



**REPUBLIC OF VANUATU**

**ANTI-MONEY LAUNDERING AND COUNTER-  
TERRORISM FINANCING (AMENDMENT)  
ACT NO. 2 OF 2015**

**Arrangement of Sections**

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# REPUBLIC OF VANUATU

**Assent:** 04/08/2015  
**Commencement:** 23/10/2015

## **ANTI-MONEY LAUNDERING AND COUNTER- TERRORISM FINANCING (AMENDMENT) ACT NO. 2 OF 2015**

An Act to amend the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014.

Be it enacted by the President and Parliament as follows-

### **1 Amendment**

The Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 is amended as set out in the Schedule.

### **2 Commencement**

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

## SCHEDULE

### AMENDMENTS OF THE ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT NO. 13 OF 2014

#### 1 Section 1 (Interpretation)

Insert in its correct alphabetical position:

“**beneficiary** has the same meaning as beneficial owner;”

#### 2 Section 1 (definition of “serious offence”)

Repeal the definition, substitute

“**serious offence** means:

- (a) an offence against a law of Vanuatu for which the penalty is a fine not less than VT1 million or imprisonment for a term not less than 12 months; or
- (b) 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 penalty is imprisonment for a term not less than 12 months; or
- (c) an offence against:
  - (i) a law of Vanuatu if the relevant act or omission generates proceeds, property or benefit of VT3 million or more, or its equivalent in a foreign currency; or
  - (ii) a law of another country if the relevant act or omission generates proceeds, property or benefit of VT3 million or more, or its equivalent in a foreign currency.”

#### 3 Paragraph 3(2)(a)

After “establishment”, insert “and maintenance”

#### 4 Paragraph 3(2)(b)

After “opening”, insert “and maintenance”

**5 Paragraph 3(2)(e)**

- (a) Delete “or” (first occurring), substitute “,”;
- (b) After “creation”, insert “or maintenance”

**6 Paragraph 5(1)(q)**

Delete “office bearers”, substitute “officers and beneficial owners”

**7 Paragraph 5(1)(s)**

Delete “.”, substitute “; and”

**8 After paragraph 5(1)(s)**

Insert

“(t) to establish and maintain the National Risk Assessment Framework.”

**9 Subsection 6(1)**

Delete “, with the written approval of the Minister,”

**10 Subsection 6(2)**

Delete “Minister may only give approval under subsection (1)”, substitute  
“Director may only enter into a written agreement or arrangement,”

**11 Section 10**

Repeal the section, substitute

**“10 Removal of entries from the register of reporting entities**

- (1) The Director may, upon the request of a reporting entity, remove the name and details of the reporting entity from the register.
- (2) In addition to section 47 or 48, the Director may:
  - (a) remove or suspend the inclusion of, the name of a reporting entity from the register; or
  - (b) temporarily remove the details of a reporting entity from the register until the reporting entity complies with the provision of this Act.
- (3) A reporting entity may appeal the decision of the Director made under subsection (2), to the Supreme Court.

- (4) An appeal must be made within a period of 28 days after the date of the notice of the Director's decision.
- (5) The Supreme Court may:
- (a) set aside the decision of the Director and if the Supreme Court considers it appropriate to do so, refer the matter back to the Director with any directions the Supreme Court thinks appropriate;  
or
  - (b) confirm the decision, in whole or in part.”

**12 Paragraph 12(1)(d)**

Delete “an occasional transaction”, substitute “occasional transactions”

**13 Subsection 13(1)**

Delete “circumstance”, substitute “situation”

**14 Paragraph 15(1)(b)**

Delete “open an account”, substitute “establish a business relationship”

**15 Paragraph 18(1)(b)**

After “that”, insert “verifiable”

**16 Paragraph 19(4)(c)**

Delete “subsection 18(2)”, substitute “subsections 18(2), 36(2) and (3) and 37(1)”

**17 Subsection 19(5)**

- (a) Delete “or”, substitute “,”;
- (b) After “enquiry”, insert “or the finding”

**18 Paragraphs 19(8)(a) and (b)**

- (a) Delete “CFT”, substitute “CTF”;
- (b) After “Manual”, insert “and AML and CTF group-wide procedure manual”

**19 After subsection 21(1)**

Insert

“(1A) A person other than a reporting entity may make a report of the activity or attempted activity to the Director within 1 month if the person suspects or has reasonable grounds to suspect that an activity or attempted activity involves proceeds of crime or is related to terrorist financing.”

**20 Subsection 22(1)**

Delete “involving proceeds of crime or is related to terrorist financing”

**21 Section 23(heading)**

After “property”, insert “and proliferation financing”

**22 Subsection 23(1)**

After “organisations”, insert “ or proliferation financing”

**23 After subsection 23(2)**

Insert

“(2A) For the purpose of this section:

**proliferation financing** means the act of providing funds or financial service, which are used or will be used, in whole or in part:

- (a) for the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling of weapons; or
- (b) for the use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual-use good used for non-legitimate purposes),

that contravenes any laws of Vanuatu.”

**24 Subsection 31(1)**

After “Director”, insert “if requested in writing by the Director”

**25 Subsection 31(3)**

After “(1)”, insert “or (2)”

**26 Paragraph 33(2)(g)**

After “an”, insert “independent”

**27 Paragraph 33(2)(h)**

Delete “.”, substitute “; and”

**28 After Paragraph 33(2)(h)**

Insert

“(i) on the staff screening, recruitment and retention program.”

**29 After section 33**

Insert

**“33A Group-wide AML and CTF Program**

- (1) This section applies to a reporting entity that has branches or majority-owned subsidiaries or agents anywhere in Vanuatu or outside Vanuatu.
- (2) A reporting entity and any of its branch, subsidiary or agent must not open accounts, provide services or establish business relationships with a customer unless the reporting entity has established and maintained an adequate AML and CTF group-wide procedure manual.
- (3) The AML and CTF group-wide procedure manual must contain group-wide policies, processes and procedures as required under subsection 33(2).
- (4) If a branch, subsidiary or agent operates in a foreign country, the branch, subsidiary or agent must apply AML and CTF group-wide procedure manual.
- (5) A reporting entity must give a copy of its AML and CTF group-wide procedure manual to the Director upon request made to it in writing by the Director.
- (6) A reporting entity who fails without reasonable excuse to comply with subsection (2) or (4) commits an offence and is liable on conviction:
  - (a) in the case of an individual - to a fine not exceeding VT2.5 million or imprisonment for a term not exceeding 2 years, or both; or
  - (b) in the case of a body corporate - to a fine not exceeding VT10 million.”

**30 Subsection 34(2)**

Delete “an existing member of staff”, substitute “a senior officer of the reporting entity”

**31 Paragraph 36(2)(d)**

- (a) After “assess”, insert “and clearly understand”;
- (b) After “controls”, insert “and responsibilities”

**32 Paragraph 36(2)(f)**

Delete “.”, substitute “; and”

**33 After paragraph 36(2)(f)**

Insert

- “(g) ensure that the person does not permit its account to be used by shell banks.”

**34 After subsection 36(3)**

Insert

- “(3A) A reporting entity must not enter into or continue cross border correspondent banking relationship with a shell bank.”

**35 Subsection 36(4)**

After “(2)”, insert “, (3) or (3A)”

**36 Section 37(heading)**

Repeal the heading, substitute “Currency Transfers”

**37 Subsection 37(1)**

After “information” (first occurring), insert “and beneficiary information”

**38 After subsection 37(4)**

Insert

“(4A) For the purpose of this section:

**accurate originator information** includes:

- (a) the name of the originator; and
- (b) the originator account number where such an account is used to process the transaction, or in the absence of an account, a unique transaction reference number; and



- (c) the originator's address, or national identity card number, or customer identification card number or passport number, or date and place of birth.

**beneficiary information** means:

- (a) the name of the beneficiary; and
- (b) the beneficiary account number where such an account is used to process the transaction, or in the absence of an account, a unique transaction reference number."

**39 Paragraph 38(1)(a)**

After "reporting entity" (second occurring), insert "or a person"

**40 After section 40**

Insert

**"40A Protection of person and information in suspicious transaction and other reports**

- (1) Subject to subsection (2), a person must not disclose any information that identifies or is likely to identify any person who has:
  - (a) handled a transaction in respect of which a suspicious transaction report or suspicious activity report or other report or information made under this Act; or
  - (b) prepared a suspicious report or suspicious activity report or other report or information under this Act; or
  - (c) given a suspicious transaction report or a suspicious activity report or other report under this Act or information to the Director.
- (2) A person may disclose any information that identifies or is likely to identify any person referred to in subsection (1) for the purposes of:
  - (a) the detection, investigation or prosecution of a person for money laundering offence, a terrorist financing offence or any other serious offence; or

- (b) the enforcement of this Act, the Proceeds of Crime Act [CAP 284], the Counter Terrorism and Transnational Organised Crime Act [CAP 313] or any other prescribed Act.
- (3) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, a proceeding before a Court if the Court is satisfied that the disclosure of the information is necessary in the interest of justice.
- (4) A person who fails without reasonable excuse to comply with subsection (1), commits an offence and is punishable on conviction:
  - (a) in the case of an individual - to a fine not exceeding VT 25 million or imprisonment for a term not exceeding 5 years, or both; or
  - (b) in the case of a body corporate - to a fine not exceeding VT 100 million.

**40B Protection from liability**

A person is not liable to any civil or criminal action or other proceeding or damages for or in respect of an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance of a power, function or duty conferred on him or her by this Act.”

**41 Section 48(heading)**

Delete “other officer”, substitute “any other person”

**42 Subsection 48(1)**

Delete “other officer”, substitute “any other person”

**43 After section 50**

Insert

**“50A Penalty Notice**

- (1) The Director may serve a penalty notice if it appears to the Director that a reporting entity or a person has committed an offence under any provision of this Act or the Regulations.
- (2) A penalty notice is a notice to the effect that, if the reporting entity or person served does not wish to have the matter determined by the Court,

the reporting entity or person may pay within a time and amount of penalty prescribed by the regulations for the offence if dealt with under this section.

- (3) Payments made under this section are to be made to the Ministry of Finance and Economic Management which is then to be transferred into trust account to be designated by the Director General of the Public Finance and Economic Management under the Public Finance and Economic Management Act [CAP 244].
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) 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.
- (7) The regulations may:
  - (a) specify the offence by referring to the provision creating the offence under this Act; and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence must not exceed the amount of penalty in this Act.
- (9) 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.”

#### **44 After Part 10**

Insert

**“PART 10A ESTABLISHMENT OF NATIONAL COMMITTEE**

- (1) The National Committee of the AML and CTF is established.
- (2) The National Committee of the AML and CTF consists of the:
  - (a) Director General of the Prime Minister’s Office, as Chairperson; and
  - (b) Governor of the Reserve Bank of Vanuatu; and
  - (c) Director General of the Ministry of Finance and Economic Management; and
  - (d) Commissioner of Police; and
  - (e) Public Prosecutor; and
  - (f) Director General of the Ministry of Justice and Community Services; and
  - (g) Attorney General; and
  - (h) Director of Financial Intelligence Unit.
- (3) The National Committee may request a person to attend any of its meetings to provide advice or any information to the National Committee.
- (4) The functions of the National Committee are:
  - (a) to advise the Director and the Minister on any matters relating to the detection and prevention of money laundering or the financing of terrorism; and
  - (b) to make recommendations to the Director and the Minister on any matters relating to the detection and prevention of money laundering and the financing of terrorism; and

- (c) to assist the Director and the Minister in the formulation of policies or strategies relating to the detection and prevention of money laundering and the financing of terrorism; and
  - (d) to assist the Director in coordination between various Government departments, agencies and statutory bodies.
- (5) A member of the National Committee must not disclose any information or matter which has been obtained by him or her in the performance of his or her duties or the exercise of his or her functions under this Act, unless required to do so by the Court.
- (6) In addition to subsection (5), a person who has attended a meeting of the National Committee must not disclose any information or matter obtained from such meeting.”

**45 After section 54**

Insert

**“54A Existing reporting entity**

- (1) This section applies to a reporting entity that was engaged, educated, guided, examined and directed by the Unit immediately before the commencement of this Act.
- (2) The reporting entity must, within 12 months on the commencement of this Act:
  - (a) apply to the Director in accordance with subsection 9(3) for a registration under this Act; or
  - (b) cease to carry on the business under subsection 9(2).
- (3) The Director must make a decision on the application for registration, within 1 month after receiving the application from the reporting entity.

**54B Existing Customer**

- (1) This section applies to customers that have established business relationship, engaged the service or opened an account with a reporting entity immediately before the commencement of this Act.

- (2) The reporting entity must, within 12 months on the commencement of this Act:
- (a) conduct the necessary identification, verification and on-going due diligence process and update its record on the customer as required under this Act; or
  - (b) terminate the relationship, cease its service or close the account of the customer.

**54C AML AND CTF powers**

- (1) Any reference in any Act or any document made before the commencement of this Act is taken to be a reference to this Act, on and after the commencement of this Act.
- (2) Any action taken before the commencement of this Act is to continue and have effect under this Act, on and after the commencement of this Act, until such time it is altered, amended or cancelled by this Act.”