

REPUBLIC OF VANUATU

BILL FOR THE PENAL CODE (AMENDMENT) ACT NO. OF 2017

Explanatory Note

The Penal Code has been amended to create predicate offences primarily to give effect to Vanuatu's FATF Action Plan and to meet FATF Recommendations*. A predicate offence refers to an underlying criminal offence that gives rise to funds used for money laundering. Vanuatu has not criminalised tax offences, illicit arms trafficking, piracy of products, insider-trading and market manipulation as predicate offences. The Action Plan requires those predicate offences to be criminalised and this has been done by creating new offences in the Penal Code. (The Copyright and Related Rights Act has been amended to create a new offence of piracy of products, and the Dealers in Securities (Amendment) Bill criminalises insider trading and market manipulation.)

Illicit firearms trafficking

Clause 146A of this Bill creates a new offence of illicit firearms trafficking, including in unmarked firearms. Trafficking is not covered by the existing firearm offences in the the Firearms Act, but amendments have been made to the definitions of 'firearms', 'components' and 'ammunition' in that Act to bring them into line with international standards. The Penal Code Amendments rely on the new definitions.

Fraudulent evasion of tax

Clause 146B of the Bill creates a new fraudulent evasion of tax offence, which applies to taxes currently imposed under any law of Vanuatu and enables the Government of Vanuatu the option of addressing this conduct by way of criminal sanctions. Together with the "foreign tax evasion offence" created by amendments to the Proceeds of Crime Act, it will also enable Vanuatu to prosecute for money laundering in Vanuatu the proceeds of a foreign tax evasion offence.

Counterfeit goods

To complement the new piracy of products offence (see Copyright and Related Rights (Amendment) Bill), clause 146C of this Bill creates a new offence of supplying, importing, exporting or manufacturing counterfeit goods.

Penalty levels have been increased to meet FATF standards.

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| Individual—up to 25 years imprisonment and/or VT50 million | Illicit firearms trafficking offence |
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|--|---|
| Company—up to VT250 million | |
| Individual—up to 15 years imprisonment and/or VT25 million | Fraudulent tax evasion Counterfeit goods |
| Company—up to VT125 million | |

*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 Service



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Arrangement of Sections

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REPUBLIC OF VANUATU

BILL FOR THE PENAL CODE (AMENDMENT) ACT NO. OF 2017

An Act to amend the Penal Code Act [CAP 135].

Be it enacted by the President and Parliament as follows-

1 Amendments

The Penal Code Act [CAP 135] is amended as set out in the Schedule.

2 Commencement

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

SCHEDULE

AMENDMENTS OF THE PENAL CODE ACT [CAP 135]

1 After section 146

Insert

“Illicit Firearms Trafficking

146A Illicit firearms trafficking

(1) If:

- (a) a person imports a firearm or ammunition with the intention of trafficking in the firearm or ammunition; and
- (b) importing the firearm or ammunition:
 - (i) was prohibited under a law of Vanuatu; or
 - (ii) breached a condition imposed under a law of Vanuatu; or
 - (iii) breached a requirement of a licence imposed under a law of Vanuatu;

the person is guilty of an offence.

Penalty:

In the case of a natural person: A fine not exceeding VT 25 million or a term of imprisonment not exceeding 15 years, or both.

In the case of a body corporate: A fine not exceeding VT 125 million.

(2) If:

- (a) a person exports a firearm or ammunition with the intention of trafficking in the firearm or ammunition; and

- (b) exporting the firearm or ammunition:
 - (i) was prohibited under a law of Vanuatu; or
 - (ii) breached a condition imposed under a law of Vanuatu; or
 - (iii) breached a requirement of a licence imposed under a law of Vanuatu;

the person is guilty of an offence.

Penalty:

In the case of a natural person: A fine not exceeding VT 25 million or a term of imprisonment not exceeding 15 years, or both.

In the case of a body corporate: A fine not exceeding VT 125 million.

- (3) If:
 - (a) a person imports or exports a firearm with the intention of trafficking in the firearm; and
 - (b) the firearm is not marked in accordance with the requirements of a law of Vanuatu;

the person is guilty of an offence.

Penalty:

In the case of a natural person: A fine not exceeding VT 25 million or a term of imprisonment not exceeding 15 years, or both.

In the case of a body corporate: A fine not exceeding VT 125 million.

- (4) In this section, “firearm” and “ammunition” have the same meaning as in the Firearms Act [CAP 198].

- (5) In this section, “trafficking” in a firearm or ammunition means to:

- (a) transfer the firearm or ammunition; or
- (b) offer the firearm or ammunition for sale; or
- (c) invite the making of offers to buy the firearm or ammunition; or
- (d) prepare the firearm or ammunition for transfer with the intention of transferring any of it or believing that another person intends to transfer any of it; or
- (e) transport or deliver the firearm or ammunition with the intention of transferring any of it or believing that another person intends to transfer any of it; or
- (f) guard or conceal the firearm or ammunition with the intention of transferring any of it or the intention of assisting another person to transfer any of it; or
- (g) possess the firearm or ammunition with the intention of transferring any of it;

and, for the purposes of paragraph (d), preparing a firearm or ammunition for transfer includes packaging the firearm or ammunition or separating the firearm into discrete units.

Tax evasion

146B Fraudulent evasion of tax

- (1) If any person:
 - (a) by act or omission:
 - (i) fraudulently evades the assessment or payment of any tax;
or
 - (ii) attempts such fraudulent evasion; or
 - (b) is otherwise knowingly concerned in:

- (i) the fraudulent evasion of any assessment or payment of any tax; or
- (ii) an attempt at such fraudulent evasion;

the person is guilty of an offence.

Penalty:

In the case of a natural person: A fine not exceeding VT 25 million or a term of imprisonment not exceeding 15 years, or both.

In the case of a body corporate: A fine not exceeding VT 125 million.

- (2) In this section, “tax” means any tax, duty, levy, excise, rate or charge imposed or payable by or under any Act, unless it is a fee for a service.

Certain dealings with counterfeit goods

146C Offence of certain dealings with counterfeit goods

- (1) If:
 - (a) a person does any of the following:
 - (i) supplies or offers to supply goods in Vanuatu; or
 - (ii) imports goods into Vanuatu; or
 - (iii) exports goods from Vanuatu; or
 - (iv) manufactures goods in Vanuatu; and
 - (b) the goods are counterfeit; and
 - (c) the person knows that the goods are counterfeit or is reckless as to whether that fact exists;

the person is guilty of an offence.

Penalty:

In the case of a natural person: A fine not exceeding VT 25 million or a term of imprisonment not exceeding 15 years, or both.

In the case of a body corporate: A fine not exceeding VT 125 million.

- (2) Goods are counterfeit if the presentation of the goods, any label for the goods or any advertisement for the goods contain a false or misleading representation about any or all of the following:
- (a) the identity or name of the goods;
 - (b) the sponsor, source, manufacturer or place of manufacture of the goods;
 - (c) the brand or trade mark of the goods;
 - (d) the style or model of the goods;
 - (e) the standard, quality or grade of the goods;
 - (f) the use, performance, characteristics or benefits of the goods;
 - (g) the composition or design specification of the goods or of any component of the goods;
 - (h) the presence or absence of any component of the goods.

- (3) In this section:

“false or misleading representation” includes a representation that is likely to cause confusion, to cause mistake or to deceive;

“supply”, in relation to goods, includes sale, exchange, lease, hire or hire-purchase.”