

REPUBLIC OF VANUATU

BILL FOR THE GAMING (CONTROL) (AMENDMENT) ACT NO. OF 2017

Explanatory Note

This Bill amends the Gaming (Control) Act [CAP 172] 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 Director of Customs to carry out fit and proper checks when a gaming operator is first licensed (point of entry). The new fit and proper criteria will apply widely to “key persons” of an applicant for a licence, namely, the applicant’s owners, controllers, beneficial owners, directors and managers. New supporting definitions are added, including for beneficial owner, which is broad and intended to look beyond the corporate veil, including chains of control and ownership, direct or indirect. In assessing fit and proper criteria, the Director 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 an applicant has been added as additional entry point criteria. Existing licensees have 6 months in which to comply with the new entry provisions.

On-going disclosure provisions

Gaming licensees must continue to meet fit and proper checks on an on-going basis. Licence holders must update the Director within 14 days of any relevant changes occurring, including funding sources, and the Director can require information from the licensees on his or her own initiative. Non-compliance by licensees 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 suspension or revocation of gaming licences 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 Director with new powers to collect information and documents relating to the licensee and to conduct on-site inspections of the licensee’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 Director 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 Director 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].

Other changes

The Bill also makes significant changes to streamline the application process for a gaming licence. It replaces the Minister with the Director of Customs as the decision maker. It also removes the legislative requirement for consultation with the Minister responsible for home affairs in the decision-making process. The role of the Collector of Rates and Taxes has also been transferred to the Director of Customs.

*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



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An Act to amend the Gaming (Control) Act [CAP 172] and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendments

The Gaming (Control) Act [CAP 172] 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.

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1 Section 1

Insert in their correct alphabetical positions

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

“confidential information” means information that is supplied to or obtained by the Director in the performance of his or her functions or the exercise of his or her 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;

“controller” of an applicant for a gaming licence or a licensee means a person who exercises influence, authority or power over decisions about the applicant’s or licensee’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;

“Court” means the Supreme Court of Vanuatu;

“Director” means the Director responsible for customs and inland revenue;

“director” of an applicant for a licence or a licensee means:

- (a) any person occupying the position of a director of the applicant or licensee, regardless of the name given to the position; or
- (b) any person held out by the applicant, or licensee to be a director;

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

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- (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;

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“key person” of an applicant for a gaming licence or a licensee means a beneficial owner, owner, controller, director or manager of the applicant or licensee;

“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;

“manager” of an applicant for a gaming licence or a licensee means:

- (a) an individual who occupies the position of the chief executive officer (however described) of the applicant or licensee; or
- (b) an individual who under the immediate authority of the chief executive officer or a director of the applicant or licensee, exercises the management functions of the applicant or licensee;

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

“regulatory law” means a law that provides for:

- (a) the grant or issue of licences, permits, certificates, registrations or other equivalent permissions; and
- (b) other regulatory functions related to a matter referred to in paragraph (a), including monitoring or enforcing compliance with standards or obligations prescribed by that law;

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

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2 Section 1 (Paragraph (c) of the definition of game of chance)

Delete “, after consultation with the Minister responsible for home affairs,”

3 After section 1

Insert

“1A. Meaning of beneficial owner

- (1) A beneficial owner of an applicant for a gaming licence or a licensee is a natural person who ultimately owns or ultimately controls the applicant or licensee.
- (2) For the purpose of the subsection (1), ultimately owns and ultimately controls include 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 After section 3

Insert

“3A. Application for a gaming licence

- (1) An application for a gaming licence must:
 - (a) be made to the Director by the person having the management of the premises referred to in section 3 and be in a form approved by the Director; and
 - (b) include the following:
 - (i) details of each key person of the applicant;
 - (ii) details as required by the Director on whether a beneficial owner of the applicant is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction;
 - (iii) details of the source of funds used to pay the capital of the applicant; and
 - (c) be accompanied by the prescribed fee.

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- (2) If the applicant is a body corporate, the application must also include the following details:
 - (a) the name of the body corporate;
 - (b) proof of incorporation of the body corporate;
 - (c) the registered business address of the body corporate.
- (3) If the applicant is a natural person, the application must also be accompanied by:
 - (a) a notarised copy of the passport of the applicant; and
 - (b) a police clearance certificate for the applicant with a certified translation where necessary.
- (4) If the applicant is not a body corporate or a natural person, the application must also include such other information as may be required by the Director.
- (5) The Director may require an applicant to provide such additional information as the Director considers necessary to determine an application.”

5 Section 4

Repeal the section, substitute

“4. Issue of gaming licence

- (1) The Director may issue a gaming licence to an applicant if:
 - (a) the application for the gaming licence complies with section 3A; and
 - (b) the Director is satisfied that:
 - (i) each key person of the applicant is a fit and proper person; and
 - (ii) the source of funds used to pay the capital of the applicant is acceptable.

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- (2) In deciding whether a key person of the applicant is a fit and proper person, the Director must have regard to:
 - (a) whether the person has been convicted of an offence or is subject to criminal proceedings; and
 - (b) whether the person is listed on a United Nations Financial Sanctions list, 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; and
 - (c) any other fit and proper criteria prescribed by Regulations.
- (3) A gaming licence is valid until the 31st of December of the year of issue unless revoked earlier.
- (4) The Director may issue a gaming licence on such conditions as he or she thinks fit, and the conditions are to be specified in the gaming licence.

4A. Renewal of gaming licence

- (1) The Director may renew a gaming licence on the written application of the licensee made at least 28 days before the expiry date of the gaming licence.
- (2) If the Director has not decided an application for the renewal of a gaming licence on or before the expiry date, the gaming licence continues in force until the Director decides the application.
- (3) If the Director renews a gaming licence, it is renewed for a period of one year starting on the day after the expiry date, unless revoked earlier.
- (4) A gaming licence may be renewed more than once under this section.
- (5) In this section, “expiry date” for a gaming licence means the 31st of December.

4B. Gaming licence and renewal fees

- (1) The fees set out below are payable in respect of the issue or renewal of a gaming licence:
 - (a) VT5 million for:

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- (i) gaming machines in a hotel; or
 - (ii) gaming tables in a hotel; or
 - (iii) gaming machines and gaming tables in a hotel; and
- (b) VT1,650,000 for gaming machines in a club.
- (2) The Director must not issue or renew a gaming licence if the fees are not paid in full.
- (3) The Director may calculate the fee for a gaming licence for the year in which it is issued on a pro rata basis.”

6 Subsection 5(2)

Delete “collector of Rates and Taxes”, substitute “Director”

7 Subsection 5A(1)

Delete “Collector”, substitute “Director”

8 Section 5AA

Delete “Minister” (wherever occurring), substitute “Director”

9 Subsection 5C(1)

Delete “Collector”, substitute “Director”

10 Subsection 5C(3)

Delete “Collector with the approval of the Minister”, substitute “Director”

11 Section 7 (heading)

Delete the heading, substitute **“Suspension and revocation of gaming licences”**

12 Subsection 7(1)

Delete “Minister may revoke”, substitute “Director may suspend or revoke”

13 Paragraph 7(1)(b)

Repeal the paragraph, substitute

- “(b) that a key person of the licensee does not meet fit and proper criteria prescribed by this Act or the Regulations;

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- (ba) that the persons employed on the relevant premises of the licensee are not fit and proper persons for such purposes;”

14 After paragraph 7(1)(g)

Insert

- “(ga) that the licensee 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;
- (gb) that the Director is not satisfied of the source of funds used to pay the capital of the licensee;”

15 After subsection 7(1)

Insert

- “(1A) Before suspending, revoking or refusing to renew a gaming licence, the Director must give written notice to the licensee that he or she proposes to suspend, revoke or refuse to renew the gaming licence and the reasons for it.
- (1B) The licensee may, within 14 days after receiving a notice under subsection (1A), give the Director written reasons why the gaming licence should not be suspended or revoked, or the renewal of the gaming licence should not be refused.
- (1C) The Director may suspend, revoke or refuse to renew a licensee’s gaming licence if:
- (a) the licensee does not give the Director reasons under subsection (1B); or
- (b) having taken into account the licensee’s reasons, the Director is of the opinion that the licensee has failed to show good cause why the gaming licence should not be suspended or revoked, or the renewal of the gaming licence should not be refused.”

16 After section 8

Insert

“8A. Licensee to give notice of certain changes to Director

- (1) A licensee must give the Director written notice of a change in:

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- (a) a key person of the licensee; or
 - (b) the circumstances of a key person of the licensee that may affect whether he or she meets fit and proper criteria; or
 - (c) the source of funds used to pay the capital of the licensee,
within 14 days after the change occurs.
- (2) If a licensee fails to comply with subsection (1), the licensee commits an offence punishable upon conviction by:
- (a) if the licensee is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
 - (b) if the licensee is a body corporate - a fine not exceeding VT 125 million.
- (3) If a licensee fails to comply with subsection (1), the Director may by notice in writing to the licensee revoke the licensee's gaming licence.
- (4) If a licensee does provide the information as required under subsection (1), but the Director is not satisfied:
- (a) that the key persons of the licensee are fit and proper persons to fulfil the responsibilities of their positions having regard to the matters referred to in subsection 4(2); or
 - (b) as to the source of funds used to pay the capital of the licensee,
the Director may by notice in writing to the licensee revoke the licensee's gaming licence.
- (5) Before revoking a gaming licence under subsection (3) or (4), the Director must give written notice to the licensee that he or she proposes to revoke the gaming licence and the reasons for the revocation.
- (6) The licensee may, within 14 days after receiving a notice under subsection (5), give the Director written reasons why the gaming licence should not be revoked.
- (7) The Director may revoke a licensee's gaming licence if:

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- (a) the licensee does not give the Director reasons under subsection (6); or
- (b) having taken into account the licensee's reasons, the Director is of the opinion that the licensee has failed to show good cause why the gaming licence should not be revoked.

8B. Director may require information and documents relating to licensee

- (1) Subject to subsection (2), the Director may, by notice in writing to a licensee, require the licensee to provide the Director 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 licensee's integrity, competence, financial standing or organisation; or
 - (b) the licensee's compliance with this Act or the regulations.
- (3) If the licensee:
 - (a) refuses or fails to give the Director the information or documents required by the Director; or
 - (b) knowingly or recklessly gives the Director information or documents that are false or misleading,the licensee commits an offence punishable upon conviction by the penalty set out in subsection (4).
- (4) The penalty is:
 - (a) if the licensee is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
 - (b) if the licensee is a body corporate - a fine not exceeding VT 75 million.

8C. On-site inspections

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

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8D. Director may request information and documents

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

8E. Disclosure of confidential information

(1) The Director 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

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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 8F.
- (2) If a person contravenes subsection (1), 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 for a term not exceeding 5 years, or both; or
 - (b) if the person is a body corporate - a fine not exceeding VT 75 million.

8F. Disclosure to foreign government agency

The Director may disclose confidential information about a licensee to a foreign government agency if:

- (a) the Director 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

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- (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 Director 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.

8G. Indemnity from liability

A person is not subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done by the person in good faith under or for the purposes of this Act.”

17 Subsection 9(1)

Delete “Penalty: a fine of VT 500,000 and imprisonment for 1 year.”, substitute “Penalty:

- (a) in the case of a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
- (b) in the case of a body corporate - a fine not exceeding VT 125 million.”

18 Subsection 9(1A)

Delete “Penalty: Fine of VT 500,000 and imprisonment of one year.”, substitute “Penalty:

- (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.”

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19 Transitional provision for certain licensee information

- (1) This provision applies to a licensee if, immediately before the commencement of this Act, the licensee's gaming licence was in force under the Gaming (Control) Act [CAP 172].
- (2) The licensee must provide the Director with the information required under subparagraphs 3A(1)(b)(i), (ii) and (iii) of the Gaming (Control) Act [CAP 172] as amended by this Act ("the additional information") within 6 months after the commencement of this Act.
- (3) If the licensee does not provide the additional information as required under subsection (2), the Director may by notice in writing to the licensee revoke the licensee's gaming licence.
- (4) If the licensee does provide the additional information as required under subsection (2), but the Director is not satisfied with the additional information having regard to the matters set out in subparagraphs 4(1)(b)(i) and (ii) of the Gaming (Control) Act [CAP 172] as amended by this Act, the Director may, by notice in writing to the licensee, revoke the licensee's gaming licence.
- (5) Before revoking a gaming licence under subsection (3) or (4), the Director must give written notice to the licensee that he or she proposes to revoke the gaming licence and the reasons for the revocation.
- (6) The licensee may, within 14 days after receiving a notice under subsection (5), give the Director written reasons why the licensee's gaming licence should not be revoked.
- (7) The Director may revoke the licensee's gaming licence if:
 - (a) the licensee does not give the Director reasons under subsection (6); or
 - (b) having taken in to account the licensee's reasons, the Director is of the opinion that the licensee has failed to show good cause why the gaming licence should not be revoked.
- (8) A term or expression used in this item has the same meaning as in the Gaming (Control) Act [CAP 172] as amended by this Act.

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20 Transitional provision for gaming licences

- (1) If a gaming licence is in force immediately before the commencement of this Act, the gaming licence continues in force, on and after that commencement, as if it were a gaming licence issued under the Gaming (Control) Act [CAP 172] as amended by this Act.
- (2) A term or expression used in this item has the same meaning as in the Gaming (Control) Act [CAP 172] as amended by this Act.