

# REPUBLIC OF VANUATU

## BILL FOR THE COMPANIES (AMENDMENT) ACT NO. OF 2017

### Explanatory Note

This Bill amends the Companies Act No. 25 of 2012 to give effect to Vanuatu's FATF Action Plan to meet FATF Recommendations\* and to strengthen regulatory controls to protect the financial system from abuse by criminals. A brief explanation of the key amendments is set out below.

#### **Obligations to convert bearer shares and share warrants**

Amendments are made to require all existing bearer shares and bearer share warrants to be converted into registered shares and registered share warrants. No new bearer shares or bearer share warrants can be issued pursuant to the new amendments. Amendments also ensure that the transfer of share warrants is to be recorded in the same way that the transfer of shares must be recorded. Share warrants must be registered on the register of members.

#### **Disclosure of nominators of nominee directors and shareholders**

The amendments ensure that the details of nominators of nominee directors and nominee shareholders are recorded on the register. Requirements have also been placed on overseas companies to provide and maintain up to date, key details of directors and shareholders, including nominators of nominee directors and shareholders. A transitional provision has been included to require overseas companies currently registered to provide this newly required information within 3 months. Criminal sanctions apply for non-compliance and companies may also be removed from the register for non-compliance.

#### **Monitoring provisions**

The amendments provide the Registrar with new powers to collect information and documents relating to registered companies and to conduct on-site inspections of a company's business premises. A failure to comply with a request for information or documents, obstruction of on-site inspections or providing false or misleading information are criminal offences. Amendments also allow the Registrar to gather information from a variety of domestic government sources as well as foreign government agencies.

#### **Disclosure of information**

Amendments have been made to allow for the disclosure of information by the Registrar to domestic and foreign agencies for a broad range of purposes. These purposes include supervision under the Anti-Money Laundering and Counter Terrorism Financing Act No. 13 of 2014, investigating or enforcing certain serious offences and foreign tax evasion offences, and investigating or taking action under the Proceeds of Crime Act [CAP 284].

\*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 and counter-terrorist financing standard.

## **Minister of Finance and Economic Management**



**REPUBLIC OF VANUATU**

**BILL FOR THE  
COMPANIES (AMENDMENT)  
ACT NO. OF 2017**

**Arrangement of Sections**

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# REPUBLIC OF VANUATU

## **BILL FOR THE COMPANIES (AMENDMENT) ACT NO. OF 2017**

An Act to amend the Companies Act No. 25 of 2012, and for related purposes.

Be it enacted by the President and Parliament as follows-

### **1 Amendments**

The Companies Act No. 25 of 2012 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 THE COMPANIES ACT NO. 25 OF 2012

#### 1 Section 1

Insert in their correct alphabetical positions:

“**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 a 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;

**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;

**Sanctions Secretariat** means the Sanctions Secretariat established under section 17 of the United Nations Financial Sanctions Act No. 6 of 2017;”

## **2 After paragraph 6(3)(g)**

Insert

“(ga) details of the nominators of nominee shareholders and nominee directors; and”

## **3 After section 25**

Insert

### **“25A Prohibition on issuing bearer shares and bearer share warrants**

- (1) Despite section 25, a company must not issue bearer shares or bearer share warrants.
- (2) If a company contravenes subsection (1), the company is guilty of an offence punishable on conviction by a fine not exceeding VT 125 million.”

## **4 Division 9 of Part 3 (Heading)**

After “shares”, insert “and share warrants”

**5 Section 37 (Heading)**

After “shares”, insert “and share warrants”

**6 Subsection 37(1)**

- (a) After “shares”, insert “or share warrants”
- (b) After “share”, insert “or share warrant”

**7 Subsection 37(2)**

After “share” (first occurring), insert “or share warrant”

**8 Subsections 37(3)**

- (a) After “shareholder” (wherever occurring), insert “or holder of a share warrant”
- (b) After “share”, insert “or share warrant”

**9 Subsection 37(4)**

After “shares” (wherever occurring), insert “or share warrants”

**10 Subsection 39(1)**

After “shares” (first occurring), insert “and share warrants”

**11 Paragraph 39(1)(a)**

After “shareholder”, insert “or nominator of a nominee shareholder”

**12 Paragraph 39(1)(c)**

Delete “.”, substitute “; and

- “(d) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, the holder of a share warrant; and
- (e) the date of any issue of share warrants to, repurchase or redemption of share warrants from, or transfer of share warrants by or to, each holder of a share warrant within the last 7 years, and in relation to the transfer, the name of the person to and from whom the share warrants were transferred.”

**13 Subsection 39(4)**

Delete “VT 25,000”, substitute “VT 25 million”

**14 Paragraph 113(1)(d)**

After “directors”, insert “and the current nominators of any nominee directors”

**15 Subsection 113(5)**

Delete “VT 25,000”, substitute “VT 25 million”

**16 Section 140**

Repeal the section, substitute

**“140 Grounds for removal from register**

- (1) Subject to section 142, the Registrar must remove a company from the Vanuatu register if:
- (a) the company fails to file its annual return within a period of 6 months after the date allocated; or
  - (b) the company has been put into liquidation, and the prescribed documents confirming that the liquidation of the company has been completed have not been sent or delivered to the Registrar within 6 months after the completion of the liquidation; or
  - (c) there is sent or delivered to the Registrar a request that the company be removed from the Vanuatu register on either of the grounds specified in section 141 made by:
    - (i) a shareholder or any other person authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question; or
    - (ii) a director or any other person, if the rules of the company so require or permit; or
  - (d) a liquidator sends or delivers to the Registrar the prescribed documents confirming that the liquidation of the company has been completed.
- (2) The Registrar may remove a company from the Vanuatu register if the company fails to comply with a requirement of this Act or the Regulations.”

**17 Section 141**

Delete “paragraph 140(c)”, substitute “paragraph 140(1)(c)”

**18 Section 142**

Delete “paragraph 140(c), or (d)”, substitute “paragraph 140(1)(c) or (d)”



**19 Subsection 143(1)**

Delete “paragraph 140(b)”, substitute “paragraph 140(1)(b) or subsection 140(2)”

**20 Subsection 143(2)**

Delete “paragraph 140(c) or (d)”, substitute “paragraph 140(1)(c) or (d)”

**21 Subsection 150(1)**

Delete “paragraph 140(a)”, substitute “paragraph 140(1)(a)”

**22 Paragraph 157(2)(b)**

After “directors”, insert “and the nominators of any nominee directors”

**23 After paragraph 157(2)(b)**

Insert

“(ba) state the full name of any shareholder, the full name of the nominator of any nominee shareholder, and the number and class of shares issued to any shareholder; and”

**24 Paragraph 160(1)(a)**

After “directors” (second occurring), insert “or the nominators of any nominee directors”

**25 After paragraph 160(1)(a)**

Insert

“(aa) a change in the shareholders, the nominators of any nominee shareholders or the number or class of shares issued to a shareholder of the overseas company; or”

**26 Subsection 160(2)**

Delete “VT 25,000”, substitute “VT 25 million”

**27 Paragraph 176(1)(b)**

Delete “.”, substitute “; or

(c) any information or document relating to:

(i) the company’s integrity, competence, financial standing or organisation; or

(ii) the company’s compliance with this Act or the Regulations.”

**28 Subsections 176(3), 178(3) and 179(2)**

Delete “VT 25,000”, substitute “VT 15 million”

**29 After section 180**

Insert

**“180A Registrar may request information and documents**

For the purpose of performing a function or exercising a power under this Act, the Registrar 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).”

**30 Section 181**

Repeal the section.

**31 Section 183**

Repeal the section, substitute

**“183 Restrictions on disclosing information and documents**

- (1) The Registrar or a person authorised by the Registrar must not disclose any documents or information except:
  - (a) in accordance with section 178; or
  - (b) subject to the approval of the Registrar in the case of a person authorised by the Registrar, with the consent of the person to whom it relates; or
  - (c) subject to the approval of the Registrar in the case of a person authorised by the Registrar, for the purpose of, or in connection with, the exercise of powers conferred by this Act; or

- (d) to the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or
  - (e) subject to the approval of the Registrar in the case of a person authorised by the Registrar, to a liquidator for the purpose of the liquidation of a company or the assets of an overseas company; or
  - (f) to the Minister; or
  - (g) for the purpose of disclosure to:
    - (i) the Financial Intelligence Unit; or
    - (ii) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purposes of performing a function or exercising a power under that Act; or
    - (iii) a law enforcement agency for the purpose of investigating or prosecuting any offence against a law of Vanuatu; or
    - (iv) a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or
    - (v) a domestic regulatory authority for the purpose of carrying out its regulatory functions; or
    - (vi) the Sanctions Secretariat for the purpose of carrying out its functions under the United Nations Financial Sanctions Act No. of 2017; or
    - (vii) a foreign government agency in accordance with section 183A.
- (2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:
- (a) for an individual - a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both; or
  - (b) for any other person - a fine not exceeding VT 75 million.

**183A Disclosure to foreign government agency**

The Registrar or a person authorised by the Registrar may disclose documents or information to a foreign government agency if:

- (a) the Registrar is satisfied that the disclosure is for the purpose of:
  - (i) performing a function or exercising a power under the foreign government agency's own regulatory legislation, including investigating a breach of that legislation; or
  - (ii) 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) 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 Registrar is satisfied that:
  - (i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and
  - (ii) the agency is subject to adequate restrictions on further disclosure.”

**32 After section 187**

Insert

**“187A Indemnity from liability etc.**

The Registrar, and any person authorised by the Registrar, is not subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done in good faith under or for the purposes of this Act.”

**33 Transitional provisions for bearer shares and bearer share warrants**

- (1) This provision applies to a company if, immediately before the commencement of this Act, there is in existence a share issued to bearer, or a share warrant issued to bearer, by the company.
- (2) Within 3 months after the commencement of this Act, any share issued to bearer by the company must be exchanged for a registered share in the company.
- (3) Within 3 months after the commencement of this Act, any share warrant issued to bearer by the company must be exchanged for a registered share warrant issued by the company.
- (4) The company must enter in its share register the name of the holder of:
  - (a) a registered share referred to in subsection (2); or
  - (b) a registered share warrant referred to in subsection (3).
- (5) An exchange referred to in subsection (2) or (3) must be evidenced by instrument in writing.
- (6) If the Registrar has reasonable cause to believe that subsection (2) or (3) has not been complied with, the Registrar may publish in the Gazette and serve on the company a notice stating that the company will be removed from the Register if that subsection is not complied with.
- (7) If subsection (2) or (3) has not been complied with within 60 days after the date of the notice referred to in subsection (6), the Registrar must remove the company from the Register and must publish notice of the removal in the Gazette.
- (8) A term or expression used in this item has the same meaning as in the Companies Act No. 25 of 2012 as amended by this Act.

**34 Transitional provision for certain information**

- (1) This provision applies to an overseas company if, immediately before the commencement of this Act, the company was registered under section 158 of the Companies Act No. 25 of 2012.
- (2) The company must provide the Registrar with the information required under section 157 of the Companies Act No. 25 of 2012 as amended by

this Act (“**additional information**”) within 3 months after the commencement of this Act.

- (3) If the company does not provide the additional information as required under subsection (2), the Registrar may publish in the Gazette and serve on the company a notice stating that the company will be removed from the Register if that subsection is not complied with.
- (4) If subsection (2) has not been complied with within 60 days after the date of the notice referred to in subsection (3), the Registrar must remove the company from the Register and must publish notice of the removal in the Gazette.
- (5) A term or expression used in this item has the same meaning as in the Companies Act No. 25 of 2012 as amended by this Act.