



REPUBLIC OF VANUATU

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

Arrangement of Sections

- 1 Amendment**
- 2 Commencement**

REPUBLIC OF VANUATU

Assent: 24/12/2007
Commencement: 11/02/2008

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)

Renumber 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.”