

TITLE 4: ECONOMIC RESOURCES
DIVISION 5: BUSINESS REGULATION

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

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

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

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

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

- (1) The amount of capital invested or to be invested by the alien investor, shall not be less than \$150,000.
- (2) The type of enterprise proposed by the alien investor;
- (3) The reputation and business experience of the alien investor;
- (4) The number and type of employment opportunities to be created for Commonwealth residents by the enterprise;
- (5) The number of alien workers to be employed by the enterprise;
- (6) The demand for the type of enterprise and existing competition;
- (7) The island or islands on which the enterprise will be located;
- (8) The extent to which the enterprise will reduce imports and increase exports;
- (9) The extent of which the enterprise will increase the availability of goods and services at competitive prices to Commonwealth residents;
- (10) The extent to which the enterprise will support or enhance existing industries in the Commonwealth;
- (11) The extent to which the enterprise will develop the resources of the Commonwealth;
- (12) The extent of any equity participation in the enterprise by Commonwealth residents;
- (13) Whether the enterprise will be a substantial, on going business, as distinct from a marginal enterprise established solely for the purpose of earning a living for the alien and his family; and

TITLE 4: ECONOMIC RESOURCES

DIVISION 5: BUSINESS REGULATION

(14) The extent to which the enterprise will contribute to the overall economic well-being of the Commonwealth without adversely affecting existing social, cultural, and ethnic conditions in the Commonwealth.

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

- (1) The amount of capital invested or to be invested by the alien investor, shall be not less than \$150,000 in a public organization or not less than \$250,000, in a private investment;
- (2) The type of business engaged in by the existing enterprise;
- (3) The size and financial integrity of the existing enterprise;
- (4) The ownership of the existing enterprise; and
- (5) The nature and extent of the alien investor's participation in the management of the existing enterprise;
- (6) The number of resident employees shall not be less than 20% of total employees of the existing enterprise.

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

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

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

Section 7. Regulations Enacted as Statute.

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

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

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

TITLE 4: ECONOMIC RESOURCES
DIVISION 5: BUSINESS REGULATION

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

. . .