

**REPUBLIC OF VANUATU**

**BILL FOR THE**  
**RESIDENT ENTITY (ECONOMIC SUBSTANCE)**  
**ACT NO.        OF 2024**

**Explanatory Note**

This Bill provides for the economic substance rules that must be met by entities that are incorporated, registered, formed, or settled in Vanuatu and are carrying on certain business activities in Vanuatu.

The Bill ensures that resident entities carrying on certain targeted activities (especially activities that pose a high risk for tax avoidance) have a substantial economic presence in Vanuatu.

The purpose of this Bill is to introduce economic substance rules for certain businesses operating in Vanuatu to meet the standards set by the European Union Code of Conduct Group (Business Taxation) (“the EU”) and the Organization of Economic Cooperation and Development (“the OECD”). These standards have been set by the EU and OECD in an effort to counter international tax avoidance and evasion.

This Bill is required for Vanuatu to be removed from the European Union List of Non-Cooperative Jurisdictions.

Consequences of being on the list include:

- (a) sanctions such as higher withholding taxes or non-deduction rules on EU countries on payments to listed countries; and
- (b) increased monitoring by EU countries of companies dealing with a listed country; and
- (c) disincentive to investment by EU companies in listed countries; and
- (d) reputation risks that may affect investment beyond the EU; and
- (e) potential impact on the ability to access funds from some development agencies.

**Minister of Finance and Economic Management**



## REPUBLIC OF VANUATU

### BILL FOR THE RESIDENT ENTITY (ECONOMIC SUBSTANCE) ACT NO. OF 2024

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# REPUBLIC OF VANUATU

## BILL FOR THE RESIDENT ENTITY (ECONOMIC SUBSTANCE) ACT NO. OF 2024

An Act requiring resident entities carrying on certain business activities in Vanuatu to meet economic substance requirements.

Be it enacted by the President and Parliament as follows-

### PART 1 PRELIMINARY

#### 1 Interpretation

(1) In this Act, unless the context otherwise requires:

**banking business** has the same meaning as set out under the Financial Institutions Act [CAP 254];

**Director** means the Director of the Department of Customs and Inland Revenue;

**distribution and service centre business** mean any or all of the following businesses:

- (a) businesses that purchase products ready for sale, or materials or component parts for products, from an entity in the same group, and resells such component parts, materials, or products in a foreign country;
- (b) businesses that provide services to an entity in the same group in connection with a business carried in a foreign country;

**employee** means an experienced and qualified full-time equivalent employee;

**entity** means a company, a limited partnership, a foundation, or a trust;

**equity interest** means a share in a company, an interest in a limited partnership or foundation, an interest or unit in a trust, or any other ownership interest in an entity;

**financial year**, in relation to an entity, means the period for which the entity prepares its financial accounts;

**foreign country** means a country or territory outside of Vanuatu;

**fund management business** means the business of acting as a manager of a fund or trust that requires a licence under the Company and Trust Services Providers Act No. 8 of 2010 or any other prescribed law;

**group** means entities that are related through ownership or control which:

- (a) are required to prepare consolidated financial statements for financial reporting purposes under the applicable accounting principles; or
- (b) would be required to prepare consolidated financial statements if equity interests in any of the entities were traded on a public securities exchange;

**headquarters business** means the business of providing any of the following services to one or more entities in the same group:

- (a) provision of senior management services; or
- (b) the assumption or control of material risk for activities carried on, or assets owned, by an entity in the same group; or
- (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b),

but does not include an activity included in a banking business, finance and leasing business, insurance business, or IP holding business;

**holding entity** means an entity that:

- (a) holds a majority of the interests in another entity; or
- (b) holds a majority of the voting rights in another entity; or
- (c) is a member of another entity and, under an agreement with the other members of the other entity, controls a majority of voting rights in the other entity; or

- (d) is a member of another entity and has the right to appoint or remove a majority of the directors of the other entity; or
- (e) is the holding entity of an entity treated as a holding entity under paragraph (a),(b),(c) or (d);

**holding entity business** means the business of being a holding entity;

**insurance business** means the business of providing insurance as a licensee under the Insurance Act No. 54 of 2005;

**IP asset** means an intellectual or industrial property right or interest, including

- (a) copyrights; and
- (b) patents; and
- (c) technical know-how; and
- (d) trademarks and service marks; and
- (e) brand and image rights; and
- (f) design rights; and
- (g) performer's rights;

**IP holding business** means the business of holding, creating, exploiting, or receiving income from IP assets;

**IP income** means income derived from an IP asset and includes royalties, income from a franchise agreement, income from licensing of the asset, and a capital gain or other income from the sale of an IP asset;

**management body**, in relation to an entity, means:

- (a) in the case of a body corporate - the board of directors, or, if the company has only one director, that director; or
- (b) in the case of a foundation - the councillor or councillors; or

- (c) in the case of a limited partnership - the managing partner or partners; or
- (d) in the case of a trust - the trustee or trustees;

**member**, in relation to an entity, means:

- (a) in the case of a company – a shareholder in the company; or
- (b) in the case of a limited partnership - a person holding an interest in the limited partnership; or
- (c) in the case of a foundation - a beneficiary of the foundation; or
- (d) in the case of a trust - a beneficiary or unit holder in the trust; or
- (e) any other person holding an ownership interest in that entity;

**membership interest** means a share in a company, an interest in a limited partnership or foundation, an interest or unit in a trust, or any other ownership interest in an entity;

**pure equity holding company** means a resident entity that:

- (a) is a holding entity; and
- (b) has, as its primary function, the acquisition and holding of membership interests in other entities; and
- (c) derives only dividends or other distributions or entitlements to income in relation to equity interests, and capital gains; and
- (d) does not carry on a commercial activity;

**relevant business** means any of the following:

- (a) banking business; or
- (b) distribution and service centre business; or

- (c) finance and leasing business; or
- (d) fund management business; or
- (e) headquarters business; or
- (f) holding entity business; or
- (g) insurance business; or
- (h) IP holding business; or
- (i) shipping business;

**ship** includes every description of vessel used in navigation over the sea;

**shipping business** means any of the following activities involving the operation of a ship anywhere in the world, other than solely within the territorial waters of Vanuatu or between the islands of Vanuatu:

- (a) the business of transporting persons, animals, goods, or mail by sea; or
- (b) the renting or chartering of ships for a purpose described in paragraph (a);  
or
- (c) the sale of travel tickets or its equivalent, and ancillary services connected with the operation of a ship; or
- (d) the use, maintenance, or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea; or
- (e) the management of the crew of a ship;

**substance requirements**, in relation to a relevant business, means the substance requirements for that business as specified in section 6.

- (2) For the purposes of the Act, if:



- (a) a business is a distribution and service centre business and another category of relevant business (other than a holding entity business), that business is treated as the other relevant business; and
- (b) a business is a distribution and service centre business and a holding entity business, that business is treated as a distribution and service centre business.

**2 Meaning of core income-producing activity**

- (1) The core income-producing activities for a banking business of a resident entity includes:
  - (a) raising funds; and
  - (b) managing risk, including credit, currency, and interest risk; and
  - (c) taking hedging positions; and
  - (d) providing loans, credit, or other financial services to customers; and
  - (e) managing capital; and
  - (f) preparing regulatory reports and returns.
- (2) The core income-producing activities for a distribution and service centre business of a resident entity includes:
  - (a) transporting and storing goods, components, and materials; and
  - (b) managing inventory; and
  - (c) taking and processing orders; and
  - (d) providing consultation or other administrative services relating to a distribution and service centre business.
- (3) The core income-producing activities for a finance and leasing business of a resident entity includes:

- (a) negotiating or agreeing funding terms; and
  - (b) for a leasing business, identifying and acquiring assets to be leased; and
  - (c) setting the terms and duration of any financing or leasing agreements; and
  - (d) monitoring and revising finance and leasing agreements; and
  - (e) managing finance leases and agreements; and
  - (f) managing risks associated with finance and leasing agreements.
- (4) The core income-producing activities for a fund management business of a resident entity includes:
- (a) taking decisions on the holding and selling of investments; and
  - (b) calculating risk and reserves; and
  - (c) taking decisions on currency or interest fluctuations and hedging positions; and
  - (d) preparing relevant regulatory or other reports for government authorities and investors.
- (5) The core income-producing activities for a headquarters business of a resident entity includes:
- (a) taking relevant management decisions; and
  - (b) incurring expenditures on behalf of an entity or entities in the same group; and
  - (c) co-ordinating activities of entities in the same group.
- (6) The core income-producing activities for an insurance business of a resident entity includes:
- (a) predicting and calculating risk; and

- (b) insuring and re-insuring against risk; and
  - (c) providing insurance business services to clients.
- (7) The core income-producing activities for an IP holding business of a resident entity includes:
- (a) in the case where the business involves holding, exploiting, or deriving income from a patent or patents - undertaking research and development in relation to the patent or patents; and
  - (b) in the case where the business involves holding, exploiting, or deriving income from an IP asset or IP assets, other than a patent - undertaking marketing, branding, and distribution activities relating to that IP asset or assets.
- (8) The core income-producing activities for a shipping business of a resident entity includes:
- (a) managing crew, including hiring, paying, and overseeing crew members; and
  - (b) hauling and maintaining ships; and
  - (c) overseeing and tracking deliveries; and
  - (d) determining what goods to order and when to deliver them; and
  - (e) organising and overseeing voyages.
- (9) The core income-producing activities for a holding entity business of a resident entity includes:
- (a) for a pure equity holding entity, complying with all applicable law filing requirements of Vanuatu; or
  - (b) for any other holding entity, the activities specified in subsections (1) to (8) that are associated with the income that the entity derives from the relevant business concerned.

**3 Meaning of finance and leasing business**

- (1) For the purposes of this Act, **finance and leasing business** means the business of providing credit facilities of any kind for consideration, but excludes an activity included as banking business, fund management business, or insurance business.
- (2) For the purposes of subsection (1):
  - (a) the reference to consideration includes consideration by way of interest; and
  - (b) the provision of credit may be by way of instalments for which a separate credit charge is made and disclosed to the customer in connection with:
    - (i) the supply of goods by hire purchase; or
    - (ii) leasing, other than any lease granting an exclusive right to occupy land; or
    - (iii) a conditional sale or credit agreement.
- (3) If an advance or credit repayable by a customer to a person is assigned to another person, that other person is treated as the person providing the credit facility for the purposes of subsection (1).

**4 Meaning of high-risk IP entity**

- (1) For the purposes of this Act, an entity is a high-risk IP entity if it carries on an IP holding business and that entity:
  - (a) has acquired an IP asset from an entity in the same group or as consideration for funding research and development by another person situated in a foreign country and licensed the IP asset to one or more entities in the same group, or otherwise derives income from the IP asset in consequence of activities performed by an entity in the same group, such as facilitating sale agreements; or
  - (b) does not carry out research and development, or marketing, branding, and distribution as part of its core income-producing activities in Vanuatu.

- (2) Paragraph (1)(b) does not apply with respect to an IP asset that comprises technical know-how or performer's rights, or both.

**5 Meaning of resident entity**

- (1) For the purposes of this Act, **resident entity** means an entity that is incorporated, registered, formed, or settled in Vanuatu.
- (2) An entity that is registered under the laws of Vanuatu is a resident entity despite also being incorporated, formed, or settled under the laws of a foreign country.
- (3) Despite subsections (1) and (2), an entity is not a resident entity if the entity is a tax resident of a foreign country under the law of that country, and that country is not on the European Union list of non-cooperative jurisdictions for tax purposes.
- (4) For the purposes of subsection (3), an entity is treated as a tax resident of a foreign country for a financial year only if the entity provides the Director with a tax residence certificate, or an assessment or receipt for the payment of tax, issued by the tax authority of that foreign country for that year.

## **PART 2 SUBSTANCE REQUIREMENTS**

### **6 Substance requirements for resident entities**

- (1) A resident entity that carries on a relevant business during a financial year must satisfy the substance requirements specified in this section for the relevant business for that year.
  
- (2) A resident entity, other than a pure equity holding company, satisfies the substance requirements for a relevant business if:
  - (a) the entity carries on core income-producing activities in Vanuatu in relation to the relevant business; and
  - (b) the entity is directed and managed in Vanuatu in relation to that activity in accordance with section 7; and
  - (c) having regard to the level of income derived from the relevant business carried on in Vanuatu, the entity:
    - (i) has an adequate number of employees proportionate to the level of the business who are physically present in Vanuatu, whether or not employed by the entity or by another entity and whether on temporary or long-term contracts; and
    - (ii) has an adequate level of operating expenditure incurred in Vanuatu proportionate to the level of the business carried on in Vanuatu; and
    - (iii) has adequate physical assets or physical presence in Vanuatu, proportionate to the level of the business carried on in Vanuatu.
  
- (3) A resident entity may outsource its core income-producing activity and still satisfy paragraph (2)(c) if:
  - (a) the outsourced activity is carried on in Vanuatu; and
  - (b) the entity can demonstrate that it undertakes adequate supervision and control of the outsourced activity in Vanuatu; and

- (c) there are adequate number of employees, and an adequate level of operating expenditure incurred in Vanuatu proportionate to the level of the business carried on in Vanuatu; and
  - (d) the number of employees and expenditure calculated under paragraph (c) exclude multiple counting of employees and expenditure across the resident entity and the entity or entities performing the outsourced activity.
- (4) For the purposes of subsection (3), only that part of the activities of the entity carrying on the outsourced activity that are attributable to producing income solely and exclusively for the resident entity, are to be taken into account in determining whether the resident entity satisfies the substance requirements.
- (5) A resident entity, other than a high-risk IP entity, carrying on an IP holding business and whose activities do not include any activities specified in subsection 2(7) does not carry on a core income-producing activity in Vanuatu unless the activities being carried on in Vanuatu include:
- (a) taking strategic decisions and managing and bearing the principal risks related to development and subsequent exploitation of IP assets that produce IP income; and
  - (b) taking the strategic decisions and managing (as well as bearing) the principal risks relating to acquisition by third parties and subsequent exploitation and protection of IP assets; and
  - (c) carrying on the underlying trading activities through which IP are exploited leading to the production of income from third parties.
- (6) A resident entity that is a high-risk IP entity is deemed to be carrying on a core income-producing activity in Vanuatu only if the high-risk IP entity can demonstrate that:
- (a) there was a high degree of control over the development, exploitation, maintenance, enhancement, and protection, of IP assets of the entity; and
  - (b) this control is being exercised by an adequate number of employees of the entity who reside, and perform their functions, in Vanuatu.

- (7) A resident entity that is a pure equity holding company satisfies the substance requirements for a financial year if the entity:
- (a) has an adequate number of employees, and adequate premises, in Vanuatu for the year for managing the equity interests that it holds; and
  - (b) complies with applicable corporate law filing requirements applicable to the entity as set out in Vanuatu law.
- (8) A resident entity that carries on more than one relevant business during a financial year must satisfy the substance requirements for each relevant business for the year.

#### **7 Direction and management in Vanuatu**

For the purposes of paragraph 6(2)(b), a resident entity carrying on a relevant business is directed and managed in Vanuatu if:

- (a) meetings of the management body are held in Vanuatu with adequate frequency having regard to the amount of decision-making required by the management body; and
- (b) for each meeting of the management body, a majority of the members of the management body are physically present in Vanuatu for the meeting; and
- (c) strategic decisions of the entity are made at meetings of the management body held in Vanuatu and the minutes of meetings record those decisions; and
- (d) the management body, as a whole, has the necessary knowledge and expertise to discharge the duties of the management body; and
- (e) the minutes of meetings of the management body are kept in Vanuatu in accordance with the laws of Vanuatu.



## **PART 3 REPORTING AND PROVISION OF INFORMATION**

### **8 Reporting obligation**

- (1) For the purposes of sections 8 and 9, **approved form** means the form approved by the Director to be filed by a resident entity.
- (2) An approved form must require the following information to be provided:
  - (a) details of the relevant business being carried on by the resident entity; and
  - (b) the amount of income derived, expenditures incurred, and assets used in carrying on the relevant business; and
  - (c) details of how the resident entity satisfied the substance requirements for the relevant business for the year including details of any outsourcing of the relevant business; and
  - (d) details of the core income producing activities of the resident entity with respect to each relevant business undertaken by the resident entity during the year; and
  - (e) names and physical addresses of the members of the management body of the resident entity for the year; and
  - (f) details of the group to which the resident entity belongs; and
  - (g) for a high-risk IP entity:
    - (i) an explanation of the commercial rationale for holding IP assets in Vanuatu; and
    - (ii) employee information, including level of experience, type of contracts, qualifications, and duration of employment; and
    - (iii) evidence that decision making is taking place within Vanuatu; and

- (iv) any other information as may be reasonably required by the Director to determine whether the resident entity satisfies the substance requirements in section 6.
- (3) A resident entity carrying on a relevant business during a financial year must file a return with the Director for that year for the purpose of enabling the Director to determine whether the entity has satisfied the substance requirements for the year.
- (4) A return under subsection (3) must be filed:
  - (a) in the approved form and contain the information and accompanying documents as required by the form; and
  - (b) within three months after the end of the financial year.

**9 Requirement to provide documents and information**

- (1) In addition to the return required to be filed under section 8, a resident entity must provide the Director with such information or documents that the Director may, by notice in writing, require to determine:
  - (a) that the entity is a resident entity; and
  - (b) whether, during a financial year, the entity carried a relevant business; and
  - (c) that the entity satisfied the substance requirements for the relevant business carried on during the year.
- (2) An entity carrying on an outsourced activity referred to in subsections 6(3) and (4) for a resident entity for a financial year must file a report of the activity with the Director within three months after the end of the financial year.
- (3) A report under subsection (2) must be filed in the form approved by the Director for the purposes of subsection (2) and include the information and accompanying documents as required by the approved form.
- (4) The Director may, by notice in writing, require any person that the Director reasonably believes to have information or documents relevant to

the determination of whether a resident entity carrying on a relevant business satisfies the substance requirements for a financial year to:

- (a) provide such information as required by the notice; or
  - (b) produce such documents as required by the notice.
- (5) The Director may require:
- (a) information required to be provided by a notice served under this section to be in such form, including electronic format, as the Director may specify in the notice; and
  - (b) information to be provided or documents produced as required by a notice served under this section to be verified or authenticated in such manner as may be specified in the notice; and
  - (c) information or documents required by a notice served under this section to be provided or produced to such person, at such place, and within such time as specified in the notice.
- (6) The Director may make copies, including electronic copies, or extracts of any document produced under this section.

## **10 Record-keeping**

A resident entity carrying on a relevant business during a financial year must keep documents, including in electronic format, evidencing the information required to be provided to the Director under this Part for a period of 6 years after the end of the financial year to which the documents relate.

## **11 Search warrant**

- (1) A Magistrate Court may issue a search warrant if it is satisfied, based on an application by the Director, that:
- (a) in the case where a notice has been served under section 9 – a person has failed to fully comply with that notice; and
  - (b) in the case where a notice has not been served under section 9 – any of the following would occur if the notice were issued:

- (i) it would not be fully complied with; or
  - (ii) the documents or information would be removed, tampered with, or destroyed; or
  - (iii) the purposes for which the notice was intended to be issued might otherwise be seriously prejudiced; and
- (c) there are reasonable grounds for believing that, on any premises specified in the search warrant, there are documents that have been required to be produced or information that has been required to be provided.
- (2) A search warrant issued under this section authorises the Director or any person authorised by the Director to:
- (a) enter the premises specified in the search warrant at any time within such time stated in the search warrant; and
  - (b) search the premises and take possession of documents or information specified in the search warrant or take, in relation to such documents or information, any other steps that are necessary for preserving or preventing interference with the documents or information, including securing of data storage devices; and
  - (c) take copies (including electronic copies) of, or extracts from, any documents or information specified in the search warrant; and
  - (d) require any person on the premises to provide an explanation of any document or information specified in the search warrant or to state where such documents or information may be located; and
  - (e) use such force as may be necessary to execute the search warrant.

## **PART 4 PENALTIES AND SANCTIONS**

### **12 Determination of compliance with substance requirements**

- (1) The Director may, in writing, determine that a resident entity carrying on a relevant business during a financial year has not met the substance requirements for that business for the year.
- (2) A determination under subsection (1) for a financial year must be made within 6 years after the end of the financial year.
- (3) Subsection (2) does not apply if the Director is not able to make a determination under subsection (1) within the 6 year period, by reason of any deliberate misrepresentation or negligent or fraudulent action by the resident entity or any other person, in relation to the resident person.

### **13 Failure to satisfy substance requirements**

If the Director determines under section 12 that a resident entity carrying on a relevant business has not satisfied the substance requirements during a financial year, the resident entity commits an offence and is punishable on conviction by a fine not exceeding VT100,000,000.

### **14 Other offences**

- (1) A resident entity that fails to:
  - (a) file a return as required under section 8; or
  - (b) provide information as required under subsection 9(1) or (4); or
  - (c) keep documents as required under section 10,commits an offence and is punishable on conviction by a fine not exceeding VT50,000,000.
- (2) An entity carrying on an outsourced activity referred to in subsections 6(3) and (4) for a resident entity for a financial year,

who fails to file a report of the activity with the Director as required under subsection 9(2) commits an offence and is punishable on conviction by a fine not exceeding VT 50,000,000.

- (3) A person who, deliberately or recklessly, provides false or misleading information to the Director, commits an offence and is punishable on conviction by a fine not exceeding VT 50,000,000 or to imprisonment not exceeding 12 months, or to both.

**15 Penalty notice**

- (1) The Director may serve a penalty notice on a person if it appears to the Director that the person has committed an offence under this Act.
- (2) A penalty notice is a notice to the effect that if the person served does not wish to have the matter determined by a Court, the person may pay within a time and to the Director, the amount of penalty stated in the penalty notice.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.
- (6) The Regulations may prescribe the amount of penalty payable for the offence if dealt with under this section.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty provided for under this Act.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## PART 5 MISCELLANEOUS

### 16 Exchange of information with competent authorities

(1) In this section:

**mutual administrative assistance agreement** means a tax information exchange agreement or other agreement providing for mutual administrative assistance including information exchange;

**ultimate beneficial owner**, in relation to an entity, means the natural person, or natural persons who ultimately own or control the entity, including those natural persons who exercise ultimate effective control over the entity;

**ultimate holding entity** means a member of a group of entities where:

- (a) the member owns, directly, or indirectly, a sufficient interest in one or more other members of the group such that it is required to prepare consolidated financial statements under accounting standards applicable in its jurisdiction of residence or, would be so required, if equity interests in the entity were traded on a stock exchange in its jurisdiction of residence; and
- (b) there is no other member of the group that owns, directly or indirectly, an interest referred to in paragraph (a) in the first-mentioned member of the group; and

**Vanuatu competent authority** means the person designated under a mutual administrative assistance agreement as the competent authority for Vanuatu.

- (2) The Vanuatu competent authority must exchange the information provided under this Act in respect of a resident entity that does not satisfy the substance requirements for a relevant business carried on by the entity for a financial year with:
  - (a) the competent authority of the foreign country of tax residence of the holding entity, ultimate holding entity, and ultimate beneficial owner of the resident entity; and
  - (b) if the resident entity is incorporated, formed, or settled in a foreign country, the competent authority of the foreign country in which the resident entity is incorporated, formed, or settled.

- (3) For a resident entity that is high risk IP entity, the Vanuatu competent authority must exchange the information provided under this Act in respect of the entity for a financial year with:
- (a) the competent authority of the foreign country of tax residence of the holding entity, ultimate holding entity, and ultimate beneficial owner of the resident entity; and
  - (b) if the resident entity is incorporated, formed, or settled in a foreign country, the competent authority of the foreign country in which the resident entity is incorporated, formed, or settled.
- (4) In the case of an entity that is carrying on a relevant business and is a tax resident of a foreign country, the Vanuatu competent authority must exchange the information provided under this Act with:
- (a) the competent authority of the foreign country in which the entity is a tax resident; and
  - (b) the competent authority of the foreign country of tax residence of the holding entity, ultimate holding entity, and ultimate beneficial owner of the resident entity; and
  - (c) if the resident entity is incorporated, formed, or settled in a foreign country, the competent authority of the foreign country in which the resident entity is incorporated, formed, or settled.
- (5) The Vanuatu Competent Authority may only exchange information with the competent authority of a foreign country under this section:
- (a) if the foreign country is a party to a mutual administrative assistance agreement to which Vanuatu is a party; and
  - (b) only to the extent that the information is permitted to be exchanged under that agreement and within the timelines agreed under that agreement.

## **17 Confidentiality**

- (1) In this section, **officer or employee**, in relation to the Department of Customs and Inland Revenue, includes a former officer or employee.



- (2) An officer or employee of the Department of Customs and Inland Revenue must keep confidential all documents and information that are, or have been, in the officer's possession or knowledge in connection with the performance of functions under this Act.
- (3) Despite subsection (2), an officer of the Department of Customs and Inland Revenue may, in the course of performing his or her functions under the Act, disclose a document or information:
- (a) that is permitted to be disclosed by the Director under this Act; or
  - (b) that is available to the public from another source; or
  - (c) that is in summary or statistical format in a manner that does not enable any resident entity, or of any officer, customer, investor, member, client, or policy holder of a resident entity, to be identified.
- (4) Despite subsection (3) and any other law, any document or information that is required to be treated as confidential under a mutual administrative assistance agreement may be disclosed only to the extent permitted under that agreement.
- (5) A person who fails to maintain confidentiality of documents and information as required under this section is guilty of an offence punishable on conviction by a fine not exceeding VT1,000,000 or to imprisonment not exceeding 12 months, or to both.

## **18 Regulations**

- (1) The Minister may make Regulations, not inconsistent with this Act, for matters that are:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary for the proper and efficient administration of this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may prescribe penalties not exceeding VT1,000,000 or a term of imprisonment not exceeding 1 year, or to both, for offences against the Regulations.

**19 Commencement**

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