

REPUBLIC OF VANUATU

BILL FOR THE INSURANCE (AMENDMENT) ACT NO. OF 2017

Explanatory Note

This Bill amends the Insurance Act No. 54 of 2005 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 Reserve Bank to carry out fit and proper checks when a person is first licensed (point of entry) to conduct an insurance business. The new fit and proper criteria will apply widely to each beneficial owner and "key individual" of an applicant for a licence, namely, the applicant's significant owners, controllers, directors and managing executives. 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 Reserve Bank must consider whether a beneficial owner or "key individual":

- 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

Licensees must continue to meet fit and proper checks on an on-going basis. Licence holders must update the Reserve Bank within 14 days of any relevant changes occurring, including funding sources, and the Reserve Bank 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 cancellation of insurance licences together with contravening the Anti-Money Laundering and Counter Terrorism Financing Act No. 13 of 2014 (AML/CTF Act).

Monitoring provisions

Amendments have been made to strengthen existing powers of the Reserve Bank to collect information and documents relating to the licensee, and to conduct on-site inspections. 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 Reserve Bank 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 Reserve Bank 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 clarifies that a person who is not satisfied with a decision of the Reserve Bank may apply to the Supreme Court for judicial review of the decision.

*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 Insurance Act No. 54 of 2005 and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendments

The Insurance Act No. 54 of 2005 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 INSURANCE ACT NO. 54 OF 2005

1 Whole of the Act

Delete “Board” (wherever occurring), substitute “Reserve Bank”

2 Subsection 1(1)

Insert the following definitions in their correct alphabetical positions:

“**beneficial owner** means a natural person who ultimately owns or ultimately controls an applicant for a licence or a licensee;

controller of an applicant for a 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;

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;

guidelines means guidelines made under section 61;

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;

Reserve Bank means the Reserve Bank of Vanuatu established under the Reserve Bank of Vanuatu Act [CAP 125];

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

3 Subsection 1(1) (definition of Board)

Repeal the definition.

4 Subsection 1(1) (definition of Governor)

Repeal the definition.

5 Subsection 1(1) (definition of key individual)

Repeal the definition, substitute

“**key individual** of an applicant for a licence or a licensee means a significant owner, controller, director or managing executive of the applicant or licensee;”

6 At the end of section 1

Add

“(3) For the purpose of the definition of a beneficial owner, 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.”

7 After subsection 6(1)

Insert

“(1A) Without limiting subsection (1), the information or documents may relate to:

- (a) a licensee’s integrity, competence, financial standing or organisation; or
- (b) a licensee’s compliance with this Act or the Regulations.”

8 Subsection 6(4)

Delete “director, partner, manager”, substitute “key individual, partner”

9 At the end of section 6

Add

“(7) If a person:

- (a) refuses or fails to give the Reserve Bank the information or documents required by the Reserve Bank; or
- (b) knowingly or recklessly gives the Reserve Bank information or documents that are false or misleading;

the person commits an offence punishable upon conviction by the penalty set out in subsection (8).

(8) The penalty is:

- (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.”

10 After Subsection 7(2)

Insert

“(2A) The Reserve Bank may for the purposes of subsection (1):

- (a) enter the business premises of the licensed insurer, insurance intermediary, insurance manager or compliance officer during ordinary business hours; and
- (b) inspect and take copies of any books, accounts and documents of the licensed insurer, insurance intermediary, insurance manager or compliance officer that relate to:
 - (i) the integrity, competence, financial standing or organisation of the licensed insurer, insurance intermediary, insurance manager or compliance officer; or

- (ii) compliance by the licensed insurer, insurance intermediary, insurance manager or compliance officer with this Act or the Regulations.”

11 At the end of section 7

Add

- “(5) If a person intentionally obstructs the Reserve Bank in the exercise of the Reserve Bank’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.
- (6) In this section, a reference to the Reserve Bank includes a person appointed by the Reserve Bank in writing as an authorised officer for the purposes of this section.
- (7) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.”

12 Paragraph 9(b)

Delete “Governor” substitute “Reserve Bank”

13 Section 12

Repeal the section.

14 After paragraph 13(1)(b)

Insert

- “(ba) disclose information under section 13A; and”

15 After section 13

Insert

“13A Disclosure of information

- (1) The Reserve Bank may disclose information if the disclosure:

- (a) is made for the purpose of performing a function or exercising a power under this Act; or
 - (b) 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
 - (c) 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
 - (d) 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
 - (e) is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or
 - (f) is made to a to domestic regulatory authority for the purpose of carrying out its regulatory functions; or
 - (g) 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
 - (h) is made to a foreign government agency in accordance with section 13B.
- (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 not exceeding 5 years, or both; and
 - (b) for any other person - a fine not exceeding VT 75 million.

13B Disclosure to foreign government agency

- (1) The Reserve Bank may disclose information to a foreign government agency if:
- (a) the Reserve Bank 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 Reserve Bank 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.

13C Exchange of information with other supervisors

- (1) This section does not limit section 13A or 13B.
- (2) The Reserve Bank may do all or any of the following:

- (a) enter into an agreement or understanding with another domestic or foreign insurance supervisor to share relevant supervisory information or to otherwise work together;
- (b) exchange all or any of the following information with another domestic or foreign insurance supervisor:
 - (i) relevant supervisory information;
 - (ii) relevant financial data about a supervised entity;
 - (iii) objective information on individuals holding positions of responsibility in a supervised entity.

13D Reserve Bank may request information and documents

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

16 Paragraph 17(2)(b)

Repeal the paragraph, substitute

- “(b) details of each beneficial owner and key individual of the applicant, to assist the Reserve Bank to determine, whether each of

them is a fit and proper person to lead the entity, in terms of personal character, such as honesty and integrity and their competence to understand and be able to fulfil the responsibilities imposed by this Act; and

- (ba) details as required by the Reserve Bank 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; and
- (bb) details of the source of funds used to pay the capital of the applicant; and”

17 Paragraph 18(4)(a)

Delete “grant”, substitute “subject to subsection (4A), grant”

18 After subsection 18(4)

Insert

“(4A) The Reserve Bank must not grant an application unless it is:

- (a) satisfied that each beneficial owner and key individual of the applicant is a fit and proper person; and
- (b) satisfied of the source of funds used to pay the capital of the applicant.

(4B) In deciding whether a person referred to in paragraph (4A)(a) is a fit and proper person, the Reserve Bank must have regard to:

- (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, 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 in the guidelines.”

19 Paragraph 20(3)(a)

After “replacing”, insert “a beneficial owner or”

20 Subparagraph 20(3)(b)(ii)

After “individual” (wherever occurring), insert “or beneficial owner”

21 At the end of section 20

Add

“(5) If a licensee contravenes any of the conditions of its licence, the licensee commits an offence punishable upon conviction by a fine not exceeding VT 125 million.”

22 Subsection 25(1)

Repeal the subsection, substitute

“(1) The Reserve Bank may, subject to subsection (2), at any time suspend a licence if it is satisfied, on the basis of available facts and information, that the licensee:

- (a) 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
- (b) has failed to comply with the requirements of this Act or the Regulations; or
- (c) no longer otherwise meets the licensing requirements.”

23 After paragraph 27(1)(c)

Insert

“(ca) 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”

24 After subsection 61(1)

Insert

“(1A) The Reserve Bank may also issue written guidelines setting out the criteria for determining whether a person is a fit and proper person.”

25 Paragraph 85(2)(c)

Delete “Governor” substitute “Reserve Bank”

26 Part 14

Repeal the Part.

27 Subsection 92(1)

After “member”, insert “, key individual”

28 Subparagraph 95(i)

(a) Delete “VT 1,000,000”, substitute “VT 15 million”

(b) Delete “3 years”, substitute “5 years”

29 Subparagraph 95(ii)

Delete “VT 5,000,000”, substitute “VT 75 million”

30 Subparagraph 96(i)

(a) Delete “VT 1,000,000”, substitute “VT 15 million”

(b) Delete “3 years”, substitute “5 years”

31 Subparagraph 96(ii)

Delete “VT 50,000,000”, substitute “VT 75 million”

32 Section 103

Repeal the section, substitute

“103 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.”

33 Transitional provision for certain licensee information

(1) This provision applies to a licensee if, immediately before the commencement of this Act, the licensee’s licence was in force under the Insurance Act No. 54 of 2005.

SCHEDULE
AMENDMENTS OF INSURANCE ACT NO. 54 OF 2005

- (2) The licensee must provide the Reserve Bank with the information required under paragraphs 17(2)(b), (ba) and (bb) of the Insurance Act No. 54 of 2005 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 Reserve Bank may by notice in writing to the licensee revoke the licensee’s licence.
- (4) If the licensee does provide the additional information as required under subsection (2), but the Reserve Bank is not satisfied with the additional information having regard to the matters set out in paragraphs 18(4A)(a) and (b) of the Insurance Act No. 54 of 2005 as amended by this Act, the Reserve Bank may by notice in writing to the licensee revoke the licensee’s licence.
- (5) Subsections 27(2) to (6) of the Insurance Act No. 54 of 2005 as amended by this Act apply to a revocation.
- (6) A term or expression used in this item has the same meaning as in the Insurance Act No. 54 of 2005 as amended by this Act.