

# REPUBLIC OF VANUATU

## BILL FOR THE UNITED NATIONS FINANCIAL SANCTIONS ACT NO. OF 2017

### Explanatory Note

The purpose of the United Nations Financial Sanctions Act (the Act), is to establish a legal framework for implementing financial sanctions against persons or entities involved in or connected with terrorism, terrorist financing, proliferation of weapons of mass destruction and its financing, and other matters of international concern.

Financial sanctions are prohibitions against dealing with property of designated persons and entities, and prohibitions against providing property and financial services to designated persons and entities, in order to prevent that property from being used to carry out terrorist acts, terrorist financing or the proliferation of weapons of mass destruction or its financing. Vanuatu is obliged to implement such measures under the *Charter of the United Nations* and relevant United Nations Security Council Resolutions.

In addition, this Act seeks to give effect to Vanuatu's FATF Action Plan to meet the FATF Recommendations\*.

An explanation of the key aspects of the proposed Act is set out below.

#### **PART 2 DESIGNATION PROCESS**

Part 2 of the Act sets out the processes by which persons or entities may be designated.

##### **Designations by the United Nations Security Council (proposed section 3)**

As a member of the United Nations, Vanuatu is required to give effect to sanctions imposed pursuant to Article 41 of the *Charter of the United Nations*. These sanctions are set out in the United Nations (UN) Security Council Resolutions. Proposed section 3 implements this requirement: it provides that the designation of a person or entity by the UN Security Council or one of its Committees, pursuant to a Resolution made under Article 41 of the *Charter of the United Nations* and listed in Schedule 1 to the Act, has immediate effect in Vanuatu. The designation continues in force until it is revoked by the UN Security Council.

##### **Designations by the Prime Minister (proposed sections 4 – 7)**

UN Security Council Resolution 1373 requires countries to adopt a domestic process for designating persons or entities involved in a terrorist act or terrorist financing. Paragraph 32 of UN Security Council Resolution 2270 requires countries to adopt a domestic process for designating a person or entity of the Government of the Democratic People's Republic of

Korea, or the Worker's Party of Korea, who is associated with the proliferation of weapons of mass destruction. Proposed section 4 and Schedule 2 give effect to these resolutions.

In both instances, the Prime Minister's designation has to be made on the advice of the National Security Advisory Committee. The decision-making process of the Committee is set out in amendments to the Government Act 2006. In addition, the Committee is required to take into account relevant communications from foreign governments, and the United Nations Security Council or any of its Committees when giving its advice (proposed subsection 4(4)).

A designation made by the Prime Minister continues in force until it expires, namely, 3 years after the date on which it was made (proposed paragraph 5(1)(a) and subsection 5(2), unless it is revoked (proposed paragraph 5(1)(b) and subsection 6(2)). A designation can be extended prior to its expiry for a further 3 years. There is no limit to the number of times a designation can be extended (proposed subsections 5(4) and (6)).

### **Notification of Designations etc. and Gazettal (proposed sections 8 - 10)**

The Act requires a staged approach to notification. Firstly, the National Security Advisory Committee must, 'without delay', notify reporting entities and any other person the Committee considers necessary (except the designated person or entity) of a designation, extension, revocation or setting aside of a designation (proposed section 8). Secondly, the National Security Advisory Committee must publish a Notice in the Official Gazette of a designation etc. (proposed section 9). Finally, the National Security Advisory Committee must use its best endeavours to provide written notification of a designation or its extension to a person or entity who is located in Vanuatu, or who has been designated by the Prime Minister (proposed section 10). Certain information must be included in the notice of designation, such as information on the right to seek judicial review of a designation.

The designated person or entity must be notified last so that their assets can be frozen and the person or entity does not have the ability to move those assets. For example, where the Prime Minister makes a designation of Person X, the Prime Minister would then notify all reporting entities (including for instance, Person X's bank, so their account is frozen before Person X can move the money from their bank account to a bank account in another country). Gazettal of the designation and notification to Person X would occur subsequent to these actions.

## **PART 3 – PROHIBITIONS AND AUTHORISATIONS RELATING TO PROPERTY**

Designation activates the prohibitions contained in Part 3 of the Act.

### **Prohibitions (proposed sections 11 and 12)**

Proposed section 11 prohibits a person from dealing with property that is owned, controlled or held (directly or indirectly) by or on behalf of a designated person or entity. The terms "deal" and "property" are defined broadly in proposed Section 1. For example, under these proposed sections a bank would be prohibited from transferring funds out of an account it held in the name of a designated person or entity.

Proposed section 12 prohibits a person from making property or a financial service available to, or for the benefit of, a designated person or entity, or person or entity owned, controlled or acting on their behalf. "Financial service" is defined broadly in section 1.

Failure to comply with proposed sections 11 and 12 is an offence. The penalties imposed depend on the mental state of the person, i.e. whether the conduct was intentional or reckless.

#### **Verification, authorisations and reporting obligations (proposed sections 14, 15 and 16)**

Proposed section 14 allows a person to verify whether a person or entity is a designated person or entity by writing to the Commissioner of Police. This gives individuals and businesses a means to obtain police assistance with verifying suspicions about property they hold.

The prohibitions in the Act, while aimed at preventing the financing of terrorism or proliferation of weapons of mass destruction, are not intended to cause personal hardship to designated persons or their family members inconsistent with basic human rights. Proposed section 15 allows a person to seek authorisation from the Prime Minister to deal with frozen property, or to make property or a financial service available in certain circumstances. These are to meet “basic expenses”, “a contractual obligation” or “an extraordinary expense”, as defined in proposed section 1. The payment of these expenses cannot defeat the object of the Act.

Further to proposed section 16, a person must report any frozen assets to the Sanctions Secretariat, i.e. the Financial Intelligence Unit established under the Anti-Money Laundering and Counter-Terrorism Act 2014. Failure to comply is an offence.

## **PART 4 SUPERVISION AND ENFORCEMENT**

### **Supervisory framework (Division 1 of Part 3)**

The Sanctions Secretariat is the supervisor for compliance with the Act. It can supervise a broad range of persons and entities across various industry sectors. The Sanctions Secretariat can delegate some or all of its supervisory functions to other regulatory authorities, such as the Reserve Bank of Vanuatu, in relation to the industries 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.

In addition to its supervisory functions, the Sanctions Secretariat is responsible for supporting the National Security Advisory Committee and the Prime Minister. It is also required to keep and maintain the names of all designated persons and entities in a **Consolidated List of designations**. This List must be freely available to the public and should be kept up to date. Proposed section 19 describes the minimum amount of information required to be entered onto the List. Publication of the Consolidated List, including any updates, is subject to the notification procedures in proposed Section 8. This prevents designated persons or entities from having advance notice, which would enable them to move or conceal property.

### **Information monitoring and gathering powers (Division 2 of Part 3)**

The Sanctions Secretariat’s monitoring powers are set out in Division 2 of this Part. These include the power to request information and documents, produce documents, and conduct on-site inspections. Failure to comply with a request for information or produce a document is an offence.

### **Use and disclosure of confidential information (Division 3 of Part 4)**

Information that is obtained under the Act is confidential, and can only be disclosed in the circumstances set out in the Act. The National Security Advisory Committee, Prime Minister

or Sanctions Secretariat can disclose information to domestic and foreign agencies for a broad range of purposes. These purposes include supervision under regulatory laws, investigating or prosecuting certain serious offences, and investigations or taking action under the Proceeds of Crime Act.

#### **Enforcement powers (Division 4 of Part 4)**

The Sanctions Secretariat has a range of non-criminal enforcement measures against persons for non-compliance with the Act. The enforcement measures include formal warnings, penalty notices, enforceable undertakings, injunctions and notices of non-compliance.

### **PART 5 MISCELLANEOUS**

#### **Report to the National Security Advisory Committee (proposed section 38)**

The Prime Minister must report annually to the National Security Advisory Committee. The proposed section specifies information which must be included in the report. This ensures the Committee is able to have oversight of the Act's implementation.

#### **Immunity (proposed section 39)**

Persons are immune from civil or criminal proceedings for anything done or omitted to be done in good faith for the purposes of the Act. This enhances the effectiveness of the Act by ensuring there are no legal disincentives to following the legislation.

#### **Delegated Authority (proposed section 40)**

It is not practical for the National Security Advisory Committee or the Prime Minister to make every decision required to implement the financial sanctions regime. To address this, proposed section 42 allows these bodies to delegate certain powers to the Sanctions Secretariat. The power to make, extend or revoke a designation cannot be delegated.

#### **Power to Make Regulations (proposed section 41)**

Proposed Section 43 allows the Prime Minister, on the advice of the National Security Advisory Committee, to make regulations for the purposes of giving effect to the Act. The proposed Section also refers to the prescribing of additional United Nations Security Council Resolutions through Regulations. This relates to proposed Section 3 of the Bill, which gives effect to designations made under Resolutions listed in Schedule 1 "or prescribed by Regulations".

### **SCHEDULE 1 – UNITED NATIONS SECURITY COUNCIL RESOLUTIONS**

Schedule 1 lists the United Nations Security Council Resolutions that the Bill seeks to implement through proposed section 3. Section 3 deals with designations made by the UN Security Council or one of its Committees. The Schedule also includes successor Resolutions to those listed.

### **SCHEDULE 2 – UNITED NATIONS SECURITY COUNCIL RESOLUTION 1373 AND 2270**

Proposed Section 3 initiates the domestic designation process required by Resolution 1373 or Resolution 2270 listed in Schedule 2. The Schedule also includes successor Resolutions to these Resolutions.

\* 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

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# REPUBLIC OF VANUATU

## BILL FOR THE UNITED NATIONS FINANCIAL SANCTIONS ACT NO. OF 2017

An Act to enable the Government of Vanuatu to prevent terrorism and deal with other matters of international concern, and to give effect to Article 41 of the Charter of the United Nations by imposing prohibitions arising from United Nations Security Council Resolutions.

Be it enacted by the President and Parliament as follows-

### PART 1 PRELIMINARY MATTERS

#### 1 Interpretation

In this Act, unless the contrary intention appears:

**authorisation** means a permission granted by the Prime Minister to act in contravention of a prohibition and can include conditions imposed on the permission;

**basic expense** means an expense necessary for reasons including but not limited to the following:

- (a) obtaining foodstuffs;
- (b) paying rent or mortgage;
- (c) obtaining medicine or medical treatment;
- (d) paying taxes;
- (e) paying insurance premiums;
- (f) paying public utility charges;

- (g) paying reasonable professional fees, including fees associated with the provision of legal services;
- (h) paying fees or service charges that are in accordance with the laws of Vanuatu for the routine holding or maintenance of frozen property;

**confidential information** has the meaning given by section 27;

**Consolidated List** means the list of all designated persons and entities maintained by the Sanctions Secretariat under section 19;

**contractual obligation** means an obligation whereby a payment is required under contracts or agreements made before the date of the designation and where the payment required does not defeat the object and purpose of this Act;

**Court** means the Supreme Court of Vanuatu;

**deal or dealings** when used in relation to property includes the transfer, conversion, disposition, movement or use of the property;

**designation** means:

- (a) a designation referred to in section 3; or
- (b) a designation made under section 4;

and includes a designation referred to in paragraph (b) that is extended under subsection 5(4), and **designate** and **designated** have a corresponding meaning;

**designated person or entity** means a person or entity:

- (a) designated by the United Nations Security Council or its Committees pursuant to the Resolutions listed in Schedule 1 of this Act or prescribed by Regulations referred to in section 3; or
- (b) designated by the Prime Minister under section 4;

**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;

**entity** includes any unincorporated body, group, association, organisation or legal arrangement;

**extraordinary expense** means any payment which is not a basic expense or a contractual obligation that the Prime Minister considers to be necessary and that he or she considers does not defeat the object and purpose of this Act;

**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;

**financial service** has the meaning given by section 2;

**frozen property** means property which cannot be dealt with due to a prohibition imposed by section 11;

**National Coordinating Committee** means the National Coordinating Committee established by section 50K of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

**National Security Advisory Committee** means the National Security Advisory Committee established under section 23B of the Government Act [CAP 243];

**person** means any natural or legal person and includes any statutory body, company, association or body corporate;

**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

- (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;

**reporting entity** has the same meaning as in section 2 of the Anti-Money Laundering and Counter-Terrorism Act No. 13 of 2014;

**Resolution 1373** means Resolution 1373 (2001) of the Security Council, adopted on 28 September 2001;

**Resolution 1718** means Resolution 1718 (2006) of the Security Council, adopted on 14 October 2006;

**Resolution 1874** means Resolution 1874 (2009) of the Security Council, adopted on 12 June 2009;

**Resolution 2087** means Resolution 2087 (2013) of the Security Council, adopted on 22 January 2013;

**Resolution 2094** means Resolution 2094 (2013) of the Security Council, adopted on 7 March 2013;

**Resolution 2270** means Resolution 2270 (2016) of the Security Council, adopted on 2 March 2016;

**Resolution 2321** means Resolution 2321 (2016) of the Security Council, adopted on 30 November 2016;

**Sanctions Secretariat** means the Sanctions Secretariat established under section 17;

**security** includes:

- (a) the protection of Vanuatu from:
  - (i) espionage; and
  - (ii) sabotage; and
  - (iii) seditious intention; and
  - (iv) active measures of foreign intervention; and
  - (v) terrorism;

whether directed from, or committed within Vanuatu or not; and

- (b) the carrying out of Vanuatu's responsibilities to any foreign country in relation to a matter contained in paragraph (a).

## **2 Meaning of financial service**

A financial service is a service of a financial nature, including but not limited to:

- (a) insurance related service such as:
  - (i) direct life insurance; and
  - (ii) reinsurance; and
  - (iii) insurance brokerage; and
  - (iv) a service related to insurance such as consultancy, risk assessment and claim settlement service; and
- (b) banking and other related service such as:
  - (i) accepting deposits and other repayable funds; and
  - (ii) lending and credit service; and
  - (iii) financial leasing; and

- (iv) payment and money transmission service; and
  - (v) providing guarantees and commitments; and
  - (vi) financial trading such as in foreign exchange, transferable securities or other negotiable instruments; and
  - (vii) issuing securities of any kind; and
  - (viii) money brokering; and
  - (ix) property management; and
  - (x) a service related to banking or other service referred to in paragraph (b) such as analysis, research and advisory service; and
- (c) a company service within the meaning of section 2 of the Company and Trust Service Providers Act No. 8 of 2010; and
- (d) a trust service, within the meaning of section 2 of the Company and Trust Service Providers Act No. 8 of 2010; and
- (e) a service (which is not a company service or trust service) provided by a person or entity to do any or all of the following:
- (i) forming, registering or managing a body corporate or entity;
  - (ii) acting (or arranging for another person to act) as a director or secretary of a company, a partner of a partnership, or a similar position in relation to a body corporate or entity;
  - (iii) providing a registered office, business address, correspondence address or accommodation for a body corporate or entity;
  - (iv) acting as, or arranging for another person to act as, a trustee or an express trust or the equivalent function for another entity;
  - (v) acting as, or arranging for another person to act as, a nominee shareholder for another person; and

- (f) issuing registration, licences, certificates, permits or other documents under the Maritime Act [CAP 131].

## **PART 2 DESIGNATION PROCESS**

### **3 Designations by the United Nations Security Council**

- (1) The United Nations Security Council or its Committees may, pursuant to Article 41 of the Charter of the United Nations and under a Resolution listed in Schedule 1 or prescribed by Regulations, designate a person or entity.
- (2) A designation made under subsection (1):
  - (a) has immediate application in Vanuatu; and
  - (b) has the immediate effect of imposing the prohibitions in this Act; and
  - (c) continues in force until it is revoked by the United Nations Security Council or its Committees.
- (3) To avoid doubt, a designation made under this section can only be revoked by the United Nations Security Council or its Committees.

### **4 Designations by the Prime Minister**

- (1) Pursuant to a Resolution listed in Schedule 2, the Prime Minister must make a designation of a person or entity if he or she:
  - (a) has considered the advice of the National Security Advisory Committee made under subsection (2) or subsection (3); and
  - (b) has reasonable grounds to believe that:
    - (i) the grounds for designation in subsection (2) are satisfied; or
    - (ii) the grounds for designation in subsection (3) are satisfied.
- (2) The National Security Advisory Committee must, before advising the Prime Minister under subparagraph (1)(b)(i), have reasonable grounds to believe that the person or entity is a person or entity mentioned in paragraph 1(c) of Resolution 1373.

- (3) The National Security Advisory Committee must, before advising the Prime Minister under subparagraph (1)(b)(ii), have reasonable grounds to believe that:
- (a) the person or entity is a person or entity mentioned in paragraph 32 of Resolution 2270; and
  - (b) the person or entity is associated with activities prohibited by:
    - (i) Resolution 1718; or
    - (ii) Resolution 1874; or
    - (iii) Resolution 2087; or
    - (iv) Resolution 2094; or
    - (v) Resolution 2270; or
    - (vi) Resolution 2321; or
    - (vii) any other relevant Resolution of the United Nations Security Council.
- (4) The National Security Advisory Committee must take into consideration any relevant communications from a foreign Government or the United Nations Security Council or its Committees when advising the Prime Minister whether a person or entity should be designated.
- (5) The Prime Minister's designation of a person or entity under this section has immediate application in Vanuatu.
- (6) The Prime Minister's designation has the immediate effect of imposing the prohibitions in this Act.

## **5 Duration of designations**

- (1) A designation made by the Prime Minister under section 4 is to continue in force until:
- (a) it expires under subsection (2); or

- (b) it is revoked by the Prime Minister under subsection 6(2).
- (2) A designation expires 3 years after the date on which it was made.
- (3) The expiry of a designation has the immediate effect of lifting the prohibitions in this Act.
- (4) The Prime Minister may extend the duration of a designation at any time before the designation expires if the Prime Minister:
  - (a) has considered the advice of the National Security Advisory Committee; and
  - (b) has reasonable grounds to believe that the grounds for designation in section 4 continue to be satisfied.
- (5) A designation that has been extended by the Prime Minister under subsection (4) expires 3 years after the date on which the extension was made.
- (6) To avoid doubt, there is no limit to the number of times the Prime Minister can extend a designation.

## **6 Review and revocation of designations**

- (1) The National Security Advisory Committee must periodically review all designations made under section 4 to determine whether the grounds for the designation continue to be satisfied.
- (2) The Prime Minister must revoke a designation prior to its expiry if he or she:
  - (a) has considered the advice of the National Security Advisory Committee made under subsection (1); and
  - (b) is of the view that the grounds for designation in section 4 are no longer met.
- (3) The revocation of a designation has immediate application in Vanuatu.
- (4) The revocation of a designation has the immediate effect of lifting the prohibitions in this Act.

**7 Judicial Review**

- (1) Nothing in this Act limits a person or entity's right to seek judicial review of a designation made by the Prime Minister.
- (2) If the Court considers that disclosure of material in any judicial review proceedings would prejudice security, the Court may consider the material in closed proceedings and in the absence of the designated person or entity and their legal representative.

**8 Notification of designations and other matters to reporting entities**

- (1) If:
  - (a) a person or entity has been designated; or
  - (b) a designation has expired under subsection 5(2) or (5); or
  - (c) a designation is revoked by the United Nations Security Council or its Committees or by the Prime Minister under subsection 6(2),

the National Security Advisory Committee must, without delay, use any necessary means to give notice of the designation, or the revocation or expiry of the designation, to the persons referred to in subsection (2).

- (2) The persons are:
  - (a) a reporting entity registered on the register under section 9 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; and
  - (b) any other person or entity as the Committee considers necessary to be notified, other than the designated person or entity.

**9 Notification in the Official Gazette**

- (1) If:
  - (a) a person or entity has been designated by the Prime Minister under section 4; or
  - (b) a designation has expired under subsection 5(2) or (5); or

- (c) a designation is revoked by the Prime Minister under subsection 6(2),

the National Security Advisory Committee must publish a notice of the designation, or the revocation or expiry of the designation, in the Official Gazette.

- (2) To avoid doubt, failure to publish a notice in the Official Gazette does not affect the validity of the designation, or the revocation or expiry of the designation.

**10 Written notice of designation to a designated person or entity in Vanuatu**

- (1) If:
- (a) a designation is made by the United Nations Security Council or its Committees in respect to a person or entity located in Vanuatu; or
  - (b) a designation is made by the Prime Minister under section 4,
- the National Security Advisory Committee must use its best endeavours to provide a written notice of the designation to the designated person or entity within a reasonable time.
- (2) The notice must contain the following matters:
- (a) the grounds for designation and the information relied on in making the designation, with the exception of information that, in the opinion of the National Security Advisory Committee, should not be disclosed on the grounds that it would prejudice security;
  - (b) the duration of the designation;
  - (c) details of the prohibitions imposed;
  - (d) the right to seek judicial review of the designation before the Court;
  - (e) information as to the procedure for making an application for authorisation to act in contravention of a prohibition.

## **PART 3 PROHIBITIONS AND AUTHORISATIONS RELATING TO PROPERTY**

### **11 Prohibition against dealing with property**

- (1) A person who deals with property knowing that the property is owned, controlled or held, directly or indirectly, wholly or jointly, by or on behalf of or at the direction of a designated person or entity, commits an offence punishable upon conviction by:
  - (a) in the case of a natural person – a fine not exceeding VT50 million or imprisonment for a term not exceeding 25 years; or both; or
  - (b) in the case of a body corporate – a fine not exceeding VT250 million or an amount equivalent to the value of the property, whichever is greater.
- (2) A person who deals with property reckless as to whether the property is owned, controlled or held, directly or indirectly, wholly or jointly, by or on behalf of or at the direction of a designated person or entity commits an offence punishable upon conviction by:
  - (a) in the case of a natural person – a fine not exceeding VT25 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 VT125 million or an amount equivalent to the value of the property, whichever is greater.
- (3) It is a defence to subsections (1) and (2) if the person has an authorisation under section 15.
- (4) It is not a defence to subsections (1) and (2) that a response from the Commissioner of Police verifying a suspicion under subsection 14(4) has not been received.
- (5) For the purposes of subsection (1), knowledge may be inferred from objective factual circumstances.
- (6) To avoid doubt, if a designated person or entity, or a person acting on behalf of or at the direction of a designated person or entity, provides

property to a reporting entity for the purposes of transferring the property, the reporting entity:

- (a) must not transfer that property; and
- (b) must hold that property; and
- (c) must file a report under section 16.

**12 Prohibition against making property and financial services available**

(1) A person who:

- (a) makes property or a financial service available knowing that it is being made available, directly or indirectly, wholly or jointly, to a designated person or entity or a person or entity owned or controlled or acting on behalf of a designated person or entity; or
- (b) makes property or a financial service available to any person knowing that the property or financial service is for the benefit of a designated person or entity;

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

(2) The penalty is:

- (a) in the case of an natural person – a fine not exceeding VT50 million or imprisonment for a term not exceeding 25 years; or both; or
- (b) in the case of a body corporate – a fine not exceeding VT250 million or an amount equivalent to the value of the property, whichever is greater.

(3) For the purposes of subsection (1), knowledge may be inferred from objective factual circumstances.

(4) A person who:

- (a) makes property or financial service available reckless as to whether it is being made available, directly or indirectly, wholly or jointly,

to a designated person or entity owned or controlled or acting on behalf of a designated person or entity; or

- (b) makes property or financial service available to any person reckless as to whether the property or financial service is for the benefit of a designated person or entity,

commits an offence punishable upon conviction by the penalty referred to in subsection (5).

- (5) The penalty is:

- (a) in the case of an natural person – a fine not exceeding VT25 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 VT125 million or an amount equivalent to the value of the property, whichever is greater.

- (6) For the purpose of this section, it is immaterial whether the property is located inside or outside Vanuatu.

- (7) It is a defence to subsections (1) and (4) if:

- (a) the person has an authorisation under section 15; or
- (b) a payment, including by way of interest or other earnings, is made to an account containing frozen property and that payment is also frozen.

### **13 Application of the Penal Code Act [CAP 135]**

To avoid doubt, sections 28, 29, 30, 31, 34 and 35 of the Penal Code Act [CAP 135] apply to all offences under this Act.

### **14 Requests to the Commissioner of Police**

- (1) A person may make a request in writing to the Commissioner of Police to help verify whether the person holds property that is or may be owned, controlled or held on behalf of, or at the direction of, a designated person or entity.

- (2) The request must be accompanied by details of the property and the owner or controller of the property as is known to the person making the request.
- (3) The Commissioner of Police must use his or her best endeavours to assist a person who has made a request.
- (4) As soon as reasonably practicable after receiving a request, the Commissioner of Police must respond in writing to the person who has made the request.
- (5) The response must state whether the Commissioner of Police considers that:
  - (a) it is likely that the property is owned or controlled by a designated person or entity; or
  - (b) it is unlikely that the property is owned or controlled by a designated person or entity; or
  - (c) it is unknown whether the property is owned or controlled by a designated person or entity.

**15 Authorisations relating to property and financial services**

- (1) A person may apply in writing to the Prime Minister for authorisation to:
  - (a) deal with frozen property; or
  - (b) make property or a financial service available to a designated person or entity.
- (2) An application must be lodged with the Sanctions Secretariat in accordance with the specified form.
- (3) The Sanctions Secretariat must forward the application to the National Security Advisory Committee as soon as is reasonably practicable and in any event within 5 working days from the date of receiving the application.
- (4) The National Security Advisory Committee must advise the Prime Minister, within a reasonable time of receiving the application, if it has reasonable grounds to believe:

- (a) that the property or financial service is required to meet:
    - (i) a basic expense; or
    - (ii) a contractual obligation; or
    - (iii) an extraordinary expense; and
  - (b) that the property or financial service will only be used for a purpose listed in paragraph (a).
- (5) Prior to advising the Prime Minister under subsection (4), the National Security Advisory Committee must:
- (a) seek any approvals required by, and make any notifications required to, the United Nations Security Council or its Committees; and
  - (b) consider any communication from a foreign Government relevant to the authorisation.
- (6) The National Security Advisory Committee may advise the Prime Minister:
- (a) to impose conditions on any authorisation granted; and
  - (b) to authorise the management, or administration, of frozen property for purposes including, but not limited to, maintaining the value of the property.
- (7) The Prime Minister must make an authorisation if he or she:
- (a) has considered the advice of the National Security Advisory Committee made under subsection (4); and
  - (b) has reasonable grounds to believe that the grounds for authorisation under subsection (4) are met.
- (8) The Prime Minister may, on consideration of the advice of the National Security Advisory Committee under subsection (6):

- (a) impose conditions on any authorisation granted; and
  - (b) authorise the management, or administration, of frozen property for purposes including, but not limited to, maintaining the value of the property.
- (9) The Prime Minister must determine the application within a reasonable time frame and respond to the applicant in writing.

**16 Obligation to report property of a designated person or entity**

- (1) A person who holds, possesses or controls property of a designated person or entity must report the holding, possession or control of that property to the Sanctions Secretariat.
- (2) A person must provide the report as soon as is reasonably practicable and in any event within 5 working days after:
- (a) the date the person receives notification of a designation under subsection 8(1); or
  - (b) the date of gazettal of the designation under subsection 9(1); or
  - (c) the date the person comes into possession of property that is:
    - (i) owned or controlled, directly or indirectly, by a designated person or entity; or
    - (ii) provided on behalf of, or at the direction of, a designated person or entity,whichever is the sooner.
- (3) A person must include the following information, if available, in the report:
- (a) details of the property;
  - (b) the name and address of the suspected owner or controller of the property;

- (c) details of any attempted transaction involving the property, including:
  - (i) the name and address of the sender; and
  - (ii) the name and address of the intended recipient; and
  - (iii) the purpose of the attempted transaction; and
  - (iv) the origin of the property; and
  - (v) where the property was intended to be sent.
  
- (4) A person must provide the report in the specified form.
  
- (5) A person must provide a report regardless of whether a suspicious transaction report or suspicious activity report is made under section 20 or 21 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014.
  
- (6) A person who intentionally fails to make a report in accordance with this section commits an offence punishable upon conviction by:
  - (a) in the case of a natural person – 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 VT125 million or an amount equivalent to the value of the property, whichever is greater.
  
- (7) For the purpose of subsection (6), intention can be inferred from objective factual circumstances.
  
- (8) A person who recklessly fails to make a report in accordance with this section commits an offence punishable upon conviction by:
  - (a) in the case of a natural person – a fine not exceeding VT15 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 VT75 million or an amount equivalent to the value of the property, whichever is greater.

## **PART 4 SUPERVISION AND ENFORCEMENT**

### **Division 1 – Establishment and Functions of the Sanctions Secretariat**

#### **17 Establishment of the Sanctions Secretariat**

The Sanctions Secretariat is established within the Financial Intelligence Unit.

#### **18 Sanctions Secretariat to support the National Security Advisory Committee and Prime Minister**

The Sanctions Secretariat is to provide secretarial and administrative support to the National Security Advisory Committee and to the Prime Minister in the exercise of their powers and functions under this Act.

#### **19 Sanctions Secretariat to keep and maintain Consolidated List of designations**

- (1) The Sanctions Secretariat must keep and maintain an up-to-date Consolidated List.
- (2) The Consolidated List must contain:
  - (a) sufficient information to identify each designated person or entity; and
  - (b) sufficient information regarding the prohibitions imposed for each designated person or entity; and
  - (c) such other facts as may be relevant to the designations.
- (3) Subject to the notification procedures under section 8, the Sanctions Secretariat must make the Consolidated List freely available for public inspection.
- (4) The Sanctions Secretariat must publish information on procedures for disputing a prohibition on the basis of a false match against the Consolidated List.

**20 Sanctions Secretariat to supervise persons and entities**

- (1) The Sanctions Secretariat must supervise persons and entities for compliance with this Act.
- (2) The Sanctions Secretariat has the following functions in relation to the supervision of persons and entities:
  - (a) to monitor and assess the level of terrorism, terrorist financing and proliferation financing risk across industry sectors;
  - (b) to monitor persons and entities for compliance with this Act, and for this purpose to develop and implement a risk-based supervisory program;
  - (c) to provide guidance and feedback to persons and entities in order to assist them to comply with this Act;
  - (d) to specify such forms and notices as are necessary in the implementation of this Act;
  - (e) to refer matters to the Commissioner of Police for investigation where it is suspected that an offence under this Act has been committed;
  - (f) to co-operate with the National Coordinating Committee, domestic regulatory authorities, law enforcement agencies and foreign government agencies to ensure the consistent, effective, and efficient implementation of this Act.

**21 Delegation of supervision functions**

- (1) The Sanctions Secretariat may by instrument in writing delegate all or any of its supervision functions of persons and entities to one or more domestic regulatory authorities.
- (2) A domestic regulatory authority that has been delegated supervision functions 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 Division 2 of this Part;  
and
  - (b) imposing any enforcement measures in Division 4 of this Part.
- (3) A domestic regulatory authority that has been delegated supervision functions may use any information about a person or entity that has been obtained under this Act for the purpose of exercising its powers or performing its functions and duties under the regulatory law governing that person or entity.
- (4) A domestic regulatory authority that has been delegated supervision functions may use any information about a person or entity that has been obtained under the regulatory law governing that person or entity for the purpose of exercising its powers or performing its functions and duties under this Act.

## **22 Use of information by Sanctions Secretariat**

- (1) The Sanctions Secretariat may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under this Act for the purpose of exercising its powers or performing its functions and duties under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014.
- (2) The Sanctions Secretariat may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purpose of exercising its powers or performing its functions and duties under this Act.

## **Division 2 – Information gathering and monitoring powers**

### **23 Power to request information and documents**

- (1) If the Sanctions Secretariat believes that it is necessary for the purpose of monitoring and enforcing compliance with this Act, the Sanctions Secretariat may request, in writing, any person or entity to:
- (a) provide information; or
  - (b) produce documents in his possession or subject to his control.

- (2) The Sanctions Secretariat may specify the manner in which, and the period within which, the information or documents are to be provided.
- (3) A request may include a continuing obligation to keep the Sanctions Secretariat informed as circumstances change, or on such regular basis as the Sanctions Secretariat may specify.
- (4) Despite any Act or any contractual obligation imposing confidentiality obligations, a person must comply with a request.
- (5) To avoid doubt, this section does not affect legal professional privilege.

#### **24 Production of documents**

If a request is made for the production of documents, the Sanctions Secretariat may:

- (a) take copies of or extracts from any documents so produced; and
- (b) request any person producing a document to give a written explanation of it.

#### **25 Power to conduct on-site inspections**

- (1) The Sanctions Secretariat may, at any reasonable time, enter and remain at any place (other than a residential dwelling) for the purpose of conducting an on-site inspection of a person or entity that it supervises.
- (2) During an inspection, the Sanctions Secretariat may request any employee, officer, or agent of the person or entity that it supervises to:
  - (a) answer questions relating to its records and documents; and
  - (b) provide any other information that the Sanctions Secretariat may reasonably require for the purpose of the inspection.
- (3) A person is not required to answer a question asked by the Sanctions Secretariat under this section if the answer would or could incriminate the person.
- (4) Before the Sanctions Secretariat requires a person to answer a question, the person must be informed of the right specified in subsection (3).

- (5) Nothing in this section requires a lawyer to disclose a communication subject to legal professional privilege.

**26 Failure to comply with a request for information or to produce a document**

- (1) A person who:
- (a) fails to comply with a request to provide information or produce documents made under section 23 or section 25; or
  - (b) gives information, or produces a document, knowing it is false in a material particular in response to a request made under section 23 or section 25; or
  - (c) destroys, mutilates, defaces, conceals or removes a document with the intention of evading a request made under section 23 or section 25,

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

- (2) The penalty is:
- (a) in the case of a natural person – 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 VT75 million.
- (3) For the purposes of subsection (1), knowledge may be inferred from objective factual circumstances.
- (4) It is a defence in a criminal proceeding under paragraph (1)(a) that the person has a reasonable excuse for failing to comply with the request for information or documents.
- (5) A person who gives information, or produces a document, reckless as to whether it is false in a material particular in response to a request made under section 23 or 25, commits an offence punishable upon conviction by:

- (a) in the case of a natural person – a fine not exceeding VT5 million or imprisonment for a term not exceeding 2 years; or both; or
  - (b) in the case of a body corporate – a fine not exceeding VT30 million.
- (6) If a person is convicted of an offence under this section, the Court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

### **Division 3 – Use and disclosure of confidential information**

#### **27 Confidential information**

Information is confidential information if it is supplied to or obtained by the National Security Advisory Committee, the Prime Minister or the Sanctions Secretariat 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.

#### **28 Disclosure of information**

- (1) The National Security Advisory Committee, Prime Minister, Sanctions Secretariat, or a domestic regulatory authority that has been delegated supervisory functions under section 21, may disclose confidential information if the disclosure:
- (a) is required or authorised by the 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 Financial Intelligence Unit for the purpose of monitoring or enforcing compliance with the Anti-Money Laundering and Counter Terrorism Financing Act No. 13 of 2014; or
  - (g) is made to enable or assist international law enforcement cooperation under police to police cooperation mechanisms, the Mutual Assistance in Criminal Matters Act [CAP 285] and other relevant mechanisms and laws; or
  - (h) is made to enable or assist any country or territory outside Vanuatu to exercise functions corresponding to those of the National Security Advisory Committee or the Prime Minister under this Act; or
  - (i) is made to enable or assist the United Nations Security Council or its Committees in implementing United Nations Security Council Resolutions listed in the Schedule or prescribed by Regulations; or
  - (j) is made to enable or assist an official trustee to discharge his functions under enactments relating to insolvency.
- (2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:
- (a) for a natural person – a fine not exceeding VT15 million or imprisonment for a term of 5 years, or both; and
  - (b) for a body corporate – a not exceeding VT75 million.

## **29 Communications from foreign Governments**

The National Security Advisory Committee may either directly or through diplomatic channels transmit, receive or respond to communications from foreign Governments or the United Nations Security Council or its Committees with regard to the powers exercisable under this Act.

## **Division 4 - Enforcement**

### **30 Enforcement measures**

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

- (a) issue a formal warning under section 31;
- (b) issue a penalty notice under section 32;
- (c) accept an enforceable undertaking under section 33 and seek an order from the Court for breach of that undertaking under section 34;
- (d) seek a performance injunction from the Court under section 35;
- (e) seek a restraining injunction from the Court under section 36;
- (f) publish a notice of non-compliance under section 37.

### **31 Formal warning**

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

### **32 Penalty notice**

- (1) The Sanctions Secretariat may serve a penalty notice on a person if the Sanctions Secretariat believes on reasonable grounds that the person has engaged in conduct which constitutes an offence under this Act.
- (2) If the Sanctions Secretariat intends to issue a penalty notice, it must do so as soon as possible after it has become aware that the person has engaged 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 a natural person; 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 Sanctions Secretariat may publish a penalty notice issued to a person in such manner as the Sanctions Secretariat 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.

### **33 Enforceable undertaking**

- (1) The Sanctions Secretariat may request a written undertaking from a person or entity in connection with compliance with this Act.
- (2) Without limiting subsection (1), a written undertaking may relate to an activity of a person or entity or to an officer, employee, agent or a group of officers, employees or agents of the person or entity.
- (3) A person or entity may give the Sanctions Secretariat 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.

**34 Enforcement of undertaking**

- (1) If the Sanctions Secretariat considers that a person or entity has breached one or more of the terms of an undertaking it provided under section 33, the Sanctions Secretariat may apply to the Court for an order under subsection (2).
- (2) If the Court is satisfied that:
  - (a) the person or entity has breached one or more of the terms of its undertaking; and
  - (b) the undertaking was relevant to the person or entity's obligation under this Act,

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

**35 Performance injunction**

- (1) The Sanctions Secretariat 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 person or 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.

**36 Restraining injunction**

- (1) The Sanctions Secretariat 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 person or 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.

**37 Notice of non-compliance**

- (1) If the Court has granted an injunction under section 35 or section 36, the Sanctions Secretariat may publish a notice in the Gazette which sets out the details of the person or entity's non-compliance and any remedial action ordered by the Court.
- (2) If the person or entity has failed to comply with an injunction granted by the Court under section 35 or section 36, the Sanctions Secretariat may in such manner as it considers appropriate publish a notice of that non-compliance and any other remedial action as ordered by the Court.

## **PART 5 MISCELLANEOUS MATTERS**

### **38 Report to the National Security Advisory Committee**

- (1) The Prime Minister must provide an annual report to the National Security Advisory Committee by 31 March each year regarding the administration of this Act.
- (2) The report must include information regarding:
  - (a) designations and revocations made under this Act by the Prime Minister; and
  - (b) any judicial reviews of designations by the Court; and
  - (c) designations and revocations made by the United Nations Security Council or its Committees relating to citizens of Vanuatu or persons located in Vanuatu; and
  - (d) communications to or from foreign Governments or the United Nations Security Council or its Committees under section 29; and
  - (e) investigations and prosecutions for offences under this Act.

### **39 Immunity**

- (1) No action in civil or criminal proceedings is to be brought against any person over anything done or omitted to be done by him or her in good faith in the execution or purported executions of his or her functions and powers under this Act or in the process of implementing a provision of this Act.
- (2) Subsection (1) does not apply if that person acts in bad faith in executing his or her functions or powers, or in dereliction of his or her functions and powers, under this Act or in the process of implementing a provision of this Act.

### **40 Delegated authority**

- (1) The National Security Advisory Committee may delegate, in writing, to an officer of the Sanctions Secretariat the exercise of any of its functions or powers under this Act, other than:

- (a) the power of delegation conferred by this section; and
  - (b) the functions and powers set out in Part 2, with the exception of sections 8, 9 and 10.
- (2) The Prime Minister may delegate, in writing, to an officer of the Sanctions Secretariat the exercise of any of his or her functions or powers under this Act, other than:
- (a) the power of delegation conferred by this section; and
  - (b) the functions and powers set out in Part 2 of this Act, with the exception of sections 8, 9 and 10.

**41 Power to make regulations**

- (1) The Prime Minister may, on the advice of the National Security Advisory Committee, make Regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Regulations may prescribe additional United Nations Security Council Resolutions.

**42 Commencement**

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

**SCHEDULE 1**

**UNITED NATIONS SECURITY COUNCIL  
RESOLUTIONS.**

**Section 3**

United Nations Security Council Resolutions are:

- (a) United Nations Security Council Resolutions on Al-Qaida:
  - (i) Resolution 1267 (1999) of the Security Council, adopted on 15 October 1999; and
  - (ii) Resolution 1989 (2011) of the Security Council, adopted on 17 June 2011; andsuccessor resolutions; and
  
- (b) United Nations Security Council Resolutions on Taliban:
  - (i) Resolution 1988 (2011) of the Security Council, adopted on 17 June 2011; andsuccessor resolutions; and
  
- (c) United Nations Security Council Resolutions on Democratic People's Republic of Korea:
  - (i) Resolution 1718 (2006) of the Security Council, adopted on 14 October 2006; and
  - (ii) Resolution 1874 (2009) of the Security Council, adopted on 12 June 2009; and
  - (iii) Resolution 2087 (2013) of the Security Council, adopted on 22 January 2013; and

SCHEDULE 1  
UNITED NATIONS SECURITY COUNCIL RESOLUTIONS.

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(iv) Resolution 2094 (2013) of the Security Council, adopted on 7 March 2013; and

(v) Resolution 2270 (2016) of the Security Council, adopted on 2 March 2016; and

(vi) Resolution 2321 (2016) of the Security Council, adopted on 30 November 2016 ; and

successor resolutions; and

(d) United Nations Security Council Resolutions on Iran:

(i) Resolution 1737 (2006) of the Security Council, adopted on 27 December 2006; and

(ii) Resolution 2231 (2015) of the Security Council, adopted on 20 July 2015; and

successor resolutions.

**SCHEDULE 2**

**UNITED NATIONS SECURITY COUNCIL  
RESOLUTIONS.**

**Section 4**

- (a) United Nations Security Council Resolutions on the Suppression of Terrorism:
  - (i) Resolution 1373 (2001) of the Security Council, adopted on 28 September 2001; andsuccessor resolutions; and
  
- (b) United Nations Security Council Resolutions on Democratic People's Republic of Korea:
  - (i) Resolution 2270 (2016) of the Security Council, adopted on 2 March 2016; andsuccessor resolutions.