promulgated under this chapter and any present or future laws of the Trust Territory which are applicable to his business operations in the Trust Territory. (Code 1970, tit. 33, § 13; P.L. No. 4C-44, § 6.)

§ 14. Surrender by noncitizen. — (1) A noncitizen doing business in the Trust Territory under a business permit granted under the provisions of this chapter may surrender its business permit by filing with the registrar of corporations a certificate signed and acknowledged by the permittee setting forth:

(a) The name of the noncitizen as shown on the records of the registrar of corporations, and the state or place of incorporation if a corporation;
(b) That it revokes its designation of agent for the service of process;
(c) That it surrenders its authority to do business in the Trust Territory and returns its business permit for cancellation;

(d) That it consents that process against it in any action upon a liability or obligation incurred within the Trust Territory prior to the filing of the certificate of surrender be served upon the registrar of corporations; and

(e) A post office address to which the registrar of corporations may mail a copy of any process served upon him, which address may be changed from time to time by filing a certificate entitled "notification of change of address" signed and acknowledged by the permittee.

(2) The business permit shall be attached to the certificate of surrender unless the permit has been lost or destroyed, in which case there shall be attached an affidavit of the permittee to that effect.

(3) Mere retirement from doing business in the Trust Territory without filing a certificate of surrender of business does not revoke the appointment of any agent for the service of process within the Trust Territory. (Code 1970, tit. 33, § 14.)

§ 15. Service of process on noncitizen after revocation or surrender. — After the business permit of a noncitizen has been revoked or surrendered, process against the noncitizen may be served upon the registrar of corporations in any action upon a liability or obligation incurred within the Trust Territory prior to the revocation of the filing of the certificate of surrender. (Code 1970, tit. 33, § 15.)

§ 16. Loss of benefit of statute of limitations. — A noncitizen which does business in the Trust Territory in violation of this chapter shall not be entitled to the benefit of the laws of the Trust Territory limiting the time for commencement of civil actions. (Code 1970, tit. 33, § 16.)

§ 17. Rules and regulations. — The director of resources and development shall, with the approval of the High Commissioner, promulgate rules and regulations necessary to implement this chapter, which rules and regulations shall have the force and effect of law. (Code 1970, tit. 33, § 17.)

§ 18. Exemptions. — The provisions of this chapter shall not apply to cooperative associations or credit unions duly organized and incorporated under the law of the Trust Territory. (Code 1970, tit. 33, § 18.)

§ 19. Prohibited acts. — Any noncitizen, as defined in this chapter, (1) who does business in the Trust Territory without first obtaining a business permit, or (2) who, after obtaining a permit, does business not authorized by the permit or intentionally fails to comply with the conditions of the permit, or (3) who obtains a permit by fraud or misrepresentation, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined not more than one thousand dollars, or both. (Code 1970, tit. 33, § 19.)

CHAPTER 2.

LICENSING OF COPRA TRADE.

Sec.

151. Terms and conditions of licensure.
 152. License required for purchase of copra for
 export.

Sec.

153. Exceptions.

Cross reference. — Micronesian coconut
 processing authority, 23 TTC ch. 1.

§ 151. Terms and conditions of licensure. — The High Commissioner may license, under such terms and conditions as he may determine, persons, firms or corporations to purchase, within a designated district of the Trust Territory, copra for export through such agency as the High Commissioner may approve. (Code 1966, § 1100(c); Code 1970, tit. 33, § 151.)

§ 152. License required for purchase of copra for export. — No person, firm or corporation shall purchase copra for export within the Trust Territory unless licensed under this chapter. (Code 1966, § 1100(c); Code 1970, tit. 33, § 152.)

§ 153. Exceptions. — Nothing in this chapter shall be construed to prevent the sale by any person, firm or corporation of copra for export to one licensed under this chapter, nor to prevent any person who, or firm or corporation which, has purchased copra in the Trust Territory and processed or manufactured any product therefrom, from exporting such processed or manufactured product. (Code 1966, § 1100(c); Code 1970, tit. 33, § 153.)

CHAPTER 3.

EXPORT CONTROLS.

Sec.

201. Exporting or transshipping of imported commodities.

Sec.

202. Export license.

§ 201. Exporting or transshipping of imported commodities. — No commodity which has been or may hereafter be imported into the Trust Territory from the United States or its territories or possessions shall be transshipped or exported from the Trust Territory to any place, other than the United States, its territories or possessions, except as provided in this chapter. (Code 1966, § 1102(a); Code 1970, tit. 33, § 201.)

§ 202. Export license. — (1) The exportation of any commodity described in section 201 of this chapter to a country for which no export license would be required if the exportation were from the United States or its territories or possessions, shall be in accordance with written permit granted by the High Commissioner, or on his behalf by such official or officials as he may designate except as expressly provided by subsection (3) of this section.

(2) The exportation of any commodity described in section 201 of this chapter to the Bonin Islands so long as they are under the jurisdiction of the United States, may be made in accordance with written permit granted by the High Commissioner, or on his behalf by such official or officials as he may designate.

(3) The exportation of any commodity described in section 201 of this chapter, other than as authorized in subsections (1) and (2) of this section, may be made only with the written consent of the office of export control of the United States Department of Commerce, or in accordance with an export license duly issued under the export control laws and regulations of the United States. (Code 1966, § 1102(b); Code 1970, tit. 33, § 202.)

CHAPTER 4.

USURY.

Sec.

251. "Defined"; actions to recover usurious amounts.

Sec.

252. Crediting of usurious interest to principal.

253. Prohibited transactions.

§ 251. "Defined"; actions to recover usurious amounts. — No action shall be maintained in any court of the Trust Territory to recover a higher rate of interest than two percent per month on the balance due upon any contract made in the Trust Territory on or after February 15, 1965 involving a principal sum of three hundred dollars or less, nor to recover a higher rate of interest than one percent per month on the balance due on any such contract involving a principal sum of over three hundred dollars. (Code 1966, § 1103; Code 1970, tit. 33, § 251.)

Interest is not an element of usury. *Kingzio v. Bank of Hawaii*, 6 TTR 334 (1973).

"Add on" method of computing interest on loans. — "Add on" method of computing interest on loans made by bank sued by borrowers who claimed usurious interest was charged, was in violation of usury statute limiting interest to one percent per month on the balance due, where the interest for each month's payment was calculated on the entire amount of the loan without taking into account the diminishing balance due. *Kingzio v. Bank of Hawaii*, 6 TTR 334 (1973).

Collection of usurious interest was intended result of bank's acts. — Bank intended the consequences of its acts in making usurious loans; its collection of usurious interest was the intended result. *Kingzio v. Bank of Hawaii*, 6 TTR 334 (1973).

Statute which does not limit interest amount but limits amount which can be recovered in suit does not give borrower right to recover interest paid. — Where statute does not prohibit charging of interest of more than one percent per month or punish the lender if he does so, but merely limits the amount of interest a lender can recover if he sues on the loan contract to one percent per month, the holding of trial court that, in the absence of a statutory provision authorizing suit, a borrower has a common law right to recover interest paid, was improper. *Kingzio v. Bank of Hawaii* (App. Div., December, 1975).

Under statute, right to sue to recover interest does not exist. — Where a statute does not impose criminal sanctions or declare a contract above the stated rate void, but merely prohibits the courts from lending their aid to enforcement of contracts for more than the stated amount, the common law right to maintain an action to recover interest in excess

of the stated rate does not exist. *Kingzio v. Bank of Hawaii* (App. Div., December, 1975).

Borrower may sue at common law for recovery of usurious interest. — A right of action created by statute need not exist before usurious interest can be recovered, and where statute only allows the usurious interest as an offsetting credit when a borrower sues a lender, borrower may sue at common law for recovery of usurious interest. *Kingzio v. Bank of Hawaii*, 6 TTR 334 (1973).

Since usurious loan is unenforceable contract, plaintiffs may recover all interest paid. — Usury, being a criminal offense, is against public policy, and thus a usurious loan is a contract which will not be enforced; so that plaintiffs to whom bank made loans at usurious rates were entitled to recover all interest paid, since one may sue to recover that which was paid under an unenforceable contract. *Kingzio v. Bank of Hawaii*, 6 TTR 334 (1973).

Loan providing for 15 percent interest in 12 equal monthly installments is usurious. — Promissory note for five thousand dollar loan, providing for payment of fifteen percent interest in 12 equal monthly installments (seven hundred and fifty dollars total interest) was usurious where statute allowed maximum of one percent per month on the balance due, which amounted to five hundred dollars for the loan in question. *Gelzinis v. Lagoon Aviation, Inc.*, 6 TTR 404 (1973).

On loan at two percent, bank cannot sue for interest in excess of one percent, but borrower cannot recover interest paid. — Where loans do not exceed the usury rate of two percent per month on the balance due as prohibited by statute, bank is precluded from seeking aid of the courts in collecting any interest in excess of one percent, but the borrower cannot recover the interest paid.

Kingzio v. Bank of Hawaii (App. Div., December, 1975).

§ 252. Crediting of usurious interest to principal. — payments of money or property made by way of usurious interest, whether made in advance or not, as to the excess of interest above the rate allowed by law at the time of making the contract, shall be taken to be payments made on account of principal, and judgment shall be rendered for no more than the balance found due, after deducting the excess of interest so paid. (Code 1966, § 1104; Code 1970, tit. 33, § 252.)

Since usurious loan is unenforceable contract, plaintiffs may recover all interest paid. — Usury, being a criminal offense, is against public policy, and thus a usurious loan is a contract which will not be enforced; so that plaintiffs to whom bank made loans at usurious rates were entitled to recover all interest paid, since one may sue to recover that which was paid under an unenforceable contract. Kingzio v. Bank of Hawaii, 6 TTR 334 (1973).

Right to sue at common law for recovery of usurious interest. — A right of action created by statute need not exist before usurious interest can be recovered, and where statute only allows the usurious interest as an offsetting credit when a borrower sues a lender, borrower may sue at common law for recovery of usurious interest. Kingzio v. Bank of Hawaii 6 TTR 334 (1973).

§ 253. Prohibited transactions. — Any person who directly or indirectly receives any interest, discount, or consideration for or upon the loan or forbearance to enforce the payment of money, goods and things in action, greater than two percent per month shall be guilty of usury, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than one hundred dollars, or both. (Code 1966, § 1105; Code 1970, tit. 33, § 253.)

Since usurious loan is unenforceable contract, plaintiff may recover all interest paid. — Usury, being a criminal offense, is against public policy, and thus a usurious loan is a contract which will not be enforced; so that plaintiffs to whom bank made loans at usurious rates were entitled to recover all interest paid, since one may sue to recover that which was paid under an unenforceable contract. Kingzio v. Bank of Hawaii, 6 TTR 334 (1973).

manifests an intent to protect the borrower and contracts to recover interest in excess of two percent per month are void at least with respect to the interest in excess of two percent per month. Kingzio v. Bank of Hawaii (App. Div., December, 1975).

Where statutory limit on interest is two percent, contracts are void with respect to interest in excess of two percent per month. — Where statute provides that if lender receives more than two percent interest per month he violates the criminal law, the imposition of criminal penalties clearly

On loan at two percent, bank cannot sue for interest in excess of one percent, but borrower cannot recover interest paid. — Where loans do not exceed the usury rate of two percent per month on the balance due as prohibited by statute, bank is precluded from seeking aid of the courts in collecting any interest in excess of one percent, but the borrower cannot recover the interest paid. Kingzio v. Bank of Hawaii (App. Div., December, 1975).

CHAPTER 5.

UNFAIR BUSINESS PRACTICES.

Sec.	Sec.
301. Definitions.	304. Contracts or agreements in violation of chapter.
302. Prohibited activities.	305. Competitive agreements.
303. Leases, sales, contracts, conditions, agreements or understandings to lessen competition.	306. Criminal and civil liability of violators.

§ 301. Definitions. — As used in this chapter, "person or persons" includes an individual or individuals, corporations, firms, partnerships or any other association existing under or authorized by the law of the Trust Territory. (Code 1970, tit. 33, § 301.)

§ 302. Prohibited activities. — It is illegal for one or more persons to create or use an existing combination of capital, skill or acts the effect of which is:

- (1) To create or carry out restrictions in trade or commerce.
- (2) To limit or reduce the production, or increase the price of, merchandise or of any commodity.
- (3) To prevent competition in the manufacture, making, transportation, sale, or purchase of any merchandise, produce or commodity.
- (4) To fix at any standard or figure whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use, or consumption.
- (5) To discriminate in price between different purchasers of commodities of like grade and quality, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce; provided, that nothing herein contained shall prevent differentials in price which only make allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to be purchased sold and delivered.
- (6) To make or enter into or carry out any contract, obligation or agreement by which the persons do any of the following:
 - (a) Bind themselves not to sell, dispose of or transport any article or commodity below a common standard figure or fixed value.
 - (b) Agree to keep the price of such article, commodity or transportation at a fixed or graduated figure.
 - (c) Establish or set the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude free and unrestricted competition among themselves or any purchaser or consumer in the sale or transportation of any such article or commodity.
 - (d) Agree to pool, combine or directly or indirectly unite any interest that they may have connected with the sale or transportation of any such article or commodity that might in any way affect its price. (Code 1970, tit. 33, § 302.)

§ 303. Leases, sales, contracts, conditions, agreements or understandings to lessen competition. — It shall be unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, machinery, supplies, or commodities for use within the Trust Territory, or to fix a price charged therefor, or discount from, or rebate upon, such price, on condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of the lessor or seller,

where the effect of such lease, sale or contract for sale, or such condition, agreement or understanding may be to substantially lessen competition tend to create a monopoly in any line of trade or commerce in any district of the Trust Territory. (Code 1970, tit. 33, § 303.)

§ 304. Contracts or agreements in violation of chapter. — Any contract or agreement in violation of this chapter is, to that extent, void and not enforceable at law or equity. (Code 1970, tit. 33, § 304.)

§ 305. Competitive agreements. — It is not unlawful to enter into agreements or form an association or combination the purposes and effect of which is to promote, encourage or increase competition in any trade or industry. (Code 1970, tit. 33, § 305.)

§ 306. Criminal and civil liability of violators. — (1) Any person who violates section 302 or 303 of this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars.

(2) Any person who is injured in his business, personal property, or real property by reason of another's violation of sections 302 or 303 of this chapter may sue therefor in the high court in the district where the defendant resides or where service may be obtained, and may recover three times the damages sustained by him together with a reasonable attorney's fee and the costs of suit: provided, that the Trust Territory and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this section, and may, through the Attorney General or the district attorney, bring an action on behalf of the Trust Territory, its political subdivisions or public agencies to recover the damages provided by this section, including a reasonable attorney's fee together with the costs of the suit.

(3) Upon conviction under this chapter of a noncitizen business, as defined in chapter 1 of this title, the High Commissioner may revoke such noncitizen's business permit. (Code 1970, tit. 33, § 306.)

CHAPTER 6.

CONSUMER PROTECTION.

Sec.	Sec.
351. Short title.	
352. Definitions.	subpoenas, administer oaths, conduct hearings, and promulgate rules and regulations.
353. Unlawful acts or practices.	
354. Exemptions.	361. Service of notices, demands or subpoenas.
355. Restraint of prohibited acts.	362. Orders for enforcement of subpoenas or investigative demands.
356. Private and class actions.	363. Civil and criminal penalties.
357. Nonnegotiability of consumer paper.	364. Forfeiture of corporate franchise.
358. Assurances of voluntary compliance.	
359. Investigation authorized.	
360. Authority of Attorney General to issue	

§ 351. **Short title.** — This chapter may be cited as the “Consumer Protection Act.” (Code 1970, tit. 33, § 351.)

§ 352. **Definitions.** — (1) “*Person*” means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(2) “*Trade*” and “*commerce*” mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of the Trust Territory. (Code 1970, tit. 33, § 352.)

§ 353. **Unlawful acts or practices.** — The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful:

- (1) Passing off goods or services as those of another.
- (2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services.
- (3) Causing likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services.
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have.
- (6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand.
- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.
- (8) Disparaging the goods, services, or business of another by false or misleading representation of fact.
- (9) Advertising goods or services with intent not to sell them as advertised.
- (10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.
- (12) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

(13) Engaging in any act or practice which is unfair or deceptive to the consumer. (Code 1970, tit. 33, § 353.)

§ 354. Exemptions. — Nothing in this chapter shall apply to:

(1) Actions or transactions carried out by the Trust Territory government, any branch thereof or any other governmental agency; or

(2) Acts done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading or deceptive character of the advertisement, did not prepare the advertisement, and did not have a direct financial interest in the sale or distribution of the advertised product or service. (Code 1970, tit. 33, § 354.)

§ 355. Restraint of prohibited acts. — (1) Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared in section 353 of this chapter to be unlawful, and that proceedings would be in the public interest, he may bring a civil action in the name of the Trust Territory against such person to restrain by temporary or permanent injunction the use of such method, act or practice. The notice must state generally the relief sought and must be served at least three days before the hearing of the action. The action may be brought in the high court in the district in which such person resides or has his principal place of business. The said court is authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter, and such injunctions shall be issued without bond.

(2) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful. (Code 1970, tit. 33, § 355.)

§ 356. Private and class actions. — (1) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 353 of this chapter, may bring an action under the rules of civil procedure in the high court in the district in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or one hundred dollars, whichever is greater. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper.

(2) Any person entitled to bring an action under subsection (1) of this section may, if the unlawful method, act or practice has caused similar injury to numerous other persons similarly situated and if they adequately represent such similarly situated persons, bring an action on behalf of themselves and other similarly injured and situated persons to recover damages as provided for in subsection (1) of this section. In any action brought under this section, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(3) Upon commencement of any action brought under subsection (1) of this section, the clerk of courts shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

(4) In any action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney's fees and costs.

(5) Any permanent injunction, judgment or order of the court made under section 355 of this chapter shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by section 353 of this title. (Code 1970, tit. 33, § 356.)

§ 357. Nonnegotiability of consumer paper. — (1) If any contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, such note, instrument or evidence of indebtedness shall have printed on the face thereof the words "consumer paper," and such note, instrument or evidence of indebtedness with the words "consumer paper" printed thereon shall not be a negotiable instrument.

(2) Notwithstanding the absence of such notice on a note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. Any agreement to the contrary shall be of no force or effect in limiting the rights of a consumer under this section. The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Failure to imprint the words "consumer paper" on such note, instrument or evidence of indebtedness shall subject the seller or other responsible person to appropriate civil and criminal sanctions as provided in this chapter. (Code 1970, tit. 33, § 357.)

§ 358. Assurances of voluntary compliance. — In the administration of this chapter, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the chapter from any person who has engaged in or is about to engage in such method, act or practice. Any such assurance shall be in writing and shall be filed with and subject to the approval of the high court in the district in which the alleged violator resides or has his principal place of business. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest, pursuant to section 355 of this chapter. (Code 1970, tit. 33, § 358.)

§ 359. Investigation authorized. — (1) When it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this chapter, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in such act or practice, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand.

(2) At any time before the return date specified in an investigative demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the high court in the district where the person served with the demand resides or has his principal place of business. (Code 1970, tit. 33, § 359.)

§ 360. Authority of Attorney General to issue subpoenas, administer oaths, conduct hearings, and promulgate rules and regulations.— To accomplish the objectives and to carry out the duties prescribed by this chapter, the Attorney General, in addition to other powers conferred upon him by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules and regulations as may be necessary which rules and regulations upon approval of the High Commissioner shall have the force of law; provided, that none of the powers conferred by this chapter shall be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided further, that information obtained pursuant to the powers conferred by this chapter shall not be made public or disclosed by the Attorney General or his employees beyond the extent necessary for law enforcement purposes in the public interest. (Code 1970, tit. 33, § 360.)

§ 361. Service of notices, demands or subpoenas. — Service of any notice, demand or subpoena under this chapter shall be made personally within the Trust Territory, but if such cannot be obtained, substituted service therefor may be made in the following manner:

- (1) Personal service thereof without the Trust Territory; or
- (2) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without the Trust Territory of such person for whom the same is intended; or
- (3) As to any person other than a natural person, in the manner provided in the rules of civil procedure as if a complaint or other pleading which institutes a civil proceeding had been filed; or
- (4) Such service as the high court may direct in lieu of personal service within the Trust Territory. (Code 1970, tit. 33, § 361.)

§ 362. Orders for enforcement of subpoenas or investigative demands. — (1) If any person fails or refuses to file any statement or report, to or obey any subpoena or investigative demand issued by the Attorney General, the Attorney General may, after notice, apply to the high court in the district in which the person resides or has his principal place of business, and, after hearing thereon, request an order:

- (a) Granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;
- (b) Vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of the Trust Territory or revoking or suspending the business permit in the Trust Territory of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and
- (c) Granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.

(2) Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof. (Code 1970, tit. 33, § 362.)

§ 363. Civil and criminal penalties. — (1) Any person who violates the terms of an injunction issued under section 355 of this chapter shall forfeit and pay to the Trust Territory a civil penalty of not more than ten thousand dollars per violation. For the purposes of this section, the high court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General, acting in the name of the Trust Territory, may petition for recovery of civil penalties.

(2) In any action brought under section 355 of this chapter, if the court finds that a person is wilfully using or has wilfully used a method, act or practice declared unlawful by section 353 of this chapter, the Attorney General, upon petition to the court, may recover, on behalf of the Trust Territory, a civil penalty of not exceeding one thousand dollars per violation.

(3) For the purposes of this section, a wilful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 353 of this chapter. (Code 1970, tit. 33, § 363.)

§ 364. Forfeiture of corporate franchise. — Upon petition by the Attorney General, the high court in the district in which the alleged violator has its principal place of business may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 355 of this chapter. (Code 1970, tit. 33, § 364.)

CHAPTER 7.

DUTY-FREE STORES.

Sec.	Sec.
401. Definitions.	405. Disposition of concession fees.
402. Establishment; operation and maintenance; transfer; fees generally.	406. License fee.
403. Grant on prepaid concession fee basis.	407. Manner of delivery of goods.
404. Importation of goods for resale at duty-free stores; taxes.	408. Regulations.
	409. Restriction of rights to citizens by district legislature.
	410. Violations; penalties.

§ 401. **Definitions.** — For the purpose of this chapter:

(1) "*Person*" means any individual, company, corporation, association, or other business activity, which, except as provided in section 403 hereof, must be wholly owned by citizens of the Trust Territory.

(2) "*Taxes*" means excise, tariff and other taxes levied on the import, export and sale of merchandise pursuant to the laws of the Trust Territory, but does not include gross revenue taxes.

(3) "*Ports of entry*" means the official ports specified under section 101 of title 53 of this Code. (P.L. No. 5-70, § 1.)

§ 402. **Establishment; operation and maintenance; transfer; fees generally.** — The High Commissioner is hereby authorized, subject to the conditions and restrictions of this chapter, to grant to any person the privilege of establishing, operating, and maintaining a duty-free retail concession in or adjacent to any port of entry under the jurisdiction of the Trust Territory. He may lease, rent, or let any public land or building or any part thereof or any interest therein, to any person to establish a duty-free retail concession under terms and conditions which, among others determined by him to be reasonable and proper, shall include the following:

(1) Only one duty-free retail concession shall be permitted at each port of entry.

(2) Each duty-free retail concession shall be advertised for public auction or public bidding and be granted to that financially responsible person of good moral character and reputable experience who, in the sole opinion of the High Commissioner, makes the best offer or bid. A noncitizen who wishes to bid for a duty-free retail concession pursuant to section 403 of this chapter shall comply with all applicable Trust Territory foreign investment laws.

(3) Bids or offers shall be accepted only in conformance with precise terms and conditions uniform in all administrative districts, which terms and conditions, among others, shall include hours of business, standards of operation, reasonableness of prices charged and appropriate record keeping, cash handling and audit procedures all in accordance with sound accounting principles.

(4) The term of any duty-free concession shall not exceed five years except as provided in section 403 hereof, and regardless of term shall not be extended without public auction or bids.

(5) The concession privilege granted hereunder may not be sold or assigned without the prior written approval of the High Commissioner of the financial responsibility, moral character, and reputable experience of the proposed purchaser or assignee. Any such approval if given shall be without charge or levy upon the seller, purchaser or assignee as a condition to such approval. A concession privilege may not be sold or assigned to a noncitizen who has not first obtained a foreign investor's business permit in the district in which the duty-free retail concession is located.

(6) The minimum concession fee shall be seven percent of gross sales of each duty-free retail concession. The percentage fee shall be paid within fifteen days after the last day of each calendar month. In addition to the concession fee, there shall be a business privilege fee of three percent of the gross sales of each duty-free retail concession which shall be paid within fifteen days after the last day of each calendar month and be deposited in and be a part of the general fund of the Congress of Micronesia. The business privilege fee may not be increased during the term of a concession privilege granted by the High Commissioner. (P.L. No. 5-70, § 1.)

§ 403. Grant on prepaid concession fee basis. — At any port of entry where the High Commissioner determines prepayment of the duty-free concession fee to be desirable or necessary to supplement available public funds for purposes of constructing port of entry facilities, including space for said concession, he may require offers or bids on the basis of a prepaid minimum concession fee. In such instances noncitizens may bid for the concession privilege, and the High Commissioner may, with respect to that person who submits the best offer or bid of a prepaid concession fee in excess of one million dollars:

- (1) Grant a concession term not in excess of fifteen years; and
- (2) Waive the imposition of gross revenue taxes and district and municipal license and permit fees. (P.L. No. 5-70, § 1.)

§ 404. Importation of goods for resale at duty-free stores; taxes. — All foreign merchandise of every description, except such as is prohibited by law, may be imported into the Trust Territory for resale at and from the duty-free retail concessions. Except as hereinafter provided, all sales of merchandise from such duty-free retail concessions shall be restricted to the crew and passengers of any common carrier engaged in foreign commerce, whether oceangoing or air, for consumption or use outside the limits of the Trust Territory by said crew or passengers. Persons traveling between ports of entry within the Trust Territory may reimport not more than two fifths of a wine gallon of distilled alcoholic beverages and three cartons of cigarettes into a Trust Territory port of entry which were purchased at a duty-free retail concession at a different Trust Territory port of entry. Any person who operates a duty-free retail concession shall be eligible for refunds of all taxes paid by him upon merchandise sold at and from the duty-free retail concession and such merchandise shall be exempt from all sales taxes. (P.L. No. 5-70, § 1.)

§ 405. Disposition of concession fees. — All concession fees paid by each duty-free retail concession shall, upon receipt, be deposited into and be a part of the general fund of that administrative district in which the concession is situated; provided, that in those districts in which separate authorities or agencies operate port of entry facilities said concession fees may by determination of the High Commissioner be deposited into and become a part of the funds of such authority or agency operating said port of entry facilities. (P.L. No. 5-70, § 1.)

§ 406. License fee. — There shall be paid to the Trust Territory government the sum of one hundred dollars each year by any person who shall be granted a privilege to establish, operate, and maintain a duty-free retail concession in any port of entry of the Trust Territory. Such license fee shall be in addition to any other sums of money which shall be payable to the government for concession fees, lease of land or other facilities or privileges. (P.L. No. 5-70, § 1.)

§ 407. Manner of delivery of goods. — Any and all merchandise sold pursuant to this chapter shall be delivered to the purchaser at a point or points and in a manner whereby said merchandise may not reenter the Trust Territory without customs examination and control. (P.L. No. 5-70, § 1.)

§ 408. Regulations. — The High Commissioner shall promulgate such rules and regulations as he shall deem necessary to carry out the provisions and intent of this chapter. (P.L. No. 5-70, § 1.)

§ 409. Restriction of rights to citizens by district legislature. — The several district legislatures may, by act of the legislature, at any time prior to the time that bids have been publicly solicited or advertised for a duty-free concession, restrict those eligible to bid upon and receive such a concession in that district to citizens of the Trust Territory. (P.L. No. 5-70, § 1.)

§ 410. Violations; penalties. — Any person who violates any of the provisions of this chapter or rules and regulations issued pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars, or imprisoned for not more than three months, or both. (P.L. No. 5-70, § 1.)