

REPUBLIC OF VANUATU

BILL FOR THE INVESTMENT PROMOTION AND FACILITATION AGENCY ACT NO. OF 2018

Explanatory Note

This Bill provides for the establishment of the Vanuatu Investment Promotion and Facilitation Agency (VIPFA) with a focused mandate and enhanced institutional governance framework to ensure confidence to both potential and existing foreign investors. The Vanuatu Investment Promotion and Facilitation Agency now replaces the Vanuatu Investment Promotion Authority under the Vanuatu Investment Promotion Authority Act which will be repealed by this Bill.

The Bill supports the Government's ongoing initiatives in undertaking reforms aimed at strengthening its legislative framework in order to be more consistent with best international practice and more appropriate to the needs of Vanuatu which in turn will result in more attractive business environment for private investors and ultimately generate greater economic benefits (job, incomes and government revenues) for the country.

Key features of the Bill that will contribute to achieving a competitive business environment and realising the economic benefits from foreign investments are explained below.

Vanuatu maintains an open policy to foreign investment

The Bill confirms that Vanuatu remains open and welcomes private sector investment in all areas except those on the (i) prohibited list, (ii) reserved list and (iii) restricted list. The limitations on investment are now well defined with comprehensive provisions for regular revisions of these list of investments. This will contribute to improving Vanuatu's position as a major player within the regional and global investment community. The Bill also provides additional list of investments which will provide assurance and certainty to foreign investors intending to do business in Vanuatu.

Implementation of a One-Stop-Shop Service

In addition to attracting and retaining foreign investment as a key function of VIPFA, the Bill provides for the effective implementation of a one stop shop – an additional activity to VIPFA's Facilitation role. This policy initiative supports the Government's efforts to improve Vanuatu's competitiveness for foreign direct investment in the region. Successful implementation of this initiative will result not only in faster registration processes, therefore less time and less cost to investors, but also provides

an opportunity to leverage on Information and Communications Technology capabilities in the longer term. Achieving this will contribute significantly to improving Vanuatu's investment climate which in turn will improve Vanuatu's global ranking in the "Ease of Doing Business".

Improved institutional governance framework

The Bill establishes clear and improved governance framework to enable VIPFA to discharge its statutory duty of ensuring enhanced transparency and accountability while pursuing its core business objectives. The Vanuatu Foreign Investment Board (the Board) will now focus on policy and development matters relating to investment, provide oversight responsibility over management operations and take on the role of a lead advisor to the Government in investment policy development. Activities relating to VIPFA's core functions promotion, facilitation and regulation of foreign investment will be undertaken by the VIPFA CEO and staff subject to policy direction from the Board.

The Bill provides for improved composition and quality of selection of members of the Board. The number of private sector representatives in the Board has increased from 1 to 3 with the remaining 4 members as Government representatives. Board members are selected based on clear procedures and well defined criteria.

Improved procedures for registration and monitoring of foreign investment

The Bill provides for a more focussed mandate for the VIPFA management. This allows the CEO and staff responsible for registration to ensure transparency and quicker processing and registration of foreign investment certificates. The Bill also allows for the regular monitoring of foreign investment activities within Vanuatu. As a measure for stringent screening process of the quality of investments that Vanuatu receives, registration processes will also include a criteria to determine an applicant's business experience and sufficient investment capital to start a business in Vanuatu. The Bill removes the payment of the application fee to renewing a VIPFA Foreign Investment Approval Certificate in support of encouraging an easy doing business environment in Vanuatu. Foreign investors will provide an annual report to the Authority on the progress of their investment in Vanuatu which increases VIPFA's facilitation role to ensure effective implementation of foreign investments in the country.

Linkages between foreign investors and local entrepreneurs are encouraged

The Bill provides for enhanced linkages between foreign investors and business owners who are Vanuatu citizens. Upon revision of the investment activities, particularly those in the reserved and restricted list, opportunities may arise for joint venture between Vanuatu citizens and foreign-owned businesses. This arrangement supports the Government intention for greater participation of Vanuatu citizens in the economic development of the country.

Smooth transitioning of VIPA's dual role

The Bill repeals the existing Vanuatu Foreign Investment Promotion Act [CAP 248] and provides for the transition of existing activities regulated under the Vanuatu Foreign Investment Promotion Act [CAP 248] to this Act.

Minister of Tourism, Trade, Commerce and Ni Vanuatu Business Development



REPUBLIC OF VANUATU

BILL FOR THE VANUATU INVESTMENT PROMOTION AND FACILITATION AGENCY ACT NO. OF 2018

Arrangement of Sections

PART 1	PRELIMINARY	4
1	Interpretation.....	4
PART 2	VANUATU INVESTMENT PROMOTION AND FACILITATION AGENCY	7
Division 1	Establishment of the Vanuatu Investment Promotion and Facilitation Agency	7
2	Establishment of the Vanuatu Investment Promotion and Facilitation Agency	7
3	Functions of the Agency	7
Division 2	Vanuatu Foreign Investment Board.....	9
4	Establishment and Composition of the Board	9
5	Deputy Chairperson	10
6	Termination of membership.....	10
7	Vacancy	10
8	Meetings of the Board.....	10
9	Functions of the Board.....	11
10	Powers of the Board.....	12
Division 3	Chief Executive Officer and Staff of the Agency.....	12
11	Chief Executive Officer	12
12	Functions of the Chief Executive Officer	13

13	Powers of the Chief Executive Officer	14
14	Delegation of the functions or powers of the Chief Executive Officer	14
15	Other staff of the Agency	14
PART 3 NATIONAL INVESTMENT ACTIVITIES		16
16	Investment activities	16
Division 1 Prohibited List		16
17	Prohibited List.....	16
18	Amendment of the Prohibited List.....	16
Division 2 Reserved List		16
19	Reserved List	16
20	Amendment of the Reserved List	16
21	Review of Reserved List	17
22	Public consultation.....	17
23	Recommendation from individual to review Reserved List	17
24	Report on review of Reserved List	17
25	Requirement for investment activity to remain on Reserved List	17
Division 3 Restricted List.....		18
26	Restricted List	18
27	Amendment of the Restricted List	19
28	Review of the Restricted List.....	19
29	Public consultation.....	19
30	Recommendation from individual to review Restricted List.....	19
31	Report on review of Restricted List.....	19
32	Requirement for investment activity to remain on Restricted List.....	20
33	Reviews of the Reserved and Restricted Lists.....	20
PART 4 REGISTER OF FOREIGN INVESTMENT		21
34	Register of Investment Activities	21
35	Annual surveys by foreign investors	21
36	Annual reporting by Chief Executive Officer.....	21
PART 5 REGISTRATION OF INVESTMENT ACTIVITIES		23
.....		
Division 1 General matters		23
37	Purpose of registration	23
38	Requirement for and effect of registration.....	23
39	Limitations on effect of registration	24
40	General principles relating to certificate of registration	25
Division 2 Registration.....		25
41	Application for registration.....	25
42	Form of application.....	25
43	Preliminary assessment of application and foreign investor	27
44	Consideration of application	28

45	Registration of investment activity	28
46	Form and content of certificate of registration	29
47	Amendment of registration of investment activity	30
48	Conditions applying to registration.....	32
49	Cancellation of certificate of registration	32
50	Effect of cancellation of certificate of registration	34
51	Cessation or transfer of business	34
PART 6 DISPUTES.....		36
52	Review of certain decisions of Chief Executive Officer by Board.....	36
PART 7 INVESTMENT GUARANTEES.....		38
53	Promotion of Investment Guarantees	38
54	Guarantee against expropriation of property	38
55	Treatment no less favourable	38
56	Free transfer of funds	38
57	Investment Disputes.....	38
PART 8 MISCELLANEOUS PROVISIONS		39
58	Serving of documents	39
59	Issue of duplicate certificate of registration.....	39
60	Funds of the Agency	39
61	Application of Funds	39
62	Books of account and audit.....	40
63	Offence of providing false or misleading statement.....	40
64	Offence to disclose or improperly use information	41
65	Protection from liability.....	42
66	Regulations	42
PART 9 REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS.....		43
67	Definitions	43
68	Repeal	43
69	References to repealed Act	43
70	Transitional provision on certificates of registration	43
71	Saving of reserved activities	44
72	Commencement	44
SCHEDULE		45

REPUBLIC OF VANUATU

BILL FOR THE VANUATU INVESTMENT PROMOTION AND FACILITATION AGENCY ACT NO. OF 2018

An Act to provide for the establishment of the Vanuatu Investment Promotion and Facilitation Agency and for related matters.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1 Interpretation

(1) In this Act, unless the contrary intention appears:

Agency means the Vanuatu Investment Promotion and Facilitation Agency established under subsection 2(1);

Board means the Vanuatu Foreign Investment Board established under subsection 4(1);

Chief Executive Officer means the Chief Executive Officer of the Agency appointed under subsection 11(1);

foreign investor means:

- (a) a natural 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 under paragraph (b),

that operates or intends to operate an investment activity in Vanuatu;

investment activity means an activity for the principal purpose of gain (pecuniary or otherwise) in conjunction with an activity for which a business licence is required but does not include:

- (a) maintaining a bank account in Vanuatu; or
- (b) acquiring land or any other interest in real property (if not in conjunction with any activity for which a business licence is required); or
- (c) 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 reoccurring or continuing benefits; or
- (d) taking security for or collecting any debt or enforcing any rights relating to any security; or
- (e) the gathering of any information or undertaking a feasibility study in contemplation of an investment proposal; or
- (f) 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; or
- (g) 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;

Minister means the Minister responsible for Trade, Tourism, Commerce, Industry and Ni-Vanuatu Business Development;

prohibited activity means an investment activity that:

- (a) a person is prohibited from undertaking by any Act (other than this Act); or
- (b) an investment activity included in the Prohibited List;

Prohibited List means the list of activities set out in Part 1 of the Schedule;

Register means the Register of Investment Activities carried out by Foreign Investors under section 33;

registration means registration of an investment activity under Part 5;

reserved activity means an investment activity specified in the Reserved List;

Reserved List means the reserved list set out in Part 2 of the Schedule;

restricted activity means an activity included in the Restricted List;

Restricted List means the list of activities set out in Part 3 of the Schedule.

- (2) A reference in this Act to the carrying out of an investment activity by a foreign investor includes a reference to:
 - (a) the foreign investor carrying out the investment activity; and
 - (b) an agent or employee of the foreign investor carrying out the investment activity for and on behalf of the foreign investor; and
 - (c) a business owned or operated by the foreign investor that is carrying out the investment activity.

PART 2 VANUATU INVESTMENT PROMOTION AND FACILITATION AGENCY

Division 1 Establishment of the Vanuatu Investment Promotion and Facilitation Agency

2 Establishment of the Vanuatu Investment Promotion and Facilitation Agency

- (1) The Vanuatu Investment Promotion and Facilitation Agency is established.
- (2) The Agency:
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may acquire, hold and dispose of property; and
 - (d) may sue and be sued in its corporate name.

3 Functions of the Agency

- (1) The Agency has the following functions:
 - (a) to advise the Minister and the Council of Ministers:
 - (i) on all matters relating to foreign and domestic investment in Vanuatu;
 - (ii) on the national investment policy of Vanuatu; and
 - (iii) on the scope and appropriateness of any amendments to the Reserved List and Restricted List; and
 - (iii) on the development and maintenance of an efficient, effective and timely regulatory environment for investment in Vanuatu; and
 - (iv) on the effective implementation of the Government one-stop shop policy; and

- (b) to report to the Minister at least every second year or at any time on the matters set out in subparagraph (1)(a)(i) and (iii); and
 - (c) to liaise with all relevant bodies in and outside Vanuatu in formulating its advice under paragraph(a); and
 - (d) to promote Vanuatu as an investment location for local and foreign citizens and enterprises; and
 - (e) to provide relevant and accurate information to investors on obtaining permits and licences from any government department or agency; and
 - (f) to establish procedures to assist foreign investors in obtaining permits, licences and approvals from any government department or agency; and
 - (g) to undertake registration and monitoring of foreign investors in Vanuatu; and
 - (h) to provide other general information to foreign investors and domestic investors in Vanuatu; and
 - (i) to report annually to the Minister on the Agency's activities and financial performance; and
 - (j) to implement Government policies in relation to investment promotion and facilitation; and
 - (k) to coordinate and facilitate the review and implementation of the national investment policy; and
 - (l) such other functions that may be conferred on the Agency under this Act or any other Act.
- (2) The Board is to discharge the functions set out in paragraphs (1)(a), (b) and (i).
- (3) The Chief Executive Officer is to discharge the functions set out in paragraphs (1)(c) to (1)(j).

- (4) The Chief Executive Officer is to advise the Board in respect of the discharge of the Agency's functions.
- (5) Subject to this Act, the Board may establish within the Agency separate business divisions to perform any of the functions set out in this section.

Division 2 Vanuatu Foreign Investment Board

4 Establishment and Composition of the Board

- (1) The Vanuatu Foreign Investment Board is established.
- (2) The Board consists of the following members:
 - (a) the Director General of the Ministry of Trade, Tourism, Commerce, Industry and Ni-Vanuatu Business Development, who is to be the Chairperson of the Board; and
 - (b) the Director of the Department of the Strategic Policy Planning and Aid Coordination; and
 - (c) the Director of the Department of Local Authorities ; and
 - (d) the General Manager of the Vanuatu Chamber of Commerce and Industry; and
 - (e) the Director General of the Ministry of Agriculture, Livestock, Fisheries, Forestry and Biosecurity; and
 - (f) a representative nominated by the Vanuatu Finance Centre Association; and
 - (g) a representative nominated by the Small Commerce Association; and
 - (h) the Chief Executive Officer who is to be the secretary of the Board.
- (3) The Chief Executive Officer has no voting right, at a meeting of the Board.

5 Deputy Chairperson

The members of the Board are to elect from amongst themselves a Deputy Chairperson.

6 Termination of membership

A member ceases to be a member of the Board, upon ceasing to hold the office for which he or she has become a member of the Board.

7 Vacancy

- (1) If a vacancy exists in the Board, the Board must ensure that the vacancy is filled as soon as possible.
- (2) An act or proceeding of the Board is not invalid if there is a vacancy amongst its members or an irregularity in the appointment of a member.

8 Meetings of the Board

- (1) The Board is to meet at least 4 times in a year and may hold such other meetings as is necessary for the proper performance of its functions under this Act.
- (2) The Chairperson in consultation with the Chief Executive Officer, is to determine the venue and time for a meeting of the Board.
- (3) The Chairperson is to preside at all meetings of the Board and in his or her absence, the Deputy Chairperson is to preside at the meeting of the Board.
- (4) The Chairperson is to nominate a member of the Board to preside at a meeting of the Board, if the Chairperson and the Deputy Chairperson are unable to attend the meeting.
- (5) At a meeting of the Board, the quorum consists of 4 members including the Chairperson, present at the meeting.
- (6) A member of the Board may nominate a person to attend a meeting if the member is unable to attend, due to an illness, absence from Vanuatu or absence due to unforeseen circumstances.

- (7) At a meeting of the Board a member has one vote and questions arising at the meeting are to be decided by a majority vote of the members present at the meeting.
- (8) If the vote is equal at a meeting of the Board, the Chairperson has a casting vote or the Deputy Chairperson if he or she is presiding at the meeting.
- (9) A member who has an interest in any matter before the Board must:
- (a) declare that interest; and
 - (b) absent himself or herself during the deliberations on that matter by the Board; and
 - (c) not vote on the matter.
- (10) The member's declaration under subsection (9) must be recorded in the minutes of the meeting and the minutes relating to that matter must not be made available to that member unless the Board decides otherwise.
- (11) A member who fails to declare his or her interest under subsection (9) is disqualified as a member of the Board and ceases to hold office.
- (12) The Minister is to prescribe the sitting allowances for the meetings of the Board.
- (13) Subject to this Act, the Board may determine and regulate its own procedures.

9 Functions of the Board

The Board has the following functions:

- (a) to determine, approve and monitor policies and strategic directions that contribute to achieving the vision, mission and goals of the Agency; and
- (b) to approve the annual budget and work plans before they are submitted to the Ministry; and
- (c) to monitor the performance of the Agency in accordance with its annual plans and budget; and

- (d) to ensure that the auditing process is carried out in an effective and efficient manner; and
- (e) such other functions as may be conferred on the Board under this Act or any other Act.

10 Powers of the Board

The Board has the power to do all things that are necessary or convenient to be done for or in connection with the purposes of this Act.

Division 3 Chief Executive Officer and Staff of the Agency

11 Chief Executive Officer

- (1) The Minister, on the recommendation of the Board, is to appoint a Chief Executive Officer of the Agency.
- (2) The Chief Executive Officer holds office for a period of 5 years and may be reappointed.
- (3) The Board is to determine the terms and conditions of the appointment of the Chief Executive Officer.
- (4) The appointment of the Chief Executive Officer must follow a fair and transparent selection process and must be based on merit.
- (5) The Chief Executive Officer is responsible for the day to day management of the Agency.
- (6) The Chief Executive Officer is a leader for the purposes of the Leadership Code Act [CAP 240].
- (7) A person is disqualified from being appointed or for continuing as the Chief Executive Officer if:
 - (a) he or she is bankrupt ; or
 - (b) he or she is 70 years of age or over; or

- (c) he or she has been convicted during the 10 years prior to his or her appointment, of any offence punishable by a term of imprisonment; or
 - (d) he or she is prohibited from being a director, member or promoter of, or from taking part, in any way directly or indirectly, in the management of a company, under any Act; or
 - (e) his or her appointment is terminated by the Board for a serious breach of the terms and conditions of his or her employment; or
 - (f) he or she is or becomes a member of, Parliament, a Provincial Government Council or a Municipal Council.
- (8) The Minister may on the recommendation of the Board, terminate a Chief Executive Officer if:
- (a) he or she becomes permanently incapable of performing his or her functions under this Act;; or
 - (b) there is a serious breach of a term and condition of his or her contract of employment; or
 - (c) misappropriates the funds of the Agency.
- (9) The Chief Executive Officer may resign from his or her office by notice in writing addressed to the Board.

12 Functions of the Chief Executive Officer

- (1) In addition to subsections 3(3) and (4), the Chief Executive Officer has the following functions:
- (a) to receive and process applications for registration of investment activities; and
 - (b) to register investment activities applied for by foreign investors and issue certificates of registration for those investment activities; and
 - (c) to monitor compliance by foreign investors with this Act and the Regulations; and

- (d) to monitor the carrying out of investment activities by foreign investors in Vanuatu; and
 - (e) to administer the employment policy and procedures of the Agency, other than to the extent that the employment policy and procedures make provision for the Board to act as an appellate Agency in respect of specified decisions of the Chief Executive Officer.
 - (f) such other functions as may be conferred on him or her under this Act or any other Act.
- (2) The Chief Executive Officer is to discharge his or her functions as directed by the Board and subject to the general policy of the Agency.

13 Powers of the Chief Executive Officer

The Chief Executive Officer has the power to do all things that are necessary or convenient to be done for or in connection to the proper performance of his or her functions.

14 Delegation of the functions or powers of the Chief Executive Officer

- (1) The Chief Executive Officer may, in writing, delegate to a staff of the Agency, any of his or her functions or powers under this Act, other than the power of delegation.
- (2) The delegation may be made generally, or in respect of a particular matter or class of matters.
- (3) The Chief Executive Officer may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Chief Executive Officer from performing the function or exercising the power that he or she has delegated.

15 Other staff of the Agency

- (1) The Chief Executive Officer may appoint other staff of the Agency as he or she considers necessary for the proper and efficient performance of the functions of the Agency.

- (2) The Chief Executive Officer is to determine the terms and conditions of appointment of the other staff.
- (3) The appointment of a staff must be in accordance with the staff manual and must follow a fair and transparent selection process and must be based on merit.
- (4) The Chief Executive Officer is to prepare the staff manual of the Agency. The staff manual must be presented to the Board by the Chief Executive Officer, for approval.
- (5) The Chief Executive Officer may, according to the disciplinary procedures set out in the staff manual, suspend or dismiss a staff of the Agency.

PART 3 NATIONAL INVESTMENT ACTIVITIES

16 Investment activities

- (1) Subject to this Act, any investment activity may be carried out by a foreign investor in Vanuatu, unless the investment activity is a prohibited activity.
- (2) A foreign investor must not carry out a reserved activity.
- (3) A foreign investor must not carry out a restricted activity unless that foreign investor has been issued with an investment registration certificate which authorises the carrying out of that restricted activity.

Division 1 Prohibited List

17 Prohibited List

The Prohibited List of investment activities is set out in Part 1 of the Schedule.

18 Amendment of the Prohibited List

- (1) The Minister may, by Order, on the advice of the Agency, amend the Prohibited List.
- (2) When amending the Prohibited List, the Minister may only add to the List an investment activity that is prohibited but must not remove an investment activity from the Prohibited List.

Division 2 Reserved List

19 Reserved List

The Reserved List of investment activities is set out in Part 2 of the Schedule.

20 Amendment of the Reserved List

- (1) The Minister may, by Order, on the advice of the Agency and with the approval of the Council of Ministers, amend the Reserve List.
- (2) Subject to section 24, the Minister when amending the Reserved List, may only add to the list an investment activity that is reserved but must not remove an investment activity from the Reserved List.

21 Review of Reserved List

- (1) The Agency must, at least once in every 2 years:
 - (a) review the Reserved List by assessing each investment activity specified in the Reserved List; and
 - (b) advise the Minister whether or not, an investment activity should remain on the Reserved List.
- (2) A foreign investor who holds an investment registration certificate may continue to carry out the investment activity authorised by that certificate, even if the investment activity is later added to the Reserved List.

22 Public consultation

In conducting a review, the Agency is to conduct a public consultation to include relevant opinions from the State, Municipal Councils and Provincial Government Councils, private sector bodies and non-government organisations, and is to include the outcomes of that review in its advice to the Minister.

23 Recommendation from individual to review Reserved List

- (1) A person may, at any time, in writing to the Board, recommend a review of the Reserved List.
- (2) The person must specify his or her reasons for recommending the review.
- (3) If a person makes a recommendation under subsections (1) and (2), the Board is to consider the recommendation and determine whether or not to carry out a review for the reasons specified in the recommendation.

24 Report on review of Reserved List

On the conclusion of a review under this Division, the Board is to provide a report to the Minister detailing the conduct and outcome of the review and is to advise the Minister on which reserved activities should be included in or omitted from, the Reserved List.

25 Requirement for investment activity to remain on Reserved List

An investment activity must not remain on, or must not be added to, the Reserved List:

- (a) unless, at least one citizen of Vanuatu, whether by himself or herself, is:
 - (i) a member of a joint venture; or
 - (ii) a partner in a partnership or
 - (iii) a trustee ; or
 - (iv) an agent or employee; orand carries out the investment activity in Vanuatu; and
- (b) unless, at least 10 business operations carry out the investment activity in Vanuatu; and
- (c) if it is carried on as a business or part of a business that produces or supplies goods or services which are used regularly by, or are otherwise important for the operation of, other businesses in Vanuatu.

Division 3 Restricted List

26 Restricted List

- (1) The Restricted List of investment activities is set out in Part 3 of the Schedule.
- (2) An investment activity on the Restricted List is to be defined by reference to all or any of the following:
 - (a) the possession of a valid business licence issued under the Business Licence Act [CAP 249];
 - (b) a minimum level of financial commitment made to undertake the investment activity;
 - (c) a minimum number of local citizens are employed by the investment;
 - (d) such other criteria as prescribed by the Regulations.

27 Amendment of the Restricted List

The Minister may, by Order, on the advice of the Agency and with the prior approval of the Council of Ministers, amend the Restricted List.

28 Review of the Restricted List

- (1) The Agency must at least once in every 2 years:
 - (a) review the Restricted List by assessing each investment activity specified in the Restricted List; and
 - (b) advise the Minister whether or not, the investment activity should remain on the Restricted List.
- (2) A foreign investor who holds an investment registration certificate may continue to carry out the investment activity authorised by that certificate, even if the investment activity is later added to the Restricted List.

29 Public consultation

In conducting a review, the Agency is to conduct a public consultation to include relevant opinions from the, State, Municipal Councils, Provincial Government Councils, private sector bodies and non-government organisations, and is to include the outcomes of that consultation in its advice to the Minister.

30 Recommendation from individual to review Restricted List

- (1) A person may at any time, in writing to the Board, recommend a review of the Restricted List.
- (2) The person must specify his or her reasons for recommending the review.
- (3) If a person makes a recommendation under subsections (1) and (2), the Agency is to consider the recommendation and determine whether or not to conduct a review for the reasons specified in the recommendation.

31 Report on review of Restricted List

On the conclusion of a review under this Division, the Board is to provide a report to the Minister detailing the conduct and outcome of the review and is to advise the Minister on which restricted activities should be included in or omitted from the Restricted List.

32 Requirement for investment activity to remain on Restricted List

An investment activity must not remain on, or must not be added to, the Restricted List:

(a) unless, at least one citizen of Vanuatu, whether by himself or herself, is:

(i) a member of a joint venture; or

(ii) a partner in a partnership or

(iii) a trustee ; or

(iv) an agent or employee; or

carries out the investment activity in Vanuatu; and

(b) unless, at least 10 business operations carry out the investment activity in Vanuatu; and

(c) if it is carried on as a business or part of a business that produces or supplies goods or services which are used regularly by, or are otherwise important for the operation of, other businesses in Vanuatu.

33 Reviews of the Reserved and Restricted Lists

(1) The reviews and reports required to be conducted under this Part are to be done simultaneously.

(2) An activity that is to be included in the Prohibited List, Reserved List or the Restricted List must be defined by its description in the Standard International Trade Classification system maintained by the Department of Statistics.

PART 4 REGISTER OF FOREIGN INVESTMENT

34 Register of Investment Activities

- (1) The Chief Executive Officer is to maintain a Register of Investment Activities which are being carried out by foreign investors.
- (2) The Chief Executive Officer is to:
 - (a) keep the Register in any form (including an electronic form) or combination of forms as he or she considers appropriate; and
 - (b) subject to subsection (3), record the information in the Register in the manner prescribed in the Regulations.
- (3) The Chief Executive Officer must not record information in the Register in a manner that discloses details of the investments and business operations of a foreign investor that are, in the Chief Executive Officer's opinion, commercially sensitive.
- (4) The Chief Executive Officer is to make the Register available for inspection by members of the public during the opening hours of the office.
- (5) A person may upon paying the prescribed fee, obtain a copy of, or extract from, information recorded in the Register.

35 Annual surveys by foreign investors

A foreign investor who carries on an investment activity must, within 2 months after the end of a financial year:

- (a) complete an annual survey in the prescribed form, relating to the carrying out of the investment activity in Vanuatu during the financial year; and
- (b) provide a copy of the survey to the Chief Executive Officer.

36 Annual reporting by Chief Executive Officer

- (1) The Chief Executive Officer must, within 3 months after the end of a financial year:

- (a) make an annual report on the following:
 - (i) the administration of this Act during the financial year; and
 - (ii) the carrying out of investment activities by foreign investors in Vanuatu during the financial year; and
 - (b) provide a copy of the report to the Board to consider.
- (2) After considering the Report, the Board is to provide a copy of the report to the Minister, within 4 months after the end of the financial year.
- (3) When making the annual report, the Chief Executive Officer:
- (a) is to consider and take into account the annual survey received under section 35; and
 - (b) must not specify information in the report in a manner that identifies a foreign investor or discloses the details of the investments or business operations of a foreign investor.
- (4) The Minister must, table a copy of the report at the next session of Parliament, after receiving the report.

PART 5 REGISTRATION OF INVESTMENT ACTIVITIES

Division 1 General matters

37 Purpose of registration

The purpose of registering an investment activity is to:

- (a) ensure that foreign investors do not carry out prohibited or reserved activities; and
- (b) ensure that foreign investors do not carry out a restricted activity without the approval of the Chief Executive Officer; and
- (c) ensure that foreign investors are entitled to benefit from the investment guarantees set out in Part 7; and
- (d) ensure that foreign investors are able to benefit from the facilitation services and support of the Agency; and
- (e) facilitate the monitoring of the carrying out of investment activities by foreign investors.

38 Requirement for and effect of registration

(1) This section:

- (a) is subject to subsection 41(2); and
- (b) prevails if there is an inconsistency between this section and any other provision of this Act or any other Act.

(2) The requirement to register investment activities under this Part is:

- (a) in addition to the requirements imposed in respect of investment activities under any other law of Vanuatu; and
- (b) the first requirement under the law of Vanuatu which a foreign investor who intends (whether by himself or herself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise) to carry out an investment activity in Vanuatu must comply with.

- (3) A foreign investor must not:
- (a) carry out an investment activity; or
 - (b) enter into any arrangement, agreement or memorandum of understanding relating to the carrying out of the investment activity; or
 - (c) take any steps to comply with the requirements under any other Acts to become authorised to carry out the investment activity,
- without a valid certificate of registration issued under this Act.
- (4) To avoid doubt, upon receiving a certificate of registration, a foreign investor who intends to carry out an investment activity specified in the certificate of registration may:
- (a) enter into any arrangement, agreement or memorandum of understanding relating to the carrying out of that investment activity; and
 - (b) commence taking steps to comply with the requirements under any other Acts (other than this Act) to become authorised to carry out the investment activity.
- (5) A permit, licence or authorisation issued under any other Acts to a foreign investor in respect of an investment activity (whether commenced or to be commenced) has no effect unless the foreign investor holds a certificate of registration for that investment activity.

39 Limitations on effect of registration

The registration of an investment activity under this Act does not operate to:

- (a) relieve a foreign investor carrying out the investment activity from complying with any other Act; or
- (b) grant or entitle a foreign investor carrying out the investment activity to any benefits under any other Act.

40 General principles relating to certificate of registration

- (1) A certificate of registration may be issued for more than one investment activity.
- (2) A foreign investor may hold more than one certificate of registration at any one time.

Division 2 Registration

41 Application for registration

- (1) A foreign investor who intends to carry out an investment activity in Vanuatu is to apply to the Chief Executive Officer to register the investment activity or activities.

- (2) If a body corporate that:

- (a) is established, registered or incorporated in Vanuatu; and
- (b) carries out an investment activity (whether by itself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise),

becomes a foreign investor because of a change in its membership or shareholding, and continues to carry out the investment activity, that body corporate must apply to the Chief Executive Officer to register the investment activity.

42 Form of application

- (1) An application under subsection 41(2) is to:
 - (a) be made in the prescribed form; and
 - (b) be accompanied by the prescribed fee .
- (2) The application must:
 - (a) specify each investment activity to be registered; and
 - (b) specify the name of the foreign investor; and

- (c) specify the postal address of the foreign investor; and
- (d) specify the business name or intended business name (if known) under which the foreign investor will carry out each investment activity; and
- (e) specify the address of the premises where the foreign investor intends to carry out each investment activity (if known); and
- (f) specify the name of the foreign investor's representative in Vanuatu (if any) and the address for service of notices and other documents on the foreign investor; and
- (g) describe the investment and business operations relating to each investment activity the foreign investor is proposing to undertake in Vanuatu; and
- (h) state that the foreign investor:
 - (i) is not bankrupt under the law of any foreign country; or
 - (ii) has not applied to take relief under a law of any foreign country for the relief of bankruptcy or insolvent debtors; or
 - (iii) has not compounded any debts or entered into an arrangement with any creditors in any foreign country; and
- (i) state that:
 - (i) the foreign investor has not been convicted of an offence for which the maximum penalty is imprisonment for 12 months or more by a Court in any country, in the last 15 years from the date of the application; and
 - (ii) there are no criminal proceedings pending or being brought against the foreign investor in any foreign country for an offence referred to in subparagraph (i); and
- (j) state that the information contained in the application is true and correct.

43 Preliminary assessment of application and foreign investor

- (1) The Chief Executive Officer must, as soon as practicable after receiving an application, assess the application to determine whether the application contains all the information required under section 42 and whether the information specified is sufficient for determining the nature of each investment activity specified in the application.
- (2) If the Chief Executive Officer is not satisfied that:
 - (a) the application contains the information required under section 42;
or
 - (b) the information contained in the application is sufficient for determining the nature of each investment activity,he or she may request the foreign investor to provide additional information to complete the application or determine the nature of each investment activity (as the case requires).
- (3) A foreign investor must comply with the request by the Chief Executive Officer under subsection (2), to provide additional information.
- (4) The Chief Executive Officer may request a foreign investor to provide him or her with the written consent or a signed authorization as is necessary for carrying out investigations or making inquiries in relation to the application.
- (5) The Chief Executive Officer is to accept an application and issue to a foreign investor a dated receipt for the application upon:
 - (a) receiving the additional information requested under subsection (2) (if any); and
 - (b) being satisfied that the application is complete and contains sufficient information for determining the nature of each investment activity.
- (6) If an investment proposal is above the value of VT1 billion or is in need of Government support, a Council of Minister's decision must be sought before giving approval.

44 Consideration of application

- (1) The Chief Executive Officer must, within 10 days after issuing a dated receipt referred to in subsection 43(5):
- (a) consider the application for the purposes of:
 - (i) determining the nature of each investment activity specified in the application, including, in particular, whether carrying out the investment activity would involve carrying out a prohibited activity, a reserved activity or a restricted activity; and
 - (ii) deciding whether to register or refuse to register each investment activity; and
 - (b) give written notice to the foreign investor stating, in respect of each investment activity specified in the application:
 - (i) whether the investment activity will be registered or not; or
 - (ii) that he or she is conducting consultations regarding the nature of the investment activity and will notify the foreign investor of his or her decision whether to register or to refuse to register the investment activity as soon as practicable.
- (2) If the Chief Executive Officer gives notice under subparagraph (1)(b)(i), he or she must as soon as practicable after giving the notice and subject to section 45, register or refuse to register the investment activity.

45 Registration of investment activity

- (1) The Chief Executive Officer is to register an investment activity specified in an application made under section 41:
- (a) if it does not involve carrying out a prohibited activity or a reserved activity; and
 - (b) if it involves carrying out a restricted activity, subject to the foreign investor complying with specified conditions in respect of the restricted activity specified on the certificate of registration; and

- (c) if the Chief Executive Officer is satisfied that the conditions prescribed in the Regulations have been complied with by the investor.
- (2) The Minister may by Regulation, prescribe the conditions provided under paragraph (1)(c), which are to include:
- (a) the nature and length of business experience of the investor; and
 - (b) a minimum level of funds.
- (3) If the Chief Executive Officer refuses to register an investment activity, the notice to the foreign investor under subparagraph 44(1)(b)(i) is to specify the reasons for the refusal and advise the foreign investor of his or her right of review under 52.
- (4) When registering an investment activity, the Chief Executive Officer is required to:
- (a) record the prescribed information relating to the investment activity in the Register; and
 - (b) issue to the foreign investor a certificate of registration for the investment activity.

46 Form and content of certificate of registration

- (1) The certificate of registration is to be in the prescribed form.
- (2) Without limiting subsection (1), the certificate of registration is to:
- (a) specify the certificate reference number; and
 - (b) specify the investment activity or investment activities for which the certificate is issued; and
 - (c) specify the name of the foreign investor to whom it is issued; and
 - (d) specify the business name (if any) under which the foreign investor carries out each investment activity; and

- (e) if the specified investment activity is on the Restricted List and includes a geographical restriction - specify the address of the premises in Vanuatu where the foreign investor carries out each restricted activity; and
- (f) specify the prescribed details (if any); and
- (g) be signed and dated by the Chief Executive Officer and bear the Chief Executive Officer's official stamp.

47 Amendment of registration of investment activity

- (1) Subject to this section, the Chief Executive Officer may amend:
 - (a) an entry in the Register relating to an investment activity; or
 - (b) a certificate of registration issued for an investment activity.
- (2) The Chief Executive Officer may amend the Register or a certificate of registration by correcting any of the following details specified in the Register or on the certificate of registration if he or she is satisfied that it contains an error on the following:
 - (a) the name of the foreign investor carrying out the investment activity; or
 - (b) the business name (if any) under which the foreign investor carries out the investment activity; or
 - (c) if the specified investment activity is on the Restricted List and includes a geographical restriction - the address of each premises where the foreign investor carries out the restricted activity; or
 - (d) any other details as may be prescribed.
- (3) If a foreign investor to whom a certificate of registration has been issued, changes any of the following details:
 - (a) the business name (if any) under which the foreign investor carries out the investment activity; or

- (b) if the specified investment activity is on the Restricted List - the address of a premises where the foreign investor carries out a restricted activity; or
- (c) the address for service of notices and other documents on the foreign investor; or
- (d) any other details as may be prescribed,

he or she must, notify the Chief Executive Officer of the change within 25 days after the change occurs.

- (4) A foreign investor who fails to notify the Chief Executive Officer of a change of a detail specified in subsection (3), commits an offence punishable on conviction:
 - (a) in the case of an individual - by imprisonment for not more than 3 years, or a fine not exceeding VT1,000,000, or both; or
 - (b) in the case of a body corporate – by a fine not exceeding VT2,000,000.
- (5) The foreign investor’s notification under subsection (3), is to be made in the prescribed form.
- (6) This section does not apply if a foreign investor to whom a certificate of registration has been issued intends to:
 - (a) change the details specified in the Register relating to an investment activity for which the certificate of registration was issued, or specified on the certificate of registration, other than the details referred to in subsection (3); or
 - (b) carries out an investment activity that is not specified on the certificate of registration.
- (7) A foreign investor referred to in subsection (6) is to apply under section 41 for a new certificate of registration.
- (8) The Minister may, by Order, prescribe the manner in which the Chief Executive Officer is to amend the certificate of registration.

- (9) A foreign investor expanding his or her business activities in the form of variation for more than 3 times must enter into joint partnership with a citizen of Vanuatu.

48 Conditions applying to registration

- (1) A foreign investor who has been registered under this Act is subject to the following conditions:
- (a) to implement proposed investment in accordance with business plan submitted with the application; and
 - (b) to properly keep financial and accounting records of the investment enterprise for accurate reporting during their renewal; and
 - (c) to facilitate Board and its employees when undertaking their monitoring services; and
 - (d) to provide employment to locals and capacity building; and
 - (e) to respond to any query from the Board or management in connection with the operations of the investment activity, within the period specified in a written notice to him or her.
- (2) The Minister may, on the recommendation of the Board, prescribe further conditions for registration under this Act.

49 Cancellation of certificate of registration

- (1) The Chief Executive Officer may cancel a certificate of registration of a foreign investor if the foreign investor:
- (a) carries out a prohibited activity or a reserved activity; or
 - (b) carries out a restricted activity other than in accordance with the conditions specified in the certificate of registration; or
 - (c) has not commenced carrying out an investment activity specified in the certificate of registration within 12 months after he or she received the certificate of registration; or

- (d) fails to comply with the conditions for registration set out under section 48; or
 - (e) applies in accordance with subsection 47(7) for a new certificate of registration to replace the certificate of registration and the Chief Executive Officer issues a new certificate of registration to the foreign investor; or
 - (f) obtained the certificate by fraud, misrepresentation, misstatement or omission of a particular material; or
 - (g) has committed an offence against this Act or any other Act relating to an investment activity specified on the certificate of registration, for which the maximum penalty is imprisonment for 12 months or more; or
 - (h) has been deported from Vanuatu under an order of a competent Court; or
 - (i) fails to complete and submit an annual survey to the Chief Executive Officer in accordance with 35.
- (2) The Chief Executive Officer must not cancel the certificate of registration unless:
- (a) the Chief Executive Officer is satisfied that there are grounds under subsection (1) for cancelling the certificate; and
 - (b) the Chief Executive Officer has requested the foreign investor to show cause why his or her certificate should not be cancelled and gives him or her not less than 10 days to respond to the request; and
 - (c) the foreign investor's response (if any) has not been made to the satisfaction of the Chief Executive Officer.
- (3) If, after complying with subsection (2), the Chief Executive Officer remains satisfied that there are grounds for cancelling the certificate of registration, he or she must cancel the certificate of registration and must, notify the foreign investor in writing that the certificate has been cancelled.

- (4) The Chief Executive Officer must specify the reasons for cancelling the certificate and advise the foreign investor of his or her right of review under section 52.

50 Effect of cancellation of certificate of registration

- (1) On the cancellation of a certificate of registration:
- (a) the investment activity or investment activities for which the certificate was issued is or are no longer registered under this Act; and
 - (b) the foreign investor to whom the certificate was issued is no longer authorised under this Act to carry out the investment activity and is to cease carrying out the investment activity or investment activities.
- (2) The Chief Executive Officer must inform all other authorities who have issued the investor with permits or licences including but not limited to the Department of Immigration Services, of the cancellation.
- (3) If there is a conflict between subsection (1) and any other provision of this Act or of any other Act, subsection (1) prevails.

51 Cessation or transfer of business

- (1) If a holder of a valid certificate of registration:
- (a) intends to cease activities at any of his or her place of business; or
 - (b) intends to cease or transfer his or her business,
- he or she must immediately give notice in writing to the Chief Executive Officer and the Board.
- (2) A person who fails to comply with subsection (1), commits an offence punishable on conviction:
- (a) in the case of an individual – by a fine not exceeding VT500,000; or

- (b) in the case of a body corporate – by a fine not exceeding VT1,000,000.

PART 6 DISPUTES

52 Review of certain decisions of Chief Executive Officer by Board

- (1) A foreign investor whose:
 - (a) application for registration of an investment activity or investment activities is refused under section 44 or 45; or
 - (b) certificate of registration is cancelled under section 49,may, subject to this section, apply to the Board to review the Chief Executive Officer's decision.
- (2) A foreign investor is to apply to the Board for review of the decision within 1 month after receiving the notice from the Chief Executive Officer of his or her decision to refuse to register an investment activity or to cancel the certificate of registration.
- (3) An application for review must:
 - (a) be made in the prescribed form; and
 - (b) be accompanied by the prescribed fee.
- (4) The Board must, within 2 months after receiving the application for the review, conduct and determine the review.
- (5) In conducting the review, the Board is to:
 - (a) act fairly and expeditiously; and
 - (b) give proper consideration to the issues brought before it.
- (6) In determining the review, the Board may in writing to the applicant:
 - (a) affirm the decision of the Chief Executive Officer; or
 - (b) revoke the decision of the Chief Executive Officer and make another decision under section 43, 44 or 49 on the matter brought before it..

- (7) In addition to subsection (6), the Board must specify the reasons for its decision to the applicant.
- (8) A decision taken by the Board under paragraph (6)(b), is final.

PART 7 INVESTMENT GUARANTEES

53 Promotion of Investment Guarantees

The Board and the Chief Executive Officer must ensure that this Act is administered in a manner that promotes the investment guarantees in this Part.

54 Guarantee against expropriation of property

Subject to this section, the Board and the Chief Executive Officer must ensure that the property of a foreign investor who is or has been issued with a certificate of registration under this Act is not being expropriated in an unlawful manner.

55 Treatment no less favourable

The Board and the Chief Executive Officer must ensure that a foreign investor is given treatment, after the issue of a valid certificate of registration, in respect of the establishment, expansion and operation of the investment and investment activity, no less favourable than that accorded to local investors in respect of a comparable investment and investment activity.

56 Free transfer of funds

- (1) A foreign investor, holding a valid certificate of registration, may transfer profits (including capital gains, dividends, royalties, loan payments and liquidations) in any currency, to any person inside or outside Vanuatu.
- (2) Subsection (1) does not limit the application of any other Act that requires the deduction withholding of any tax or levy from a payment to be made inside or outside Vanuatu.

57 Investment Disputes

- (1) A dispute involving a foreign investor who carries out an investment activity is to be dealt with under the laws of Vanuatu as if it were a dispute involving a citizen of Vanuatu.
- (2) So far as is not inconsistent with this Act or any other Act, the Convention of Settlement of Investment Disputes is to apply to the management and settlement of investment disputes under this Act.

PART 8 MISCELLANEOUS PROVISIONS

58 Serving of documents

A document that is required under this Act to be given to a person may be given to that person personally, by registered mail, by email or fax.

59 Issue of duplicate certificate of registration

The Chief Executive Officer may issue a duplicate of the certificate of registration to a foreign investor, if the Chief Executive Officer is satisfied that a certificate of registration issued to that foreign investor has been lost or destroyed.

60 Funds of the Agency

The funds of the Agency consists of:

- (a) grants appropriated by Parliament; and
- (b) grants received from the State and other sources; and
- (c) fees received by the Agency under this Act or the Regulations, which are deemed to be Public Money for the purposes of the Public Finance and Economic Management Act [CAP 244] and are appropriated for the use of the Agency; and
- (d) any other funds approved in writing, by the Minister of Finance and Economic Management.

61 Application of Funds

Subject to the Public Finance and Economic Management Act [CAP 244], the funds of the Agency are to be expended only on the following matters:

- (a) for expenses related to the implementation of the provisions of this Act; and
- (b) for payment of remuneration and allowances of the Chief Executive Officer, other staff and other persons employed under the provisions of this Act; and
- (c) for payment of sitting allowances for meetings of the Board; and

- (d) for such other purposes that are consistent with this Act as determined by the Chief Executive Officer after consultation with the Board.

62 Books of account and audit

- (1) The Agency is to have the same fiscal year as the State.
- (2) The Agency is to maintain such books, records, and accounts in accordance with international accounting standards.
- (3) Books and records maintained by the Agency are to be kept by the Agency for a period of 6 years.
- (4) The Board and the Chief Executive Officer must ensure at all times that the Agency's books, records, and accounts, including financial statements, are prepared and maintained in conformity with international financial reporting standards, including the use of full accrual accounting on a daily basis.
- (5) The Board is to appoint a registered public auditor to control and audit its books, records, and accounts.
- (6) The Agency is to publish before the end of April each year, the annual audited statements as signed by the Chief Executive Officer and approved by the Board.
- (7) Financial statements published under subsection (6), must show the complete financial condition and performance of the Agency as of the last business day of the preceding fiscal year.

63 Offence of providing false or misleading statement

- (1) A person must not knowingly make a statement that is false and misleading in a material particular:
- (a) in connection with an application, report, record, form, certificate or other document made, filed or kept under this Act; or
- (b) in connection with the operation of this Act.
- (2) A person who contravenes subsection (1), is guilty of an offence punishable on conviction:

- (a) in the case of an individual - by imprisonment for not more than 2 months or a fine not exceeding VT500,000, or both; or
- (b) in the case of a body corporate - by a fine not exceeding VT1,000,000.

64 Offence to disclose or improperly use information

- (1) A person who in the course of the administration of this Act, acquires information about another person's affairs or has custody of or access to a document containing information about another person's affairs, must not:
 - (a) conceal any record of, or a copy of a record of, the information; or
 - (b) show or give the record of, or a copy of the record of, the information to another person; or
 - (c) make available anything from which, by electronic process or otherwise, the information may be obtained by another person; or
 - (d) communicate the information in any other manner to another person; or
 - (e) improperly use the information to gain, whether directly or indirectly, an advantage for himself or herself or another person, to the detriment of the person to whom the information relates.
- (2) A person who contravenes subsection (1), is guilty of an offence punishable on conviction by a fine of VT500,000 or to imprisonment for period not exceeding 12 months or to both.
- (3) Subsection (1) does not apply if the person:
 - (a) is required to do so for the purposes of this Act or another Act; or
 - (b) is required to do so for the purposes of an investigation or prosecution of an offence against this Act or any other Act; or
 - (c) does so with the consent of the person to whom the information relates.

65 Protection from liability

- (1) A civil or criminal liability action is not to be taken against the Minister, Chief Executive Officer or a member of the Board in respect of anything done or omitted to be done by the Minister, Chief Executive Officer or member of the Board in good faith in the execution or purported execution of his or her functions or the exercise of his or her powers under this Act.
- (2) Subsection (1) does not affect any liability that the State would, apart from that subsection, have for the act or omission.

66 Regulations

- (1) The Minister may make Regulations, not inconsistent with this Act, prescribing matters that are:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may provide for:
 - (a) the forms to be used in connection with this Act; or
 - (b) the fees payable under this Act; or
 - (c) notifications to the Chief Executive Officer of investment activities recorded in the Register; or
 - (d) the threshold requirements of investments; or
 - (e) penalties for:
 - (i) offences against the Regulations not exceeding, if the offender is a natural person - VT1,000,000; or
 - (ii) if the offender is a body corporate - VT2,000,000.

PART 9 REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

67 Definitions

For the purposes of this Part:

approval certificate means an approval certificate granted under the repealed Act;

foreign investment means a foreign investment within the meaning of the repealed Act that was authorised by an approval certificate;

foreign investor has the same meaning as in the repealed Act.

investor means a person investing or intending to invest in Vanuatu (whether by himself, as a member of a joint venture, as a partner in a partnership, as a trustee or otherwise) who is:

- (a) a natural person whether a citizen of Vanuatu or another country; or
- (b) a body corporate which is established, registered or incorporated in Vanuatu or outside Vanuatu;

repealed Act means the Vanuatu Foreign Investment Promotion Act [CAP 248] repealed under section 68.

68 Repeal

The Vanuatu Foreign Investment Promotion Act [CAP 248] is repealed.

69 References to repealed Act

On and after the commencement of this Act, a reference in any Act, subsidiary legislation, an agreement, contract, agency or any other document to the repealed Act is to be taken as a reference to this Act.

70 Transitional provision on certificates of registration

- (1) A foreign investment activity carried out by a foreign investor that has been approved before the commencement of this Act, may continue to be carried out until:

- (a) the expiry of 12 months after the commencement of this Act; and
 - (b) the registration of each investment activity involved in the carrying out of the foreign investment.
- (2) The person who is employed as the Chief Executive Officer of the Foreign Investment Promotion Act immediately before the commencement of this Act continues to be employed as the Chief Executive Officer under this Act, on and after that commencement, on the same terms and conditions of employment with the same accrued and accruing entitlements.
- (3) A person who is employed as a staff of the Agency immediately before the commencement of this Act continues to be employed under this Act, on and after that commencement, on the same terms and conditions of employment with the same accrued and accruing entitlements.

71 Saving of reserved activities

- (1) This section applies despite any provision of this Act to the contrary.
- (2) Unless inconsistent with this Act, all Regulations, Orders and Notices made under the repealed Act remain in force as if they were made under this Act.
- (3) If, immediately before the commencement of this Act, a foreign investor carried on a foreign investment that is provided for under this Act as a reserved or restricted activity, the foreign investor may, on and after that commencement, continue to carry on that activity as if it were not a reserved or restricted activity, but only for as long as he or she continues to operate the enterprise that comprises the foreign investment as authorised under the repealed Act.
- (4) For the purposes of subsection (2), this Act applies, and has effect, in relation to the activity referred to in that subsection as if it were not a reserved or restricted activity.

72 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

PART 1: PROHIBITED LIST

- 1 Manufacture of nuclear weapons
- 2 Manufacture of chemical weapons
- 3 Arms manufacture
- 4 Dumping or storage of nuclear waste
- 5 Dumping or storage of toxic chemicals

PART 2: RESERVED LIST

Number	Activity
1	Export of sandalwood in stick and chips form harvested from natural forest
2	Local trading of sandalwood harvested from natural forest
3	Export of seeds and other minor forest products harvested from natural forest
4	Second hand clothing shops
5	Export of kava in root, chips and stick form
6	Manufacture of handicraft and artefacts
7	Kava bar
8	Open air vendors, door to door sales and mobile shops
9	Road transport operators: the provision of any taxi or bus service, including airport road transfers and any other road transport service involving the guest of a hotel or other accommodation business
10	Private security services including security guards
11	Electricians and electro-technicians
12	Commercial fishing within Vanuatu's inshore waters as defined by the Maritime Zones Act [Cap. 138] (i.e. archipelagic waters including first 6 nautical miles from land)
13	Commercial culture feasts
14	Residential building and construction
15	Small scale production of sawn timber from natural forest using a portable sawmill (i.e. can be physically moved from one location to another in the forest)

PART 3: RESTRICTED LIST

Number	Activity	Threshold Level
1	Tour agent (business that sells tourism services) if the annual turnover is less than VT 20 million	Annual sales turnover of 20 million vatu
2	Tour operator (business that packages two or more travel services into a single product for the consumer i.e. transport, accommodation, meals, entertainment, sightseeing if the investment is less than VT 50 million	Investment of 20 million vatu
3	Guest House (business that provides simple accommodation using private or semi-private rooms and offers limited guest services)	50 beds or 10 rooms or annual sales turnover of 20 million vatu
4	Bungalows (business that provides island-style accommodation in detached or semi-detached dwellings)	Annual sales turnover of 30 million vatu
5	Hotels and Motels (business that provides accommodation using private rooms and offers amenities such as food, alcohol and other guest services)	Investment of 10 million vatu or annual sales turnover of 20 million vatu
6	Retail shops including general merchandise trading shops (excluding speciality shops)	Annual sales turnover of 30 million vatu
7	Coastal shipping (excluding vessels that exclusively provide transport to foreign tourists)	Vessel size with carrying capacity of 80 tonnes
8	Any of the following professional or business services: <ul style="list-style-type: none"> • Real estate agent • Property manager • Land and property developer • Legal practitioner • Accounting practitioner • Engineering practitioner and services • Architectural practitioner and services • Surveyor and draftsman • Core drilling, assaying 	Annual sales turnover of 5 million vatu

SCHEDULE
PART 3: RESTRICTED LIS

Number	Activity	Threshold Level
	<p>geological and prospecting support services</p> <ul style="list-style-type: none">• Business and financial services and consultants• Book keeping services• Management services and consultants• Advertising and marketing services and consultants• Photocopying and duplicating services• Typing and secretarial services• Language translation and interpreting services• Business security and protective services• Debt collection and credit rating services• Other business and administrative services and agencies	