



REPUBLIC OF VANUATU

BILL FOR THE SMALL BUSINESS DEVELOPMENT ACT NO. OF 2018

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REPUBLIC OF VANUATU

BILL FOR THE SMALL BUSINESS DEVELOPMENT ACT NO. OF 2017

An Act to provide for the promotion, encouragement and support of the small business sector, to establish the Business Development Department, provide incentives for small businesses and for matters connected therewith and incidental thereto.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1 Interpretation

In this Act, unless the context otherwise requires:

certificate means a certificate granted under section 13, declaring a small business to be a certified small business for the purposes of this Act;

certified small business means a small business that is certified by the Minister under section 13;

Council means the Small Business Development Council established under Part 2;

Department means the Department of Ni-Vanuatu Business Development, or any other Department that is given responsibility for small business; **Director** means the Director of the Department; **financial institution** means any of the following:

- (a) any body corporate that carries on banking business under the Financial Institutions Act [CAP 254]; or

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- (b) a cooperative society registered under the Co-operative Societies Act [CAP 152]; or
- (c) any other credit institution declared by the Minister by Order to be a financial institution for the purposes of this Act;

Fund means the Small Business Development Fund;

Minister means the Minister of Trade, Commerce, Industry and Tourism;

Ministry means the Ministry of Trade, Commerce, Industry and Tourism;

owner unless otherwise stated, means a person who has established or intends to establish a small business;

Registry means the Registry of Small Business established under section 22;

small business means a business:

- (a) in which not more than 10 persons are employed; or
- (b) whose gross annual revenue does not exceed VT15 million; or
- (c) of which not more than 25 percent of the business is owned or controlled by a company whose employment or annual turnover exceeds the levels mentioned in subsections (a) or (b);

State means the Government of the Republic of Vanuatu;

2 Objects of Act

The objects of this Act are to:

- (a) promote, encourage, strengthen, develop and modernize small businesses in Vanuatu and to provide a framework for provision of programs and incentives to them; and
- (b) improve generally the understanding of the public regarding small business contribution to economic growth and job creation within the State; and

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- (c) strengthen the partnership between the Government and private sector agencies to promote and facilitate the establishment of small businesses; and
- (d) increase the contribution of small businesses to the growing of the economy; and
- (e) ensuring that small businesses comply with national laws.

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3 Functions of the Department

- (1) The Department has the following functions in relation to small business development:
 - (a) articulating and promoting the small business policy and strategy of the State and implementing the provisions of this Act; and
 - (b) receiving and reviewing applications made under section 11 and making decisions with respect to the certification of small business; and
 - (c) mobilizing international and local resources for the development of the small business sector; and
 - (d) facilitating technology adaptation and diffusion amongst small businesses; and
 - (e) overseeing policy, planning and program implementation with the Ministry and other Departments and agencies; and
 - (f) preparing for submission to the Minister a draft annual report on small business which is to include:
 - (i) initiatives taken by the State to support small businesses and to facilitate their access to financing; and
 - (ii) incentives granted to certified small businesses pursuant to provisions of this Act; and
 - (iii) the level of procurement by the State from small businesses pursuant to section 20; and
 - (iv) pertinent recommendations on policy and legislative matters; and

- (v) statistics relating to the small business sector; and

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- (g) advising the Minister on significant administrative issues, opportunities and other matters relating to small businesses; and
 - (h) generally promoting the interests of small businesses;
 - and (i) any other function, which the Minister deems necessary.
- (2) The Department is responsible for providing facilitation services to the owners of small businesses which addresses the training and technical assistance needs of the owners of small businesses in Vanuatu.
- (3) The facilitation services referred to in subsection (2) includes:
- (a) providing a forum for the coordination of efforts to address the needs and opportunities of small businesses;
 - (b) coordinating, implementing and monitoring the provision of educational training, and providing coaching, technical assistance, advice, counselling and other non-financial services to small businesses in accordance with the policy and strategy of the State;
 - (c) introducing small businesses to appropriate business support service providers, and encouraging those providers to offer up to date services of high quality and relevance on a cost effective, coordinated basis;
 - (d) conducting or otherwise providing research on areas which affect the development of the small business sector;
 - (e) consulting, where necessary, with any public servant or relevant body to:
 - (i) assist small businesses in complying with the procedures for bidding and negotiating for contracts;

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- (ii) assist in obtaining the necessary licences, which an owner may legally require to establish and operate a small business;
 - (iii) generally strengthen the capacity of small businesses to compete successfully in the economy;
 - (f) formulating and coordinating a program of policy research, collection and dissemination of information concerning small businesses;
 - (g) actively increasing public awareness with respect to the policy of the State in relation to small business.
- (4) In carrying out its responsibilities, the Department is to focus in particular on serving the needs of small businesses having annual revenues not exceeding VT10 million, and employing not more than 5 persons, including the business owner.
- (5) The Minister is to submit in the Council of Ministers the annual report prepared under paragraph (1)(f), within 60 days after it has been completed by the Department.

4 Small Business Development Council

- (1) The Small Business Development Council is established.
- (2) The Council consists of 7 members appointed by the Minister.
- (3) The members of the Council are as follows:
 - (a) the Director;
 - (b) a representative of the Vanuatu Chamber of Commerce and Industry or another organisation representing the small business sector in Vanuatu;
 - (c) a representative from the Department of Industry;

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- (d) a representative from the Department of Education or from an educational institution in Vanuatu;
 - (e) a representative from the Department of Customs;
 - (f) a representative of a private sector provider of services to business;
 - (g) 3 representatives of other business sectors within the Vanuatu private sector.
- (4) The Director appointed under paragraph (3)(a) is an ex-officio member.
- (5) A member appointed under paragraphs (3)(b) to (g) is to be appointed for a period of 2 years and is eligible for reappointment for only 2 further terms.

5 Chairperson and deputy Chairperson of the Council

- (1) The Council is to elect from amongst its members, a Chairperson and a deputy Chairperson.
- (2) The Chairperson and deputy Chairperson are to hold office for a period of 1 year and may be re-elected.

6 Meetings of the Council

- (1) The Council is to meet at least 2 times a year.
- (2) The quorum of the Council is 5 members present at the meeting.
- (3) Subject to this Act, the Council may determine and regulate its own procedures.

7 Allowance of members

- (1) The members of the Council are entitled to receive an allowance.

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- (2) The Minister is to prescribe the rate of allowance of the members of the Council.

8 Functions of the Council

- (1) The Council is to advise the Director and the Minister on matters which are of concern to small businesses.
- (2) The Council is to submit its recommendations to the Minister on matters relating to:
- (a) the actual or proposed activities and plans of the Department; and

PART 2 FUNCTIONS OF THE DEP

ARTMENT AND THE COUNCIL

- (b) the legislative or administrative reform; and
- (c) the distribution of resources from the Fund; and
- (d) new or altered programs and initiatives to support and promote the development of the small business sector in Vanuatu.

9 Reimbursement of the Council members

- (1) Any expenses incurred by a member of the Council in the course of carrying out his or her duties, is to be reimbursed in accordance with the State's approved levels and standards.
- (2) A member of the Council is not entitled to receive any other compensation for his or her service on the Council.

10 Requirement to consult

- (1) In exercising any function under this Act the Department or the Council are to ensure that the small business community must be consulted.
- (2) Consultation may include any of the following:
 - (a) conducting workshops, conferences, and meetings with small businesses and their representatives;
 - (b) conducting surveys and focus groups to gather and analyze opinion and to report on the results of the opinions gathered;
 - (c) publishing papers, studies, pamphlets and other materials, in paper or electronic form;
 - (d) use of public media.

PART 3 APPLICATION AND CERTIFICATION OF SMALL BUSINESS

11 Application for permit to operate a small business

- (1) A person who wishes to carry on a small business under this Act is to apply to the Director for a permit.
- (2) An application for permit under subsection (1) must:
 - (a) be in the form prescribed in the Schedule; and
 - (b) be accompanied by such other particulars and supporting documents relating to the business as may be required by the Director.
- (3) A person who operates a business that falls under the definition of small business under this Act, may apply to the Director for a permit to carry on a small business.
- (4) An application is deemed to have been received when all information and documents requested under paragraph (2)(b) have been submitted to the Director.

12 Determination of application for permit to operate small business

The Director must within 10 days after receiving an application for a permit, make a decision on an application by:

- (a) reviewing the application; and
- (b) granting or refusing to grant the permit.

13 Issuance of certificate and declaration of certified small business status

PART 3 APPLICATION AND CERTIFICATION OF SMALL BUSINESS

- (1) If the Director decides to grant the permit, it must within 10 days of making the decision:
 - (a) notify the applicant in writing; and
 - (b) issue to the applicant a certificate in the prescribed form, declaring the small business as a certified small business for the purposes of this Act.
- (2) A certificate issued under subsection (1) is to state the following:
 - (a) the incentives that the owner is entitled to receive in relation to his certified small business; and
 - (b) the licenses or permits which the owner is required to obtain, if any; and
 - (c) the conditions of the certificate.
- (3) A certified small business that has been granted incentives under this section must:
 - (a) allow the Department to inspect at all reasonable times the books, records and accounts of the certified small business; and
 - (b) maintain proper financial and accounting records relating to the operations of the certified small business; and
 - (c) permit the Department to monitor the operations of the certified small business.
- (4) A certificate issued under this section must not be transferred or assigned without the approval of the Director.

14 Refusal to grant Application

PART 3 APPLICATION AND CERTIFICATION OF SMALL BUSINESS

If the Director refuses to grant an application, he or she must, within 10 days of making the decision, notify the applicant in writing and state the reasons for the decision.

15 Revocation of certificate

- (1) The Director may revoke a certificate issued under section 13 if:
- (a) the applicant provided a false or misleading information; or
 - (b) the owner of a certified small business:
 - (i) breaches any condition attached to his or her certificate;
or
 - (ii) fails or refuses to submit information or interferes with or prevents an inspection or submission of information as required under section 24; or
 - (c) the Director is notified that a certified small business has ceased to operate; or
 - (d) the Director is satisfied that a small business is no longer a small business as defined under section 1.
- (2) The Director must give the owner of a certified small business an opportunity to be heard and to make representations, prior to revoking the certificate.

**PART 4 INCENTIVES AND PROGRAMS TO SUPPORT
SMALL BUSINESSES**

16 Small Business Development Fund

- (1) The Director is to administer and manage the Small Business Development Fund for the purposes of providing resources for provision of the incentives prescribed in this Act for:
- (a) grants, concessional loans or deposits to be made to financial institutions providing access to financing and export marketing assistance to small businesses; and
 - (b) support and access to financing for small businesses; and
 - (c) institutional support to organizations representing, promoting, supporting and strengthening small businesses; and (d) generally supporting the development of small businesses.
- (2) There is to be paid into the Fund:
- (a) monies appropriated by Parliament for the benefit of the small business sector; and
 - (b) monies made available by the State out of loans raised by the State; and
 - (c) grants made to the Fund; and
 - (d) monies accrued to the Fund out of investments made by the Fund; and
 - (e) deposits made by private contributors; and
 - (f) revenues raised by the Department for services rendered.

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- (3) The Minister may prescribe by regulations the matters that are to be carried out by the Fund and set out the rules and procedures concerning the administration of the Fund.

17 Incentives for Small Businesses

- (1) The Director may from time to time recommend to the Minister the establishment of a range of incentives to assist and support small businesses in becoming more competitive and successful enterprises.
- (2) The Director may grant to a small business the incentives established under subsection (1), and may determine the criteria under which the incentive is to be granted.
- (3) Subject to the conditions set out in the certificate, the owner of a small business who is granted a certificate under section 13 may receive any incentive listed in the certificate.
- (4) Despite this section, the incentives granted to a certified small business under this Act expires if the small business ceases to operate or ceases to be eligible to be qualified as a certified small business.
- (5) The owner of a certified small business is not eligible to receive any incentives under subsection (2) if the business or its owner fails to comply with the conditions of the certificate.

18 Incentives for contribution to small businesses

The Minister may by Order prescribe certain incentives to be granted to a financial institution or to any other person that makes a significant contribution from their annual profits to the Fund or invests in small capital or venture capital programs designed to improve, enhance and develop the small business sector.

19 Promotion of small business with the Vanuatu Investment Promotion Authority

- (1) The Vanuatu Investment Promotion Authority is to include in its mandate and role the promotion of certified small businesses,

PART 4 INCENTIVES AND PROGRAMS TO SUPPORT SMALL BUSINESSES

individually and in clusters, as partners for foreign and domestic investors.

- (2) The Vanuatu Investment Promotion Authority may carry out proactive work with the Department and other public or private sector bodies to:
 - (a) organize and prepare Vanuatu's certified small businesses to understand and meet the requirements of investors and potential partners; and
 - (b) prepare and disseminate information to such investors about the capabilities and readiness of Vanuatu's certified small businesses.

20 Procurement by the State from small businesses

- (1) The State may, where practicable, procure goods and services from certified small businesses.
- (2) For the purposes of subsection (1), the Department is to develop a Small Business Procurement Program and a strategy for improving the performance of small businesses as suppliers.
- (3) A procurement made by the State under this section is to be at competitive prices and in accordance with any law in force.
- (4) For the purpose of giving effect to subsection (1), the Department is to prepare an annual report to the Minister on the progress made in implementing the Small Business Procurement Program.
- (5) A report made under subsection (4) is to be part of the Draft Annual Report on Small Business prepared by the Department under paragraph 3(1)(f).

21 Other incentives

The Minister may, on the advice of the Director or the Council, create additional incentives, facilities and services to further support and promote the small business sector in Vanuatu.

Draft as at 20 February 2017 [V08]

PART 4 INCENTIVES AND PROGRAMS TO SUPPORT SMALL BUSINESSES

PART 5 SMALL BUSINESS REGISTRY

PART 5 SMALL BUSINESS REGISTRY

22 Establishment of registry

- (1) The Director is to keep a Small Business Register in such form as the Director considers fit.
- (2) The registry is to contain the following information on small businesses and certified small businesses:
 - (a) the name and address of each certified small business;
 - (b) the date of application for certification pursuant to section 11;
 - (c) the issuance of a certificate under section 13 and the conditions, if any, attached to the certificate;
 - (d) the date of commencement of operations of the small business;
 - (e) any other information, which the Director considers necessary.
- (3) Any information obtained under subsection (2) may be integrated into any other existing State registry, with the prior consent of the Director.
- (4) The Director may, if he or she considers it practicable to do so, contract the management and operation of the registry to the Vanuatu Chamber of Commerce and Industry or to any other organization representing the small business sector.

PART 6 MISCELLANEOUS

23 Appeal to the Supreme Court

PART 6 MISCELLANEOUS

- (1) A person who is not satisfied with a decision of the Director under Part 3, may appeal to the Supreme Court.
- (2) An appeal must be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the Court may allow.
- (3) The Court may:
 - (a) confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the Director as may be necessary to give effect to the Court's decision; or
 - (b) refer the matter back to the Director with directions to reconsider the whole of or any specified part of the matter.

24 Monitoring and inspection

- (1) The Director may on a yearly basis, monitor and inspect a certified small business for the purposes of:
 - (a) ensuring that the certified small business complies with the provisions of this Act; and
 - (b) determining whether the certified small business qualifies as a small business for the purposes of this Act.
- (2) For the purposes of subsection (1), the Director may:
 - (a) inspect the books, records and accounts of a certified small business; and
 - (b) request any further information, as it considers necessary.
- (3) The Director may delegate to any officer of the Department, the powers to carry out monitoring and inspections under this section.
- (4) An officer delegated under subsection (3) has the power, to enter and inspect the premises of a certified small business, at any reasonable time

PART 6 MISCELLANEOUS

and may request such documents or such other information as is deemed necessary to assist him or her in carrying out his or her functions under this Act.

- (5) A person who refuses to appear, make a signed statement or assist an officer who is empowered to carry out a function or duty under this Act, commits an offence punishable on conviction by imprisonment for not more than 3 months or a fine not exceeding VT20,000, or both.

25 Offences

A person who contravenes a provision of this Act for which no penalty is prescribed commits an offence punishable on conviction:

- (a) if the person is an individual - to a fine not exceeding VT500,000; or
- (b) if the person is a body corporate – to a fine not exceeding VT1,000,000.

26 Regulations

- (1) The Minister may make Regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) that are necessary or convenient to be prescribed for the carrying out or giving effect to the provisions of this Act.

- (2) Without limiting the generality of subsection (1) the Minister may make Regulations to:

- (a) regulate the management of the Fund, its resources and policies;
- (b) prescribe the criteria of incentives, programs and mechanisms established for supporting small businesses;
- (c) regulate the Small Business Registry.

27 Commencement

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

Draft as at 20 February 2017 [V08]

PART 6 MISCELLANEOUS

Bill for the Small Business Development Act No. of 2017 23