

# REPUBLIC OF VANUATU

## BILL FOR THE CO-OPERATIVE SOCIETIES (AMENDMENT) ACT NO. OF 2017

### Explanatory Note

This Bill amends the Co-operative Societies Act [CAP 152] 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 (Appointed by the Minister) to carry out fit and proper checks when a society is first registered (point of entry). The new fit and proper criteria will apply widely to "key persons" of the registered society, namely, any officer of the registered society, and any beneficial owner of such officers. New supporting definitions are added, including for beneficial owner, which is broad and intended to identify the nominators of nominee members or officers. The definition 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 registered society has been added as additional entry point criteria. Existing registered societies have 6 months in which to comply with the new entry provisions.

#### **On-going disclosure provisions**

After being registered, a registered society must continue to meet fit and proper checks on an on-going basis. A registered society must update the Registrar within 14 days of any relevant changes occurring, including by-laws or policies regarding funding sources, and the Registrar can require such information on his or her own initiative. Non-compliance by a registered society 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 registered society 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 registered society, and to conduct on-site inspections of the registered society'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 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 Tourism, Trade, Commerce and Ni-Vanuatu Business Development**



**REPUBLIC OF VANUATU**

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**Arrangement of Sections**

<b>1</b>	<b>Amendment .....</b>	<b>2</b>
<b>2</b>	<b>Commencement.....</b>	<b>2</b>

# REPUBLIC OF VANUATU

## **BILL FOR THE CO-OPERATIVE SOCIETIES (AMENDMENT) ACT NO.      OF 2017**

An Act to amend the Co-operative Societies Act [CAP 152], and for related purposes.

Be it enacted by the President and Parliament as follows-

### **1      Amendments**

The Co-operative Societies Act [CAP 152] 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 CO-OPERATIVE SOCIETIES ACT [CAP 152]

#### 1 Section 1

Insert in their correct alphabetical positions:

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

**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 rules;

**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** of a registered society or a society applying for registration under this Act means an officer of the society or a beneficial owner of an officer;

**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;

**rules** means the rules made under section 53;

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

## **2 Section 1 (definition of officer)**

Repeal the definition, substitute

“**officer** includes a chairman, secretary, treasurer, member of committee, or other person empowered under the by-laws to give directions in regard to the business of a registered society or society applying for registration under this Act;”

**3 After section 1 in Part 1**

Insert

**“1A Meaning of beneficial owner**

- (1) A “beneficial owner” of an officer is a natural person who ultimately controls the officer.
- (2) For the purpose of subsection (1), “control” means exercising influence, authority or power over the officer, and includes circumstances where the officer is acting as a nominee or proxy on behalf of another person or entity.
- (3) For the avoidance of doubt, if an officer is acting as a nominee or proxy on behalf of a legal person or legal arrangement, the natural person who ultimately controls the officer 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.”

**4 At the end of section 5**

Add

- “(4) In addition to subsections (2) and (3), an application must include the following information:
- (a) details of each officer of the society; and
  - (b) details of any beneficial owner of an officer; and
  - (c) details as required by the registrar of the source of funds used to pay the capital of the society.”

**5 Section 7**

Repeal the section, substitute

**“7 Registration**

- (1) The registrar may register a society if he or she is satisfied:

- (a) that the application for registration complies with this Act; and
  - (b) that the proposed by-laws of the society are not contrary to this Act or any other law; and
  - (c) of the source of funds used to pay the capital of the society; and
  - (d) that key persons of the society are fit and proper persons.
- (2) In assessing whether or not a key person of the society 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 the rules.”

**6 After section 11**

Insert

**“11A Registered society to give notice of certain changes to registrar**

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

- (3) If a registered society fails to comply with subsection (1), the registrar may by notice in writing to the registered society cancel the registration of the registered society.
- (4) If a registered society does provide the information as required under subsection (1), but the registrar is not satisfied:
- (a) that the key persons of the registered society are fit and proper persons having regard to the matters referred to in subsection 7(2);  
or
  - (b) of the by-laws or policies relating to the source of funds used to pay the capital of the registered society,
- the registrar may by notice in writing to the registered society cancel the registration of the registered society.
- (5) Subsections 39(2), (3) and (3A) apply to cancellation of registration of the registered society under this section.”

## **7 Section 37**

Repeal the section, substitute

### **“37 Registrar may require information and documents relating to registered society**

- (1) Subject to subsection (2), the registrar may, by notice in writing to a registered society, require the registered society 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 registered society’s integrity, competence, financial standing or organisation; or
  - (b) the registered society’s compliance with this Act or the rules.
- (3) If the registered society:
- (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 registered society commits an offence punishable upon conviction by a fine not exceeding VT 75 million.

**37A On site inspections**

- (1) The registrar may conduct on-site inspections at the business premises occupied by a registered society at any time during normal business hours.
- (2) The registrar may for the purposes of subsection (1):
  - (a) enter the business premises of the registered society during ordinary business hours; and
  - (b) inspect and take copies of any books, accounts and documents of the registered society that relate to:
    - (i) the registered society's integrity, competence, financial standing or organisation; or
    - (ii) the registered society's compliance with this Act or the rules.
- (3) The registered society 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) if the person is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
  - (b) in any other case - a fine not exceeding VT 75 million.
- (5) In this section, a reference to the registrar includes assistant registrar.

- (6) An assistant registrar must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.

**37B Registrar may request information and documents**

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)."

**8 Paragraphs 39(1)(b) and (c)**

Repeal the paragraphs, substitute

- "(b) if the registrar is satisfied that the registration was obtained by fraud or mistake; or
- (c) if the registered society has ceased to exist; or
- (ca) if the registered society 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
- (cb) if the fit and proper criteria are not met as required under this Act or as prescribed by the rules; or
- (cc) 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 registered society; or"

**9 Subsections 39(2) and (3)**

Repeal the subsections, substitute

- “(2) Before cancelling the registration of a registered society, other than under paragraph (1)(d), the registrar must give written notice to the registered society that it proposes to cancel the registration and the reasons for the cancellation.
- (3) A registered society may within 14 days after receiving a notice under subsection (2) give the registrar written reasons why the registration of the registered society should not be cancelled.
- (3A) The registrar may by order cancel the registration of a registered society if:
- (a) the registered society does not give the registrar reasons under subsection (3); or
  - (b) having taken in to account the registered society’s reasons, the registrar is of the opinion that the registered society has failed to show good cause why the registration should not be cancelled.”

**10 Section 40**

Repeal the section.

**11 After Part 9**

Insert

**“PART 9A SHARING OF INFORMATION**

**52A Meaning of confidential information**

For the purposes of this Part, “confidential information” is 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.

**52B 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 52C.
- (2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:
- (a) for an individual—a fine not exceeding VT 15 million or imprisonment for a term of 5 years, or both; and

- (b) for a body corporate- a fine not exceeding VT 75 million.

**52C 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."

**12 Subsection 58(8)**

Delete "under section 39 or to hold an inquiry or inspection under section 37 or 38", substitute "under section 11A or 39, or conduct an on-site inspection under section 37A or hold an inquiry under section 38"

**13 After section 59**

Insert

**“59A Indemnity from liability**

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.”

**14 Transitional**

- (1) This provision applies to a society if, immediately before the commencement of this Act, the society was registered under the Co-operative Societies Act [CAP 152].
- (2) The registered society must provide the registrar with the information required under paragraphs 5(4)(a), (b) and (c) of the Co-operative Societies Act [CAP 152] as amended by this Act (“**the additional information**”) within 6 months after the commencement of this Act.
- (3) If the registered society does not provide the additional information as required under subsection (2), the registrar may by notice in writing to the registered society cancel its registration.
- (4) If the registered society 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 7(1)(c) and (d) of the Co-operative Societies Act [CAP 152] as amended by this Act, the Registrar may by notice in writing to the registered society cancel its registration.
- (5) Subsections 39(2), (3) and (3A) of the Co-operative Societies Act [CAP 152] as amended by this Act apply to a cancellation.
- (6) A term or expression used in this item has the same meaning as in the Co-operative Societies Act [CAP 152] as amended by this Act.