



REPUBLIC OF VANUATU

**FORESHORE DEVELOPMENT (AMENDMENT)
ACT NO. 11 OF 2019**

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Assent: 23/12/2019
Commencement: 16/01/2020

FORESHORE DEVELOPMENT (AMENDMENT) ACT NO. 11 OF 2019

An Act to amend the Foreshore Development Act [CAP 90].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Foreshore Development Act [CAP 90] 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 THE FORESHORE DEVELOPMENT ACT [CAP 90]

1 1 Interpretation

Insert in their correct alphabetical positions:

““Committee” means the Foreshore Advisory Committee established under section 5B;

“developer” means a person who undertakes any foreshore development;”

2 At the end of section 4

Add

“(3) To avoid doubt, a decision of the Minister made under subsection (1) without the advice of the Director, is null and void.”

3 After section 5

Insert

“5A. Exemptions

- (1) A person may apply to the Minister for an exemption from the requirements under subsection 5(1) or 5(2) if the development is destroyed by a natural disaster, civil commotion, land dispute or any accident not done by the developer’s negligence.
- (2) An application must be in the prescribed form and be accompanied with the prescribed fees.
- (3) The Minister may, on the advice of the Director:
 - (a) grant the exemption; or
 - (b) refuse to grant the exemption; or
 - (c) grant the exemption subject to such other prescribed conditions.
- (4) The Director must consult the Committee before advising the Minister under subsection (3).

- (5) To avoid doubt, an exemption granted by the Minister without the advice of the Director, is null and void.

5B. Establishment of the Foreshore Advisory Committee

- (1) The Foreshore Advisory Committee is established.
- (2) The Committee consists of the following persons:
- (a) the Director of the Department of Local Authority; and
 - (b) a representative from the Department of the Local Authority nominated by the Director; and
 - (c) a representative from the Department of Environment nominated by the Director of Environment; and
 - (d) a representative from the Department of Lands nominated by the Director of Lands; and
 - (e) a representative from the Public Works Department nominated by the Director of Public Works.
- (3) The Minister is to appoint in writing persons referred to under paragraphs (2)(b),(c),(d) and (e).
- (4) The Director is the Chairperson of the Committee.
- (5) The members of the Committee are to elect from amongst themselves a Deputy Chairperson of the Committee for a term of 1 year.
- (6) Persons appointed under paragraphs (2)(b),(c),(d) and (e), are to hold office for a period of 3 years and may be re-appointed.
- (7) The Committee may invite a person to any of its meeting for any matter that requires technical expertise.
- (8) A person referred to under subsection (7) has no voting rights at any meeting of the Committee.

5C. Functions of the Committee

The Committee has the following functions:

- (a) to consider foreshore applications and make recommendations to the Minister on the application; and
- (b) to make recommendations to the Director for the revocation of a consent; and
- (c) to make recommendations to the Director on the reinstatement or removal of unsafe abandoned developments.

5D. Powers of the Committee

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

5E. Meetings of the Committee

- (1) The Committee is to meet once in every 2 months and may hold such other meetings as are necessary for the proper performance of its functions.
- (2) The Chairperson is to preside at all meetings of the Committee and in his or her absence, the Deputy Chairperson is to preside at these meetings.
- (3) The quorum for a meeting is 3 members of the Committee present at the meeting.
- (4) A member present at a meeting of the Committee has one vote and questions arising at a meeting are to be decided by a majority of votes.
- (5) If the voting at a meeting is equal, the Chairperson or the Deputy Chairperson (if he or she is chairing the meeting) has a casting vote.
- (6) Subject to this Act, the Committee may determine and regulate its own procedures.

5F. Sitting Allowance

The members including the Chairperson are entitled to a sitting allowance of VT5,000 for each day in which the Committee sits for a meeting.

5G. Transfer of a foreshore development

- (1) A developer must not transfer his or her or its foreshore development to a person unless the developer has:
 - (a) obtained the consent of the Minister; and

- (b) completed the period stated in the consent.#
- (2) Any person who breaches subsection (1), commits an offence and is liable on conviction:
 - (a) in the case of an individual - to a fine not exceeding VT5,000,000 or to imprisonment for a term not exceeding 5 years; or
 - (b) in the case of a body corporate - to a fine not exceeding VT10,000,000”

5H. Revocation of a consent granted by the Minister

- (1) The Minister may, on the advice of the Director, revoke a consent granted under section 4 if:
 - (a) the developer fails to comply with the conditions granted under paragraph 4(1)(c); or
 - (b) the developer fails to meet the requirements under any other Act; or
 - (c) the developer uses false information to obtain the consent; or
 - (d) the consent was obtained through a fraudulent manner.
- (2) The Director must take into account the recommendation of the Committee when advising the Minister.
- (3) To avoid doubt, any revocation of consent by the Minister that is made without the advice of the Director, is null and void.”

4 Section 7

Repeal the section, substitute

“7. Minister’s power to make reinstatement or removal of unsafe abandoned developments

- (1) The Minister may, on the advice of the Director, make an order:
 - (a) to reinstate or remove unsafe abandoned developments; and

- (b) to require the leaseholder of the adjacent land title to undertake such reinstatement or removal in accordance with the order.
- (2) The Director must take into account any recommendation provided to him or her by the Committee when advising the Minister.”

5 At the end of section 9

Add

- “(5) A person who assaults, obstructs, resists or interferes with an officer or any person empowered to carry out any function under this Act, commits an offence and is liable on conviction to a fine not exceeding VT2,000,000 or to imprisonment for a term not exceeding 3 years .”

6 After section 9

Insert

“9A. Penalty notice

- (1) The Director or any officer authorised by the Director in writing may serve a penalty notice on a person if it appears to the Director or any officer authorised by the Director that the person has committed an offence under any provision of this Act.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a Court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the Regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) The amount of a penalty imposed under this section must not exceed the maximum amount of penalty imposed under the Act.
- (5) If the amount of a penalty imposed under this section for an alleged offence is paid, a person is not liable to any further proceedings for the alleged offence.
- (6) 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.
- (7) The Regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (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.”