

REPUBLIC OF VANUATU

BILL FOR THE INTERNATIONAL COMPANIES (AMENDMENT) ACT NO. OF 2017

Explanatory Note

This Bill amends the International Companies Act [CAP 222] primarily to give effect to Vanuatu's FATF Action Plan to meet FATF Recommendations*. A brief explanation of the key amendments is set out below.

Beneficial Ownership of International Companies

The Action Plan requires that international companies obtain and maintain up to date basic and beneficial ownership information, and provide information in a timely fashion to competent authorities on request. Complementary obligations are also placed on the registered agents of international companies, which must be based in Vanuatu. These obligations include:

- (a) Obtaining the company's constitution, proof of incorporation, details of the beneficial owners of the company, the register of members, and the details of the nominators of nominee shareholders and nominee directors when becoming a registered agent.
- (b) Ensuring that any changes to information in the company's constitution, including the company name, and any changes to the details of nominators are notified to the Vanuatu Financial Services Commission (VFSC) within 14 days of the change.
- (c) Updating their records of beneficial ownership information and the register of members within 14 days of a change to the information (registered agents do not need to provide the information or any updates to the VFSC unless the VFSC requests it).

A failure by a registered agent to comply with any of the new obligations is an offence, and penalties apply upon conviction. Non-compliance is also now a ground for the VFSC to 'strike-off' the company from the register.

Other enforcement measures

At present, the VFSC has few monitoring powers. Amendments are made to expand these powers to enable the VFSC to require production of documents and information, and to conduct on-site inspections. Both provisions apply to registered agents.

Repeal Section 125 (secrecy provision)

As a result of the scheme for basic and beneficial ownership outlined above, section 125 is now repealed. This will facilitate more efficient and effective international cooperation.

Obligations to convert bearer shares and share warrants

Amendments in 2016 attempted to require the conversion of bearer shares into registered shares but did not do the same for bearer share warrants. The current amendments require all bearer shares and bearer share warrants to be converted into registered shares and registered share warrants, and the transfer of share warrants to be recorded and share warrants to be registered on the register of members.

Power to obtain information and disclosure of information

Amendments are made to allow the VFSC to gather information from a variety of sources, including government agencies in other countries, and to disclose information to domestic and foreign agencies for a broader range of purposes. These purposes include supervision under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 (AML/CTF Act), investigating or enforcing certain serious offences, and investigations or taking action under the Proceeds of Crime Act [CAP 284].

*The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

Minister of Finance and Economic Management



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An Act to amend the International Companies Act [CAP 222], and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendment

The International Companies Act [CAP 222] is amended as set out in the Schedule, and any other item in the Schedule has effect according to its terms.

2 Application

This Act applies to a company, whether incorporated or continued under the International Companies Act [CAP 222] before, on or after the commencement of this Act.

3 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF INTERNATIONAL COMPANIES ACT [CAP 222]

1 Section 1

Insert in their correct alphabetical positions

““beneficial owner” means a natural person who is the ultimate owner or ultimate controller of a company;

“controller” of a company means a person who exercises influence, authority or power over decisions about the company’s financial or operating policies, including as a result of, or by means of, a trust, agreement, arrangement, understanding or practice, and “control” has a corresponding meaning;”

“domestic regulatory authority” means a body or agency established by or under a law of Vanuatu that:

- (a) grants or issues under that law or any other law licences, permits, certificates, registrations or other equivalent permissions; and
- (b) performs any other regulatory function related to a matter referred to in paragraph (a), including developing, monitoring or enforcing compliance with standards or obligations prescribed by or under that law or any other law;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under section 4 of the Anti-Money Laundering and Counter- Terrorism Financing Act No. 13 of 2014;

“foreign government agency” means:

- (a) a body or agency established by or under a law of a foreign country; or
- (b) an arm, ministry, department, or instrumentality of the government of a foreign country; or
- (c) a body or agency of a foreign country set up by administrative act for governmental purposes;

“foreign serious offence” means:

- (a) an offence against a law of another country that, if the relevant act or omission had occurred in Vanuatu, would be an offence against the laws of Vanuatu, for which the maximum penalty is imprisonment for at least 12 months; or
- (b) an offence prescribed by the regulations;

“foreign tax evasion offence” means conduct that:

- (a) amounts to an offence against a law of a foreign country; and
- (b) relates to a breach of a duty relating to a tax imposed under the law of the foreign country (whether or not that tax is imposed under a law of Vanuatu); and
- (c) would be regarded by the courts of Vanuatu as an offence of fraudulent evasion of tax for which the maximum penalty is imprisonment for at least 12 months, had the conduct occurred in Vanuatu;

“law enforcement agency” means:

- (a) the Vanuatu Police Force; or
- (b) the Office of the Public Prosecutor; or
- (c) the department responsible for customs and inland revenue; or
- (d) the department responsible for immigration; or
- (e) such other persons prescribed for the purposes of this definition;

“owner” of a company means a person who has a legal entitlement of 25% or more of the company by way of ownership of shares or otherwise, and “own” and “ownership” have a corresponding meaning;

“Register of Members” means a Register of Members kept by a company in accordance with section 58;

“Sanctions Secretariat” means the Sanctions Secretariat established under section 17 of the United Nations Financial Sanctions Act No. of 2017;”

2 Section 1 (definition of member)

Repeal paragraph (b)

3 At the end of section 1

Add

- “(4) For the purpose of the definition of beneficial owner, ultimate owner and ultimate controller includes circumstances where ownership or control is exercised:
- (a) through a chain of ownership; or
 - (b) by a means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights.”

4 Subsection 3(3)

Repeal the subsection, substitute

- “(3) The constitution must name the first directors of the company.”

5 Subsections 3(5) and (6)

Repeal the subsection, substitute

- “(5) The constitution of a company must set out the regulations for the company.
- (6) The regulations for a company comprise:
- (a) regulations prepared by or for the company; or
 - (b) regulations contained in the model constitution appropriate for the company’s type, adopted by the company, including any exclusions or modifications.”

6 After subsection 5(1)

Insert

- “(1A) A person wishing to incorporate a company must also file with the Commission:
- (a) details of the nominators of nominee shareholders and nominee directors; and
 - (b) such other information prescribed by the regulations.”

7 After subsection 5(2)

Insert

“(2A) The Commission must make available to the public, in any way the Commission thinks fit, the constitution of a company registered under subsection (2) in the Register.”

8 After section 16

Insert

“16A Prohibition on issuing bearer shares and bearer share warrants

- (1) A company must not issue bearer shares or bearer share warrants.
- (2) If a company contravenes subsection (1), the company is guilty of an offence punishable on conviction by a fine not exceeding VT 125 million.”

9 Paragraph 25(1)(b)

- (a) After “company” (second occurring), insert “or share warrant issued by the company”
- (b) After “share” (second occurring), insert “or share warrant”

10 Paragraph 25(1)(c)

After “shares”, insert “or share warrants”

11 Subsection 25(2)

After “company” (second occurring), insert “or share warrant issued by the company”

12 Subsection 25(3)

After “shares” (wherever occurring), insert “or share warrants”

13 Section 26

Repeal the section

14 After Section 35(1)

Insert

“(1A) A registered agent under subsection (1) must be licensed under paragraph 15(1)(a) of the Company and Trust Services Provider Act No. 8 of 2010.”

15 After Section 35(3)

Insert

“(3A) A company that fails to comply with subsection (3) commits an offence punishable upon conviction by a fine not exceeding VT 125 million.”

16 Section 35

Add at the end

- “(5) Upon becoming the registered agent of a company, the registered agent must obtain the following information:
- (a) the company’s constitution;
 - (b) the certificate or other proof of incorporation under this Act or under another law of the company;
 - (c) details of the beneficial owners of the company;
 - (d) the Register of Members of the company;
 - (e) details of the nominators of nominee shareholders and nominee directors.
- (6) The registered agent of a company must give written notice of a change in any of the following:
- (a) the name of the company;
 - (b) the constitution of the company;
 - (c) the details of the nominator of a nominee shareholder or nominee director;
 - (d) to the Commission within 14 days after the change occurs.
- (7) The registered agent of a company must ensure any change in the Register of Members of the company or the details of the beneficial owners of the company is updated in the registered agent’s records within 14 days after the change occurs.
- (8) The registered agent of a company must ensure that the information referred to in subsection (5) is kept up to date and retained for at least 6 years after the registered agent ceases to be the registered agent of the company.
- (9) If a registered agent fails to comply with subsection (5), (6), (7) or (8), the registered agent commits an offence punishable upon conviction by:

- (a) if the registered agent is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
- (b) if the registered agent is a body corporate - a fine not exceeding VT 125 million.”

17 After section 35

Insert

“35A Commission may require certain information or documents about beneficial owners or members

- (1) Subject to subsection (2), the Commission may, by notice in writing to the registered agent of a company, require the registered agent to provide the Commission with information or documents, or both, specified in the notice within the period set out in the notice.
- (2) The information or documents must relate to:
 - (a) the beneficial owners of the company; or
 - (b) details of the members of the company as contained in its Register of Members.
- (3) If the registered agent:
 - (a) refuses or fails to give the Commission the information or documents required by the Commission; or
 - (b) knowingly or recklessly gives the Commission information or documents that are false or misleading;the registered agent commits an offence punishable upon conviction by the penalty referred to in subsection (4):
- (4) The penalty is:
 - (a) if the registered agent is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
 - (b) if the registered agent is a body corporate - a fine not exceeding VT 75 million.

(5) To avoid doubt, this section does not limit section 128B.”

18 Subsections 57(1) and (2)

Repeal the subsections, substitute

“(1) Any notice, information or written statement required under this Act to be given to members by a company must be served in the manner prescribed in its constitution, or in the absence of any such provision, by personal service or by mail addressed to each member at the address shown in the Register of Members.”

19 After paragraph 58(1)(b)

Insert

- “(ba) the names and addresses of the persons who hold registered share warrants issued by the company;
- (bb) the identification number of each registered share warrant;”

20 After section 58

Insert

“58A Company to keep up to date records of beneficial owners and nominators of nominee shareholders and directors

A company must ensure that up to date records are kept of:

- (a) the beneficial owners of the company; and
- (b) the nominators of nominee shareholders and nominee directors.”

21 Subsection 63(1)

After “its”, insert “current”

22 Paragraph 79(1)(c)

Repeal the paragraph

23 Paragraph 79(6)(d)

Repeal the paragraph, substitute

- “(d) a statement of the name of the debenture holder;”

24 After subsection 106(4)

Insert

“(4A) If the Commission has reasonable cause to believe that the registered agent of a company has failed to comply with subsection 35(5), (6), (7) or (8) the

Commission may publish in the Gazette and serve on the registered agent a notice stating that the name of the company will be struck off the Register if the registered agent fails to comply with that subsection.

(4B) If the registered agent of a company fails to comply with subsection 35(5), (6), (7) or (8) within 60 days after the date of the notice referred to in subsection (4A), the Commission must strike the name of the company off the Register and must publish notice of the striking-off in the Gazette.

(4C) If the Commission has reasonable cause to believe that the registered agent of a company has:

- (a) failed to give the information or documents required under a notice under section 35A; or
- (b) given the Commission information or documents that are false or misleading in response to a notice under that section;

the Commission may publish in the Gazette and serve on the registered agent a notice stating that the name of the company will be struck off the Register if the registered agent of the company fails to comply with the notice given under section 35A or to correct the information or documents that the registered agent has given.

(4D) If the registered agent of a company fails to comply with a notice under section 35A or to correct the information or documents that the registered agent has given, within 60 days after the date of the notice referred to in subsection (4C), the Commission must strike the name of the company off the Register and must publish notice of the striking-off in the Gazette.”

25 Insertion of new sections

Before section 120 in Part 15, insert

“119 Privileged information

Nothing in subsection 35(6), section 35A or 128B or any other provision of this Act requires a person to disclose to the Commission information or documents that are subject to legal professional privilege.

119A Indemnity from liability etc.

No person is subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done in good faith under or for the purposes of this Act.”

26 After section 124

Insert

“124A Commission may request information and documents

For the purpose of discharging a duty, performing a function or exercising a power under this Act, the Commission may request information or documents, or both, from any or all of the following:

- (a) the Financial Intelligence Unit;
- (b) a supervisor within the meaning of the Anti-Money Laundering and Counter- Terrorism Financing Act No. 13 of 2014;
- (c) the Sanctions Secretariat;
- (d) a law enforcement agency;
- (e) a domestic regulatory authority;
- (f) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b), (c), (d) or (e).”

27 Section 125

Repeal the section

28 Subsection 125A(3)

Repeal the subsection, substitute

“(3) Company records are confidential unless otherwise required to be made available to the public under another provision of this Act.”

29 Subsection 125A(4)

Delete “A”, substitute “Except as required or permitted under this Act, a”

30 Subparagraph 125A(6)(b)(iii)

Repeal the subparagraph

31 After Paragraph 125A(6)(b)

Insert

“(ba) the disclosure is made to:

- (i) the Financial Intelligence Unit; or

- (ii) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purposes of discharging a duty, performing a function or exercising a power under that Act; or
- (iii) a law enforcement agency for the purpose of investigating or prosecuting an offence against a law of Vanuatu for which the maximum penalty is a fine of at least VT 1 million or imprisonment for at least 12 months; or
- (iv) a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or
- (v) a domestic regulatory authority for the purpose of carrying out its regulatory functions; or
- (vi) the Sanctions Secretariat for the purpose of carrying out its functions under the United Nations Financial Sanctions Act No. of 2017; or”

32 Subsections 125A(7) and (8)

Repeal the subsections

33 Subsection 125B(1)

Repeal the subsection, substitute

- “(1) If a company record under section 125A is likely to be disclosed in a Court proceeding, the Court may decide whether:
- (a) the disclosure is to be made in open Court; and
 - (b) any confidential company information is to be disclosed in any written judgement, orders or minutes of the proceeding.”

34 After section 125B

Insert

“125C Disclosure to foreign government agency

- (1) In this section, “regulatory information” means information about a company and the company’s compliance with this Act.
- (2) This section applies despite confidentiality requirements in section 125A.

- (3) The Commission may disclose information about a company to a foreign government agency in the manner set out in this section.
- (4) The Commission may disclose regulatory information to a foreign government agency of a country if:
- (a) the Government of Vanuatu has entered into an agreement with the government of the country about exchanging regulatory information; and
 - (b) the Commission is satisfied, on information supplied by the agency, that the agency is subject to adequate legal restrictions on further disclosure; and
 - (c) the Commission has received a request for the information from the agency; and
 - (d) the Commission is satisfied, on information supplied by the agency, that the information sought is within the terms of the agreement; and
 - (e) the disclosure is in accordance with the agreement.
- (5) The Commission may disclose information about a company to a foreign government agency of a country with whom the Government of Vanuatu has no agreement on exchanging information if:
- (a) the Commission is satisfied that the disclosure is for the purpose of:
 - (i) discharging a duty, performing a function or exercising a power under the foreign government agency's own regulatory legislation (if any), including investigating a breach of that legislation; or
 - (ii) discharging a duty, performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws; or
 - (iii) discharging a duty, performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws; or

- (iv) investigating or prosecuting a foreign serious offence or a foreign tax evasion offence; or
 - (v) investigating or taking action under the foreign jurisdiction's proceeds of crime laws; and
- (b) the Commission is satisfied that:
- (i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and
 - (ii) the agency is subject to adequate restrictions on further disclosure.
- (6) In deciding whether to disclose information under subsection (5), the Commission may take into consideration whether:
- (a) the foreign government agency has agreed to assist the Commission with the costs of supplying the information; and
 - (b) the foreign government agency has provided, or would provide, similar assistance to the Commission; and
 - (c) it is in the interests of Vanuatu as a reputable financial centre to disclose the information.”

35 Section 127

Delete “a fine not exceeding \$50,000 or to a term of imprisonment not exceeding three years”, substitute “a fine not exceeding VT 15 million or to a term of imprisonment not exceeding 5 years”.

36 After section 128

Insert

“128A On site inspections

- (1) The Commission may conduct on-site inspections at the business premises occupied by the registered agent of a company at any time during normal business hours.
- (2) The Commission may, for the purposes of subsection (1):
 - (a) enter the business premises of the registered agent during ordinary business hours; and

- (b) inspect and take copies of any books, accounts and documents of the registered agent that relate to:
 - (i) a service provided by the registered agent to the company;
or
 - (ii) any other business of the registered agent, so far as it affects services provided by the registered agent to the company; and
 - (c) require information from the registered agent about the services it provides to the company.
- (3) The registered agent must cooperate fully with the Commission by:
- (a) giving the Commission all the information, and making available the documents it requires; and
 - (b) if necessary, giving the Commission appropriate workspace and reasonable access to office services, during the inspection.
- (4) A person who intentionally obstructs the Commission in the exercise of its powers under this section commits an offence punishable upon conviction by:
- (a) if the person is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
 - (b) if the person is a body corporate - a fine not exceeding VT 75 million.
- (5) In this section, a reference to the Commission includes a person authorised by the Commission in writing as an authorised officer for the purposes of this section.
- (6) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.
- (7) A statement by a person to the Commission under this section may not be used in evidence against the person in criminal proceedings other than in proceedings for making a false statement.

128B Commission may require information and documents

- (1) Subject to subsections (2) and (3), the Commission may, by notice in writing to a company or the registered agent of a company, require the company or the registered agent to provide the Commission with information or documents, or both, specified in the notice within the period set out in the notice.
- (2) In the case of a notice to the registered agent of a company, the information or documents may relate to any or all of the following:
 - (a) the registered agent's provision of services to the company;
 - (b) the registered agent's integrity, competence, financial standing or organisation;
 - (c) the registered agent's compliance with this Act or the Regulations.
- (3) In the case of a notice to a company, the information or documents must relate to any of the following:
 - (a) the company's integrity, competence, financial standing or organisation;
 - (b) the company's compliance with this Act or the Regulations.
- (4) If the registered agent of a company:
 - (a) refuses or fails to give the Commission the information or documents required by the Commission; or
 - (b) knowingly or recklessly gives the Commission information or documents that are false or misleading;

the registered agent commits an offence punishable upon conviction by the penalty referred to in subsection (5).
- (5) The penalty is:
 - (a) if the registered agent is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
 - (b) if the registered agent is a body corporate - a fine not exceeding VT 75 million.

- (6) If a company:
- (a) refuses or fails to give the Commission the information or documents required by the Commission; or
 - (b) knowingly or recklessly gives the Commission information or documents that are false or misleading;
- the company commits an offence punishable upon conviction by a fine not exceeding VT 75 million.”

37 Transitional provisions for registered agents

- (1) This provision applies to the registered agent of a company if, immediately before the commencement of this Act, the registered agent has not provided the Commission with the information required under subsection 35(5) of the International Companies Act [CAP 222] as amended by this Act (“additional information”).
- (2) The registered agent must provide the Commission with the additional information within 60 days after the commencement of this Act.
- (3) If a registered agent does not provide the additional information as required under subsection (2), the Commission may by notice in writing to the registered agent strike the name of the company off the Register.
- (4) If a registered agent does provide the additional information as required under subsection (2), but the Commission is not satisfied with the additional information, the Commission may by notice in writing to the registered agent strike the name of the company off the Register.
- (5) Before striking the name of the company off the Register under subsection (3) or (4), the Commission must give written notice to the registered agent of the company that it proposes to strike the name of the company off the Register.
- (6) The registered agent may within 14 days after receiving a notice under subsection (5) give the Commission written reasons why the name of the company should not be struck off the Register.
- (7) The Commission may strike the name of the company off the Register:
 - (a) if the registered agent does not give the Commission reasons under subsection (6); or

- (b) if having taken into account the registered agent's reasons, the Commission is of the opinion that the registered agent has failed to show good cause why the name of the company should not be struck off the Register.

38 Requirement for certain transitional notices under sections 35A and 128B

- (1) This provision applies if, within 60 days after the commencement of this Act ("transition period"), the Commission requires:
 - (a) the registered agent of a company to provide information or documents under section 35A or 128B of the International Companies Act [CAP 222] as amended by this Act; or
 - (b) a company to provide information or documents under section 128B of the International Companies Act [CAP 222] as amended by this Act.
- (2) The Commission must give the registered agent of the company or the company at least until the end of the transition period in which to comply with the notice.

39 Transitional provisions for bearer shares and bearer share warrants

- (1) This provision applies to a company if, immediately before the commencement of this Act, there is in existence a share issued to bearer, or a share warrant issued to bearer, by the company.
- (2) Within 3 months after the commencement of this Act, any share issued to bearer by the company must be exchanged for a registered share in the company.
- (3) Within 3 months after the commencement of this Act, any share warrant issued to bearer by the company must be exchanged for a registered share warrant issued by the company.
- (4) The company must enter in its Register of Members the name of the holder of:
 - (a) a registered share referred to in subsection (2); or
 - (b) a registered share warrant referred to in subsection (3).

- (5) An exchange referred to in subsection (2) or (3) must be evidenced by instrument in writing.
- (6) If the Commission has reasonable cause to believe that subsection (2) or (3) has not been complied with, the Commission may publish in the Gazette and serve on the registered agent of the company a notice stating that the name of the company will be struck off the Register if that subsection is not complied with.
- (7) If subsection (2) or (3) has not been complied with within 60 days after the date of the notice referred to in subsection (6), the Commission must strike the name of the company off the Register and must publish notice of the striking-off in the Gazette.

40 Meaning of terms and expressions used in items 37 to 39

A term or expression used in item 37, 38 or 39 has the same meaning as in the International Companies Act [CAP 222] as amended by this Act.”