



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**ON THE BREACHES OF THE GOVERNMENT
CONTRACTS AND TENDERS ACT, THE
LEADERSHIP CODE ACT AND FINANCIAL
REGULATIONS IN RELATION TO**

VANUATU HOLDINGS LIMITED



REPUBLIC OF VANUATU

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**PUBLIC REPORT ON THE BREACH OF THE GOVERNMENT CONTRACT AND TENDERS
ACT AND THE LEADERSHIP CODE ACT
BY FORMER PRIME MINISTER EDWARD NATAPEI
AND HIS COUNCIL OF MINISTERS**

SUMMARY

The Ombudsman is issuing this public report to illustrate how the Government has misused aid money that was given by the Chinese Government.

In 2004, the Vanuatu Government received a VT 8 million grant from the Chinese Government to revive a government entity known as the Vanuatu Holdings Limited.

In April 2004, the Honourable Minister Edward Natapei who was at that time the Prime Minister of Vanuatu entered into a 6 month contract with a local consultancy firm, H & D (Pacific) Consultants; owned by Messrs Aaron Hanghangkon and Alan Palmer. H & D (Pacific) Consultants were to use the Vt 8 million grant from the Chinese Government to revive Vanuatu Holdings Limited.

The Ombudsman has found in this enquiry that the VT 8 million grant from the Chinese Government became public money as soon as it was handed to the state. Therefore, how the grant is spent should be done in accordance with the relevant laws governing public money.

In this case, the Honourable Prime Minister and his Council of Ministers have been found to have breached the Government Contracts and Tenders Act, the Leadership Code Act and Financial Regulations when awarding H & D (Pacific) Consultants with the contract to revive Vanuatu Holdings Limited as per the agreement between the Chinese Government and the Vanuatu Government. It is also found that H & D (Pacific) Consultants have breached section 30 of the Leadership Code Act

Thus, the Ombudsman now recommends that:

- **The former Prime Minister Edward Natapei and his Ministers should be dealt with in accordance with Part Six of the Government Contracts and Tenders Act 1998, Part 6 of the Leadership Code Act and Part 14 of the Financial Regulations of Vanuatu.**
- **Section 46 (1) (f) of the Public Finance and Economic Management Act 1998 should be amended so that it specifically states that "grants" received by way of donor aid should be deemed as public money and be subject to all laws and regulations governing the use of public moneys.**
- **The former Prime Minister Edward Natapei must personally refund the amount of money that was used by the H & D (Pacific) Consultants during its six months consultancy period as the agreement that he had entered into on behalf of the Vanuatu Government was void.**
- **H & D (Pacific) Consultants must refund the amount of money (from the VT8 million grant from the Chinese Government) that was used by them during the six months consultancy period as the agreement signed between them and the former Prime Minister was void. Further, they did**

not fulfil the work they were engaged to do as per the Terms of Reference of the agreement.

- The current Prime Minister's Ministry must refund the amount of money taken from the VT 8 million grant from the Chinese Government for Vanuatu Holdings Limited that was used for other purposes.
- The Attorney General must institute a civil proceeding against the former Prime Minister Edward Natapei and H & D (Pacific) Consultants to recover the VT8 million that was misused by them.

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1. JURISDICTION

- 1.1 The Constitution, the Ombudsman Act and the Leadership Code Act allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes the Prime Minister of the Republic of Vanuatu. The Ombudsman can also look into defects in laws or administrative practices, including the decisions taken by the Council of Ministers.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present the Ombudsman's findings as required by the Constitution, the Ombudsman Act and the Leadership Code Act.
- 2.2 The scope of this investigation is to establish the facts about the decision taken by the Honourable Prime Minister (former) Edward Natapei and his Council of Ministers to engage H & D (Pacific) Consultant to use a VT 8 million grant from the Chinese Government to revive Vanuatu Holdings Limited and to determine whether this decision was proper.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS

- 3.1 Relevant parts of the following laws are reproduced in **Annex "A"**.

4. OUTLINE OF EVENTS

- 4.1 On 2 June 2005, the Ombudsman received a complaint alleging that in 2004, the former Prime Minister Edward Nipake Natapei signed a six month contract with a private consultant – H & D Consultants which belongs to Messrs Aaron Hanghangkon and Alan Palmer (please refer to **Annex 'B'**). This Consultant was engaged to propose a new Vanuatu Holdings Limited (VHL) structure, to identify the costs of the new entity using VT 8 million allocated to them that was a special budgetary allocation from the Chinese Government. The Consultant was paid a rate of VT 800,000 per month to do this work and they operated within a government office which was the Prime Minister's office and used all the existing office facilities.

It was alleged by the complainant that the procedure that was used to engage H & D Consultants was not done in accordance with the Government Tenders and Procedures Act. Furthermore, at the end of the six month contract, none of the original tasks that this Consultancy firm was appointed to do was carried out and the reports that were produced were so far of a very low quality. It was further alleged that the Consultancy firm focused its time and efforts in duplicating the functions of the Vanuatu Investment Promotion Authority (VIPA); functions that fall outside the primary function of VHL by making deals to attract foreign investors.

The complainant concluded by stating that Honourable Natapei and Mr Hanghangkon are trying to convince the Government to revive VHL even

though the Chinese Government special budgetary allocation of VT 8 million has not been accounted for.

4.2 On 14 June 2005, the Ombudsman commenced an enquiry into the matter. The Secretary of the Council of Ministers (COM) was requested to provide the following information and documents:

- A copy of the Council of Ministers meeting that approved a Government Contract for H & D Consultant to revive Vanuatu Holding Limited.
- Any documents to prove that a tender process was followed prior to awarding the Government Contract to H & D Consultants.
- Any other information and documents that are relevant to this matter.

4.3 On 30 June 2005, the Ombudsman received a response from the Secretary of the COM, Mrs Nadine Alatoa ("Mrs. Alatoa"). Mrs Alatoa advised in her response that the COM did not approve the contract that was awarded to H & D Consultants and there was no tender process prior to the contract being awarded to the said Consultants. Mrs Alatoa was however, able to provide copies of the following documents:

- Copy of council paper 84 and its decision 97. This paper was tabled by Prime Minister Natapei in a COM meeting on 18 December 2002 and its purpose was to seek the COM's approval to:
 - (i) Revive Vanuatu Holdings Limited;
 - (ii) Appoint an interim steering committee to coordinate consultations and
 - (iii) Approve the appointment of a short term consultant to prepare groundwork for VHL and work with Fijian Holdings delegation.

Decision 97 by the COM approved the following:

- (i) To revive VHL
 - (ii) The PM shall appoint an interim steering committee and appoint a short term consultant
 - (iii) Approved the visit of the Fijian delegation in January 2003
 - (iv) The outcome of the consultation will go before the COM for decision
 - (v) The steering committee's work will end once the Consultant's report is produced.
- Copy of council paper 247 and its decision 135/2003. This paper was tabled by Prime Minister Natapei in a COM meeting on 18 December 2003 and its purpose was for the COM to endorse the report that was produced by the Meridian Consultant Group of Fiji and to make a decision on the recommendations that were in this report.

Decision 135/2003 by the COM approved the following:

- (i) Accept the Consultant's report

- (ii) Endorse the recommendation that the forme VHL be properly closed down.
 - (iii) Endorse the recommendation that a suitable person be appointed to carry out the next phase of the report
 - (iv) Endorse the recommendation that the Government seeks aid from an aid donor.
- Copy of council paper 129 and decision 71/2005. This paper was tabled by the Prime Minister Ham Lini in a COM meeting on 13 June 2005 and its purpose was to:
 - (i) seek the COM's approval to re-establish VHL following the study that was undertaken by the consultant company of Fiji.

The former Prime Minister has signed an agreement with another private company, H & D Consultants to draw up a company structure and establish VHL.

Decision 71/2005 by the COM approved the following:

- (i) That the decision taken to re-establish VHL be deferred until the COM receives the report from H & D Consultants, receives the copy of the contract that H & D Consultants signed with the Government and a detailed breakdown of how the VT 8 million grant from the Chinese Government was spent.

4.4 On 7 July 2005, the Ombudsman issued a letter of enquiry to the Director General of the Prime Minister's Ministry, Mr Jean Sese ("Mr. Sese"). Mr Sese was asked to provide the following documents and information:

- Provide a copy of the contract that was signed between the former Prime Minister Natapei, on behalf of the Government and H & D Consultants.
- Who drafted the contract?
- Did the State Law Office provide its legal opinion on the contract? If yes, please provide the relevant documents as proof.
- A copy of the report that H & D Consultant produced as a result of the work that they were engaged to do, if any.
- Any other information and documents that he considers relevant to this matter.

4.5 On 12 July 2005, the Ombudsman received a response from Mr Sese, Director General of the Prime Minister's Ministry. Mr Sese provided the following information and documents:

- A copy of the contract that was signed between the former Prime Minister Natapei and H & D Consultants was provided.
- There is no information as to who drafted the contract except that it was not drafted by the State Law Office.

- The DG was not aware if any legal opinion on the contract was sought from the State Law Office (SLO). The Ombudsman may wish to verify this with the SLO.
- A copy of the report that was produced by the H & D Consultants was also provided

4.6 On 15 July 2005, the Ombudsman issued letters of enquiry to the following people:

- Mr Sampson Endehipa ("Mr. Endehipa"), Attorney General of the Republic of Vanuatu. Mr Endehipa was requested to inform the Ombudsman if he has been requested by the former PM Natapei to provide any legal advice on the decision to engage H & D Consultants. If not, then was he or a meeting that discussed the paper that was tabled by PM Natapei and if the legal opinion of this person was sought at the time of the meeting.
- Mr Sese requesting that he provide the Ombudsman with relevant documents to prove the total amount of money that was awarded to H & D Consultants after their appointment. Such documents would include copies of LPOs, government cheques etc. He was also requested to inform the Ombudsman of the total cost incurred by the Prime Minister's Office to have H & D Consultants operating from its office space and using its facilities and submit the copies of the relevant documents as proof.

4.7 The Ombudsman received a response from Mr. Endehipa on 17 August 2005. Mr. Endehipa's response to the Ombudsman's letter of 15 July 2005 was as follows:

- Their records show that discussions on the concept of Vanuatu Holdings also involved the State Law Office. However, Mr. Endehipa was not aware of any specific request or instruction by the former Prime Minister to the Attorney General to provide legal advice on the Agreement itself before it was signed. Similarly, he was not aware nor was he instructed to advise on the decision to engage H & D Consultants.
- The State Law Office provided two later advices to the Government on the Agreement after it was signed. One is dated the 10 June 2004 and the latter dated 24 June 2004 (please refer to **Annex 'C'**).
- The Attorney General was present in the Council of Ministers' meeting when the paper tabled by Honourable Edward N. Natapei to revive VHL was discussed.
- There was no legal opinion sought from the Attorney General by the Council of Ministers at the meeting therefore he could not provide the Office of the Ombudsman with a copy.

4.8 The Ombudsman received a response from Mr Sese, Director General of the Prime Minister's Ministry on 26 August 2005. Mr Sese submitted the following documents in response to the Ombudsman's letter of 15 July 2005:

- Details of funds disbursed to Mr Aaron Hanghangkon and Mr Palmer as well as the office expenditures;

- Balance of VHL funds used by the PM's Office after the expiry of the Consultants' contract and the Government's decision not to renew the contract or to proceed with the project and
 - Copy of his letter to the Prime Minister dated 12 July 2005.
- 4.9 On 1 September 2005, the Ombudsman issued another letter to Mr. Sese requesting him to provide the following information and documents:
- Did the Vanuatu Government specifically request VT 8 million from the Chinese Government to attempt to revive Vanuatu Holdings Limited?
 - If yes, please provide the written copy of the request.
 - If no, under which grant was this VT 8 million taken from?
 - Please provide a copy of the agreement that was signed between the Chinese Government and Vanuatu Government which states how this grant will be used.
 - Please confirm whether the Prime Minister's Office is the ministry responsible for administering this grant.
 - Please provide any other information and documents that you consider relevant to this matter.
- 4.10 On 27 September 2005, the Ombudsman issued a letter to the Director of the Department of Finance, Ms Dorothy Ericson requesting her to provide the following information and documents:
- Was the Vt 8 million grant from the Chinese Government given especially for the Vanuatu Government to use in reviving Vanuatu Holdings Limited?
 - Were the funds placed in a trust account or in the Vanuatu Public accounts system? Please provide the relevant documents as proof.
 - Was the project recorded in the Government GIP system? If yes, please provide the relevant documents as proof.
 - Please provide any other documents or information that you consider relevant to this matter.
- 4.11 On 9 November 2005, the Ombudsman issued another letter to Mr Benjamin Shing who was now the Director of Finance. Mr Shing was requested to provide the same information and documents that was requested of Ms Ericson in the Ombudsman's letter of 27 September 2005.
- 4.12 On 15 November 2005, the Ombudsman received a response from Mr Shing providing the following information and documents:
- The VT 8 million grant from the Chinese Government was given especially for the Vanuatu Holdings.
 - The funds were placed in the Vanuatu Government accounts system under a project code given especially for VHL.
 - The Aid section in Foreign Affairs and the Department of Economic and Social Planning can confirm whether the project was recorded in the Government Investment Program (GIP) system.

- The following reports and documents were attached with his response:
 - (i) Project summary report to show the running balance of the project with funds coming in and funds going out.
 - (ii) A transaction listing showing the funds received and payments made.
 - (iii) Copy of part of the Economic and Technical Cooperation between the Vanuatu Government and the Government of the People's Republic of China which states that assistance be provided for the Vanuatu Holdings Limited.
- 4.13 On 18 November 2005, the Ombudsman issued a letter to the Director of the Department of Economic and Social Development, Ms Nancy Wells. Ms Wells was requested to advise if the project to revive VHL was recorded in the Government Investment Program System.
- 4.14 On 24 November 2005, the Ombudsman received a response from Ms Wells who confirmed that the project to revive Vanuatu Holdings Limited was recorded in the GIP and has been allocated the GIP number 04K510.
- 4.15 On 9 February 2006, the Ombudsman issued a letter to the former Prime Minister who was now the Minister of Infrastructure, Honourable Edward Natapei. Honourable Natapei was informed of the allegation and was also requested to provide the following information and documents:
 - Who drafted the contract that was signed between himself as the PM and H & D (Pacific) Consultants? Please provide any supporting documents as proof.
 - Did he as the PM seek any legal advice from the State Law Office (SLO) regarding this contract? If yes, please submit any supporting document as proof. If no, why not?
 - Did he as the PM seek any legal advice from any other law firm apart from SLO? If yes, please submit any supporting documents as proof.
 - How was H & D Consultants assessed and finally engaged to carry out the work to revive VHL? Please submit a copy of the criteria that was used to identify H & D Consultancy as the appropriate company to do this work.
 - Why wasn't this contract advertised for tender so that other consultancy firms could apply?
 - Please provide the names (s) of any other person (s) who may have assisted you in making the decision to engage H & D Consultants.
 - Please provide any other documents or information that you consider relevant to this matter.

- 4.16 On 3 March 2006, the Ombudsman received a response from Honourable Edward Natapei. Honourable Natapei advised that he has been unable to locate the file containing information on the project as the former Private Secretary who was handling the case when he was Prime Minister had passed away in 2005 thus he does not have any document to hand. He recalls that a report was produced by H & D (Pacific) Consultants which indicated that there is over VT 2 million left in the account.
- He shall endeavour to find the documents that have been requested and provide some queries as soon as possible.
- 4.17 On 10 July 2006, the Ombudsman issued a letter to Honourable Natapei advising him that he has not provided any response to the Ombudsman as per his advice in his letter of 28 February 2006 that was received by the Ombudsman on 3 March 2006.
- 4.18 On 31 August 2006, the Ombudsman received a response from Honourable Edward Natapei. Honourable Natapei submitted the following documents with his response:
- His letter to Mr Sese dated 15 June 2004 (please refer to **Annex 'D'**);
 - Mr Sese's letter to Mr Mark Bebe (please refer to **Annex 'E'**);
 - The Solicitor General's advice to Mr Sese (please refer to **Annex 'C'**) and
 - Mr Hanghangkon's letter to Mr Sope (Acting Prime Minister) (please refer to **Annex 'F'**).
- 4.19 On 22 March 2007, the Ombudsman issued a letter to Mr Aaron Hanghangkon. Mr Hanghangkon was informed of the allegation and was requested to provide the following information and documents:
- Who drafted the contract that was signed between the former Prime Minister Natapei and H & D (Pacific) Consultants? Please provide any supporting documents as proof.
 - How did H & D (Pacific) Consultants apply for this work? Did it respond to an advertisement or from a special request from Honourable Natapei? Please submit any relevant documents as proof.
 - Please submit a copy of the final report that was issued by H & D (Pacific) Consultants at the end of its contract.
 - Please submit a copy of relevant documents showing how H & D (Pacific) Consultants used the VT 8 million grant given by the Chinese Government.
 - Please provide any other documents or information that you consider relevant to this matter.
- 4.20 On 14 May 2007, the Ombudsman received a response from Mr Aaron Hanghangkon who is a partner in H & D (Pacific) Consulting Group. Mr Hanghangkon provided the following information and documents:

- *Allegation that the procedure used to engage H & D consultants was not in accordance with the Government Contracts and Tenders Act.*

Refer to State Law office clarification [letter attached dated 10 June 2004]. Issue 1 refers to the amount to engage the consultants were below the sum that would normally be called for public tender. The fund provided by the Chinese by way of a trust fund was deposited with the government treasury and they were fully responsible for the disbursements. The Prime Minister acted within his discretion to appoint consultants, after getting the necessary approval from his cabinet as total remuneration was VT 4,800,000 below the required sum under the Tenders Act. However, he was given a mandate by the Council of Ministers to appoint a suitable person and he did so under his power. Tenders Act is only applicable where contract sum must exceed VT 5,000,000 as the remaining balance from the grant was kept under the Dept. of Finance to meet office expenses, administration and secretarial services. Attached State Law Office advice on a letter which comments on all issues raised in your enquiries and the Prime Minister's DG comment on the advice. (Refer to **Annex 'C'**)

- *Alleged at the end of a six month contract, H & D did not carry out its tasks and reports were of low quality.* Report submitted on a monthly basis to the Prime Minister was strictly in line with the TOR. The tasks given during the six months were for VHL to be revived and formally instituted. The monthly reports were deliberately ignored by the Chairman of the steering committee, Mr. Sese, DG for the Prime Minister and no action or feedback was made on issues raised. They were term as low quality, the issued raised must have been difficult for the responsible quality of those civil servants as fit to hold a high office in government. Also implementation report has to be brief and to the point for quick comments or actions and was not intended for another long report to duplicate that of the independent consultant.
- *The consultancy firm focused its time and efforts in duplication the functions of VIPA.* This misconception was repeatedly raised during the wide consultations involving all government agencies, NGOs and other stakeholders prior to the approval of setting up the VHL. All were in agreement that they were two distinct views that VIPA was for promotion and attracting investors to invest in Vanuatu while VHL was to operate under two entities recommended by the independent consultants that (i) Vanuatu Investment Company [VIC] was to deal with investments with commercial objectives and (ii) State Holding Company [SHC] was to oversee and improve the efficiency of State-Owned Enterprises. (Refer to **Annex 'G'**).
- *The consultancy contract was not drafted by the State Law Office – This is a non-issue to be challenged.* The contract was drafted by the steering committee responsible for advising the Prime Minister on VHL at the time. It is logical to fund exactly who drafted the contract as when the Prime Minister signature the document, he becomes fully accountable as it becomes his own property. By all account, the SLO was asked to comment on the contract and its clauses and it is submitted for your reference.

- *Did H & D apply for this work? Was there an advertisement or a special request from the Prime Minister?* We can only gather that our one year preliminary briefs and work relating to the recommendations as to how a government business arm would be created and run privately puts us in a more advantageous position. A lot of work to gather information seek relevant advice from people and key agencies in country and overseas was done at our own costs and without any remuneration until the Prime Minister approve the concept and submitted to the Council of Ministers. H & D assisted further in the preparation of a project submission to the forum Secretariat in Fiji to fund the tendering of seeking an independent consultant to study the proposed concept of the VHL into a new concept that could be professionally oriented and submit to the government for final approval and implementation. This was achieved with our own contacts in the region to get funding from the Forum Secretariat and upon wide tendering the pacific, Meridian Consulting was accepted to carry out the consultancy under a \$US45,000.00 contract. A professional report was made by an independent consultant and submitted to the government steering committee who sat on the report for over four months with no clear direction as to the next step of implementing its recommendations. The Prime Minister took his own initiative to follow on from a policy decision and went ahead to seek own funding to implement the report. Attached is the independent report from Meridian Consulting would have assist with the ongoing maladministration of current state own enterprises; i.e. Air Vanuatu, VCMB, VBTC, Development Bank, etc. (Refer to **Annex 'D'**).
- *Final report issued by H & D at the end of its contract* – Enclosed our report for your perusal. It is important to note that our contract was stopped after four months by publicising it in the media [not in writing] by the new prime minister; Hon Serge Vohor after a change of government. We tried unsuccessfully to meet PM Vohor after a change of government. We tried unsuccessfully to meet PM Vohor to get his support as he was the first leader in coalition with Natapei that fully supported the revival of VHL. It was to our amazement that he took this decision and we never had the chance to meet him during the two months of our consultancy. Copy of our letter to PM Vohor is on **Annex 'H'**.
- *Relevant documents on how H & D expended the VT 8 million grant from the Chinese government* – Attached is the approved budget estimates for the six months consultancy (**Annex 'I'**). We were not granted vote controllers of the funds, after confirmation from the Department of Finance who would take over the responsibility and account for the funds. The final expenditure showed a balance of around VT 2,400,000 remaining in the account after our consultancy. The overspending occurred due to other expenditures approved by the DG for the Prime Minister who was the vote controller of the funds. A separate letter was sent from our office dated 29 June 2005 to the Acting Prime Minister voicing our concern on how the funds were used for other purposes other than VHL. We have not received any response to date and no action taken to recover the funds or get the DG to face disciplinary action. (Refer to **Annex 'F'**).

- *Other relevant information that may assist you in your inquiry. It is important to note that:*
 - The end of consultancy report attached to this submission
 - The former PM Natapei did convince the Chinese government to support the setting up of VHL; it was a way forward to the proper functioning of the government business arm and this was endorsed by the independent consultants to restructure the new VHL. This entity was to be governed by law and solely independent from the government. (See press release **Annex 'J'**).
 - The Hon. Serge Vohor who was implicated in the former VHL again without consultation prematurely terminated our services and used the balance of funds on other activities authorised under his tenure as Prime Minister. The engagement of RK Warsal Lawyers for VT 1,142,844 s to defend him on his arrest case.
 - Hon. Serge Vohor should be investigated for former VHL, the illegal termination of our services prior in breach of contract and his improper use of the funds on their expenditures that are not related to VHL activities.
 - The Director of Finance should be disciplined for allowing Chinese funds to be used for other purposes as he was given the role to safeguard the use of the funds for VHL purposes only.
 - Front copy of Meridian Consulting report, the independent consultant who produced the report that was subject to the Prime Minister to appoint local consultants to implement the recommendations. Should you wish to see the whole report, we can make one available. (Refer to **Annex 'K'**).
 - In our opinion, we trust that former Prime Minister and his government had a vision to deal constructively with the affairs of the state through the VHL and he complied fully within the law in the process of implementation. The forces of opposition were within the political ranks that supported the idea but failed to follow through with the process when a change of government took place. We believed that this was the way forward for the country to move economically including the government of China who provided the funds and further the Forum Secretariat who funded the independent consultant.
 - Those who may have masterminded the failure of the VHL had one aim to ridicule the Prime Minister and try to create obstacle, which is once again a set-back to policy makers. They do not present themselves to be the implementers of policy decision but rather will continue to be hindrance in major decision making in government. The country will never prosper if the same civil servants with inferior attitude continue to dictate what should be done their way rather than the elected leaders whose policy is make change and for the betterment of the Vanuatu people both socially and economically.

5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM

- 5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply whenever requested by the Ombudsman. Also, a working paper was provided on 13 September 2007 prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond.
- 5.2 Responses to the working paper were received from the following on the following dates:
- On 19 September 2007, the Ombudsman received a response from the Solicitor General, Mr Dudley Aru. Mr Aru advised that he has reviewed the Working Paper and would add that as far as the State Law Office was concerned, advice was provided as per instructions received to advise. Otherwise, he has no further comments to add or documents to provide in relation to this inquiry.
 - On 26 September 2007, the Office of the Ombudsman received a response from Mr Aaron Hanghangkon, Senior Partner in the H & D (Pacific) Consulting Group. Mr Hanghangkon firstly clarified the position of Mr Allan Palmer who was recruited by H & D Pacific Consulting Group for his professional contribution in this particular assignment but he is not a shareholder. Mr Hanghangkon then proceeded to make the following comments :
 - (1) Mr Hanghangkon finds the ongoing tirade against their Group to be inconsistent and without substance. From their view, they were contracted by the government in good faith to undertake a consultancy assignment within the period provided for in the contract. This means, they had to reorganise their busy commitment to respond to government request and deal with the tasks outlined in the Term of Reference for a period of six months.
 - (2) It would be more appropriate that the Ombudsman directs his complaints to the DG, Prime Minister's office who was the Chairman of the steering committee overlooking the implementation of VHL. They are an independent private sector firm who were contracted to carry out a government assignment and it is sad to see the ongoing politicking and in-fighting among officials which have lead them to suffer and face the criticisms currently being labelled against their company.
 - (3) They are accused of not complying with certain laws which they find unacceptable when private sector are asked by the government to carry out tasks and through no fault of their own, they are blamed for irregularities that are created from within the government. They were tasked to set up the groundwork for VHL structure and would have completed everything on time had Prime Minister Serge Vohor and key civil servants cooperated fully with them during the consultancy period.
 - (4) Their own observations to the following saga would deem to have no basis as the then Prime Minister acted within his powers mandated by COM decision 135/2003. It is important to note that all COM papers are cleared from the technical Development Committee of Officials (DCO) and some of those members are now questioning the legality of

the decision that they are a party to. The Ombudsman may need to consult with various attachments on annexures D, E, G, H, J to the report that would clearly elaborate on the concept of VHL revival.

- (5) The issue of trust money and public money is clearly explained by the Attorney General's advice in their letter of 10 June 2004. Further, Mr Sese concurred with the advice in his letter of 16 June 2004 to Mr Bebe. It is unfortunate to note that incumbents Ms Dorothy Erickson and Mr Mark Bebe were seen to have pressured the State Law Office for a second advice. The Attorney General repeated his final advice in a letter dated 24 June 2004 to reaffirm what was already given in their letter of 10 June 2004.

Relating to the State Law advices, they consider the Ombudsman report findings 1, 2 and 3 to be inconsistent and irrelevant to any existing laws. The recommendations on 7.1 and 7.3 do not apply based on the same advice. Instead of crying over spilt milk, advices given prompted the suggestion to amend the PFEM Act accordingly that would avoid future repetition. And the Ombudsman rightly agreed to this in recommendation 7.2.

- (6) Overall, Mr Hanghangkon wishes to state that by all the actions of the complainants and the Office of the Ombudsman that this matter is leading to a more personal vendetta against their Group. Despite all the legal advice provided, the matter should rightly be put to rest. They are the innocent party in this matter as the frustrations and hindrances were masterminded by certain officials of the state with the aim of damaging their professional image and reputation.
- (7) Their responses point to the fact that there is a cause for financial misappropriations by certain leaders and officials, and it would be fair to know what action the Ombudsman is going to take into the matter. Public finance regulations refer to appropriate action to be taken, however, the PSC has not responded to their letter of 29 June 2005.

In conclusion, Mr Hanghangkon stated that while he awaits the final verdict of the Ombudsman's consideration to this report, he will be seeking legal advice to defend the professional reputation of their business and to seek damages in a court of law.

- On 26 September 2007, the Ombudsman received a response from Director General of the Prime Minister's Office, Mr Jean Sese. Mr Sese made the following points in his response
 - (1) Despite good intentions to revive the Vanuatu Holdings Limited, the consultancy work carried out by H & D (Pacific) Consultants failed to produce the outcomes within the agreed timeframe as directed by the Council of Ministers in 2004;
 - (2) H & D (Pacific) Consultants have been paid fully for their six months of engagement as provided for under the Agreement between the then Prime Minister (Hon. Edward Natapei) and the consultants;

(3) With a change of Government in 2004, the engagement of H & D (Pacific) Consultants was not renewed by the then successor Prime Minister (Hon. Serge Vohor). As such, there was no further obligation on the Government to make any further payment to H & D (Pacific) Consultants.

- On 28 September 2007, the Ombudsman received a response from the Deputy Prime Minister and Minister of Infrastructure and Public Utilities Edward Nipake Natapei. Mr Natapei stated that he was advised that any contract for amounts less than VT 5,000,000 did not require to be put through the tender process so when the agreement which was for a maximum payment (Clause 9) of VT 4,800,000 was put before him, he signed it.

It is very clear from the Solicitor General's advice dated 10 June 2004 and re-affirmed by the Attorney General in his letter dated 24 June 2004 that "the Agreement between the Prime Minister and Mr Hanghangkon and Mr Palmer is not a Government contract" as defined in the Government Contracts and Tenders Act.

Honourable Natapei concluded by stating that he believes he has not breached the Government Contract and Tenders Act and the Leadership Code Act.

- On 28 September 2007, the Ombudsman obtained a statement from the Secretary to the Council of Ministers, Mrs Nadine Alatoa. Mrs Alatoa confirmed the information and documents that she provided to the Ombudsman as per section 4.3 of the Working Paper.
- On 1 October 2007, the Ombudsman received a letter from Mr Juris Ozols of Juris Ozols & Associates Attorneys. This letter was first received by fax on 26 September 2007. Mr Ozols stated that as the Ombudsman's letter of 13 September 2007 was only delivered to Mr Alan Palmer on Friday 21 September 2007, he presumes that the Ombudsman will allow them fourteen days from the date of receipt in which to provide their client's comments.

For the record, their client strenuously disagrees with a number of the allegations put forward in the draft report and they will be preparing a detailed response shortly.

- On 8 October 2007, the Ombudsman received a response from Honourable Willie Jimmy Tapanga Rarua, current Minister of Finance and Economic Management (he was the Minister of Tourism in 2004 when Honourable Natapei was Prime Minister). Honourable Tapanga Rarua stated that his involvement was a collective decision of the Council of Ministers only, none other.

However, reading the content of the Preliminary findings of the Working Paper, he could hardly believe the procedures that were adopted by the then Prime Minister, Hon Edward Nipake Natapei, which seemed to be a deliberate act of ignoring the provisions of the Government Contracts and Tenders Act to appoint a consultant to do a feasibility study to revive Vanuatu Holdings in 2004.

Therefore, the Ombudsman's proposed recommendations are to be dealt with in a usual manner by appropriate authorities.

- The Ombudsman did not receive any response to the Working Paper from the following people:
 - (1) Honourable Ham Lini Vanuaroroa, current Prime Minister and former Minister of Infrastructure in April 2004;
 - (2) Honourable George Wells, current Minister of Foreign Affairs and former Minister of Internal Affairs in April 2004;
 - (3) Honourable Maxime Carlot Korman, current Minister of Lands and former Minister of Agriculture in April 2004;
 - (4) Honourable Philip Boedoro, current Member of Parliament and former Minister of CRP in April 2004;
 - (5) Honourable Moana Carcasses Kalosil, MP/current Leader of Opposition and former Minister of Foreign Affairs in April 2004;
 - (6) Honourable Sam Dan Avock, current Speaker of Parliament and former Minister of Ni-Vanuatu Business in April 2004;
 - (7) Honourable James Bule, current Minister of Trade and former Minister of Health in April 2004;
 - (8) Honourable Iatika Morkin Steven, current Minister of Health and former Minister of Youth & Sports in April 2004;
 - (9) Mr Nicholas Brown, former Minister of Education in April 2004;
 - (10) Mr Jimmy Nicklam, former Minister of Finance in April 2004;
 - (11) Mr Mark Bebe, current Secretary to the Public Service Commission and former Director to the Department of Strategic Management in 2004;
 - (12) Mr Benjamin Shing, Director of Finance;
 - (13) Mr Simeon Athy, Director General of the Ministry of Finance and
 - (14) Ms Nancy Wells, former Director of the Department of Economic and Social Planning.

6. FINDINGS

6.1 Finding 1: BREACH OF THE GOVERNMENT CONTRACTS AND TENDERS ACT 1998 BY THE HONOURABLE PRIME MINISTER (FORMER) EDWARD N. NATAPEI AND HIS COUNCIL OF MINISTERS

Having considered the above stated correspondences, the Ombudsman finds that the former Prime Minister, Honourable Edward N. Natapei and his Council of Ministers have breached the Government Contracts and Tenders (GCT) Act 1998.

In 2004, the Chinese Government gave a VT 8 million grant to the Vanuatu Government specifically for the establishment of Vanuatu Holdings. Section 46 (1) (f) of the Public Finance and Economic Management (PFEM) Act states that all money received by way of donor aid, pending expenditure in accordance with such purposes and conditions as agreed between the donor and state is trust money. Section 46 (2) of the PFEM Act further states that

all trust money held by the State shall be accounted for separately from public money.

Being a grant, the money will not be refunded as per the definition of grants in section 2 (1) of the PFEM Act (please refer to **Annex 'A'**) and therefore it becomes the property of the State and as such, it is "public moneys". As per the agreement, the Chinese Government does not need reports on how this money was used. Further, as the funds were placed in the Vanuatu Government accounts system and was recorded in the Government Investment Program (GIP), it is deemed to be public money as per the PFEM Act.

Section 3 of the GCT Act states how Government Contracts that exceed VT 5 million should be awarded. It was found in this investigation that even though the agreement that was signed between Honourable Natapei and H & D (Pacific) Consultants was for the expenditure of the VT 8 million given by the Chinese Government, section 3 of the GCT Act was not adhered to.

It is also not apparent, who drafted the said agreement between Honourable Natapei on behalf of the Government and H & D (Pacific) Consultants and whether any legal opinion on the agreement was sought prior to its signing. The State Law Office was only consulted after the contract between the Government and H & D (Pacific) Consultants had been established.

Thus, this agreement is void and of no effect as per section 7 of the GCT Act.

6.2 **Finding 2: BREACH OF THE LEADERSHIP CODE ACT BY FORMER PRIME MINISTER EDWARD NATAPEI AND HIS COUNCIL OF MINISTERS**

The former Prime Minister Edward Natapei and his Council of Ministers had an obligation to comply with section 3 of the GCT Act as stated above.

Their failure to do so has also caused them to be in breach of the Leadership Code Act (LCA). Section 29 (d) of the LCA states that a leader who fails to abide by the provisions of an Act that provides for government contracts and tenders is in breach of the Code.

6.3 **Finding 3: BREACH OF SECTION 30 OF THE LEADERSHIP CODE ACT BY H & D (PACIFIC) CONSULTANTS**

Section 30 of the Leadership Code Act provides that "(1) A person other than a leader who: (a) takes part in conduct that is a breach of this Code; or obtain a benefit, directly or indirectly, from an act or commission that is a breach of this Code; is guilty of a breach of this Code".

On 2nd April 2004 a Memorandum of Agreement between former Prime Minister Edward Natapei and H & D (Pacific) Consulting Group for the revival of the Vanuatu Holdings Limited was signed (Annex B – page 1 to 5) without complying with section 29 of the Leadership Code Act as mentioned above. As such, by taking part in the signing of a contract that was void and of no effect due to the failure to abide by section 3 of the GCT Act, H & D (Pacific) Consultants were in breach of section 30 of the Leadership Code Act.

6.4 Finding 4: BREACH OF THE FINANCIAL REGULATIONS BY FORMER PRIME MINISTER EDWARD NATAPEI AND HIS COUNCIL OF MINISTERS

Regulation 5.1 (3) of the Financial Regulations outlines the procedure to be used when purchasing services that are greater than VT 5 million – the Government Contracts and Tenders Act 1998 and the procedures set out in the Tenders Regulations must be followed.

Furthermore, Regulation 5.1 (5) of the Financial Regulations further states that the purchases of goods and services must not be divided up in order to fit within the lower category outlined in subsection 3.

It was found in this investigation that the former Prime Minister Natapei and his Council of Ministers did not adhere to the above regulations and have therefore committed an offence under the Financial Regulations. They should therefore be dealt with in accordance with Regulation 14.1 in Part 14 of the Financial Regulations.

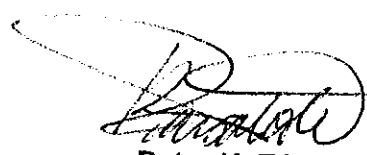
7. RECOMMENDATIONS

Due to the above findings, the Ombudsman makes the following recommendations.

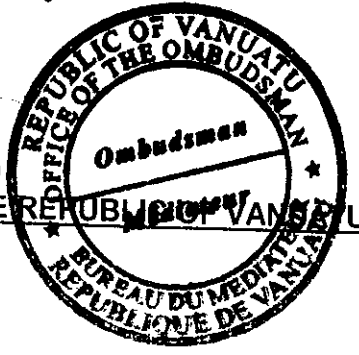
- 7.1 The former Prime Minister Edward Natapei and his Ministers should be dealt with in accordance with Part Six of the Government Contracts and Tenders Act 1998, Part 6 of the Leadership Code Act and Part 14 of the Financial Regulations of Vanuatu.**
- 7.2 Section 46 (1) (f) of the Public Finance and Economic Management Act 1998 should be amended so that it specifically states that “grants” received by way of donor aid should be deemed as public money and be subject to all laws and regulations governing the use of public moneys.**
- 7.3 The former Prime Minister Edward Natapei must personally refund the amount of money that was used by the H & D (Pacific) Consultants during its six months consultancy period as the agreement that he had entered into on behalf of the Vanuatu Government was void.**
- 7.4 H & D (Pacific) Consultants must refund the amount of money (from the VT8 million grant from the Chinese Government) that was used by them during the six months consultancy period as the agreement signed between them and the former Prime Minister was void. Further, they did not fulfil the work they were engaged to do as per the Terms of Reference of the agreement.**
- 7.5 The current Prime Minister’s Ministry must refund the amount of money taken from the VT 8 million grant from the Chinese Government for Vanuatu Holdings Limited that was used for other purposes.**

7.6 The Attorney General must institute a civil proceeding against the former Prime Minister Edward Natapei and H & D (Pacific) Consultants to recover the VT8 million that was misused by them.

Dated this 2nd day of. May 2008



Peter K. TAURAKOTO
OMBUDSMAN OF THE REPUBLIC OF VANUATU



8. INDEX OF APPENDICES

- A** Relevant laws
- B** Copy of contract signed between the Honourable Prime Minister Natapei and H & D (Pacific) Consultants
- C** Copies of letters of advice from the State Law Office dated 10 July 2004 and 24 June 2004
- D** Copy of Honourable Natapei's letter to Mr Jean Sese dated 15 June 2004
- E** Copy of Mr Jean Sese's letter to Mr Mark Bebe dated 16 June 2004
- F** Mr Aaron Hanghangkon's letter to Honourable Barak Sope, Acting Prime Minister dated 29 June 2005
- G** Prime Minister Circular No 1 of 2004
- H** Copy of letter from Mr Aaron Hanghangkon to Honourable Rialuth Serge Vohor dated 17 August 2004
- I** Interim Budget of Vanuatu Holdings Limited from 1 April to 30 September 2004
- J** Press Release – Prime Minister launches the Vanuatu Holdings
- K** Front page of the Meridian Consulting report on the Revival of Vanuatu Holdings Limited

CONSTITUTION OF THE REPUBLIC OF VANUATU

CONDUCT OF LEADERS

66(1)

Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to—

- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
- (b) demean his office or position;
- (c) allow his integrity to be called into question; or
- (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

66(2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub article (1).

DEFINITION OF A LEADER

67 For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law.

LEADERSHIP CODE ACT 1998

SPECIFIC PROVISIONS

29. Without limiting the generality of section 28 a leader who fails to abide by the provisions of an Act that provides for:

- (a) the public service; or
- (b) public finance or economic management; or
- (c) expenditure review committee or audit functions; or
- (d) government contracts or tenders;

Is in breach of this Code.

OFFENCES BY OTHER PERSONS

30 (1) A person other than a leader who:

(a) takes part in conduct that is a breach of this Code; or

(b) obtains a benefit, directly or indirectly, from an act or omission that is a breach of this Code;

is guilty of a breach of this Code.

(2) A person other than a leader must not exercise undue influence over or in any other way bring pressure to bear on a leader, so as to influence, or attempt to influence, the leader to act in a way that is in breach of this Code.

(3) A person who is found guilty of a breach under this section is liable, on conviction, to a penalty of:

(a) a fine not exceeding VT5,000,000; or

(b) imprisonment for a period not exceeding 10 years;
or both the fine and imprisonment.

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- (4) If the person obtains a benefit as a result of acting in breach of this section, the court may make an order that the benefit be recovered in accordance with section 45 or 46.

PART 6 - PUNISHMENT OF LEADERS

FINE OR IMPRISONMENT

40. (1) A leader who is convicted of a breach of section 19, or 20, or 21, or 22, or 23, or 24 or 26 or 27 is liable to -
- (a) a fine not exceeding VT5,000,000; or
 - (b) imprisonment for a period not exceeding 10 years.
- (2) A leader who is convicted of a breach of section 33 is liable to :
- (a) a fine not exceeding VT2,000,000; and
 - (b) if the offence is a continuing one to a fine not exceeding VT20,000 a day for each day or part day the leader remains in breach.
- (2) A leader who is convicted of a breach of this code for which no specific penalty is provided is liable to a fine not exceeding VT2,000,000.

DISMISSAL FROM OFFICE

41. (1) Where a leader is convicted of a breach of this Code the court may, if it regards the breach as serious, make an order dismissing the leader from office.
- (2) In determining whether the breach of this code is serious, the court may have regard to:
- (a) in the case of a breach involving a financial matter, the amount involved;
 - (b) whether the conduct of the leader was significantly below what would be expected of a leader;
 - (c) where it is possible to discern, the motives of the leader;
 - (d) the extent to which the breach diminished the respect or public confidence in the leader's position; and
 - (e) whether the leader has been previously convicted of a breach of this Code.

DISQUALIFICATION FROM FUTURE OFFICE

42. Where the leader is dismissed from office under section 41 the leader is disqualified from standing for election as, or being appointed as, a leader of any kind for a period of 10 years from the date of the conviction.

LOSS OF EMPLOYMENT BENEFITS

43. If the leader is entitled to any other payment or allowance, on ceasing to be a leader, as a result of being dismissed from office under this Act, the entitlement ceases.

DEPRIVATION OF PROCEEDS OF CORRUPTION

44. If:

- (a) a leader has been convicted of a breach of this Code (including an offence listed in section 27);
- (b) the leader or another person has obtained a benefit in any way from the conduct that constituted the breach; and the leader or the other person is not entitled to retain the benefit.

RECOVERY OF PROCEEDS

45. (1) If the Public Prosecutor is of the opinion that a leader who has been convicted of a breach of this Code has obtained property or any other benefit from the breach, the Public Prosecutor must apply to the Court for an order that:
- (a) the property be forfeited to the Government of Vanuatu;
 - (b) the leader pay a pecuniary penalty equal to the value of any other benefit he or she received;
- or both, but the total sum ordered to be paid must not exceed the value of the property or benefit received.

- (2) The order does not take effect until:
- (a) after the end of any appeal period in relation to the conviction; or
 - (b) if the leader has lodged an appeal then, after the appeal has been determined.

RESTRAINING ORDER

46. (1) If the Public Prosecutor is of the opinion that property that may have been obtained from a breach of this Code may be disposed of by a leader or other person, the Public Prosecutor may apply to the Court for an order restraining the leader or any other person from dealing with the property.
- (2) If the Court makes the restraining order, the leader or any other person must not sell, dispose of or otherwise deal with the property without the approval of the Court.

EFFECT OF FORFEITURE ORDER

47. (1) If a Court makes a forfeiture order against property, the property vests absolutely in the Government of Vanuatu.
- (2) Every registrar and every person who is charged with the responsibility of recording the ownership of property (whether as a matter of public record or otherwise) will take notice of any further order and will without further authority than this section take all such steps to record the ownership of such property in the name of the Government or the Government's nominee upon production of the order.

EFFECT OF PENALTY ORDER

48. If the court makes an order for a pecuniary penalty against a leader, the amount ordered is payable to the Government of Vanuatu and may be recovered as a debt due in a court of competent jurisdiction.

PUBLIC FINANCE AND ECONOMIC MANAGEMENT ACT 1998

INTERPRETATION

2. (1) In this Act, unless the context otherwise requires-

“grants” means unrequited: involving payment in return for a quid pro quo, non-repayable, non-compulsory receipts from other Governments or international institutions.

TRUST MONEY

46. (1) The following money shall be deemed to be trust money-
- (a) money that is deposited with the State pending the completion of a transaction or dispute and which may become repayable to the depositor or payable to the State or any other person;
 - (b) all money that is paid into Court for possible repayment to the payee or a third party, by virtue of any Act, rule, or authority whatsoever;
 - (c) unclaimed money that is due to or belongs to any person and is deposited with the State;
 - (d) all money that is paid to the State in trust for any purpose;
 - (e) money that belongs to or is due to any person and is collected by the State pursuant to any agreement between the State and that person;
 - (f) all money received by way of donor aid, pending expenditure in accordance with such purposes and conditions as agreed between the donor and the State.

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- 2) All trust money held by the State shall be accounted for separately from public money.
- 3) All trust money is the responsibility of the head of ministry appointed on behalf of the State to manage it and must be managed in a manner consistent with the requirements laid down by MFEM.
- 4) The Director – General may appoint an agent to manage some or all trust money on such terms and conditions as the Director-General from time to time determines subject to the requirements of this section, and to the requirement that the agent is a recognised professional institution of a kind and with experience in the handling of trust moneys

OFFENCES

64. (2) A person commits an offence against this Act who-

- (a) without reasonable excuse, refuses or neglects to pay any public money into a bank account of the Public Fund; or
- (b) without reasonable excuse, refuses or neglects to pay any trust money into a bank account designated under section 47; or
- (c) makes any statement or declaration, or gives any information or certificate, required by a pursuant to this Act, knowing it to be false or misleading, or does so without adequate investigation; or
- (d) does any fact the purpose of procuring for that person or for any other person or organisation:
 - (i) the improper payment of any public money or trust money; or
 - (ii) the improper use of any public resource; or
- (e) wilfully fails to carry out any duty or obligation imposed on that person pursuant to this Act

PENALTIES FOR OFFENCES

66 (1) A person who commits an offence under section 64 [64] of this Act, is liable on conviction-

- (a) in the case of an individual, to a fine not exceeding VT600,000 or imprisonment for a term not exceeding 3 years or both;
 - (b) in the case of a person or organisation other than an individual, to a fine not exceeding VT 1,000,000.
- (2) Every person who commits an offence under section 64 [2] of this Act is liable on conviction-
- (a) in the case of a individual to a fine not exceeding VT 1,000,000 or imprisonment for a term not exceeding 7 years or both;
 - (b) in the case of a person or organisation other than an individual, to a fine not exceeding VT 2,000,000.
- (3) Where any body corporate commits an offence against this Act, every director, secretary, manager and other officer of the body corporate and every person purporting to act in and such capacity shall also be guilty of an offence unless that person satisfies the Court that either -
- (a) the offence was committed without that person's knowledge or consent or not through that person's gross negligence; or

- (b) that person took all reasonable steps to prevent the commission of the offence.
- (4) Details of offences and penalties must be provide to the Expenditure Review Committee.
- (5) A person who is a leader [as defined in the Leadership Code Act] and who is convicted of an offence under section shall in addition to the penalties provided for under this Act be liable to the penalties under that Act as if a conviction under this Act were a conviction under that Act.

GOVERNMENT CONTRACTS AND TENDERS ACT 1998

**PART TWO
GOVERNMENT CONTRACTS**

GOVERNMENT CONTRACTS

- 3. (1) Every Government Contract must be in writing.
- (2) Subject to subsection [3], a minister, under this or any other Act authorizing him to do so, may enter into a Government Contract.
- (3) Prior to entering into a Government Contract a minister must first:
 - a) Ensure the contract is consistent with Government policy;
 - b) Ensure the contract is fiscally responsible, prudent cost effective, and is a necessary obligation for Government to assume;
 - c) Consult with the Director General and satisfy himself on reasonable grounds that the Government has or is likely to have the financial ability and resources to meet all of the obligations under the contract including future obligations;
 - d) Consult with and obtain the advice of the Attorney General or a legal practitioner approved by the Attorney General in writing, on the legal aspects, implications, and appropriateness of entering into the contract;
 - e) Ensure that no conflict of interest exists between a minister or the Council and the other party;
 - f) Use a competitive and transparent process when deciding who to award the contract to including where applicable, a tender process as may be prescribed by this or any other Act or regulation;
 - g) Make a written submission to Council which must include a copy of the proposed contract, the process followed, and comments on the proposed contract by, and under the signature of, the Director General and the Attorney General or the legal practitioner. The Attorney General must certify that the procedures in accordance with this or any other applicable Act have been followed;
 - h) Obtain a Council minute approving the contract

EXECUTION OF GOVERNMENT CONTRACTS

- 4.1 (1) Every Government Contracts entered into under section 3 must be in the name of the Government of the Republic of Vanuatu represented by the responsible minister, and every document required to be signed evidencing

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the terms of the contract may be executed by the responsible minister on behalf of the Government.

- (2) The terms of a Government contract may be varied or discharged in the same way.

VALIDATION OF PRIOR CONTRACTS

5. All things lawfully done before the passing of this Act, will be deemed to have been validly and lawfully done under the authority of this Act and any contract entered into is ratified and confirmed.

APPLICATION OF ACT TO EXISTING ARRANGEMENTS

6. The provisions of this Act will apply to any arrangement to enter into a Government Contract which at the date of commencement of this Act has not been executed.

EFFECT OF GOVERNMENT CONTRACT ENTERED INTO IN BREACH OF THIS ACT

7. A Government Contract entered into after the commencement of this Act, which is in breach of the provisions of this Act, will be void, of no effect, and will not be binding on the State or the Government

PART SIX

OFFENCES AND PENALTIES

OFFENCES AND PENALTIES

14. (1) A person who acts in breach of sections 3, 4, 8, 10(2), (3), (4), (7) or 12, or regulations under this Act commits an offence and is liable on conviction to a fine not exceeding VT1,000,000 or imprisonment for a term not exceeding 1 year or in the case of a person or organization other than an individual, to a fine not exceeding VT5,000,000.
 - (2) It will be a defence in any proceedings under subsection (1) where a person can satisfy the court that the offence was not intentional and that the breach was minor, trivial, or technical.

FINANCIAL REGULATIONS OF THE REPUBLIC OF VANUATU**Regulation 5.1****PLACING AN ORDER FOR GOODS AND SERVICES**

- (3) The procedures set out in the Table must be carried out depending on the value of goods for services being purchased:

Table		
Item	Amount	Procedure
1.	Less than 100,00 Vatu	An officer with an appropriate financial delegation must approve the purchase order form for the goods or services, and he or she must ensure that the cost is reasonable.
2.	At least 100,00 vatu, but not more than 1 million vatu	An officer with appropriate financial delegation must approve the purchase order form for the goods or services, and 2 quotations must be obtained wherever possible.
3.	More than 1 million vatu, but not more than 5 million vatu	The purchase order form for the goods or services must be approved by the head of Ministry (or his or her delegate), and 3 written quotations must be obtained wherever possible
4.	Greater than 5 million vatu	The government Contracts and Tender Act 1998 and the procedures set out in the Tenders Regulations must be followed.

- (4) The Ministry concerned must keep all quotation obtained on file until its annual audit is completed.
- (5) Purchases of goods and services must not be divided up in order to fit within a lower category outlined in subsection 3.

PART 14 OFFENCES AND SANCTIONS**Regulation 14.1****OFFENCES AND SANCTIONS**

- (1) Any person who, without a reasonable excuse, fails to carry out any duty or obligation imposed on that person under these Regulations commits an offence against these Regulations.
- (2) Any person who commits an offence under subsection [1] is liable on conviction to a fine not exceeding 100,000 vatu. (For clarification, where the offence is included in Section 64 of the PFEM Act, the more stringent penalties of that Act must apply).
- (3) Any person who commits an offence under subsection 910 may be subject to a disciplinary action by the Head of Ministry or Public Service Commission.

GOVERNMENT OF THE REPUBLIC OF VANUATU

MEMORANDUM OF AGREEMENT

Between

HON. NIPAKE E NATAPEI TUTA FANUA'ARIKI
PRIME MINISTER OF THE REPUBLIC OF
VANUATU

and

AARON HANGHANGKON
ALLAN PALMER

as

CONSULTANTS

from

H & D (PACIFIC) CONSULTING GROUP.

for the

REVIVAL OF VANUATU HOLDINGS PROJECT

CONSULTANCY AGREEMENT

An AGREEMENT made on this 02nd day of April 2004

BETWEEN:

The Hon. Nipake E Natapei TUTA FANUA'ARIKI, Prime Minister of the Republic of Vanuatu, care of the Prime Minister's Office, PMB 043, Port Vila, Republic of Vanuatu ("the Prime Minister").

AND:

Mr. Aaron HANGHANGKON and Mr. Allan PALMER, Consultants, H & D (Pacific) Consulting Group, Rue de Picardie, PO Box 1023, Republic of Vanuatu ("the Consultants").

WHEREAS the Prime Minister has been duly authorized by the Council of Ministers (COM) by decision 135 of 18 December 2003 of the Government of Vanuatu, to proceed with the implementation of Vanuatu Holdings independent report produced by the Forum Secretariat funded consultants ("the project"), and

WHEREAS the Prime Minister wishes to engage the services of the Consultants upon the terms and conditions hereafter set forth to assist in the management of the interim operations of the Vanuatu Holdings (VH) in accordance with the said COM decision, and on behalf of the Government of the Republic of Vanuatu, and

WHEREAS the Consultants has agreed to provide the required consultancy services in accordance with the terms contained in the Employer's Letter of Appointment dated 01 April 2004 together with the Terms of Reference (TOR) for the consultancy as attached in Schedule A;

THE PARTIES HERETO AGREE AS FOLLOWS:

1. Duties of the Consultants

The Consultants shall perform the duties assigned by the Prime Minister on behalf of the Government of Vanuatu in accordance with the Terms of Reference annexed as schedule A hereto such duties being hereafter called "the services").

2. Commencement of Engagement

The services of the Consultants shall be deemed to have commenced in Port Vila as follows:

- (i) 02 April to 30 September 2004 to provide an interim management of the operations of the Vanuatu Holdings and work towards a fully structured permanent office of VH.

3. Term of Engagement

The Consultants shall be engaged by the Prime Minister until such time as they shall have completed the Services proposed, however, that the period during which the consultants shall be so engaged (hereafter called "the term of engagement") shall not, except as the parties may otherwise agree, exceed six calendar months from the date of commencement. The assignment will involve possible visits to other centers in Vanuatu as well as overseas countries on project visit and to establish preliminary contacts with international funding agencies, investors, financiers, etc. It is further provided that the Prime Minister may at any time, upon giving to the Consultants reasonable notice in writing, terminate the engagement.

4. Remuneration

The Government of Vanuatu shall pay the Consultants, a monthly professional fee of VT. 800,000 for the period 02 April to 30 September 2004.

5. Out-of-pocket Expenses

The Prime Minister shall pay out-of-pocket expenses on actual cost basis unless otherwise specified and on which a claim should be submitted with supporting documents at the end of each Service period.

6. Payments

The professional fee shall be paid in advance, on the first day of each month, and out-of-pocket expenses shall be paid within fifteen (15) days from the Prime Minister's receipt of the Consultant's billing/s. Payment of the fee shall be subject to certification by the Prime Minister.

7. Advances

The Consultants shall, if he so requests, be entitled to an advance of up to VT. 400,000 an out-of-pocket expenses to be remitted to him in accordance with his payment instructions and to be fully recovered from the first billing.

8. Reports

The Consultants shall submit to the Prime Minister the type-written papers/reports as required and specified in the Terms of Reference (Schedule A).

9. Maximum Payment Clause

Except as otherwise agreed by the Prime Minister, but notwithstanding anything elsewhere provided herein, total payment under this contract shall not exceed an amount equivalent to a gross remuneration of VT. 4.800.000.

10. Facilities

The Prime Minister shall ensure that the Consultants are provided with office space, administration and secretarial support services reasonably required by the Consultants in the performance of the services.

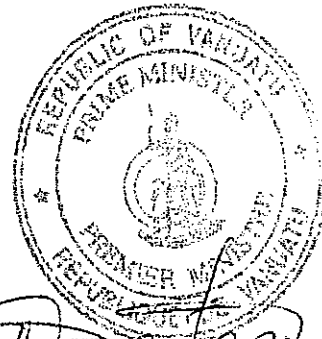
IN WITNESS THEREOF the parties hereto have executed this Agreement the day and year first above written.

CONSULTANTS FOR
H & D (PACIFIC) CONSULTING
GROUP


Aaron HANGHANGKON


Allan PALMER

THE PRIME MINISTER OF THE
REPUBLIC OF VANUATU




Hon. Nipake E Natapei TUTA FANUA' ARIKI

Encl: Schedule A: Terms of Reference

SCHEDULE A

TERM OF REFERENCE

1. Take appropriate steps to ensure a proper closure of the former VHL;
2. Develop an implementation timetable for an appropriate structure and framework towards the setting up of the VH;
3. Identify appropriate experts to commence the legal framework for VH structure;
4. Operate under VIC structure to deal with existing investment projects already under negotiation;
5. Consult with the Prime Minister in seeking potential donors and private sector funding for the VH structure;
6. Liaise with the Prime Minister to develop the investor's passport scheme that is crucial to generate needed capital for VH;
7. Develop and strengthen existing working relationships with the Northern Province of New Caledonia to secure VH involvement in their projects;
8. Establish business contacts and working relationships with partner holding companies, attract investors, and secure project financiers to work with VH;
9. Authorize managing consultants to set in place a full organizational structure, develop job descriptions for key positions, and secure a permanent office within the six months consultancy;
10. Provide progressive monthly reports to the Prime Minister on the tasks listed above.

GOVERNMENT OF THE REPUBLIC OF VANUATU

Private Mail Bag 9048
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Vanuatu
South West Pacific

Telephone: (678) 22362
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Our Ref: AG.20/22/00/VM

STATE LAW OFFICE

10 June 2004

Mr Jean Sese
Director General
Prime Minister's Office
PMB 053
Port Vila

Dear Mr Sese,

Memorandum of agreement between Prime Minister and Aaron Hanghangkon and Allan Palmer in relation to Vanuatu Holdings Ltd.

Thank you for your letter dated 8 April 2004 seeking my advice on the above-named agreement. My advice is as follows.

Facts

In summary, the facts are:

- Meridian Consulting, Fiji, produced a report titled "Revival of Vanuatu Holdings Limited" dated 23 October 2003 (the "report").
- A Council of Ministers ("COM") paper concerning the report stated that the DCO recommended that the COM endorse option 2 which was drafted as follows:

Opson2. Acceptem ripot

Sipos Gavman hemi jusum opsen tu (2) then igat commitment blong lukluk long hemi olsem:

1. *Nambawan samting nao hemi blong Gavman hemi closem daon gud foma VHL mo; Namba tu commitment nao hemi blong acceptem split blong VHL (splitem VHL ikam SHL mo VIC nomo) mo semtaem tu lukluk long strakja, legislation mo funding blong hem.*
2. *Formally appointem wan suitable person blong karem aot nekis phase blong ripot.*

3. *Gavman hemi sikem funding sapot long ol donas.*
 4. *Mandatem Prime Minister blong terminatem appointment blong Steering Committee we term blong olgeta hemi finis afta long production blong final report.*
- The COM paper was considered and decided upon by the COM at its meeting on 18 December 2003. The minute of the COM decision states:

Desisen 135/2003: Rivaevol blong Vanuatu holding limited (VHL) – Ripot blong konsalten

Kaonsel blong ol Minista i bin holem NO. 23 odineri miting blong hem long 18 Disemba 2003

Taem ia, Kaonsel disaed blong apruvum desisen antap wetem toktok ia, Kaonsel blong ol Minista i:

- *Akseptem ripot blong konsalten*
 - *Endosem se i kat propa klos daon blong VHL blong bifo*
 - *Endosem se i kat apoenmen blong wan sutebol peson blong karem aot nekis fes (phase) blong ripot*
 - *Endosem se Gavman i sikim fanding sapot blong ol dona*
- By letters dated 1 April 2004, Hon. Nipake Natapei, the Prime Minister acting "in accordance with the mandate provided by the COM decision 135 of 18 December 2003" appointed Mr Aaron Hanghangkon and Mr Allan Palmer of H & D (Pacific) Consulting Group as consultants "to manage the interim operation of the Vanuatu Holdings effective from 2 April till 30 September 2004" as per the Terms of Reference attached to the letters.
 - Mr Hanghangkon and Mr Palmer (the "consultants") both accepted the appointments on 1 April 2004.
 - On 2 April 2004, the Prime Minister, Mr Hanghangkon and Mr Palmer entered into a consultancy agreement regarding the Vanuatu Holdings Project (the "agreement").
 - On 31 May 2004 Mr Sese informed Mr Hanghangkon that further payments under the agreement would not be made until the Prime Minister's Office had received proper advice on the agreement.

I understand that any payments under the agreement will be out of funds from a grant by the Chinese government to the Vanuatu government.

The issues

My advice is sought on the following issues:

1. Comment on the clauses of the agreement.
2. Does the *Government Contracts and Tenders Act* No. 10 of 1998 apply to the agreement?
3. Is the Prime Minister personally liable on the agreement?

I also provide point out particular provisions of the *Public Finance and Economic Management Act* No. 6 of 1998 (the "PFEM Act") relating to "trust money".

Issue 1: Comment on the clauses of the agreement.

The agreement is for Mr Hanghangkon and Mr Palmer to provide consultancy services to the government in consideration for payment by the government of a monthly professional fee by way of remuneration, the payment of out-of-pocket expenses and the provision of office space, administration and secretarial support services by the government. The terms "Prime Minister" and "government" are used interchangeably in the agreement but in light of my answer to issue 3 below, at this stage this is of no consequence.

Clause 4 provides for the government to pay the consultants a monthly professional fee of VT800,000 over the 6 month period of the agreement, 2 April to 30 September 2004. The total over the 6 month period is VT4,800,000.

Clause 5 provides that the Prime Minister shall pay the consultants' out-of-pocket expenses on an actual cost basis. The agreement does not limit the total amount payable for the out-of-pocket expenses. Clause 7 goes on to provide that a consultant shall be entitled to an advance of up to VT400,000 to be recovered from the first billing by the consultant for his out-of-pocket expenses.

Then we have clause 9 which provides:

9. *Maximum Payment Clause*

Except as otherwise agreed by the Prime Minister, but notwithstanding anything elsewhere provided herein, total payment under this contract shall not exceed an amount equivalent to a gross remuneration of VT4,800,000.

The clause is ambiguously drafted, but I would interpret it as saying that except as otherwise agreed by the Prime Minister, total payment of remuneration under the agreement shall not exceed VT4,800,000. Considering the agreement deals separately with "remuneration" and "out-of-pocket expenses", it appears that clause 9 is putting a limit on the remuneration payable at VT4,800,000, although this is already provided for in clause 4, while the total amount of out-of-pocket expenses payable appears to be unlimited.

Clause 10 provides that the Prime Minister shall ensure that the consultants are provided with office space, administration and secretarial support services reasonably required by them in the performance of their services.

Issue 2: Does the Government Contracts and Tenders Act No. 10 of 1998 apply to the agreement?

Section 2A of the *Government Contracts and Tenders Act* No. 10 of 1998 (the "GC&T Act") provides:

2A *Government Contracts*

- (1) *Subject to subsections (3) and (4), each of the following is a Government Contract:*

- (a) a contract or arrangement for the supply of goods or services or the execution of public works in consideration of payment out of public moneys;
 - (b) a contract or arrangement for the disposal of an asset of the Government;
 - (c) a concession or franchise granted by the Government.
- (2) Any subcontract made in relation to any contract or arrangement mentioned in paragraph (1)(a) or (b) is also a Government Contract.
 - (3) The consideration in relation to any contract, arrangement, franchise or concession must exceed VT 5,000,000.
 - (4) A contract or arrangement for raising loans for the Government is not a Government Contract.
 - (5) Nothing in paragraph (1)(c) is to be taken to affect the requirement for a licence, permit, approval, authority or permission required under or by any other Act.

As provided by paragraph 2A(1)(a) of the *GC&T Act*, a contract or arrangement for the supply of services in consideration of payment out of public moneys is a "government contract". In this case, the agreement entered into by the Prime Minister and the consultants is for them to provide consultancy services in consideration for payment by the government of a monthly professional and out-of-pocket expenses, and the provision of office space, administration and secretarial support services.

I understand that the payments to be made by the government under the agreement will be out of funds from a grant by the Chinese government to the Vanuatu government.

Paragraph 46(1)(f) of the *Public Finance and Economic Management Act* No. 6 of 1998 (the "*PFEM Act*") provides:

46. (1) The following money shall be deemed to be trust money -

- (f) all money received by way of donor aid, pending expenditure in accordance with such purposes and conditions as agreed between the donor and the State.

The money received under the grant from the Chinese government is "money received by way of donor aid" and assuming that it is to be expended in accordance with the purposes and conditions agreed between the Chinese and Vanuatu governments, it is "trust money" as defined in paragraph 46(1)(f) of the *PFEM Act*.

I am not instructed as to the purposes and conditions of the grant as agreed by the Chinese and Vanuatu governments. Therefore, until I receive instructions as to what the purposes and conditions of any expenditure under the grant are, I cannot advise on whether the expenditure incurred under the agreement is in accordance with the purposes and conditions of the grant. If you wish me to advise on this aspect, please provide me with a copy of the conditions of the grant in order that I may do so.

Subsection 46(2) of the *PFEM Act* provides:

46. ...
(2) *All trust money held by the State shall be accounted for separately from public money.*

Implicit in subsection 46(2) is that trust money is distinct from public money. If as discussed above, the money from the grant from the Chinese government is "trust money", paragraph 2A(1)(a) of the *GC&T Act* is not satisfied as the payment in consideration for the agreement is not out of public moneys, but from trust money. Therefore, the agreement is not a "government contract" as defined in section 2A of the *GC&T Act* and the provisions of that Act do not apply to the agreement.

Issue 3: Is the Prime Minister personally liable on the agreement?

In his letters appointing the consultants, dated 1 April 2004, and in the agreement, the Prime Minister stated that in accordance with the COM decision, he wished to engage the consultants to assist in the management of the interim operations of the Vanuatu Holdings (VH).

The COM's decision 135 of 18 December 2003 stated "*Endosem se i kat apoenmen blong wan sutebol peson blong karem aot nekis fes (phase) blong ripol*". Whether or not this COM decision authorised the Prime Minister to appoint consultants on the terms and conditions set out in the agreement is a question of fact as to what the members of the COM on 18 December 2003 intended when they made that decision.

It is for the COM itself to instruct this office on the question of whether or not the Prime Minister exceeded his authority under COM decision 135 by entering into the agreement. Until I am provided with relevant instructions, I cannot advise on this question. In the absence of instructions from the COM that the Prime Minister exceeded his authority under COM decision 135, it must be taken that by its decision 135, the COM authorised the Prime Minister to appoint consultants on the terms and conditions set out in the agreement and therefore, he is not personally liable for the agreement.

Issue 4: Provisions of the *PFEM Act* relating to "trust money".

Subsection 44(5) of the *PFEM Act* provides:

44. ...
(5) *All money received by way of donor aid shall be placed into a separate bank account of the implementing ministry or Government agency and used for the purpose agreed with the donor and accounted for by the ministry or agency.*

Subsections 46(3) and (4) of the *PFEM Act* provide:

46.

- (3) All trust money is the responsibility of the head of ministry appointed on behalf of the State to manage it and must be managed in a manner consistent with the requirements laid down by MFEM.
- (4) The Director-General may appoint an agent to manage some or all trust money on such terms and conditions as the Director-General from time to time determines subject to the requirements of this section, and to the requirement that the agent is a recognised professional institution of a kind and with experience in the handling of trust moneys.

I point out subsections 44(5) and 46(3) of the *PFEM Act* which provide that all money received by way of donor aid shall be used for the purpose agreed with the donor and accounted for by the implementing ministry, and as Director General, any trust money to be managed by your ministry is your responsibility and must be managed in a manner consistent with the requirements laid down by MFEM.

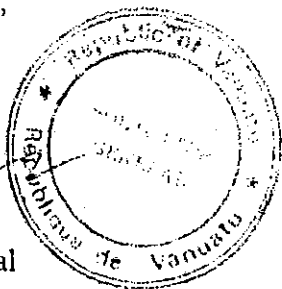
Conclusion

The agreement between the Prime Minister, Mr Hanghangkon and Mr Palmer to provide consultancy services to the government in consideration of payment of a monthly professional fee and out-of-pocket expenses, and the provision of office space, administration and secretarial support services by the government is not a "government contract" as defined in the *Government Contracts and Tenders Act* because payment is out of trust money, not public moneys. Therefore, that Act does not apply to the agreement. I am unable to advise at this stage on other aspects of the agreement until I am provided with the relevant instructions as discussed above.

Please contact Ms Molisa of this office with any queries that you might have.

Yours sincerely,

Dudley Aru
Solicitor General



Cc: Hon. Nipake Natapei, Prime Minister.
Mr Mark Bebe, Director, Department of Strategic Management.
Mr Simeon Athy, Director General, Ministry of Finance & Economic Management.

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South West Pacific

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Our Ref: AG./

STATE LAW OFFICE

24th June 2004

Mr. Jean Sese
Director General
Office of the Prime Minister
Port Vila

Dear Director General,

RE: MOA BETWEEN PRIME MINISTER AND AARON HANGHANGKON AND ALLAN PALMER IN RELATION TO VANUATU HOLDINGS

I refer to your letter of 14th June 2004 with reference to the letter by Acting Director of MFEM dated 16th and the letter by Mr. Mark Bebe of DSM dated 17th June 2004.

The main concern raised from our advice to you on the 10 June 2004 by the Acting Director of MFEM and Mr. Mark Bebe refers to the following;

1. That the total costs of the contract which was set at **Vt4, 800,000** would exceed **Vt5, 000,000** and that such is required to go through the Government tendering process.
2. The "**trust money**" as provided for under section 46 (3) of the 1998 PFEM Act is "**public money**" and that it should be accounted for under Government contracts and tenders Act section 2A (1) (a).
3. That the trust money is the responsibility of the head of ministry appointed on behalf of the State to manage it and must be managed in a manner consistent with the requirements laid down by MFEM.
4. That the incumbents Ms Dorothy Erickson and Mr. Mark Bebe stated that we **reconsider issuing another advice immediately** on this particular contract.

Firstly let me remind the incumbents that under section 11 (2) of the State Law Office Act No.4 of 1998 the Attorney General is not subject to direction of any persons or body in the exercise of his functions. Its states and I quote; "*The Attorney General is not to be subject to the direction of any other person or body in the exercise of his or her functions*".

Taking your concern into consideration this is my final advice as follows;

From the outset of my advice to you dated 10 June 2004, it was based on your instructions by way of your letter dated 8 April 2004. You instructed me to first comment on the clauses of the agreement, secondly whether or not the Government Contracts and tenders Act No.10 of 1998 apply to the agreement and finally whether or not the Prime Minister is personally liable on the agreement.

Hence after careful review of my advice on the issues you raised above, I hereby confirm that the advice I provided you on page 3 to 5 of my letter of 10 June 2004 is final. However in respect of the issues raised in paragraph 1, 2 and 3 above the following is my additional and final view.

The law on the definition of "Public money" and "Trust money" is quite distinct from each other under PFEM Act. As rightly put by Acting Director of Department of Finance, "public money" as defines by PFEM Act relates to all resources and entitlements owned by, owed to, or held by the State, or held by any ministry, agency, or any other person for or on behalf of the Government, a ministry or agency and includes public resources. Unfortunately it does not include "Trust money". "Trust money" however is further elaborated under the same Act where it states under section 46 (1) (f), (3) and (4) that all money received by way of donor aid and placed under a separate account and administered by implementing ministry or Government agency is deemed to be trust money.

Having access to the additional information provided by Mr. Mark Bebe, the form "Request for Authorisation to Expend Development Funds" further confirms my earlier advice, hence which provides the following;

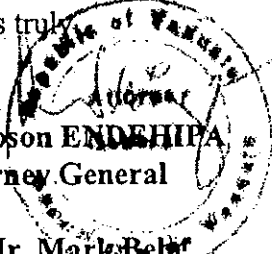
- 1) The funds requested are those received from the Aid Donor.
- 2) The Donor is the Chinese Government
- 3) The total funding by donor is **Vt8,000,000**
- 4) The implementing Agency is the Prime Minister's Office
- 5) The certification by DFEM confirms that **Vt8,000,000** has been received and the funds have been transferred to project 4-10AA-MPAA-IQCH on the 20th April 2004.

From the above information and according to section 46 (2) of the PFEM Act the "Trust money" held by the State is totally a separate money altogether and shall be accounted for separately from "public money".

Accordingly the agreement between the Prime Minister, Mr. Hanghangkon and Mr. Palmer is not a government contract as defined in Government Contracts and Tenders Act.

Finally, where the Government consider the issues raised by the incumbents Mr. Bebe and Ms. Erickson to be serious my suggestion is to review if necessary amend the PFEM Act accordingly.

Yours truly,



Sampson ENDEHIPA
Attorney General

cc: Mr. Mark Bebe
Director of DSM

cc: Ms. Dorothy Erickson
Acting Director
Department of Finance

cc: Mr. Simeon Athy
Director General
Department of Finance

Annex D - Page 1 of 2

**GOVERNMENT OF THE
REPUBLIC OF VANUATU**
OFFICE OF THE PRIME MINISTER
PMB 9053 Port Vila, Vanuatu
Tel: (678) 22413 Fax 26301



**GOVERNMENT DE LA
REPUBLIQUE DE VANUATU**
BUREAU DU PREMIER MINISTRE
SPP 9053 Port Vila, Vanuatu
Tel: (678) 22413 Fax 26301

RECEIVED
17 JUN 2004
BY: _____

15 June 2004

Mr. Jean SESE
Director General
Prime Minister's Office
PORT-VILA

Dear Jean

Re: APPOINTMENT OF CONSULTANTS FOR INTERIM MANAGEMENT OF THE VANUATU HOLDINGS LIMITED

Further to your letter of 31 May 2004 seeking legal interpretation of the VHL Agreement signed between the Government of Vanuatu and the H & D (Pacific) Consulting Group to manage the operations of VHL, I have sighted the legal advice from the State Law Office dated 10 June 2004 on the same subject.

I now wish to direct that all expenses committed by VHL, including the June professional fees for the consultants are paid with immediate effect. I wish to remind you that the initiative to revive the VHL follows a policy decision of the Government, having received wide consultations among stakeholders in Vanuatu and endorsed by a technical study from independent consultants. I have acted in accordance with the powers conferred on me by the Council of Minister's (COM) decision 135 of 2003 on recommendation by the Development Committee of Officials (DCO) to appoint the most suitable persons to drive the initial setting up of the VHL. The decision to appoint the current consultants reflects their involvement from the early initiation and consolidation of views to effect this VHL revival process that dates back to 2002.

I had no hesitation to appoint H & D (Pacific) Consulting Group as the most suitable consultants, who have wide knowledge of the affairs of the state and their ideas to revitalize the economy are home grown rather than foreign driven ideas remote to Vanuatu.

The Terms of Reference (TOR) reflects the process of implementation strategies of a wider spectrum of the goals intended under the VHL structure that has been subject to ongoing consultations between themselves and us. It may be seen by some officials (new to the scene) as not in line with the usual preconditions to formal set up of a structure, and I wish to repeat that the items listed on the TOR are practically-action oriented towards realizing target goals. The intimate knowledge of carrying out this policy decision rests within the inner circle of advisers within my portfolio and it would provide good opportunity for you and other interested parties who wish to appraise yourself with this roadmap to have a full briefing with them.

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In my Circular No. 1 of 2004, issued after launching on 1st April, I made a special call for the cooperation of all stakeholders to assist in the implementation of the VHL, a priority policy initiative of the Government. By the same measure, I strongly urged you to ensure that the consultants now appointed are given all assistance during the process rather than create hindrance to the smooth flow of their tasks.

I support the suggested weekly consultations so that we could discuss progress and issues of concern to avoid seeking clarifications in writing that is seen as not conducive to ensuring good office relationship. Now that the legal issues are clear, I am in the process of appointing the Board of Directors to assist in the recruitment process of key positions within an approved structure. It must be borne in mind that the proposed VHL structure will come under the auspices of the Prime Minister but under no circumstances that their private and independent entity status as a limited company is compromised through politicized decisions. I am a strong advocate in ensuring good governance and transparency in government institutions, and any accusation by certain officials of VHL as 'highly politicized' is a serious allegation.

I issue these instructions to reinforce my authority to appoint the interim consultants; any matters that may deem to be irregular should be sorted out with me and not directly with the consultants. It would be of national interest that you support the roadmap VHL is embarking on in relation to the TOR in order that there is no confusion that would frustrate and cause unnecessary delay to the process. The consultations are legally obligated to deliver on the TOR and I urge you and all addressees of this letter to cooperate and assist the consultants fully during their term of engagement.

I hope that the above comments together with the legal interpretation from the State Law Office on the different issues raised by you relating to the consultancy agreement clarifies any misunderstanding that may exist among us.

Yours sincerely



Hon. Nipake E Natapei TUTA FANUA'ARIKI
PRIME MINISTER

- Cc - First Political Adviser, PMO
- Cc - Director, Department of Strategic Management
- Cc - Attorney General, State Law Office
- Cc - Director-General, MFEM
- Cc - Director, Department of Finance
- Cc - Chief Executive Officer, VIPA
- Cc - Secretary, Public Service Commission
- Cc - Managing Consultants, Vanuatu Holdings Limited

Annex 'K'

GOVERNMENT OF THE
REPUBLIC OF VANUATU
OFFICE OF THE PRIME MINISTER
P M B 053 Port Vila, Vanuatu
Tel: (678)22413 Fax: 26301



GOUVERNEMENT DE LA
REPUBLIQUE DU VANUATU
BUREAU DU PREMIER MINISTRE
SPP 053 Port Vila, Vanuatu
Tel: (678) 22413 Fax: 26301

16 June 2004

Mr. Mark BEBE
Director
DSM

Dear Mark,

**RE: LEGALITY OF THE CONTRACT BETWEEN VHL AND THE PRIME MINISTER
OF THE REPUBLIC OF VANUATU**

I have noted your views on the legal advice from the State Law Office in relation to the Memorandum of Understanding between the Prime Minister, on the one hand, and Messrs. A. HANGHANGKON and A. PALMER, on the other.

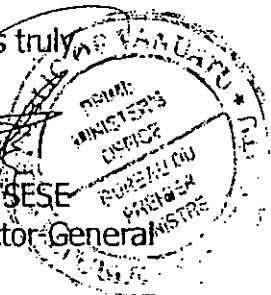
I have raised the matter again with the Attorney General this morning.

The State Law Office has already provided a legal advice and, unless I receive separate advice from the State Law Office, the current advice remains valid.

However, there may be a need to bring about some improvements/amendments to the current agreement. The State Law Office recognizes this. Please, further consult the Attorney General and the VHL consultants in this regard.

Yours truly,

Jean SESE
Director General



Cc: -Hon. Prime Minister.
-Attorney General, State Law Office.
-Director, Department of Finance.

(PACIFIC) CONSULTING GROUP

Rue de Picardie, PO Box 1023, Port Vila, Vanuatu

Annex 'F' - Page 1 of 3

Telephone : (678) 23 980
Mobile : (678) 43 401
Fax : (678) 22 910
E-mail : hdconsultants@vanuatu.com.vu

"CONFIDENTIAL"

29 June 2005

Hon. Barak T Sope Mau'autame, MP
Acting Prime Minister & Minister of Public Service
Government of Vanuatu
PORT VILA

Dear Acting Prime Minister

RE: MISUSE OF FUNDS FOR VANUATU HOLDINGS LIMITED

As former Managing Consultants for the Vanuatu Holdings Limited (VHL), we were saddened to see the Opposition Leader criticism labeled against us in the media over the alleged misuse of funds. We have responded to clear our name and have taken steps to file a report on the finances, which are under the custody of the Department of Finance.

In the process we approached the Department of Finance for a commitment print-out of expenditures, and found to our horror the improper expenditures against the fund authorized by Mr. Jean Sese, Director General of the Prime Minister's Office. Our own commitment record showed a net balance of over VT 2.4 million (subject to confirmation) that await further work on VHL revival on the directive of the government.

We find this unauthorized use of expenditures by the Director General to be a serious breach of public finance regulation, which requires all DGs as the vote controller and a custodial of funds to expend them strictly for the purpose to which they are intended. The conduct of the Director General into the alleged misuse of funds calls into question the trust bestowed on him as a safe custodial of VHL funds and his action demean his office and integrity.

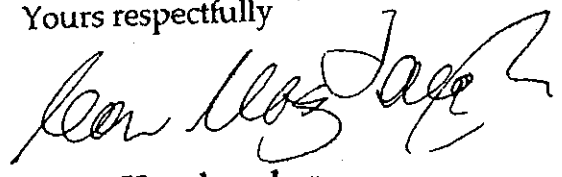
We find the unauthorized use of funds under the VHL budget to be intentional and a cause for misappropriation by the Director General. We demand that as Minister responsible for Public Service that you act within the Public Service Act and staff manual to deal with Mr. Sese appropriately.

In line with Public Service Act, we request the Chairman of the Public Service Commission to follow due process and order investigation into the allegations. We register our deep concern of this blatant abuse of power by a senior civil servant and to state that regardless of his status in the public service, we call for a disciplinary action against Mr. Sese with an immediate suspension from office so the relevant authorities can carry out the due process of investigations. This is a serious disciplinary matter and the holder of the office the complaint is made against must vacate the premises to avoid tampering of the investigators.

We provide the detailed list of unauthorized expenditures totaling VT 2,675,846.

Should you wish further clarifications on the matter, please do not hesitate to contact me.

Yours respectfully



Aaron Hanghangkon
Senior Partner

- cc: Chairman, Public Service Commission
- : Ombudsman, Office of the Ombudsman

Unau
funds

Total

Unauthorized Expenditures against Vanuatu Holdings Limited development funds

<u>Date</u>	<u>Payment</u>	<u>Details</u>	<u>Amount</u>
06/10/04	Donald Kalpokas	Leaders entitl/allowance	VT 500,000
22/10/04	Malachi Rua	Annual leave entitl.	36,214
08/10/04	Bethual Solomon	Subs. Allowance	71,400
08/10/04	Bethual Solomon	Accommodation costs	25,200
25/10/04	Laho Motors	Fuel for PMO vehicles	35,556
07/10/04	VBTC	???	300,000
22/09/04	RK Warsal	Private Lawyer fees	1,142,844
23/12/04	Harbourview Rest.	Farewell Chinese Ambass.	88,889
24/11/04	???	Renovations citizenship office	260,000
11/11/04	ASCO	PMO number plate/floor mat	12,343
08/10/04	Bethual Solomon	Accountable Imprest	203,400
			<hr/>
Total			VT 2,675,846
			<hr/>

GOVERNMENT OF THE
REPUBLIC OF VANUATU
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GOUVERNEMENT DE LA
REPUBLIQUE DU VANUATU
BUREAU DU PREMIER MINISTRE
SPP 053 Port Vila, Vanuatu
Tel: (678) 22413 Fax: 26301

PRIME MINISTER CIRCULAR NO 1 OF 2004

To: His Excellency, President of the Republic of Vanuatu
Speaker of Parliament
Members of Parliament
Chief Justice
Ombudsman
Auditor General
Ministers
Attorney General
Leader of the Opposition
First Political Advisers
Director Generals
Heads of Departments
Secretary Generals, Provincial Councils
Town Clerks, Municipalities of Port Vila & Luganville
Semi-Government bodies/Statutory Organizations
Members of the Diplomatic Corps

SUBJECT: REVIVAL OF THE VANUATU HOLDINGS

I took the initiative in August 2002 to start the revival process of the former Vanuatu Holdings Limited incorporated in 1993 with an aim to deal with all business and investment affairs of the Government. The Government initially adopted the concept of Vanuatu Holdings Limited as a suitable vehicle to assist with the efficient and effective control in the management of its State-Owned Enterprises (SOEs)

The idea of resurrecting the Vanuatu Holdings (VH) is to effectively handle all investment and business affairs of the Government running independently as a professional entity. We have observed costly changes to the nation as a result of change of governments where politics has played a major destabilizing factor. This practice allowed direct interferences into the administrative and structural mechanisms at all levels of government.

Even though the leaders have played a credible role in shaping our nation since independence, later years have seen leaders politically influenced to an extent that has nearly crippled all the administrative processes in the country. We see little affirmative action oriented to assist growth with maturity towards our destiny of flourishing and raising living standards of our people.

The Comprehensive Reform Programme (CRP) supported the need for reform of the public sector with an aim to redirect the affairs of the state by ensuring efficiency and productivity considering the limited resources available in the country. A policy move towards a private sector led growth was encouraged seeking government-supported initiatives to facilitate this direction.

The support given by all key stakeholders including a call by the provincial summits at Saratamata (2002) and Lakatoro (2003) to revive the now defunct VHL speaks for itself.

I engaged the services of local consultants to collect and consolidate different viewpoints of various stakeholders and produced a Term of Reference (TOR). The new concept was widely adopted after gathering cross-section of views through the consultations in government, opposition, private sector and donor agencies. The Forum Secretariat based in Suva funded a team of consultants who carried out the feasibility into the revival of the VHL in August 2003. Their report and recommendations were approved by the Council of Ministers on 18 December 2003.

In summary, the report recommended under the VH structure, two separate entities to be set up to ensure a clear demarcation of their objectives:

1. One entity will be an investment entity, which may act as the Government's investment arm to be referred to as Vanuatu Investment Company (VIC);
2. Another entity to be used to improve the efficiency of State Owned Enterprises (SOE's) to be referred to as State Holdings Company (SHC).

I have acted on this decision and appointed H & D (Pacific) Consulting Group based in Vanuatu to implement the key recommendations within a specific time period.

Their primary tasks (among others) would be to:-

- (i) develop an implementation timetable for an appropriate organizational structure and framework;
- (ii) identify experts to commence legal framework for a Holding structure;
- (iii) develop and strengthen business contacts and working relationships with partner holding companies, attract investors, and secure project financiers;
- (iv) deal and finalize existing investment projects already under negotiation;

- (v) seek potential donors and private sector funding for VH structure and projects;
- (vi) develop awareness among stakeholders in Vanuatu on the role of VH;

It is important to note that for the Holdings to deliver on a new mandate, its work will be governed by its own legislation. Steps are already underway for legal experts to commence drafting and advice in consultation with the State Law Office.

I wish to re-emphasize the importance of the Vanuatu Holdings whose role will be independent; handled by a competent management team in close liaison with policy objectives of the government. Investors will be dealt with in a professional business manner where much of the administrative impediments now experienced by investors will be overcome. It must be made clear that VH role will complement and reinforce that of VIPA, which is a government agency and there is no over-lapping of responsibilities. The usual processing and screening of investors entering the country will be handled by VIPA. VH will be more concerned with private sector financing of large-scale projects with strategic infrastructure that would impact on the overall development of the nation.

The economic affairs of the state, its stability and continuity are foremost and can only be protected by the Vanuatu Holdings, an independent entity, who will be unaffected through political changes. I quote from the report '*a strong political will is required of government to engender good governance as well as a high level of corporate responsibility by the board members to form a strong basis for independent and rational commercially oriented decision-making*'. In the interest of the State, all major projects, whether under government supervision or privately will be handled by the Holdings. It is expected that all ministries and departments will work closely with VH to ensure that investments into the country are handled in a way that ensures stability for the country to progress unhindered and investor confidence is maintained.

This new initiative needs to be appreciated by all parties, as the road to achieving the target goals can be long and difficult at times. The conceptual framework is on a medium to longer-term goals and will take time to settle in, therefore, close scrutiny and fine-tuning will be made as implementation gets underway. The consultants will need all support and encouragement from both the public and the private sector, and I urged the full cooperation and understanding of everyone. As an interim measure, the consultants are tasked to work towards a permanent office set up later this year.

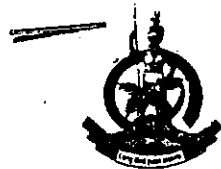
If you have any views or criticisms on the concept, please feel free to make them heard by officers of the Prime Minister or the consultants directly. A temporary office is set up within the Prime Minister's premises managed by H & D (Pacific) Consulting Group team of consultants.

Should you require further clarifications, do not hesitate to contact Aaron Hanghangkon at the Vanuatu Holdings interim office, Prime Minister's Office.



Hon. Nipake E Natapei Tuta Fandua Aniki
Prime Minister

2 April 2004



P.M.B 9060, Port Vila, Republic of Vanuatu
Tel: (678) 22 858, Fax: (678) 22 857, Email: vanuatuholdings@vanuatu.com.vu

17 August 2004

URGENT

Hon. Vister Rialuth Serge Vohor
Prime Minister
Government of Vanuatu
Port Vila

Dear Praem Minista

INTERIM OPERASEN BLONG VANUATU HOLDINGS

Mi wandem tekem oppotuniti ia blong kongratulatem yu long eleksen blong yu olsem Praem Minista blong Republic blong Vanuatu.

Folem sam publiciti long daily pepa long las wik, mi olsem Konsalten blong Vanuatu Holdings I stap traem blong kasem wan taem blong yumi save toktok be mi stap wet yet blong luk Fas politikal advisea.

Mi bin enkareg blong harem offisol polisi toktok blong yu blong putum stamba tingting long saed blong education, heit mo ekonomik developmen. Long saed blong economi witem difficulti we yumi facem naoia, yu bin emphasasem strong tingting blong yu blong dil witem projeks we I save benefitem ol pipol long rural area. Witem sem tingting naoia, yu bin attakem fasen we yumi stap witem long ol yeas we plenti taem ol civil servants blong yumi I no save mekem tingting blong olgeta mekem se plenti I alloaem rum I stap blong ol foreign advisa I dictatem wok long kantri.

Mi glad blong sharem sem tingting we yumi man ples I sud wok tugeta blong developem kantri blong yumi. Mi bin wok witem kapman blong yu mo Natapei stat long 2002 blong fanem wei blong yumi revivem bakeken Vanuatu Holdings we I save lukluk plenti long developem ol projeks we I gat impact long pipol blong Vanuatu. Taem consulting grup blong mifala I stat wok long April 2004, ol contacts we I stap I soem plenti big projek I stap long pipaen blong yumi

realisem. Mi stap repot everi manis long ol activiti we mifala I mekem we I soem se although wok I gohed gud mo naoia yumi stat blong realisem olgeta. I gat sam civil servants I stap traem blong blockem wok tru long ol white advisa mo jealousy blong olgeta mo mi putum long repot olsem kos blong delay.

Mi biliv long toktok blong ekonomik development we yumi everiwan I stap traem blong talem be spos yumi gohed blong stap faet forom political tingting blong wanwan long yumi, bae ol waet man o advisa bae I gohed blong lav gud long yumi. Spos mifala I provem mifala se I save attrakdem ol projekts I kam long Vanuatu witem ol contacts we mifala I gat, wae nao yumi stap faet mo no joinem han tugeta. Stat long 1980 I kam, yumi no biliv yet se yumi save wok tugeta mo gohed blong stap disappointem yumi. Mi biliv long uniti we yu stap preachem mo hop se witem spirit ia bae yu soem long action.

Mi appeal strong long yu olsem Praem Minista blong givim chanis long mifala I save toktok long progress we I stap finis long saed blong Holdings befo yu save tekem wan decisen long futuja blong em. Wok we mifala I stat blong mekem long Vanuatu Holdings nomo long las faev manis I progress long wei mo naoia yumi stap realisem sam frut blong em. Mo wok ia I no blong benefitem wan man o pati nomo, hemi ol nasenal projekts we bae I changem fes blong kantri blong yumi. Grup blong mifala I kam long private sekta olsem ol consultants mo I wok blong givim independen advaes long eni gapman. Mifala I providem bes advaes long interes long nation building blong yumi mo ol projekts bae I kontribut direct long ekonomi blong Vanuatu.

Blong talem smol nomo, wok blong ofis I redi blong stat folem appointment blong bod of direkta mo tu strakja we I stap I sud luk fes step blong appointem ol key posisen. Ol projekts we I gat rural benefit I stat olsem farmem ol bech de mer, crab mo naoura lata long tis yea. Bigfala kontak blong yumi blong sealem relasensip witem New caladonia mo espesiali long notern provins. I gat fulap projekts we bae Vanuatu I partisipat long em mo I nid blong yumi finalism plan blong ko sementim relasens ia quik taem.

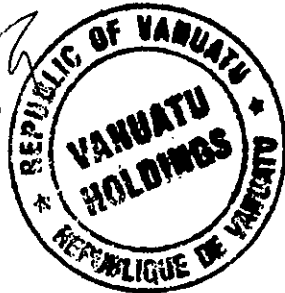
Mi wandem gat chanis blong briefem yu fulwan long ol wok we mifala I mekem finis olsem foundasen blong Vanuatu Holdings. Witem smol tingting ia, mi appeal blong yu no tekem wan drastic action blong destablisem wok we VHL I stap mekem naoia. Spos yu save build long em mo realisem ol projekts we I stap bae Vanuatu I save benefit mo tu yu olsem lida blong nasen I save proud long em. Blong haltem wok blong Holdings I soem se yu foldaon long sem trap we ol civil servants mo waet advisa blong ol I trekem yu long em.

Mi luk fowod blong mitim yu eni taem blong yumi save storian long futja blong Vanuatu Holdings. Mi kat respek long hae ofis blong yu oltaem.

Yours respekfuli



Aaron Hanghangkon
Consultant



Cc: Hon. Barak Sope Mautamate, Minista blong Foreign Affeas mo Extenal Trade
: Fas Political Advisa, Praem Minista

Annex I

VANUATU HOLDINGS LIMITED

INTERIM BUDGET 1 APRIL TO 30 SEPTEMBER 2004

(Revised as at 15 June 2004)

1.	Professional Consultancy Fees (VT 800,000 x 6)	VT 4,800,000
2.	Telecommunications (telephone, email, fax, etc)	300,000
3.	Office Supplies & Stationery	180,000
4.	Transport & Fuel	100,000
5.	Office Furniture & Equipment	200,000
6.	Overseas Travel & Allowances	2,000,000
7.	Entertainment (including board meetings)	100,000
8.	Accounting & Legal Fees	300,000
9.	Incidental/Contingency Expenses	20,000
		<hr/>
TOTAL		VT 8,000,000
		<hr/>

PRESS RELEASE

PRIME MINISTER LAUNCHES THE VANUATU HOLDINGS

The Prime Minister, Honourable Nipake Edward Natapei Tuta Fanua'Ariki has today officially announced the setting up of the Vanuatu Holdings; an investment and business arm of the Government. In his speech of 30 July 2003 and the New Year's speech, Prime minister reiterated his call for the revival of the Vanuatu Holdings (VH). After wide consultations and preparatory work carried out by an interim committee under the Chairmanship of the Director General of the Prime Minister's Office in 2003, the conceptual framework of the new Vanuatu Holdings was adopted and approved by the Council of Ministers. In September 2003, the Forum Secretariat funded consultants based in Fiji carried out an independent study and produced a report that is now accepted by the Government for implementation.

He has appointed a local consulting firm, H & D (Pacific) Consulting Group to drive the interim management process towards a formal set up later this year. The consultants are tasked to implement the report recommendations, in particular, develop the organizational structure, identify experts for legal framework for VH structure, liaise with Prime minister to establish networking for VH with international agencies, project contacts, investors and financiers, and secure a permanent office in Port Vila.

The Prime Minister wishes to inform the nation that after much talk about concern for the economy, he emphasized the importance for the Holdings who will carry out an independent role outside of political and other interferences to deal with investment projects. Large-scale investment projects will be professionally handled by a competent management team of the Holdings in close liaison with the responsible ministry. Investors will be dealt with in a professional business environment and much of the administrative impediments now experienced by investors will be handled by the Holdings. The Prime Minister will be announcing over the coming months projects that will be coming on stream after negotiations are secured with potential investors.

The Prime Minister stressed that VH role will complement that of VIPA, which is a government agency and there is no over-lapping of responsibilities. VH will operate like a business entity independent of government and carrying out its work in close consultation with the government policy of the day. The nation stability and continuity will be foremost; this will be protected by the Vanuatu Holdings to ensure that its developmental affairs are unaffected through political changes that is common in Vanuatu.

The proposed legal framework will cover all aspects of VH operations, and legal draftsmen are being instructed to consult with existing legislations to ensure that VH work is protected under a law. As proposed, VH will also have an overseeing role over State Owned Enterprises (SOEs) already operating in Vanuatu and its prudent management team will work closely with heavily-politicized SOEs already operating whose performance record is disappointing. However, Prime Minister wishes to point out that VH will not automatically take over existing SOEs but legislation will allow inclusion of VH member on their board of directors. Over time, each SOEs will see the benefit of professionalism that will be injected into the overall running of VH sponsored projects and where efficiency and profitability are their ultimate goal.

A number of VH large high-powered projects that are already in the pipeline will now be fast-tracked towards realization, and this will be a big boost for the economy. As mentioned in the Prime Minister's New Year's message; *"2004 will be a year to realize some major development and my government is committed towards this goal. All ministers are directed to work closely with Vanuatu Holdings to ensure that these projects are realized immediately."* Further instruction will be issued shortly to all ministries, departments and statutory bodies outlining the processes to which VH will operate.

The Prime Minister wishes to register his deep appreciation to the Government of China who willingly agreed to provide the initial funding of the Vanuatu Holdings. As a donor country, China recognizes the reform process undertaken by the Government of Vanuatu and pledges ongoing support for its implementation and development of the nation. The Prime Minister wishes to appeal to other friendly donor countries to assist the Vanuatu Holdings with capital funding in its endeavor to deliver on the economic aspirations of Vanuatu.

An interim management of the Vanuatu Holdings is located at the premises of the Prime Minister's Office. All enquires relating to the Vanuatu Holdings should be directed to the consultants via the Prime Minister's Office.

Authorized by: Daniel B Aaron
Government Spokesman
Prime Minister's Office

Dated: 2 April 2004

Revival of Vanuatu Holdings Limited



MERIDIAN CONSULTING

Email: meridian@connect.com.fj

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