REPUBLIC OF VANUATU

COMMISSION OF INQUIRY ACT [CAP 85]

Instrument of Appointment – Commission of Inquiry into the conduct of the former Minister of Public Utilities and Infrastructure MP Jay Ngwele and Vanuatu Logistics and Administrative Services Limited for alleged abuse of power and for corruption
Order No. 36 of 2024

In exercise of the powers conferred on me by subsections 1(1) and (2) of the Commission 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 former Minister of Public Utilities and Infrastructure MP Jay Ngwele and Vanuatu Logistics and Administrative Services Limited for alleged abuse of power and for corruption is established.

2 Appointment of the Commissioners

The following persons are appointed as Commissioners:

(a) Joshua BONG; and

(b) George BOAR; and

(c) Jonah MAEL; and

(d) Jean Yve CHABOD; and

(e) Juris Lvovich GULBIS; and

(f) Alick JOHN; and

(g) Markmon BATIE.

3 Appointment of the Chairman of the Commission

Joshua BONG is appointed as the Chairman of the Commission.

4 Appointment of the Secretary of the Commission

Jonah MAEL 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 Services Conference room in Port Vila, or in such other places as the Commission determines necessary.

6 No public inquiry

The Commission of Inquiry 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 in 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 VT1,000,000; and

(b) Members VT600,000; and

(c) Secretary VT850,000.

(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 05th **day of** February**, 2024.**

Honourable JOHN NALAU AMOS
Minister of Justice and Community Services

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

SCHEDULE

TERMS OF REFERENCE

1. Purpose

The principal purpose of the Commission of Inquiry ("COI") into the conduct of the former Minister of Infrastructure and Public Utilities MP Jay Ngwele ("Jay Nqwele") and the Vanuatu Logistics and Administrative Services Limited("VLAS") arises out from the Council of Ministers' Decisions 141 of 2022 and 158 of 2023 following several allegations against the former Minister Jay Ngwele and his conduct resulting in undue influence where upon he signed a concession contract with VLAS to operate the Vanuatu International Shipping Registry("VISR").

The Council of Minister ("COM") is of the firm view that Jay Ngwele's conduct has not complied with the following:

(1) Government Contracts and Tenders Act [CAP 245] and its Regulations; and
(2) Vanuatu Maritime Safety Authority Act No. 26 of 2016; and
(3) Leadership Code [CAP 240]; and
(4) Legal advices from the Office of the Attorney General; and
(5) Advices from the Commissioner of Maritime Affairs and Director General of the Ministry of Infrastructure and Public Utilities; and
(6) Various COM Decisions particularly Com Decision No.141 of 2022; and
(7) Penal Code Act [CAP 135].

2. Background/Context

The VISR plays an important role in the economy of Vanuatu. It has contributed an estimate of over VT100 million annually to the Government's revenue over the years and continues to do so. The VISR also assisted the Government to pay the Government's contribution of over 20 million to various Fisheries COIs and Organisations within the Pacific.

The VISR was established in December 1981 by the Government pursuant to the Maritime Act [CAP 131] and it is owned by the Government. In December 1993, the Government appointed a private local company named, Vanuatu Maritime Services Limited (VMSL) to be the Administrator of the VISR and Vanuatu

Maritime Marketing Limited (VMM) as the sole agent for the purpose to market the VISR throughout the world. The operational office of VMSL is located in New York, USA. The appointment of VMSL and VMM have expired on 31 December 2019.

In 2022, the Government amended the Maritime Act [CAP 131] which regulates the VISR to allow the Vanuatu Maritime Safety Authority (VMSA) to manage and operate the VISR on behalf of the Government under subsection 10A (3). Despite of subsection 10 A (3), subsection 10B (1) allows the Minister to tender out specific aspect of the VISR to any person subject to following the processes set out under the Government Tenders and Contract Act [CAP 245].

The VMSL continues to manage and operate the VISR on behalf of the Government despite the fact that the contract had expired on 31 December 2019. However, the revenue collection of the Government after 2019 up to early 2023 was not deposited with the Government, but was withheld.

3. Roles and functions of the COI

The Council of Minister through COM Decisions 141 of 2022 and 158 of 2023 has decided to establish a COI to investigate the conduct of former Minister Jay Ngwele and his conduct resulting in undue influence where upon he signed a concession contract with VLAS to operate and manage the VISR. The findings of this COI will be submitted to the COM for endorsement to be further recommended to the Vanuatu Police Force (VPF) for further investigations and finally deposited to the Public Prosecutors Office for prosecutions where appropriate.

The roles and functions of the inquiry team will be to focus but not limited to the following:

(a) Investigate as to whether the award of the VLAS Concession contract with Jay Nqwele dated 30th Day of September 2022 and its addendum dated 4th October 2023 was in full compliant with the following:

(1) Government Contracts and Tenders Act [CAP 245] and its Regulations;

(2) Vanuatu Maritime Safety Authority Act No. 26 of 2016;

(3) Leadership Code Act [CAP 240]; and

(4) Legal advices sought from the Office of the Attorney General; and

(5) Advices from the Commissioner of Maritime Affairs and the Director General of Ministry of Infrastructure and Public Utilities; and

(6) COM Decision 141 of 2022; and

(b) investigate as to whether the VMSL and Vanuatu Maritime Marketing have paid in full all monetary benefits under the various contracts from January 2020 to November 2023; and

(c) investigate complaints that VMSL and VMM have not been marketing the Vanuatu Shipping Registry; and

(d) investigate the sale and purchase of the Vanuatu Shipping Registry to PITCO sometime in 1995; and

(e) investigate whether the Vanuatu International Shipping Registry Council of Ministers papers was either signed since 2021 to 2023 by relevant Ministers or shelved by the Council of Ministers; and

(f) investigate the relationship if any of VLAS concession contract dated 30th September 2022 with Jay Nqwele and Jack Mackerel case with Fisheries; and

(g) investigate why the Government is not defending the court case of VLAS v Vanuatu Government/VMSL in New York.

4. General

4.1. Chair/Convenor

The COI is to be chaired by the Chairman. Meetings will be convened by the Chairman.

4.2. Agenda items

All agenda items will be forwarded to the Chairman by close of business one 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.

4.3. Minutes and meeting papers

The minutes of each COI meeting will be prepared by the Secretary.

Full copies of the minutes, including attachments, will be provided to all members of the COI no later than one working day following each meeting.

4.4. Frequency of meetings

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

4.5. Proxies to meetings

Members of the COI will nominate a proxy to attend a meeting if the member is unable to attend.

The Chairman is to be informed of the substitution at least 1 working day prior to the scheduled nominated meeting.

The nominated proxy must provide relevant comments/feedback about the attended meeting to the COI member they are representing.

4.6. Quorum requirements

A quorum will be half the regular membership plus one.

4.7. Term

The term for all responsibilities to be completed by the COI is 3 Months starting from the date of appointment.

4.8. Reporting Line

The COI is to report directly to the Minister responsible of Justice and Community Services and the Hon Prime Minister. The Minister of Justice and Community Services is to report directly to the COM.

4.9. Legal Implication

The Investigation is to be undertaken in accordance with international best practices and with lessons learned from well-managed, sound and similar Shipping Registry in the region and around the world. The COI will be responsible to make recommendations to the Minister responsible for the Inquiry and the Prime Minister on the best options and actions going forward for the best interest of economic development in the country.

4.10. Remuneration

The budget and expenses proposals are to be claimed against work perform by the COI. Such expenses will be charged against the Vanuatu Government 2024 Budget earmarked for the Commission of Inquiry, managed by the Ministry of Finance & Economic Management over two instalments. The first instalment payment of 40% is to be paid upon the successful signing of the TOR and the issuance of the appointment letters. The remaining instalment is to be paid once the report has been finalised, presented to COM and with COM's endorsement for VPF and Prosecutions purposes. The Vanuatu Government is to make the necessary budget provision in its 2024 annual budget to cater for this Budget of approximately VT2,820,000.

4.11. External Assistance

The Chairman of the COI is to have the discretion to engage a third party to undertake any specific task as required by the COI.