



REPUBLIC OF VANUATU

**INTERNATIONAL COMPANIES (AMENDMENT)
ACT NO. 11 OF 2010**

Arrangement of Sections

1 **Amendment.....**

2 **Commencement.....**

REPUBLIC OF VANUATU

Assent: 15/07/2010
Commencement: 11/08/2010

INTERNATIONAL COMPANIES (AMENDMENT) ACT NO. 11 OF 2010

An Act to amend the International Companies Act [CAP 222].

Be it enacted by the President and Parliament as follows-

1 Amendment

The International Companies Act [CAP 222] 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 INTERNATIONAL COMPANIES ACT [CAP 222]

1 Subsection 1(1)

Insert the following definitions in their correct alphabetical positions:

“annual fee” means the annual fee required to be paid under section 112 of this Act;

“articles” means the articles of association of a company that is registered under the Companies Act [CAP 191];

“bearer share” means a share represented by a certificate which states that the bearer of the certificate is the owner of the share;

“certificate of continuation” means the certificate issued by the Commission under subsection 92(5);

“custodian” means an authorised custodian or a recognised custodian within the meaning of the regulations;

“effective date” means the date on which the International Companies (Amendment) Act No. of 2010 comes into force;

“exempted company” means a company that is registered or re-registered as an exempted company under the Companies Act [CAP 191];

“existing bearer share” means a share in a company that:

(a) was issued or converted to a bearer share before the effective date; and

(b) remains a bearer share in the company on the effective date;

“memorandum” means the memorandum of association of a company registered under the Companies Act [CAP 191];

“prescribed” means prescribed by regulations made under this Act;

“provisional certificate of continuation” means the certificate of continuation issued by the Commission under subsection 95A(3);

“registered agent” means the person who is at any particular time performing the functions of registered agent of a company under this Act;

“regulations” means the regulations made by the Minister under this Act;

“share warrant” means a share warrant issued under subsection 23(1);

“transition date” means 31st December 2012;”

2 Subsection 1(1) (definition of Guidelines)

Repeal the definition

3 Paragraph 3(1)(ca)

Repeal the paragraph, substitute

“(ca) whether the company elects to be registered:

(i) for a period of 1 year; or

(ii) for longer than 1 year under long term registration;

(cb) if the company elects to be registered under long term registration, whether the period of registration is 5 years, 10 years or 20 years;”

4 Subsections 3(5) and (6)

Delete “regulations” (wherever occurring), substitute “rules”

5 Section 6A

Repeal the section, substitute

“6A. One year and long term registration

(1) An incorporator of a company may, or a company may at any time, elect that the company be registered:

(a) for a period of 1 year; or

(b) for a period of 5 years, 10 years or 20 years under long term registration.

- (2) A company registered for 1 year may:
- (a) subject to section 112 continue its registration, on payment of an annual fee; or
 - (b) at the end of 1 year elect to be registered under long term registration.
- (3) A company registered under long term registration may at the end of its period of registration:
- (a) renew its long term registration, on payment of the long term renewal fee under section 111; or
 - (b) elect to be registered for a period of 1 year.”

6 Paragraph 10(1)(d), (e), and (f)

Repeal the paragraphs, substitute

- “(d) carry on banking business within the meaning of the International Banking Act [CAP 280], unless it is licensed under that Act;
- (e) carry on trust business or company management business as defined by the Companies and Trust Service Providers Act No. of 2010, unless it is licensed under that Act;
- (f) carry on insurance business as defined by the Insurance Act No. 54 of 2005, unless it is licensed under that Act; or”

7 Paragraph 14(2)(a)

After “authorized by a” insert “special”

8 Section 26

Delete “A share issued to bearer”, substitute “Subject to the provisions of this Act and the regulations, a bearer share”

9 Section 26A

Repeal the section, substitute

“26A. Issue of bearer shares and conversion of registered shares after effective date

- (1) If a company on or after the effective date:

- (a) issues a bearer share; or
- (b) disposes of a treasury share that is a bearer share,

it must not deliver the share to any person other than a custodian who has agreed to hold the share.

- (2) A company must not on or after the effective date, deliver a bearer share converted from a registered share, to any person other than a custodian who has agreed to hold the share.
- (3) To avoid doubt, nothing in this section must be construed in any way as conferring on a custodian who holds a bearer share, any entitlements or right carried by the bearer share under this Act.

26B. Existing bearer shares

- (1) An existing bearer share of a company must be, on or before the transition date:
 - (a) deposited with a custodian who has agreed to hold the share; or
 - (b) converted to, or exchanged for a registered share.
- (2) Subsection (1) does not apply to a bearer share that, before the transition date:
 - (a) is cancelled; or
 - (b) is redeemed, purchased or otherwise acquired by the company as a treasury share.
- (3) An existing bearer share in a company is taken not to have been deposited with a custodian for the purposes of subsection (1), until the registered agent of the company has received notification of the deposit from the custodian in accordance with the regulations.

26C. Bearer shares not held by custodian disabled

- (1) Subject to subsections (2), (3) and (4), a bearer share in a company is disabled for any period during which it is held by a person other than a custodian.

- (2) Subsection (1) does not have effect with respect to an existing bearer share until after the transition date.
- (3) Subsection (1) does not apply to a bearer share in a company:
- (a) that is held by the registered agent of the company in accordance with the regulations; or
 - (b) that is held by a person who received the share at a time when he was a custodian but who has ceased to be a custodian.
- (4) Subsection (1) does not apply to a bearer share in a company:
- (a) that is held by the company, and the bearer share is to be, or has been:
 - (i) converted to, or exchanged for a registered share; or
 - (ii) redeemed, purchased or otherwise acquired by the company; or
 - (iii) cancelled and forfeited;
 - (b) if the company does not hold the bearer share for or on behalf of any other person.

26D. No rights and entitlements carried by disabled bearer shares

- (1) During the period in which a bearer share is disabled under this Act:
- (a) the share does not carry any of the entitlements and rights which it would otherwise carry; and
 - (b) subject to subsection (2), any transfer or purported transfer of an interest in the bearer share is void and of no effect.
- (2) Without limiting subsection (1), for the purposes of this section, “entitlement” includes an entitlement to vote, an entitlement to a dividend, and an entitlement to a share in the assets of the company on its winding up or on its dissolution.

- (3) Paragraph (1)(b) does not apply to the transfer or delivery of a bearer share in a company:
- (a) to a custodian in accordance with this Act or regulations; or
 - (b) to the company where the share is or is to be:
 - (i) converted to, or exchanged for a registered share; or
 - (ii) redeemed, purchased or otherwise acquired by the company; or
 - (iii) forfeited or cancelled,
- and the company does not hold the bearer share for another person; or
- (c) to the registered agent of a company in accordance with the regulations.”

10 Paragraph 58(1)(f)

Repeal the paragraph, substitute

- “(f) with respect to each certificate for bearer shares issued:
- (i) the identifying number of the certificate; and
 - (ii) the number of each class or series of shares issued specified in the certificate; and
 - (iii) the date of issue of the certificate; and
 - (iv) the name and address of the custodian of the certificate,”

11 Subsection 58(1)(Proviso)

Delete “shares issued that have been cancelled”, substitute “persons who are no longer members or information relating to bearer shares that have been cancelled”

12 Section 65 (heading)

Delete “inspection” (second occurring), substitute “records”

13 After section 74

Insert

“74A. Charges of bearer shares

Despite anything in any other Act, a charge of a bearer share created after the transition date is not valid and enforceable unless the certificate for the share is deposited with a custodian in accordance with the regulations.”

14 Subsection 92(1)

Delete “A company”, substitute “Subject to section 95A, a company”

15 Paragraph 92(2)(b)

Delete “constitution”, substitute “memorandum and articles or their equivalent”

16 After section 95

Insert

“95A. Continuation of existing exempted companies as companies under this Act

- (1) Despite anything in any other Act, on the effective date, an exempted company is taken to have been granted a provisional certificate of continuation under this section to continue as a company under this Act.
- (2) Despite anything in any other Act, on the effective date an exempted company ceases to be subject to the Companies Act [CAP 191].
- (3) The Commission must as soon as possible after the effective date issue to each exempted company, a provisional certificate of continuation.
- (4) A provisional certificate of continuation must:
 - (a) be in the form approved by the Commission; and
 - (b) remain in force for a period of 5 years.
- (5) If a company issued with a provisional certificate of continuation wishes to continue as a company incorporated under this Act after the end of the period of 5 years, the company must within 6 months before the date ending the period of 5 years, apply to the Commission under subsection 92(1) for a certificate of continuation to continue as a company under this Act.

- (6) To avoid doubt, an application by a company under subsection 92(1) is an application for a new certificate of continuation.
- (7) The Commission must not take into account the fact that a company holds a provisional certificate of continuation under this section when determining an application for continuation filed under subsection 92(2).

95B Effect of Provisional certificate of continuation

Upon the issue of a provisional certificate of continuation under subsection 95A(3):

- (a) the status of the company issued with the certificate is changed from an exempted company to a company under this Act; and
- (b) Section 94 applies *mutatis mutandis* in relation to the effect of the continuation of the company under this Act.

95C Annual return of a company issued with provisional certificate of continuation

A company issued with a provisional certificate of continuation, must upon each anniversary of its registration as a company under the Companies Act, forward to the Commission a return in the form and containing the particulars, prescribed by regulations.”

17 Section 106(heading)

After “off” add “on breach of section 10”

18 Subsections 106(5) and (6)

Repeal the subsections

19 Subsections 106(7) and (8)

Renumber the subsections as “(5) and (6)”

20 Subsections 106(5) and (6)

After “section” (wherever occurring), insert “and section 112A”

21 Subsection 107(2)(proviso)

Delete “licence fees”, substitute “annual fees”

22 Subsection 107(3)

Delete “section 106(6), substitute “section 113”

23 Paragraph 107(3)(a)

After “;”, add “and”

24 Paragraphs 107(3)(b) and (c)

Repeal the paragraphs, substitute

“(b) annual fee due under section 112 and 112A,”

25 Subsection 110(1)

After “section 106”, insert “and section 113”

26 After section 110

Insert

“110A. Disposal of books, records and papers of company

- (1) If a company is wound up and about to be dissolved, the books, records and papers of the company, and liquidators may be disposed:
 - (a) in the case of a winding up by the court - in the manner the court may direct; and
 - (b) in the case of a members’ voluntary winding up - in the manner the company by extraordinary resolution directs.
- (2) After 5 years from the dissolution of the company, no responsibility must rest on the company, the liquidators or any person to whom the custody of the books, records and papers has been committed, by reason of any book, record or paper not being forthcoming to any person who claims to have an interest in it.”

27 Part 13 (Heading)

Delete “and penalties”

28 Paragraph 111(2)(a)

Repeal the paragraph, substitute

“(a) \$150 for registration of a company that elects to be registered for 1 year.”

29 Paragraph 111(2)(aa)

Repeal the paragraph, substitute

“(aa) for long term registration:

- (i) \$675 for registration for 5 years;
- (ii) \$1200 for registration for 10 years;
- (iii) \$2000 for registration for 20 years;
- (ab) for renewal of long term registration:
 - (i) \$1000 for renewal of registration for 5 years;
 - (ii) \$1500 for renewal of registration for 10 years;
 - (iii) \$2500 for renewal of registration for 20 years;”

30 Subsection 111(5)

Repeal the subsection, substitute

“(5) Subsections (1), (2) and (3) do not apply to a company issued with a provisional certificate of continuation under subsection 95A(3).”

31 Section 112

Repeal the section, substitute

“112. Annual fee for companies continuing registration under paragraph 6A(1)(a)

A company that is registered for 1 year and elects to continue its registration must pay to the Commission an annual fee of \$300:

- (a) on or before 30th June each year, if the company is on the Register on the effective date;
- (b) in each year, on or before the last day of the month in which the company is registered, if the company is registered after the effective date.

112A. Annual fee for companies issued with provisional certificate of continuation

A company issued with a provisional certificate of continuation must, upon each anniversary of its registration as a company under the Companies Act, pay to the Commission an annual fee as set out in the table:

Authorised capital of a company	Annual fee
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(i)	VT 50,000,000 or less	VT100,000
(ii)	more than VT50,000,000, but not more than VT 100.000,	VT150,000
(iii)	more than Vt100,000,000, but not more than VT 200,000,000	VT200,000
(iv)	more than VT 200,000,000, but not more than 300,000,000	VT250,000
(v)	more than VT 300,000,000	VT300,000.”

32 Section 113

Repeal the section, substitute

“113. Striking off on non-payment of fee

- (1) If a company:
- (a) registered for 1 year fails to pay the annual fee payable under section 112 within a period of 30 days from the date on which the annual fee falls due; or
 - (b) registered under long term registration, fails to pay the long term renewal fee payable under paragraph 111(2)(ab) within a period of 30 days from the date on which the long term renewal fee falls due; or
 - (c) issued with a provisional certificate of continuation under subsection 95A(3), fails to pay the annual fee payable under section 112A within a period of 30 days from the date on which the annual fee falls due,

the Commission must within 7 days after the expiration of the period of 30 days, send a notice to the company stating that the name of the company will be struck off the Register if the company fails to pay the fee within 14 days from the date of the notice.

- (2) If a company fails to pay the fee within 14 days from the date of the notice referred to in subsection (1), the Commission must strike the name of the company off the Register and must publish notice of the striking off in the Gazette.

- (3) Subsection (2) does not apply to a company in the process of being wound up or dissolved.
- (4) Subsections 106(5) and (6) apply to a company that has been struck off under this section.”

33 Section 114(heading)

Delete “Penalties” substitute “fees”

34 Section 114

Delete “or penalty”

35 Section 115

Delete “and penalties” (wherever occurring)

36 Section 116

Repeal the section

37 Subsection 117(1)

Delete “all fees and penalties have been paid”, substitute “the fee has been paid.”

38 Subsection 131(2)

Repeal the subsection, substitute

- “(2) Without limiting the generality of subsection (1), the regulations may make provisions about:
- (a) the qualification of custodians; and
 - (b) the approval or recognition of custodians by the Commission; and
 - (c) the delivery of share warrants issued to bearer, to custodians; and
 - (d) the duties of custodians holding:
 - (i) bearer shares; and
 - (ii) share warrants issued to bearer;
 - (e) the delivery of the certificate of bearer share to a custodian in respect of a charge of the share; and
 - (f) the conduct, duties and responsibilities of registered agents; and

- (g) the issue of provisional certificate of continuation, and matters in relation to the companies, that certificate relates; and
- (h) vary any fee specified in this Act.”

39 Section 132

Repeal the section