

TITLE 4: ECONOMIC RESOURCES
DIVISION 5: BUSINESS REGULATION

§ 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 post \$25,000 to secure payment of claims made by the Commonwealth government for taxes and government fees and penalties. The deposit shall be in the form of a bond in the amount of \$25,000 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 or other surety companies having positive capital/surplus as determined and approved by the Commonwealth Insurance Commissioner. 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 one year, renewable annually, must provide for a minimum of 30 days notice to the Secretary prior to its being cancelled, 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 and financial obligations to the CNMI Government are fully satisfied. The alien investor must also publish the notice, in at least one daily newspaper distributed throughout the Commonwealth, once a week for four consecutive weeks, that the investor has either ceased operation or has divested its interest in the business in the Commonwealth and has applied to the Secretary of the Department of Commerce for release of the 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 the Commonwealth government 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.

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(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; (a) amended by PL 13-51, § 3, modified; (a) amended by PL 15-108 § 6.

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

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

Only subsection (a) was actually amended by PL 13-51. PL 13-51 was enacted on April 21, 2003 and contained findings, purpose, severability, and savings clause provisions. PL 13-51 stated:

Section 1. Findings. The Commonwealth continues to suffer the devastating effects of a general decline in its revenues. The Legislature recognizes the need to take additional measures to encourage new foreign business development and free up capital for use by existing foreign businesses in the Commonwealth. Many of our laws were created to control the unprecedented growth of former years. Those laws, while necessary at the time, no longer serve the interests of the Commonwealth and have had contributed to the image of the Commonwealth as a difficult place to invest.

The legislature finds that the time has come to re-visit the security deposit requirement imposed on applicants for long-term foreign investment permits. The law requires those applicants to maintain a cash deposit of \$100,000 in a banking, trust, or finance institution approved by the Secretary of the Department of Commerce or, in the alternative, to post a security bond. Those applicants, however, are already required to make substantial investments in the Commonwealth. The legislature finds that the high security deposit requirement is a deterrent to new and existing foreign investment in these difficult economic times.

Section 2. Purpose. The purpose of this bill is to modify the security deposit requirement imposed on applicants for long-term foreign investment permits.

For more information regarding PL 15-108, effective on January 1, 2008, see comment to 3 CMC § 4401.