

REPUBLIC OF VANUATU

BILL FOR THE PARTNERSHIP (AMENDMENT) ACT NO. OF 2018

Explanatory Note

This Bill amends the Partnership Act [CAP 92] (“the Act”).

Since being removed from the FATF Grey list, it is essential that Vanuatu make necessary amendments to strengthen the enforcement of its laws so that we remain on the FATF White list.

A Partnership can be created by both citizens and non-citizens and therefore the risks of money laundering, terrorist financing and financial loss is always high.

The current provisions of the Act firstly fail to state which institution is to administer the Act. That itself is a major flaw in the Act as it cannot be enforced. Furthermore there is no mandatory requirement to register Partnership with the Vanuatu Financial Services Commission (“the VFSC”). Partnerships currently operate as a private contract with two or more partners.

With the current provisions of the Act, it is difficult to monitor and supervise Partnerships in Vanuatu especially in cases where the partners of the partnership are body corporates and not natural persons. In such cases, enforcement actions are particularly difficult given that the ultimate beneficial owners of the partnerships cannot be easily identified and conducting due diligence checks on these persons is quite difficult.

Furthermore, the VFSC has faced difficulties in monitoring and supervising many Partnerships in Vanuatu where the partners of those partnerships do not ordinarily reside in Vanuatu. In such cases, the VFSC cannot conduct any onsite inspections locally and cannot personally question any of the partnerships to determine whether or not they are fit and proper persons to run the partnership. Additionally, where all of the partners live abroad, it is difficult to enforce the provisions of the Act against them as it would be a costly exercise to have them tried in another jurisdiction.

The amendments proposed will require at least half of the partners to be natural persons and not body corporates and will also require half of the Partners to ordinarily reside in Vanuatu. The amendment will also see mandatory registration of Partnerships and allowing the Registrar to obtain information on all partners at the Market Entry stage and during the registration and introduces a penalty notices which will empower the Commissioner to deal with all suspected breaches in a fast and efficient manner. This will improve and facilitate VFSC’s ongoing robust monitoring and supervision of Partnerships in Vanuatu.

Minister of Finance and Economic Management



REPUBLIC OF VANUATU

**BILL FOR THE
PARTNERSHIP (AMENDMENT)
ACT NO. OF 2018**

Arrangement of Sections

1	Amendment	2
2	Commencement.....	2

REPUBLIC OF VANUATU

BILL FOR THE PARTNERSHIP (AMENDMENT) ACT NO. OF 2018

An Act to amend the Partnership Act [CAP 92].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Partnership Act [CAP 92] is amended as set out in the Schedule.

2 Commencement

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

SCHEDULE

AMENDMENTS OF PARTNERSHIP ACT [CAP 92]

1 References to “Companies Act, Cap. 191”

Delete all reference to “Companies Act, Cap.191” (wherever occurring), substitute “Companies Act No. 25 of 2012”

2 Part 1 (Heading)

Delete “PARTNERSHIP”, substitute

“PRELIMINARY MATTERS”

3 Section 1

Repeal the section, substitute

“1 Interpretation

In this Act, unless the contrary intention appears:

beneficial owner means a natural person who ultimately owns or ultimately controls an applicant;

Commission means the Vanuatu Financial Services Commission established under section 2 of the Vanuatu Financial Services Commission Act [CAP 229];

key person of an applicant means a beneficial owner, owner or controller of the applicant;

registrar means the registrar appointed under section 170 of the Companies Act No. 25 of 2012;”

4 After Part 1

Insert

“PART 1A PARTNERSHIP

1A Definition of Partnership

- (1) Partnership is the relation which subsists between persons carrying on a business (which expression must include every trade, occupation or profession) in common with a view of profit, but the relationship between members of any company or association which is:

(a) registered as a company under the Companies Act No. 25 of 2012 or any other Act for the time being in force relating to the registration of joint stock companies; or

(b) formed or incorporated by any Act,

is not a partnership within the meaning of Part 1A.

(2) A Partnership is:

(a) a body corporate with perpetual succession; and

(b) to have a common seal; and

(c) capable of suing and being sued.

1B Administration of the Act

This Act is to be administered by the Commission.

1C Application for registration

(1) An application to the Registrar must:

(a) be in the prescribed form; and

(b) include:

(i) details of each key person; and

(ii) details as required by the Registrar of the source of funds used to pay the capital of the applicant.

(2) The application must be accompanied by a copy of the statement or other document setting up the partnership.

(3) In addition to subsection (1), the registrar may require an applicant to provide any further information as he or she considers necessary to enable an application for registration to be determined.

1D Registration

(1) A partnership must be registered with the Commission.

(2) The registrar may register a partnership if he or she is satisfied:

- (a) that the application for the registration complies with section 1C;
and
 - (b) that the proposed by-laws of the partnership are not contrary to this Act or any other Act; and
 - (c) of the source of funds used to pay the capital of the partnership;
and
 - (d) that the key persons of the partnership are fit and proper persons.
- (3) In assessing whether or not a key person of the partnership satisfies fit and proper criteria, the registrar must take into consideration the following matters:
- (a) whether the person has been convicted of an offence or is subject to any criminal proceedings; and
 - (b) whether the person is listed on a United Nations Financial Sanctions list, or a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under the law of any jurisdiction; and
 - (c) any other fit and proper criteria prescribed by the Regulations.

1E Partnership to give notice of certain changes to registrar

- (1) A partnership must give the registrar written notice of a change in:
- (a) a key person of the partnership; or
 - (b) the circumstances of a key person of the partnership that may affect whether he or she meets fit and proper criteria; or
 - (c) the by-laws or policies relating to the source of funds used to pay the capital of the partnership,
- within 14 days after the change occurs.
- (2) If a partnership fails to comply with subsection (1):
- (a) the partnership commits an offence punishable upon conviction by a fine not exceeding VT 125 million; and

- (b) the registrar may by notice in writing to the partnership, cancel the registration of the partnership.
- (3) If a partnership does provide the information as required under subsection (1), and the registrar is not satisfied:
 - (a) that the key persons of the partnership are fit and proper persons having regard to the matters referred to in subsection 1C(3); or
 - (b) of the by-laws or policies relating to the source of funds used to pay the capital of the partnership,

the registrar may by notice in writing to the partnership, cancel the registration of the partnership.

- (4) Subsections 1H(2), (3) and (4) apply to the cancellation of the registration of the partnership under this section.

1F Registrar may require information and documents relating to partnership

- (1) Subject to subsection (2), the registrar may, by notice in writing to a partnership, require the partnership to provide the registrar 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 partnership's integrity, competence, financial standing or organisation; or
 - (b) the partnership's compliance with this Act or the Regulations.
- (3) If the partnership:
 - (a) refuses or fails to give the registrar the information or documents required by the registrar; or
 - (b) knowingly or recklessly gives the registrar information or documents that are false or misleading,

the partnership commits an offence punishable upon conviction by a fine not exceeding VT 75 million.

1G Registrar may request information and documents

The registrar 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).

1H Cancellation of registration of partnership

- (1) The registrar may, in writing, cancel the registration of a partnership:
 - (a) if the registrar is satisfied that the registration was obtained by fraud or mistake; or
 - (b) if the partnership has ceased to exist; or
 - (c) if the partnership has contravened a provision of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and that contravention has resulted in the use of an enforcement measure under Part 10AA of that Act; or
 - (d) if the fit and proper criteria are not met as required under this Act or as prescribed by the rules; or
 - (e) if the registrar is not satisfied of the by-laws or policies relating to the source of funds used to pay the capital of the partnership; or
 - (f) at the request of the members of the partnership.”

- (2) Before cancelling the registration of a partnership, the registrar must give written notice to the partnership that it proposes to cancel the registration and the reasons for the cancellation.
- (3) A partnership may within 14 days after receiving a notice under subsection (2), give the registrar written reasons why the registration of the partnership should not be cancelled.
- (4) The registrar may cancel the registration of a partnership if:
- (a) the partnership does not give the registrar reasons under subsection (3); or
 - (b) having taking into account the partnership's reasons, the registrar is of the opinion that the partnership has failed to show good cause why the registration should not be cancelled.
- (5) If the registrar makes an order for the cancellation of the registration of a partnership under this section, he or she may make such further order as he or she thinks fit for the custody of the books and documents and the protection of the assets of the partnership until the order is cancelled.”

5 Section 2

- (a) Before “In”, insert “(1)”;
(b) After subsection (1), insert
“(2) For the purposes of paragraph 2(d):

reside in Vanuatu means a person who resides in Vanuatu and carries on business from an office or other fixed place within Vanuatu.”

6 Subparagraph 2(1)(c)(v)

Delete “.”, substitute “;”

7 At the end of paragraph 2(1)(c)

Add

- “(d) that half of the partners ordinarily reside in Vanuatu.”

8 Section 46 (definition of “registrar”)

Repeal the definition.

9 Section 50

Delete “Part 1” (wherever occurring), substitute “Part 1A”

10 Section 58

Repeal the section, substitute

“PART 3 MISCELLANEOUS PROVISIONS

58 Penalty Notice

- (1) The Commissioner may serve a penalty notice on a person if it appears to the Commissioner that the person has committed an offence under any provision of this Act.
- (2) A penalty notice may be served personally or by post.
- (3) The Minister may by Order prescribe penalties which a person is required to pay under this section, which must not exceed:
 - (a) VT 500,000 for an individual; or
 - (b) VT 2 million for a body corporate;within 30 days after the date on which the notice was served.
- (4) If the amount of penalty referred to in subsection (3) is paid, that person is not liable to any further proceedings for the alleged offence.
- (5) Payment made under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any proceeding arising out of the same occurrence.
- (6) The Commissioner may publish a penalty notice issued to a person in such manner as the Commissioner determines.
- (7) If a penalty notice has been served on a person, a prosecution in respect of the alleged offence may only be commenced if the penalty remains unpaid 30 days after the penalty was due, and the Court may take account of any unpaid penalty when imposing a penalty in respect of the offence.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

59 Fees

- (1) A partnership or a limited partnership must pay a registration fee of VT20,000 before it can be registered.
- (2) A partnership or a limited partnership who operates without being registered under this Act commits an offence and is liable on conviction to a fine not exceeding VT500,000.
- (3) The annual renewal fee for registration is VT1,000.
- (4) All fees must be paid to the registrar.

60 Annual reports

- (1) All partnerships or limited partnerships under this Act must provide an annual report to the registrar.
- (2) The registrar must within 3 months after the end of each financial year provide a report to the Commission relating to the operations of the partnership or limited partnership for that year.
- (3) To avoid doubt, the Commission may request the registrar to provide a financial report or any other report at any time.”