

# **Vanuatu Agriculture Development Bank Act 2006**

*Commencement: 11 September 2006*

## **REPUBLIC OF VANUATU**

### **VANUATU AGRICULTURE DEVELOPMENT BANK ACT NO. 20 OF 2006**

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**REPUBLIC OF VANUATU**

**VANUATU AGRICULTURE DEVELOPMENT BANK ACT  
NO. 20 OF 2006**

Assent: 17/07/2006

Commencement: 11/09/2006

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

**PART 1 PRELIMINARY**

## **1 Interpretation**

In this Act, unless the context otherwise requires-

**Bank** means the Vanuatu Agriculture Development Bank.

**Board** means the Board of directors of the Bank.

**director** means a member of the Board appointed under section 12.

**Executive Committee** means a committee established under section 19.

**financial year** means the financial year of the bank commencing on 1 January and ending on 31 December each year.

**General Manager** means the person appointed as the General Manager under section 20.

**member** means a member of the Board of Directors of the Bank.

**Minister** means the Minister responsible for Finance and Economic Management.

**share** means a share in the authorized capital of the Bank.

**Shareholder** means a person who acquires shares in the bank.

## **PART 2 ESTABLISHMENT, PURPOSE, FUNCTIONS AND POWERS OF THE BANK**

### **2 Establishment and incorporation of the bank**

(1) The Vanuatu Agriculture Development Bank of Vanuatu is established.

(2) The Bank:

(a) is a body corporate with perpetual succession; and

(b) is to have a common seal; and

(c) is capable of suing and being sued.

### **3 Purpose of the Bank**

The purpose of the Bank is to facilitate and promote the economic development of the national resources of Vanuatu with special regard to agriculture, forestry, fisheries,

livestock, manufacture and tourism.

#### **4 Functions of the Bank**

The Bank has the following functions:

(a) to provide assistance to enterprises including individuals, partnerships, co-operatives and companies for new and existing businesses, and the expansion or modernization of their existing facilities by:

(i) making loans;

(ii) taking equity participation;

(iii) guaranteeing the finance provided by other sources;

(iv) providing technical, managerial and financial consultancy services; and

(v) assisting in the identification, formulation and promotion of new projects.

(b) participate in the management of enterprises which have received some form of financing from the Bank;

(c) organise, participate in, or act as agent for consortium arrangements designed to finance economic development;

(d) act as agent for local, foreign and international bodies in the financing of economic development;

(e) take such steps as may be necessary to protect or recover its interest in any enterprise;

(f) take insurance cover over its operations and assets;

(g) provide technical assistance in connection with businesses it finances;

(h) provide technical services in areas such as feasibility 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;

(i) establish or acquire subsidiaries or form partnerships;

(j) to undertake such other functions as are conferred on it by or under this Act.

#### **5 Powers of the Bank**

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

(2) Without limiting subsection (1), the Bank may:

(a) sell, purchase or subscribe to stock, shares, debentures, guarantees, bonds or other types of 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 receive money for the purposes of loan contribution and loan repayment;

(d) underwrite or sub-underwrite issues of securities, give and receive guarantees, or participate with others in any such activities;

(e) place funds not immediately required on deposit with any other bank;

(f) make charges for the provision of any of its services;

(g) acquire such assets as may be required for the operations of the Bank;

(h) acquire, hold and dispose of property, movable and immovable, of every description;

(i) enter into contracts relevant to the functions of the Bank;

(j) raise loans and borrow moneys for the purpose of meeting any of its obligations or discharging any of its functions under this Act.

(3) All deeds and other instruments which are by law required to be sealed are to be sealed with the common seal of the Bank in the presence of, and authenticated by, the Chairman of the Board or a person authorised by a resolution of the Board for that purpose, and judicial notice shall be taken of such sealing.

## **6 General business policies of the Bank**

(1) In the exercise of its functions under this Act the Bank is to be guided by, and is to 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.

(2) The Statement referred to in subsection (1) and any alteration thereof is to 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 after consultation with the Minister.

(3) In performing its functions under this Act the Bank is to be guided by accepted banking principles.

## **7 General directions by Minister**

(1) 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.

(2) For the avoidance of doubt a direction referred to in subsection (1) must not in any way include recommendation for approval of loans or the recruitment of staff.

## **PART 3 THE CAPITAL OF THE BANK**

### **8 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.

### **9 Increase and reduction of the share capital**

On the recommendation of the Board and subject to the approval of the shareholders, 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.

### **10 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.

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.

The Minister of Finance and Economic Management 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 such transfer or assignment has been approved by the Minister on the recommendation of the Board.

## **11 Limited liability of shareholders**

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

## **PART 4 BOARD OF DIRECTORS OF THE VANUATU AGRICULTURE DEVELOPMENT BANK**

### **12 Establishment of the Board of Directors of the Vanuatu Agriculture Development Bank**

The Board of Directors of the Vanuatu Agriculture Development Bank is established.

### **13 Functions of the Board**

The Board is responsible for the day to day operations of the Bank and is to ensure that the policies of the Bank are implemented in an efficient and effective manner.

### **14 Composition of the Board**

(1) The Board consists of 7 members to be appointed by the Minister.

(2) The members are:

- (a) a person nominated by the Director General of the Ministry responsible for Agriculture with qualification in agriculture or a related field from a recognized institution and 5 years practical experience in farming business;
- (b) a person nominated by the Director General of the Ministry of Finance and Economic Management with ten years experience in the banking and finance sector;
- (c) a person nominated by the Syndicate Agricole with ten years experience in the business of farming;
- (d) a person nominated by the Chairman of the Chamber of Commerce and Industry, with experience in tourism;
- (e) a person nominated by the Vanuatu Society of Accountants;
- (f) a person nominated by the National Council of Chiefs who is actively involved in farming;
- (g) a person nominated by the Director of Women's Affairs with experience in business management.

(3) Not more than 3 directors may be public servants.

(4) A person is disqualified from being appointed or for continuing as a member of the Board if he or she:

- (a) is or becomes a Minister of the Government or a Member of Parliament; or
  - (b) has reached 70 years of age; or
  - (c) is bankrupt or has made an arrangement in the nature of composition or assignment with his creditors; or
  - (d) fails to attend 3 consecutive meetings of the Board without the permission of the Board; or
  - (e) has been convicted of an offence and sentenced to a term of imprisonment of 6 months or more, whether or not it is a suspended sentence.
- (5) A person may be appointed for a period not exceeding 3 years and is eligible for reappointment. A person may only be appointed for 2 terms as a member of the Board.

(6) The office of a director is vacant if-

- (a) he or she is disqualified for appointment under subsection (4); or
  - (b) he or she becomes permanently incapable of performing his or her duties.
- (7) A member of the Board must not be removed from office unless situations arise that would disqualify him or her from being a member under subsection (4) or his or her office becomes vacant for reasons set out in subsection (6).

## **15 Chairperson and Deputy Chairperson**

The Board is to appoint, from amongst the directors, a Chairperson and a Deputy Chairperson of the Board, who are to hold office for such period as the Board determines in writing.

## **16 Terms and Conditions**

(1) Subject to subsection (2) a member is not entitled to any remuneration for performing his or her functions under this Act.

(2) A member must be paid:

- (a) a sitting allowance at a rate of not more than VT15,000; and
- (b) such reasonable travelling costs and other costs connected with the performance of his or her duties as a member of the Board.

(3) Directors (other than the General Manager) who are members of the Executive Committee under section 19 are entitled to a sitting allowance at a rate of not more than VT5,000.

## **17 Meetings of the Board**

- (1) The Board is to meet, at least once in every 3 months, at such time and place as the Chairperson, or in his absence the Deputy Chairperson, directs.
- (2) Without limiting subsection (1), the Chairperson, or in his absence, the Deputy Chairperson is to convene a meeting of the Board on a written request signed by not less than four directors.
- (3) At a meeting of the Board a quorum consists of four members.
- (4) The chairperson, or in his or her absence, the Deputy Chairperson is to preside at all meetings of the Board. In the case where both the Chairperson and Deputy Chairperson are absent from a meeting, the Board is to elect a director to preside at that meeting.
- (5) A member of the Board must notify the Minister if by reason of illness, absence from Vanuatu temporarily or any other valid reason the member is unable to perform the duties of his or her office. The Minister must, get nominations from the relevant persons or organizations under subsection 14(2) which nominated that member, appoint another member to represent that member until such time that the member is able to resume his or her duties.
- (6) Each member present at the meeting has one vote and questions arising at a meeting of the Board are to be decided by a majority of votes. If the voting is equal, the member presiding at the meeting has a casting vote.
- (7) Subject to this Act, the Board may determine and regulate its own procedures.

## **18 Disclosure of Interests by members of the Board**

- (1) A member who:
  - (a) has a financial or personal business interest in a matter under consideration or a matter which is to be considered by the Board; or
  - (b) is likely to have a conflict of interest in relation to the matter, must disclose that interest to the Board.
- (2) The member must not be part of any discussion in relation to such matter and may be requested by the Chairperson, Deputy Chairperson or member presiding at the meeting to absent himself or herself while the matter is being considered by the Board.

## **19 Executive Committee**

- (1) The Board may, by a resolution carried by a majority of two-thirds of the number of its members, set up an Executive Committee of the Board to whom the Board may delegate any of its functions and powers under this Act except the functions and powers of:
  - (a) the consideration and approval of the accounts of the Bank; and
  - (b) the allocation of profits and declaration of dividends; and

- (c) the appointment of the General Manager.
- (2) The Executive Committee shall consist of the General Manager and not more than three directors who are to hold office for a period to be determined by the Board.
- (3) The Board may give such directions as it thinks fit with respect to the procedure to be followed by the Executive Committee 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 quorum of meetings of the Executive Committee;
  - (c) the manner in which questions arising at a meeting of the Executive Committee are to be decided;
  - (d) any information or other matters, which the Executive Committee is required to refer to the Board for approval and the manner in which such information or other matters are to be made.
- (4) The General Manager is to preside at all meetings of the Executive Committee. In his or her absence the Deputy General Manager is to preside at these meetings.
- (5) A member of the Executive Committee must disclose to the Executive Committee any financial or personal interest in a matter under consideration or a matter which is to be considered by the Executive Committee.
- (6) The member must not be part of any discussion in relation to such matter and may be requested by the person presiding in the meeting to absent himself or herself while the matter is being considered by the Executive Committee.

## **20 General Manager of the Bank**

- (1) The Board is to appoint a General Manager of the Bank, by a resolution of the Board and after consultation with the Minister.
- (2) The Board is to determine the terms and conditions of the General Manager.
- (3) A person must not be appointed to the position of General Manager unless he or she:
  - (a) has had at least 5 years experience in banking and managerial positions; and
  - (b) has a degree in:
    - (i) banking and finance; or
    - (ii) commerce; or
    - (iii) accounting; or
    - (iv) economics; and
  - (c) has applied for this position and has gone through a fair and transparent selection process.
- (4) The Board may determine other criteria required for the position of General Manager.
- (5) A person is disqualified from being appointed as the General Manager if the person:
  - (a) is or becomes a Minister of the Government or a member of Parliament; or
  - (b) has reached 70 years of age; or
  - (c) is bankrupt or has made an arrangement in the nature of composition or assignment with his creditors; or

(d) has been convicted of an offence and sentenced to a term of imprisonment of 6 months or more, whether or not it is a suspended sentence.

(6) Subject to subsection (8) the General Manager is to hold office for a term not exceeding 3 years and is eligible for re-appointment. However a person must not hold the position of General Manager for more than two terms.

(7) The General Manager is the chief executive officer of the, Bank, and, subject to this Act and to the general directions of the Board, is responsible for the day-to-day management of the business of the Bank.

(8) The General Manager ceases to hold office if-

(a) he or she becomes ineligible for appointment under subsection (5); or

(b) he or she becomes permanently incapable of performing his functions under this Act; or

(c) he or she resigns his office by notice in writing addressed to the Board; or

(d) his or her appointment is terminated by the Board for a serious breach of the terms and conditions of his employment.

(9) If the General Manager is absent temporarily from duty or is unable to perform his or her functions or if his or her office becomes vacant during his or her term in office the Deputy General Manager is to exercise the functions of the General Manager during such absence.

## **21 Deputy General Manager**

The Board may appoint a Deputy General Manager of the Bank on such terms and conditions as the Board determines.

## **22 Other Staff of the Bank**

(1) The General Manager may employ such officers, servants, agents and advisers as is necessary for the proper and efficient performance of its functions.

(2) The General Manager is to determine the terms and conditions of employment of the persons referred to in subsection (1).

(3) The appointment of officers, servants, agents and advisers under subsection (1) must follow a fair and transparent selection process and must be based on merit.

(4) For the avoidance of doubt any recommendation for appointment by a Minister or Member of Parliament verbal or written shall automatically disqualify the applicant for appointment as an officer, servant, agent or advisor of the Bank.

## **PART 5 ORDINARY AND EXTRAORDINARY GENERAL MEETINGS OF SHAREHOLDERS**

### **23 Ordinary general meeting**

(1) The Board must call an ordinary general meeting within 8 months after the end of each financial year.

(2) Shareholders at an ordinary general meeting are to meet and receive:

- (a) the annual reports and statements of accounts of the Bank and the auditor's report;
- (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;
- (c) any other matters submitted to the meeting by the Board.

### **24 Extraordinary general meeting**

(1) The Board may call an extraordinary general meeting if:

- (a) the Board considers it necessary to do so; or
- (b) 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) The Shareholders at an extraordinary general meeting are 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; or
- (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.

### **25 Resolutions and voting at ordinary general meetings and extraordinary general meetings**

Resolutions of an ordinary general meeting or an extraordinary general meeting are to be carried by a simple majority of votes of the shareholders present or represented by proxy and voting at the meeting. Every shareholder shall have 1 vote for each share of which he is the holder.

### **26 Board to regulate procedures at ordinary general meetings and extraordinary general meetings**

The Board may make rules, not inconsistent with this Act, to provide for any matter with respect to the calling of, and procedure at, ordinary general meetings and extraordinary general meetings, and in particular, with respect to:

- (a) the giving of notices of the time, place and business of an ordinary general meeting or extraordinary general meeting;
- (b) quorum at an ordinary general meeting or extraordinary general meeting;

- (c) proxies in relation to voting at these meetings;
- (d) persons to preside over an ordinary general meeting or an extraordinary general meeting and powers and functions to be exercised by such persons;
- (e) the keeping and approval of minutes.

## **PART 6 FINANCIAL MATTERS**

### **27 Reserve fund and allocation of profits**

(1) The Bank must provide against any anticipated losses. In doing that, the Bank must establish and maintain a reserve fund which consists of the aggregate of not less than 25 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 is to be allocated to any special reserve fund, payment of dividend or to any other purpose as the Board determines with the prior approval of the Minister.

### **28 Estimates of annual income and expenditure**

(1) The Bank must, not later than 2 months before the commencement of each financial year, prepare estimates of income and expenditure of the Bank in respect of that year.

(2) The Board must, as soon as practicable, give the Minister a copy of the estimates for each financial year referred to in subsection (1).

### **29 Accounts and Audits**

(1) The Bank must keep proper accounts and records of all its transactions and must 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 accounts of the Bank for each financial year must be audited by a qualified external auditor who is to be appointed by the Board for a term of not more than 3 years. This period may be extended by the Board.

(3) The Board must as soon as practicable after the accounts and statement of accounts for each financial year have been audited under subsection (2), give the Minister a copy of the statement of account and a copy of the auditor's report.

(4) Failure to comply with the provisions of subsection 28(1) or subsections 29(1) and (2) constitutes a serious misconduct by the General Manager which will result in the termination of the General Manager by the Board without notice.

### **30 Annual Report**

The Board must give the Minister before 30 April of each year, an annual report dealing with the operations of the Bank during the preceding financial year.

### **31 Report and statement of accounts to be laid before Parliament**

The Minister must, as soon as practicable, after receiving the annual report, cause a copy of every statement of accounts or report referred to in sections 28 and 29 to be laid before Parliament.

### **32 Grants**

(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 is to 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 must be specified in the agreement. Every such agreement must be authorised by the Board and approved by the Minister.

### **33 Bank may raise loans**

(1) In addition to paragraph 5(2)(j) of this Act relating to the powers of the Bank, the Bank may, from time to time and 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) The Bank may borrow by way of overdraft or a short loan of amounts not exceeding VT 20,000,000 which the Bank may require temporarily for the purpose of meeting its commitments.

(3) The Bank may raise loans and borrow money 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) Guarantee of the State for payment of any loans or money borrowed by the bank is subject to the provisions of the Public Finance and Economic Management Act No. 6 of 1998.

### **34 Guarantee funds**

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 must report regularly on its management to the grantor of such fund.

## **PART 7 MISCELLANEOUS**

### **35 Secrecy**

No person who is or has been the General Manager or the holder of any office or member of the staff of the Bank is to, either directly or indirectly, except in the performance of a duty under, or in connection 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: liable on conviction to imprisonment for a period of one year or a fine of VT100,000 or both.

### **36 Application of the Financial Institutions Act No. 2 of 1999**

(1) The provisions of the Financial Institutions Act No. 2 of 1999, does not apply to the Bank.

(2) Despite subsection (1), the Minister may, on the advice of the Reserve Bank, by Order apply any provision of the Financial Institutions Act No. 2 of 1999 to the Bank.

### **37 Provision of information to the Reserve Bank of Vanuatu**

The provisions of section 31 of the Reserve Bank of Vanuatu Act [CAP 125] which relate to the provision of information by financial institutions to the Reserve Bank of Vanuatu, applies in relation to the Bank in the like manner as they apply in relation to the financial institutions within the meaning of that Act.

### **38 Financial and other information to the Ministry of Finance and Economic Management**

The Bank must provide financial and other information to the Ministry responsible for Finance and Economic Management on the request of that Minister. That Minister may delegate in writing the responsibility for requesting information from the bank to an officer within the Ministry of Finance and Economic Management and any such information requested by the officer is deemed to have been made by that Minister.

### **39 Prohibition on borrowing funds from the Bank**

A member of the Board or any staff of the Bank must not borrow funds in any manner from the Bank.

#### **40 Internal Regulations of the Bank**

(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 6 the latter shall prevail.

(3) The internal regulations and any amendments made to it must be made by a resolution of the Board carried by a majority of not less than two-thirds of the number of its members.

#### **41 Commencement**

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

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