

REPUBLIC OF VANUATU

BILL FOR THE CREDIT UNIONS (AMENDMENT) ACT NO. OF 2017

Explanatory Note

This Bill amends the Credit Unions Act [CAP 256] to give effect to Vanuatu's FATF Action Plan to meet FATF Recommendations* and to strengthen regulatory controls to protect the financial sector from abuse by criminals. 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 require the Registrar (Vanuatu Financial Services Commissioner) to carry out fit and proper checks when a credit union or League of Credit Unions is first registered (point of entry). The new fit and proper criteria will apply widely to "key persons" of the proposed credit union and League, namely, any officer of the proposed credit union who has been appointed or any officer of the League, and any beneficial owner of such officers. New supporting definitions are 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 fit and proper criteria, the Commissioner must consider whether a "key 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 any other fit and proper criteria prescribed in the regulations.

The source of funds for the capital of the proposed credit union and a League has been added as additional entry point criteria. Existing credit unions and Leagues have 6 months in which to comply with the new entry provisions.

On-going disclosure provisions

After being registered, a credit union and League must continue to meet fit and proper checks on an on-going basis. Both must update the Commissioner within 14 days of any relevant changes occurring, including by-laws or policies regarding funding sources, and the Commissioner can require such information on his or her own initiative. Non-compliance by a credit union or League with the new entry and on-going requirements is a criminal offence, and penalty levels have been increased to meet FATF standards.

Non-compliance is also a new ground for cancelling the registration of a credit union and League together with contravening the Anti-Money Laundering and Counter Terrorism Financing Act No. 13 of 2014 (AML/CTF Act).

Monitoring provisions

The amendments provide the Supervisor (the Reserve Bank) with new powers to collect information and documents relating to a League, and to conduct on-site inspections of the League's business premises (existing provisions already provide such powers in relation to credit unions). 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 and Supervisor 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 and Supervisor 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 foreign tax evasion offences, and investigating or taking action under the Proceeds of Crime Act [CAP 284].

Other changes

The Bill also provides that the Registrar and Supervisor may request information from each other and share information with each other for the purposes of the administration of the 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 and counter-terrorist financing standard.

Minister of Finance and Economic Management



REPUBLIC OF VANUATU

**CREDIT UNIONS (AMENDMENT)
ACT NO. OF 2017**

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REPUBLIC OF VANUATU

BILL FOR THE CREDIT UNIONS (AMENDMENT) ACT NO. OF 2017

An Act to amend the Credit Unions Act [CAP 256] and for related purposes.

Be it enacted by the President and Parliament as follows-

1 Amendments

The Credit Unions Act [CAP 256] 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 CREDIT UNIONS ACT [CAP 256]

1 Section 1

Insert in their correct alphabetical positions

“ “beneficial owner” has the meaning given by section 1A;

“confidential information” means information that is supplied to or obtained by the Registrar or Supervisor in the performance of the Registrar’s or Supervisor’s functions or the exercise of the Registrar’s or Supervisor’s powers 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;

“Court” means the Supreme Court of Vanuatu;

“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;

“key person” has the meaning given by section 1B;

“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 Section 1 (definition of officer)

Repeal the definition, substitute

“ “officer” has the meaning given by section 1C;”

3 After section 1

Insert

“1A. Meaning of beneficial owner

- (1) A “beneficial owner” of an officer is a natural person who ultimately controls the officer.
- (2) For the purpose of subsection (1), **control** means exercising influence, authority or power over the officer, and includes circumstances where the officer is acting as a nominee or proxy on behalf of another person.
- (3) For the avoidance of doubt, if an officer is acting as a nominee or proxy on behalf of a body (whether corporate or unincorporate), the natural person who ultimately controls the officer is the natural person who:
 - (a) has a legal entitlement to 25% or more of the body by way of ownership of shares or otherwise, including ownership exercised through a chain of ownership; or
 - (b) otherwise exercises control, directly or indirectly, over the body.

1B. Meaning of key person

- (1) A “key person” of a credit union is an officer of the credit union or a beneficial owner of the officer.
- (2) A “key person” of a League is an officer of the League or a beneficial owner of the officer.
- (3) A “key person” of a proposed credit union is a person who has been appointed as an officer of the proposed credit union or a beneficial owner of the officer.

1C. Meaning of officer

- (1) An “officer” of a credit union is:

- (a) a member of the board of directors of the credit union; or
 - (b) a member of the supervisory committee or any other committee of the credit union; or
 - (c) a person who occupies the position of managing director of the credit union (howsoever described) or any other employee who exercises senior management functions.
- (2) An “officer” of a League is:
- (a) a member of the board of directors of the League; or
 - (b) a person who exercises senior management functions for the League.
- (3) An “officer” of a proposed credit union is:
- (a) a member of the board of directors of the proposed credit union; or
 - (b) a member of the supervisory committee or any other committee of the proposed credit union; or
 - (c) a person who occupies the position of managing director of the proposed credit union (howsoever described) or any other employee who exercises senior management functions.”

4 After paragraph 8(2)(c)

Insert

- “(d) details of each key person of the proposed credit union;
- (da) details as required by the Registrar of the source of capital of the proposed credit union;”

5 Section 8

Add at the end

- “(3) The Registrar may require an applicant to provide such additional information as the Registrar considers necessary to determine an application.”

6 After paragraph 9(1)(b)

Insert

- “(ba) each key person of the proposed credit union is a fit and proper person; and
- (bb) the source of capital of the proposed credit union is acceptable; and”

7 After subsection 9(1)

Insert

- “(1A) In deciding under paragraph (1)(ba) whether a key person of the proposed credit union is a fit and proper person, the Registrar must have regard to:
 - (a) whether the person has been convicted of an offence or is subject to criminal proceedings; and
 - (b) whether the person is listed on a United Nations Financial Sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under a law of any jurisdiction; and
 - (c) any other fit and proper criteria prescribed by the Regulations.”

8 After section 11

Insert in Division 2 of Part 3

“11A. Credit union to give notice of certain changes to Registrar

- (1) A credit union must give the Registrar written notice of a change:
- (a) to key persons of the credit union; or
 - (b) in the circumstances of a key person that may affect whether he or she meets fit and proper criteria; or
 - (c) to the by-laws or policies regarding the source of capital of the credit union,
- within 14 days after the change occurs.
- (2) If a credit union fails to comply with subsection (1), the credit union commits an offence punishable upon conviction by a fine not exceeding VT 125 million.
- (3) If a credit union fails to comply with subsection (1), the Registrar may cancel the registration of the credit union.
- (4) If a credit union does provide the information as required under subsection (1), but the Registrar is not satisfied:
- (a) that the key persons are fit and proper persons having regard to the matters referred to in subsection 9(1A); or
 - (b) as to the by-laws or policies regarding the source of capital of the credit union,
- the Registrar may cancel the registration of the credit union.
- (5) Subsections 52(2) to (8) apply to a cancellation under subsection (3) or (4).”

9 After section 34

Insert

“34A. Supervisor may require information and documents relating to credit union

- (1) Subject to subsection (2), the Supervisor may, by notice in writing to a credit union, require the credit union to provide the Supervisor with information or documents, or both, specified in the notice within the period set out in the notice.

- (2) The information or documents must relate to:
- (a) the credit union's integrity, competence, financial standing or organisation; or
 - (b) the credit union's compliance with this Act or the Regulations.
- (3) If the credit union:
- (a) refuses or fails to give the Supervisor the information or documents required by the Supervisor; or
 - (b) knowingly or recklessly gives the Supervisor information or documents that are false or misleading,
- the credit union commits an offence punishable upon conviction by a fine not exceeding VT 75 million."

10 Section 37

Delete "by a fine not exceeding VT 50,000 or imprisonment for not more than one year, or both.", substitute "by:

- (a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
- (b) in any other case - a fine not exceeding VT 75 million."

11 After paragraph 52(1)(b)

Insert

- "(ba) the credit union 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
- (bb) a key person does not meet fit and proper criteria as required under this Act and the Regulations; or
- (bc) the by-laws or policies regarding the source of capital of the credit union are not acceptable; or"

12 Subsection 52(9)

Repeal the subsection.

13 Section 53

Repeal the section.

14 After paragraph 57C(3)(b)

Insert

- “(ba) details of each key person of the League; and
- (bb) details as required by the Registrar of the source of capital of the League; and”

15 Section 57C

Add at the end

- “(4) The Registrar may require an applicant to provide such additional information as the Registrar considers necessary to determine an application.”

16 After paragraph 57D(3)(b)

Insert

- “(ba) each key person of the League is a fit and proper person; and
- (bb) the source of capital of the League is acceptable; and”

17 After subsection 57D(3)

Insert

- “(3A) In deciding under paragraph (3)(ba) whether a key person is a fit and proper person, the Registrar must have regard to:
 - (a) whether the person has been convicted of an offence or is subject to any criminal proceedings; and
 - (b) whether the person is listed on a United Nations Financial Sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanction list under a law of any jurisdiction; and
 - (c) any other fit and proper criteria prescribed by the Regulations.”

18 At the end of Part 10

Add

“Division 3—Other Matters

65. Dissolution

- (1) The Registrar may cancel the registration of a League if the Registrar is satisfied that:
- (a) the number of members of the League is less than 5 credit unions;
or
 - (b) the registration of the League was obtained by fraud; or
 - (c) the key persons of the League do not meet fit and proper criteria as required under this Act and the Regulations; or
 - (d) the by-laws or policies regarding the source of capital of the League are not acceptable; or
 - (e) the League has contravened any provisions of this Act, the Regulations or its by-laws.
- (2) Subsections 52(2) to (8) apply to a cancellation of registration of a League as if a reference in those subsections to a credit union were a reference to a League.

66. League to give notice of certain changes to Registrar

- (1) A League must give the Registrar written notice of a change:
- (a) in a key person of the League; or
 - (b) to the circumstances of a key person that may affect whether he or she meets fit and proper criteria; or
 - (c) to the by-laws or policies regarding the source of capital of the League,
- within 14 days after the change occurs.
- (2) If a League fails to comply with subsection (1), the League commits an offence punishable upon conviction by a fine not exceeding VT 125 million.

- (3) If a League fails to comply with subsection (1), the Registrar may cancel the registration of the League.
- (4) If a League does provide the information as required under subsection (1), but the Registrar is not satisfied:
- (a) that the key persons are fit and proper persons having regard to the matters referred to in subsection 57D(3A); or
 - (b) of the by-laws or policies regarding the source of capital of the League,
- the Registrar may cancel the registration of the League.
- (5) Subsections 52(2) to (8) apply to a cancellation of registration of a League as if a reference in those subsections to a credit union were a reference to a League.

67. Supervisor may require information and documents relating to League

- (1) Subject to subsection (2), the Supervisor may, by notice in writing to a League, require the League to provide the Supervisor with information or documents, or both, specified in the notice within the period set out in the notice.
- (2) The information or documents must relate to:
- (a) the League's integrity, competence, financial standing or organisation; or
 - (b) the League's compliance with this Act or the Regulations.
- (3) If the League:
- (a) refuses or fails to give the Supervisor the information or documents required by the Supervisor; or
 - (b) knowingly or recklessly gives the Supervisor information or documents that are false or misleading,
- the League commits an offence punishable upon conviction by a fine not exceeding VT 75 million.

68. On-site inspections

- (1) The Supervisor may conduct on-site inspections at the business premises occupied by a League at any time during normal business hours.
- (2) The Supervisor may for the purposes of subsection (1):
 - (a) enter the business premises of the League during ordinary business hours; and
 - (b) inspect and take copies of any books, accounts and documents of the League that relate to:
 - (i) the League's integrity, competence, financial standing or organisation; or
 - (ii) the League's compliance with this Act or the Regulations.
- (3) The League must cooperate fully with the Supervisor by:
 - (a) giving the Supervisor all the information, and making available the documents the Supervisor requires; and
 - (b) if necessary, giving the Supervisor appropriate workspace and reasonable access to office services, during the inspection.
- (4) If a person intentionally obstructs the Supervisor in the exercise of the Supervisor's powers under this section, the person commits an offence punishable upon conviction by:
 - (a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
 - (b) in any other case - a fine not exceeding VT 75 million.
- (5) In this section, a reference to the Supervisor includes a person appointed by the Supervisor in writing as an authorised officer for the purposes of this Part.
- (6) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.

68A. Power to remove a director of a League

- (1) The Supervisor may in writing direct a League to remove a person who is a member of the board of directors of the League if the Supervisor is satisfied that the person:
 - (a) is listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under a law of any jurisdiction; or
 - (b) has been convicted of an offence or is subject to any criminal proceedings; or
 - (c) does not meet any other fit and proper criteria prescribed by the Regulations.
- (2) Before issuing a direction, the Supervisor must give to the League a written notice requiring the League and the director proposed to be removed to make submissions to the Supervisor on the matter within a reasonable period specified in the notice.
- (3) The Supervisor must review any submission received and decide whether or not to issue the direction.
- (4) A direction takes effect on the day specified in the direction, which must be at least 7 days after it is made.
- (5) If the Supervisor directs a League to remove a director, the Supervisor must give a copy of the direction to the director concerned.
- (6) If a League fails to comply with a direction, the League commits an offence punishable upon conviction by a fine not exceeding VT 125 million.

68B. Appointment of authorised officers

The Supervisor may in writing appoint persons to be authorised officers for the purposes of this Part.”

19 Subsection 69(1)

Delete “by a fine not exceeding VT 75,000 or imprisonment for not more than three years, or both”, substitute “by the penalty set out in subsection (1A)”

20 After subsection 69(1)

Insert

“(1A) The penalty is:

- (a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
- (b) in any other case - a fine not exceeding VT 75 million.”

21 Subsection 70(1)

Delete “by a fine not exceeding VT 50,000 or imprisonment for not more than one year, or both.”, substitute “by:

- (a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
- (b) in any other case - a fine not exceeding VT 75 million.”

22 Subsection 70(2)

Delete “by a fine not exceeding VT 50,000 or imprisonment for not more than 1 year, or both.”, substitute “by:

- (a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or
- (b) in any other case - a fine not exceeding VT 75 million.”

23 After section 70

Insert

“70A. Registrar or Supervisor may request information and documents

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

70B. Disclosure of confidential information

- (1) The Registrar or Supervisor may disclose confidential information if the disclosure:
 - (a) is required or authorised by the Court; or
 - (b) is made for the purpose of performing a function or exercising a power under this Act; or
 - (c) is made to the Financial Intelligence Unit for the purpose of performing a function or exercising a power under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or
 - (d) is made to a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purpose of performing a function or exercising a power under that Act; or
 - (e) 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
 - (f) is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or
 - (g) is made to a domestic regulatory authority for the purpose of carrying out its regulatory functions; or
 - (h) is made to the Sanctions Secretariat for the purpose of performing a function or exercising a power under the United Nations Financial Sanctions Act No. 6 of 2017; or
 - (i) is made to a foreign government agency in accordance with section 70C.

- (2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:
- (a) in the case of a natural person - a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both; or
 - (b) in any other case - a fine not exceeding VT 75 million.

70C. Disclosure to foreign government agency

The Registrar or Supervisor may disclose confidential information about a credit union or a League to a foreign government agency if:

- (a) the Registrar or Supervisor 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 or Supervisor 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.

70D. Registrar and Supervisor may share and request information

To avoid doubt, the Registrar and Supervisor may request information from each other and share information with each other for the purposes of the administration of this Act.

70E. Indemnity from liability

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

24 Transitional provision for certain credit union information

- (1) This provision applies to a credit union if, immediately before the commencement of this Act, the credit union was registered under the Credit Unions Act [CAP 256].
- (2) The credit union must provide the Registrar with the information required under paragraphs 8(2)(d) and (da) of the Credit Unions Act [CAP 256] as amended by this Act (“**the additional information**”) within 6 months after the commencement of this Act.
- (3) If the credit union does not provide the additional information as required under subsection (2), the Registrar may cancel the registration of the credit union.
- (4) If the credit union does provide the additional information as required under subsection (2), but the Registrar is not satisfied with the additional information having regard to the matters set out in paragraphs 9(1)(ba) and (bb) of the Credit Unions Act [CAP 256] as amended by this Act, the Registrar may cancel the registration of the credit union.
- (5) Subsections 52(2) to (8) of the Credit Unions Act [CAP 256] as amended by this Act apply to a cancellation of registration of a credit union.
- (6) A term or expression used in this item has the same meaning as in the Credit Unions Act [CAP 256] as amended by this Act.

25 Transitional provision for certain League information

- (1) This provision applies to a League if, immediately before the commencement of this Act, the League was registered under the Credit Unions Act [CAP 256].

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- (2) The League must provide the Registrar with the information required under paragraphs 57C(3)(ba) and (bb) of the Credit Unions Act [CAP 256] as amended by this Act (“the additional information”) within 6 months after the commencement of this Act.
- (3) If the League does not provide the additional information as required under subsection (2), the Registrar may cancel the registration of the League.
- (4) If the League does provide the additional information as required under subsection (2), but the Registrar is not satisfied with the additional information having regard to the matters set out in paragraphs 57D(3)(ba) and (bb) of the Credit Unions Act [CAP 256] as amended by this Act, the Registrar may cancel the registration of the League.
- (5) Subsections 52(2) to (8) of the Credit Unions Act [CAP 256] as amended by this Act apply to a cancellation of registration of a League as if a reference in those subsections to a credit union were a reference to a League.
- (6) A term or expression used in this item has the same meaning as in the Credit Unions Act [CAP 256] as amended by this Act.