

REPUBLIC OF VANUATU

BILL FOR THE CHARITABLE ASSOCIATIONS (INCORPORATION) (AMENDMENT) ACT NO. OF 2017

Explanatory Note

This Bill amends the Charitable Associations (Incorporation) Act [CAP 140] to give effect to Vanuatu's FATF Action Plan to meet FATF Recommendations* and to strengthen regulatory controls to protect the financial sector from abuse by criminals. A brief explanation of the key amendments is set out below.

Market entry fit and proper criteria, including source of funds

Amendments have been made to require the Registrar to carry out fit and proper checks when the committee of a charitable association applies for a certificate of incorporation. The new fit and proper criteria will apply widely to "key persons" of the committee, namely, any member of the committee, and any beneficial owner of such members. New supporting definitions are added, including for beneficial owner, which is broad and intended to identify the nominators of nominee members. The definition also allows the Registrar to look beyond the corporate veil, including chains of control and ownership, direct or indirect. In assessing fit and proper criteria, the Registrar must consider whether a "key person":

- has been convicted of an offence or is subject to any criminal proceedings; and
- is listed on a financial sanctions list of the United Nations or another country; and
- meets any other fit and proper criteria prescribed in the regulations.

The source of funds for the capital of the committee has been added as additional entry point criteria. Existing committees have 6 months in which to comply with the new entry provisions.

On-going disclosure provisions

After being granted a certificate of incorporation, a committee must continue to meet fit and proper checks on an on-going basis. A committee must update the Registrar within 14 days of any relevant changes occurring, including rules or policies regarding funding sources, and the Registrar can require such information on his or her own initiative. Non-compliance by a committee with the new entry and on-going requirements is a criminal offence, and penalty levels have been increased to meet FATF standards.

Non-compliance is also a new ground for cancelling the registration of a committee together with contravening the Anti-Money Laundering and Counter Terrorism Financing Act No. 13 of 2014 (AML/CTF Act).

Monitoring provisions

The amendments provide the Registrar with new powers to collect information and documents relating to a committee, and to conduct on-site inspections of the committee's business premises. A failure to comply with a request for information or documents, obstruction of on-site inspections or providing false or misleading information are criminal offences. Amendments also allow the Registrar to gather information from a variety of domestic government sources as well as foreign government agencies.

Disclosure of information

Amendments have been made to allow for the disclosure of confidential information by the Registrar to domestic and foreign agencies for a broad range of purposes. These purposes include supervision under the AML/CTF Act, investigating or enforcing certain serious offences and foreign tax evasion offences, and investigating 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 and counter-terrorist financing standard.

Minister of Finance and Economic Management



REPUBLIC OF VANUATU

**BILL FOR THE
CHARITABLE ASSOCIATIONS (INCORPORATION)
(AMENDMENT) ACT
NO. OF 2017**

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REPUBLIC OF VANUATU

BILL FOR THE CHARITABLE ASSOCIATIONS (INCORPORATION) (AMENDMENT) ACT NO. OF 2017

An Act to amend the Charitable Associations (Incorporation) Act [CAP 140] and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendments

The Charitable Associations (Incorporation) Act [CAP 140] is amended as set out in the Schedule, and any other item in the Schedule has effect according to its terms.

2 Commencement

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

SCHEDULE

AMENDMENTS OF THE CHARITABLE ASSOCIATIONS (INCORPORATION) ACT [CAP 140]

1 Section 1

Insert in their correct alphabetical positions:

““beneficial owner” has the meaning given by section 1A;

“committee” means a committee:

- (a) that has made an application under section 2; or
- (b) for which a certificate of incorporation has been granted under section 2;

“confidential information” means information supplied to or obtained by the Registrar in the performance of the Registrar’s functions or the exercise of the Registrar’s powers under this Act, but does not include information that:

- (a) can be disclosed under any provision of this Act; or
- (b) is already in the public domain; or
- (c) consists of aggregate data from which no information about a specific person or business can be identified;

“Court” means the Supreme Court of Vanuatu;

“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;

“key person” means a member of a committee, or a beneficial owner of a member of a committee;

“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;

“Sanctions Secretariat” means the Sanctions Secretariat established under section 17 of the United Nations Financial Sanctions Act No. 6 of 2017;”

2 After section 1

Insert

“1A. Meaning of beneficial owner

- (1) A “beneficial owner” of a committee member is a natural person who ultimately controls the committee member.
- (2) For the purpose of subsection (1), “control” means exercising influence, authority or power over the committee member, and includes circumstances where the committee member is acting as a nominee or proxy on behalf of another person or entity.
- (3) For the avoidance of doubt, if a committee member is acting as a nominee or proxy on behalf of a legal person or legal arrangement, the natural person who ultimately controls the committee member is the natural person who:
 - (a) has a legal entitlement to 25% or more of the legal person or legal arrangement by way of ownership of shares or otherwise, including ownership exercised through a chain of ownership; or
 - (b) otherwise exercises control, directly or indirectly, over the legal person or legal arrangement.”

3 Subsection 2(2)

Repeal the subsection, substitute

- “(2) The Registrar must either refuse to grant a certificate or grant a certificate.
- (2A) The Registrar must grant a certificate if he or she is satisfied:

- (a) that the application complies with this Act; and
 - (b) that the association is established for charitable purposes; and
 - (c) of the source of funds used to pay the capital of the committee; and
 - (d) that key persons are fit and proper persons.
- (2B) In assessing whether or not a key person 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;
 - (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 a law of any jurisdiction;
 - (c) any other fit and proper criteria prescribed by regulations.”

4 Section 3 (heading)

Repeal the heading, substitute “Refusal of grant of incorporation”

5 Subsections 3(3), (4) and (5)

Repeal the subsections.

6 Subsection 4(1)

Repeal the subsection, substitute

“(1) An application to the Registrar under section 2 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 committee.”

7 Paragraph 10(1)(f)

Delete “,”, substitute “; or

- (g) a committee 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
- (h) the fit and proper criteria are not met as required under this Act or Regulations; or
- (i) the rules or policies relating to the source of funds of the committee are not acceptable.”

8 Section 11

Repeal the section.

9 Section 13

Repeal the section, substitute

“13. Committee to give notice of certain changes to Registrar

- (1) A committee must give the Registrar written notice of a change in any or all of the following within 30 days after the change occurs:
 - (a) the registered office of the committee;
 - (b) the articles, rules or constitution of the association;
 - (c) a key person;
 - (d) the circumstances of a key person that may affect whether he or she meets fit and proper criteria;
 - (e) the rules or policies relating to the source of funds of the committee.
- (2) If a committee fails to comply with subsection (1), the committee commits an offence punishable upon conviction by a fine not exceeding VT 125 million.
- (3) If a committee fails to comply with subsection (1), the Registrar may cancel the certificate of incorporation of that committee.
- (4) If a committee does provide the information as required under subsection (1), but the Registrar is not satisfied that:

- (a) the key persons are fit and proper persons having regard to the matters referred to in subsection 2(2B); or
- (b) the rules or policies relating to the source of funds of the committee are acceptable,

the Registrar may cancel the certificate of incorporation of the committee.

- (5) Section 10 applies to the cancellation of the certificate of incorporation under this section.”

10 After section 14

Insert

“14A. Disclosure of confidential information

- (1) The Registrar may disclose confidential information if the disclosure:
 - (a) is required or authorised by the Court; or
 - (b) is made for the purpose of performing a function or exercising a power under this Act; or
 - (c) is made to the Financial Intelligence Unit for the purpose of performing a function or exercising a power under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or
 - (d) is made to a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purpose of performing a function or exercising a power under that Act; or
 - (e) is made to 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
 - (f) is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or

- (g) is made to a domestic regulatory authority for the purpose of carrying out its regulatory functions; or
 - (h) is made to the Sanctions Secretariat for the purpose of performing a function or exercising a power under the United Nations Financial Sanctions Act No. 6 of 2017; or
 - (i) is made to a foreign government agency in accordance with section 14B.
- (2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:
- (a) for an individual – a fine not exceeding VT15 million or imprisonment for a term not exceeding 5 years, or both; or
 - (b) for any other person – a fine not exceeding VT75 million.

14B. Disclosure to foreign government agency

The Registrar may disclose confidential information to a foreign government agency if:

- (a) the Registrar is satisfied that the disclosure is for the purpose of:
 - (i) performing a function or exercising a power under the foreign government agency's own regulatory legislation, including investigating a breach of that legislation; or
 - (ii) 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) 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 Registrar 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.”

11 After subsection 15A(1)

Insert

“(1A) Subsection (1) does not limit the powers of the Registrar in sections 15AA, 15AB and 15AC.”

12 Subsection 15A(3)

Repeal the subsection, substitute

“(3) A person who fails or refuses to comply with a requirement of the Registrar under this section, commits an offence punishable on conviction, by:

- (a) for an individual – a fine not exceeding VT15 million or imprisonment for a term not exceeding 5 years, or both; or
- (b) for any other person – a fine not exceeding VT75 million.”

13 After section 15A

Insert

“15AA.Registrar may require information and documents

- (1) Subject to subsection (2), the Registrar may, by notice in writing to a committee, require the committee 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 committee’s integrity, competence, financial standing or organisation; or
 - (b) the committee’s compliance with this Act or the Regulations.
- (3) If the committee:
 - (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 committee commits an offence punishable upon conviction by the penalty set out in subsection (4).

- (4) The penalty is:
 - (a) for an individual member of the committee – a fine not exceeding VT15 million or imprisonment for a term not exceeding 5 years, or both; or
 - (b) for the committee– a fine not exceeding VT75 million.

15AB. On-site inspections

- (1) The Registrar may conduct on-site inspections at the business premises occupied by a committee at any time during normal business hours.
- (2) The Registrar may for the purposes of subsection (1):
 - (a) enter the business premises of the committee during ordinary business hours; and
 - (b) inspect and take copies of any books, accounts and documents of the committee that relate to:
 - (i) the committee’s integrity, competence, financial standing or organisation; or
 - (ii) the committee’s compliance with this Act or the Regulations.
- (3) The committee must cooperate fully with the Registrar by:
 - (a) giving the Registrar all the information, and making available the documents the Registrar requires; and
 - (b) if necessary, giving the Registrar appropriate workspace and reasonable access to office services, during the inspection.

- (4) If a person intentionally obstructs the Registrar in the exercise of the Registrar's powers under this section, the person commits an offence punishable upon conviction by:
- (a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
 - (b) in the case of a body corporate - a fine not exceeding VT 75 million.
- (5) In this section, a reference to the Registrar includes a person appointed by the Registrar in writing as an authorised officer for the purposes of this Act.
- (6) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.

15AC. Registrar may request information or documents from a government agency

For the purpose of performing a function or exercising a power under this Act, 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)."

14 Subsection 15B(1)

Delete "VT1,000,000", substitute "VT125 million"

15 After section 15B

Insert

“15C. Indemnity from liability etc.

The Registrar, and any person authorised by the Registrar, is not 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.

15D Appointment of authorised officers

The Registrar may in writing appoint persons to be authorised officers for the purposes of this Act.”

16 Schedule 1

Repeal the Schedule.

17 Transitional

- (1) This provision applies to a committee if, immediately before the commencement of this Act, the committee was incorporated under the Charitable Associations (Incorporation) Act [CAP 140].
- (2) The committee must provide the Registrar with the information required under subparagraphs 4(1)(b)(i) and (ii) of the Charitable Associations (Incorporation) Act [CAP 140] as amended by this Act (“**the additional information**”) within 6 months after the commencement of this Act.
- (3) If the committee does not provide the additional information as required under subsection (2), the Registrar may by notice in writing to the committee cancel the certificate of incorporation relating to that committee.
- (4) If the committee does provide the additional information as required under subsection (2), but the Registrar is not satisfied with the additional information having regard to the matters set out in paragraphs 2(2A)(c) and (d) of the Charitable Associations (Incorporation) Act [CAP 140] as amended by this Act, the Registrar may by notice in writing to the committee cancel the certificate of incorporation relating to that committee.
- (5) Section 10 of the Charitable Associations (Incorporation) Act [CAP 140] as amended by this Act applies to the cancellation of a certificate of incorporation.

SCHEDULE
AMENDMENTS OF THE CHARITABLE ASSOCIATIONS (INCORPORATION) ACT [CAP
140]

- (6) A term or expression used in this item has the same meaning as in the Charitable Associations (Incorporation) Act [CAP 140] as amended by this Act.