

REPUBLIC OF VANUATU

BILL FOR THE

SMALL BUSINESS DEVELOPMENT

ACT NO. OF 2021

Explanatory Note

This Bill is to provide for a legal framework to assist in the registration and development of small businesses in Vanuatu.

For the purposes of this Bill, a small business means a business in which:

- (a) employs not more than 5 persons; and
- (b) has a gross annual revenue of not less than VT1,000,000 and not more than VT10,000,000.

The following are the key policy features of this Bill:

1 Lack of survey information on small business contribution to the economy

A survey undertaken by the Reserve Bank of Vanuatu in 2016 shows that there has been an increase in the number of small businesses in Vanuatu with a majority of them from the informal sector.

As most small businesses are within the informal sector, it is very difficult for the Government to properly calculate how much small business are contributing towards the development of the economy. Being unable to recognise the contribution of small business towards building the economy has resulted in the Government investing insufficient amount of its resources to assist with the development of small business in Vanuatu.

This Bill requires the compulsory registration of small businesses. This will allow Government to fully realise the contribution of small businesses towards the development of the economy and will justify the need for more resources towards the development of small businesses.

2 Government assistance towards small businesses

Given the recent effects of COVID-19 on the economic growth of Vanuatu, it is a priority of the Government to find more sustainable means of growing the economy. As small businesses are a big part of Vanuatu's economy, it is important that the Government plays an active role in assisting the development of these small businesses.

However, without a formal system to register and look into the operations of small businesses, the Government is unable to identify which small businesses need assistance and how to assist in their development.

This Bill, therefore, provides that the Government through the Department of Ni-Vanuatu Business, will be responsible for the monitoring the development of small businesses in Vanuatu. This will be done by looking into the books of small business and other operation matters of small business to best determine how the Government can assist with their development.

Furthermore, the Bill provides that the Minister may prescribe, on the advice of the Small Business Development Council, the types of incentives that the Government may provide for different types of small business, to assist with their development. Incentives to also include benefits from the Small Business Development Fund and the promotion of small business out from Micro, into Small, Medium and Large enterprise. These incentives are to assist and support small businesses to become more competitive and successful enterprise.

Once a small business is registered under this Bill, the Director may, after looking into the books and operations of that business, determine which of these incentives to provide to that small business.

3 Partnership between the Government and the private sector towards the development of small businesses

The private sector including banks, non-government agencies and other medium to large enterprises also affect the development of small business. To better assist the development of small business, the Government intends to work in close partnership with the private sector towards a coordinated approach in assisting small business.

As such the Bill also provides for the Government to provide incentives necessary to assist small businesses development to certain institutions within the private sector. For example, incentives may be given to medium sized businesses that sell dried kava to assist them in purchasing kava from small business owners. This will in effect result in better market access for small businesses and will lead to the development of those small businesses.

Minister of Tourism, Trade, Industry, Commerce and Ni-Vanuatu Businesses



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REPUBLIC OF VANUATU

BILL FOR THE SMALL BUSINESS DEVELOPMENT ACT NO. OF 2021

An Act to provide for the registration of small businesses and incentives to promote, encourage and support the small business sector and for related matters.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1 Interpretation

In this Act, unless the contrary intention appears:

certificate means a small business certificate issued under section 11;

Council means the Small Business Development Council established under section 3;

Department means the Department responsible for small business;

Director means the Director of the Department;

financial institution means any of the following:

- (a) any corporate body that carries on banking business under the Financial Institutions Act [CAP 254]; or
- (b) a savings and credit co-operative society registered under the Co-operative Societies Act [CAP 152]; or
- (c) any other credit institution declared by the Minister of Finance by Order to be a financial institution for the purposes of this Act;

Fund means the Small Business Development Fund established under subsection 17(1);

incentive means programs, funding, reward, training and any other assistance that the Government is able to provide for small businesses registered under this Act;

Minister means the Minister responsible for small business;

Ministry means the Ministry responsible for small business;

owner means a person who has established a small business;

Register means the Small Business Register established under section 16;

small business means a business that:

- (a) currently employs not more than 5 persons; and
- (b) has a gross annual revenue of:
 - (i) not less than VT1,000,000; and
 - (ii) not exceeding VT10,000,000.

2 Objectives of Act

The objectives of this Act are to:

- (a) promote, encourage, strengthen, develop and modernize small businesses in Vanuatu; and
- (b) provide a framework for the provision of incentives to small businesses; and
- (c) improve the understanding of the general public on how small businesses contribute to the economic growth of Vanuatu; and
- (d) strengthen the partnership between the Government and private sector agencies in promoting and facilitating the establishment of small businesses; and
- (e) increase the contribution of small businesses to Vanuatu's economic growth; and

- (f) ensure that small businesses comply with this Act or any other Act.

PART 2 THE SMALL BUSINESS DEVELOPMENT COUNCIL

3 Small Business Development Council

- (1) The Small Business Development Council is established.
- (2) The Council consists of 7 members.
- (3) The members of the Council are as follows:
 - (a) the Director; and
 - (b) the General Manager of the Chamber of Commerce; and
 - (c) the Chief Executive Officer of the Malvatumauri Council of Chiefs; and
 - (d) a representative of the Department of Local Authority nominated by the Director of Local Authority; and
 - (e) a representative from the Department of Industry nominated by the Director of the Department of Industry; and
 - (f) a representative from the Department of Customs nominated by the Director of Customs; and
 - (g) a representative of the Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity nominated by the Director General of the Ministry of Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity.
- (4) The members nominated under paragraphs (3)(d) to (g) are to be appointed by the Minister after consultation with the Director General of the relevant Ministry.
- (5) A member appointed under subsection (4) is to hold office for a term of 2 years and is eligible for reappointment for only 2 terms.

4 Chairperson and Deputy Chairperson of the Council

- (1) The Council is to elect from amongst its members, a Chairperson and a Deputy Chairperson.
- (2) The Chairperson and Deputy Chairperson are to hold office for a term of 1 year and may be re-elected.

5 Meetings of the Council

- (1) The Council is to meet at least 2 times a year and may hold such other meetings as are necessary for the proper performance of its functions.
- (2) The quorum of a meeting of the Council is 4 members present at the meeting.
- (3) The Chairperson is to preside at all meetings of the Council and in his or her absence, the Deputy Chairperson is to preside at these meetings.
- (4) The Council may meet despite any vacancies in its membership so long as a quorum is present.
- (5) If a member of the Council is for any reason unable to attend a meeting of the Council, he or she may nominate another person to represent him or her at a meeting of the Council.
- (6) A member present at a meeting has 1 vote and questions arising at a meeting are to be decided by a majority of votes and in the event of an equality of votes, the Chairperson will have a casting vote.
- (7) Subject to this Act, the Council is to determine and regulate its own procedures.

6 Sitting allowance

The Minister is to prescribe by Order, the sitting allowances of the members of the Council which must not exceed VT20,000.

7 Functions of the Council

The Council has the following functions:

- (a) to advise the Minister on matters which are of concern to small businesses;
and
- (b) to make recommendations to the Minister on matters relating to:
 - (i) the distribution of resources from the Fund; and
 - (ii) new or altered initiatives to support and promote the development of the small business sector in Vanuatu; and
- (c) such other functions as may be conferred on it under this Act or any other Act.

8 Powers of the Council

The Council has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

PART 3 REGISTRATION AND REGISTER OF SMALL BUSINESS

9 Registration of small business

- (1) A person must register his or her small business under this Act.
- (2) A person who contravenes subsection (1), commits an offence and is liable on conviction to a fine not exceeding VT500,000.

10 Application for registration

- (1) A person must apply to the Director for registration of his or her small business.
- (2) An application made under subsection (1), must:
 - (a) be in the prescribed form; and
 - (b) be accompanied with:
 - (i) a prescribed fee; and
 - (ii) such other particulars and supporting documents relating to the business as may be required by the Director.

11 Registration of a small business

- (1) The Director must, within 10 days after receiving an application made under section 10, make a decision as to whether or not to register that small business.
- (2) The Director must not issue a certificate to an applicant unless he or she is satisfied that the applicant:
 - (a) has been issued with a valid business license; and
 - (b) has included in his or her application a viable business plan; and
 - (c) has paid the prescribed fee.

- (3) If the Director decides to issue a certificate to an applicant, he or she must do so within 10 working days of making that decision.
- (4) A certificate must provide for the following matters:
 - (a) the incentives that the owner is entitled to receive in relation to his or her small business; and
 - (b) any other matters as prescribed under the Regulations.
- (5) A certificate issued under this section cannot be transferred or assigned to a new owner without the approval of the Director.

12 Term of registration

A registration of a small business under section 11 is valid for a term of 5 years from the date on which it is registered.

13 Conditions of registration

The Director may impose reasonable conditions on the registration of a small business.

14 Refusal to register a small business

If the Director refuses to issue a certificate he or she must, within 10 working days of making that decision, notify the applicant in writing and state the reasons for the decision.

15 Cancellation of registration

- (1) The Director may cancel the registration of a small business if:
 - (a) the applicant has provided false or misleading information; or
 - (b) the owner of a small business:
 - (i) breaches any condition of his or her registration; or
 - (ii) fails or refuses to submit information or interferes with or prevents an inspection or submission of information as required under section 20; or

- (c) the Director is notified that a small business has ceased to operate;
or
 - (d) the Director is satisfied that the business is no longer a small business as defined under section 1.
- (2) The Director must inform the owner of the small business of his or her decision to cancel a registration and must give the owner of the small business an opportunity to be heard, and to make representations, prior to cancelling the certificate.

16 Small Business Register

- (1) The Director is to keep and maintain a Register of small businesses.
- (2) The Register must contain the following information:
- (a) the name and address of each registered small business; and
 - (b) the date of application for registration; and
 - (c) the date of issuing a certificate under section 11; and
 - (d) the conditions, if any, attached to the certificate; and
 - (e) the date of commencement of operations of the small business; and
 - (f) any other information which the Director considers necessary.
- (3) The Director must update the Register at least once a year and ensure that the Register is available for inspection at the Department by any person during the ordinary hours of business.
- (4) The Director may supply a copy of the Register or a part of the Register to a person upon payment of a prescribed fee.

PART 4 SMALL BUSINESS DEVELOPMENT FUND AND INCENTIVES TO SUPPORT SMALL BUSINESSES

17 Small Business Development Fund

- (1) The Small Business Development Fund is established.
- (2) The Fund consists of the following:
 - (a) monies appropriated by Parliament for the benefit of the small business sector; and
 - (b) grants made to the Fund; and
 - (c) monies accrued to the Fund out of investments made by the Fund.
- (3) The Director is to administer and manage the Fund for the following purposes:
 - (a) to provide grants, concessional loans or deposits to be made to financial institutions or persons providing access to financing to small businesses; and
 - (b) to support access to financing and export marketing assistance for small businesses; and
 - (c) to financially support any organizations that are established to support, represent or promote small business.
 - (d) to provide any other type of support to the development of small businesses.
- (4) The Minister may by Regulations, on the recommendation of the Council, prescribe the rules and procedures concerning the administration of the Fund.

18 Incentives for small businesses

- (1) The Minister may by Order, on the recommendation of the Council, prescribe the incentives to be granted to different classes of small businesses.
- (2) The Minister may by Order, on the recommendation of the Council, prescribe the criteria under which an incentive is to be granted.

19 Incentives to financial institutions or persons that contribute to or invest on small business

The Minister may by Order, on the recommendation of the Council, prescribe the incentives to be granted to a financial institution or to any other person that assists a small business by providing:

- (a) financial assistance to the small business; or
- (b) programs designed to improve, enhance and develop the small business sector; or
- (c) any other assistance approved by the Council.

PART 5 MISCELLANEOUS PROVISIONS

20 Monitoring and inspection

- (1) The Director may monitor and inspect a small business registered under this Act, for the purposes of:
 - (a) ensuring that the small business complies with the provisions of this Act; and
 - (b) determining whether the small business qualifies as a small business for the purposes of this Act.
- (2) For the purposes of subsection (1), the Director may:
 - (a) inspect the books, records and accounts of the small business; and
 - (b) request any further information, as he or she considers necessary.
- (3) The Director has the power to:
 - (a) enter and inspect the premises of a small business, at any reasonable time; and
 - (b) request such documents or such other information as is deemed necessary to assist him or her in carrying out his or her functions under this Act.
- (4) The Director may delegate to any officer of the Department, any of his or her power under subsection (3).
- (5) A small business must:
 - (a) allow the Director or an officer to inspect the books, records and accounts of that small business at all reasonable times; and
 - (b) maintain proper financial and accounting records relating to the operations of the small business; and
 - (c) allow the Director or officer to monitor the operations of the small business.

- (6) A person who:
- (a) hinders or obstructs the Director or an officer in carrying out his or her functions; or
 - (b) provides false or misleading information,

under this section, commits an offence and is liable on conviction to a fine not exceeding VT500,000.

21 Penalty notice

- (1) The Director may serve a penalty notice on a person if it appears to the Director that the person has committed an offence under any provision of this Act.
- (2) A penalty notice is a notice to the effect that if the person served does not wish to have the matter determined by a Court, the person may pay within a time and to a person specified in the notice, the amount of penalty stated in the penalty notice.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.
- (6) The Regulations may prescribe the amount of penalty payable for the offence if dealt with under this section.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a Court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

22 Regulations

The Minister, on the recommendation of the Director, may make Regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) that are necessary or convenient to be prescribed for the carrying out or giving effect to the provisions of this Act.

23 Commencement

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