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REPUBLIC OF VANUATU

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING

ACT NO. 13 OF 2014

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As Amended

Act 13 of 2014

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Act 2 of 2015

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REPUBLIC OF VANUATU

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING

An Act to provide for the establishment of the Financial Intelligence Unit and to regulate reporting entities to give effect to Anti-Money Laundering and Counter-Terrorism Financing measures, and for related purposes.

BE IT ENACTED by the President and Parliament as follows-

**PART 1
PRELIMINARY**

1 Interpretation

In this Act, unless the contrary intention appears:

account means any facility or arrangement in which a reporting entity does any of the following:

- (a) accepts deposits of funds;
- (b) allows withdrawals of funds;
- (c) pays negotiable or transferable instruments or cheques or payment orders drawn on behalf of any person, or collects negotiable or transferable instruments or cheques or payment orders on behalf of a person,

and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit or held in a cash management trust;

activity means a series of transactions or an act or omission of an act;

assisting entity means:

- (a) a law enforcement agency or supervisory body outside Vanuatu or any other institution or agency of the relevant foreign state; or
- (b) an international organization established by the governments of foreign states; or
- (c) a body outside Vanuatu with functions similar to the Unit; or
- (d) a law enforcement agency or supervisory body within Vanuatu;

AML means Anti-Money Laundering;

beneficial owner means:

- (a) a natural person who ultimately owns or controls the right to or benefits from a fund; or
- (b) a person who exercises ultimate effective control over a legal person or legal arrangement;

"beneficiary" has the same meaning as **beneficial owner**;

business relationship means a business, professional or commercial relationship which is:

- (a) connected with the professional activities of a reporting entity; and
- (b) expected at the time when the contact is established, to have an element of duration;

cash means any coin or paper money that is designated as legal tender in the country of issue;

CTF means Counter-Terrorism Financing;

currency includes:

- (a) the cash of Vanuatu or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue; or
- (b) monetary instruments that may be exchanged for money, including cheques, travellers cheques, money orders and negotiable instruments in a form in which title passes on delivery; or
- (c) a precious metal or precious stone; or
- (d) such other monetary instruments specified by the Minister by Order; or
- (e) currency in electronic form including debit cards, credit cards, pre-paid mobile phones and any other electronic device with a stored value;

customer in relation to a transaction, business relationship or an account includes:

- (a) the person in whose name or for whom a transaction, relationship or account is arranged, opened or undertaken; or
- (b) a signatory to the transaction, relationship or account; or
- (c) any person to whom, a relationship or an account or rights or obligations under a transaction or relationship have been assigned or transferred; or
- (d) any person who is authorised to conduct the transaction or control the relationship or account; or
- (e) such other persons prescribed for the purposes of this definition;

data means representations, in any form, of information or concepts;

Director means the Director of the Financial Intelligence Unit appointed under section 7;

financing of terrorism offence means an offence against section 6 of the Counter Terrorism and Transnational Organised Crime Act [CAP 313];

fund includes:

- (a) currency; or
- (b) assets of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; or
- (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, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit; or
- (d) any legal or equitable interest in any such asset;

law enforcement agency means:

- (a) the Vanuatu Police Force; or
- (b) the Department of Customs and Inland Revenue; or
- (c) the Department of Immigration; or
- (d) a Police organisation or institution outside of Vanuatu; or
- (e) an organisation responsible for criminal prosecutions or investigations inside or outside of Vanuatu; or
- (f) such other persons prescribed for the purposes of this definition;

Minister means the Prime Minister;

money laundering entity means a person or group prescribed under subsection 53(2);

money laundering offence means an offence against section II of the Proceeds of Crime Act [CAP 284];

originator means the account holder or where there is no account, the person that places the order with a reporting entity to perform an electronic funds transfer;

person means any natural or legal person and includes any statutory body, company or association or body of persons corporate or unincorporated;

politically exposed person means an individual who is or has been entrusted with prominent public functions such as the Head of State, the Prime Minister, Ministers, senior politicians, senior Government officials, judicial or military officials, senior executive members of state owned corporations or international organisations and officials of a political party;

prescribed entity means:

- (a) a specified entity within the meaning of the Counter Terrorism and Transnational Organised Crime Act [CAP 313]; or
- (b) a money laundering entity;

record means any material on which information is recorded or marked and which is capable of being read or understood by a person, computer system or other device;

reporting entity has the meaning given by section 2;

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.”

supervisory body means:

- (a) the Reserve Bank of Vanuatu; or
- (b) the Vanuatu Financial Services Commission; or
- (c) the registrar of Cooperatives; or
- (d) the inspector of Casinos; or
- (e) a body outside Vanuatu with functions similar to the Reserve Bank of Vanuatu or the Vanuatu Financial Services Commission; or
- (f) such other persons prescribed for the purposes of this definition; **suspicious activity report** means a report prepared under Part 6; **suspicious transaction report** means a report prepared under Part 6;

terrorist organization includes an individual or organization prescribed by the Regulations to be a terrorist organization;

terrorist property has the same meaning as in the Counter Terrorism and Transnational Organised Crime Act [CAP 313];

transaction has the meaning given by section 3;

Unit means the Financial Intelligence Unit established under section 4.

2 Meaning of reporting entity

Each of the following is a reporting entity:

- (a) the Reserve Bank of Vanuatu;
- (b) a licensee within the meaning of the Financial Institutions Act [CAP 254];
- (c) a licensee within the meaning of the International Banking Act [CAP 280];
- (d) a company licensed under the Vanuatu Interactive Gaming Act [CAP 261];
- (e) a person licensed under the Casino (Control) Act [CAP 223];
- (f) a person carrying on a business under the Gaming (Control) Act [CAP 172] or the Lotteries Act [CAP 205];
- (g) a foundation within the meaning of the Foundation Act No. 38 of 2009;
- (h) an association within the meaning of the Charitable Associations (Incorporation) Act [CAP 140];
- (i) a person carrying on electronic business under the E-Business Act [CAP 264];
- (j) a licensee within the meaning of the Company and Trust Services Provider Act No.8 of 2010;
- (k) a credit union registered under the Credit Unions Act [CAP 256] or a co-operative society registered under the Co-operative Societies Act [CAP 152];
- (l) a person carrying on a business:
 - (i) of administering or managing funds on behalf of an international
 - (ii) financial company within the meaning of the International Companies Act [CAP 222] or any other person; or
 - (iii) as a trustee in respect of funds of other persons; or
 - (iv) as a trustee or manager of a unit trust;
- (m) a person carrying on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
- (n) a person (other than a person mentioned under paragraph (a), (b) or (c)), carrying on a business of:
 - (i) exchanging currency or value; or
 - (ii) collecting, holding, exchanging or transferring currency or value, or otherwise negotiating transfers of currency or value, on behalf of other persons; or
 - (iii) preparing payrolls on behalf of other persons in whole or in part from currency collected; or
 - (iv) delivering currency including payroll;
- (o) a lawyer, notary or accountant that provides services to a client relating to all or any of the following:
 - (i) buying or selling of real estates, business entities or properties;
 - (ii) managing of currencies, securities or other assets;

- (iii) managing of banks, savings or securities accounts;
 - (iv) organising contributions for the creation, operation or management of legal persons or legal arrangements;
 - (v) creating, operating or managing legal persons or legal arrangements;
- (p) a person (whether or not the person is a trust or company service provider) providing all or any of the following services:
- (i) forming or managing legal persons or legal arrangements;
 - (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 other legal persons;
 - (iii) providing a registered office, a business address or accommodation, correspondence or an administrative address for a company, a partnership or any other legal person or legal arrangement;
 - (iv) acting (or arranging for another person to act) as a trustee of a trust or a similar position in other form of legal arrangements;
 - (v) acting (or arranging for another person to act) as a nominee shareholder for another person;
- (q) a person carrying on a business of:
- (i) dealing in bullions, precious metals or precious stones; or
 - (ii) issuing, selling or redeeming traveller's cheques, money orders or similar instruments; or
 - (iii) collecting, holding and delivering currency as part of a business or providing payroll services;
- (r) a person carrying on the business of:
- (i) lending, including consumer credit or mortgage credit, and financing of commercial transactions; or
 - (ii) financial leasing; or
 - (iii) issuing and managing means of payment (such as credit and debit cards, cheques, bankers' drafts and electronic money); or
 - (iv) issuing financial guarantees and commitments; or
 - (v) trading for the person's own account or for the account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, commodity futures trading or transferable securities; or
 - (vi) participating in securities issues and providing financial services relating to such issues; or
 - (vii) money brokering; or
 - (viii) mutual funds or, individual or collective portfolio management; or
 - (ix) safekeeping and administration of cash or liquid securities on behalf of other persons; or
 - (x) trustee administrator or investment manager of a superannuation scheme, other than a scheme under which contributions are made by salary deductions and withdrawals are for limited purposes such as retirement; or
 - (xi) dealing in real estate or sale or hire of motor vehicles; or

- (xii) dealing in property (other than real estate) exceeding VT 1 million or such other amount as may be prescribed;
- (s) any other person prescribed for the purpose of this provision.

3 Meaning of transaction

- (1) A transaction means any deposit, withdrawal, exchange or transfer of fund whether:
 - (a) in cash; or
 - (b) by cheque, payment order or other instrument; or
 - (c) by electronic or other non-physical means; or
 - (d) in satisfaction, whether in whole or part, of any contractual or other legal obligation.
- (2) Without limiting subsection (1), a transaction includes the following:
 - (a) the establishment **and maintenance** of a business relationship; or
 - (b) the opening **and maintenance** of an account; or
 - (c) the engagement of a service; or
 - (d) any payment made in respect of a lottery, bet or other game of chance; or
 - (e) the establishment, creation **or maintenance** of a legal person or legal arrangement; or
 - (f) such other transactions as may be prescribed.

PART 2 FINANCIAL INTELLIGENCE UNIT

4 Establishment of the Financial Intelligence Unit

The Financial Intelligence Unit is established within the State Law Office.

5 Functions and powers of the Unit

- (1) The Unit has the following functions:
 - (a) to receive suspicious transaction reports and other reports, and information, in accordance with the provisions of this Act; and
 - (b) to analyse and assess any report or information refer to under this Act; and
 - (c) to gather information, whether or not it has been requested by the Director from an assisting entity, or a ministry, department or agency of the Government or any person, for the purposes of this Act; and
 - (d) to disclose information derived from any report or information provided to the Director under this Act, to an assisting entity if the Director has reasonable grounds to suspect that the report or information is relevant to:
 - (i) the detection, investigation or prosecution of a person for a money laundering offence, a financing of terrorism offence or any other serious offence; or
 - (ii) the commission of a money laundering offence, a financing of terrorism offence or any other serious offence; or
 - (iii) an act preparatory to a financing of terrorism offence; or
 - (iv) the enforcement of this Act, the Proceeds of Crime Act [CAP 284] or any other Act prescribed by the Regulations; and

- (e) to collect information that the Director considers relevant to a money laundering offence, a financing of terrorism offence or any other serious offence, whether or not the information is publicly available, including information in commercially available databases or databases maintained by the Government; and
 - (f) to enter into agreements or arrangements under section 6, and exchange information in accordance with those agreements or arrangements; and
 - (g) to request information from an assisting entity to assist with any analysis or assessment mentioned in paragraph (b); and
 - (h) to direct in writing a reporting entity to take such steps as the Director considers appropriate in relation to any information or report received by the Director so as to facilitate any investigation that is anticipated or being undertaken by the Director or an assisting entity; and
 - (i) to undertake inquiries as may be requested in writing by an assisting entity where appropriate; and
 - (j) to do checks on any person if requested by the Vanuatu Investment Promotion Authority or a Ministry, Department or agency of the Government; and
 - (k) to provide feedback to reporting entities and other relevant persons regarding outcomes relating to the reports or information given under this Act; and
 - (l) to conduct research into money laundering and terrorism financing trends and developments and recommend on detecting and deterring measures against money laundering and terrorism financing activities; and
 - (m) to carry out examinations of reporting entities to ensure their compliance with this Act; and
 - (n) to issue guidelines to reporting entities in relation to customer due diligence obligations, record keeping obligation, reporting obligations, identification of suspicious transactions and money laundering and financing of terrorism typologies; and
 - (o) to provide training programs for reporting entities in relation to customer due diligence obligations, record keeping obligations and reporting obligations;
 - (p) to compile statistics and records, and to disseminate information within Vanuatu; and
 - (q) to register reporting entities and screen ~~office-bearers~~ **officers and beneficial owners** of reporting entities; and
 - (r) to ensure reporting entities comply with this Act and its Regulations; and
 - (s) to educate the public and create awareness on matters relating to money laundering and the financing of terrorism; and
 - (t) **to establish and maintain the National Risk Assessment Framework.**
- (2) The Unit has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

6 Agreements and arrangements

- (1) The Director may, ~~with the written approval of the Minister~~, enter into a written agreement or arrangement with an assisting entity regarding the exchange of information under this section.
- (2) The **Director may only enter into a written agreement or arrangement**, ~~Minister may only give approval under subsection (1)~~ if the Director and the assisting entity have reasonable grounds to suspect that an information may be relevant to detecting, investigating or prosecuting:
- (a) a money laundering offence, a financing of terrorism offence or any other serious offence; or
 - (b) an offence that is substantially similar to such an offence.

- (3) An agreement or arrangement entered into under subsection (1) must:
- (a) restrict the use of the information to purposes relevant to investigating or prosecuting a money laundering offence, a financing of terrorism offence or any other serious offence, or an offence that is substantially similar to such an offence; and
 - (b) stipulate that the information is to be treated in a confidential manner and not to be disclosed without the express consent of the Director and the assisting entity.
- (4) In the absence of an agreement or arrangement entered into under subsection (1), the Director may exchange information with an assisting entity having functions and duties similar to those of the Unit, provided that:
- (a) the use of the information is restricted to purposes relevant to investigating or prosecuting a money laundering offence, a financing of terrorism offence or any other serious offence, or an offence that is substantially similar to such an offence; and
 - (b) the information is to be treated in a confidential manner and not to be disclosed without the express consent of the Director and the assisting entity.

7 Appointment of the Director

- (1) The Attorney General is to appoint a Director of the Unit.
- (2) The Director is to perform the functions and exercise the powers of the Unit specified under this Act.
- (3) The Director may authorise in writing, a senior officer of the Unit, subject to any terms and conditions as may be specified by the Director, to carry out any functions or powers of the Director under this Act.

8 Staff of the Unit

- (1) The Attorney General may employ other staff of the Unit as he or she considers necessary for the proper and efficient performance of the functions of the Unit.
- (2) The Attorney General is to determine the terms and conditions of employment of the persons referred to in subsection (1).

PART 3 REGISTER OF REPORTING ENTITIES

9 Register of reporting entities

- (1) The Director must establish and maintain a register of reporting entities.
- (2) A reporting entity must not provide a service or establish a business relationship with a customer if its name and details are not entered on the register of reporting entities.
- (3) If a reporting entity makes a written application in the prescribed form to the Director for the reporting entity's name and details to be entered on the register of reporting entities, the Director must enter the reporting entity's name and details on the register if the reporting entity's name is not already entered on that register.
- (4) If a reporting entity's name or details are entered on the register and the reporting entity has changed its name or details, the reporting entity must inform the Director in writing of the changes made.
- (5) A reporting entity who contravenes subsection (2), (3) or (4), commits an offence and is liable on conviction:

- (a) in the case of an individual- to a fine not exceeding VT25 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 VTI 00 million.

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.

11 Access to the register of reporting entities

- (1) A reporting entity may request the Director, in writing, to inform the reporting entity whether the name of a specified person is entered on the register of the reporting entities.
- (2) The Director must comply with the reporting entity's request as may be prescribed.

PART 4 CUSTOMER DUE DILIGENCE REQUIREMENT

12 Obligation to identify customer

- (1) A reporting entity must carry out the prescribed identification process if a person:
 - (a) opens an account with a reporting entity; or
 - (b) engages the services of a reporting entity; or
 - (c) enters into a business relationship with a reporting entity; or
 - (d) conducts **occasional transactions** that exceeds the prescribed threshold under section 27 or 28.
- (2) A reporting entity must carry out a prescribed identification process *on:*
 - (a) a person conducting a transaction; and
 - (b) a person on whose behalf a transaction is being conducted; and
 - (c) a beneficial owner,if the reporting entity has reasonable grounds to believe that the person is undertaking a transaction on behalf of another person.

- (3) A reporting entity must carry out a prescribed identification process on the customer if the reporting entity:
- (a) carries out an electronic currency transfer for the customer, other than an electronic currency transfer referred to under subsection 37(2) or (4); or
 - (b) suspects that the customer is involved in proceeds of crime, a financing of terrorism or a serious offence; or
 - (c) suspects that the transaction involves proceeds of crime, or may be used for financing terrorism or for committing a serious offence; or
 - (d) has doubts on the veracity or adequacy of the customer identification or information it had previously obtained.
- (4) A reporting entity who contravenes subsection (1), (2) or (3), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT2,500,000, 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 VT10,000,000.

13 Necessity of due diligence to conduct transaction

- (1) If satisfactory evidence of the identity or verification of a person is not produced to or obtained by a reporting entity under this Part within a prescribed timeframe and under a prescribed [situation](#), a reporting entity must prepare a suspicious transaction report for the Director as if the transaction were a transaction made under section 20.
- (2) The reporting entity must not proceed any further with the transaction unless directed to do so by the Director.
- (3) A reporting entity who contravenes subsection (1) or (2), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT2,500,000, 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 VT1 0,000,000.

14 Reporting entity to maintain business relationship under true name

- (1) A reporting entity must maintain an account or establish a business relationship with the true name of the customer.
- (2) A reporting entity who contravenes subsection (1), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT2,500,000, or imprisonment for a term not exceeding 2 years or both; or
 - (b) in the case of a corporate body - to a fine not exceeding VT10,000,000.

15 Establishing a business relationship under false or misleading names

- (1) A reporting entity must not:
- (a) establish a business relationship with a person using a false, fictitious or misleading name; and
 - (b) [establish a business relationship](#) with a person using one of the person's name, if the person has 2 or more different names, unless the person has disclosed the other name or names to the reporting entity.

- (2) If a person is using a particular name in the person's dealings with a reporting entity and discloses to it a different name or names under which the person is commonly known, the reporting entity must:
- (a) make a record of the disclosure of the person's name; and
 - (b) give the Director a copy of that record if requested to do so in writing by the Director.
- (3) For the purposes of this section, a person establishes a business relationship in a false name if the person:
- (a) in establishing the business relationship uses a name other than a name in which the person is commonly known; or
 - (b) does any act or thing in relation to the business relationship (whether by way of making a deposit or withdrawal or by way of communication with the reporting entity concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known.
- (4) A reporting entity who contravenes subsection (1) or (2), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine of not exceeding VT 10 million or imprisonment for a term of not exceeding 4 years or both; or
 - (b) in the case of a body corporate- to a fine of not more than VT 50 million.

16 Obligation to verify the identification of customer

- (1) A reporting entity must undertake a prescribed verification process within a prescribed timeframe if after carrying out or purporting to carry out the prescribed customer identification process:
- (a) a prescribed event happens; or
 - (b) a prescribed circumstance comes into existence; or
 - (c) a prescribed period ends.
- (2) A reporting entity who contravenes subsection (1), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT 1 million or imprisonment for a term not exceeding 1 year, or both; or
 - (b) in the case of a body corporate -to a fine not exceeding VT 5 million.

17 Obligation to conduct regular customer and transaction due diligence

- (1) A reporting entity must undertake a prescribed on-going due diligence process to monitor its account, service or relationship with each of its customers to identify, mitigate and manage the risk it may reasonably face with its customer that might involve money laundering, financing of terrorism or other serious offences.
- (2) In addition to subsection (1), a reporting entity must:
- (a) record its findings in writing; and
 - (b) upon a written request by the Director, make available such findings to the Director.
- (3) A reporting entity who fails to comply with subsections (1) and (2), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT 1 million or imprisonment for a term not exceeding 1 year, or both; or
 - (b) in the case of a body corporate- to a fine not exceeding VT 5 million.

18 Obligation for intermediaries or third parties introducers

- (1) If a reporting entity relies on intermediary or a third party to undertake its obligations under this Part or to introduce customers to it, the reporting entity must:
 - (a) satisfy itself that the intermediary or third party is regulated and supervised, and has measures in place to comply with the requirements under this Part and Part 5; and
 - (b) ensure that **verifiable** copies of identification data and other relevant documentation relating to the requirements under this Part is made available to the intermediary or the third party upon request without delay; and
 - (c) immediately obtain the information required under this Part.
- (2) In addition to subsection (1), a reporting entity must:
 - (a) record its finding in writing; and
 - (b) upon a written request by the Director, make available such findings to the Director.
- (3) A reporting entity who fails to comply with subsections (1) and (2), commits an offence and is liable on conviction:
 - (a) in the case of an individual- to a fine not exceeding VT 1 million or imprisonment for a term not exceeding 1 year, or both; or
 - (b) in the case of a body corporate -to a fine not exceeding VT 5 million.

**PART 5
RECORD KEEPING REQUIREMENT**

19 Obligation to keep records

- (1) A reporting entity must keep records of all transactions in such a manner as to enable the transactions to be readily reconstructed at any time by the Director.
- (2) Without limiting subsection (1), the records must contain the prescribed information.
- (3) A reporting entity must keep the records for a period of 6 years after the completion of the transaction.
- (4) A reporting entity must keep:
 - (a) a record of any suspicious transaction, suspicious activity or other report made under Part 6; and
 - (b) a record of any enquiry relating to money laundering or the financing of terrorism made to the Director; and
 - (c) a record of a finding referred to under ~~subsection 18(2)~~ **subsections 18(2), 36(2) and (3) and 37(1)**.
- (5) A reporting entity must keep records provided under subsection (4) for a period of 6 years after the date on which the report, the enquiry **or the finding** was made.
- (6) A reporting entity must keep:
 - (a) if evidence of a person's identity and verification is obtained under Part 4:
 - (i) a record that indicates the kind of evidence that was obtained; and
 - (ii) either a copy of the evidence or information that enables a copy of it to be obtained; and
 - (b) a record referred to under subsections 15(2) and 17(2).

- (7) A reporting entity must keep records provided under subsection (6) for a period of 6 years after the closure or termination of the account, service or business relationship.
- (8) A reporting entity must make:
- (a) a record of the adoption of an AML and CTF Procedure Manual and AML and CTF group-wide procedure manual; and
 - (b) retain the AML and CTF Procedure Manual and AML and CTF group-wide procedure manual for a period of 12 months.
- (9) A reporting entity who contravenes subsection(1), (2), (3), (4), (5), (6), (7) or (8) commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT2,500,000, 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 VT1 0,000,000.

PART 6 TRANSACTION AND ACTIVITY REPORTING REQUIREMENT

20 Obligation to report suspicious transaction

- (1) A reporting entity must make a report of the transaction or attempted transaction to the Director not later than 2 working days if the reporting entity suspects or has reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime or is related to terrorist financing.
- (2) The reporting entity must not proceed any further with the transaction unless directed to do so by the Director.
- (3) A reporting entity who fails without reasonable excuse to comply with subsection (1) or (2), commits an offence and is liable on conviction:
- (a) in the case of an individual - to a fine not exceeding VT25,000,000, 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 VT100,000,000.

21 Obligation to report suspicious activity

- (1) A reporting entity must make a report of the activity or attempted activity to the Director not later than 2 working days if a reporting entity suspects or has reasonable grounds to suspect that an activity or attempted activity involves proceeds of crime or is related to terrorist financing.
- (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.
- (2) The reporting entity must not proceed any further with the activity unless directed to do so by the Director.
- (3) A reporting entity who fails without reasonable excuse to comply with subsection (1) or (2), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT25 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 VT100 million.

22 Obligation to report transaction conducted by prescribed entities

- (1) If a prescribed entity conducts or seeks to conduct a transaction through or by using a reporting entity and such transaction or attempted transaction is deemed to be a suspicious transaction ~~involving proceeds of crime or is related to terrorist financing~~, the reporting entity must make a report of the transaction or attempted transaction to the Director not later than 2 working days.
- (2) The reporting entity must not proceed any further with the transaction unless directed to do so by the Director.
- (3) A reporting entity who fails without reasonable excuse to comply with subsection (1) or (2), commits an offence and is liable 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.

23 Obligation to report transaction involving terrorist property or proliferation financing

- (1) A reporting entity must make a report of the transaction or attempted transaction and provide the report to the Director not later than 2 working days if a reporting entity has information in its possession concerning any transaction or attempted transaction which it suspects involves terrorist property, property linked to terrorists or terrorist organisations or proliferation financing.
- (2) The reporting entity must not proceed any further with the transaction unless directed to do so by the Director.

(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.”

- (3) A reporting entity who fails without reasonable ground to comply with subsection (1) or (2), commits an offence and is liable on conviction:
- (a) in the case of an individual - to a fine not exceeding VT25 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 VT100 million.

24 Obligation to report certain transaction with no legitimate purpose

- (1) This section applies if a reporting entity suspects that a transaction or attempted transaction:
- (a) is complex, unusual or large and does not have any apparent or visible economic or lawful purpose; or
 - (b) is part of an unusual pattern of transactions that does not have any apparent or visible economic or lawful purpose.
- (2) The reporting entity must make a report of the transaction or attempted transaction and provide the report to the Director not later than 2 working days after forming the suspicion.
- (3) The reporting entity must not proceed any further with the transaction unless directed to do so by the Director.

- (4) A reporting entity who fails without reasonable grounds to comply with subsection (2) or (3), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT25 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 VT100 million.

25 Supervisory body or auditor to report suspicious transaction

- (1) This section applies if a supervisory body or an auditor of a reporting entity has reasonable grounds to suspect that a transaction or an attempted transaction or information that it has in its possession involves proceeds of crime or is related to financing of terrorism.
- (2) The supervisory body or the auditor of the reporting entity must make a report of the transaction or attempted transaction, or the information to the Director not later than 2 working days after forming the suspicion.
- (3) A supervisory body or an auditor of a reporting entity who fails without reasonable grounds to comply with subsection (2), commits an offence and is liable 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 VT100 million.

26 Form of reports

- (1) A report under section 20, 21, 22, 23, 24 or 25 must be made in the prescribed form and may be sent to the Director by way of fax or electronic mail or hand delivery.
- (2) A report may be given orally including by telephone.
- (3) If an oral report is given under subsection (2), a written report must be prepared in accordance with subsection (1) within 24 hours after the oral report is given.
- (4) A reporting entity who fails without reasonable grounds to comply with subsection (1) or (3), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT2,500,000, 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 VT10,000,000.

27 Obligation to report large cash transaction

- (1) A reporting entity must make a report to the Director on any single transaction of an amount in cash which exceeds the prescribed threshold or its equivalent in foreign currency.
- (2) Subsection (1) does not apply if the originator and beneficiary of the transaction are reporting entities under section 2 of this Act and acting on their own behalf.
- (3) A report made under this section must be in the prescribed form and be provided to the Director within the prescribed time frame.
- (4) A reporting entity may apply in writing to the Director to be exempted from reporting under subsection (1), if the transactions are deposits or withdrawals by an established customer of that reporting entity.
- (5) A reporting entity who contravenes subsection (1), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT2,500,000, 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 VT10,000,000.

28 Obligation to report international currency transfers

- (1) A reporting entity must make a report to the Director:
 - (a) on any electronic transmission of currency or other currency transfer out of Vanuatu that exceeds the prescribed threshold or its equivalent to foreign currency in the course of a single transaction; or
 - (b) on any electronic receipt of currency or other currency receipts from outside Vanuatu that exceeds the prescribed threshold or its equivalent to foreign currency in the course of a single transaction; or
 - (c) if the reporting entity uses a service of a third party to receive or transmit electronic transaction or other currency transfer that exceeds the prescribed threshold or its equivalent to foreign currency in the course of a single transaction.
- (2) A report made under subsection (1) must be:
 - (a) made in the prescribed form; and
 - (b) sent to the Director within the prescribed time frame.
- (3) A reporting entity who contravenes subsection (1) or (2), commits an offence and is liable on conviction:
 - (a) in the case of an individual- to a fine not exceeding VT2,500,000, 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 VT10,000,000.

29 Avoidance of section 27 or 28

- (1) This section applies to a reporting entity if the reporting entity conducts 2 or more transactions that are of an amount below the prescribed threshold under section 27 or 28.
- (2) A reporting entity who conducts the transactions for the sole or dominant purpose of ensuring or attempting to ensure that a report in relation to the transactions is not made under section 27 or 28, commits an offence and is liable on conviction:
 - (a) in the case of an individual- to a fine not exceeding VT2,500,000, 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 VT10,000,000.
- (3) Without limiting subsection (2), all or any of the following may be taken into account by a court in deciding whether a person has committed an offence against that subsection:
 - (a) the manner and form in which the transactions were conducted;
 - (b) the amount of the currency involved in each transaction;
 - (c) the aggregate amount of the currency involved in the transactions;
 - (d) the period of time over which the transactions occurred;
 - (e) the interval of time between the transactions;
 - (f) the locations at which the transactions were initiated or conducted;
 - (g) any explanation made by the person concerned as to the manner or form in which the transactions were conducted.

30 Obligation to report cross-border movement of currency

- (1) The authorized officers prescribed under the Currency Declaration Act No.7 of 2009 must send a report to the Director of all:
 - (a) physical currency; and
 - (b) bearer negotiable instruments, entering or departing Vanuatu.

- (2) The report must be:
- (a) made in the prescribed form; and
 - (b) sent to the Director within the prescribed time frame.

31 Obligation to submit AML and CTF Compliance Report

- (1) A reporting entity must lodge an AML and CTF Compliance report with the Director [if requested in writing by the Director](#).
- (2) The AML and CTF compliance report must be:
- (a) made in the prescribed form; and
 - (b) sent to the Director within a prescribed time frame.
- (3) A reporting entity who contravenes subsection (1) [or \(2\)](#), commits an offence and is liable on conviction:
- (a) in the case of an individual - to a fine not exceeding VT1 million or imprisonment for a term not exceeding 1 year or both; or
 - (b) in the case of a body corporate - to a fine not exceeding VT5 million.

32 Obligation to submit additional Information

- (1) The Director may request any further information from a reporting entity if the reporting entity has made a report on a transaction, attempted transaction, activity or attempted activity or has provided information under this Part to the Director.
- (2) A reporting entity who fails without reasonable grounds to comply with subsection (1), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT2,500,000, 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 VT10,000,000.

**PART 7
ANTI-MONEY LAUNDERING AND
COUNTER-TERRORISM FINANCING PROGRAM**

33 AML and CTF Procedure Manual

- (1) A reporting entity must not open accounts, provide services or establish a business relationship with a customer unless the reporting entity has established and maintained an adequate AML and CTF procedure manual.
- (2) The AML and CTF Procedure Manual must contain internal policies, processes and procedures:
- (a) to implement the reporting requirements under Part 6; and
 - (b) to implement the customer due diligence requirements under Part 4; and
 - (c) to implement the record keeping requirements under Part 5; and
 - (d) to inform the entity's officers and employees of the laws of Vanuatu about money laundering and financing of terrorism, of the policies, processes and procedures and systems adopted by the entity to deal with money laundering and financing of terrorism; and
 - (e) to train the entity's officers and employees to recognise and deal with money laundering and terrorism financing; and

- (f) on the role and responsibility of the AML and CTF Compliance officer; and
 - (g) on the establishment of an **independent** audit function which is able to test its AML and CTF processes, procedures and systems; and
 - (h) on the adoption of systems by the entity to deal with money laundering and terrorism financing; **and**
 - (i) **on the staff screening, recruitment and retention program.**
- (3) A reporting entity must give a copy of its AML and CTF Procedure Manual to the Director upon request made to it in writing by the Director.
- (4) A reporting entity who contravenes subsection (1), (2) or (3), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT2,500,000, 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 VT10,000,000.

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."

34 Appointment of AML and CTF Compliance Officer

- (1) A reporting entity must appoint a person as AML and CTF compliance officer to be responsible for ensuring the reporting entity's compliance with the requirements of this Act and the Regulations.
- (2) An AML and CTF compliance officer appointed under subsection (1) may be employed on a full time or part time basis and may be a **senior officer of the reporting entity**.
- (3) A reporting entity must inform the Director in writing of its Compliance officer's appointment, or any change of appointment or termination of appointment.
- (4) A reporting entity who contravenes subsection (1) or (3), commits an offence and is liable on conviction:

- (a) in the case of an individual - to a fine not exceeding VT10,000,000 or imprisonment for a term not exceeding 4 years or both; or
- (b) in the case of a body corporate - to a fine not exceeding VT50,000,000.

35 Money laundering and terrorism financing risk assessments

- (1) The Director may by notice in writing, require a reporting entity to:
 - (a) carry out a money laundering and terrorism financing risk assessment; and
 - (b) prepare a written report setting out the results of the assessment; and
 - (c) provide a copy of the report within the period specified in the notice to the Director.
- (2) A report made under subsection (1) must be in the prescribed form.
- (3) A reporting entity who fails to comply with any notice under subsection (1), commits an offence and is liable on conviction:
 - (a) in the case of an individual - to a fine not exceeding VT2,500,000 or imprisonment for a term not exceeding 2 year or both; or
 - (b) in the case of a body corporate - to a fine not exceeding VT1 0,000,000.

PART 8 CORRESPONDENT BANKING

36 Cross Border Correspondent Banking

- (1) This section applies if a reporting entity carries out cross border correspondent banking or has other similar relationships.
 - (2) A reporting entity must, in addition to its other obligations under this Act, do all of the following:
 - (a) adequately identify and verify the person with whom it conducts such a business relationship; and
 - (b) gather sufficient information about the nature of the business of the person; and
 - (c) determine from publicly available information the reputation of the person and the quality of supervision the person is subject to; and
 - (d) assess **and clearly understand** the person's anti-money laundering and counter-terrorism financing controls **and responsibilities**; and
 - (e) obtain approval from senior management before establishing a new correspondent relationship; and
 - (f) record the responsibilities of the reporting entity and the person; **and**
 - (g) **ensure that the person does not permit its account to be used by shell banks.**
 - (3) If a reporting entity allows a person with whom it carries out a cross border correspondent banking relationship to establish accounts in the reporting entity for use by that person's customers, the reporting entity must, in addition to its other obligations under this Act, be satisfied that that person:
 - (a) has verified the identity of and is performing on-going due diligence on that person's customers that have direct access to accounts of the reporting entity; and
 - (b) is able to provide to the reporting entity customer identification data of the customers referred to in this section upon request.
- (3A) A reporting entity must not enter into or continue cross border correspondent banking relationship with a shell bank.**

- (4) A reporting entity who contravenes subsection (2), (3) or (3A) commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT1,000,000, or imprisonment for a term not exceeding 1 year or both; or
- (b) in the case of a body corporate - to a fine not exceeding VT5,000,000.

37 ~~Originator information~~ **Currency Transfers**

- (1) A reporting entity must include accurate originator information and beneficiary information on an electronic currency transfer and on any other form of currency transfer, and such information is to be recorded as part of the transfer.
- (2) Subsection (1) does not apply to an electronic currency transfer that results from a transaction carried out using a credit or debit card, the number of which is included in the information accompanying such a transfer.
- (3) Despite subsection (2), if a money transfer is made using a credit or debit card as a means of payment, then subsection (1) applies to such transfer.
- (4) Subsection (1) does not apply to an electronic currency transfer or settlement between reporting entities where the originator and beneficiary of the currency transfer are reporting entities acting on their own behalf.

(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.

- (5) A reporting entity who contravenes subsection (1), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT1,000,000, or imprisonment for a term not exceeding 1 year, or both; or
- (b) in the case of a body corporate - to a fine not exceeding VT5,000,000.

PART 9
SECREC Y AND ACCESS

38 Disclosure of information

- (1) A person must not disclose any information to any other person:
- (a) that a reporting entity, or the supervisory body or auditor of a reporting entity or a person, has formed a suspicion in relation to a transaction or an attempted transaction, or an activity or attempted activity; or
 - (b) that a report under this Act is made to the Director; or
 - (c) that information under this Act is given to the Director; or
 - (d) any other information from which a person to whom the information is disclosed may reasonably be expected to infer any of the circumstances in paragraph (a), (b) or (c).
- (2) Subsection (1) may not apply to a disclosure made to:
- (a) an officer, employee or agent of a reporting entity who has made or is required to make a report or provide information under this Act for any purpose connected with the performance of that reporting entity's duties; or
 - (b) a lawyer for the purpose of obtaining legal advice or representation in relation to the disclosure; or
 - (c) the supervisory body of the relevant reporting entity; or
 - (d) an assisting entity or any other person by the Unit under this Act.
- (3) An information disclosed to a lawyer under paragraph (2)(b) must not be disclosed to any other person except to a person of the kind referred to under that paragraph, for the purpose of:
- (a) the performance of the lawyer's duties; or
 - (b) obtaining legal advice or representation in relation to the disclosure.
- (4) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.
- (5) A person who contravenes subsection (1), commits an offence and is liable on conviction:
- (a) in the case of an individual -to a fine not exceeding VT25,000,000, or imprisonment for a term not exceeding 5 years, or both;
 - (b) in the case of a body corporate - to a fine not exceeding VT100,000,000.
- (6) A person who contravenes subsection(1):
- (a) with intent to prejudice an investigation of a money laundering offence, a financing of terrorism offence or another serious offence; or
 - (b) for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person,
- commits an offence and is liable on conviction:
- (i) in the case of an individual - to a fine not exceeding VT50,000,000, or imprisonment for a term not exceeding 10 years, or both; or
 - (ii) in the case of a body corporate - to a fine not exceeding VT200,000,000.

39 False or misleading information

If a person making a report or providing information required under Part 3, 4, 5, 6, 7 or 8:

- (a) makes any statement that the person knows is false or misleading in a material particular; or
- (b) omits from any statement any matter without which the person knows that the statement is false or misleading in a material particular,

commits an offence and is liable on conviction:

- (i) in the case of an individual - to a fine not exceeding VT2,500,000, or imprisonment for a term not exceeding 2 years, or both; or
- (ii) in the case of a body corporate -to a fine not exceeding VT10,000,000.

40 Legal Professional Privilege

(1) Nothing in this Act requires a lawyer or notary to disclose information which is subject to legal professional privilege.

(2) For the purposes of this Act, an information is privileged information if:

- (a) it is a confidential information, whether orally or in writing between:
 - (i) a lawyer or notary in his or her professional capacity and another lawyer or notary in such capacity; or
 - (ii) a lawyer or notary in his or her professional capacity and his or her client, whether made directly or indirectly through an agent; and
- (b) it is made for the purpose of obtaining or giving legal advice or assistance; and
- (c) it is not made for the purpose of committing or furthering the commission of an illegal or wrongful act.

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 VT25 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 VT100 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 Secrecy provision

- (1) This section applies if a person ceases to be an officer, employee or agent of the Unit, the Public Prosecutor's Office or an assisting entity.
- (2) The person must not, directly or indirectly, divulge or communicate to any other person, or make a record of:
 - (a) any information contained in a suspicious transaction report or other report provided under this Act; or
 - (b) any information provided under this Act, except for one or more of the purposes required under subsection (3).
- (3) The purposes are all or any of the following:
 - (a) the detection, investigation or prosecution of a money laundering offence, a financing of terrorism offence or any other serious offence;
 - (b) the enforcement of this Act, the Proceeds of Crime Act [CAP 284] or any other Act prescribed by the Regulations;
 - (c) when lawfully required to do so by any court;
 - (d) such other purposes connected with the performance of the person's functions or duties under this Act.
- (4) A person who contravenes subsection (2), commits an offence and is liable on conviction to a fine not exceeding VT2,500,000, or imprisonment for a term not exceeding 2 years, or both.

42 Immunity

A civil or criminal proceedings must not be taken against the Attorney General, the Director or any member or agent of the Unit or any person acting under the direction of the Attorney General or the Director for any act done or omission made in good faith in the discharge or purported discharge of any of the Unit's functions or powers under this Act.

43 Overriding of secrecy

- (1) A reporting entity and an officer, employee or agent of the reporting entity must comply with the requirements of this Act despite any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.
- (2) A civil or criminal proceedings must not be taken against a reporting entity or an officer, employee or agent of the reporting entity for complying with its or his or her obligations under this Act despite any written law to the contrary.
- (3) To avoid doubt, this section overrides section 125 of the International Companies Act [CAP 222] and section 43 of the Company and Trust Service Providers Act No.8 of 2010.

44 Liability of directors or officers of bodies corporate

Any director or officer of a body corporate is liable if it is proved that an act or omission that constituted the offence under this Act took place with his or her knowledge, authority, permission or consent.

**PART 10
POWERS OF THE DIRECTOR**

45 Power to collect information

- (1) This section applies to a person if the Director believes on reasonable grounds that:
- (a) being a reporting entity; or
 - (b) being an officer, employee or agent of a reporting entity; or
 - (c) being an assisting entity or Ministry, Department or agency of the Government; or
 - (d) being an officer, employee or agent of an assisting entity, Ministry, Department or agency of the Government; or
 - (e) any other person,
- has information or records relevant to the operation of this Act or Regulations.
- (2) The Director may by notice in writing, require a person to give or produce any information or records within a period as specified in the notice.
- (3) A notice made under this section must be in the prescribed form.
- (4) A person who fails to comply with subsection (2), commits an offence and is liable on conviction:
- (a) in the case of an individual- to a fine not exceeding VT2,500,000, 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 VT10,000,000.

46 Power to examine

- (1) The Director may examine the records and inquire into the business and affairs of any reporting entity for the purpose of ensuring compliance by the reporting entity with Parts 3, 4, 5, 6, 7, 8 and this Part.
- (2) Without limiting subsection (1), the Director may do all or any of the following:
- (a) at any reasonable time, enter any premises, in which the Director believes, on reasonable grounds, that there are records relevant to ensuring compliance by a reporting entity with Part 4, 6 or 7;
 - (b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;
 - (c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying;
 - (d) use or cause to be used any copying equipment in the premises to make copies of any record.
- (3) The owner or occupier of premises under subsection (1) and any person found there must:
- (a) give the Director all reasonable assistance to enable him or her to carry out his or her duties; and
 - (b) provide the Director with any information that he or she may reasonably require for that purpose.

- (4) The Director may transmit any information from, or derived from, such examination to an assisting entity if the Director has reasonable grounds to suspect that the information is or may be relevant to:
- (a) the detection, investigation or prosecution of a person for a money laundering offence, a financing of terrorism offence or any other serious offence; or
 - (b) the commission of a money laundering offence, a financing of terrorism offence or any other serious offence; or
 - (c) an act preparatory to a financing of terrorism offence; or
 - (d) the enforcement of this Act, the Proceeds of Crime Act [CAP 284] or any other Act as prescribed by the Regulations.
- (5) A person who:
- (a) obstructs or hinders or fails to cooperate with the Director in the lawful exercise of the powers under subsection (1) or (2); or
 - (b) does not comply with subsection (3), commits an offence and is liable on conviction:
 - (i) in the case of an individual - to a fine not exceeding VT2,500,000, or imprisonment for a term not exceeding 2 years, or both; or
 - (ii) in the case of a body corporate- to a fine not exceeding VT10,000,000.

47 Power to enforce compliance

- (1) A reporting entity must take all reasonable steps to ensure that it complies with its obligations under this Act.
- (2) The Director may in writing direct a reporting entity that has without reasonable excuse failed to comply in whole or in part with any of its obligations under Part 3, 4, 5, 6, 7 or 8 to:
- (a) implement such obligations within such time as specified in the direction; and
 - (b) produce a written action plan in relation to the implementation of its obligations.
- (3) The Director may in writing direct a reporting entity to take such steps as the Director considers appropriate in relation to any information or report received by the Director to enforce compliance with this Act.
- (4) If a reporting entity fails to comply with a direction under subsection (2) or (3) within the time specified in the direction, the Director may apply to the Supreme Court for an order against the reporting entity to enforce compliance with the relevant obligations.
- (5) The Court must not make an order unless it is satisfied that the reporting entity has failed without reasonable excuse to comply in whole or in part with any of its obligations under Parts 3, 4, 5, 6, 7, 8 or 10 and has failed to comply with a direction under subsection (2) or (3).
- (6) If a reporting entity fails to comply with a direction under paragraph 5(1)(h), the Director may apply to the Supreme Court for an order against the reporting entity to comply with the direction.
- (7) The Court must not make an order unless it is satisfied that the reporting entity has failed without reasonable excuse to comply with the direction given under paragraph 5(1)(h).

48 Power to remove a director, manager, secretary or any other person of a reporting entity

- (1) The Director may in writing direct a reporting entity to remove a person who is a director, manager, secretary or any other person of that reporting entity if the Director is satisfied that the person:
- (a) is a disqualified person within the meaning of section 49; and
 - (b) does not meet one or more criteria for fitness and suitability as may be prescribed.

- (2) The Director, in directing a reporting entity to remove a person under subsection (1), must give a written notice and reasonable opportunity for the reporting entity and the person to make their submissions on the matter.
- (3) The Director must review the submission under subsection (2) and decide whether or not to require the reporting entity to comply with the direction.
- (4) The direction made under this section is to take effect on the day specified in the notice, which must be at least 7 days after it is made.
- (5) If the Director directs a reporting entity to remove a person, the Director must give a copy of his or her direction to the reporting entity and the person.
- (6) A reporting entity who fails to comply with a direction under this section, commits an offence and is liable on conviction:
 - (a) in the case of an individual- to a fine not exceeding VT2,500,000 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 VT10,000,000.

49 Disqualified person

- (1) A person is a disqualified person if, at any time, the person:
 - (a) has been convicted of an offence under this Act; or
 - (b) has been a director or directly concerned in the management of a reporting entity in Vanuatu or any other country which has had its licence revoked or has been wound up by the Court; or
 - (c) has been convicted by a court for an offence involving dishonesty; or
 - (d) is or becomes bankrupt; or
 - (e) has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (f) has compounded with his or her creditors.
- (2) A disqualified person must not act or continue to act as a director, manager, secretary or other officer of any reporting entity unless the Director gives his or her written approval for that person to do so.
- (3) A reporting entity that engages or allows a disqualified person to act or continue to act as a director, manager, secretary or other officer commits an offence and is liable on conviction:
 - (a) in the case of an individual- to a fine not exceeding VT2,500,000 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 VT10,000,000.
- (4) A person who contravenes subsection (2) commits an offence and is liable on conviction:
 - (a) in the case of an individual- to a fine not exceeding VT2,500,000 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 VT10,000,000.

50 Search warrants

- (1) The Director may apply to the Supreme Court for a warrant:
 - (a) to enter premises belonging to, or in the possession or control of, a reporting entity or any officer or employee of the reporting entity; and
 - (b) to search the premises and remove any document, material or thing on the premises.

- (2) The Court must grant the application if he or she is satisfied that there are reasonable grounds for believing that:
- (a) the reporting entity has failed without reasonable excuse to comply in whole or in part with Part 3, 4, 5, 6, 7, 8 or 10; or
 - (b) an officer or employee of the reporting entity has committed or is about to commit a financing of terrorism or a money laundering offence.

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.

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.

PART 11 ANNUAL REPORT, TRANSITIONAL AND MISCELLANEOUS PROVISIONS

51 Destruction of reports

The Director is to destroy a report under this Act received or collected by him or her on the expiry of 6 years:

- (a) after the date of receipt of the report if there has been no further activity or information relating to the report or a person named in the report; or
- (b) after the date of the last activity relating to the person or report.

52 Annual Reports

- (1) The Director must, on or before the end of March of each year, submit an annual report to the Minister on the operations of the Unit for the preceding year.
- (2) The Minister must as soon as practicable table a copy of the annual report in Parliament.
- (3) The Director must not disclose any information in the report that may directly or indirectly identify:
 - (a) an individual who provided a annual report or information under this Act to the Director; or
 - (b) a person about whom a report or information was provided under this Act.

53 Regulations

- (1) The Minister may make Regulations not inconsistent with this Act:
- (a) for or with respect to any matter that by this Act is required or permitted to be prescribed; or
 - (b) that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Minister may make Regulations prescribing as a money laundering entity a person or group if the person or group has been convicted of money laundering offence or an offence that is substantially similar to such an offence.

54 Transitional arrangements

- (1) This section applies to any person who was employed at the Unit immediately before the commencement of this Act.
- (2) On and after that commencement, the person is to continue to be employed at the Unit as an employee of the Unit:
- (a) on the same terms and conditions; and
 - (b) in the same position and/or with the same classification,

until such time the person's employment lawfully ceases or the person's employment terms and conditions, position or classification lawfully changes.

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.

55 Repeal

The Financial Transactions Reporting Act [CAP 268] is repealed.

56 Commencement

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