

**REPUBLIC OF VANUATU**

**BILL FOR THE**

**VANUATU NATIONAL PROVIDENT FUND (AMENDMENT)**

**ACT NO.      OF 2020**

**Explanatory Note**

This Bill amends the Vanuatu National Provident Fund Act (“the Fund”) [CAP 189] (“the Act”).

Since the establishment of the Act in 1987, the Act has undergone only one amendment in 2007. With the experiences and bad management resulting in the financial losses, a Commission of Inquiry was carried out in 2016, to investigate the alleged mismanagement, illegal and improper conduct of the past and present staff of the Fund. In the report produced from the Commission of Inquiry, there are some key recommendations for amendments in the Act.

This Bill comes to provide for the amendments in the Act as recommended in the report. In addition, some of the amendments are also necessary as the Act is outdated, and silent and restrictive on issues affecting the Fund. The amendments will also address other loop holes identified in the implementation of the Act.

This Bill also supports the Government’s ongoing initiatives to achieve the objectives of the National Sustainable Development Plan, particularly to create stability of an economy on the equitable and sustainable growth to create jobs and income earning opportunities, that is accessible to all people in rural and urban areas.

Some of the main features of this Bill are:

- (a) to provide for the appointments and functions of the Board; and
- (b) to establish other Committees to assist the Board in carrying out its functions; and
- (c) to provide guidelines for the investment of monies of the Fund; and
- (d) to provide for the duties of the Fund as the trustee; and
- (e) to provide for the rate of the interest payable to the Fund; and
- (f) to provide for the registration of employers and employees; and

- (g) to provide for the partial withdrawal of credit from the Fund at the age of 47 years;  
and
- (h) to provide for offences and penalties under the Act.

**Minister of Finance and Economic Management**



**REPUBLIC OF VANUATU**

**BILL FOR THE  
VANUATU NATIONAL PROVIDENT FUND  
(AMENDMENT)  
ACT NO. OF 2020**

**Arrangement of Sections**

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# REPUBLIC OF VANUATU

## **BILL FOR THE VANUATU NATIONAL PROVIDENT FUND (AMENDMENT) ACT NO. OF 2020**

An Act to amend the Vanuatu National Provident Fund Act [CAP 189].

Be it enacted by the President and Parliament as follows-

### **1 Amendment**

The Vanuatu National Provident Fund Act [CAP 189] is amended as set out in the Schedule.

### **2 Commencement**

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

## SCHEDULE

### AMENDMENTS OF VANUATU NATIONAL PROVIDENT FUND ACT [CAP 189]

#### **1 Section 1 (Definition of “existing scheme”)**

Repeal the definition.

#### **2 Section 1**

Insert in its correct alphabetical positions:

““closely associated or affiliated with a political party” means a person who is a sponsor, an executive member or a political appointee of a political party;

“informal sector” means persons who are self-employed;”

#### **3 Subsection 3(1)**

Repeal the subsection, substitute

“(1) The Board consists of the following members:

- (a) 2 persons representing employers who are to be nominated as follows:
  - (i) a person nominated by the Chairperson of the Vanuatu Chamber of Commerce; and
  - (ii) a person nominated by the Chairperson of the Vanuatu Non-Government Organisations;and
- (b) 3 persons representing employees who are to be nominated as follows:
  - (i) a person nominated by the Workers Union; and
  - (ii) a person nominated by the Director of Cooperatives and Ni-Vanuatu Business; and

- (iii) a person representing the informal sector, nominated by a majority of the members of that sector who are members of the Fund; and
  - (c) 2 persons representing the Government, who must be a Director General and a senior public servant, nominated by the Minister after consultation with the Council of Ministers; and
  - (d) the General Manager.
- (1A) The Minister is to appoint the persons nominated under paragraphs (a), (b) and (c).”

**4 Subsection 3(2)**

After “determine”, insert “and may be reappointed”

**5 Subsections 3(2A), (3) and (4)**

Delete “subsection (1)(a)”, substitute “subsections (1),(a),(b) and (c)”

**6 Paragraph 3(2A)(f)**

Delete “.”,insert “; or

- (g) is a person who is closely associated or affiliated with a political party.”

**7 Subsection 3(2B)**

Repeal the subsection, substitute

“(2B) A person appointed under paragraph3(1)(a), (b) or (c)must have 5 years or more work experience.”

**8 Subsection 3(2C)**

Repeal the subsection.

**9 Paragraph 3(3)(i)**

Delete “or”

**10 Paragraph 3(3)(j)**

After “;”, insert “or

- (k) is a person who is closely associated or affiliated with a political party,”

**11 Subsection 3(3)**

Delete “may”, substitute “is to,”

**12 After section 4**

Insert

**“4A Functions of the Board**

- (1) The Board is responsible for the efficient and proper management and control of the monies of the Fund.
- (2) Without limiting subsection (1), the Board has the following functions:
- (a) to approve the following documents of the Fund which are to be prepared by the General Manager:
- (i) the strategic plan; and
  - (ii) the annual budget; and
  - (iii) the annual implementation plan; and
  - (iv) the annual report on the operations of the Fund; and
  - (v) any donor report; and
  - (vi) the organizational structure of the Fund; and
- (b) to approve the Policies and Operations Manual of the Fund, which must be consistent with this Act, and which must specify the following matters:
- (i) the project or scheme selection and prioritization criteria; and

- (ii) the Fund’s interest rate structure in respect to loans, types of financial products, criteria for their selection and their terms and conditions; and
  - (iii) any other matters relating to the objectives of the Fund; and
  - (iv) the investments of the Fund; and
- (c) to collect contributions; and
  - (d) to distribute contributions to members’ accounts; and
  - (e) to invest contributions according to the investment guidelines; and
  - (f) to collect revenue through rental, dividends or any other business or investments; and
  - (g) to invest in equity, direct loans and other investments as approved by the Board; and
  - (h) to carry out any other functions that are necessary or required to be carried out for the purposes of this Act.”

**13 Subsection 7A(1)**

Delete “other”, substitute “direct or indirect”

**14 After paragraph 7A(2)(c)**

Insert

- “(ca) contracts, arrangements or understandings, whether formal or informal, and whether or not enforceable;”

**15 At the end of section 7A**

Add

- “(6) If a member fails to disclose his or her direct or indirect financial or personal interest in a matter that the Board has made a decision on, and the direct or indirect financial or personal interest comes to the attention of the Board, the Chairman or Deputy Chairman must, as soon as practicable, call a meeting to revise that decision.



- (7) A member of the Board who contravenes this section, commits an offence punishable on conviction by a fine not exceeding VT1,000,000 or imprisonment for a term not exceeding 12 months, or both.
- (8) For the purpose of this section, “immediate family” includes:
- (a) spouse, child or parent of a member of the Board; or
  - (b) a company and its subsidiaries of which a member of the Board is a director or executive officer; or
  - (c) a company for which a spouse, child or parent of a member of the Board is a director or executive officer; whether those related parties own, control, or exercise voting powers.”

**16 After section 7A**

Insert

**“7B. Sitting Allowance**

- (1) The members of the Board including the Chairman and the Deputy Chairman are entitled to a sitting allowance for each day in which the Board sits for a meeting.
- (2) The Minister is to prescribe, by Order, the amount of the sitting allowance.”

**17 Subsection 8(1B)**

Repeal the subsection, substitute

“(1B) The appointment of the General Manager must follow a fair and transparent selection process and must be based on merit.”

**18 Section 9**

Repeal the section, substitute

**“9. Other Staff**

- (1) The General Manager may, after consultation with the Board, employ other staff of the Fund, as he or she considers necessary, for the proper and efficient performance of the functions of the Board and the Fund.

- (2) The General Manager is to determine the terms and conditions of the employment of other staff.
- (3) The appointment of other staff must follow a fair and transparent selection process and must be based on merit.”

**19 After section 9**

Insert

**“9A. Other Committees**

- (1) The Board may establish other Committees to assist the Board in carrying out its functions under this Act.
- (2) The Board is to determine the functions and procedures of these other Committees.”

**20 Section 11**

Delete “A member must be paid a sitting allowance of VT 20,000 per day or part day (as the case may be) for attending meetings of the Board.”

**21 Section 15**

Repeal the section, substitute

**“15. Board to be the trustee of the Fund**

- (1) The Board is to be the trustee of the Fund.
- (2) Without limiting the duties of a trustee, the Board has the following duties:
  - (a) to acquaint themselves fully with the terms of the Trust; and
  - (b) to ensure that the trust property is vested according to the terms of the Trust; and
  - (c) to manage the trust property in a prudent, competent and professional manner; and
  - (d) to preserve the trust property; and

- (e) to establish and implement appropriate and effective governance systems and processes for the Trust; and
- (f) to act impartially in relation to the Trust; and
- (g) to manage the affairs of the Trust in an efficient and effective manner
- (h) to uphold their fiduciary duty towards the beneficiaries; and
- (i) to administer the Trust solely in the interest of the beneficiaries and must not place its interest in conflict with beneficiaries; and
- (j) to not profit personally from its role as trustees other than a fee, which it may receive for its trusteeship; and
- (k) to exercise reasonable care; and
- (l) to keep updated accounts; and
- (m) to provide information to beneficiaries.”

## **22 Section 16**

Repeal the section, substitute

### **“16. Investment of monies of the Fund**

- (1) Subject to section 16B, the monies of the Fund are to be invested by the Board according to the investment guidelines.
- (2) The Minister may, by Order, after consultation with the Reserve Bank of Vanuatu and relevant officials from the Government, approve the investment guidelines.
- (3) The investment guidelines must provide for the following:
  - (a) the interests of members of the Fund; and
  - (b) the needs for assisting the financing of balanced social and economic development; and

- (c) the need for a balanced portfolio bearing in mind the need for sufficient Vatu liquidity, prudent diversification and rates of returns on the various sources of investment.
- (4) The Board must ensure that an investment complies with the following:
- (a) the investment guidelines; and
  - (b) the prudential standards in place from time to time; and
  - (c) the portfolio composition; and
  - (d) the diversification; and
  - (e) the expected rates of return and the associated risks; and
  - (f) the Fund liquidity; and
  - (g) such other matters as the Board considers appropriate for the prudent management of the investment.
- (5) The Board is to review the investment guidelines each year.”

**23 After subsection 16AB(1)**

Insert

“(1A) The Board is to determine the terms and conditions of appointment of the Funds Manager.”

**24 At the end of section 16AB**

Add

“(5) The appointment of the Funds Manager must follow a fair and transparent selection process and must be based on merit.”

**25 After section 16AB**

Insert

**“16AC. Removal of Funds Manager**

- (1) The Board may remove a Funds Manager if it breaches a term or condition of its appointment.
- (2) If the Funds Manager is removed under subsection (1), the Funds Manager must return monies belonging to the Fund immediately.”

**26 Subsection 17(1)**

Repeal the subsection, substitute

- “(1) The Board may declare any amount of rate of interest payable by the Fund annually to the members.”

**27 Subsection 17(2)**

Delete “(a) or (1)(b)”

**28 Subsections 17(3), (4) and (5)**

Repeal the subsections.

**29 Subsection 21(1)**

Delete “Auditor General thereon, to the Minister and to the Minister responsible for finance”, substitute “auditor appointed under subsection 20(2), to the Minister”

**30 After section 21**

Insert

**“21A. Offence and penalty**

If a person contravenes any provision of Part 3, the person commits an offence punishable on conviction:

- (a) in the case of an individual - by a fine not exceeding VT5,000,000 or by imprisonment to a term not exceeding 2 years, or both;
- (b) in the case of a body corporate - to fine not exceeding VT10,000,000.”

**31 Section 23**

Repeal the section, substitute

**“23. Registration of employees**

Every employer must register his or her employee with the Board as a member of the Fund in the manner approved by the Board.

**23A. Registration of a self-employed person**

A person who is self-employed and who intends to be a member of the Fund may apply to the Board to be registered as a member of the Fund, in the manner approved by the Board.”

**32 Paragraph 30(2)(b)**

Delete “section 17(1)(b)”, substitute “subsection 17(1)”

**33 Paragraph 30(3)(b)**

(a) Delete “interim”

(b) Delete “section 17(1)(a)”, substitute “subsection 17(1)”

**34 Subsection 30(4)**

Repeal the subsection.

**35 At the end of section 34**

Add

“(10) For the purpose of this section, “existing scheme” means any provident fund or pension or superannuation scheme set up before the date of commencement of this Act for the benefit of employees.”

**36 After section 39**

Insert

**“39A. Partial withdrawal of credit**

Despite section 38, a member may apply for the partial withdrawal of 50% of his or her credit from the Fund at the age of 47 years or more.”

**37 Subsection 44A(1)**

Delete “, being a scheme that is in existence when this section commences”

**38 Subsection 50(1)**

Delete “VT 100,000”, substitute “VT1,000,000”

**39 Subsection 50(2)**

Delete “VT 200,000”, substitute “VT2,000,000”

**40 Part 11(Heading)**

Delete “AND OFFICERS OF THE FUND”, substitute “, OFFICERS OF THE FUND AND VOLUNTARY AGENTS”

**41 After section 58**

Insert

**“58A. Obstructing inspectors in execution of their powers**

A person who, without lawful or reasonable excuse, hinders or obstructs any inspector in the performance of his or her powers under this Act, commits an offence punishable on conviction to a fine not exceeding VT1,000,000, or to a term of imprisonment not exceeding 1 year, or both.”

**42 After section 59**

Insert

**“59A. Voluntary agents**

- (1) The Board may enter into a Cooperation Agreement with an employer to become a voluntary agent of the Fund.
- (2) A voluntary agent is to assist the Fund to collect contributions of members who are self-employed.”

**43 Section 61**

Repeal the section.

**44 After Part 12**

Insert

**“PART 12A- MEMBER PROTECTION BENEFIT**

**62A. Member Protection Benefit**

- (1) The Member Protection Benefit is established.
- (2) The Member Protection Benefit provides for the following benefits for members:

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- (a) death benefits, and
- (b) medical benefits; and
- (c) housing benefits; and
- (d) agricultural protection benefits; and
- (e) natural disasters benefits; and
- (f) any other benefits as may be determined by the Board.”