

# REPUBLIC OF VANUATU

## BILL FOR THE E-BUSINESS (AMENDMENT) ACT NO. OF 2017

### Explanatory Note

This Bill amends the E-Business Act [CAP 264] 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 Commission to carry out fit and proper checks when a company conducting an internet-based e-currency business is first licensed (point of entry). The new fit and proper criteria will apply widely to "key persons" of an applicant for a licence, namely, the applicant's owners, controllers, beneficial owners, directors and managers. 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 Commission 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 an applicant has been added as additional entry point criteria. Existing licensees have 6 months in which to comply with the new entry provisions.

#### **On-going disclosure provisions**

Licensees must continue to meet fit and proper checks on an on-going basis. Licence holders must update the Commission within 14 days of any relevant changes occurring, including funding sources, and the Commission can require information from the licensees on his or her own initiative. Non-compliance by licensees 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 suspension or revocation of licences 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 Commission with new powers to collect information and documents relating to the licensee and to conduct on-site inspections of the licensee'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 Commission 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 Commission 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 creates a new Part 3A which contains a streamlined application process for a licence to conduct an internet-based e-currency business. It replaces the Minister with the Commission as the decision maker for issuing licences.

\*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  
E-BUSINESS (AMENDMENT)  
ACT NO. OF 2017**

**Arrangement of Sections**

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# REPUBLIC OF VANUATU

## **BILL FOR THE E-BUSINESS (AMENDMENT) ACT NO. OF 2017**

An Act to amend the E-Business Act [CAP 264], and for related purposes.

Be it enacted by the President and Parliament as follows-

### **1 Amendments**

The E-Business Act [CAP 264] 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 E-BUSINESS ACT [CAP 264]

#### 1 Whole of the Act (except the definition of Minister in section 1 and section 19)

Delete “Minister” (wherever occurring), substitute “Commission”

#### 2 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 Commission in the performance of its functions or the exercise of its 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;

“controller” of an applicant for a licence or a licensee means a person who exercises influence, authority or power over decisions about the applicant’s or licensee’s financial or operating policies, including as a result of, or by means of, a trust, agreement, arrangement, understanding or practice, and “control” has a corresponding meaning;

“Court” means the Supreme Court of Vanuatu;

“director” of an applicant for a licence or licensee means:

- (a) any person occupying the position of a director of the applicant or licensee, regardless of the name given to the position; or
- (b) any person held out by the applicant or licensee to be a director;

“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” of an applicant for a licence or a licensee means a beneficial owner, owner, controller, director or manager of the applicant or licensee;

“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;

“licence” means a licence issued under section 14B;

“licensee” means the holder of a licence;

“manager” of an applicant for a licence or a licensee means:

- (a) an individual who occupies the position of the chief executive officer (however described) of the applicant or licensee; or
- (b) an individual who under the immediate authority of the chief executive officer or a director of the applicant or licensee, exercises the management functions of the applicant or licensee;

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

“regulatory law” means a law that provides for:

- (a) the grant or issue of licences, permits, certificates, registrations or other equivalent permissions; and
- (b) other regulatory functions related to a matter referred to in paragraph (a), including monitoring or enforcing compliance with standards or obligations prescribed by that law;

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

**3 Section 1 (definition of Financial Transactions Reporting Act)**

Repeal the definition.

**4 After section 1**

Insert

**“1A. Meaning of beneficial owner**

- (1) A beneficial owner of an applicant for a licence or a licensee is a natural person who ultimately owns or ultimately controls the applicant or licensee.
- (2) For the purpose of the subsection (1), ultimately owns and ultimately controls include circumstances where ownership or control is exercised:
  - (a) through a chain of ownership; or
  - (b) by a means of indirect control that may not have legal or equitable force, or be based on legal or equitable rights.”

**5 After Part 3**

Insert

**“PART 3A—LICENCE FOR INTERNET-BASED E-CURRENCY BUSINESS**

**14A. Application for licence to conduct internet-based e-currency business**

- (1) A company registered under the Companies Act may apply to the Commission for a licence to conduct an internet-based e-currency business.
- (2) An application for a licence must:
  - (a) be made to the Commission in the prescribed form; and
  - (b) include the following:
    - (i) details of each key person of the applicant;



- (ii) details as required by the Commission on whether a beneficial owner of the applicant is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction;
    - (iii) details of the source of funds used to pay the capital of the applicant; and
  - (c) be accompanied by the prescribed fee.
- (3) The Commission may require an applicant to provide such additional information as the Commission considers necessary to determine an application.
- 14B. Issue of licence**
- (1) The Commission may issue a licence if:
- (a) the application for the licence complies with section 14A; and
  - (b) the Commission is satisfied that the applicant possesses the required expertise and skills to conduct an internet-based e-currency business; and
  - (c) the Commission is:
    - (i) satisfied that each key person of the applicant is a fit and proper person; and
    - (ii) satisfied of the source of funds used to pay the capital of the applicant.
- (2) In deciding whether a key person of the applicant is a fit and proper person, the Commission 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 sanctions list under the law of any jurisdiction; and

- (c) any other fit and proper criteria prescribed by the Regulations.
- (3) Upon issuing a licence, the Commission is to appoint the licensee as an e-services provider.
- (4) The appointment made under subsection (3) must be published in the Gazette.
- (5) The terms and conditions and the period of appointment are to be set out in a licensing agreement between the Commission and the e-services provider.
- (6) An e-services provider is:
  - (a) not deemed to be a financial institution as a consequence of it providing e-currency services; and
  - (b) not deemed to be carrying on international banking business under the International Banking Act [CAP 280] as a consequence of it providing e-currency services; and
  - (c) bound by the the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; and
  - (d) bound by the Code.
- (7) An e-services provider must not carry on any business activities other than the e-currency services and such other activities that are incidental to or in furtherance of its e-currency services.
- (8) Subject to subsection (9), the e-services provider may establish and maintain such bank accounts in such jurisdictions as it determines necessary for it to provide e-currency services.
- (9) An e-services provider must not:
  - (a) establish and maintain a bank account with any financial institution that does not have an effective anti- money laundering and counter-terrorism financing policy; or

- (b) establish and maintain any bank account in a jurisdiction that does not have legislation or regulations equivalent to the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014.

**14C. Licensee to give notice of certain changes to Commission**

- (1) A licensee must give the Commission written notice of a change in:
  - (a) a key person of the licensee; or
  - (b) the circumstances of a key person of the licensee that may affect whether he or she meets fit and proper criteria; or
  - (c) the source of funds used to pay the capital of the licensee,within 14 days after the change occurs.
- (2) If a licensee fails to comply with subsection (1), the licensee commits an offence punishable upon conviction by a fine not exceeding VT 125 million.
- (3) If a licensee fails to comply with subsection (1), the Commission may by notice in writing to the licensee suspend or revoke the licensee's licence.
- (4) If a licensee does provide the information as required under subsection (1), but the Commission is not satisfied:
  - (a) that the key persons of the licensee are fit and proper persons to fulfil the responsibilities of their positions having regard to the matters referred to in subsection 14B(2); or
  - (b) as to the source of funds used to pay the capital of the licensee,the Commission may by notice in writing to the licensee suspend or revoke the licensee's licence.
- (5) Before suspending or revoking a licence under subsection (3) or (4), the Commission must give written notice to the licensee that it proposes to suspend or revoke the licence and the reasons for the revocation.
- (6) The licensee may within 14 days after receiving a notice under subsection (5) give the Commission written reasons why the licence should not be suspended or revoked.

- (7) The Commission may suspend or revoke a licensee's licence if:
- (a) the licensee does not give the Commission reasons under subsection (6); or
  - (b) having taken into account the licensee's reasons, the Commission is of the opinion that the licensee has failed to show good cause why the licence should not be suspended or revoked.

## **PART 3B—SUPERVISION**

### **14D. Commission may require information and documents relating to licensee**

- (1) Subject to subsection (2), the Commission may, by notice in writing to a licensee, require the licensee to provide the Commission 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 licensee's integrity, competence, financial standing or organisation; or
  - (b) the licensee's compliance with this Act, the Regulations or the Code.
- (3) If the licensee:
  - (a) refuses or fails to give the Commission the information or documents required by the Commission; or
  - (b) knowingly or recklessly gives the Commission information or documents that are false or misleading,

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

### **14E. On-site inspections**

- (1) The Commission may conduct on-site inspections at the business premises occupied by a licensee at any time during normal business hours.
- (2) The Commission may for the purposes of subsection (1):
  - (a) enter the business premises of the licensee during ordinary business hours; and
  - (b) inspect and take copies of any books, accounts and documents of the licensee that relate to:

- (i) the licensee's integrity, competence, financial standing or organisation; or
  - (ii) the licensee's compliance with this Act, the Regulations or the Code.
- (3) The licensee must cooperate fully with the Commission by:
  - (a) giving the Commission all the information, and making available the documents it requires; and
  - (b) if necessary, giving the Commission appropriate workspace and reasonable access to office services, during the inspection.
- (4) If a person intentionally obstructs the Commission in the exercise of the Commission'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 the case of a body corporate - a fine not exceeding VT 75 million.
- (5) In this section, a reference to the Commission includes a person appointed by the Commission in writing as an authorised officer for the purposes of this section.
- (6) An authorised officer must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.

**14F. Commission may request information and documents**

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

**14G. Suspension or revocation of licence**

- (1) The Commission may by notice in writing to a licensee suspend or revoke the licensee’s licence if the Commission:
  - (a) has reasonable grounds to believe that:
    - (i) the licensee has contravened a provision of the Anti–Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and that contravention has resulted in the use of an enforcement measure under Part 10AA of that Act; or
    - (ii) a key person does not meet the fit and proper requirements under this Act or the Regulations; or
    - (iii) the licensee has committed an offence against any provision of this Act; or
    - (iv) the licensee has contravened the Code; or
  - (b) is not satisfied of the source of funds used to pay the capital of the licensee.
- (2) Before suspending or revoking a licence, the Commission must give written notice to the licensee that the Commission proposes to suspend or revoke the licence and the reasons for the suspension or revocation.
- (3) The licensee may within 14 days after receiving a notice under subsection (2) give the Commission written reasons why the licence should not be suspended or revoked.
- (4) The Commission may suspend or revoke a licensee’s licence if:
  - (a) the licensee does not give the Commission reasons under subsection (3); or

- (b) having taken in to account the reasons of the licensee, the Commission is of the opinion that the licensee has failed to show good cause why the licence should not be suspended or revoked.

### **PART 3C—DISCLOSURE OF INFORMATION**

#### **14H. Disclosure of confidential information**

- (1) The Commission 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 14I.



- (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; and
  - (b) for any other person - a fine not exceeding VT 75 million.

**14I. Disclosure to foreign government agency**

The Commission may disclose confidential information to a foreign government agency if:

- (a) the Commission 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 Commission 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."

**6 Section 18**

Repeal the section, substitute

**“18. 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.”

**7 Transitional provision for certain licensee information**

- (1) This provision applies to a licensee if, immediately before the commencement of this Act, the licensee’s licence was in force under the ; E-Business Act [CAP 264].
- (2) The licensee must provide the Commission with the information required under subparagraphs 14A(2)(b)(i), (ii) and (iii) of the E-Business Act [CAP 264] as amended by this Act (“the additional information”) within 6 months after the commencement of this Act.
- (3) If the licensee does not provide the additional information as required under subsection (2), the Commission may by notice in writing to the licensee revoke the licensee’s licence.
- (4) If the licensee does provide the additional information as required under subsection (2), but the Commission is not satisfied with the additional information having regard to the matters set out in subparagraphs 14B(1)(c)(i) and (ii) of the E-Business Act [CAP 264] as amended by this Act, the Commission may by notice in writing to the licensee revoke the licensee’s licence.
- (5) Before revoking a licence under subsection (3) or (4), the Commission must give written notice to the licensee that it proposes to revoke the licence and the reasons for the revocation.
- (6) The licensee may within 14 days after receiving a notice under subsection (5) give the Commission written reasons why the licence should not be revoked.
- (7) The Commission may revoke a licensee’s licence:
  - (a) if the licensee does not give the Commission reasons under subsection (6); or
  - (b) having taken in to account the licensee’s reasons, the Commission is of the opinion that the licensee has failed to show good cause why the licence should not be revoked.

SCHEDULE  
AMENDMENTS OF THE E-BUSINESS ACT [CAP 264]

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- (8) A term or expression used in this item has the same meaning as in the E-Business Act [CAP 264] as amended by this Act.