



Comprehensive Review of the **Vanuatu** **Citizenship by Investment Program**

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Office

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List of Acronyms Used

AIP	Agreement in Principle
AML	Anti-Money Laundering
AMLA	Anti-Money laundering Act
BEPS	Base Erosion and Profit Shifting
BVI	British Virgin Islanders (BVIs)
CBI	Citizenship by Investment
CIIP	Capital Investment Immigration Program
CIU	Country Intelligence Unit
COC	Citizenship Office and Commission
COM	Council of Ministers
CRS	Common Reporting Standards
CRVS	Civil Registry and Vital Statistics
DD	Due diligence
DSP	Development Support Program
EES	Entry/Exit system
ETIAS	Electronic Travel Information and Authorization System (ETIAS).
EURODAC	European Asylum Dactyloscopy Database
EU	European Union
EUROPOL	European Union Agency for Law Enforcement Cooperation
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GDP	Gross National Product
GRT	Government Remuneration Tribunal
HDI	Human Development Index
HRD	Human Resource Development
KYC	Know your client
ICAO	International Civil Aviation Organisation
IIP	Immigration Investment Programs
INTERPOL	International Criminal Police Organization
IATA`	International Air Transport Association
IMF	International Monetary Fund
LDC	Least Developed Countries
MP	Minister of Parliament
NBA	Nationality Based Approach
OECD	Organisation for Economic Co-operation and Development
RBI	Residence by Investment
SIS	Schengen Information System (SIS
SP	South Pacific
TIN	Taxpayer Identification Number
UK	United Kingdom
UN	United Nations
USA	United States of America
VAT	Value-Added Tax
VFSC	Vanuatu Financial Services Commission
VCP	Vanuatu Contribution Program
VIPA	Vanuatu Investment Promotion Authority
VIS	Visa Information System
VRS	Vanuatu Registry Services Limited
VERP	Vanuatu Economic Rehabilitation Program
VNSDP	Vanuatu National Sustainable Development Plan
WCC	World Citizenship Council
QNI	Quality of Nationality Index

Executive Summary

The review of the Vanuatu Citizenship by Investment (CBI) program was carried out at the request of the Citizenship Commission and took place between November 2019-January 2020ⁱ. The purpose of the review was to contribute to:

- assessing and ensuring alignment between the CBI program and the Vanuatu People's plan;
- creating an effective and efficient CBI system, that is acceptable to the people of Vanuatu and attractive to foreign investors;
- identifying alternative short- and long- terms option for the CBI program.

CBI programs “help create significant sovereign and societal value through transferring assets from wealthy individuals to developing countries”, supporting fiscal independence and address growing imbalances and inequalities inherent to traditional sovereign debt financingⁱⁱ. Vanuatu is one of at least 13 countries globally offering CBI programs and one of more than 60 countries offering Immigration Investment Programs (IIP).

Vanuatu's current CBI program is offered through its Vanuatu Development Support Program (DSP) and its Vanuatu Contribution program (VCP), both started in 2017. They are administered by the Citizenship Office, with support from related government offices. To date, 5,253 passports were issued through the two programs and the total revenue collected was 26,795,585,717 vatu. This revenue has provided significant support for Vanuatu development, including repayment of debt and support for key programs in education, infrastructure, agriculture and tourism.

The two major challenges for the program are meeting the external international pressures around security and due diligence, and addressing the internal political pressures around acceptability.

Based on the review of the CBI program, the following major recommendations are offered:

1. To demonstrate and further strengthen transparency and accountability, provide a thorough public narrative of the program, explaining its purpose, functioning, revenue, and spending;
2. Address the major reputational, legal, and administrative issues in the current CBI program as soon as possible, keeping in mind the urgency of many of the issues;
3. Plan for a public dialogue around three policy options:
 - a. Eliminate the CBI program and develop alternative sources of revenue through taxation;
 - b. Improve the existing CBI program to meet international requirements and domestically, clearly demonstrate its purpose and contributions;
 - c. Develop an alternative model to pro-actively manage immigration and attract potentially valuable contributors of capital, resources and skills to Vanuatu, using a nationality-based model and a clear, Vanuatu-centered path to citizenship, based on relationship development, community engagement and contributions to the country.

The introduction to the report reviews CBI, globally and in Vanuatu, and discusses the purpose, methodology, and limitations of the review.

The next section provides an overview of the program's transparency, accountability and alignment with the VNSDP, along with a summary of the reputation, legal, and administrative issues identified.

Each of these is discussed in detail in the subsequent 4 sections, along with specific recommendations on how to address each of the issues.

The last section - section 7- outlines the 3 policy options identified by the review.

1. Introduction

This section first discusses Citizenship by Investment (CBI) programs, globally and in Vanuatu, followed by an overview of the CBI review purpose, process and methodology.

1.1. Citizenship by Investment (CBI)

1.1.1 CBI globally

Globally, there are many countries that offer either citizenship by investment (CBI) or residence by investment (RBI) programs. The first programs were started by Canada and the Caribbean island of St Kitts and Nevis in the 1980s and the USA and UK began similar ones in the 1990s. Referred to broadly as Immigrant Investment Programs (IIPs), they are one way in which countries attract foreign capital, by offering residence or citizenship in exchange for substantial private or public sector investmentⁱⁱⁱ. IIPs are growing rapidly, with thousands of people buying into alternative residence and citizenship options annually. In 2017, 77 countries had some form of IIP program^{iv}. Today, citizenship-by-investment generates approximately USD 3 billion annually, and residence-by-investment is estimated to exceed much more than that, with the total worldwide investment migration market generating more than USD 21.4 billion and growing at 23% a year^{vi}. The largest revenues - US\$12.4 billion in 2017 alone- were generated by Greece, Spain, Portugal, Malaysia, UK, US (EB-5), New Zealand, Australia, Andorra, Quebec, and South Korea^{vii}.

Worldwide, conservative estimates suggest that Chinese applicants – more than 57,000 over the last decade - account for two-thirds of so-called golden visa or RBI investments worldwide. The largest number of Chinese went to the USA, Quebec, Malaysia, Portugal, Greece, and Australia and the largest investment amounts went to the USA, Quebec, and Australia^{viii}.

Currently, the 13 main countries offering CBIs are Dominica, St Kitts and Nevis, Grenada, St. Lucia, Antigua and Barbuda, Vanuatu, Cyprus, Malta, Turkey, Bulgaria, Austria, Cambodia, and Jordan^{ix}.

Vanuatu is the only country in Oceania currently providing CBI. While all CBI programs exist primarily as a way for countries to boost their incomes, they vary considerably by name, nature of the investment, amount of investment required, investment conditions, and the kinds of checks and balances that exist in the system.



For investors, CBI offers many advantages: “the freedom to travel visa free to a multitude of countries; the freedom to work and conduct business around the world; and the freedom to live a high quality of life without government interference”^x. Others can include possible tax advantages, the opportunity to engage with local economies, and, especially in Vanuatu, the opportunity to live and work in a beautiful and politically stable country.

For countries offering CBI, advantages include attracting capital and businesses that “create long- and short-term employment, implement social projects in schools and hospitals, and develop infrastructure, and improve local economies”^{xi}.

CBI programs “help create significant sovereign and societal value through transferring assets from wealthy individuals to developing countries”, supporting fiscal independence and address growing imbalances and inequalities inherent to traditional sovereign debt financing^{xii}. Especially for small and developing countries, CBI programs have become both a valuable source of income and a good way of attracting businesses and other resources to the country. In some Caribbean island states, CBI revenues account for up to a third of Gross National Product (GDP) (see also Figure 1 below^{xiii}).

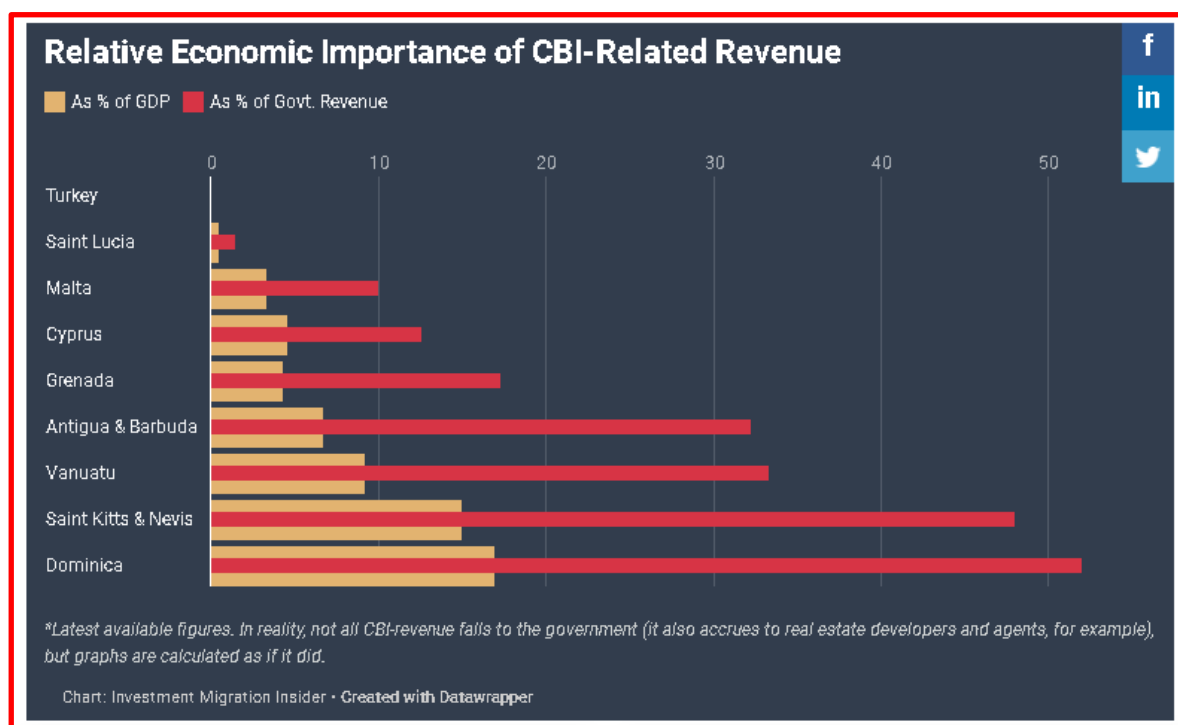


Figure 1: Relative Economic importance of CBI Revenue – IMI, 2019

CBI programs have come under considerable scrutiny over the past 5 years, especially from the European Union (EU), the Organisation for Economic Co-operation and Development (OECD), and International Monetary Fund (IMF), on account of concerns related to security, money laundering, and tax evasion. Because EU access is a major attraction for most of the CBI offerings, meeting these international requirements and standards is key to maintaining any CBI programs.

1.1.2 CBI in Vanuatu

Citizenship management is an integral part of the sovereignty of all independent states. As noted in the ToR, “(i)n the era of post-colonialism, nation states have opted to protect their cultural identity by formulating closed policies and regulations to control external migration”. In Vanuatu, this was reflected in the restrictive citizenship policies that existed between 1980 and 2014.

Earlier version of CBI programs included the Citizenship by Investment Immigration program (CIIP) and the Vanuatu Emergency Relief Program (VERP). Today, Vanuatu offers citizenship through its DSP and VCP programs, and also offers residence visas through real estate and business investment programs. Initially, the CBI programs were offered through the honorary citizenship provision in the Constitution, but are now offered as regular citizenship but without political rights. Summary descriptions of the programs, along with other citizenship options are provided in Appendix 3.

In terms of both revenue and use of revenue, the current CBI programs have significantly outperformed earlier programs. Over the past 5 years, the estimated total number of CBI passports issued was 6500 and the total revenue collected exceeded 32 billion Vt, not counting the CIIP program.

Under *CIIP* in 2014, 49 applications were processed, 89 passports were issued, with an estimated revenue of 1.5 billion vatu. It is not clear that the Vanuatu government ever received this money, however, and where it is currently located. Because of a CIIP court case still pending, it is still listed as an available program on the COC website, but no applications are currently accepted under CIIP.

In 2015 and 2016, under *VERP*, 896 passports were issued and revenue collected was 5,472,941,515. In 2017-2019, under *VCP and DSP*, 5515 passports were issued and total revenue collected was 26,795,585,717.

In 2019 alone, the CBI revenue collected was 12,271,369,028, which was 36.22 % of the total government revenue amount of 33,884,723,854 vatu for the year. An additional 1,425,730,621 vatu were collected in application charges and program fees.

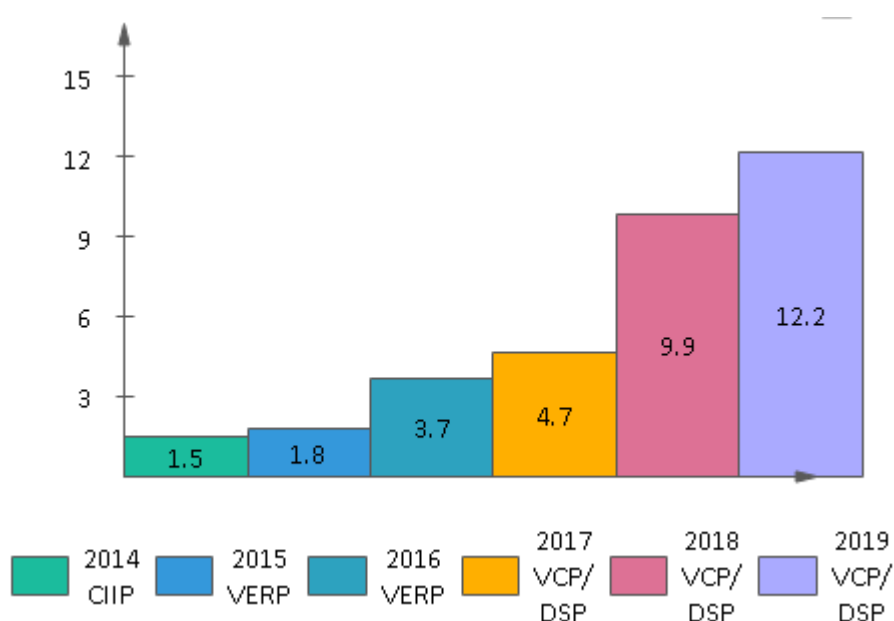


Figure 2: Vanuatu CBI Revenue by Program and Year in Billions of Vatu

As of 2018, the funds collected from the CBI programs were placed into a special account and require explicit approval and any spending of these funds require special approval from the Council of Ministers decision. To date, the major categories of spending have included external and domestic loan repayments, support for the 2016 elections, outstanding severance liabilities, GRT, school grants and scholarships, subsidies for the copra, beef, and tourism industries, support for infrastructure development, hosting of the 2017 Pacific Games, and disaster relief support. A discussion of the program details in terms of numbers, revenue and revenue spending is provided in section 3 of this review.

Internationally, the program is regarded positively. The CBI Index ranks Vanuatu #6 of 13, with especially high scores on minimum investment outlay, and speed and ease of processing. The Vanuatu passport provides visa-free access to 129 countries, including the EU^{xiv}. However, program reputation and security are major international issues for all CBI programs, in Vanuatu and elsewhere. Pressure from the European Union EU) and OECD are particular areas of concern, especially given the value of the EU visa-free travel offered through Vanuatu citizenship.

Internally, very little is known about the nature and purpose of the CBI programs, and there is a lot of confusion and misinformation, even within government offices. In the wider society, CBI is seen as socially and politically contentious, especially given the still quite recent struggle for independence and strong feelings around identity and sovereignty.

The external and internal reputation of the program is discussed in detail in section 4 of this review. There are also a number of legal and administrative issues that are in need of clarification and these are discussed in sections 5 and 6 respectively.

While the CBI program has made a significant contribution to the country's development goals, "the challenge for Vanuatu is how it can design and control citizenship by investment program to its own development benefits and most importantly as a catalyst to achieve its development objectives provided in VNSDP 2030"^{xv}. This requires developing a sustainable CBI policy and program that will serve and benefit Vanuatu in both the short- and the long-term. Section 7 of this review provide three different policy options in this area for consideration by government.

1.2. CBI Review Purpose, Methodology and Limitations

The review of the Vanuatu CBI programs took place at the request of and with the support from the Vanuatu Citizenship Commission. The review process included stakeholder consultations and desk review, conducted in November and December of 2019, with feedback and validation meetings held in early January of 2020. Every effort was made to ensure the review process was as comprehensive and inclusive as possible.

The purpose of this review was to provide an assessment of Vanuatu's CBI program, recognizing that "the challenge for Vanuatu is how it can design and control citizenship by investment program to its own development benefits and most importantly as a catalyst to achieve its development objectives provided in VNSDP 2030"^{xvi}. Vanuatu's CBI policy and program aims:

1. Maximize the benefit of citizenship by investment and other related programs through a clear policy framework, harmonized institutional framework, and clear investment plan which reflect government policy priorities
2. Prompt socio-economic development of Vanuatu, to attract genuine investors and direct them to invest in key development priorities of Vanuatu and
3. Create a modern enabling environment (encouraging innovation and investment, creating jobs, retaining skills and reducing transaction costs) making Vanuatu more efficient and more attractive to citizenship by investment globally.

The review process was organized around 3 main questions (see Appendix 1):

- What is the transparency and accountability of the CBI program and the extent of its alignment with the VNSDP?
- What is the effectiveness of the current Vanuatu CBI programs and how can it be improved?
- What policy options exist for the management of immigration and citizenship programs in Vanuatu, that would promote revenue, positive social relations within the country, and meaningful international investment in Vanuatu?

Working in a participatory and collaboratively fashion, the process used the following components as the foundation for generating proposed policy options, along with recommendations for implementation, monitoring and evaluation:

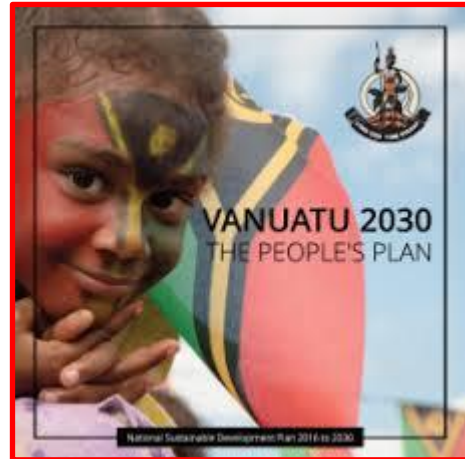
- extensive stakeholder consultations with representatives from relevant government offices, private sector, civil society and others (see Appendix 2 for stakeholder list);
- comprehensive system capacity and performance assessment, including review of policy, process, finance and program records and data;
- thorough desk review of existing legislation, policy documents, and international standards and best practices.

In developing a sustainable CBI policy and program that will serve and benefit Vanuatu in both the short- and the long-term, the first part of the review– assessing the current program- focused on 3 key factors:

1. Examining the alignment between the existing and any alternative CBI policies and programs and Vanuatu's own development priorities;
2. Assessing the transparency and accountability of the program's policies and institutional architecture;
3. Exploring the attractiveness of the CBI program to foreign investors and its acceptability to Vanuatu citizens.

First, it is essential that the CBI policy and program be *closely aligned with Vanuatu's own development priorities*, as formulated in the Vanuatu National Sustainable Development Plan (VNSDP) 2030. This means focusing on:

- “key government sectors that are catalysts for boosting development growth, creating employment opportunities, increasing market accessibility to Vanuatu products, increasing local production capacity and enabling greater participation of Vanuatu citizens into economic activity”
- “promoting productive sectors, creating stable and equitable growth, improve infrastructure, strengthen rural communities, and create jobs and business opportunities.
- expanding “air services and tourism products”^{xvii}.



Second, it is important that the program be guided by clearly outlined national policy priorities, and an “institutional architecture” that will ensure *transparency and accountability*. For a country like Vanuatu, citizenship is a precious commodity. Traditionally, citizenship is a privilege bestowed through birth, kinship or residence, but it also implies a bond of loyalty, involving duties as well as rights. Even if citizenship can now be bestowed through a CBI program, it still means that rights and duties, on the part of all parties, must be clearly outlined, protected and enforced.

Among other things, this means that Vanuatu must protect its interests and reputation. Best practices in the field indicate this requires an enhanced system of due diligence, record checks, data collection and data sharing to avoid illicit financial activity, tax evasion, international money laundering and other potential problems.

Additional steps include identifying the key skills and competencies needed for CBI program management, designing effective monitoring and evaluation tools, and outlining the best ways to collaborate with industry, and with international partners. Lastly, an enhanced system of CBI data collection and data sharing, both within and outside government offices, is essential.

Third, it is essential that the policy and the program are *attractive* to foreign investment and *acceptable* to Vanuatu citizens.

In terms of *attractiveness*, Vanuatu's CBI program ranks #6 on the CBI index, which compares 13 different countries offering CBI programs^{xviii}. Vanuatu also ranks #78 of 157 on the Quality of Nationality Index (QNI)^{xix}. Reviewing the program lessons and experiences generated additional information on Vanuatu's current program's attractiveness and external effectiveness, but also on ways to effectively enhance these factors.

In terms of *acceptability*, consultation with a wide range of stakeholders showed that many of the local stakeholders, including various government offices, had insufficient information about the program itself, and about how the program has benefitted the country. It was also evident that the CBI program is perceived as politically and culturally contentious. Additional accountability and transparency provisions, especially being able to clearly demonstrate how the program economically and socially benefits development priorities and different populations will be extremely helpful.

Following the assessment of the current CBI program, the review identified 3 policy options for consideration by the government:

- 1) Eliminate the CBI programs and generate government revenue through taxation;
- 2) Improve the program and launch a comprehensive public education campaign;
- 3) Develop an alternative approach to immigration and immigration investment, using a nationality-based approach and a contribution-based pathway to full citizenship.

In terms of *limitations*, it should be noted that a number of stakeholders were invited, but did not respond or otherwise made themselves available for consultation. There were also problems accessing specific documents, especially those regulating the DSP/VCP agents.

This review had a very tight timeline of 2.5 months, which included the holidays, during which government offices were closed for extended periods. Given the timeline and limited budget, the review did not include broader assessments for instance of the general public's opinion of the CBI program.

Conclusions regarding transparency and accountability were based on government documents provided and did not incorporate substantive additional third-party verification of those documents, even though it did include review of reports from the IMF and other international bodies.

Finally, where no documents or data were available or provided, such as in the case of post-citizenship travel or residency, or in the case of agent contracts, no attempts were made to draw substantive conclusions.



2. Vanuatu's CBI Programs: Overview of Issues and Recommendations

This section serves as an *overview and summary of the review*. It first describes in detail the current state of the program, in terms of numbers of new citizens, the revenue coming in from CBI and how it is spent. Next, it discusses the major reputation, legal, and administrative issues that must be addressed, should the Government decide to keep the program in place. It concludes by providing a full listing of the major recommendations offered on how to address the issues.

2.1. Overview

Vanuatu first regulated citizenship through its Constitution and the Citizenship Act. On the Day of Independence in 1980, citizenship was given to any person who has or had four generations of ancestors belonging to a tribe or indigenous to Vanuatu or to people of Ni-Vanuatu ancestry who had no other citizenship. Anyone born after the Day of Independence whether in Vanuatu or abroad shall become a citizen of Vanuatu if at least one parent is a citizen of Vanuatu. Also, a national of foreign state or stateless person could apply to be naturalized as a citizen of Vanuatu, if he or she lived in Vanuatu continuously for at least 10 years before the date of the application.

The Citizenship Act (CAP 112) provided further regulations for naturalization of long-term residents and for those married to or adopted by Ni-Vanuatu citizens. Article 14 of the Constitution also allows Parliament to make additional provisions for the acquisition of Citizenship of Vanuatu. There have been various amendments, including those permitting dual citizenship under both the Constitution and the Act. These amendments allowed for the subsequent launching of the Capital Investment Immigration Program (CIIP) in 2014, administered by the Vanuatu Registry Services Limited (VRS). Following Cyclone Pam in 2015, the Vanuatu Economic Rehabilitation Program (VERP) was launched as an additional CBI option, to support disaster relief and reconstruction.

Today, Vanuatu offers citizenship through its DSP and VCP programs, and also offers residence visas through real estate and business investment programs. Initially, the CBI programs were offered through the honorary citizenship provision in the Constitution, but they are now offered as regular citizenships, albeit without political rights if they hold dual citizenship. Summary descriptions of the various programs, along with other citizenship options are provided in Appendix 3.

Strong points of the existing CBI programs include first, the fact that they provide substantial revenue to the government. In 2019, it generated more than 12 billion vatu, which was more than 1/3rd of the total government revenue for the year. Stakeholder interviews indicated that key government officials recognize the value of this revenue stream, but are also very cognizant of the need to avoid reliance on these funds.

Careful management of the CBI funds has been reflected in the government's 2018 designating a separate account for CB revenue collection. Expenditures from this fund require a Council of Ministers (COM) decision. Most of the funds have been spent on debt repayment, development projects, and government expenditures, in line with the VNSPD.

Vanuatu's CBI program is well-regarded internationally, judging from ratings such as the CBI index. Factors rather highly include a timeline, low minimum investment outlay, ease of processing, and low mandatory traveling and residency requirements. Freedom of movement, standard of living, and due diligence received lower but still acceptable ratings on the index.

Overall, the program has been managed effectively by the Citizenship Office, using an orderly program of administration and record keeping.

Areas of concern include first, the growing international criticisms of all CBI programs, including those of Vanuatu. These concerns deal with issues of due diligence and security, money laundering, and tax evasion. They are important not only because they can negatively affect Vanuatu's

international reputation and its internal security, but also because they can threaten the current visa agreement between Vanuatu and the EU, a major point of attraction for the CBI programs.

Another area of concern is the lack of clarity and existing gaps within the legal framework that need to be addressed. An additional concern is the lack of public awareness of the program, the reasons for its existence and its contribution to the country. The general public is uninformed and/or misinformed about the program. There are also strong negative feelings around the concept of “selling Vanuatu identity and sovereignty”.

Finally, while the program administration has been effective overall, a written system of policies and procedures is lacking, as is an effective data tracking and data sharing system. There are also issues related to the program’s agents and the payment structure that cause concerns.

Each of the areas identified is briefly summarized below, and explored in detail in the subsequent sections of this review.

2.2. Transparency, Accountability and Alignment with the VNSDP

There have been 4 different CBI programs in Vanuatu: CIIP, VERP, and the current VCP and DSP programs. The total number of passports that have been issued through all programs is 6500, and the total amount of revenue collected well exceeds 33 billion vatu.

For VCP/DSP alone, the number of passports issued since 2017 is 5515 and the total amount of revenue is close to 27 billion vatu. For 2019, the revenue of 12,271,369,028 vatu was almost double the projected amount of 6,372,500,000 for the year and comprised 36.2% of the 2019 government revenue.

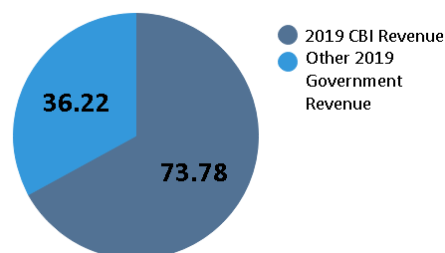


Figure 3: 2019 CBI Revenue as part of all 2019 Government Revenue

Transparency and accountability were key issues to be addressed in this review. A detailed accounting of CBI revenue and spending was provided by the Ministry of Finance and Economic Management, showing revenue collected and the spending of the revenue. The only gap is the lack of information regarding the CIIP program from 2014. This is a particular concern because the CIIP was a bond investment program, and repayments which could be as high as USD 12 million are due in 2021^{xxxxi}. Revenue and spending for the VERP program was tracked better, showing important lessons learned.

Since 2018, revenue for the current CBI programs has been placed in a dedicated and restricted account, and spending requires special Council of Ministers (COM) decisions, which shows a commitment to transparency and accountability.

The review was also tasked with assessing the alignment between the CBI programs and the VNSDP. Looking at the expenditures of the funds, it appears that CBI account spending has been managed effectively, starting in 2016. Currently at 12 billion vatu, the revenue stream is substantial, but key government officials are very cognizant of the need to avoid reliance on these funds.

CBI expenditures have been in 3 major areas:

- *Repayment and pre-payment* of external, advance and domestic loan repayments, which in 2019 totaled 1975.6 million, and over the past 4 years totaled 9.2 billion. Repayment of loans is a key element of effective development, and consistent with the country’s 2019-2022 debt management strategy^{xxii}.
- *Government operations*, including support for 2018 elections (88.4 million vatu), outstanding severance liabilities (2500 million vatu) and Government Remuneration Tribunal (GRT) (2465.2

million vatu), funding re-adjustment to the salary grades for the Public Service Commission Post Officers, serving across all 13 Government Ministries;

- Specific *development related projects* and areas, including education, agriculture, tourism, infrastructure, and disaster emergencies.

Detailed information on numbers, revenue and spending is provided in section 3 of this review. The review concludes that it demonstrates both proper recordkeeping and appropriate spending, aligned with the Vanuatu 2030 People's Plan. It would be useful for the Citizenship Commission and the government to share this information along with information on program rationale and revenue spending with the public, to avoid further confusion and misinformation.

2.3. Reputation of the Program

External perception of Vanuatu and its CBI program

External perceptions of Vanuatu and its CBI program are important because they affect its international reputation. This issue is all the more important, given Vanuatu's past placement on the OECD's Financial Action Task Force (FATF) grey list, its former listing on the Anti-Money Laundering (AML) list, its listing on the OECD CBI/CRS list, and its current blacklisting for not having taxation policies in line with the EU policies.

Furthermore, if its program is perceived as posing a security risk to Vanuatu and other countries, it will threaten existing visa agreements, especially with the EU. Also, at risk are relations with key donor countries, including Australia, China, and New Zealand.

Existing Due Diligence Process

Due diligence (DD) for Vanuatu CBI applicants is carried out largely by the Vanuatu Financial Intelligence Unit (FIU). There are currently 3 DD stages: the agent, the FIU, and an external, independent company, FACT UK. The FIU uses 4 globally reputable data base services, including Interpol. Inquiries include criminal investigations and convictions, but document verification and checks on sources of funds.

Results from the data bases are instant, which speeds up the process. Currently, the policy is to complete all checks within 24 hours. If any problems are uncovered by the FIU, further follow-up and a secondary investigation takes place. All searches and files are randomly checked by other officers for accuracy. The cost for DD is USD 2000 which is paid by the applicant, separate from other CBI payments.

Main issues of concern include:

- The need for enhanced due diligence to meet both internal and external requirements
- The need for enhanced document verification procedures

In order to meet the extensive external requirements, the review recommends that the FIU continues to develop and enhance its current good DD practices. It also recommends an additional due diligence layer by mandating background checks on all applicants, using a reputable, independent 3rd party agency, collaborating with and monitored by the FIU, and focusing on meeting EU DD requirements; The cost of the additional due diligence would be covered by increasing the client's DD fee to USD 7000, which is industry average.

It is also recommended also that the COC and the FIU publish their CBI good diligence practices and that the FIU continues to develop ties with the international CBI and CIU community for collaboration and data sharing.

Related Concerns

In addition to due diligence and security, there are also issues related to possible tax evasion and money laundering. These issues are not isolated to the CBI program, but nevertheless, need to be addressed as soon and as thoroughly as possible, by meeting the international requirements.

In addition, there are concerns about the integrity of the Vanuatu passport and identity documents. The review recommends enhanced document verification and enhanced document security features, including issuing Vanuatu e-passports, and a comprehensive and thorough post-citizenship data and document collection and sharing process between government offices.

Reputation of the program internationally

According to industry standards, which rate the attractiveness of CBI programs to potential clients, Vanuatu's CBI programs is well-regarded. The most comprehensive evaluation is provided in *A Guide to Global Citizenship: The 2019 CBI Index*, rating CBI programs in 13 countries around the world.

In terms of *overall ranking*, the top 3 countries for 2019 were Dominica, St. Kitts and Nevis and Grenada. Vanuatu was ranked a respectable # 6 out of 13, making it the best performing program outside of the Caribbean. Looking at specific areas, Vanuatu rated 10 out of 10 in the area of CBI timeline, 9 in the areas of minimum investment outlay and ease of processing, 8 in mandatory travel, and 7 in freedom of movement. The lowest scores – 6 out of 10- were in the areas of standard of living and due diligence. Addressing due diligence following the recommendations in this review will be key to further enhancing Vanuatu's ranking on the CBI index.

The *Guide* further mentions that "a programme's integrity is founded on more than longevity and due diligence. Communication of how funds are used to benefit locals is also key"^{xxiii}. Because Vanuatu CBI funds are used in full alignment with the VNSDP, additional publicity of this on the part of government, as is recommended elsewhere, will further strengthen the international reputation of the program.

Domestic Perception of the program

A key factor in the domestic perception of the CBI program is whether or not people are fully informed about what the program is, how it functions, and what it contributes. Regardless of whether people are well-informed or not, opinions on the program are rather sharply divided between those in support, those opposed, and the general public, which has led to considerable social and political contention. Each of these groups has different concerns.

In addition to addressing the specific concerns of the three groups, the review recommends that the COC, along with support from other government offices, provide a coherent explanation of the CBI program, ideally through a thorough and professional education campaign, and incorporating the results of the review. It also recommends that the Vanuatu government invite public dialogue on the three policy options provided in the last section of this review. Option 3 in particular may serve to address the major domestic concerns about national identity and sovereignty.

2.4. Legal Framework for CBI

The legal framework relating to citizenship has been changed significantly and frequently since the initial amendments were made to the *Constitution* and *Citizenship Act* to facilitate the first CBI program in 2013.

While the *Constitution* contains provisions for persons entitled to citizenship and naturalization, it also gives Parliament powers to pass laws for the acquisition of citizenship. The 2013 amendments to the *Constitution* allowed dual citizenship, and the CBI programs were subsequently established under Parliament's powers to pass new laws for the acquisition of citizenship. This was initially done

under the powers of the President to grant honorary citizenship^{xxiv} and later, under amendments to the Citizenship Act.

Multiple categories of citizenship, each with different rights and privileges, have been created as a result of amendments that distinguish ‘indigenous and naturalized citizens’ from other citizens. The effect political rights are exclusively held by indigenous or naturalized citizens only^{xxv} and Parliament the powers to limit the fundamental rights and freedoms of any citizen that is not indigenous or naturalized.^{xxvi} This includes non-indigenous Vanuatu-born citizens, persons married to Vanuatu citizens and children adopted to Vanuatu citizens. People that have gained citizenship through the CBI programs also fall into this latter category, except for those that have gained citizenship through the CIIP Real Estate Option CBI program, who may have the same rights as ‘native’ citizens. It is not clear whether all categories of CBI citizens are entitled to Vanuatu residency and whether or not they are allowed to work or operate businesses in activities reserved for Ni-Vanuatu.

The legal review in Section 5 focuses on clarifying each of the citizenship categories and their corresponding rights and privileges. It also examines the legal status of the various CBI programs, and the legal framework around the deprivation, revocation and renunciation of citizenship and the removal of persons who have obtained citizenship by fraud or concealing material facts, or who commit crimes post-citizenship.

2.5. Administrative Structure and Process

The DSP and VCP programs are run by the COC, with support from other government offices, including the Financial Intelligence Unit, the Passport Office, and the Immigration Office.

Authority of the Citizenship Commission to grant applications for citizenship, if the applicant and process meet the requirements prescribed, is provided by Chapter 112 Citizenship (1980, 1983, 1987). This was amended by #39 of 2013 which details the new composition of the COC, and the COC’s powers to consider and approve applications for citizenship and revoke citizenship.

The DSP and VCP programs are publicized at the COC website^{xxvii} and at designated agent websites. Both programs use government authorized agents to recruit clients. The agents assist in the application process, which includes finding clients, accompanying them in required document collection and submission, conducting the first DD stage, and processing of funds.

Applications then undergo more thorough checks organised by the FIU. If they pass, they are evaluated by an Internal Screening Committee, consisting of the COC secretary, the COC Compliance Officer, the Director of Immigration Services, the principal Passport Officer and a legal Officer from State Law. The COC currently has 6 full-time staff, in addition to the Chair of the COC.

While the programs are run efficiently and effectively overall, some factors should be addressed to further improve their functioning. These include administrative process issues, and issues related to agents, publicity and market, pricing, agent commission, fees, payment process, and money flow.

The review recommends a comprehensive post-citizenship tracking system, changes in passport delivery, and a waiting period for name changes. It also recommends that the COC restructure the payment process to meet AML/CRS requirements, adjust agent commission to meet industry norms, and increase the DD fee to allow for enhanced, outsourced DD and document verification.

The review also recommends that the COC work to enhance the correctness, clarity and attractiveness of publicity on its own website and the websites of its agencies.

2.6. Listing of Recommendations

1: The COC work to *meet international due diligence/security standards* by:

- Continuing to develop and enhance the current good DD practices on the part of the FIU;
- Adding additional due diligence by carrying out thorough background checks on all applicants, using a reputable, independent 3rd party agency, collaborating with and monitored by the FIU, and focusing on meeting EU DD requirements;
- Having the cost of this be covered by increasing the client DD fee to USD 7000;
- Publish the COC/FIU best diligence practices regarding its CBI program;
- Ensuring that the COC and FIU keep records consistent with the 2019 EU reporting requirements;
- Continuing to develop ties with the international CBI and CIU community for collaboration and data sharing

2: The Vanuatu government work to *enhance Vanuatu's international reputation* by taking steps to remove Vanuatu from the EU non-cooperative and other grey/black list by:

- Meeting all specified anti- tax evasion and AML requirements;
- Ensuring that proper reporting is provided to the relevant international institutions on all CBI citizens, including proper information for tax residency and tax liability purposes and enhanced due diligence regarding CRS and related documentation.

3: The Vanuatu Government *enhance the integrity of Vanuatu identity documents* by:

- Making Vanuatu passports part of the international e-passport system;
- Instituting security features or data checks on the citizenship certificate.

4: The COC, with support from other government offices, work to *build domestic support* for the program by providing a coherent explanation of the CBI program, ideally through a thorough and professional education campaign, and incorporating the results of the review.

5: The COC and State Law Office to enhance the *transparency of the current CBI legal framework* by:

- Publishing official consolidated editions of the *Constitution, Citizenship Act and Immigration Act*;
- Updating the COC website with current acts and regulations.

6: The COC and State Law Office to ensure *the rights and privileges of citizens* are clearly defined and protected by:

- Reviewing the terms 'indigenous and naturalized citizens' referred to in the dual-citizenship provisions;
- Amending these terms to include non-indigenous Vanuatu-born citizens, persons married to citizens and children adopted to Vanuatu citizens;
- Considering alternative approaches to restrictions on political rights that do not create categories of citizenship, such as prohibiting dual citizens from being eligible to contest and hold high level government offices for reasons of allegiance to foreign powers;
- Defining who qualifies as an 'indigenous' citizen and clarifying whether 'ni-Vanuatu ancestry' refers to indigenous ni-Vanuatu ancestry, or Vanuatu citizens in general; and
- Providing clarification on the extent to which fundamental rights and freedoms can be limited by law under Article 5 of the *Constitution*, and the relationship of these limits to common law principles including natural justice and due process.

7: The COC and State Law Office to *improve the legal framework* around the CBI programs by:

- Harmonizing the provisions of *the Citizenship Act* and regulations creating multiple CBI programs, particularly those that have the same processes, fees and rights attached;

- Requiring that future contracts with agents are drafted with comprehensive clauses that give the Vanuatu Government more control and flexibility to adjust the CBI programs when needed;
- Clarifying the residency, investment and work rights of investor citizens under each of the programs. If residency, investment and work rights are to be separated out with political rights, include provisions that harmonise their rights, and the requirements to reside, invest and work in Vanuatu, with those of non-citizens;
- Considering including provisions for investor citizens to become eligible for these rights if they have met the same requirements as naturalized citizens;
- Inserting into the honorary citizenship provision explicit reference to what rights and privileges accompany honorary citizenship.

8: The COC and State Law Office to provide clear information on the processes relating to *revocation of citizenship and name change* requirements, through:

- Updating the provisions of the *Citizenship Act* relating to the powers of the COC to revoke citizenship to reflect the process required to be followed as determined by case law;
- Review the process for name changes under the *Civil Status Act*, and fees; and
- Publish information on the processes for revocation of citizenship and name changes on the COC website.

9: The COC to enhance the current *CBI administration* system, through:

- Updating and formalizing the current administrative process, policies and filing system;
- Developing and implementing a comprehensive, intragovernmental post-citizenship CBI data collection, tracking and sharing system;
- Following the existing legal requirement, publish the names of all new citizens;
- Ensuring that Vanuatu passports are only delivered through Immigration or Foreign Affairs Officers;
- Requesting that the Chief Justice appoint officers of the Vanuatu overseas missions to become Commissioners for Oaths and requiring that all CBI oaths taken overseas be taken at Vanuatu missions;
- Instituting a minimum 1 year waiting period for name changes requested by new CBI citizens.

10. The COC to *enhance the quality of CBI sales and publicity processes* by:

- Reviewing the written guidelines ensuring they clearly specify agent performance, requirements, operating restrictions and tax requirements, along with clear disciplinary steps to be taken in case of violations;
- Working to enhance the correctness, clarity and attractiveness of publicity on its own website and the websites of its agents.

11. The COC to *enhance the pricing, commission, fees, and payment process* by:

- Restructuring the payment process to meet AML/CRS requirements;
- Adjust agent commission to meet industry norms; and
- Increase the DD fee to allow for enhanced and outsourced DD and document verification

12. The Vanuatu Government, in full and open consultation with its Councils, decide on *one of the 3 policy options* identified:

- 1) Eliminate the CBI programs and generate government revenue through taxation;
- 2) Improve the program and launch a comprehensive public education campaign;
- 3) Develop an alternative approach to immigration and immigration investment, using a nationality-based approach and a contribution-based pathway to full citizenship.

3. Transparency, Accountability, and Alignment with VNSPD

3.1. Program Numbers and Details

As noted earlier, there have been 4 different CBI programs in Vanuatu: CIIP, VERP, and the current VCP and DSP programs. The total number of passports issued through all programs is 6500, and the total amount of revenue collected is around over 32 billion vatu, not counting the CIIP program. For VCP/DSP alone, the number of passports is 5515 and the amount of revenue is close to 27 billion vatu, with a 2019 revenue in excess of 12 billion. Table 1 below provides an overall summary of the all programs, showing years of operation, the number of applicants for each program, the revenue collected and the requirements for each program. Table 2 shows applicants by program and by year.

Table 1: Summary of CBI Programs by Years, Revenue and Requirements			
CBI Program	Years in operation	Revenue in millions of vatu	Requirement
CIIP	2014	±1,484,493 (estimate)	USD 260,000 investment to be refunded in 7 years, plus 40,000 fees
VERP	2015-2016	2015: 1.747.773 2016: 3.725.169	USD 160,000 non-refundable contribution, plus fees
Total VERP		5,472,941,515	
VCP	2017-2019	For VCP and DSP: 2017: 4,695,029 2018: 9,829,187 2019: 12,271,369	USD 130,000 USD plus 2000 USD security check fee and applicable passport/oaths fees
DSP	2017-2019	727	USD 130,000 USD plus 2000 USD security check fee and applicable passport/oaths fees
Total VCP/DSP		26,795,586	
Total VERP, VCP, DSP		32,268,527	
Total all CBI		33,753,021	

Table 2: Vanuatu Applications (A) and Passports (P) under CIIP, CIIP, VCP and DSP programs													
Program	2014		2015		2016		2017		2018		2019		Total Passports
	A	P	A	P	A	P	A	P	A	P	A	P	
CIIP	49	89											89
VERP			167	232	139	664							896
VCP							101		526		536		
DSP							93		200		727		
VCP& DSP								1357		1493		2665	5515
Total	49	89	167	232	139	664	194	1357	726	1493	1263	2665	6500

3.2. Program Revenue

Transparency and accountability were key issues to be addressed in this review. A detailed accounting of CBI revenue and spending was provided by the Ministry of Finance and Economic Management, showing revenue collected and the spending of the revenue.

As noted earlier, the CBI programs have provided substantial revenue for the government. In terms of accounting and spending, the only major issue identified is the lack of substantive information regarding the CIIP program from 2014. It is unclear how much money came in and whether the money was actually received by the government, and where it is currently located. This is a particular concern because the repayments of CIIP bonds and investments, possibly as high as USD 12 million, are due in 2021^{xxix}. Where CIIP revenue are provided below, they are estimates only

Lessons were learned however, and revenue and spending for the VERP program was tracked better. A major strong point is that accurate records were also kept for VCP and DSP, and that since 2018, revenue for the current CBI programs has been placed in a dedicated and restricted account, with spending guidelines. Spending requires special COM decisions, which shows a commitment to transparency and accountability. Table 3 shows the revenue collected under each program by year.

Table 3: CBI Revenue Collected in millions of vatu							
	2014	2015	2016	2017	2018	2019	Program Total
CIIP	1,484,493						1,484,493
VERP		1,747,772	3,725,169				5,472,941
VCP & DSP				4,695,029	9,829,187	12,271,369	26,795,585
CBI Total 2016-2019 only							30,520,755
CBI Total (not counting CIIP) all years							32,268,527
CBI Total (including CIIP)							33,753,021

According to the IMF, in 2018, some 10% of Vanuatu GDP and fully one-third of its government revenue – about US\$88 million – came from the CBI program and in its Article IV consultation report for 2019, it concludes that this revenue is “more properly considered a windfall than a ‘new normal’”. The IMF does not expect CBI-revenue to continue and urged the Vanuatu government not to grow too accustomed to it^{xxx}.

The Department of Finance and Treasury’s 2019 midyear financial report noted that “In 2018, revenue from the honorary citizenship programs overtook that of VAT for the first time. The Government remains careful not to rely on the income stream from the honorary citizenship programs and is working on implementing the Tax Administration Act to make the collection of tax revenue more efficient”. The *Daily Post* chart shown provides a visual illustration^{xxxi}.

For 2019, the CBI revenue continued to exceed VAT revenue, generating 12.2 billion or 36.2 % of the total government revenue streams^{xxxii}.

3.3. Program Spending in Relation to the VNSDP

This review was also tasked with assessing the alignment between the CBI programs and the VNSDP. The revenue stream is substantial, but key government officials are very cognizant of the need to avoid reliance on these funds. Looking at the expenditures of the funds summarized in figure 4 below, it appears that CBI account spending has been managed effectively.

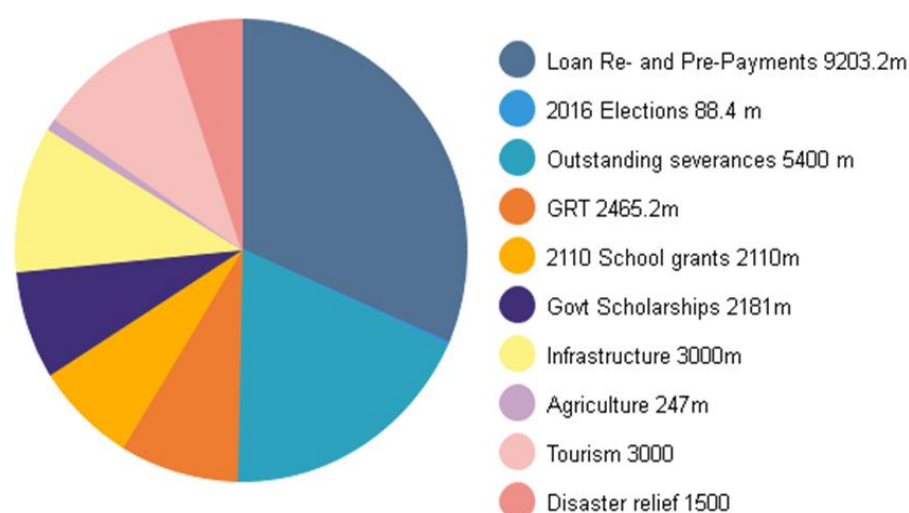


Figure 4: 2016-2019 CBI Revenue Expenditures

The first and largest expenditure area supported by CBI revenue has been *repayments and advance repayments of external and domestic loans*. In 2019, this totaled 1975.6 million, and over the 4 years it totaled 9.2 billion, as shown in table 4 below.

Loan repayments are directly connected to the Economy Pillar of the VNSDP, in particular ECO 1.3 “Ensure public debt is sustainably managed and finances are directed towards projects with positive economic returns”. Repayment of loans is also a key element of effective development strategy, and consistent with the country’s 2019-2022 debt management strategy^{xxxiii}.

The goal of the strategy is to ensure that “the government’s borrowing requirements and payment obligations are met at the lowest cost with a prudent degree of risk”, and that “public debt levels remain sustainable, while supporting our development programs to strengthen Vanuatu in the present and invest in our country’s future”^{xxxiv}. Using CBI funds for loan repayments has also allowed to government to make advance payments on government debt.

The IMF also acknowledged the Vanuatu government’s sensible use of the CBI funds in this area, noting that “(t)he authorities have taken the opportunity provided by strong growth in revenues from the economic citizenship program in 2019 to reduce debt where possible,” pointing out that about one-third of program-related income had gone toward reducing its overall debt burden^{xxxv}.

Table 4: Repayment of loans and advance repayments				
External debts	2016	2017	2018	2019
External Loan repayments	557.9 m	546.9 m	1463.9 m	213.5 m
Advance loan repayments			826.6 m	1500 m
Domestic Loan repayment	593.3 m	1623.3 m	1615.7 m	262.1 m
Total 9203.2 m	1151.2 m	2170.2 m	3906.2 m	1975.6 m

CBI revenue was also spent on selected *government expenditures*, for a total of 5,053.6m. This included elections (88.4 million vatu), outstanding severance liabilities (2500 million vatu) and Government Remuneration Tribunal (GRT) (2465.2 million vatu) funding adjustments to salary grades for Public Service Commission Post Officers, serving across all 13 Government Ministries to address salaries paid below minimum rate of remuneration.

The remaining expenditure areas were all directly related to key focus areas within the VNSDP and the identified development policy priorities. The first category was *education*, corresponding to goal area 2 Quality Education, part of the Society pillar of the VNSDP, in particular SOC 2.1 “Ensure every child, regardless of gender, location, educational needs or circumstances has access to the education system”. For 2018-2019 this included school grants and subsidies (2136.8m), and Vanuatu government scholarships (2180.8m). It is worth noting that these expenditures allowed for the recent elimination of school fees. School fees have been identified by many people as the major social development issue in Vanuatu.

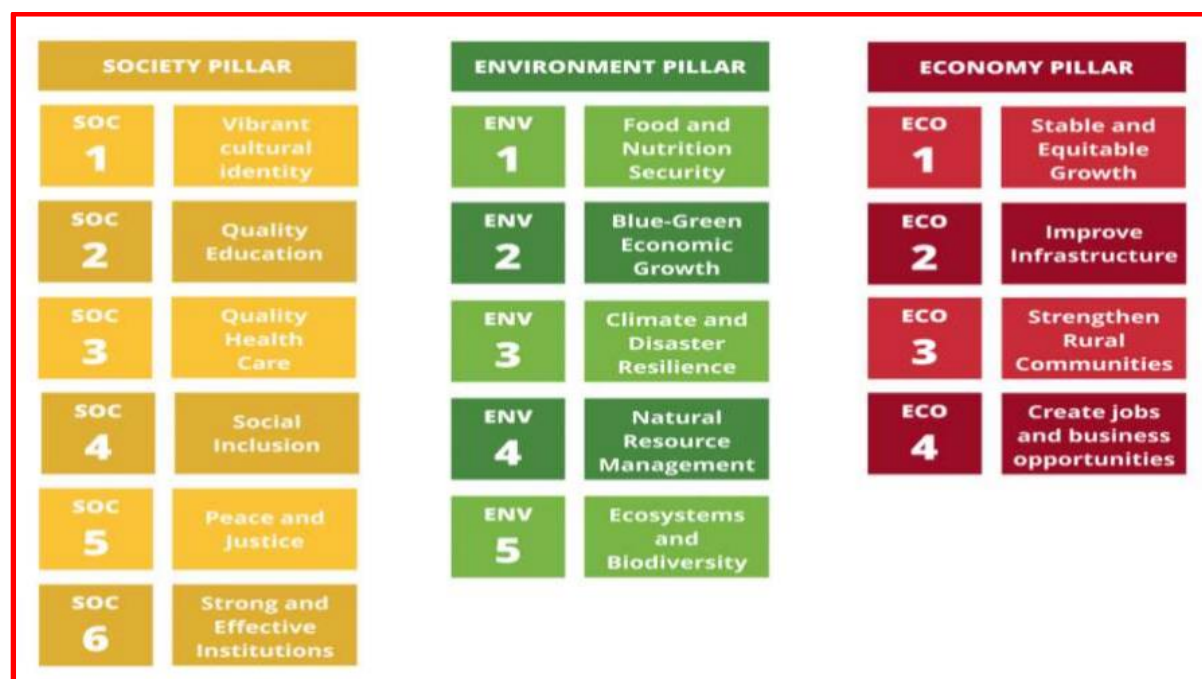


Figure 5: The 3 pillars of the Vanuatu NSDP

The second category was investment in *agriculture development*, part of both the Environment and the Economy pillar, corresponding among other things to ENV 1.1 Increase agricultural and fisheries food production using sustainable practices to ensure sufficient access to affordable and nutritious food” and ECO 3.1 “Promote broad-based growth by strengthening linkages between tourism, infrastructure, agriculture and industry in rural areas and diversify the rural economy”. Expenditures included copra subsidy (187m) and livestock restocking (60m).

The third category was *tourism* (1000 m to host the 2017 South Pacific Games and 2000m advance for Shared vision – Air Vanuatu), supporting ECO 4.4 “Improve and expand the range of sustainable tourism products and services throughout Vanuatu and strengthen links to local production”.

The fourth category was *infrastructure development* (3000m) for roads and bridges, most recently the development of rural roads on several of the islands. This connects to the Economy Pillar of the VNSDP, in particular ECO 2.6 “Provide equitable and affordable access to efficient transport in rural and urban areas”.

The last category was *disaster emergency funds*, covering emergency response for Ambae, Ambrym and tropical cyclones. While not directly related to the VNSDP, emergency response is a key and ongoing need in Vanuatu. One suggestion here is to consider using some CBI funds in the future to either support Environment Goal 3 of building “a strong and resilient nation in the face of climate change and disaster risks posed by natural and man-made hazards” or to build a disaster savings fund to cope with future disasters.

Table 5: Approved Expenditure for Govt sector policy priorities		
Sector	Amount (in millions)	Description
Elections	88.4	Cover the 2016 elections
Outstanding severance liabilities	2500	For 2016
	2900	For 2017-2019
GRT	2465.2	To cover new GRT determination
School grants	513.0	2016 school grant and subsidies
	649.6	2017 school grant and subsidies
	974.2	2018 school grant and subsidies
Vanuatu Govt scholarship	587.3	For 2016 students
	784.0	For 2017 students
	809.5	For 2018 students
Copra Subsidy	187	For 2019
Livestock restocking	60	To boost the beef industry
Infrastructure Development fund	3000	For roads and bridges
Host 2017 South Pacific games	1000	SP Games 2017
Shared vision - Air Vanuatu	2000	To boost tourism
Disaster Emergency for Ambae/ Ambrym/Tropical cyclones	1500	Emergency response to natural disaster
Total	20018.2	

As shown in the figures and tables above, the total CBI revenue spending accounted for is 29,221.4 million out of CBI revenue of 30,520,8 million, beginning in 2016. It should be noted, however, that the revenue figures provided for were updated to the end of 2019, but the final spending figures or residual fund figures were not yet available, which should account for the difference of 1,299m

The information summarized demonstrates both proper recordkeeping and appropriate spending, aligned with the Vanuatu 2030 People's Plan.

It would be useful for the COC and the Government to share this information along with information on program rationale and revenue spending with the public, to avoid further confusion and misinformation. A formal recommendation to this effect will be part of the next section.

4. Reputation of the Program

4.1. Introduction

If the Vanuatu CBI program continues, it is essential that its reputation is protected and enhanced. Specifically, the following must be addressed urgently:

1. *External or International Concerns* – major issues include concerns expressed by the EU and the OECD around security, tax evasion, and money laundering, and the overall external reputation of the program;
2. *Internal or Domestic Concerns* – major issues include negative perceptions of the Vanuatu citizenry of the program and concerns expressed around sovereignty, national identity, and perceived socio-cultural and economic threats created by to the Ni-Van population.

4.2. External Reputation

Oxford Analytica in their 2020 report on *Due Diligence in Investment Migration*^{xxxvi} noted that “states should be encouraged to consider the security impacts (of CB and RBI programs) not only for their own country or region, but also for the countries to which these new citizens and residents are able to freely travel. ..Moreover, there should also be a sensitivity to the concerns and demands of the global community in designing and operating CBI and RBI programmes. .. States are becoming answerable to a growing number of advocacy groups, the EU, international organisations such as the International Monetary Fund, and the Organisation for Economic Co-operation and Development, as well as to their partner countries and, of course, to the general public”.

Globally, all CBI programs are being scrutinized closely based on possible and potential risks involving security and due diligence issues, tax evasion, corruption, and money laundering, mostly by the EU, the OECD, and the IMF. For Vanuatu, these concerns not only affect its reputation as a law-abiding member of the global system, they also impact the attractiveness of Vanuatu passports to potential CBI clients. In the worst-case scenario, the Vanuatu passport may lose its privileges and benefits regarding travel and use in the EU countries, effectively destroying its usefulness as a government revenue source. The EU concerns in these areas regarding Vanuatu passport holders can be diminished if the Vanuatu CBI abides, as much as possible, by EU and OECD requirements, as they apply to Vanuatu realities.

4.2.1 Security and Due Diligence

The EU Reports

On 23 January 2019, the European Commission adopted its *Report on Investor Citizenship and Residence Schemes in the European Union*.^{xxxvii} The Report provides an overview of all schemes operating in the EU, and their associated risks. The report calls for increased “effective and independent oversight and transparency regarding such schemes”. While the report focuses on CBI programs operating in the EU, similar concerns exist regarding CBI programs elsewhere.

The report requires countries to provide clear information on how the schemes are run, the number of applications received, how many applications are granted or rejected as well as the national origins and names of the applicants.

The Commission's report notes that to avoid security risks, security checks in Schengen areas are implemented through the following centralized information systems:

- The Schengen Information System (SIS);
- The Visa Information System (VIS);
- EURODAC and the newly established Entry/Exit system (EES);
- Electronic Travel Information and Authorization System (ETIAS).

The Commission reminds Member States not to allow investor schemes to undermine and jeopardize security by circumventing security checks and requires that checks run on applicants should be sufficiently robust. It notes that it will “closely monitor compliance of existing investor residence schemes with EU law to ensure that all obligatory existing border and security checks are systematically and effectively carried out by Member States”^{xxxviii}.

In 2017, a memo was also issued specific to third countries having visa-free agreements with the EU, such as Vanuatu.^{xxxix} It noted that security “risks are mitigated as all travelers, including those that do not require an EU visa, are checked at the EU's external borders as to whether they fulfil the entry conditions, including by carrying out checks in the Schengen Information System and Member States' national databases”. Travelers suspected of posing a risk to the internal security or public policy of any Member State, can be refused entry.

A revised and strengthened visa suspension mechanism was entered into force, providing “new grounds for the temporary suspension of visa liberalization, including where the third country in question by its actions – or inaction – is endangering the public policy or internal security of the EU Member States.” ... “It applies horizontally to all third countries whose citizens enjoy visa-free access to the Union. *The Commission will monitor the impact of investor citizenship schemes implemented by visa-free countries as part of this mechanism*” (emphasis added).

Checks on non-EU Travelers are enhanced through new information systems such as the European Travel Information and Authorization System (ETIAS) and the Entry/Exit System (EES).

International Practices and Standards

It is useful to look at emerging industry-wide DD standards and the ways in which other countries carry out security checks and. The 2019 *CBI Index* notes that in general, suitability for CBI means that the applicant has good moral character, no criminal record or link to criminal activity, no security or reputation risk, and a clear and clean source of funds, including employment and business records.^{xi} Some countries reject applicants who have been denied a visa to any of its visa-free travel destinations and did not subsequently obtain a visa from that destination.

The *CBI Index* rates due diligence practices of CBI countries, and key factors affecting the ratings include: enhanced diligence in authenticating source of funds, strict requirements for documentary evidence, and employment of independent due diligence providers, use of passport biometrics, requiring local and authenticated police records of origin and country of residence, and excluding or restricting applications from countries that could not be vetted or pose a risk to national security.

In the Caribbean, where there is a long history with CBI programs, DD typically includes:

- Knowing your client – this may include personal interviews with the applicant;
- Pre-vetting of applicants by approved agents
- Internally checking documents and information
- Outsourcing enhanced due diligence to professional firms
- Collaborating with national and international bodies, such as due diligence firms

There are a number of highly rated due diligence companies currently in operation^{xii} and DD fees for their services— usually ranging around USD7000- are usually charged directly to the applicant. It is also useful to review the Investment Migration Council Code^{xiii} of Ethics regarding DD standards.

For Cyprus and Malta, 2 of the EU countries currently offering CBI, applicants are required to already have a Schengen visa, thereby incorporating EU security procedures for 3rd party nationals. Cyprus also rejects applicants who were denied citizenship in EU member states.

Malta, one of the countries currently under investigation, responded by developing a process using the “INTERPOL/ EUROPOL data bases as part of a four-tier due diligence process covering KYC (Know-your-client due diligence checks) by both the agent and Identity Malta’s IIP unit, clearance by

the police authorities, checks for completeness and correctness of the application, and verification of the documents submitted”^{xliii}

Identity Malta, a government agency in charge of citizenships and identity management, has developed an internal risk matrix, based on seven elements:

- “(i) Identification and verification (how the applicant’s identity has been established and verified);
- (ii) The applicant’s business and corporate affiliations;
- (iii) Whether the applicant is a politically exposed person or has been on a sanction or watch list;
- (iv) Establishing how the applicant has accumulated his/her wealth and the origin of the funds for financing the application;
- (v) The applicant’s reputation (observed through open source intelligence, reports and on the ground intelligence);
- (vi) Legal and regulatory matters such as charges or convictions for offences; (vii) analysis of the applicant’s activities and their impact on his/her immediate network and society in general”^{xliiv}.

International collaboration is one of the strategies recommend for enhanced DD worldwide. The World Citizenship Council (WCC), a nonprofit organization for research, promotion and development of citizenship and residency schemes, proposed a set of recommendations to Governments and Country Intelligence Units (CIUs) to protect CBI program integrity from abuse and fraud^{xliv}:

1. *Data sharing on high risk and refused CBI/RBI applicants*^{xlvi} so that refusal by one country automatically generates refusal by another. The WCC recommends an international committee to establish and maintain the data base and that it includes biometric (fingerprint, facial) features.
2. Sharing of data between Citizenship Agents on clients they refused, based on suspected high risk.
3. Taking enough time for DD – the WCC recommends at least 6 months.
4. Using blockchain technology for risk data sharing between CIUs.
5. Adopting a model like Malta’s risk matrix, described above to predict applicant risk
6. A minimum 3-day requirement to visit the country, before receiving the passport.
7. Extra caution on the part of agents in taking clients from sanctioned countries, including OFAC or EU sanctions, closely scrutinizing the passport’s place of birth (POB) field.
8. Closely examining real estate applicants who invest more than \$400,000
9. Provide extra incentive to agents for referring highly qualified applicants and their families.
10. Require that economic citizens can show specific ties to country, such as living there (renting or owning a real estate) so that the passport comes with residential address.

Oxford Analytica^{xlvii}, pointed out the importance of minimum standards in their 2020 report, including government overview:

- ‘As a foundational component of both CBI and RBI programmes, *appropriately rigorous due diligence is arguably the main means of ensuring their viability and success.*
- (However)...*due diligence continues to be applied unequally* across jurisdictions and within the industry as a whole. ... The transparency of individual programmes’ due diligence processes and the government’s risk appetite and rationale for accepting or rejecting applicants is also variable. ..This is problematic for the entire industry, as it will typically be judged by its weaknesses.
- Certain *minimum standards* therefore need to be agreed... (and) should include the involvement of all three actors – agents, governments and third-party providers – as part of best practice for CBI and RBI programmes:
 - A system of national enforcement of minimum standards should be encouraged through industry associations, with guidance from international bodies such as the EU;
 - Increased transparency of CBI and BI programmes should be used as a tool to ensure that minimum standards are met;

- *Documentation* should be ready in case it is requested as part of an industry audit to ensure that programmes meet agreed standards.
- *Notwithstanding growing concerns about the security and use of personal data*, governments should ensure that all decisions on CBI and RBI applications are appropriately recorded and that they are prepared to justify those decisions if required to do so.

Outsourcing DD

As described earlier, due diligence processes are basically about gathering of relevant information about the applicant, and interpreting and following up on that information. The purpose of the DD report is to pre-screen applicants and their dependents. It should be requested as early as possible in the application process, as the information collected will indicate the level of risk involved if the application is accepted. The DD stage also acts as a government safeguard against high risk clients and protects the reputation of the program.

There are professional agencies that offer assistance with DD reports. The use of such agencies can add credibility to the program and protection to the government. If DD is outsourced, it is important to clarify if DD advisors act as agents of the government or if the agencies are independent contractors. The latter offers greater protection to the government. However, the final interpretation and decision based on DD reports should still be held at government level.

Whether or not all the due diligence steps can effectively be outsourced and the risks be minimized will depend on the type of firm contracted. Specialized due diligence firms such as Exiger, BDO, Harod, and Thomson Reuters will provide higher cover than firms that are not DD specialists or themselves outsource the DD.^{xlviii} It is also important to review their reputation and standing in the CBI community. Some companies, such as BDO^{xlix}, have a large presence in the world of investment migration and a good reputation. The choice of company should also keep in mind the typical CBI applicants, and whether that company is usually versed to deal with applications from a particular region or type. In the case of Vanuatu's CBI programs, the ability to effectively conduct checks on applicants from China is essential, as is the reputation of the firm to the EU.

It is important to be clear from the beginning on the actual due diligence processes to be carried out by the external firm. A high level of transparency in the processes between the government and the external agency is advisable, and the government must regularly review the work of the company. The role of the FIU in this process will be critical.

It is also important to remember that DD is a *tool* for decision making, but that decision making remains the responsibility of governments and not third-party due diligence providers and agents. As noted by Oxford Analytica: "The decision to accept or reject an applicant ultimately falls to governments and is determined by what they deem to be in their interests after considering the risks presented by an applicant. Outsourced due diligence is not meant to replace such judgements or reduce the responsibility of governments."^l

The outsourcing of DD processes has its own risks, if not done carefully and if the DD firm is not monitored to some extent. While DD firms are covered by indemnity insurance, the public blame for accepting the wrong clients will still go to the government and can harm the reputation of its CBI program. Again, while the task of data collection and some or much of the data interpretation may be assigned to independent contractors, the overall risk assessment should remain in the hands of government.

It is unlikely that all risk can ever completely be contractually outsourced at the due diligence level and without any government involvement. Even with a full outsourcing of DD, challenges to both the DD provider and the government by clients as well as other third parties may be expected. Nevertheless, a staged due diligence process, involving both government and reliable agencies, can greatly enhance and in effect create an overall effectively outsourced due diligence process.

Existing DD in Vanuatu

Due diligence (DD) for Vanuatu CBI applicants is carried out largely, but not solely, by the Financial Intelligence Unit (FIU). The process is regulated in part by the Anti-Money laundering Act (AML), 13 of 2014, section 5(1)j which allows the FIU to carry out checks on persons, upon government request.

In terms of *process*, there are currently three stages of DD. The agent is supposed to handle the *first stage* by reviewing the DD related documentation provided by the applicant. It includes copies of valid passports and citizen identity cards, a CV, 1 or more police clearances, and residence permit if residing in a country different from country of origin. If applicants are citizens of restricted countries, they must also provide a written declaration that they have no business in the country and have taken no money from there. Restricted countries include Iran, Iraq, Syria, North Korea, and Yemen.

Some agents do a good job in this area, but some do not or there does not seem to be a systematic process or requirement in place. PRG/VGL, the VCP agent, did report having a compliance team that checks every VCP applicant against available China reporting sites. The efficacy of the agent DD process is an issue to be addressed by the COC and is addressed in the administration section.

The *second stage* in the DD process is carried out by the FIU and includes, among many other things, inquiries into criminal investigations and convictions. For its primary checks, the FIU uses 4 globally reputable data base services: Thompson Reuters, Accuity Solutions, Dow Jones and KYC360. These databases source their information from:

- *Government Sanction lists*- all government sanction lists are constantly monitored and include OFAC, EU terror list, United Nations, Bank of England, and so forth;
- *Enforcement lists* – these include over 300 credible published enforcement, embargo and denied parties lists from around the world including Interpol, security and exchange commissions, State Attorney warnings and Central Bank notices;
- *Credible & diverse media* - content harvested from over 15,000 sources, including digital media, newspapers, periodicals, wikis, blogs, press releases, pod casts and other sources;
- *Public Court records*, geography-specific researches, third party contributors, and client requests.

In addition, the FIU is currently negotiating access to an additional database through 'S-RM', a global risk and intelligence consultancy agency specifically to further strengthen its security checks in compliance with the EU requirements.

Results from the data bases are instant, which speeds up the process. Currently, the policy is to complete all FIU checks within 24 hours. All FIU searches and files are randomly checked by other FIU officers for accuracy, which did occasionally catch the rare errors or omissions.

A specific DD complication is the fact that China does not allow for dual citizenship and therefore, its government cannot officially participate in the DD process. In some cases, China has volunteered information on applicants it knew to be involved in criminal cases, providing information not surfaced in other data bases.

Current databases do include numerous Chinese government law enforcement and judicial listings, including the China Central Commission for Discipline Inspection, China Banking and Insurance Regulatory Commission, China Ministry of Public Security, China Supreme People's Court, China Security Regulatory Commission, China State Administration of Taxation, and more.

If any adverse information is discovered during the second stage, a *third stage* takes place, involving a secondary investigation, using the FIU international network, FACT UK and additional data sources, which may take anywhere from 14 days to 3 months. Secondary checks include follow-up on any adverse information, document verifications, background checks and checks on source of funds.

Currently, the cost for DD is USD 2000 which is paid by the applicant, separate from the other CBI payments. This is far below the industry average of USD 7000. If applicants do not get DD clearance, the application does not proceed. Based on FIU DD checks, 37 applicants were rejected in 2017.

The Vanuatu FIU is a member of the Egmont Group of FIUs^{li}, which “was created to provide FIUs around the world a forum to exchange information confidentially to combat Money-Laundering, the Financing of Terrorism and other predicate offences. As a member, the FIU has access to a platform for securely sharing intelligence and requests, and in turn, can share information with any counterpart FIU around the globe. The Vanuatu FIU is to be commended for its proactive stance in this area which should be continued. For the purpose of promoting Vanuatu’s CBI reputation, sharing its DD practices proactively with the CBI community would also be helpful.

There are a few remaining *issues of concern* regarding due diligence.

The first issue deals with *document verification*. To certify the authenticity of documents, the current process requires that all documents submitted are notarized by a notary public, attorney, registered account, oath officer or other appropriate official. The notarized document must also contain contact information from the notary official involved. The FIU would prefer additional and enhanced verification processes.

The second issue deals with the different DD stages and *the need for in-depth DD*. Currently, FACT UK is only engaged if adverse information is discovered during the first stage. It would be useful for the FIU to engage FACT UK for all applicants, which would also address the concern over documents verification. FACT is the DD company currently engaged in the highly rated Caribbean CBIs programs. While this would slow down the CBI timing and approval process, it would greatly enhance the overall DD.

The FIU also expressed a concern with *staffing*. Even though the FIU staff has been cross trained FIU DD processes, and FIU staff rose from 2 to 14 since 2007, more staff is needed, especially given the tight timeline requirements placed on the process. The planned addition of a new liaison officer will help in this regard.

Going beyond DD, being able to *revoke citizenship* in case of any problems is an important additional tool for CBI countries. In Vanuatu, citizenships can be revoked, following a proper process and in provision with the Citizenship Act and Constitutions. The COC website notes that “due to previous illegal and unreasonable activities by individuals, the current established Commission has revoked around almost 30 citizenships that were granted contrary to the Provisions of the Citizenship Act [Cap 112] and the national Constitution”^{lii}.

However, the Guide to Global Citizenship provided a negative review of Vanuatu, stating:

A more controversial case unfolded in Vanuatu. Here, an economic citizen may be deprived of citizenship within 15 days of that person being sentenced to a term of imprisonment of 10 or more years. Economic citizenship may also be withdrawn where it was obtained by any false representation, fraud, or concealment of a material fact, but the person will only “cease to be a citizen 30 days after such finding.” In July 2019, Vanuatu extradited six Chinese nationals, four of which had received citizenship through its Development Support Programme. Despite the claim that the Ni-Vanuatu citizenship of the extradited individuals had been revoked, allegations were made that the 30-day timeframe had not been respected, and that none of the four citizens were given the opportunity to defend their case in court^{liii}.

Enhancing Due Diligence in the Future

As is evident from the discussion above, the work of the Vanuatu FIU and related agencies is not only fast, it is also thorough and professional, especially in its use of multiple stages and resources, including outside firms and data bases.

In light of the pressure from the EU and other international agencies, and for the protection of both the government and the program's reputation, the review recommends that the FIU enhance its current processes by using FACT UK or another agency to conduct full, independent, second stage checks on all applicants. This additional layer of DD, along with using the S-RM data base, should meet EU requirements.

However, it is important that Vanuatu, the COC and the FIU be transparent about its DD processes. Hence, it is also recommended that the FIU provide a clear, public and transparent narrative of its DD system and processes, to be shared with the EU for feedback and to be shared with the international CBI and FIU communities.

Finally, it is important for the FIU and the COC to keep records along with support documentation, in a manner consistent with the 2019 EU report, specifically providing clear information on how the schemes are run, the number of applications received, how many applications are granted or rejected, and the national origins and names of the applicants.

Recommendation 1: The COC work to meet international due diligence/security standards by:

- Continuing to develop and enhance the current good DD practices on the part of the FIU;
- Adding additional due diligence by carrying out thorough background checks on all applicants, using a reputable, independent 3rd party agency, collaborating with and monitored by the FIU, and focusing on meeting EU DD requirements;
- Having the cost of this be covered by increasing the client DD fee to USD 7000;
- Publishing the COC/FIU best diligence practices regarding its CBI program;
- Ensuring that the COC and FIU keep records consistent with the 2019 EU reporting requirements;
- Continuing to develop ties with the international CBI and CIU community for collaboration and data sharing.

4.2.2 Tax Evasion

CBI and taxation are often associated with each other, especially because many of the countries offering CBI have low taxes. Concerns about the possibility of CBI being used for the purpose of tax evasion have been voiced by both the EU and the OECD.

With regard to tax evasion, the goal of the EU is to improve tax good governance globally, and ensure that EU's international partners respect the same international standards as EU Member States. In order to do this, it publishes an *EU list of non-cooperative tax jurisdictions*, the first of which was put out in December 2017.^{liv} This list is described as part of the EU's work to fight tax evasion and avoidance, aiming to create a stronger deterrent for countries that consistently refuse to play fair on tax matters and create a clearer and fairer environment for businesses and third countries^{lv}

The EU listing criteria include:^{lvi}

- *Transparency:* The country should comply with international standards on automatic exchange of information and information exchange on request. It should also have ratified the OECD's multilateral convention or signed bilateral agreements with all Member States, to facilitate this information exchange;

- *Fair Tax Competition*: The country should not have harmful tax regimes, which go against the principles of the EU's Code of Conduct or OECD's *Forum on Harmful Tax Practices*. Those that choose to have no or zero-rate corporate taxation should ensure that this does not encourage artificial offshore structures without real economic activity;
- *BEPS*: The country must have committed to implement the OECD's Base Erosion and Profit Shifting (BEPS) minimum standards^{lvii}.

The November 2019 EU list identifies the following countries as those that refused to engage with the EU or to address tax good governance shortcomings:

- *no commitment to address EU concerns*: American Samoa, Guam, Samoa, US Virgin Islands;
- *did not deliver on time*: Fiji, Oman and Vanuatu^{lviii}
- *major transparency concerns*: Trinidad and Tobago

The *OECD* first voiced its concern regarding CBI and residency schemes and taxes in 2018, asking “whether an economic citizen or resident could abuse that status to circumvent the Common Reporting Standard (CRS) , a system used by multiple jurisdictions to ensure the correct sharing of tax information”^{lix}.

Its subsequent report^{lx} concluded that CBI and RBI schemes can be potentially misused by hiding assets offshore, in order to escape reporting under the OECD/G20 Common Reporting Standard (CRS). Specific concerns included the following:

- Identity Cards and other documentation obtained through CBI/RBI schemes can potentially be misused to misrepresent an individual’s jurisdiction(s) of tax residence and to endanger the proper operation of the CRS due diligence procedures;
- Potentially high-risk CBI/RBI schemes are those that give access to a low personal income tax rate on offshore financial assets and do not require an individual to spend a significant amount of time in the location offering the scheme.

The OECD has analyzed over 100 CBI/RBI schemes, offered by CRS-committed jurisdictions and produced a blacklist of 21 CBI/RBI countries, including Vanuatu. It specifically identified the following Vanuatu schemes as potentially posing a high-risk to the integrity of CRS: *DSP, Self-Funded Visa, Landowner Visa, and Investor Visa*

It mentions that CBI/RBI schemes can be misused to undermine the CRS due diligence procedures. This may lead to inaccurate or incomplete reporting under the CRS, in particular when not all jurisdictions of tax residence are disclosed to the Financial Institution:

“Such a scenario could arise where an individual does not actually or not only resides in the CBI/RBI jurisdiction, but claims to be resident for tax purposes only in such jurisdiction, and provides his Financial Institution with supporting documentation issued under the CBI/RBI scheme, for example a certificate of residence, ID card or passport”^{lxi}.

The OECD requires financial Institutions to take the outcome of the OECD's analysis of high-risk CBI/RBI schemes into account when performing their CRS due diligence obligations. It also notes that Financial Institutions should not rely on “self-certification or Documentary Evidence (Section VII of the CRS), if they have reason to believe, that such provided information is incorrect, or unreliable. All relevant information should be used, including the findings of the OECD’s CBI/RBI risk analysis in making such determinations”^{lxii}.

“Potentially high-risk for these purposes are those that give a taxpayer access to a low personal income tax rate of less than 10% on offshore financial assets and do not require significant physical presence of at least 90 days in the jurisdiction offering the CBI/RBI scheme. This is based on the premise that most individuals seeking to circumvent the CRS via CBI/RBI schemes will wish to avoid income tax on their offshore financial assets in the

CBI/RBI jurisdiction and would not be willing to fundamentally change their lifestyle by leaving their original jurisdiction of residence and relocating to the CBI/RBI jurisdiction. Where CBI/RBI schemes meet both criteria, but the residence documentation provided to successful applicants is clearly identified as issued under the respective CBI/RBI scheme, only such specific residence documentation should be perceived as potentially high-risk in the context of the CRS due diligence procedures...^{lxiii}.

The OECD also recommends that banks and financial institutions ask account holders:

- Did you obtain residence rights under an CBI/RBI scheme?
- Do you hold residence rights in any other jurisdiction(s)?
- Have you spent more than 90 days in any other jurisdiction(s) during the previous year?
- In which jurisdiction(s) have you filed personal income tax returns during the previous year?

The CBI industry itself does not necessarily considers CBI programs as problematic from a tax evasion perspective. The *Guide to Global Citizenship* refers to a 2019 report by Ernst and Young, entitled *Tax residency beyond citizenship*, that argued that tax residency, not citizenship, is the key factor in determining tax liability, and that the rules for tax residency are clearly spelled out, i.e. requiring a person to be present in the country at least 6 months each year, have a permanent home there, or have the country as the centre of his or her vital interests^{lxiv}.

Recommendation 2: The Vanuatu government work to enhance Vanuatu's international reputation by taking steps to remove Vanuatu from the EU non-cooperative and other grey/black list by:

- meeting all specified anti- tax evasion and AML requirements;
- ensuring that proper reporting is provided to the relevant international institutions on all CBI citizens, including proper information for tax residency and tax liability purposes and enhanced due diligence regarding CRS and related documentation.

4.2.3 Integrity of the Vanuatu Identity Documents

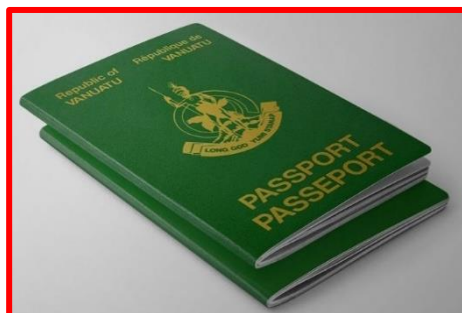
According to the International Civil Aviation Organisation (ICAO), all identity documents used at ports of entries must meet specific security requirement, including the followings:

- The document itself must contain effective security features to prevent fraudulent reproduction;
- The document must meet the international machine-readable standard of travel documents;
- All information included in the document must meet the international requirements;
- Document processing must be secure so that the document cannot be obtained fraudulently;
- The document handling process must also be secure to avoid identity fraud and unlawful possession of travel and identity documents.

Currently the Vanuatu passport has many security features that meet the international requirements. Its processing system and mechanism are also in compliance with the international requirements.

However, there is a problem that may affect or is currently affecting the integrity of the passport system and processes. The issuance of passport to non-indigenous people requires more careful checks at the ports of entries, which could mean a longer process to cross the international borders for all Vanuatu citizens.

To address this situation proactively, VIS and the Department of Foreign Affairs would need to send samples of Vanuatu passports to all countries frequented by Ni-Van travellers and inform foreign border agencies of the new citizens and their legal possession of Vanuatu passports.



The preferable, long-term solution is to issue Vanuatu e-passports, a goal which is already part of the Immigration's strategic plan. This will facilitate smooth and instant due diligence checks at ports of entries. It will also allow the border controls to stay on alert by providing automatic connection between the entry and exit points. Vanuatu would be the first Melanesian country to join the e-passport system.

Additional concerns are that the citizenship certificate has no security features on it so it is easy to reproduce as are birth certificates. The Vanuatu identity card has only basic security features and can also be reproduced fraudulently. In light of this, the recommendations listed in section 6.2 on enhanced data sharing between government offices become all the more important.

Recommendation 3: Enhance the integrity of Vanuatu identity documents by:

- Making Vanuatu passports part of the international e-passport system;
- Instituting security features or data checks on the citizenship certificate.

4.2.4 CBI Industry Program Ratings

CBI programs around the world are regularly evaluated by the CBI industry in terms of attractiveness to potential clients. Looking at these ratings provides useful information about the market value of Vanuatu's CBI program and possible avenues to improve it.

One indicator is the *Quality of Nationality Index* (QNI). It measures both the internal value of nationality, rating to the quality of life and opportunities for personal growth within the country of origin, and the external value of nationality, rating the diversity and quality of opportunities that this nationality allows one to pursue outside the country^{lxv}. Factors include economic strength, peace and stability, human development, diversity of settlement, freedom of settlement, diversity of travel freedom, and value of travel freedom. As of 2018, Vanuatu ranks #78 out of 157 on the QNI, with additional points for the external value of nationality, freedom of settlement, and travel freedom^{lxvi}.

The *Henley Passport Index* ranks the value of passports on the number of countries the passport holder can access, without requiring a prior visa, based on International Air Transport Association (IATA) data. On this index, Vanuatu ranks 42 out of 107. It lists Antigua and Barbuda, Austria, Cyprus, Malta, Moldova, Montenegro, and St. Nevis and Kitts as the most successful and credible residence and citizenship programs. However, a number of those are under severe scrutiny right now and at least one is currently suspended.

By far the most comprehensive evaluation of CBI programs is provided in *A Guide to Global Citizenship: The 2019 CBI Index*. The 2019 CBI Index assesses the CBI of 13 countries: Antigua and Barbuda, Austria, Bulgaria, Cambodia, Cyprus, Dominica, Grenada, Jordan, Malta, St Kitts and Nevis, St Lucia, Turkey, and Vanuatu.

The CBI provides both an overall score and detailed scores. In terms of *overall ranking*, the top 3 countries for 2019 were Dominica, St. Kitts and Nevis and Grenada. Vanuatu was ranked # 6 out of 13, making it the best performing program outside of the Caribbean.

The *detailed scores* for the CBI programs are based on 7 pillars, with scores on each pillar ranges from a low of 1 to a high of 10:

1. Freedom of Movement
2. Standard of Living
3. Minimum Investment Outlay
4. Mandatory Travel or Residence
5. Citizenship Timeline
6. Ease of Processing
7. Due Diligence

The first pillar, *Freedom of Movement*, “measures a passport’s relative strength by the number of destinations to which it allows travel without restriction, and by the amount of prime business hubs to which it provides access”. Austria and Malta were rated highest with a score of 10, followed by Bulgaria and Cyprus at 9. Vanuatu had a rating of 7. Visa-free access to the EU is a definite plus for Vanuatu, but lack of such access to the USA is a minus.

The second pillar, *Standard of Living*, “is a measure of the quality of life offered by the 13 citizenship by investment jurisdictions under assessment”. It uses the country’s GDP, its rating on the UN Human Development Index (HDI) for life expectancy, education, security, and income, and ratings on sources like the Freedom House’s Freedom in the World Index to assess the country’s ability to promote freedom, and protect civil liberties and political rights. Austria and Malta received scores of 9 here, Cyprus was rated 8 and all other countries had scores between 7 and 5, with Vanuatu receiving a rating of 6.

The third pillar, *Minimum Investment Outlay*, rates the program on the amount of capital investment required under the program, not counting fees. Dominica and St. Lucia received a rating of 10 based on their program price of USD 100,000, and Antigua and Barbuda, Grenada, St. Kitts and Nevis, and Nevis were rated at 9 based on their price of USD 150,000. Vanuatu’s rating was based on the USD 130,000 price and was also rated at 9. It should be noted that the fees for many of the other countries were much higher. Antigua for instance charges USD 25,000 for processing and USD 7,000 for DD. Malta charges what is calls a professional fee of EUR 70,000. Similarly, Montenegro, which was not rated by CBI, charges USD 15,000 in application fees.

Pillar four, *Mandatory Travel or Residence*, looks at the travel or residence requirements both before and after the granting of full citizenship. Dominica, Grenada, and Jordan received a score of 10 on this pillar. Vanuatu received a score of 8, based on the mandated attendance at an oath signing ceremony, which can be in Dubai, Hong Kong, or Singapore.

Pillar five, *Citizenship Timeline* rates programs on the average amount of time it takes for citizenship to be secured by the applicant, with the highest ratings given to the programs with the shortest turnaround times. Here, Dominica, St. Kitts and Nevis, and Vanuatu were given a perfect score of 10.

The sixth pillar is *Ease of Processing* which assesses the end-to-end complexity of the CBI application process and the extent to which the process is streamlined and clear. It also measures factors such as whether or not previous business experience, language fluency, or knowledge of local history or culture are required. In this area, only Dominica received a score of 10. Antigua and Barbuda, St. Kitts and Nevis, Grenada, St. Lucia and Vanuatu received scores of 9.

The seventh and last pillar, *Due Diligence*, evaluates program integrity, focusing on the country’s ability to effectively perform internal and external due diligence checks, collect police certificates, biometric data, and evidence on the applicant’s source of funds. The greater a country’s ability to

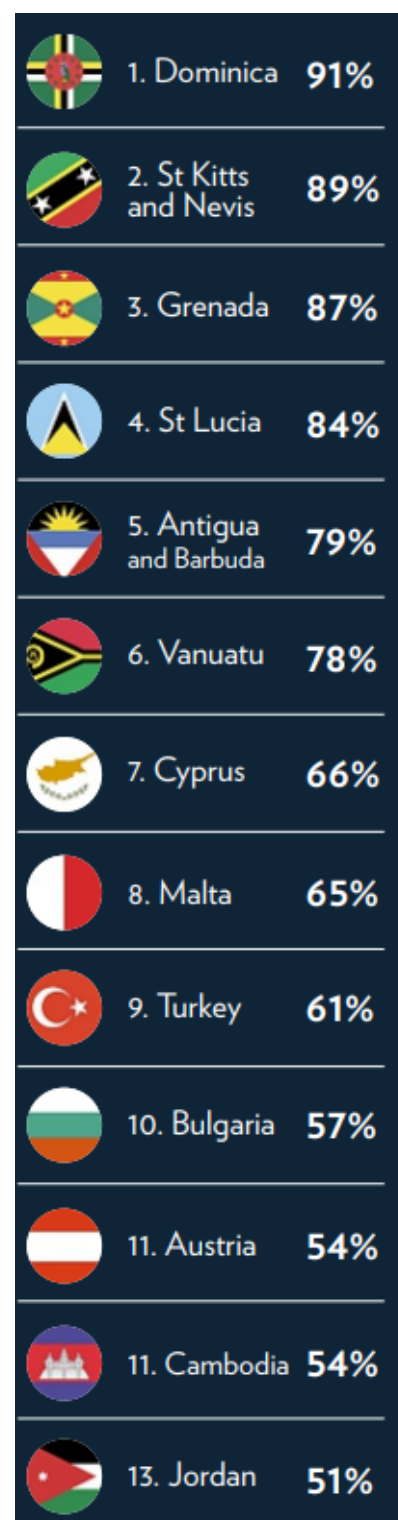


Figure 6: CBI Index Overall Country Ratings

perform applicant background checks, the higher the score. Dominica, Malta, and St. Kitts and Nevis had scores of 10 in this area. Effective authenticating of source of funds, strict requirements for documentary evidence and the employment of independent due diligence providers were listed as key factors in attaining this rating. Vanuatu had a score of 6. Pillar 2 and pillar 7 were the only areas where Vanuatu scored low.

The chart below, taken from the CBI Index, summarizes the overall and detailed ratings for all countries included in the 2019 index. Three action steps for the COC to consider in terms of Vanuatu's future CBI ratings – covered by recommendations elsewhere in this review- are:

- Protecting its EU visa agreement by implementing enhanced DD procedures;
- Addressing rights of process in the case of evoking citizenships;
- Reviewing the cost of the program, especially in terms of base amount and fees.

THE CBI INDEX									
Country	SEVEN PILLARS							FINAL RESULTS	
	Freedom of Movement	Standard of Living	Min Inv Outlay	Mandatory Trv/Res	Citizenship Timeline	Ease of Processing	Due Diligence	Total Points (70)*	%
Antigua and Barbuda	8	7	9	7	6	9	9	55	79
Austria	10	9	1	8	2	4	4	38	54
Bulgaria	9	7	5	7	1	4	7	40	57
Cambodia	1	5	8	8	8	4	4	38	54
Cyprus	9	8	2	7	6	7	7	46	66
Dominica	7	6	10	10	10	10	10	63	91
Grenada	8	7	9	10	8	9	10	61	87
Jordan	1	5	3	10	9	5	2	36	51
Malta	10	9	4	2	3	8	10	46	65
St Kitts and Nevis	8	6	9	10	10	9	10	62	89
St Lucia	8	6	10	10	9	9	7	59	84
Turkey	4	6	8	8	6	6	4	43	61
Vanuatu	7	6	9	8	10	9	6	54	78

4.3. Domestic Program Perceptions

The *internal perception* of the CBI program must be understood within both the economic and the socio-political context of Vanuatu. Economically, Vanuatu is a relatively resource poor and developing country, as of yet without a sustainable government tax base and heavily dependent on external aid. Seen within that light, the contributions of the CBI program are considerable and, for better or worse, are currently calculated into the budget. As noted earlier though, the CBI funds are carefully tracked and spent in accordance with the VNSDP.

Socio-politically, Vanuatu is a young country and for many people, the struggle for independence is still very much alive in their memories. From that point of view, giving citizenship to outsiders is often associated with giving away national identity, even if it results in significant social contributions. This has been the basis for intensifying public criticism over the past year. It is useful to remember that Vanuatu was rather closed to outsiders for the first twenty some years after independence, and it only allowed dual citizenship for both Ni-Vanuatu and others since 2014.

These issues must also be understood within the light of globalization, and the threats that are felt by many small and developing countries around the world on their culture, their identity, and their independence. It is important therefore that this or any other programs involving naturalisation and citizenship are understood and accepted by the citizenry, and promote due respect of Vanuatu culture and identity.

With regard to the CBI program, a key factor is whether or not people are *fully informed* about what the program is, how it functions, and what it contributes. In Vanuatu, we see three different groups of people with very different sets of perceptions and positions on the program, which has led to much social and political contention. These include those in support of the program, those opposed to the program, and the general public.

4.3.1 Support for the program

The people in support of CBI are mostly those that are familiar with the program and that are often driving, facilitating or accommodating the program, such as officers in Government departments and the private agents.

For this group, the program seems to be working very well as it brings in sufficient funds to assist the Government in meeting its development priorities and providing the ability to pay off its debts and loans. For the agents, it also provides a good source of income.

Still, there are three main concerns among this group. The first is *how to sustain the program, without relying on the funds long term*. It is fully understood that the program will not and cannot function long term, and hence, careful fund management and keeping the funds separate from overall government operation has been a key priority. Minister Napaut for instance said that “Through this program, Vanuatu was able to rebuild, rehabilitate and improve its economy to a stage where we did not suffer the severe negative impacts of the devastated cyclone Pam but at least we kept our economy going, public servants continue to receive salaries, the government continues to provide services to the people and run the nation’s affairs with the help of development partners. ... Now that we have built a good reserve in our budget, it is timely we should review the program in light of the reactions of the people, the weaknesses and issues that are coming out as a result of this program, national security concerns, do a wider consultation then decide on the future of the citizenship program”^{lxvii}.



The second concern is how to *safeguard Vanuatu’s reputation* through making improvements in such areas as security and due diligence. Minister of Foreign Affairs, Mr. Regenvanu said that the government was not happy with the level of due diligence on applicants or the structure, which prompted the current program review: “We are getting some negative implications as a result of the lack of due diligence on applicants to get citizenships, which is affecting our bilateral relations with other countries,” further noting that Vanuatu would “stop some [Programme] aspects” and make “other aspects better”^{lxviii}. Similarly, Jonathan Pryke, director of the Pacific programme at the Lowy institute, noted “Vanuatu passports are appealing, they’re relatively cheap and have no requirement for a minimum amount of time or investment in the country itself, just a cash payment... The challenge is oversight and regulation; just who exactly is getting these passports?”^{lxix}

The third concern is how to *promote new citizens making investments in the country*. Vanuatu's Parliamentary Committee on Economic Policies wants assurances that foreigners who buy passports will invest in the country. The *Daily Post* on June of 2019 reported that while there has been a surge in passport sales, there has apparently been no substantial increase in the numbers of Chinese visitors in the past two years. Committee co-chair and MP Kalo Seule said that, as Vanuatu is selling passports to foreigners with no interest in investing in Vanuatu, “it must include policies that will cause these people to do so”, noting that even if the new citizens do not want to reside in Vanuatu, they have a duty to invest to create jobs for locals^{lxx}.

4.3.2 *Opposition to the program*

The people opposed to the program often have some information about it by virtue of their official capacity in government, public media or other areas, but do not agree with the basic concept of selling Vanuatu citizenship and passports. This group perceives CBI as a very real *threat to the country's sovereignty* and they are very concerned about the country remembering the struggle to reach independence. For instance, the first president of Vanuatu, Ati George Sokomanu, said that "(t)he sale of Vanuatu passports to foreigners means the country's struggle for independence was worth nothing". Mr. Sokomanu called on the government to find other means of generating income, to stop passport sales and to move away from being a tax haven^{lxxi}.

Similarly, Mr. Korman of the Vanuatu First party and former prime minister in the 1990s^{lxxii}, said "Our independence and identity as Ni-Vanuatu is not for sale to foreigners and we cannot afford to run an expensive government by allowing such positions as Parliamentary Secretaries and such other positions just to hold on to power". Veteran politician, Shem Rarua, said: "The passport is our identity, it is our land, it is our physical existence as the people of Vanuatu on this planet. If the current government cannot find other ways or means of revenue sources, then it means it does not have the ability to run the country and therefore should step down." He further called on all 52 Members of Parliament (MPs) to question themselves, "is it right to sell my own identity as a Ni-Vanuatu, to a foreigner?"^{lxxiii} Others have gone as far as calling the CBI program a form of prostitution.

President Moses Obed Tallis has spoken out against what he calls "the sale of passports", saying it undermines the unity and freedom envisioned by the country's founders, and that people are becoming stateless in their own land. The *Daily Post* quotes the Presidents as saying that "records showed that since June 2019, 4000 passports have been sold under the Citizenship Program to foreigners who have no interest to invest in Vanuatu, thus diminishing our economic development and destroying the very status that has been given to our people by the framers of the Constitution".^{lxxiv}

In response to this and other speeches by the President, Prime Minister Salwai noted that "It would be good for him to start at the beginning of the program when there was an amendment to the Constitution to allow Dual Citizenship with the first program dubbed CIIP (Capital Investment Immigration Plan), which some members of this House were part of and made millions from it and until today, we are still trying to locate some of these funds".^{lxxv} PM Salwai also noted that "when this program was created, we took into account our fundamental rights as indigenous citizens enshrined in the Constitution."

The other fear coming from this group is about inviting *foreigners involving themselves in Vanuatu politics and contesting Vanuatu elections*. Even though CBI citizens do not have political rights, intervention and influence on Vanuatu politics is often listed as a main concern.

For example, the President of the Malvatumauri of Chief Willie Grey Plasua was reported as saying he understood the government needed to generate revenue to provide services to the people of Vanuatu. But he said that doesn't mean it has to sell the national identity. Mr. Plasua said many ni-Vanuatu had voiced concerns and the chiefs stand with them. He said the programme must be stopped before honorary Vanuatu citizens number in the tens-of-thousands and start to make a political impact in the country^{lxxvi}.

4.3.3 *The general public*

Many people in the general public know little to nothing about the actual program. They would probably like to learn more about it, but did not or could not find accurate and full information. Instead, they often rely on what is appears in the newspaper or on social media and what they hear from conversations happening on the street. They may go along with whatever information and opinions they get from these sources, which are often incomplete and conflicting.

For example, the Campaign for Justice said it conducted an investigation into the CBI at the request of the Ombudsman and under the Leadership. It reported, among other things that “(t)here is no transparency and accountability. The government has the responsibility to explain this to the people”^{lxxvii}. Also, as part of a widely distributed BBC radio and print report, community leaders like Anne Pakoa were quoted as saying that local communities aren't seeing the money from the passport sales, despite promises that the scheme would rebuild infrastructure and homes after the devastating Cyclone Pam in 2015.^{lxxviii} No government officials had been made available in the construction of the BBC report.

Concerns about losing identity, undue influence on politics, and general fears about foreign influence on the culture and the economy are spreading into the roots of the community and are being connected to the CBI program. They are further aggravated by a general mistrust of government and a fear or perhaps an expectation of corruption.

4.3.4 *China, and its relation to Vanuatu and the CBI program*

Fears of China, and negative perceptions of Chinese citizens are a particular, often voiced issue, which is all the more important given that most CBI citizens come from mainland China. Some have argued that the people's negative perceptions of China have been fueled by other external influences, in particular, the concerns from Australia and New Zealand and others about growing Chinese influence in the Pacific. Since 2011, Beijing has provided substantial development aid for Vanuatu infrastructure and other development projects, including roads, Korman stadium, the Convention Centre, and school buildings such as Malapoa Teachers College and others. Chinese universities have also developed Pacific language programmes and offered many scholarships to Pacific students to boost educational links^{lxxix}.

Beijing's Pacific push has persuaded six of the region's island nations to switch their diplomatic allegiance away from Taiwan towards Beijing since 2016. Most of the tiny island nations have populations of fewer than 1m people — just 300,000 people live in Vanuatu — but each has a vote at the UN and controls strategic shipping lanes in Pacific waters.

In an interview with the *Financial Times*, Foreign Minister Regenvanu said that, because of its limited economic clout, Vanuatu had no choice but to use its votes strategically in international organisations such as the UN. He said: “We're experiencing a surge in Chinese interest in Vanuatu and investment in Vanuatu compared to, for example, Australia, a traditional partner.” He rejected Western concerns that Beijing held too much sway in the region, (saying that) ‘the important thing is we make sure that our laws that we develop for our benefit are enforced across the board. It doesn't matter who you are’^{lxxx}.

A particular perception often voiced is that Chinese investors operating in Vanuatu contribute little to the Vanuatu economy and are not abiding by Vanuatu labor laws. The Commission of Labour expressed concerns, first, about the enforcement of the localization policy which she said needed to be based on the percentage of indigenous employees, not those holding citizenship. A recent VIPA compliance inspection of Chinese businesses in Port Vila showed no violations, but the Commissioner suggested that compliance efforts must be strengthened. The second concern was the need to clarify policies about the reserved work and the reserved businesses list, since some new CBI citizens may be working in one or both^{lxxxi}. The third concern was about reported ill treatment of employees by Chinese businesses, another compliance issue to be addressed by the Department of Labour. A related concern sometimes voiced is that Chinese businesses compete with business opportunities for Ni-Vans.

Clearly, the broader issue of Chinese or other external influence on Vanuatu is beyond the scope of this review, but the last part does address various ways to reframe and restructure meaningful investment and relations between immigrants and Ni-Vanuatu to better meet Vanuatu needs.

4.3.5 Need for Education Campaign and Reform

Given the important and legitimate concerns about the CBI program of both external and internal stakeholders, it is essential that the government provide a clear, transparent, honest, and understandable narrative on what the program is, how it functions, and how it contributes to the overall well-being of the country. Also, given the significant amount of revenue generated by this program, the Citizenship Office and Commission must give the highest priority to addressing questions regarding suspected abuse, misuse, and mismanagement of funds by government officials. Not addressing these issues effectively can cause both confusion, and unnecessary discord among stakeholders. A first attempt at this has been made by the COC's participation in a Talk-Back show in December and various Daily Post interviews of government officials.

In light of this, it would be good if the COC, with the support from other government offices, would launch a citizen education campaign, including press releases, public interviews, and information sharing meetings to clarify the current state of the CBI program, and respond to specific concerns. It is hoped that the current review can be shared as part of that process. It is especially important to share clear information about revenue and spending, and the alternative of taxation as a replacement revenue source. This is also an opportunity for the government to share a pro-active and progressive plan to address issues in the short term and manage long term foreign investment and migration in Vanuatu.

To do this, it would be useful if the COC enhanced its capacity in the public relations area, making effective and pro-active use of media to present a n effective CBI program narrative to important stakeholders and key decisionmakers such as Malvatumauri, and the general public regarding issues of development and national sovereignty.

Furthermore, in a later section of this review, an alternative approach is suggested that is based on nationality rather than citizenship, combined with a path to citizenship based on developing solid relations with the community and contributions made to the country. This was developed in part to address the domestic concerns about the "selling of citizenship", but also to propose a different, phased model of citizenship that promotes ongoing and meaningful investment in the country, and the development of strong links between investors and communities.

Finally, it is important to address questions regarding Chinese applicants. Working with Tourism and VIPA, it will be useful to publicize some of the success stories of Chinese visitors and investors. Working with the Commissioner of Labour, the concerns voiced about encroachment into areas reserved for Ni-Vanuatu citizens and alleged employment violations can and must be addressed. This will be discussed further in the next section on legal issues and clarifications.

Working together with the Foreign Ministry, it is also important to reassure the concerns of regional powers regarding Chinese interest in Vanuatu investment opportunities. Lastly, expanding the scope of the planned National Audit Office performance audit of the passport office to include the CBI programs – or alternatively, schedule a separate performance audit of the CBI programs-will further strengthen and demonstrate government transparency and accountability.

Recommendation 4: The COC, along with support from other government offices, work to build domestic support for the program by providing a coherent explanation of the CBI program, ideally through a thorough and professional education campaign, and incorporating results of the review.

5. Legal Review and Recommendations

The following laws have been referred to in the following legal review:

1. *Constitution of Vanuatu*
2. *Citizenship Act, Amendments Regulations and Orders*
3. *Citizenship (Entitled Persons) Act*
4. *Regulations and Orders made under the Citizenship Act*
5. *Immigration Act, Regulations and Orders*
6. *Passports Act*
7. *Civil Status Act*
8. *Vanuatu Investment Promotion Authority Act*^{lxxxii}
9. *Labour (Work Permits) Act*
10. *Freehold Titles Act*

The legal review summarises the legal framework around Vanuatu's CBI programs, and analyses gaps to make recommendations on issues raised during stakeholder consultations. This section is divided into three main issues: 1) the clarity of the legal framework; 2) the categories of citizenship and their corresponding rights and privileges; and 3) the process for revoking citizenship.

The first section discusses the large number of amendments made to the *Citizenship Act*, and its regulations and orders, which have created multiple CBI programs and categories of citizenship, and which are not easily identifiable due to the complexity of the framework.

The second section discusses the different categories of citizenship. The introduction of different rights and privileges for citizens that are not indigenous or naturalized, has removed the political rights to hold public office, vote, and contest from investor citizens, but also from other categories of citizens that are neither indigenous or naturalized, nor investor citizens. Due to the provisions relating to restrictions on political rights applying only to dual citizenship holders (that are not indigenous or naturalized citizens), they allow all categories of citizenship, including investor citizens to obtain these rights if they renounce or lose their original citizenship.

The CBI programs that are currently active have almost identical legal frameworks, including fees, processes and rights accompanying citizenship. However, there appears to be duplication of programs to facilitate multiple agent contracts, including those for persons that are exceptionally not Vanuatu citizens.

Finally, the processes for the deprivation of citizenship, the subsequent deportation of persons that have lost their citizenship and security issues relating to name changes are contained in 4 different legal instruments. They are clarified in the third section for consideration.

5.2 Clarity of the legal framework

The legal framework relating to citizenship has been changed significantly since the introduction of 'investor citizenship'. Complete and consolidated records of the relevant laws, regulations and orders are not readily accessible online due to there being few updated consolidated versions of the relevant Acts and large numbers of regulations and orders not publicly available online via PacLII. There have been 6 or more amendments to the *Citizenship Act* since it was last consolidated and over 60 regulations or amendments to regulations.

There have been 4 different CBI programs (5 if the Honorary DSP program is distinguished from the DSP program) with additional options within the programs established under the *Citizenship Act*. Multiple amendments to each of the CBI programs have resulted in different rights and privileges, fees, processes and possibly agent commissions being applicable to different investor citizens, dependent on when they applied, sometimes for timeframes only spanning months. There are also some inconsistencies arising from the many amendments, detailed in the next subsection.

Recommendation 5: The COC and State Law Office to enhance the transparency of the current CBI legal framework by:

- Publishing official consolidated editions of the *Constitution*, *Citizenship Act* and *Immigration Act*; and
- Updating the COC website with current acts and regulations

5.3 Categories of citizenship and their corresponding rights and privileges

The amendments to the *Constitution* and *Citizenship Act* in relation to dual citizenship referring to ‘indigenous and naturalized citizens’ create new categories of citizenship with some ambiguity around the rights and privileges accompanying each of these categories.

All fundamental rights and freedoms under Article 5 of the *Constitution* can be limited by law for non-citizens and holders of dual citizenship who are not indigenous or naturalized citizens.^{lxxxiii} Political rights to vote, hold public office, contest and affiliate with any political parties are also prohibited to any dual citizenship holders that are not indigenous or naturalized citizens.^{lxxxiv}

The terms ‘*indigenous and naturalized citizens*’ were presumably used to distinguish those citizens from investor and honorary citizens. However, they are yet to be given a clear definition within the context of citizenship.

Without these definitions, other categories of citizenship are potentially being excluded from these rights, including persons with ni-Vanuatu ancestry who are not indigenous, descendants of naturalized citizens and persons that have gained citizenship through marriage or adoption. Additionally, these rights and privileges can only be excluded if the citizen holds dual-citizenship. If an investor citizen were to renounce or lose their other citizenship, they would no longer fall under the exceptions.

The key issues relevant to categories of citizenship and rights and privileges include the following:

- The terms “indigenous” and “naturalized” citizens are not defined, creating ambiguity
- There is a lack of clarity regarding the rights of various categories of citizens
- It is not clear whether all categories of CBI citizens are entitled to Vanuatu residency, with the exception of investor citizens that have come through the CIIP Real Estate Option, that have not only residency rights, subject to renewal after 10 years, but also full citizenship rights, equivalent to those of ‘native-born citizens’.
- The current wording of the *VIPA Act* and *Labour (Work Permit) Act* enables any citizen, regardless of their category of citizenship to apply for work and hold business licenses in reserved activities and employment. However, some investor citizens are still required to pay VIPA fees.

5.3.1 Categories of Citizenship

The *Constitution of Vanuatu* provides for different categories of citizenship. At the time of independence, any person with 4 indigenous grandparents, or with ni-Vanuatu ancestry and no other citizenship or nationality, automatically became a citizen of Vanuatu.^{lxxxv} Anyone born after independence is also a citizen of Vanuatu if one of their parents is a citizen of Vanuatu.^{lxxxvi}

Since the recognition of dual citizenship in Vanuatu,^{lxxxvii} any person with ni-Vanuatu ancestry has the entitlement to apply for citizenship regardless of other nationality or citizenship.^{lxxxviii}

The remaining provisions within the *Constitution* provide for the recognition of naturalized citizens,^{lxxxix} give Parliament powers to make further provisions for the acquisition of citizenship,^{xc} and as mentioned above, recognize dual-citizenship.^{xci}

The *Citizenship Act* and other Acts provide further details creating different rights and privileges for different categories. Below are the findings and gaps identified within 5 broad categories listed in descending order based on the level of rights and privileges: 1) indigenous; 2) naturalized; 3) non-indigenous ni-Vanuatu citizens and citizens through marriage and adoption; 4) investor citizens; 5) honorary citizens

Indigenous ni-Vanuatu citizens

Automatic citizens, those entitled to citizenship through ancestry, and their children born after independence, are presumably indigenous citizens.^{xcii} Indigenous citizens are entitled to dual citizenship without any restrictions on political rights, as well as the entire suite of rights and privileges available in Vanuatu, including land ownership rights, subject to customary rules relating to land ownership.^{xciii}

The legal framework does not define who qualifies as an indigenous citizen, though multiple rights are conferred on, or privileges reserved for, indigenous citizens. The only express definition of an 'indigenous citizen' is found in the *Freehold Titles Act*, which does not specifically deal with citizenship. It defines an indigenous citizen as '*a person who is a citizen of Vanuatu who himself has or had, or has or had at least one parent or earlier predecessor who has or had, four grandparents who belong or belonged to a tribe or community which was living in Vanuatu prior to the year 1800*'.

Without a clear definition of who qualifies as an indigenous citizen, the following gaps arise:

- Article 9 *Constitution*: Article 9(a) refers to persons with 4 grandparents who belong to a tribe or community 'indigenous' to Vanuatu. Article 9(b) refers to a person of 'ni-Vanuatu ancestry' who is stateless. Article 10 then refers again to a person of 'ni-Vanuatu' ancestry having entitlement to citizenship. It is not required that the ancestry be indigenous and persons without any indigenous ancestry have gained citizenship through this provision.^{xcv}

The term 'ni-Vanuatu' in Articles 9(b) and 10 in place of the term 'indigenous' used in Article 9(a) suggests this interpretation is possible. This would result in the rights under Articles 5 and 13 (restricted to indigenous and naturalized citizens) not extending to citizenship based on non-indigenous ni-Vanuatu ancestry as they would not fall within the intended meaning of indigenous citizens nor naturalized citizens.

Naturalised citizens

Naturalised citizens under Article 12 of the *Constitution*, further detailed in Section 12 of the *Citizenship Act*, have the same rights as indigenous citizens, except for land ownership rights,^{xcvi} and can only gain rights to natural resources on customary land,^{xcvii} and indigenous intellectual property, traditional knowledge and cultural expression^{xcviii} with consent from the indigenous owners.

Naturalised citizens with dual citizenship have the full protection of fundamental rights and freedoms under Article 5 of the *Constitution*, as well as political rights under Article 13 of the *Constitution* and are therefore entitled to vote, contest for elections and hold public offices. Naturalised citizens are also entitled to run businesses and hold employment in reserved activities under the *Labour (Work Permits) Act*, however, this is the case with all citizens. Both the *Labour (Work Permit) Act* and the *Vanuatu Investment Promotion Authority Act*, only place restrictions on non-citizens carrying out reserved activities. Once a person becomes a citizen of Vanuatu, regardless of category of citizenship, these restrictions no longer apply.^{xcix}

In order to become a naturalized citizen, applicants must have resided in Vanuatu continuously for 10 years, and meet the most extensive requirements out of all the citizenship categories^{c, ci}. Article 12 of the *Constitution* falls under the heading 'Naturalisation', and allows Parliament to prescribe 'further conditions' of the eligibility to apply for naturalisation. The terms used here 'further conditions' implies that this section, and category of naturalization, is limited to persons that have 'continuously lived in Vanuatu for at least 10 years.'^{cii}

The descendants of naturalised citizens, who are entitled to citizenship under Article 11 of the *Constitution*, are no longer classified as naturalized citizens, but are also not indigenous citizens. However, under the current legal framework, they are not entitled to the same rights as naturalised or indigenous citizens. See point below for further detail.

Non-indigenous ni-Vanuatu citizens and citizens through marriage and adoption

These categories of citizenship exist within the legal framework but their rights and privileges are not clearly defined. Below are some of the gaps identified:

- *Non-indigenous ni-Vanuatu citizens:* Article 11 of the *Constitution* states that persons born after independence to a citizen of Vanuatu become a citizen of Vanuatu. It does not refer to any categories of citizenship making it uncertain as to whether that person, born to a citizen, if not indigenous, would fall under the category of a 'naturalised' citizen or if they fall into a separate category of non-indigenous ni-Vanuatu citizens. Without clarification of this, they could potentially be excluded from the protection of fundamental rights and freedoms and are excluded from voting, contesting and holding public office.^{ciii}
- *Citizens through marriage:* It is not clear whether this category of citizenship has been created under Parliament's rights to 'prescribe further conditions of the eligibility to apply for 'naturalisation' under Article 12 of the *Constitution*, or Article 14 'Further provision for citizenship', which makes no reference to 'naturalisation'. It may be logical to assume that persons gaining citizenship through marriage, and adoption (below) are a form of naturalized citizenship, however, if this reading was given, then naturalization may also extend to some investor citizens.

This interpretation may be further supported when read together with the *Citizenship Act*. Part 3 is titled, 'Citizenship by Adoption and Naturalisation'. Section 10 refers to the "application for citizenship by a non-citizen married to a citizen of Vanuatu", Section 11 refers to "adopted children", and Section 12 is the only section to refer to 'naturalisation'. It is consistent with Article 12 of the *Constitution* in that it requires the applicant to have resided in Vanuatu for over 10 years. Section 10 citizenship through marriage only requires that the applicant reside in over 2 years, which would be inconsistent with the *Constitution* if created under Parliament's Article 12 powers.

Therefore, although not explicitly excluded from the category of naturalized citizens, the wording of the relevant laws implies that citizenship gained through marriage, does not qualify as naturalisation. They could potentially be excluded from the protection of fundamental rights and freedoms and excluded from voting, contesting in elections and holding public office.^{civ}

- *Citizens through adoption:* The analysis above relating to citizens through marriage is also applicable to citizens through adoption, i.e. the category of citizenship is not clear and the interpretation above would indicate that they do not qualify as naturalized citizens. It is worth noting that only an adopted child, under the age of 18, and formally adopted under any Act relating to the adoption of children, qualifies for citizenship through adoption.^{cv} i.e. Custom adoptions and adoption of adults would not qualify for automatic citizenship rights.

Additionally, if the right of persons to apply for citizenship through 'ni-Vanuatu ancestry' under Article 10 is not amended to expressly state indigenous ancestry, it would potentially provide for grandchildren and other generations to apply for citizenship, whether they are indigenous or not, and regardless of whether their parents hold citizenship.

Recommendation 6: The COC and State Law Office ensure the rights and privileges of citizens are clearly defined and protected by:

- Reviewing the terms ‘indigenous and naturalized citizens’ referred to in the dual-citizenship provisions;
- Amending these terms to include non-indigenous Vanuatu-born citizens, persons married to citizens and children adopted to Vanuatu citizens;
- Considering alternative approaches to restrictions on political rights that do not create categories of citizenship, such as prohibiting persons holding dual-citizenship from being eligible to contest and hold high level government offices for reasons of allegiance to foreign powers;
- Defining who qualifies as an ‘indigenous’ citizen and clarify whether ‘ni-Vanuatu ancestry’ refers to indigenous ni-Vanuatu ancestry, or Vanuatu citizens in general; and
- Providing clarification on the extent to which fundamental rights and freedoms can be limited by law under Article 5 of the *Constitution*, and the relationship of these limits to common law principles including natural justice and due process.

Investor Citizens

This category of citizenship is specifically referred to as a separate ‘class’ of persons eligible to apply for citizenship under Section 13B(2)(a)-(c) of the *Citizenship Act*. There are 3 sub-categories currently in force under the *Citizenship Act* that are determined by the citizenship investment program the person has come through. These programs are the Capital Investment Immigration Plan (CIIP);^{cv} Contribution Program (VCP);^{cvi} and Development Support Program (DSP).^{cvi} The Vanuatu Economic Rehabilitation Program (VERP) is another sub-category under investor citizens, however, it was repealed in 2019 and is therefore no longer accepting citizenship applications.^{cix}

The requirements for investor citizenship applicants are set out under Section 13B(3)(c) of the *Citizenship Act*. There is inconsistency as to who these requirements apply to. The requirements under Section 13B(3)(c) are required for all dual citizenship applicants, presumably in addition to any other requirements. Two of the categories of investor citizens, CIIP and VCP, are not required to speak and understand any of Vanuatu’s official or vernacular languages,^{cx} but investor citizens coming through the DSP are.

Section 13B(3) also requires that the Commission be satisfied that all citizenship applicants have respect for the culture and ways of life of Vanuatu, are of good character, have reasonable knowledge and understanding of the rights, privileges, responsibilities and duties of citizens. However, there are no guidelines on how this is assessed for investor citizens and there are no requirements for investor citizens, at least under the DSP program, to enter Vanuatu in person during the application process.^{cx}

Under both of the currently active programs (VCP and DSP), there are requirements that the applications be processed within 3 months and the FIU are required to complete their due diligence checks within 48 hours, making the process expedient for investor citizens.

Investor citizens do not have political rights, as long as they are dual citizens. Each of the sub-categories of investor citizens fall under ‘Part 3A – Dual Citizenship’ of the *Citizenship Act*. It links investor citizens to Article 13 of the *Constitution*, which exempts dual-citizens from voting, contesting and holding public office, unless they are indigenous or naturalised citizens. It does not take into account the possibility of investor citizens losing or renouncing their original citizenship and under the current framework, it is likely that investor citizens would still be entitled to vote, contest and hold public office if they were to renounce their other citizenship.

1. Capital Investment Immigration Program (CIIP)

The CIIP citizenship sub-category was the first of the CBI programs established by the Government, which coincided with the amendment to the Constitution allowing dual-citizenship in 2013. The legal framework for the CIIP is still mostly in place, as it has not been repealed under the *Citizenship Act*.^{cxii} Amendments to the *Immigration Visa Regulation Order*^{cxiii} set out the requirements and process for investors to gain residency under the CIIP Roadmap. The requirements and processes are far more involved for the investor than the current CBI programs.

The Roadmap for the CIIP program required investment in Government Bonds and the purchase of 'preference shares' in the 'Capital Investment Immigration Fund Ltd.'^{cxiv} Foreign investors would then be eligible to benefit from 7-year renewable residency visa, and fast-tracked citizenship after 2 years, or only 9 months if their investments are waived and an additional 25% of the investment amount is donated to the Government.^{cxv} Unless, waived, the Government bonds would need to be repaid to the investor after a certain period of time.

Citizenship granted under this program were initially equivalent to those enjoyed by 'native-born citizens', including the right to a passport.^{cxvi} however, the right to vote, stand for election, work in the public service, serve in the Police Force, right to diplomatic protection in countries where they are a national, and right of children to inherit Vanuatu citizenship, could only be exercised or enjoyed after 10 years of residence in Vanuatu. This was later amended to restrict these rights 'so long as the citizen is the holder of dual nationality'.^{cxvii}

A Real Estate Option, was added under the CIIP program in 2015 but repealed only 1 year later.^{cxviii} This program contained provisions giving full citizenship rights, however, without any limitations, stating that the "category of citizenship granted to applicants will be full citizenship, not economic citizenship or any other category different from that enjoyed by native-born citizens."^{cxix} Therefore citizens that came through the CIIP Real Estate Option likely have the same rights as indigenous citizens without restrictions on political rights and fundamental rights and freedoms.

While the CIIP Program is still a program listed under the *Citizenship Act*,^{cxx} until the PM makes new regulations prescribing the requirements for applications, the program is not active and no new applications can be received. As of Jan 2020, there is a court case pending in relation to this program, which will may be determinative of its future.

2. Vanuatu Economic Rehabilitation Program (VERP)

The VERP program was established in May 2015 and provided for the President to confer honorary citizenship on eligible persons under Section 20 of the *Citizenship Act*.^{cxxi} It was eventually repealed in 2019, however, with an effective date of 31 January 2017.^{cxii} The program initially gave Pacific Resource Group (PRG) exclusive rights to handle applications, however, subsequent amendments to the Order establishing the program removed the explicit reference to PRG and enabled the 'designated agent' to handle applications. It is not clear whether this was still PRG or another agent.^{cxiii}

Applications were required to be processed within 1 month under the VERP program and initially capped at 100 applications but opened to a number to be 'determined by Government' through amendments to the regulations.^{cxiv}

Unlike the DSP and VCP programs, citizenship applications through the VERP gave the successful applicants and their families rights to Vanuatu Passports as well as the right to invest in Vanuatu.^{cxv} It appears that the USD2000 VIPA fee was intended as a one-off fee and it is not clear whether the investor citizen would then be exempt from the normal annual VIPA requirements, nor are their residency rights clear. As honorary citizens, they are not likely entitled to political rights and interestingly, these citizens are required to pay USD4,000 in annual due diligence fees.^{cxvi}

3. Vanuatu Contribution Program (VCP)

The VCP program commenced immediately after the VERP ceased to operate in 2016. It is a program that is operated exclusively through Vanuatu Glory Limited (VGL), initially with the similar fees to the DSP program, without any provisions for VGLs marketing fees. Through subsequent amendments, the provisions, fees, and processes largely mirror those of the current DSP program, however, the VCP program has an exclusive agent, and the DSP program having multiple agents.

Investor Citizens coming through the VCP program have no political rights, unclear residency, work and business rights and any children born are automatically Vanuatu citizens.

4. Development Support Program (DSP)

The DSP program commenced at the beginning of 2017^{cxxvii} as an honorary citizenship program established under Section 20 of the *Citizenship Act* providing for the President to confer honorary citizenship. This honorary DSP program was eventually repealed^{cxxviii} and replaced with a DSP citizenship program established under the new Section 13E of the *Citizenship Act*, specifically created for the DSP program, in 2019.^{cxxix}

Honorary DSP investor citizens, regardless of the honorary citizenship status have been granted privileges to a Vanuatu Passport by Order,^{cxxx} and non-honorary DSP investor citizens have the same rights as other investor citizen categories, which do not include political rights as mentioned above. However, any children of DSP investor citizens born after the grant of citizenship through the DSP program are stated to be Vanuatu Citizens,^{cxxxi} which implies they are given the same rights as non-indigenous, non-naturalised citizens of Vanuatu (i.e. also no political rights at present).

It is not clear whether Honorary Citizens through the DSP program have rights to reside, work or carry out business in Vanuatu.

Honorary Citizens

There is some legal uncertainty as to whether persons granted honorary citizenship under the DSP and VERP programs, and honorary citizens in general, can also hold passports.

Under Section 20 of the *Citizenship Act*, the President, on the advice of the Prime Minister may confer honorary citizenship on any person, with 'such privileges or exemptions as may be prescribed'.^{cxxxii} Persons eligible are those that have or will 'contribute to the advancement and betterment of the development process in Vanuatu' and persons appointed under the *Foreign Service Act*.^{cxxxiii} They must not have a criminal records and also be of high standing in his or her community, organization, society or country.^{cxxxiv}

The Honorary Citizenship Regulations on the privileges of VERP and Honorary DSP explicitly state that these categories of citizenship are entitled to Vanuatu Passports.

However, previous reports from the Ombudsman's Office, based on the advice of the AG, have stated that 'the conferral of honorary citizenship is not the same as granting of citizenship by naturalisation' and furthermore, 'conferral of honorary citizenship however does not mean that the recipient is then able to obtain travel documents'.^{cxxxv} However, there is no express exclusion of honorary citizens being issued passports under the *Passport Act*.^{cxxxvi}

Recommendation 7: COC and State Law to improve the legal framework around the CBI programs by:

- Considering harmonizing the provision of *the Citizenship Act* and regulations creating multiple CBI programs, particularly those that have the same processes, fees and rights attached;
- Requiring that future contracts with agents are drafted with comprehensive clauses that give the Vanuatu Government more control and flexibility to adjust the CBI programs when needed;
- Clarifying the residency, investment and work rights of investor citizens under each of the programs. If residency, investment and work rights are to be separated out with political rights, include provisions that harmonise their rights, and the requirements to reside, invest and work in Vanuatu, with those of non-citizens;
- Considering including provisions for investor citizens to become eligible for these rights if they have met the same requirements as naturalized citizens;
- Inserting into the honorary citizenship provision explicit reference to what rights and privileges accompany honorary citizenship.

5.4 Deprivation and renunciation of citizenship, deportation and other relevant processes

Article 14 of the *Constitution* provides that Parliament may make provisions for the deprivation and renunciation of citizenship in Vanuatu. Section 14 of the *Citizenship Act* then details the provision for the loss of citizenship.

The Citizenship Commission has the power to revoke citizenship granted if the citizenship was granted in a fraudulent manner, contrary to the Act or the Constitution or the citizen has not complied with the restriction provided in the Act.^{cxvii} The citizen must be given notice and the opportunity to respond before citizenship is revoked.^{cxviii}

Section 14(1) and Section 15 refer to the loss of citizenship due to a person's allegiance to another country, which may be inconsistent with amendments to Article 13 of the *Constitution*.

Section 14(2) refers to persons who have obtained citizenship by false representation, fraud or concealment of a material fact. The requirements for loss of citizenship under this subsection are:

- A court has determined that citizenship was obtained by false representation, fraud or concealment of a material fact
- The person will cease to be a citizen only 30 days after the court finding. However, the Prime Minister has the power to make a declaration confirming that person's citizenship by Gazette within those 30 days if:
 - The PM is satisfied that it was a minor offence and if the true facts were revealed it would not have affected the grant of naturalization or citizenship.

Section 16 of the *Citizenship Act* gives the PM the power to deprive a naturalized citizen their citizenship if that person has been sentenced to a term of imprisonment of 10 years or more, provided it is gazetted within 15 days of the sentencing.

Under the *Immigration Act 2010*, persons may only be detained or removed from Vanuatu, or given the status of a 'prohibited immigrant' if they are non-citizens of Vanuatu.^{cxix} However, powers of arrest without warrant are given to an immigration officer if there are reasonable grounds to believe that person has committed an offence under the Act and proceedings by summons against the person would not be effective.^{cxl} There is a requirement that the arrested person be brought before a magistrate to be dealt with in accordance with law.^{cxli} Citizens may commit an offence under the Act if they unlawfully obtain or deal with a 'travel document',^{cxlii} which includes passports.^{cxliii}

Name changes are regulated by the *Civil Status Act*. An amendment to the Act in 2018 inserted a provision to address name changes on the Civil Status Registry, which requires approval from the Registrar-General to change, add or remove an existing name on the register. All changes must be applied for, the use of previous registered names is not permitted and the Citizenship Office and Department of Immigration must be notified of the changes. Records must then be kept by the Registrar-General.^{cxliv}

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Recommendation 8: The COC and State Law to provide clear information on the processes relating to revocation of citizenship and name change requirements, through:

- Updating the provisions of the *Citizenship Act* relating to the powers of the COC to revoke citizenship to reflect the process required to be followed as determined by case law;
- Reviewing the process and fees for name changes under the *Civil Status Act*;
- Requiring a mandatory 1 year waiting period for name changes for CBI citizens;
- Publishing information on the processes for revocation of citizenship and name changes on the COC website.

6. Program Administration

6.1 Overview

The DSP and the VSP programs are run by the Citizenship Office and Commission, with support from other government offices, including the Financial Intelligence Unit, the Passport Office, and the Immigration Office. Relationships with other government offices are less clear.

Authority of the Citizenship Commission to grant applications for citizenship, if applicant and process meet requirements prescribed is provided by Chapter 112 Citizenship (1980, 1983, 1987). This was amended by #39 of 2013 which details the new composition of the COC, and the COC's powers to consider and approve applications for citizenship and revoke citizenship.

It also specifies the establishment of an Internal Screening Committee for applications, consisting of the COC secretary, the COC Compliance Officer, the Director of Immigration Services, the principal Passport Officer and a legal Officer from State Law. The COC currently has 8 full-time staff, in addition to the Chair of the COC.

The DSP and VCP programs are publicized at the COC website^{cxlvi} and at designated agent. websites Both programs use government authorized agents to recruit clients. The agents assist in the application process, including finding clients, accompanying them in the document collection and submission, and the processing of funds.

While the programs are run efficiently and effectively overall, there are a number of key factors that should be addressed in order to further improve the functioning of the current programs. These include administrative process issues, and issues related to agents, publicity, pricing, commission and fees, and money flow.

6.2 Administrative process

Currently, the COC has an established administrative process in place, including a document and procedures checklist. On the COC website, the following description of the process is provided for becoming a Vanuatu citizen:

"The decision to take a second and dual citizenship is the first step towards becoming a Vanuatu Citizen. Please ensure that you deal directly with an approved Government of Vanuatu DSP Representative and complete the Official Application Form without any advance payment.

There are many Vanuatu Citizenship offers promoted on the internet, some are offering very cheap prices. Ensure that you only deal with an approved representative agent for the DSP program and ensure that you sight an official Government Appointment Letter, which is the only certain way of ensuring your security in applying for Citizenship.

A "pre-approval" stage involving a Vanuatu Government background check on the applicant is required. Once the pre-approval has been received (normally 7-10 days), the full documentation is submitted with full payment. The Citizenship process from here takes between 30 to 60 days to complete, making it one of the fastest processing times in the World.

Once the application is approved, the applicant will be required to present themselves at a Government of Vanuatu Consulate, nominated office or, in Vanuatu itself.

At the Consulate or Government Offices the applicant will participate in the Oath of Allegiance ceremony upon which they will be granted their citizenship and receive their Vanuatu passport.

The applicant will then be entitled to full Vanuatu citizenship benefits and rights, and ensured of visa free travel on their Vanuatu passport to 129 countries.

Citizenship is for life, and is hereditary"^{cxlvii}.

The COC also provides the following description of the application process:

“STEP ONE: Applicant (and Spouse where applicable) to submit via our Global DSP Processing and Due Diligence Provider a certified true copy of existing passport (cover and bio data page) plus Police Clearance Report, Birth Certificate Copy and Personal Profile.

STEP TWO: Upon written confirmation of no adverse findings by FIU, and therefore “pre-approval” granted, Applicant, under guidance of the DSP Representative completes all documentation and prepares full payment. Payment is made directly to the Vanuatu Information Centre Limited, a Government Approved Agent.

STEP THREE: Application is submitted to Representative to review pre-submission to the Citizenship Commission which convenes on the last Friday of each month. Application Form must be received 8 days prior to Citizenship Committee meeting.

STEP FOUR: Screening Committee considers the Application one day before the Citizenship Commission meets and makes a recommendation to the Citizenship Commission.

STEP FIVE: After Citizenship Commission approves the Application, an Agreement in Principle (AIP) is issued to the Representative. AIP process is 7 to 14 days.

STEP SIX: The final step is the Applicant taking their Oath. This will be commissioned by the Vanuatu Government’s Commissioner of Oath. In this ceremony the new Citizen receives their Certificate of Vanuatu Citizenship as well as their new Vanuatu Passport”^{cxlviii}.

It is important to note that there is no requirement for the citizen to visit Vanuatu. Also, citizens of Iran, Iraq, Syria, North Korea, and Yemen are not eligible for citizenship, unless they can demonstrate that they no longer have any residency or business ties to the country.

Citizenship applicants submit a pre-payment of 25 % to the government, via the agent, along with a fee of USD 2000 for FIU clearance, and application fees. Applicants must also submit a nomination form, copies of a valid passport and citizen identity card, police clearance, birth certificates, a health declaration, 4 passport photos, an asset report, employment certification and a bank reference, along with the FIU clearance once completed.

For spouses, a nomination form, passport copies, citizen identity cards, police clearance, FIU clearance, marriage certificate, health declaration and 4 photographs. For any children, a nomination form, 4 photographs, and copies of a valid passport and a birth certificate must be provided.

The process is followed in an orderly fashion, but it is not formalized, even though some additional steps and processes were detailed by the COC (see Appendix 5). Formalization of the process is recommended, as are updates and improvements to the COC’s filing system and office space.

Two additional key issues must be addressed: post-citizenship data collection and sharing, and security risks related to passport delivery and name changes.

In terms of *data collection and sharing*, there is no post-citizenship tracking system in place for new CBI citizens, and little to no data sharing between various government offices. This causes confusion around functional responsibilities between offices, such as Civil Registry and Vital Statistics (CRVS), Passport Office, and the Electoral Office. For instance, the Electoral Office has no way of determining whether or not voter registrants are CBI citizens, without political rights, and hence, has no basis for denying CBI citizens registration in the voting registry. There is a legal requirement in place that the COC publicize the names of all new citizens, but with regard to CBI citizens this not happening.

Foreign Affairs is not part of any of the CBI processes, unless there are issues or problems, and could benefit from pro-active data sharing. There is no data link with immigration, and hence, no way of checking whether CBI citizens are visiting or residing in Vanuatu. There is also no link with Police, so

law violations may not always be properly recorded or dealt with. Because the FIU is only involved in the beginning, problems that may be discovered later are perhaps not dealt with systematically.

The CRVS requires all citizens to register, but does not receive CBI data from the COC and voter registration data are not fed back to other offices. Because CBIs are citizens, there is also no data sharing with VIPA, which reduces their ability to work with new investor citizens. All businesses are required to register with VFSC, but there is no easy way to access those data to other offices.

To promote intergovernmental office collaboration, record keeping and sharing, and risk containment, it is essential that the COC develop *a comprehensive CBI data collection, tracking and sharing system*, with mandatory data input from and accessibility by COC, CRVS, Customs, Electoral Office, FIU, Foreign Affairs, Immigration, Internal Affairs, Passport Office, Police, VIPA, and VFSC. This system should track CBI citizens by date of citizenship, entry into the country and periods of residence, businesses or other investments, passports issued, identity registration and name changes, and any security issues or concerns. This system should track CBI citizens by date of citizenship (COC), entry into the country and periods of residence (Immigration), businesses or other investments (VIPA/VFSC), passports (Passport Office), identity registration and name changes (CRVS), and any security issues or concerns (Internal Affairs/Foreign Affairs/Electoral Office).

Adopting a secure TIN# system, possibly starting with the current Vanuatu National Identity numbers, would greatly aid in this process and may facilitate other general record keeping processes as well. Finally, a formal document and training session, developed by the COC, describing the CBI program and procedures, and the new data system will be important in securing its success.

With regard to *security*, passport delivery is sometimes done by a third-party agent rather than by Immigration or the Office of Foreign Affairs, directly or through its foreign services desks in other countries. A proper policy directive on this aspect would strengthen the level of integrity of the system and processes.

In addition, the CBI process requires CBI applicants to take an oath, using authorized Commissioners. Currently, there are no Oath Officers at the Vanuatu overseas missions. Changing this practice would not only strengthen program integrity, it would also expand the number of places where the oath could be taken, which would help the rating of the CBI process. To do this, the COC would need to request that the Chief Justice appoint at least one Oath Officer at each of the overseas missions and require that all CBI oaths taken overseas be taken at Vanuatu missions.

Finally, new CBI citizens at times request a name change to be processed through CRVS, prior to requesting a passport which poses a security risk. Again, the current lack of data sharing between offices does not allow for such risks to be minimized. To further minimize security risks, it is recommended that the government institute a minimum 1 year waiting period for name changes requested by new CBI citizens, a common practice also used by other countries with CBI programs.

Recommendation 9: The COC to enhance the current CBI administration system, through:

- Updating and formalizing the current administrative process, policies and filing system;
- Developing and implementing a comprehensive, intragovernmental post-citizenship CBI data collection, tracking and sharing system;
- Following the existing legal requirement, publish the names of all new citizens;
- Ensuring that Vanuatu passports are only delivered through Immigration or Foreign Affairs Officers;
- Requesting that the Chief Justice appoint officers of the Vanuatu overseas missions to become Commissioners for Oaths and requiring that all CBI oaths taken overseas be taken at Vanuatu missions;
- Instituting a minimum 1 year waiting period for name changes requested by new CBI citizens.

6.3 Use of Agents and other Publicity Tools

Pacific Resource Group/Vanuatu Glory Limited is the sole agent for the VCP program. The DSP program uses approximately 35 agents. As specified under Act 33 of 2019; agents must be Vanuatu citizens NOT admitted through VERP or DSP (VCP/CIIP All agents must be ni-Vanuatu citizens, who have not themselves obtained citizenship through the DSP program. All agents must follow the established the CBI pricing rules and have a minimum sales quota of 10 per year. Agents are required to pay Value Added Tax (VAT) to the Vanuatu government on the full commission.

There are a number of problems with some agents not performing up to standard, such as selling below or above the set price, charging non-existing fees, not paying VAT on the full or gross commission, not providing proper first stage DD, not respecting COC and FU time deadlines, and listing inaccurate information on their websites. Improper agent performance can be very damaging to the CBI program.

Therefore, the COC should review existing guidelines and agent contracts to ensure they clearly specify agent performance, requirements, operating restrictions and tax requirements, along with clear disciplinary steps to be taken in case of violations they are clear. They should also become more selective in its agent recruitment process, provide regular training, evaluation and feedback sessions for the agents, and provide positive incentives for agents meeting all the quality standards.

Current agent contracts are set to expire in 2021 for the VCP and for DSP, at the moment the cap of 600 is reached. Renegotiating the contracts to reflect new guidelines and agents' fees is important.

A related issue is the CBI market. In Vanuatu and in all other countries with RBI/CBI programs, the vast majority of applicants come mainland China, but other potential markets such as Europe, Africa, or the Middle East are much less explored. It would be useful to encourage exploration of additional markets by agents.

Effective publicity is key to marketing and selling any product, including CBI. The Vanuatu Citizenship Commission maintains its own website, describing the program. While informative, the website could be made much more attractive to potential clients^{cxlix}. In addition, the website needs to be updated. It still lists the CIIP as a CBI option, along with CIIP application forms. The DSP program application form is not provided. Also, providing a listing of and contact information for certified agents would be helpful, or minimally, ensure that the COC website list any parties that are not no longer certified to work as DSP agents

Looking at the agents' websites, there are varied and conflicting descriptions on different internet sites regarding the Vanuatu DSP program. It would be good if the COC required that agents submit their website and other publicity material to the government for review and approval, and the websites are monitored and corrected for errors and inconsistencies.

Recommendation 10: The COC to enhance the quality of CBI sales and publicity processes by:

- Improve the agent management process by reviewing the written guidelines, having more stringent selection, training, performance, and disciplinary systems.
Working to enhance the correctness, clarity and attractiveness of publicity on its own website and the websites of its agents.

6.4 Pricing, Commission, Fees, and Payment Process

Agents are required to offer the DSP program at a minimum selling price of USD 130,000, of which \$50,000 is the agent marketing fee or commission. There is no set maximum price. There are several pricing and related issues, affecting both the DSP and VCP programs:

- Some DSP agents are selling the program below or above the set government price. Selling under the price is against government regulations. Selling over the price is not prohibited but causes confusion in the market;
- The price of the Vanuatu passport is on the lower end among passport donation programs. Inclusive of fees, it is listed on comparison sites as 137,00 USD which includes \$2000 for due diligence and a \$5000 oath fee, if taken abroad^{cl};
- Some agents reportedly charge additional, non-authorized fees;
- At USD 50,000, the agent commission is 38% of the total price, which is disproportionately high. Comparable agent commissions in other countries are around USD 20,000;
- To avoid unfair competition and market confusion; agent commissions should be standard, and not higher or lower than the level set by government,
- The agent commission is a general, across the board commission, and there is no incentive, for example, for bringing in high quality applicants, or applicants from new regions of the world;
- Client payment comes in through the agents which causes concerns around due diligence and AML requirements. Agents' use of Western Union to process payment raises additional concerns.
- The government cannot track actual commissions and other fees paid by the clients.
- Some agents reported paying VAT on net income rather than on the full commission amount.

Looking at the price comparisons that were also discussed in section 4.2.4, it looks like the current selling price offers a competitive advantage which should be maintained. The selling price should be fixed, both as a minimum and as a maximum.

The agents' commission, however, should be reduced, effectively immediately after the DSP program cap is met, with similar arrangements to be made with the VCP agent. The suggested commission rate is 20% of the selling price or USD 26,000. It may be useful to note that the WCC recommends offering incentives for agents bringing in high quality applicants, but the criteria would need to be clearly spelled out.

As recommended in section 4.2.1, there should be a new, separate, and higher priced due diligence fee, estimated at USD7500 to be paid prior application, to support new, enhanced, outsourced due diligence and enhanced document verification procedures.

Lastly, it is suggested that the COC arrange to have the DD fees and the full client payment amount, including fees and agent commission, be paid directly to a Vanuatu government account, domestic or abroad. Using this new payment structure will also allow for early engagement of banks and other financial institutions, which will help in meeting AML and CRS requirements. After the successful completion of the CBI process, the COC can then pay the commission to the agent, with copies sent to the Customs office to ensure VAT is paid on the full commission.

Recommendation 11: The COC enhance the pricing, commission, fees, and payment process by:

- Restructuring the payment process to meet AML/CRS requirements;
- Adjusting agent commission to meet industry norms; and
- Increasing the DD fee to allow for enhanced and outsourced DD and document verification.

7. Implications: Policy Alternatives for Investment by Immigration

7.1 Overview

Up to this point, the review has focused on the existing CBI programs only. This section will discuss the implications of the review for government policy and decision-making. Looking to the future, it seems that there are three major viable options available to the Vanuatu government with regard to investment by immigration:

1. Discontinue the CBI program and look for alternative sources of revenue through taxation;
2. Continue the CBI program, addressing the major issues related to legal framework, reputation, and program administration;
3. Develop an alternative investment by immigration program.

Each of these options will be discussed below. It should be noted that this is a preliminary discussion only and should the government decide on any of these options, a more detailed process should be carefully developed to ensure effective policy and implementation.

7.2 Option One: Discontinue the CBI program

As noted in the review, the CBI program has a number of major liabilities. The first is risks to Vanuatu's international standing, including the risk of losing EU visa-free status, the risk of incurring grey- and blacklisting from the OECD, the EU and the IMF, and the risk of negative impact on international donor relations, including Australia and China.

An additional risk is that of undue government reliance on funds that may not be sustainable in the long run. Even though the CBI industry is now a large and growing market, it is also a market with heavy competition, much of it coming from larger and more developed countries. Lastly, the negative perceptions of the program domestically may give rise to social and political unrest. These perceptions may unduly influence the upcoming national elections. They can also create a generally negative climate with regard to outsiders, which can damage not only CBI citizens but also the tourism market.

Discontinuing the CBI program is one way to minimize all of these risks. It should be noted, however, that even if the CBI program is discontinued, it will still be necessary to address the various reputation and security issues outlined in this review, along with the currently existing legal inconsistencies regarding naturalization and residency programs. Given Vanuatu's 2020 budget priorities of Increased national tourism and foreign investment, the general social issues regarding the perception of "outsiders" will also need to be addressed.

Should the program be discontinued, the main factor to be examined closely is alternative sources of revenue. Currently, the Vanuatu government's major sources of revenue are the CBI program, VAT and other fees and taxes, and donor aid, with CBI being the largest single source, comprising 25% of the total government revenue of in 2018 and over 36% in 2019.

With the country's scheduled graduation from the LDC list, donor aid will decrease in the near future. The only alternative immediately available source of revenue is the introduction of corporate and individual income taxation. The government's recent proposals for income taxation were received very negatively. At the individual level, income taxation will have major challenges, given the overall low level of income and the lack of a comprehensive tax reporting and collection system.

At the corporate level, income taxation is much more viable and would seem to be a necessary measure, given the current lack of direct corporate contributions to the government system. In addition to taxes, it is recommended that the Vanuatu government work with the business community to develop a model of corporate social responsibility, that would both encourage and structure the business community to fully participate in and contribute to Vanuatu.

Possible factors to keep in mind is that these measures may have a negative impact on the business investment climate however and the taxes may not be sufficient to substitute for the CBI income currently collected.

However, the 2020 Budget Policy Statement already includes a commitment to developing a “larger, more diverse and more equitable tax revenue base by the end of 2020, with a strengthened Government Compliance System to collect revenue in this area”:

Expand revenue base – by strengthening the Government Compliance System to collect revenue; by assessing income tax legislation as an option to increase the revenue base and by developing the capabilities needed to deliver it; through review and desegregation of business license categories for all economic sectors to promote local and foreign investments. ^{cli}.

7.3 Option Two: Improve the CBI program

This review provided a detailed list of issues related to the current CBI program, including reputation, legal, and administrative issues. Should the government decide to continue the program, these issues should be addressed as soon as possible, because many of them are urgent.

In order to address the *external reputation* issues, major steps that need to be taken are:

- Enhance the due diligence and document verification process;
- Increase security features on the Vanuatu passport and other documents;
- Work to meet the EU and OECD tax reporting and compliance requirements;
- Collaborate with the international CIU community to enhance data sharing;

In order to address the *domestic reputation* issues, major steps that need to be taken are:

- Launch a comprehensive citizen education campaign to demonstrate government transparency and accountability regarding the CBI program and its alignment with the VNSDP;
- Promote public discussion regarding the potential value of if CBI and immigration to the country, including the contribution of resources and skills;

In order to address *legal issues*, the review recommends a consolidation of all citizenship and immigration legislation, and a process to address existing inconsistencies and gaps.

In order to address the *administration* issues, the review recommends:

- The development of a comprehensive post-citizenship database, to be shared among government offices;
- Clarifications and changes in the administration and agent management process;
- Changes and revisions in the pricing, commission, payment, and agent components.

The current government approach to accounting for and spending the funds, with a focus on meeting the priorities of the VNSDP, should be continued.

Regardless of how much the current system is improved, there is a general understanding that it is likely to be unsustainable in the long run, for reasons beyond the control of the Vanuatu government. Therefore, the government is encouraged to also use CBI revenue to identify and develop alternative revenue streams and enhance citizen capacity for self-reliant development. Capacity building in the creation and management of small business operations and niche export markets, as well as providing non-commercial micro-credit would be good strategies.

7.4 Option Three: Develop an alternative investment by immigration program

7.4.1 *The investment climate and perceptions of “outsiders”*

The domestic opposition to the CBI program is considerable, and much of it centers on the issue of citizenship, and the related issues of sovereignty and identity. The relatively recent struggle for independence is still vivid in the minds of many Ni-Vanuatu and the idea of outsiders being able to acquire citizenship, merely through an economic donation to the government is seen as distasteful.

This has resulted in political debate but also in an increasingly hostile social climate for immigrants. This is most pronounced with regard to Chinese immigrants, which makes up the largest proportion of investment immigrations, not only in Vanuatu but in all other countries with CBI or RBI programs. The negative reaction to incoming Chinese is not limited to immigrant investors but is also evident with regard to Chinese tourists, which are expected to increase substantially in the coming years.

Non-Chinese investor immigrants have also voiced concerns, especially about the recent changes in the work permit policy. While the focus on employment localization is good and necessary, it seems to focus more on numbers such as the 4-year limit on renewable work permits and the number of Ni-Vanuatu employed by businesses and NGOs, rather than on requiring and monitoring actual skills transfer and capacity development programs. Further adding to feelings about investment insecurity are ongoing land disputes, increasing court cases, increasing crime rates, especially in Port Vila, social media violence, violence against women, and a growing distrust of “outsiders”, anyone who is or is perceived as not being a Ni-Vanuatu.

These issues are of course not unique to Vanuatu. All of Europe and most large, developed countries like the USA and Australia, all struggle with diversity within its borders, trying to define who “belongs” and who does not, who has what kinds of rights, and who to invite in and who to exclude. Many of these issues can be traced back to a lack of effective immigration management and integration and inclusion efforts. As humanity moves towards true globalization, these are issues that need to be sorted out, at the collective level and at all national levels.

For small island nations like Vanuatu, sorting out these issues are even more important, given the relatively small population, and the impact of globalization on traditional cultures. Even if we only look at the effect of introducing a money-based economy, the impact is already felt even in isolated communities, such as those in Santo bush.

Immigration, however, is not necessarily negative. In fact, studies have shown that all countries benefit from the contributions of immigrants. For instance, in the USA in 2016, more than half of US startups valued at \$1 billion and above were founded by at least one immigrant, and immigrants contributed \$2 trillion to its economy. Also, the World Bank reports that “the richest countries in the world are those that have the power to provide a hospitable environment for immigrants” and that “25 of the wealthiest and most developed countries in the world have recorded an average of 22.5 % immigrant-born population...The US has 12.8%, Hong Kong has 42.6%, and Switzerland 22.9%”^{clii}.

For small countries, specific possible positive consequences of immigration include sizeable economic benefits, infusion of scarce skills, growth of new business and industry, and increased social and cultural diversity. In order for these benefits to materialize, careful and pro-active management of immigration is essential, as is a general climate of openness. ^{cliii}

Two components of a new approach to immigration management will be outlined below. The first is a nationality-based approach to CBI, which substitutes passports based on citizenship with passports based on nationality, and proposed a phased approach to full citizenship.

The second is a Vanuatu-centered approach to managing immigration through building long-term constructive relations between immigrants and Ni-Vanuatu people and communities. It is designed to encourage local support by integrating immigrants into Vanuatu’s existing citizenry in a variety of ways, using language and culture requirements, establishing models of investment connected to

communities, increased joint ventures, strengthened corporate social responsibility; and further contributions to clearly identified priority areas within the VNSDP.

7.4.2 *A nationality-based approach to citizenship*

One alternative to the current CBI program is a nationality-based program (NBP) with a phased approach to citizenship. This approach recognizes the important economic value of CIPs for small island economies like Vanuatu, while also acknowledging the political issues related to granting citizenship to non-ni-Vanuatu^{cliv}. The approach proposes that Vanuatu develop a passport program based on nationality, and that investors in such a program be encouraged to develop long-term constructive relations with the country through following a new immigration management process.

NBA is *similar* to the current DSP/VCP programs in that successful applicants would contribute the same amount, receive a Vanuatu passport, and not receive political rights. One major *difference* those programs, however, NBP passport holders would not be considered full citizens. As such, any NBA businesses would have to register with VIPA, and would not have access to either reserved businesses or reserved jobs. NBPs would be eligible for 10-year, renewable residence permit, similar in process and terms to those currently available to self-funded and landowner immigrants.

The concepts of nationality, citizenship and passports are interconnected but not the same.

- Within the international sphere, *a passport* identifies a traveler as a citizen or a national of that state, with the right to that state's protection.
- *Citizenship* reflects an internal contract within the national sphere of that state - the internal political life and the rights and duties attached to citizenship.
- *Nationality* is the status given to someone belonging to a state in international matters, irrespective of the rights and duties of that person within that state.^{clv}

While this approach is not common among CBI programs, it should be noted that it is the sovereign right of each state to determine who can acquire citizenship, nationality, and passports. From an international travel perspective, there would be no difference between the current CBI passport and an NBP passport. It would still be important to establish and maintain the post- "citizenship" database, recommended under CBP program improvements. The NBP approach also recognizes that many CBI clients are only interested in a passport, and not in full-time residence or even citizenship. This approach effectively manages that, while protecting the economic benefits of a passport program.

From a domestic perspective, it would be essential to explain to the Vanuatu citizenry the difference between citizenship and nationality. Currently, even though CBI citizens do not have political rights, it is difficult for the average person to grasp the idea of different kinds of citizens. Also, "nationality" may not have the same emotional responses as those attached to citizenship.

Lastly, it is important to note that Vanuatu can and does benefit from investment immigration and as such, acquiring nationality would be for some the first step to full citizenship. In order that status, with its accompanying rights and privileges, Vanuatu nationals would be both encouraged and required to develop genuine links and interests in Vanuatu, similar to the requirements already in place for naturalized citizens, and following the process outlined further in the next section.

7.4.3 *Growing relations between immigrant investors and Vanuatu*

Currently, there are a number of different kinds of immigrants in or associated with Vanuatu. In addition to the CBI citizens, these include people registered as businesses under VIPA, people with work permits or special category visas, and people with self-funded or landowner residencies. In addition, there are also other people out there, looking for either investment or other business opportunities, or simply looking for a new place to make a possible contribution of resources or skills.

Looking to the future, it would be good for Vanuatu to find ways to make sure that immigration benefits the country, that immigrant skills and resources are encouraged and properly managed, and that the country attract the kinds of immigrants that would benefit the development of Vanuatu.

In order to accomplish that, it is suggested that Vanuatu develop a pro-active and positive immigration management policy and framework. One approach – and there may be a number of others – is to provide a clear path to citizenship that encourages making positive contributions.

At this point, immigrants to Vanuatu experience an often complex and confusing process, that may involve considerable costs, including any of the following:

- Employer-sponsored annual work permits at 330,000 vatu per year, with a 4-year limit
- Annual residency permits at 57,000 per year
- Required trips out of the country at times of visa renewals
- Annual VIPA fees of 50,000 vatu

Naturalisation citizenship fee of 500,000vt with additional fees

An alternative approach, presented here in *outline form* only, would be to develop a pathway to integration, community membership, and ultimately citizenship that would incentivize making positive contributions, using a shorter, 5-year timeline and a point system. The 5-year timeline is comparable to that used in many other countries. Regarding the point system for contributions, this is one way to operationalize the concept that is currently already recognized as “honorary citizenship”. It is of course essential that such system be designed carefully and managed appropriately, to avoid misuse and possible corruption.

To avoid confusion, it is suggested this pathway would be available to all immigrants, including those already in country under current CBI programs or other resident visas.

Qualifying immigrants would be eligible to receive full naturalized citizenship *after 5 years*, provided that:

1. They have been a *continuous, in-country resident for at least 5 years*;
2. They meet the existing *language requirements* for naturalised citizens, specifically Bislama;
3. They complete a *citizen culture integration* course. This course should be designed with the assistance of the Vanuatu cultural centre, and should focus on sharing key components of Vanuatu history, tradition and culture, ideally these courses should offered at the local community level, both to promote the development of actual relations between people, and to provide local communities with another source of income^{clvi}.
4. They demonstrate having developed positive community relations through meaningful letters of support, generated *without payment*, from leaders in the community;
5. They demonstrate having made a *valuable contribution to the country*, in one or more of the following categories:
 - a. Development of *business enterprises*, with two or more of the following features:
 - i. Creation of 15 or more jobs for Ni-Vanuatu
 - ii. Joint venture with Ni-Vanuatu, meeting VIPA joint venture standards
 - iii. An effectively designed and implemented program of skills transfer and capacity development, using Department of Labour standards (to be developed)
 - iv. Scholarships and training support for Ni-Vanuatu employees
 - v. A program of internships and training for Ni-Vanuatu
 - vi. Development of facilities that are fully accessible to people with disabilities
 - vii. Corporate social responsibility programs that give back to the community

- b. Development and implementation of, or substantial support for *community-based projects* in areas aligned with the VNSDP. Possible examples include:
 - i. Community disaster preparedness and response, following NDMO standards
 - ii. Community evacuation centres, meeting government standards
 - iii. Community water supply systems and management
 - iv. Community-based education or health service provision
 - v. Community-based waste management or eco-restoration
 - vi. New community-based and owned agriculture projects
 - vii. Community beautification projects
 - viii. Development and capacity building of CSOs, including contributions through board or committee membership and contributions of skill, labor and time
- c. Substantial economic contributions to Vanuatu government or society. Possible examples include:
 - i. Public donations to government projects in line with the VNSDP;
 - ii. Building schools, hospitals, or sports facilities, especially on outer islands
 - iii. Substantial contribution to a Vanuatu Disaster Savings Fund
 - iv. Scholarship programs for Ni-Vanuatu students, especially in key skills areas identified by the new National Human Resource Development plan^{clvii}
 - v. Funding of key cultural research projects, identified by the Vanuatu Cultural Centre or the Malvatumauri Council of Chiefs

To further support this pathway and its associated initiatives, it is recommended that:

- Detailed *operational definitions* be provided for each of the areas, showing the nature of the point system, providing a clear rationale for the allocation of points, detailing the documentation process required, and appointing an inclusive, representative committee to evaluate applications.
- A *resource bank* be developed, documenting available and desirable initiatives and projects, with input from communities, government departments, NGO/CSOs and others, with a special focus on extending the initiatives to the outer islands
- An effective *publicity campaign* would be designed and implemented, explaining the pathway, inviting public input, and documenting success stories and challenges

Effectively managing immigration will help Vanuatu to both benefit from immigration and to avoid the kinds of problematic social and political conflicts encountered by many other countries. It is hoped that the approaches and options presented in this last section will assist the Vanuatu government in developing an effective immigration management strategy for the immediate and the long-term future of the country.

Recommendation 12: The Vanuatu Government, in full and open consultation with its Councils, decide on one of the 3 options identified in the CBI review.

Appendix 1 Review Guiding Questions

I. What is the effectiveness of the current Vanuatu CBI programs and how can it be improved?

What CBI programs exist and have existed in Vanuatu?

What is the history of CBI in Vanuatu? What earlier programs existed? What are the lessons drawn from earlier programs?

What are the programs currently existing? How do they operate? What are the main challenges and issues? What are the benefits, liabilities and risks of the current programs?

- What legislation regulates the CBI programs? Is the legislation effective, sufficient?
- How is the program administered? What written policies exist?
- Are there caps or date limits on the programs?
- How does the agent structure operate? Is it effective? What issues exist?
- What is the relationship between the various government offices in the process?

What security issues exist related to the CBI program?

- What due diligence procedures are used? Who implements due diligence?
- What are the international due diligence standards? Do current due diligence procedures meet international standards?

What data are collected in what fashion? Are the data collected sufficient? Are they shared?

- Who are the clients? Where do they come from? How are they tracked, post-citizenship?
- How many applications have been submitted? How many have been accepted or rejected? How many passports have been issued?
- What government income is generated by the program?
- How is income tracked? How is it spent? How does current spending relate to the Government's development priorities?

How is the program perceived?

- How well understood is the program internally and externally?
- How are the programs viewed by the different stakeholders?
- How are the programs viewed internationally? By EU/other countries? By the CBI community?

II. What viable, alternative models exist or can be developed for immigration investment and immigration management?

Rationale: An alternative model should be developed to address domestic issues around sovereignty and identity that exist in Vanuatu, along with concerns over immigration management in general

Options to be reviewed:

- Nationality based; subject based; passport based on residency status

What is a "meaningful investment"?

- long/short-term impact on society, politics, development, environment

What does it mean to have a meaningful connection?

- Connection with community, contribution, residency (10 years as current or less?)

What kinds of new citizens would be beneficial for Vanuatu?

- Money, skills sets, commitment; What can they contribute? Current needs and gaps?
- What constitutes a meaningful investment?
- What is the value of in-country presence requirement?

What are desirable investment structures?

Joint ventures, community-based investment, investment aligned to specific parts of the VNSDP

Appendix 2 Stakeholders Invited and/or Consulted during the Review Process

Citizenship Commission
Citizenship by Investment Taskforce
Citizenship Office
Customs and Inland Revenue
Electoral Office
Immigration
Banks (Attendance: ANZ, BSP, NBV, Wanfuteng)
Chamber of Commerce
Civil Aviation Authority
Customs and Inland Revenue
Civil Registry and Vital Statistics
Civil Society (Attendance: International Organization for Migration (IOM), VSPD, VCSIN)
Department of Agriculture
Department of Immigration and Passport Service
Department of Industry
Department of Labour
Department of Lands
Department of Strategic Policy, Planning, and Aid Coordination
Department of Tourism
Development Support Program agents
Financial Intelligence Unit
Immigration Services
Malvatumauri Council
Melanesian Spearhead Group Secretariat
Office of the Ombudsman
Office of the Registrar of Cooperative & Business Development Services Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity
Ministry of Climate Change, incl NDMO
Ministry of Finance
Ministry of Foreign Affairs
Ministry of Health
Ministry of Infrastructure and Public Utilities
Ministry of Justice
Malvatumauri National Council of Chiefs
National Audit Office
National Statistics Office
Office of the President
Office of the Prime Minister
Police Force
Ports and Harbour Department
State Law Office
State Office
Vanuatu Investment Promotion Authority

1 Appendix 3 Summary of Citizenship Types and Program

Type	Legislation	Rights	Requirements	#s	Other
Indigenous Ni-Vanuatu	Constitution	Land rights Reserved businesses Reserved jobs Political rights		300,000 current estimate	
Dual Citizen	Constitution Citizenship Act	If not indigenous or naturalised: No political rights Reserved businesses Reserved jobs Fundamental rights and freedoms can be limited by law			"Parliament may prescribe: (a) the requirements to be met by categories of persons applying for dual citizenship; or (b) the privileges to be accorded to any category of persons who are holders of dual citizenship." (SIXTH) (AMENDMENT) ACT NO. 27 OF 2013
Vanuatu Diaspora	Constitution Citizenship Act	No political rights (unless indigenous) Reserved businesses Reserved jobs Fundamental rights and freedoms can be limited by law (unless indigenous)			Designed to accommodate Vanuatu diasporas
Non-citizens married to Vanuatu citizen	Constitution Citizenship Act	No political rights Reserved businesses Reserved jobs Fundamental rights and freedoms can be limited by law	2 year Vanuatu residency, married to Ni-Van citizen		Designed to accommodate spouses of indigenous Ni-vans

Naturalised Citizens of other countries who have spent over 10 consecutive years of residence in Vanuatu	Constitution Citizenship Act	Political rights Reserved businesses Reserved jobs Cannot have fundamental rights and freedoms limited	<ul style="list-style-type: none"> - 10 year resident - Intends to continue to reside in Vanuatu - Is not or is unlikely to become a charge on public funds - Has respect for the culture and ways of life of Vanuatu - Is of good character - Unless prevented by physical or mental disability, is able to speak and understand sufficiently for normal conversational purposes, Bislama, English, French or a vernacular of Vanuatu - Has a reasonable knowledge and understanding of the rights, privileges, responsibilities and duties of citizens - Has taken and subscribed to an oath of allegiance or made a solemn affirmation in the form set out in Schedule 1 - Has not been involved in the financing of a terrorist act; - Has not been involved in the funding of political instability in Vanuatu; - Has not been removed from Vanuatu under section 53A of the Immigration Act No. 17 of 2010; - Has not been convicted of any offence carrying a maximum penalty of imprisonment for 12 months or more in Vanuatu or in another jurisdiction 	200-300 annually	200-300 applicants per year
Honorary Citizenship	Constitution Citizenship Act	Unknown	<ul style="list-style-type: none"> - No criminal record 	Any numbers?	Also, person appointed under the Foreign service Act as

- Service to Vanuatu/ contribute significantly to the development process of the country			- Of high standing in community, organization, society or country		representative of the Government overseas
VERP Vanuatu Economic Rehabilitation Program (2015-2017) Established after cyclone Pam as a rehabilitation program for disaster relief/ reconstruction	Citizenship Act Citizenship Regulations	Honorary Citizenship Right to passport Right to carry out investment No political rights and fundamental rights and freedoms can be limited by law	Investment: Vt13 million, which is a non-refundable contribution, Vt1 million citizenship fee, Vt16,000 passport fee, Vt200,000 VIPA fee and Vt100,000 for checks by Government authorities. No residency, culture or language requirements	306 applicants 896 passports -	Original cap of 100 applicants Most of the applicants were Chinese who were interested to possess a Vanuatu passport for travel convenience PRG was sole agent for VERP, with Vanuatu Glory Limited as the local company.
CIIP (2013 -) Attract capital investment funds in exchange of Vanuatu citizenship and Vanuatu passport.	Citizenship Act Citizenship Regulations Immigration Visa Regulations	No political rights and fundamental rights and freedoms can be limited by law (unless citizens under Real Estate Option)	- Has respect for the culture and ways of life of Vanuatu - Is of good character - Has a reasonable knowledge and understanding of the rights, privileges, responsibilities and duties of citizens - Has taken and subscribed to an oath of allegiance or made a solemn affirmation in the form set out in Schedule 1	49 cases processed	260,000 USD fee Eliminates residency and language requirements This program was introduced after the amendment of the constitution in 2013

Vanuatu Contribution Program (VCP) (2018-current) designed to attract and build the development fund	Citizenship Act Citizenship Regulation	No political rights and fundamental rights and freedoms can be limited by law Right to do business in Vanuatu Right to a passport	Required, specified “investment” in Vanuatu No criminal conviction Not from “restricted country”	-1163 citizenships -5253 passports (VCP/DSP combined)	- main interest of VCP applicants is the Vanuatu passport in order to enter without visa requirement in EU states and in commonwealth countries. - PRG/VGL is sole agent for this program - Order 34 of 2019 establishes agents, selling prices, fees plus application procedures
Development Support Program (DSP) (2018-current) attract and build the development fund.	Citizenship Act Citizenship Regulations	No political rights and fundamental rights and freedoms can be limited by law -	Required, specified “investment” in Vanuatu No criminal conviction Not from “restricted country”	- 812 citizenships -5253 passports (VCP/DSP combined) -Program currently capped at 600 – not sure from what date?	- Most of the applicants for this program comes from China, a small number from Europe and Middle East -- Main interest is in travel document

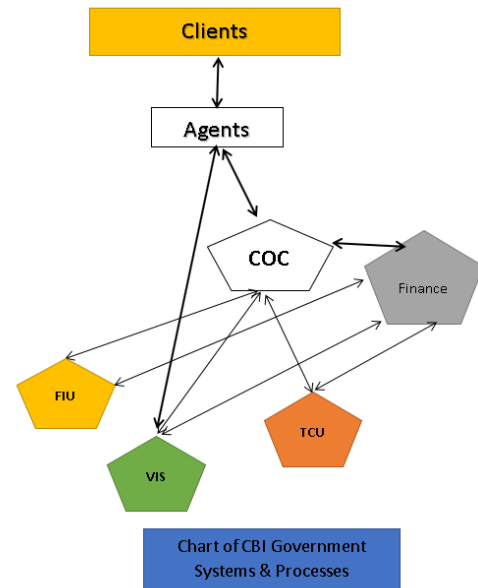
2 Appendix 4 Regulations covering Investor Citizens

Program	2013	2015	2016	2017	2018	2019
Honorary VERP		*Regulation Order 34/2015 Amendment to Regulation Order 37/215 Amendment to Regulation Order 188/2015 Privileges Order 38/2015 Amendment to Privileges Order 189/2015	Amendment to Regulation Order 70/2016 Amendment to Regulation Order 116/2016 Amendment to Privileges Order 157/2016			*Repeal Order 15/2019
CIIP	Citizenship Amendment Act No. 39/2013 Constitutional (Sixth) (Amendment) Act No. 27/2013 Immigration Visa Regulation (Amendment) Order 115/2013	Real Estate Option Regulation Order 115/2015	*Real Estate Option Repeal Order 67/2016			

Honorary DSP			*Regulation Order 215/2016 Privilege Order 216/2016	Regulation Amendment Order 5/2017 Amendment to Regulation Order 105/2017	Amendment to Regulation Order 27/2018 Amendment to Regulation Order 45/2018 Amendment to Regulation Order 88/2018 Repeal of 45/2018 Order 91/2018 Repeal 88/2018 Order 93/2018 Amendment to Regulation Order 94/2018	*Repeal of 215/2016 Order 46/2019
DSP						Regulation Order 33/2019
VCP			*Regulation Order 220/2016	Amendment to Regulation Order 6/2017	Amendment to Regulation Order 46/2018 Amendment to Regulation Order 84/2018 *Repeal of 84/2018 Order 92/2018 Amendment to Regulation Order 95/2018	Amendment to Regulation Order 19/2019 Amendment to Regulation Order 34/2019

Appendix 5 Administrative Process Sequence for CBI

1. The DSP/VCP programs are publicized at the COC website and at designated agents' websites.
2. The designated agent begins the application process using COC prescribed application form
Suggestion: COC to have a numbered and standardized application form for DSP/VCP
3. The client is tasked to provide all required documents
 - identity documents: passport, birth certificate, Identity cards, CV, other documents
 - due diligence documents, including police clearance
 - proof of assets: Bank reference and asset values?*Suggestion:* require police clearance from all previous and related residence areas
4. Agent to check if clients has fulfilled all the required documents
 If agent satisfied, agent request service payment of 25% processing fees
5. Once Client made the 25% payment, the agent sends the 25% payment to Vanuatu finance DSP account and collects receipt.
6. The agent provides the payment receipt and all the required documents to COC for review.
7. After receiving the application, the COC request the due diligence checks from the respective government security agencies such as FIU and TCU and waits for their clearances.
8. Once FIU and TCU provide clearance, it goes to the screening committee composed of (VIS rep/ SLO rep / SG and Citizenship compliance Officer. Police rep will join in future already approved but not yet gazetted)
9. The screening committee will make recommendations to the COC.
10. The commission will deliberate on the applications and provide its approval in principle or pronounce its refusal.
Suggestion: keep records of rejected applicants at all stages
11. The Secretary General of the COC will inform the agent within the next 48 hours of the decision of the commission.
12. If the decision was positive in principle, the agent will request the client to complete the other 75% of the payment. The current policy is silent on how soon should the 75% be paid. In the case of naturalised citizens, there is a 3-month grace period, after which the application is considered cancelled.
13. The agent forwards the payment to the Vanuatu government account and provides receipts to the citizenship secretariat.
14. The COC will check with the Finance Department to see if the payment was received and if so, proceed with the release of the citizenship certificate. The certificate is signed by COC chair and one other Commission Member
15. After the certificate is printed at the COC, the agent collects the certificate.



- Suggestion:* develop some system to add security features into the citizenship certificate
16. The agent then completes the passport application forms and submits the passport required documents pays the passport processing fees to the passport office.
 17. The passport office checks the required documents and fees, including the citizenship certificate prior processing the passport.
 18. Once the passport is printed, the agent collects it and organises the delivery of the citizenship and the passport to the client.
 19. For the delivery, the agent needs to organise an Officer of Oath to witness the citizenship certificate and also negotiate with immigration to release an officer to deliver the passport and certificate of citizenship. Currently, oaths can be taken Hong Kong, Dubai, and Singapore.
 20. The government officers travel with the citizenship document and the passport to the destination and deliver the documents to the client at the agent's expense.

Appendix 6: A Nationality-Based Program for Immigrant Investors

Overview

The ‘Nationality Based Program’ (NBA) proposes a citizenship by investment program using a phased approach to gaining full citizenship. The initial investment provides the investor with ‘Vanuatu national’ status and following the establishment of genuine links and further investment eligibility for citizenship. The approach recognizes the important economic value of CBI programs for small island economies like Vanuatu, while also acknowledging the political issues related to granting citizenship to non-ni-Vanuatu.

This initial Vanuatu ‘nationality’ status makes the investor eligible for a Vanuatu passport, and a qualification for residency. In order to obtain full citizenship, along with its accompanying rights and privileges, Vanuatu nationals would be both encouraged and required to develop genuine links and interests in Vanuatu, similar to the requirements already in place for naturalized citizens.

The NBA is designed to encourage local support for the program by integrating investor citizens into Vanuatu’s existing citizenry in a variety of ways: through language and culture requirements; through establishing models of investment connected to communities, increased joint ventures, and strengthened corporate social responsibility; and through further contributions to clearly identified priority areas within the Vanuatu National Sustainable Development Plan (VNSDP).

Conceptual Framework

Nationality, Citizenship and Passports

Nationality, citizenship and passports are concepts that are interconnected but also distinguishable from each other. Within the international sphere, a passport identifies a traveler as a citizen or *national* of that state and their right to protection from its issuing state. Citizenship is determined by the inner contractual ties within the national sphere of that state, that is, the inner political life and the rights and duties attached to that citizen. Nationality on the other hand, is the status given to someone belonging to a state in international matters, irrespective of the rights and duties of that person within that state.¹⁵⁹

It is the sovereign right of each state to determine who can acquire citizenship, nationality, and passports. The introduction of Vanuatu nationality provides the national, the state and the polity with the time to grow genuine links and genuine investment, which would be conditional for granting full citizenship. It would uphold the meaning of citizenship rather than further erode it.

This relationship between the national and state from the perspective of the international community would be one of a protected non-stateless national passport holder. The inner contractual ties between the national and the state are not the concern of the international community and the status of a protected non-stateless national passport holder allows the national to participate within the international community in the same way as a citizen. The inner contractual ties, that is the legal relationship between the national and the state, is where nationality and full citizenship are distinguished until such time the national establishes genuine links.

The process of transitioning from national to citizenship is legally held in place within the legal framework and by contract, by the state’s promise for protection and by the national’s investment and promise to abide by the law, both acting as cornerstones giving rise to nationality and passport eligibility. Nationality is the possible start to full citizenship status, which can eventually materialize through legal residence and points for contributions, representing the genuine links established.

Both nationals and citizens can hold passports issued by their respective states. The United Kingdom (UK), United States of America (US) and Republic of China (Taiwan), each have nationality laws that distinguish nationals from citizens:

United Kingdom: British nationality law defines 6 classes of British national, among which 'British Citizen' is one just one class. There are also British Overseas Citizens, British National (Overseas), British Subjects, and British Protected Persons, each with differing residency, work and political rights. The British Virgin Islands provide an interesting example. British Virgin Islanders (BVI) are British Overseas Territories Citizens that are entitled to British passports. Although BVIs do not have automatic rights to reside in the UK, they are exempt from visas within the Schengen Area for visits of less than 6 months. They are also entitled to a simplified process for applying for residency and can become British Citizens by registration, rather than by naturalization after a certain number of years. British Citizens that are not BVIs are likewise not automatically entitled to reside, work or own land in the British Virgin Islands unless they qualify under local legislation for these rights and privileges.

- *United States:* US nationality laws define some persons born in US outlying possessions as US national but not citizens. For example, American Samoans are 'non-citizen nationals' of the US, who are not automatically granted citizenship at birth, and are currently not able to register to vote, and have limited work rights. Automatic citizenship has been opposed the basis that it would threaten American Samoa's traditional cultural and religious practices, in particular their indigenous political system and land rights. However, it is also currently being challenges in US federal courts.¹⁶⁰
- *Taiwan:* There is a status of 'national without household registration', which is given to persons who have nationality but are not automatically entitled to enter or reside in Taiwan Area. They also do not qualify for political rights and duties.
- *Further examples* can be found in Estonia and Latvia where there are categories of nationals that were created during transition from the former USSR. These categories of nationals do not hold citizenship but still travel with Estonian and Latvian 'alien' passports.

The need for 'genuine link' citizenship

One of the main critiques of citizenship by investment schemes, both globally and within Vanuatu, is the farce of citizenship with merely formal legal declaratory citizens i.e. it uses a hollowed-out concept of citizenship while the CBI recipient is granted citizenship in name. The absence of genuine links between investor citizens and the polity challenges international legal principles on the recognition of citizenship,¹⁶¹ commercializes sovereignty, alters the ties that bind the political community, and corrodes public trust in a way that other forms of citizenship, such as naturalization, does not.

Take for instance *the major differences between CBI citizens and naturalized citizens*, the process and requirements listed for naturalisation establish that the applicant has built a genuine link with Vanuatu language and culture, and has integrated and connected with polity. These requirements are far more involved in comparison to those applying to all other categories of citizenship, and this is also reflected in the rights and privileges granted to naturalised citizens in contrast to all other categories of citizenship, most notably rights to political participation. Naturalised citizens in Vanuatu are granted the same rights and privileges as indigenous ni-Vanuatu citizens, save land ownership rights.¹⁶³

Investor citizens, and other categories of citizenship do not have political rights and their fundamental rights and freedoms may be limited by law.¹⁶⁴ The citizenship is an empty shell without entitlements to the rights that are linked to the concept of a 'citizen'. They are citizens only in name, carrying Vanuatu

passports. This status would be more accurately described as ‘national’ status, as described in the examples above, rather than citizenship. It is also a more accurate description of the status of a person that ‘purchases’ a passport than the common CBI programs that do assign full citizenship where there is no reason to do so beyond the investment or contribution.

The NBA presents an honest answer to the main critique of CBI being a farce of a citizenship with merely formal legal declaratory citizens. Citizenship is only a random concept if it follows no rules or meaning. The NBA does not grant citizenship, but a nationality that may become citizenship. It is local citizenship, and without the locale, there is no citizenship. A government is and should always be able to choose to assign the legal status of citizen only to those who have fulfilled and are fulfilling any and all criteria beyond a technical assignment of an otherwise empty status.

Nationals, passports and genuine investment

The concept of ‘nationals’ can be used in Vanuatu’s CBI program to build both genuine link citizenship and genuine investment. In Vanuatu’s context, the existing ‘investor citizenry’ have predominately engaged with Vanuatu’s CBI programs to facilitate international travel and importantly for investment growth, easier access to international markets.

Under the NBP model, an investor wanting to obtain full citizenship in Vanuatu would begin the process of obtaining citizenship by being granted the legal status of a Vanuatu ‘national’ for their investment – the first phase or criteria required to obtain citizenship by investment. The legal status of a Vanuatu ‘national’ could encompass the right to register for legal residency, a Vanuatu nationality-based passport and its corresponding consular protection when travelling internationally.

Legally recognizing Vanuatu nationals and Vanuatu national passports

The NBP will firstly need to legally distinguish the concepts of ‘nationals’ and ‘citizens’. The existing legal framework already does this. There are multiple Acts that contain the phrase ‘national or citizen’,¹⁶⁵ however to date, only ‘citizen’ has been defined leaving the term ‘national’ to be further developed in Vanuatu’s context.

The first phase of the NBA grants suitable investors with ‘Vanuatu national’ status and an accompanying Vanuatu National Passport. The *Passports Act* already states that a Vanuatu passport will show ‘the identity and nationality or citizenship’ and therefore recognizes the possibility of nationals being granted passports. The term ‘nationality’ replaced the term ‘subject’ in 2009.¹⁶⁶

Section 3 of the *Passport Act* only provides for a ‘citizen’ of Vanuatu to be issued with a passport, however, an amended to ‘national or citizen’ would suffice to accommodate the NBA.

The original CIIP program requirements and processes had some similarities to this concept, providing successful applicants with residency rights, followed by fast-track options for gaining citizenship through further investment, and limited political rights until such time the citizen had been resident in Vanuatu for over 10 years. This indicates that the approach, broadly conceived, is not new to Vanuatu.

International laws regulating passports do not place any restrictions on non-citizen nationals being issued passports. As mentioned above, there is precedent for this in the UK, US, Taiwan, Estonia and Latvia, to name a few. For the example given on American Samoa, their passports include the disclaimer: ‘The bearer is a United States national and not a United States citizen’. Estonian and Latvian non-citizen nationals travel with ‘alien passports’ issued by each of their respective states. It is important to note here that these distinguished categories of passports, in the case of Latvia, do not have the same visa-free travel entitlements as Latvian ‘citizen’ passports.

Although these examples distinguish non-citizen national passports from citizen passports, there are no international regulations that require countries to make this distinction or place disclaimers on their passports. It remains the sovereign right of each country to determine what information is included on their passports, save the minimal information required to identify the passport holder. Therefore, whether the passport holder is a Vanuatu citizen, or a Vanuatu national, does not need to be distinguished on the passport itself, and can be left as a matter of internal affairs.

End Notes

ⁱ The review was carried out by a team, assembled by Human Capacity Development International (HCDI), a Vanuatu-based NGO. The team of organisational, international policy, legal and industry experts was led by Mr. Henry Tamashiro, former Director of Immigration Services and former Vanuatu and Regional Pacific Director of IOM.

ⁱⁱ *The Global Guide to Citizenship: The 2019 Index*, p.5 <https://cbiindex.com/reports/>

ⁱⁱⁱ Adim, L. (2017) Between benefit and abuse: Immigrant investment programs. Saint Louis University Law Journal, 62, 121-136. https://www.slu.edu/law/law-journal/pdfs/issues-archive/v62-no1/leila_adim_article.pdf

^{iv} Investment Migration Market Would Reach US\$100bn in Revenue by 2025 if 23% CAGR Trend Persists
Investment Migration Insider February 19, 2019. <https://www.imidaily.com/editors-picks/investment-migration-market-would-reach-us100bn-in-revenue-by-2025-if-23-cagr-trend-persists/>

^v Investment Immigration for Governments and Global Citizens December 6, 2018.
<https://citizenshipbyinvestment.ch/index.php/2018/12/06/investment-immigration-for-governments-and-global-citizens/>

^{vi} CBI/RBI is not limited to developing countries. In New Zealand for instance, its investor visa priced at either NZD 3 or 10 million, raises upwards of NZD 27 million a week and it rejects 1 out of 3 applicants. About 67% of its applicants comes from China. Investment Migration Insider January 15, 2020. <https://www.imidaily.com/asia-pacific/new-zealands-investor-visa-raises-nz27-million-a-week-rejects-1-in-3-applicants/>

^{vii} Investment Migration Market Would Reach US\$100bn in Revenue by 2025 if 23% CAGR Trend Persists
Investment Migration Insider, February 19, 2019. <https://www.imidaily.com/editors-picks/investment-migration-market-would-reach-us100bn-in-revenue-by-2025-if-23-cagr-trend-persists/>

^{viii} 57,000+ Chinese Spent More Than US\$44 Billion on Golden Visas in Last Decade, *Investment Migration Insider* September 1, 2019. <https://www.imidaily.com/china/57000-chinese-spent-more-than-us44-billion-on-golden-visas-in-last-decade/>

^{ix} *The Global Guide to Citizenship: the 2019 Index*, p.2 <https://cbiindex.com/reports/>

^x Citizenship by Investment Terms of Reference (TOR), November 2019.

^{xi} ToR

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^{xiii} Vanuatu Has Reportedly Issued 4,000+ Passports Under CIP But IMF Estimates 72% Drop in 2019 *Investment Migration Insider*, June 24, 2019. <https://www.imidaily.com/asia-pacific/vanuatu-has-reportedly-issued-4000-passports-under-cip-but-imf-estimates-72-drop-in-2019/>

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Panama, Peru, Saint Kitts and Nevis, Saint Lucia, St Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands.

^{xv} ToR

^{xvi} CBI Terms of Reference (ToR)

^{xvii} ToR

^{xviii} *The Global Guide to Citizenship: the 2019 Index*, <https://cbiindex.com/reports/>

^{xix} *Quality of Nationality Index*: The QNI measures both the internal value of nationality, which refers to the quality of life and opportunities for personal growth within country of origin, and the external value of nationality, which identifies the diversity and quality of opportunities that this nationality allows one to pursue outside the country. <https://www.nationalityindex.com/worldmap/VUT#>

^{xx} The May 2015 IMF *Staff report for the 2015 Article IV consultation and request for disbursement under the rapid credit facility and purchase under the rapid financing instrument*, p. 41 provides this description of the Capital Investment Immigration Plan (CIIP)

“In addition to the Hong Kong Permanent Residency Visa Program, Vanuatu has recently established the Capital Investment Immigration Plan (CIIP), whose target group is not limited to the Chinese. In exchange for the Vanuatu citizenship, an investor has to pay a \$40,000 fee and invest \$260,000. The investment, which will be returned to the investor after 7 years, is allocated to deposits in partially-government-owned National Bank of Vanuatu (25 percent), Vanuatu long-term government bond (25 percent), and real investment in the country’s various islands (50 percent). The authorities hope that the return from the real investment alone would be sufficient to fully repay investors. The program was launched in 2014 and brought in about 0.2 percent of GDP that year”.

<https://www.imf.org/external/pubs/ft/scr/2015/cr15149.pdf?fbclid=IwAR3RyGe3gSCjArZJL64qeTUpCt490IHr75ueSa64p5-ggYJfwVZf0Wp7Y>

^{xxi} CIIP: Where is the money? *Vanuatu Daily Post* Nov 29, 2016. https://dailypost.vu/news/ciip-where-is-the-money/article_e763951f-b682-5545-9dba-47ce6a35b7cd.html

^{xxii} 2019-2022 *Vanuatu Debt Management Strategy*

[https://doft.gov.vu/images/2019/Debt/Vanuatu Debt Management Strategy 2019-2022.pdf](https://doft.gov.vu/images/2019/Debt/Vanuatu%20Debt%20Management%20Strategy%202019-2022.pdf)

^{xxiii} *Guide to Global Citizenship: the 2019 CBI index* <https://cbiindex.com/reports/> p. 7

^{xxiv} Section 20, *Citizenship Act*

^{xxv} Article 13(3) and (4) *Constitution of Vanuatu*

^{xxvi} Article 5(1) *Constitution of Vanuatu*

^{xxvii} Types of Citizenship, Vanuatu Citizenship Office and Commission,

<https://vancitizenship.gov.vu/index.php/citizenship/types-of-citizenship>

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^{xxxi} Passport Sales Out-Earn, *Vanuatu Daily Post*, Aug 22, 2019. https://dailypost.vu/news/passport-sales-out-earn-vat/article_82ac5f99-e80a-54e3-b924-077966309a64.html

^{xxxii} Passport Sales Out-Earn, *Vanuatu Daily Post*, Aug 22, 2019. https://dailypost.vu/news/passport-sales-out-earn-vat/article_82ac5f99-e80a-54e3-b924-077966309a64.html

^{xxxiii} 2019-2022 *Vanuatu Debt Management Strategy*

[https://doft.gov.vu/images/2019/Debt/Vanuatu Debt Management Strategy 2019-2022.pdf](https://doft.gov.vu/images/2019/Debt/Vanuatu%20Debt%20Management%20Strategy%202019-2022.pdf)

^{xxxiv} 2019-2022 *Vanuatu Debt Management Strategy*, p. 2

^{xxxv} Vanuatu Has Reportedly Issued 4,000+ Passports Under CIP But IMF Estimates 72% Drop in 2019, *Investment Migration Insider*, June 24, 2019. <https://www.imidaily.com/asia-pacific/vanuatu-has-reportedly-issued-4000-passports-under-cip-but-imf-estimates-72-drop-in-2019/>

^{xxxvi} Oxford Analytica. Due Diligence in Investment Migration (2020), available at

<https://investmentmigration.org/wp-content/uploads/DD-in-IM-Current-Applications-and-Trends-January-2020.pdf>

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- xxxviii Questions and Answers on the Report on Investor Citizenship and Residence Schemes in the European Union 23 January 2019. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_527
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- xlvi For a list of due diligence firms, see World Citizenship Council: Due diligence firms for Citizenship by Investment (Oct 1, 2018) <https://worldcitizenshipcouncil.org/2018/10/01/due-diligence-firms-for-citizenship-by-investment/> and <https://citizenshipbyinvestment.ch/index.php/2018/10/01/due-diligence-firms-recommended-for-cbi-agents-and-governments/>
- xlvi BDO Consulting Services [https://www.bdo.com/services/business-financial-advisory/forensics-and-investigations/overview-\(3\)](https://www.bdo.com/services/business-financial-advisory/forensics-and-investigations/overview-(3))
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- li Egmont Group. www.egmontgroup.org
- lii <https://vancitizenship.gov.vu/> The issue of proper process was the major contention related to the recent deportation of Chinese nationals <https://www.scmp.com/week-asia/geopolitics/article/3018076/vanuatues-deportation-six-chinese-nationals-erosion-its>
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- lvi OUTCOME OF PROCEEDINGS: Criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes-Council conclusions (8 November 2016). <https://www.consilium.europa.eu/media/24230/08-ecofin-non-coop-juris-st14166en16.pdf>
- lvii International collaboration to end tax avoidance, OECD. <http://www.oecd.org/tax/beps/> "Base erosion and profit shifting (BEPS) refers to tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax. Developing countries' higher reliance on corporate income tax means they suffer from BEPS disproportionately. BEPS practices cost countries USD 100-240 billion in lost revenue annually. Working

together within OECD/G20 Inclusive Framework on BEPS, over 135 countries and jurisdictions are collaborating on the implementation of 15 measures to tackle tax avoidance, improve the coherence of international tax rules and ensure a more transparent tax environment". <http://www.oecd.org/tax/beps/about/>

^{lviii} Vanuatu urges EU to assist members out of 'black list', *Vanuatu Daily Post*, Dec 12, 2019. Vanuatu Foreign Minister Ralph Regenvanu "has voiced Vanuatu's concern over the ongoing bullying tactics and asymmetrical manner in which the EU has taken on the revised list of so-called 'Non-Cooperative Tax Jurisdictions'". He also pointed to the need for consultation, clarity, and capacity building in order for Vanuatu, and other South Pacific nations, to meet their international obligations. https://dailypost.vu/news/vanuatu-urges-eu-to-assist-members-out-of-black-list/article_918514ca-1c61-11ea-8882-732689e17f42.html

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^{lxi} Residence/Citizenship by investment schemes, OECD, 20 November 2018. <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>

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^{lxvi} Quality of Nationality Index, 2018 Rankings. <https://www.nationalityindex.com/worldmap/VUT#>

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^{lxviii} Vanuatu reviews 'passports for sale' scheme over EU worries, *Vanuatu Daily Post*, Oct 24, 2019.

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^{lxix} Vanuatu reviews 'passports for sale' scheme over EU worries, *Vanuatu Daily Post*, Oct 24, 2019.

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<https://www.rnz.co.nz/international/pacific-news/392621/vanuatu-mp-wants-stricter-controls-on-passport-sales>

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<https://www.bbc.com/news/business-49958628>

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^{lxxxi} Reserved businesses include: Export of sandalwood in stick and chip form, harvested from natural forests; Local trading of sandalwood, harvested from natural forests; Export of seeds and other minor forest products, harvested from natural forests; Second hand clothing shops; Export of kava in root, chip and stick form; Manufacture of handcrafts and artefacts; and Kava bars

^{lxxxii} Both the current VIPA Act and the relevant provisions within the recently passed, yet to be gazetted Vanuatu Investment Promotion Facilitation Act (VIPF Act) have been referred to. The relevant provisions in the VIPF Act are consistent with current Act.

^{lxxxiii} Article 5(1) *Constitution of Vanuatu*

^{lxxxiv} Article 13(3) and (4) *Constitution of Vanuatu*

^{lxxxv} Article 9, *Constitution of Vanuatu*

^{lxxxvi} Article 11, *Constitution of Vanuatu*

^{lxxxvii} Article 13, *Constitution of Vanuatu*

^{lxxxviii} Article 10, *Constitution of Vanuatu*

^{lxxxix} Article 12, *Constitution of Vanuatu*

^{xc} Article 14, *Constitution of Vanuatu*

^{xci} Article 13, *Constitution of Vanuatu*

^{xcii} Articles 9-11, *Constitution of Vanuatu*

^{xciii} Article 73, 74 and 75, *Constitution of Vanuatu*, these provisions state that all land in Vanuatu belongs to the indigenous custom owners and their descendants in perpetuity, which could include persons entitled to citizenship through ancestry, assuming their ancestry has indigenous lineage. However, rights to land ownership through indigenous ancestry are not automatic. The rules of custom determine basis of ownership and use of land, therefore, only some indigenous ni-Vanuatu citizens have land ownership rights creating a sub-category of citizenship within indigenous citizens.

^{xcv} See for example, *Registered Persons as Citizens of Vanuatu Order No. 74 of 2011*

^{xcvi} Articles 73-75, *Constitution of Vanuatu*

^{xcvii} See for example, s20 *Forestry Act*; s12 *Mines and Minerals Act*; s5 *Kava Act*

^{xcviii} See for example, s34 *Environmental Protection and Conservation Act*; *Traditional Knowledge and Cultural Expression Act*; s41 *Copyright and Related Rights Act*

^{xcix} Section 9, *Labour (Work Permits) Act*, Section 3, *Vanuatu Investment Promotion Authority Act*

^c - 10-year resident

- Intends to continue to reside in Vanuatu

- Is not or is unlikely to become a charge on public funds

- Has respect for the culture and ways of life of Vanuatu

- Is of good character

- Unless prevented by physical or mental disability, is able to speak and understand sufficiently for normal conversational purposes, Bislama, English, French or a vernacular of Vanuatu (clarify?)

- Has a reasonable knowledge and understanding of the rights, privileges, responsibilities and duties of citizens

- Has taken and subscribed to an oath of allegiance or made a solemn affirmation in the form set out in Schedule 1

- Has not been involved in the financing of a terrorist act;

- Has not been involved in the funding of political instability in Vanuatu;

- Has not been removed from Vanuatu under section 53A of the Immigration Act No. 17 of 2010;

- Has not been convicted of any offence carrying a maximum penalty of imprisonment for 12 months or more in Vanuatu or in another jurisdiction

ci Schedule 1, *Citizenship Act*

cii Article 12, *Constitution of Vanuatu*

ciii Article 5(1) and 13, *Constitution of Vanuatu*

civ Article 5(1) and 13, *Constitution of Vanuatu*

cv Sections 1 and 11, *Citizenship Act*

cvi Section 13C, *Citizenship Act*

cvi Section 13CB, *Citizenship Act*

cvi Section 13E, *Citizenship Act*

cix *Honorary Citizenship (Vanuatu Economic Rehabilitation Program) Regulation (Repeal) Order No. 15 of 2019*

cx Section 13B(4), *Citizenship Act*

cxI Clause 9, *Citizenship (Development Support Program) Regulations Order No. 33 of 2019*

cxii Section 13C, *Citizenship Act*

cxiii *Immigration Visa Regulation (Amendment) Order No. 115 of 2013*

cxiv Clause 6, *Immigration Visa Regulation (Amendment) Order No. 115 of 2013*

cxv Section 13C, *Citizenship (Amendment) Act No. 39 of 2014*

cxvi Section 13D, *Citizenship (Amendment) Act No. 39 of 2014*

cxvii *Immigration Visa Regulation (Amendment) Order No. 31 of 2014*

cxviii *Citizenship (Real Estate Option) Order No. 115 of 2015 and Citizenship (Real Estate Option) Regulation (Repeal) Order No. 67 of 2016*

cxix Schedule Clause 8, *Citizenship (Real Estate Option) Regulation Order No. 115 of 2015*

cxix Section 13C, *Citizenship Act*

cxxi *Honorary Citizenship (Vanuatu Economic Rehabilitation Program) Regulation Order No. 34 of 2015*

cxixii *Honorary Citizenship (Vanuatu Economic Rehabilitation Program) Regulation (Repeal) Order No. 15 of 2019*

cxixiii Clause 2, *Honorary Citizenship (Vanuatu Economic Rehabilitation Program) Regulation (Amendment) Order No. 188 of 2015*

cxixiv Clause 3, *Honorary Citizenship (Vanuatu Economic Rehabilitation Program) Regulation (Amendment) Order No. 37 of 2015*

cxixv Clause 4, *Honorary Citizenship (Vanuatu Economic Rehabilitation Program) Regulation Order No. 15 of 2019*

cxixvi Clause 6, *Honorary Citizenship (Vanuatu Economic Rehabilitation Program) Regulation Order No. 38 of 2015*

cxixvii *Citizenship (Development Support Program) Regulation Order No. 214 of 2016*

cxixviii *Citizenship (Development Support Program) (Repeal) Order No. 46 of 2019*

cxixix *Citizenship (Development Support Program) Order no. 33 of 2019*

cxixx *Honorary Citizenship (Development Support Program) Order No. 216 of 2016*

cxixxi Clause 8(6), *Citizenship (Development Support Program) Regulation Order No. 33 of 2019*

cxixxii Section 20(1), *Citizenship Act*, The category of citizenship ‘Honorary Citizenship’ is created under either section 20 of the *Citizenship Act* through Parliament’s power to make further provisions for the acquisition of citizenship under Article 14 of the *Constitution*.

cxixxiii Section 20(2), *Citizenship Act*

cxixxiv Section 20(4), *Citizenship Act*

cxixxv *Unlawful and Improper Issuance of 11 Vanuatu Passports and Honorary Citizenship Certificates to Foreign Nationals* [1999] VUOM 16; 1999.19 (26 November 1999), Office of the Ombudsman, at 3.2 and 3.4

cxixxvi Article 3, *Passports Act*

cxixxvii Section 5(3), *Citizenship Act*

cxixxviii *Republic of Vanuatu v Benard* [2016] VUCA 4; Civil Appeal Case 666 of 2015 (15 April 2016)

cxixxix See Sections 15, 16, 50, 53, and 53A, *Immigration Act 2010*

cxI Section 16(1), *Immigration Act 2010*

cxli Section 16(2), *Immigration Act 2010*

cxlii Section 81, *Immigration Act 2010*

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- cxliii Section 1, *Immigration Act 2010*; see also Section 13, *Passports Act*
- cxliv Section 14A, *Civil Status (Registration) (Amendment) Act No. 13 of 2018*
- cxlv Section 14A, *Civil Status (Registration) (Amendment) Act No. 13 of 2018*
- cxlvi Types of Citizenship, Citizenship Office and Commission, 2015.
<https://vancitizenship.gov.vu/index.php/citizenship/types-of-citizenship>
- cxlvii Message from Acting Secretary General, The Vanuatu Citizenship Commission Mr. Samuel Garae, Vanuatu Information Center, <https://vic.vu/citizenship/#Citizen>
- cxlviii Message from Acting Secretary General, The Vanuatu Citizenship Commission, Mr. Samuel Garae, Vanuatu Information Center <https://vic.vu/citizenship/#Citizen>
- cxlix For good examples, see government CBI site of Grenada, <https://www.cbi.gov.gd/grenada-citizenship/application-fees/>, Dominica <https://cbiu.gov.dm/> and Antigua and Barbuda <https://cip.gov.ag/>
- cl Price comparisons between countries, including agent and other fees shows:
- o Dominica offers a price of 109,950, incl. DD 7500 USD
 - o St. Lucia's price is 109,500 USD incl DD7500 plus 20,000 agent fees
 - o Antigua has a fee of 132,800 fee plus DD 7500
 - o St. Kitts and Nevis has a fee of 157,750 plus DD 7500
 - o Grenada offers a starting price of 158,500 USD incl 5000 DD
 - o Montenegro 100,000 Euro
 - o Malta 650,000 euro
 - o Cyprus 150,000 euro
- cli Budget Policy Statement
https://doft.gov.vu/images/2019/Budget_Statement/2020_Budget_Policy_Statement_English_FINAL_05082019.pdf
- clii How Immigrants Benefit The Host Economy, Express Money Blog, 25/9/2019.
<https://www.xpressmoney.com/blog/industry/how-immigrants-benefit-the-host-economy/>
- cliii . "Business is becoming increasingly global; governments are stuck with the question: so, what can you do for us? When, really, the question they need to ask to the foreign investor is: what can we do for you? How can we help you grow your wealth? Only then will governments realize that their interests can be aligned and gain from seeing foreign investors prosper in their own backyard The recipe for a successful citizenship by investment program – Suggestions for Montenegro *Immigration Investment Daily* <https://www.imidaily.com/opinion/recipe-successful-citizenship-investment-program-suggestions-montenegro/>
- cliv M Koessler, "'Subject,'" "Citizen," "National," and "Permanent Allegiance", available at: http://natural-borncitizens.com/nbcfiles/SUBJECT_Citizen_NATIONAL.pdf
- clvi Currently, the naturalisation procedure uses a test to assess knowledge of history and culture. If the COC wishes to retain such a test, it is recommended that the test be reviewed for reliability and validity.
- clvii <https://vcci.vu/wp-content/uploads/2019/05/VANUATU-NHRDP-draft-0119.pdf>
- 159 M Koessler, "'Subject,'" "Citizen," "National," and "Permanent Allegiance", available at: http://natural-borncitizens.com/nbcfiles/SUBJECT_Citizen_NATIONAL.pdf
- 160 This is currently being challenged in the US Federal Courts. See:
<https://www.nytimes.com/2019/12/13/us/american-samoa-us-citizenship.html> and
<https://www.nbcnews.com/news/asian-america/why-some-american-samoans-don-t-want-u-s-citizenship-n1103256>
- 161 *Nottebohm Case (Liechtenstein v. Guatemala)*; *Second Phase, International Court of Justice (ICJ)*, 6 April 1955
The ICJ upheld the principle that in order to be recognized as a citizen of a state, a meaningful connection to the state had to be established.
- 163 Refer to Section 5, Legal Review of this report
- 164 Refer to Section 5, Legal Review of this report
- 165 See Sections 13, 14(1)(b), 14(2), 18(b)&(c) *Citizenship Act*, Section [?], *Immigration Act*, Section 1, *Passports Act*
- 166 Section 1, *Passports (Amendment) Act 2009*