

REPUBLIC OF VANUATU

BILL FOR THE ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING (AMENDMENT) ACT NO. OF 2017

Explanatory Note

This Bill amends the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 (the Principal Act) primarily to give effect to Vanuatu's FATF Action Plan to meet FATF Recommendations. A brief explanation of the key amendments is set out below.

National Coordinating Committee of AML and CTF

Amendments have been made to add additional members to the National Coordinating Committee. The additional members are the Commissioner of the Vanuatu Financial Services Commission, the Director responsible for customs and inland revenue, and the Head of the Office of the Registrar of Cooperatives and Business Development Services. This amendment ensures that all relevant regulatory authorities are represented on the Committee. The amendments also clarify the functions of the Committee and enable the Committee to share information as necessary to exercise its functions.

Supervisory framework

Amendments have been made to clarify the framework for supervision of reporting entities, including outlining the functions of a supervisor. These amendments clarify that the Vanuatu Financial Intelligence Unit is the supervisor for all reporting entities. However, the amendments enable the Unit to delegate some or all of its supervisory functions to other regulatory authorities, including to the Reserve Bank of Vanuatu, in relation to the industry sectors that they regulate. Regulatory authorities that have been delegated supervisory functions can use the monitoring and enforcement powers in the Act to perform their supervisory functions.

Market entry and ongoing fit and proper checks for unregulated reporting entities

Amendments to regulatory laws make it clear that regulatory authorities conduct market entry fit and proper checks. The amendments in this Act clarify that the Vanuatu Financial Intelligence Unit will conduct fit and proper checks prior to registration as a reporting entity under the Act if a reporting entity is not regulated.

The fit and proper criteria apply widely to owners, controllers, beneficial owners, directors and managers of unregulated reporting entities. In particular, the new definition of beneficial owner is broad and intended to look beyond the corporate veil, including chains of control and ownership, direct or indirect. The source of funds for the capital of an unregulated reporting entity has been added as additional registration criteria. Unregulated reporting entities that are already registered have 6 months in which to comply with the new registration requirements.

Unregulated reporting entities must continue to meet the fit and proper criteria on an ongoing basis. Consequently, the entities must update the Unit within 14 days of any relevant changes occurring and the Unit can require information on its own initiative. Non-compliance by reporting entities with the ongoing requirements is an offence.

For regulated reporting entities, the Unit can rely on the market entry and ongoing fit and proper checks conducted by regulatory authorities. The Unit can remove regulated and unregulated reporting entities for failure to meet market entry, registration and ongoing fit and proper checks.

Enhancing electronic currency transfer requirements

The amendments repeal existing electronic currency transfer requirements and insert a comprehensive regime, which imposes detailed obligations on originating, intermediary and beneficiary reporting entities in the electronic currency transfer process. The obligations relate to the gathering and verification of customer information, the transfer of that information with the electronic currency transfer, and the keeping of records related to that information.

Access to beneficial ownership information

The Financial Intelligence Unit has been given the power to request reporting entities to disclose to the Unit, information on the beneficial ownership of customers who are legal persons or legal arrangements. Non-compliance by reporting entities is an offence.

Power to obtain information and disclosure of information

Amendments have been made to allow the Unit to gather information from a variety of sources, including regulatory authorities and government agencies in other countries. A key purpose of this is to enable the Unit to be able to obtain and verify information on reporting entities and monitor compliance with the Act. Amendments have also been made to allow the Unit to disclose information to domestic and foreign agencies for a broader range of purposes. These purposes include supervision under regulatory laws, investigating or enforcing certain serious offences, and investigations or taking action under the Proceeds of Crime Act.

Additional enforcement powers

Amendments have been made to provide the Unit with a range of non-criminal enforcement measures against reporting entities for non-compliance with the Act. The enforcement measures include, among others, penalty notices and injunctions.

Penalties for criminal offences

Penalty levels for offences have been increased and consistent penalties applied depending on the type of offence.

*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 (AML) and counter-terrorist financing (CTF) standard.

Prime Minister



REPUBLIC OF VANUATU

**BILL FOR THE
ANTI-MONEY LAUNDERING AND COUNTER-
TERRORISM FINANCING (AMENDMENT)
ACT NO. OF 2017**

Arrangement of Sections

1	Amendment	2
2	Commencement.....	2

REPUBLIC OF VANUATU

BILL FOR THE ANTI-MONEY LAUNDERING AND COUNTER- TERRORISM FINANCING (AMENDMENT) ACT NO. OF 2017

An Act to amend the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014, and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 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 ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT NO. 13 OF 2014

1 Section 1

Insert in their correct alphabetical positions

“**confidential information** has the meaning given by section 38;

controller of a person or entity means a person who exercises influence, authority or power over decisions about the person’s or entity’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 of a person or entity means:

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

domestic electronic currency transfer means an electronic currency transfer, or a chain of electronic currency transfers, where all of the parties to the transaction are located in 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;

electronic currency transfer means a transaction carried out on behalf of a person (the sender) through a reporting entity by electronic means with a view to making an amount of currency available to a person (the receiver who may also be the sender) at another reporting entity but excludes:

- (a) transfers and settlements between reporting entities if both the sender and the receiver are reporting entities acting on their own behalf; and
- (b) credit and debit card transactions if the credit or debit card number accompanies the transaction;

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 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;

international electronic currency transfer means an electronic currency transfer, or a chain of electronic currency transfers, where at least one party to the transaction is located outside Vanuatu;

key person of a reporting entity means a beneficial owner, owner, controller, director or manager of the reporting entity;

manager of a person or entity means:

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

money laundering means conduct which constitutes an offence of money laundering under section 11 of the Proceeds of Crime Act [CAP 284];

National Coordinating Committee means the National Coordinating Committee established by section 50K;

owner of a person or entity means a person who has a legal entitlement of 25% or more of the person or entity by way of ownership of shares or otherwise, and **own** and **ownership** have a corresponding meaning;

proceeds of crime has the same meaning as under section 5 of the Proceeds of Crime Act [CAP 284];

property means assets of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired, including:

- (a) currency and other financial assets; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets, including but not limited to

bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit,

register means the register of reporting entities established under section 9;

Regulations means the regulations made under this Act;

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;

supervisor means the Unit or a domestic regulatory authority delegated supervisory functions under section 8B;

terrorist financing means conduct which constitutes an offence of terrorism financing under section 6 of the Counter Terrorism and Transactional Organised Crime Act [CAP 313];”

2 Section 1 (definition of beneficial owner)

Repeal the definition, substitute

“**beneficial owner** means a natural person who is the ultimate owner or ultimate controller of a person or entity;”

3 Section 1 (definition of law enforcement agency)

Repeal the definition, substitute

“**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;”

4 Section 1 (definition of serious offence)

Repeal the definition, substitute

“**serious offence** has the same meaning as in the Proceeds of Crime Act [CAP 284];”

5 Section 1 (definitions of assisting entity, beneficiary, fund, originator, prescribed entity, supervisor, terrorist organisation and terrorist property)

Repeal the definitions

6 Section 1

Add at the end

- “(2) For the purpose of the definition of a beneficial owner, ultimate owner and ultimate controller 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 Subparagraphs 2(l)(i) and (ii)

Delete “funds”, substitute “property”

8 Subparagraph 2(p)(ii)

After “secretary”, insert “or an agent”

9 Paragraphs 5(1)(c), (d) and (e)

Repeal the paragraphs, substitute

- “(c) to gather information, whether or not it has been requested by the Director from a domestic regulatory authority, a law enforcement agency or a foreign government agency for the purposes of this Act; and
- (d) to disclose information in accordance with this Act; and
 - (e) to collect information in accordance with this Act; and

- (ea) to receive, analyse and disseminate reports made under section 16 of the United Nations Financial Sanctions Act No. of 2017; and”

10 Paragraphs 5(1)(g) and (i)

Delete “an assisting entity”, substitute “a domestic regulatory authority, a law enforcement agency or a foreign government agency”

11 Paragraph 5(1)(h)

Delete “an assisting entity”, substitute “a law enforcement agency”

12 Paragraphs 5(1)(m), (n), (o), (r), (s) and (t)

Repeal the paragraphs, substitute

“(m) to supervise reporting entities for compliance with this Act in accordance with section 8A; and

(n) to establish, maintain and implement the National Risk Assessment Framework; and

(o) to educate the public and create awareness on matters relating to money laundering and the financing of terrorism.”

13 After section 8

Insert in Part 2

“8A Supervision of reporting entities

- (1) The Unit must supervise reporting entities for compliance with this Act.
- (2) The Unit has the following functions in relation to the supervision of reporting entities:
 - (a) to monitor and assess the level of AML and CTF risk across reporting entities;
 - (b) to monitor reporting entities for compliance with this Act and the Regulations, and for this purpose to develop and implement a risk-based supervisory programme;
 - (c) to provide guidance and feedback to reporting entities in order to assist those reporting entities to comply with this Act and the Regulations;

- (d) to specify such forms and notices as are necessary in the implementation of this Act;
- (e) to produce guidelines for compliance with this Act and Regulations;
- (f) to monitor and enforce compliance with this Act and Regulations;
- (g) to co-operate with the National Committee, domestic regulatory authorities, law enforcement agencies and foreign government agencies to ensure the consistent, effective, and efficient implementation of this Act;
- (h) to provide training programs for reporting entities in relation to customer due diligence obligations, record keeping obligations and reporting obligations.

8B Delegation of supervision functions

- (1) The Unit may by instrument in writing delegate all or any of its supervision functions of reporting entities to:
 - (a) the Reserve Bank of Vanuatu in relation to all or any of the following reporting entities:
 - (i) licensees within the meaning of the Financial Institutions Act [CAP 254];
 - (ii) licensees within the meaning of the International Banking Act [CAP 280];
 - (iii) credit unions registered under the Credit Unions Act [CAP 256],
 - (iv) insurances businesses as defined under the Insurance Act [CAP 82]; or
 - (b) any other domestic regulatory authority in relation to any other reporting entity or group of reporting entities.
- (2) The Reserve Bank of Vanuatu or other domestic regulatory authority that has been delegated supervision functions under subsection (1) has the

power to do all things necessary or convenient to be done for or in connection with the performance of the delegated supervision functions, including when monitoring and enforcing compliance with this Act:

- (a) exercising any of the monitoring powers in Part 10; and
- (b) imposing any enforcement measures in Part 10AA.

8C Use of information by supervisors

- (1) The Reserve Bank of Vanuatu or any other domestic regulatory authority that has been delegated supervision functions under subsection 8B(1) may use any information about a reporting entity obtained or held by it in the exercise of its powers or the performance of its functions or duties under this Act for the purpose of exercising its powers or performing its functions and duties under the regulatory law governing that reporting entity.
- (2) The Reserve Bank of Vanuatu or any other domestic regulatory authority that has been delegated supervision functions under subsection 8B(1) may use any information about a reporting entity obtained or held by it in the exercise of its powers or the performance of its functions or duties under the regulatory law governing that reporting entity for the purpose of exercising its powers or performing its functions and duties under this Act.

8D Unit may use AML/CTF information for certain purposes

- (1) The Unit may use any information obtained or held by it in the exercise of its powers or the performance of its functions or duties under this Act for the purpose of exercising its powers or performing its functions and duties under the United Nations Financial Sanctions Act No. of 2017.
- (2) The Unit may use any information obtained or held by it in the exercise of its powers or the performance of its functions or duties under the United Nations Financial Sanctions Act No. of 2017 for the purpose of exercising its powers or performing its functions and duties under this Act.”

14 Subsections 9(2), (3), (4) and (5)

Repeal the subsections, substitute

- “(2) A reporting entity must not provide a service or establish a business relationship with a customer unless the reporting entity is registered on the register.

- (3) An application for registration by a reporting entity must be made to the Director in the prescribed form, including its name and such other details as are prescribed by the Regulations.
- (4) If a reporting entity is regulated by a domestic regulatory authority under a regulatory law, the Director must not enter the reporting entity on the register unless:
- (a) the application complies with the requirements in subsection (3); and
 - (b) the reporting entity meets the requirements of the regulatory law; and
 - (c) the reporting entity meets the fit and proper criteria prescribed by the Regulations.
- (5) If a reporting entity is not regulated by a domestic regulatory authority, the Director must not enter the reporting entity on the register unless:
- (a) the application complies with the requirements in subsection (3); and
 - (b) the reporting entity meets the fit and proper criteria prescribed by the Regulations; and
 - (c) the Director is satisfied that the source of funds used to pay the capital of the applicant is acceptable.
- (6) In deciding under paragraph (4)(c) or (5)(b) whether a reporting entity meets fit and proper criteria, the Director must have regard to whether any of the key persons of the reporting entity:
- (a) have been convicted of an offence or are subject to any criminal proceedings; or
 - (b) are listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. of 2017 or a financial sanctions list under the law of any jurisdiction.

- (7) If a reporting entity contravenes subsection (1), the reporting entity commits an offence punishable upon conviction by:
- (a) if the reporting entity is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
 - (b) if the reporting entity is a body corporate - a fine not exceeding VT 125 million.”

15 After section 9

Insert

“9A Reporting entity to notify Director of certain changes

- (1) If a reporting entity registered on the register changes its name or any of its other details required for the purposes of registration, the reporting entity must give the Director written notice of the change within 14 days after the change occurs.
- (2) The Director upon receiving the notice:
- (a) must consider whether the reporting entity continues to meet the requirements for registration in subsection 9(4) or (5); and
 - (b) may, by notice in writing to the reporting entity, remove the reporting entity from the register if the Director is not satisfied that the reporting entity continues to meet the registration requirements.
- (3) If a reporting entity fails to comply with subsection (1), the reporting entity commits an offence punishable upon conviction by:
- (a) if the reporting entity is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
 - (b) if the reporting entity is a body corporate - a fine not exceeding VT 125 million.

9B Changes relating to key persons and source of capital of unregulated reporting entities

- (1) This section applies if:

SCHEDULE
AMENDMENTS OF ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM
FINANCING ACT NO. 13 OF 2014

- (a) a reporting entity is not regulated by a domestic regulatory authority; and
- (b) there is a change:
 - (i) of a key person of the reporting entity, or in the circumstances of a key person that may affect whether he or she meets the fit and proper criteria; or
 - (ii) to the source of funds used to pay the reporting entity's capital.
- (2) The reporting entity must give the Director written notice of the change within 14 days after the change occurs.
- (3) The Director may, by notice in writing to the reporting entity, remove the reporting entity from the register if the Director is not satisfied that:
 - (a) the key person concerned meets the fit and proper criteria prescribed by the Regulations; or
 - (b) the source of funds used to pay the reporting entity's capital is acceptable.
- (4) If a reporting entity fails to comply with subsection (2), the reporting entity commits an offence punishable upon conviction by:
 - (a) if the reporting entity is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
 - (b) if the reporting entity is a body corporate - a fine not exceeding VT 125 million.
- (5) To avoid doubt, this section does not limit section 9A."

16 Subsection 10(1)

Delete "the name and details of"

17 Subsections 10(2), (3), (4) and (5)

Repeal the subsections, substitute

- “(2) The Director may, by notice in writing to a reporting entity, suspend or remove the reporting entity from the register if the Director is satisfied on reasonable grounds that the reporting entity has failed to comply with a provision of this Act.
- (3) The period of any suspension must be specified in the notice referred to in subsection (2).”

18 Paragraph 12(1)(d)

Repeal the paragraph, substitute

- “(d) conducts an occasional transaction that exceeds the prescribed threshold under section 27 or 28, whether conducted as a single transaction or by way of two or more transactions that appear to be linked.”

19 After subsection 12(2)

Insert

- “(2A) In addition to subsection (2), a reporting entity must also verify that a person is authorised to undertake the transaction concerned on behalf of the other person.”

20 Subsection 12(4)

Repeal the subsection, substitute

- “(4) If a reporting entity contravenes subsection (1), (2) or (3), the reporting entity commits an offence punishable upon conviction by:
- (a) if the reporting entity is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
- (b) if the reporting entity is a body corporate - a fine not exceeding VT 125 million.”

21 At the end of section 12

Add

- “(5) If a reporting entity is unable to carry out the prescribed identification process on a person, the reporting entity:
- (a) must not open an account for the person; and
- (b) must not enter into a business relationship with the person; and

- (c) if a business relationship already exists with the person, must terminate the existing business relationship.”

22 Subsection 13(3)

Repeal the subsection, substitute

“(3) If a reporting entity contravenes subsection (1) or (2), the reporting entity commits an offence punishable upon conviction by:

- (a) if the reporting entity is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or

- (b) if the reporting entity is a body corporate - a fine not exceeding VT 125 million.”

23 Subsection 15(4)

Repeal the subsection, substitute

“(4) If a reporting entity contravenes subsection (1) or (2), the reporting entity commits an offence punishable upon conviction by:

- (a) if the reporting entity is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or

- (b) if the reporting entity is a body corporate - a fine not exceeding VT 125 million.”

24 Subsection 17(3)

Repeal the subsection, substitute

“(3) If a reporting entity fails to comply with subsection (1) or (2), the reporting entity commits an offence punishable upon conviction by:

- (a) if the reporting entity is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or

- (b) if the reporting entity is a body corporate - a fine not exceeding VT 125 million.”

25 Paragraphs 18(1)(b) and (c)

Repeal the paragraphs, substitute

- “(b) ensure that copies of identification data and other relevant documentation relating to the requirements under this Part are made available to the reporting entity by the intermediary or third party on request without delay; and
- (c) immediately obtain the information required under this Part; and
- (d) assess whether the location of the intermediary or third party is a high risk location, and whether the countries or geographical areas that the intermediary or third party operates in are high risk countries or geographical areas.”

26 After subsection 18(2)

Insert

- “(2A) Despite the use of an intermediary or third party, a reporting entity remains liable for any failure to undertake the reporting entity’s obligations under this Part.”

27 After subsection 19(7)

Insert

- “(7A) A reporting entity to which Part 8A applies must keep and maintain records required to be obtained and maintained under that Part for a period of 6 years after the completion of the transfer.”

28 Subsection 19(9)

Repeal the subsection, substitute

- “(9) If a reporting entity contravenes subsection (1), (2), (3), (4), (5), (6), (7), (7A) or (8), the reporting entity commits an offence punishable upon conviction by:
- (a) if the reporting entity is a natural person - a fine not exceeding VT 25 million or imprisonment not exceeding 15 years, or both; or
- (b) if the reporting entity is a body corporate - a fine not exceeding VT 125 million.”

29 Section 22(heading)

Delete “prescribed entities”, substitute “money laundering entities”

30 Subsection 22(1)

- (a) Delete “prescribed entity”, substitute “money laundering entity”
- (b) Delete “or is related to terrorist financing”

31 Section 23 (heading)

Delete “and proliferation financing”

32 Subsection 23(1)

Delete “or proliferation financing”

33 Subsection 23(2A)

Repeal the subsection.

34 Paragraph 23(3)(b)

Delete “100 million”, substitute “125 million”

35 Subsection 27(1)

Repeal the subsection, substitute

- “(1) A reporting entity must make a report to the Director on a transaction of an amount of cash that exceeds the prescribed threshold or its equivalent in foreign currency, whether the transaction is conducted as a single transaction or two or more transactions that appear to be linked.”

36 Paragraphs 28(1)(a), (b) and (c)

Delete “single transaction” substitute “transaction, whether conducted as a single transaction or by way of two or more transactions that appear to be linked”.

37 Subsections 29(1) and (2)

Repeal the subsections, substitute

- “(1) This section applies to a person if the person conducts 2 or more transactions that are of an amount below the prescribed threshold under section 27 or 28.
- (2) If the person conducts the transactions for the sole or dominant purpose of ensuring, or attempting to ensure, that a report in relation to the transactions is not made under section 27 or 28, the person commits an offence punishable upon conviction by:

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

38 Subsection 31(3)

Repeal the subsection, substitute

“(3) If a reporting entity contravenes subsection (1), the reporting entity commits an offence punishable upon conviction by:

- (a) in the case of an individual - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years or both; or
- (b) in the case of a body corporate – a fine not exceeding VT 125 million.”

39 After section 32 in Part 6

Insert

“32A Disclosure of information

- (1) A person must not disclose any information to any other person that:
 - (a) a reporting entity, or the supervisor or auditor of a reporting entity, has formed a suspicion in relation to a transaction or an attempted transaction, or an activity or attempted activity; or
 - (b) a report under this Act is made to the Director; or
 - (c) information under this Act is given to the Director.
- (2) A person must not disclose any information to any other person if the person to whom the information is disclosed may reasonably be expected to infer any of the circumstances in paragraph (1)(a), (b) or (c).
- (3) Subsections (1) and (2) do not apply to a disclosure made to:

- (a) an officer, employee or agent of a reporting entity who has made or is required to make a report or provide information under this Act for any purpose connected with the performance of that reporting entity's duties; or
 - (b) a lawyer for the purpose of obtaining legal advice or representation in relation to the disclosure; or
 - (c) the supervisor of the relevant reporting entity; or
 - (d) a law enforcement agency or any other person assisting the Unit under this Act.
- (4) Any information disclosed to a lawyer under paragraph (3)(b) must not be disclosed to any other person except for the purpose of:
- (a) the performance of the lawyer's duties; or
 - (b) obtaining legal advice or representation in relation to the disclosure.
- (5) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.
- (6) If a person contravenes subsection (1) or (2), the person commits an offence punishable upon conviction by:
- (a) in the case of an individual - a fine not exceeding VT15 million, or imprisonment for a term not exceeding 5 years, or both;
 - (b) in the case of a body corporate - a fine not exceeding VT 75 million.
- (7) If a person contravenes subsection (1):

SCHEDULE
AMENDMENTS OF ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM
FINANCING ACT NO. 13 OF 2014

- (a) with intent to prejudice an investigation of a money laundering offence, a financing of terrorism offence or another serious offence; or
- (b) for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person,

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

(8) The penalty is:

- (a) in the case of an individual - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or
- (b) in the case of a body corporate - a fine not exceeding VT 125 million.

32B False or misleading information

(1) If a person making a report or providing information required under Part 3, 4, 5, 6, 7 or 8:

- (a) makes any statement that the person knows is false or misleading in a material particular; or
- (b) omits from any statement any matter without which the person knows that the statement is false or misleading in a material particular,

the person commits an offence punishable upon conviction by the penalty referred to in subsection (2).

(2) The penalty is:

- (a) in the case of an individual - a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both; or

- (b) in the case of a body corporate - to a fine not exceeding VT 75 million.

32C Legal Professional Privilege

- (1) Nothing in this Act requires a lawyer or notary to disclose information which is subject to legal professional privilege.
- (2) For the purposes of this Act, information is privileged information if:
 - (a) it is confidential information, whether orally or in writing between:
 - (i) a lawyer or notary in his or her professional capacity and another lawyer or notary in such capacity; or
 - (ii) a lawyer or notary in his or her professional capacity and his or her client, whether made directly or indirectly through an agent; and
 - (b) it is made for the purpose of obtaining or giving legal advice or assistance; and
 - (c) it is not made for the purpose of committing or furthering the commission of an illegal or wrongful act.”

40 After subsection 33(1)

Insert

- “(1A) A reporting entity must implement its AML and CTF Procedure Manual and update it as required to take into account new and emerging risks.
- (1B) The AML and CTF Procedure Manual of a reporting entity must have regard to:
 - (a) the nature and level of money laundering and terrorist financing risk that the reporting entity may reasonably expect to face in the course of its business; and
 - (b) the nature, size and complexity of the reporting entity’s business.”.

41 After paragraph 33(2)(e)

Insert

- “(ea) to vet the officers and employees of the reporting entity to ensure that they are fit and proper persons to engage in anti-money laundering and counter terrorist financing related duties; and
- (eb) in the case of a person referred to in paragraph 2(q) (definition of reporting entity) on the role and responsibility of any agent of the person, including the person monitoring the agent’s compliance with the person’s AML and CTF Procedure Manual; and”

42 After subsection 33(2)

Insert

- “(2A) A reporting entity must periodically engage an external auditor to provide an independent review of its AML and CTF processes, procedures and systems, and to make recommendations for improvements.”

43 Subsection 33(4)

Repeal the subsection, substitute

- “(4) If a reporting entity contravenes subsection (1), (1A), (2) or (3), the reporting entity commits an offence punishable upon conviction by:
 - (a) in the case of an individual - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years or both; or
 - (b) in the case of a body corporate - a fine not exceeding VT 125 million.”

44 After subsection 33A(2)

Insert

- “(2A) A reporting entity must implement its AML and CTF group-wide procedure manual and update it as required to take into account new and emerging risks.
- (2B) The AML and CTF group-wide procedure manual of a reporting entity must have regard to:
 - (a) the nature and level of money laundering and terrorist financing risk that all branches, majority-owned subsidiaries and agents of

the reporting entity may reasonably expect to face in the course of their businesses; and

- (b) the nature, size and complexity of such businesses.”

45 Subsection 33A(3)

Repeal the subsection, substitute

“(3) The AML and CTF group-wide procedure manual of a reporting entity must contain group-wide policies, processes and procedures:

- (a) that are applicable and appropriate to all branches, majority-owned subsidiaries and agents of the reporting entity; and
- (b) that cover the requirements of subsection 33(2); and
- (c) on the sharing of information amongst all branches, majority-owned subsidiaries and agents of the reporting entity for the purposes of customer due diligence, and anti-money laundering and counter terrorist financing risk management; and
- (d) for all branches, majority-owned subsidiaries and agents of the reporting entity to provide customer account and transaction information to each other; and
- (e) that contain adequate safeguards on the confidentiality and use of information shared.”

46 Subsection 33A(6)

After “(2)”, insert “, (2A)”

47 After subsection 34(1)

Insert

“(1A) A person must not be appointed as an AML and CTF compliance officer unless the person has suitable qualifications and experience.

(1B) An AML and CTF compliance officer must be a member of the senior management team of the reporting entity.”

48 Subsection 34(2)

Delete “may” (second occurring), substitute “must”

49 Subsection 35(3)

Repeal the subsection, substitute

- “(3) If a reporting entity fails to comply with any notice under subsection (1), the reporting entity commits an offence punishable upon conviction by:
- (a) in the case of an individual - a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years or both; or
 - (b) in the case of a body corporate - a fine not exceeding VT 75 million.”

50 Part 8 (Heading)

Repeal the heading, substitute

“PART 8 DUE DILIGENCE FOR CORRESPONDENT BANKING”

51 Paragraph 36(2)(c)

After “person” (first occurring), insert “, including whether the person has been subject to a money laundering or terrorist financing investigation or regulatory action,”

52 Subsection 36(4)

Repeal the subsection, substitute

- “(4) If a reporting entity contravenes subsection (2), the reporting entity commits an offence punishable upon conviction by:
- (a) in the case of an individual - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or
 - (b) in the case of a body corporate - a fine not exceeding VT 125 million.”

53 Section 37

Repeal the section

54 After Part 8

Insert

**“PART 8A DUE DILIGENCE FOR ELECTRONIC CURRENCY
TRANSFERS**

37 Application of Part

- (1) This Part applies to reporting entities that conduct any of the following activities:
- (a) acceptance of deposits and other repayable funds from the public, including private banking;
 - (b) lending, including, but not limited to, consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions, including forfeiting;
 - (c) financial leasing other than with respect to arrangements relating to consumer products;
 - (d) transfer of money or value;
 - (e) issuing and managing the means of payment, including, but not limited to, credit and debit cards, cheques, traveller’s cheques, money orders and bankers’ drafts and electronic money;
 - (f) issuing financial guarantees and commitments;
 - (g) trading in:
 - (i) bearer negotiable instruments; or
 - (ii) foreign exchange; or
 - (iii) exchange, interest rate and index instruments; or
 - (iv) transferable securities; or
 - (v) commodity futures trading;
 - (h) participation in securities issues and the provision of financial services related to such issues;
 - (i) individual and collective portfolio management;

- (j) safekeeping and administration of currency, bearer negotiable instruments or liquid securities on behalf of other persons;
 - (k) investing, administering or managing funds or money on behalf of other persons;
 - (l) underwriting and placement of insurance, including insurance intermediation by agents and brokers;
 - (m) money and currency changing.
- (2) To avoid doubt, this Part also applies to the agents of reporting entities that transfer money or value.

37A Overview of customer due diligence for electronic currency transfers

- (1) A reporting entity that is required to conduct customer due diligence in the circumstances described in section 37B, 37C, 37D or 37E is not required to verify any documents, data or information that it has previously verified for the purposes of carrying out customer due diligence under Part 4 and any other provision of this Act.
- (2) Subsection does not apply if there are reasonable grounds for the reporting entity to doubt the adequacy or veracity of the documents, data or information previously obtained.

37B Requirements for originating entity-electronic currency transfer

- (1) This section applies to a reporting entity if the entity receives a request from a person (the sender) to execute an electronic currency transfer of an amount in currency equal to or greater than VT 100,000 (the originating entity).
- (2) Subject to subsection (3), if a request is made to execute an electronic currency transfer, the originating entity must, in the case of a domestic electronic currency transfer or an international electronic currency transfer, identify the sender of the transfer by obtaining the following identity information:
- (a) the sender's full name;
 - (b) the sender's account number or such other identifying information that allows the transaction to be traced back to the sender;

- (c) any one of the following:
 - (i) the sender's address;
 - (ii) the sender's customer identification number;
 - (iii) the sender's place and date of birth;
 - (iv) the sender's passport number;
 - (v) the sender's national identity card number.

- (3) In relation to a domestic electronic currency transfer, an originating entity may identify the sender by obtaining:
 - (a) the sender's account number; or
 - (b) other information prescribed in Regulations;

if the sender's account number or the other identifying information allows the transaction to be traced back to the sender, and the originating entity is able to provide the information specified in paragraphs (2)(a) and (c) within 3 working days of a request being made by the beneficiary entity or the Unit.

- (4) If a request is made to execute an electronic currency transfer, the originating entity must, in the case of an international currency transfer, identify the receiver of the electronic currency transfer by obtaining the following identity information:
 - (a) the receiver's full name;
 - (b) the receiver's account number or other identifying information that allows the transaction to be traced back to the receiver.

- (5) An originating entity must verify the sender's identity so that it is satisfied that the information obtained under subsection (2) is correct.

- (6) An originating entity must verify the sender's identity before ordering the electronic currency transfer.

- (7) If several individual currency transfers from a single sender are put in one file for transmission to multiple receivers, the originating entity must ensure that the file contains:
- (a) required and verified sender information, and required receiver information that is traceable within the receiver country; and
 - (b) either:
 - (i) the sender's account number; or
 - (ii) other information prescribed in Regulations;which allows the transaction to be traced back to the sender.
- (8) An originating entity must transmit with the electronic currency transfer:
- (a) the identity information about the sender that it has obtained under subsection (2) and verified under subsection (5); and
 - (b) in the case of an international currency transfer - the identity information about the receiver that it has obtained under subsection (4).
- (9) An originating entity must not execute a currency transfer if the information requirements under subsection (8) are not met.
- (10) An originating entity must retain records of all sender and receiver information that accompanies an electronic currency transfer and must comply with the record keeping requirements in Part 5.
- (11) If a reporting entity contravenes subsection (2), (4), (5), (6), (7), (8), (9) or (10), the reporting entity commits an offence punishable upon conviction by:
- (a) in the case of an individual - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or
 - (b) in the case of a body corporate - a fine not exceeding VT 125 million.

37C Requirements for originating entity-electronic currency transfer of less than VT 100,000

- (1) This section applies to a reporting entity if the reporting entity receives a request from a person (the sender) to execute an international electronic currency transfer of an amount in currency less than VT 100,000 (the originating entity).
- (2) In identifying the sender of the transfer, an originator entity must obtain the following identity information:
 - (a) the name of the sender;
 - (b) either:
 - (i) the sender's account number; or
 - (ii) other information prescribed in Regulations;which allows the transaction to be traced back to the sender.
- (3) If an originating entity has a suspicion of money laundering or terrorist financing, the originating entity must:
 - (a) verify the information obtained in relation to the sender; and
 - (b) file a suspicious transaction report or suspicious activity report.
- (4) In identifying the receiver of the transaction, an originating entity must obtain the following identity information:
 - (a) the name of the receiver;
 - (b) either:
 - (i) the receiver's account number; or
 - (ii) other identifying information prescribed by the Regulations;which allows the transaction to be traced back to the receiver.

- (5) The originating entity must transmit with the electronic currency transfer the information the originating entity has obtained under subsections (2) and (4).
- (6) The originating entity must not execute the currency transfer if the originating entity cannot meet the information requirements under subsections (2), (3) and (4).
- (7) An originating entity must retain records of all sender and receiver information required to be obtained under subsections (2), (3) and (4) and must comply with the record keeping requirements in Part 5.
- (8) If a reporting entity contravenes subsection (2), (3), (4), (5), (6) or (7), the reporting entity commits an offence punishable upon conviction by:
 - (a) in the case of an individual - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or
 - (b) in the case of a body corporate - a fine not exceeding VT 125 million.

37D Requirements for intermediary entity-electronic currency transfer

- (1) This section applies to a reporting entity that receives a request to act as an intermediary in an electronic currency transfer of an amount in currency equal to or greater than VT 100,000 (an intermediary entity).
- (2) Subject to subsection (6), an intermediary entity must transmit all of the identity information that it receives under subsection 37B(4) from the originating entity with the electronic currency transfer.
- (3) An intermediary entity must take reasonable measures to identify international electronic currency transfers that lack any of the information required under section 37B.
- (4) An intermediary entity must have risk based policies and procedures for determining:
 - (a) when to execute, reject or suspend an electronic currency transfer which lacks any of the information required under section 37B to accompany the transfer; and

- (b) follow up actions to be taken.
- (5) An intermediary entity must retain records of all sender and receiver information that accompanies an electronic currency transfer and must comply with the record keeping requirements in Part 5.
- (6) If a reporting entity contravenes subsection (2), (3), (4) or (5), the reporting entity commits an offence punishable upon conviction by:
 - (a) in the case of an individual - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or
 - (b) in the case of a body corporate - a fine not exceeding VT 125 million.

37E Requirements for beneficiary entity-electronic currency transfer

- (1) This section applies to a reporting entity that receives a request to receive an electronic currency transfer of an amount in currency equal to or greater than VT 100,000 on behalf of a receiver (beneficiary entity).
- (2) A beneficiary entity must verify the receiver's identity so that it is satisfied that the information obtained by an originating entity under subsection 37B(4) is correct.
- (3) A beneficiary entity must take reasonable measures to identify international electronic currency transfers that lack any of the information required under sections 37B and 37C to accompany an international currency transfer.
- (4) A beneficiary entity must have risk based policies and procedures for determining:
 - (a) when to execute, reject or suspend an electronic currency transfer which lacks any of the information required under sections 37B, 37C and 37D to accompany the transfer; and
 - (b) follow up actions to be taken.
- (5) A beneficiary entity must retain records of all sender and receiver information that accompanies an electronic currency transfer and must comply with the record keeping requirements in Part 5.

- (6) If a reporting entity contravenes subsection (2), (3), (4) or (5), the reporting entity commits an offence punishable upon conviction by:
- (a) in the case of an individual - a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years , or both; or
 - (b) in the case of a body corporate - a fine not exceeding VT 125 million.

37F Addition information and exemption

The Regulations may:

- (a) prescribe additional information required to be provided by reporting entities to which this Part applies; or
- (b) exempt reporting entities to which this Part applies from obligations to obtain some or all information required by this Part in relation to specified transfers.

37G Other requirements for reporting entities

- (1) This provision applies to a reporting entity that provides a money or value transfer service.
- (2) If a reporting entity controls both the sending and the receiving side of an electronic currency transfer, the reporting entity must:
 - (a) take into account all information required to be obtained under sections 37B, 37C and 37D relating to the sender and the receiver in order to determine whether a suspicious transaction or suspicious activity report should be filed; and
 - (b) file a suspicious transaction report in any country affected by the electronic currency transfer.
- (3) A reporting entity must have policies and procedures in place to ensure that they do not contravene prohibitions under Part 3 of the United Nations Financial Sanctions Act No. of 2017.”

55 Part 9 (Heading)

Repeal the heading, substitute

“PART 9 DISCLOSURE OF INFORMATION”

56 Part 9

Delete “supervisor” (wherever occurring), substitute “supervisor”

57 Sections 38, 39 and 40

Repeal the sections, substitute

“38 Meaning of confidential information

Information is confidential information if it is supplied to or obtained by the Unit or a supervisor 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.

39 Disclosure of confidential information generally

- (1) The Unit or a supervisor may disclose confidential information if the disclosure:
 - (a) is required or authorised by a court; or
 - (b) is made for the purpose of discharging a duty, performing a function or exercising a power under this Act; or
 - (c) 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
 - (d) is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or
 - (e) is made to a domestic regulatory authority for the purpose of carrying out its regulatory functions; or

- (f) is made to the Sanctions Secretariat for the purpose of carrying out its functions under the United Nations Financial Sanctions Act No. of 2017; or
 - (g) is made to a foreign government agency in accordance with section 40.
- (2) If a person contravenes subsection (1), the person commits an offence punishable upon conviction by:
- (a) for an individual - a fine not exceeding VT 15 million or imprisonment for a term of 5 years, or both; and
 - (b) for a body corporate - a fine not exceeding VT 75 million.

40 Disclosure of confidential information to foreign government agency

The Unit or a supervisor may disclose confidential information to a foreign government agency if:

- (a) the Unit or a supervisor is satisfied that the disclosure is for the purpose of:
 - (i) discharging a duty, performing a function or exercising a power under the foreign government agency's own regulatory legislation (if any), including investigating a breach of that legislation; or
 - (ii) discharging a duty, 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) discharging a duty, 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 Unit or a supervisor 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.

40A Disclosure of information relating to suspicious transaction reports and suspicious activity reports

- (1) This section applies in respect of all or any of the following information:
 - (a) any suspicious transaction report or suspicious activity report;
 - (b) any information the disclosure of which will identify, or is reasonably likely to identify, any person:
 - (i) as a person who, in his or her capacity as an officer or employee of a reporting entity, has handled a transaction in respect of which a suspicious transaction report or suspicious activity report was made; or
 - (ii) as a person who has prepared a suspicious transaction report or suspicious activity report; or
 - (iii) as a person who has made a suspicious transaction report or suspicious activity report;
 - (c) any information that discloses, or is reasonably likely to disclose, the existence of a suspicious transaction report or suspicious activity report.
- (2) The Unit or a supervisor may disclose information to which this section applies only for law enforcement purposes.
- (3) No person may disclose, in any civil or criminal proceeding, any information to which this section applies unless the court concerned is satisfied that the disclosure of the information is necessary in the interests of justice.”

58 Subsection 41(1)

Delete “the Public Prosecutor’s Office or an assisting entity”, substitute “a law enforcement agency or supervisor”

59 Subsection 41(4)

Repeal the subsection, substitute

“(4) A person who contravenes subsection (2), commits an offence punishable upon conviction by a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both.”

60 Section 42

Repeal the section

61 Subsection 43(3)

Repeal the subsection

62 After section 44 in Part 9

Insert

“44A Agreements and arrangements

(1) The Unit may enter into an agreement or arrangement for the purpose of sharing information or cooperating on matters in relation to which information can be shared with all or any of the following:

- (a) domestic regulatory authorities;
- (b) law enforcement agencies;
- (c) foreign government agencies.

(2) To avoid doubt, the disclosure of information by the Unit is not dependent on an agreement or arrangement being in force.

44B Request from foreign government agency

On the request of a foreign government agency, the Director may do all or any of the following:

- (a) search the Unit’s own records;
- (b) search other records to which the Director has direct or indirect access, including law enforcement records, public records, administrative records and commercially available records;

- (c) provide information obtained from the search to the foreign government agency, subject to the restrictions on sharing information under section 40.”

63 Paragraphs 45(1)(c) and (d)

Repeal the paragraphs

64 Subsection 45(4)

Repeal the subsection, substitute

- “(4) If a person fails to comply with subsection (2), the person commits an offence punishable upon conviction by:
- (a) in the case of an individual - a fine not exceeding VT 15 million, or imprisonment for a term not exceeding 5 years or both; or
- (b) in the case of a body corporate - a fine not exceeding VT 75 million.”

65 After section 45

Insert

“45A Director may request information and documents

For the purpose of discharging a duty, 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) a supervisor;
- (b) the Sanctions Secretariat;
- (c) a law enforcement agency;
- (d) a domestic regulatory authority;
- (e) any other government agency or 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) or (d).

45B Director may require reporting entities to provide information about the beneficial owners of customers

- (1) The Director may, by notice in writing, to a reporting entity require the reporting entity to provide the Director with information specified in the notice, being information about the beneficial owner of a customer of the reporting entity that the reporting entity is required to collect under Part 4 of this Act and the Regulations.
- (2) The notice must specify the period within which the reporting entity is to provide the information to the Director.
- (3) If the reporting entity:
- (a) refuses or fails to give the Director the information required by the Director; or
 - (b) knowingly or recklessly gives the Director information that is false or misleading;

the reporting entity commits an offence punishable upon conviction by:

- (ai) if the reporting entity is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
- (bi) if the reporting entity is a body corporate - a fine not exceeding VT 75 million.”

66 Subsection 46(1)

After “8”, insert “,8A, 9A”

67 Subsection 46(4)

Repeal the subsection

68 Sections 47, 48 and 49

Repeal the sections

69 Subparagraphs 46(5)(i) and (ii)

Repeal the subparagraphs, substitute

- “(i) in the case of an individual - to a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both; or
- (ii) in the case of a body corporate - to a fine not exceeding VT 75 million.”

70 Paragraph 50(2)(a)

Delete “or 10”, substitute “, 8A, 9A or this Part”

71 Section 50A

Repeal the section

72 Before Part 10A

Insert

“Part 10AA Enforcement

50A Enforcement measures

If the Director has reasonable grounds to believe that a reporting entity has failed to comply with an obligation under this Act, the Director may do all or any of the following acts:

- (a) issue a formal warning under section 50B;
- (b) issue a penalty notice under section 50C;
- (c) accept an enforceable undertaking under section 50D and seek an order from the Court for breach of that undertaking under section 50E;
- (d) seek a performance injunction from the Court under section 50F;
- (e) seek a restraining injunction from the Court under section 50G;
- (f) publish a notice of non-compliance under section 50H;
- (g) direct a reporting entity to remove a director, manager, secretary or other officer under section 50I.

50B Formal warning

- (1) The Director may issue a formal warning to a reporting entity if the Director has reasonable grounds to believe that the reporting entity has engaged in conduct that has contravened a requirement of this Act.
- (2) A formal warning may specify any remedial action that the Director believes the reporting entity should take.
- (3) The Director may publish in the Gazette a formal warning issued to the reporting entity.

50C Penalty Notice

- (1) The Director may serve a penalty notice on a reporting entity if the Director believes on reasonable grounds that the reporting entity has engaged in conduct which constitutes an offence under this Act.
- (2) If the Director intends to issue a penalty notice, it must do so as soon as possible after it has become aware that the reporting entity has engaged in, or may engage in, conduct which constitutes an offence under this Act.
- (3) The penalty notice must require the person to pay a penalty not exceeding:
 - (a) VT 200,000 for an individual; or
 - (b) VT 1 million for a body corporate;as stated in the notice within 30 days after the date the notice was served.
- (4) If the amount of penalty referred to in subsection (3) for an alleged offence is paid, that person is not liable to any further proceedings for the alleged offence.
- (5) Payment made 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 proceeding arising out of the same occurrence.
- (6) The Commission may publish a penalty notice issued to a person in such manner as the Commissioner determines.
- (7) If a penalty notice has been served on a person, a prosecution in respect of the alleged offence may only be commenced if the penalty remains unpaid

30 days after the penalty was due, and the Court may take account of any unpaid penalty when imposing a penalty in respect of the alleged offence.

- (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.

50D Enforceable undertaking

- (1) The Director may request a written undertaking from a reporting entity in connection with compliance with this Act.
- (2) Without limiting subsection (1), a written undertaking may relate to an activity of a reporting entity or to an officer, employee, agent or a group of officers, employees or agents of the reporting entity.
- (3) A reporting entity may give the Director a written undertaking in connection with compliance with this Act.
- (4) The terms of an undertaking under this section must be lawful and in compliance with this Act.

50E Enforcement of undertaking

- (1) If the Director considers that a reporting entity has breached one or more of the terms of an undertaking it provided under section 50D, the Director may apply to the Court for an order under subsection (2).
- (2) If the Court is satisfied that:
- (a) the reporting entity has breached one or more of the terms of its undertaking; and
 - (b) the undertaking was relevant to the reporting entity's obligation under this Act;

the Court may make an order directing the reporting entity to comply with any of the terms of the undertaking.

50F Performance injunctions

- (1) The Director may apply to the Court for an injunction requiring a person to do an act or thing in order to comply with this Act.

- (2) In addition to an application under subsection (1), the Court may grant an injunction requiring a person to do an act or thing under this Act if it is satisfied that:
- (a) the person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of this Act.
- (3) An injunction granted by the Court under subsection (2) may relate to an officer, employee or agent, or a group of officers, employees or agents of the reporting entity.
- (4) An application made under subsection (1) may be made ex parte, and the Court may grant an interim injunction under subsection (2) without the defendant being heard when the Court considers it appropriate to do so.

50G Restraining injunctions

- (1) The Director may apply to the Court for an injunction restraining a person from engaging in conduct in contravention of this Act.
- (2) In addition to an application under subsection (1), the Court may grant an injunction restraining a person from engaging in conduct in contravention of this Act if it is satisfied that:
- (a) a person has engaged, is engaging or is proposing to engage, in any conduct; and
 - (b) the conduct was, is or would be a contravention of this Act.
- (3) An injunction under subsection (2) may relate to an officer, employee or agent, or a group of officers, employees or agents of the reporting entity.
- (4) An application made under subsection (1) may be made ex parte, and the Court may grant an interim injunction under subsection (2) without the defendant being heard if the Court considers it appropriate to do so.

50H Notice of non-compliance

- (1) If the Court has granted an injunction under section 50F or 50G, the Director may publish a notice in the Gazette which sets out the details of

the reporting entity's non-compliance and any remedial action ordered by the Court.

- (2) If the reporting entity has failed to comply with an injunction granted by the Court under section 50F or 50G, the Director may publish a notice of that non-compliance and any other remedial action as ordered by the Court.

50I Power to remove a director, manager, secretary or other officer of a reporting entity

- (1) The Director may in writing direct a reporting entity to remove a person who is a director, manager, secretary or other officer of the reporting entity if the Director is satisfied that the person is a disqualified person within the meaning of section 50J.
- (2) Before issuing a direction, the Director must give to the reporting entity a written notice requiring the reporting entity and the person proposed to be removed to make submissions to the Director on the matter within a reasonable period specified in the notice.
- (3) The Director must review any submission received and decide whether or not to issue the direction.
- (4) A direction takes effect on the day specified in the direction, which must be at least 7 days after it is made.
- (5) If the Director directs a reporting entity to remove a person, the Director must give a copy of the direction to the person removed.
- (6) If a reporting entity fails to comply with a direction, the reporting entity commits an offence punishable upon conviction by:
 - (a) in the case of an individual – a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or
 - (b) in the case of a body corporate – a fine not exceeding VT 125 million.

50J Disqualified person

- (1) A person is a disqualified person if, at any time, the person:
- (a) has been convicted of an offence under this Act; or
 - (b) has been a director or directly concerned in the management of a reporting entity in Vanuatu or any other country which has had its licence revoked or has been wound up by the Court; or
 - (c) has been convicted by a court for an offence involving dishonesty; or
 - (d) is or becomes bankrupt; or
 - (e) has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (f) has compounded with his or her creditors; or
 - (g) is listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. of 2017 or a financial sanctions list under the law of any jurisdiction; or
 - (h) does not meet any other fit and proper criteria prescribed by the Regulations.
- (2) A disqualified person must not act or continue to act as a director, manager, secretary or other officer of any reporting entity unless the Director gives his or her written approval for the person to do so.
- (3) If a person contravenes subsection (2), the person commits an offence punishable upon conviction by:
- (a) in the case of an individual – a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both; or

- (b) in the case of a body corporate – a fine not exceeding VT 75 million.”

73 Heading to Part 10A

Delete the heading, substitute “**PART 10A-NATIONAL COORDINATING COMMITTEE**”

74 After the Heading to Part 10A

Insert the following section heading

“**50K National Coordinating Committee of AML and CTF**”

75 Section 50K

Delete “National Committee” (wherever occurring), substitute “National Coordinating Committee”

76 After paragraph 50K(2)(g)

Insert

- “(ga) Commissioner of the Vanuatu Financial Services Commission; and
- (gb) Director responsible for customs and inland revenue; and
- (gc) Head of the Office of the Registrar of Cooperatives and Business Development Services; and”

77 After paragraph 50K(4)(c)

Insert

- “(ca) facilitate the necessary flow of information on AML and CTF between relevant agencies; and
- (cb) facilitate the production and dissemination of information on the risks of AML and CTF in order to give advice and make decisions on AML and CTF requirements and the risk-based implementation of those requirements; and
- (cc) facilitate co-operation amongst supervisors and consultation with other agencies in the development of AML and CTF policies and legislation; and

- (cd) facilitate consistent and co-ordinated approaches to the development and dissemination of AML and CTF guidance materials and training initiatives; and
- (ce) facilitate good practice and consistent approaches to supervision of this Act; and
- (cf) provide a forum for examining any operational or policy issues that have implications for the effectiveness or efficiency of the AML and CTF system; and”

78 Subsections 50K(5) and (6)

Repeal the subsections, substitute

- “(5) The National Committee may disclose information obtained under this section if the disclosure is necessary for the Committee to carry out its functions under this Act.
- (6) The National Committee may establish working groups for specific AML and CTF purposes.”

79 After section 52

Insert

“52A Protection from liability

A person is not liable to any civil or criminal action or other proceeding or damages for or in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, duty or obligation conferred on him or her by this Act.”

80 Transitional provisions for unregulated reporting entities

- (1) This provision applies to a reporting entity if immediately before the commencement of this Act, the reporting entity:
 - (a) was not regulated by a domestic regulatory authority; and
 - (b) had not provided the Director with details of any or all of its key persons or the source of funds used to pay its capital, or both (“additional information”).

- (2) The reporting entity must provide the Director with the additional information within 6 months after the commencement of this Act.
- (3) If a reporting entity does not provide the additional information as required under subsection (2), the Director may by notice in writing to the reporting entity remove the reporting entity from the register.
- (4) If a reporting entity does provide the additional information in relation to key persons as required under subsection (2), but the Director is not satisfied that the key persons of the reporting entity are fit and proper persons to fulfil the responsibilities of their position having regard to:
- (a) whether any of the key persons of the reporting entity:
 - (i) have been convicted of an offence or are subject to any criminal proceedings; or
 - (ii) are listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. of 2017 or a financial sanctions list under the law of any jurisdiction; and
 - (b) any fit and proper criteria prescribed by the Regulations;
- the Director may by notice in writing to the reporting entity remove the reporting entity from the register.
- (5) If a reporting entity does provide the additional information in relation to the source of funds used to pay its capital as required under subsection (2), but the Director is not satisfied that the source of funds so used is acceptable, the Director may by notice in writing to the reporting entity remove the reporting entity from the register.
- (6) Before removing a reporting entity from the register under subsection (3) (4) or (5), the Director must give written notice to the reporting entity that it proposes to remove the reporting entity from the register and the reasons for the removal.
- (7) The reporting entity may, within 14 days after receiving a notice under subsection (6), give the Director written reasons why the reporting entity should not be removed from the register.

SCHEDULE
AMENDMENTS OF ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM
FINANCING ACT NO. 13 OF 2014

- (8) The Director may remove a reporting entity from the register:
- (a) if the reporting entity does not give the Director reasons under subsection (7); or
 - (b) having taken into account the reporting entity's reasons, the Director is of the opinion that the reporting entity has failed to show good cause why the reporting entity should not be removed from the register.
- (9) A term or expression used in this provision has the same meaning as in the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 as amended by this Act.