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CHAPTER 248

VANUATU FOREIGN INVESTMENT PROMOTION

Act 15 of 1998
Act 1 of 1999
Act 5 of 2001

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VANUATU FOREIGN INVESTMENT PROMOTION

An Act to establish the Vanuatu Investment Promotion Authority to expeditiously facilitate, promote and foster foreign investment in Vanuatu.

PART 1 – PRELIMINARY

1. Purpose of Act

The purposes of this Act are:

(a) to promote and facilitate investment in Vanuatu by foreign investors; and

(b) to provide an efficient, effective and transparent system for appraising and approving investments proposals by foreign investors; and

(c) to promote investments by foreign investors that will materially benefit Vanuatu and its people by:

(i) contributing to sustainable economic growth; and

(ii) creating employment; and

(iii) utilising natural resources and, in particular renewable resources; and

(iv) increasing the volume and value of exports; and

(d) to facilitate and expedite investments through Ministries, Departments and other government bodies.

1A. Principle of joint ventures, partnerships and other associations in Vanuatu

(1) This section establishes and confirms the right of citizens of Vanuatu and local companies of the kind referred to in section 3(1)(b)(i) and (ii) to enter into joint ventures, partnerships and other associations with foreign investors in investments that are not reserved investments.

(2) Such joint ventures, partnerships and other associations must apply for the necessary business licences in accordance with the Business Licence Act [Cap. 249] to carry on their business in non-reserved areas of investment.

(3) *(Repealed)*

2. Interpretation

(1) In this Act, and unless the context otherwise requires:

"approval certificate" means a certificate issued by the Board under section 8;

"Authority" means the Vanuatu Investment Promotion Authority established under section 14A;

"Board" means the Board for the Vanuatu Investment Promotion Authority established under section 15;

"business licence" means a licence issued under section 5 of the Business Licence Act [Cap. 249];

"CEO" means the Chief Executive Officer of the Board, and includes a person for the time being acting in that position;

"enterprise" means any person or entity engaged in an investment;

"fit and proper person" means a person:

(a) who has not been convicted of an offence that calls into question that person's character such that it would be inappropriate for that person to participate in a proposed investment or be granted a work residence permit; or

(b) who has not been convicted of a serious offence involving tax evasion;

(c) not in liquidation or who is not an undischarged bankrupt;

(d) who is a natural person and who is not partly or wholly the legal or beneficial owner or officer of a body corporate that is in liquidation;

"foreign investor" means:

(a) a person who is not a citizen of Vanuatu; or

(b) a body corporate:

(i) that is not wholly controlled by persons who are citizens of Vanuatu; or

(ii) that has any of its shares (voting or otherwise) beneficially owned or controlled by persons who are not citizens of Vanuatu; or,

(c) any entity other than a natural person or a body corporate, where the control of, or the benefit to be derived from the entity, will vest wholly in persons who are not citizens of Vanuatu or a body corporate that is a foreign investor;

"invest" and "investment" means to be engaged in an activity for the principal purpose of gain (pecuniary or otherwise) in conjunction with a business licence but does not include:

(a) maintaining a bank account in Vanuatu;

(ab) acquiring land or any other interest in real property (if not in conjunction with any activity for which a business licence is required);

(b) an isolated transaction, not being one of a number of similar transactions repeated from time to time or from which there will be derived a re-occurring or continuing benefits;

(c) taking security for or collecting any debt or enforcing any rights relating to any security;

(d) the gathering of any information or undertaking a feasibility study in contemplation of an investment proposal;

(e) the supply of services by a company incorporated under the International Companies Act [Cap. 222] for the exclusive use by and benefit of persons who are not residents of Vanuatu;

(f) entry into and performance of a contract for the supply of goods or services by a supplier who is not a resident of Vanuatu;

"investment proposal" means a proposal by a foreign investor to invest in Vanuatu, and includes a proposal by a foreign investor investing through a joint venture, partnership or other association with citizens of Vanuatu or companies incorporated in Vanuatu;

"investor" does not include a citizen of Vanuatu or an enterprise wholly owned and controlled by a citizen of Vanuatu;

"local company" has the same meaning as in the Companies Act [Cap. 191];

"member" means a member of the Board and includes a nominee of that member;

"Minister" means the minister appointed by the Prime Minister to be responsible for the Board;

"prescribed" means prescribed by order of the Board;

"reserved investment" means the list of investments set out in the Reserved Investments Table in Part 2 of Schedule 1;

"reserved occupation" means an occupational activity declared under section 9 of the Labour (Work Permits) Act [Cap. 187] to be a reserved occupation as is set out in Schedule 2;

"residence permit" means a permit to enter and reside in Vanuatu, issued under section 13 of the Immigration Act [Cap. 66];

"work permit" means a work permit issued under the Labour (Work Permits) Act [Cap. 187].

(2) For the purposes of this or any other Act, the list of reserved investments in Part 2 of Schedule 1 and the list of reserved occupations in Schedule 2 must be interpreted strictly by the Board. For example, if a proposed investment does not fall strictly within reserved investment category, then the investment can still be authorized, even if personnel will need to be recruited from reserved occupations.

(3) *(Repealed)*

2A. Policy directions

The Minister may in writing give the Board general directions in relation to investment policy. Such directions must be consistent with the provisions of this Act.

3. Reserved investments and occupations

(1) The investments specified in:

(a) Part 1 of Schedule 1 are prohibited investments for which a certificate of approval must not be granted by the Board; and

(b) Part 2 of the Schedule 1 are reserved investments for citizens of Vanuatu and local companies that;

(i) are wholly controlled by persons who are citizens of Vanuatu; and

(ii) have all their shares (voting or otherwise) beneficially owned or controlled by persons who are citizens of Vanuatu;

and a foreign investor cannot enter into any joint venture, partnership or association with any such citizen or company in relation to those reserved investments, being investments for which the Board must not grant an approval certificate.

(2) The occupations specified in the Schedule 2 are reserved occupations for citizens of Vanuatu for which the Board must not issue a work permit.

(3) The investments and occupations specified in Schedules 1 and 2 respectively must not be added to or removed except by the express provisions of this or any other Act.

(4) (Repealed)

(5) (Repealed)

(6) (Repealed)

PART 2 – APPROVAL OF FOREIGN INVESTMENT

4. Purpose of part

The purpose of this Part is to establish and regulate a system for appraising investment proposals and granting approvals to foreign investors to invest in Vanuatu.

5. Foreign investment without approval certificate prohibited

(1) A foreign investor must not invest in Vanuatu without first obtaining an approval certificate.

(2) Where a foreign investor invests in Vanuatu without an approval certificate or engages in an investment not authorised by an approval certificate then, every contract and every, agreement entered in to by that foreign investor and relating to that investment will be void and of no effect.

(3) A transfer of a legal or equitable interest or an increase in the share capital or any proprietary interest in an enterprise, that has the effect of the enterprise becoming a foreign investor shall not be valid or of any effect unless an approval certificate has first been obtained.

6. Application for approval certificate

(1) A foreign investor proposing to invest in Vanuatu or an enterprise that proposes to become a foreign investor must apply in the prescribed form to the Authority for an approval certificate.

(2) An investment proposal must contain full particulars of –

(a) the name and address of the foreign investor;

(b) the name and address of the legal and beneficial owners of the foreign investor and the proportionate interest of each owner;

(c) if the foreign investor is already in business beyond Vanuatu, the principal place at which the business of the foreign investor is carried on and a description of that business;

(d) the principal place and description of existing investments in Vanuatu;

(e) the proposed investment including its location, the categories of business licence required, the nature and source of raw materials to be used, the amount and source of capital expenditure to be incurred, and the projected return on investment during the first 3 years of the investment;

(f) full details, including passport particulars of:

(i) the foreign investor if an individual; or

(ii) in any other case – the legal and beneficial owners of the foreign investor, being owners who are not citizens of Vanuatu and who intend to reside on a full time or part time basis in Vanuatu;

(fa) the number of employees who are not citizens of Vanuatu and an estimate of the number of persons to be employed during the first 3 years of the investment;

(g) the number of residence and work permits that will be required and the reasons why;

(h) what provisions (if any) will be made for the training of Vanuatu citizens in the event that specialist skills are required of persons to be employed by the foreign investor;

(i) a statutory declaration that no criminal or taxation evasion convictions have been entered against the foreign investor or investor who is a legal or beneficial owner of the foreign investor and persons who will require work or residence permits and if convictions have been entered, the date of conviction, the offence and the penalty imposed;

(j) whether the foreign investor or any investors who are the legal or beneficial owners of the foreign investor or its officers are or have been in liquidation or bankrupt and if so, full details of the circumstances;

(k) the value of bank deposits together with bank references and the location and value of unencumbered assets of the foreign investor and investors who are the legal or beneficial owners of the foreign investor relative to the proposed investment;

(l) other information as may be requested by the Board.

(2A) Without limiting subsection (2)(l) information relating to all or any of the following may be requested:

(a) land;

(b) the environment and hazardous waste;

(c) agriculture, fisheries and forests;

(d) tax concessions and financial viability of a project.

(3) The prescribed fee must accompany an application.

7. Existing foreign investors to apply for approval certificate

(1) A foreign investor engaged in an investment immediately before the commencement of this Act must, within 12 months of the date of commencement (or within such further period as the Board may allow), apply to the Board for an approval certificate for that investment.

(2) Every application made in accordance with subsection (1) must:

(aa) be accompanied by the prescribed fee; and

(a) contain:

(i) the date that the investment commenced;

(ii) details of the investment;

(iii) the name and address of the foreign investor;

(iv) the names and addresses of the legal and beneficial owners of and their respective interests in the foreign investor;

(v) the names and addresses of the officers of the foreign investor;

(vi) the names of the individuals to whom section 10 applies,

(b) subject to compliance with paragraphs (aa) and (a) by the foreign investor, be approved by the Board and an approval certificate issued.

(3) A foreign investor to whom this section applies and who has made application in accordance with subsection (1) shall, notwithstanding section 5, and notwithstanding that the foreign investor has not been approved by the Board pursuant to subsection (2)(b), be entitled to continue to engage in the investment pursued by the investor immediately before the date of commencement of this Act.

8. Approval of investment proposal

(1) Subject to subsections (2), (2A) and (3) the Board must approve an investment proposal.

(2) When considering an investment proposal, the Board must be satisfied:

(a) the application contains full particulars of the information required by section 6;

(b) the foreign investor or the legal and beneficial investors of the foreign investor are fit and proper persons;

(c) the foreign investor has sufficient financial resources for the proposed investment;

(d) the persons who will receive work or residence permits are fit and proper persons.

(2A) In determining an application, the Board may require the foreign investor to submit:

(a) an environmental impact assessment report if, having regard to all circumstances, it is apparent that the investment proposal could impact on the environment; and

(b) details of the corrective environmental measures that the foreign investor will carry out within a period specified by the Board.

(3) An application for an approval certificate for a proposed investment will not be approved where the investment:

(a) is a prohibited investment; or

(b) is contrary to the law of Vanuatu; or

(c) will interfere with an exclusive right of investment granted by the Board under subsection (6C).

(4) In determining whether a person is a fit and proper person, the Board is not confined to a consideration of the matters set out in the definition of that term but may:

(a) take into account such other matters as may be relevant (including any association between the person being considered and a person who is not a fit and proper person); and

(b) consider any information obtained from any reliable source and in the event that the Board is of the opinion that further investigation is required, undertake that investigation.

(5) If the Board takes into account material that is prejudicial to a person, the Board must disclose the information to that person and provide a reasonable opportunity for that person to refute or comment on it.

(6) The Board may approve an application subject to conditions not inconsistent with this Act or refuse an application and, where approved subject to conditions or refused, must give reasons in writing to the foreign investor no later than 7 days after the decision. Where the Board approves an application with or without conditions, the Board may not alter that approval or add to the conditions subsequent to the issue of a certificate of approval under subsection (7).

(6A) Without limiting subsection (6), the Board may approve an application subject to the condition that all relevant pollution and waste management issues, including management of hazardous substances, are addressed to the Board's satisfaction.

(6B) Despite subsection (7), a certificate of approval must not be issued in respect to an application for which a conditional approval under subsection (6A) has been given unless the Board is satisfied that:

(a) all outstanding issues have been addressed to the Board's satisfaction; and

(b) the approved project will not damage the environment of Vanuatu.

(6C) The Board may approve an application for a proposed investment on the condition that the foreign investor has an exclusive right in relation to that investment for a period specified by the Board, being a period that does not exceed 5 years.

(7) A certificate of approval in the form to be prescribed must be issued by the CEO within 7 days of the date of the Board's approval and will remain valid for a period of 12 months from a date to be specified in the certificate.

(8) Subject to a foreign investor satisfying the Board that implementation of the investment has been pursued with all diligence, the Board must renew the certificate for such further periods of 6 months as may be required by the foreign investor while the approved project is still being implemented.

(9) When the Board is notified and satisfied by the foreign investor that the investment for which a certificate of approval has been issued is a going concern the CEO must issue a notice to the investor that the certificate of approval will remain valid subject to section 8A and section 8B.

8A. Fees for approval certificates

(1) The foreign investor named in an approval certificate must pay to the Authority the prescribed fee for the issue and annual renewal of the certificate on or before the prescribed date.

(2) If a foreign investor fails to pay the prescribed fee by the prescribed date, the Authority may, by notice in writing to the foreign investor, cancel his, her or its approval certificate.

(3) This section applies to an approval certificate whether issued before, on or after the commencement of this section.

8B. Revocation of certificates of approval

(1) If a foreign investor, after being requested in writing by the Board, has not provided, within 28 days after receiving the Board's request, a satisfactory written explanation to the Board why an investment is not consistent with its original purpose, the Board may be notice in writing revoke:

(a) the investor's certificate of approval; and

(b) all relevant residence and work permits.

(2) A revocation takes effect:

(a) on the date specified by the Board in the notice mentioned in subsection (1); or

(b) if the Board does not specify a date – on the date of receipt of that notice by the investor.

(3) A foreign investor whose certificate of approval is revoked must cease to carry on the business concerned on and from the date on which the revocation takes effect.

9. Effect of approval certificate

(1) Subject to compliance with the law and the statutory declaration referred to in section 6(2)(1) being correct in every material respect and subsection (2) an approval

certificate will entitle the foreign investor named in the certificate to engage in the investment specified in the certificate.

(2) A foreign investor must diligently pursue the investment specified in the certificate without any material deviation from the substance of the investment proposal and where there is a material deviation the Board must not revoke the certificate of approval without first taking into account the circumstances that gave rise to that deviation.

9A. Variation of approval certificate

(1) A foreign investor issued with an approval certificate may apply to the Authority to vary:

(a) the investment activity; or

(b) the location of the investment; or

(c) any other condition of the certificate.

(2) The application must be in the prescribed form and be accompanied by the prescribed fee.

(3) The Board must determine the application within 14 days of its being made.

(4) The Board must advise the foreign investor in writing of its decision within 7 days after making it.

10. Residence permits, work permits, business licence and land lease

(1) An approval certificate entitles the foreign investor named in the certificate:

(a) subject to the foreign investor complying with the Immigration Act [Cap. 66], to be issued with:

(i) residence permits for at least 2 key positions requiring professional, technical or managerial expertise; and

(ii) such other number of residence permits as are specified in the certificate; and

(b) subject to the foreign investor complying with the Labour (Work Permits) Act [Cap. 187], to be issued with:

(i) work permits for at least 2 key positions requiring professional, technical or managerial expertise; and

(ii) such other number of work permits as are specified in the certificate; and

(c) subject to the foreign investor complying with the Business Licence Act [Cap. 249], to be issued a business licence if the project requires a business licence; and

(d) to be issued with a certificate to negotiate under section 6 of the Land Reform Act [Cap. 123] and subject to the foreign investor complying with that Act and the Land Leases Act [Cap. 163], to be granted a lease of land if the project requires land; and

(e) subject to the Value Added Tax Act [Cap. 247], the Import Duties (Consolidation) Act [Cap. 91] and the Customs Act [Cap. 257], to an exemption from either value added tax or import duty, or both, for the whole or part of the investment.

(2) The foreign investor must also comply with the requirements of any other law that requires the granting of a permit, licence or other approval (however described) before undertaking the activity involved in the investment proposal.

(3) (Repealed)

(4) In deciding the number and duration of additional residence and work permits to which a foreign investor is entitled, the Board must have regard to:

(a) the nature and extent of the activity involved in the project;

(b) the number of other positions requiring professional, technical or managerial expertise;

(c) the availability of Vanuatu citizens with that particular professional, technical or managerial expertise who are prepared and available for that activity;

(d) whether the employment of persons who are not citizens of Vanuatu in professional, technical or managerial positions will lead to the employment of additional persons who are citizens of Vanuatu.

(5) (Repealed)

(6) (Repealed)

(7) If the foreign investor wishes to renew a residence permit or work permit, he or she must apply under the Immigration Act or Labour (Work Permits) Act.

(8) When issuing an approval certificate, the Board must also give the foreign investor a summary of his or her obligations:

(a) to train Vanuatu citizens; and

(b) to obtain permits, licences or other government approvals (however described) under other laws.

(9) Subsection (8) does not relieve the foreign investor from the requirement to find out his or her obligations under other laws of Vanuatu in detail and to comply with those laws.

(10) *(Repealed)*

(11) *(Repealed)*

(12) *(Repealed)*

11. Security of property

(1) For the avoidance of doubt, there is extended to every foreign investor granted an approval certificate under this Act the following guarantees:

(a) there will be no compulsory acquisition of the property of the investor in Vanuatu except in accordance with due process of law and upon payment of just compensation;

(b) subject to compliance with the law, there is an absolute entitlement to remit beyond Vanuatu:

(i) earnings and expatriate capital;

(ii) payments necessary to meet payments of principal, interest, service charges and similar liabilities on foreign loans and the cost of other foreign obligations relating to the investment;

(iii) compensation received in accordance with paragraph (a);

(c) the right to dispose of part or all of an investor's interest in the foreign enterprise to any person including a citizen of Vanuatu or another investor or intending investor in the foreign enterprise subject only to the second mentioned investor being a fit and proper person as determined by the Board upon application by the second mentioned investor.

(2) Unless the parties have agreed otherwise, a dispute regarding the amount of compensation to be paid to a foreign investor may be submitted to the Supreme Court for an order as to the amount of just compensation payable.

(3) The Supreme Court has jurisdiction to hear and determine a dispute.

12. Copy of approval certificate to be provided to interested departments of Government

The Board must within 7 days of granting an approval certificate send a copy thereof, and provide access to the files of the Board relating to the application and the granting of the approval certificate, to:

(a) the Principal Immigration Officer;

(b) the Commissioner of Labour;

(c) the Director of Customs;

(d) the Director of the Department of Statistics;

(e) any other department that will have an interest in the approval.

13. Appeal from Board's decision

(1) A person dissatisfied with all or part of the Board's decision or any conditions imposed may within 14 days of being notified request the Board to reconsider its decision or the imposition of the conditions and the Board must within 14 days of the request reconsider its decision and notify the person of the outcome of that reconsideration and the reasons therefore.

(2) A person who remains dissatisfied with the outcome of the Board's reconsideration may appeal to the Supreme Court against the decision or imposition of any conditions and the Supreme Court has jurisdiction to hear and determine an appeal brought under this subsection.

PART 3 – VANUATU INVESTMENT PROMOTION AUTHORITY

14. Purpose of Part

This Part establishes the Vanuatu Investment Promotion Authority.

14A. Establishment of the Vanuatu Investment Promotion Authority

(1) The Vanuatu Investment Promotion Authority is established.

(2) The Authority:

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued.

14B. Functions of the Authority

The functions of the Authority are:

(a) to provide information to foreign investors within and outside Vanuatu; and

(b) to promote investments by foreign investors in Vanuatu in close collaboration with the private sector and other relevant government bodies; and

(c) to receive and appraise investment proposals in accordance with this Act and present them to the Board for consideration and approval; and

(d) to encourage and facilitate investment in Vanuatu by assisting foreign investors to obtain all necessary permits, licences, and other approvals (however described); and

(e) to facilitate the introduction of citizens of Vanuatu and foreign investors to each other and to investments and other activities of mutual benefit; and

(f) to prescribe a system of certification in relation to foreign investors; and

(g) to monitor the investments and activities of foreign investors for the purpose of determining whether they are complying with certificates of approval, permits, licences and other approvals; and

(h) to establish and maintain a register of investment opportunities for foreign investors; and

(i) to advise the Minister on policy issues relevant to this Act; and

(j) to carry out any other functions conferred on it by this Act or another Act.

14C. Powers of the Authority

The Authority has all the powers necessary to perform its functions.

15. Board for the Vanuatu Investment Promotion Authority

(1) A Board for the Vanuatu Investment Promotion Authority is established.

(1A) The Board is to perform the functions, exercise the powers and direct the affairs of the Authority. In so doing, the Board must have regard to any directions given by the Minister under section 2A.

(2) The Board consists of the following:

(a) the Director responsible for industry and trade;

(b) the Commissioner of Labour;

(c) the Principal Immigration Officer;

(d) the person nominated by the Vanuatu Chamber of Commerce and Industry;

(e) a representative of the Minister;

(f) the Director of the Department responsible for lands;

(g) the CEO who will be an ex-officio member;

(h) the Director-General of the Ministry responsible for finance or his or her nominee who must be either the Director of the Department responsible for economic and social development of the Director of the Department responsible for finance;

(i) the Director of Customs.

(2A) The Board may seek on an as-needed basis the assistance of:

(a) a representative of any department to assist with technical matters; and

(b) qualified financial or business specialists in Vanuatu to review the financial viability of projects.

(3) A member may be represented at meetings of the Board by a nominee who shall be that member's immediate subordinate.

(4) The Chairperson of the Board will be selected by the Board from amongst the members of the Board.

(4A) The Board may select a Deputy Chairperson from amongst the members of the Board.

(4B) The Chairperson and the Deputy Chairperson hold office for a period of 2 years or until they cease to be members, whichever first occurs, and are eligible to be re-selected.

(5) The Minister is to determine in writing the remuneration (if any) and allowances (if any) that are payable to members of the Board.

(6) Subject to this section and sections 19 and 20, the Board is to determine its own procedures.

16. Functions of Board

The functions of the Board are to:

(a) receive and appraise investment proposals in accordance with this Act; and

(b) issue approval certificates to foreign investors in accordance with this Act; and

(c) carry out any other functions conferred on it by this Act or another Act.

17. Powers of Board

The Board has all the powers necessary to perform its functions.

18. Fees

(1) The Board may prescribe application and other fees payable to the Authority.

(2) Fees received by the Authority must be paid into the Public Fund.

18A. Funds of the Authority

The funds of the Authority consist of the following:

(a) monies appropriated to the Authority by the Appropriation Acts;

(b) grants received from the Government and other sources;

(c) fees received by the Authority under section 18.

18B. Application of funds

Subject to section 18(2), the funds of the Authority are to be expended only on the following:

(a) in payment of the discharge of its functions under this Act;

(b) in payment of remuneration and allowances to members of the Board;

(c) for such other purposes that are consistent with this Act determined by the CEO after consultation with the Board.

PART 4 – ADMINISTRATION

19. Meetings

(1) The Board must meet at least once per month on or before the 15th of the month to undertake the business of the Board. However, the Board may meet more often if it considers it is necessary to do so to undertake its business.

(2) Meetings of the Board will be convened by the CEO who will cause a written record of each meeting to be kept.

(3) The procedure at meetings will be as determined by the Chairperson.

(4) A quorum of the Board is 4 voting members.

(5) If the Chairperson is absent (whether by reason of a vacancy in the chairperson's office, disability, death or otherwise) then the members present will select from amongst themselves a chairperson who will have all the powers of the Chairperson for as long as that absence continues.

(6) Each member present, including the CEO, will have a vote and decisions will be carried by a simple majority of the votes cast and in the event of an equality of votes the Chairperson shall have a casting vote.

(7) A member who has an interest over and above any other member of the Board in any matter before the Board must declare that interest, absent himself or herself during deliberation of that matter by the Board and shall not vote on the matter. The member's declaration must be recorded in the minutes of the Board and minutes relating to that matter will not be available to that member unless the Board decides otherwise.

20. Applications to be considered expeditiously

(1) Subject to this section, the Board must consider and determine an application within 30 days of receiving it.

(2) Where an application is deferred the Board must cause the reasons for that deferral to be notified to the applicant.

(2A) The Board:

(a) may forward an application to the relevant department for advice on any technical issue, including issues relating to the environment, hazardous waste, fisheries, forestry, lands or tax concessions; and

(b) must give the department 14 days in which to provide its advice.

(2B) If, within that time, the department has provided no advice or advice that the Board considers is not adequate, the Board must:

(a) approve or reject the application; or

(b) defer the application by seeking assistance on the outstanding issues, including assistance outside Vanuatu.

(2C) If the Board defers the application under subsection (2B)(b) by seeking assistance, the Board's decision to defer is deemed not to be a decision for the purpose of section 13.

(3) For the purposes of section 13(2) a deferral of an application (other than a deferral under subsection (2B)(b)) shall be deemed to be a decision.

(4) If the Board seeks assistance under subsection (2B) in relation to environment, hazardous waste, fisheries or forestry issues, the Board must approve or reject the application in question within 6 months after the receipt of the application.

21. CEO and other staff of Board

(1) The CEO is to be chosen by the members of the Board through an open and competitive selection process based on merit and appointed by the Minister for a period of not less than 1 year and not more than 3 years.

(2) A person is not entitled to be appointed as CEO unless the person:

(a) has significant experience and competence in business and investment; and

(b) has an understanding of the investment environment; and

(c) is fluent in English or French, and has a reasonable command of the other.

(d) (Repealed)

(3) The Minister must appoint as CEO the person chosen by the members of the Board.

(4) The CEO may be reappointed if he or she is chosen again by the members of the Board.

(4A) The CEO is the head of the staff of the Authority and is responsible to the Board for the efficient carrying out of the functions of the Authority.

(5) Without limiting subsection (4A), the CEO must:

(a) manage the Authority in accordance with the policies and directions of the Board; and

(b) advise the Board on any matter concerning the Authority referred to him or her by a member of the Board; and

(c) cause the proceedings of the Board meetings to be recorded; and

(d) manage the staff of the Authority; and

(e) generally assist the Board in the performance of its functions; and

(f) carry out other functions conferred on him or her by this Act or delegated to him or her by the Board.

(6) The CEO must not disclose any information about an investment proposal except:

(a) as required or permitted by this Act; or

(b) as required by or under any other law of Vanuatu.

(7) The CEO must be appointed on terms and conditions determined by the Board, and must be paid at least the same remuneration as a public servant on salary scale P19-21.

(8) The CEO's salary and allowances are payable out of the Public Fund, which is appropriated accordingly.

(9) A person is not entitled to be appointed or to continue as CEO if the person:

(a) is or becomes a member of Parliament, a local government council or a municipal council; or

(b) is or becomes a member of the National Council of Chiefs; or

(c) is convicted, or at any time in the previous 10 years has been convicted, of an offence involving moral turpitude punishable by a term of imprisonment for 3 months or more; or

(d) is or becomes an undischarged bankrupt; or

(e) in the case of a person having professional qualifications – is disqualified or suspended from practising his or her profession on the grounds of professional misconduct.

(10) The CEO may resign his position by giving not less than 60 days written notice to the Minister, and CEO must give a copy of the notice to the Board as soon as possible after giving it to the Minister.

(11) *(Repealed)*

(12) *(Repealed)*

(13) *(Repealed)*

(14) *(Repealed)*

(15) *(Repealed)*

21A. Staff of the Authority

The staff of the Authority are to be appointed by the Public Service Commission in accordance with the Public Service Act [Cap. 246].

22. Secrecy

A member or employee of the Board must not:

(a) disclose any information that may come into that member's or that employee's possession while acting as a member of or employed by the Board other than in accordance with law;

(b) use any such information in a manner that is inconsistent with that member's or that employee's duty and responsibility to the Board or duty to a foreign investor to act fairly and impartially;

(c) engage in any activity that is inconsistent with that member's appointment as a member or the employee's employment with the Board.

23. Annual report and quarterly reports

(1) The Board must publish an annual report of its activities no later than 3 months after the end of each financial year for the immediately preceding year.

(2) The report must be published in the Gazette and presented by the Minister to Parliament no later than 14 sitting days after the report has been received.

(3) The Board must publish quarterly statistical reports which must include the following information:

(a) the number of applications received by the Board;

(b) the number of approval certificates granted by the Board together with an analysis of the capital investments to be undertaken;

(c) the number of persons granted work and residence permits;

(d) the number of citizens of Vanuatu employed or to be employed as a consequence of the approvals granted.

(4) (Repealed)

24. Delegation

(1) The CEO may delegate his or her functions, except this power of delegation, to any responsible senior office or employee of the Board.

(2) Where the CEO delegates a function or power:

(a) the delegation may be made to a person by name or to the person holding, or performing the duties of, a specified office or position;

(b) the delegation may be made generally or limited as may be specified in the instrument of delegation;

(c) the function or power delegated, when performed by the delegate, will be taken to have been performed by the CEO;

(d) the delegation of a function does not prevent the CEO from performing the function or exercising the power;

(e) if the function delegated requires the forming of an opinion by the CEO, the delegate on the delegate's opinion may perform the function.

PART 5 – MISCELLANEOUS

25. Protection for action taken under this Act

(1) No suit or prosecution lies:

(a) against the Board for anything done in good faith by the Board under this Act or regulations; or

(b) against a member, officer, servant or agent of the Board for anything done by him or her in good faith in the performance of his or her duties under this Act or the regulations.

(2) A member of the Board is not personally liable for any legal expenses or court costs incurred by the Board in any action by or against the Board in a court. Any moneys paid to the Board as a result of an action by or against the Board are to be paid into the Public Fund.

(3) Any expenses incurred by a person referred to in subsection (1)(b) in an action brought against him or her in a court in respect of anything done or purported to have been done by the person under this Act or the regulations may be paid out of the Public Fund if the court holds that the act was done in good faith, unless the expenses are recovered by the person in the action.

26. Offences

(1) Every person who contravenes the provisions of this Act is guilty of an offence and on conviction is liable to a fine not exceeding VT 500,000.

(2) Where a body corporate is guilty of an offence and that offence is proved to have been committed with the connivance of, or attributable to the neglect on the part of a director, manager, secretary, or other officer or any person purporting to act in any such capacity, that person as well as the body corporate will be guilty of that offence and be liable to be punished accordingly.

27. Act to bind State

This Act shall bind the State.

27A. Sale of certain reserved investments as if they were not reserved investments

(1) This section applies to a foreign investor who immediately before commencement of this Act was engaged in an investment of a kind that was included in Part 2 of Schedule 1 as a reserved investment when this Act commenced.

(2) A foreign investor to whom this section applies may sell or otherwise dispose of the investment as if the investment had never been become a reserved investment.

(3) For the avoidance of doubt, this section does not apply to an investment that was sold or otherwise disposed of by a foreign investor before the commencement of this section.

28. Regulations

The Minister may make regulations, not inconsistent with this Act, for all matters necessary to give effect to this Act.

SCHEDULE 1

(Section 3)

PART 1
Prohibited Investments
List of activities not to be undertaken

Manufacture of nuclear weapons
Manufacture of chemical weapons
Arms manufacture
Dumping or storage of nuclear waste
Dumping or storage of toxic chemicals

PART 2
Reserved Investments

RESERVED INVESTMENTS TABLE	
ITEM	**CATEGORY**
	Tourism
1(a)	Local tour agents if the annual turnover is less than VT 20 million
(b)	Local tour operator if the investment is less than VT 50 million
(c)	Commercial cultural feasts (Melanesian, Polynesian, etc..)
(d)	Guests houses if the number of beds is less than 50 or less than 10 rooms or annual turnover is less than VT 20 million
(e)	Bungalows if the annual turnover is less than VT 30 million
(f)	Hotels and motels if the total value of the investment is less than VT 10 million or the annual turnover is less than VT 20 million
	Trade
2(a)	Export of sandalwood in stick and chips form
(b)	Local trading of sandalwood
(c)	Export of seeds and other minor forest products
(d)	Second hand clothing shops
(e)	Export of kava in root, chips and stick form
	Manufacturing
3(a)	Manufacture of handicraft and artefacts
	Services
4(a)	Kava bars
(b)	Open air vendors
(c)	Mobile shops
(d)	Door to door sales
(e)	Road transport operators – public taxi and bus services

(f)	Private security services including security guards
(g)	Category F of Business Licence Act [Cap. 249] of less than VT 5 million turnover per year
(h)	Retail shops including general merchandise trading shops where the annual turnover is less than VT 30 million, excluding specialty shops
(i)	Coastal shipping of less than 80 tonnes, excluding vessels used for tourism purposes
(j)	Electricians and electro-technicians meeting prescribed standards
(k)	Residential building and construction meeting prescribed standards
	Fishing
5(a)	Fishing within archipelagic waters within the meaning of the Maritime Zones Act [Cap. 138] and the first 6 nautical miles of the territorial sea within the meaning of that Act

SCHEDULE 2

(Section 3)

Reserved Occupations

List of occupational activities declared under section 9 of the Labour (Work Permits) Act as reserved for citizens.

Able seaman/ordinary seaman
Bricklayer
Bus driver
Clerical supervisor
Dock worker and freight handler
Driver
Earth moving and related machinery operator
Hotel receptionist
Housemaid/domestic worker
Joiner
Lorry and van driver
Mason
Painter
Portable sawmiller
Receptionist
Street vendor
Typist
Waiter/waitress/bar tender

Table of Amendments

Title	Substituted by Act 5 of 2001	10(5)(c)	Amended by Act 1 of 1999
Long Title	Amended by Act 5 of 2001	10(5),(6)	Repealed by Act 5 of 2001
1	Substituted by Act 5 of 2001	10(10)-(12)	Repealed by Act 5 of 2001
1A	Inserted by Act 1 of 1999	12	Amended by Act 1 of 1999
1A(1)	Substituted by Act 5 of 2001	Part 3 heading	Substituted by Act 5 of 2001
1A(2)	Amended by Act 5 of 2001	14	Amended by Act 5 of 2001
1A(3)	Repealed by Act 5 of 2001	14A, 14B, 14C	Inserted by Act 5 of 2001
2(1)	Amended by Acts 1 of 1999, 5 of 2001	15 heading	Amended by Act 5 of 2001
2(2)	Inserted by Act 1 of 1999	15(1)	Substituted by Act 5 of 2001
2(3)	Inserted by Act 1 of 1999; repealed by Act 5 of 2001	15(1A)	Inserted by Act 5 of 2001
		15(2)(e)	Substituted by Act 1 of 1999; Amended by Act 5 of 2001
2A	Inserted by Act 5 of 2001		
3(1)(b)	Substituted by Act 1 of 1999, then by Act 5 of 2001	15(2)(ea)	Inserted by Act 1 of 1999; Amended by Act 5 of 2001
3(3)	Amended by Act 1 of 1999	15(2)	Substituted by Act 5 of 2001
3(4)-(6)	Repealed by Act 1 of 1999	15(2A)	Inserted by Act 1 of 1999
6(2)(l)	Amended by Act 1 of 1999	15(2A)(b)	Amended by Act 5 of 2001
6(1)	Amended by Act 5 of 2001	15(4A),(4B)	Inserted by Act 5 of 2001
6(2)(fa)	Inserted by Act 5 of 2001	15(5)	Substituted by Act 5 of 2001
6(2)(f)	Substituted by Act 5 of 2001	15(6)	Substituted by Act 5 of 2001
6(2A)	Inserted by Act 1 of 1999	18(1),(2)	Amended by Act 5 of 2001
7(2)(aa)	Inserted by Act 1 of 1999	18A,18B	Inserted by Act 5 of 2001
7(2)(b)	Amended by Act 1 of 1999	19(1)	Substituted by Act 1 of 1999
8(1)	Amended by Act 1 of 1999	20(1)	Substituted by Act 1 of 1999
8(2A)	Inserted by Act 1 of 1999	20(2A)-(2C)	Inserted by Act 1 of 1999
8(3)(a)	Amended by Act 1 of 1999	20(3)	Amended by Act 1 of 1999
8(3)(c)	Repealed by Act 1 of 1999; Inserted by Act 5 of 2001	20(4)	Inserted by Act 1 of 1999
		21(1)	Amended by Act 1 of 1999
8(6A),(6B)	Inserted by Act 1 of 1999	21(2)(d)	Repealed by Act 1 of 1999
8(6C)	Inserted by Act 5 of 2001	21(3),(4)	Amended by Act 1 of 1999
8(7),(8)	Amended by Act 1 of 1999	21(4A)	Inserted by Act 5 of 2001
8(9)	Amended by Acts 1 of 1999, 5 of 2001	21(5)	Substituted by Act 5 of 2001
8A	Inserted by Act 1 of 1999; Substituted by Act 5 of 2001	21(7)	Substituted by Act 5 of 2001
		21(10)	Amended by Act 5 of 2001
8B	Inserted by Act 1 of 1999	21(11)-(14)	Repealed by Act 1 of 1999
9A	Inserted by Act 5 of 2001	21(15)	Repealed by Act 5 of 2001
10 heading	Amended by Act 1 of 1999	21A	Inserted by Act 5 of 2001
10(1)(d)	Inserted by Act 1 of 1999	23(4)	Repealed by Act 5 of 2001
10(1)	Substituted by Act 5 of 2001	27A	Inserted by Act 1 of 1999
10(2)(ca)	Inserted by Act 1 of 1999	Sched 1, Part 2	Amended by Act 1 of 1999; Substituted by Act 5 of 2001
10(2)	Substituted by Act 5 of 2001		
10(3)	Repealed by Act 5 of 2001	Sched 2	Amended by Act 1 of 1999
10(4)(d)	Substituted by Act 5 of 2001		