

Commencement: 6 November 2000



CHAPTER 264

E - BUSINESS

Act 25 of 2000

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E - BUSINESS

An Act to facilitate the carrying on of electronic business by international companies.

PART I – PRELIMINARY

1. Interpretation

In this Act, unless the contrary intention appears:

“asset” means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

“Companies Act” means the Companies Act [Cap. 191];

“company” means a company incorporated under the International Companies Act [Cap. 222];

“counterparty” means any person who is a party to an electronic business contract with a company or a cybersuite proprietor;

“cybersuite” has the meaning effected by section 2;

“cybersuite contract” has the meaning given by section 3;

“cybersuite interest” means the interests and entitlements of a cybersuite proprietor in a cybersuite as stipulated in the relevant cybersuite contract;

“cybersuite proprietor” means a person with whom a company has entered into cybersuite contract;

“e-business account” means the account established in the records of the company and maintained for all electronic business of the company, other than such business recorded, allocated or credited to a cybersuite;

“electronic business” means electronically based data transactions for digitally based commerce including, but not limited to:

- (a) business to business and business to consumer data transactions, electronic data interchange and other digital supply transactions; and
- (b) financial settlements, web based marketing, advisory and transactional services, database services and products; and
- (c) online services such as telecommuting, telemedicine, education and information research; and
- (d) all related data communication services, whether conducted by e-mail, document management, voice or data transmission or otherwise;

“electronic business contract” means any contract entered into by a company or cybersuite proprietor in the form of an electronic record;

“electronic record” has the same meaning as in the Electronic Transactions Act [Cap. 263];

“International Companies Act” means the International Companies Act [Cap. 222];

“liability” means any liability, duty or obligation, whether actual, contingent or prospective;

“Minister” means the Minister responsible for electronic business;

“security” includes any share, note, bond, debenture, evidence of indebtedness, certificate, unit or right conferring an option to acquire shares.

2. Meaning of cybersuite

- (1) A cybersuite is an account established and maintained by a company as a cybersuite account.
- (2) A cybersuite is to be treated for all purposes as a separate legal entity, except as expressly provided by the regulations made under this Act.
- (3) A cybersuite has the capacity to contract with another cybersuite.

3. Meaning of cybersuite contract

- (1) A cybersuite contract, in relation to a cybersuite, means a contract made between a company and a cybersuite proprietor regulating the rights and obligations of the company and the cybersuite proprietor in relation to the cybersuite.
- (2) Without limiting subsection (1), a cybersuite contract may:
 - (a) stipulate the voting and economic rights in relation to the cybersuite; and
 - (b) provide for the issue by the company or the cybersuite proprietors of any class of equity or debt; and
 - (c) provide for the disbursement of funds into a cybersuite proprietor’s separate account; and
 - (d) provide that voting and economic rights can be exclusive or non-exclusive.

PART 2 – CYBERSUITE CONTRACTS AND ELECTRONIC BUSINESS CONTRACTS

4. Company’s capacity in relation to electronic business and cybersuite contracts

- (1) A company may enter into a cybersuite contract or an electronic business contract with any person.
- (2) Despite any statutory provision or other law to the contrary:
 - (a) a company has the capacity to carry on electronic business; and
 - (b) a company has the capacity to enter into and perform its obligations under any electronic business contract or cybersuite contract; and
 - (c) no electronic business contract or cybersuite contract entered into by a company is voidable or unenforceable by reason only that at the relevant time any other party to the contract lacked capacity to be a party to it.

5. Certain counterparties and cybersuite proprietors not required to be licensed

- (1) Subject to subsection (2), a counterparty or cybersuite proprietor is not required:
 - (a) to be licensed under any Act or other law of Vanuatu to carry on business in or within Vanuatu; or
 - (b) to obtain any other permission or authority under any Act or other law of Vanuatu to carry on business in or within Vanuatu,by reason only of the creation, entry into, effecting, purchase, sale or issue of an electronic business contract or cybersuite contract.
- (2) Subsection (1) does not apply to a cybersuite proprietor or counterparty that is:
 - (a) a local company within the meaning of the Companies Act; or
 - (b) a resident of Vanuatu; or

- (c) licensed to conduct a business activity set out in Schedule 3 of the Companies Act; or
- (d) is permitted by the Minister to carry on business in or within Vanuatu as the case may be with a local company or a resident of Vanuatu in accordance with section 378(1)(c)(iii) of the Companies Act.

6. Legal recognition of cybersuite contracts and electronic business accounts

A cybersuite contract or an electronic business contract entered into by a company or cybersuite proprietor is not to be denied legal effect, validity, enforceability or admissibility into evidence solely on the ground that it is in the form of an electronic record.

7. Laws of Vanuatu apply to cybersuite contracts and electronic business accounts

Despite any other Act or law to the contrary, any cybersuite contract or electronic business contract entered into by a company or cybersuite proprietor is taken to be formed in Vanuatu and is to be governed by the laws of Vanuatu unless the parties to the contract expressly provide otherwise.

PART 3 – CYBERSUITES AND E-BUSINESS ACCOUNTS

8. Electronic business

The electronic business carried on by a company is to be recorded, allocated or credited to and maintained in:

- (a) the e-business account; or
- (b) a cybersuite in accordance with the relevant cybersuite contract.

9. Separate records

- (1) A company must maintain separate financial records for each cybersuite and the e-business account in accordance with generally accepted accounting principles in Vanuatu.
- (2) Such records must be sufficient to permit identification of the property recorded, allocated or credited to each cybersuite and the e-business account.

10. Assets and liabilities

- (1) A company must record, allocate or credit to a cybersuite all assets and liabilities of or under the control of the company that are attributable to that cybersuite in accordance with the relevant cybersuite contract.
- (2) A company must record, allocate, debit or credit all other assets and liabilities of the company that relate to the electronic business carried on by the company to the e-business account.
- (3) Any asset or liability referred to in subsection (1) or (2) must be valued by the company and included in its records.
- (4) Despite any statutory provision or other law to the contrary, the assets of a cybersuite are taken to be held by the company on trust for the cybersuite proprietors.
- (5) Nothing in this Act is to be construed so as to interfere with:
 - (a) a cybersuite proprietor's beneficial ownership of its cybersuite interests; and
 - (b) the rights of a cybersuite proprietor to have the cybersuite disposed of or to distribute the assets of a cybersuite to the cybersuite proprietor entitled to such assets.

11. Incomes and expenses

- (1) If a company:
 - (a) earns income or interest; or
 - (b) acquires any property,
by investing or dealing with any asset recorded, allocated or credited to a particular cybersuite or the e-business account, the company must record, allocate or credit such income, interest or property to that cybersuite or the e-business account, as the case requires.
- (2) All expenses, fees or losses that:
 - (a) relate directly or indirectly to a particular cybersuite or the e-business account;
or
 - (b) are incurred by a company as a result of dealing or investing the assets of that cybersuite or the e-business account,
must be charged by the company against that cybersuite or the e-business account, as the case requires.
- (3) A company may deduct or remove from the relevant cybersuite or e-business account an amount equal to the amount referred to in subsection (2). Such an amount ceases to form part of the property recorded, allocated or credited to that cybersuite or the e-business account.

12. Dealing with property of cybersuites and e-business accounts

- (1) A company may deal with the property recorded, allocated or credited to the e-business account as it thinks fit.
- (2) Unless permitted by the relevant cybersuite contract, property recorded, allocated or credited to a cybersuite must not be commingled or substituted.

13. Termination of cybersuites

- (1) A company may terminate a cybersuite if:
 - (a) all cybersuite contracts and electronic business contracts relating to that cybersuite have been terminated; and
 - (b) the company's, any counterparty's and the cybersuite proprietor's obligations under that cybersuite have been discharged.
- (2) Any property then standing to the credit of that cybersuite belongs to the cybersuite proprietor and may be dealt with in such manner as the cybersuite proprietor thinks fit.

14. Securities

- (1) A company may issue one or more securities which relate to one or more cybersuites, unless expressly prohibited under the terms of the relevant cybersuite.
- (2) Any such security is to be identified in the records of the company at the time of issue as a security issued with respect to a particular cybersuite.
- (3) A company may issue such securities for such consideration and on such terms and conditions as the company thinks fit. Any funds or other assets received (less any expenses, fees and taxes relating thereto) in connection with the issue of such securities are to be credited to the cybersuite relating to such securities.
- (4) Despite the provisions of Parts 4 and 9 of the International Companies Act, a company may redeem or repurchase securities using the property of the relevant cybersuite in accordance with the terms and conditions on which the securities were issued.

PART 4 – MISCELLANEOUS

15. Data protection officer

- (1) A company must comply with any code of conduct or standard approved under the Electronic Transactions Act [Cap. 263] in carrying on any electronic business.
- (2) A company must appoint a person with appropriate qualifications and experience as its data protection officer who is responsible for ensuring the company complies with such approved codes of conduct or standards.

16. Protection of cybersuites in winding up of company

- (1) Despite any Act or other law to the contrary, this section applies in relation to any legal proceedings to wind up or dissolve a company.
- (2) Any property identified in the records of a company as the property of a cybersuite (including any interest in property that may have been commingled) cannot be used to pay the claims of any secured or unsecured creditors of the company.

17. Cybersuite fee

- (1) A company must, on or before 30 June each year, pay to the Vanuatu Financial Service Commission an annual fee of VT 40,000 for each cybersuite maintained by the company. The fee is to be paid in accordance with the written directions of the Commission.
- (2) If a company fails to pay the amount due under subsection (1) by the due date, the annual fee is to be increased by penalty of 10% of that amount for each month or part thereof during which the fee remains unpaid.
- (3) Any fee or penalty payable under this section is a debt due to the State by the company concerned and may be recovered by the State in a court of competent jurisdiction.

18. Cybersuite account to be maintained with National Bank of Vanuatu

- (1) A company must keep an account with the National Bank of Vanuatu for use for all transactions conducted through its cybersuites.
- (2) If a company contravenes subsection (1), the company is guilty of an offence punishable on conviction by a fine not exceeding VT 5 million.

19. Regulations

The Minister may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.