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CHAPTER 251

ASSET MANAGEMENT UNIT

Act 22 of 1998

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ASSET MANAGEMENT UNIT

An Act to set up an asset management unit, provide for the restructuring of the National and Development Banks of Vanuatu and for the transfer of certain assets and liabilities from the Vanuatu National Provident Fund to the Asset Management Unit.

PART 1 – PRELIMINARY

1. Purposes

The purpose of this Act is to:

(a) establish an asset management unit;

(b) provide for the transfer of certain assets and liabilities of the National Bank to the Asset Management Unit;

(c) provide for the transfer of the loan portfolio of the Development Bank of Vanuatu to either the Asset Management Unit or the National Bank and to provide for its liquidation;

(d) provide for the transfer of certain assets and liabilities of the Vanuatu National Provident Fund to the Asset Management Unit.

2. Interpretation

In this Act, unless the context otherwise requires:

"acquiring party" means the party acquiring the assets or liabilities, which, for the purposes of this Act, shall be the National Bank or the AMU, as the case may be;

"AMU" means the Asset Management Unit established under section 3;

"assets" means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting the generality of the foregoing includes:

(a) choses in action and money;

(b) goodwill;

(c) rights, interests and claims of every kind, whether arising from accruing under created or evidenced by or the subject of, an instrument or otherwise and whether liquid or unliquidated, actual, contingent or prospective;

"Development Bank" means the Development Bank of Vanuatu established under the Development Bank of Vanuatu Act [Cap. 169];

"divesting time" means the date on which any asset or liability is transferred pursuant to a written agreement or otherwise from a securing party to an acquiring party;

"Minister" means the Minister of Finance and Economic Management;

"National Bank" means the National Bank of Vanuatu established under the National Bank of Vanuatu Act [Cap. 209];

"securing party" means the original party entering into any loan or investment agreement or agreement relating to the holding or securing of assets and for the purposes of this Act, shall be either the National Bank, the Development Bank or the VNPF, as the case may be;

"VNPF" means the Vanuatu National Provident Fund established under the Vanuatu National Provident Fund Act [Cap. 189].

PART 2 – ASSET MANAGEMENT UNIT

3. Establishment of Asset Management Unit

(1) There is established a body corporate to be called the Asset Management Unit.

(2) AMU shall:

(a) be a body corporate with perpetual succession;

(b) have a common seal;

(c) be, subject to the provisions of this Act, capable of suing and being sued, and or purchasing and otherwise acquiring, holding and alienating property, real or personal, and of doing or performing such acts and things as a body corporate may by law do and perform.

4. Board of the AMU

(1) The AMU will have a Board that will be responsible for making the executive decisions of the AMU in compliance with the provisions of this Act.

(2) The Board shall comprise the following members appointed by the Minister:

(a) A solicitor practicing in Vanuatu to be nominated by the President of the Vanuatu Law Society, and if no society exists, then by the Attorney General;

(b) An accountant practicing in Vanuatu to be nominated by the President of the Vanuatu Society of Accountants and if no society exists, then by the Chairperson of the Vanuatu Financial Centre Association Limited;

(c) A member of the Public Service nominated by the Director-General of the Ministry of the Prime Minister;

(d) The Chief Executive Officer appointed under section 9.

(3) Each member will be appointed for a term of 2 years and may be reappointed.

(4) A member may be removed from the Board by the Prime Minister for incompetence, disability, bankruptcy, neglect of duty or misconduct, or breach of his or her performance contract (if any).

(5) A member of the Board may resign at any time by notice in writing to the Minister.

(6) If a member dies, or resign, or is removed from office, the vacancy created will be deemed to be an extraordinary vacancy.

(7) An extraordinary vacancy will be filled by the appointment of a member by the Minister in accordance with subsection (2).

(8) The person that would be entitled to nominate that member in accordance with subsection (2) will nominate the new member.

(9) The quorum for any meeting shall be 3 members.

(10) The members will select from amongst them a member of the Board to be chairperson.

5. Functions of the AMU

The functions of the AMU are:

(a) to acquire assets and liabilities from a securing party;

(b) to manage its assets and liabilities with the objective of disposing of or satisfying all of them as soon as practicable, while minimizing any loss of value to it;

(c) when disposing of assets and liabilities to consider the inter-temporal commercial ramifications and manage the disposal in an orderly way;

(d) to adhere to any statement of corporate intent, corporate plan or performance contract approved by the Board.

6. Powers of the AMU

The AMU shall have all such powers as are reasonably necessary or expedient for achieving its purposes, including the power to contract out all or some of its functions.

7. Operations of the AMU

(1) Subject to subsection (3), the operations of the AMU including the remuneration of Board members and employees will be funded from moneys appropriated by Parliament for that purpose; provided however that the allocation for the financial year ending 31 December 1998 for the AMU will be funded by Government without further appropriation than this section.

(2) Subject to subsection (3), the AMU must account to Government by payment into the Public Fund of the proceeds of the realisation and sale of assets and liabilities under its control, and for the avoidance of doubt the AMU or any member of its Board shall not be entitled to withhold any money for payment to itself or its members or employees of any fee or charge of any kind whatsoever.

(3) The AMU may use receipts from the realisation of assets and liabilities for payment to the National Bank and VNPF for the purchase of assets and liabilities, expenses such as legal fees, court fees, process server fees, agents fees and, for payment of any bonus pursuant to an employee's incentive scheme contained in that person's contract of employment.

8. Dissolution of the AMU

(1) The Minister may, at any time after consultation with the Board, dissolve the AMU by publishing in the Gazette written notice to that effect and sending a copy thereof to the Board.

(2) On receiving the notice of dissolution from the Minister the AMU must be dissolved following the same rules and procedures as if it were a company being liquidated under the Companies Act [Cap. 191].

9. Chief Executive Officer

(1) There shall be a Chief Executive Officer appointed by the Minister who shall also be a member of the Board.

(2) The Chief Executive Officer must be a person with experience in the law and in debt recovery.

10. Staff of the AMU

The Chief Executive Officer shall appoint sufficient staff necessary for the effective administration of the AMU, but shall have regard to the budget allocated to the AMU prior to recruitment.

PART 3 – RESTRUCTURING PLAN FOR NATIONAL AND DEVELOPMENT BANKS AND VANUATU NATIONAL PROVIDENT FUND

11. Restructuring plan

(1) In a restructuring plan approved by the Council of Ministers the National Bank and the Development Bank and the VNPF are to be restructured as follows:

(a) The National Bank will:

(i) divest its bad or poorly performing loans to the AMU;

(ii) acquire from the Development Bank that bank's good or better performing loans;

(iii) receive equity capital from the Government through funds made available for that purpose by the Government from its loan from the Asian Development Bank;

(iv) receive equity capital from the Government through conversion of Government loans to equity.

(b) The Development Bank will:

(i) divest its bad or poorly performing loans to the AMU;

(ii) divest its good or better performing loans to the National Bank;

(iii) close all of its operations and then be dissolved as if it were a company being liquidated under the Companies Act [Cap. 191].

(c) The VNPF will divest certain nominated assets and liabilities, held as part of its investments of participants' funds, to the AMU.

(2) Where assets and liabilities (in the form of loans and investments or otherwise) are divested or acquired under subsection (1) there shall be an agreement between the parties concerned as to the purchase price (globally or individually) and for the terms and method of payment.

(3) All employees of the Development Bank shall from the 30th day of September 1998 become employees of the National Bank and shall continue in employment for the period for which they were appointed or employed by the Development Bank until otherwise advised by the National Bank.

(4) (i) Severance pay and any other entitlement due to an employee transferring under subsection (3) to the National Bank, for the period employed by the Development Bank, will be paid to that employee when that person ceases employment with the National Bank;

(ii) when an employee ceases employment with the National Bank, whenever that may be, that person's length of service will be calculated on the last continuous period of employment with the Development Bank until the date of transfer to the National Bank, together with the length of service with the National Bank;

(iii) when an employee ceases employment with the National Bank, the National Bank will be responsible and liable to pay that person the severance pay and any other entitlement due for the last continuous period that the person was employed in the Development Bank and National Bank calculated in accordance with subparagraph (ii) thereof.

(5) The Development Bank will indemnify and pay to the National Bank the sum required to meet the amount of severance pay and other entitlement to which a employee of the Development Bank would be entitled as at 30 September 1998, prior to the transfer of staff to the National Bank.

12. *(Omitted)*

PART 4 – TRANSFER OF ASSETS AND LIABILITIES

13. Effect of transfer

(1) From the date of the agreement to divest or acquire assets and liabilities in the form of a loan or investment or otherwise that loan or investment or security shall vest absolutely in the acquiring party.

(2) A reference (express or implied) to the securing party in any instrument, register, record, notice, security, document or communication made, given, passed or executed at any time that relates to a transferred asset or transferred liability shall be read and construed as and deemed to be a reference to the acquiring party.

(3) Every contract, agreement, conveyance, deed, lease, licence, or other instrument, undertaking, or notice (whether or not in writing), entered into by, made with, given to or by, or addressed to the securing party, whether alone or with any other person, before it is divested and subsisting immediately before the divesting time, and that relates to a transferred asset or transferred liability, to the extent that it was previously binding on and enforceable by, against, or in favour of the securing party shall be binding on and enforceable by, against, or in favour of the acquiring party as fully and effectually in every respect as if, instead of the securing party, the acquiring party had been the person by whom it was entered into, with whom it was made, or to whom it was given or addressed, as the case may be.

(4) An instruction, order, direction, mandate, or authority given to the securing party in relation to a transferred asset or transferred liability and subsisting immediately before the divesting time shall be deemed to have been given to the acquiring party.

(5) A security held by the securing party as security for a transferred asset that is a debt or other liability to the securing party shall be available to the acquiring party as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the acquiring party incurred after the vesting time; and, in relation to a security, the acquiring party shall be entitled to all the rights and priorities (however arising) and shall be subject to all liabilities to which the securing party would have been entitled or subject if this Act had not been passed.

(6) All the rights and liabilities of the security party as bailor or bailee of any document or chattel that is or relates to a transferred asset or transferred liability shall be vested in and assumed by the acquiring party.

(7) A negotiable instrument or order for payment of money that relates to a transferred asset or transferred liability and that before the divesting time is drawn on or given to or accepted or endorsed by the securing party or payable at a place of business of the securing party shall, unless the context otherwise requires, have the same effect on and after the divesting time as if it had been drawn on or given to or accepted or endorsed by the acquiring party instead of the securing party or was payable at the place of business of the acquiring party.

(8) Where the transfer or assignment is registrable, the person responsible for keeping the register shall register the transfer or assignment forthwith after written notice of the transfer or assignment is received by him or her from any person authorized for this purpose. In the case of the transferred asset or liability the Chief Executive Officer (however named) of the acquiring party shall be an authorized person.

(9) On transfer of the assets and liabilities the securing party shall in respect of each contract between the customer and the acquiring party be released by the customer from its obligation to the customer and those obligations shall be assumed and undertaken by the acquiring party.

(10) From the date of transfer the securing party shall cease to have the benefit of and obligations under any contract with a customer and the benefit thereof shall vest in the acquiring party and the customer shall be bound to the acquiring party in the same manner and on the same terms and conditions as applied between the customer and the securing party prior to transfer.

(11) All standing instructions and authorities including nominations of authorized signatories and attorneys whether express or implied with respect of all accounts prior to the date of transfer shall subsist as between the customer and the acquiring party on transfer. The acquiring party may transfer customers accounts to an account or accounts, established by it, and may debit such customers accounts with any moneys, charges, costs, expenses of a nature that prior to the transfer, the securing party was authorized to debit, whether it be the account of the customer with the securing party or a new account established by the acquiring party.

(12) The acquiring party, in agreement with the securing party, may maintain the accounts held by the customer with the securing party.

14. Notice to customers

(1) The securing party shall on the transfer of the asset and/or liability of a customer advise the affected customer in writing of the transfer and to which acquiring party the asset or liability has been transferred and the date of the transfer.

(2) There shall, on or about the date of the transfer of any assets or liabilities between a securing party and an acquiring party be published in a newspaper circulating in Vanuatu a general notice to all customers of the transfer

(3) The giving of notice under subsections (1) and (2) shall be deemed to be notice of transfer to the customer.

15. Fees and charges on transfer

Notwithstanding any other enactment to the contrary there shall be no charge, fee or tax of any kind payable (including stamp duty) in respect of the transfer of asset and liabilities, and any security documentation thereto, between an acquiring party and a securing party.

PART 5 – MISCELLANEOUS

16. Transition

Notwithstanding anything in this or any other Act, or any rule of law, any proceedings commenced or pending (whether before or after the commencement of this Act) in any Court or Tribunal, in respect of the exercise or intended exercise of any power to which this section applies, may be continued and determined as if the transfer had not taken place and the securing party in respect of any asset or liability transferred will be responsible to meet all or any obligation arising from the decision of the Court or Tribunal in respect of that asset or liability.

17. Regulations

The Minister may from time to time by order, make regulations so as to give effect to all or any of the purposes of this Act, including regulations for all or any of the following:

(a) prescribing the form of documents to be used when evidencing transfers and registration of transfers under this Act;

(b) prescribing the form of notice of transfer to be given under this Act.

Table of Amendments

12 Omitted per Cap. 295 (Consequential amendments to Cap. 209, Cap. 169 and Cap. 189)