

Vanuatu

FOREIGN INVESTMENT ACT NO. 25 OF 2019 (2021)

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REPUBLIC OF VANUATU

FOREIGN INVESTMENT ACT NO. 25 OF 2019

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REPUBLIC OF VANUATU

Assent: 23/12/2019

Commencement: 15/01/2020

FOREIGN INVESTMENT ACT NO. 25 OF 2019

An Act to provide for the establishment of the Vanuatu Foreign Investment Promotion Agency and for related matters.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1 Interpretation

(1) In this Act, unless the contrary intention appears:

approval certificate means an approval certificate granted under the repealed Act;

Agency means the Vanuatu Foreign Investment Promotion Agency established under subsection 2(1);

Board means the Vanuatu Investment Board established under subsection 4(1);

Chief Executive Officer means the Chief Executive Officer of the Agency appointed under subsection 11(1);

foreign investor means:

(a) a natural person who is not a citizen of Vanuatu; or

(b) a body corporate:

(i) that is not wholly controlled by persons who are citizens of Vanuatu; or

(ii) that has any of its shares (voting or otherwise) beneficially owned or controlled by persons who are not citizens of Vanuatu; or

(c) any entity other than a natural person or a body corporate, where the control of, or the benefit to be derived from the entity, will vest wholly in persons who are not citizens of Vanuatu or a body corporate under paragraph (b),

that operates or intends to operate an investment activity in Vanuatu;

investment activity means an activity for the principal purpose of pecuniary gain but does not include:

(a) maintaining a bank account in Vanuatu; or

(b) acquiring land or any other interest in real property (unless in conjunction with any activity for which a business licence is required); or

(c) an isolated transaction, not being one of a number of similar transactions repeated from time to time or from which there will be derived a reoccurring or continuing benefits; or

(d) taking security for or collecting any debt or enforcing any rights relating to any security; or

(e) the gathering of any information or undertaking a feasibility study in contemplation of an investment proposal; or

(f) entry into and performance of a contract for the supply of goods or services by a supplier engaged by the Vanuatu Government for a Government negotiated project;

investment proposal means a proposal by a foreign investor to invest in Vanuatu, and includes a proposal by a foreign investor investing through a joint venture, partnership or other association with citizens of Vanuatu or companies incorporated in Vanuatu;

Minister means the Minister responsible for Trade and Industry;

prohibited activity means an investment activity that:

- (a) a person is prohibited from undertaking by any Act (other than this Act); or
- (b) an investment activity included in the Prohibited List;

Prohibited List means the list of activities set out in Part 1 of the Schedule;

Register means the Register of investment activities carried out by foreign investors under section 32;

Registration means registration of an investment activity under Part 5;

Repealed Act means the Vanuatu Foreign Investment Promotion Act [CAP 248] repealed under section 70;

Reserved activity means an investment activity specified in the Reserved List;

Reserved List means the reserved list set out in Part 2 of the Schedule;

Restricted activity means an activity included in the Restricted List;

Restricted List means the list of activities set out in Part 3 of the Schedule.

(2) A reference in this Act to the carrying out of an investment activity by a foreign investor includes a reference to:

- (a) the foreign investor carrying out the investment activity; and
- (b) an agent or employee of the foreign investor carrying out the investment activity for and on behalf of the foreign investor; and
- (c) a business owned or operated by the foreign investor that is carrying out the investment activity.

PART 2 VANUATU FOREIGN INVESTMENT PROMOTION AGENCY

Division 1 Establishment of the Vanuatu Foreign Investment Promotion Agency

2 Establishment of the Vanuatu Foreign Investment Promotion Agency

(1) The Vanuatu Foreign Investment Promotion Agency is established.

(2) The Agency:

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may acquire, hold and dispose of property; and
- (d) may sue and be sued in its corporate name.

3 Functions of the Agency

(1) The Agency has the following functions:

(a) to advise the Minister and the Council of Ministers on all matters relating to foreign investment in Vanuatu, including:

(i) the approval by the Council of Ministers of the national investment policy of Vanuatu; and

(ii) the scope and appropriateness of any amendments to the Reserved List and Restricted List; and

(iii) reporting to the Minister annually from the commencement date on the matters in subparagraphs (a)(i) and (a)(ii); and

(b) to advise the Minister on the development and maintenance of an efficient, effective and timely regulatory environment for investment in Vanuatu; and

(c) to perform its functions effectively in order to implement Government policies; and

(d) to promote Vanuatu as an investment location; and

(e) to provide relevant and accurate information on obtaining permits, licences and approvals by foreign investors from any State department or agency; and

(f) to establish methods to assist foreign investors in obtaining permits, licences and approvals from any State department or agency; and

(g) to undertake registration and monitoring of foreign investors in Vanuatu; and

(h) to provide information to foreign investors in Vanuatu, as prescribed in the Regulations; and

(i) to report annually to the Minister on the Agency's activities and financial performance; and

(j) to coordinate and facilitate the review and implementation of the national investment policy; and

(k) such other functions that are conferred on the Agency under this Act or any other Act.

(2) The Board is to discharge the functions set out in paragraphs (1)(a), (b) and (c).

(3) The Chief Executive Officer is to discharge the functions set out in paragraphs (1)(d) to (1)(k).

(4) The Chief Executive Officer is to advise the Board in respect of the discharge of the Agency's functions.

(5) Subject to this Act, the Board may establish within the Agency separate business divisions to perform any of the functions set out in this section.

Division 2 Vanuatu Investment Board

4 Establishment and Composition of the Board

(1) The Vanuatu Investment Board is established.

(2) The Board consists of the following members:

(a) the Director General of the Ministry responsible for Trade and Industry, who is to be the Chairperson of the Board; and

- (b) the Director of the Department responsible for Strategic Policy Planning; and
 - (c) the Director of the Department of Local Authorities; and
 - (d) the Director General of the Ministry responsible for Agriculture, Livestock, Forestry, Fisheries and Biosecurity; and
 - (e) a representative nominated by the Vanuatu Chamber of Commerce and Industry; and
 - (f) a representative nominated by the Vanuatu Finance Centre Association; and
 - (g) a representative nominated by the Vanuatu Hotels and Resorts Association.
- (3) The Minister is to appoint persons nominated under paragraphs (2)(e),(f) and (g) by Order published in the Gazette.
- (4) The Chief Executive Officer is to attend the Board meetings and has no voting right.

5 Deputy Chairperson

The members of the Board are to elect from amongst themselves a Deputy Chairperson who is to hold office for a period of 2 years and is eligible for re-election.

6 Term of membership

- (1) A member appointed under subsection 4(3) is to be a member of the Board for a period of 2 years and may be re-appointed.
- (2) A member of the Board under paragraph 4(2)(a), (b), (c) or (d) ceases to be a member of the Board, upon ceasing to hold the office for which he or she has become a member of the Board.

7 Vacancy

- (1) If a vacancy exists in the Board, the Board must ensure that the vacancy is filled as soon as possible.
- (2) An act or decision of the Board is not invalid if there is a vacancy amongst its members or an irregularity in the appointment of a member.

8 Meetings of the Board

- (1) The Board is to meet at least 4 times in a year and may hold such other meetings as is necessary for the proper performance of its functions under this Act.
- (2) The Chairperson is to preside at all meetings of the Board and in his or her absence, the Deputy Chairperson is to preside at the meeting of the Board.
- (3) The Chairperson is to nominate a member of the Board to preside at a meeting of the Board, if the Chairperson and the Deputy Chairperson are unable to attend the meeting.
- (4) At a meeting of the Board, the quorum consists of 2 members representing the private sector and 2 members representing the Government.
- (5) A member of the Board may nominate a person to attend a meeting if the member is unable to attend, due to an illness, absence from Vanuatu or absence due to unforeseen circumstances.

(6) For the purposes of subsection (5), a member of the Board under:

(a) paragraph 4(2)(a),(b),(c) or (d) must nominate a Director or senior officer within the his or her Ministry or Department; or

(b) paragraph 4(2)(e),(f) or (g) must nominate an elected member of the association or institution which he or she represents.

(7) At a meeting of the Board a member has one vote and questions arising at the meeting are to be decided by a majority vote of the members present at the meeting.

(8) If the vote is equal at a meeting of the Board, the Chairperson has a casting vote or the Deputy Chairperson if he or she is presiding at the meeting. In the case where a member is nominated to preside over a meeting under subsection (3), that member has a casting vote.

(9) A member who has an interest or a potential conflict of interest in any matter before the Board must:

(a) declare that interest; and

(b) not be present during any deliberation of that matter by the Board;

and

(c) must not vote on that matter.

(10) The member's declaration under subsection (9) must be recorded in the minutes of the meeting.

(11) A member who fails to declare his or her conflict of interest under subsection (9) is disqualified as the member of the Board.

(12) Subject to this Act, the Board may determine and regulate its own procedures.

9 Functions of the Board

The Board has the following functions:

(a) to determine, approve and monitor policies and strategic directions that contribute to achieving the vision, mission and goals of the Agency; and

(b) to approve the annual budget and work plans before they are submitted to the Ministry responsible for Trade and Industry; and

(c) to monitor the performance of the Agency in accordance with its annual plans and budget; and

(d) to ensure that the auditing process is carried out in an effective and efficient manner; and

(e) such other functions as may be conferred on the Board under this Act or any other Act.

10 Sitting allowances

The Minister may prescribe the sitting allowances for the meetings of the Board.

Division 3 Chief Executive Officer and Staff of the Agency

11 Chief Executive Officer

- (1) The Minister, on the recommendation of the Board, is to appoint a Chief Executive Officer of the Agency.
- (2) Subject to subsection (8), the Chief Executive Officer holds office for a period of 3 years and may be reappointed.
- (3) The Chief Executive Officer is to have at least 5 years' experience in investment promotion related work with preferable background in economics or management or similar fields.
- (4) The Board is to determine the terms and conditions of the appointment of the Chief Executive Officer.
- (5) The appointment of the Chief Executive Officer must follow a fair and transparent selection process and must be based on merit.
- (6) The Chief Executive Officer is responsible for the day to day management and operations of the Agency and is to report to the Board.
- (7) The Chief Executive Officer is a leader for the purposes of the Leadership Code Act [CAP 240].
- (8) A person is disqualified from being appointed or for continuing as the Chief Executive Officer if he or she:
 - (a) is bankrupt or has made an arrangement in the nature of composition or assignment with his or her creditors; or
 - (b) has been convicted during the 10 years prior to his or her appointment, of any offence punishable by a term of imprisonment; or
 - (c) is prohibited from being a director, member or promoter of, or from taking part, directly or indirectly, in the management of a company, under any Act; or
 - (d) his or her appointment is terminated by the Board for a serious breach of the terms and conditions of his or her employment; or
 - (e) is or becomes a member of:
 - (i) Parliament; or
 - (ii) a Provincial Government Council; or
 - (iii) a Municipal Council.
- (9) The Minister may on the recommendation of the Board, terminate a Chief Executive Officer if he or she:
 - (a) fails to fulfil the functions conferred on the Chief Executive Officer under this Act or under the Contract of Employment; or
 - (b) commits a serious breach of a term and condition of his or her contract of employment; or
 - (c) misappropriates the funds of the Agency.
- (10) The Chief Executive Officer may resign from his or her office by giving a 90 days' written notice addressed to the Board.

12 Functions of the Chief Executive Officer

(1) The Chief Executive Officer has the following functions:

- (a) to perform the functions of the Agency under section 3; and
- (b) to receive and process applications for registration of investment activities; and
- (c) to register investment activities applied for by foreign investors and issue certificates of registration for those investment activities; and
- (d) to monitor compliance by foreign investors with this Act and its Regulations; and
- (e) to monitor the carrying out of investment activities by foreign investors in Vanuatu; and
- (f) to administer the employment policy and procedures of the Agency, other than to the extent that the employment policy and procedures make provision for the Board to act as an appellate Agency in respect of specified decisions of the Chief Executive Officer; and
- (g) such other functions as may be conferred on him or her under this Act or any other Act.

(2) The Chief Executive Officer is to discharge his or her functions as directed by the Board and subject to the general policy of the Agency.

13 Powers of the Chief Executive Officer

The Chief Executive Officer has the power to do all things that are necessary or convenient to be done for or in connection to the proper performance of his or her functions.

14 Delegation of the functions or powers of the Chief Executive Officer

(1) The Chief Executive Officer may, in writing, delegate to a staff of the Agency, any of his or her functions or powers under this Act, other than the power of delegation.

(2) The delegation may be made generally, or in respect of a particular matter or class of matters.

(3) The Chief Executive Officer may at any time revoke or vary a delegation.

(4) A delegation does not prevent the Chief Executive Officer from performing the function or exercising the power that he or she has delegated.

15 Other staff of the Agency

(1) The Chief Executive Officer may appoint other staff of the Agency as he or she considers necessary for the proper and efficient performance of the functions of the Agency.

(2) The Chief Executive Officer is to determine the terms and conditions of appointment of the other staff.

(3) The appointment of a staff must be in accordance with the staff manual and must follow a fair and transparent selection process and must be based on merit.

(4) The Chief Executive Officer is to prepare the staff manual of the Agency.

The staff manual must be presented to the Board by the Chief Executive Officer, for approval.

(5) The Chief Executive Officer may, according to the disciplinary procedures set out in the staff manual, suspend or dismiss a staff of the Agency.

PART 3 NATIONAL INVESTMENT ACTIVITIES

16 Investment activities

(1) Subject to this Act, any investment activity may be carried out by a foreign investor in Vanuatu, unless the investment activity is a prohibited activity.

(2) A foreign investor must not carry out a reserved activity.

(3) A foreign investor must not carry out a restricted activity unless that foreign investor has been issued with an investment registration certificate which authorises the carrying out of that restricted activity.

17 Prohibited List

The Prohibited List of investment activities is set out in Part 1 of the Schedule.

18 Amendment of the Prohibited List

The Minister may by Order, on the advice of the Agency, amend the Prohibited List.

19 Reserved List

The Reserved List of investment activities is set out in Part 2 of the Schedule.

20 Amendment of the Reserved List

(1) The Minister may, by Order, on the advice of the Agency and with the approval of the Council of Ministers, amend the Reserved List.

(2) To avoid doubt, the Minister when amending the Reserved List, may add to or remove an investment activity from the List.

21 Review of Reserved List

(1) The Agency must, at least once in every 2 years:

(a) review the Reserved List by assessing each investment activity specified in the Reserved List; and

(b) subject to section 22, advise the Minister whether or not, an investment activity is to remain on the Reserved List.

(2) A foreign investor who holds an investment registration certificate may continue to carry out the investment activity authorised by that certificate, even if the investment activity is later added to the Reserved List.

22 Public consultation on reserved list

In conducting a review under this Act, the Agency is to conduct a public consultation to include relevant opinions from the Government, Municipal Councils and Provincial Government Councils, private sector bodies and non-government organisations, and is to include the outcomes of that review in its advice to the Minister.

23 Recommendation from individual to review Reserved List

(1) A person may, at any time, in writing to the Agency, recommend a review of the Reserved List.

(2) The person must specify his or her reasons for recommending the review.

(3) If a person makes a recommendation under subsections (1) and (2), the Agency is to consider the recommendation and determine whether or not to carry out a review for the reasons specified in the recommendation.

24 Report on review of Reserved List

On the conclusion of a review, the Board is to provide a report to the Minister detailing the conduct and outcome of the review and is to advise the Minister on which reserved activity is to be added to or removed from the Reserved List.

25 Restricted List

The Restricted List of investment activities is set out in Part 3 of the Schedule.

26 Amendment of the Restricted List

(1) The Minister may, by Order, on the advice of the Agency and with the prior approval of the Council of Ministers, amend the Restricted List.

(2) To avoid doubt, the Minister when amending the Restricted List, may add to or remove an investment activity from the List.

27 Review of the Restricted List

(1) The Agency must at least once in every 2 years:

(a) review the Restricted List by assessing each investment activity specified in the Restricted List; and

(b) subject to section 28, advise the Minister whether or not, the investment activity is to remain on the Restricted List.

(2) A foreign investor who holds an investment registration certificate may continue to carry out the investment activity authorised by that certificate, even if the investment activity is later added to the Restricted List.

28 Public consultation on restricted list

In conducting a review, the Agency is to conduct a public consultation to include relevant opinions from the Government, Municipal Councils, Provincial Government Councils, private sector bodies and non-government organisations, and is to include the outcomes of that consultation in its advice to the Minister.

29 Recommendation from individual to review Restricted List

(1) A person may at any time, in writing to the Agency, recommend a review of the Restricted List.

(2) The person must specify his or her reasons for recommending the review.

(3) If a person makes a recommendation under subsections (1) and (2), the Agency is to consider the recommendation and determine whether or not to conduct a review for the reasons specified in the recommendation.

30 Report on review of Restricted List

On the conclusion of a review, the Board is to provide a report to the Minister detailing the conduct and outcome of the review and is to advise the Minister on which restricted activity is to be added to or removed from the Restricted List.

31 Reviews of the Reserved and Restricted Lists

(1) The reviews and reports required to be conducted under this Part are to be done simultaneously.

PART 4 REGISTER AND ANNUAL SURVEY OF FOREIGN INVESTMENTS

32 Register of Investment Activities

(1) The Chief Executive Officer is to maintain a Register of investment activities which are being carried out by foreign investors.

(2) The Chief Executive Officer is to:

(a) keep the Register in any form (including an electronic form) or combination of forms as he or she considers appropriate; and

(b) subject to subsection (3), record the information in the Register in the manner prescribed in the Regulations.

(3) The Chief Executive Officer must not record information in the Register in a manner that discloses details of the investments and business operations of a foreign investor that are, in the Chief Executive Officer's opinion, commercially sensitive.

(4) The Chief Executive Officer is to make the Register available for inspection by members of the public during the opening hours of the office.

(5) A person may upon paying the prescribed fee, obtain a copy of or extract from information recorded in the Register.

33 Annual surveys by foreign investors

A foreign investor who carries on an investment activity must by 28 February in each year:

(a) complete an annual survey in the prescribed form, relating to the carrying out of the investment activity in Vanuatu in the proceeding calendar year; and

(b) provide a copy of the annual survey to the Chief Executive Officer.

PART 5 REGISTRATION OF INVESTMENT ACTIVITIES

Division 1 General matters

34 Purpose of registration

The purpose of registering an investment activity is to:

- (a) ensure that foreign investors do not carry out prohibited or reserved activities; and
- (b) ensure that foreign investors do not carry out a restricted activity unless they have been issued with an investment registration certificate; and
- (c) ensure that foreign investors are entitled to benefit from the investment guarantees set out under Part 7; and
- (d) ensure that foreign investors are able to benefit from the facilitation services and support of the Agency; and
- (e) facilitate the monitoring of the carrying out of investment activities by foreign investors.

35 Requirement for and effect of registration

- (1) The requirement to register investment activities under this Part is in addition to the requirements imposed in respect of investment activities under any other law of Vanuatu.
- (2) A foreign investor must not carry out an investment activity without a valid certificate of registration under this Act.
- (3) Any arrangement, agreement or memorandum of understanding entered into by a foreign investor in respect of an investment activity to be commenced, has no effect until the foreign investor holds a valid certificate of registration for that investment activity.
- (4) A permit, licence or authorisation issued under any other Act to a foreign investor in respect of an investment activity (whether commenced or to be commenced) has no effect until the foreign investor holds a current certificate of registration for that investment activity.

36 Limitations on effect of registration

The registration of an investment activity under this Act does not operate to:

- (a) relieve a foreign investor carrying out the investment activity from complying with any other Act; or
- (b) grant or entitle a foreign investor carrying out the investment activity to any benefits under any other Act.

37 General principles relating to certificate of registration

- (1) A certificate of registration may be issued for more than one investment activity.
- (2) A foreign investor may hold more than one certificate of registration at any one time.

Division 2 Registration

38 Application for registration

- (1) A foreign investor who intends to carry out an investment activity in Vanuatu is to apply to the Chief Executive Officer to register the investment activity or activities.
- (2) If a body corporate that:
 - (a) is established, registered or incorporated in Vanuatu; and

(b) carries out an investment activity (whether by itself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise), becomes a foreign investor because of a change in its membership or shareholding, and continues to carry out the investment activity, that body corporate must apply to the Chief Executive Officer to register the investment activity.

39 Form of application

(1) An application under subsection 38(1) is to:

(a) be made in the prescribed form; and

(b) be accompanied by the prescribed fee.

(2) The application must:

(a) state the principal activity and specify each investment activity which is related to the principal investment activity to be registered; and

(b) specify the name of the foreign investor; and

(c) specify the postal address of the foreign investor; and

(d) specify the business name or intended business name (if known) under which the foreign investor will carry out each investment activity; and

(e) specify the address of the premises where the foreign investor intends to carry out each investment activity (if known); and

(f) specify the name of the foreign investor's representative in Vanuatu (if any) and the address for service of notices and other documents on the foreign investor; and

(g) describe the investment and business operations relating to each investment activity the foreign investor is proposing to undertake in Vanuatu; and

(h) state whether the foreign investor:

(i) is bankrupt under the law of any country; or

(ii) has applied under a law of any country for the relief of

bankruptcy or insolvent debtors; or

(iii) has compounded any debts or entered into an arrangement with any creditors in any country; and

(i) state whether:

(i) the foreign investor has, in the last 10 years from the date of the application, been convicted of an offence for which the maximum penalty is imprisonment for 12 months or more by a Court in the country of conviction; and

(ii) there are criminal proceedings pending or being brought against the foreign investor in any country for an offence referred to in subparagraph (i); and

(j) state that the information contained in the application is true and correct.

40 Preliminary assessment of application and foreign investor

- (1) The Chief Executive Officer must, as soon as practicable after receiving an application, assess the application to determine whether:
- (a) the application contains all the information required under section 39; and
 - (b) the information specified is sufficient for determining the nature of each investment activity specified in the application.
- (2) The Chief Executive Officer may request the foreign investor to provide additional information if he or she is not satisfied that:
- (a) the application contains the information required under section 39; or
 - (b) the information contained in the application is sufficient for determining the nature of each investment activity.
- (3) A foreign investor must comply with the request of the Chief Executive Officer to provide additional information under subsection (2).
- (4) The Chief Executive Officer may request a foreign investor to provide him or her with the written consent or a signed authorization as is necessary for carrying out investigations or making inquiries in relation to the application.
- (5) The Chief Executive Officer is to accept an application and issue to a foreign investor a dated receipt for the application upon:
- (a) receiving the additional information requested under subsection (2) (if any); and
 - (b) being satisfied that the application is complete and contains sufficient information for determining the nature of each investment activity.
- (6) If:
- (a) an investment proposal is above the value of VT1 billion; and
 - (b) the applicant has requested the Government's support in relation to the investment, the Chief Executive Officer must obtain the approval of the Council of Minister's before approving the application.

41 Consideration of application

- (1) The Chief Executive Officer must, within 15 working days after issuing a dated receipt referred to in subsection 40(5):
- (a) consider the application for the purposes of:
 - (i) determining the nature of each investment activity specified in the application, including, in particular, whether carrying out the investment activity would involve carrying out a prohibited activity, a reserved activity or a restricted activity; and
 - (ii) deciding whether to register or refuse to register each investment activity; and
 - (b) give written notice to the foreign investor stating, in respect of each investment activity specified in the application:
 - (i) whether the investment activity will be registered or not; or

(ii) that he or she is conducting consultations regarding the nature of the investment activity and will notify the foreign investor of his or her decision whether to register or to refuse to register the investment activity as soon as practicable.

(2) If the Chief Executive Officer gives notice under subparagraph (1)(b)(i), he or she must as soon as practicable after giving the notice and subject to section 43, register or refuse to register the investment activity.

(3) If the Chief Executive Officer refuses to register an investment activity, the notice to the foreign investor under subparagraph (1)(b)(i) is to specify the reasons for the refusal and advise the foreign investor of the foreign investor's right of review under section 50.

42 Refund of Application Fee

(1) If notice of a decision is not given within 15 working days, the applicant is entitled to a refund of the application fee.

(2) To avoid doubt, an applicant may re-submit an application for registration under section 38.

43 Registration of investment activity

(1) The Chief Executive Officer is to register an investment activity specified in an application made under subsection 38(1):

(a) if it does not involve carrying out a prohibited activity or a reserved activity; and

(b) if it involves carrying out a restricted activity, subject to the foreign investor complying with specified conditions in respect of the restricted activity specified on the certificate of registration; and

(c) if the Chief Executive Officer is satisfied that the foreign investor has complied with the conditions prescribed in the Regulations.

(2) When registering an investment activity, the Chief Executive Officer is required to:

(a) record the prescribed information relating to the investment activity in the Register; and

(b) issue to the foreign investor a certificate of registration for the investment activity.

44 Form and content of certificate of registration

(1) The certificate of registration is to be in the prescribed form.

(2) Without limiting subsection (1), the certificate of registration is to:

(a) specify the certificate reference number; and

(b) specify the investment activity or investment activities for which the certificate is issued; and

(c) specify the name of the foreign investor to whom it is issued; and

(d) specify the business name (if any) under which the foreign investor carries out each investment activity; and

(e) if the specified investment activity is on the Restricted List and includes a geographical restriction - specify the address of the premises in Vanuatu where the foreign investor carries out each restricted activity; and

- (f) specify the prescribed details (if any); and
- (g) be signed and dated by the Chief Executive Officer and bear the Chief Executive Officer's official stamp.

45 Amendment of registration of investment activity

(1) The Chief Executive Officer may amend:

- (a) an entry in the Register relating to an investment activity; or
- (b) a certificate of registration issued for an investment activity.

(2) The Chief Executive Officer may amend the Register or a certificate of registration by correcting any of the following details specified in the Register or on the certificate of registration if he or she is satisfied that it contains an error on the following:

- (a) the name of the foreign investor carrying out the investment activity; or
- (b) the business name (if any) under which the foreign investor carries out the investment activity; or
- (c) if the specified investment activity is on the Restricted List and includes a geographical restriction - the address of each premises where the foreign investor carries out the restricted activity; or
- (d) any other details as may be prescribed.

(3) A foreign investor to whom a certificate of registration has been issued must notify the Agency of changes to any of the following details within 25 days after the change occurs:

- (a) the business name (if any) under which the foreign investor carries out the investment activity; or
- (b) if the specified investment activity is on the Restricted List - the address of a premises where the foreign investor carries out a restricted activity; or
- (c) the address for service of notices and other documents on the foreign investor; or
- (d) any other details as may be prescribed.

(4) A foreign investor who fails to notify the Agency of a change of a detail under subsection (3), commits an offence punishable on conviction:

- (a) in the case of an individual - by imprisonment for not more than 3 years, or a fine not exceeding VT1,000,000, or both; or
- (b) in the case of a body corporate – by a fine not exceeding VT2,000,000.

(5) A foreign investor issued with an approval certificate before the commencement of this Act, must apply to the Agency to vary:

- (a) the investment activity; or
- (b) ownership structure of the activity; or
- (c) any other details as may be prescribed.

(6) The foreign investor's variation under subsection (5) is to be made in the prescribed form and be accompanied by the prescribed fee.

(7) Sections 40, 41, 42, 43 and 50 apply to all application for variation under subsection (5).

(8) A foreign investor who fails to apply to the Agency for a change of a detail specified in subsection (5), commits an offence punishable on conviction:

(a) in the case of an individual - by a fine not exceeding VT500,000; or

(b) in the case of a body corporate - by a fine not exceeding VT1,000,000.

(9) If the business activities of a foreign investor are expanded more than 3 times in the form of a variation, the foreign investor must enter into joint partnership with a citizen of Vanuatu.

46 Conditions applying to registration

(1) A foreign investor who has been registered under this Act is subject to the following conditions:

(a) to implement the proposed investment in accordance with the laws of Vanuatu and the business plan submitted with the application; and

(b) to properly keep financial and accounting records of the investment enterprise; and

(c) to facilitate the Board and its employees when undertaking their monitoring services; and

(d) to provide employment to locals and capacity building; and

(e) to respond to any query from the Board or management in connection with the operations of the investment activity, within the period specified in a written notice to him or her.

(2) The Minister may, on the recommendation of the Board, prescribe further conditions for registration under this Act.

47 Cancellation of certificate of registration

(1) The Chief Executive Officer may cancel a certificate of registration of a foreign investor if the foreign investor:

(a) carries out a prohibited activity or a reserved activity; or

(b) carries out a restricted activity other than in accordance with the conditions specified in the certificate of registration; or

(c) fails to commence carrying out an investment activity specified on the certificate of registration:

(i) for investments with a proposed value up to VT 20 million - within 12 months after he or she received the certificate of registration; or

(ii) for investments with proposed values above VT 20 million - within 18 months after he or she received the certificate of registration; or

(d) fails to comply with the conditions of registration set out under section 46; or

(e) obtained the certificate by fraud, misrepresentation, misstatement or omission of a particular material; or

(f) has committed an offence against this Act or any other Act relating to an investment activity specified on the certificate of registration, for which the maximum penalty is imprisonment for 12 months or more; or

(g) has been deported from Vanuatu under a removal order issued by the Minister responsible for Immigration under the Immigration Act No. 17 of 2010; or

(h) fails to complete and submit an annual survey to the Chief Executive Officer in accordance with section 33.

(2) The Chief Executive Officer must not cancel the certificate of registration unless:

(a) the Chief Executive Officer is satisfied that there are grounds under subsection (1) for cancelling the certificate; and

(b) the Chief Executive Officer provides a written notice to the foreign investor providing for the following:

(i) the grounds for which the certificate is to be cancelled; and

(ii) allowing the foreign investor to show cause why the foreign investor's certificate should not be cancelled within 10 days of receiving the notice; and

(c) the foreign investor's response (if any) has not been made to the satisfaction of the Chief Executive Officer.

(3) If, after complying with subsection (2), the Chief Executive Officer remains satisfied that there are grounds for cancelling the certificate of registration, he or she must cancel the certificate of registration and must, notify the foreign investor by notice in writing that the certificate has been cancelled.

(4) The Chief Executive Officer must specify in the notice the reasons for cancelling the certificate and advise the foreign investor of the foreign investor's right of review under section 50.

48 Effect of cancellation of certificate of registration

(1) On the cancellation of a certificate of registration:

(a) the investment activity or investment activities for which the certificate was issued is or are no longer registered under this Act; and

(b) the foreign investor to whom the certificate was issued is no longer authorised under this Act to carry out the investment activity and is to cease carrying out the investment activity or investment activities.

(2) If a certificate of registration is cancelled, the Chief Executive Officer must inform all other authorities who have issued the foreign investor with permits or licences including but not limited to the Department of Immigration Services, of the cancellation.

(3) In addition to subsection (2), the Chief Executive Office must notify the general public when a certificate is cancelled through a national newspaper or other appropriate media distribution channels.

(4) If there is a conflict between subsection (1) and any other provision of this Act or of any other Act, subsection (1) prevails.

49 Cessation or transfer of business

(1) A holder of a valid certificate of registration must as soon as practicable, give notice in writing to the Chief Executive Officer and the Board if the holder intends to:

(a) cease all investment activities; or

(b) transfer all investment activities.

(2) A person who fails to comply with subsection (1), commits an offence punishable on conviction:

(a) in the case of an individual – by a fine not exceeding VT500,000; or

(b) in the case of a body corporate – by a fine not exceeding VT1,000,000.

PART 6 DISPUTES

50 Review of certain decisions of the Chief Executive Officer by the Board

(1) A foreign investor whose:

(a) application for registration of an investment activity or investment activities is refused under section 40 or 41; or

(b) certificate of registration is cancelled under section 47, may, subject to this section, apply to the Board to review the Chief Executive Officer's decision.

(2) A foreign investor is to apply to the Board for review of the decision within 1 month after receiving the notice from the Chief Executive Officer of his or her decision to refuse to register an investment activity or to cancel the certificate of registration.

(3) An application for review must:

(a) be made in the prescribed form; and

(b) be accompanied by the prescribed fee.

(4) The Board must, within 2 months after receiving the application for the review, conduct and determine the review.

(5) In conducting the review, the Board is to:

(a) act fairly and expeditiously; and

(b) give proper consideration to the issues brought before it.

(6) In determining the review, the Board may in writing to the applicant:

(a) affirm the decision of the Chief Executive Officer; or

(b) revoke the decision of the Chief Executive Officer and make another decision under section 40, 41 or 47 on the matter brought before it.

(7) In addition to subsection (6), the Board must specify the reasons for its decision to the applicant.

PART 7 INVESTMENT GUARANTEES

51 Promotion of Investment Guarantees

The Board and the Chief Executive Officer must ensure that this Act is administered in a manner that promotes the investment guarantees in this Part.

52 Expropriation

Subject to the Constitution and any other relevant law, the Government must not expropriate or nationalize an investment of any foreign investor registered in accordance with this Act except:

- (a) for a public purpose or for national interest; and
- (b) in a non-discriminatory manner; and
- (c) in accordance with due process of the law.

53 National Treatment

The Board and the Chief Executive Officer must ensure that a foreign investor is given treatment, after the issue of a valid certificate of registration, in respect of the establishment, expansion and operation of the investment and investment activity, no less favourable than that accorded to citizen foreign investors in respect of a comparable investment and investment activity.

54 Free transfer of funds

- (1) A foreign investor, holding a valid certificate of registration, may transfer profits (including capital gains, dividends, royalties, loan payments and liquidations) in any currency, to any person inside or outside Vanuatu.
- (2) Subsection (1) does not limit the application of any other Act that requires the deduction withholding of any tax or levy from a payment to be made inside or outside Vanuatu.

55 Investment Disputes

- (1) A dispute involving a foreign investor who carries out an investment activity is to be dealt with under the laws of Vanuatu as if it were a dispute involving a citizen of Vanuatu.
- (2) So far as is not inconsistent with this Act or any other Act, the Convention of Settlement of Investment Disputes is to apply to the management and settlement of investment disputes under this Act.

PART 8 OFFENCES AND PENALTY NOTICES

56 Offence of carrying on an investment activity without an investment approval

- (1) A foreign investor must not carry out any investment activity unless that foreign investor has been issued with an investment registration certificate which authorises the carrying out of that investment activity.
- (2) A person who contravenes subsection (1), is guilty of an offence punishable on conviction by:
 - (a) in the case of an individual - a fine not exceeding VT1 million; or
 - (b) in the case of a body corporate - a fine not exceeding VT2 million.

57 Offence of failing to apply for a variation

(1) A foreign investor must apply to the Agency to vary the following information in the foreign investor's existing approval certificate:

- (a) the investment activity; or
- (b) ownership structure of the investment; or
- (c) any other details as may be prescribed.

(2) A person who fails to comply with subsection (1) is guilty of an offence punishable on conviction by:

- (a) in the case of individual - a fine not exceeding VT200,000; or
- (b) in the case of a body corporate - a fine not exceeding VT500,000.

58 Offence of providing false or misleading statement

(1) A person must not knowingly make a statement that is false or misleading in a material particular:

- (a) in connection with an application, report, record, form, certificate or other document made, filed or kept under this Act; or
- (b) in connection with the operation of this Act.

(2) A person who contravenes subsection (1), is guilty of an offence punishable on conviction:

- (a) in the case of an individual - by imprisonment for not more than 2 months or a fine not exceeding VT500,000, or both; or
- (b) in the case of a body corporate - by a fine not exceeding VT1,000,000.

59 Offence to disclose or improperly use information

(1) A person who in the course of the administration of this Act, acquires information about another person's affairs or has custody of or access to a document containing information about another person's affairs, must not:

- (a) conceal any record of, or a copy of a record of, the information; or
- (b) show or give the record of, or a copy of the record of, the information to another person; or
- (c) make available anything from which, by electronic process or otherwise, the information may be obtained by another person; or
- (d) communicate the information in any other manner to another person; or
- (e) improperly use the information to gain, whether directly or indirectly, an advantage for himself or herself or another person, to the detriment of the person to whom the information relates.

(2) A person who contravenes subsection (1), is guilty of an offence punishable on conviction by a fine of VT500,000 or to imprisonment for period not exceeding 12 months or to both.

(3) Subsection (1) does not apply if the person:

- (a) is required to do so for the purposes of this Act or another Act; or

(b) is required to do so for the purposes of an investigation or prosecution of an offence against this Act or any other Act; or

(c) does so with the consent of the person to whom the information relates.

60 Penalty Notice

(1) The Chief Executive Officer may serve a penalty notice on a person if it appears to him or her that the person has committed an offence under this Act or the regulations and the offence is one that is stated by the regulations to be an offence to which this section applies.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice, the amount of penalty stated in the penalty notice.

(3) A penalty notice may be served personally or by post.

(4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

(6) The Regulations may:

(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and

(b) prescribe the amount of penalty payable for the offence if dealt with under this section; and

(c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty prescribed in this Act.

(8) This section does not limit the operation of any other provision of or made under this Act or any other Act relating to proceedings that may be taken in respect of offences.

PART 9 MISCELLANEOUS PROVISIONS

61 Serving of documents

A document that is required under this Act to be given to a person may be given to that person personally, by registered mail, by email or fax.

62 Issue of duplicate certificate of registration

The Chief Executive Officer may issue a duplicate of the certificate of registration to a foreign investor, if the Chief Executive Officer is satisfied that a certificate of registration issued to that foreign investor has been lost or destroyed.

63 Funds of the Agency

The funds of the Agency consist of:

- (a) grants appropriated by Parliament; and
- (b) grants received from the State and other sources; and
- (c) fees received by the Agency under this Act or the Regulations, which are deemed to be Public Money for the purposes of the Public Finance and Economic Management Act [CAP 244] and are appropriated for the use of the Agency; and
- (d) any other funds approved in writing, by the Minister of Finance and Economic Management.

64 Application of Funds

Subject to the Public Finance and Economic Management Act [CAP 244], the funds of the Agency are to be expended only on the following matters:

- (a) for expenses related to the implementation of the provisions of this Act; and
- (b) for payment of remuneration and allowances of the Chief Executive Officer, other staff and other persons employed under the provisions of this Act; and
- (c) for such other purposes that are consistent with this Act as determined by the Chief Executive Officer after consultation with the Board.

65 Books of accounts and audit

- (1) The Agency is to have the same fiscal year as the State.
- (2) The Agency is to maintain such books, records, and accounts in accordance with international accounting standards.
- (3) Books and records maintained by the Agency are to be kept by the Agency for a period of 6 years.
- (4) The Board must appoint a registered and qualified auditor to audit its books, records, and accounts.
- (5) The Agency must publish within 6 months of the end of the fiscal year, the annual audited statements of the previous year as signed by the Chief Executive Officer and approved by the Board.
- (6) Financial statements published under subsection (5), must show the complete financial condition and performance of the Agency as of the last business day of the preceding fiscal year.

66 Annual reporting by Chief Executive Officer

- (1) The Chief Executive Officer must by 30 April in each year:
 - (a) make an annual report on the following:
 - (i) the administration of this Act during the financial year; and
 - (ii) the carrying out of investment activities by foreign investors in Vanuatu during the financial year; and
 - (b) provide a copy of the report to the Board to consider.

(2) After considering the Report, the Board is to provide a copy of the report to the Minister, by the 30th of June in each year.

(3) When making the annual report, the Chief Executive Officer:

(a) is to consider and take into account the annual survey received under section 33; and

(b) must not specify information in the report in a manner that identifies a foreign investor or discloses the details of the investments or business operations of a foreign investor.

(4) The Minister must, table a copy of the report at the next session of Parliament, after receiving the report.

67 Protection from liability

A civil or criminal liability action is not to be taken against the Minister, Chief Executive Officer, a staff of the Agency or a member of the Board in respect of anything done or omitted to be done by the Minister, Chief Executive Officer, a staff of the Agency or member of the Board in good faith in the execution or purported execution of his or her functions or the exercise of his or her powers under this Act.

68 Regulations

(1) The Minister may make Regulations, not inconsistent with this Act, prescribing matters that are:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Regulations may provide for:

(a) the forms to be used in connection with this Act; or

(b) the fees payable under this Act; or

(c) notifications to the Chief Executive Officer of investment activities recorded in the Register; or

(d) penalties for offences against the Regulations.

PART 10 REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

69 Repeal

The Vanuatu Foreign Investment Promotion Act [CAP 248] is repealed.

70 References to repealed Act

On and after the commencement of this Act, a reference to the repealed Act in any other Act or subsidiary legislation is taken as a reference to this Act.

71 Transitional provision on certificates of registration

(1) A foreign investment activity carried out by a foreign investor that has been approved under the repealed Act, is deemed to have been approved under this Act.

(2) The person who is employed as the Chief Executive Officer of the Foreign Investment Promotion Authority before the commencement of this Act, continues to be employed as the Chief Executive Officer under this Act, on the same terms and conditions of employment with the same accrued and accruing entitlements.

(3) A person who is employed as a staff of the Authority before the commencement of this Act continues to be employed under this Act, on the same terms and conditions of employment with the same accrued and accruing entitlements.

72 Savings

All Regulations, Orders and Notices made under the repealed Act remain in force as if they were made under this Act, unless they are inconsistent with this Act.

73 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

PART 1: PROHIBITED LIST

- 1 Manufacture of nuclear weapons
- 2 Manufacture of chemical weapons
- 3 Arms manufacture
- 4 Dumping or storage of nuclear waste
- 5 Dumping or storage of toxic chemicals

PART 2: RESERVED LIST

Number

Activity

- 1Export of sandalwood in stick and chips form harvested from natural forest
- 2Local trading of sandalwood harvested from natural forest
- 3Export of seeds and other minor forest products harvested from natural forest
- 4Second hand clothing shops
- 5Export of kava in root, chips and stick form

6Manufacture of handicraft and artefacts

7Kava bar

8Open air vendors, door to door sales and mobile shops

9Road transport operators: the provision of any taxi or bus service, including airport road transfers and any other road transport service involving the guest of a hotel or other accommodation business

10Private security services including security guards

11Electricians and electro-technicians

12Commercial fishing within Vanuatu's inshore waters as defined by the Maritime Zones Act [Cap. 138] (i.e. archipelagic waters including first 6 nautical miles from land)

13Commercial culture feasts

14Residential building and construction

15Small scale production of sawn timber from natural forest using a portable sawmill (i.e. can be physically moved from one location to another in the forest)

PART 3: RESTRICTED LIST

Number

Activity

Threshold Level

1Tour agent (business that sells tourism services) if the annual turnover is less than VT 20 million

Annual sales turnover of 20 million vatu

2Tour operator (business that packages two or more travel services into a single product for the consumer i.e. transport, accommodation, meals, entertainment, sightseeing if the investment is less than VT 50 million

Investment of 20 million vatu

3

Guest House (business that provides simple accommodation using private or semi-private rooms and offers limited guest services)

50 beds or 10 rooms or annual sales turnover of 20 million vatu

4Bungalows (business that provides island-style accommodation in detached or semi-detached dwellings)

Annual sales turnover of 30 million vatu

5Hotels and Motels (business that provides accommodation using private rooms and offers amenities such as food, alcohol and other guest services)

Investment of 10 million vatu or annual sales turnover of 20 million vatu

6Retail shops including general merchandise trading shops (excluding speciality shops)

Annual sales turnover of 30 million vatu

7Coastal shipping (excluding vessels that exclusively provide transport to foreign tourists)

Vessel size with carrying capacity of 80 tonnes

8Any of the following professional or business services:

- Real estate agent
- Property manager
- Land and property developer
- Legal practitioner
- Accounting practitioner
- Engineering practitioner and services
- Architectural practitioner and services
- Surveyor and draftsman

- Core drilling, assaying geological and prospecting support services
- Business and financial services and consultants
- Book keeping services
- Management services and consultants
- Advertising and marketing services and consultants
- Photocopying and duplicating services
- Typing and secretarial services
- Language translation and interpreting services
- Business security and protective services
- Debt collection and credit rating services
- Other business and administrative services and agencies

Annual sales turnover of 5
million vatu

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