



## **REPUBLIC OF VANUATU**

### **E- BUSINESS (AMENDMENT) ACT NO. 17 OF 2007**

#### **Arrangement of Sections**

- 1 Amendment**
- 2 Commencement**

# REPUBLIC OF VANUATU

## **E- BUSINESS (AMENDMENT) ACT NO. 17 OF 2007**

An Act to amend the E- Business Act [CAP 264].

Be it enacted by the President and Parliament as follows-

### **1 Amendment**

The E- Business Act [CAP 264] is amended as set out in the Schedule.

### **2 Commencement**

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

## SCHEDULE

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

#### 1 Section 1

Insert the following definitions in their correct alphabetical order:

**“Code** means any code of conduct or standard approved under the Electronic Transactions Act [CAP 263] in relation to carrying on of any electronic business;

**Commission** means the Vanuatu Financial Services Commission established under section 2 of the Vanuatu Financial Services Commission Act [CAP 229];

**e-currency** means a digital form of currency that is capable of being, or is intended to be, exchanged between persons in relation to their financial transactions whether arising from electronic business or otherwise;

**e-currency services** means the provision of an integrated electronic system for the issue and redemption of units of e-currency, together with the recording of transactions involving units of e-currency and individual balances of units of e-currency held, by persons engaging in any form of electronic business or other financial transactions;

**e- services provider** means the person appointed as the provider of e-currency services under section 18;

**financial institution** has the same meaning as in the Financial Institutions Act [CAP 254];

**Financial Transactions Reporting Act** means the Financial Transactions Reporting Act [CAP 268];

**long term registration** has the same meaning as in the International Companies Act.”

#### 2 Section 1 (definition of counterparty)

Delete “proprietor”.

#### 3 Section 1 (definition of cybersuite)

Delete “2” substitute “3”.

#### **4 Section 1 (definition of electronic business contract)**

Repeal the definition substitute,

“**electronic business contract** means any contract entered into by a company or a cybersuite.”

#### **5 Section 2**

Repeal the section, substitute

##### **“2 Purpose and application of the Act**

- (1) The purpose of this Act is to provide a robust and sustainable environment for the development and growth of electronic business in or that is associated with Vanuatu and to regulate such electronic business.
- (2) An electronic business that is undertaken in, or in connection with, Vanuatu is to be conducted in such manner that:
  - (a) maintains and upholds the good reputation of Vanuatu; and
  - (b) complies with the laws of Vanuatu applicable to a company; and
  - (c) complies with the Code; and
  - (d) is transparent, ethical and is in accordance with generally accepted concepts of fair trading; and
  - (e) is self- regulating.
- (3) Subject to subsection (4), this Act applies to any form of electronic business conducted by a company or by a cybersuite or any person who is a party to a cybersuite or a cybersuite contract.
- (4) This Act does not apply to a company that conducts an electronic business outside of, or without any connection to Vanuatu unless the company has been registered pursuant to the International Companies Act.”

#### **6 Section 3**

Repeal the section, substitute

##### **“3 Meaning of cybersuite and cybersuite contract**

- (1) A cybersuite means an entity created and remaining in existence pursuant to cybersuite contract.
- (2) A cybersuite is to be treated for all purposes as a separate legal entity unless expressly provided by this Act or any regulations made under this Act.
- (3) The provisions of the International Companies Act on solvency apply to a cybersuite as if the cybersuite is a company.

- (4) A cybersuite may enter into a contract with counterparty or with another cybersuite.
- (5) A cybersuite contract means a contract made between a company and the cybersuite proprietor for the purpose of conducting electronic business.
- (6) In addition to subsection (1), a cybersuite contract may:
  - (a) provide for the management and economic rights in relation to the cybersuite, which may be exclusive or non exclusive to a party; and
  - (b) provide for the issue of any class of equity of debt by the company or the cybersuite proprietor in relation to the cybersuite; and
  - (c) provide for the disbursement of funds by the company to the cybersuite proprietor.”

**7 Subsection 9(1)**

Repeal the subsection, substitute

“(1) A company must:

- (a) maintain financial records in respect of its electronic business; and
- (b) adequately maintain separate financial records for each cybersuite contract to which it is a party,

in accordance with generally accepted accounting principles for a company.”

**8 Section 15 (heading)**

Repeal the heading, substitute

“**15 Compliance**”

**9 Subsection 15(1)**

Delete “any code of conduct or standard approved under the Electronic Transactions Act [Cap. 263]” substitute, “the Code”.

**10 Subsection 15(2)**

Delete “such approved codes of conduct or standards”, substitute “the Code”.

**11 At the end of section 15**

Add

“(3) A company entering into a cybersuite contract or any form of contract to perform or facilitate electronic business must:

- (a) prior to entering into the contract, provide to the cybersuite proprietor or the intended customer, a copy of the Code and must ensure that the recipient is aware of the requirements of the Code;
  - (b) ensure that the terms and conditions of any proposed contract (including any subsequent amendment) complies with the Act and the Code;
  - (c) ensure that any such contract is performed and carried out in accordance with this Act and the Code.
- (4) A term, condition or stipulation in a contract is void if such term, condition or stipulation is contrary to this Act or Code.”

**12 Subsection 17(2) and (3)**

Re-number the subsections as (4) and (5).

**13 Subsection 17(1)**

Repeal the subsection, substitute

- “(1) A company must pay a cybersuite registration fee to the Commission within 30 days after entering into a cybersuite contract with a cybersuite proprietor.
- (2) In addition to the cybersuite registration fee, a company referred to under subsection (1) must on or before the anniversary date of the registration, pay an annual cybersuite fee to the Commission.
- (3) The fees payable under subsections (1) and (2) are to be paid in such manner as may be determined by the Commission and the amount must not exceed:
- (a) for the cybersuite registration fee-one-half of the amount payable for the registration of a company (not being a long term registration) under the International Companies Act; and
  - (b) for the annual cybersuite fee- one-half of the amount of the annual fee payable by a company under the International Companies Act.”

**14 Subsection 17(5)**

Repeal the subsection, substitute

- “(6) If the company fails to pay any fee due under subsection (1), the outstanding fee is to be increased by a penalty of 10% of that amount for each month or part thereof during which the fee remains unpaid.”

**15 Section 18**

Repeal the section, substitute

**“18 E-currency services and e-services provider**

- (1) A company that is incorporated under the Companies Act may apply to the Minister for a licence to conduct an internet-based e-currency business.
- (2) The Minister may issue, upon payment of the prescribed fee, a licence to a company to conduct an internet-based e-currency business if the Minister is satisfied that the company possesses the required expertise and skills to conduct such business.
- (3) Upon issuing a licence under subsection (2), the Minister is to appoint the company referred to under subsection (2) as an e-services provider.
- (4) The appointment made under subsection (3) must be published in the Gazette.
- (5) The terms and conditions and the period of appointment are to be set out in a licensing agreement between the Minister and the e-services provider.
- (6) An e-services provider is:
  - (a) not deemed to be a financial institution as a consequence of it providing e-currency services; and
  - (b) not deemed to be carrying on international banking business under the International Banking Act; and
  - (c) bound by the Financial Transactions Reporting Act; and
  - (d) bound by the Code.
- (7) An e-services provider must not carry on any business activities other than the e-currency services and such other activities that are incidental to or in furtherance of its e-currency services.
- (8) The prescribed fee referred to under subsection (2) is payable to the Commission.
- (9) Subject to subsection (10), the e-services provider may establish and maintain such bank accounts in such jurisdiction as it determines necessary for it to provide e-currency services.

- (10) An e-services provider must not:
- (a) establish and maintain a bank account with any financial institution that does not have an effective anti- money laundering policy; and
  - (b) establish and maintain any bank account in a jurisdiction that does not have a Financial Transactions Reporting Act or other laws or regulations which are equivalent to the Financial Transactions Reporting Act.”