

REPUBLIC OF VANUATU

BILL FOR THE COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME (AMENDMENT) ACT NO. OF 2017

Explanatory Note

The purpose of this Bill is to amend the Counter Terrorism and Transnational Organised Crime Act [CAP 313] (the Principal Act), primarily to give effect to Vanuatu's FATF Action Plan to meet FATF Recommendations*.

Interpretation

The Bill repeals the definitions that are no longer used throughout the Act and inserts new definitions for “basic expenses”, “contractual obligation”, “designated person or entity”, “electronic system”, “extraordinary expense”, “restraining order”, “terrorist”, “terrorist act” and “terrorist group” to give meaning to new provisions in the Principal Act and to ensure consistency with the United Nations Financial Sanctions Act of 2017. The Bill also introduces a new definition of “property” that is consistent with the FATF definition of ‘funds or other assets’.

Meaning of terrorist act

The Bill introduces a new definition of “terrorist act”. This definition provides that a terrorist act is an act which is an offence within the Conventions or Protocols in Schedule 1 or any other act or threat of action that meets the criteria set out in proposed section 3(2).

Committing, threatening or preparing to commit a terrorist act is an offence pursuant to section 5 of the Act. Amendments have been made to the penalties in sections 29(2), 30(2), 33(4), 33A(3), 33B(4) and 33F, which are also offences under the conventions in the schedule, to ensure they are consistent with the penalty for an offence under section 5.

Targeted Financial Sanctions

The Bill amends the Act by removing the regime for targeted financial sanctions against terrorism, which is now contained in the United Nations Financial Sanctions Act 2017. Amendments have also been made to ensure consistency with the United Nations Financial Sanctions Act 2017. This includes repealing sections 4 (Specified entities), 4A (Revocation or variation of a prescribed

specified entity), 4B (Judicial review), 4C (Periodic review of prescribed specific entities), 4D (Proceedings involving classified security information), 7 (Provision of property or services to terrorist groups) and 8 (Dealing with terrorist property).

An amendment to section 19(1) ensures that the forfeiture provisions do not apply to property of a designated person or entity where they have not been convicted of an offence that would justify forfeiture.

Terrorist financing offence

The Bill introduces a new terrorism financing offence by repealing and replacing section 6. The proposed section 6 creates offences for funding a terrorist act, an individual terrorist, a terrorist group, or the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. The offences apply regardless of whether the terrorist act is carried out or not; whether the property is not used to commit a terrorist act or linked to a specific terrorist act; and whether the property was from a legitimate or illegitimate source. The offences also apply regardless of whether the terrorist or terrorist group is located in Vanuatu or another country and regardless of whether the terrorist act has occurred or is intended to occur in Vanuatu or another country. The proposed section 6 also includes ancillary offences. For all of these offences, the mental element of intention or knowledge can be inferred from objective factual circumstances.

General offences

The Bill provides a general offence provision for failure to comply with any provisions of this Act for which there is not an express penalty.

Schedule 1 United Nations Conventions and Protocols

The Bill updates the Conventions and Protocols in Schedule 1 to ensure the terrorist financing offence proposed in section 6 is consistent with FATF Recommendations.

Savings and transitional

The Bill also provides that, despite the repeal of section 7 (Provisions of property or services to terrorist groups) and section 8 (Dealing with terrorist property) under the Principal Act, those sections continue to apply to offences that have been committed before the commencement of this Act; proceedings for an alleged

offence committed before the commencement of this Act and any other matter connected with or arising out of such proceedings.

*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.

Minister of Justice and Community Services



REPUBLIC OF VANUATU

**BILL FOR THE
COUNTER TERRORISM AND TRANSNATIONAL
ORGANISED CRIME (AMENDMENT)
ACT NO. OF 2017**

Arrangement of Sections

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REPUBLIC OF VANUATU

BILL FOR THE COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME (AMENDMENT) ACT NO. OF 2017

An Act to amend the Counter Terrorism and Transnational Organised Crime Act [CAP 313], and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Counter Terrorism and Transnational Organised Crime Act [CAP 313] is amended as set out in the Schedule, and any other item in the Schedule has effect according to its terms.

2 Application of amendments

- (1) The amendments made by the Schedule to this Act apply:
 - (a) to conduct that takes place on or after this Act commences; and
 - (b) to property, regardless of whether criminal or other conduct relevant to the property occurred before, on or after this Act commences.
- (2) To avoid doubt, in the application of the amendments, paragraph (a) relates to conduct and paragraph (b) relates only to property.

3 Commencement

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

SCHEDULE

AMENDMENTS OF COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME ACT [CAP 313]

- 1 Section 2 (definition of “Al Qaida Sanctions Committee”, “basic expenses”, “classified security information”, “consular officer”, “detection agent”, “international nuclear transport”, “landing”, “Sanctions Committee of the United Nations Security Council”, “1988 Sanctions Committee”, “property”, “specified entity”, “terrorist act”, and “terrorist group”)**

Repeal the definitions.

2 Section 2

Insert the following definitions in their correct alphabetical positions:

““basic expense” has the meaning given by section 1 of the United Nations Financial Sanctions Act No. of 2017;

“contractual obligation” has the meaning given by section 1 of the United Nations Financial Sanctions Act No. of 2017;

“designated person or entity” has the meaning given by section 1 of the United Nations Financial Sanctions Act No. of 2017;

“electronic system” includes an information system, telecommunications system, financial system, system used for the delivery of essential government services, system used for, or by, an essential public utility, or system used for, or by, a transport system;

“extraordinary expense” has the meaning given by section 1 of the United Nations Financial Sanctions Act No. of 2017;

“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) economic resources, including oil and other natural resources and human resources; and

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- (c) legal documents or instruments in any form, including electronic or digital, evidencing title to, or 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; and
- (d) any interest, dividends or other income on or value accruing from or generated by such funds or other assets; and
- (e) any other assets which potentially may be used to obtain funds, goods, or services,

whether such assets are situated in Vanuatu or outside of Vanuatu, and includes a legal or equitable interest, whether full or partial, in any such assets;

“restraining order” means an order made by the Court under section 18A;

“terrorist” means any natural person who:

- (a) directly or indirectly, commits, enables, aids, counsels or procures a terrorist act; or
- (b) directly or indirectly, attempts to commit a terrorist act; or
- (c) directly or indirectly, conspires to commit a terrorist act; or
- (d) is a designated person;

“terrorist act” has the meaning given by section 3;

“terrorist group” means:

- (a) a group of persons or a body corporate that directly or indirectly has as one of its activities or purposes committing, or facilitating the commission of, a terrorist act; or
- (b) a group of persons or a body corporate that directly or indirectly commits, enables, aids, counsels or procures a terrorist act; or
- (c) a group of persons or a body corporate that directly or indirectly attempts to commit a terrorist act; or

- (d) a group of persons or a body corporate that directly or indirectly conspires to commit a terrorist act; or
- (e) a designated person or entity.”

2 Section 2 (paragraph (c) - definition of “terrorist property”)

Delete “specified entity”, substitute “designated person or entity”

3 Section 3

Repeal the section, substitute

“3. Meaning of terrorist act

- (1) An act which is an offence within the scope of and as defined by any of the Conventions or Protocols mentioned in Schedule 1 is a terrorist act.
- (2) Any other act or threat of action is a terrorist act if:
 - (a) the act or threat of action:
 - (i) involves serious violence against a person not taking an active part in hostilities in a situation of armed conflict; or
 - (ii) involves serious damage to property; or
 - (iii) endangers another person's life; or
 - (iv) creates a serious risk to the health or safety of the public or a section of the public; or
 - (v) is designed to seriously interfere with or to seriously disrupt an electronic system; and
 - (b) either the act or threat of action:
 - (i) is designed to influence a government, or international organisation or to intimidate the public or a section of the public; or
 - (ii) is made for the purpose of advancing a political, religious or ideological cause.”

4 Sections 4, 4A, 4B, 4C and 4D

Repeal the sections.

5 Before section 5

Insert:

“5AA. Application

Without limiting section 48 of this Act and in addition to Section 1 of the Penal Code Act [CAP 135], this Part applies to an offence:

- (a) committed in Vanuatu; or
- (b) committed on board a ship flying the flag of Vanuatu or an aircraft registered in Vanuatu; or
- (c) directed towards or resulting in the carrying out of a terrorist act in the territory of or against a citizen of Vanuatu; or
- (d) directed towards or resulting in the carrying out of a terrorist act committed against a facility of Vanuatu abroad, including diplomatic or consular premises of Vanuatu; or
- (e) committed by a citizen of Vanuatu or a body corporate incorporated under a law of Vanuatu (whether or not the offence took place in Vanuatu).”

6 Section 6

Repeal the section, substitute

“6. Terrorism financing

- (1) A person who by any means, directly or indirectly, provides or collects property, with the intention that the property should be used, or in the knowledge that it is to be used, in whole or in part:
 - (a) in order to carry out a terrorist act; or
 - (b) by a terrorist; or
 - (c) by a terrorist group; or
 - (d) in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of

the perpetration, planning, or preparation of, or participation in,
terrorist acts or the providing or receiving of terrorist training,

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

- (2) The penalty is:
- (a) if the person is a natural person - a fine not exceeding VT 125 million or imprisonment for a term not exceeding 25 years or both; or
 - (b) if the person is a body corporate - a fine not exceeding VT 250 million.

- (3) A person who:
- (a) attempts, conspires or incites to commit an offence within the meaning of subsection (1); or
 - (b) aids, abets, counsels or procures the commission of an offence within the meaning of subsection (1); or
 - (c) in agreement with another, takes part in the commission of an offence within the meaning of subsection (1),

commits an offence punishable upon conviction by the penalty referred to
in subsection (4).

- (4) The penalty is:
- (a) if the person is a natural person - a fine not exceeding VT 125 million or imprisonment not exceeding 25 years, or both; or
 - (b) if the person is a body corporate - a fine not exceeding VT 250 million.

- (5) In this section, a reference to providing or collecting property includes a reference to it being given, lent or otherwise made available, whether or not for consideration.

- (6) A person commits an offence under this section:
- (a) even if a terrorist act does not occur or is not attempted; and
 - (b) even if the property was not actually used to commit or attempt to commit a terrorist act or linked to a specific terrorist act; and
 - (c) regardless of whether the property was from a legitimate or illegitimate source; and
 - (d) regardless of the country in which the terrorist or terrorist group is located; and
 - (e) regardless of the country in which the terrorist act has occurred or is intended to occur.
- (7) Intention and knowledge in subsections (1) and (3) may be inferred from objective factual circumstances.”

7 Sections 7 and 8

Repeal the sections.

8 Part 3 (Heading)

Delete the Heading, substitute “**PART 3 – FREEZING, MANAGEMENT, RESTRAINT AND FORFEITURE OF TERRORIST PROPERTY**”

9 Subsection 12(1)

Delete “person or group that has been prescribed under section 4”, substitute “designated person or entity”

10 Paragraph 12(2)(c)

After “basic expenses”, insert “, contractual obligations,”

11 Section 12A

Delete “42”, substitute “52”

12 Paragraph 14(3)(a)

Repeal the paragraph, substitute

- “(a) a person or entity ceases to be a designated person or entity; or”

13 Section 14A (Heading)

Delete “specified entities”, substitute “designated persons or entities”

14 Subsection 16(3)

Delete “person or entity prescribed under section 4”, substitute “designated person or entity”

15 Paragraphs 17(3)(a), 17(3)(b), 18D(3)(b) and 20(2)(c)

Delete “specified entity”, substitute “designated person or entity”

16 Subsection 19(1)

After “terrorist property” insert “other than property of a designated person or entity who has not been convicted of an offence under this Act”

17 Subsections 29(2), 30(2), 33(4), 33A(3), 33B(4) and 33F

Delete “term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.”, substitute “term of imprisonment of not more than 25 years or a fine of not more than VT 125 million, or both.”

18 After section 44

Insert in Part 5

“44A General offences

A person who contravenes or fails to comply with a provision of this Act for which no penalty is expressed is guilty of an offence punishable on conviction by a term of imprisonment of not more than 2 years or a fine of not more than VT1 million, or both.”

19 Schedule 1 – Items 4 and 5

Repeal the items, substitute

“4 The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988).

5 The Convention on the Physical Protection of Nuclear Material (1980).”

20 Schedule 1 – Item 10

Repeal the item, substitute

“10 The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973).”

21 Schedule 1 – Item 12

Repeal the item, substitute

“12 The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005).”

22 Schedule 1 – After Item 12

Insert

“13 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005).

14 International Convention for the Suppression of the Financing of Terrorism (1999).”

23 Savings and transitional provision for sections 7 and 8

Despite the repeal of sections 7 and 8 of the Counter Terrorism and Transnational Organised Crime Act [CAP 313] made by this Act, those sections continue to apply on and after the commencement of this Act in relation to any or all of the following:

- (a) an offence committed before the commencement of this Act;
- (b) proceedings for an offence alleged to have been committed before the commencement of this Act;
- (c) any matter connected with, or arising out of, such proceedings,

as if the repeal had not been made.