

REPUBLIC OF VANUATU

BILL FOR THE VANUATU AGRICULTURE DEVELOPMENT BANK (AMENDMENT) ACT NO. OF 2021

Explanatory Note

This Bill amends the Vanuatu Agriculture Development Bank Act No. 20 of 2006 (“the Act”).

The Vanuatu Agriculture Development Bank (“the VADB”) is established with the purpose to facilitate and promote the economic development of the national resources of Vanuatu, with special regard to agriculture, forestry, fisheries, livestock, manufacture and tourism. While the mandate of the VADB has not changed over the years, evidences indicated that there is lack of prudential management due to the deficiencies identified under the governance strategies.

Reforming the VADB is part of the wider financial sector reform which is currently being carried out by the Government.

The general policy of this amendment aims:

- (a) to strengthen the governance structure of the VADB; and
- (b) to transform the VADB into a viable and sustainable provider of credit and development finance to all segments of the population; and
- (c) to support all the development sectors such as agriculture, infrastructure, telecommunications, electrification; and
- (d) to support the objectives of the Government Development Policy as described in the Vanuatu’s 2030 Peoples’ Plan and the Vanuatu’s Financial Inclusion National Strategic Plan.

The main objectives of this Bill are;

1 to strengthen the Regulatory Framework of the VADB

Currently, the Act limits the Regulator’s jurisdiction in executing its supervisory roles over the VADB. Regular and up to date information are required for prudential matters:

- (a) to ensure that information asymmetry is minimised; and
- (b) to allow for identification and enforcement of timely proactive measures; and
- (c) to mitigate inherited risks which can cause moral hazard to Financial System of Vanuatu.

Therefore the inclusion of the prudential supervision provisions in the Bill will strengthen the effectiveness of the regulatory framework and enhance good governance to allow transformation of the VADB into a self-reliant, sustainable financial institution whilst supporting the economic developments in Vanuatu.

2 to provide for the powers of the VADB Board

The Bill provides the Board with the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act.

3 to improve the governance and management of the VADB

The quality of governance and management determines the difference of failure and success of any development bank. Currently, the governance structure of the VADB failed:

- (a) to adhere to the best governance principles and needs; and
- (b) to be reviewed to safeguard the interest of the VADB and its stakeholders; and
- (c) to ensure a high degree of integrity and competence.

Therefore, this Bill includes the provision of the Evaluation Committee, the Audit, Risk and Compliance Committee and the sitting allowance of the members of the Board. It will ensure that the fit and proper persons are appointed to the Board and it will improve the governance and the management of the VADB.

Minister of Finance and Economic Management



REPUBLIC OF VANUATU

**BILL FOR THE
VANUATU AGRICULTURE DEVELOPMENT BANK
(AMENDMENT) ACT NO. OF 2021**

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REPUBLIC OF VANUATU

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An Act to amend the Vanuatu Agriculture Development Bank Act No. 20 of 2006.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Vanuatu Agriculture Development Bank No. 20 of 2006 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 AGRICULTURE DEVELOPMENT BANK ACT NO. 20 OF 2006

1 Title of the Act

Delete “Vanuatu Agriculture Development Bank”, substitute “Vanuatu Rural Development Bank”

2 References to “Vanuatu Agriculture Development Bank”

Delete “Vanuatu Agriculture Development Bank” (wherever occurring), substitute “Vanuatu Rural Development Bank”

3 Section 1 (definitions of “Bank” and “Executive Committee”)

Repeal the definitions, substitute

“**Bank** means the Vanuatu Rural Development Bank;”

4 Section 1 (Interpretation)

Insert in their correct alphabetical positions:

“**Audit Committee** means the Audit, Risk and Compliance Committee established under section 22A;

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;

Evaluation Committee means the Evaluation Committee under section 20;

Reserve Bank means the Reserve Bank of Vanuatu established under the Reserve Bank Act [CAP 125];”

5 Section 3

Delete “with special regard to agriculture, forestry, fisheries, livestock, manufacture and tourism”

6 Paragraph 4(i)

Repeal the paragraph, substitute

“(i) to establish offices, agents, branches and subsidiaries with the written approval of the Reserve Bank;”

7 Paragraph 5(2)(j)

Delete “.”, substitute “;

(k) take term deposits;

(l) take any other deposits as approved by the Reserve Bank.”

8 Sections 7, 19, 24 and 29

Repeal the sections.

9 Part 3

Repeal the Part.

10 After section 13

Insert

“13A 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 performance of its functions under this Act.”

11 Subsections 14(1), (2) and (3)

Repeal the subsections, substitute

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

- (a) a senior officer of the Ministry of Agriculture nominated by the Director General of the Ministry of Agriculture; and
- (b) a senior officer of the Ministry of Finance and Economic Management nominated by the Director General of the Ministry of Finance and Economic Management; and
- (c) a person who is a qualified and reputable accountant practitioner nominated by the Finance Centre Association; and
- (d) a representative of the Vanuatu Chamber of Commerce and Industry nominated by the Vanuatu Chamber of Commerce and Industry Board; and
- (e) a representative of the Vanuatu Primary Producers Authority nominated by the Vanuatu Primary Producers Authority Board.

(2) The General Manager is to attend the Board meetings but has no voting right.

(3) The Minister is to appoint by Order, persons nominated under subsection (1).

(3A) A person nominated under subsection (1), must:

- (a) not be a disqualified person under section 34L; and
- (b) have at least 5 years' experience of working in a financial institution; and
- (c) have a degree in finance, economics, commerce, banking or law or any other relevant field; and
- (d) not be closely associated or affiliated with a political party."

12 After paragraph 14(4)(c)

Insert

"(ca) is a disqualified person under section 34L; or

(cb) is closely associated or affiliated with a political party; or"

13 Paragraph 16(2)(a)

Repeal the paragraph, substitute

"(a) a sitting allowance of VT25,000 for each day the Board sits for a meeting; and"

14 Subsections 20(1), (2), (3) and (4)

Repeal the subsections, substitute

"(1) The Minister may, on the recommendation of the Evaluation Committee, appoint the General Manager.

(2) The Evaluation Committee consists of the following members:

- (a) the Commissioner of the Vanuatu Financial Service Commission, who is to be the Chairperson of the Evaluation Committee; and
- (b) a person appointed by the Bankers Association of Vanuatu; and
- (c) a Director General of a Ministry appointed by the Public Service Commission.

- (3) The Minister may, on the recommendation of the Board, determine the terms and conditions of the employment of the General Manager.
- (4) The Evaluation Committee is to:
- (a) evaluate on merit, all candidates for the position of General Manager; and
 - (b) recommend to the Minister the name of the successful candidate.
- (4A) The Evaluation Committee must not recommend a candidate if he or she has not given his or her consent to the Evaluation Committee to accept the appointment on such terms and conditions.
- (4B) The Minister must not appoint a person who is not recommended by the Evaluation Committee.
- (4C) A person must not be appointed as the General Manager unless he or she:
- (a) has a degree or qualification in finance, banking or economics; and
 - (b) has 10 years' experience of working in finance or banking in a company; and
 - (c) is not a disqualified person under section 34L; and
 - (d) is not be closely associated or affiliated with a political party.”

15 Section 21

Repeal the section, substitute

“21 Deputy General Manager

- (1) The General Manager may, after consultation with the Minister, appoint a Deputy General Manager.
- (2) A person appointed as the Deputy General Manager:
- (a) must have a degree or qualification in finance, banking or economics; and
 - (b) must have 10 years' experience of working in finance or banking in a company; and

- (c) must not be a disqualified person under section 34L; and
 - (d) must not be closely associated or affiliated with a political party;
and
 - (e) has applied for this position and gone through a fair and transparent
selection process based on merit.
- (3) The General Manager is to determine the terms and conditions of the
employment of the Deputy General Manager.”

16 After section 22

Insert

**“PART4A ESTABLISHMENT, FUNCTIONS AND POWERS OF THE
AUDIT, RISK AND COMPLIANCE COMMITTEE**

22A Establishment of the Audit, Risk and Compliance Committee

The Audit, Risk and Compliance Committee is established.

22B Functions of the Audit Committee

The Audit Committee has the following functions:

- (a) to review the annual financial statements of Bank; and
- (b) to monitor the integrity of the banking business relating to its financial
reporting system and internal controls; and
- (c) to review the accounts of the Bank and consider emerging accounting
issues relating to the Bank’s affairs and make recommendations to the
Board for approval; and
- (d) to oversee:
 - (i) the internal audit function and in particular consideration of the
enterprise risk management within the Bank; and
 - (ii) the professional and other operational business risk issues affecting
the Bank; and
 - (iii) the management of risk to ensure that the internal controls remain
robust, appropriate and effective and assessing the effectiveness of

the various risk and quality compliance programmes operating within the Bank.

22C Composition of the Audit Committee

The composition of the Audit Committee will be determined by the charter of the Bank.

22D Power of the Audit Committee

The Audit Committee 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 under this Act.

22E 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.”

17 Part 6 (Heading)

Delete “FINANCIAL MATTERS”, substitute “CAPITAL, PROFIT AND RESERVE”

18 Before section 27

Insert

“26A Authorised share capital

The authorised share capital of the Bank is VT500,000,000 and is to be divided into 50,000 ordinary shares of VT10,000 each.

26B Increase in share capital

- (1) The Board may increase the share capital of the Bank by:
 - (a) the ordinary resolution of the shareholders; and
 - (b) the Minister.
- (2) The Board must publish the details of the increased share capital in the Gazette.

26C Allotment and transfer of shares

- (1) Not less than 60 per cent of the amount of the issued share capital of the Bank referred to in subsection (2), must at all times be held by the Government.
- (2) Subject to the written approval of the Minister, the Board may allot shares in any part of the authorised share capital of the Bank, to any person or institution at such price and on such terms and conditions as the Board thinks fit.
- (3) The Minister and the Minister of Agriculture are shareholders of the Bank on behalf of the Government.
- (4) No transfer or assignment of any share or any right or any interest whatsoever in any share is to have effect unless the Bank has obtained a written approval from the Reserve Bank prior to the Board's endorsement and the approval of the shareholders.

26D Limited liability of shareholders

The liability of the shareholders is limited to the amount, if any, unpaid on shares held by them.”

19 Subsections 28(2), and 33(3) and (5)

Repeal the subsections.

20 Subsection 33(1)

Repeal the subsection, substitute

- “(1) In addition to paragraph 5(2)(h), the Bank may, upon such terms and conditions as approved by the Board in consultation with the Reserve Bank, raise loans for the purpose of carrying out its functions under this Act.”

21 After section 34

Insert

“PART 6A SUPERVISION OF BANK

34A Prudential supervision

- (1) The functions of the Reserve Bank include:

- (a) to collect and analyse information in respect of prudential matters relating to the Bank; and
 - (b) to encourage and promote the Bank to carry out sound practices in relation to prudential matters; and
 - (c) to evaluate the effectiveness and carrying out of those practices.
- (2) In carrying out its functions under this section, the Reserve Bank must have regard to the following:
- (a) the capital adequacy of the Bank in relation to the size and nature of its banking business;
 - (b) the asset concentration and risk exposure of the Bank;
 - (c) the separation of the banking business of the Bank from the financial interests of any person owning or controlling the Bank;
 - (d) the adequacy of the liquidity of the Bank in relation to its liabilities;
 - (e) the asset quality and adequacy of provisions for losses of the Bank;
 - (f) the internal control, risk management and accounting systems of the Bank;
 - (g) such other matters as the Reserve Bank considers relevant.
- (3) The Reserve Bank may formulate in writing guidelines and issue directives in relation to prudential matters to be complied with by the Bank.
- (4) Without limiting subsection (3), the Reserve Bank may formulate written guidelines setting out the criteria for determining whether a person is a fit and proper person.
- (5) The directives issued by the Reserve Bank must be published in the Gazette.
- (6) The Reserve Bank may vary or revoke a directive or guideline.

- (7) This section does not limit any provision of the Reserve Bank Act [CAP 125].

34B Appointment of auditor

- (1) The Bank must appoint one or more persons (whether as individuals or as members from time to time of any firm or firms) to be the auditor of the Bank.
- (2) An appointment of an auditor by the Bank is subject to a prior written approval of the Reserve Bank which must not be given unless:
- (a) the auditor is qualified to act as an auditor under section 130 of the Companies Act No. 25 of 2012; and
 - (b) the Reserve Bank is satisfied that the auditor is sufficiently experienced in auditing banking business.
- (3) An appointment made under subsection (1) by the Bank is subject to the written approval of the Reserve Bank which must not be unreasonably withheld.
- (4) The following persons are not eligible for appointment as an auditor of the Bank:
- (a) a person having a financial interest in the Bank otherwise than as a depositor;
 - (b) a director, officer, employee or agent of the Bank.
- (5) A person who is the auditor of the Bank ceases to be the auditor of the Bank if the person:
- (a) acquires a financial interest in the Bank otherwise than as a depositor; or
 - (b) becomes a director, officer, employee or agent of the Bank.
- (6) If the Bank:
- (a) fails to appoint an auditor under subsection (1); or
 - (b) fails to fill a vacancy for an auditor,

the Reserve Bank may appoint an auditor and must fix the remuneration to be paid by the Bank to the auditor.

34C Report by auditor

- (1) The Bank must cause to be prepared an auditor's report on the financial statements and its subsidiaries (if any) for each financial period.
- (2) The auditor must state in the report:
 - (a) whether the auditor has obtained all information and explanations which to the best of the auditor's knowledge were necessary for the purposes of the audit; and
 - (b) whether in the auditor's opinion proper books of account have been kept by the Bank and its subsidiaries; and
 - (c) whether in the auditor's opinion the balance sheet and the profit and loss account of the Bank and its subsidiaries are in agreement with the books of account and returns of the Bank and the subsidiaries; and
 - (d) whether in the auditor's opinion the balance sheet of the Bank and its subsidiaries gives a true and fair view of the state of affairs of the Bank and the subsidiaries for the period covered by the report; and
 - (e) whether in the auditor's opinion the profit and loss account of the Bank and its subsidiaries gives a true and fair view of the profit or loss of the Bank and the subsidiaries for the period covered by the report; and
 - (f) in any case in which the auditor has called for an explanation or information from officers or agents of the Bank or a subsidiary - whether in the auditor's opinion the explanation or information is satisfactory.
- (3) The auditor of the Bank must report immediately to the Reserve Bank information relating to the affairs of the Bank or a subsidiary obtained in the course of an audit if the auditor is of the opinion that:
 - (a) the Bank is insolvent or is likely to become insolvent; or

- (b) the Bank is likely to be unable to meet its obligations or is in serious financial difficulties; or
 - (c) a criminal offence involving fraud or dishonesty has been committed; or
 - (d) serious irregularities have occurred, including irregularities that jeopardise the interest of the depositors and the creditors of the Bank; or
 - (e) the Bank has failed to comply with a prudential standard; or
 - (f) losses have been incurred which substantially reduce the capital funds of the Bank.
- (4) An auditor who contravenes subsection (3), commits an offence and is liable on conviction to a fine not exceeding VT1,000,000 or to imprisonment for a term not exceeding 2 years, or to both.
- (5) The auditor must, before disclosing any information to the Reserve Bank under subsection (3), take reasonable steps to inform the Bank concerned that the auditor intends to disclose the information.
- (6) The Bank's auditor must, if requested to do so by the Reserve Bank, discuss the audit of the Bank directly with the Reserve Bank and provide such additional information regarding the audit as the Reserve Bank may require. However, the auditor must take reasonable steps to inform the Bank that the auditor intends to discuss the audit with the Reserve Bank and to disclose information to it.
- (7) The Bank must give 3 months' notice in writing to the Reserve Bank if the Bank proposes to terminate the appointment of its approved auditor.
- (8) The Bank must set out in the notice the reasons for the termination.
- 34D Auditor's report to be given to the Reserve Bank**
- (1) The Bank must submit to the Reserve Bank within 3 months, or such longer period as the Reserve Bank may approve, after the end of its financial period:
- (a) a copy of its audited financial statements; and

- (b) a copy of the audit report made under section 34C.
- (2) The Bank must submit to the Reserve Bank a copy of any director's report presented to the bank's annual shareholders meeting within 1 month after that meeting.
- (3) A copy of the audit report prepared under section 34C must be tabled at the Bank's annual shareholders meeting.

34E Reserve Bank may require report to be prepared

- (1) The Reserve Bank may, after consultation with the Bank including about costs, by notice in writing to the Bank, require the Bank to supply the Reserve Bank with a report prepared by the Bank's auditor or other person nominated by the Reserve Bank on such matters as the Reserve Bank may determine.
- (2) Without limiting subsection (1), a report may deal with the following:
 - (a) the quality of the assets of the Bank;
 - (b) the adequacy of the Bank's provisions for losses;
 - (c) the adequacy of the Bank's risk management, accounting and internal control systems.
- (3) The Reserve Bank must give the Bank a reasonable time within which to prepare a report.

34F Publication of financial statements

- (1) Not later than 4 months, or such longer period as the Reserve Bank may specify, after the end of each financial period of the Bank, the Bank must lodge for publication in the Gazette and a national publication specified by the Reserve Bank:
 - (a) copies of the Bank's audited annual balance sheet and annual profit and loss account; and
 - (b) the full and correct names of the directors of the Bank.
- (2) The Bank must make available on request in each of its offices or agencies and branches in Vanuatu:

- (a) copies of its audited balance sheet and profit and loss accounts; and
 - (b) the information mentioned in subsection (1)(b).
- (3) If the Bank fails to comply with subsection (1) or (2), commits an offence and is liable on conviction to a fine not exceeding VT10,000,000.

34G On-site examinations

- (1) The Reserve Bank may initiate on-site examinations of the accounts and affairs of the Bank or any of its subsidiaries or affiliates, including any branch, agency or office of the Bank or of its subsidiaries or affiliates.
- (2) An examination may be conducted by one or more of the following people:
- (a) an officer or officers of the Reserve Bank;
 - (b) any other person or persons appointed by the Reserve Bank as an examiner for the purposes of this section.
- (3) The Bank, subsidiary or affiliate must, within the time specified by an officer or examiner, make available for inspection by him or her:
- (a) all cash and securities of the Bank, subsidiary or affiliate, as the case requires; and
 - (b) all accounts, books, vouchers, minutes, records or other documents as may be required by the officer or examiner that are relevant to the business of the Bank, subsidiary or affiliate, as the case requires.
- (4) An officer or examiner may make copies of and take away for further scrutiny any papers or electronically stored data of the Bank, subsidiary or affiliate.

PART 6B RESTRICTIONS ON BANK BUSINESS

34H Application of Part

The Bank and each of its subsidiaries (if any) to the extent that the provisions of this Part apply to the Bank and the subsidiary must comply with such provisions in respect of its operations in Vanuatu.

34I Offences under this Part

If the Bank fails to comply with any provisions under this Part, commits an offence and is liable on conviction to a fine not exceeding VT6,000,000.

34J Maintaining minimum capital amounts

(1) The Bank must maintain at all times eligible capital:

(a) in such minimum proportion in relation to its assets, liabilities or risk exposures; and

(b) in such amount,

as the Reserve Bank may in writing specify from time to time.

(2) The Reserve Bank must determine the computation and form of the capital required to be maintained under subsection (1) after consultation with the Bank.

(3) The Bank must comply with a determination made by the Reserve Bank under subsection (2) within 6 months, or such longer period as the Reserve Bank may approve in writing, after the determination is made.

34K Restrictions on payment of dividends and transfer of profits

(1) The Bank must not declare or pay any dividend, or make any other transfer from its profits or reserves, if to do so would contravene the requirements of section 34J.

(2) The Bank must not:

(a) pay any dividend on its shares; or

(b) make any other transfer from its profits;

until all its capitalised expenditure (including preliminary expenses, organization expenses, share selling commission, brokerage and amounts of losses) not represented by tangible assets has been completely written off.

(3) The net profit of the Bank for any financial year must be determined according to the requirements of International Financial Reporting Standards (IFRS).

- (4) The Bank must establish reserves and retain profits in:
- (a) a minimum portion in relation to the assets, liabilities or risk exposures of its operations; and
 - (b) such other amount as specify in writing by the Reserve Bank.
- (5) Subject to subsections (3) and (4), the dividend declaration amount must not exceed the amount of distributing profits declared for the current financial year.

34L Disqualified person

- (1) A person is a disqualified person if at any time:
- (a) the person has been convicted of an offence against or arising out of this Act; or
 - (b) the person has been a director or directly concerned in the management of a financial institution in Vanuatu or any other country which has had its licence revoked or has been wound up by the court; or
 - (c) the person has been convicted of:
 - (i) an offence of money laundering under section 11 of the Proceeds of Crime Act [CAP 284]; or
 - (ii) an offence of terrorism financing under section 6 of the Counter Terrorism and Transnational Organised Crime Act [CAP 313]; or
 - (iii) an offence against the United Nations Financial Sanctions Act No. 6 of 2017; or
 - (d) the person is listed on a United Nations Financial Sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under a law of any jurisdiction; or
 - (e) the person has been convicted by a court for an offence involving dishonesty; or

- (f) the person is or becomes bankrupt; or
 - (g) the person has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (h) the person has compounded with his or her creditors.
- (2) A disqualified person must not act or continue to act as a director, manager, secretary or other officer of the Bank unless the Reserve Bank gives its written approval for that person to do so.
- (3) If the Bank engages a disqualified person to act or continue to act as a director, manager, secretary or other officer of the Bank, commits an offence and is liable on conviction to a fine not exceeding VT10,000,000.
- (4) An individual who contravenes subsection (2), commits an offence and is liable on conviction to a fine not exceeding VT15,000,000 or to imprisonment for a term not 5 years, or to both.

34M The Reserve Bank may remove a director, manager, secretary or other officer

- (1) The Reserve Bank may direct, in writing, the Bank to remove a person who is a director, manager, secretary or other officer of the Bank if the Reserve Bank is satisfied that the person:
- (a) is a disqualified person under section 34L;
 - (b) does not meet any other fit and proper criteria in this Act or the guidelines.
- (2) Before directing the Bank to remove a person, the Reserve Bank must give a written notice to:
- (a) the person; and
 - (b) the Bank,
- giving each of them an reasonable opportunity to make submissions on the matter.
- (3) A direction takes effect on the day specified in it, which must be at least 7 days after it is made.

- (4) If the Reserve Bank directs the Bank to remove a person, the Reserve Bank must give a copy of the direction to the person and the Bank.
- (5) If the Bank fails to comply with the directions under subsection (1), commits an offence and is liable on a conviction to a fine not exceeding VT10,000,000.

22 Section 35

Repeal the section, substitute

“35 Secrecy

- (1) The Reserve Bank officers, director, General Manager, Deputy General Manager or any officer or employee of the Bank, auditor, a member of the Audit Committee, must not disclose to any person any information relating to the affairs of the Bank or other person which he or she has acquired in the performance of his or her duties under this Act except for the purpose of the performance of his or her duties or when lawfully required to do so by a court.
- (2) A person who contravenes subsection (1), commits an offence and is liable on conviction to a fine not exceeding VT1,000,000 or to imprisonment for a term not exceeding 12 months, or to both.

35A Immunity for acts done in good faith

The Reserve Bank officers, the director, the General Manager, the Deputy General Manager, auditor and any officer, employee or person duly appointed or authorised by the Bank or a member of the Audit Committee, must not incur any liability or suffer any penalty as a result of anything done or for any omission made in good faith in the exercise of any power or the performance of any duty under this Act.”

23 Section 37

Repeal the section, substitute

“37 Reserve Bank to request information

- (1) The Reserve Bank may, within such time and in such form as specified by the Reserve Bank, request the Bank to submit such information as it determines necessary for the purpose of its role as a supervisor.
- (2) In addition to subsection (1), the Reserve Bank may:

- (a) request the Bank to submit a certificate from its auditor verifying the accuracy of the information; and
- (b) impose administrative fine to the Bank if it fails or delay the submission of any information or submit false, inaccurate or misleading information.

37A Reserve Bank to protect Depositors

It is the duty of the Reserve Bank to exercise its powers and functions to protect Depositors under this Act.

37B Insolvency of the Bank

- (1) The Bank must immediately notify the Reserve Bank, in writing, if the Bank is:
 - (a) insolvent; or
 - (b) likely to be insolvent; or
 - (c) likely to be unable to meet its obligations.
- (2) The Reserve Bank must take appropriate action if:
 - (a) the Bank notify the Reserve Bank; or
 - (b) the Reserve Bank is satisfied that the auditor's report and on-site examination shows that the Bank is:
 - (i) carrying on its business activities in a manner that is detrimental to the interest of deposits, its creditors or the public; or
 - (ii) likely to be unable to meet its obligations when it falls due.
- (3) After taking appropriate actions under subsection (2), the Reserve Bank must:
 - (a) give directions to the Bank; or
 - (b) appoint a qualified person to direct the Bank; or

- (c) apply to Court.

37C Unsound or unsafe practices

- (1) If the Reserve Bank is of the opinion that Bank:
 - (a) is following unsound or unsafe practices in the conduct of its banking business that are:
 - (i) likely to jeopardise its obligations to its depositors or other creditors; or
 - (ii) likely to adversely affect the operation or stability of the financial system in Vanuatu; or
 - (b) has contravened or failed to comply with the terms and conditions of its licence or any of the provisions of this Act,

the Reserve Bank may issue a directive to the Bank.
- (2) The directive may require the Bank:
 - (a) to cease the practice, contravention or non-compliance; and
 - (b) to take such action (including action to replace or strengthen management) as may be specified in the directive to correct the conditions resulting from the practice, contravention or non-compliance.

24 Section 38

Repeal the section, substitute

“38 Financial information to the Minister

- (1) The Bank must provide audited financial information to the Minister.
- (2) The General Manager may provide periodical updates of financial information to the Ministry if requested by the Minister.”

25 Section 39

Repeal the section, substitute

“39 Borrow funds from the Bank

An officer of the Bank, other than a member of the Board, may access credit for personal use as part of his or her employment incentives and in accordance with the lending policies of the Bank.

39A Special advances to high risk sectors

- (1) The Bank may allow borrowing to high risk sectors but must introduce measures to mitigate the risks.
- (2) For the purpose of this section, **high risk sector** means the sectors that are identified by the Board as high risk investments.

39B General offences

A person who fails to comply with the provisions of this Act or its Regulations, commits an offence and is liable on conviction to:

- (a) in the case of an individual - a fine not exceeding VT1,000,000, or imprisonment for a term not exceeding 12 months, or both; or
- (b) in the case of a body corporate - a fine not exceeding VT10,000,000.

39C Application of the Act in relation to other Acts

The provisions of this Act apply in addition to and not in derogation of any other requirement or process relevant to the Bank under any other Act.”

26 After paragraph 40(1)(c)

Insert

“(ca) the Bank complies with the guidelines issued by the Reserve Bank;”

27 After section 40

Insert

“40A Regulation

The Minister may make Regulations:

- (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 the provisions of this Act.”

28 Transitional Provisions for Board of directors, General Manager or Deputy General Manager

- (1) A person who occupies the position of director, General Manager or Deputy General Manager immediately before the commencement of this Act is to continue to be employed as a director, General Manager, or Deputy General Manager for a period of 3 months commencing from the date on which this Act comes into force.
- (2) The employment of a director, General Manager or Deputy General Manager is deemed to be terminated on the expiry of the period provided under subsection (1).