REPUBLIC OF VANUATU

COMMISSIONS OF INQUIRY ACT [CAP 85]

Instrument of Appointment – Commission of inquiry into the conduct of the Director of the Financial Intelligent Unit for alleged abuse of power and corruption
Order No. 195 of 2023

In exercise of the powers conferred on me by subsections 1(1) and (3) and section 5 of the Commissions of Inquiry Act [CAP 85], I, the Honourable JOHN NALAU AMOS, Minister of Justice and Community Service, make the following Order.

1 Establishment of the Commission

The Commission of Inquiry into the conduct of the Director of the Financial Intelligent Unit for alleged abuse of power and corruption is established.

2 Appointment of the Commissioners

The following persons are appointed as Commissioners:

(a) Peter BONG; and

(b) Sowany JOSEPH; and

(c) Edward Nalyal MOLU; and

(d) Jimmy EDWARDS; and

(e) Rexley SHEM; and

(f) Donald Benjamin ABIUT.

3 Chairman of the Commission

Peter BONG is appointed as the Chairman of the Commission.

4 Secretary of the Commission

Sowany JOSEPH is appointed as the Secretary of the Commission.

5 Location of inquiry

The inquiry is to be made in Port Vila, at the Ministry of Justice and Community Service Conference room in Port Vila or in such other places as the Commission considers necessary.

6 No public inquiry

The Commission is not obliged to hold any public inquiries.

7 Terms of reference

(1) The terms of reference of the Commission are set out in the Schedule.

(2) The terms of reference of the Commission may be amended or varied by the Minister after consultation with the Commission.

8 Remuneration and cost

(1) The members of the Commission are entitled to, after submitting the report, the following remuneration:

(a) Chairperson VT500,000; and

(b) Secretary VT480,000; and

(c) Members VT450,000.

(2) The remunerations referred to in subclause (1) must be paid as set out in the Schedule.

(3) The costs for the Commission to carry out its duties under this Order are to be met by the State.

9 Duration of the inquiry

(1) The Commission has 3 months from the commencement of this Order to compile its finding and submit a complete report to the Minister.

(2) If the Commission is unable to meet the requirements under subclause (1) due to some unforeseen circumstances, the Commission may extend the duration of the inquiry given that no additional payment is to be made to the members.

10 Commencement

This Order commences on the day on which it is made.

Made at Port Vila this 27 **day of** October **, 2023.**

REPUBLIC OF VANUATU
Ministry of Justice & Community Service
MINISTER
Ministère de la Justice et services du Communautée
REPUBLIQUE DE VANUATU

Honourable JOHN NALAU AMOS
Minister of Justice and Community Service

SCHEDULE

TERM OF REFERENCE

1 Interpretation

In this term of reference, unless the contrary intention appears:

Commission means the Commission of Inquiry established under this Order;

COM means the Council of Ministers;

FIU means Financial Intelligence Unit;

AML means the Anti Money Laundering;

CFT means the Counter Financing of Terrorism;

EU means the European Union;

2 Purpose

The purpose of the Commission is to inquire into the Vanuatu Financial Intelligence Unit as per the COM decision 181 of 2023 and COM decision 151 of 2023 following several allegations levelled against the Director of the FIU, Floyd Ray MERAH and his alleged conduct resulting in undue influence where upon his management and operation of the FIU.

The COM is concerned that Mr. MERAH's conduct will jeopardise Vanuatu's development prospect while at the same time expose the entire country into more risks with forever blacklisting by the European Union Code of Conduct Group on AML and the CFT.

3 Background

The Government of the 13th Legislature has in its 100 days policy plans, item 16 a mandate to investigate the conduct of Mr. MERAH, Director of the FIU following multiple allegations that against the Director and his staff.

On 28 August 2023, the Minister of Finance and Economic Management wrote a letter of complaint addressed to the Honourable Minister of Justice and Community of Service requesting for a Commission of Inquiry to inquire into the management and operations alleging abuse of power and corruptions practices within the FIU.

On 29 August 2023, via flying minutes, COM endorsed decision 181/2023 formalising the appointment of the Commission. It transpires that the actions of Mr. MERAH have put into disrepute the reputation of Vanuatu as country when conducting due diligence checks against applications for the Vanuatu Citizenship Investment dated back from 2015 to 2022. This has forced the EU Commission to place Vanuatu under the EU list of countries with strategic deficiencies in their regimes on anti-money laundering and countering financing of terrorism.

EU argues that its objective of the EU list of High-Risk third countries is to protect the EU's internal market, through application of enhanced due diligence measures by obliged entities.

On 12 November 2021, the EU Director General for Financial Stability, Financial Services and Capital Markets Union wrote to the former Minister of Finance and Economic Management, Honourable Johnny Koanapo RASOU, highlighting that the EU Commission has gathered sufficient information which Vanuatu needs to fulfill in order to be delisted from the EU list on AML and CFT. There were 3 deficiencies. The third deficiency highlighted that Vanuatu should demonstrate that effective, proportionate that the mitigating measures of Vanuatu's specific investment programs that could constitute a higher risks of money laundering and terrorism financing matches the level of risk to which the country is exposed. It when on to say that Vanuatu should demonstrate in particular that the country implements relevant processes and controls in this regard.

In performing the due diligence on all interested applicants for the Contribution Program, MR. MERAH is mandated to give the last clearance on all checks for serious deficiencies. It was through these due diligence checks that arose several allegations of unfair and biased clearance of the same individuals but from different local agents.

There were allegations that Mr. MERAH was performing assessments after working hours to give clearance by which time, no more automated generated receipts from the Government financial system are possible but only manual receipts issued by the Mr. MERAH. This compromises the way in which receipts have been generated which cross verification suggesting, fund have not been deposited into the Government revenue system.

The Government believe that Mr MERAH was favouring some agents of the Government Contribution Program while not been very impartial to all.

Mr MERAH build himself a huge family house on his home Island in Maewo through cash only, no one regulates his banking activities with the commercial banks.

The Government is very frustrated that potential investors could not be allowed to invest into the Country, they were disallowed disproportionately and has impacted potential investments, employment and economic development.

It was evidenced that Mr MERAH was incompetent on his application of risks assessment that resulted in the National Bank of Vanuatu's ("the NBV") correspondent banking relationships (CBRs) with the NBV was terminated.

Mr MERAH was very incompetent in formulating allegations and unduly influences other agencies including the Vanuatu Police Force, the Ombudsman, the Public Prosecutor and Commercial Banks to act unreasonably in the processes abusing his powers to freeze bank accounts and exposed the State to reputational damages.

The Development Support Program became very popular and started to contribute positive to the Government finances result in fiscal surplus generated by the Government between year 2017-2021.

The actions by the National Australia Bank and other Commercial banks in Australia to de-risked National Bank of Vanuatu was the risks of high level of risks due to incompetent and favourable treatment in due diligence checks of applicants that were later approved and issued Vanuatu citizenships which in fact possess security risks in Europe and the world. The action of Mr MERAH has impacted on the Government national revenue.

Furthermore, the Government is so concerned that if these issues of abuses of power from Mr MERAH is not address, the Government will be forced to pay substantial compensations to innocent households, firms as a result of Mr MERAH personal ignorance of the regulations regulating AML and CTF.

Finally, there are allegations that recruitments within the FIU are being made on family ties and links to Mr MERAH without going through competitive and fair transparent processes.

4 Functions of the Commission

The functions of the inquiry team is to focus on the following:

(a) to investigate the conduct of Mr MERAH into the FIU office through unfair recruitment processes of family related employment; and

(b) to investigate the conduct of Mr MERAH regarding favouritism and nepotisms towards certain citizenship programme licensees; and

(c) to investigate the conduct of Mr MERAH regarding the issuing of manual receipts on Vanuatu Development Support Program clients after working hours against the actual payment of receipts. The Commission must perform reconciliation of receipt statements from the years 2016-2022 from both the Citizenship Office and the Revenue Section of the Ministry of Finance and Economic Management; and

(d) to investigate the allegations that Mr MERAH built himself a family house on Maewo on cash without any Bank loans from the Commercial Banks; and

(e) to review and collate the trends of Mr MERAH Bank Statement to justify any loans being borrowed for his home construction; and

(f) to investigate the unjustified freezing and or freezing of financial assets of households, firms and individuals without proper authorisation from the Court but based on his formulation of personal of allegations; and

(g) to investigate the continuous abuse of office and power by not acting impartially resulting in huge costs by the Government; and

(h) to investigate the possible collusion with his Brothers' for Life network which often result in abuse of power and office in the conduct of his office; and

(i) to investigate the possibility of placing undue pressure on employees for possible collusion with clients; and

(j) to investigate Mr MERAH on allegations that he continuously coerces his officers to wilfully disregard ethics, morals, the laws of Vanuatu and working against the National Government policies; and

(k) to investigate undue influences by Mr MERAH with the Department of Labour and Immigration for suspected directive to freeze, withdraw and refusal to issue work permit to certain investors in country that would have catastrophic consequences for the economy; and

(l) to investigate the likelihood that Mr MERAH and his work colleague were aiding and abetting illegal activities by certain individuals; and

(m) to review the current organisation structure of the FIU with the view to aligning it with best practise that will uphold good governance; and

(n) to formulate decisions and recommendations about the dangerous and the risks of abuse of power by establishing positions of deputy within the FIU structure; and

(o) to make recommendations of the future reporting framework of the FIU; and

(p) to investigate whether the current practise of FIU in managing external risks of AML and CTF at the same time attacking innocent individuals, firms and households suitable for economic development in Vanuatu; and

(q) to compared and contrast the work of the FIU across similar jurisdictions in the region; and

(r) to draw lessons of best practices in the regions and make recommendation of how best the FIU could be managed according to best international practices; and

(s) to undertake external investigations with several affected businesses, individuals and companies for lesson learns; and

(t) to review and investigate existing and prospect court cases and judgements that were initiated by the Mr MERAH through the Ombudsman, VNPF, VPF and Public Prosecutor exposing the State to huge liability that will certainly haunt Vanuatu; and

(u) to make recommendation that would best aligned Vanuatu with the rest of the World in accordance, if necessary, with the EU code of conduct group on the AML and CTF regulations and requirements.

5 Agenda of the meeting

All agenda of the meeting is to be forwarded to the Chairman by close of business 1 working day prior to the next scheduled meeting.

The agenda, with attached meeting papers, will be distributed at least 1 working day or during the meeting day.

6 Minutes and meeting papers

The minutes of each Commission meeting must be prepared by the Secretary.

Full copies of the minutes, including attachments, is to be provided to all the members of the Commission no later than 1 working day following each meeting.

7 Frequency of meetings

The Commission must meet more than once a week to review progress of work undertaken or regularly based on the need as maybe directed by the Chairman.

8 Proxies to meetings

Members of the Commission must nominate his representative to attend a meeting on his behave if the member is unable to attend.

The Chairman must be informed of the nomination at least 1 working day prior to the meeting.

The nominee is to provide relevant comments and feedback about the meeting to the Commission member they are representing.

9 Quorum requirements

A quorum of the meeting is 6 members.

10 Reporting

The Commission must report directly to the Minister of Justice and Community Service who is to brief the Prime Minister. The Prime Minister is to report directly to the COM.

11 Legal implications

The Commission must be undertaken in accordance with international best practices and with lessons learned from well-managed and similar Financial Intelligence Unit in the region and around the world. The Commission is to be responsible to make recommendations to the Minister of Justice and Community Service and the Prime Minister on the best options and actions going forward for the best interest of economic development in the country.

12 External assistance

The Chairman of the Commission has the discretion to engage a third party to undertake any specific task as required by the Commission.