

**BETWEEN: VANUATU NATIONAL PROVIDENT FUND  
BOARD**  
First Claimant

**AND: LETLET AUGUST**  
Second Claimant

**AND: PARMOD ACHARY**  
Third Claimant

**AND: FLOYD RAY MERA**  
First Defendant

**AND: ATTORNEY GENERAL**  
Second Defendant

*Date of Hearing:* 1<sup>st</sup> June 2023

*Before:* Justice R.L.B Spear

*Counsel:* Mr G Blake for the First and Second Claimants  
Mr G Blake on behalf of Mr N Morrison for the Third Claimant  
Mr S Aron for the First and Second Defendants

*Date of Delivery:* 9<sup>th</sup> June 2023

---

**RESERVED DECISION**

---

1. This claim is primarily seeking the judicial review of decisions of the first defendant (Mr Mera) who is the Director of the Financial Intelligence Unit (FIU). That unit was established within the State Law Office by s. 4 of the *Anti-Money Laundering and Counter-Terrorism Act 2014* (the AM Act). Mr Mera's appointment as Director of the FIU was in accordance with s. 7 of the AM Act.
2. On 25<sup>th</sup> October 2022, Mr Mera, in his capacity as Director of the FIU, notified the Executive Manager of the Vanuatu National Provident Fund (VNPF) of his intention to direct the removal of both the second claimant (Mr Letlet) and the third claimant (Mr Archary) from their positions as officers of the VNPF. At that time, Mr Letlet was the Chairman of the VNPF Board and Mr Archary was the General Manager of VNPF as well as a VNPF board member ex-officio.
3. Mr Mera's authority to initiate a procedure for the removal of either Mr Letlet or Mr Archary derives from section 50I of the Anti- Money Laundering and Counter Terrorism Financing Act No.13 of 2017 (The "AM ACT"). That provision empowers the Director of the Financial



Intelligent Unit to direct a reporting entity to remove an officer of the reporting entity if the Director is satisfied that the person is a disqualified person within the meaning of section 50J of the Act.

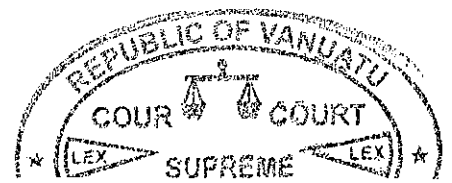
4. Section 50I (2) requires that notice of the intention to remove must first be given to the reporting entity and time then allowed for submissions to be made to assist the Director to decide whether to direct removal or not.
5. Section 50I and 50J are as follows:

***"50I. Power to remove a director, manager, secretary or other officer of a reporting entity"***

- (1) *The Director may in writing direct a reporting entity to remove a person who is a director, manager, secretary or other officer of the reporting entity if the Director is satisfied that the person is a disqualified person within the meaning of section 50J.*
- (2) *Before issuing a direction, the Director must give to the reporting entity a written notice requiring the reporting entity and the person proposed to be removed to make submissions to the Director on the matter within a reasonable period specified in the notice.*
- (3) *The Director must review any submission received and decide whether or not to issue the direction.*
- (4) *A direction takes effect on the day specified in the direction, which must be at least 7 days after it is made.*
- (5) *If the Director directs a reporting entity to remove a person, the Director must give a copy of the direction to the person removed.*
- (6) *If a reporting entity fails to comply with a direction, the reporting entity commits an offence punishable upon conviction by:*
  - (a) *in the case of an individual –a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or*
  - (b) *in the case of a body corporate –a fine not exceeding VT 125 million."*

***"50J. Disqualified person"***

- (1) *A person is a disqualified person if, at any time, the person:*
  - (a) *has been convicted of an offence under this Act; or*
  - (b) *has been a director or directly concerned in the management of a reporting entity in Vanuatu or any other country which has had its licence revoked or has been wound up by the Court; or*
  - (c) *has been convicted by a court for an offence involving dishonesty; or (d)is or becomes bankrupt; or*



(e) has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(f) has compounded with his or her creditors; or

(g) is listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under the law of any jurisdiction; or

(h) does not meet any other fit and proper criteria prescribed by the Regulations.

(2) A disqualified person must not act or continue to act as a director, manager, secretary or other officer of any reporting entity unless the Director gives his or her written approval for the person to do so.

(3) If a person contravenes subsection (2), the person commits an offence punishable upon conviction by:

(a) in the case of an individual – a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both; or

(b) in the case of a body corporate – a fine not exceeding VT 75 million

6. There is no question but that Mr Mera, as the Director of the Financial Intelligence Unit, has a supervisory or monitoring responsibility in respect of any reporting entities under the AM Act. Furthermore, that the Director has the power to proceed towards the removal of any officer of a reporting entity if the Director is satisfied that the person concerned is a disqualified person within the categories specified in s. 50J.

7. There are two issues that arise for determination:-

- a) Whether the VNPF is a reporting entity for the purposes of the AM Act;
- b) If so, was the decision of Mr Merah to initiate the procedure towards removal, in either case, lawful within the "Wednesday principle"<sup>1</sup>.

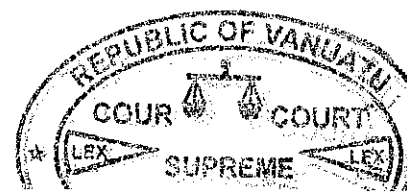
8. Counsel have agreed that this is a convenient case for the first issue to be addressed on a preliminary basis. Obviously, if this Court finds that VNPF is not a reporting entity then Mr Mera does not have the power to initiate the removal procedures. If indeed it is found that the VNPF is a reporting entity, it will then be necessary to give consideration of the lawfulness of Mr Merah's decision in relation to each of Mr Letlet and Mr Achary.

9. It is noted the consent orders were made on 16<sup>th</sup> November 2022 as follows:-

1. Subject to the final outcome of the substantive of this proceeding, the First Defendant shall not issue any directive under s.50I of the Anti-Money Laundering And Counter-Terrorism Financing Act (the "Act") purporting to:-

<sup>1</sup> A reasoning or decision is Wednesday unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it

*Associated Provincial Picture Houses Ltd v Wednesday Corporation [1948] 1 KB 223*



- a) *Remove the Second Claimant as Chairman and member of the First Claimant's board of directors; and*
- b) *Remove the Third Claimant as General Manager and member of the First Claimant's board of directors.*

10. A significant body of evidence has been filed in the case.

11. For the Claimants, three statements by Richard Edwin, Executive Manager of Corporate Services of the VNPF dated 3 November 2022, 2 December 2022 and 14 April 2023.

12. For the Defendants:

- a) Three statements by the first defendant Mr Mera dated 15 November 2022, 16 December 2022 and 24 February 2023

- b) Statements by:

- i. John Hansen Merah of 12 December 2022,
- ii. Sammy Aron of 12 December 2022,
- iii. Donny Boe of 3 April 2023 and
- iv. Agnes Melinda Willie of 3 April 2023.

13. One matter requiring a comment is the sworn statement of Mr Aron who is also appearing as counsel for the defendants. It is of course well understood, and for very good reasons, that legal counsel cannot appear in a case when he or she is also a witness in the case. That notwithstanding, Mr Blake conceded that there was no challenge to Mr Aron's evidence and that he had no difficulty with Mr Aron remaining involved in the case as counsel for the defendants. While that may be, it was clearly a fundamental mistake for Mr Aron to consider that he could appear as counsel when he has also filed a sworn statement as evidence in the case.

14. Accordingly, this hearing is to determine whether the VNPF is a reporting entity pursuant to the AM Act. Section 2 of the AM Act defines what is meant as a "reporting entity" for the purposes of the AM Act.

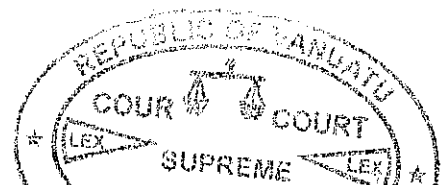
***"2. Meaning of reporting entity***

*Each of the following is a reporting entity:*

- (a) the Reserve Bank of Vanuatu;*
- (b) a licensee within the meaning of the Financial Institutions Act [CAP 254];***
- (c) a licensee within the meaning of the International Banking Act [CAP 280];*
- (d) a company licensed under the Vanuatu Interactive Gaming Act [CAP 261];*
- (e) a person licensed under the Casino (Control) Act [CAP 223];*



- (f) a person carrying on a business under the Gaming (Control) Act [CAP 172] or the Lotteries Act [CAP 205];
- (g) a foundation within the meaning of the Foundation Act No. 38 of 2009;
- (h) an association within the meaning of the Charitable Associations (Incorporation) Act [CAP 140];
- (i) a person carrying on electronic business under the E-Business Act [CAP 264]; (j) a licensee within the meaning of the Company and Trust Services Provider Act No. 8 of 2010;
- (k) a credit union registered under the Credit Unions Act [CAP 256] or a co-operative society registered under the Co-operative Societies Act [CAP 152];
- (l) a person carrying on a business:**
- (i) of administering or managing property on behalf of an international company within the meaning of the International Companies Act [CAP 222] or any other person; or
- (ii) as a trustee in respect of property of other persons; or**
- (iii) as a trustee or manager of a unit trust;
- (m) a person carrying on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
- (n) a person (other than a person mentioned under paragraph (a), (b) or (c)), carrying on a business of:
- (i) exchanging currency or value; or
- (ii) collecting, holding, exchanging or transferring currency or value, or otherwise negotiating transfers of currency or value, on behalf of other persons; or
- (iii) preparing payrolls on behalf of other persons in whole or in part from currency collected; or
- (iv) delivering currency including payroll;
- (o) a lawyer, notary or accountant that provides services to a client relating to all or any of the following:
- (i) buying or selling of real estates, business entities or properties;
- (ii) managing of currencies, securities or other assets;
- (iii) managing of banks, savings or securities accounts;
- (iv) organising contributions for the creation, operation or management of legal persons or legal arrangements;
- (v) creating, operating or managing legal persons or legal arrangements;
- (p) a person (whether or not the person is a trust or company service provider) providing all or any of the following services:
- (i) forming or managing legal persons or legal arrangements;
- (ii) acting (or arranging for another person to act) as a director or secretary or an agent of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- (iii) providing a registered office, a business address or accommodation, correspondence or an administrative address for a company, a partnership or any other legal person or legal arrangement;
- (iv) acting (or arranging for another person to act) as a trustee of a trust or a similar position in other form of legal arrangements;
- (v) acting (or arranging for another person to act) as a nominee shareholder for another person;



(q) a person carrying on a business of:

- (i) dealing in bullions, precious metals or precious stones; or
- (ii) issuing, selling or redeeming traveller's cheques, money orders or similar instruments; or
- (iii) collecting, holding and delivering currency as part of a business or providing payroll services;

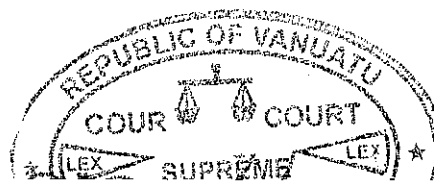
(r) a person carrying on the business of:

- (i) lending, including consumer credit or mortgage credit, and financing of commercial transactions; or**
- (ii) financial leasing; or
- (iii) issuing and managing means of payment (such as credit and debit cards, cheques, bankers' drafts and electronic money); or
- (iv) issuing financial guarantees and commitments; or (v) trading for the person's own account or for the account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, commodity futures trading or transferable securities; or
- (vi) participating in securities issues and providing financial services relating to such issues; or
- (vii) money brokering; or
- (viii) mutual funds or, individual or collective portfolio management; or
- (ix) safe keeping and administration of cash or liquid securities on behalf of other persons; or
- (x) trustee administrator or investment manager of a superannuation scheme, other than a scheme under which contributions are made by salary deductions and withdrawals are for limited purposes such as retirement; or**
- (xi) dealing in real estate or sale or hire of motor vehicles; or
- (xii) dealing in property (other than real estate) exceeding VT 1 million or such other amount as may be prescribed;**
- (s) any other person prescribed for the purpose of this provision."

**(emphasis added)**

15. Mr Aron argued that the VNPF fell within at least one of the following categories:-

- a) s. 2(b) - a licensee within the meaning of the Financial Institutions Act [CAP 254];
- b) s. 2(l)(ii) – a person carrying on a business as a trustee in respect of property of other persons
- c) s. 2(r)(i) - a person carrying on the business of lending, including consumer credit or mortgage credit, and financing of commercial transactions
- d) s. 2 (r)(xii) -.a person carrying on the business of dealing in property (other than real estate) exceeding VT 1 million or such other amount as may be prescribed.



16. Mr Aron initially (in his written submissions) also sought to draw the VNPF into the s.2(r)(x), category - that is, a person carrying on the business of a trustee administrator or investment manager of a superannuation scheme other than a scheme under which contributions are made by salary deductions and withdrawals are for limited purposes such as retirement. I remain unsure whether Mr Aron maintained that submission. However, I will deal with it in due course.
17. It is necessary to examine each of the identified categories in turn. However, it is first necessary to understand more about the VNPF.

### ***The Vanuatu National Provident Fund (VNPF)***

18. The VNPF was established in 1986 by the Vanuatu National Provident Fund Act [CAP 189]. The long title to the Act is as follows:

*"To establish a national Provident Fund, to provide for contributions to and the payment of benefits out of the Fund, and for matters connected therewith and incidental thereto"*

19. Section 14 of the VNPF Act provides as follows:

*"There shall be a Fund to be called the Vanuatu National Provident Fund into which shall be paid all contributions required to be made under the provisions of this Act together with all other revenue of the Board and out of which shall be met all payments required to be made by the Board under the provisions of this Act"*

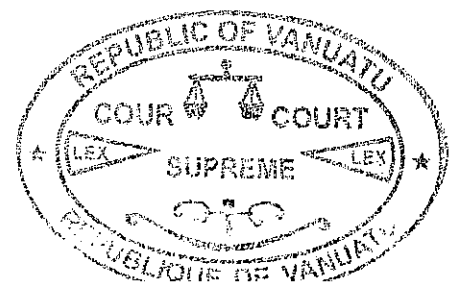
20. The VNPF is governed by a Board which is the trustee of the fund<sup>2</sup>. The Board consists of six members appointed by the Minister responsible for the VNPF together with the General Manager ex officio<sup>3</sup>
21. The fund receives contributions from employers in respect of each of that employer's employees at the rate of 8% of the remuneration paid to that employee of which half is paid by the employer and the other half by the employee<sup>4</sup>. Such contributions for employees are compulsory. Additionally, people who are not employees may become a voluntary contributor to the fund. The objective is obviously to enable members of the fund to have a retirement nest egg although, in certain cases, a member may receive benefits based on the member's account.
22. The Board is constrained in the manner in which it invests or otherwise deals with the funds. It is authorised to invest funds but only in accordance with policy guidelines approved by Order by the Minister for Finance and the Reserve Bank of Vanuatu<sup>5</sup>. It can appoint a Fund Manager but for not more than 15 % of the fund.

<sup>2</sup> Section 15 - Vanuatu National Provident Fund Act [CAP 189] – (VNPF Act)

<sup>3</sup> Section 3 – VNPF Act

<sup>4</sup> Part 4 - VNPF Act

<sup>5</sup> Section 16 – VNPF Act.



23. As will be addressed later, the Board also operates schemes for the benefit of its members such as educational or micro loans to members<sup>6</sup>, the Student Education Support Scheme and the Member Protection Benefit scheme to assist members in need such as that caused by the recent cyclones (the "natural disasters benefits")<sup>7</sup>
24. Without question, the VNPF is a substantial financial institution in Vanuatu and of critical importance to the social security of its people.
25. I turn now to the arguments raised by Mr Aron as to why the VNPF should be classified as a "reporting entity" for the purpose of the AM Act. I will do so by dealing with each of the categories that Mr Aron argues are applicable and the counter argument by Mr Blake.
26. There is, however, one clear but obvious point that Mr Blake emphasised – that is, that notwithstanding the extensive categories in s. 2 of the AM Act of those to be considered "reporting entities", the VNPF is not expressly identified as a reporting entity. This is in contrast to the express inclusion of the Reserve Bank of Vanuatu<sup>8</sup> and that the VNPF is one of the most important and substantial financial institutions in Vanuatu. In short, Mr Blake contended that the VNPF could not have been overlooked when the various categories under s. 2 were devised, nor is it feasible that the VNPF was left to be considered within one of the various general categories. Mr Blake considers that this is a telling point and one indicating that Parliament did not intend the VNPF to be considered a "reporting entity".

**2(b): "a licensee within the meaning of the Financial Institutions Act [CAP 254]."**

27. In section 2 of the FI Act, "licensee" means a financial institution licensed under that Act to carry on banking business in Vanuatu. Although it was conceded that the VNPF was no licensed to under the FI Act to carry out banking business in Vanuatu, Mr Aron contended that section 5(1) of the FI Act established what might be considered as special relationship between VNPF and the FI Act:

**"5. Application of Act to other bodies**

- (1) *The Minister may, by order in writing, apply any provision of this Act to the Vanuatu National Provident Fund as if it were a licensee."*

28. Reference was then made to Order No.45 of 2003 made under section 53(1) of the FI Act which provides as follows:

*1. Application of the Financial Institution Act*

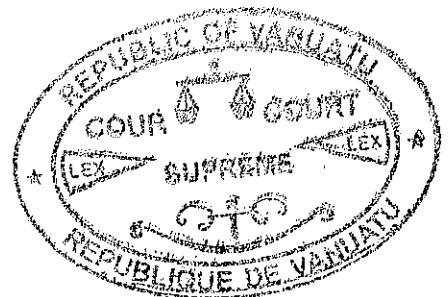
*The following provisions of the Financial Institution Act (FI Act) apply to the Vanuatu National Provident Fund as if it were a licensee within the meaning of that Act:*

- a) Sections 21 to 28 (other than section 22);*

<sup>6</sup> Section 44A - VNPF Act

<sup>7</sup> Section 62A – VNPF Act

<sup>8</sup> Section 2(1) – AM Act





- b) Sections 42 and 42S;
- c) Sections 50, 53, 54, 55, 56 and 58

29. Mr Aron's argument was developed by reference to section 21(2A) of the FI ACT which of course is applicable to VNPF by Order No.45 above. That section provides:

*21(2A) The Reserve Bank may formulate in writing guidelines and issue directives in relation to prudential matters to be complied with by:*

- (a) all licensees; or*
- (b) a specified class of licensees; or*
- (c) one or more specified licensees.*

30. Mr Aron developed his argument along the lines that Reserve Bank of Vanuatu's Financial Institutions Prudential Guideline No.9 placed an obligation on financial institutions in relation to report any suspicious transaction that might involve dealing with the proceeds of crime or financing of terrorism.

31. Mr Blake took strong issue with this. He contended that it was abundantly clear that VNPF could not be drawn within such a broad definition as found in section 2(b) of the AM Act by an argument of this nature. Either an entity is a licensee within the meaning of the FI Act – that is, a financial licensed under the FI Act to carry on banking business in Vanuatu - or it is not.

32. Indeed, Mr Blake argued that any reference to that Order 45 of 2003 supported his case. That order identifies certain sections of the FI Act as applying to the VNPF which order would not have been necessary, nor would s5(1) of the FI Act had been necessary, if the intention of Parliament was for the VNPF was to be construed as a licensee. Indeed, the wording of s5(1) of the FI Act empowers the Minister to order that certain provisions of the Act applied to VNPF "as if it were a licensee."

33. This is a matter of statutory interpretation. Section 8 of the Interpretation Act [CAP 132] is of course applicable. This section states that:

**8. General principles of interpretation**

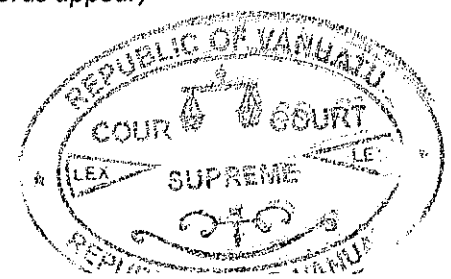
*(1) Every Act must be interpreted in such manner as best corresponds to the intention of Parliament.*

*(2) The intention of Parliament is to be derived from the words of the Act, having regard to:*

*(a) the plain meaning of ordinary words; and*

*(b) the technical meaning of technical words; and*

*(c) the whole of the Act and the specific context in which words appear;*  
*and*



*(d) headings and any limitation or expansion of the meaning of words implied by them; and*

*(e) grammar, rules of language, conventions of legislative drafting and punctuation.*

*(3) Where the application of subsection (2) would produce:*

*(a) an ambiguous result; or*

*(b) a result which (can reasonably) be supposed to correspond with the intention of Parliament, the words are to receive such fair and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.*

*(4) In applying subsection (3), the intention of Parliament may be ascertained from:*

*(a) the (legislative) history of the Act or provision in question; and*

*(b) explanatory notes and such other material as was before Parliament; and*

*(c) Hansard; and*

*(d) Treaties and International Conventions to which Vanuatu is a party."*

34. The plain meaning of the words involved here clearly establish that VNPF is not a licensee under the FI Act and the long bow drawn by Mr Aron in this respect simply strains any consideration of those relevant provisions.

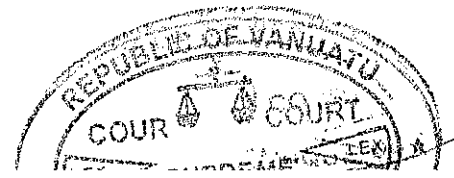
35. I do not consider that VNPF is caught by s2(b) as being a licensee within the meaning of the FI Act.

**Section 2(l)(ii) - "a person carrying on a business...as a trustee in respect to property of other persons."**

36. The board holds the funds it receives from its contributing members in trust for those members but with certain powers to manage those funds for the best interests of the members. Indeed, s16 of the VNPF Act provides:

**"16. Moneys belonging to the Fund, how to be used or invested**

*Subject to section 16B, the moneys belonging to the Fund shall be invested by the Board in accordance with policy guidelines approved by Order by the Minister for the time being responsible for finance and by the Reserve Bank of Vanuatu after consultation with appropriate departments of the Government which will have primary regard to the interests of members on the one hand, and the needs for assisting the financing of balanced social and economic development on the other. Such investment guidelines shall have regard to the need for a balanced portfolio bearing in mind the need for sufficient Vatu liquidity, prudent diversification and rates of returns on the various sources of investment."*



37. Mr Aron refers to evidence from Mr Mera as well as evidence Mr Aron, Mr Boe and Ms Willie as to the operation of the VNPF. In short, the VNPF invest the funds it holds in accordance with the guidelines and it is also entitled to and does undertake investment in the following:

- Fix interest terms deposits
- Equity Investment
- Property Investment and
- Commercial loans

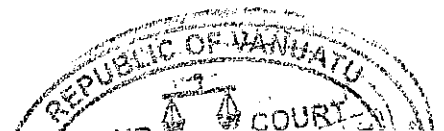
38. It also provides loans for the benefit of its members. Evidence of specific loans made was as follows:

- a. Mr Aron has a loan from the VNPF to assist in "Home Related Expenses". Mr Aron is a member of the VNPF;
- b. Mr Danny Boe has a loan from the VNPF to support his studies in Law at the University of the South Pacific. Mr Boe is not a member of the VNPF. However, as a requirement for a loan from the Student Education Support Scheme, his loan had to be guaranteed by two members of the VNPF, as it was. This scheme is explained as providing a benefit to members to enable them to support their family's education.
- c. Ms Agnes Willie obtained a loan from the VNPF in March 2023 to assist with her recovery from the damages caused by the recent tropical cyclones Judy and Kevin. That loan was made in accordance with the Disaster Recovery Loan Scheme. Ms Willie is a member of the VNPF.

39. Mr Blake raised a theme in his submission that resonated throughout the rest of his argument. That is, that the VNPF does not operate a "business" in the general and plain meaning of that term. VNPF undertakes a statutory responsibility to hold funds for the members of the fund and to deal with those funds in the best interest of those members. Mr Blake contended that s2(1)(ii) has to be read as referring to a trustee company that is in the business of holding funds and trust and managing that not only for the best interest of the beneficiaries but also for personal profit. That is, a private entity and not a statutory organisations such as VNPF. It is in this respect that Mr Blake returned time and time again when dealing with Mr Aron's submissions.

40. To this point, it is necessary to return again to s. 8 of the Interpretation Act 2010. The term "business" is not defined in the AM Act. Some benefit is obtained from the definition of "business" to be found in the LexisNexis Concise Australian Legal Dictionary (4th Edit):

1. *A commercial enterprise in the nature of a going concern; activities engaged in for the purpose of profit on a continuous and repetitive basis: Hope v Bathurst City Council (1980) 144 CLR 1; 29 ALR 577*
2. *The occupation, work, profession, or trade in which a person is engaged.*



3. *The volume of commercial trade or patronage*
4. *Commercial, industrial, or professional dealings, transactions, or communications.*

41. Mr Blake argues that s2(l)(ii) specifically requires that the specified activity is of a person (include entity) undertaking a business which must have commercial connotations.
42. It is Mr Blake's essential submission here that the VNPF is not a business, nor does it carry on a business as a trustee or otherwise. Indeed, Mr Blake observes that in Vanuatu, a person or other entity that carries on a business is required to have a licence under the Business License Act 1998 or the Company and Trust Services Providers Act 2010. The VNPF does not have a licence under either of those Acts, nor is required to do so.
43. Mr Blake's argument is that VNPF is simply a trustee undertaking a statutory function to manage the collection and investment of contributions from members with a view to providing benefits as provided and sanctioned by the VNPF Act. The VNPF is not run for a profit as the income received is apportioned to its members. Its expenses are simply a charge on the fund.
44. I accept Mr Blake's submission in this respect. What activity is undertaken by the VNPF does not amount to a "business"

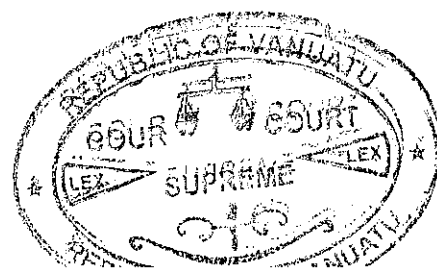
**Section 2(r)(i) and (xii) – a person carrying on the business of:**

*(i) lending, including consumer credit or mortgage credit, and financing of commercial transactions; or*

...

*(xii) dealing in property (other than real estate) exceeding VT 1 million or such other amounts as may be subscribed.*

45. Much the same conclusion is reached in this category. In short, the activity undertaken by the VNPF is not a "business".
46. Mr Aron referred to a substantial loan provided to Interchange Limited (ICL). That company owns Vanuatu's only submarine cable. THE VNPF is the largest shareholder in ICL. It initially guaranteed a loan that ICL obtained from the ANZ Bank. That arrangement was restructured on the basis that the VNPF lend ICL funds to enable them to repay the ANZ Bank, have the VNPF released from the guarantee, and then benefit directly from ICL by a commercial return on its investment.
47. Again, that was an investment that was required to be within the Minister's guidelines for investment and accordingly within the general investment scheme sanctioned by the VNPF Act.



**Section 2(r)(x) – a person carrying on the business of a -**

*(x) trustee administrator or investment manager of a superannuation scheme, other than a scheme under which contributions are made by salary deductions and withdrawals are for limited purposes such as retirement; or*

48. Mr Aron argued that the VNPF did not fall within that exclusion (“*other than a scheme ...*”) by reference to its various investments for fixed interest term deposits, equity investment, property investments and commercial loans. That however ignores the exact wording whereby withdrawals are for “limited purposes such as retirement.” That doesn’t mean that withdrawals can be only for retirement.
49. Additionally, and as mentioned already, investments are required to be in accordance with the guidelines (the Minister and the Reserve Bank) or in accordance with a scheme approved under the act.

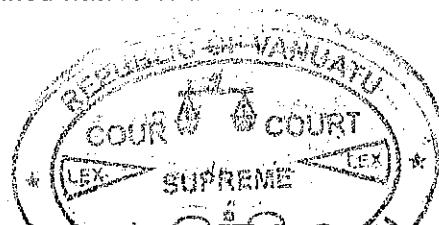
**Part 3 Register of Reporting Entities**

50. Mr Mera, the Director of the FIU, contends that the VNPF is a reporting entity. However, every reporting entity under the AM Act is required to be registered as a reporting entity. Furthermore, s. 9(1) of the AM Act provides that the Director of the FIU “*must establish and maintain a register of reporting entities*”.
51. Part 3 of the AM Act can be considered as generally imposing a duty on the Director not only to maintain a register of reporting entities but also on the FIU to monitor those reporting entities’ compliance with their statutory responsibilities as a reporting entity.
52. Mr Mera, in his first sworn statement, states that he has been the Director of the FIU, “at all material times”. He further explained that from about 2020, discussions took place between the FIU and the VNPF towards registration of the VNPF as a reporting entity. Mr Mera states<sup>9</sup>

34 *On or around 4<sup>th</sup> August 2022, after attempts to finalise VNPF’s registration was unsuccessful, FIU concluded that the VNPF was uncooperative and therefore, removed VNPF’s conditional registration status*

53. Given that the Director must maintain a register of reporting entities and if the Director was of clear opinion that the VNPF was a reporting entity, why did the Director not take steps to require the VNPF to comply with the relevant registration requirements? That appeared to be an abdication of his s. 9(1) responsibility.
54. All that notwithstanding, the position now adopted by the VNPF is that it is not a reporting entity and that, in particular, it does not fall within any of the s. 2 reporting entity categories. Given the limited and statutorily constrained nature of the VNPF structure

<sup>9</sup> First sworn statement of Floyd Mera Banga dated 15 November 2022



and its operation, I find that it does not fall within any of those categories. Furthermore, given the prominent place that the VNPF occupies in Vanuatu, the omission from express inclusion in the s. 2 categories suggests that Parliament never intended that the VNPF would be subject to the oversight of the FIU or its director.

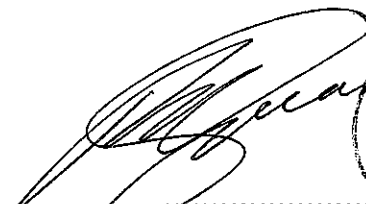
### Conclusion

55. For these reasons, I find that the VNPF is not a reporting entity within the categories contained in s. 2 of the AM Act. That being so, it is not necessary to proceed further with a determination as to whether Mr Mera's decisions to initiate the removal of either Mr Letlet or Mr Archary were lawful.

56. Costs will follow the event and to be taxed by the Master in the event that there is no agreement between counsel.

Dated at Port Vila this 9th day of June, 2023

BY THE COURT

  
Justice R.L.B. Spear

