



REPUBLIC OF VANUATU

**BILL FOR THE
NATIONAL INVESTMENT
ACT NO. OF 2013**

Arrangement of Sections

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SCHEDULE

Draft as at 26 September 2013

REPUBLIC OF VANUATU

BILL FOR THE NATIONAL INVESTMENT ACT NO. OF 2013

An Act to provide for the establishment of the Vanuatu Investment Promotion Authority, for the provision of services to enhance Vanuatu as an investment location and for related purposes.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1 Interpretation

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

Authority means the Vanuatu Investment Promotion Authority established under section 2;

Chief Executive Officer means the Chief Executive Officer of the Authority;

foreign investor means:

- (a) a 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 that is a foreign investor;

investment certificate means a certificate of registration issued under section 48 to a foreign investor for the purpose of conducting an investment activity specified in the certificate;

investment activity means an activity for the principal purpose of gain (pecuniary or otherwise) in conjunction with a business licence but does not include:

- (a) maintaining a bank account in Vanuatu;
- (b) acquiring land or any other interest in real property (if not in conjunction with any activity for which a business licence is required);
- (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;
- (d) taking security for or collecting any debt or enforcing any rights relating to any security;
- (e) the gathering of any information or undertaking a feasibility study in contemplation of an investment proposal;
- (f) the supply of services by a company incorporated under the International Companies Act [CAP 222] for the exclusive use by and benefit of persons who are not residents of Vanuatu;
- (g) entry into and performance of a contract for the supply of goods or services by a supplier who is not a resident of Vanuatu;

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;

local company has the same meaning as in the Companies Act [CAP. 191];

prohibited activity means an investment activity that:

- (a) a person is prohibited from undertaking by any written law (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 conducted by Foreign Investors kept under section 36;

Registrar means the Registrar of Foreign Investment appointed under section 33;

registration means registration of an investment activity under Part 5;

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

Reserved List means the reserved list established under section 18 and 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 established under section 25 and set out in Part 3 of the Schedule.

- (2) A reference in this Act to the conduct of an investment activity by a foreign investor includes a reference to:
 - (a) the foreign investor conducting the investment activity;
 - (b) an agent or employee of the foreign investor conducting the investment activity for and on behalf of the foreign investor; and
 - (c) a business owned or operated by the foreign investor that is conducting the investment activity.

Comment: Drafters to confirm with me if they have checked that all terms defined in section 1 earn their place in that section as having being used in a couple of provisions in the Bill.

PART 2 VANUATU INVESTMENT PROMOTION AUTHORITY

2 Vanuatu Investment Promotion Authority

- (1) The Vanuatu Investment Promotion Authority is established.
- (2) The Authority:
 - (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) The common seal of the Authority may not be affixed to any document or instrument except pursuant to a resolution of the Board.
- (4) The affixation of the common seal of the Authority is to be attested by any two members of the Board.
- (5) All courts, judges and persons acting judicially are to take judicial notice of the common seal of the Authority affixed to a document and are to presume, unless the contrary is proved, that the seal was properly affixed.
- (6) The Authority is to have its principal office in Port Vila and may establish, if it considers necessary, branch offices in any location in Vanuatu, agency or agent outside Vanuatu.

3 Vanuatu Foreign Investment Board

- (1) The Vanuatu Foreign Investment Board is established.
- (2) The Board consists of the following persons:
 - (a) the Director General of Trade, Commerce and Industry who is to be the Chairperson; and

- (b) the Director of Strategic Policy Planning and Aid Coordination, Prime Minister's Office; and
 - (c) the Director of Local Government Affairs in the Ministry of Internal Affairs; and
 - (d) the President of the Vanuatu Chamber of Commerce and Industry; and
 - (e) the Financial Services Commissioner; and
 - (f) a person appointed by the Minister of Trade; and
 - (g) the Chief Executive Officer.
- (3) To avoid doubt, the Chief Executive Officer has no right to vote at a meeting of the Board.

Comment: Drafters –CHIEF EXECUTIVE OFFICER must be spelt out here as it is stating membership of the Board. It can be CHIEF EXECUTIVE OFFICER in later provisions. I am not comfortable with abbreviations used in provisions of the Act. 'Executive Officer' will do. I know its been used in the old Act.

Comment: Subsection (2) should be deleted. It is stating the obvious in legislation.

- (4) The member under paragraph (2)(f) is not to be appointed by the Minister unless he or she satisfies the following criteria:
- (a) the person has relevant experience and expertise in industry, commerce, business, law or accounting;
 - (b) the person has experience in Board membership and strategic planning and decision making;
 - (c) the person is not a public servant;

- (d) the person is not related to the Minister or an ex officio member;
 - (e) the person is not an officeholder, employee, adviser or consultant of the Vanuatu Chamber of Commerce and Industry.
- (5) The procedures for nomination and appointment under subsection (2) are to be prescribed in the Regulations.

Comment: The old paragraph (a) can be prescribed in this Regulation.

Drafters: The old paragraph (a) has been lumped into a provision of criteria! Did we read?

- (6) For purposes of paragraph (4)(d), a person is related to another person if that first person:
- (a) is married, is the parent of, is the child of, or is the sibling of, the other person; or
 - (b) is a business partner of the other person in any form of partnership or business enterprise; or
 - (c) is a shareholder (with greater than 5% of the total issued shares) in a company or other incorporated legal entity in which the other person is also a shareholder, and whose shareholding is greater than 5% of the total issued shares.
- (7) A member referred to in paragraph (2)(f) holds office for a period of 4 years and is eligible for reappointment.
- (8) A member of the Board is to be paid a sitting allowance as prescribed by the Minister.

4 Disqualification from being a member of the Board

A person appointed under paragraph 3(2)(f) is disqualified from being appointed or for continuing as a member of the Board 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) is 70 years of age or over; or
- (c) is standing, or is to stand trial for, or has been convicted during the 10 years prior to his or her appointment of, any offence punishable by a term of imprisonment; or
- (d) is prohibited from being a director, member or promoter of, or from taking part, in any way directly or indirectly, in the management of a company under any law; or
- (e) has his or her affairs administered under any law relating to mental health;
- (f) is or becomes a member, of Parliament, of a Local Government Council or of a Municipal Council.

5 Deputy Chairperson

- (1) The Board is to appoint from amongst its members a Deputy Chairperson.
- (2) The Deputy Chairperson is to act as Chairperson if the Chairperson is not able to attend a meeting.
- (3) The nominee of the Chairperson is to preside at a meeting called under section 8 if the Chairperson or the Deputy Chairperson are unable to attend the meeting.

Comment: Drafters -Subsection (3) does not belong in this provision. Find its correct place and insert it there.

6 Termination of membership

- (1) A member is deemed to have resigned from the Board upon ceasing to hold the office for which he or she has become a member of the Board.
- (2) A member appointed under paragraph 3(2)(f), may resign at any time by giving 2 weeks notice in writing to the Authority.

7 Vacancy not to affect powers or functions

- (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 proceeding 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 a year.
- (2) The Board is to meet at least 4 times a year and at a place and time determined by the Chairperson in consultation with the Chief Executive Officer.
- (3) A meeting of the Board is to be presided by the Chairperson, or in the Chairperson's absence, by the Deputy Chairperson.
- (4) At a meeting of the Board, the quorum consists of 4 members including the Chairperson.
- (5) A member of the Board may nominate a person to attend and act on his or her behalf at the meeting if the member is unable to attend due to an illness, absence from Vanuatu or absent due to unforeseen circumstances.
- (6) Despite subsection (4), the nominee of the Director General of the Ministry of Trade is the Director of Industry.
- (7) Any matter arising at a meeting of the Board is to be decided by a consensus of the members present at the meeting.
- (8) If a decision cannot be reached by consensus in a meeting, the Chairperson is to direct the matter to be determined by a majority vote of the members present.
- (9) If the vote is equal, the Chairperson has a casting vote.
- (10) Subject to this section, the procedures of the Board, including the recording of proceedings and the conduct of meetings, is to be prescribed in the Regulations.

9 Chief Executive Officer

- (1) The Minister, on the recommendation of the Board, is to appoint a Chief Executive Officer of the Authority, who is to be an employee of the Board.
- (2) An appointment or reappointment made under this section must follow a fair and transparent selection process and must be based on merit.
- (3) The Chief Executive Officer is to be appointed for a period of 5 years on such terms and conditions as determined by the Board, and may be reappointed.
- (4) The Chief Executive Officer is a leader for the purposes of the Leadership Code Act [CAP 240].
- (5) 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) is 70 years of age or over; or
 - (c) is standing, or is to stand trial for, or has been convicted during the 10 years prior to his or her appointment of, any offence punishable by a term of imprisonment; or
 - (d) is prohibited from being a director, member or promoter of, or from taking part, in any way directly or indirectly, in the management of, a company, under any law; or
 - (f) his or her appointment is terminated by the Board for a serious breach of the terms and conditions of his or her employment.
 - (g) has his or her affairs administered under any law relating to mental health; or
 - (h) is or becomes a member, of Parliament, of a Local Government Council or of a Municipal Council.
- (6) The Chief Executive Officer may resign from his or her office by notice in writing addressed to the Board.

- (7) The Chief Executive Officer is deemed to have resigned if any of the circumstances in subsection (6) occurs.

10 Staff of Authority

- (1) The Chief Executive Officer may appoint with such remuneration and upon such terms and conditions as the Chief Executive Officer thinks fit, such officers, employees, agents, advisors or consultants for the proper and efficient discharge of the Authority's functions and may dismiss any such officer, employee, agent, advisor or consultant.
- (2) The Chief Executive Officer has the sole power of administering the employment policy and procedures of the Authority, other than to the extent that the employment policy and procedures make provision for the Board to act as an appellate authority in respect of specified decisions of the Chief Executive Officer.
- (3) The Chief Executive Officer may delegate, to a nominated employee, or class of employees by written notice, any power vested in him under this Act, the Regulations or resolution of the Board, other than this power of delegation.

11 Funds of the Authority

The funds of the Authority consists of:

- (a) grants appropriated by Parliament;
- (b) grants received from the State and other sources;
- (c) fees received by the Authority 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 Authority;
- (d) any other funding approved by the Minister of Finance and Economic Management in writing.

12 Application of Funds

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

- (a) in payment of the discharge of its functions under this Act;
- (b) in payment of remuneration and allowances to members of the Board;
- (c) in payment of remuneration and allowances of the Authority's lawfully employed staff, consultants and advisers;
- (d) for such other purposes that are consistent with this Act determined by the Chief Executive Officer after consultation with the Board.

13 Books of Account and Audit

- (1) The Authority is to have the same fiscal year as the State.
- (2) The Authority is to maintain such books, records, and accounts in accordance with international accounting standards.
- (3) Books and records maintained by the Authority are to be kept by the Authority for a period of 6 years.

Query: What happens to it after 6 years just to complete this provision?

- (4) The Board and Chief Executive Officer must ensure at all times that the Authority's books, records, and accounts, including financial statements, are prepared and maintained in conformity with international financial reporting standards, including the use of full accrual accounting on a daily basis.
- (5) The Board is to appoint a certified public accountant to control and audit its books, records, and accounts.
- (6) The Authority is to publish before the end of April of each calendar year, the annual audited statements as signed by the Chief Executive Officer and approved by the Board.
- (7) Financial statements published under subsection (6) must show the complete financial condition and performance of the Authority as of the last business day of the preceding fiscal year.

14 Functions of the Authority

- (1) The Authority has the following functions:
- (a) to advise the Minister and the Council of Ministers on all matters relating to foreign and domestic investment in Vanuatu, including:
 - (i) the formulation by the Council of Ministers of the national investment policy of Vanuatu;
 - (ii) the scope and appropriateness of the any amendments to the Reserved List and Restricted List;
 - (iii) reporting to the Minister at least every second year 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 liaise with all relevant bodies in and outside Vanuatu in formulating its advice under paragraphs (a) and (b); and
 - (d) to promote Vanuatu as an investment location for local and foreign citizens and enterprises; and
 - (e) to provide relevant and accurate information on obtaining permits, licences and approvals by investors from any State department or authority; and
 - (f) to establish methods to assist investors in obtaining permits, licences and approvals from any State department or authority; and
 - (g) to undertake registration and monitoring of foreign investors in Vanuatu; and
 - (h) to provide information to foreign and domestic investors in Vanuatu, as prescribed in the Regulations; and
 - (i) to report annually to the Minister on the Authority's activities and financial performance; and

- (j) to ensure that the objects of this Act are achieved; and
 - (k) such other functions that are conferred on the Authority under this Act or any other Act.
- (2) The Board is to discharge the functions set out in paragraphs (1)(a), (b) and (i).
 - (3) The Chief Executive Officer is to discharge the functions set out in paragraphs (1)(c) to (1)(h) and for the purposes of paragraph (1)(c), is to act as the Registrar of Foreign Investment.
 - (4) The Chief Executive Officer is to advise the Board in respect of the discharge of the Authority's functions.
 - (5) The Chief Executive Officer is to discharge his or her functions subject to the general policy directed by the Board.
 - (6) Subject to this Act, the Board may establish within the Authority separate business divisions to perform any of the functions set out in this section.

PART 3 NATIONAL INVESTMENT ACTIVITIES

15 Investment activities

- (1) Subject to this Act, any investment activity by an investor is allowed in Vanuatu, unless the investment activity is a prohibited activity.
- (2) A foreign investor must not conduct a reserved activity.
- (3) A foreign investor must not conduct a restricted activity unless the investor has been issued an investment registration certificate which authorises the carrying out of that restricted activity.

Division 1 - Prohibited List

16 Prohibited List

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

17 Review of Prohibited List

- (1) The Minister may by Order, on the advice of the Authority, amend the Prohibited List.
- (2) When amending the Prohibited list the Minister may only add to the list an investment activity that is prohibited but may not remove an investment activity from the prohibited list.

Division 2- Reserved List

18 Reserved List

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

19 Amendment of Reserved List

- (1) The Minister may by Order, on the advice of the Authority and with the approval of the Council of Ministers, amend the Reserve List.
- (2) When amending the Reserved List the Minister may only add to the list an investment activity that is Reserved but may not remove an investment activity from that List.

20 Review of Reserved List

- (1) The Authority 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) advise the Minister whether or not, the investment activity should remain on the Reserved List.
- (2) A foreign investor who holds an investment registration certificate may continue to conduct the investment activity authorised by that certificate, even if the investment activity is later added to the Reserved List.

21 Public consultation

In conducting a review, the Authority is to conduct a public consultation exercise to include relevant opinions from the State, municipal and local government, private sector bodies and non-government organisations, and is to include the outcomes of that exercise in its advice to the Minister.

22 Recommendation from individual to review Reserved List

- (1) A person may at any time, in writing to the Authority, 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 in accordance with subsections (1) and (2), the Authority is to consider the recommendation and determine whether or not to conduct a review for the reasons specified in the recommendation.

23 Reporting of review of Reserved List

On the conclusion of a review under this Division, the Authority is to provide a report to the Minister detailing the conduct and outcome of the review and advise the Minister on which reserved activities should be included in or omitted from the Reserved List.

24 Requirement of investment activity to remain on Reserved List

An investment activity must not remain on, or must not be added to, the Reserved List:

- (a) unless at least one citizen of Vanuatu, whether by himself or herself, as:
 - (i) a member of a joint venture; or
 - (ii) a partner in a partnership or
 - (iii) a trustee or otherwise; or
 - (iv) an agent or employee,conducts the investment activity in Vanuatu; and
- (b) unless at least 10 business operations conduct the investment activity in Vanuatu; and
- (c) if it is carried on as a business or part of a business that produces or supplies goods or services which are used regularly by, or are otherwise important for the operation of, other businesses in Vanuatu.

Division 3 Restricted List

25 Restricted List

- (1) The Restricted List of investment activities is set out in Part 3 of the Schedule.
- (2) An investment activity on the Restricted List is to be defined by reference to all or any of the following:
 - (a) the possession of a valid business licence issued under the Business Licences Act [CAP 249];
 - (b) a minimum level of financial commitment made to undertake the investment activity;
 - (c) a minimum number of local citizens employed by the investment;

- (d) such other criteria prescribed by Regulation.

26 Amendment of the Restricted List

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

27 Review of the Restricted List

- (1) The Authority 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) advise the Minister whether or not, the investment activity should remain on the Restricted List.
- (2) A foreign investor who holds an investment registration certificate may continue to conduct the investment activity authorised by that certificate, even if the investment activity is later added to the Restricted List.

28 Public consultation

In conducting a review, the Authority is to conduct a public consultation exercise to include relevant opinions from State, municipal and local governments, private sector bodies and non-government organisations, and is to include the outcomes of that exercise 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 Authority, 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 in accordance with subsections (1) and (2), the Authority is to consider the recommendation and determine whether or not to conduct a review for the reasons specified in the recommendation.

30 Reporting of review of Restricted List

On the conclusion of a review under this Division, the Authority is to provide a report to the Minister detailing the conduct and outcome of the review and advise the Minister on which restricted activities should be included in or omitted from the Restricted List.

31 Requirement of investment activity to remain on Restricted List

An investment activity must not remain on, or must not be added to, the Restricted List:

- (a) unless at least one citizen of Vanuatu, whether by himself or herself, as:
 - (i) a member of a joint venture; or
 - (ii) a partner in a partnership or
 - (iii) a trustee or otherwise; or
 - (iv) an agent or employee,conducts the investment activity in Vanuatu; and
- (b) unless at least 10 business operations conduct the investment activity in Vanuatu; and
- (c) if it is carried on as a business or part of a business that produces or supplies goods or services which are used regularly by, or are otherwise important for the operation of, other businesses in Vanuatu.

32 Reviews of the Reserved and Restricted Lists

- (1) The reviews and reports required to be carried out under this Part are to be done simultaneously.
- (2) An activity that is to be included in the Prohibited List, Reserved List or the Restricted List must be defined by its description in the Standard International Trade Classification system (STIC) maintained by the Department of Statistics.

PART 4 REGISTRAR OF FOREIGN INVESTMENT

33 Registrar of Foreign Investment

The Chief Executive Officer is the Registrar of Foreign Investment.

34 Functions and powers of Registrar

- (1) The Registrar has the following functions:
 - (a) to receive and process applications for registration of investment activities; and
 - (b) to register investment activities applied for by foreign investors and issue certificates of registration for those investment activities; and
 - (c) to monitor compliance by foreign investors with this Act and the Regulations; and
 - (d) to monitor the conduct of investment activities by foreign investors in Vanuatu; and
 - (e) to carry out any other functions imposed on him under this Act.
- (2) The Registrar has power to do all things that are necessary or convenient to be done for or incidental to the proper performance of his or her functions.

35 Delegation of the functions or powers of the Registrar

- (1) The Registrar may, in writing, delegate to an employee of the Authority 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 Registrar may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Registrar from performing the function or exercising the power that he or she has delegated.

36 Register of Investment Activities

- (1) The Registrar is to maintain a Register of Investment Activities conducted by Foreign Investors.
- (2) The Registrar is to:
 - (a) keep the Register in any form (including an electronic form) or combination of forms he considers appropriate; and
 - (b) subject to subsection (3), record the information in the Register in the manner prescribed in the Regulations.
- (3) The Registrar 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 Registrar's opinion, commercially sensitive.
- (4) The Registrar 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.

37 Annual surveys by foreign investors

- (1) A foreign investor who conducts an investment activity must, within 2 months after the end of a financial year:
 - (a) complete an annual survey about the conduct of the investment activity in Vanuatu during the financial year; and
 - (b) give a copy of it to the Registrar.
- (2) The annual survey is to be in the prescribed form (including an electronic form).

38 Annual reporting by Registrar

- (1) The Registrar must, within 3 months after the end of a financial year:

- (a) subject to subsection (2), make an annual report on the following:
 - (i) the administration of this Act during the financial year;
 - (ii) the conduct of investment activities by foreign investors in Vanuatu during the financial year; and
 - (b) give a copy of the report to the Board which shall, after consideration of the Report, give a copy to the Minister within 4 months after the end of the financial year.
- (2) When making the annual report, the Registrar:
- (a) is to consider and take into account the annual survey received under section 37, 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.
- (3) The Minister must, as soon as practicable after receiving the annual report, lay a copy of the report before Parliament.

PART 5 REGISTRATION OF INVESTMENT ACTIVITIES

Division 1 General matters

39 Purpose of registration

The purpose of registering an investment activity is to:

- (a) ensure that foreign investors do not conduct prohibited or reserved activities;
- (b) ensure that foreign investors do not conduct a restricted activity without the approval of the Registrar;
- (c) ensure that foreign investors are entitled to benefit from the investment guarantees set out in Part 7;
- (d) ensure that foreign investors are able to benefit from the facilitation services and support of the Authority;
- (e) facilitate the monitoring of the conduct of investment activities by foreign investors.

40 Requirement for and effect of registration

(1) This section:

- (a) applies subject to subsections 43(2); and
- (b) prevails if there is an inconsistency between this section and any other provision of this Act or any other Act.

(2) The requirement to register investment activities under this Part is:

- (a) in addition to the requirements imposed in respect of investment activities under any other law of Vanuatu; and
- (b) the first requirement under the law of Vanuatu which a foreign investor who intends (whether by himself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise) to conduct an investment activity in Vanuatu must comply with.

- (3) A foreign investor must not:
- (a) conduct the investment activity;
 - (b) enter into any arrangement, agreement or memorandum of understanding relating to the conduct of the investment activity; or
 - (c) commence taking steps to comply with the requirements under the law of Vanuatu (other than this Act) to become authorised to conduct the investment activity,
- without a valid certificate of registration issued under this Act.
- (4) To avoid doubt, upon receiving a certificate of registration, a foreign investor who intends to conduct an investment activity specified in the certificate of registration may:
- (a) enter into any arrangement, agreement or memorandum of understanding relating to the conduct of that investment activity; and
 - (b) commence taking steps to comply with the requirements under any other written laws of Vanuatu (other than this Act) to become authorised to conduct the investment activity.
- (5) A permit, licence or authorisation issued under the any other written law (other than this Act) to a foreign investor in respect of an investment activity (whether commenced or to be commenced) has no effect unless the foreign investor holds a certificate of registration for that investment activity.

41 Limitations on effect of registration

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

- (a) relieve a foreign investor conducting the investment activity from complying with any other written law; or
- (b) grant or entitle a foreign investor conducting the investment activity to any benefits under any other written law of Vanuatu.

42 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 anyone time.

Division 2 Registration

43 Application for registration

- (1) A foreign investor who intends to conduct an investment activity in Vanuatu is to apply to the Registrar to register the investment activity or activities.
- (2) If a body corporate that:
 - (a) is established, registered or incorporated in Vanuatu; and
 - (b) conducts 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 the conduct the investment activity, that body corporate must apply to the Registrar to register the investment activity.

44 Form of application

- (1) An application under subsection 43(2) is to:
 - (a) be in the prescribed form; and
 - (b) be accompanied by the prescribed fee (if any).
- (2) The application is to:
 - (a) specify each 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 conduct each investment activity; and
- (e) specify the address of the premises where the foreign investor intends to conduct 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 that the foreign investor is not bankrupt under the law of any country, has not applied to take relief under a law of any country for the relief of bankrupt or insolvent debtors or has not compounded his debts or entered into an arrangement with his creditors in any country; and
- (i) state that:
 - (i) the foreign investor has not, within the immediately preceding 15 year period, been convicted of an offence for which the maximum penalty is imprisonment for 12 months or more by a Court in any country; and
 - (ii) there are no 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.

45 Preliminary assessment of application and foreign investor

- (1) The Registrar must, as soon as practicable after receiving an application, assess the application to determine whether the application specifies all the information required under section 44 and whether the information

specified is sufficient for determining the nature of each investment activity specified in the application.

- (2) If the Registrar is not satisfied that:
- (a) the application contains the information required under section 44;
or
 - (b) that the information contained in the application is sufficient for determining the nature of each investment activity,

he or she may request the foreign investor to provide additional information to complete the application or determine the nature of each investment activity (as the case requires).

- (3) A foreign investor must comply with the request by the Registrar under subsection (2), to provide additional information.
- (4) The Registrar may request a foreign investor to provide him or her with the written consents or signed authorities as is necessary for carrying out investigations or making inquiries.
- (5) The Registrar 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.

46 Consideration of application

- (1) The Registrar must, within 10 days after issuing a dated receipt referred to in subsection 45(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

- conducting the investment activity would involve conducting 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 carrying out 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 Registrar gives notice under subparagraph (1)(b)(i), he or she must as soon as practicable after giving the notice and subject to section 48, register or refuse to register the investment activity.

47 Registrar to consult about nature of certain investment activities

- (1) If the Registrar gives notice to a foreign investor under subparagraph 46(1)(b)(ii), the Registrar must, as soon as practicable after giving the notice, request advice from:
- (a) the Minister - if he unable to decide whether the investment activity is a reserved activity or a restricted activity; or
- (b) the appropriate officer in a department or other agency of the State that is responsible for an area of State business, or administers legislation, that relates to the investment activity - if the Registrar is unable to decide whether the investment activity is a prohibited activity.
- (2) The Minister or the appropriate officer is to provide the advice to the Registrar within 5 working days after receiving a request under subsection (1).

- (3) The Registrar is to consider the advice given to him under subsection (2) and decide whether or not to register the investment activity.
- (4) The Registrar must as soon as practicable after making a decision under subsection (3):
 - (a) give written notice to of his or her decision; and
 - (b) subject to section 19, register or refuse to register the investment activity accordingly.

48 Registration of investment activity

- (1) The Registrar is to register an investment activity specified in an application made under section 43:
 - (a) if it does not involve conducting a prohibited activity or a reserved activity; and
 - (b) if it involves conducting 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 investor satisfies the Registrar that the conditions prescribed in the Regulations are met.
- (2) The Minister may by Regulations, prescribe the conditions provided under paragraph (1)(c) which are to include:
 - (a) the nature and length of business experience of the investor; and
 - (b) a minimum level of funds.
- (3) If the Registrar refuses to register an investment activity, the notice to the foreign investor under subparagraph 46(1)(b)(i) or paragraph 47(4)(a) is to specify the reasons for the refusal and advise the foreign investor of his or her right of review under section 53.
- (4) When registering an investment activity, the Registrar 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.

49 Form and content of certificate of registration

- (1) The certificate of registration is to be in the prescribed form.
- (2) 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 conducts 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 conducts each restricted activity; and
 - (f) specify the prescribed details (if any); and
 - (g) be signed and dated by the Registrar and bear the Registrar's official stamp.

50 Amendment of registration of investment activity

- (1) Subject to this section, the Registrar 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 Registrar 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 conducting the investment activity;
 - (b) the business name (if any) under which the foreign investor conducts the investment activity;
 - (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 conducts the restricted activity;
 - (d) the prescribed details (if any).
- (3) If a foreign investor to whom a certificate of registration has been issued changes any of the following details:
- (a) the business name (if any) under which the foreign investor conducts the investment activity; or
 - (b) if the specified investment activity is on the Restricted List - the address of a premises where the foreign investor conducts a restricted activity; or
 - (c) the address for service of notices and other documents on the foreign investor; or
 - (d) the prescribed details (if any),
- he or she must, notify the Registrar of the change within 25 days after the change occurs.
- (4) A foreign investor who fails to notify the Registrar of a change of a detail specified in subsection (3) commits an offence.
- (5) A person who contravenes subsection (4) is guilty of an offence punishable on conviction:

PART 5 REGISTRATION OF INVESTMENT ACTIVITIES

- (a) if the person is an individual - by imprisonment for not more than 3 years, or a fine not exceeding VT1,000,000, or both; or
 - (b) if the person is a body corporate ó by a fine not exceeding VT2,000,000.
- (6) The foreign investor's notification under subsection (3) is to be made in the prescribed form.
- (7) This section does not apply if a foreign investor to whom a certificate of registration has been issued wishes to:
- (a) change the details specified in the Register relating to an investment activity for which the certificate of registration was issued, or specified on the certificate of registration, other than the details referred to in subsection (3); or
 - (b) conduct an investment activity that is not specified on the certificate of registration.
- (8) A foreign investor referred to in subsection (7) is to apply under section 43 for a new certificate of registration.
- subsection (9) The Minister may by regulations prescribe the manner in which the Registrar is to amend the certificate of registration.

51 Cancellation of certificate of registration

- (1) Subject to this section, the Registrar may cancel a certificate of registration of a foreign investor if the foreign investor:
- (a) conducts a prohibited activity or a reserved activity; or
 - (b) conducts a restricted activity other than in accordance with the conditions specified on the certificate of registration; or
 - (c) has not commenced conducting an investment activity specified on the certificate of registration within 12 months after he or she received the certificate of registration; or

- (d) applies in accordance with subsection 50(8) for a new certificate of registration to replace the certificate of registration and the Registrar issues a new certificate of registration to the foreign investor; or
 - (e) obtained the certificate by fraud, misrepresentation, misstatement or omission of a material particular; or
 - (f) has committed an offence against this Act or any other written law of Vanuatu 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 an order of a competent court; or
 - (h) fails to complete and submit an Annual Survey to the Registrar in accordance with section 37.
- (2) The Registrar must not cancel the certificate of registration unless:
- (a) the Registrar is satisfied that there are grounds under subsection (1) for cancelling the certificate;
 - (b) the Registrar has requested the foreign investor to show cause why his or her certificate should not be cancelled and given him or her not less than 10 days to respond to the request; and
 - (c) the foreign investor's response (if any) has not been made to the satisfaction of the Registrar.
- (3) If, after complying with subsection (2), the Registrar remains satisfied that there are grounds for cancelling the certificate of registration, he shall, by notice in writing to the foreign investor, cancel the certificate.
- (4) The Registrar is to specify in the notice the reasons for cancelling the certificate and advise the foreign investor of his or her right of review under section 53.

52 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 written law to conduct the investment activity and is to cease conducting the investment activity or investment activities.
- (2) If there is an inconsistency between subsection (1) and any other provision of this Act or any other Act, subsection (1) is to prevail.

PART 6 DISPUTES

53 Review of certain decisions of Registrar by Board

- (1) A foreign investor whose:
 - (a) application for registration of an investment activity or investment activities is refused under section 46 or 47; or
 - (b) certificate of registration is cancelled under section 51,may, subject to this section, apply to the Board to review the Registrar'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 registrar of his or her decision in refusing to register an investment activity or cancelling the certificate of registration.
- (3) An application for review must:
 - (a) be made in accordance with the prescribed form; and
 - (b) be accompanied by the prescribed fee (if any).
- (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.
- (6) In determining the review, the Board may, by notice in writing to the applicant:
 - (a) affirm the decision appealed; or

- (b) revoke the decision appealed and substitute for that decision another decision that the Registrar may make under section 46, 47 or 51 regarding the subject matter of the decision appealed.
- (7) The Board is to specify the reasons for its decision in the notice.
- (8) If the Board substitutes another decision for the decision appealed, the substituted decision has effect, and is to be complied with, as if it were the decision made by the Registrar.
- (9) A foreign investor may appeal against the Board's decision to the Supreme Court on an error of law only.

PART 7 INVESTMENT GUARANTEES

54 Promotion of Investment Guarantees

The law of Vanuatu must, in relation to foreign investors who conduct investment activities, be administered in a manner that promotes the investment guarantees in this Part.

55 Guarantee against expropriation of property

- (1) Subject to this section, the State is not to expropriate the property in Vanuatu of a foreign investor to whom a certificate of registration has been issued.
- (2) The State may expropriate property in Vanuatu of a foreign investor only in accordance with the Constitution and a written law, and if:
 - (a) the expropriation does not discriminate against the foreign investor by reason of the investor not being a local investor; and
 - (b) adequate, timely and effective compensation is payable by the State to the foreign investor in respect of the expropriate property; and
 - (c) the foreign investor is granted a right to challenge the expropriation, the value of the compensation, or both, in a court of competent jurisdiction.

56 Treatment no less favourable

The State is to 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 local investors in respect of a comparable investment and investment activity.

57 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 freely convertible currency to any person inside or outside Vanuatu.

- (2) Subsection (1) does not limit the application of any written law that requires the deduction withholding of any tax or levy from a payment to be made inside or outside Vanuatu.

58 Investment Disputes

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

PART 8 MISCELLANEOUS

59 Giving of lodging notices and applications

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

60 Issue of duplicate certificate of registration

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

61 Offence of providing false or misleading statement

- (1) A person must not knowingly make a statement that is false and misleading in a material particular:
 - (a) in connection with an application, report, record, form, certificate or other document made, filled in or kept under this Act; or
 - (b) otherwise in connection with the operation of this Act.
- (2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:
 - (a) if the person is an individual - by imprisonment for not more than 2 months or a fine not exceeding VT500,000, or both; or
 - (b) if the person is a body corporate - by a fine not exceeding VT1,000,000.

62 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 imprisonment for not more than 2 months, or a fine of VT500,000, or both.
- (3) Subsection (1) does not apply if the person does an act specified in that subsection because of any of the following reasons:
- (a) he or she is required to do so for the purposes of this Act or another Act;
 - (b) he or she is required to do so for the purposes of an investigation or prosecution of an offence against this Act or any other Act;
 - (c) he or she does so with the consent of the person to whom the information relates.

63 Protection from liability

- (1) A civil or criminal liability action is not to be taken against the Minister, Registrar or a member of the Board in respect of anything done or omitted to be done by the Minister, Registrar or member of the Board in good faith in the execution or purported execution of his or her powers and duties under this Act.
- (2) Subsection (1) does not affect any liability that the State would, apart from that subsection, have for the act or omission.

64 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) notification to the Registrar of investment activities recorded in the Register; or
 - (d) set the threshold requirements of investments; or
 - (e) penalties for offences against the regulations not exceeding, if the offender is a natural person, VT1,000,000 or, if the offender is a body corporate, VT2,000,000.

PART 9 REPEAL AND SAVINGS AND TRANSITIONAL PROVISIONS

65 Repeal

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

66 Definitions

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

foreign investment means a foreign investment within the meaning of the repealed Act that was authorised by an approval certificate;

foreign investor has the same meaning as in the repealed Act.

investor means a person investing or intending to invest in Vanuatu (whether by himself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise) who or which is:

- (a) a natural person whether a citizen of Vanuatu or another country;
- (b) a body corporate which is established, registered or incorporated in Vanuatu or outside Vanuatu;

repealed Act means the Vanuatu Foreign Investment Promotion Act [CAP 248] repealed under section 65.

67 References to repealed Act

On and after the commencement of this Act, a reference in any Act, subsidiary legislation, an agreement, contract, authority or any other document to the repealed Act is to be taken as a reference to this Act.

68 Transitional provision on certificates of registration

- (1) Subject to section 69, a foreign investment activity carried out by a foreign investor that has been approved before the commencement of this Act, may continue to be carried out until:

- (a) the expiry of 12 months after the commencement of this Act;
 - (b) the registration of each investment activity involved in the conduct of the foreign investment.
- (2) The person who is employed as the Chief Executive Officer of the Foreign Investment Promotion Act immediately before the commencement of this Act continues to be employed as the Chief Executive Officer under this Act, on and after that commencement, on the same terms and conditions of service.
- (3) A person who is employed as a staff of the Authority immediately before the commencement of this Act continues to be employed under this Act, on and after that commencement, on the same terms and conditions of service.

69 Saving of reserved activities

- (1) This section applies despite any provision of this Act to the contrary.
- (2) Unless inconsistent with this Act, all regulations, orders and notices made or given under the repealed Act remain in force as if they were made or given under this Act.
- (3) If, immediately before the commencement of this Act, a foreign investor carried on a foreign investment involving the conduct of an activity which is under this Act deemed to be a reserved or restricted activity, the foreign investor may, on and after that commencement, continue to carry on that activity as if it were not a reserved or restricted activity, but only for as long as he or she continues to operate the enterprise that comprises the foreign investment as authorised under the repealed Act.
- (4) For the purposes of subsection (2), this Act applies, and has effect, in relation to the activity referred to in that subsection as if it were not a reserved or restricted activity.

70 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
1	Export of sandalwood in stick and chips form harvested from natural forest
2	Local trading of sandalwood harvested from natural forest
3	Export of seeds and other minor forest products harvested from natural forest
4	Second hand clothing shops
5	Export of kava in root, chips and stick form
6	Manufacture of handicraft and artefacts
7	Kava bar
8	Open air vendors, door to door sales and mobile shops
9	Road 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
10	Private security services including security guards
11	Electricians and electro-technicians
12	Commercial 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)
13	Commercial culture feasts
14	Residential building and construction
15	Small 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)

SCHEDULE

PART 3: RESTRICTED LIST

Number	Activity	Threshold Level
1	Tour agent (business that sells tourism services) if the annual turnover is less than VT 20 million	Annual sales turnover of 20 million vatu
2	Tour 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
4	Bungalows (business that provides island-style accommodation in detached or semi-detached dwellings)	Annual sales turnover of 30 million vatu
5	Hotels 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
6	Retail shops including general merchandise trading shops (excluding speciality shops)	Annual sales turnover of 30 million vatu
7	Coastal shipping (excluding vessels that exclusively provide transport to foreign tourists)	Vessel size with carrying capacity of 80 tonnes
8	Any of the following professional or business services: <ul style="list-style-type: none"> • 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 	Annual sales turnover of 5 million vatu

SCHEDULE

Number	Activity	Threshold Level
	geological and prospecting support services <ul style="list-style-type: none"> • 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 	