

THE DEVELOPMENT BANK OF VANUATU ACT No. 13 OF 1983

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REPUBLIC OF VANUATU

THE DEVELOPMENT BANK OF VANUATU ACT NO. 13 OF 1983

An Act to provide for the organization and management of the Development Bank of Vanuatu.

BE IT ENACTED by the President and Parliament as follows :-

PART 1 - PRELIMINARY

**INTERPRETATION**

1. In this Act, unless the context otherwise requires -

"the Bank" means the Development Bank of Vanuatu;

"the Board" means the board of directors of the Bank;

"director" means a member of the Board appointed under section 13;

"Executive Committee" means a committee set up under section 17;

"financial year" means a year commencing on the 1st January and ending on the 31st December;

"the former bank" means the Bank of Development of the New Hebrides established under Joint Regulation No. 11 of 1979 and, pursuant to resolution No. 1 of 10 November 1981 of the extraordinary general meeting thereof, known as the Development Bank of Vanuatu;

"General Meeting" means a General Meeting, whether ordinary or extraordinary, of the shareholders;

"Managing Director" means the person appointed as such under section 19;

"Minister" means the Minister responsible for administering the Act;

"share" means a share in the authorized capital of the Bank and "shareholder" has a corresponding meaning.

PART 2 - ESTABLISHMENT, PURPOSE, FUNCTIONS AND POWERS OF THE BANK

**ESTABLISHMENT AND INCORPORATION OF THE BANK**

2. (1) There shall continue to be established a bank to be called the Development Bank of Vanuatu.

- (2) The Bank shall be a body corporate with perpetual succession and a common seal and shall, under its name, be capable of suing and being sued, and of acquiring, holding and disposing of property, movable and immovable, of every description, and entering into contracts and of doing and performing all such acts and things as a body corporate may by law do and perform, subject to the provisions of this Act.
- (3) All deeds and other instruments which are by law required to be sealed shall be sealed with the common seal in the presence of, and authenticated by, the Managing Director or a person authorised by him for that purpose, and judicial notice shall be taken of such sealing.

#### THE BANK TO SUCCEED THE BANK OF DEVELOPMENT OF THE NEW HEBRIDES

On the date of the commencement of this Act -

- (a) all assets, liabilities and obligations of the former bank shall by virtue of this section, and without any conveyance, transfer, assignment or other formality, be transferred to and vest in the Bank;
- (b) all references to the former bank in any deed, contract, bond, warrant, bill of exchange, cheque, promissory note or other instrument whatsoever, whether or not the Bank is a party thereto, or in any judgment, order, direction or other proceeding of any court or other authority, shall be taken as references to the Bank;
- (c) subject to section 38 every person employed by or holding office in the former bank shall be deemed to be employed by, or to hold office in, the Bank on the like terms and conditions as immediately before that date.

#### PURPOSE OF THE BANK

The purpose of the Bank shall be to facilitate and promote the economic development of the national resources of Vanuatu with special regard to agriculture, forestry, fisheries, manufacture and tourism.

#### FUNCTIONS OF THE BANK

The functions of the Bank shall be to provide assistance to enterprises (including individuals, partnerships, co-operatives and companies) for new projects, and the expansion or modernization of their existing facilities by -

- (a) making loans;
- (b) taking equity participation;
- (c) guaranteeing the finance provided by other sources;
- (d) providing technical, managerial and financial consultancy services; and
- (e) assisting in the identification, formulation and promotion of new projects.

#### POWERS OF THE BANK

The Bank shall have all such powers as may be necessary for its purpose, and in particular, and without limiting the generality of the foregoing but subject to the provisions of this Act, the Bank may -

- (a) sell, purchase or subscribe to stock, shares, debentures, bonds or other securities, including securities issued by the Bank or issued in connection with a loan or guarantee of the Bank, with or without security;
- (b) finance the purchase, sale or lease of machinery, plant, equipment, land, premises, materials, goods, and articles of every description including the purchase and resale and lease thereof and the making of loans on the security of a mortgage or an assignment of interest in any such transaction;
- (c) execute, make, draw, accept, endorse, discount, issue and negotiate cheques, promissory notes, bills of exchange, bills of lading, bankers and other drafts, warrants, bonds, debentures, coupons and other negotiable or transferable instruments, and buy, sell, or otherwise deal in the same, and accept deposits of money;
- (d) underwrite or sub-underwrite issues of securities, give and receive guarantees, or participate with others in any such activities;
- (e) participate in the management of enterprises which have received some form of financing from the Bank;
- (f) organise, participate in, or act as agent for consortium arrangements designed to finance economic development;
- (g) act as agent for foreign and international bodies in the financing of economic development;
- (h) place funds not immediately required on deposit with any bank;
- (i) take such steps as may be necessary to protect or recover its interest in any enterprise;
- (j) make charges for the provision of any of its services;
- (k) acquire such assets as may be required for the operations of the Bank;
- (l) establish or acquire subsidiaries or form partnerships;
- (m) raise loans and borrow moneys for the purpose of meeting any of its obligations or discharging any of its functions under this Act;
- (n) provide technical assistance in connection with projects it finances;
- (o) provide technical services in areas such as project studies and management and accounting practices to public authorities or institutions, local community councils, national

associations, co-operative societies and to foreign organisations of a national or international nature;

- (p) do such other things as are incidental or conducive to the better exercise of its powers.

#### GENERAL BUSINESS POLICIES OF THE BANK

7. (1) In the exercise of its functions under this Act the Bank shall be guided by, and act in conformity with, the operating principles, policies and objectives set out in an instrument to be known as the Statement of General Business Policies of the Bank; such Statement and any alteration thereof shall be made by a resolution of the Board carried by a majority of not less than two-thirds of the total number of its members and approved by the Minister.
- (2) In performing its functions under this Act the Bank shall be guided by accepted banking principles.

#### GENERAL DIRECTIONS BY MINISTER

8. The Minister after consulting the Board may give the Bank directions (not inconsistent with this Act) of a general character as to the exercise of the functions and policies of the Bank.

### PART 3 - THE CAPITAL

#### AUTHORISED SHARE CAPITAL

9. (1) The authorised share capital of the Bank shall be 200 million Vatu and shall be divided into 20,000 shares of 10,000 Vatu each.
- (2) The shares in the registered share capital of the former bank held by the Government immediately before the commencement of this Act shall be deemed to be the shares referred to in subsection (1).

#### INCREASE AND REDUCTION OF THE SHARE CAPITAL

10. On the recommendation of the Board and subject to the approval of the Minister, the authorised share capital of the Bank may be increased or reduced by a resolution of an Extraordinary General Meeting by such amount and in such manner as shall be specified in the resolution.

#### ALLOTMENT AND TRANSFER OF SHARES

11. (1) Not less than 51 per cent of the amount of the issued share capital of the Bank shall be held by the Government at all times.
- (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;

Provided that the total number of shares so allotted must not be such as to reduce the shareholding of the Government to less than provided for in subsection (1).

- (3) No transfer or assignment of any share or any right or any interest whatsoever in any share shall have effect unless such transfer or assignment has been approved by the Board and by the Minister;

Provided that such approval may not be given so as to reduce the shareholding of the Government to less than provided for in subsection (1).

#### LIMITED LIABILITY OF SHAREHOLDERS

12. The liability of the shareholders shall be limited to the amount, if any, unpaid on shares held by them.

#### PART 4 - THE BOARD AND MANAGEMENT OF THE BANK

#### THE BOARD AND ITS FUNCTIONS

13. (1) There shall be a Board of Directors of the Bank who shall be responsible for the policy and the operation of the Bank subject to the provisions of this Act.
- (2) The Board shall consist of -
- (a) the Managing Director, and
  - (b) not more than eight other directors nominated by the Minister and appointed by a resolution of the General Meeting.
- (3) In making the nominations under subsection (2)(b) the Minister shall ensure, so far as practicable, that the persons so nominated represent the principal geographical divisions of Vanuatu and have sufficient experience in finance, commerce, industry or agriculture.
- (4) Not more than four directors may be public servants.
- (5) No person may be appointed as a director who -
- (a) is a Minister of the Government or a member of Parliament; or
  - (b) has reached 70 years of age or whose term of office would normally expire after he has reached that age; or
  - (c) has been adjudged bankrupt or made an arrangement in the nature of composition or assignment with his creditors; or
  - (d) has been sentenced by a court to a term of imprisonment, whether suspended or not, without the option of a fine;
  - (e) excepting the Managing Director, is in paid employment of the Bank;
- (6) Subject to subsection (7) every director shall hold office for a term of three years but shall be eligible for re-appointment;
- Provided that if the office of a director becomes vacant during the term thereof the Minister may temporarily appoint some other person to fill the vacancy for the remainder of that term. Such appointment shall be confirmed by the subsequent general meeting of the Bank.
- (7) The office of a director shall become vacant if -

- (a) he becomes ineligible for appointment under subsection (5); or
  - (b) he becomes permanently incapable of performing his duties; or
  - (c) he resigns his office by notice in writing addressed to the Minister; or
  - (d) he without leave of the Board absents himself from two consecutive meetings of the Board; or
  - (e) he fails to comply with the provisions of section 16; or
  - (f) his appointment is terminated by a resolution of the General Meeting on the recommendation of the Minister.
- (8) The directors shall serve without remuneration but may be paid reasonable travelling and other expenses when engaged on the business of the Board.

#### CHAIRMAN AND VICE-CHAIRMAN

14. The Board with the approval of the Minister, shall appoint, from among the directors, a chairman and vice-chairman of the Board, who shall hold office for such period as the Board shall fix.

#### MEETINGS OF THE BOARD

15. (1) The Board shall meet, not less than once in every three months, at such times and places as the chairman, or in his absence the vice-chairman, shall direct.
- (2) Without prejudice to subsection (1), the chairman, or in his absence, the vice-chairman shall convene a meeting of the Board on a written request signed by not less than five directors.
- (3) Five members of the Board shall be a quorum at meetings of the Board.
- (4) The chairman, or in his absence, the vice-chairman shall preside at all meetings of the Board, and if both are absent from a meeting the Board shall elect a director to preside at that meeting.
- (5) Except where otherwise provided in this Act, questions arising at a meeting of the Board shall be decided by a majority of the members present and voting, provided that in the event of an equality of votes the person presiding at the meeting shall have a second or casting vote.
- (6) Subject to the provisions of this Act the Board may regulate its own procedure, and, in particular, may regulate the holding of meetings, the notice to be given of any meeting, the proceedings thereat, and the keeping and custody of minutes.

#### DISCLOSURE OF INTEREST BY MEMBERS OF THE BOARD

16. Every member of the Board shall fully disclose to the Board any financial or other personal interest that he may have directly or indirectly in any matter before the Board and shall not take part in the discussion of any such matter nor vote thereon, and, if requested to do so by the person presiding at the meeting, shall absent himself while deliberations with respect to any such matter are taking place.



#### EXECUTIVE COMMITTEE

- (1) The Board may, by a resolution carried by a majority of two thirds of the total number of its members, set up an Executive Committee to whom it may delegate any of its functions and powers under this Act except -
  - (a) the consideration and approval of the accounts of the Bank;
  - (b) the allocation of profits and declaration of dividends;
  - (c) the appointment of the Managing Director and acting Managing Director.
- (2) The Executive Committee shall consist of the Managing Director and not less than three directors who shall hold office during the pleasure of the Board.
- (3) The Board may give such directions as it thinks fit with respect to the procedure to be followed at or in relation to the meetings of the Executive Committee, and, in particular, directions with respect to -
  - (a) the convening of meetings of the Executive Committee;
  - (b) the number of members of the Executive Committee to constitute a quorum;
  - (c) the appointment of a person to preside at the meetings of the Executive Committee;
  - (d) the manner in which questions arising at a meeting of the Executive Committee shall be decided;
  - (e) the class of matters, if any, which the Executive Committee shall be required to refer to the Board for approval or information and the manner in which such references shall be made.

#### VACANCIES AND IRREGULARITIES NOT TO AFFECT PROCEEDINGS

8. The exercise of the functions and powers of the Board or of the Executive Committee shall not be called into question by reason only of a vacancy on the Board or the Executive Committee or any irregularity in the appointment of any member thereof.

#### MANAGING DIRECTOR OF THE BANK

9. (1) The Board shall, by a resolution carried by a majority of two-thirds of the total number of the directors, appoint a Managing Director of the Bank and shall determine the terms and conditions of his service; his appointment and the terms and conditions of his service shall be subject to a prior written approval of the Minister.
- (2) No person referred to in paragraphs (a), (b), (c) or (d) of section 13(5) shall be eligible for appointment as Managing Director.
- (3) Subject to subsection (6) the Managing Director shall hold office for a term not exceeding three years but shall be eligible for re-appointment.
- (4) The Managing Director shall be the chief executive officer of the Bank, and, subject to this Act and to the general directions of the Board, shall be responsible for the day-to-day management of the business of the Bank.

- (5) The Managing Director shall devote the whole of his services to the Bank and shall not hold any other paid office or employment.
- (6) The Managing Director shall cease to hold office if -
  - (a) he becomes ineligible for appointment under subsection (2); or
  - (b) he becomes permanently incapable of performing his functions under this Act; or
  - (c) he resigns his office by notice in writing addressed to the Board; or
  - (d) he fails to comply with the provisions of section 16; or
  - (e) his appointment is terminated by the Board with the approval of the Minister for a serious breach of the terms and conditions of his service or for other sufficient cause.
- (7) If the Managing Director is temporarily absent or unable to act or if his office becomes vacant during the term thereof the Board may appoint an acting Managing Director to exercise the functions of the Managing Director during such absence, incapacity or vacancy.

#### **EMPLOYMENT OF STAFF**

20. The Bank may employ such officers, servants, agents and advisers as shall be necessary for the proper and efficient performance of its functions, on such terms and conditions of service as the Board shall determine.

#### **PART 5 - GENERAL MEETINGS**

##### **ORDINARY GENERAL MEETINGS**

21. (1) An Ordinary General Meeting shall be called by the Board within eight months after the end of each financial year.
- (2) It shall be the business of an Ordinary General Meeting to consider and carry resolutions, with respect to -
- (a) the approval of the annual reports and statements of account of the Bank and the auditor's report thereon;
  - (b) the appointment of the external auditors of the Bank;
  - (c) any matter required by notice in writing addressed to the Board to be submitted to the Meeting by any shareholder holding not less than one-quarter of the shares;
  - (d) any other matter submitted to the Meeting by the Board.

##### **EXTRAORDINARY GENERAL MEETINGS**

22. (1) An Extraordinary General Meeting shall be called by the Board -
- (a) when the Board thinks fit to do so; or
  - (b) when such Meeting is required by notice in writing addressed to the Board by any shareholder holding not less than one-quarter of the shares.

- (2) It shall be the business of an Extraordinary General Meeting to consider and carry resolutions with respect to -
- (a) any matter submitted to the meeting by the Board, in particular the increase or reduction in the capital of the Bank;
  - (b) any matter required by notice in writing addressed to the Board to be submitted to the Meeting by any shareholder holding not less than one-quarter of the shares.

#### RESOLUTIONS AND VOTING AT GENERAL MEETINGS

23. (1) Subject to subsection (2), resolutions of a General Meeting shall be carried by a simple majority of votes of the shareholders present or represented by proxy and voting at the meeting, and every shareholder shall have one vote for each share of which he is the holder.
- (2) A resolution signed by all the shareholders shall be deemed to have been carried by a General Meeting irrespective of whether or not a Meeting had taken place.

#### BOARD TO REGULATE PROCEDURE AT GENERAL MEETINGS

24. The Board may make rules, not inconsistent with this Act, to provide for any matter with respect to the calling of, and procedure at, the General Meetings, and in particular, with respect to -
- (a) the giving of notices of the time, place and business of a General Meeting;
  - (b) quorum at a General Meeting;
  - (c) proxies;
  - (d) persons to preside over a General Meeting and powers and functions to be exercised by such persons;
  - (e) the keeping and approval of minutes.

### PART 6 - FINANCIAL MATTERS

#### RESERVE FUND AND ALLOCATION OF PROFITS

- 25 (1) The Bank shall provide against any anticipated losses by establishing and maintaining a reserve fund which shall consist of the aggregate of -
- (a) the amounts standing to the credit of the legal reserve fund and the general risks reserve fund of the former bank immediately before the commencement of this Act; and
  - (b) not less than 50 per cent of the net profits of the Bank allocated in each financial year until the total amount standing to the credit of such reserve fund equals the amount of the authorized share capital of the Bank.
- (2) Subject to subsection (1) the net profits of the Bank in each financial year shall be allocated to any special reserve fund, payment of dividend or to any other purpose as the Board with the approval of the Minister shall determine.

#### ESTIMATES OF ANNUAL INCOME AND EXPENDITURE

26. (1) The Bank shall, not later than two months before the commencement of each financial year, prepare estimates of income and expenditure of the Bank in respect of that year.

- (2) A copy of the estimates for each financial year referred to in subsection (1) shall, as soon as practicable be sent to the Minister.

#### ACCOUNTS AND AUDIT

27. (1) The Bank shall keep proper accounts and records of all its transactions and shall prepare in respect of each financial year a statement of account in accordance with generally accepted accounting principles and practices.
- (2) The accounts and statement of account of the Bank for each financial year shall be audited by a suitably qualified external auditor appointed by the Board in accordance with a resolution of an Ordinary General Meeting, for a term of three years, which the Board may extend, from time to time, for a similiar period.
- (3) As soon as practicable after the accounts and statement of account for each financial year have been audited under subsection (2) the Board shall deliver to the Minister a copy of the statement of account together with a copy of the auditor's report thereon.

#### ANNUAL REPORT

8. The Board shall deliver to the Minister before the 30th June of each year, an annual report dealing with the operations of the Bank during the preceding financial year.

#### REPORTS ETC. TO BE LAID BEFORE PARLIAMENT

29. The Minister shall, as soon as practicable, after their receipt cause a copy of every statement of accounts or report referred to in sections 27 and 28 to be laid before Parliament.

#### GRANTS

30. (1) The Bank may receive grants from the Government, or any organisation or body in or outside Vanuatu in accordance with the terms and conditions specified for any such grant.
- (2) Every grant shall be governed by an agreement between the grantor and the Bank. The respective rights and obligations of the parties, the allocation of funds, the means of making reports and the frequency of reports shall be specified in the agreement. Every such agreement must be authorised by the Board and approved by the Minister.

#### BANK MAY RAISE LOANS

31. (1) Subject to section 6 (m), the Bank may, from time to time in such manner and upon such terms and conditions as the Board may approve, raise loans for the purpose of carrying out its functions under this Act.
- (2) Subject to section 6 (m), the Bank may borrow by way of overdraft or a short term loan up to such limit as the Board may specify, any sum which the Bank may require temporarily for the purpose of meeting its commitments.

- (3) The Bank may raise loans and borrow moneys in any currency.
- (4) The repayment of any loan raised or moneys borrowed under this section, and interest thereon, may be secured by mortgage, debenture or other charge upon the assets of the Bank.
- (5) Subject to approval by resolution of Parliament, the Minister may guarantee the payment of any loan raised or money borrowed by the Bank under this section together with interest thereon and other charges relating thereto. The provisions of the Government Borrowing and Guarantee Act 1982 shall not apply in relation to any guarantee under this subsection.

#### **GUARANTEE FUNDS**

32. The Bank may manage any guarantee fund, whether established by itself or granted by the Government or any public authority or any body or organisation in or outside Vanuatu, and shall report regularly on its management to the grantor of such fund.

#### **PART 7 - MISCELLANEOUS**

#### **SECRECY**

33. No person who is or has been a director or the holder of any office or member of the staff of the Bank shall, either directly or indirectly, except in the performance of a duty under, or in connexion with, this Act, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under, or for the purpose of, this Act.

Penalty: imprisonment for 1 year or fine of 100,000 vatu or both.

#### **EXEMPTION FROM BANKING LAWS**

34. The provisions of the Banking Regulation or any law in force from time to time in substitution therefor shall not apply in relation to the Bank.

#### **PROVISION OF INFORMATION TO CENTRAL BANK**

35. The provisions of section 32 of the Central Bank of Vanuatu Act No.3 of 1980 which relate to the provision of information by financial institutions to the Central Bank of Vanuatu, shall apply in relation to the Bank in the like manner as they apply in relation to the financial institutions within the meaning of that Act.

#### **WAIVER OF GAZETTING CERTAIN INSTRUMENTS**

36. Notwithstanding the provisions of section 13 of the Interpretation Act No. 9 of 1981, the Statement of General Business Policy, the Minister's directions, rules and the Internal Regulations referred to in sections 7, 8, 24 and 37 respectively shall not be regarded as statutory orders for the purpose of the publication of the same in the Gazette.

#### **INTERNAL REGULATIONS OF THE BANK**

37. (1) The Board may make rules to be known as the Internal Regulations of the Bank to regulate the conduct of the business of the Bank, and, in particular, with respect of all or any of the following -
- (a) the terms and conditions on which loans may be made and the requisite securities or guarantees relating to the same;

- (b) the total amount of the loan commitment of the Bank in any one or more financial years, whether generally or in respect of any class of loan as determined by the nature of the activity for which a loan is applied for, the period of repayment or other factors;
  - (c) the Bank's interest rate structure and the fixing of the margins of the interest rates in respect of any class of loans;
  - (d) the establishment of reserve and other funds including provisions for bad or doubtful debts;
  - (e) the diversification of the Bank's loan and investment portfolios;
  - (f) the acquisition, holding and disposal of the shares in any company;
  - (g) the keeping of a register of the shareholders and entries therein;
  - (h) the manner, form and frequency of any reports on the Bank's operations as a whole or any part thereof;
  - (i) the manner and form in which the exercise of any of the powers or functions of the Board may be delegated to the Executive Committee;
  - (j) the conditions under which the Bank may act as an agent for any body or organisation in or outside Vanuatu.
- (2) In the event of a conflict between any of the provisions of the Internal Regulations and the provisions of the Statement of General Business Policies of the Bank referred to in section 7 the latter shall prevail.
- (3) The internal regulations and amendments thereto shall be made by a resolution of the Board carried by a majority of not less than two thirds of the total number of its members.

#### TRANSITIONAL PROVISIONS

38. (1) Until such time as the Board is constituted and a Managing Director is appointed under this Act -
- (a) the board of directors of the former bank and the members, the chairman and the vice-chairman thereof shall exercise the functions of their corresponding offices respectively as such; and
  - (b) the general manager of the former bank shall exercise the functions of the Managing Director,
- under this Act.
- (2) For the purposes of sections 27 and 28 relating to the accounts, reports and audit for the financial year ending on the 31st December 1983 the Bank and the former bank shall be treated as one body.

#### REPEAL

39. Joint Regulation No. 11 of 1979 which relates to the approval of the articles of association of the Bank of the Development of the New Hebrides is hereby repealed.

#### COMMENCEMENT

40. This Act shall come into operation on such date as the Minister shall by order appoint.