

FOREIGN INVESTMENT APPROVAL APPLICATION GUIDE

Republic of Vanuatu



VANUATU INVESTMENT
PROMOTION AUTHORITY



Private Mail Bag 9011, Port Vila, Vanuatu
Tel : +678 24096 / 24441 Facsimile: +678 25216
E-mail: investment@vipa.org.vu Website: www.investvanuatu.org

Welcome

Welcome, and thank you for choosing Vanuatu as an investment destination. This guide is designed to provide you with all the information you will need to complete a successful foreign investment application.

I encourage you to read the guide before completing an application. It explains our different application forms, approval requirements and the evidence you must provide when applying. It is organized into the following sections:

- **General information** – general background about the process of obtaining a foreign investment approval certificate including its legal basis and the responsibilities and privileges it bestows on successful foreign investors.
- **Types of application forms and associated fees** – summary of the three types of application forms you will need to be familiar with and our application processing fees.
- **Common application related questions** – Responses to commonly asked questions such as how long it takes to process an application and what criteria we use when assessing them.
- **Application guides** – question by question guides that will assist you to successfully complete each of the following application forms:
 - New investment;
 - Variation of an existing foreign investment approval certificate;
 - Annually renew your foreign investment approval certificate.

While we have made an effort to make the document as comprehensive as possible, we appreciate there will always be specific queries and issues for individual investors. We here at VIPA are always available and happy to respond to any specific questions you may have. Please contact the Manager, Foreign Investment Registration using the contact details identified on the cover of this guide.

Chief Executive Officer
Vanuatu Investment Promotion Authority

Contents

FOREIGN INVESTMENT APPROVAL

General Information	1
Background	1
Purpose	1
Underlying legislation	1
Definition of a foreign investor	1
Foreign investment approval certificate (FIAC)	2
Responsible government authority	2
Foreign investor responsibilities and privileges	2
Common application related questions	5
Should I consult with other government agencies about my proposed business activities before I submit my application?	5
When is the appropriate time to make an application?	5
In addition to the application form, are supporting documents required?	6
What language can I use to prepare my application?	6
At what point is an application accepted for processing?	7
How long will it take to process my application?	7
What criteria are used to assess my application?	7
Is there a process I can use to dispute a decision I don't agree with?	9
Instructions for successfully completing an application form for a "New Investment"	10
Section 1: General information and checklist	10
Section 2: Foreign investor information	12
Section 3: Business activities and location	13
Section 4: Implementation issues	14
Section 5: Summary information	16
Instructions for successfully completing an application form to "Vary an Existing FIAC"	18
Section 1: Type of variation requested and checklist	18

Section 2: Variation in business name	20
Section 3: Variation in ownership.....	21
Section 4: Variation in business activity or location	22

Instructions for successfully completing an application form to “Renew a FIAC”	27
Section 1: General information and checklist.....	27
Section 2: Financial information.....	29
Section 3: Reserved activities	29
Section 4: Plans and problems encountered.....	30

Schedule of fees and penalty fines	31
Application fees	31
Other fees	31
Penalty fines	31

FOREIGN INVESTMENT APPROVAL

General Information

Background

The Government of Vanuatu has as its key goal raising the welfare of the people of Vanuatu. It recognizes the significant contribution private enterprise can play in achieving this goal, and is committed to having in place an environment conducive to the maintenance and creation of new investment.

While the Government welcomes foreign investment to Vanuatu, it also seeks to protect the interests of citizen investments in certain sectors of the economy. It also wishes to ensure foreign investors are bone fide and possess sufficient financial means to establish and operate their planned investments.

Purpose

Foreign investment approval is the regulatory mechanism used by the Government to help it achieve the above mentioned objectives. Once obtained, it provides a foreign investor with the legal right to establish and conduct business in specified activities and locations within Vanuatu.

Underlying legislation

The Foreign Investment Promotion Act 1998 (referred to hereafter as “the Act”) regulates foreign investment into Vanuatu.

Under the law, a foreign investor is not allowed to engage in business within the country without first obtaining a foreign investment approval certificate. This requirement precedes all other business regulatory requirements.

The Act is currently under review with the aim of making the foreign investment approval process more transparent and efficient to administer. The review is expected to be completed by the end of 2009.

Definition of a foreign investor

A foreign investor is defined as:

- a person who is not a citizen of Vanuatu; or
- a body corporate that is not wholly owned by Vanuatu citizens or has any of its shares (voting or otherwise) beneficially owned or controlled by persons who are not Vanuatu citizens; or

- any entity other than a natural person or a body corporate where control of, or benefit to be derived from the entity, will vest wholly in persons who are not citizens of Vanuatu or a body corporate that is a foreign investor.

Foreign investment approval certificate (FIAC)

A successful foreign investor is issued with a foreign investment approval certificate (FIAC). The FIAC is issued under the registered name of the foreign investor and specifies all business activities the enterprise may undertake within the country, along with the geographic location of these activities. The FIAC is issued for a period of one year.

A foreign investor must renew their FIAC annually by lodging an application describing their performance during the year and future plans.

In the event a foreign investor wishes to change any aspect of their FIAC they must submit an application for variation. This applies to a change in business name, shareholding or type or location of business activity. A revised FIAC is issued once the variation has been approved.

Failure to obtain a FIAC or amend it as required could result in the foreign investor committing an offence under the Act, for which a fine not exceeding VT500,000 is prescribed. Investors who continually fail to abide by the terms and conditions of their certificate or Vanuatu's other laws may have their certificate revoked.

Responsible government authority

The Vanuatu Investment Promotion Authority (VIPA) is the government authority tasked under the Act to receive and assess foreign investment applications, issue, vary and renew FIACs, and monitor foreign investor compliance with conditions set out in the certificates.

Foreign investor responsibilities and privileges

A FIAC bestows both responsibilities and privileges on a foreign investor. It is important that you are aware of these responsibilities and privileges.

Responsibilities

- Obey all the laws of Vanuatu, including completing and complying with all the regulatory requirements necessary to establish and operate a business in the country.
- In the case of investors with limited Bislama, English or French language skills, ensure at least one staff person is available to provide translation services to ensure government agency monitoring and inspection activities are effectively implemented.

- Whenever possible hire and train Ni-Vanuatu workers, ensure they are registered with the Vanuatu National Provident Fund, and treat them in accordance with Department of Labour regulations.
- Implement development activities sensitive to the country's diverse cultural traditions and fragile ecosystems, and which are in compliance with the Environmental Management and Conservation Act 2002.

Privileges

- Zero corporate and personal income tax.
- Subject to compliance with the Value Added Tax Act and Import Duties Act, eligible for an exemption from either VAT or import duty, or both, for the whole or part of the investment.
- Subject to compliance with the Immigration Act, guaranteed minimum two residency permits for shareholders in the foreign investment who intend to reside in the country to implement their investment.
- Subject to compliance with the Labour (Work Permits) Act, access to work permits for at least two key positions requiring professional, technical or managerial expertise.
- Subject to compliance with the Land Leases Act, permission to lease land for periods up to 75 years in rural areas, and 30 to 50 years in urban areas.
- Freely able to repatriate funds without condition.

Types of foreign investment application forms

There are three types of application forms, each of which is designed for a specific purpose. The types of forms and explanations of when they should be are outlined below:

Table 1. Types of foreign investment applications

Application Form	When it should be used?
1. New Investment	<ul style="list-style-type: none">• To obtain a FIAC for a new investment in the country.
2. Variation	<ul style="list-style-type: none">• To change any aspect of an existing FIAC including business name, ownership, business activity or location.
3. Renewal	<ul style="list-style-type: none">• To renew an existing FIAC. Renewals must be done annually before the anniversary date of the FIAC.

A listing of application fees and fees for other services is included at the end of the guide. It also identifies penalty fees charged for different infractions related to the Act.

Common application related questions

Should I consult with other government agencies about my proposed business activities before I submit my application?

Yes, we strongly encourage you to understand the regulatory environment you will be working within before you submit your application for a foreign investment approval certificate (FIAC).

First, you need to be aware that the FIAC is required by law to identify the location of your business activities. Because Provincial Councils and the Municipalities of Port Vila and Luganville have authority to regulate some aspects of business operation within their boundaries, there is the potential some of these by-laws may include restrictions specific to foreign investors. Unfortunately, there is no central repository of these by-laws and rules. As a result, it is important you visit the appropriate local authority as soon as possible to gain a better understanding of their rules and how they may affect your proposed business activities.

Second, you should also be aware the Government of Vanuatu has policies in place to sustainably manage its natural resources. This typically involves the setting of annual allowable harvest levels which limit the number of licences that can be issued at any one time. Moreover, in cases where over-exploitation of a natural resource is deemed to have occurred harvesting bans will be introduced. Such bans apply to all investors. If you are intending to harvest or exploit natural resources you should consult the relevant resource agencies as soon as possible to gain an understanding of the health of the target natural resource, as well as, the current availability of associated licences.

When is the appropriate time to make an application?

This depends on the type of application you intend to submit. The table below explains the requirements for each type of application:

Table 2. When to submit an application

1. New Investment	<ul style="list-style-type: none">We encourage you to complete the application process as soon as possible once you have identified a viable business opportunity. The FIAC is a pre-requisite for all other business regulatory requirements. VIPA staff can also provide information and support to assist you comply with these other requirements. Please note that you do not need to be outside of the country in order to submit an application.
2. Variation	<ul style="list-style-type: none"><u>Changing your business name</u> – You should first register the change at the Vanuatu Financial Services Commission (VFSC). You will then need to provide proof of this VFSC registration as part of your application to VIPA. The application for variation should be submitted to VIPA within

	<p>two weeks of the change being made at the VFSC.</p> <ul style="list-style-type: none"> • <u>Changing ownership of the investment</u> – If you are selling all or part of your business to new investors (foreign or local), or adding or deleting shareholders, you should submit an application for variation before making your final transaction. We recommend you do this to ensure the proposed new foreign investors meet the requirements of the Act and are deemed fit and proper persons. In instances where you have added or deleted shareholders you will be required to submit a copy of the VFSC document registering your revised ownership as a condition of the approval. • <u>Changing business activity or business location</u> – If you are intending to begin operation of a new business activity or establish operations of an already approved business activity but in a new location, you must submit an application for variation before you proceed. You also should submit an application for variation if you intend to stop operating an already approved business activity. This can be done at your discretion but should be completed before the end of the calendar year in order to avoid payment of business licence fees associated with that activity.
3. Renewal	<ul style="list-style-type: none"> • Your FIAC must be renewed annually before its anniversary date. We recommend you submit your application at least 3 weeks in advance of your FIAC’s expiry date. Failure to renew your FIAC on time will incur a penalty fee of VT100,000.

In addition to the application form, are supporting documents required?

Each type of application requires you to provide supporting documents. These requirements are identified in the checklist included on page two of each application form. Specific supporting document requirements are explained in the “Filling out an application” sections of this document.

What language can I use to prepare my application?

All applications, as well as supporting documents, must be completed in either English or French. Supporting documents written in another language must be translated into English. In these instances, the original supporting document as well as the English translation must be submitted as part of the application.

At what point is an application accepted for processing?

VIPA staff use the checklists included at the front of each application form to ensure that your application includes all the necessary information and complies with the above mentioned language requirement. Payment of the application fee will only be accepted if the application is found to be complete. Application fees must be paid in full and are non-refundable.

Applications that are deemed incomplete will be returned with an explanation of what information is required in order to address the gap.

On acceptance of the application, VIPA issues a receipt indicating the payment was made and identifies a target date for providing its response.

How long will it take to process my application?

Much of the application processing is done by VIPA staff, but some applications must go to the VIPA Board for consideration and approval. VIPA is committed to providing a response for all types of application within 15 working days of accepting a complete application.

What criteria are used to assess my application?

The key criteria used by VIPA to assess your application are identified below.

Table 3. Criteria used to assess applications

1. New investment	<ul style="list-style-type: none">• <u>Application is complete</u> – All specified information requirements have been met. This means the application form has been fully completed, statutory declarations for all non-citizen investors have been completed and signed, all supporting documents are attached and complete, and the application fee has been paid in full.• <u>Proposed business activity is not prohibited</u> – Certain activities cannot be undertaken by private sector enterprises in Vanuatu. These activities are identified in Schedule 1, Part 1 of the Act and include: the manufacture of nuclear and chemical weapons, as well as arms; and the dumping or storage of nuclear waste of toxic chemicals. The Penal Code Act also prohibits adult entertainment and related services such as massage parlours, prostitution, as well as the production and sale of x-rated materials.• <u>Proposed business activity does not contravene reserved list requirements</u> – Certain activities are reserved solely for Ni-Vanuatu citizens, or restricted by minimum investment conditions. These activities are identified in Schedule 1, Part 2 of the Act. An application to invest in an activity reserved solely for Ni-Vanuatu citizens will be rejected. An application to invest in a business activity with minimum investment conditions is permissible subject to the applicant providing a satisfactory explanation
-------------------	---

	<p>describing how and when these conditions will be achieved. The list of reserved activities is included as an appendix to the application form.</p> <ul style="list-style-type: none"> • <u>Proposed investor(s) is a fit and proper person</u> – An application will be rejected in instances where any investor in the proposed investment has been: a) convicted by a court in Vanuatu or any other country of an offence in respect of which they have been sentenced to imprisonment for a term of 6 months or more; or b) declared bankrupt more than twice, or is currently bankrupt and has not yet been granted an “order of discharge” by a court.
2. Variation	<p>Decision criteria depend on the nature of the variation being applied for:</p> <ul style="list-style-type: none"> • Change in business name <ul style="list-style-type: none"> – <u>Application is complete</u> – All specified information requirements have been met. This means the application form has been fully completed, the name identified on the business name registration certificate is identical to the name change being sought, and the application fee has been paid in full. • Change in ownership <ul style="list-style-type: none"> – <u>Application is complete</u> – All specified information requirements have been met. This means the application form has been fully completed, statutory declarations for all new non-citizen investors have been completed and signed, all supporting documents are attached and complete, and the application fee has been paid in full. – <u>Proposed investor(s) is a fit and proper person</u> – An application will be rejected in instances where any investor in the proposed investment has been: a) convicted by a court in Vanuatu or any other country of an offence in respect of which they have been sentenced to imprisonment for a term of 6 months or more; or b) declared bankrupt more than twice, or is currently bankrupt and has not yet been granted an “order of discharge” by a court. • Change in business activity or location <ul style="list-style-type: none"> – <u>Application is complete</u> – All specified information requirements have been met. This means the application form has been fully completed, all supporting documents are attached and complete, and the application fee has been paid in full. – <u>Proposed new business activity is not prohibited</u> – Certain activities cannot be undertaken by private sector enterprises in Vanuatu. These activities are identified in Schedule 1, Part 1 of the Act and include: the manufacture of nuclear and chemical weapons, as well as arms; and the dumping or storage of nuclear waste of toxic chemicals. The Penal Code Act also

	<p>prohibits adult entertainment and related services such as massage parlors, prostitution, as well as the production and sale of x-rated materials.</p> <ul style="list-style-type: none"> - <u>Proposed business activity does not contravene reserved list requirements</u> – Certain activities are reserved solely for Ni-Vanuatu citizens, or restricted by minimum investment conditions. These activities are identified in Schedule 1, Part 2 of the Act. An application to invest in an activity reserved solely for Ni-Vanuatu citizens will be rejected. An application to invest in a business activity with minimum investment conditions is permissible subject to the applicant providing a satisfactory explanation describing how and when these conditions will be achieved. The list of reserved activities is included as an appendix to the application form.
3. Renewal	<ul style="list-style-type: none"> • <u>Application is complete</u> – All specified information requirements have been met. This means the application form has been fully completed, all supporting documents are attached and complete, and the application fee has been paid in full.

Please note that under the Act the VIPA Board also has the authority to request other information from you if they feel it is necessary. Failure to successfully address such a request in a timely way may jeopardize the approval of your application.

Is there a process I can use to dispute a decision I don't agree with?

Yes, in the event you are unhappy with a decision we have made with respect to your application you may launch an appeal within 14 days of receiving the decision. Your appeal should be submitted to VIPA and must be addressed to the VIPA Board. It should provide a clear explanation of the reasons why you believe the initial decision should be overturned. A fee of VT 5,000 is charged to lodge an appeal. The VIPA Board will respond to any appeal letter it receives within 14 days. If you are still unsatisfied with the decision you may lodge a further appeal with the Supreme Court.

Instructions for successfully completing an application form for a “New Investment”

This section will help you understand what information we need you to provide in order to obtain a foreign investment approval certificate (FIAC) for the first time and why. It is organized according to the questions found in the application form.

Section 1: General information and checklist

Question 1 – Proposed business name

This information is used to issue your FIAC. The name you select, however, must be consistent with the Business Name Act, 1990. You must visit the VFSC to apply for the reservation of your name. This can be done quickly and at minimal cost.

Questions 2 to 5 – Name of key contact and contact information

This is the person to whom all correspondence relating to your investment will be sent, and whom we will contact if issues arise as part of our monitoring activities. It can be you as the investor, a local business consultant who is acting on your behalf, or a managing director you have hired to run the business. You must provide us with a mailing address, telephone number and email address.

You will be given an opportunity to update this information as part of the renewal process that occurs annually.

Question 6 – Brief description of proposed investment

You must provide us with a concise summary describing the nature of your proposed investment in the country. This will provide us with a clear picture of your intentions. Please note your summary should be consistent with the business activities you select in section 3. More detailed information describing your activities should be included in your business plan.

Question 7 – Checklist and required supporting documents

You must ensure that all items identified in the checklist are appended to your application. This information helps us verify and better understand information included on your application form. Immediately prior to submitting your application you should review this information to ensure it is complete and then tick the associated box confirming it is included in your package.

Applying to establish a new investment

Table 4. Required supporting documents (New Investment)

Statutory declaration(s)	<ul style="list-style-type: none"> • A signed declaration (original) is required for each investor that is not a Ni-Vanuatu citizen or registered as a company in Vanuatu. The declaration is used to notify us of any previous bankruptcies or criminal convictions incurred by a shareholder in the investment. It also provides us with comfort that the information provided in the application form is true and accurate. The declaration must be signed by the investor, as well as a registered Justice of the Peace, Commissioner for Oaths or Notary Public, in Vanuatu or the country where the investor resides. The declaration is included at the end of the application form.
Business name reservation	<ul style="list-style-type: none"> • Obtainable from the VFSC, the business name reservation certificate notifies us that your proposed business name (your response to Q.1) has been reserved in Vanuatu solely for your use. Following approval of your application you will be required to complete the process of registering this name at the VFSC, along with incorporating or registering your business entity.
Passport ID pages	<ul style="list-style-type: none"> • Copies of the passport ID pages for each foreign investor must be provided. This is to substantiate the list of proposed shareholders in the investment, and assists us with any investor screening checks we may undertake.
Police clearance(s)	<ul style="list-style-type: none"> • Police clearances are required only for shareholders in the investment who intend to reside in Vanuatu, as well as their accompanying family members (if applicable). They provide evidence these persons are of good character. Each police clearance must be less than three months old when the application is lodged. It should be obtained from the national or federal police force from the country the individual has lived in for the past 12 months. If you are unable to obtain a police certificate you must provide us with detailed information of your attempt to get one.
Confirmation of funds	<ul style="list-style-type: none"> • You must provide proof you have financial resources (cash or other unencumbered assets associated with the proposed business) of at least VT 5.0 million. This provides us with comfort that you are a serious investor with immediate access to capital for commencing your investment. For cash assets, proof must be in the form of a current bank statement (i.e. within five days of date of application) in the name of one or more of the investors from a commercial bank in Vanuatu or overseas attesting to this level of capital. In the case of land or other assets, proof should include ownership papers in the name of the investor and a valuation of the asset at current market prices. If the assets are located in Vanuatu the valuation must be done by a valuer who is registered with the Valuer General. If the assets are located outside of the country, it must be done by a qualified third party.

Applying to establish a new investment

Business summary	<ul style="list-style-type: none">• The business summary provides us with a better idea of the nature of your proposed activities and assures us your intentions are serious. It should address the following:<ul style="list-style-type: none">– Business description: concept behind the business and a detailed explanation of what you propose to do and where in the country it will be based– Products or services: description of your proposed products and services– Management and staff: Key members of your management team and the numbers and types of local employees you intend to hire, along with proposed monthly wage rates.– Reserved activities: Only necessary if you intend to pursue a reserved business activity. In these instances you must explain how and when you will achieve the planned level of operation you specify in Q12, including providing a proforma income statement for the first three years of operation.
Local worker training plan	<ul style="list-style-type: none">• You must provide a breakdown of your proposed staffing for the first 3 years of the investment. It should be broken down by citizen and non-citizen workers and identify the key types of workers you will require. Your training plan should outline the general skills training you intend to undertake for the citizen component of your workforce and how this will be done, i.e. on-the-job training, local training courses. In cases where you intend to use expatriate labor, it should also address your strategy for reducing this reliance over time.

Section 2: Foreign investor information

Question 8 – Foreign Investor details

You are required to identify all individuals or companies that are shareholders in the business. This enables us to know who is behind the investment and confirm the categorization of the investment as a foreign investor.

In the case of individuals the names should correspond to the names identified on the ID pages of their passports. Contact details, and information about citizenship and percentage ownership must be provided.

If a company will be a shareholder in the investment you must provide a listing of its shareholders and directors, the jurisdiction where the company is incorporated, its contact details, and the percentage of its ownership held by non-Ni-Vanuatu citizens.

Each investor that is not a Ni-Vanuatu citizen or registered as a company in Vanuatu must complete a statutory declaration included on page 7 of the application form.

Applying to establish a new investment

Question 9 – Associated businesses

In order to get as a clear picture of the ownership of the proposed investment as possible, you are required to inform us of other businesses that shareholders of the proposed foreign investment are currently involved in, whether in Vanuatu or overseas.

Question 10 – Form of intended business entity

You should indicate the type of business entity you intend to operate under in Vanuatu. Following receipt of a FIAC, you will be required to visit the VFSC to register your business entity.

Section 3: Business activities and location

Question 11 – Intended investment categories, business activities and location

The FIAC will list every business activity you are permitted to undertake in Vanuatu, as well as the locations you will operate from. It provides us with a transparent means of monitoring your activities in the country. This listing will also be used later to assist local authorities issue your annual business licence.

Using the list of investment categories and business activities included in Appendix A of the application form, and for each location in the country where you intend to base yourself, you should identify each business activity you intend to pursue and its associated investment code.

With respect to information about the location of your investment, we only require you to identify the municipality or province from which you will operate. In identifying your location you should select from the following options:

- Port Vila Municipality
- Luganville Municipality
- Shefa Province (operating outside of Port Vila in Efate, Epi and Shepherd Islands)
- Sanma Province (operating outside of Luganville in Santo and Malo)
- Malampa Province (Ambryn, Malakula and Paama)
- Penama Province (Pentecost, Ambae and Maewo)
- Tafea (Tanna, Aniwa, Futuna, Erromango and Anatom)
- Torba Province (Banks and Torres Islands)

For example:

Applying to establish a new investment

If you intend to establish a hotel on Tanna, you would record:

- “D3 (code); Accommodation, restaurants and bars (category); Hotel (business activity); Tafea Province (location)”.

Alternatively, if you intend to establish an accounting practice in Port Vila and Luganville, you would record two entries:

- “F4; Other professional and business services; Accounting Practitioner; Port Vila Municipality”, and
- “F4; Other professional and business services; Accounting practitioner; Luganville Municipality”.

It is extremely important your list is comprehensive and accurate. You should not hesitate to consult with a VIPA staff person if you have any questions in interpreting Appendix A or preparing your list.

Question 12 – Reserved business activities

Certain business activities have been defined as “reserved” under the Act. These activities are identified in Appendix B of the application form. Some of these activities (section 1) are reserved solely for Ni-Vanuatu citizens. As a foreign investor, you are not permitted to involve yourself in any of these activities.

Others (section 2), however, are open to foreign investment assuming you meet certain conditions. If you intend to operate one of these business activities you must inform us of this intention and identify the planned level of operation you intend to achieve. This planned level must be greater than the minimum investment threshold that has been set. For example, if you intend to establish a hotel on the island of Tanna it must have a total investment of 10 million vatu or annual sales turnover of 20 million vatu. Let’s say you propose to invest 50 million vatu in the project. You would record the following:

- “D3 (code); Hotel (business activity); Tafea Province (location); annual turnover of 50 million vatu (planned level of operation)”

Please note that in your business summary, you must clearly explain how you to intend to achieve this planned target level of operation by the end of your first two years of operation. If you are unable to demonstrate achievement of the specified minimum investment within this timeframe your right to operate in the reserved activity may be revoked.

Section 4: Implementation issues

Question 13 – Management

In instances where you intend to employ someone other than one of the

Applying to establish a new investment

investors to manage the day-to-day affairs of the business, you are required to provide us with the name and contact details of this individual. This lets us know who has operational responsibility for your investment.

Question 14 – Access to land

Gaining access to land in Vanuatu through a lease arrangement can be a challenge. While it is not essential for you to have already made such arrangements we are interested in knowing if this is an important pre-requisite for your investment, and if so, how far along the process you have gone. This information provides us with a better understanding of how long it may take you to become operational. It also gives an indication of how we at VIPA might be of assistance in this area.

Question 15 – Potential environmental impacts

The promotion of environmentally sound and safe management and conservation of the country's natural resources is a key objective of the Government of Vanuatu. Assuming your application is approved, and following the full preparation of your development proposal, you are required to consult the Environment Unit at the Ministry of Lands to determine if a preliminary impact assessment is required. Preliminary assessments are required only in situations where your development proposal is likely to cause a significant environmental, social or custom impact. The results of such an assessment will then be used to determine if a full impact assessment is required.

By responding to the six questions included in the application form concerning your proposed plans, we both gain a better understanding of whether a preliminary impact assessment will ultimately be required. If you answer yes to any of the questions included in Q.15 there is a good chance the Environment Unit will require this of you. In the event you respond positively to any of these questions, you should also provide a brief explanation of the nature of your development activity. For example, if you propose to build wharf facilities and a fish processing plant, you might respond:

- “yes” to Q.15a and c;
- “wharf facility will be constructed to accommodate long-line vessels, and large volumes of water will be used to process fish which will then receive primary treatment before being discharged into the ocean” (as your explanation).

Please note that if you answer “no” to all of the questions included in the self-assessment it does not mean a preliminary environmental impact assessment will not be required. Once you have obtained your FIAC, you still must consult the Environment Unit to clarify your obligations with respect to this requirement.

Section 5: Summary information

Question 16 – Investors

Provide a list of the full names of all shareholders in the investment, along with their nationalities and percentage shareholding. This information summarizes the information you provided in response to Question 8.

Question 17 – Residency permits required

Provide the full names of those individuals who intend to reside in Vanuatu for the purposes of implementing the investment. The person(s) can be an investor (identified in response to Question 16), a designated manager (identified in response to Question 13) or an accompanying family member. You are guaranteed a minimum of two residency permits. If you require more you must explain why they are required. You must provide a police clearance for each of these people.

Please note you are still required to contact the Immigration Department and fully comply with their application process. Section 9A of the Immigration Act CAP 66, however, currently obligates the Department to issue any residency permits agreed to as part of the FIAC as long as they meet the conditions set out in the Immigration Act.

Question 18 – Value of proposed investment

You are required to provide an estimate of the total value of the investment you intend to make in millions of vatu. This information provides us with important information that we use for statistical and monitoring purposes.

Your estimate must be broken down into basic asset categories (i.e. land and buildings, plant and equipment etc) with an indication of whether the assets will be sourced locally, or purchased overseas. It must cover the first three years of your investment, informing us the total value of the investment at the end of each year. Please note this information should be consistent with, and supported by, information you include in the financial section of your business plan.

Question 19 – Projected employment

You are also required to provide a summary of the formal employment your investment is expected to create over the first three years of operation. This information is similarly used for statistical and monitoring purposes.

The information should represent full-time positions (excluding any investors) and be broken down according to their position type (i.e. management, skilled or non-skilled) and citizenship (i.e. Ni-Vanuatu or foreign worker). This information should be consistent with, and supported by, information included in your business plan.

Applying to establish a new investment

Please note, once issued with a FIAC, you will be required to register as an employer with the Vanuatu National Provident Fund and make monthly social security payments to the Fund on behalf of your workers.

Instructions for successfully completing an application form to “Vary an Existing FIAC”

This section will help you understand what information we need you to provide in order to vary your foreign investment approval certificate and why. It is organized according to the questions found in the application form.

Section 1: Type of variation requested and checklist

Question 1 – Business name

This is the name of the business under which your existing FIAC has been issued.

Questions 2 and 3 – Name of key contact and telephone number

This is the person to whom all correspondence relating to your investment is normally sent, and whom we will contact if issues arise as part of our monitoring activities. You must also provide us this person’s telephone number.

Question 4 – Type of variation requested, checklist and supporting documents

This single application form can be used to make several changes to your FIAC. The first step is to tick the box associated with the type of variation you wish to make:

- Option a) – Change the business name that appears on your FIAC
- Option b) – Change the shareholding ownership of the investment
- Option c) – Add or delete a business activity or change your business location

Please note you can use the application to make one or more changes at the same time.

Once you have made your selection, you must ensure that all items identified in the checklist associated with this option are appended to your application. This information helps us verify and better understand information included on your application form. Immediately prior to submitting your application check to ensure you have this information and then tick the associated box confirming it is included in your package.

The following table identifies and explains the supporting documents you are required to submit and is organized by type of variation.

Applying to vary an existing FIAC

Table 5. Required supporting documents (Variation)

Change in Business Name	
Business name registration certificate	<ul style="list-style-type: none"> • Copy of the certificate issued by VFSC identifying your new business name. This is required in order to verify that the business name under which your new FIAC will be issued has been legally changed.
Change in Ownership	
Statutory declaration(s)	<ul style="list-style-type: none"> • A signed declaration (original) is required for each investor that is not a Ni-Vanuatu citizen or registered as a company in Vanuatu. The declaration is used to notify us of any previous bankruptcies or criminal convictions incurred by a shareholder in the investment, and provides us with comfort that information provided in the application form is true and accurate. The declaration must be signed by the investor, as well as a registered Justice of the Peace, Commissioner for Oaths or Notary Public, in Vanuatu or the country where the investor resides. The declaration is included at the end of this section of the form.
Passport ID pages	<ul style="list-style-type: none"> • Copies of the passport ID pages for each <u>new</u> foreign investor must be provided. This is to substantiate the list of new proposed shareholders in the investment, and assists us with any investor screening checks we may undertake.
Police clearance(s)	<ul style="list-style-type: none"> • Police clearances are required only for shareholders in the investment who intend to reside in Vanuatu, as well as their accompanying family members (if applicable). They provide evidence these persons are of good character. Each police clearance must be less than three months old when the application is lodged. It should be obtained from the national or federal police force from the country the individual has lived in for the past 12 months. If you are unable to obtain a police certificate you must provide us with detailed information of your attempt to get one.
Letter of support from business owner/director	<ul style="list-style-type: none"> • A letter from the owners or directors of the business is required in order to confirm the proposed change in shareholder ownership. This provides us with comfort that the transaction is legitimate. The letter should be on company letterhead and specify the ownership changes that are being made.
Confirmation of funds	<ul style="list-style-type: none"> • You must provide proof you have financial resources (cash or other unencumbered assets associated with the proposed business) of at least VT 5.0 million. This provides us with comfort that you are a serious investor with immediate access to capital for commencing your investment. For cash assets, proof must be in the form of a current bank statement (i.e. within five days of date of application) in the name of one or more of the investors from a commercial bank in Vanuatu or overseas attesting to this level of capital. In the

Applying to vary an existing FIAC

	<p>case of land or other assets, proof should include ownership papers in the name of the investor and a valuation of the asset at current market prices. If the assets are located in Vanuatu the valuation must be done by a valuer who is registered with the Valuer General. If the assets are located outside of the country, it must be done by a qualified third party.</p>
Existing business licence	<ul style="list-style-type: none"> • Provide a copy of your current business licence. For businesses located in Port Vila or Luganville, your business licence is obtainable from the Rates and Taxes Office, Department of Customs. For businesses located in other areas of the country it is issued by the local Provincial Council. This confirms that your business is operational and in compliance with Business Licencing requirements.
Change in Business Activity or Location	
Existing business licence	<ul style="list-style-type: none"> • Provide a copy of your current business licence. For businesses located in Port Vila or Luganville, your business licence is obtainable from the Rates and Taxes Office, Department of Customs. For businesses located in other areas of the country it is issued by the local Provincial Council. This confirms that your business is operational and in compliance with Business Licencing requirements.
Business summary (if investing in a reserved activity)	<ul style="list-style-type: none"> • If you are intending to invest in a “reserved” business activity to which minimum investment conditions are attached, you must explain how and when you will achieve the planned level of operation you specify in answer to Q11b. Your business summary should address the following: <ul style="list-style-type: none"> – Business description: detailed explanation of what you propose to do and where in the country it will be based – Products or services: description of your proposed products and services – Management and staff: key members of your management team and the numbers and types of local employees you intend to hire, along with proposed monthly wage rates. – Financial plan: proforma income statement for the first three years of operation showing when the required threshold levels will be achieved.

Section 2: Variation in business name

Questions in this section only need to be completed and submitted if you are changing the business name that appears on your FIAC.

Question 5 – Business Name

Applying to vary an existing FIAC

Provide your new business name as it appears on your business name registration certificate issued by the VFSC.

Signature

You must sign and date page 3 of the application form.

Section 3: Variation in ownership

Questions in this section only need to be completed and submitted if you are changing the shareholding ownership of all or part of your investment.

Question 6 – Investors

You are required to identify all new individuals or companies that are shareholders in the business.

In the case of individuals the names should correspond to the names identified on the ID pages of their passports. Contact details, and information about citizenship and percentage ownership must be provided.

If a company will be a new shareholder in the investment you must provide a listing of its shareholders and directors, the jurisdiction where the company is incorporated, its contact details, and the percentage of its ownership held by non-Ni-Vanuatu citizens.

Each investor that is not a Ni-Vanuatu citizen or registered as a company in Vanuatu must complete a statutory declaration included on page 6 of the application form.

Question 7 – Associated businesses

In order to get as a clear picture of the new ownership of the proposed investment as possible, you are required to inform us of other businesses that the proposed new shareholders in the investment are currently involved in, whether in Vanuatu or overseas.

Question 8 – Day-to-day management

If you intend to employ someone other than one of existing or new investors to manage the day-to-day affairs of the business, you are required to provide us with the name and contact details of this individual. This lets us know who has operational responsibility for your investment.

Question 9 – Summary

Applying to vary an existing FIAC

Provide us with an indication of the type of variation in ownership you are applying for by ticking the appropriate box, i.e. selling the entire business or merely adding new shareholders.

In part b, you must provide a summary of how your ownership is changing. This includes a complete list of the existing shareholders in the business (i.e. before the change) alongside a list of your shareholders assuming the application is approved. The lists should include the percentage shareholding of each investor, as well as their nationality.

In part c, with respect to the proposed new ownership of the business, you are required to provide us with a list of every investor who intends to reside in Vanuatu for the purposes of implementing the investment, or a designated manager if you answered “yes” to Q8. For each person you list, you must indicate by ticking the appropriate box whether the person has already been issued a residency permit associated with this investment, or if one is required. This information gives us a clear idea on the total number of residency permits you require, and the number of new permits that must be issued immediately. Each person for whom a new residency permit is being requested must provide a police clearance.

This information is passed on to the Immigration Department. Please note you are still required to contact the Immigration Department and fully comply with their application process. Section 9A of the Immigration Act CAP 66, however, obligates the Department to issue any residency permits agreed to as part of the FIAC as long as they meet the conditions set out in the Immigration Act.

Signature

You must sign and date page 5 of the application form.

Section 4: Variation in business activity or location

Questions in this section only need to be completed if you propose to change the business activities listed on your FIAC or their location.

Question 10 – Description of the new proposed investment

You must provide us with a summary describing the nature of your proposed new investment in the country and how it fits with your existing activities. This will provide us with a clear picture of your intentions.

Question 11 – Variation in business activity or location

Your FIAC lists every business activity you are permitted to undertake in Vanuatu, as well as the locations you can operate from. It provides us with a transparent means of monitoring your activities in the country and is used by authorities to issue your annual business licence.

Applying to vary an existing FIAC

This question is used to ascertain which type of variation you would like to make, and describe the proposed variation. There are three types of variation to select from:

- Begin operation of a new business activity? – Tick the “yes” box in response to Q.11a;
- Stop operating a business activity included on your existing FIAC? – Tick the “yes” box in response to Q.11c;
- Begin operation of a business activity for which you already have approval, but in a new location within the country? – tick the “yes” box in response to Q.11d.

Beginning a new business activity (Q.11a)

If you answer “yes” to Q11.a, and you intend to start a new business activity, you must then identify, using the list of investment categories and business activities included in Appendix A, all the new business activities you propose to initiate, as well as, the location in the country you will base yourself to implement them.

With respect to information about the location of your investment, we only require you to identify the municipality or province from which you will operate. In identifying your location you should select from the following options:

- Port Vila Municipality
- Luganville Municipality
- Shefa Province (operating outside of Port Vila in Efate, Epi and Shepherd Islands)
- Sanma Province (operating outside of Luganville in Santo and Malo)
- Malampa Province (Ambryn, Malakula and Paama)
- Penama Province (Pentecost, Ambae and Maewo)
- Tafea (Tanna, Aniwa, Futuna, Erromango and Anatom)
- Torba Province (Banks and Torres Islands)

For example, if you intend to establish a hotel on Tanna, you would record:

- “D3 (code); Accommodation, restaurants and bars (category); Hotel (business activity); Tafea Province (location)”.

It is extremely important your list of new business activities is comprehensive and accurate. You should not hesitate to consult with a VIPA staff person if you have any questions in interpreting Appendix A or preparing your list.

Applying to vary an existing FIAC

Achieving any associated investment conditions (Q.11b)

If any of the new business activities you identify in Q.11a are defined as “reserved” under the Act, we need you to provide us with some further information.

Reserved business activities are identified in Appendix B of the application form. Some of these activities (section 1) are reserved solely for Ni-Vanuatu citizens. As a foreign investor, you are not permitted to involve yourself in any of these activities.

Others (section 2), however, are open to foreign investment assuming you meet certain conditions. If you intend to operate one of these business activities you must inform us of this intention and identify the planned level of operation you intend to achieve. This planned level must be greater than the minimum investment threshold that has been set. For example, if you intend to establish a hotel on the island of Tanna it must have a total investment of 10 million vatu or annual sales turnover of 20 million vatu. Let’s say you propose to invest 50 million vatu in the project. You would record the following:

- “D3 (code); Hotel (business activity); Tafea Province (location); 50 million vatu (planned level of operation)”

Please note that you must submit a business summary clearly explaining how you to intend to achieve this planned target level of operation by the end of your first two years of operation. If you are unable to demonstrate achievement of the specified minimum investment within this timeframe your right to operate in the reserved activity may be revoked.

Stopping an already approved business activity (Q.11c)

If you answer “yes” to Q.11c, and intend to stop operating an already approved business activity, then you must identify this activity along with its location and associated investment category. Please note the code, category, business activity and location must be identical to what appears on your FIAC.

Establishing an already approved business activity in a new location (Q.11d)

If you answer “yes” to Q.11d, and intend to establish operation of a business activity already included on your existing FIAC but do it from a new location within the country, then you must identify the activity along with its location and associated investment category. Please note the code, category and business activity must already appear at least once on your FIAC.

Question 12 – Value of proposed investment

If you are proposing to make a new investment, you must provide an estimate of its total value in millions of vatu. This information provides us with important information that is used for statistical and monitoring purposes.

Applying to vary an existing FIAC

Your estimate must be broken down into basic asset categories (i.e. land and buildings, plant and equipment etc). In addition, you must provide an indication of the value of your investment before and after your proposed investment is made.

Question 13 – Projected employment

Similarly, you are required to provide a summary of the additional formal employment that will result from your new investment. This information is also used for statistical and monitoring purposes.

The information should represent full-time positions (excluding any investors) and be broken down according to their position type (i.e. management, skilled or non-skilled) and citizenship (i.e. Ni-Vanuatu or foreign worker). The information must also be organized to show the number of full-time workers before and after your new investment is implemented.

Please note as an employer you are required to register with the Vanuatu National Provident Fund and make monthly social security payments to the Fund on behalf of your workers.

Question 14 – Access to land

As with Q12 and Q13, you only need answer this question if you are intending to implement a new business activity or begin operating from a new location.

Given the challenges that exist in obtaining a land lease in Vanuatu, we are interested in knowing if access to land is an important pre-requisite for your new investment, and if so, how far along the lease process you have gone. This information provides us with a better understanding of how long it may take you to become operational. It also gives an indication of how we at VIPA might be of assistance in this area.

Question 15 – Potential environmental impacts

Lastly, we are interested in any potential environmental impacts that may arise from your new investment. As you are aware, the promotion of environmentally sound and safe management and conservation of the country's natural resources is a key objective of the Government of Vanuatu. Assuming your application for variation is approved, and following the full preparation of your development proposal, you are required to consult the Environment Unit at the Ministry of Lands to determine if a preliminary impact assessment is required. Preliminary assessments are required only in situations where your development proposal is likely to cause a significant environmental, social or custom impact. The results of such an assessment will then be used to determine if a full impact assessment is required.

Applying to vary an existing FIAC

By responding to the six questions included in the application form concerning your proposed plans, we both gain a better understanding of whether a preliminary impact assessment will ultimately be required. If you answer yes to any of the questions included in Q.15 there is a good chance the Environment Unit will require this of you. In the event you respond positively to any of these questions, you should also provide a brief explanation of the nature of your development activity. For example, if you propose to build wharf facilities and a fish processing plant, you might respond:

- “yes” to Q.15a and c;
- “wharf facility will be constructed to accommodate long-line vessels, and large volumes of water will be used to process fish which will then receive primary treatment before being discharged into the ocean” (as your explanation).

Please note that if you answer “no” to all of the questions included in the self-assessment it does not mean a preliminary environmental impact assessment will not be required. Once you have obtained your FIAC, you still must consult the Environment Unit to clarify your obligations with respect to this requirement.

Signature

You must sign and date page 9 of the application form.

Instructions for successfully completing an application form to “Renew a FIAC”

This section will help you understand what information we need you to provide in order to renew your foreign investment approval certificate (FIAC) and why. It is organized according to the questions found in the application form.

Section 1: General information and checklist

Question 1 – FIAC details

Provide the business name under which your FIAC is issued, along with your certificate number. You also must list all the business activities and associated locations within the country that are identified on your certificate.

Question 2 – Contact details

Provide the name of the person to whom all correspondence relating to your investment should be sent. This is also the person whom we will contact if any issues arise as part of our monitoring activities. This person can be the investor, a local business consultant who is acting on your behalf, or a managing director you have hired to run the business. You must provide us with a mailing address, telephone number and email address.

Question 3 – Investor nationality

Identify the country of origin of the investment by ticking the appropriate box. In the event the investment is owned by investors from more than one country please identify the country that represents the majority of your shareholders. For example, if you have a total of three shareholders, two of whom are from New Zealand and one from Australia, you should tick the box for New Zealand. If the shareholding is equally split between two or more countries tick the box associated with these countries. This information is used for statistical purposes and assists us in our promotion activities.

Question 4 – Status of investment

We are interested in knowing what stage you are at in implementing your investment. Please tick the box which best describes your current situation with respect to your investment:

- Under consideration – You have obtained a FIAC but are still exploring your options or in the process of developing your development proposals.

Applying to renew a FIAC

- Confirmed and implemented shortly – You have decided where and how you will implement your investment and are in the process of establishing your business operations, i.e. securing land or undertaking constructing. You have not yet commenced earning income in any of the business activities listed on your FIAC.
- Carrying on business but not as fully planned – You are operational and earning income from at least one planned business activity, but have been unable to commence operations in all activities listed on your FIAC.
- Carrying on business – You are operational and earning income from all activities listed on your FIAC.
- Carrying on business with new investment under consideration – You are operational and earning income from all activities listed on your FIAC, and seriously considering expanding your investment into new activities or locations within the country in the coming year.
- Plan to divest – You intend to close or sell your business operations within the country in the coming year.

Question 5 – Checklist

You must ensure all items identified in the checklist are appended to your application. Immediately prior to submitting your application check to ensure you have this information and then tick the associated box confirming it is included in your package.

Table 6. Required supporting documents (Renewal)

VAT returns	<ul style="list-style-type: none">• Provide copies of your VAT returns submitted to the VAT Office, Department of Customs over the past 12 month period. This helps confirm your business is operational and in compliance with government requirements.
Existing business licence	<ul style="list-style-type: none">• Provide a copy of your current business licence. For businesses located in Port Vila or Luganville, your business licence is obtainable from the Rates and Taxes Office, Department of Customs. For businesses located in other areas of the country it is issued by the local Provincial Council. This helps confirm your business is operational and in compliance with government requirements.

Section 2: Financial information

Question 6 – Total level of actual investment

Provide the date of your most recent financial year. Based on your balance sheet for this ending period, provide a summary of the value of your actual investment in millions of vatu. The total value should be broken down into its major components, i.e. land and buildings, other fixed assets, working capital and inventory.

Question 7 – Total level of actual employment

Based on the monthly contribution schedules you submitted to the Vanuatu National Provident Fund over the past 12 months, provide the number of workers under your employ. You should exclude any investors from this total.

The total must also be broken down according to the number who are Ni-Vanuatu citizens and the number who are expatriates working under work permits. Of the number of Ni-Vanuatu citizen workers, also provide the number who are female.

Finally, provide a breakdown of the wages paid to these different employer groups over the past year.

Question 8 – Total level of actual sales

Based on the VAT returns you submitted to the VAT Office, Department Customs, provide the total gross sales earned in millions of vatu for the past 12 month period. Please note this figure should be consistent with information included on your VAT returns. You are required to attach copies of these VAT returns to your application.

Section 3: Reserved activities

Question 9 – Achievement of minimum investment conditions

If you have been given approval to operate in a reserved activity for which minimum investment conditions apply, you are required to provide us with information that shows you have achieved these conditions.

If one or more business activities identified on your certificate is included on Appendix A, please tick “yes”.

If yes, you must identify the reserved activity, its code and location, and indicate whether you have met the minimum threshold conditions or not, as well as the level of operation you have attained.

If you have not yet been able to achieve the minimum threshold conditions you must provide us with a clear explanation as to the reasons behind this

Applying to renew a FIAC

result. In addition, you must explain the steps you intend to take over the coming year to address this short-coming.

Section 4: Plans and problems encountered

Question 10 – Difficulties negatively affecting investment implementation

Provide comments to assist us better understand any difficulties you have encountered over the past year in the course of implementing your investment. Please be as specific as possible in identifying problem areas, particularly if the issue relates to a government policy or regulatory requirement. We are also interested in knowing how these problems have impacted your business, i.e. delayed implementation by x months, resulted in foregone sales of x vatu, etc.

We use this information to gain a better appreciation for the key problems being faced by investors in order to help us with our policy advocacy work.

Question 11 – Expansion plans

In the event you are considering expanding your operations within the country over the coming year, we would appreciate knowing more about your plans. This includes a brief description of the new business activities and/or locations under consideration, the approximate value of this new investment (in millions of vatu) and the timeline for implementation.

Please note if your planned expansion is in an activity or location which is not already included on your FIAC you are required to apply for a variation to your FIAC before you begin implementation. We would also be pleased to discuss your plans with you to see how we may be able to assist.

Question 12 – Plans to wind down your investment

In the event you are considering winding down aspects of your investment or divesting completely, we would appreciate knowing more about your plans. This includes identification of the business activities in question, their estimated value (in millions of vatu), and how you intend to proceed.

Please note if you sell your business (either in its entirety or aspects of it) you are required to apply for a variation to your FIAC before completing the transaction.

Signature

You must sign and date page 4 of the application form.

Schedule of fees and penalty fines

Application fees

Application for a new investment (Form 1)	VT 25,000
Application to vary and existing foreign approval investment certificate (Form 2)	VT 10,000
Application to renew a foreign investment certificate (Form 3)	VT 10,000
Application to launch an appeal of any decision you do not agree with	VT 10,000

Other fees

Issue of a new foreign investment approval certificate if it is lost or misplaced	VT 2,000
Hard copy of the VIPA Act No. 15 1998	VT 1,000
Hard copy of VIPA Annual Report <ul style="list-style-type: none"> • Private entities • Government departments and agencies 	VT 700 VT 400
Hard copy of VIPA Quarterly Report <ul style="list-style-type: none"> • Private entities • Government departments and agencies 	VT 450 VT 200
For any other request for which a fee is not elsewhere prescribed	VT 10,000

Penalty fines

For failing to submit an application to renew a foreign investment approval certificate within one week of its expiry	VT 100,000
For failing to submit an application to vary an existing foreign investment approval certificate before commencing its implementation	VT 200,000
For operating any business activity without a valid foreign investment approval certificate	VT 500,000