REPUBLIC OF VANUATU

FOREIGN INVESTMENT ACT NO. 25 OF 2019

Foreign Investment Regulation
Order No. 91 of 2024

In exercise of the powers conferred on me by section 68 of the Foreign Investment Act No. 25 of 2019, I, the Honourable BOB LOUGHMAN WEIBUR, Minister of Trades and Commerce, make the following Regulation.

1 Definitions

In this Regulation, unless the context otherwise requires:

Minimum Threshold refers to a minimum amount of sales turnover, investment value, number of rooms and beds and size of vessels defined under the Schedule PART 3 of the Restricted List a foreign investor must meet when investing in these investment activities;

MIS means Management Information System;

VFIPA means Vanuatu Foreign Investment Promotion Agency;

VFSC means Vanuatu Financial Services Commission;

VNPF means Vanuatu National Provident Fund;

2 Rules for restricted business activity

(1) The Restricted business activities are open to foreign investment if the level of their operation exceeds their minimum threshold.

(2) The rules for monitoring businesses that carry out a restricted business activity is based on an annual survey and are as follows:

(a) in the first year of the Annual Survey completion, the MIS will remind the existing investors who conduct a restricted business activity of their legal obligation if they operate below the required threshold level; and

(b) in the second year, the MIS will continue to remind those existing investors if they still operate below the required threshold level and will inform them that failing to meet the required threshold for three consecutive years will result in de-registration of the restricted business activity; and

(c) in the third year, if the existing investors still operate below the required threshold, the MIS will advise them that they do not meet the required level of threshold and issue a de-registration notice for the restricted business activity respectively.

(3) Subject to the assessment of the monitoring compliance checks on restricted business activities and or restricted investments if the existing investors fail to achieve the required minimum threshold for 3 consecutive years the MIS may de-register the relevant restricted business activity.

3 Annual Survey Return, Fees and Documents

(1) The existing and active foreign investments and or businesses that have been registered in VFIPA are required to complete and submit an Annual Survey other than the new investments that have been registered between 1 January - 28 February during the year of the Annual Survey Return.

(2) The Annual Survey must be accompanied with a prescribed fee of Vt 15,000.

(3) The Annual Survey must be supported with a copy of the:

(a) past 12 Months VAT Returns; and

(b) Business Licence Certificate; and

(c) valid VFSC Registration Certificate; and

(d) VNPF List of Active Employees.

4 Annual Survey Reminders

(1) The existing and active foreign investments and or businesses that have not filed an Annual Survey will be reminded by VFIPA MIS to complete and submit an Annual Survey Return.

(2) This automated reminder excludes those that are registered between 1 January – 28 February during the year of the Annual Survey Return.

(3) The following is a schedule of reminders of foreign investments and or businesses when submitting their Annual Survey Return each year:

(a) reminder 1is to be issued by 15 January every year to all existing and active businesses reminding each one of their legal obligations to complete and submit an annual survey by 28 February each year; and

(b) reminder 2 is to be issued by 15 February every year to those that have not responded to reminder 1 and have not submitted an Annual Survey Return; and

(c) reminder 3 is the final reminder and be issued by 15 March every year to those that have not responded to reminders 1 and 2 and have not submitted an Annual Survey Return giving another 30 days to do so or the MIS may de-register their investments by 30 April.

5 Annual Survey Penalty

(1) A penalty fine is to impose to investors who fail to complete and submit an Annual Survey by 28 February each year.

(2) The penalty fine for failure to complete and submit an Annual Survey comprises 10% of the annual survey fee accumulated each month with effect from the month of March every year.

6 De-registrations of business

The de-registration advice is to be issued to the foreign investors, by 30 April every year, if the foreign investors have not responded to reminders 1, 2 and 3 under subclause 4(3) and have not submitted an Annual Survey Return.

7 Re-activations of business

(1) The businesses that were de-registered and being closed due to failure to lodge an annual survey may be re-activated.

(2) The fees for re-activation comprises all the annual survey fees due including the accumulated penalty fines.

8 Rules relating to a new application for an investment activity

A foreign investor who intends to carry out an investment activity in Vanuatu is to apply to the Chief Executive Officer to register his/her investment activity or activities following these rules:

(a) for new applications, a foreign investor must apply first to register his or her business with the VFSC for registration of his or her business name; or

(b) the foreign investor applying for a new investment must be with the same business details registered at the VFSC; or

(c) if a foreign investor has registered a company or a business separately with the VFSC, he or she must also register the company or business separately with the VFIPA.

9 Application for variation of foreign investors and business activities

(1) The existing foreign investors who hold an approval certificate and intend:

(a) to expand by adding new or additional investors into the business; or

(b) propose to expand by incorporating new business activities into the business to vary the ownership structure and the business activity,

must apply through a variation application.

(2) The existing foreign investor applying through a variation application under subclause (1) must comply with these rules:

(a) variation of existing businesses can be made and accepted only if the business is being implemented and is in operation; and

(b) for additional investors, the following must be provided:

(i) a copy of the Passport ID pages for each investor (if the investor is a person); and

(ii) a copy of the Police Clearance Certificate from the country of origin for each investor (if the investor is a person); and

(iii) a copy of the Incorporation Registration Certificate (if the investor is a company or a corporate body).

(c) for additional business activity, provide a copy of the business plan (using the VFIPA Business Plan Template).

(3) The foreign investor applying through a variation application must make sure that his or her new business activity relates to his or her existing and main business activities.

10 Applications for new business activities and locations

A foreign investor who intends to:

(a) apply for an investment or business activities that is not related to his or her existing investment and main business activity, must apply for it separately as a new business through a new application.

(b) expand his or her existing business, by establishing in an additional business branch in a different location, with a new business name as registered with the Vanuatu Financial Services Commission, must apply for this separately as a new business through a new application.

11 Other Changes

(1) Other form of changes and or expansion of existing businesses such as establishing additional business branch, change in business locations, change in business names, withdrawal of existing business owner or owners and removal of existing business activity or activities do not require a variation application.

(2) These changes must be made known to VFIPA by the investors by way of Notification Letters where VFIPA will acknowledge and amend its records accordingly.

12 Commencement

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

Made at Port Vila this 26th **day of** June **, 2024**

REPUBLIC OF VANUATU MINISTER TRADE COMMERCE REPUBLIQUE DE VANUATU

Honourable BOB LOUGHMAN WEIBUR
Minister of Trade and Commerce