

**REPUBLIC OF VANUATU**

Assent: 16/07/98  
Commencement: 24/08/98

**LABOUR (WORK PERMITS) (AMENDMENT)**  
**ACT NO. 9 OF 1998**

An Act to amend the Labour (Work Permits) Act [CAP. 187].

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

**AMENDMENT TO SECTION 1**

1. (1) Insert the following definitions, so that all definitions are in alphabetical order:

" application fee" means the fee payable under section 5F;

"approval certificate" means an approval certificate issued by the Foreign Investment Board;

"employer" means a person for whom a person performs a contract for service, whether the contract is written or not and whether or not the first person pays the second person;

"Foreign Investment Board" means the Board established by the Foreign Investment Act 1998;

"foreign investor" has the same meaning as in the Foreign Investment Act 1998;

"investment proposal" has the same meaning as in the Foreign Investment Act 1998;

"residence permit" means a residence permit issued under the Immigration Act;

"temporary work permit" means a temporary work permit issue under section 5H.

- (2) Omit from the definition of "employment" the words, " 'employee' and 'employer' ", substitute the words " and 'employee' ".
- (3) Add at the end of the definition of "worker" the words "but does not include an employer."

#### **AMENDMENT TO SECTION 2 - WORK PERMITS**

- 2. Insert after subsection 2(3) the following subsection:

"(3A) However, if the permit is issued because of a decision of the Foreign Investment Board, the Commissioner of Labour must issue the permit for the period stated in the approval certificate issued by the Board."

#### **AMENDMENT TO SECTION 3 - WORK PERMIT TAX**

- 3. Omit subsection (3), substitute the following subsection:

"(5) The work permit tax payable on the issue of a temporary work permit is Vt15,000. This tax is not refundable if the worker ceases to be employed during the period of the temporary work permit."

#### **NEW SECTIONS**

- 4. After section 5, insert the following sections:

##### **"FOREIGN INVESTORS ENTITLED TO WORK PERMITS**

5A (1) A foreign investor who has received an approval certificate from the Foreign Investment Board for an investment proposal is entitled to be issued with the work permits specified in the certificate for the proposal.

(2) If a foreign investor:

- (a) produces an approval certificate to the Commissioner of Labour; and
- (b) lodges an application in accordance with subsection 2(2); and
- (c) pays the work permit tax in accordance with section 3 and the application fee;

the Commissioner must issue to the investor the number of work permits specified in the certificate, for the period specified in the certificate.

#### **ISSUE OF WORK PERMITS TO FOREIGN INVESTORS**

- 5B (1) The Commissioner of Labour must issue the work permits within 5 working days after the foreign investor complies with subsection 5A(2).
- (2) Each work permit remains in force for the period stated in the permit.
- (3) The foreign investor does not require a work permit to enable himself or herself to carry out the activities involved in the investment proposal.
- (4) If the Commissioner of Labour is unable for any reason to consider an application from a foreign investor under section 5A, one of the deputy commissioners must consider the application and issue the permit within the time specified in subsection (1).

#### **TRAINING**

- 5C (1) When issuing a work permit to a foreign investor, the Commissioner of Labour must tell the person in writing:
- (a) about the person's obligations to train citizens with the aim of replacing non-citizens in the positions for which the work permits are issued; and
- (b) that the Commissioner will take into account the amount of training the person has provided in deciding whether to renew the work permits.
- (2) The foreign investor must tell the Commissioner of Labour, at the end of each financial year, about the training that has taken place during that financial year.

#### **REPLACEMENT WORK PERMIT**

- 5D (1) If during the period of a work permit granted to a foreign investor (the "original permit") the person named in the permit leaves Vanuatu:
- (a) the foreign investor may apply to the Commissioner of Labour for a replacement work permit; and
- (b) on payment of the application fee, the Commissioner of Labour must issue a replacement work permit for the person named in the application.
- (2) A replacement work permit:

- (a) is in force for the remainder of the period of the original permit; and
  - (b) is issued subject to the same conditions to which the original work permit was subject.
- (3) In spite of section 3:
- (a) the foreign investor is not entitled to a refund of the work permit tax paid on the original work permit; and
  - (b) no work permit tax is payable on the issue of the replacement work permit; and
  - (c) the tax paid on the original permit is taken to have been paid on the replacement permit.

**RENEWAL OF WORK PERMIT**

- 5E (1) A foreign investor may apply for the renewal of a work permit issued under section 5A or 5D.
- (2) The foreign investor must:
- (a) lodge an application, in accordance with the Schedule, at least 30 days before the work permit is due to expire; and
  - (b) pay the work permit tax in accordance with section 3 and the application fee.
- (3) In deciding whether to renew a work permit, the Commissioner must take into account the amount of training that the foreign investor has provided for citizen workers he or she employs.

**FEES**

- 5F. The application fee payable on an application for a work permit, temporary work permit or exemption under this Act is Vt5,000.

**REVOCATION OF WORK PERMIT**

- 5G (1) A work permit issued under this Part is automatically revoked if the residence permit issued to the holder of the work permit is cancelled.
- (2) If the holder of a work permit fails to pay the work permit tax within 30 days of the date on which the tax becomes due under subsection 3(2):

- (a) the Commissioner of Labour must give the holder a written notice that the Commissioner will revoke the permit if the tax is not paid within 7 days of the date specified in the notice; and
- (b) if the tax is not paid by that date, the Commissioner must revoke the permit.

#### **TEMPORARY WORK PERMIT**

5H (1) The Commissioner of Labour may issue a temporary work permit for a worker who proposes to be employed for 4 months or less if the employer pays:

- (a) the work permit tax payable under subsection 3(3); and
- (b) the application fee.

#### **EXEMPTION**

5J The Commissioner of Labour may exempt an employer from the need to obtain a work permit for a worker if:

- (a) the worker is to be employed for 1 month or less; and
- (b) the employer pays the application fee.

#### **APPEAL**

5K (1) If the Commissioner of Labour:

- (a) refuses to issue a work permit under section 5A or 5D; or
- (b) fails to issues a work permit within the time specified in ;subsection 5B(1);

the person who applied for the permit may appeal to the Minister against the refusal or failure.

- 6 -

- (2) The Minister must consider the appeal and make a decision within 30 days of the lodging of the appeal.
- (3) The Minister must:
  - (a) record the decision, and the reason for the decision, in writing; and

- (b) send a copy of the decision and reasons to the employer concerned and to the Foreign Investment Board within 7 days of the decision.
- (4) A person dissatisfied by a decision of the Minister under subsection (2) may appeal to the Supreme Court within 28 days of receiving the notice of the decision.
- (5) The Supreme Court has jurisdiction to hear and determine the matter.
- (6) On an appeal under this section, the Supreme Court may:
  - (a) order that the Commissioner of Labour issue the number of work permits for the positions, and for the period, specified in the order; and
  - (b) make such other order as the court thinks fit."

**SECTION 8 - DECISIONS AND APPEALS**

5. Add at the end of the section:

- "(4) This section does not apply to a work permit issued under section 5A or 5D."

**NEW SECTION 9A**

6. After section 9, insert the following section:

**CHANGES TO THE LIST OF RESERVED OCCUPATIONS**

- "9A (1) Before making a declaration under section 9 changing the list of reserved occupations, the Minister must publish a notice of the proposed changes in the Gazette and in a local newspaper.
- (2) The notice must:
  - (a) set out details of the proposed changes; and
  - (b) be published at least 6 months before the Minister proposes to make the declaration to change the list; and
  - (c) ask for public comment on the proposed changes; and
  - (d) set out the address to which comments may be sent, and a closing date for comments.
- (3) The Minister must have regard to the comments when deciding on the changes."

## **SECTION 10 - VOCATIONAL TRAINING**

7. Add at the end of the section:

"(3) This section does not apply to a work permit issued to a foreign investor under section 5A or 5D."

## **SECTION 11 - SUBMISSION OF APPLICATIONS**

8. Insert after subsection 11(2) the following subsection:

"(3A) The district labour officer must transmit the application to the Commissioner of Labour within 7 days of receiving the application."

## **COMMENCEMENT**

9. This Act commences on the same day the Foreign Investment Act 1998 commences.

**REPUBLIC OF VANUATU**

**LABOUR (WORK PERMITS) (AMENDMENT)**  
**ACT NO. 9 OF 1998**

## **Arrangement of sections**

1. Amendment to section 1
2. Amendment to section 2 – work permits
3. Amendment to section 3 – work permit tax
4. New sections
5. Section 8 – decisions and appeals
6. New section 9A
7. Section 10 – vocational training
8. Section 11 – submission of applications
9. Commencement