

REPUBLIC OF VANUATU

BILL FOR THE INTERNATIONAL BANKING (AMENDMENT) ACT NO. OF 2017

Explanatory Note

This Bill amends the International Banking Act [CAP 280] 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.

Market entry fit and proper criteria, including source of funds

Amendments have been made to the Reserve Bank's fit and proper checks when a company is first licensed to carry on international banking business (point of entry). The new fit and proper criteria will apply widely to the applicant's owners, controllers, beneficial owners, directors and managers. New supporting definitions have been added, including for beneficial owner which is broad and intended to look beyond the corporate veil, including chains of control and ownership, direct or indirect.

In assessing the fit and proper criteria, the Reserve Bank must consider whether a person:

- has been convicted of an offence or is subject to any criminal proceedings; and
- is listed on a financial sanctions list of the United Nations or another country; and
- meets the specific fit and proper criteria in the guidelines.

The source of funds for the capital of an applicant has been added as additional entry point criteria. Existing licensees have 6 months in which to comply with the new entry provisions. If they do not comply, their licences may be revoked by the Reserve Bank.

Licensing provisions

Holders of international banking licences must continue to meet fit and proper checks on an ongoing basis. Licence holders must update the Reserve Bank within 14 days of any relevant changes occurring, including funding sources, and the Reserve Bank can require information from the licensees on its own initiative. Non-compliance by licensees with the new entry and ongoing requirements is a criminal offence, and penalty levels have been increased to meet FATF standards. Non-compliance is also a new ground for suspension or revocation of licences together with contravening the Anti-Money Laundering and Counter Terrorism Financing Act.

Power to obtain information and disclosure of information

Amendments have been made to allow the Reserve Bank to gather information from a variety of sources, including foreign government agencies. Further, amendments have been made to allow for the disclosure of information by the Reserve Bank to domestic and foreign agencies

for a broad range of purposes. These purposes include supervision under the AML/CTF Act, investigating or enforcing certain serious offences, and investigations or taking action under the Proceeds of Crime Act.

*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 Finance and Economic Management



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An Act to amend the International Banking Act [CAP 280], and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendments

The International Banking Act [CAP 280] 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 INTERNATIONAL BANKING ACT [CAP 280]

1 Subsection 1(1)

Insert in their correct alphabetical positions:

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

“controller” has the meaning given by subsections 1(1A) and (1B);

“domestic regulatory authority” means a body or agency established by or under a law of Vanuatu that:

- (a) grants or issues under that law or any other law licences, permits, certificates, registrations or other equivalent permissions ; and
- (b) performs any other regulatory function related to a matter referred to in paragraph (a), including developing, monitoring or enforcing compliance with standards or obligations prescribed by or under that law or any other law;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under section 4 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

“foreign government agency” means:

- (a) a body or agency established by or under a law of a foreign country; or
- (b) an arm, ministry, department, or instrumentality of the government of a foreign country; or
- (c) a body or agency of a foreign country set up by administrative act for governmental purposes;

“foreign serious offence” means:

- (a) an offence against a law of another country that, if the relevant act or omission had occurred in Vanuatu, would be an offence against the laws of Vanuatu, for which the maximum penalty is imprisonment for at least 12 months; or
- (b) an offence prescribed by the regulations;

“foreign tax evasion offence” means conduct that:

- (a) amounts to an offence against a law of foreign country; and
- (b) relates to a breach of a duty relating to a tax imposed under the law of the foreign country (whether or not that tax is imposed under a law of Vanuatu); and
- (c) would be regarded by the courts of Vanuatu as an offence of fraudulent evasion of tax for which the maximum penalty is imprisonment for at least 12 months, had the conduct occurred in Vanuatu;

“guidelines” means guidelines formulated in writing under subsection 13(3);

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

“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;

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

2 Subsection 1(1) (definition of “law enforcement authority”)

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;”

3 After subsection 1(1)

Insert

- “(1A) A person is a controller of a company if the person exercises influence, authority or power over decisions about the company’s financial or operating policies, including as a result of, or by means of, a trust, agreement, arrangement, understanding or practice.
- (1B) Without limiting subsection (1A), a controller of a company includes a person who holds a significant interest in the company.
- (1C) For the purpose of the definition of a beneficial owner, ultimately owns and ultimately controls include circumstances where ownership or control is exercised:
- (a) through a chain of ownership; or
 - (b) by a means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights.”

4 Subparagraph 6(2)(b)(i)

Repeal the subparagraph, substitute

- “(i) a statement disclosing details of the beneficial owners, owners, controllers, directors and managers of the applicant; and
- (ia) a statement as required by the Reserve Bank on whether a beneficial owner mentioned in subparagraph (i) is a beneficial

owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction; and

- (ib) a statement disclosing the source of funds that were used to pay the capital of the applicant; and”

5 After paragraph 8(1)(a)

Insert

- “(aa) the beneficial owners, owners and controllers of the applicant are fit and proper persons; and”

6 After paragraph 8(1)(e)

Insert

- “(ea) the source of funds used to pay the capital of the applicant is acceptable; and”

7 After subsection 8(1)

Insert

- “(1A) In relation to beneficial owners, owners, controllers, directors and managers of an applicant, the Reserve Bank must, in assessing fit and proper criteria, take into consideration the following matters:
- (a) whether the person has been convicted of an offence or is subject to any criminal proceedings;
- (b) whether the person is listed on a United Nations Financial Sanctions list, or a financial sanctions list under the United Nations Financial Sanctions Act No. of 2017 or any law of any jurisdiction;
- (c) any fit and proper criteria in the guidelines.”

8 After section 10

Insert

“10A Suspension of a licence

- (1) The Reserve Bank may suspend a licence without notice to the licensee if:

- (a) the Reserve Bank has reasonable grounds to consider that substantial prejudice to customers or the general public may occur; and the circumstances are urgent; or
 - (b) the licensee has contravened a provision of the Anti-Money Laundering and Counter-Terrorism-Financing Act No. 13 of 2014; or
 - (c) a beneficial owner, owner, controller, director or manager of the licensee does not meet the fit and proper criteria in the guidelines.
- (2) As soon as practicable after suspending a licence under subsection (1), the Reserve Bank must, in writing, inform the licensee:
- (a) that the licence has been suspended; and
 - (b) of the grounds for the suspension; and
 - (c) of the period of the suspension.
- (3) The Reserve Bank must publish a notice of the suspension in a newspaper circulating in Vanuatu and in any other way it considers appropriate.
- (4) The Reserve Bank must give the licensee 14 days in which to respond to the notice of suspension.
- (5) The Reserve Bank must consider the licensee's response (if any) and may decide to revoke the suspension if it is satisfied that the circumstances under subsection (1) no longer exist.
- (6) The Reserve Bank must notify the licensee in writing of its decision under subsection (5).
- (7) The Reserve Bank must publish a notice that the suspension has been revoked in a newspaper circulating in Vanuatu and in any other way it considers appropriate."

9 After paragraph 11(1)(a)

Insert

- “(aa) the licensee has contravened a provision of the Anti–Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and that contravention has resulted in the use of an enforcement measure under Part 10AA of that Act; or
- (ab) the fit and proper criteria in the guidelines are not met as required under this Act; or
- (ac) the source of funds used to pay the capital of the licensee are not acceptable; or”

10 After section 15

Insert

“15A Reserve Bank may request information and documents from licensee

- (1) The Reserve Bank may, by notice in writing to a licensee, request the licensee:
 - (a) to provide to it, at the time and place set out in the notice, the information or documents, or both, specified in the notice; and
 - (b) to respond to questions that the Reserve Bank reasonably requires the licensee to answer.
- (2) Subsection (1) only applies to information, documents or questions relating to:
 - (a) the licensee’s provision of services; or
 - (b) the licensee’s integrity, competence, financial standing or organisation; or
 - (c) the licensee’s compliance with this Act or the Regulations, or with a licence condition imposed on the licensee’s licence.
- (3) If a licensee:
 - (a) refuses or fails to give the Reserve Bank the information or documents requested by the Reserve Bank; or

- (b) knowingly or recklessly gives the Reserve Bank information or documents that are false or misleading;

the licensee commits an offence punishable upon conviction by a fine not exceeding VT 75 million.

15B Reserve Bank may request information and documents from other agencies

For the purpose of discharging a duty, performing a function or exercising a power under this Act, the Reserve Bank may request information or documents, or both, from any or all of the following:

- (a) the Financial Intelligence Unit;
- (b) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;
- (c) the Sanctions Secretariat;
- (d) a law enforcement agency;
- (e) a domestic regulatory authority;
- (f) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b), (c), (d) or (e)."

11 After subparagraph 16(1)(f)(i)

Insert

- “(ia) who is a beneficial owner, owner, controller, manager or director of a licensee; or”

12 Paragraph 18(3)(b)

After “ownership” insert, “, beneficial ownership”

13 After Paragraph 24(3)(c)

Insert

“(ca) the person has been found not to be fit and proper as required under the guidelines; or”

14 After section 27

Insert

“27A Obligation of licensee to disclose

- (1) A licensee must give written notice of a change:
- (a) of a beneficial owner, owner controller, director or manager of the licensee; or
 - (b) in the circumstances of a person mentioned in paragraph (a) that may affect whether he or she meets fit and proper criteria; or
 - (c) in the source of funds used to pay the capital of the licensee;
- to the Reserve Bank within 14 days after the change occurs.
- (2) The Reserve Bank may, by notice in writing to a licensee, require the licensee to provide to the Reserve Bank, within the period specified in the notice, up to date and accurate information concerning:
- (a) the beneficial owners, owners, controllers, directors and managers of the licensee; or
 - (b) the source of funds used to pay the capital of the licensee.
- (3) If the Reserve Bank, having considered information provided by a licensee under subsection (1) or (2), is not satisfied that:
- (a) a beneficial owner, owner, controller, director or manager of the licensee is a fit and proper person as required under the guidelines; or
 - (b) the source of funds used to pay the capital of the licensee is acceptable;

the Reserve Bank may revoke the licence.

- (4) If a licensee fails to comply with subsection (1) or (2), the licensee commits an offence punishable upon conviction by a fine not exceeding VT 125 million.
- (5) The procedure in subsections 11(2) to (7) for revoking a licence applies to a revocation under subsection (3).
- (6) To avoid doubt, this section applies to a licensee if the licensee's licence was in force immediately before the commencement of this section."

15 Section 28

Add at the end

- "(6) This section applies despite section 27A."

16 Paragraphs 38(2)(c),(d) and (e)

Repeal the paragraphs, substitute

- "(c) the disclosure is made to the Financial Intelligence Unit for the purposes of discharging a duty, performing a function or exercising a power under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or
- (d) the disclosure is made to a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purposes of discharging a duty, performing a function or exercising a power under that Act; or
- (e) the disclosure 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
- (ea) the disclosure is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or
- (eb) the disclosure is made to a to domestic regulatory authority for the purpose of carrying out its regulatory functions; or

- (ec) the disclosure 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 ”

17 Paragraph 38(2)(l)

Delete “foreign law enforcement authority or a foreign regulatory authority”
substitute, “foreign government agency”

18 Subsection 38(3)

Repeal the subsection.

19 After section 38

Insert

“38A Disclosure to foreign government agency

The Reserve Bank may disclose information about a licensee to a foreign government agency if:

- (a) the Reserve Bank 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 Reserve Bank is satisfied that:

- (i) the foreign government agency is subject to adequate restrictions on further disclosure; and
- (ii) the information disclosed is reasonably required by the foreign government agency for the purpose of its regulatory or law enforcement functions.”

20 Paragraph 39(2)(c)

Repeal the paragraph, substitute

- “(c) the disclosure is made as part of a suspicious transaction report or any other report required under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or”

21 Subsection 45(1)

- (a) Delete “are to” substitute, “may”
- (b) Delete “, unless the Court otherwise orders”

22 Transitional provision for certain licensee information

- (1) This provision applies to a licensee if:
 - (a) the licensee’s licence was in force immediately before the commencement of this Act; and
 - (b) the licensee has not provided the Reserve Bank with the information required under subparagraphs 6(2)(b)(i) and (ia) of the International Banking Act [CAP 280] as amended by this Act (“**additional information**”).
- (2) The licensee must provide the Reserve Bank with the additional information within 6 months after the commencement of this Act.
- (3) If a licensee does not provide the additional information as required under subsection (2), the Reserve Bank may by notice in writing to the licensee revoke the licensee’s licence.
- (4) If a licensee does provide the additional information as required under subsection (2), but the Reserve Bank is not satisfied with the additional information having regard to the matters set out in section 8 of the International Banking Act [CAP 280] as amended by this Act, the Reserve

Bank may by notice in writing to the licensee revoke the licensee's licence.

- (5) Before revoking a licence under subsection (3) or (4), the Reserve Bank must give written notice to the licensee that it proposes to revoke the licence and the reasons for the revocation.
- (6) The licensee may within 14 days after receiving a notice under subsection (5) give the Reserve Bank written reasons why the licence should not be revoked.
- (7) The Reserve Bank may revoke a licensee's licence:
 - (a) if the licensee does not give the Reserve Bank reasons under subsection (6); or
 - (b) having taken in to account the licensee's reasons, the Reserve Bank is of the opinion that the licensee has failed to show good cause why the licence should not be revoked.
- (8) A term or expression used in this item has the same meaning as in the International Banking Act [CAP 280] as amended by this Act.