



**REPUBLIC OF VANUATU**

**FOUNDATION (AMENDMENT)  
ACT NO. 32 OF 2018**

**Arrangement of Sections**

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# REPUBLIC OF VANUATU

**Assent:** 24/12/2018  
**Commencement:** 08/01/2019

## FOUNDATION (AMENDMENT) ACT NO. 32 OF 2018

An Act to amend the Foundation Act No. 38 of 2009.

Be it enacted by the President and Parliament as follows-

### **1 Amendment**

The Foundation Act No. 38 of 2009 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 FOUNDATION ACT NO. 38 OF 2009

**1 Section 2 (Definition of “Commission”)**

Repeal the definition.

**2 References to “Commission”**

Delete all references to “Commission”, substitute “Commissioner”

**3 Section 2**

Insert in its correct alphabetical position:

““Commissioner” means the Commissioner of the Vanuatu Financial Services Commission appointed under section 9 of the Vanuatu Financial Services Commission Act [CAP 229];”

**4 After paragraph 7(1)(a)**

Insert

“(aa) that the guardians, councillors and the secretary of the foundation are natural persons; and

(ab) that at least half of the councillors of the foundation reside in Vanuatu for at least 6 months within each calendar year; and”

**5 Subsections 13(2), 15(2) and 21(2)**

Repeal the subsections.

**6 Paragraph 14(1)(b)**

Repeal the paragraph.

**7 Subsection 15(3)**

Repeal the subsection, substitute

“(3) A person is not qualified to be appointed as secretary of a foundation if the person is the sole councillor of the foundation.”

**8 Paragraph 22(2)(b)**

Delete “; or”, substitute “.”

**9 Paragraph 22(2)(c)**

Repeal the paragraph.

**10 After section 29C**

Insert

**“29D. The Commissioner may remove a key person of a foundation**

- (1) The Commissioner may direct in writing a foundation to remove a guardian, councillor or the secretary of the foundation if he or she is satisfied that the guardian, councillor or the secretary of the foundation is not a natural person.
- (2) Before directing the foundation to remove a person under subsection (1), the Commissioner must give written notice to:
  - (a) the person; and
  - (b) the foundation,giving each of them a reasonable opportunity to make submissions on the matter.
- (3) A direction takes effect on the day specified in the direction.
- (4) If the Commissioner directs a foundation to remove a person, the Commissioner must give a copy of the direction to the person and the foundation.
- (5) If the foundation fails to comply with a direction under this section, the foundation is guilty of an offence punishable on conviction by a fine not exceeding VT75 million.”

**11 Paragraph 41(2)(d)**

Delete “43”, substitute “44”

**12 After paragraph 43(1)(a)**

Insert

- “(aa) at least half of the councillors of the foundation have not resided in Vanuatu for at least 6 months within each calendar year; or”

**13 After section 55A**

Insert

**“55B. Penalty Notice**

- (1) The Commissioner may serve a penalty notice on a person if it appears to the Commissioner that the person has committed an offence under any provision of this Act.
- (2) A penalty notice may be served personally or by post.
- (3) The Minister may by Order prescribe penalties which a person is required to pay under this section, which must not exceed:
  - (a) VT 200,000 for an individual; or
  - (b) VT 1 million for a body corporate;within 30 days after the date on which the notice was served.
- (4) If the amount of penalty referred to in subsection (3) is paid, that person is not liable to any further proceedings for the alleged offence.
- (5) Payment made 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 proceeding arising out of the same occurrence.
- (6) The Commissioner may publish a penalty notice issued to a person in such manner as the Commissioner determines.
- (7) If a penalty notice has been served on a person, a prosecution in respect of the alleged offence may only be commenced if the penalty remains unpaid 30 days after the penalty was due, and the Court may take account of any unpaid penalty when imposing a penalty in respect of the offence.
- (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.”