

# **REPUBLIC OF VANUATU**

## **BILL FOR THE VANUATU INTELLECTUAL PROPERTY OFFICE ACT NO. OF 2024**

### **Explanatory Note**

Vanuatu is a member to the World Trade Organization (“the WTO”). Under the auspicious of the WTO, it is a requirement under the Trade Related Aspects of Intellectual Property Rights Agreement (“TRIPS Agreement”) for Vanuatu to implement intellectual property laws. Vanuatu has the following intellectual property laws:

1. Trademark Act; and
2. Patents Act; and
3. Designs Act; and
4. Trade Secret Act; and
5. Circuit Layout Act; and
6. Geographical Act; and
7. Copyright and Related Rights Act.

These intellectual property laws are administered by the Vanuatu Intellectual Property Office (“the VIPO”), which was established in 2012 by a Ministerial Order under the Ministry of Trade and Commerce. The Ministerial Order establishing the VIPO was made under the Trademarks Act No. 1 of 2003.

The Ministerial Order does not provide for all the functions and powers of the VIPO, therefore, the VIPO has a limited scope of work to enforce the compliance of these intellectual property laws.

The Government acknowledges the need to establish an organisation to properly administer these intellectual property laws, therefore, there is the need for a Vanuatu Intellectual Property Office Act (“the VIPO Act”).

This VIPO Act will establish the VIPO as a statutory body, which is essential for fostering a robust intellectual property framework that protects the rights of creators, promotes innovation, and supports economic and cultural development. The VIPO will always play a pivotal role to manage, protect and make awareness on intellectual properties and to advance Vanuatu’s interest in the global economy.

Key features of this Bill include:

- (a) The establishment of the Vanuatu Intellectual Property Office as the body responsible for intellectual property in Vanuatu; and
- (b) The establishment of the Vanuatu Intellectual Property Board to consider and approve standards and plans; and
- (c) The appointment of a Registrar General who will be responsible for the daily operations of the VIPO.

**Minister of Trade and Commerce**



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### Arrangement of Sections

#### **PART 1 PRELIMINARY MATTERS**

1	Interpretation.....	3
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#### **PART 2 VANUATU INTELLECTUAL PROPERTY OFFICE**

2	Vanuatu Intellectual Property Office .....	4
3	Functions of the Office .....	4
4	Powers of the Office .....	5

#### **PART 3 VANUATU INTELLECTUAL PROPERTY BOARD**

5	Establishment of the Vanuatu Intellectual Property Board .....	6
6	Composition of the Board.....	6
7	Functions of the Board.....	6
8	Powers of the Board.....	7
9	Delegation of functions and powers .....	7
10	Chairperson and the Deputy Chairperson of the Board .....	7
11	Meetings of the Board.....	7
12	Secretary of the Board .....	8
13	Sitting Allowances .....	9

#### **PART 4 APPOINTMENT, FUNCTIONS AND REMOVAL OF THE REGISTRAR GENERAL**

14	Appointment of the Registrar General.....	10
15	Functions of the Registrar General .....	11
16	Powers of the Registrar General .....	11
17	Delegation of functions and powers .....	11
18	Removal of the Registrar General .....	11
19	Resignation by the Registrar General .....	12
20	Vacancy .....	12
21	Staff of the Office .....	12

**PART 5 MISCELLANEOUS**

22 Funds of the Office ..... 13  
23 Accounts and Audit ..... 13  
24 Annual Report..... 13  
25 Immunity..... 13  
26 Disclosure of interest ..... 14  
27 Secrecy ..... 14  
28 Amendment of Schedule..... 14  
29 Regulations ..... 14  
30 Savings and transitional ..... 15  
31 Commencement ..... 15

# REPUBLIC OF VANUATU

## BILL FOR THE VANUATU INTELLECTUAL PROPERTY OFFICE ACT NO. OF 2024

An Act to establish the Vanuatu Intellectual Property Office and for the related matters.

Be it enacted by the President and Parliament as follows-

### PART 1 PRELIMINARY MATTERS

#### 1 Interpretation

In this Act unless the context otherwise requires:

**Board** means the Vanuatu Intellectual Property Board established under section 5;

**Director General** means the Director General of the Ministry responsible for intellectual property;

**Minister** means the Minister responsible for intellectual property;

**Office** means the Vanuatu Intellectual Property Office established under section 2;

**Registrar General** means the person appointed as the Registrar General under section 14;

**relevant Acts** means the Acts set out in the Schedule.

## **PART 2 VANUATU INTELLECTUAL PROPERTY OFFICE**

### **2 Vanuatu Intellectual Property Office**

- (1) The Vanuatu Intellectual Property Office is established.
- (2) The Office is to:
  - (a) have perpetual succession and a common seal; and
  - (b) be capable of suing and being sued in its corporate name.

### **3 Functions of the Office**

The Office has the following functions:

- (a) to provide for the registration of trademarks, designs, patents, copyright and related rights works, circuit layouts, geographical indications and any other intellectual properties; and
- (b) to operate, administer and develop the intellectual property Registry; and
- (c) to provide for and facilitate all dispute resolutions in relation or connection with intellectual property rights; and
- (d) to provide for and facilitate compliance of all regulatory provisions of this Act and relevant Acts; and
- (e) to implement the Vanuatu Intellectual Property Strategy as approved by the Council of Ministers; and
- (f) to assist the Vanuatu Copyright Management Society and any other authority; and
- (g) to advise the Minister on all matters in relation to intellectual property rights; and
- (h) to administer this Act and the relevant Acts; and
- (i) to encourage and assist the sustainable intellectual property assets development of Vanuatu by promoting creativity and innovation through legal frameworks; and

- (j) to represent Vanuatu internationally in matters relating to intellectual property; and
- (k) to carry out such other functions as may be conferred on the Office by this Act or any other Act.

#### **4 Powers of the Office**

- (1) The Office has the power to do all things that are necessary or convenient to be done for or in connection with its functions under this Act.
- (2) Without limiting subsection (1), the Office has the power to do all or any of the following:
  - (a) to acquire, purchase, hold, manage and dispose of real or personal property;
  - (b) enter into written contracts;
  - (c) promote and finance any undertaking;
  - (d) establish pension schemes or other welfare schemes for the benefit of its staff;
  - (e) to fund for training and development of its staff;
  - (f) carry out research programmes;
  - (g) publish printed or electronic matter for sale or otherwise;
  - (h) acquire copyrights;
  - (i) charge fees for services rendered by it.

## **PART 3 VANUATU INTELLECTUAL PROPERTY BOARD**

### **5 Establishment of the Vanuatu Intellectual Property Board**

The Vanuatu Intellectual Property Board is established.

### **6 Composition of the Board**

The Board consists of the following members:

- (a) the Director General; and
- (b) the Director of the Department of External Trade; and
- (c) the Director of the Department of Customs and Inland Revenue; and
- (d) the Director of the Department of Industry; and
- (e) the Chief Executive Officer of Vanuatu Investment Promotion Authority;  
and
- (f) the Chief Executive Officer of the Vanuatu Bureau of Standard; and
- (g) the Chairperson of the Cultural Council.

### **7 Functions of the Board**

The Board has the following functions:

- (a) to consider and approve:
  - (i) standard procedures of the Registry to meet or align with regional and international standards; and
  - (ii) new business plans; and
  - (iii) the annual draft budget before it is submitted to the Minister; and
  - (iv) the relevant reports for the previous year before submission to the Minister; and



- (b) to monitor the performance of the Registrar General and the staff of the Vanuatu Intellectual Property Office; and
- (c) to perform such other functions conferred on the Board under this Act or any other Act.

## **8 Powers of the Board**

The Board has the power to do all things necessary or convenient to be done for or in connection with its functions under this Act.

## **9 Delegation of functions and powers**

- (1) The Board may, in writing, delegate to the Registrar General any of its functions or powers under this Act, other than the power of delegation.
- (2) The delegation may be made generally, or in respect of a particular matter or class of matters.
- (3) The Board may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Board from performing the function or exercising the power that it has delegated.

## **10 Chairperson and the Deputy Chairperson of the Board**

- (1) The Director General is the Chairperson of the Board.
- (2) The members of the Board are to elect from amongst themselves a Deputy Chairperson.
- (3) The Deputy Chairperson is to hold office for a period of 3 years and is eligible for reappointment.

## **11 Meetings of the Board**

- (1) The Board is to meet at least once every quarter within a year and may hold such other meetings as are necessary for the proper performance of its functions under this Act.
- (2) The Chairperson of the Board is to preside at all meetings of the Board and in his or her absence, the Deputy Chairperson is to preside at these meetings.

- (3) The quorum for a meeting of the Board is 4 members of the Board, including the Chairperson or Deputy Chairperson, present at the meeting.
- (4) A member present at a meeting of the Board has one vote and issues arising at a meeting are to be decided by a majority of votes.
- (5) If there is a tie vote at a meeting of the Board, the Chairperson or the Deputy Chairperson (whichever is presiding at the meeting) has a casting vote.
- (6) Subject to this Act, the Board may determine and regulate its own procedures.

## **12 Secretary of the Board**

- (1) The Registrar General is to be the Secretary of the Board.
- (2) The Secretary has the following functions:
  - (a) to prepare and circulate the agenda and issue papers for the meetings of the members of the Board; and
  - (b) to take minutes of the meetings of the Board and circulate the minutes to members of the Board within 3 weeks after each meeting; and
  - (c) to organize general meetings of the Board; and
  - (d) to coordinate and facilitate the implementation of the decisions of the Board; and
  - (e) to ensure that meetings are held according to the approved schedule of the meetings; and
  - (f) to prepare annual work programmes of the Board; and
  - (g) such other functions as may be imposed on the Secretary by this Act or any other Act.

**13 Sitting Allowances**

The members of the Board including the Chairperson and Deputy Chairperson are entitled to a sitting allowance of VT15,000 for each day in which the Board sits for a meeting.

## **PART 4 REGISTRAR GENERAL**

### **14 Appointment of the Registrar General**

- (1) Subject to subsections (2) and (3), the Minister is to, on the recommendation of the Board, appoint the Registrar General.
- (2) The position of the Registrar General must be advertised by the Office of the Director General 3 months prior to the date on which the position is to be vacant.
- (3) The appointment of the Registrar General must be based on merit and must follow a fair and transparent selection process.
- (4) The Registrar General is to hold office for a period of 5 years and is eligible for reappointment for 1 term only.
- (5) A person must not be appointed as Registrar General if he or she:
  - (a) exercises a position of responsibility in a political party; or
  - (b) is a member of Parliament, Municipal Council or a Provincial Government Council; or
  - (c) has been convicted of a crime carrying a penalty of imprisonment for 12 months or more; or
  - (d) is declared bankrupt by a Court.
- (6) The Registrar General must be a person who:
  - (a) has a degree in law or commerce from a recognised tertiary institution; and
  - (b) has 5 or more years of experience in dealing with intellectual property matters; and
  - (c) has at least 5 years experience in managing an office.

### **15 Functions of the Registrar General**

The Registrar General has the following functions:

- (a) to advise the Minister and the Board on matters relating to the administration of this Act; and
- (b) to advise the Minister and the Board on matters relating to intellectual property rights; and
- (c) to advise the Malvatumauri Council of Chiefs and other Government institutions on all matters relating to intellectual property rights involving indigenous knowledge and expression of indigenous culture; and
- (d) to manage and oversee the operations of the Office; and
- (e) to carry out such other functions as may be conferred on him or her by this Act or any other Act.

### **16 Powers of the Registrar General**

The Registrar General has the power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions.

### **17 Delegation of functions and powers**

- (1) The Registrar General may, in writing, delegate to a senior officer of the Office any of his or her functions or powers under this Act, other than the power of delegation.
- (2) The delegation may be made generally, or in respect of a particular matter or class of matters.
- (3) The Registrar General may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Registrar General from performing the function or exercising the power that he or she has delegated.

### **18 Removal of the Registrar General**

The Minister may, on the recommendation of the Board, remove a person as the Registrar General if he or she is satisfied that the person:

- (a) is incapacitated by physical or mental illness; or
- (b) is declared bankrupt by a Court; or
- (c) has been convicted and sentenced by a Court for an offence; or
- (d) exercises a position of responsibility in a political party; or
- (e) engages in another paid employment during his or her term in office; or
- (f) has acquired such financial or other interest as is likely to affect his or her functions as the Registrar General under this Act.

### **19 Resignation by the Registrar General**

The Registrar General may resign at any time, by giving 3 months' notice in writing to the Minister.

### **20 Vacancy**

If the position of the Registrar General is vacant or if the Registrar General is unable to perform his or her functions for any reason at any time, the Minister may, on the recommendation of the Board, appoint a suitably qualified senior officer of the Office to act in the position of Registrar General until a permanent appointment is made or until the Registrar General resumes duty.

### **21 Other Staff of the Office**

- (1) The Registrar General may, with the prior approval of the Board, employ other staff of the Office as he or she considers necessary for the proper and efficient performance of the functions of the Office.
- (2) The Registrar General is to determine the terms and conditions of the employment of the other staff of the Office.
- (3) The appointment of a staff of the Office must follow a fair and transparent selection process and must be based on merit.

## **PART 5 MISCELLANEOUS**

### **22 Funds of the Office**

- (1) The funds of the Office consist of the following:
  - (a) monies appropriated to the Office by Parliament; and
  - (b) grants from aid donors or other international organisations; and
  - (c) monies received from any other source; and
  - (d) monies accrued out of fees charged by the Office.
- (2) Subject to the relevant provisions of the Public Finance and Economic Management Act [CAP 244], the Registrar General may with the approval of the Board, open and maintain such bank accounts on behalf of the Office as it considers necessary.

### **23 Accounts and Audit**

- (1) The Office is to keep proper accounts and other records in respect of its receipts and expenditure and is to prepare an annual statement of accounts in respect of each financial year.
- (2) The accounts of the Office are to be audited by the Auditor- General at the end of each financial year.
- (3) The Registrar General must provide the Minister with a copy of the audited accounts referred to in subsection (2).

### **24 Annual Report**

The Office must within 3 months after the end of each financial year provide a report to the Minister relating on the operations of the Office for the preceding year.

### **25 Immunity**

- (1) A civil or criminal proceedings must not be brought against any staff of the Office, the Registrar General or member of the Board for anything done or omitted to be done in good faith in performing his or her functions or exercising his or her powers under this Act.

- (2) Subsection (1) does not apply if the staff of the Office, the Registrar General or member of the Board acted in bad faith in performing his or her functions or exercising his or her powers under this Act.

**26 Disclosure of interest**

- (1) The Registrar General or any staff or member of the Board who has any direct or indirect personal or financial interest in any matter coming before the Office or the Board must declare his or her interest in the matter.
- (2) A disclosure under subsection (1) is to be recorded and the Registrar General, staff of the Office or member of the Board must not:
- (a) be present during any deliberation with respect to that matter; or
  - (b) take part in any deliberations or vote with respect to that matter.

**27 Secrecy**

Subject to this Act and any other Act, the Registrar General or any staff of the Office or any member of the Board must not without lawful authority, publish or communicate to any person otherwise than in the ordinary course of his or her appointment, any information acquired by him or her in the course of his or her employment.

**28 Amendment of Schedule**

The Minister may, by Order, on the recommendation of the Registrar General:

- (a) add to; or
- (b) vary; or
- (c) replace; or
- (d) remove,

any relevant Acts listed in the Schedule.

**29 Regulations**

- (1) The Minister may, on the advice of the Registrar General, make Regulations not inconsistent with this Act, prescribing matters:



- (a) required or permitted by this Act to be prescribed; or
  - (b) that are necessary or convenient to be prescribed for better carrying out or giving effect to the provisions of this Act.
- (2) Without limiting subsection (1), the Minister may, after consulting the Registrar General, make Regulations prescribing fees to be paid for general services as required under this Act or any relevant Act.

### **30 Savings and transitional**

- (1) Any act undertaken under the provisions of the relevant Acts set out in the Schedule before the commencement of this Act, is to continue and have effect under this Act, on and after the commencement of this Act, until such time it is altered, amended, or cancelled by this Act.
- (2) A person who was employed by the Office immediately before the commencement of this Act continues to be employed as an employee of the Office under this Act, on and after the commencement of this Act, on the same terms and conditions of service with accrued entitlements.
- (3) The person who was appointed as the Registrar General before the commencement of this Act will continue to serve as the Registrar General for the period set out under subsection 14(4).

### **31 Commencement**

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

## **SCHEDULE**

### **LIST OF RELEVANT ACTS**

1. Copy Rights and Related Rights Act No. 42 of 2000;
2. Circuit Layouts Act No. 51 of 2000;
3. Trade Secrets Act No. 52 of 2000;
4. Geographical Indications (Wine) Act No.53 of 2000;
5. Trademarks Act No.1 of 2003;
6. Patents Act No. 2 of 2003;
7. Designs Act No. 3 of 2003.